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10 *Attorneys for Settling Defendants*

11 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF ALAMEDA**

13 CENTER FOR ENVIRONMENTAL
14 HEALTH,

15 Plaintiff,

16 v.

17 AERODYNAMIC AVIATION, *et al.*,

18 Defendants.

Case No. RG-11-600721

Hon. Somnath Raj Chatterjee

**DECLARATION OF DAVID M.
BARNES IN SUPPORT OF SETTLING
DEFENDANTS' *EX PARTE*
APPLICATION TO SUBMIT
ADDITIONAL EVIDENCE**

**Regarding Plaintiff's Motion to Enforce
and Modify Consent Judgment:**

Date: February 25, 2025

Time: 1:30 p.m.

Reservation Number: 690015831804

Complaint Filed: October 20, 2011

1 **DECLARATION OF DAVID M. BARNES**

2 I, David M. Barnes, declare as follows:

3 1. I am an attorney admitted to practice before the courts of the State of California and
4 a senior associate with the law firm of Hogan Lovells US LLP. My firm and I serve as counsel to
5 Settling Defendants in the above-captioned action.

6 2. I make this declaration in support of Settling Defendants' *Ex Parte* Application to
7 Submit Additional Evidence. The facts stated herein are based upon my personal knowledge and,
8 if called up to testify thereto, I could and would competently do so.

9 3. On February 10, 2025, pursuant to the Parties' stipulation, the Court entered an order
10 providing that all evidence that the Parties discover at least one week in advance of the rescheduled
11 hearing date that they wish to submit for the Court's consideration shall be submitted collectively
12 in one filing one week in advance of the rescheduled hearing date in this action, in accordance with
13 the standard *ex parte* procedures set forth in the California Rules of Court and Department 21's
14 procedural guidelines.

15 4. In the present filing, Settling Defendants are providing all additional evidence that
16 they have discovered, as of today's date, that they wish to submit for the Court's consideration. I
17 declare, on Settling Defendants behalf, that the omission of this evidence from the record will cause
18 Settling Defendants irreparable harm, such that the granting of *ex parte* relief is appropriate.
19 Settling Defendants distribute and/or sell avgas in California. The evidence presented in this *Ex*
20 *Parte* Application concerns issues, including those that are attested to concern airworthiness, that
21 have been identified in aircraft that have used G100UL, the Avgas that CEH seeks to force Settling
22 Defendants to distribute and/or sell. Settling Defendants were not aware of this evidence at the
23 time of their prior filings. Settling Defendants contend that this evidence is relevant to the issue of
24 whether G100UL is commercially available, as well as whether the impacts of the present motion
25 on the "public interest," including the California general aviation community.

26 5. On February 13, 2025, I provided notice of Settling Defendants' intent to file this
27 *Ex Parte* Application via email to Plaintiff Center For Environmental Health's ("CEH") counsel,
28

1 Mark Todzo and Mary-Haley Ousley. A true and correct copy of this email correspondence is
2 attached as **Exhibit A**.

3 6. As of the time of this filing, Settling Defendants are unaware whether CEH will
4 oppose this *Ex Parte* Application. CEH therefore has every right to respond to this Application, in
5 accordance with the standard *ex parte* procedures set forth in the California Rules of Court and
6 Department 21's procedural guidelines.

7 I declare under penalty of perjury under the laws of the State of California that the foregoing
8 is true and correct.

9 Executed this 18th day of February 2025, at San Francisco, California.

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12 _____
David M. Barnes

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EXHIBIT A

Barnes, David

From: Barnes, David
Sent: Thursday, February 13, 2025 10:08 PM
To: 'Mark Todzo'; 'Mary-Haley Ousley'
Cc: Norris, Trent
Subject: CEH v. Aerodynamic Aviation, et al - RG 11-600721 - Notice of Ex Parte Application

Hi Mark and Mary-Haley –

Pursuant to Cal. Rule of Court R. 3.1203(a) and the Court's Order signed February 10, 2025, I write to provide CEH notice that Settling Defendants intend to file an ex parte application on February 18, 2025, to submit additional evidence in support of their opposition to CEH's motion to enforce and modify the consent judgment in the above action.

At present, Defendants anticipate submitting declarations (with accompanying photo and/or video exhibits) by the below individuals. Defendants may add additional declarations or evidence to their submission, should they discover such evidence between now and February 18:

- David Bertucci: owner of aircraft based at Reid-Hillview who used G100UL;
- Patrick Davis: owner of aircraft based at Reid-Hillview who used G100UL;
- Sean Patrick Kelley: owner of aircraft based at Watsonville who used G100UL;
- Michael Lambert: owner of aircraft based at Reid-Hillview who used G100UL;
- Michael Lionudakis: owner of aircraft based at San Martin airport, who obtained G100UL at Reid-Hillview;
- Terra McKenna: mechanic at Watsonville;
- Nik Nickraves: mechanic at Reid-Hillview
- Steve Rubin: owner of aircraft based at Reid-Hillview who used G100UL; and
- Jeffrey Soule: mechanic at Reid-Hillview.

Should Defendants discover additional evidence between now and February 18 that they wish to submit, I will update this notice.

The declarations concern issues the above pilots and/or mechanics have encountered with G100UL, as well as the FAA's investigation of these issues. Defendants contend that this evidence is relevant to whether G100UL is "Commercially Available." Because Defendants have already filed their opposition and this evidence did not exist when they filed their opposition, they must move ex parte to submit this evidence for the Court's consideration.

The declarations are not yet finalized. If CEH believes that a review of these declarations in advance of our filing would inform whether they will oppose the motion, I would be happy to send copies of the declarations after they are signed (either piecemeal or all at once).

Please let us know if you have any questions, or if a discussion would be helpful.

Thank you,
David

David Barnes
Senior Associate

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