



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

December 13, 2013

DMS NOTICE
QC - 13 - 13
DISCARD: RETAIN

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Settlement - Amerigas Propane, Inc.; and Amerigas Propane, L.P.

Enclosed is a copy of the Stipulated Final Judgment issued against Amerigas Propane, Inc.; and Amerigas Propane, L.P. The case was filed by the District Attorney's Offices of Ventura, Alameda, Fresno, Monterey, Santa Clara, San Joaquin, and Sonoma Counties on December 3, 2013 for misleading consumers into believing the cylinders of propane gas were filled to capacity a violation of California Business and Professions Code Section 12606.

The California Department of Food and Agriculture, Division of Measurement Standards worked with weights and measures investigators from counties throughout the state. The total settlement was for \$800,000. Civil penalties amounted to \$772,595, agency costs were \$14,905, and cy pres in the amount of \$12,500 were paid into the Consumer Protection Prosecution Trust Fund.

Alameda County should be sure to report these penalties on the County Monthly Report. All participating counties should separately record their individual investigative cost reimbursements in the appropriate columns on the report.

We appreciate the fine work done by the District Attorney's Offices along with the state and county investigators that documented and caused to be prosecuted these violations. If you have any questions, please contact Kathy de Contreras, Supervising Special Investigator, Enforcement Branch at (916) 229-3047, or katherine.decontreras@cdfa.ca.gov.

Sincerely,

Kristin J. Macey
Director

Enclosure

cc: Gary Leslie, County/State Liaison, CDFA





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FILED
ALAMEDA COUNTY

DEC - 3 2013

CLERK OF THE SUPERIOR COURT
[Signature]
Deputy

Received: NOV 20 2013
Executive Officer/Clerk

[Signature]
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

AMERIGAS PROPANE, INC.; and
AMERIGAS PROPANE, L.P.;

Defendants.

CASE NO. H013703 958

~~PROPOSED~~ *ye*
STIPULATED FINAL JUDGMENT

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1 Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, through its attorneys,
2 GREGORY D. TOTTEN, the District Attorney of Ventura County, by Senior Deputy District Attorney
3 Mitchell F. Disney; NANCY E. O'MALLEY, the District Attorney of Alameda County, by Deputy
4 District Attorney Robert J. Hartman; ELIZABETH A. EGAN, the District Attorney of Fresno County,
5 by Deputy District Attorneys Michael Brummel and Edward T. Browne; DEAN D. FLIPPO, the
6 District Attorney of Monterey County, by Deputy District Attorney James Burlison; JAMES P.
7 WILLETT, the District Attorney of San Joaquin County, by Deputy District Attorney David J. Irey;
8 JEFFREY F. ROSEN, the District Attorney of Santa Clara County, by Deputy District Attorney Tina
9 Nunes Ober; and JILL R. RAVITCH, the District Attorney of Sonoma County, by Deputy District
10 Attorney Matthew T. Cheever; and Defendants AMERIGAS PROPANE, INC., a Pennsylvania
11 Corporation, and AMERIGAS PROPANE, LP, a Delaware Limited Partnership, through their
12 attorneys, Jay Varon, Esq., and Eileen Ridley, Esq., of Foley & Lardner LLP, have stipulated to the
13 entry of this Stipulated Final Judgment without the Court taking evidence, without the Defendants
14 admitting or denying any wrongdoing, and without this Stipulated Final Judgment ("Judgment")
15 constituting an admission or denial by any party regarding any issue of fact or law, and the Court
16 having considered the pleadings and good cause appearing:

17 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff have judgment
18 against Defendants as follows:

19 **JURISDICTION AND VENUE**

- 20 1. This action is brought under the laws of the State of California and this Court has
21 jurisdiction of the subject matter hereof and the parties hereto.
- 22 2. This Stipulated Final Judgment and Permanent Injunction entered into by the parties has
23 been reviewed by the Court, and the Court finds that it has been entered into in good faith and is in all
24 respects just, reasonable, equitable and adequate.

25 **APPLICABILITY**

- 26 3. All provisions of this Judgment are applicable to Defendants AMERIGAS PROPANE,
27 INC., a Pennsylvania Corporation, and AMERIGAS PROPANE, LP, a Delaware Limited Partnership

1 (sometimes hereinafter "Defendants"), and to Defendants' officers, employees, agents, representatives,
2 successors and assigns, and to all persons acting in concert or participation with any of them, with
3 actual or constructive knowledge of the terms of this judgment. Defendants shall within five (5)
4 business days of receipt of this Judgment provide actual notice of this Judgment to their corporate
5 officers.

6 4. This Final Judgment shall resolve all claims against Defendants that were known to
7 Plaintiff's counsel herein as of the date this Final Judgment was lodged with the Court.

