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**UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, D.C.**

AIRCRAFT OWNERS AND PILOTS  
ASSOCIATION, *ET AL.*

Complainants,

FAA Docket No. 16-22-08

v.

COUNTY OF SANTA CLARA,  
CALIFORNIA

Respondent.

**RESPONDENT COUNTY OF SANTA CLARA'S CONSOLIDATED  
MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT**

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## I. Introduction

Effective January 1, 2022, the County of Santa Clara (“County”) transitioned five County owned fuel tanks at Reid-Hillview Airport (“RHV”) and San Martin Airport (“E16”) (collectively, “County Airports”) to the exclusive sale of unleaded avgas. The County took this action to promote the availability of unleaded avgas in response to a study demonstrating a clear causal link between general aviation operations using leaded aviation gasoline (“avgas”) at RHV and significant increases in blood lead levels for children in the surrounding neighborhood. This transition ended the sale of leaded avgas at the County Airports and has prevented the emission of over 600 pounds of lead into the community with negligible impacts on airport operations. Operators of piston engine aircraft unable to use commercially available unleaded avgas are no longer able to purchase leaded avgas at a County Airport, but are able to fuel at numerous airports in the immediate vicinity.

Complainants wrongly interpret the County’s actions as a prohibition on the use of leaded avgas, including a prohibition on self-fueling with leaded avgas, at the County Airports. In fact, there have been thousands of operations at the County Airports in the past year – including some by Complainants – by aircraft using leaded avgas. The County has not made any changes to its general aviation self-fueling permit in over twenty years. Further, the County has been working with the FAA and industry to mitigate the impact on aircraft unable to use commercially available unleaded fuel.

Rather than seeking to accurately understand the County’s actual actions and mitigation efforts, Complainants have filed a series of complaints asserting that the County’s alleged actions violate their reasonable access and self-fueling rights under the grant assurances between the County and the Federal Aviation Administration (“FAA”). This frivolous and misguided Complaint is exactly the type of activity that the pre-complaint informal resolution requirement in 14 C.F.R. Part 16 (“Part 16”) is designed to prevent.

The remainder of Complainants’ allegations turn on the proposition that their right to reasonable access and self-fueling requires the County to sell every type of fuel at the County Airports for every aircraft that could conceivably land there. This would be a drastic reinterpretation of reasonable access. There is no right to have any particular type of fuel available for purchase at a

1 public use airport. In fact, leaded avgas is unavailable for purchase at almost 30 percent of public  
2 use airports in California and over fourteen hundred public use airports nationwide.

3 The entire Complaint warrants dismissal, or in the alternative, summary judgment in favor of  
4 the County for several reasons. Complainants' failure to initiate and engage in the mandatory good  
5 faith efforts to resolve the disputed matter prior to filing their Part 16 complaint requires dismissal of  
6 their entire Complaint, or in the alternative, summary judgment in favor of the County. Second,  
7 Complainants' claims the County has prohibited the use of leaded avgas and self-fueling with leaded  
8 avgas at the County Airports is simply untrue; as the undisputed facts demonstrate, the County has  
9 not taken these actions. Third, the County is under no obligation to sell leaded avgas from its own  
10 fuel tanks; Complainants' claims to the contrary are without merit and warrants dismissal for failure  
11 to state a claim, or alternatively summary judgment in favor of the County as a matter of law.  
12 Fourth, Complainants' allegations relating to the County's self-fueling regulations also merit  
13 dismissal for lack of standing as no Complainant alleges that the County denied them a self-fueling  
14 permit. Finally, the Director should also strike Dr. Joseph C. McMurray as a complainant for failure  
15 to sign the Complaint.

## 16 **II. Statement of Material Facts**

### 17 **A. Lead exposure from general aviation operations at the County Airports is** 18 **creating a public health crisis in Santa Clara County.**

19 The County is the owner and operator of two airports, Reid-Hillview Airport, and San Martin  
20 Airport. Declaration of Harry Freitas ("Freitas Dec.") ¶ 6, 10. Air traffic at the County Airports  
21 consists entirely of general aviation operations, most of which is comprised of piston engine aircraft.  
22 *Id.* at ¶ 7, 11. The most common form of aviation gasoline ("avgas") for piston engine aircraft is  
23 100LL, a leaded 100 octane fuel. 199 Fed. Reg. 62758. Combustion of leaded avgas due to piston  
24 engine aviation operations causes emission of lead into the environment.

25 Exposure to lead can cause severe and irreparable human health effects, including harm to  
26 the nervous, cardiovascular, immune, and reproductive systems. The effects of lead exposure are  
27 particularly pronounced for children, for whom exposure to lead can also cause severe and often  
28 irreversible cognitive and intellectual impairment, harm academic performance, and increase

1 children’s risk for behavioral disorders. *Id.* at 62775-77. Lead emissions from piston engine aircraft  
2 are the largest single source of lead to air in the U.S. in recent years, contributing 70 percent of the  
3 annual emissions of lead to air in 2017. *Id.* at 62761. The EPA recently proposed to find that engine  
4 emissions of the lead air pollutant from piston engine aircraft cause or contribute to the lead air  
5 pollution that may reasonably be anticipated to endanger public health and welfare under the Clean  
6 Air Act. *Id.* at 62780.

7         The pernicious effects of lead on children living near RHV is well established. In August  
8 2021, the County released a peer-reviewed study conducted by a leading expert on the economic,  
9 health, and social costs of pollution and environmental risks, that provides a detailed and robust  
10 account of the effects of RHV’s operations on blood lead levels in local children. Freitas Dec. ¶ 13,  
11 Ex. C. The study examined over 300,000 blood lead test results collected by the California  
12 Department of Public Health over a 10-year period. The extensive data the study analyzed allowed  
13 for it to control for variables such as other sources of exposure to lead and demographic factors. The  
14 study found correlations between various indicators of general aviation operation at the airport and  
15 significant increases in blood lead levels in children living near the airport. The study also found  
16 that living downwind of RHV is associated with childhood blood lead level increases comparable to  
17 those from the Flint water crisis, and that children living within half a mile of the airport during  
18 periods of maximum piston-engine aircraft traffic had blood lead level increases nearly twice the  
19 amount that occurred during the Flint crisis. Freitas Dec., Ex. C at xi-xvii. In particular, the study  
20 demonstrated a strong correlation between the volume of leaded avgas sales at RHV and increased  
21 blood lead levels in children living near RHV. *Id.* at 45. The study has been accepted for  
22 publication in the Proceedings of the National Academy of the Sciences.

