SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,

Plaintiff,

v.

AERODYNAMIC AVIATION, et al.,

Defendants.

Case No. RG11600721

ORDER DENYING MOTION OF CEH TO ENFORCE AND MODIFY CONSENT JUDGMENT

I. INTRODUCTION

Center for Environmental Health ("CEH") filed the operative Second Amended Complaint ("SAC") on July 17, 2011, against multiple defendants asserting one cause of action under Proposition 65, Health & Safety Code §§ 25249.6, et seq. The action addressed exposure to airborne lead pollution caused by leaded aviation fuel, known as Avgas, burned by piston engine aircraft. On December 10, 2014, the Court entered an Amended Consent Judgment between CEH and certain defendants ("Settling Defendants").

On January 28, 2025, CEH moved this court to enforce and to modify the Consent Judgment against 17 Settling Defendants. CEH requests the following: (1) the Settling Defendants be required to sell and distribute a brand of unleaded Avgas known as G100UL; (2) to modify the Consent Judgment to reduce the maximum lead level from 0.56 grams per liter to 0.013 grams per liter; (3) an award of CEH's attorneys' fees; (4) sanctions and an order holding the Distributor Settling Defendants in contempt; and (5) reopening discovery regarding sanctions. The matter was heard on March 5, 2025. Mark Todzo appeared for CEH, and Trent Norris appeared for the Settling Defendants. The Court took the matter under submission and now rules as follows.

II. FACTUAL BACKGROUND

A. The Consent Judgment

The Consent Judgment was entered between CEH and two types of defendants, fixed base operators ("FBO") that offer Avgas for retail sale at airports in California ("FBO Settling Defendants") and distributors ("Distributor Settling Defendants") that distribute Avgas to the FBO Settling Defendants. FBOs are entities that operate airports and provide various aeronautical support services, including fueling, to general aviation operators at airports. (See, e.g., Yahya Decl., ¶ 4.) The Consent Judgment affected 24 airports in California where the Settling Defendants operate. (Consent Judgment, ¶ 1.5.) Many of the airports operated by the FBO Settling Defendants only have one tank available for Avgas. (See, e.g., Tellez Decl., ¶¶ 5 and 8 [11 airports operated by Atlantic]; Borgsmiller Decl., ¶ 8; Yahya Decl., ¶ 8.)

The Consent Judgment required the FBO Settling Defendants to post specific warning signs at the airports in which they operate, with the airports' consent, in accord with Proposition 65. In short, the signs warn that people within a kilometer area around the airport are exposed to lead, a carcinogen that causes birth defects and reproductive harm, from aviation fuel when aircraft take off and land.[1]

In addition, the Settling Defendants were ordered to buy and to sell certain Avgas. At the time the Consent Judgment was entered, the form of Avgas in use was known as 100LL—meaning 100 octane with "low lead." (Consent Judgment, ¶ 1.6.) 100LL had a maximum of

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[1] The warning signs were to state:

> The area within one kilometer of this airport contains lead, a chemical known to the State of California to cause cancer, birth defects or other reproductive harm. Lead is contained in the aviation fuel ("Avgas") that is used by small piston engine aircraft that take off and land at this airport. People living, working, or traveling near this location will be exposed to lead as aircraft take off and land.
>
> For more information, visit www.ceh.org/avgas

(¶ 2.1.3.)

0.56 grams of lead per liter of fuel under specification ASTM D910.[2] (Id.) At the time they entered the Consent Judgment, the parties understood that a form of Avgas known as 100VLL (very low led) had recently been approved by the Federal Aviation Administration ("FAA") and was specified at a maximum of 0.45 grams of lead per liter of fuel under ASTM D910, but that Avgas was "not yet commercially available for sale in California." (Id.) They further understood that one major refinery of Avgas began FAA approval process of a lead free alternative to Avgas. (Id.) The parties further understood that the FAA granted Supplemental Type Certificates to use high octane unleaded automotive gas ("Mo[g]as"). (Id., ¶ 1.7.) The Consent Judgment states, "But, although some aircraft are capable of using Mogas, some are not. As a result, FBOs cannot offer Mogas in lieu of Avgas but only in addition to Avgas." (Id.)

To describe the Avgas the Settling Defendants were ordered to buy and sell, the Consent Judgment provides as follows:

> As of the Effective Date, Settling Defendants shall not purchase for resale in California, distribute for sale in California, or sell in California Avgas that contains a lead concentration of more than 0.56 grams of lead per liter of fuel. 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.

