Hearing Date: Sept 27th

Docket #0012 Date Filed: 8/23/2012

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UNITED STATES BANKRUPTCY COURT, SOUTHERN DISTRICT OF NEW YORK
(at Manhattan)
[18 USC §§ 245(b)(2)(B), 664, 666, 1962][29 USC §§ 1131, 1132(h), 1140]
[26 USC §§ 101(f)(3)(A), 267(b)(1)][42 U.S.C. §§ 1441, 3535(d), 4651(3), 7573)]

In Re: Residential Capital, LLC., et al., And, In Re: GMAC, Mortgage Co., et al, Debtors	Case No. 12-bk-12020 (MG) Chapter (Ch.11, Joint Admin.) (Related BR Case No.07-bk-57237, S.D., OHIO) (Related BR Case No. 12-bk-12032, S.D., N.Y.) JUDGE: GLENN, MARTIN
UNITED STATES of America, Ex Rel., Yvonne D. Lewis, et al., Plaintiffs/ Surplus Creditors Vs. GMAC, Mortgage Co., et al, Defendants/ Bankrupt Debtor,	Adversary Case No.: 12-01731 (Related Case No. 12-bk-12020 (MG); 05-CV-7346 (03-CV-7478); 03-CV-10836; 05-CV-4555; 03-CV-6954);(04-AP-469, 11-AP-875, 10-AP-110, COA10th Dist., OHIO

MOTION FOR SUMMARY JUDGMENT BY PLAINTIFFS; GROUNDED ON (1) FEDERAL PREEMPTIONS FOR FEDERAL PROGRAMS UNDER HUD (*42 U.S.C. § 3535(i)(1[1])*) AND US DOT (*49 U.S.C. § 47502*[2]); AND "SEPARATION OF POWERS" OF FEDERAL AGENCIES ON 09/08/2011 IN STATE COURT CASE NO. 05-CV-4555, FR. CNTY., OHIO.

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF OHIO;
(at Columbus)

[18 USC §§ 245(b)(2)(B), 664, 666, 1962][29 USC §§ 1131, 1132(h), 1140]
[26 USC §§ 101(f)(3)(A), 267(b)(1)][42 U.S.C. §§ 1441, 3535(d), 4651(3), 7573)]

In Re: SIDNEY T. LEWIS, pro se,) Case No. 2:07-bk-57237

[1] (See: United States ex rel. United States Dep't of Hous. & Urban Dev. v. Jones-Williams, 870 F. Supp. 90, 95 (M.D. Pa. 1994),(" In short, "the respective rights and obligations of a federal mortgagee and a defaulting mortgagor under a national housing program . . . are governed by federal law which **preempts state laws** in the field, such as Act 6." *Stohr, 1993 U.S. Dist. Lexis 2228, 4-5.*");

[2] (See: Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624, pp.633-634, "It is the pervasive nature of the scheme of federal regulation of aircraft noise that leads us to conclude that there is **pre-emption**. *** *Northwest Airlines, Inc.* v. *Minnesota*, 322 U.S. 292, 303")

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	)	(Ch.7)
Debtor	)	(Related Bankr Case No. 2:05-bk-75111)
	)	
Social Security No.: xxx-xx-5959	)	JUDGE: HOFFMAN, JOHN, Jr.

In Re: Yvonne D. Lewis,	)	Case No. 2:05-bk-75111
	)	(Ch.7)
Debtor	)	(Related Case No. 2:07-bk-57237)
	)	
Social Security No.: xxx-xx-2390	)	JUDGE: HOFFMAN, JOHN, Jr.

IN THE UNITED STATES DISTRICT COURT, S. D. OF OHIO
EASTERN DIVISION (at Columbus)

[18 USC §§ 245(b)(2)(B), 664, 666, 1962][29 USC §§ 1131, 1132(h), 1140]
[26 USC §§ 101(f)(3)(A), 267(b)(1)][42 U.S.C. §§ 1441, 3535(d), 4651(3), 7573)]

UNITED STATES of America, Ex Rel.,	)	
Sidney T. Lewis, et al.,	)	Action No. 2:08-cv-1042
Plaintiffs	)	(Related Dist. Ct. Cases 2:08-cv-16; 2:96-cv-494;
Vs.	)	2:09-cv-179);
		JUDGE: HOLSCHUH
Larry McClatchey, et al.,	)	Magistrate Judge: KING
Defendants		

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[18 USC §§ 245(b)(2)(B), 664, 666, 1962][29 USC §§ 1131, 1132(h), 1140]
[26 USC §§ 101(f)(3)(A), 267(b)(1)][42 U.S.C. §§ 1441, 3535(d), 4651(3), 7573)]

	)	
FRIENDS OF THE EARTH, et al.,	)	Case: 1: 12-cv-00363
Plaintiff,	)	
	)	
Vs.	)	Assigned To: Jackson, Amy Berman, Judge
	)	
UNITED STATES E.P.A. and	)	

LISA JACKSON, Administrator,)
Defendants.)
)

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

[18 USC §§ 245(b)(2)(B), 664, 666, 1962][29 USC §§ 1131, 1132(h), 1140]
[26 USC §§ 101(f)(3)(A), 267(b)(1)][42 U.S.C. §§ 1441, 3535(d), 4651(3), 7573)]

SECURITIES AND EXCHANGE COMMISSION)
Plaintiff,)
)
vs.) Case No. 4:10-cv-87
)
AMERICAN EQUITY INVESTMENT LIFE)
HOLDING COMPANY;)
DAVID J. NOBLE; and)
WENDY C. WAUGAMAN,)
Defendants.)

**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY;
LOUISVILLE DIVISION**

[18 USC §§ 245(b)(2)(B), 664, 666, 1962][29 USC §§ 1131, 1132(h), 1140]
[26 USC §§ 101(f)(3)(A), 267(b)(1)][42 U.S.C. §§ 1441, 3535(d), 4651(3), 7573)]

BEVERLY S. MALONE, Living Trust Beneficiary,)
Plaintiff,) Case No. 3:01-CV-259(H)
)
vs.)
) JUDGE: JOHN HEYBURN
AMERICAN EQUITY INVESTMENT LIFE)
HOLDING COMPANY ("AEL") et al., and)
ADDISON INSURANCE MARKETING (AIM))
Defendants.)

UNITED STATES SUPREME COURT

Charles STRUBE, et al., Living Trust Matters,) 11th Cir. No. 06–35, Certiorari denied.

Beverly MALONE, Living Trust Matters, Appellant, vs. AMERICAN EQUITY ("AEL"), et al., Appellee.	) No. 05-13014 / No. 05-11461) Removed USDC, M.D., FL, case # 01-cv-1236) [26 USC §§ 401(a), 4975(e)])) Reported below: 158 Fed. Appx. 198.))

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT; AT FL.

[18 USC §§ 245(b)(2)(B), 664, 666, 1962][29 USC §§ 1131, 1132(h), 1140]
[26 USC §§ 101(f)(3)(A), 267(b)(1)][42 U.S.C. §§ 1441, 3535(d), 4651(3), 7573)]

Charles STRUBE, et al., Living Trust Matters, Beverly MALONE, Living Trust Beneficiary, Plaintiffs/Appellants, vs. AMERICAN EQUITY ("AEL"), et al., Defendants/Appellees.	) **No. 05-11461 Non-Argument Calendar;**) **No. 05-13014 Non-Argument Calendar**) Removed from case nos. 6:01-cv-1236 and) 3:01-CV-259(H); [26 USC §§ 401(a), 4975(e)])) Before ANDERSON, BLACK and PRYOR,) Circuit Judges.)

MOTION FOR SUMMARY JUDGMENT BY PLAINTIFF

Plaintiffs/Relators, SIDNEY LEWIS and YVONNE D. LEWIS, as Federal Program Beneficiaries and Whistleblowers; pursuant to U.S. Const., Art. I, Sect. 1 & Art. II; U.S. Const., VI. Cl.2 and VIX Amend; pursuant to authorities in United States ex rel. United States Dep't of Hous. & Urban Dev. v. Jones-Williams, 870 F. Supp. 90, 95 (M.D. Pa. 1994)("pre-emption"); Ferrell v. United States HUD, 186 F.3d 805, 810 (7th Cir. Ill. 1999)("pre-emption"); Fid. Fed. Sav. & Loan Ass'n v. De la Cuesta, 458 U.S. 141, 152-153 (U.S. 1982)("The pre-emption doctrine, which has its roots in the Supremacy Clause, U.S. Const., Art. VI, cl. 2***); Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624, pp.633-634)("pre-emption"); FRIENDS OF THE EARTH, et al., UNITED STATES E.P.A, Case no: 1:12-cv-00363, USDC, D.C., Doc.22-22 (2012)("*In its response to FOE's petition, EPA stated that it was not at this time determining whether general aviation piston-engine aircraft lead emissions cause or contribute to air*

*pollution that endangers public health or welfare, based on the information that it then had before it. Instead, EPA concluded it would continue to develop and evaluate relevant science and technical information, and at a later date make a scientifically-sound determination****"); and Rule 56 of the Federal Rules of Civil Procedure; for Federal Preemptions under 42 USC §§ 7571(a)(2)(A), 7573, 1441, 3535(c)&(d); And for GMAC's Mortgage Company's unauthorized capital gains from its May 31, 2012 post-Bankruptcy petition Notice of assignment transaction with FNMA (**Exhibit E**), regarding Plaintiff's unreleased 1975 FHA Mortgage Deed (**Exhibit A**) as previously conveyed and converted by Mortgagee-Citicorp Mortgage Company to a "mortgage backed security" in an Investor Pool No. X00008225 under GNMA (**Exhibit C**) as a mortgage assignment transaction recorded on January 3, 2001 without written consent from HUD on behalf of the United States of America in violation of 31 U.S.C.A. §§ 3729 to 3733; 12 USC §§ 1710(b), 1723(a)&(b); 18 USC §§ 666, 1962, move the Court to enter summary judgment for the plaintiff-mortgagors on the grounds that there are no genuine issues as to any material facts surrounding exclusive federal Subject Matter Jurisdiction under 42 USC 1441, 3535(d), 4903, 7573, to address GMAC Mortgage Company's void judgment of foreclosure on Sept. 12, 2012 and prohibited capital gains under Federal Laws regulating ASNA, CAA, HUD, UPA, FAA, GNMA, FNMA, and National Housing Act programs in Ohio State Court default judgment in case no. 05-CV-4555 without written notice from HUD and the plaintiffs are entitled to judgment as a matter of Federal law on two federal preemption grounds as follows:

FEDERAL PREEMPTIONS (1)&(2)

(1) Federal preemption of state laws under National Housing Program 12 USC §§ 1710-1723. (See: Jones-Williams, Supra, 870 F. Supp. Id at pp. 94 at n14, and pp.95; See Also: Ferrell v. United States HUD, 186 F.3d 805, 810 (7th Cir. Ill. 1999))

42 USC §§ 1441, 3535(d) [24 CFR §§ 3500.21(d), 203.675], and 12 USC § 1710(b), 1715u(c) and authorities in Jones-Williams, Supra, and Mortgagor-Yvonne Moore's Jan. 3,

2001 Assignment of 1975 FHA Mortgage Deed to Investor Pool No. X00008225 under GNMA (**Exhibit C**) absent notice to the borrower nor written consent by HUD.

(Compare: **EXHIBIT A**, 1975 FHA Mortgage Deed filed Sept. 30, 1975; With: **EXHIBIT C**, 2001 Assignment of 1975 FHA Mortgage Deed to GNMA Investor Pool No. X00008225)

(2) Federal "stated" preemption of state laws under Av-Ea Program 42 USC §§ 4903, 7573.

(See: Burbank, Supra, Id at pp.633-634; also see: Nat'l Bus. Aviation Ass'n v. City of Naples Airport Auth., 162 F. Supp. 2d 1343, 1350 (2001)))

42 USC § 7573 and 49 USC § 44715(c) and authorities in Burbank, Supra, prohibited GMAC's September 8 , 2011 Title Report Update absent a "1992 permanent Aviation Noise/Air Pollution Easement Disclosure Statement" as relied upon by Judge Julie Lynch of the Franklin County Common Pleas Court as a prohibited political subdivision of the State of Ohio. Said 2011 Title Report circumvents the EPA's mandatory duty under the 1975 FHA Mortgage Deed filed September 30, 1975

.

(**EXHIBIT B**, 1992 permanent Aviation Noise/Air Pollution Easement ("1992 AV- EA") filed April 20, 1992)

In support of the instant motion for summary judgment, plaintiffs "incorporate by reference"p to the exclusive federal preemptions under 42 USC §§ 7573, 1441(c), 3535(d)(e) in **EPA'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** in the case of FRIENDS OF THE EARTH, et al., UNITED STATES E.P.A, Case 1:12-cv-00363-ABJ Document 22-1 Filed 07/20/12 Page 1 to 40, [See 40 CFR § 93] attached hereto as Exhibit F and marked thereon as Exhibit F; and plaintiffs refer to the recorded "1992 AV- EA" with an embedded federal preemption under FAA regulations, FAR part 150 [14 CFR §150.21-33[3]] codified under 49 USC § 47502 as attached hereto as **EXHIBIT B**, and marked thereon as

[3]"... the Sixth Circuit said in dicta that the "FAA has, thus, made clear that ... FAA regulations preempt local law in regard to aircraft safety, the navigable airspace, and noise control. Gustafson v. City of Lake Angelus, 76 F.3d 778, 786 (6th Cir. 1996) (emphasis added)." (See: **McMahon Helicopter Servs. v. United States, 2006 U.S. Dist. LEXIS 51819 (E.D. Mich. July 28, 2006))**

Exhibit B, including the defective amended title report for GMAC Mortgage filed September 8, 2011, absent 1992 AV-EA "Disclosure Statement", the answer herein, the defendant's failure to file an amendment to the answer proffering the 1992 AV-EA "Disclosure Statement" and plaintiff's annexed affidavit of Yvonne D. Lewis f/k/a/ Yvonne D. Moore as sworn to the 20th day of Aug. 2012.

Respectfully submitted,

Dated: August 20, 2012. Sidney T. Lewis

Sidney T. Lewis, pro se
1875 Alvason Avenue
Columbus, Ohio 43219
(614) 940-3306

Dated: August 20, 2012. Yvonne D. Lewis

Yvonne D. Lewis, pro se
1875 Alvason Avenue
Columbus, Ohio 43219
(614) 940-3306

VERIFICATION

State of Ohio)
) SS:
Franklin County)

I, Yvonne D. Lewis, declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge as based on my understandings and belief.

FURTHER SAYETH THE AFFIANT NAUGHT.

