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9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF ALAMEDA**

11
12 CENTER FOR ENVIRONMENTAL
13 HEALTH,

14 Plaintiff,

15 v.

16 AERODYNAMIC AVIATION, *et al.*,

17 Defendants.

Case No. RG-11-600721

Hon. Somnath Raj Chatterjee

**SETTLING DEFENDANTS’
OPPOSITION TO MOTION TO
ENFORCE AND MODIFY CONSENT
JUDGMENT**

Date: February 4, 2025

Time: 1:30 p.m.

Reservation Number: 690015831804

Complaint Filed: October 20, 2011

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1 **I. INTRODUCTION**

2 Plaintiff Center for Environmental Health (“CEH”) seeks to force the four distributors of
3 aviation gasoline (“Avgas”) in California, along with certain fixed base operators (“FBOs”), to
4 offer only unleaded Avgas such as General Aviation Modifications, Inc., (“GAMI’s”) G100UL in
5 California, even though neither G100UL nor any other unleaded Avgas is “Commercially
6 Available” within the meaning of the 2014 Consent Judgment (“CJ”). Granting CEH’s Motion as
7 to the Distributor Defendants would effectively and almost immediately ban the time-tested Avgas
8 that is in universal use in California and across the United States—100 Low Lead (“100LL”)—
9 despite California and federal law not only permitting but *requiring* this fuel to be available at most
10 airports through 2030. Such a ruling would ground a significant portion of the general aviation
11 fleet, including aircraft used for fighting fires, law enforcement, and other essential public services.

12 CEH’s Motion is unnecessary, premature, and a distraction from responsible industry
13 efforts to develop an unleaded Avgas that will achieve universal acceptance. CEH has taken the
14 aggressive marketing campaign of one fuel developer (i.e., GAMI), which is attempting to obtain
15 a first-mover advantage for G100UL, and leveraged the CJ into a legal cudgel against the
16 companies who simply provide aircraft operators with the fuel they prefer or require, companies
17 who do not have the ability to create new fuels or force pilots to use them, but who perform the
18 intermediary roles of distributing fuels and fueling aircraft.

19 Despite extensive meet and confer efforts in which Settling Defendants attempted to educate
20 CEH on the complexities of fuel approval and adoption by the many stakeholders in the aviation
21 industry,¹ CEH ignores the salient facts in its crusade to force the use of G100UL. The facts are
22 that G100UL (1) has only been approved for a portion of the general aviation (“GA”) fleet; (2)
23 voids original equipment manufacturer (“OEM”) warranties; (3) raises “airworthiness concerns”;
24 (4) does not have an industry consensus standard; (5) may violate unspecified regulations; and (6)
25 lacks sufficient insurance. No responsible business would offer such a fuel to the exclusion of all
26 others. It simply cannot be considered “Commercially Available” under the CJ such that Settling
27

28 ¹ Defendants hereby incorporate by reference the arguments presented to CEH in their meet-and-confer letters.
Todzo Decl., Exs. 13-15.

1 Defendants are obligated to offer G100UL and no fuel with more lead than G100UL contains.

2 The CJ, which was subject to extensive negotiation over a decade ago, recognized that the
3 decisions of distributors and FBOs on what fuels to offer are constrained by many factors out of
4 their control, including market forces on price and demand, approval by regulators, approval by
5 aircraft manufacturers, availability of insurance, assurances of quality control, and manufacturing
6 capacity and supply. These factors are incorporated into the term “Commercially Available.” Only
7 once a lower-lead or unleaded Avgas is Commercially Available must the Defendants offer it. CEH
8 seeks to ignore all considerations beyond supply and (partial) approval by regulators.

9 A necessary precondition for an Avgas to be Commercially Available for an industrywide
10 transition, of course, is that the fuel has been approved for the entire industry. But the Federal
11 Aviation Administration (“FAA”) has not yet approved G100UL for use in several categories of
12 aircraft, including piston-powered helicopter airframes, light sport aircraft, and experimental
13 aircraft (approximately 17% of the GA fleet). Neither the Distributors nor the FBOs can exclusively
14 offer a fuel that would result in grounding one-sixth of the fleet. Nor would a prohibition on 100LL
15 comport with the FAA’s Reauthorization Act, which—contrary to CEH’s allegations—requires
16 formal findings on a replacement unleaded Avgas (findings that the FAA has not issued to date).

17 Despite lacking any evidence that G100UL is indeed Commercially Available to each
18 Defendant, and despite having been informed of the many impediments to G100UL’s adoption by
19 the aviation industry, CEH seeks its attorney fees for bringing this motion. What’s more, CEH
20 seeks to initiate a contempt proceeding against the Distributor Defendants even though CEH agrees
21 that the Distributor Defendants already comply with the Consent Judgment by offering an unleaded
22 fuel, 94UL. D’Acosta Decl. ¶ 11, Ex. B (“[E]ither fuel will allow such parties to meet their
23 obligations under the 2014 legal agreement.”). As explained below, CEH’s Motion not only fails
24 but lacks substantial justification. The Court should deny it in full.

25 **II. BACKGROUND**

26 **A. The General Aviation Industry and Fleet of Aircraft**

27 The GA industry serves many critical functions, including, *inter alia*, emergency
28 preparedness and response (e.g., disaster relief, aerial firefighting support, law enforcement),

1 critical community access (e.g., serving remote populations), commercial and economic activities
2 (e.g., agricultural support), and other aviation-specific functions (e.g., flight instruction and
3 personal flying). Barnes Decl., Ex. A (ICAO Paper), Ex. B (FAA, GA Airports: A National Asset).
4 Many of these functions cannot be supported at primary commercial service airports. *Id.*

5 GA encompasses approximately 289,000 aircraft in the U.S. and supports 1.2 million jobs.
6 Castagna Decl., Ex. B (EAGLE FAQ). GA aircraft are diverse and include piston-powered aircraft,
7 piston rotorcraft, light-sport aircraft (i.e., small, lightweight aircraft, *see* 14 C.F.R. § 1.1) (“LSA”),
8 experimental aircraft (i.e., aircraft built by individuals that are used for non-commercial purposes,
9 *see* 14 C.F.R. § 91.319), and piston-powered helicopter airframes. Barnes Decl. Ex. C (AOPA).