(Id., ¶ 2.3.1.(a).) The burden is on CEH to establish that a lower lead alternative to 100LL Avgas is "Commercially Available" to the Settling Defendants for the California market. (Id., ¶ 2.3.1(c).) The Consent Judgment includes detailed enforcement provisions. (Id., § 3.) It also includes an attorney fee provision that provides as follows:

> Should CEH prevail on any motion, application for an order to show cause, or other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its reasonable attorneys' fees and costs incurred as a result of such motion or application. Should a Settling Defendant prevail on any motion application for an order to show

[2] As discussed below, ASTM refers to ASTM International, an international standards-setting body.

> cause, or other proceeding, the Settling Defendant may be awarded its reasonable attorneys' fees and costs as a result of such motion or application upon a finding by the court that CEH's prosecution of the motion or application lacked substantial justification. For purposes of this Consent Judgment, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

(Id., ¶ 9.1.)

B. G100UL

G100UL is an unleaded Avgas developed by General Aviation Modifications, Inc. ("GAMI"). Vitol Aviation Company began producing G100UL in April 2024 in Louisiana. (Emmett Decl., ¶ 4.) Vitol represents that it can continuously and consistently produce enough G100UL to supply any FBO or fuel distributor in California. (Id., ¶ 6.) Vitol acknowledges that GI00UL's prices are slightly higher than 100LL. (Id., ¶ 7.) On October 16, 2024, Vitol contracted with Santa Clara County to provide G100UL at Reid-Hillview Airport in San Jose and San Martin Airport in San Martin, California. (Id., ¶ 9.) Santa Clara County has four fuel tanks at Reid-Hillview Airport and is currently using one fuel tank to store G100UL, and as of October 30, 2024, has been offering G100UL for sale on a full-service basis. (Freitas Decl., ¶¶ 6, 14, and 15.) On November 14, 2024, Vitol contracted with the City of Watsonville to provide G100UL to the city's municipal airport. (Emmett Decl., ¶ 10.)

C. Certification

The FAA provides two pathways to obtain FAA authorization for use of unleaded fuel. One pathway is approval by the Piston Aviation Fuels Initiative ("PAFI"). PAFI was established in 2014 to support the evaluation of unleaded fuels to replace leaded gasoline with the objective of ultimately approving an unleaded Avgas that could be used by the entire general aviation fleet. (Barns Decl., Ex. F.) As second pathway is to obtain a traditional FAA aircraft type certification known as a Supplemental Type Certificate ("STC"), which applies to specified aircraft. (Barns Decl., Ex. E at 2.)

G100UL has been certified by the FAA for use in certain piston powered aircraft. GAMI has obtained an STC for G100UL—STC Number SE01966WI—issued on July 23, 2021.

(Todzo Decl., at 14.) The STC states that GAMI meets the airworthiness requirements of Part 23 C.F.R. regarding "Use of GAMI G100UL High Octane Unleaded Avgas on aircraft listed in the attached AML." (Id.) The FAA's STC applies to the specified aircraft referenced in the STC's attachment. The STC includes "Limitations and Conditions" that states "specific approval must be obtained for each model aircraft to ensure compatibility with its fuel system." (Todzo Decl., ¶ 14(a).) On May 31, 2024, the FAA approved a revised G100UL production specification which CEH asserts is substantially similar to the earlier one. (Id., ¶ 17.)

The FAA's STC for G100UL does not apply to the entire general aviation fleet. CEH concedes that the FAA's STC for G100UL does not apply to piston powered helicopters. (Todzo Decl., ¶ 15.) The Settling Defendants claim that the STC does not authorize the use of G100UL in LSA (light sport aircraft) or experimental aircraft. (Barns Decl., Ex. C; Castagna Decl., ¶ 22.) General aviation encompasses approximately 289,000 aircraft in the United States. (Castagna Decl., ¶ 7.) According to the General Aviation Manufacturers Association ("GAMA"), an international trade association that represents manufacturers of general aviation aircraft, engines, and related products, piston powered helicopters, experimental aircraft, and light sport aircraft make up about 17% of all general aviation aircraft in the United States. (Hoyt Decl., ¶ 23.) GAMI disputes this figure and claims that experimental aircraft are approved by the FAA to use G100UL, and that less than 3% of the fleet are excluded from using G100UL. (Braly Decl., ¶ 7.)

The FAA's STC only addresses the use of fuel in the aircraft. The FAA does not regulate the production, distribution, handling, operation, and maintenance of aviation fuel before it reaches aircraft fuel tanks. (Castagna Decl., ¶ 13.) Test data submitted through the STC process remains proprietary, and original equipment manufacturers ("OEMs") and other stakeholders have no means to obtain this information without the voluntary cooperation of the applicant. (Castagna Decl., ¶ 12; see also Gang Decl. ¶¶ 10 and 11.)