Executed on August 20, 2012 pursuant to 28 U.S.C.§§ 1651, 1746; U.S. Const., Amend., § 14th.

Yvonne D. Lewis

YVONNE D. LEWIS, Affiant, In Personam

VERIFICATION

State of Ohio)
) SS:
Franklin County)

I, Sidney T. Lewis, declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge as based on my understandings and belief.

FURTHER SAYETH THE AFFIANT NAUGHT.

Executed on August 20, 2012 pursuant to 28 U.S.C.§§ 1651,1746; U.S. Const., Amend., § 14th.

Sidney T. Lewis

SIDNEY T. LEWIS, Affiant, In Personam

UNITED STATES BANKRUPTCY COURT, SOUTHERN DISTRICT OF NEW YORK;

In Re: Residential Capital, LLC., et al., And, In Re: GMAC, Mortgage Co., et al, Debtors	)	Case No. 12-bk-12020 (MG) Chapter (Ch.11, Joint Admin.) (Related BR Case No.07-bk-57237, S.D., OHIO) (Related BR Case No. 12-bk-12032, S.D., N.Y.) JUDGE: GLENN, MARTIN
UNITED STATES of America, Ex Rel., Yvonne D. Lewis, et al., Plaintiffs/ Surplus Creditors Vs. GMAC, Mortgage Co., et al, Defendants/ Bankrupt Debtor,	)	Adversary Case No.: 12-01731 (Related Case No. 12-bk-12020 (MG); 05-CV-7346 (03-CV-7478); 03-CV-10836; 05-CV-4555; 03-CV-6954);(04-AP-469, 11-AP-875, 10-AP-110, COA10th Dist., OHIO AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF OHIO;
(at Columbus)

[18 USC §§ 245(b)(2)(B), 664, 666, 1962][29 USC §§ 1131, 1132(h), 1140]
[26 USC §§ 101(h), 267(b)(1)][42 U.S.C. §§ 4651(2),7407(d)(1)(C)(i)]

In Re: SIDNEY T. LEWIS, pro se, Debtor Social Security No.: xxx-xx-5959	)	Case No. 2:07-bk-57237 (Ch.7) (Related Bankr Case No. 2:05-bk-75111) JUDGE: HOFFMAN, JOHN, Jr.
In Re: Yvonne D. Lewis, Debtor Social Security No.: xxx-xx-2390	)	Case No. 2:05-bk-75111 (Ch.7) (Related Case No. 2:07-bk-57237) JUDGE: HOFFMAN, JOHN, Jr.

IN THE UNITED STATES DISTRICT COURT, S. D. OF OHIO
EASTERN DIVISION (at Columbus)

UNITED STATES of America, Ex Rel., Sidney T. Lewis, et al., Plaintiffs Vs. Larry McClatchey, et al.,	)	Action No. 2:08-cv-1042 (Related Dist. Ct. Cases 2:08-cv-16; 2:96-cv-494; 2:09-cv-179); JUDGE: HOLSCHUH Magistrate Judge: KING

Defendants

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRIENDS OF THE EARTH, et al., Plaintiff,	Case: 1: 12-cv-00363
Vs.	Assigned To: Jackson, Amy Berman, Judge
UNITED STATES E.P.A. and LISA JACKSON, Administrator, Defendants.	

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

SECURITIES AND EXCHANGE COMMISSION Plaintiff,	
vs.	Case No. 4:10-cv-87
AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY; DAVID J. NOBLE; and WENDY C. WAUGAMAN, Defendants.	

AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT BY PLAINTIFFS; GROUNDED ON PREEMPTED FAA & US EPA CONTROL ZONE AROUND AIRPORT;

STATE OF OHIO)
)
COUNTY OF FRANKLIN) ss.

Yvonne D. Lewis, being duly sworn, states:

1. I am the HUD Mortgagor on a recorded **SEPT. 30, 1975** FHA Mortgage Deed (See: **EXHIBIT A**).

2. I make this affidavit in support of Plaintiff's motion for a summary judgment which incorporates US EPA's memorandum in support of motion for a summary judgment filed **JULY 20, 2012** (See: **EXHIBIT F**) as a matter of subject matter jurisdiction for preempted Federal Programs administered exclusively by Federal Agencies, ie. 1975 FHA/HUD Mortgage Deed (See: **EXHIBIT A**) and FAA/US DOT 1992 permanent Aviation Noise/Air Pollution Easement (Compare: 14 CFR part §150 et seq.; With: **EXHIBIT B,** 1992 Aviation Easement).

3. On **JANUARY 3, 2001** the Mortgagee-Assignee, Citi Mortgage and the Mortgagee-Assignor, Chase Mortgage Company, assigned said 1975 FHA Mortgage Deed, to GNMA as a "Third-Party" Investor-Assignee (See: 24 CFR § 251.2), without consent of HUD Mortgagor [See: 12 U.S.C. §1710(b)] on 2001 Assignment of Mortgage, (See: **EXHIBIT C**).

4. On **MAY 31, 2012** GMAC as Assignee, re-assigned said 1975 FHA Mortgage Deed to Investor-Assignee (See: 24 CFR § 251.2), without consent of HUD Mortgagor [See: 12 U.S.C. §1723(a)].

Subscribed and sworn to before me this 20th day of August, 2012.

"I certify under penalty of perjury that the foregoing is true and correct."

Yvonne D. Lewis

Executed on: August 20, 2012_____("Yvonne D. Lewis, Affiant") (See: 28 U.S.C. §1746)

Yvonne D. Lewis pro se
1875 Alvason Avenue,
Columbus, Ohio 43219
(614) 940-3306

935530008

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STATE OF OHIO
FHA Form No. 2165M
Revised November 1972

This form is used in connection with mortgages insured under the one- to four-family provisions of the National Housing Act.

P-27987

MORTGAGE DEED WITH DOWER

19296

KNOW ALL MEN BY THESE PRESENTS, THAT Ronald L. Moore, by Yvonne D. Moore, his Attorney-in-Fact, and Yvonne D. Moore, husband and wife, both being over 18 years of age,

of The City of Columbus, County of Franklin and State of Ohio, the Grantor, for and in consideration of the sum of Twenty-four Thousand Eight Hundred and no/100's Dollars ($24,800.00), to him paid by CENTRAL SAVINGS AND LOAN COMPANY, a corporation organized and existing under the laws of The United States of America, and having its principal place of business at 46 E. Gay Street, Columbus, Ohio 43215, Grantee, the receipt of which is hereby acknowledged, does give, grant, bargain, sell, and convey unto the Grantee the following-described premises, situated in the City of Columbus, County of Franklin, State of Ohio, and bounded and described as follows, to wit:

Being Lot Number Seventeen (17) of ARGYLE PARK SUBDIVISION, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 36, page 6, Recorder's Office, Franklin County, Ohio.

Received OCT 6 1975 at 4:05 P. M. O'Clock
Recorded OCT 8 1975 19 In Franklin County
JAMES A. SCHAEFER, Recorder
Recorder's Fee $ 2.00

Columbus, Ohio September 30, 1975

For value received, the undersigned hereby sells, assigns and sets over unto: CITIZENS MORTGAGE CORPORATION, a corporation organized and existing under the laws of the State of Delaware, whose address is, 24700 Northwestern Highway, Southfield, Michigan 48075, all its right, title and interest in and to the within Mortgage, without recourse.

CENTRAL SAVINGS AND LOAN COMPANY
x _____
JAMES L. GILGARD, TREAS.
x _____
JANE G. CLARKSON
ASST. SEC'Y.

together with the privileges and appurtenances thereunto belonging, and all the rents, issues, and profits which may arise or be had therefrom; and all the estate, title, and interest of the said Grantor, either in law or in equity, of, in, and to the said premises; to have and to hold the above-granted and bargained premises, with all the privileges and appurtenances thereto belonging, including all heating, plumbing, and lighting fixtures and equipment now or hereafter attached to or used in connection with the said premises, and all the rents, issues, and profits which may arise or be had therefrom, unto the said Grantee, its successors or assigns, forever. And the Grantor covenants that at and until the execution and delivery of these presents, he is well seised of the above-described premises in fee simple, and has good right to bargain and sell the same in manner and form above written, and that the same are free from all encumbrances whatsoever; and that he will warrant and defend said premises, with the above-mentioned appurtenances to the said Grantee, its successors and assigns, forever, against all lawful claim or claims and demands whatsoever.

And, for a valuable consideration, the said Grantors does hereby remise, release, and forever quitclaim, unto the Grantee all right and title of dower in the above-described premises.

The conditions of this deed are such that whereas the Grantor has executed and delivered to the Grantee his certain promissory note, of even date herewith, in the principal sum of Twenty-four Thousand Eight Hundred and no/100's Dollars ($24,800.00) with interest from date at the rate of Nine percentum (9 %) per annum on the unpaid balance until paid, said principal and interest being payable at the office of Citizens Mortgage Corporation at 24700 Northwestern Highway, Southfield, Michigan 48075, or at such other place as the holder may designate in writing, in monthly installments of One Hundred Ninety-nine and 64/100's Dollars ($ 199.64), commencing on the first day of November, 19 75, and on the first day of each month thereafter until the principal and interest are fully paid, except that the final payment of principal and interest, if not sooner paid, shall be due and payable on the first day of October, 2005.

EXHIBIT A

Cust Nme: S. Lewis Date/Time: 7/25/2012 11:15:55 AM TransID: Free Printing

AND WHEREAS the Grantor further covenants and agrees that:

1. He will promptly pay the principal of and interest on the indebtedness evidenced by the said note, at the times and in the manner therein provided. Privilege is reserved to pay the debt in whole or in an amount equal to one or more monthly payments on the principal that are next due on the note, on the first day of any month prior to maturity; *provided, however*, that written notice of an intention to exercise such privilege is given at least thirty (30) days prior to prepayment.

2. In order more fully to protect the security of this deed, he will pay to the Grantee, together with, and in addition to, such payments of principal and interest, the following sums:

(a) An amount sufficient to provide the holder hereof with funds to pay the next mortgage insurance premium if this instrument and the note secured hereby are insured, or a monthly charge (in lieu of a mortgage insurance premium) if they are held by the Secretary of Housing and Urban Development, as follows:

(I) If and so long as said note of even date and this instrument are insured or are reinsured under the provisions of the National Housing Act, an amount sufficient to accumulate in the hands of the holder one (1) month prior to its due date the annual mortgage insurance premium, in order to provide such holder with funds to pay such premium to the Secretary of Housing and Urban Development pursuant to the National Housing Act, as amended, and applicable Regulations thereunder; or

(II) If and so long as said note of even date and this instrument are held by the Secretary of Housing and Urban Development, a monthly charge (in lieu of a mortgage insurance premium) which shall be in an amount equal to one-twelfth (1/12) of one-half (½) per centum of the average outstanding balance due on the note computed without taking into account delinquencies or prepayments;

(b) A sum equal to the ground rents, if any, next due, plus the premiums that will next become due and payable on policies of fire and other hazard insurance protecting the premises covered hereby, plus taxes and assessments next due on the premises covered by this deed (all as estimated by the Grantee) less all sums already paid therefor divided by the number of months to elapse before one month prior to the date when such ground rents, premiums, taxes and assessments will become delinquent, such sums to be held by the Grantee in trust to pay said ground rents, premiums, taxes and special assessments before the same become delinquent; and

(c) All payments mentioned in the two preceding subsections of this paragraph and all payments to be made under the note secured hereby shall be added together, and the aggregate amount thereof shall be paid by the Grantor each month in a single payment to be applied by the Grantee to the following items in the order set forth:

(I) premium charges under the contract of insurance with Secretary of Housing and Urban Development, or monthly charge (in lieu of mortgage insurance premium), as the case may be;

(II) ground rents, taxes, special assessments, fire and other hazard insurance premiums;

(III) interest on the note secured hereby; and

(IV) amortization of the principal of said note.

Any deficiency in the amount of such aggregate monthly payments shall, unless made good by the Grantor prior to the due date of the next such payments, constitute an event of default under this deed. The Grantee may collect a "late charge" not to exceed two cents (2¢) for each dollar ($1) of each payment more than fifteen (15) days in arrears to cover the extra expense involved in handling delinquent payments.

3. If the total of the payments made by the Grantor under subsection *(b)* of paragraph 2 preceding shall exceed the amount of the payments actually made by the Grantee for ground rents, taxes, or assessments or insurance premiums, as the case may be, such excess, at the option of the Grantor, shall be credited by the Grantee on subsequent payments to be made by the Grantor, or refunded to the Grantor. If, however, the monthly payments made by the Grantor under such subsection shall not be sufficient to pay ground rents, taxes, or assessments or insurance premiums, when the same shall become due and payable, then the Grantor shall pay to the Grantee any amount necessary to make up the deficiency, on or before the date when payment of such ground rents, taxes, assessments or insurance premiums shall be due. If at any time the Grantor shall tender to the Grantee, in accordance with the provisions of said note, full payment of the entire indebtedness represented hereby, the Grantee shall, in computing the amount of such indebtedness, credit to the account of the Grantor all payments made under the provisions of subsection *(a)* of paragraph 2. above, which the Grantee has not become obligated to pay to the Secretary of Housing and Urban Development, and any balance remaining in the funds accumulated under the provisions of subsection *(b)* of paragraph 2. If there shall be a default under any of the provisions of this deed resulting in a public sale of the premises covered hereby, or if the Grantee acquires the property otherwise after default, the Grantee shall apply, at the time of the commencement of such proceedings, or at the time the property is otherwise acquired, the balance then remaining in the funds accumulated under subsection *(b)* of paragraph 2 as a credit against the amount of principal then remaining unpaid under said note, and shall properly adjust any payments which shall have been made under subsection *(a)* of paragraph 2.

4. He will pay all ground rents, taxes, assessments, water rates, and other governmental or municipal charges, fines, or impositions, levied upon said premises, or upon the interest of the Grantee in and to said premises, for which provision has not been made hereinbefore, and in default thereof the Grantee may pay the same; and he will promptly deliver the official receipts therefor to the Grantee.

5. The Grantee, its successors or assigns, shall have the right to pay any ground rents, taxes, assessments, water rents, and other governmental or municipal charges, fines or impositions, which the Grantor has agreed to pay under paragraph 4. above, and to make any payments hereinabove provided to be made by the Grantor in subsections *(a)* and *(b)* of paragraph 2 hereof, and any amount so paid by the Grantee shall then be added to the principal debt named herein and bear interest at the rate set forth in the note secured hereby, payable monthly, from the date of such payment, and be secured by this deed.