23                 **B. The County has successfully transitioned the County Airports to the exclusive**  
24                 **sale of unleaded avgas.**

25         In response to the Lead Study, the Board directed the County Administration to “continue  
26 working on securing unleaded aviation gasoline for the County Airports System” and to “take all  
27 actions necessary to transition to carrying only lead free gas at both County airports as soon as  
28 possible.” Freitas Dec. ¶ 15, Ex. D. Since January 1, 2022, the leaded avgas has been unavailable

1 for purchase at the County Airports. *Id.* at ¶ 30, 36. Previously, fixed base operators (“FBOs”) at  
2 both County Airports had sold leaded avgas using five fuel tanks currently owned by the County. *Id.*  
3 at ¶ 29, 35. The County negotiated new contracts with the FBOs that, effective January 1, 2022,  
4 authorized the FBOs to continue using the tanks, but only for the sale of unleaded avgas. *Id.* at ¶ 30,  
5 Ex. G.1, G.2, G.3 (RHV); ¶ 36, Ex. H (E16). The County expects to take over operation of all fuel  
6 tanks at RHV in early 2023 and exclusively sell unleaded avgas. *Id.* at ¶ 31. The County did not  
7 adopt any regulations limiting the use of leaded fuel at the County Airports. *Id.* at ¶ 36. Operators  
8 that obtain a permit may self-fuel with leaded avgas. *Id.* at ¶ 42-47. The County has not denied any  
9 self-fueling permit applications from Complainants. *Id.* at ¶ 46, 48.

10 This transition has had negligible impacts on aviation operations at the County Airports, but  
11 enormous positive impact on community health. Almost 70% of piston engine aircraft in the US  
12 piston fleet are still able to use the UL94 sold at the County Airports. The unavailability of 100LL  
13 for purchase has not affected utilization of the County Airports. Operations at RHV and E16 have  
14 exceeded operations for the same period in 2021. *Id.* at ¶ 51-52. There has been no significant  
15 reduction in aircraft based at County facilities at either County Airport. *Id.* at ¶ 52-53. The County  
16 has no record of any safety incidents resulting from the exclusive sale of unleaded avgas. *Id.* at ¶ 55.  
17 In contrast, transitioning to the exclusive sale of unleaded avgas has prevented over 600 pounds of  
18 lead emissions into the community. *Id.* at ¶ 39.

19 In addition to protecting the surrounding community, this transition has allowed the County  
20 to meet significant consumer demand for UL94. Prior to 2022, UL94 was only available at one  
21 airport west of the Rocky Mountains. *Id.* at ¶ 18. Being able to buy UL94 in larger quantities has  
22 reduced the overall cost for all retailers in Northern California by about \$1.15 per gallon. *Id.* at ¶ 25.  
23 From January 1, 2022 to November 30, 2022 aircraft users consumed and sold over 180,000 gallons  
24 of UL94 at the County Airports. *Id.* at ¶ 37. The County expects sale of unleaded avgas to grow as  
25 pilots become more aware of the benefits of unleaded avgas, including reduced maintenance costs  
26 and lowered lead exposure. *Id.* at ¶ 38.

27 The County is working to mitigate inconveniences that the unavailability of 100LL has  
28 created for the minority of piston engine aircraft unable to use commercially available unleaded

1 avgas. The County maintains a protocol for allowing pilots who land at a County Airport without  
2 sufficient leaded fuel to safely access and fuel with leaded fuel. *Id.* at ¶ 49. Notably, however, there  
3 has not been a single instance necessitating its use. *Id.* at ¶ 50. Numerous nearby airports continue  
4 to sell 100LL, including Palo Alto Airport, Livermore Airport, San José International Airport, and  
5 Hollister Airport. *Id.* at ¶ 22. Additionally, the County is working to obtain a supply of G100UL, a  
6 100 octane unleaded avgas that the FAA recently approved for use in virtually all aircraft in the U.S.  
7 piston engine fleet. G100UL should be available for purchase at the County Airports within months.  
8 *Id.* at ¶ 31.

9 **C. Until the Complaint was filed, the County was discussing avgas sales at the**  
10 **County Airports with the FAA.**

11 This is Complainants' second complaint to the FAA alleging that the unavailability of leaded  
12 avgas for purchase at the County Airports violate several FAA grant assurances. On December 13,  
13 2021, Complainants filed an informal complaint with the FAA pursuant to 14 C.F.R. § 13.1 making  
14 substantially similar allegations. Freitas Dec. ¶ 59, Ex. K. The FAA issued a Notice of Informal  
15 Investigation Under 14 C.F.R. § 13.1 ("Part 13 Notice") on December 22, 2021 that included the  
16 availability of leaded avgas for purchase at the County Airports. See Complaint, Attachment 20 at  
17 99. The Complainants have made no efforts to engage directly with the County in good faith  
18 informal dispute resolution. Freitas Dec. ¶ 56-58.