ASTM International is an international standard setting body. The Consent Decree refers to certain ASTM standards for Avgas, as noted above, as does various regulations. The ASTM standard setting process would enable technical data regarding the fuel to be reviewed by

industry stakeholders. (Hoyt Decl., ¶ 15.) GAMI has not developed or released a standard through ASTM for G100UL or otherwise proceeded through the ASTM process. (Gang Decl., ¶ 11.) G100UL utilized an independent fuel specification rather than an ASTM certification standard for its fuel. (Todzo Decl., ¶ 17.) GAMI has also declined to release technical information regarding G100UL to OEMs and other stakeholders in general aviation to permit them to test and to evaluate G100UL. (Hoyt Decl., ¶ 15; Gang Decl., ¶ 10.)

D. Third Party OEMs and Trade Groups

The Court has received declarations from independent third-party OEMs who oppose CEH's motion even though the FAA's STC for G100UL applies to their aircraft. For example, Piper Aircraft, Inc. manufactures a significant number of piston-powered aircraft and opposes this motion. (Gang Decl., ¶ 4.) Piper states that without an "ASTM standard and supporting technical information from GAMI, Piper cannot make a reasonable determination as to the safety, airworthiness, or compatibility of G100UL in any model of Piper aircraft." (Gang Decl., ¶ 13.) Piper does not authorize the use of G100UL in any of its aircraft. (Id., ¶ 18.) Further, the manufacturers of engines used in Piper aircraft—Lycoming Engines and Continental Aerospace Technologies—have not approved G100UL for use in their engines. (Gang Decl., ¶¶ 14-17; see also Anderson Decl., ¶ 6 [re Lycoming].) Piper asserts that it lacks information to evaluate G100UL to make a reasonable determination as to its safety, airworthiness, or compatibility of G100UL with any of its aircraft. (Gang Decl., ¶ 19.)

Similarly, Aviat Aircraft has not approved G100UL with its Husky, Pitts, or Eagle brand aircraft. (Anderson Decl., ¶ 3.) Aviat has not been able to evaluate the G100UL fuel's chemical properties or how it interacts with any airframe surface and/or structures, aircraft fuel tanks (materials, sealants, bladders, gaskets, etc.), the fuel quantity gauging components, fuel lines, or other fuel system components (pumps, valves, sensors, etc.), etc. (Anderson Decl., ¶¶ 4 and 5.)

Diamond Aircraft Industries GmbH ("Diamond") states that any new fuel must hold an ASTM approved production specification and be approved by the OEMs of engines used in its aircraft before Diamond can approve it for use in its aircraft and list it as an approved fuel.

(Kremnitzer Decl., ¶ 5.) Diamond believes that this prerequisite would give it the necessary information to evaluate the fuel's chemical properties and how it may interact with its materials, including the airframe surface and structures, the fuel storage system, and the fuel distribution system. Until the engine manufacturers approve G100UL for use in their engines and Diamond has had the opportunity to assess the fuel's use its airplanes, Diamond cannot safely approve the fuel for use in its aircraft. (Id., ¶ 7.)

The Court received evidence that Cirrus Aircraft independently evaluated G100UL and stated in an advisory that Cirrus does not approve G100UL for use with its aircraft. (Hoyt Decl., ¶ 17, Ex. E.; D'Acosta Decl., ¶ 26.) Cirrus reported concerns regarding the degradation of fuel tank sealant when in contact with G100UL that could result in airworthiness concerns. (Id.)

Textron Aviation, an OEM that manufactures Beechcraft and Cessna aircraft, released a Communique stating it has not had the opportunity to conduct comprehensive testing of G100UL and has not approved G100UL for use in its products. (Hoyt Decl., ¶ 27, Exs. C and D.)

Piston-powered helicopters require 100LL or 100VLL (or similar) Avgas. (Viola Decl., ¶ 4.) No helicopter OEMs have approved G100UL for use in their aircraft. (Id., ¶ 6.) Several helicopter manufacturers have opposed this motion. (See Viola and Smith Decls.) Helicopters serve vital functions in California. In addition to private use, helicopters are used for policing and responding to disasters and emergencies. (Viola Decl., ¶ 8; Smith Decl., ¶ 8; Barns Decl., Exs. A and B.)

