



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

October 30, 2015

DMS NOTICE
QC - 15 - 11
DISCARD: RETAIN

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Settlement – Airgas Inc., a Delaware corporation; Airgas USA, LLC, a Delaware limited liability company

Enclosed are copies of the Final Judgment Pursuant to Stipulation, Stipulation for Entry of Final Judgment, and Complaint for Injunction, Civil Penalties, and Other Equitable Relief issued against Airgas Inc., a Delaware corporation; Airgas USA, LLC, a Delaware limited liability company. The case was filed on August 5, 2014 by the District Attorney's office of the City of San Diego for overcharging consumers and failure to use a point-of-sale system that conspicuously displays the price of each good or service along with any related surcharges at least once before requiring the customer to pay at the time of the transaction, in violation of California Business and Professions Code Sections 12024.2 and 13300 respectively.

The California Department of Food and Agriculture, Division of Measurement Standards (Department) worked with weights and measures investigators from seven counties on this case. The total settlement was for \$625,000. Civil penalties amounted to \$500,000, agency costs were \$80,606, and cy pres restitution in the amount of \$44,394 was placed in the Consumer Protection Prosecution Trust Fund.

San Diego County should 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.

The Department appreciates the fine work done by the District Attorneys' Offices along with the state and county investigators that documented and caused to be prosecuted these violations. If you have any questions, please contact Katherine 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



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

F I L E D
Clerk of the Superior Court

AUG - 5 2014

By: R. CERSOSIMO, Deputy

NO FEE GC §6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

AIRGAS, INC., a Delaware corporation;
AIRGAS USA, LLC, a Delaware limited
liability company; and DOES 1 through 10,
inclusive,

Defendants.

) CASE NO. 37-2013-00033208-CU-BT-CTL

) **FINAL JUDGMENT PURSUANT TO
STIPULATION**

) Dept: 68
) Judge: Hon. Judith F. Hayes

Plaintiff, The People of the State of California, having filed its Complaint, and Defendant Airgas USA, LLC, having accepted service of the Complaint; and

Plaintiff, The People of the State of California, appearing through its attorneys, Jan I. Goldsmith, City Attorney, by Michael R. Hudson, Deputy City Attorney, and Defendant Airgas USA, LLC, appearing through its attorneys, Gordon & Rees, LLP, by Miles D. Scully; and

On February 1, 2013, Plaintiff filed its Complaint For Injunction, Civil Penalties and Other Equitable Relief entitled *The People of the State of California v. Airgas, Inc., Airgas USA, LLC, and Does 1 to 10, inclusive* (San Diego County Superior Court Case No. 37-2013-00033208-CU-BT-CTL) (hereinafter the "Action"). Therein, Plaintiff alleged two causes of action: (1) violation of Business and Professions Code ("B & P") section 17500 (False

1 Advertising Law (“FAL”)); and (2) violation of B & P Code section 17200 (Unfair Competition
2 Law (“UCL”)). Plaintiff sought the following remedies: (a) a permanent injunction from making
3 untrue or misleading statements and engaging in acts and practices of unfair competition; (b) civil
4 penalties pursuant to B & P section 17206; (c) civil penalties pursuant to B & P section 17536; (d)
5 restitution of monies acquired by means of alleged violations; and (e) costs of investigation and
6 prosecution incurred by the San Diego City Attorney and other law enforcement or regulatory
7 agencies. Airgas filed a verified answer to the Complaint on or about April 19, 2013.

8 On December 6, 2013, Plaintiff and Airgas attended a mandatory settlement conference
9 before Hon. Thomas Nugent and entered into a settlement as described in this Final Judgment.
10 Plaintiff and Airgas desire to resolve the Action in an amicable fashion and have freely and
11 voluntarily agreed to this Final Judgment in good faith and with the intent to fully and finally
12 compromise, settle, and discharge any and all claims, controversies and demands of every kind
13 and nature that they may have or claim to have related to the subject matter of this action, whether
14 known or unknown, against each other. Airgas does not admit to the factual or legal sufficiency
15 of any claims, allegations, assertions, contentions, or positions of Plaintiff.