19 Since early 2022, the County and the FAA have been engaged in regular communication  
20 regarding the FAA's concerns and the County's efforts to address the issues raised in the Part 13  
21 Notice. Until the filing of the Complaint, the topics of discussions included fuel sales at the County  
22 Airports. Senior FAA officials and County officials have been personally involved in these  
23 discussions, including U.S. Department of Transportation Assistant Secretary Annie Petsonk, FAA  
24 Deputy Administrator Bradley Mims, FAA Chief Counsel Marc Nichols, County Executive Jeffrey  
25 Smith, County Supervisor Cindy Chavez, and County Roads and Airports Director Harry Freitas. *Id.*  
26 at ¶ 62. During Deputy Administrator Mims's most recent visit to the County on September 16,  
27 2022, he informed County officials that FAA staff was meeting regularly to advance proposals for  
28 resolving the issues raised in the Part 13 Notice. *Id.* at ¶ 62(d). The FAA and the County have

1 exchanged multiple drafts of a memorandum of understanding (“MOU”), most recently on  
2 December 23, 2022, to outline a process for resolving the issues in the Part 13 Notice. *Id.* at ¶ 63.  
3 Rather than allow informal resolution process to conclude, Complainants have filed a new Part 16  
4 complaint with the FAA raising substantially similar issues.

### 5 **III. Argument**

#### 6 **A. The Complaint should be dismissed because Complainants have failed to comply** 7 **with the informal dispute resolution requirements of Part 16.**

8 The informal resolution requirements of 14 C.F.R. section 16.21 (“Section 16.21”) ensure  
9 that expending FAA resources to adjudicate a Part 16 complaint is a measure of last resort, not first  
10 resort. Complainants must “initiate and engage in good faith efforts to resolve the disputed matter  
11 informally with those individuals or entities believed responsible for the noncompliance” prior to  
12 filing a complaint and certify that they have done so. See 14 C.F.R. § 16.21(a), (b)(2)(i).  
13 Complainants must also certify that there is no “reasonable prospect for practical and timely  
14 resolution of the dispute.” See 14 C.F.R. § 16.21(b)(2). “The FAA’s requirement for documented  
15 efforts to resolve this specific matter are mandatory.” *Shinnick v. Mojave Air and Space Port, CA*,  
16 Docket No. 16-19-13, Director’s Determination, 2019 WL 10272368, at \*1 (Oct. 22, 2019).  
17 Complaints that fail to comply with the requirements of Section 16.21 are subject to dismissal  
18 pursuant to 14 C.F.R. § 16.27(a).

19 Complainants have failed to satisfy these requirements, and their efforts to represent  
20 otherwise are patently insufficient as a matter of law. Complainants did not engage in any  
21 meaningful good faith informal resolution efforts prior to filing their Complaint. Consequently, the  
22 Complaint makes no reference to the County’s negotiations with the FAA which could resolve the  
23 dispute in a practical and timely manner. Furthermore, the Complaint’s numerous  
24 mischaracterizations of the County’s actions underscore the need for dialogue between  
25 Complainants and the County prior to the FAA expending resources to adjudicate this Complaint.  
26 These deficiencies merit dismissal under Section 16.21.

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1 **1. Complainants have failed to engage in good faith efforts to resolve the**  
2 **disputed matter informally with the County.**

3 Complainants assert that they have complied with the informal dispute resolution  
4 requirements of Section 16.21 by stating “that there have been numerous good faith and substantial  
5 efforts to resolve the disputed matter described herein informally with Santa Clara County, but those  
6 efforts have been unsuccessful.” Complaint at 16. This certification lacks the details or  
7 documentation required by Section 16.21. This deficiency underscores Complainants’ failure to  
8 make any meaningful efforts to engage with the County prior to filing their Complaint.

9 A complaint must identify informal resolution efforts with specificity. “[V]ague statements,  
10 unsupported by documentation, do not satisfy the requirements of 14 CFR § 16.23.” *Vanduin v.*  
11 *Alpena County Airport*, Docket No. 16-21-05, Final Agency Decision, 2021 WL 4727447, at \*1  
12 (Sept. 24, 2021). “Although the description provided may be ‘brief,’ there needs to be enough  
13 information for [the FAA] to determine what actions were taken.” *Re: Diaz Aviation Corp. v.*  
14 *Aerostar Airport Holdings, LLC et al.*, FAA Docket No. 16-18-07, Director’s Determination, 2018  
15 WL 11191813, at \*1 (Nov. 29, 2018). These informal resolution efforts must be “relatively recent  
16 and be demonstrated by pertinent documentation.” 14 C.F.R. § 16.21(b). “At a minimum [the FAA]  
17 need[s] some ‘pertinent documentation’ that shows [the complainant] contacted the sponsor in  
18 writing and proposed a meeting or proposed an informal resolution.” *Re: Diaz Aviation Corp.*, 2018  
19 WL 11191813, at \*1.

20 Reporting an alleged violation to the sponsor or the FAA is insufficient to satisfy the  
21 requirements of Section 16.21. In *VanDuinen v. Alpena County Airport*, the FAA dismissed a  
22 complaint where the Complainant stated that “he has complained several times to the Airport District  
23 Office in Detroit and in Washington for many years to no avail” and that “he has tried to resolve the  
24 issue several times with the County and they refuse to discuss.” The FAA held that this certification  
25 did not adequately identify the complainant’s efforts at informal resolution and was too vague to  
26 satisfy Section 16.21. *VanDuinen*, 2021 WL 4727447, at \*1 (complaints to FAA insufficient). The  
27 FAA has also held that informal resolution must include “efforts to *resolve* the disputed matters” not  
28



1 just filing a complaint. *Uhlik v. City of Delano, CA*, Docket No. 16-19-05, Director’s  
2 Determination, 2019 WL 10272362, at \*1 (June 24, 2019) (emphasis in original).

3 The Complaint fails to provide the requisite details as to the nature of Complainants’ alleged  
4 “numerous” and “substantial” good faith efforts. The Complaint provides no dates or documentation  
5 of efforts to meet with the County or proposals for resolution of the disputed matters. See Complaint  
6 at 16; *Re: Diaz Aviation Corp.*, 2018 WL 11191813, at \*1. These vague statements are even less  
7 detailed than the statements the FAA rejected as deficient in *Vanduinien*. See *Vanduinien*, 2021 WL  
8 4727447, at \*1; *Uhlik*, 2019 WL 10272362, at \*1.