10 **B. The EAGLE Initiative and the Safe Transition to Unleaded Avgas**

11 In GA aircraft, lead has long been used as an additive to boost fuel octane, which is
12 necessary to avoid engine detonation and catastrophic engine failure. Castagna Decl. Ex. B
13 (EAGLE FAQ). Finding a suitable unleaded substitute has long been a goal of the GA industry. *Id.*
14 In early 2022, the FAA and various stakeholders—including fuel suppliers and distributors,
15 airports, OEMs, research institutions, and environmental groups—partnered to form the Eliminate
16 Aviation Gasoline Lead Emissions (“EAGLE”) initiative. *Id.* EAGLE’s mission is to safely
17 eliminate leaded Avgas in piston-engine aircraft by the end of 2030 without adversely affecting the
18 safety or operation of the current fleet. *Id.* (EAGLE FAQ). Like the California Legislature and the
19 OEMs of aircrafts and engines, EAGLE recognizes that the general aviation (“GA”) industry’s
20 transition to unleaded Avgas will not happen overnight.

21 It is not enough for the FAA to approve these new [unleaded] fuels. The industry—
22 from aircraft owners to fuel distributors to FBOs that dispense fuel and aircraft
23 manufacturers that provide continued operational support—must accept them. Safety, reliability, and commercial viability must guide this transition

24 This transition is about more than meeting regulatory requirements—it’s about
25 ensuring that aircraft owners feel confident in the safety and reliability of the new
26 fuel. The solution must be robust enough to meet the diverse needs of the piston-
27 engine fleet, from the World War II era planes to modern helicopters.

28 Castagna Decl. Ex. D (FAA EAGLE Fall 2024 Update).

EAGLE stresses that “the unleaded transition must be safe and smart, and airports and
communities must provide a supply of ... 100LL for all aircraft to fly safely during the transition.”

1 *Id.* Ex. B (EAGLE FAQ). This is because the transition to unleaded Avgas “poses unique
2 challenges.” *Id.* To start, the “safety-critical nature of aircraft operations necessitates specialized
3 handling of aviation fuels to ensure their cleanliness, dryness, and adherence to specifications
4 throughout the distribution system.” *Id.* Moreover, many of the 289,000 GA aircraft may require
5 modifications to their operating limitations or hardware to safely use unleaded Avgas. *Id.* Because
6 the turnover rate of the existing GA fleet is low, aircraft owners are “particularly vulnerable to
7 devaluation of their aircraft should an unleaded replacement Avgas be incompatible with the
8 existing fleet.” Barnes Decl. Ex. D (FAA Unleaded Avgas Transition).

9 **C. FAA Authorization for Unleaded Avgas**

10 The FAA offers two pathways to approval for a new unleaded Avgas. Barnes Decl. Ex. E
11 (Building an Unleaded Future by 2030). First, FAA established the Piston Engine Aviation Fuels
12 Initiative (“PAFI”) in 2014 to support the evaluation of unleaded Avgas candidates, with the
13 objective of ultimately qualifying a fleetwide solution. *Id.* Ex. F (FAA PAFI Background). Once a
14 candidate Avgas formulation is qualified for PAFI testing, the FAA tests the Avgas using methods
15 created through collaboration with industry. *Id.* The FAA is responsible for testing the candidate
16 the fuel, OEMs participate in the review of this testing data, and the FAA assesses and approves
17 the fuel for use in piston aircraft. *Id.* Ex. G (FAA PAFI versus STC Chart). According to FAA, the
18 “collaborative process” between the FAA and OEMs “includes the selection of materials, engines,
19 and aircraft to test to ensure the full general aviation engine power range and aircraft operational
20 spectrum are represented.” *Id.* The FAA also has the authority to authorize candidate fuels in LSA
21 and experimental aircraft. *Id.*

22 Second, approval of an unleaded Avgas may be obtained with a supplemental type
23 certificate (“STC”) issued by the FAA. *Id.* Ex. H (FAA STC Background). A type certificate (“TC”)
24 approves the design of an aircraft and all component parts (including propellers, engines, control
25 stations, etc.). Gang Decl. ¶ 8. A TC signifies that the design is in compliance with applicable
26 airworthiness, noise, fuel, vesting, and emission standards. *Id.*; *see also* 14 C.F.R. 21.21. An STC
27 is a TC that is issued when an applicant has received approval to modify an aeronautical process
28 from its original design. *Id.*; *see also* 14 C.F.R. § 21.113. Unlike the PAFI process, the FAA does

1 not authorize the use of Avgas in LSA or experimental aircraft. *Id.* Rather, the “LSA manufacturer
2 must authorize fuel for their aircraft,” and the “STC holder may choose to make data available to
3 support experimental aircraft.” *Id.*

4 Because “[t]he FAA does not certify fuels,” the issuance of an STC indicates only that the
5 FAA has found that the applicable engine and aircraft models may operate with an unleaded fuel.
6 Barnes Decl. Ex. I (FAA Unleaded Fuel FAQ). “The STC does not substantiate the fuel’s
7 producibility, supply chain infrastructure, quality control, or environmental compliance.” *Id.* In
8 contrast to PAFI, the STC process does not involve input from OEMs. *Id.* Ex. G (FAA PAFI versus
9 STC Chart). In fact, neither OEMs nor TC holders may obtain technical information or testing data
10 from the FAA related to an STC application.

11 **D. The Importance of Consensus-Based Industry Standards**

12 Regardless of the method, the FAA’s approval of an Avgas stops at the wings of the aircraft.
13 “Unlike all other aspects of aircraft design, the FAA does not regulate the production, distribution,
14 handling, operation, and maintenance of aviation fuel before it reaches the aircraft fuel tanks.” *Id.*
15 Ex. I (*Unleaded Fuel Development FAQs*). Therefore, although the FAA approves an Avgas for
16 use in aircraft, additional safeguards are needed to ensure the “[q]uality control of the fuel
17 composition.” *Id.* Because the composition of hydrocarbon fuels varies with each batch produced,
18 “a scientifically developed and statistically based regime of fuel property tests is required to
19 maintain the fuel composition within known variances to ensure each production batch of aviation
20 fuel is fit for purpose for use on aircraft.” *Id.* Such tests are based on consensus standards, notably
21 developed by ASTM International. These standards are “the product of a collaborative approach
22 that includes many stakeholders from the aviation community as well as other experts.” *Id.*

23 The California Legislature has recognized that “ASTM certification is the gold standard”
24 for making unleaded Avgas “widely available” because an ASTM Standard “looks at the fuel
25 performance more comprehensively from production to consumption while the FAA certification
26 looks only at performance in the engine.” *Id.* Ex. J (SB 1193, Senate Rules Committee at 4).
27 Specifically, an ASTM standard “allow[s] refineries, terminals, fuel distributors, FBOs and other
28 aviation stakeholders throughout the supply chain to appropriately examine and process aviation

1 gasoline to ensure their quality towards safe and efficient use.” *Id.* Ex. K (Assembly Floor Analysis)
2 For instance, the ASTM D7826-1 Standard for Avgas evaluates compatibility with materials
3 throughout the supply chain upstream of the aircraft, “including those used in hoses, filters, gaskets,
4 and other wetted components among railcars, transport trucks, fuel farms, mobile refuelers, and
5 other dispensing equipment.” *Id.* Incompatibility of a fuel with any of these components will
6 undermine its commercial acceptance.