The Court has received declarations from third-party trade associations that oppose requiring G100UL at this time. GAMA opposes removing 100LL Avgas prematurely. (Hoyt Decl., ¶ 8.) Its concern is that G100UL has not undergone widespread assessment, testing, or a traditional consensus standards review process that would enable all key stakeholders to use the new fuel. (Id., ¶¶ 9 and 12.) GAMA points out that the FAA's STC process is narrower in scope and less rigorous than the established industry peer review process and consensus standards. (Id., ¶ 14.)

The National Air Transportation Association ("NATA") is a national trade association representing the business interests of general aviation service companies on legislative and regulatory matters at the federal level. (Castagna Decl., ¶ 1.) NATA does not believe that G100UL has reached the point of being a fleetwide "drop-in" replacement for 100LL. (Castagna Dec., ¶ 25.) NATA's position is that, to ensure a safe transition from leaded Avgas, unleaded Avgas should not be offered as a standalone "drop-in" fuel without an industry consensus standard, such as ASTM International, confirmation of material compatibility throughout the supply chain, and FAA testing for compatibility with other FAA-approved unleaded Avgas formulations. (Id., ¶ 12.) NATA also believes that an unleaded Avgas cannot be offered as a standalone "drop-in" fuel until all industry stakeholders are satisfied that the fuel does not present material compatibility issues. (Id., ¶ 29.)

NATA points out that, in addition to GAMI, two other companies are developing unleaded Avgas. (Castagna Decl., ¶¶ 22-24.) Swift Fuels, LLC's ("Swift") 100R Avgas is going through the STC process. In addition, LyondellBasell/VP Racing's UL 100E is progressing through the PAFI pathway. Both Swift and LyondellBasell/VP Racing have also begun working through ASTM International on the development of an industry consensus production specification for their respective fuels. (Id.)

E. Federal and State Regulation

Congress and the California Legislature have both regulated Avgas and seek to move the industry toward using unleaded Avgas. In 2024, Congress passed the FAA Reauthorization Act ("Reauthorization Act"). Among other things, it provides that a federally obligated airport (i.e., an airport that has accepted federal funds in the last 20 years) "may not restrict or prohibit the sale or self-fueling of any 100-octane low lead aviation gasoline for purchase or use by operators of general aviation aircraft if such aviation gasoline was available at such airport at any time during calendar year 2022, until the earlier of--(A) December 31, 2030; or (B) the date on which the airport or any retail fuel seller at such airport makes available an unleaded aviation gasoline that--(i) has been authorized for use by the Administrator of the Federal Aviation Administration

as a replacement for 100-octane low lead aviation gasoline for use in nearly all piston-engine aircraft and engine models; and (ii) meets either an industry consensus standard or other standard that facilitates the safe use, production, and distribution of such unleaded aviation gasoline, as determined appropriate by the Administrator." 49 U.S.C. § 47107(a)(22)(ii).

Many of the airports with which the FBO Settling Defendants are associated are federally obligated, having received federal funding within the last 20 years. (Tellez Decl., ¶ 7 [13 airports at which Atlantic operates are federally obligated.])

The FAA has established the Eliminate Aviation Gasoline Lead Emissions ("EAGLE") program. EAGLE's mission is to transition general aviation to use unleaded Avgas. As described by NATA, EAGLE is a government-industry initiative consisting of the aviation and petroleum industries and U.S. government stakeholders, as well as a wide range of other constituents and interested parties (including engine and aircraft manufacturers, research institutions, local communities, and environmental groups), all working toward the transition to lead-free aviation fuels for piston-engine aircraft by 2030 without compromising the safety or economic health of the general aviation industry. (Castagna Decl., ¶ 5.)

On September 22, 2024, the California Legislature adopted Senate Bill 1193 ("SB 1193"). It provides that "[a]n airport operator or aviation retail establishment shall not sell, distribute, or otherwise make available leaded aviation gasoline to consumers on or after January 1, 2031, in compliance with [the Reauthorization Act]." (Cal. Pub. Util. Code § 21711.) Thus, California seeks to end the use of leaded Avgas by 2031. The State Assembly's committee notes addressed G100UL:

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

(Barns Decl., Ex. K at 3 [SB 1193, Assembly Committee].)

Local governments also regulate Avgas. For example, San Mateo County regulations provide: "Fuel delivered, stored, or dispensed by FBO shall comply with the quality specifications outlined in American Society for Testing and Materials (ASTM) D 1655 (Jet Fuel), ASTM D 910 (100LL Avgas), and ASTM D7547 (Unleaded Avgas). Ensuring the quality of the Fuel is the sole responsibility of FBO." (Defendant's RJN, Ex. 2; Dameo Decl., Ex. F.) Napa County has a similar regulation requiring that an FBO "comply with the specifications" outlined in "ASTM D 1910 (Avgas)." (Defendants RJN, Ex. 1.)