9 Complainants cannot provide these details and documentation because they have none to  
10 offer—they have completely failed to comply with the mandatory requirements of Section 16.21.  
11 Complainants have *not* met with the County to discuss informal resolution. Complainants have *not*  
12 made any written proposals for informal resolution. See Freitas Dec. ¶ 57. Complainants have *not*  
13 even submitted a written request proposing a meeting to discuss informal resolution. See Freitas  
14 Decl. at ¶ 58.

15 The only specific actions referenced in the informal resolution certification are  
16 Complainants’ previous complaints to the FAA. See Complaint at 16. These complaints do not  
17 satisfy the informal resolution requirement because Section 16.21(a) requires engagement between  
18 complainants and the airport sponsor. See *VanDuinen*, 2021 WL 4727447, at \*1. The negotiations  
19 between the County and the FAA stemming from Complainants’ previous complaint regarding the  
20 availability of avgas at the County Airports do not satisfy Complainants’ good faith informal  
21 resolution requirements because they do not involve Complainants. See *Mr. Jay Darling*, FAA  
22 Docket No. 16-14-15, Director’s Determination, 2017 WL 11558523, at \*1 (Nov. 17, 2017). To the  
23 contrary, filing a new complaint while these negotiations were ongoing is antithetical to engaging in  
24 good faith informal resolution and disrupted the very kind of discussions Section 16.21 seeks to  
25 encourage.<sup>1</sup>

26 \_\_\_\_\_  
27 <sup>1</sup> The only communication between a Complainant and the County referenced in the Complaint is a  
28 letter from Aperature Aviation to the County dated December 13, 2021. See Complaint,  
Attachment 5A. This letter does not satisfy the informal resolution requirement because it does not  
address any action taken by the County. Instead, the letter requests an exemption from the County’s

1 Furthermore, the Complaint is replete with misstatements and mischaracterizations of the  
2 very County actions that the Complaint alleges violate the grant assurances. See Sec. III.B, *infra*.  
3 These misstatements belie Complainants' assertions that they have engaged in good faith informal  
4 dispute resolution with the County and underscore the need for Complainants to comply with the  
5 requirements of Section 16.21 and engage in informal resolution with the County before the FAA  
6 processes their misguided Complaint. At very least, engagement with potential informal resolution  
7 would provide Complainants an opportunity to discuss their concerns and develop an accurate  
8 factual understanding of the situation at hand. But Complainant have neglected to fulfill that  
9 obligation, and instead presented a factually inaccurate Complaint that unnecessarily complicates  
10 these proceedings.

11 **2. The filing of the Complaint disrupted negotiations that may have led to**  
12 **practical and timely resolution of the dispute independent of the Part 16**  
13 **process.**

14 The Complaint incorrectly asserts that "there is no reasonable prospect for timely resolution  
15 of the grant assurance violations dispute." Complaint at 16. To the contrary, up until the filing of  
16 the Complaint, the County was engaged in productive discussions with the FAA regarding the very  
17 allegations at the heart of the Complaint. The Complaint resulted in the curtailing of these  
18 discussions, which would have provided practical and timely resolution to the disputed matters in the  
19 Complaint.

20 The central question disputed in the Complaint is whether the unavailability of 100 octane  
21 avgas for purchase at the County Airports violates the County's grant assurances. The County is  
22 currently negotiating an MOU with the FAA regarding resolution of the allegations in  
23 Complainant's previous complaints. Until the filing of the Complaint, those discussions included  
24 the County's fueling practices at the County Airports and the County's policies relating to fueling,

25  
26 "prohibition against fueling aircraft at RHV with 100LL avgas." Complaint, Attachment 5A at 1.  
27 As the County explained in its response to Aperture Aviation, the County never prohibited aircraft  
28 operators from fueling planes with leaded avgas at the County Airports. See Freitas Dec. ¶¶ 40, 42,  
66, Ex. L; Sec. III(A)(2), *infra*. To the extent that the FAA interprets this letter as an attempt at  
informal resolution, the FAA should consider Aperture Aviation's request for an exemption from  
the County's (nonexistent) prohibition granted and the matter moot.

1 and the County's participation in an FAA sponsored pilot demonstration initiative studying the  
2 transition to unleaded avgas. Upon receipt of the Complaint the FAA indicated that they could no  
3 longer continue discussing actions challenged in the Complaint. Freitas Decl. ¶¶ 62-64. Moving  
4 forward with adjudicating this new Part 16 Complaint has been and will continue to be  
5 counterproductive to the actual resolution of Complainants' concerns.<sup>2</sup> Instead, the Director should  
6 dismiss the Complaint and let the County and the FAA continue their discussions regarding the  
7 County's fueling practices.

8 **B. The County has not prohibited the use of leaded avgas or self-fueling with leaded**  
9 **avgas.**

10 The Complaint is replete with misstatements and mischaracterizations of the very County  
11 actions that the Complainant alleges violate the Grant Assurances. Most notably, Complainants  
12 repeatedly assert that the County has prohibited the use of leaded fuel and self-fueling with leaded  
13 fuel at the County Airports, which Complainants assert violate their rights to reasonable access to the  
14 County Airports pursuant to Grant Assurance 22(a) and to self-fuel pursuant to Grant Assurance  
15 22(d). Undisputed facts indicate that the County has taken neither action. Summary judgment is  
16 warranted where "there is no genuine issue of material fact for adjudication and that the complaint,  
17 when viewed in the light most favorable to the complainant, should be summarily adjudicated in  
18 favor of the respondent as a matter of law." 14 C.F.R. § 16.26(c)(1). Thus, the Director should  
19 grant summary judgment in favor of the County with respect to these allegations.

20 **1. The County has not prohibited the use of leaded avgas at the County**  
21 **Airports.**

22 Complainants incorrectly assert that the County has prohibited "use of leaded fuel at both of  
23 its airports." Complaint at 16; see also Complaint at 9. To the contrary, the County continues to  
24

25 \_\_\_\_\_  
26 <sup>2</sup> The Complaint cites the County's alleged failure to substantively respond to the FAA's February  
27 22, 2022 request for additional information as evidence that there is no prospect for timely  
28 resolution. Complaint at 16. While the County has not responded to all the FAA's requests, the  
County has submitted hundreds of pages of additional documents to the FAA. The County and the  
FAA agreed to extend the deadlines to respond to the letter and incorporate provision of the  
outstanding information into the MOU. Freitas Decl. ¶¶ 65.