16 Plaintiff, The People of the State of California (“Plaintiff”), and Defendant Airgas USA,
17 LLC (“Airgas”), having stipulated and consented to the entry of this stipulated Final Judgment
18 (“Final Judgment”) prior to the taking of any proof, and without trial or adjudication of any issue
19 of fact or law herein; and

20 The Court having considered the pleadings;

21 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

22 **JURISDICTION**

23 1. This Action is brought under California law and this Court has jurisdiction of its
24 subject matter and parties.

25 **APPLICATION OF FINAL JUDGMENT**

26 2. This Final Judgment, including the injunctive provisions, shall apply to Airgas and
27 its officers, directors, managers, employees, agents, successors and assignees with respect to
28 Airgas locations in California. Unless otherwise stated, all obligations imposed upon Airgas by

1 the terms of this Final Judgment are ordered pursuant to Business and Professions Code sections
2 17203 and 17535.

3 **INJUNCTION**

4 3. Airgas, and all persons and/or entities set forth in Paragraph 2, are hereby
5 permanently enjoined and restrained, pursuant to Business and Professions Code sections 17203
6 and 17535, from directly or indirectly engaging in any of the following acts or practices:

7 A. Making or causing to be made any false or misleading statement to the
8 public of the State of California with the intent to sell goods or services, in violation of Business
9 and Professions Code section 17500;

10 B. Engaging in any act of unfair competition in the State of California, in
11 violation of Business and Professions Code section 17200;

12 C. Using a point-of-sale system in California to sell goods or services to
13 consumers and failing to ensure that the price of each good or service to be paid by the consumer
14 is conspicuously displayed to the consumer at the time that the price is interpreted by the system
15 or failing to display, at least once before the customer is required to pay for the goods or services,
16 any surcharges and the total value to be charged for the overall transaction, in violation of
17 Business and Professions Code section 13300; and

18 D. Using a point-of-sale system to sell goods or services to consumers in San
19 Diego County and failing to post at each point-of-sale station a "Notice to Consumers" regarding
20 price accuracy, as required by the Department of Agriculture, Weights and Measures pursuant to
21 San Diego County Ordinance 9597, Section 21.2010.

22 **MONETARY RELIEF**

23 4. Pursuant to Business and Professions Code sections 17206 and 17536, Airgas
24 shall, within fifteen (15) days of the date of the filing of this Final Judgment, pay to Plaintiff the
25 sum of five hundred thousand dollars (\$500,000.00) for civil penalties, to be allocated in the
26 following manner and amounts:

27 A. One certified check in the amount of two hundred fifty thousand dollars
28 (\$250,000.00), payable to the "San Diego City Treasurer;" and

1 B. One certified check in the amount of two hundred fifty thousand dollars
2 (\$250,000.00), payable to the "San Diego County Treasurer."

3 5. Airgas shall, within fifteen (15) days of the date of the filing of this Final
4 Judgment, pay to Plaintiff the sum of forty-four thousand three hundred ninety four dollars
5 (\$44,394.00) for *cy pres* restitution, payable in one certified check to the "Consumer Protection
6 Prosecution Trust Fund" with the sum to be used exclusively for consumer protection.

7 6. Airgas shall, within fifteen (15) days of the date of the filing of this Final
8 Judgment, pay to Plaintiff the sum of eighty thousand, six hundred six dollars (\$80,606.00) for
9 costs, by certified checks made payable as follows:

10	Consumer Protection Prosecution Trust Fund	\$ 5,000
11	San Diego City Attorney	\$45,000
12	California Dept. of Food & Agriculture	\$20,727
13	Los Angeles Dept. of Agriculture	\$ 1,565
14	Orange Agricultural Commissioner	\$ 1,638
15	Riverside County Weights and Measures	\$ 1,776
16	San Bernardino Agricultural Commissioner	\$ 1,176
17	San Diego Dept. of Agriculture	\$ 1,523
18	Tuolumne Dept. of Agriculture	\$ 126
19	Ventura Dept. of Agriculture	\$ 2,075

20 7. All checks shall be delivered to the attention of Deputy City Attorney Michael
21 Hudson, Office of the San Diego City Attorney, Consumer and Environmental Protection Unit,
22 1200 Third Avenue, Suite 700, San Diego, California, 92101-4103.

23 8. Except as otherwise provided in this Final Judgment, the parties shall bear their
24 own attorneys' fees and costs in connection with this dispute.