6. He will keep the improvements now existing or hereafter erected on the premises covered by this deed, insured as may be required from time to time by the Grantee against loss by fire and other hazards, casualties and contingencies including war damage insurance, in such amounts and for such periods as may be required by the Grantee and will pay promptly, when due, any premiums on such insurance provision for payment of which has not been made hereinbefore. All insurance shall be carried in companies approved by the Grantee and the policies and renewals thereof shall be held by the Grantee and have attached thereto loss-payable clauses in favor of and in form acceptable to the Grantee. In event of loss Grantor will give immediate notice by mail to the Grantee, who may make proof of loss if not made promptly by Grantor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to the Grantee instead of to the Grantor and the Grantee jointly, and the insurance proceeds, or any part thereof, may be applied by the Grantee at its option either to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged. In event of foreclosure of this mortgage deed, or other transfer of title to the property covered hereby in extinguishment of the indebtedness secured hereby, all right, title and interest of the Grantor in and to any insurance policies then in force shall pass to the purchaser or Grantee.

7. He will keep the mortgaged premises in as good order and condition as they are now, and will not commit or permit waste, reasonable wear and tear excepted.

8. That if the premises, or any part thereof, be condemned under any power of eminent domain, or acquired for a public use, the damages, proceeds, and the consideration for such acquisition, to the extent of the full amount of indebtedness upon this Mortgage, and the Note secured hereby remaining unpaid, are hereby assigned by the Grantor to the Grantee and shall be paid forthwith to the Grantee to be applied by it on account of the indebtedness secured hereby, whether due or not.

9. The Grantor further agrees that should this deed and the note secured hereby not be eligible for insurance under the National Housing Act within 60 days from date hereof (written statement of any officer of the Department of Housing and Urban Development or authorized agent of the Secretary of Housing and Urban Development dated subsequent to the aforesaid time from the date of this deed, declining to insure said note and this deed, being deemed conclusive proof of such ineligibility) the Grantee or the holder of the note may, at its option, declare all sums secured hereby immediately due and payable.

EX. A

Cust Nme: S. Lewis Date/Time: 7/25/2012 11:15:55 AM TransID: Free Printing

VOL 3553 PAGE 23

10. Upon a default in any of the terms of the note secured hereby, or upon a breach of any condition or covenant of this deed, the rents of the real estate herein described shall immediately accrue to the benefit of the Grantee, and such rents shall be immediately payable to the Grantee.

11. Upon any default in the note secured hereby, or under this deed, foreclosure proceedings may be instituted, at the option of the Grantee, in any such action, the Grantee shall be entitled, without notice and without regard to the adequacy of the security of the debt, to the appointment of a receiver of the rents and profits of the mortgaged premises and in case of any other suit or legal proceeding, wherein the Grantee shall be made a party thereto by reason of this mortgage, its costs and expenses, and the reasonable fees and charges of the attorneys or solicitors of the Grantee, as made parties, for services in such suit or proceedings, shall be a further lien and charge upon the said premises under this mortgage, and all such expenses shall become so much additional indebtedness secured hereby and be allowed in any decree foreclosing this mortgage.

12. The Grantee is authorized and empowered to do all things provided to be done by a mortgagee under Section 1311.14 of the Revised Code, and under the Act of the Legislature passed May 27, 1915, 106 Ohio Laws, Pages 522-524, and any amendments or supplements thereto.

Now, therefore, if the Grantor shall well and truly perform all the conditions of this deed, and of the note secured hereby, then this deed shall be void; otherwise, it shall remain in full force and virtue.

The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, the Grantor (s) ha ve hereunto set their hand s this 30th day of September A.D. 19 75.

Ronald L. Moore By
x Yvonne D. Moore #324, In Fact
Ronald L. Moore
by Yvonne D. Moore, his Attorney-in-Fact

Signed, acknowledged and delivered in the presence of

x Yvonne D. Moore
Yvonne D. Moore

STATE OF OHIO)
) ss:
COUNTY OF Franklin)

Before me, the undersigned, a Notary Public in and for said State and County, personally appeared the above named, Ronald L. Moore and Yvonne D. Moore who executed the foregoing in the above mortgage deed, and severally acknowledged the signing thereof, and that such signing was their free voluntary act and deed, for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto signed my name, and affixed my official seal, this 30th day of September, A.D. 19 75.

FRANK D. PARKAS
NOTARY PUBLIC, FRANKLIN COUNTY, OHIO
MY COMMISSION EXPIRES AUG. 27, 1979

The conditions of this mortgage have been complied with, and the same is fully paid, satisfied, and discharged.

The form of this instrument was prepared by the Office of the General Counsel, Department of Housing and Urban Development, and the material in the blank space in the form was inserted by or under the direction of Central Savings and Loan Company.

EX. A

20318F14

ATTACHMENT B
Avigation Easement

137475
TIME 10:20A
RECORDER FRANKLIN CO., OHIO

SEP 2 1992
RICHARD B. METCALF, RECORDER
RECORDER'S FEE 18.00

~~HOMEOWNER PARTICIPATION AGREEMENT~~
RESIDENTIAL SOUND INSULATION PROGRAM
Port Columbus International Airport

This easement is conveyed from YVONNE DECAROL WEBB., hereinafter called "Grantor", to the Columbus Municipal Airport Authority of Columbus, Ohio, hereinafter called the "Grantee". This easement is entered into this 20TH day of APRIL, 1992.

Grantor is the owner of land and improvements thereto located at 1875 ALVASON AVE., COLUMBUS, of the State of Ohio, and described as follows:

DESCRIPTION

Being Lot Number Seventeen (17) of Argyle Park Subdivision, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 36, page 6, Recorder's Office, Franklin County, Ohio.

EXHIBIT B

MAILED ENVELOPE FURNISHED

The Grantee is the proprietor of the Port Columbus International Airport.

TRANSFER
NOT NECESSARY
SEP 2 1992
JOSEPH W. TESTA
AUDITOR
FRANKLIN COUNTY, OHIO

CONVEYANCE TAX
EXEMPT
JOSEPH W. TESTA

203 18F 15

ATTACHMENT B (continued)
Avigation Easement

HOMEOWNER PARTICIPATION AGREEMENT
RESIDENTIAL SOUND INSULATION PROGRAM
Port Columbus International Airport

WHEREAS, The Property is subject to existing or forecast aircraft noise levels of 65 Ldn or higher, is subject to frequent aircraft overflights, and is subject to occasionally loud aircraft noise associated with takeoff and landing; and

WHEREAS, Grantor has been advised that the Property is located in a noise-impacted area (65 Ldn or higher); and

WHEREAS, Grantor acknowledges that the approximate aircraft flight path in relation to the Property is as shown on the "1991 Noise Exposure Map from the Part 150 Noise Compatibility Program" which is attached hereto and marked Exhibit A; and

WHEREAS, Grantee intends to sound insulate the Property to meet Federal Aviation Administration (FAA) guidelines for Part 150 Noise Mitigation Programs;

NOW, THEREFORE, in consideration of the foregoing, Grantor does hereby grant a permanent avigation easement and right of way for noise to the Columbus Municipal Airport Authority, owner and operator of Port Columbus International Airport in all airspace extending from the surface of the property to an infinite height above the Property.

Grantor further agrees that no structures exceeding 50 feet in height (as measured from ground level) shall be constructed on the Property and no other improvements, fixtures or structures in excess of 50 feet in height (as measured from ground level) shall be permitted to be located or remain on the Property. Grantor further grants to the Columbus Municipal Airport Authority the right to trim any trees or other vegetation which exceed 50 feet in height (as measured from

203187F16

ATTACHMENT B (continued)
Avigation Easement

HOMEOWNER PARTICIPATION AGREEMENT
RESIDENTIAL SOUND INSULATION PROGRAM
Port Columbus International Airport

ground level), at no cost or expense to Grantor. By virtue of this Agreement, the Grantor, for and on behalf of itself and its successors and assigns, waives as to the Columbus Municipal Airport Authority, and any successor agency legally authorized to operate said airport, but only to said Columbus Municipal Airport Authority and said successor agencies, any and all claims for damage of any kind.

Grantor hereby grants to Grantee all that certain avigation easement over and above the Property hereinafter described for the use and benefit of the Grantee, its successors and assigns, for the use and benefit of the public, as an easement and right-of-way appurtenant to the Port Columbus International Airport, for the unobstructed passage of all aircraft, ("aircraft" being defined for the purpose of this easement as any contrivance now known or hereinafter invented, used or designed for navigation or flight in the air by whomsoever owned and operated), which easement is bounded and described as follows, to wit:

Grantor shall not permit or create any electrical interference with radio communication between any installation at Port Columbus International Airport and aircraft, and shall not make it difficult for flyers to distinguish between airport lights and others, and shall not impair visibility in the vicinity of the airport or otherwise to endanger landing, taking off or maneuvering of aircraft, it being understood and agreed that all of the aforementioned covenants and agreements contained shall run with the land.

The Grantor, for and on behalf of itself and its successors and assigns, does further hereby convenant and agree with the Columbus Municipal Airport Authority that it will not, from and after the effective date hereof, sue, prosecute, molest or trouble the Columbus Municipal

20318F17

ATTACHMENT B (continued)
Avigation Easement

HOMEOWNER PARTICIPATION AGREEMENT
RESIDENTIAL SOUND INSULATION PROGRAM
Port Columbus International Airport

Airport Authority in respect to or on account of the flight of any and all aircraft over or near the Property or for any effects resulting therefrom, including, but not limited to, noise, air pollution, or any and all other possible damages (except damage resulting from negligent operation of the airport) to or taking of the Property resulting from such flights.

This easement and non-suit covenant is granted solely to the Columbus Municipal Airport Authority and any successor agency (but only in their capacities as airport operators) and does not grant any right to private persons or entities, and no such persons or entities shall be the direct or indirect beneficiary of this easement and non-suit covenant.

Said easement and right of way, and all rights appertaining thereunto, to the Columbus Municipal Airport Authority, its successors and assigns, shall remain in effect until said Port Columbus International Airport shall be abandoned and shall cease to be used for public airport purposes.

Grantor covenants that Grantor is the owner in fee simple of the Premises, and that at the time of signing this avigation easement, Grantor has full ownership rights and powers to convey this easement free and clear from all other grants, bargains, sales, liens, taxes, assessments and encumbrances of whatever kind or nature, and Grantor covenants with the Grantee, its successors, and assigns, to warrant and forever defend against all and every person or persons claiming any right or title adverse to the easement herein granted.

20318F18

ATTACHMENT B (continued)
Avigation Easement

HOMEOWNER PARTICIPATION AGREEMENT
RESIDENTIAL SOUND INSULATION PROGRAM
Port Columbus International Airport

IN WITNESS WHEREOF, the said Grantor has caused this Avigation Easement to be executed this 20th day of APRIL, 1992.

WITNESS(ES):

Tiffany R. Parker

Anthony C. Iacoboni

GRANTOR(S):

Yvonne D. Webb

ZU318F19

ATTACHMENT B (continued)
Avigation Easement

HOMEOWNER PARTICIPATION AGREEMENT
RESIDENTIAL SOUND INSULATION PROGRAM
Port Columbus International Airport

STATE OF OHIO)
)
) ss.:
COUNTY OF FRANKLIN)

On this 20TH day of APRIL, 1992, before me the undersigned Notary Public in and for the State of OHIO, duly commissioned and sworn, personally appeared YVONNE D. WEBB and _____, to me known to be the individual(s) described in and who executed the within instrument and acknowledged that he/she/they signed and sealed the same as his/her/their free and voluntary act and deed for the uses and purposes herein mentioned.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal.

Notary Public in and for the
State of OHIO
residing at WORTHINGTON

My Commission Expires On: NO EXPIRATI

Rod Courtney Borden

ROD COURTNEY BORDEN
ATTORNEY AT LAW
NOTARY PUBLIC - STATE OF OHIO
LIFETIME COMMISSION

CERTIFICATE OF RESIDENCE

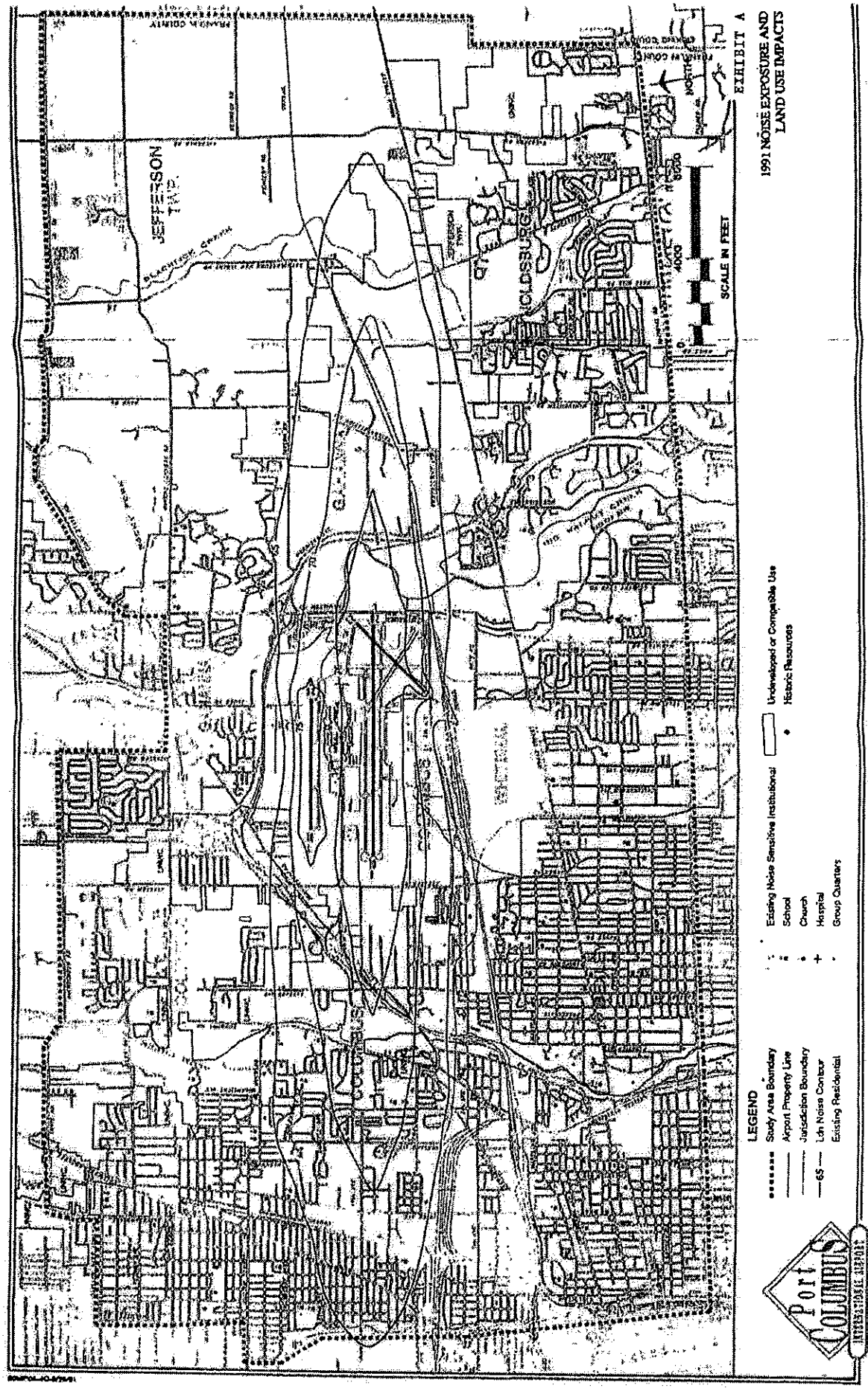
I,(we) Yvonne D. Webb, do hereby certify that grantor's precise residence is, 1825 Alvason Avenue. Dated this 20th day of April, 1992.