F. Anecdotal Issues

The Court received declarations from general aviation pilots that report various problems that they personally observed with their aircraft after using G100UL, for example, an amber-colored viscous substance seeping out airplane wing fuel drains and problems with fuel tank top cover seal gaskets (Davis Decl., ¶ 6); fuel weeping out of several places, bubbled paint, staining, and a brown liquid seeping out of multiple covers (Bertucci Decl., ¶¶ 5 and 10); fuel leak (Kelley Decl., ¶ 4); fuel seeping around wing access panel and paint bubble around the access panels (Rubin Decl., ¶ 4); and seeping fuel that stained fuselage (Nelson Decl., ¶ 6.)

GAMI disputes these factual assertions that any of these alleged problems were caused by G100UL. (See Braly Decl.)

III. DISCUSSION

CEH argues that the Settling Defendants are required to "purchase for resale, distribute, and sell in California" G100UL under Para. 2.3.1.(a) of the Consent Judgment. CEH argues that G100UL is a lower lead alternative that is both "approved for aviation use" and "Commercially Available." CEH bears the burden of proof.

This motion requires the Court to interpret the Consent Judgment's terms "approved for aviation use" and "commercially available," although the latter arguably incorporates the former. "Approved for aviation use" is not defined. "Commercially available" is purportedly defined as "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." The purported definition of "Commercially Available," however, includes the phrase "commercially available," so it is self-referential and circular and not very helpful in defining "commercially available."

The parties dispute the interpretation of these terms. CEH offers a narrow interpretation while the Settling Defendants offer a more expansive interpretation. CEH reads "Commercially Available" as focusing on what the Settling Defendants can make available. CEH argues that if the defendants can acquire lower lead fuel "on a consistent and sustained basis at prices and on terms, in quantities and at times sufficient to [provide the fuel to] the customers," then the defendants must buy the fuel and make it available to their customers. The Settling Defendants read "Commercially Available" as meaning both commercially available and feasible, which means that the Settling Defendants must not only be able to acquire the lower lead fuel, but there must also be sufficient demand. CEH interprets "approved for aviation use" to mean STC approval by the FAA. The Settling Defendants read "approved for aviation use" to mean FAA approval for general use.

A. A Broad and Expansive Interpretation of "Approved for Aviation Use" and "Commercially Available" Is Appropriate

The well-established rules of contract interpretation apply to the interpretation of a consent judgment. *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, 471; *In re Tobacco Cases I* (2011) 193 Cal.App.4th 1591, 1601. In short, a consent decree must be interpreted as to give effect to the mutual intention of the parties as it existed at the time they entered the document, so far as the same is ascertainable and lawful. (Civ. Code § 1636.) In doing so, the language is to govern if it is clear and explicit and does not involve an absurdity. (Civ. Code § 1638.) The parties' intention is to be ascertained from the writing alone if possible. (Civ. Code § 1639.) The document may be explained by reference to the circumstances under which it was made, and the matter to which it relates. (Civ. Code § 1647.) It should receive an interpretation as will make it lawful and capable of being carried out. (Civ. Code § 1643.)

The Court interprets the phrases "approved for aviation use" and "commercially available" "by reference to the circumstances under which [the agreement] was made, and the matter to which it relates" so that it is "lawful, … reasonable, and capable of being carried into effect." (Civ. Code §§ 1643 and 1647.) These factors warrant a broad and expansive reading of both terms more in line with the Settling Defendants' interpretation.

First, the circumstance under which the Consent Judgment was entered was a Proposition 65 settlement. Proposition 65 is designed to provide warnings to the public about hazardous substances, and its remedies ordinarily do not require the Court to order fundamental changes to industry practices. A defendant may agree to sell or use a reformulated product to avoid liability under Proposition 65, but that does not change Proposition 65's principal nature as a warning statute. (*Center for Environmental Health v. Perrigo Co*. (2023) 89 Cal.App.5th 1, 22-24 ["even if reformulation is a potential remedy for a violation of section 25249.6, a suit under that provision fundamentally seeks to impose a state law warning requirement, not a reformulation requirement"].) CEH is using the Consent Judgment to implement a fundamental change to the operations of the general aviation industry in California. While that type of enforcement is permitted by the Consent Judgment, the nature and scope of that enforcement given the purpose of the underlying statute warrants a broad and expansive reading of these terms.