7 **E. Unleaded Avgas Candidate Fuels**

8 Numerous unleaded Avgas candidates have been or are proceeding through the FAA’s PAFI
9 or STC processes. Only one unleaded Avgas has been approved by the FAA and is currently
10 available for sale across the country: Swift Fuels, LLC’s 94-octane fuel, UL94. Declaration of Chris
11 D’Acosta Decl. ¶ 3. In 2015, Swift obtained an STC for UL94, which the FAA has now approved
12 for use in up to 75 percent of the U.S. piston fleet. *Id.* As CEH knows, the Distributors have and
13 continue to either distribute or facilitate the distribution of UL94. Huehl Decl. ¶ 6; Stallings Decl.
14 ¶ 7; Batty Decl. ¶ 7; Bryant-Jordan Decl. ¶ 4.

15 Three unleaded 100-octane fuels are proceeding through the STC or PAFI processes. With
16 respect to G100UL, the FAA issued STCs on September 1, 2022 to GAMI, approving the use of
17 G100UL in spark ignition piston-engine airplanes and associated engine models. Todzo Decl. ¶ 14.
18 Although CEH claims that these STCs constitute “FAA approval of G100UL for use in all of the
19 aircraft engines and airplanes” (Mot. at 8:24-25), the FAA did not approve, and the STCs do not
20 cover, G100UL’s use in helicopter airframes, LSA, or experimental aircraft. *See* Barnes Decl. Ex.
21 C (AOPA); Hoyt Decl. ¶ 20-22, Exs. F, G, H; Viola Decl. ¶ 4; Tetzlaff Decl. ¶ 4; Horton Decl. ¶ 4;
22 Kremnitzer Decl. ¶ 6; Smith Decl. ¶ 5. As such, CEH’s claim—based on its counsel’s review of an
23 FAA database—that the STC’s approved the use of G100UL in 98.5% of aircraft (i.e., all aircraft
24 except helicopters) is incorrect. *See* Todzo Decl. ¶ 15. FAA data show that STCs for G100UL do
25 not cover at least 17% of the GA aircraft fleet in 2023, including 2,900 piston-powered helicopter
26 airframes, 3,000 LSA, and 30,000 experimental aircraft. Hoyt Decl. ¶ 23.

27 On May 31, 2024, a single unnamed “Engineer/Pilot” in the FAA’s Engine and Propellor
28 Directorate stamped and initialed a revised G100UL product specification (“Specification”) that

1 was submitted by GAMI, and based on GAMI’s own testing. Barnes Decl. Ex. L. The Specification
2 states that G100UL may be commingled with 100LL, but cautions that “Grade G100UL that has
3 significant amounts of lead as a result of commingling with ADTM D910 may not comply with
4 local or state, regulatory requirements.” *Id.* at 5, n.k. The Specification does not advise what “local
5 or state regulatory requirements” may be violated as a result of commingling G100UL with 100LL,
6 nor does it advise what level of commingled lead is “significant.” *Id.*

7 GAMI refuses to obtain an ASTM Standard for G100UL. *See id.* Ex. M (GAMI, G100UL.
8 G100UL is the first Avgas in history that has not undergone a consensus standard stakeholder peer
9 review process or ASTM review. Hoyt Decl. ¶ 14. GAMI, for its part, has refused to provide OEMs
10 “with access to any technical information related to G100UL unless [they] agree that [they] will
11 not disclose [their] findings.” *Id.* Ex. b (Lycoming Service Advisory). That condition is
12 unacceptable to OEMs, who are focused on safety and therefore need to report any adverse findings.

13 The manufacturers of other 100-octane unleaded fuel candidates have provided or intend to
14 provide information to OEMs. On September 17, 2024, the FAA issued STCs for Swift’s 100-
15 octane fuel (100R) for the Cessna 172R and 172S model aircraft operating the Lycoming IO-360-
16 L2A engine. D’Acosta Decl. ¶ 17. Swift is also making progress towards obtaining an ASTM
17 Standard for 100R, which it expects to obtain within the first four months of 2025. *Id.* ¶ 16. In
18 addition to Swift’s 100R, LyondellBasell/VP Racing is pursuing FAA authorization of a 100-octane
19 fuel through the FAA’s PAFI process. Barnes Decl. Ex. G (FAA PAFI versus STC Chart). It
20 therefore is not clear why CEH is in such a rush to force G100UL on the GA community without
21 adequate vetting and assurances of safety.

22 **F. Lack of OEM Approval for G100UL; G100UL Compatibility Issues**

23 Due to a lack of information on G100UL—as well as issues G100UL has caused in the short
24 time it has been used—OEMs have refused to approve the use of G100UL in their equipment. The
25 Safety Data Sheet for G100UL reports the fuel contains meta-toluidine. D’Acosta Decl. ¶ 22, Ex.
26 C. This additive is prone to damaging paint, sealants, bladders, diaphragms, and other parts in
27 aircraft fuel systems. *Id.*; *see also* Barnes Decl. Ex. N (AOPA Press Release) (“G100UL tends to
28

1 stain paint, hangar floors, and anything else it touches.”). Numerous OEMs have accordingly
2 refused to approve the use of G100UL in the aircraft they manufacture.