GRANTOR(S):

Yvonne D. Webb

_____

90018-2/w/agree-b1


EXHIBIT A
1991 NOISE EXPOSURE AND LAND USE IMPACTS
SCALE IN FEET
4000
0
NORTH
JEFFERSON TWP.
GROVEPORT
LEGEND
Study Area Boundary
Airport Property Line
Jurisdiction Boundary
65 Ldn Noise Contour
Existing Residential
Existing Noise Sensitive Institutional
School
Church
Hospital
Group Quarters
Undeveloped or Compatible Use
Historic Resources
Port COLUMBUS

OHIO

COUNTY OF FRANKLIN
LOAN NO 1: 4002455385
LOAN NO 2: 002455384
INVESTOR: 01637
POOL NO: X00008225
INVESTOR TYPE: GNMA

WHEN RECORDED MAIL TO:

BayView Portfolio Services, Inc.
3631 S. Harbor Blvd., Suite 200
PO BOX 25079
Santa Ana, CA 92704-6951

Prepared By Production Group

Instr:200101030001168 01/03/2001
Pages:1 Fee:$16.00 7:41AM
Robert G. Montgomery T20010030498
Franklin County Recorder MEPBAYVIEW

Assignment of Real Estate Mortgage

FOR VALUE RECEIVED, the undersigned as Mortgagee ("ASSIGNOR"), hereby grants, conveys, assigns and transfers to
CITICORP MORTGAGE, INC., A DELAWARE CORPORATION
27555 FARMINGTON ROAD, FARMINGTON HILLS, MI 48334-3357
("Assignee") all beneficial interest under that certain mortgage dated **9/30/75** executed by
RONALD L. MOORE, BY YVONNE D. MOORE, HIS ATTORNEY-IN-FACT, AND YVONNE D. MOORE, HUSBAND AND WIFE, BOTH BEING OVER 18 YEARS OF AGE.

Mortgagor, to

CENTRAL SAVINGS AND LOAN COMPANY

Mortgagee, and recorded as InStrument No. on **10/8/75** in Book **3553**, Page **21**, Micro Film , of Official Records in the office of the County Recorder of **FRANKLIN** County, Ohio as described in said mortgage.

PIN: 10-136633

Together with the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Mortgage.

Dated: **11/1/00**

CHASE MORTGAGE COMPANY, AN OHIO CORPORATION, F/K/A CHEMICAL MORTGAGE COMPANY

3415 VISION DRIVE, COLUMBUS, OH 43219

By _____
ROBERT ZIERTEN
VICE PRESIDENT

CHASE MORTGAGE COMPANY CORPORATE SEAL

STATE OF CALIFORNIA)
) SS
COUNTY OF ORANGE)

On **11/1/00**, before me, **MONICA LADZINSKI** personally appeared **ROBERT ZIERTEN, VICE PRESIDENT,**

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/ her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

_____
NOTARY PUBLIC **MONICA LADZINSKI**
My commission expires 8/15/02

MONICA LADZINSKI COMM. #1193525 NOTARY PUBLIC-CALIFORNIA ORANGE COUNTY My Comm. Expires AUG 15, 2002

This instrument was prepared by: Production Group, BayView PS
3631 S. Harbor Blvd., Suite 200, Santa Ana, CA 92704

EXHIBIT C

887 00008103219

E1299 - L79

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

GMAC Mortgage Corporation **Plaintiff,** **vs.** **Yvonne D. Lewis aka Yvonne D. Webb-Lewis, et al.** **Defendants.**	**Case No. 05CVE-04-4555** **Judge Julie M. Lynch** **NOTICE OF FILING OF ENDORSEMENT**

Attached hereto is a Endorsement in reference to the above captioned case.

Respectfully submitted,

Matthew J. Richardson (0077157)
Manley Deas Kochalski LLC
P. O. Box 165028
Columbus, OH 43216-5028
Telephone: 614-222-4921
Fax: 614-220-5613
Email: mjr2@mdk-llc.com
Attorney for Plaintiff

FILED
COMMON PLEAS COURT
2011 SEP -8 AM 11:23
CLERK OF COURTS

EXHIBIT D

9

Ref# 05-2846/RLG

E1299 - L80

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Notice of Filing of Endorsement was sent to the following by ordinary U.S. Mail, postage prepaid, on the date indicated below:

Yvonne D. Lewis aka Yvonne D. Webb-Lewis
1875 Alvason Avenue
Columbus, OH 43219

Sidney T. Lewis
1875 Alvason Avenue
Columbus, OH 43219

Matthew J. Richardson

September 7, 2011
Dated

EX. D

Ref# 05-2846/RLG

E1299 - L81

IFA/MTS OH
FORM MTS-106A
JUDICIAL REPORT
SCHEDULE A

FILE NUMBER: 05-2846

First American Title Insurance Company

ENDORSEMENT

Prepared for: Manley Deas Kochalski LLC
Attorneys at Law
P. O. Box 165028
Columbus, OH 43216-5028

In the Case of GMAC MORTGAGE CORPORATION v. YVONNE D. LEWIS AKA YVONNE D. WEBB-LEWIS, et al., now pending in the County Court of Common Pleas, Franklin County, Ohio, as Case No. 05CVE-04-4555, THE FIRST AMERICAN TITLE INSURANCE COMPANY after a search of the records of said Franklin County, pertaining to the premises involved in said action since June 12, 2007, to the date September 1, 2011, hereby guarantees that there appear of record, during said period, no instruments of proceedings relating to or affecting said premises except as shown below.

(Continued)

EX. D

Ref# 05-2846/RLG

E1299 - L82

Endorsement (Continued)

1. **TAX INFORMATION**: The property stands charged on the Franklin County Auditor's Duplicate in the name of Sidney T. Lewis and Yvonne D. Webb-Lewis. It carries parcel number 010-136633-00 and has a physical street address of 1875 Alvason Avenue, Columbus, OH 43219.

   The Treasurer has a first lien for taxes in an amount to be determined.

   Taxes or assessments approved, levied or enacted by the State, County, Municipality, Township or similar taxing authority, but not yet certified to the tax duplicate of the County in which the land is situated, including any retroactive increases in taxes or assessments resulting from any retroactive increase in the valuation of the land by the State County, Municipality, Township or other taxing authority.

2. Schedule B, Item 3, Sub-item a is hereby amended to read as follows:

   3a. An examination of the PACER index of the United States Bankruptcy Court, Northern and Southern Districts of Ohio, reflects the following: Yvonne DeCarol Lewis aka Yvonne D. Webb-Lewis aka Yvonne D. Webb, 1875 Alvason Avenue, Columbus, OH 43219, filed a Chapter 7 Petition for Bankruptcy in the United States Bankruptcy Court, Southern District of Ohio, Eastern Division, Case No. 05-75111, on October 14, 2005; debtor was discharged on February 21, 2006; the case was terminated on March 16, 2006.

3. Schedule B is updated by adding Item 3, Sub-item b as follows:

   3b. An examination of the PACER index of the United States Bankruptcy Court, Northern and Southern Districts of Ohio, reflects the following: Sidney Tyler Lewis, 1875 Alvason Avenue, Columbus, OH 43219, filed a Chapter 7 Petition for Bankruptcy in the United States Bankruptcy Court, Southern District of Ohio, Eastern Division, Case No. 06-53508, on July 13, 2006; the case was dismissed on September 5, 2006; the case was terminated on December 11, 2006.

4. Schedule B is updated by adding Item 3, Sub-item c as follows:

   3c. An examination of the PACER index of the United States Bankruptcy Court, Northern and Southern Districts of Ohio, reflects the following: Sidney T. Lewis, 1875 Alvason Avenue, Columbus, OH 43219, filed a Chapter 7 Petition for Bankruptcy in the United States Bankruptcy Court, Southern District of Ohio, Eastern Division, Case No. 07-57237, on September 12, 2007; debtor was discharged on January 29, 2008; the case was terminated on March 4, 2010.

5. The foreclosure action styled GMAC Mortgage Corporation v. Yvonne D. Lewis aka Yvonne D. Webb-Lewis, et al, of record in the Franklin County Court of Common Pleas,

EXD

E1299 - L83

as Case No. 05CVE-04-4555, reflects that all parties necessary for the adjudication of this dispute have been named. A review of the proceedings in Case No. 05CVE-04-4555, Common Pleas Court, Franklin County, Ohio has been made and the Company finds no record in said proceedings of service completed on the following parties:

NONE

Service results for the parties are as follows:

- Yvonne D. Lewis aka Yvonne D. Webb-Lewis, Served by Ordinary Mail on or about July 26, 2005;
- Sidney T. Lewis, Served by Ordinary Mail on or about July 26, 2005;

EXH D

Ref# 05-2846/RLG

E1299 - L84

FIRST AMERICAN TITLE INSURANCE COMPANY

Number

File Number 05-2846

ENDORSEMENT

This is a guarantee of record title only and is made for the use and benefit of all parties to said proceedings, and the purchaser at judicial sale thereunder. Liability hereunder and under any Title Commitment issued on the property described in said proceedings shall not exceed, in the aggregate, the sum of $53,138.32.

Dated: September 1, 2011 at 7:59 a.m.

In witness whereof, *FIRST AMERICAN TITLE INSURANCE COMPANY* has caused its corporate name and seal to be hereunto affixed.

First American Title Insurance Company

BY: _____
Nicole P. Bontrager, Agent
Authorized Signatory



First American Title Insurance Company

By _____ President

Attest _____ Secretary

EX. D

Ref# 05-2846/RLG

E1299 - L85



Home

Case Information Online

Court Schedule

Last Name: First Name: Middle Init: Court: All Case: 05 CV 004555 Search

Advanced Search

Email Updates

CIVIL CASE DETAIL

Previous Case Next Case

CASE NUMBER
05 CV 004555

TYPE of CASE
FORECLOSURES

STATUS
CLOSED

DATE FILED
04/22/2005

JUDGE
JULIE LYNCH

COURTROOM
COURTROOM 7E
345 SOUTH HIGH STREET
7TH FLOOR
COLUMBUS, OH 43215

PLAINTIFF(S)

Name	Attorney
GMAC MORTGAGE CORPORATION	PAMELA S PETAS

DEFENDANT(S)

Name	Attorney
YVONNE D LEWIS	DAVID F HANSON
SIDNEY T LEWIS	SIDNEY T LEWIS

CASE SCHEDULE

Date	Description
04/22/05	CASE FILED
********	INITIAL STATUS CONFERENCE
09/09/05	INITIAL JOINT DISCLOSURE OF ALL WITNESSES
11/04/05	SUPPLEMENTAL JOINT DISCLOSURE OF ALL WITNESSES
11/18/05	TRIAL CONFIRMATION DATE
01/27/06	DISPOSITIVE MOTIONS
02/10/06	DISCOVERY CUT-OFF
03/24/06	DECISIONS ON MOTIONS
********	FINAL PRE-TRIAL CONFERENCE/ORDER (OR BOTH)
********	TRIAL ASSIGNMENT

DOCKET Show All Descriptions ☐ Select Docket Category All

Date	Description	Image	Fiche	Frame	Pages
08/03/11	MASS TRANFER OF JUDGE LOCATION				
	OLD COURTROOM: COURTROOM 7C				
	NEW COURTROOM: COURTROOM 7E				
09/25/08	NOTICE				
09/29/08	NOTICE OF FILING		D8293	X98	6
09/29/08	NOTICE OF SERVICE		D8293	X97	1
09/29/08	ATTORNEY WITHDRAWAL		D8290	J02	1
	TIE FILING DATE: 04/22/05		D8201	P98	2
09/25/08	NOTICE OF SUBSTITUTION OF COUNSEL				
09/29/08	APPEARANCE FILED		D8201	P98	2
	NAME: GMAC MORTGAGE CORPORATION				
	PLNTIF/DEFNDT IND: P				
	ATTORNEY NAME: PAMELA S PETAS				
	ATTORNEY ADDRESS: GERNER & KEARNS CO LPA 6TH FLOOR 1 RIVERFRONT PLACE NEWPORT, KY 41071 (513) 241-7722				
11/21/07	MISCELLANEOUS PAPER				
10/29/07	SERVICE COMPLETE - CERTIFIED MAIL		D5406	C05	1
10/24/07	PROOF OF SERVICE ISSUED - CERTIFIED MAIL		D5667	F19	1
10/05/07	ADDITIONAL COST BILL CREATED		D5530	E02	1
09/21/07	REQUEST FOR SERVICE - CERTIFIED MAIL				1
09/21/07	INSTRUCTIONS FOR SERVICE		D4494	G02	2
09/21/07	TERMINATE CASE		D44w4	G02	11
09/21/07	REMOVE TO UNITED STATES DISTRICT COURT		D4494	G02	11
09/21/07	MISCELLANEOUS PAPER		D4493	J15	1
09/13/07	MOTION FOR LEAVE TO FILE		D4195	J03	3
	NAME: YVONNE D LEWIS				
	PLNTIF/DEFNDT IND: D				
	PRO SE NAME: YVONNE D LEWIS				
	MOTION COUNTER: 0009				
08/01/07	MOTION DENIED				
	TIE FILING DATE: 07/02/07		D2773	D12	1
08/01/07	DECISION/ENTRY				
07/12/07	AFFIDAVIT FILED		D2773	D12	1
			D2258	D10	1

EXH D

E1299 - L86

07/12/07	MOTION TO DISMISS			
07/10/07	MOTION TO STAY	D2238	D07	23
07/10/07	APPEARANCE FILED - PRO SE	D2166	D03	23
		D2166	D03	1
	NAME: SIDNEY T LEWIS			
	PLNTIF/DEFNDT IND: D			
	PRO SE NAME: SIDNEY T LEWIS			
	PRO SE ADDRESS: 1875 ALVASON AVE COLUMBUS, OH 43219			
07/09/07	AFFIDAVIT FILED			
07/09/07	MOTION TO QUASH	D2136	G09	1
		D2136	G05	4
	NAME: YVONNE D LEWIS			
	PLNTIF/DEFNDT IND: D			
	PRO SE NAME: YVONNE D LEWIS			
	MOTION COUNTER: 0008			
07/02/07	MOTION TO SET ASIDE			
07/02/07	APPEARANCE FILED - PRO SE	D1990	J13	4
06/22/07	COMMITMENT FOR TITLE INSURANCE	D1990	J13	4
06/22/07	NOTICE OF FILING	D1708	D08	3
06/22/07	MOTION FOR DEFAULT JUDGMENT	D1708	D08	5
		D1707	J15	4
	NAME: GMAC MORTGAGE CORPORATION			
	PLNTIF/DEFNDT IND: P			
	ATTORNEY NAME: RACHEL A LEIER			
	ATTORNEY ADDRESS: MANLEY DEAS KOCHALSKI LLC 1400 GOODALE BLVD SUITE 200 COLUMBUS, OH 43212 (614) 220-5611			
	MOTION COUNTER: 0004			
06/11/07	MEMO CONTRA FILED			
06/08/07	CASE REINSTATED BY ORDER	D1338	H07	12
06/08/07	MOTION GRANTED	D1224	I05	1
06/08/07	ORDER	D1224	I05	1
05/30/07	MOTION TO REINSTATE	D1224	I05	1
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01/16/07	COST PAID BY DEPOSIT			
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EX D

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

GMAC Mortgage Corporation	**Case No. 05CVE-04-4555**
Plaintiff,	**Judge Julie M. Lynch**
vs.	
Yvonne D. Lewis aka Yvonne D. Webb-Lewis, et al.	**NOTICE OF ASSIGNMENT OF BID**
Defendants.	