8 **INJUNCTION**

9 5. Pursuant to Business and Professions Code sections 17203 and 17535, Defendants and
10 their officers, employees, agents, representatives, successors and assigns, as more fully described in
11 paragraph 3 of this Judgment, are permanently enjoined and restrained from engaging, directly or
12 indirectly, in any of the following acts or practices in or from the State of California:

13 a. Making or causing to be made any statement which is known or by the exercise
14 of reasonable care should be known to be untrue or misleading about the weight or volume of
15 propane contained in any propane exchange canister offered for retail sale, in violation of
16 California Business and Professions Code Section 17500. Propane exchange canisters
17 containing more propane than stated shall not constitute a violation of this section. Nor shall
18 isolated or unforeseen incidents that occur despite Defendants having taken reasonable
19 protective measures and that are promptly remedied constitute a violation of this section.

20 b. Stating or suggesting in any advertisement or other communication to the public
21 that a propane exchange canister is "filled to capacity," is at "maximum capacity," or words to
22 that effect, unless it is in fact filled to its actual capacity.

23 c. Selling or offering for retail sale any propane exchange canister that does not
24 allow the consumer to fully view its contents, and which is not filled to its actual capacity for
25 reasons other than those enumerated in Business and Professions Code section 12606,
26 subdivision (b)(1) through (15), such that the exchange canister is filled as to be misleading, in
27 violation of Business and Professions Code section 12606, subdivision (b). For purposes of this

1 Final Judgment, an exchange canister that otherwise complies with applicable law and bears or
2 is accompanied by a clear and conspicuous notice that meets the requirements of subparagraph
3 (d) below or otherwise accurately discloses to potential purchasers the relation between: (1) the
4 quantity of propane contained in the exchange canister, and (2) the capacity of the canister, shall
5 not be deemed to violate Business and Professions Code section 12606 and shall not be
6 considered to be filled so as to be misleading.

7 d. For a period beginning 45 days after entry of this Final Judgment, Defendants
8 shall post and maintain on each AmeriGas cage or vending machine in use in California a clear
9 and conspicuous notice that is at least 4" x 4" in size disclosing to potential purchasers the
10 relation between: (1) the quantity of propane contained in the exchange canister, and (2) the
11 capacity of the canister. It shall not be considered a material violation of this section if a
12 disclosure statement is removed from a cage or vending machine or becomes obscured because
13 of weather, vandalism, or other similar acts over which Defendants have no control, provided
14 that Defendants have taken reasonable measures to: (i) ensure the disclosure statements were
15 constructed and placed so as to be appropriately durable and weatherproof, (ii) to monitor the
16 ongoing placement and legibility of the disclosure statements, and (iii) promptly replace any
17 disclosure statement as soon as Defendants become aware of its absence or illegibility. It is
18 further understood that Defendants will use their best efforts to ensure that their retail customers
19 agree to permit the notices described in subparagraph 4(b) to be affixed to the cages and/or
20 vending machines. However, in the event that a retailer refuses to allow the notices, Defendants
21 will give prompt written notice to Plaintiff's counsel and the parties will negotiate in good faith
22 in an effort to find a solution to this issue.

23 **NO ADMISSION OF LIABILITY**

24 6. This Final Judgment is not to be construed as an admission of liability by any party, or a
25 finding of liability against any party. This Judgment was entered into as a result of a stipulation of the
26 parties, without admissions or findings of fact or law, and without any admission by the Defendants or
27 by any party of liability, wrongdoing, illegality, or of any fact alleged in the Complaint. To the extent

1 permitted by law, all information and communications relating to the negotiations of the settlement
2 reflected in this Judgment shall remain confidential.

3 **MONETARY RELIEF**

4 7. Defendants shall, within ten days of the date of the filing of this Final Judgment, pay to
5 the People the sum of Eight Hundred Thousand Dollars (\$800,000) as civil penalties pursuant to
6 Business and Professions Code sections 17206 and 17536, and for costs of investigation, by checks
7 made payable as follows:

8 a. The sum of Seventy-three Thousand, Nine Hundred and Fifty Thousand Dollars
9 (\$73,950) payable to the Alameda County District Attorney's Office, as civil penalties, pursuant
10 to Business and Professions Code sections 17206 and 17536;

11 b. The sum of Thirty-six Thousand, Four Hundred and Twenty-five Dollars
12 (\$36,425) payable to the Alameda County District Attorney's Office, as costs and attorney fees;

13 c. The sum of One Hundred and Ten Thousand, Three Hundred and Seventy
14 Dollars (\$110,370) payable to the Fresno County District Attorney's Office, as civil penalties,
15 pursuant to Business and Professions Code sections 17206 and 17536;

16 d. The sum of One Hundred and Ten Thousand, Three Hundred and Seventy
17 Dollars (\$110,370) payable to the Monterey County District Attorney's Office, as civil
18 penalties, pursuant to Business and Professions Code sections 17206 and 17536;