3 On June 18, 2024, Cirrus Aircraft (“Cirrus”), the largest global manufacturer of piston
4 aircraft, issued a Service Advisory disapproving the use of G100UL in SR series aircraft. Hoyt
5 Decl., Ex. E. Cirrus subsequently revised the Service Advisory on November 5, 2024, reporting
6 that “Cirrus has identified specific concerns regarding material compatibility,” specifically that
7 “[l]ab and on-aircraft testing, in coordination with FAA representatives, revealed degradation of
8 tank sealant with GAMI G100UL fuel that could result in airworthiness concerns.” *Id.* Accordingly,
9 “Cirrus does not approve the use of GAMI G100UL fuel in any Cirrus SR airplanes,” which would
10 violate the company’s warranty. *Id.*

11 Textron Aviation (“Textron”), which manufactures Cessna and Beechcraft aircraft, has
12 likewise refused to approve the use of G100UL in its aircraft. On December 19, 2024, Textron
13 issued a communiqué advising that it was “aware of reports indicating that two different OEMs
14 have been advised of reported issues with fuel tank sealant degradation following exposure of those
15 sealants to G100UL.” Hoyt Decl. Exs. C, D. “These kinds of reported materials compatibility issues
16 give rise to concerns about the continuing airworthiness of aircraft that may be operated on fuels
17 that have not yet been comprehensively tested by Textron Aviation and by its engine suppliers.”
18 *Id.* Among other aircraft, Textron manufactures several aircraft (e.g., Cessna 206, Aero
19 Commander 500) that the United States Forest Service (“USFS”) uses for missions including forest
20 health and wildlife surveys, law enforcement, fire detection, and transporting personnel and cargo.
21 Hoyt Decl. ¶ 27, Ex. L. The California Department of Forestry & Fire Protection (“CalFire”) also
22 uses a G58 Baron manufactured by Textron for fire-fighting support. *Id.* ¶ 26.

23 In addition to Textron, other manufacturers of aircraft have refused to endorse the use of
24 G100UL in their aircraft due to safety and material compatibility concerns. Gang Decl. ¶ 18;
25 Anderson Decl. ¶ 7. For instance, Piper Aircraft has not endorsed the use of G100UL in the
26 approximately 75,000 aircraft it has manufactured that theoretically could use the fuel. Gang Decl.
27 ¶ 17. Likewise, Aviat Aircraft will not endorse the use of G100UL in aircraft it manufactures
28 because it “has not been able to evaluate the G100UL’s fuel chemical properties and how the fuel

1 interacts with airframe surface, structures, and fuel tanks.” Anderson Decl. ¶ 5.

2 The two largest OEMs of the engines placed in these aircrafts have also refused to approve
3 G100UL. Lycoming Engines, which has been producing piston aviation engines for over 95 years,
4 has expressed a willingness to independently review technical documentation regarding G100UL,
5 but GAMI has refused to share this information unless Lycoming agrees to a “gag-restriction” that
6 would prohibit Lycoming from disclosing any of its findings, including any adverse safety findings
7 to FAA. *See* Hoyt Decl. Ex. B (Lycoming Service Advisory). As a result, Lycoming cannot
8 undertake the “rigorous evaluation” of G100UL necessary to conclude that it can be safely used in
9 its engines, and Lycoming has not added G100UL to its approved fuel list. *Id.* Because Lycoming’s
10 warranty coverage excludes damages caused by fuels that are not on this list, any pilot who uses
11 G100UL would void the engine warranty. *Id.* The other OEM of aircraft engines, Continental
12 Aerospace Technologies, has likewise refused to add G100UL to its approved fuel list or extend its
13 warranty coverage to the use of G100UL. Hoyt Decl. ¶ 17.

14 **G. Legislative & Regulatory Efforts to Remove Leaded Avgas**

15 Congress and state legislatures have recognized that the transition to unleaded Avgas must
16 be careful. The May 16, 2024 FAA Reauthorization Act (“Reauthorization Act”) included several
17 provisions to strengthen safety standards and oversight at the FAA. Under the law, any federally
18 obligated airport (i.e., an airport that has accepted federal funds in the last 20 years) may not restrict
19 or prohibit the sale of 100LL until the earlier of December 31, 2030, or

20 the date on which the airport or any retail fuel seller at such airport makes
21 available an unleaded aviation gasoline that—

- 22 i. has been authorized for use by the Administrator of the [FAA] as a replacement
23 for 100-octane low lead aviation gasoline for use in nearly-all piston-engine
24 aircraft and engine models; and
- 25 ii. meets either an industry consensus standard or other standard that facilitates the
26 safe use, production, and distribution of such unleaded aviation gasoline, as
27 determined appropriate by the Administrator.

28 49 U.S.C. § 47107(a)(22)(ii). Of note, the December 31, 2030 date in this provision coincides with
EAGLE’s goal to safely remove lead from Avgas by the end of 2030.

Following the FAA Reauthorization Act, on September 22, 2024, the California Legislature
adopted Senate Bill 1193 (“SB 1193”). SB 1193 prohibits airport operators or aviation retail

1 establishments in California from selling or distributing leaded Avgas on or after January 1, 2031.
2 Pub. Util Code § 21710. The Legislature noted concerns regarding the Reauthorization Bill’s
3 preemptive effect and accordingly set California’s prohibition on the sale of leaded Avgas for one
4 day after the Reauthorization Act’s deadline. *Id.*, Ex. J (SB 1193, Senate Rules Committee, at 5.
5 The Legislature also addressed “commercial availability,” reasoning that G100UL will not become
6 “commercially available” until it obtains an ASTM Specification:

7 The FAA’s approval of an unleaded avgas for use in these aircraft is an important first
8 step in the process of transitioning to an unleaded fuel for the entire GA fleet, but it is not
9 the only step needed to ensure a safe transition. Fuel distributors and FBOs lack safety
10 assurance without an industry consensus standard or ASTM International product
11 specification. ***At present, G100UL is not commercially available for distribution and
12 sale in the U.S. largely due to the fact that it does not have an ASTM International
13 product specification.***

14 *Id.*, Ex. K (SB 1193, Assembly Committee) (emphasis added). The Assembly Committee included
15 this statement notwithstanding GAMI’s submission of a February 12, 2024 letter in which it
16 claimed that an ASTM Standard was not necessary. *Id.*, Ex. O (GAMI Letter to Legislature). CEH
17 publicly applauded the adoption of SB 1193 immediately after it was signed, noting that “CEH was
18 proud to support this important legislation.” Barnes Decl. Ex. P. Nowhere in the legislative record
19 did CEH challenge the proposition that G100UL is not commercially available until it obtains an
20 ASTM Standard.