Plaintiff GMAC Mortgage Corporation, acting through counsel, hereby gives notice that it has assigned its bid on the sale of the property that is the subject of this foreclosure action to the following person:

Federal National Mortgage Association
P.O. Box 650043
Dallas, TX 75265-0043

Respectfully submitted,

Matthew J. Richardson (0077157)
Holly N. Wolf (0068847)
Manley Deas Kochalski LLC
P. O. Box 165028
Columbus, OH 43216-5028
Telephone: 614-222-4921
Fax: 614-220-5613
Email: mjr2@mdk-llc.com
Attorney for Plaintiff

EXHIBIT E

Ref# 05-2846/NNW

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Notice of Assignment of Bid was sent to the following by ordinary U.S. Mail, postage prepaid, on the date indicated below:

Yvonne D. Lewis aka Yvonne D. Webb-Lewis
1875 Alvason Avenue
Columbus, OH 43219

Sidney T. Lewis
1875 Alvason Avenue
Columbus, OH 43219

Matthew J. Richardson
Holly N. Wolf

May 30, 2012
Dated

EX. E

Ref# 05-2846/NNW

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRIENDS OF THE EARTH, Plaintiff, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al., Defendants.	Civ. Action No. 1:12-CV-00363 (ABJ)

EPA'S MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

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EXHIBIT F

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MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF EPA'S MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

In this lawsuit, Plaintiff Friends of the Earth ("FOE") contends that Defendants United States Environmental Protection Agency and Lisa Jackson, Administrator of the United States Environmental Protection Agency (collectively "EPA") have unreasonably delayed taking two actions. First, FOE contends that EPA has unreasonably delayed responding to an administrative petition, which generally requested that EPA (a) commence regulation of lead emissions from general aviation aircraft pursuant to EPA's authority under Section 231(a) of the Clean Air Act, 42 U.S.C. § 7571(a), or alternatively, that EPA (b) further study and investigate the health and environmental impacts of such emissions and issue a public report. *See* FOE's First and Second Claims for Relief, Complaint ¶¶ 52-61; FOE Petition for Rulemaking (appended as Exhibit 1 to EPA Statement of Material Facts). Second, FOE contends that EPA has unreasonably delayed making a determination under Section 231(a)(2)(A) of the Clean Air Act, 42 U.S.C. § 7571(a)(2)(A), concerning whether lead emissions from general aviation aircraft engines using leaded aviation gasoline (avgas) "cause[] or contribute[] to, air pollution which may reasonably be anticipated to endanger public health or welfare." *See* FOE's Third Claim for Relief, Complaint ¶¶ 62-67.

Summary judgment should be granted for EPA on all of FOE's claims. As an initial matter, EPA has now issued a final decision responding to FOE's administrative petition, and therefore FOE's First and Second Claims for Relief are moot. FOE's remaining Third Claim for Relief lacks merit. An unreasonable delay claim must be premised on some action that an agency is required to take. Section 231(a)(2)(A) of the Clean Air Act, however, does not contain any requirement that EPA make an endangerment determination for each pollutant, including

lead, emitted by aircraft engines. Second, even if Section 231(a)(2)(A) were deemed to contain such a requirement, EPA is entitled to summary judgment because EPA has not unreasonably delayed making an endangerment determination with respect to lead emissions from general aviation aircraft engines. EPA is instead expending reasonable effort and time to engage in the rigorous scientific inquiry that necessarily must precede a scientifically sound and legally defensible determination regarding whether lead emissions from aircraft engines pose an endangerment. EPA intends to make such a determination after a notice and comment proceeding, and has announced its anticipated schedule for concluding such a proceeding.

STATEMENT OF THE CASE

I. STATUTORY AND REGULATORY BACKGROUND

A. EPA's Regulation of Air Pollutants from Aircraft Engines under Title II of the Clean Air Act

The Clean Air Act, 42 U.S.C. §§ 7401-7671q, enacted in 1970 and extensively amended in 1977 and 1990, is intended to "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare." 42 U.S.C. § 7401(b)(1). The Clean Air Act sets up a detailed program for control of air pollution through a system of shared federal and state responsibility.

Title II of the Act, 42 U.S.C. §§ 7521-7590, authorizes EPA to establish national emission standards for mobile sources of air pollution. As relevant here, Section 231 of the Clean Air Act, 42 U.S.C. § 7571, addresses the regulation of emissions of air pollutants from aircraft engines. Section 231(a)(1) directs EPA to study and investigate emissions of air pollutants from aircraft, including investigating "the extent to which such emissions affect air quality in air quality control regions throughout the United States." 42 U.S.C. § 7571(a)(1)(A). Section 231(a)(2) further provides that EPA shall "from time to time, issue proposed emission

standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which in [the Administrator's] judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7571(a)(2)(A). Before adopting any final emissions standards, EPA must consult with the Administrator of the Federal Aviation Administration and hold public hearings. 42 U.S.C. § 7571(a)(2)(B).[1/] Emission standards promulgated under Section 231 cannot take effect until after such period as the EPA Administrator finds necessary (after consultation with the Secretary of Transportation) to permit the development and application of requisite technology, giving appropriate consideration to compliance costs. 42 U.S.C. § 7571(b). EPA may not change aircraft engine emissions standards if such change would significantly increase noise and adversely affect safety. 42 U.S.C. § 7571(a)(2)(B)(ii).

Thus, under Section 231, EPA may regulate a pollutant emitted by aircraft engines if, and only if, the EPA Administrator investigates emissions of that pollutant and makes a threshold finding that, in her "judgment," emissions of that air pollutant "cause[], or contribute[] to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7571(a)(2)(A). This threshold finding under subsection (a)(2)(A) on whether or not a

---

[1/] The Federal Aviation Administration ("FAA") also has separate legal authority to regulate the fuels used in aircraft engines. Title 49 requires that "[t]he Administrator of the [FAA] shall prescribe (1) standards for the composition or chemical or physical properties of an aircraft fuel or fuel additive to control or eliminate aircraft emissions the Administrator of the Environmental Protection Agency decides under section 231 of the Clean Air Act (42 U.S.C. 7571) endanger the public health or welfare; and (2) regulations providing for carrying out and enforcing those standards." 49 U.S.C. § 44714.

particular pollutant "causes or contributes" to pollution that may pose an "endangerment" is commonly referred to as an "endangerment determination."[2]

B. National Ambient Air Quality Standards for Certain Air Pollutants under Title I of the Clean Air Act

Sections 108 and 109 of the Act, 42 U.S.C. §§ 7408-09, require EPA to establish national ambient air quality standards ("NAAQS") for certain air pollutants – commonly referred to as "criteria pollutants." The NAAQS establish permissible concentrations of these pollutants in the "ambient," or outside air. 42 U.S.C. § 7409. "Primary" NAAQS standards must be standards that, "in the judgment of the Administrator," are requisite to protect public health with "an adequate margin of safety." 42 U.S.C. § 7409(b)(1). "Secondary" NAAQS standards must protect public welfare against known or anticipated adverse effects." 42 U.S.C. § 7409(b)(2).

EPA first established NAAQS for lead in 1978. In 2008, EPA decreased the level of the primary and secondary NAAQS for lead from 1.5 micrograms per cubic meter to 0.15 micrograms per cubic meter in order to provide increased protection for children and other at-risk populations against an array of adverse health effects, most notably neurological effects. 73 Fed. Reg. 66,964 (Nov. 12, 2008). Children are particularly susceptible to the adverse effects of lead, and exposures to low levels of lead early in life have been linked to effects on IQ, learning, memory and behavior. 73 Fed. Reg. at 66,972-76.

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[2] Under authority of Clean Air Act Section 231, EPA has conducted several rulemakings since 1973, establishing emission standards and related requirements for various pollutants from several classes of aircrafts and aircraft engines. *See, e.g.*, "Emissions Standards and Test Procedures for Aircraft," 38 Fed. Reg. 19,099 (July 17, 1973); "Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures," 62 Fed. Reg. 25,356 (May 8, 1997); "Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures," 70 Fed. Reg. 69,664 (Nov. 17, 2005); "Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures," 77 Fed. Reg. 36,342 (June 18, 2012).

C. Unreasonable Delay Suits under the Clean Air Act Citizen Suit Provision

Section 304(a) of the Clean Air Act, 42 U.S.C. § 7604(a), authorizes citizen suits against EPA "to compel . . . agency action unreasonably delayed." Jurisdiction for such "unreasonable delay" suits lies in the district courts. 42 U.S.C. § 7604(a). However, once EPA takes a final action, judicial review is available only in the courts of appeals, pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

II. FACTUAL BACKGROUND

A. Use of Leaded Avgas in General Aviation Aircraft

Lead in the form of tetraethyl lead is an additive to fuel for piston-engine general aviation aircraft.[3/] This lead additive helps boost fuel octane, prevent knock, and prevents valve seat recession and subsequent loss of compression for engines without hardened valves. 75 Fed. Reg. 22,440, 22,442 (Apr. 28, 2010).

B. FOE's Administrative Petition to EPA

On October 3, 2006, FOE submitted an administrative petition to the EPA Administrator requesting that the Administrator (1) make a finding that lead emissions from general aviation aircraft endanger public health and welfare and issue a proposed emissions standard for lead from general aviation aircraft under Section 231(a)(2)(A) of the Clean Air Act, or, alternatively (2) if the Administrator believes that insufficient information exists to make such a finding, commence a study and investigation of the health and environmental impacts of lead emissions

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[3/] The term "general aviation" aircraft refers to most of the aircraft used for recreational flying, business and personal transportation. It does not include commercial aircraft used for scheduled service transporting passengers, freight, or both. 75 Fed. Reg. at 22,443, n.8. Commercial and military aircraft fleet largely utilize jet turbine-engine or turbo-prop propelled aircraft that are not fueled by leaded avgas. 75 Fed. Reg. at 22,443.

from general aviation aircraft, and issue a public report on the findings of the study and investigation. *See* EPA Statement of Material Facts ("EPA Statement") ¶ 1.

C. EPA's Request for Comment on FOE's Administrative Petition and Preliminary Search for Relevant Scientific Literature

EPA preliminarily responded to FOE's administrative petition by issuing a Federal Register notice on November 16, 2007, in which EPA solicited public comment on a wide range of issues related to the use of leaded avgas in general aviation piston-engine aircraft and potential public health and welfare exposure issues. EPA Statement ¶ 2; 72 Fed. Reg. 64,570 (Nov. 16, 2007). In that Federal Register notice, EPA requested information and public comment on twenty-two specific topics, including the following:

- concentrations of lead in the air, soil, surface water, or other environmental media at or near airports where leaded avgas is used;
- levels of lead in indoor dust in homes in the vicinity of airports where leaded avgas is used;
- blood lead levels in children and adults residing or attending school near an airport where leaded avgas is used;
- characteristics of the populations residing in the vicinity of airports where leaded avgas is used, including the number of children six years and younger and the number of schools;
- the volume of leaded avgas supplied at individual airports nationwide; and
- characteristics of piston engine general aviation operation, including the frequency and duration of flights.

EPA Statement ¶ 3; 72 Fed. Reg. at 64,572-73. EPA created an administrative docket for comments on this notice, and all of the comments that EPA has received on this notice are publicly available in this docket. *See* Docket No. EPA-HQ-OAR-2007-0294, *available at* http://www.regulations.gov.

FOE submitted initial and revised comments in response to EPA's request. EPA Statement ¶ 4. In its revised comments dated March 18, 2008, FOE stated that it had "carried out a literature search to find information related to human and environmental exposures around general aviation airports, including lead concentrations in indoor dust and blood-lead levels in exposed individuals," but reported that "[o]ur search of the scientific literature did not reveal any relevant studies." *Id.* ¶ 5. FOE additionally commented that "[i]t is likely that EPA will not receive data from the public for several of its key information requests because this information may not currently exist." *Id.* As predicted by FOE, EPA did not, in fact, receive any substantial material information pertinent to a Section 231(a)(2)(A) endangerment determination in response to EPA's request for public comment. *Id.* ¶ 6.

After receiving the FOE petition, EPA also communicated extensively with investigators in the United States and abroad to identify any available literature concerning the issues identified in the 2007 Federal Register Notice. *Id.* ¶ 7. EPA confirmed through this effort that there are very few monitoring or modeling studies of environmental air lead concentrations near airports servicing piston-engine aircraft that operate on leaded gasoline. *Id.* ¶ 8.