1 allow operations by aircraft using leaded fuel and has adopted no laws, regulations, or policies that  
2 prohibit the use of leaded avgas at the County Airports. Freitas Decl. ¶ 40; see also Complaint,  
3 Attachment 22 at 2. Moreover, the County has not taken any enforcement action for the use of  
4 leaded avgas at the County Airports. Freitas Decl. ¶ 40. Complainants provide no facts  
5 demonstrating the existence of such a prohibition. In fact, operations by aircraft using leaded fuel  
6 occur at the County Airports daily. *Id.* at ¶ 41. Complainants' own testimony contradicts their  
7 assertion that the County has prohibited the use of leaded avgas at the County Airports. Multiple  
8 Complainants routinely conduct operations at both County Airports with aircraft using leaded fuel.  
9 See e.g., Complaint, Attachment 5, ¶ 7; Attachment 7, ¶ 9; Attachment 8, ¶ 8; Attachment 9, ¶ 8.  
10 Accordingly, the Director should grant summary judgment in favor of the County with respect to any  
11 allegation that the County has violated its grant assurances by prohibiting the use of leaded avgas at  
12 the County Airports.

13 Complainants wrongly allege that the direction the Santa Clara County Board of Supervisors  
14 gave to County administration on Item 37 of their August 17, 2021 meeting and the alleged Trade  
15 Winds lease constitutes a ban on the use of leaded avgas. The Board directed County administration  
16 "to take such actions as may be necessary to expeditiously eliminate lead exposure from operations  
17 at Reid Hillview Airport, consistent with all established federal, state, and local laws and all court  
18 orders. Such actions may include, but are not limited to, both prohibiting the sale or use of leaded  
19 fuel." Freitas Dec., Ex. E at 22. This is not a self-executing directive; it requires further action from  
20 County administration to implement it. The Board's direction did not require the County to  
21 immediately ban the use of leaded fuel, and the County has not done so. See *id.* at ¶ 40.  
22 Complainants have not identified any additional measures prohibiting the use of leaded avgas at the  
23 County Airports.

24 The only evidence Complainants offer of anything like a prohibition on the use of leaded  
25 avgas is an excerpt that Complainants allege to be from a lease between the County and Trade  
26 Winds that requires compliance with orders relating to the prohibition of use of leaded fuels on  
27 County Airports. See Complaint, Attachment 13A. However, there is no evidence that Trade Winds  
28 or the County not signed, adopted, or approved by the lease. In fact, the final executed lease

1 between the County and Trade Winds does not contain the language Complainants cite and does not  
2 prohibit the use of leaded avgas. Freitas Decl. Ex. A.4. Additionally, none of the orders  
3 contemplated by the draft lease were ever issued. *Id.* at ¶ 40.

4 **2. The County has not prohibited self-fueling with leaded avgas at the**  
5 **County Airports.**

6 The Complaint also incorrectly asserts that “the County is not allowing 100LL self-fueling.”  
7 Complaint at 10. In fact, the County has adopted no laws, regulations, or policies that prohibit self-  
8 fueling with leaded avgas at the County Airports. Freitas Decl. ¶ 42; see also Complaint,  
9 Attachment 22 at 8. The County does require operators to obtain a permit to conduct self-fueling at  
10 the County Airports. See Freitas Dec. ¶ 43, Complaint, Attachment 14. The County issues two  
11 types of self-fueling permits: a general aviation self-fueling permit and a commercial self-fueling  
12 permit. Freitas Decl., ¶ 44. The general aviation self-fueling permit is a nondiscretionary permit  
13 issued to individual operators who wish to refuel their aircraft at the County Airports. This permit  
14 has been unchanged since 2002. *Id.* at ¶ 45, Ex. I. Commercial self-fueling permits are available to  
15 commercial operators seeking to perform self-fueling on a large scale. See *id.* at ¶ 47. The permits  
16 impose insurance, safety and equipment standards, and require payment of flowage fees, exactly the  
17 types of reasonable rules and regulations contemplated by the FAA. Freitas Decl., Ex. I, J; see FAA  
18 Order 5190.6B: *FAA Airport Compliance Manual* (Sept. 30, 2009) at p.11-3, 11-4.<sup>3</sup> Neither of these  
19 self-fueling permits limit the use of leaded avgas for self-fueling. See Freitas Decl., Ex. I, J. The  
20 County has also indicated that it will continue to consider reasonable requests for avgas self-fueling  
21 at Reid-Hillview even if it exercises its proprietary right to become the exclusive vendor of avgas.  
22 Freitas Dec., ¶ 32, Complaint, Attachment 23 at 1. The Director should grant summary judgment in  
23 favor of the County with respect to any allegation that the County has violated its grant assurances  
24 by limiting self-fueling with leaded avgas at the County Airports.

25  
26  
27 <sup>3</sup> The Complaint incorrectly references the County’s emergency protocol as a restriction on self-  
28 fueling. The emergency protocol does not limit self-fueling. Instead, it provides aircraft operators  
that may not meet the requirements for a self-fueling permit a streamlined process for accessing  
leaded fuel in the event of an emergency. Freitas Dec. ¶ 49.