21 **III. ARGUMENT**

22 **A. Requirement that Alternative Fuels Be “Commercially Available”**

23 At the heart of CEH’s Motion is Section 2.3.1(a), which contains two “measures to reduce
24 the amount of Lead emitted”:

- 25 1. As of the Effective Date, Settling Defendants shall not purchase for resale in California,
26 distribute for sale in California, or sell in California Avgas that contains a lead
27 concentration of more than 0.56 grams of lead per liter of fuel. (“Lead Limit”).
- 28 2. In addition, each Settling Defendant shall purchase for resale, distribute, and sell in
California Avgas with the lowest concentration of lead approved for aviation use that is
commercially available to that Settling Defendant on a consistent and sustained basis at
prices and on terms, in quantities and at times sufficient to meet demands of the customers
of that Settling Defendant in California (“Commercially Available”), including 100VLL
once it becomes Commercially Available to that Settling Defendant for the California
market (“Lowest Lead Requirement”).

1 The Consent Judgment provides that CEH bears the burden of establishing that a lower lead
2 alternative to 100LL Avgas is Commercially Available. § 2.3.1(c). Here, CEH seeks to enforce the
3 Lowest Lead Requirement against the Distributor Defendants only. Mot. at 15:27-28. It also seeks
4 to unilaterally modify the CJ to eliminate any reference to Commercial Availability and lower the
5 Lead Limit from 0.56 to 0.013 grams of lead per liter, the level found in G100UL. Mot. at 17:26-
6 28. As discussed below, CEH not only fails to meet its burden to show G100UL is Commercially
7 Available, it fundamentally misunderstands the Lowest Lead Requirement.

8 **B. The Distributors Already Distribute An Unleaded Fuel.**

9 At the outset, the Court need not even consider whether G100UL is Commercially Available
10 in order to deny CEH’s Motion because the Distributors (the only parties against whom CEH seeks
11 enforcement) already distribute an unleaded Avgas. The Consent Judgment requires the
12 Distributors to “purchase for resale, distribute, and sell in California Avgas with the lowest
13 concentration of lead approved for aviation use.” § 2.3.1(a). It does not require them to distribute
14 *all* forms of Avgas with the lowest concentration of lead, nor does it require them to distribute
15 unleaded Avgas with different octanes. Because the Distributors distribute a zero-lead Avgas, 94UL
16 (Huehl Decl. ¶ 6; Stallings Decl. ¶ 7; Batty Decl. ¶ 7; Bryant-Jordan Decl. ¶ 4.), they comply with
17 Section 2.3.1(a). In fact, CEH has acknowledged in writing that Settling Defendants comply with
18 the Consent Judgment by distributing or selling 94UL. On February 26, 2024, CEH’s CEO sent a
19 letter to Swift’s CEO instructing that Settling Defendants who supply 94UL need not supply
20 G100UL, “*as either fuel will allow such parties to meet their obligations under the 2014 legal*
21 *agreement.*” D’Acosta Decl. Ex. B (emphasis added). The Distributors’ distribution of 94UL—a
22 fuel for which an ASTM standard has been obtained and that has been endorsed by the OEMs for
23 use in their equipment—establishes their compliance. CEH’s change of heart and apparent new
24 position that it now can select *which* unleaded Avgas must be offered finds no basis in the text of
25 the Consent Judgment. The Court should accordingly reject CEH’s motion to enforce at step one
26 of its analysis.

27 **C. G100UL Is Not Commercially Available.**

28 CEH claims that “because G100UL is a 100 octane fuel, it meets the demands of Distributor

1 Settling Defendants’ customers: FBOs.” Mot. at 17:12-13. Demand, however, does not exist simply
2 because a 100-octane fuel has been issued STCs for a portion of the GA fleet.

3 The defined term “Commercially Available” incorporates the words “commercially
4 available” and is subject to a determination for each Settling Defendant based on factors such as
5 prices, terms, quantities, and times sufficient to meet the demands of *that Settling Defendant’s*
6 customers. It does not further elucidate the common term “commercially available,” which refers
7 to various factors that businesses must take into account when making decisions related to buying,
8 selling, or marketing of goods or services, such as pricing, market demand, investment costs, supply
9 chain logistics, product safety, and compliance with relevant laws and regulations. CEH seeks to
10 ignore these terms, and indeed provides no evidence on any of them.

11 Businesses must consider the costs and potential demand for the product in the marketplace,
12 and a product cannot be considered Commercially Available to a business if it does not make
13 business sense to offer it or if it exposes a business to uninsured liability. It does not make business
14 sense for Settling Defendants to sell a fuel that would force violations of the FAA Reauthorization
15 Act, raises airworthiness concerns for the ultimate consumer, void OEM warranties, lacks adequate
16 insurance protections, and may not comply with state or local regulations. These real life safety and
17 liability concerns are a far cry from the “imaginary and hypothetical excuses,” CEH contends
18 Settling Defendants “hide behind.” Mot. at 17:19.

19 1. Distributing G100UL Will Force FBOs to Violate the Reauthorization Act.

20 As tenants and licensees of federally-obligated airports, the FBOs—along with many of the
21 Distributors’ other FBO clients who are not parties to the Consent Judgment—are required to make
22 100LL available for purchase under the Reauthorization Act. Indeed, the FAA has instructed
23 federally-obligated airports that have prohibited the sale of 100LL that such prohibitions run afoul
24 of the Reauthorization Act. 49 U.S.C. § 47107(a)(22); Barnes Decl. Ex. C, Attachment 3 (FAA
25 Santa Monica Letter); *id.*, Attachment 4 (FAA Superior, Colorado Letter). The Reauthorization Act
26 requires federally-obligated airports to make 100LL available for purchase until December 31,
27 2030, unless an unleaded Avgas satisfies two conditions for replacement. None does.