Accordingly, EPA concluded based on its own literature search and its review of public comments that the available information for assessing ambient air lead concentrations near airports servicing piston-engine aircraft that operate on leaded gasoline is severely limited, and that the agency would therefore have to commit significant time and effort to develop the scientific and technical information necessary to quantitatively evaluate the influence of leaded avgas use on ambient lead concentrations near airports. *Id.* ¶ 9.[4] This rigorous scientific inquiry

[4] EPA identified three air quality monitoring studies reporting lead concentrations near airports, one of which EPA subsequently had peer reviewed. EPA Statement ¶ 8.

would form the basis of a scientifically sound determination under section 231(a)(2)(A) regarding whether the use of leaded avgas poses an endangerment. *Id.*

The levels of lead in the environment at and around airports is expected to vary based on factors such as the type of piston-engine planes using the airport, the frequency of aircraft take-off and landing events, the layout of the airport, and other airport-specific factors. *Id.* ¶ 10. In light of this, EPA faces a quite intensive investigation to understand the range of lead concentrations to which people may be exposed from this source. *Id.*

D. EPA's Ongoing Efforts to Model Lead Concentrations in the Vicinity of Airports

Having determined that the available information for assessing lead concentrations near airports servicing piston-engine aircraft that operate on leaded gasoline is severely limited, EPA initiated a study to develop and evaluate an air quality modeling approach that could be used to evaluate local-scale concentrations of lead in the vicinity of an airport. EPA Statement ¶ 11. Developing such an air quality modeling approach was necessary since the few previous studies that EPA was aware of had not focused on near-field gradients in lead near airports or attempted to differentiate aircraft lead emissions from other sources of lead in the ambient air (*e.g.* roadways). *Id.* ¶ 12.

A study detailing a generalized modeling approach using the Meteorological Society/EPA Regulatory Model (the "AERMOD Model") was published in the peer-reviewed scientific literature in 2011. EPA Statement ¶ 13. The approach developed includes apportioning lead emitted during landing and take-off to different altitudes in order to characterize emissions during these modes of operation in a realistic manner. *Id.* ¶ 14. The modeling approach also includes consideration of aircraft-induced wake turbulence and plume rise of the aircraft exhaust. *Id.* ¶ 15. EPA is not aware of any previous peer-reviewed published

studies that have modeled lead aircraft emissions and resulting air quality lead concentrations near airports employing the AERMOD model. *Id.* ¶ 16.[5]

Having developed a modeling approach, EPA in late 2010 initiated a follow-on effort to apply the modeling methods developed, that will provide the data to evaluate exposure to lead at thousands of airports where piston-engine aircraft are active in the United States, including the potential for exceedance of the lead national ambient air quality standards ("lead NAAQS"). EPA Statement ¶ 18. As part of this effort, EPA is comparing modeled data and monitored data to further validate the modeling approach and further evaluating ambient lead concentrations resulting from different types of aircraft operations. EPA Statement ¶ 19.

The follow-on modeling work will be completed in the fall of 2012. EPA Statement ¶ 20. Subsequently, EPA will apply the air quality impact factors (*i.e.*, increments in the increase in ambient air lead concentration per landing and take-off event by a piston-engine aircraft) from the model to quantify the air quality impact of the specific aircraft activity at airports across the country. EPA Statement ¶ 21. This process will include evaluating seasonal variation in piston engine activity and regional meteorological patterns that would determine the frequency of use of one runway end (and therefore lead concentrations downwind). *Id.* Peer review of the modeling work and extrapolation of the air quality impact to airports nationwide is expected to be complete in 2013. *Id.* ¶ 22. This modeling and analyses will ultimately allow EPA to develop a credible and comprehensive characterization of ambient lead levels at and

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[5] Previous modeling studies of air quality near airports have typically evaluated pollutants on spatial scales of at least 200 meters or more. EPA Statement ¶ 17. To evaluate the most highly exposed population and the potential for exceedances of the lead NAAQS though, it is necessary to understand changes in lead concentrations on and off airport property on small spatial scales of approximately 50 meters. *Id.* This is because the limited measurements of lead near airports suggest that lead concentrations increase sharply with increasing proximity to the source. *Id.*

around airports, both the maximum concentrations experienced by those exposed in close proximity to aircraft emissions as well as lower exposures at greater distances from the airport. *Id.* ¶ 23.

EPA has also conducted and is conducting demographic analyses to evaluate the numbers of people, including children, who are potentially exposed to lead emissions from piston-engine aircraft at and around airports. *Id.* ¶ 24. Utilizing 2010 United States Census data, EPA will be able to evaluate the specific number of children, by age, that reside within a given distance of an airport facility. *Id.* ¶ 25. EPA will also use the most up-to-date school enrollment data to evaluate the number of children that attend school within a given distance of an airport. *Id.* ¶ 26. EPA will combine this demographic information with modeled data to assess the potential for harm from exposure to ambient lead levels at and around airports. *Id.* ¶ 27.[9]

E. EPA's Ongoing Efforts to Monitor Ambient Air Lead Concentrations At Airports and to Search for Additional Data on a Wide Range of Topics

On December 14, 2010, EPA revised the ambient air monitoring requirements for the 2008 lead NAAQS. 75 Fed. Reg. 81,126 (Dec. 27, 2010); EPA Statement ¶ 29. The amended monitoring requirements contained provisions particularly directed at monitoring ambient air concentrations at general aviation airports. EPA Statement ¶ 29. The airport monitoring data being obtained pursuant to the NAAQS monitoring requirements will assist EPA in determining whether lead emissions have the potential to cause areas surrounding

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[9] EPA previously conducted a demographic analysis using the 2000 U.S. Census data, which was the most up-to-date data available at that time. EPA Statement ¶ 28. In the previous analysis, EPA evaluated the exposure to people residing or attending school within a given distance of a single latitude/longitude point, usually located in the center of the airport. *Id.* In its current analysis, EPA is using a graphical interface system to evaluate the exposure to people residing or attending school within specified distances of the airport runways. *Id.* This approach will result in a more refined analysis of the most highly exposed population residing and attending schools near an airport. *Id.*

airports to exceed the lead NAAQS of 0.15 micrograms per cubic meter. EPA Statement ¶ 30. The airport monitoring data will also be used by EPA to evaluate whether lead emissions from piston-engine general aviation aircraft pose an endangerment. *Id.*[7]

Monitoring should be commenced at the study airports by mid-2012. EPA Statement ¶ 32. These monitors are required to operate for a minimum of one year. 40 C.F.R. part 58, App. D § 4.5(a)(iii). After analysis of the collected samples and required quality control measures implemented by state agencies to certify the monitoring results, EPA anticipates having one year of certified data from these airports in 2014. 40 C.F.R. § 58.15(a); EPA Statement ¶ 32.

In the meantime, EPA is also continuing to search for additional measured data to evaluate a wide range of topics, including the deposition of lead emitted by piston-engine aircraft, the potential contribution of lead emissions from piston-engine aircraft to lead concentrations in fish tissue, the potential contribution of weekend increases in piston-engine aircraft on ambient lead concentrations, lead concentrations in runoff water at airports, and the potential impact of lead emissions from piston-engine aircraft used in the cultivation of crops. EPA Statement ¶ 33.

In 2007, EPA also initiated an extensive update of the methods used to develop the inventory for lead emissions from piston-engine aircraft, in coordination with the Federal Aviation Administration. EPA Statement ¶ 34. This work took place from 2007 to 2010 and

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[7] EPA will use the monitoring data in an integrated approach across airports to quantitatively evaluate the different factors influencing lead concentrations (e.g., types of aircraft, number of landing and take-off events, prevailing meteorology, and distance of the monitor to the maximum impact sites at the different airports). For example, these data will be used to estimate the incremental increase in ambient air lead per landing and take-off event at a specific distance from the maximum impact site. In this way, the data will benchmark EPA's modeling approach and extrapolation of its modeling results to airports nationwide, making EPA's final analysis more robust and dependable. EPA Statement ¶ 31.

resulted in the addition to the 2008 National Emissions Inventory ("NEI") of about 16,000 airport facilities in that had not previously been identified. *Id.*[8]

F. The 2010 Advance Notice of Proposed Rulemaking

On April 28, 2010, EPA issued a twenty-nine page Advance Notice of Proposed Rulemaking on Lead Emissions From Piston-Engine Aircraft Using Leaded Aviation Gasoline. 75 Fed. Reg. 22,440 (Apr. 28, 2010), EPA Statement ¶ 35. EPA issued this notice to detail the information then available to EPA concerning health and environmental impacts of exposure to lead emissions from general aviation piston-engine aircraft as well as to describe the additional information that EPA was collecting for use by the EPA Administrator in issuing a subsequent proposed endangerment determination. 75 Fed. Reg. at 22,441-42; EPA Statement ¶ 36. EPA in this notice described and solicited public comment on both the data then available as well as on additional information being collected that would inform any further action. 75 Fed. Reg. at 22,452-59; EPA Statement ¶ 37. EPA also provided in the ANPR a demographic analysis of the number of people residing near airports and the number of children attending schools near airports. *Id.* All of the comments that EPA has received in response to the ANPR are publicly available in Docket No. EPA-HQ-OAR-2007-0294, which is accessible at http://www.regulations.gov. EPA Statement ¶ 38.

G. EPA's Response to FOE's Petition

On July 19, 2012, EPA issued its final decision in response to FOE's petition. EPA Statement ¶ 39. In its response to FOE's petition, EPA stated that it was not at this time

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[8] The NEI is a comprehensive and detailed estimate of air emissions of both criteria and hazardous air pollutants from all emissions sources. The NEI is prepared every three years by the EPA and is used to identify level of emissions by individual sources across the country and to understand the major sources contributing to national inventories for each pollutant. *See generally* http://www.epa.gov/ttn/chief/net/2008inventory.html.

determining whether general aviation aircraft engine lead emissions cause or contribute to air pollution that endangers public health or welfare, based on the information that it then had before it. *Id.* ¶ 40. Instead, EPA concluded it would continue to develop and evaluate relevant science and technical information, and at a later date make a scientifically-sound determination – following a notice and comment proceeding – as to whether general aviation piston-engine aircraft emissions of lead cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. *Id.*

EPA explained that in making an endangerment determination, it intends to follow a general approach similar to its recent Clean Air Act Section 202(a) endangerment finding for greenhouse gas emissions from motor vehicles. *Id.* ¶ 41. The basic lines of inquiry for EPA's forthcoming endangerment determination are two-fold. *See* 42 U.S.C. § 7571(a)(2)(A). First, EPA must determine whether the air pollution is reasonably anticipated to endanger public health or welfare. Second, EPA must determine whether emissions of the air pollutant from the subject source category cause or contribute to the air pollution at issue. As applied to lead emissions from general aviation piston-engine aircraft, EPA intends to assess, among other things: (1) the contribution of piston-engine aircraft lead emissions to local and national lead inventories; (2) the contribution of piston-engine aircraft lead emissions to ambient concentrations of lead near airports (using both modeled and monitored data); (3) the number of children and adults residing in close proximity to airports or attending school in close proximity to airports in areas across the country; (4) the contribution of piston-engine aircraft lead emissions to lead inventories, lead deposition, and lead concentrations in lead NAAQS nonattainment areas; (5) the contribution of piston-engine aircraft lead emissions to particulate matter inventories in areas exceeding the NAAQS for particulate matter (6) all data submitted to

the docket through public comments; and (7) relevant scientific and technical information related specifically to general aviation piston-engine aircraft lead emissions. EPA Statement ¶ 42.

EPA anticipates that it will require significant additional agency time and resources to finish the necessary additional studies; develop a proposed determination regarding emissions from piston-engine general aviation aircraft; receive, analyze and respond to public comments on the proposal; and reach an appropriate final determination. *Id.* ¶ 45. EPA anticipates a proposed determination will generate extensive public comments from a wide range of state and local agency, industry, and congressional stakeholders, as well as interested members of the public. *Id.* ¶ 46.

EPA estimates that, given the time it will take to obtain necessary modeling and monitoring information and data discussed above, it will take up to three years, or until mid-to-late 2015, to develop a proposal, publish it for comment, review and analyze the extensive comments that are expected, and issue a final endangerment determination with regard to lead emissions from general aviation piston-engine aircraft.[9] *Id.* ¶ 47.[10]

H. Other EPA Regulatory Actions Addressing Lead Air Emissions Since 2006

Beyond the efforts outlined above that are specifically responsive to the administrative petition submitted by FOE, EPA has simultaneously undertaken and concluded significant regulatory actions under the Clean Air Act over the same time period addressing lead air

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[9] However, contingencies could arise that would affect this projected general schedule, including, but not limited to, unforeseen events regarding Agency budgets or the scheduling of other regulatory actions. *Id.* ¶ 45.

[10] Separate from EPA's ongoing work towards making a Clean Air Act Section 231 endangerment determination, the Administrator of the FAA in 2011 chartered a committee to investigate issues other than endangerment that are associated with a potential transition to unleaded avgas. This committee – Unleaded Avgas Transition Aviation Rulemaking Committee – issued a final report on June 26, 2012. *See* http://www.faa.gov/about/initiatives/avgas/.

emissions. Most significantly, on October 15, 2008, EPA completed a review and revision of the national ambient air quality standards for lead ("lead NAAQS"). 73 Fed. Reg. at 67,051, codified at 40 C.F.R. § 50.12. As noted above (*see* page 4), EPA substantially strengthened these standards. EPA then further revised and strengthened the ambient monitoring requirements for measuring lead in air. 75 Fed. Reg. 81,126 (Dec. 27, 2010). These amendments expand the nation's lead monitoring network to better assess attainment of the revised 2008 lead NAAQS.

In addition, EPA has conducted a number of separate rulemakings pursuant to its authority under Clean Air Act Sections 112 and 129, 42 U.S.C. §§ 7412 and 7429, to promulgate revised and strengthened national hazardous air pollutant emission standards and standards regulating incinerator emissions for various specific industries. Among these, for example, EPA promulgated, in January 2012, revised hazardous air pollutant emission standards for secondary lead smelters, which will reduce emissions of lead and arsenic from this industry by 68 percent from their current regulated levels. 77 Fed. Reg. 556 (Jan. 5, 2012). EPA similarly promulgated, in November 2011, revised hazardous air pollutant emission standards for primary lead smelters. 76 Fed. Reg. 70,834 (Nov. 15, 2011).[11/]

III. FOE's COMPLAINT

FOE's Complaint was filed in March 2012 and alleges that EPA has unreasonably delayed in two relevant respects: by not timely responding to the administrative petition filed by FOE (First and Second Claims for Relief, Complaint ¶¶ 52-61), and by not timely determining

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[11/] The following concluded Clean Air Act rulemakings will also reduce lead emissions from specific industries. *See* 76 Fed. Reg. 18,407 (Apr. 4, 2011) (hospital and medical waste incinerators); 76 Fed. Reg. 15,372 (Mar. 21, 2011) (sewage sludge incineration units); 76 Fed. Reg. 15,704 (Mar. 21, 2011) (commercial and industrial solid waste incineration units); 73 Fed. Reg. 15,923 (Mar. 26, 2008) (area sources); 72 Fed. Reg. 38,864 (July 16, 2007) (area sources).

whether lead emissions from aircraft engines "cause[] or contribute [] to, air pollution which may reasonably be anticipated to endanger public health or welfare" pursuant to Section 231(a) of the Act (Third Claim for Relief, Complaint ¶¶ 62-67).