19 e. The sum of One Hundred and Ten Thousand, Three Hundred and Seventy
20 Dollars (\$110,370) payable to the San Joaquin County District Attorney's Office, as civil
21 penalties, pursuant to Business and Professions Code sections 17206 and 17536;

22 f. The sum of One Hundred and Ten Thousand, Three Hundred and Seventy
23 Dollars (\$110,370) payable to the Santa Clara County District Attorney's Office, as civil
24 penalties, pursuant to Business and Professions Code sections 17206 and 17536;

25 g. The sum of One Hundred and Ten Thousand, Three Hundred and Seventy
26 Dollars (\$110,370) payable to the Sonoma County District Attorney's Office, as civil penalties,
27 pursuant to Business and Professions Code sections 17206 and 17536;

1 h. The sum of One Hundred and Ten Thousand, Three Hundred and Seventy
2 Dollars (\$110,370) payable to the Ventura County District Attorney's Office, as civil penalties,
3 pursuant to Business and Professions Code sections 17206 and 17536;

4 i. The sum of Twelve Thousand Six Hundred Dollars (\$12,600) payable to the
5 California Department of Food & Agriculture, Division of Measurement Standards, as costs of
6 investigation;

7 j. The sum of One Thousand Dollars (\$1,000), as costs of investigation, payable to
8 the Fresno County Division of Weights & Measures;

9 k. The sum of Seven Hundred and Twenty-one Dollars (\$721), as costs of
10 investigation, payable to the Sonoma County Division of Weights & Measures;

11 l. The sum of Five Hundred and Eighty-Four Dollars (\$584), as costs of
12 investigation, payable to the Tulare County Division of Weights & Measures; and

13 m. The sum of Twelve Thousand Five Hundred Dollars (\$12,500) payable to the
14 Consumer Protection Prosecution Trust Fund established by court order on September 21, 1999,
15 in *People v. ITT Financial Services Corporation*, Alameda County Sup. Ct. No. 656038-0, as
16 reimbursement for costs of investigation.

17 8. The payments required by this Judgment shall be delivered to Mitchell F. Disney, Senior
18 Deputy District Attorney, Consumer and Environmental Protection Division, Ventura County District
19 Attorney's Office, 5720 Ralston Street, Suite 300, Ventura, California, 93003.

20 **RETENTION OF JURISDICTION**

21 9. Jurisdiction shall be retained by the Court for the purpose of enabling any party to this
22 Stipulated Final Judgment to apply to the Court at any time for such further orders and directions as
23 may be necessary and appropriate for the construction or carrying out of this Judgment, and for the
24 enforcement of compliance with and the punishment of violations of the Judgment.

25 10. At any time after the Defendants have paid any and all amounts due hereunder, and after
26 this Final Judgment has been in effect for the applicable period as specified below:

27

1 a. After three (3) years from the date of implementation of the requirements of
2 Paragraph 5.d, above, the Defendants may file a motion requesting that the Court order that the
3 affirmative injunctive provisions of Paragraph 5.d., above, shall have no prospective force or
4 effect; and/or

5 b. After five (5) years from November 11, 2010, the date on which Defendants
6 settled a private class action that included injunctive relief (*In re: Pre-filled Propane Tank*
7 *Marketing and Sales Practices Litigation*, U.S.D.Ct. for the Western District of Missouri,
8 Western Division, Master Case No. 09-2086-MD-W-GAF), the Defendants may file a motion
9 requesting that the prohibitory injunctive provisions of Paragraphs 5.a. through c., above, shall
10 have no prospective force or effect.

11 Any such motion(s) shall be based on the Defendants' demonstrated history of compliance with the
12 Final Judgment and all of its injunctive provisions. Prior to each such filing, Defendants may make a
13 request of the People as to whether there have been any incidents of material non-compliance with the
14 provisions of this Final Judgment, and shall concurrently disclose to the People all incidents of non-
15 compliance about which Defendants have received notice. If, after the Defendants have complied with
16 their reciprocal disclosure obligations, the People agree that the Defendants have substantially
17 complied with the applicable provisions of this Final Judgment, the People shall file a statement of non-
18 opposition to the motion. In the event of material non-compliance, the People may file an opposition
19 setting forth the People's position. For purposes of this paragraph, isolated or unforeseen incidents that
20 occur despite Defendants having taken reasonable protective measures and that are promptly remedied
21 shall not constitute substantial non-compliance. The People and the Defendants agree that the Court
22 may grant the Defendants' motion upon determining that the Defendants have substantially complied
23 with all of the obligations set forth in the Final Judgment and injunction.

24 11. The clerk is ordered to enter this Judgment immediately, and to provide notice to
25 counsel for the People.

26 DATED: 12-3, 2013

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JUDGE OF THE SUPERIOR COURT