1                   **C. The County’s use of its fuel tanks for the exclusive sale of unleaded avgas does**  
2                   **not violate the FAA Grant Assurances.**

3                   Currently, there are four fuel vendors at the County Airports, each using a County-owned  
4 tank. The County sells unleaded avgas using the remaining tank. Freitas Dec. ¶ 30, 36. The  
5 contracts granting the FBOs the right to use these tanks effectively prohibit use of the tanks to store,  
6 sell, or distribute leaded fuel. *Id.* at ¶ 30, Ex. G.1-3 (RHV); ¶ 36, Ex. H. The County negotiated  
7 these contracts pursuant to its proprietary authority as the owner of the tanks. The County expects to  
8 take over operation of all fuel tanks at RHV in early 2023. *Id.* at ¶ 31. Complainants’ allegations  
9 that the unavailability of leaded avgas for purchase at the County Airports violate their rights to  
10 reasonable access and to self-fuel depend on an interpretation of these provisions that would require  
11 airports to ensure that fuel is available for purchase for every type of aircraft that could conceivably  
12 land on their runways. As Complainants’ interpretation is contrary to well established precedent,  
13 their allegations merit dismissal for failure to state a claim. 14 C.F.R. § 16.26(b)(1)(ii). In the  
14 alternative, the Director should grant summary judgment in favor of the County. 14 C.F.R. §  
15 16.26(c)(1).

16                   **1. Entering into permits with FBOs for the use of County-owned fuel**  
17                   **tanks is a business decision within the County’s proprietary discretion**  
18                   **as the owner of the tanks.**

19                   The County has a well-established “proprietary right” to manage its airport property,  
20 including the leasing of its fuel tanks, subject to the nondiscrimination requirements of Grant  
21 Assurances. *Amav, Inc. v. Maryland Aviation Administration*, Docket No. 16-05-12, Director’s  
22 Determination, 2006 WL 2038717, at \*14 (Mar. 20, 2006). The County is not required to make its  
23 property available in a manner consistent with the wishes of any one party, but rather may exercise its  
24 proprietary rights and powers in a manner consistent with the public's interest. *Santa Monica*  
25 *Airport Ass’n, et al. v. City of Santa Monica*, Docket No. 16-99-21, Final Agency Decision, 2003  
26 WL 1963858, at \*17 (Feb. 4, 2003). The FAA has applied this principle to sponsor owned fueling  
27 equipment, expressly holding that the decision to sell a particular type of fuel is a business decision  
28 within the discretion of the County. See *Ashton v. City of Concord*, Docket No. 16-99-09, Director’s  
Determination, 2000 WL 132770 at \*19 (Jan. 28, 2000) (sponsor’s “decision not to offer auto fuel is

1 a business decision within its rights to make. The Sponsor is simply not obligated to provide a more  
2 detailed reason for this business decision.”).

3 The County decided to dedicate its fuel tanks to the exclusive sale of unleaded avgas to meet  
4 the market demand for unleaded avgas. See *Ashton*, 2000 WL 132770 at \*19. In evaluating the  
5 availability of avgas in Santa Clara County, the County determined that there was a substantial  
6 unmet need for unleaded avgas and negotiated fuel permits with its FBOs for the exclusive sale of  
7 unleaded avgas from County-owned tanks. Freitas Decl. ¶ 21-27. Users of the County Airports,  
8 including Complainant Aperture Aviation, Inc., have indicated their desire to use unleaded avgas  
9 when it is available. Freitas Decl. ¶ 24; Complaint, Attachment 5A.

10 Using all the County Tanks for sale of leaded avgas has made UL94 more accessible to the  
11 Northern California market by allowing Northern California fuel retailers to order UL94 in larger  
12 quantities. This increase has allowed the manufacturer and transporters of UL94 to better utilize  
13 economies of scale, reducing prices for UL94 by approximately \$1.15 per gallon and allowing the  
14 County to offer UL94 at a competitive price point with 100LL. Freitas Decl. ¶ 26. As cost and  
15 availability of unleaded avgas pose significant barriers to more widespread adoption, making  
16 unleaded fuel the most convenient option for fueling at County Airports will incentivize adoption  
17 among the aviation community.

18 Demand for UL94 has been strong since its introduction at the County Airports. Operators  
19 have consumed over 180,000 gallons of UL94 from the County Airports since January 1, 2022.  
20 Freitas Decl. ¶ 37. The County expects that UL94 sales will increase as operators realize the  
21 benefits of using unleaded fuels, including substantially decreased aircraft maintenance costs. *Id.* at  
22 ¶ 38. Indeed, a substantial portion of the aircraft operating out of RHV can use commercially  
23 available unleaded avgas, and many have already transitioned to unleaded avgas. *Id.* at ¶ 33. Once  
24 the County is operating all of its tanks directly, the County expects to generate over a hundred  
25 thousand dollars annually for the County’s Airport Enterprise Fund through avgas sales. *Id.* at ¶ 27.

26 This transition has also had significant environmental health benefits for surrounding  
27 communities. Increasing the consumption of unleaded avgas rather than leaded fuel by aircraft  
28 fueling at the County Airports has prevented over 600 pounds of lead emissions in 2022 alone. *Id.* at

¶ 39. Eliminating these emissions reduces severe and irreparable human health effects, including harm to the nervous, cardiovascular, immune, and reproductive systems, cognitive and intellectual impairment, and behavioral disorders that result from lead exposure. See 199 Fed. Reg. 62775-77.

**2. Unavailability of 100 avgas for purchase does not deny Complainants reasonable access to the County Airports.**

Grant Assurance 22(a) requires that the County “make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities.” The obligation to make the airport available to the public “does not mean that the sponsor is obligated to provide a specific level of service or level of convenience.” *Ashton*, 2000 WL 132770 at \*21. The County is not required to provide the same level of service to all types of aircraft. Instead, the County has the proprietary discretion as owner of the airport to prioritize providing services, including availability of fuel for purchase, to specific types of aircraft.