Second, a significant governmental and industry (public-private) infrastructure has been set up to address the transition from using leaded to unleaded Avgas. Requiring the public to use a particular brand or type of Avgas requires consideration of highly complex and technical health, safety, and compatibility issues. The FAA is studying these issues through the EAGLE and PAFI projects; the California Legislature is addressing these issues; the aviation industry with its many stakeholders is providing input into the process; and various unleaded fuels are being vetted. This motion, in effect, seeks to circumvent that public-private infrastructure to impose the use of G100UL by way of a motion under a stipulated Consent Judgment. Courts in general should be careful to avoid assuming general regulatory powers and determining complex economic policies. (*Hambrick v. Healthcare Partners Medical Group, Inc.* (2015) 238

Cal.App.4th 124, 152 [addressing abstention]). The public-private infrastructure and the Legislature are well placed to consider all the health, safety and compatibility issues implicated by the required use of any particular Avgas. The Consent Judgment must be "reasonable" and cannot be interpreted to require the parties to engage in unreasonably or unsafe activities. (Civ. Code § 1643.) Accordingly, a broad and expansive interpretation is warranted to account for the complex health, safety, and compatibility issues involved in mandating the use of a specific Avgas currently being considered by the public-private infrastructure.

Third, as a related point, Avgas is a regulated fuel in a highly regulated general aviation industry. To be lawful, the Consent Judgment should be interpreted to be consistent with the corresponding legal framework. (Civ. Code 1643.) Various statutes and regulations currently address the movement in the aviation industry away from the use of leaded to the use of unleaded Avgas. An expansive interpretation of the Consent Judgment is appropriate to ensure it is consistent with the corresponding legal framework.

As to "commercially available," CEH's definition is too narrow and gives effect to the specific details of the terms on which the fuel must be "commercially available" as set forth in Para 2.3.1(a), but this definition does not give reasonable effect to the meaning of the term "commercially available" [small caps] itself. It does not account for the other factors noted above. The Settling Defendants' interpretation is more consistent with the Consent Judgment's reference that the defendants must acquire lower lead fuel "to meet demands of the customers." The level of demand for the new fuel based on price and other market and industry factors affects commercial feasibility and thus availability. The phrase "sufficient to meet demands of the customers" set forth in § 3.2.1 of the Consent Judgment is where "Commercially Available" incorporates commercially feasible and the requirement of demand. The Court interprets the phrase "commercially available" to mean that the fuel is both available for sale and commercially feasible, which means that there will likely be substantial demand for the fuel in the general aviation industry.

As to "approved for aviation use," the parties reasonably contemplated FAA approval. But the Consent Decree does not articulate what level of approval by the FAA is required or for what portion of the fleet. But the parties reasonably intended that any new fuel that would be required to be used under the Consent Judgment was intended to service the entire fleet. The Consent Judgment's reference that Mogas cannot be offered in lieu of Avgas because some aircraft are not capable of using it shows that the parties did not intend to require Avgas that some aircraft are not capable of using. (Consent Judgment, ¶ 1.7.) It is not reasonable that the parties intended to preclude the operations of certain aircraft in California. That was not the purpose of the Consent Judgment. The Court interprets the phrase "approved for aviation use" to mean that the fuel is approved by the FAA for general aviation use by all aircraft types in the general aviation fleet.

B. CEH Has Not Met Its Burden to Prove that G100UL Has Been Approved for Aviation Use and Is Commercially Available

CEH has not met its burden to show that G100UL has been approved for aviation use and is commercially available under the Consent Judgment.

The record before the Court shows that the general aviation industry lacks a general consensus that G100UL is safe and compatible for use with significant portions of the aviation fleet. The Settling Defendants' argument that this lack of a general consensus means that CEH has not demonstrated the demand necessary to show commercial availability and feasibility is well taken. (Opp. at 15:6-18:18.) The Court finds that commercial availability, including a showing of "demand," under the Consent Judgment requires a showing that there is a general consensus in the aviation industry that the use of G100UL is safe, compatible, and effective for use with all affected types of aircraft.