25 **RETENTION OF JURISDICTION AND FINALITY**

26 9. The Court shall retain jurisdiction for the purpose of enabling any party to this
27 Final Judgment to apply to the Court for such further orders and directions as may be necessary
28 and appropriate for the construction or carrying out of this Final Judgment, for the modification of

1 any of its injunctive provisions, and for the enforcement of, compliance with, and for the
2 punishment of violations of the Final Judgment in accordance with California law, including Code
3 of Civil Procedure section 664.6. At least ninety (90) days prior to the filing of any application,
4 motion, or suit related to the Final Judgment, the parties shall commence a meet and confer
5 process in writing and negotiate in good faith in an effort to resolve any dispute without judicial
6 intervention. If any corrections or modifications are required, Airgas shall be allowed a minimum
7 of ninety days (90) days to make such corrections or modifications prior to judicial intervention,
8 subject to any mutually agreeable extensions of time. If the parties are unable to resolve their
9 dispute after meet and confer discussions, any party may seek a resolution of that dispute by the
10 Court. Further, except as provided in this Paragraph, any party may bring suit in the California
11 state courts located within the County of San Diego to enforce the rights and obligations
12 contained in this Final Judgment.

13 10. All parties to this Action agree not to seek any further relief relating to the matters
14 alleged in the Complaint. This paragraph is intended to make clear that Plaintiff shall not seek
15 further relief or penalties for violations of Business and Professions Code sections 17200 and
16 17500 alleged in the Action which occurred prior to the date of filing of this Final Judgment.

17 11. The parties to this Action agree that this Final Judgment is intended to provide full,
18 fair and adequate relief to protect the interests of Plaintiff and members of the public injured
19 and/or damaged prior to the date of filing of this Final Judgment and that the terms of this Final
20 Judgment shall have the maximum permitted *res judicata* effect.

21 **CALIFORNIA LAW GOVERNS ANY DISPUTES**

22 12. This Final Judgment shall be construed and enforced in accordance with the laws
23 of the State of California.

24 **MODIFICATION OF FINAL JUDGMENT**

25 13. No modification of the Final Judgment shall be binding except upon written
26 consent by all of the parties and approval of the Court, or upon noticed motion by one of the
27 parties with approval of the Court. No waiver or modification of any provision of this Final
28 Judgment or of any breach thereof shall constitute a waiver or modification of any other provision

1 or breach, whether or not similar; nor shall any such waiver or modification constitute a
2 continuing waiver.

3 **INTEGRATION**

4 14. This Final Judgment constitutes the entire agreement between the parties and may
5 not be amended or supplemented except as provided for in the Final Judgment. No oral
6 representations have been made or relied upon other than as expressly set forth herein.

7 **SEVERABILITY**

8 15. In the event any provision of this Final Judgment is held void or unenforceable for
9 any reason, it shall in no way affect the enforceability of the remaining provisions.

10 **DISMISSALS**

11 16. Defendants Airgas, Inc. and Does 1 through 10, inclusive, are dismissed.

12 **ENTRY OF FINAL JUDGMENT**

13 17. The Clerk is directed to immediately enter this Final Judgment.

14
15 Dated: AUG - 5 2014

RUDITH R. HAYSE
JUDGE OF THE SUPERIOR COURT

16
17
18
19
20
21
22
23
24
25
26
27
28

1 JAN I. GOLDSMITH, City Attorney
2 MARLEA DELL'ANNO, Assistant City Attorney
3 MICHAEL R. HUDSON, Deputy City Attorney
State Bar No. 121877
E-Mail: mhudson@sandiego.gov

4 Office of the City Attorney
5 1200 Third Avenue, Suite 700
6 San Diego, California 92101-4103
Telephone: (619) 533-5500
Facsimile: (619) 533-5504

7 Attorneys for Plaintiff

F I L E D
Clerk of the Superior Court

JUL 24 2014

By: R. CERSOSIMO, Deputy

NO FEE GC §6103

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF SAN DIEGO

11 THE PEOPLE OF THE STATE OF
12 CALIFORNIA,

13 Plaintiff,

14 vs.