1 The first condition is that an unleaded Avgas must be “authorized for use by the
2 Administrator as a replacement for 100-octane low lead aviation gasoline for use in *nearly-all*
3 *piston-engine aircraft and engine models.*” 49 U.S.C. § 47107(a)(22)(B)(i) (emphasis added). As
4 discussed above, the FAA STCs for G100UL do not cover several types of piston-engine aircraft,
5 including piston-powered helicopter airframes, LSA, and experimental aircraft. *See* Viola Decl. ¶
6 4; Tetzlaff Decl. ¶ 4; Horton Decl. ¶ 4; Kremnitzer Decl. ¶ 6; Smith Decl. ¶ 5. These aircraft
7 comprise approximately 17% of all GA aircraft nationwide, for which no “replacement fuel” has
8 been authorized. Hoyt Decl. § 23. The term “nearly all” is not defined, but clearly Congress did not
9 want the transition to unleaded Avgas to effectively ground several categories of aircraft. Indeed,
10 if CEH’s position were correct, aircraft used by federal agencies such USFS and state agencies like
11 CalFire would be unable to obtain fuel in California without violating their OEM warranties.

12 The second condition is that an unleaded fuel candidate must “meet either an industry
13 consensus standard or other standard that facilitates the safe use, production, and distribution of
14 such unleaded aviation gasoline, *as determined appropriate by the Administrator.*” 49 U.S.C.
15 § 47107(a)(22)(B)(ii) (emphasis added). CEH contends that the initials of a single “Engineer/Pilot”
16 in the FAA’s Engine and Propellor Directorate on the G100UL Specification that GAMI wrote
17 constitutes an official determination by the “Administrator.” That cannot be.

18 The unnamed “Engineer/Pilot” stamped and initialed the G100UL Specification on May 31,
19 2024, just *15 days* after the Reauthorization Act was signed into law. Had any unleaded Avgas,
20 including G100UL, been on the precipice of fleetwide authorization, Congress would not have set
21 December 31, 2030 as the target for halting the sale of leaded Avgas. The timing of the initialing
22 of the G100UL Specification raises additional questions because it appears that GAMI simply
23 pasted language from the newly-signed Reauthorization Act into the specification. *Compare* 49
24 U.S.C. § 47107(a)(22)(B)(ii) (“meet either an industry consensus standard or other standard that
25 facilitates the safe use, production, and distribution of such unleaded aviation gasoline”) with
26 Barnes Decl. Ex. L at 6-7 (“the FAA has, in fact, made a determination that this Specification
27 provides, not only an equivalent, but in fact an enhanced level of quality control . . . [as] industry
28 voluntary consensus based standards which have previously defined and controlled the production

1 and distribution of aviation gasolines used for spark ignition piston engines.”). Further, a
2 determination by the FAA that, for the first time in history, the sale of 100LL could be prohibited
3 fleetwide and nationwide is one that the Administrator would have communicated to the regulated
4 community. No such communication occurred, however, and the FAA has never stated that the
5 G100UL specification constitutes a determination by the Administrator that the fuel can replace
6 100LL. In fact, that would be inconsistent with FAA’s statements through the EAGLE initiative
7 about a careful transition involving all stakeholders.

8 As CEH acknowledges, the “vast majority” of the Distributors’ FBO clients “only have one
9 Avgas tank.” Mot. at 12:25-26. Commingling even one drop of G100UL with 100LL in these tanks
10 would mean that the 100LL no longer meets its specification. Because G100UL does not satisfy
11 the Reauthorization Act, the FBOs cannot replace 100LL with it.

12 2. There Is No Demand For A Fuel That Cannot Serve The GA Fleet.

13 CEH’s claim that G100UL “meets the demands of Distributor Settling Defendants’
14 customers: FBOs” (Mot. at 17:11-12) can only be true if G100UL meets the demands of the FBO’s
15 customers: the pilots in the GA industry. G100UL, however, has not been approved for use by a
16 significant portion of the FBOs’ customers because the G100UL STC does not cover several
17 categories of GA aircraft, including piston-powered helicopter airframes, LSA, and experimental
18 aircraft. CEH does not discuss these aircraft in its Motion but instead speculates that “G100UL
19 cannot be used in approximately 1.5% of aircraft, which are helicopters.” (Todzo Decl. ¶ 15).
20 Remarkably, CEH appears to believe a de facto ban on an entire category of aircraft is acceptable.
21 See Viola Decl. ¶ 4 (noting that the removal of 100LL will ground all piston-powered helicopter
22 airframes); ¶ 7 (describing uses of helicopters, including support of first responders).

23 But the actual percentage of GA aircraft nationwide that cannot use G100UL is
24 approximately 17%. Hoyt Decl. ¶ 23. The FBOs do not have a demand for a fuel that will reduce
25 their existing customer base by more than one-sixth, nor does it make business sense for the
26 Distributors to supply the FBOs with a fuel that cannot serve all their customers. Further, the
27 overwhelming majority of FBO Defendants’ operations do not have a second tank to offer G100UL,
28 and in any event, CEH seeks to ban the sale of 100LL. In addition, the de facto ban of 100LL sought

1 by CEH would result in a halt to services offered by piston-powered helicopter airframes and certain
2 aircraft used by USFS for firefighting and law enforcement operations, as well as aircraft CalFire
3 uses for firefighting operations. Hoyt Decl. ¶¶ 10, 27. Neither the Distributors nor the FBOs have
4 a desire to reduce the demand for the Avgas they supply, nor do they wish to compromise the public
5 services that are made possible because of the GA industry.

6 3. There Is No Demand For A Fuel That Lacks An Industry Consensus Standard.

7 Even if G100UL was approved for use in all GA aircraft, the FBOs would only have demand
8 to supply the fuel to their customers if they were provided with adequate assurances that the fuel
9 can be safely produced, transported, and used. This is not the case, for several reasons.

10 These safety concerns are not “hypothetical.” Indeed, every approved Avgas that preceded
11 G100UL has undergone a consensus standard stakeholder peer review process or ASTM review.
12 Hoyt Decl. ¶ 14. With GAMI refusing to undertake these processes for G100UL—and with GAMI
13 also refusing to share technical information regarding G100UL with OEMs unless they sign a gag
14 order—every stakeholder lacks adequate assurances regarding G100UL’s safety and material
15 compatibility. The California Legislature, before whom GAMI contended an ASTM Standard was
16 not necessary, expressly found that G100UL will not become Commercially Available until it
17 obtains such a standard. “*At present, G100UL is not commercially available for distribution and*
18 *sale in the U.S. largely due to the fact that it does not have an ASTM International product*
19 *specification.*” Barnes, Decl., Ex. J (SB 1193, Assembly Committee).²

20 In addition to the California Legislature, EAGLE recognizes that the “availability of an
21 ASTM or independent specification detailing specific requirements for the quality and safe use,
22 production, and distribution of the fuel” is critical. Castagna Decl. Ex. B (EAGLE FAQ). ASTM is
23 a “collaborative approach that includes many stakeholders from the aviation fuel community”
24 (Barnes Decl., Ex. I, FAA Unleaded Fuel FAQ), one that analyzes a fuel’s compatibility in, *inter*
25 *alia*, “hoses, filters, gaskets, and other wetted components among railcars, transport trucks, fuel
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27 ² When Settling Defendants made CEH aware of this finding, CEH’s only response was that “it appears as
28 though this comment comes directly from industry lobbyists.” Mot. at 19:27-28. But this finding was made by
the Assembly Committee on Local Government during the official proceedings for SB 1193—and CEH fails to
establish why references to this document are somehow “improper.” Mot. at 19:27.