The significant opposition to this motion by independent third-party OEMS— Piper Aircraft, Lycoming Engines, Continental Aerospace, Aviat Aircraft, Diamond Aircraft, Cirrus Aircraft, Textron Aviation, and multiple helicopter manufacturers—and prominent industry groups—GAMA and NATA—shows that the aviation industry has not developed a consensus

that G100UL is safe and compatible for use in significant numbers of aircraft. G100UL has not been approved by the FAA's EAGLE program. (Oppo at 3-4.) G100UL has not been approved by the FAA's PAFI. (Oppo at 4-5.) Several OEMs, including aircraft manufacturers, have disapproved the use of G100UL for various reasons, including a claim that it degrades tank sealant. (Oppo at 7-9.) The Court does not need to find by a preponderance of the evidence that G100UL has caused the specific problems raised by the OEMs or the pilots. The Court, however, finds that there are safety and compatibility issues that need to be vetted. The Court further finds that material industry stakeholders, including significant manufacturers of the aircraft and engines with which G100UL will be used, need to have their concerns addressed and satisfied before a general consensus on safety, compatibility, and efficacy can emerge. Owners of aircraft equipment are likely to be reluctant to use fuel in their aircraft when the pertinent manufacturers have disapproved of that fuel and have asserted that the use of such fuel would void warranties. Absent a general industry consensus that the fuel is safe, compatible, and effective, aircraft users are likely to be reluctant to use the fuel. These factors militate against finding that G100UL is commercially available at this time.

G100UL is not subject to an ASTM certification standard. There is no independent industry standard against which G100UL can be measured. (Oppo at 5-6, 9-10, 15-16.) The parties' reference in Para. 1.6 of the Consent Judgment to a fuel—100VLL—that is subject to an ASTM standard is significant.[3] The ASTM standard setting process enables more transparency that enables various stakeholders to determine whether the fuel is safe, compatible, and effective for use with their products. The parties reasonably anticipated that any fuel required to be sold under § 2.3.1(a), at issue here, would also be subject to an ASTM standard because § 2.3.1(a) also refers to 100VLL as a type of fuel contemplated to be required under that section. Further, regulations in the general aviation industry refer to ASTM standards. The transparency required

[3] The Consent Judgment at § 1.9 provides, "A newer form of Avgas, known as 100VLL for "very low lead," has recently been approved by the Federal Aviation Administration ("FAA") and is specified at a maximum of 0.45 grams of lead per liter of fuel under specification ASTM D910, but is not yet commercially available for sale in California."

by the ASTM standard setting process would permit the public-private infrastructure to adequately vet the fuel and to make informed decisions regarding the fuel's safety, compatibility, and efficacy with particular aircraft and their components. The parties presumably did not intend the Consent Judgment to create fundamental safety and compatibility issues.

GAMI elected not to pursue an ASTM specification and has elected not to disclose certain specifications and information regarding G100UL. G100UL has not been subject to "peer review" because GAMI declines to share information without a confidentiality agreement. (Oppo at 9.) While that might be GAMI's rational business choice, that decision has inhibited the formation of a general industry consensus by, among other things, preventing industry stakeholders from adequately vetting the fuel. These factors, in light of the concerns raised regarding the safety and compatibility of G100UL, such as whether it degrades tank sealant, further militate against finding that the fuel is commercially available.

While G100UL has obtained FAA STC certification for use with a majority of aircraft in the fleet, STC approval concerns a modification from the original design rather than a general approval. CEH argues that the FAA has found that G100UL is safe based on its STC certification. But the STC certification has not moved the industry to form a general consensus regarding G100UL's safety, compatibility, and efficacy.

The STC certification excludes helicopters and other aircraft and does not approve the use of G100UL for all aircraft types in the fleet. Helicopters are used regularly for matters of significant public health and safety, including emergency responses and policing. Many affected airports at issue have only one tank for aviation fuel. Requiring G100UL to be used by FBOs that have only one tank (before a second tank is built) would create significant public safety concerns. For example, the inability of a helicopter to refuel because the local airport carries only G100UL can pose serious consequences to public health and safety when the helicopter is needed to respond to an emergency or urgent policing. Even though helicopters form only about 1.5% of the fleet, they have an outsized importance to public health and safety.

If the Consent Decree required all affected airports to provide G100UL, then the one-tank airports would need to have one tank of fuel that is FAA-approved for helicopters and other aircraft and another tank for G100UL. Similarly, FBOs who are federally obligated (either directly or indirectly through their airport) will, at least, face legal issues under the Reauthorization Act if they stop selling 100LL Avgas. The parties dispute whether FBOs who are directly or indirectly federally obligated will violate the Reauthorization Act if they stop selling 100LL. The Court need not resolve that precise legal question because it finds that, at a minimum, the FBOs risk a violation if they do. Hence, an order requiring those FBOs to sell G100UL will put them in legal jeopardy unless they build another tank. Building a second fuel tank would require significant capital investment and could take years. CEH has not demonstrated that building a second tank would be commercially feasible for the affected FBOs and airports after considering the required capital investment necessary to build a new fuel tank, which is in the order of $300,000 to $900,000.