15 AIRGAS, INC., a Delaware corporation;
16 AIRGAS USA, LLC, a Delaware limited
17 liability company; and DOES 1 through 10,
inclusive,

18 Defendants.

) CASE NO. 37-2013-00033208-CU-BT-CTL

) **STIPULATION FOR ENTRY OF FINAL**
) **JUDGMENT**

) Dept: 68

) Judge: Hon. Judith F. Hayes

19
20
21 IT IS HEREBY STIPULATED between Plaintiff, The People of the State of California,
22 appearing through its attorney Jan I. Goldsmith, San Diego City Attorney, by Michael R. Hudson,
23 Deputy City Attorney, and Defendant Airgas USA, LLC ("Airgas"), appearing through their
24 attorneys Gordon & Rees LLP, by Miles D. Scully, that the proposed Final Judgment ("Final
25 Judgment"), a copy of which is attached hereto as Exhibit 1, may be signed by a judge of the San
26 Diego Superior Court.

27 All parties acknowledge that the language of this Stipulation for Entry of Final Judgment
28 ("Stipulation") and the Final Judgment was negotiated by the parties. It is agreed that if an

1 ambiguity arises, there is no presumption that documents should be interpreted against any party
2 and the presumption set forth in Civil Code section 1654 is not applicable.

3 All parties stipulate to the following:

4 1. The Complaint on file herein sets forth facts giving rise to a controversy between
5 Plaintiff and Defendant.

6 2. The parties to this Stipulation have determined to compromise and settle their
7 differences in accordance with the provisions of this Stipulation. Neither this Stipulation nor any
8 of the statements or provisions it contains shall be deemed to constitute an admission or
9 adjudication of any of the allegations of the Complaint.

10 3. That Airgas warrants and represents that it has caused this Stipulation to be
11 executed by Tom Smyth, Vice President/Controller, Airgas USA, LLC, who has been authorized
12 by appropriate action to bind said Defendant to all terms and conditions of this Stipulation and of
13 the Final Judgment.

14 4. The Court has personal jurisdiction of Defendant and subject matter jurisdiction
15 over the instant action.

16 5. Airgas, Inc. and Does 1 through 10, inclusive, are dismissed from the action.

17 6. The Final Judgment may be entered forthwith and without the presentation of any
18 evidence and without trial or adjudication of any issue of law or fact herein.

19 7. It is the intent of all parties that the attached Final Judgment is a full and final
20 settlement of all claims for violations of Business and Professions Code sections 17200 and 17500
21 alleged in the Action which occurred prior to the date of filing of this Final Judgment.

22 8. Each party signed this Stipulation on the date set opposite each name. It is all
23 parties' intention that the Stipulation must be accepted by all parties to be effective and it
24 becomes binding on the date of the last signature to this document.

25 ///

26 ///

27 ///

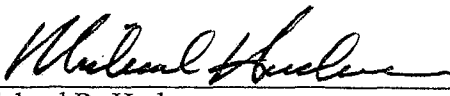
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

IT IS SO STIPULATED.

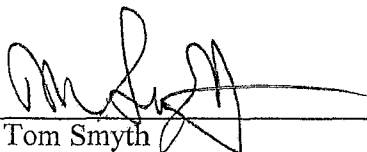
Dated: July 24, 2014

JAN I. GOLDSMITH, City Attorney

By 
Michael R. Hudson
Deputy City Attorney

Attorneys for Plaintiff

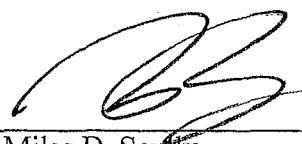
Dated: July 22, 2014

By 
Tom Smyth
Vice President/Controller

Airgas USA, LLC

Dated: July 23, 2014

GORDON & REES LLP

By 
Miles D. Scully
Timothy K. Branson

Attorneys for Defendant Airgas USA, LLC

1 Advertising Law (“FAL”)); and (2) violation of B & P Code section 17200 (Unfair Competition
2 Law (“UCL”). Plaintiff sought the following remedies: (a) a permanent injunction from making
3 untrue or misleading statements and engaging in acts and practices of unfair competition; (b) civil
4 penalties pursuant to B & P section 17206; (c) civil penalties pursuant to B & P section 17536; (d)
5 restitution of monies acquired by means of alleged violations; and (e) costs of investigation and
6 prosecution incurred by the San Diego City Attorney and other law enforcement or regulatory
7 agencies. Airgas filed a verified answer to the Complaint on or about April 19, 2013.