SUMMARY OF ARGUMENT

Summary judgment should be granted for EPA on all of FOE's claims. First, FOE's first and second claims for relief are moot, because EPA has now issued a final decision responding to FOE's petition. Any judicial review of that response is committed to the exclusive jurisdiction of the D.C. Circuit Court of Appeals, pursuant to the Clean Air Act's judicial review provision, 42 U.S.C. § 7607(b)(1).

Summary judgment should also be granted for EPA on FOE's remaining third claim for relief. As a threshold matter, this claim is untenable because Clean Air Act Section 231(a)(2), 42 U.S.C. § 7571(a)(2)(A), does not itself create an enforceable duty for EPA to make an endangerment finding for lead emitted by aircraft engines. Alternatively, summary judgment should be granted for EPA on FOE's third claim for relief because even if Section 231(a)(2) creates some enforceable duty, EPA has not unreasonably delayed making a Section 231(a)(2)(A) endangerment determination regarding lead emissions from general aviation aircraft engines.

EPA has been, and will be, expending reasonable effort and time to engage in the rigorous scientific inquiry that necessarily must precede a scientifically sound and legally defensible endangerment determination under Section 231(a)(2)(A). EPA has already expended, and will continue to expend, substantial effort to obtain and analyze the complex data and information that EPA plans to use in making a scientifically sound endangerment determination. This effort has included obtaining and analyzing information on such key topics as the ambient

concentrations of lead in the air at and around airports where leaded avgas is used and the number of children who are potentially exposed to this level of air lead. Thus, EPA has not unreasonably delayed taking agency action.

ARGUMENT

I. EPA HAS RESPONDED TO FOE'S PETITION AND FOE'S FIRST AND SECOND CLAIMS FOR RELIEF ARE NOW MOOT.

Article III limits the judicial power of federal courts to live "cases" or "controversies." The live case-or-controversy requirement subsists "through all stages of federal judicial proceedings." *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990). The effect of post-complaint changes in the facts or law on the continued existence of a particular controversy are assessed through the lens of mootness. *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 68 n. 22 (1997).

The doctrine of mootness precludes a court from adjudicating claims that no longer present a concrete and substantial controversy that can be redressed through specific relief. *See, e.g., United States v. Michigan Nat'l Corp.*, 419 U.S. 1, 4 (1974). Thus, "[e]ven where litigation poses a live controversy when filed, the [mootness] doctrine requires a federal court to refrain from deciding it if 'events have so transpired that the decision will neither presently affect the parties' rights nor have a more-than-speculative chance of affecting them in the future.'" *Clarke v. United States*, 915 F.2d 699, 701 (D.C. Cir. 1990)). "Corrective action by an agency is one type of subsequent development that can moot a previously justiciable issue." *NRDC v. U.S. Nuclear Regulatory Comm'n*, 680 F.2d 810, 814 (D.C. Cir. 1982).

Here, FOE in its first and second claims seeks relief for EPA's alleged unreasonable delay responding to FOE's October 2006 petition under the citizen suit provision of the Clean Air Act, 42 U.S.C. § 7604(a), or the Administrative Procedure Act, 5 U.S.C. § 706(1). The only

remedy authorized by these provisions, however, is an order compelling EPA to take a legally required action – or, in this case, an order compelling EPA to respond to the petition. *See Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 63, 64 (2004); *Friends of the Earth v. U.S. Dep't of Interior*, 478 F. Supp. 2d 11, 26-27, n.16 (D.D.C. 2007); *Sierra Club v. Browner*, 130 F. Supp. 2d 78, 82-83 (D.D.C. 2001), *aff'd*, 285 F.3d 63 (D.C. Cir. 2002). EPA, however, has already provided a final response to FOE's October 2006 petition. EPA Statement ¶ 39. Therefore, EPA has completed the action at issue and FOE's claims are moot.

FOE's administrative petition requested specifically that the EPA Administrator (1) make a finding that lead emissions from general aviation aircraft endanger public health or welfare under Section 231(a)(2)(A) (*i.e.*, make an affirmative endangerment determination) and issue a proposed emission standard, or, alternatively, (2) if the Administrator believes that insufficient information exists to make such a finding, commence a study and investigation of the health and environmental impacts of lead emissions from general aviation aircraft, and issue a public report on the findings of the study and investigation. EPA Statement ¶ 1.

On July 19, 2012, EPA provided its final response to FOE's petition. EPA Statement ¶ 39. EPA fully responded to FOE's requests by explaining that at the present time, EPA would not exercise its authority to determine whether general aviation engine lead emissions cause or contribute to endangerment, and instead would proceed with further study. EPA Statement ¶ 40. EPA explained that such further study would culminate in a notice and comment proceeding to determine whether piston-engine aircraft lead emissions cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. *Id.* EPA explained that to the extent the Petition requested additional or different action by EPA, it was denying the Petition. *Id.*

Thus, EPA's response is a hybrid – taking certain action and otherwise denying the petition to the extent it requests additional or different action. The agency has effectively committed to continue to conduct the type of analytical study and investigation work requested by FOE in its alternative request, in support of making a future endangerment determination. The Agency declined, however, to prepare the "public report" FOE requested alternatively (which might or might not have then led to a subsequent and separate endangerment determination), and instead set forth its intent to conduct a notice and comment proceeding culminating in an endangerment determination.

EPA's response to FOE's petition is final. *Cf. Nat'l Parks Conservation Ass'n v. DOI*, 794 F. Supp. 2d 39, 46 (D.D.C. 2011) (rejecting a claim that EPA must foreclose taking the course of action requested by plaintiffs in an administrative petition for EPA's response to that petition to be considered final). To the extent FOE seeks to challenge EPA's decision not to make an endangerment determination at this time, FOE must go to the D.C. Circuit to seek judicial review of that response, 42 U.S.C. § 7607(b)(1).

In short, because EPA has provided its final response to FOE's petition and already taken the action that FOE requests in its first and second claims for relief, these claims are moot. There is no further relief that the Court can grant with respect to these claims.

II. EPA IS NOT REQUIRED BY SECTION 231(a)(2)(A) TO MAKE AN ENDANGERMENT DETERMINATION FOR EACH POLLUTANT EMITTED BY AIRCRAFT ENGINES.

Summary judgment should also be granted for EPA on FOE's remaining third claim for relief (alleging that EPA has unreasonably delayed performing an alleged required duty to make a Section 231(a)(2) endangerment determination for leaded avgas emissions). As an initial matter, as discussed in this section, FOE fails to state a claim upon which relief may be granted

and fails to identify an applicable waiver of sovereign immunity. An unreasonable delay claim must be premised on some action that an agency is required to take. Section 231(a)(2)(A), however, does not contain any requirement that EPA make an endangerment determination for each pollutant emitted by aircraft engines, such as lead.

A. To State a Valid Claim for Unreasonable Delay, FOE Must Identify an Action That EPA is Required to Take.

Because FOE is suing a federal agency, it must identify an applicable waiver of sovereign immunity in order to establish that the Court has jurisdiction over its complaint. *FDIC v. Meyer*, 510 U.S. 471, 475 (1994) ("Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit;" sovereign immunity is "jurisdictional in nature"). In addition, FOE must identify a valid federal cause of action. *See FDIC*, 510 U.S. at 483-84 (recognizing need for both sovereign immunity waiver and cause of action); *Floyd v. District of Columbia*, 129 F.3d 152, 155-56 (D.C. Cir. 1997).

With respect to its third claim for relief, FOE relies solely on Sections 231(a)(2)(A) and 304(a) of the Clean Air Act, 42 U.S.C. §§ 7571(a)(2)(A) and 7604(a), to establish an applicable waiver of sovereign immunity and a valid cause of action. *See* Complaint ¶¶ 62-67. Like any waiver of sovereign immunity, Sections 231(a)(2)(A) and 304(a) must be strictly construed. *See United States v. Nordic Village, Inc.*, 503 U.S. 30, 34 (1992). "[J]urisdiction over citizen suits does not encompass every grievance a citizen might have with [EPA's] actions." *Rushing v. Leavitt*, No. Civ. A 03-1969 (CKK), 2005 WL 555415, at *3 (D.D.C. Mar. 7, 2005); *see also Natural Res. Def. Council v. Thomas*, 885 F.2d 1067, 1073 (2d Cir. 1989) (recognizing Congressional intent to limit number of citizen suits that can be brought against EPA) (citation omitted).

Thus, FOE cannot state a claim upon which relief may be granted merely by alleging that EPA has unreasonably delayed in taking action that FOE views as desirable. Instead, for FOE to demonstrate that its unreasonable delay claim falls within the ambit of Sections 231(a)(2)(A) and 304(a), it must identify "an agency action that [EPA] is *required to take*." *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. at 63, 64, n.1. *See also In re Am. Rivers & Idaho Rivers United*, 372 F.3d 413, 418 (D.C. Cir. 2004) (in considering charge of unreasonable delay, court must satisfy itself that agency has duty to act); *San Francisco Baykeeper v. Whitman*, 297 F.3d 877, 885 (9th Cir. 2002) ("[F]or a claim of unreasonable delay to survive, the agency must have a statutory duty in the first place.").[12]

B. FOE's Third Claim for Unreasonable Delay is Not Premised on Any Duty That EPA is Required to Perform.

In its third claim for relief, FOE fails to meet its burden of identifying some action that EPA is required to take. By its plain terms, Section 231(a)(2)(A) of the Clean Air Act provides EPA with discretion as to whether to make a Section 231(a)(2)(A) endangerment determination for a particular pollutant emitted from aircraft engines. Section 231(a)(2)(A) states that the EPA Administrator "shall, from time to time," propose emission standards for emissions of air pollutants from aircraft engines "which, in [the Administrator's] *judgment* cause[], or contribute[] to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7571(a)(2)(A) (emphasis added).

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[12] The clause in Section 304(a) that authorizes unreasonable delay claims was added as part of the 1990 amendments to the Act, which amended the citizen suit provision to "encompass the full range of inaction covered by the Administrative Procedure Act." S. Rep. No. 101-228, at 374 (1989), *reprinted in* 1990 U.S.C.C.A.N. 3385, 3757. Authority concerning the reach of the APA provision authorizing a court to "compel agency action . . . unreasonably delayed," 5 U.S.C. § 706(1), is thus pertinent to determining the reach of Section 304(a)'s "unreasonable delay" clause.

Although the language in Section 231(a)(2)(A) compels regulation of a particular pollutant *in the event* that the Administrator makes an affirmative endangerment finding for that pollutant, the language in this provision does not create an enforceable duty for the Administrator to reach a judgment concerning endangerment for each and every one of the dozens of potential pollutants emitted by aircraft engines. Section 231(a) instead provides the Administrator with discretion to determine whether to make an endangerment finding for a particular pollutant. If the Administrator does reach a judgment concerning endangerment with respect to a particular pollutant – whether in response to a petition for agency action, or on the Administrator's own initiative – that determination then constitutes judicially reviewable final agency action, and judicial review proceeds under the familiar arbitrary and capricious standard.

Concluding that the Administrator does not have any enforceable duty to make an affirmative or negative endangerment determination for each and every pollutant emitted by aircraft engines is therefore compelled by the cardinal canon of statutory construction – the canon "a legislature says in a statute what it means and means in a statute what it says there." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). It is further compelled by the principle that waivers of sovereign immunity are to be construed strictly and any ambiguities resolved in favor of the sovereign.

Had Congress intended to create a mandatory duty for EPA to make affirmative or negative endangerment determinations for all pollutants emitted by aircraft engines, it would have said so by using different language expressly creating such a duty. *Compare* Clean Air Act Section 231(a)(2), 42 U.S.C. § 7571(a)(2), *with* Sections 213(a)(2), 42 U.S.C. § 7547(a)(2), (creating mandatory duty to determine whether emissions of certain specified pollutants from

nonroad engines are significant contributors to nonattainment with national ambient air quality standards).

We acknowledge that in *Center for Biological Diversity v. EPA*, 794 F. Supp. 2d 151 (D.D.C. 2011) ("*CBD*"), Judge Kennedy disagreed with EPA's construction of Section 231 and held, in rejecting a motion to dismiss, that EPA has an enforceable duty under Section 231(a)(2)(A) – independent of a petition for agency action – to make an endangerment finding for greenhouse gases emitted by aircraft engines. This Court, however, is not bound by another district court decision. *See In re Exec. Office of President*, 215 F.3d 20, 24 (D.C. Cir. 2000) ("District Court decisions do not establish the law of the circuit, nor, indeed, do they even establish 'the law of the district'") (citations omitted). We respectfully submit, for the reasons set forth below, that the *CBD* court incorrectly construed Section 231.[13]

The construction of Section 231 in *CBD* should not be adhered to here for several reasons. Most importantly, the court in *CBD* disregarded the cardinal canon of statutory construction – that "a legislature says in a statute what it means and means in a statute what it says there." *Conn. Nat' Bank v. Germain*, 503 U.S. at 253-54. The specific language that Congress used in Section 231(a)(2) simply does not create any mandatory duty to make an endangerment finding for each and every pollutant emitted by aircraft engines. Instead, it creates a duty to promulgate emission standards for a pollutant emitted by aircraft engines if, and only if, the Administrator determines, in her "judgment," that such pollutant "causes or contributes to "air pollution which may reasonably be anticipated to endanger public health or welfare."

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[13] In *Center for Biological Diversity v. EPA*, the court subsequently granted the United States' motion for summary judgment on the Section 231 duty claim, on grounds that there had been no unreasonable delay, but no final judgment has been entered. *See* No. 1:10-cv-985 (FJS), 2012 WL 967662, (D.D.C. Mar. 20, 2012) at *1.

Section 231(a)(2) means exactly what it says. It does not say that the Administrator must necessarily make an endangerment finding for each and every pollutant emitted by aircraft engines.