1 farms, mobile refuelers and other dispensing equipment.” *id.*, Ex. I (SB 1193, Assembly
2 Committee); *see also id.* (observing that “fuel distributors, transport companies, airports, and FBOs
3 [] rely on ASTM specification to minimize or eliminate the potential for degradation or
4 contamination of fuel itself or the equipment used to transport, handle, and dispense it”).

5 The Distributors’ and FBOs’ clients do not have demand for a fuel that has not been proven
6 to be safe (or legal, *see supra* p. 18) at every step of the production or distribution process and that
7 therefore could expose them to significant liability for damage to aircraft or parts or for operational
8 problems that may result in personal injuries. Nor is it consistent with responsible business practices
9 to distribute and sell batches of Avgas that have not been independently verified as safe. These
10 same concerns have led the OEMs to refuse to endorse G100UL for use in their products, another
11 fact that renders G100UL not Commercially Available.

12 4. There Is No Demand For A Fuel That Violates OEM Warranties.

13 Settling Defendants alerted CEH during the meet and confer process that pilots who use
14 G100UL risk violating their warranties, but CEH’s Motion ignores this issue. Warranties are crucial
15 for the FBOs’ pilot clients, many of whom fly for a living, and as a result, they are critical for the
16 Distributors who supply fuel to the FBOs. It does not make business sense for the Distributors and
17 FBOs to distribute and sell a fuel that would force end customers to violate their warranties and
18 ultimately expose the Distributors and FBOs to liability if and when the fuel causes damage to
19 aircraft or engines.

20 The OEMs’ concerns are not “imaginary and hypothetical.” The largest manufacturer of
21 aircraft, Cirrus, reports that “[l]ab and on-aircraft testing, in coordination with FAA representatives,
22 revealed degradation of tank sealant when in contact with GAMI G100UL fuel that could result in
23 airworthiness concerns.” Hoyt Decl. Ex. E. Cirrus therefore “does not warrant or represent in any
24 way an operator’s use” of G100UL in its SR Series airplanes. *Id.* Textron, likewise, refuses to
25 endorse G100UL for use in its aircraft because “reported material compatibility issues” with
26 G100UL “give rise to concerns about the continuing airworthiness of aircraft” it manufactures. *Id.*,
27 Exs. C, D. Piper and Aviat similarly refuse to approve the use of G100UL in their aircraft. Gang
28 Decl. ¶ 17, Anderson Decl. ¶ 7.

1 The same is true of the two largest OEMs of aircraft engines, Lycoming and Continental.
2 Lycoming advises that, because GAMI insists on a “gag-restriction” that prevents it from sharing
3 “appropriate guidance to the FAA, the industry, and the flying public,” it has not yet had the
4 opportunity to evaluate G100UL’s “material compatibility, evaluation of toxicity, engine testing
5 for detonation, endurance, flight testing and operability; as well as review of operational concerns
6 to determine that [G100UL] is fit for purpose.” Hoyt Decl. ¶ 17, Ex. B. As a result, end customers
7 whose aircraft have engines from Lycoming or Continental risk voiding their warranties if they use,
8 or are forced to use, G100UL.

9 Until OEMs have had the opportunity to analyze G100UL and endorse its use in their
10 engines, the fuel will not be Commercially Available. The OEMs, not the Distributors or FBOs, are
11 best situated to determine whether G100UL may be safely used in their equipment. Panico Decl.
12 ¶ 11; Tellez Decl. ¶ 11; Borgsmiller Decl. ¶ 11; Marlow Decl. ¶ 11; Yahya Decl. ¶ 11; Batty Decl.
13 ¶ 11. As the entities who supply Avgas, the Distributors and FBOs would face liability if G100UL
14 they sell damages pilots’ aircraft and pilots are not able to use their warranties. What’s more, the
15 potential liability caused by “airworthiness” concerns (i.e., whether planes can safely fly) is severe.
16 Again, the compelled distribution of G100UL at this time neither makes business sense nor would
17 be a responsible business decision for Settling Defendants.

18 5. There Is No Demand For A Fuel That Can Damage Aircraft Equipment.

19 Nor do the FBOs have a demand to sell a fuel that can damage their customers’ aircraft.
20 Although G100UL has only been available for purchase for a few months, numerous questions
21 regarding its safety and material compatibility have arisen. Cirrus’s lab and on-aircraft testing has
22 “revealed degradation of tank sealant with GAMI G100UL that could result in airworthiness
23 concerns.” Hoyt Decl. ¶ E. Textron has likewise advised that it is “aware of reports that two
24 different OEMs have been advised of reported issues with fuel tank sealant degradation following
25 exposure of those sealants to G100UL.” *Id.*, Exs. ¶ C, D. Aircraft owners have reported leaks in
26 their tanks, Barnes Decl., Ex. Q, while mechanics have found that G100UL causes nitrile O-rings
27 to swell beyond certified limits, prompting GAMI to suggest that aircraft owners modify their
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1 aircraft to replace these parts. *Id.*, Ex. R. Concerns have also been raised regarding G100UL’s
2 capacity to stain aircraft parts. *Id.*, Ex. N.

