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October 27, 2022

VIA E-MAIL TO *MARC.NICHOLS@FAA.GOV* AND *KEVIN.WILLIS@FAA.GOV*

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Office of the Chief Counsel
Federal Aviation Administration
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Kevin Willis, Director
Airport Compliance and Management Analysis
Federal Aviation Administration
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Re: Aircraft Owners and Pilots Association, *et al.* v. County of Santa Clara, California

Dir. Willis and Mr. Nichols:

The County of Santa Clara (“County”), as the sponsor of the Reid-Hillview Airport and San Martin Airport (collectively, the “County Airports”), writes to request that the Federal Aviation Administration (“FAA”) dismiss prior to docketing, pursuant to 14 C.F.R § 16.27, the complaint filed by the Aircraft Owners and Pilots Association et al. (“Complainants”) regarding the unavailability of leaded 100 octane aviation gasoline (“avgas”) at the County Airports (“Complaint”).

This Complaint is a second attempt by the Complainants to seek FAA intervention regarding the unavailability of leaded 100 octane avgas at the County Airports; the FAA investigation pursuant to 14 C.F.R. Part 13 (“Part 13”) stemming from Complainants’ prior informal complaint raising the same issues is still pending. Complainants’ first complaint, a December 13, 2021 letter to then-Administrator Stephen Dickson on behalf of various aviation industry groups, resulted in the FAA initiating an informal Part 13 investigation on December 22, 2021. See Complaint, Attachment 20. Since March 2022, senior County officials have been in regular conversation with FAA officials, including Deputy Administrator Bradley Mims, to resolve the issues raised in the Part 13 investigation. See Complaint, Attachment 23. A key component of these negotiations has been integrating the County Airports into an FAA sponsored pilot demonstration initiative involving the sale of unleaded avgas. See *id.* In his most recent meeting with County officials on September 16, 2022, Deputy Administrator Mims personally indicated that the development of this initiative was a high priority for the FAA.

There has been no indication by either the FAA or the County that the two parties are at an impasse. In fact, the parties have been working together amicably and productively towards resolution over the last six months. We understand that the FAA is finalizing a document with additional details regarding the scope of the proposed initiative for the County's review. Complainants should not be able to press the same concerns in this new Complaint while the Part 13 process and negotiations on the initiative are ongoing.

The Complaint fails to meet the basic standards for docketing. A complaint pursuant to 14 C.F.R. Part 16 ("Part 16") must certify that the complainant "has made substantial and reasonable good faith efforts to resolve the disputed matter informally prior to filing the complaint" and there is "no reasonable prospect for practical and timely resolution of the dispute." 14 C.F.R. § 16.21(b). A complaint must also document the complainants' efforts to resolve the matter informally prior to filing. 14 C.F.R. § 16.21(c). Not only have Complainants failed to pursue reasonable good faith informal resolution, their filing of this Complaint could disrupt the most likely avenue for the timely resolution of their concerns—participation in the FAA's forthcoming demonstration project.

The Complaint does not include any documented efforts by the Complainants to informally resolve their concerns with the County other than filing the complaints with the FAA that led to the ongoing negotiations between the FAA and County over the pilot demonstration initiative.¹ Attempting to circumvent the County's ongoing informal negotiations with the FAA – negotiations which stemmed from Complainants' own prior complaint – by filing a duplicative Part 16 complaint is the antithesis of making substantial and reasonable good faith efforts to resolve the disputed matter informally prior to filing the complaint.

The ongoing negotiations between the County and the FAA represent the most "reasonable prospect for practical and timely resolution of the dispute." See 14 C.F.R. § 16.21(b)(2). County participation in an FAA sponsored pilot demonstration initiative involving the sale of unleaded avgas would resolve any questions about whether the County's practices comply with its FAA grant obligations. Adjudication of the Complaint would have a counterproductive effect on actual resolution of the dispute by chilling these ongoing negotiations.

The County appreciates the Complainants' desire for the availability of 100 octane avgas at the County Airports as soon as possible. To this end, the County is also working with General Aviation Modifications, Inc. to ensure that the County Airports are among the first airports at which G100UL, their newly approved 100 octane unleaded avgas, is available. The County anticipates that G100UL will be available at the County Airports as soon as mid-2023, resolving Complainants' need for 100 octane avgas.

For the foregoing reasons, the County respectfully requests the FAA dismiss the Complaint before docketing. Doing so would allow both the County and the FAA to focus on their ongoing informal resolution efforts. If the FAA should nonetheless docket the Complaint,

¹ Aperture Aviation did send a letter to the County on December 13, 2021 requesting permission to continue fueling with 100LL at RHV. (See Complaint, Attachment 5A.) The County has acknowledged that its transition to the exclusive sale of unleaded fuel does not affect the right of aircraft operators to self-fuel. (See Complaint, Attachment 22 at p.8.) The County does not prohibit self-fueling, and has taken no action to prevent Aperture Aviation from self-fueling, its aircraft.

the County reserves all its rights to present legal arguments and facts to refute the claims asserted therein.

Very truly yours,

JAMES R. WILLIAMS
County Counsel

/s/ Jerett Yan

JERETT YAN
Deputy County Counsel

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Justine Harrison, General Counsel, Aircraft Owners and Pilots Association