Furthermore, even if there were any ambiguity in what Section 231(a)(2) requires (and there is not), the court erred in *CBD* by failing to apply the principle that "[a] waiver of the Federal Government's sovereign immunity must be unequivocally expressed in statutory text," and that waivers of sovereign immunity must be strictly construed, in terms of scope, in favor of the sovereign. *Lane v. Pena*, 518 U.S. 187, 192 (1996). Instead of strictly applying the statutory text and construing any ambiguity in favor of the sovereign, the court in *CBD* found an *implied* enforceable duty for EPA to make endangerment determinations for all pollutants emitted by aircraft engines based on the statutory text surrounding Section 231(a)(2). 794 F. Supp. 2d at 159-60.

The court in *CBD* reasoned that absent implying such a duty, the general statutory purpose to regulate harmful aircraft emissions *could* otherwise be defeated. *Id.* But in reaching this conclusion, the court overlooked that there is, in fact, an alternative mechanism by which citizens may obtain judicial review of EPA's administration of Section 231(a)(2) and ensure that EPA's decisions with respect to the administration of Section 231 are reasonable. Specifically, just as FOE has done here, a citizen may petition EPA to make an endangerment determination for a particular pollutant. If EPA declines to make an endangerment finding at that time, EPA's stated reasons for doing so may be reviewed by the court of appeals under Clean Air Act section 307(b)(1), 42 U.S.C. § 7607(b)(1). Nothing in Section 231 itself, however, independently obligates EPA to necessarily make the predicate endangerment determination.

To the extent the court in *CBD* relied on legislative history to trump a plain construction of the statutory text, the court erred. As the Supreme Court has made clear, where statutory text is clear, then judicial inquiry begins and ends with the plain text, and legislative history cannot be considered. *See Conn. Nat'l Bank v. Germain*, 503 U.S. at 254. Likewise, a statute's legislative history cannot supply a waiver of sovereign immunity that does not appear expressly in any statutory text. *Lane v. Pena*, 518 U.S. at 192. Furthermore, we dispute that the legislative history considered by Judge Kennedy in *CBD* actually provides any clear expression of intent that EPA expend its limited resources making endangerment determinations for each of the dozens of potential pollutants emitted by aircraft engines.

Indeed, the court in *CBD* did not grapple with the practical consequences of construing Section 231(a)(2)(A) as imposing a mandatory duty on EPA to make endangerment findings for each and every pollutant emitted by aircraft engines. Aircraft engines, like land-based fossil fueled engines, emit dozens of chemical compounds. *See, e.g.*, USEPA, "Recommended Best Practice for Quantifying Speciated Organic Gas Emissions from Aircraft Equipped with Turbofan, Turbojet, and Turboprop Engines" at 5, Table 1, *available at* http://www.epa.gov/otaq/aviation.htm (identifying approximately 80 organic gases, including hazardous air pollutants, emitted by aircraft engines). Thus, the logical extension of the reasoning in *CBD* is that EPA has a mandatory duty to make endangerment determinations not just with respect to greenhouse gases, but with respect to each and every chemical compound emitted by aircraft engines, regardless of whether EPA has reason to believe that effort would be

a productive use of its limited resources. There is no reason to conclude that Congress intended for EPA to utilize its limited resources in this manner.[14]

In short, summary judgment should be granted for EPA on the Third Claim for Relief in FOE's complaint because FOE has failed to identify an applicable duty in Section 231 that EPA is required to perform.

III. EPA HAS NOT UNREASONABLY DELAYED MAKING AN ENDANGERMENT DETERMINATION.

Alternatively, summary judgment should be granted for EPA on FOE's third claim for relief because EPA is expending reasonable effort and time to engage in the rigorous scientific inquiry that is necessary for the Administrator to make a sound and legally defensible Clean Air Act Section 231(a)(2) endangerment determination for lead emissions from piston-engine general aviation aircraft. Thus, EPA has not unreasonably delayed making an endangerment determination.

A. Standard of Review For Unreasonable Delay Claims

Determining whether an agency has exceeded the bounds of its discretion and unreasonably delayed in taking action "is ordinarily a complicated and nuanced task requiring consideration of the particular facts and circumstances before the court." *Mashpee Wampanoag Tribal Council v. Norton*, 336 F.3d 1094, 1100 (D.C. Cir. 2003). There is no one-size-fits-all approach, and no absolute rule as to how long an agency may take to execute its obligations. *See id.* at 1102 (unreasonable delay claim cannot be decided in the abstract). The ultimate question

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[14] The discretion provided to EPA in Section 231 of the Act contrasts sharply with the language in Section 112 of the Act, where Congress did direct EPA to establish emission standards for an exhaustive menu of specific air pollutants for major stationary source categories. *See* 42 U.S.C. §§ 7412(b)(1), (c) and (d); *National Lime Ass'n v. EPA*, 233 F.3d 625 (D.C. Cir. 2000) (holding EPA has clear statutory obligation under Section 112 to set emission standards for each listed hazardous air pollutant).

in any unreasonable delay case is whether the time an agency takes to act satisfies a "rule of reason," an issue that "depend[s] in large part . . . upon the complexity of the task at hand, the significance (and permanence) of the outcome, and the resources available to the agency." *Id.*

The D.C. Circuit provided guidance to courts assessing whether agency action is unreasonably delayed in *Telecommunications Research & Action Center. v. FCC*, 750 F.2d 70, 79 (D.C. Cir. 1984) ("*TRAC*"). The factors identified in *TRAC* include:

(1) the time agencies take to make decisions must be governed by a "rule of reason";

(2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason;

(3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake;

(4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority;

(5) the court should also take into account the nature and extent of the interests prejudiced by delay; and

(6) the court need not "find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed."

TRAC, 750 F.2d at 80 (citations omitted).

Pursuant to the second factor in *TRAC*, the reasonableness of an agency's delay is assessed with reference to the statute that authorizes the agency to act. *See Beyond Pesticides/National Coal. Aga. The Misuse of Pesticides v. Johnson*, 407 F. Supp. 2d 38, 40 (D.D.C. 2005). Section 231(a) of the Act, which is at issue here, provides that EPA "shall, *from time to time*," issue proposed emissions standards for air pollutant emissions from aircraft engines which, in EPA's judgment, cause or contribute to air pollution which may endanger public health or welfare. 42 U.S.C. § 7571(a)(2)(A) (emphasis added). The statute thus creates

no discernible schedule for proposing any emission standards, let alone for making the endangerment determination that necessarily precedes such a proposal.

Absent a statutory timetable for agency action – which does not exist in this case – an agency is entitled to considerable deference in how expeditiously it proceeds with agency action. *Beyond Pesticides*, 407 F. Supp. 2d at 40. Absent a firm statutory deadline, an agency's delay must generally be "egregious" before a court will order the agency to act within a specific time frame. *Orion Reserves Ltd. P'ship v. Kempthorne*, 516 F. Supp. 2d 8, 11 (D.D.C. 2007) (citing *TRAC*, 750 F.2d at 79); *see also In re Barr Labs, Inc.*, 930 F.2d 72, 76 (D.C.. Cir. 1991) (courts compel agency action only in "exceptionally rare cases").

The third *TRAC* factor indicates that delays affecting human health and welfare are less tolerable than delays affecting economic interests. The D.C. Circuit, however, has made clear that the third "factor alone can hardly be considered dispositive when . . . virtually the entire [EPA] docket . . . involves issues of this type." *Sierra Club v. Thomas*, 828 F.2d 783, 798 (D.C. Cir. 1987) (discussing the competing interests at EPA and finding that ["g]iven that Congress provides EPA with finite resources to satisfy these various responsibilities, the agency cannot avoid setting priorities among them.").

"As to the fourth and fifth [*TRAC*] factors, an agency is in the best position to view its projects as a whole, estimate the prospects for each, and allocate its resources in the optimal way." *Beyond Pesticides*, 407 F. Supp. 2d at 40 (internal quotation and citation omitted)). Agencies are in a "unique and authoritative position to view [their] projects as a whole" and optimally allocate their limited resources, and courts are highly reluctant to interfere with this prioritization. *In re Barr Labs*, 930 F. 2d at 76; *see also Mashpee*, 336 F.3d at 1102 (competing agency priorities are important in assessing the reasonableness of agency delay); *Orion Reserves*,

516 F. Supp. 2d at 14 ("When confronted with practical difficulties in executing a task and the need to prioritize limited resources, administrative agencies are in the best position to allocate their resources to complete the task in a timely manner.").

B. EPA is Proceeding at a Reasonable Pace in Making a Section 231(a)(2) Determination.

EPA has already expended significant resources studying and investigating the scientific and technical issues surrounding aircraft lead emissions and their effects on the public and the environment. EPA intends to continue this substantial effort to obtain and analyze the complex data and information that EPA expects will facilitate developing a scientifically sound endangerment determination related to lead emissions from general aviation aircraft. EPA has announced its intention and the prospective schedule for a notice and comment proceeding to make its final endangerment determination.

EPA's pace in conducting the scientific inquiry necessary to make a sound endangerment determination easily meets a "rule of reason." *Mashpee Wampanoag Tribal Council*, 336 F.3d at 1100. Making a scientifically sound endangerment determination for lead emissions is a complex task. In evaluating the endangerment and contribution issues related to lead emissions from aircraft piston-engines using leaded avgas, EPA must evaluate both the likelihood of risk that a harm could occur to the public health or welfare, and the severity of this harm if it were to occur. These basic inquiries in turn entail evaluating a host of fact-intensive scientific issues, including assessing (1) the ambient levels of lead in the air at and around airports, (2) the number of people, including children, who are potentially exposed to this level of air lead, and (3) the nature of the health problems associated with such exposures. *See* EPA Statement ¶ 42. These fact-intensive technical inquiries are complicated by the fact that levels of lead in the air at and around airports are expected to vary significantly based on airport-specific factors such as the

number of piston-engine planes using the airport and the layout of the airport, and by the fact that lead levels increase sharply with proximity to an airport. *Id.* ¶ 43. The fact-intensive technical issues are further complicated by the multimedia nature of lead as a pollutant. Human exposure to lead occurs through ingestion of lead in a variety of media such as food, water, soil, and dust, as well as by inhalation of airborne lead. *Id.*

As discussed in the background section above, EPA preliminarily determined in response to the FOE petition, based on its own literature search and review of public comments, that the available information for assessing ambient lead concentrations near airports servicing piston-engine aircraft that operate on leaded gasoline was severely limited. *See, supra*, at 7; EPA Statement ¶¶ 7-9. Thus, the agency reasonably determined, after considering the results of its literature search and public comments, that it lacked sufficient information to quantitatively evaluate the influence of leaded avgas use on ambient lead concentrations near airports. *Id.* ¶ 9. Lacking such information, EPA has reasonably expended considerable resources and effort to obtain and develop such information, which EPA expects will facilitate developing a scientifically sound endangerment determination.

As discussed in detail in the background section above, most of EPA's ongoing evaluation has focused on developing basic factual information about the levels of lead in the air in and around general aviation airports, given the variation across the airports, and the numbers of people, including children, who are potentially exposed to these ambient levels of lead in the air. Among its ongoing efforts, EPA has expended and intends to continue to expend significant resources and efforts to develop and utilize a robust model that can characterize the levels of lead in the ambient air at and around airports based on the factual characteristics of airports. EPA Statement ¶¶ 11-23. This model, which has been validated and will be further validated based on

actual monitoring data, will allow EPA to develop a credible and comprehensive characterization experienced by those exposed in close proximity to aircraft emissions as well as exposures at greater distances from the airport. *Id.* ¶ 23. EPA intends also to utilize, along with other information, the actual monitoring data from 15 airports that is being collected pursuant to the monitoring program implementing the revised lead NAAQS. *Id.* ¶¶ 30-33.[15]

Ultimately, EPA intends to analyze the modeled and monitored data in light of updated demographic data to gain an understanding of the numbers of people, including children, who are potentially exposed to lead emissions from piston engine aircraft in the air in and around airports. *Id.* ¶ 27. To inform the question regarding the potential for harm from exposure to the ambient lead levels EPA identifies at and around airports, EPA will look to the most recent scientific information, such as that being developed in its ongoing review of the current NAAQS, as well as the risk assessment conducted by EPA in 2007 in support of the 2008 NAAQS revision. *Id.* ¶ 44. All of these analyses will in turn provide a major part of the scientific basis that EPA plans to use in making a scientifically sound and legally defensible Section 231(a)(2) judgment on endangerment and contribution related to lead emissions from piston-engine aircraft using leaded avgas.

EPA's efforts to develop the information necessary to assess the ambient levels of lead in the air at and around airports, and the number of people, including children, who are potentially exposed to this level of air lead, and the nature of the health problems associated with such exposures, are appropriate and reasonable. EPA should take the time to develop and consider highly relevant scientific evidence in order to appropriately exercise its scientific expertise and

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[15] As noted above, certified monitoring data from all of these airports will not be available until 2014. *Id.* ¶ 32.

judgment. Indeed, the public has a significant interest in ensuring that the government does not make an endangerment finding through a process that emphasizes expedience over quality and accuracy. *See United Steelworkers of Am. AFL-CIO-CLC v. Rubber Mfrs. Ass'n*, 783 F.2d 1117, 1120 (D.C. Cir. 1986) (holding judicial imposition of overly hasty timetable on agency would ill serve the public interest). As noted above, Section 231 does not impose any statutory timetable for making an endangerment determination, and therefore, EPA is entitled to considerable deference in how expeditiously it proceeds. *Beyond Pesticides*, 407 F. Supp. 2d at 40. Applying this deferential standard, EPA's pace to develop and assess the complex scientific evidence relevant to the endangerment determination FOE seeks satisfies the "rule of reason." *Mashpee Wampanoag Tribal Council v. Norton*, 336 F.3d at 1100.

Furthermore, the D.C. Circuit has made clear that aircraft emissions standards promulgated by EPA under Section 231 – which are the ultimate regulatory product of EPA's efforts under Section 231 – are entitled to an unusually broad degree of deference. *See National Ass'n of Clean Air Agencies v. EPA*, 489 F.3d 1221, 1229-30 (D.C. Cir. 2007). The *NACAA* court, for example, held that EPA is not required under Section 231 to promulgate emission standards that compel the introduction of emission control technology not already in use, and that EPA may permissibly give greater weight to considerations of factors such as safety, cost and noise under Section 231 than it might under other CAA provisions. In view of the extraordinary deference EPA has in promulgating appropriate emission standards under Section 231, it would be incongruous for this Court to apply some less deferential standard to EPA's preliminary work in support of possible future regulatory action under Section 231.

In short, EPA has not unreasonably delayed making an endangerment determination or responding to FOE's petition. Therefore, summary judgment should be granted for EPA on FOE's third claim for relief.

CONCLUSION

WHEREFORE, for the reasons set forth above, EPA respectfully requests that summary judgment be granted for EPA on all of the claims set forth in Plaintiff's complaint.

Respectfully submitted,

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DATED: July 20, 2012