**a. The County is not required to provide equal services to all classes of aircraft that use the County Airports.**

An airport sponsor can exercise its proprietary authority to provide better services to certain types of aircraft at the expense of other types of aircraft consistent with Grant Assurance 22. In *Pacific Coast Flyers Inc. v. County of San Diego*, the FAA rejected an argument by operators of piston engine aircraft that the County of San Diego had denied them reasonable access to an airport by redeveloping a hanger that previously provided storage for piston engine aircraft into a facility primarily serving jet aircraft. In doing so, the FAA held that Grant Assurance 22 “does not prevent an airport from developing facilities for new or different markets” and “does not require any airport sponsor to provide at all times exactly the facilities any particular segment of the aeronautical community might prefer.” *Pac. Coast Flyers, Inc., et al. v. County of San Diego*, No. 16-04-08, Director’s Determination, 2005 WL 1900515, at \*41(July 25, 2005); see also *Thermco Aviation, Inc. et al. v. City of Los Angeles, et al.*, No. 16-06-07, Final Agency Decision, 2007 WL 9666186, at \*31(Dec. 17, 2007) (no discrimination against piston engine aircraft displaced by redevelopment project). And the fact that an airport provides a service to a particular type of aircraft does not obligate the airport to provide the service indefinitely. *Pac. Coast Flyers, Inc.*, 2005 WL 1900515,



1 at \*31 (“One class of aeronautical user cannot expect to indefinitely lay claim to airport facilities at  
 2 the expense of another class of aeronautical users or jeopardize the airport’s ability to manage its  
 3 facilities.”); *Thermco Aviation*, 2007 WL 9666186, at \*17. The FAA further found that the needs of  
 4 some aircraft users displaced by the County of San Diego’s actions could be reasonably  
 5 accommodated by facilities at other airports. *Pac. Coast Flyers, Inc.*, 2005 WL 1900515, at \*32.

6 In restricting County owned fuel tanks to the exclusive sale of unleaded avgas, the County is  
 7 exercising its proprietary authority to prioritize the fueling convenience of low-powered piston  
 8 engine aircraft that can use lower octane fuel over the convenience of piston engine aircraft using  
 9 high powered engines that rely exclusively on 100 octane avgas. Users of high-power piston engine  
 10 aircraft are no more entitled to the use of the County’s fuel tanks to purchase their preferred fuel than  
 11 the piston engine aircraft in *Pacific Coast Flyers* were to their hanger bays. See *Pac. Coast Flyers,*  
 12 *Inc.*, 2005 WL 1900515, at \*41. Just as the County of San Diego had the proprietary discretion to  
 13 allocate its facilities in a manner favoring jet aircraft, the County of Santa Clara can reallocate use of  
 14 its fuel tanks to take advantage of the unmet demand for unleaded avgas, promote the use and  
 15 availability of unleaded avgas and to protect the health of surrounding communities. And just like  
 16 the aircraft users in *County of San Diego*, any airport users inconvenienced by this transition can  
 17 address their needs at other nearby airports that still sell leaded avgas. See *Pac. Coast Flyers, Inc.*,  
 18 2005 WL 1900515, at \*32.

19 **b. The County is not required to guarantee the availability of fuel for**  
 20 **every type of aircraft that might use the County Airport.**

21 The availability of a particular type of fuel for purchase is a level of service consideration  
 22 and does not rise to a denial of access.<sup>4</sup> In *Ashton v. City of Concord*, the FAA rejected a claim that  
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24 <sup>4</sup> To the extent that Complainants assert that the County violated their right to reasonable access by  
 25 preventing them from selling leaded avgas at the County Airports, their claim also fails. The County  
 26 considers reasonable requests to sell fuel as they arise. Freitas Dec. ¶ 32. As the County has not  
 27 received any requests to sell leaded avgas at the County Airports from Complainants, any allegations  
 28 by Complainants that the County has improperly denied their right to sell leaded avgas fails for lack  
 of standing. Additionally, the County is not required to make its fuel tanks available to  
 Complainants to sell leaded avgas. *Ashton v. City of Concord* (Jan. 28, 2000) 2000 WL 132770 at  
 \*21 (“The Assurance establishes a privilege [...] but does not, by itself, compel the sponsor to lease  
 such facilities which may be necessary to exercise that right.”).

1 an airport which did not have auto gas available for sale had denied access to an airport user whose  
2 aircraft required auto gas. In doing so, the FAA found that the complainant's allegations amounted  
3 to level of service concerns, not access concerns. *Ashton*, 2000 WL 132770 at \*27; see also  
4 *Mainardi v. Lincoln Park Airport*, No. 16-02-12, Director's Determination, 2003 WL 27377872, at  
5 \*16 (Nov. 25, 2003) (Grant Assurance 22 "does not require the airport owner to provide any and all  
6 services its aeronautical users may desire."). The FAA further held that "[m]anagement issues such  
7 as economy of collection and efficient use of the airport's limited facilities can be justifications for  
8 differing treatment of differing users of the airport" and the sponsor's "decision not to offer auto fuel  
9 is a business decision within its rights to make. The Sponsor is simply not obligated to provide a  
10 more detailed reason for this business decision." See *Ashton*, 2000 WL 132770 at \*22, \*19.

11 Unavailability of 100 octane avgas for purchase is no more a denial of access than the  
12 unavailability of auto gas was in *Ashton*. Both are "a specific level of service or level of  
13 convenience" that neither the City of Concord nor the County are required to provide. See *id.* at  
14 \*21. Complainants' own declarations demonstrate that they continue to use and enjoy reasonable  
15 access to the County Airports for a variety of aeronautical purposes. See Complaint, Attachment 5,  
16 ¶ 7; Attachment 7, ¶ 9; Attachment 8, ¶ 8; Attachment 9, ¶ 8. As in *Ashton*, the FAA should not  
17 interfere with the County's business decision regarding the type of fuel it has chosen to make  
18 available for sale. See *Ashton*, 2000 WL 132770 at \*19.

19 Further, unavailability of leaded avgas is a common condition at public use airports. There  
20 are 70 *public use airports* across California where 100 octane fuel is not available for sale.  
21 Collectively, these airports account for almost 30% of public use airports in California. Freitas Dec.  
22 ¶ 20(a), Ex. F. These airports include large urban airports like Los Angeles International Airport,  
23 remote airports such as Siskiyou County Airport, and heavily used general aviation airports such as  
24 Mountain Valley Airport. Other airports frequented by jet craft, such as Zamprini Field in the City  
25 of Torrance and Rio Vista Municipal Airport, do not have jet fuel available for purchase. *Id.*  
26 Nationally, there are 1,434 airports that reported general aviation operations in the previous year  
27 where 100 octane avgas is not available for purchase. These airports reported over four million  
28 operations in the past year. *Id.* at ¶ 20(b), Ex. F. Forty-five of these airports have chosen to sell

1 other types of fuel. Eighteen of them exclusively sell unleaded low octane avgas or auto fuel. *Id.* at  
2 ¶ 20(c), Ex. F. Compelling all these airports to guarantee the availability of 100 octane avgas for  
3 purchase would constitute a drastic reinterpretation of Grant Assurance 22 and an inappropriate  
4 interference with the right of airport sponsors to manage their airports.