3 It does not make business sense for the Distributors or FBOs to place a product in the market
4 unless they are adequately assured that the product does not damage aircraft. Indeed, CEH’s
5 emphasis that “Santa Clara has sold over 2,800 gallons of G100UL without any adverse safety
6 incidents whatsoever” misses the mark both for its extremely small sample size, as well as its logic
7 that the lack of a “safety incident” in two months means that it is safe for this Court to order that
8 the entire California GA industry transition exclusively to G100UL. Stakeholders in the GA
9 industry are still investigating—and would like to investigate, with GAMI’s cooperation—the
10 fuel’s material compatibility. From the Distributors and FBOs perspective, however, the
11 “airworthiness concerns” identified by OEMs pose potentially catastrophic risks to their end
12 customers. Panico Decl. ¶ 11; Tellez Decl. ¶ 11; Borgsmiller Decl. ¶ 11; Marlow Decl. ¶ 11; Yahya
13 Decl. ¶ 11; Batty Decl. ¶ 11. It also makes no business sense for Settling Defendants to expose
14 themselves to potentially severe liability for a fuel with these documented concerns. Indeed, as
15 FAA observes, aircraft owners are “particularly vulnerable to devaluation of their aircraft should
16 an unleaded replacement Avgas be incompatible with the existing fleet.” Barnes Decl., Ex. D (FAA
17 Unleaded Avgas Transition Committee). G100UL has not yet been proven, from either a safety or
18 legal perspective.

19 6. There Is No Demand For A Fuel That May Violate Regulatory Requirements.

20 Buried in a footnote in the G100UL Specification is a warning that, while G100UL can be
21 commingled with 100LL, “G100UL that has significant amounts of lead as a result of commingling
22 with conforming ADTM D910 fuel chemistries may not comply with local or state, regulatory
23 requirements.” Barnes Decl. Ex. L. The G100UL Specification does not identify any specific
24 regulatory requirements, does not advise users if these requirements relate to safety, and does not
25 provide any further details. *Id.*

26 Neither the Distributors nor the FBOs have a demand for a fuel that has not been shown to
27 comply with all state and local regulatory requirements, under all conditions of use. The
28 Distributors need adequate assurance that G100UL is legal. Again, because “[t]he FAA does not

1 certify fuels,” the issuance of an STC indicates only that the FAA has found that the applicable
2 engine and aircraft models may operate with an unleaded fuel. Barnes Decl., Ex. I (FAA Unleaded
3 Fuel FAQ). The G100UL Specification does not provide adequate assurance that the fuel can be
4 safely produced and distributed in compliance with regulations governing hazardous material.
5 ASTM Standards, on the other hand, do not contain disclaimers that a fuel may not be legal. Indeed,
6 although GAMI claims on its website that the COAs for 100LL under ASTM D910 “are very
7 similar in their appearance,” Barnes Decl., Ex. L (GAMI, G100UL FAQ), neither the ASTM D910
8 Standard (nor any other ASTM Standard Settling Defendants located) warns that the use of the fuel
9 may not comply with unnamed regulatory requirements. *Id.* Ex. S (ASTM D910); Ex. T ASTM
10 D7826.

11 7. There Is No Demand For A Fuel With Inadequate Warranties and Insurance.

12 EAGLE acknowledges that the transition to unleaded Avgas requires “sufficient risk
13 mitigation protection with established product liability insurance coverage.” Castagna Decl., Ex. B
14 (EAGLE FAQ). G100UL lacks this protection. At present, the supplier of G100UL, Vitol Aviation
15 (“Vitol”) warrants only that G100UL conforms to the G100UL Specification. Barnes Decl. ¶ 4, Ex.
16 U. Vitol’s declarant states that it “currently has approximately one billion dollars” of “aviation
17 fueling liability insurance,” Emmett Decl. ¶ 8, but does not say what types of liability this covers
18 or whether it is merely an umbrella policy. Tellingly, Vitol’s declarant says nothing about the
19 coverage it offers distributors and whether distributors’ policy limits must first be exhausted before
20 Vitol’s coverage can be accessed. Indeed, Vitol appears to limit the product liability coverage it
21 offers to the greater of \$250,000 or the purchase price of G100UL, an amount that would not
22 remotely offer sufficient coverage in the event G100UL caused a serious safety incident or
23 significant damage to planes. Barnes Decl. ¶ 4, Ex. U

24 If G100UL damages aircraft or causes personal injury, the Settling Defendant who submits
25 a claim can expect that, at a minimum, their premiums will increase. Depending on the size of the
26 claim, which could be very large given the potential catastrophic damage of air accidents, the
27 Settling Defendant could see their policy amount reduced or even canceled. Neither the Distributors
28

1 nor the FBOs will have a demand for a fuel whose documented material compatibility concerns
2 could force them to submit claims against their own insurance policies.

3 **D. Section 2.3.1(d) Does Not Permit CEH To Lower The Level For All Avgas.**

4 Because G100UL is not Commercially Available, CEH cannot seek to modify the CJ under
5 Section 2.3.1(d). In addition, however, CEH fundamentally misunderstands the meaning of Section
6 2.3.1(d)'s modification provision. That provision only references the 0.45 g/L Limit for 100VLL,
7 not the 0.56 g/L Limit for 100LL. Section 2.3.1(a) *does not* state that Settling Defendants *may only*
8 distribute Avgas with the lowest concentration of lead that is approved and Commercially
9 Available; rather, they must distribute such an alternative Avgas *in addition* to other Avgas
10 containing up to 0.56 g/L of lead. Stated differently, the Distributors can comply with both of
11 Section 2.3.1(a)'s mandates by (1) ensuring that all Avgas they distribute contains less than 0.56
12 g/L and (2) distributing an approved Avgas with the lowest concentration of lead that is
13 Commercially Available (e.g., Swift 94 UL). Indeed, CEH itself has acknowledged that the CJ does
14 not set "maximum concentrations" on all Avgas that may be sold. Barnes Decl. ¶ 5, Ex. V.

15 **E. CEH Is Not Entitled to Attorney Fees or a Contempt Citation.**

16 As this analysis shows, CEH's Motion should be denied, which will dispose of CEH's
17 request for attorney fees and contempt citation.³ Furthermore, CEH never mentioned in meet and
18 confer discussions that it was planning to seek contempt of court findings against the Distributors.
19 Indeed, because the evidence shows that CEH's Motion lacks substantial justification, Settling
20 Defendants intend to seek *their* attorney fees once the Motion is denied. *See* CJ, § 9.1.

21 **IV. CONCLUSION**

22 For the foregoing reasons, the Court should deny CEH's Motion.
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27 _____
28 ³ In an abundance of caution, Settling Defendants reserve the right to contest the availability and amount of
CEH's attorney fees demand, as well as CEH's request for a hearing on its request for a contempt citation,
should the Court be inclined to grant CEH's motion in whole or in part.

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