That at least two airports currently use G100UL is helpful, but not outcome determinative. Those airports have begun using the fuel recently, since late 2024, and there is an insufficient record of use of the fuel in those airports to find that their use of the fuel alone meets the meaning of commercially available—both in terms of customer demand and safety and compatibility. The Reid-Hillview airport in Santa Clara has four tanks, so pilots have alternatives if they do not want to use G100UL.

CEH points out the significant health hazards connected with leaded Avgas, which is undisputed and disturbing. Removing leaded Avgas from California would undoubtedly benefit the public health. But using this Prop 65 Consent Judgment to impose that change on this record poses significant consequences that also affect the public's health and safety as well as the operations of the entire general aviation industry and social and economic sectors that depend on that industry. The Legislature and regulatory and industry bodies are addressing the issue.

CEH raises the point that the OEMs might be financially motivated to avoid the use of G100UL, so the Court should discount their declarations in opposition to this motion. Hidden

financial interests behind the various declarations filed on this motion might very well exist on both sides. GAMI and Vitol certainly have financial interests that favors granting of this motion. The Court has balanced these factors and finds that the opposition to a Court order requiring G100UL is widespread and cuts across different interests, including independent and competing OEMs, trade associations, and at least some pilots. The Court finds that the declarations by the independent OEMs and trade groups are sufficiently credible to make the findings set forth herein. The asserted financial interests, upon consideration, do not alter the finding of a lack of general consensus regarding G100UL.

The Court finds that CEH has not met its burden at this time to demonstrate that G100UL is "approved for aviation use" and "Commercially Available." This Order does not minimize the health hazards of lead in the air. This Order decides only that CEH has not demonstrated that G100UL is "approved for aviation use" and "Commercially Available" to the Settling Defendants in the California market, which under Consent Judgment para 2.3.1 would require each Settling Defendant to "purchase [G100UL] for resale, distribut[ion], and [sale] in California."

This motion is premature. The science of aircraft fuel will continue to develop. (Opp at 7:13-21.) G100UL is new on the market. CEH has not established a record presented to this Court on this motion in the face of the significant opposition to find that it is "commercially available" at this time. The Court agrees with the statements in the Legislative notes to the same effect. This order does not preclude CEH from raising the issue again as the science and industry advance.

IV. ORDERS

For the reasons set forth above and based on all the papers and evidence filed in support of and in opposition to this motion, the Court Orders the following:

1. The motion to enforce the consent judgment is DENIED.

2. CEH's request to modify the Consent Judgment to reduce the maximum lead level from 0.56 grams per liter to 0.013 grams per liter is DENIED. (Consent Judgment, para 2.3.1(d).)

3. CEH's request for attorneys' fees and costs related to this motion is DENIED. (Consent Judgment, para 9.1.) The Court notes, by way of dicta, that CEH's motion was brought with substantial justification. (Consent Judgment, para 9.1.)

4. CEH's request to sanction and hold the Distributor Settling Defendants in contempt is DENIED.

5. CEH's request to reopen discovery regarding sanctions is DENIED.

IT IS HEREBY ORDERED.

Dated: May 30, 2025

By: _____
S. Raj Chatterjee
Judge of the California Superior Court

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp **FILED** Superior Court of California County of Alameda 05/30/2025 Chad Finke, Executive Officer / Clerk of the Court By: _____ Deputy T. Smith
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	
PLAINTIFF/PETITIONER: Center for Environmental Health,	
DEFENDANT/RESPONDENT: Aerodynamic Aviation et al	
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6	CASE NUMBER: RG11600721

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the ORDER DENYING MOTION OF CEH TO ENFORCE AND MODIFY CONSENT JUDGMENT entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

Trenton Herbert Norris
Hogan Lovells US LLP
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Chad Finke, Executive Officer / Clerk of the Court

Dated: 05/30/2025

By:

T. Smith, Deputy Clerk

CERTIFICATE OF ELECTRONIC SERVICE
CODE OF CIVIL PROCEDURE 1010.6

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	FILED Superior Court of California County of Alameda 05/30/2025 Chad Finke, Executive Officer / Clerk of the Court By: _____ Deputy T. Smith
PLAINTIFF/PETITIONER: Center for Environmental Health,	
DEFENDANT/RESPONDENT: Aerodynamic Aviation et al	
CERTIFICATE OF MAILING	CASE NUMBER: RG11600721

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the attached document upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Oakland, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

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Chad Finke, Executive Officer / Clerk of the Court

Dated: 05/30/2025

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