### 5 **3. The fuel tank leases do not limit Complainants' rights to self-fuel.**

6 The unavailability of 100 octane avgas for purchase at the County Airports is irrelevant to  
7 Complainants' right to self-fuel. The right to self-fueling means "the fueling or servicing of an  
8 aircraft by the owner of the aircraft with his or her own employees and using his or her own  
9 equipment." FAA Advisory Circular No: 150/5230-4C: *Aircraft Fuel Storage, Handling, Training,*  
10 *and Dispensing on Airports* (Sept. 23, 2021), Appendix A, Sec. A.1(7). Self-fueling does not  
11 include use of a self-service pump or purchase of fuel from a third party. *Id.* The right to self-fuel  
12 "does not, by itself, compel the sponsor to lease such facilities which may be necessary to exercise  
13 that right." See *Ashton*, 2000 WL 132770 at \*21. Accordingly, the County's leasing decisions for  
14 its fuel tanks cannot constitute a denial of Complainants' right to self-fuel.

15 None of the authority cited in the Complaint is relevant to Complainants' allegations. Each  
16 of the decisions cited involves an airport user that has requested authority to construct a fuel facility  
17 to self-fuel. See *Monaco Coach Corp. v. City of Eugene*, Docket No. 16-03-17, Final Agency  
18 Decision, 2005 WL 825551 (March 4, 2005), *Boston Air Charter v. Norwood Airport Commission*,  
19 Docket No. 16-07-03, Final Agency Decision, 2008 WL 4186034 (Aug. 14, 2008), *Cedarhurst Air*  
20 *Charter, Inc. v. County of Waukesha*, Wisconsin, Docket No. 16-99-14, Final Agency Decision,  
21 2000 WL 1642462 (Aug. 7, 2000). Under these circumstances, these cases generally affirm that  
22 airport sponsors regulating the construction of such fueling facilities may only impose reasonable  
23 regulations. The County has not received an application from any Complainant to construct a  
24 fueling facility, so these cases are not relevant. See Freitas Dec. ¶ 32.

### 25 **D. Complainants lack standing to challenge the County's regulations on self-** 26 **fueling.**

27 Complainants lack standing to challenge the County's rules on self-fueling because the  
28 County has not denied a request for a self-fueling permit from any Complainant. To file a

1 complaint, a complainant must be “directly and substantially affected by any alleged  
2 noncompliance.” 14 C.F.R. § 16.23(a). The Director may dismiss a complaint where the  
3 complainants lack standing to file the complaint. 14 C.F.R. § 16.26(b)(1)(iii); see *Truman Arnold*  
4 *Companies v. Chattanooga Metropolitan Airport Authority*, Docket No. 16-11-08, Director’s  
5 Determination, 2013 WL 12244247, at \*28 (Oct. 4, 2013) (claim of discrimination in leasing  
6 dismissed where there was no evidence that the complainant had ever requested to lease the facilities  
7 in question).

8 As previously discussed, the County regulates self-fueling at the County Airports subject to a  
9 permit. See Sec. III(A)(3)(b), *infra*. No Complainant alleges that they were denied either a general  
10 aviation self-fueling permit or a commercial self-fueling permit. In fact, the only application for a  
11 self-fueling permit of any type the County received from any Complainant was for a commercial  
12 self-fueling permit from Trade Winds Aviation. See Freitas Decl., ¶ 46, 48. The County *granted*  
13 this application. See *id.* at ¶ 48, Ex. J. As no Complainant has been adversely affected by the  
14 County’s self-fueling permit requirement, the Director should dismiss this claim, or in the alternative  
15 grant summary judgment to the County with respect to this claim, for lack of standing.

16 **E. The Director should strike Dr. Joseph C. McMurray as a complainant.**

17 Every complaint must be “signed by the person filing it or the person’s duly authorized  
18 representative.” 14 C.F.R. § 16.13(e). The signature serves as a certification that the signer attests  
19 that the document is “[n]ot interposed with for any improper purpose, such as to harass or to cause  
20 unnecessary delay or needless increase in the cost of the administrative process.” *Id.* The Complaint  
21 names Dr. Joseph C. McMurray as a complainant. Complaint at 2. However, Dr. McMurray has  
22 failed to sign the Complaint. *Id.* at 17. Accordingly, the Director should strike Dr. Joseph C.  
23 McMurray as a complainant.

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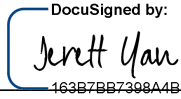
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**IV. Conclusion**

For the foregoing reasons, the Director should dismiss the Complaint in its entirety without prejudice for failure to comply with the mandatory pre-complaint informal resolution requirements. Alternatively, the Director should dismiss the Complaint with prejudice for failure to state a claim or grant summary judgment to the County as a matter of law.

Respectfully submitted this 29<sup>th</sup> day of December, 2022.

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By:  163B7BB7398A4B8

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this 29<sup>th</sup> day of December, 2022, served the foregoing document by email to the following persons:

Office of the Chief Counsel  
Attn: FAA Part 16 Airport Proceedings Docket, AGC-610  
Federal Aviation Administration  
800 Independence Avenue, SW  
Washington, D.C. 20591  
[9-AWA-AGC-Part-16@faa.gov](mailto:9-AWA-AGC-Part-16@faa.gov)

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Dated this 29<sup>th</sup> day of December, 2022.

DocuSigned by:  
*kimberly Ide*  
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Kimberly Ide

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