8 On December 6, 2013, Plaintiff and Airgas attended a mandatory settlement conference
9 before Hon. Thomas Nugent and entered into a settlement as described in this Final Judgment.
10 Plaintiff and Airgas desire to resolve the Action in an amicable fashion and have freely and
11 voluntarily agreed to this Final Judgment in good faith and with the intent to fully and finally
12 compromise, settle, and discharge any and all claims, controversies and demands of every kind
13 and nature that they may have or claim to have related to the subject matter of this action, whether
14 known or unknown, against each other. Airgas does not admit to the factual or legal sufficiency
15 of any claims, allegations, assertions, contentions, or positions of Plaintiff.

16 Plaintiff, The People of the State of California (“Plaintiff”), and Defendant Airgas USA,
17 LLC (“Airgas”), having stipulated and consented to the entry of this stipulated Final Judgment
18 (“Final Judgment”) prior to the taking of any proof, and without trial or adjudication of any issue
19 of fact or law herein; and

20 The Court having considered the pleadings;

21 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

22 **JURISDICTION**

23 1. This Action is brought under California law and this Court has jurisdiction of its
24 subject matter and parties.

25 **APPLICATION OF FINAL JUDGMENT**

26 2. This Final Judgment, including the injunctive provisions, shall apply to Airgas and
27 its officers, directors, managers, employees, agents, successors and assignees with respect to
28 Airgas locations in California. Unless otherwise stated, all obligations imposed upon Airgas by

1 the terms of this Final Judgment are ordered pursuant to Business and Professions Code sections
2 17203 and 17535.

3 **INJUNCTION**

4 3. Airgas, and all persons and/or entities set forth in Paragraph 2, are hereby
5 permanently enjoined and restrained, pursuant to Business and Professions Code sections 17203
6 and 17535, from directly or indirectly engaging in any of the following acts or practices:

7 A. Making or causing to be made any false or misleading statement to the
8 public of the State of California with the intent to sell goods or services, in violation of Business
9 and Professions Code section 17500;

10 B. Engaging in any act of unfair competition in the State of California, in
11 violation of Business and Professions Code section 17200;

12 C. Using a point-of-sale system in California to sell goods or services to
13 consumers and failing to ensure that the price of each good or service to be paid by the consumer
14 is conspicuously displayed to the consumer at the time that the price is interpreted by the system
15 or failing to display, at least once before the customer is required to pay for the goods or services,
16 any surcharges and the total value to be charged for the overall transaction, in violation of
17 Business and Professions Code section 13300; and

18 D. Using a point-of-sale system to sell goods or services to consumers in San
19 Diego County and failing to post at each point-of-sale station a "Notice to Consumers" regarding
20 price accuracy, as required by the Department of Agriculture, Weights and Measures pursuant to
21 San Diego County Ordinance 9597, Section 21.2010.

22 **MONETARY RELIEF**

23 4. Pursuant to Business and Professions Code sections 17206 and 17536, Airgas
24 shall, within fifteen (15) days of the date of the filing of this Final Judgment, pay to Plaintiff the
25 sum of five hundred thousand dollars (\$500,000.00) for civil penalties, to be allocated in the
26 following manner and amounts:

27 A. One certified check in the amount of two hundred fifty thousand dollars
28 (\$250,000.00), payable to the "San Diego City Treasurer;" and

1 B. One certified check in the amount of two hundred fifty thousand dollars
2 (\$250,000.00), payable to the "San Diego County Treasurer."

3 5. Airgas shall, within fifteen (15) days of the date of the filing of this Final
4 Judgment, pay to Plaintiff the sum of forty-four thousand three hundred ninety four dollars
5 (\$44,394.00) for *cy pres* restitution, payable in one certified check to the "Consumer Protection
6 Prosecution Trust Fund" with the sum to be used exclusively for consumer protection.

7 6. Airgas shall, within fifteen (15) days of the date of the filing of this Final
8 Judgment, pay to Plaintiff the sum of eighty thousand, six hundred six dollars (\$80,606.00) for
9 costs, by certified checks made payable as follows:

10 Consumer Protection Prosecution Trust Fund	\$ 5,000
11 San Diego City Attorney	\$45,000
12 California Dept. of Food & Agriculture	\$20,727
13 Los Angeles Dept. of Agriculture	\$ 1,565
14 Orange Agricultural Commissioner	\$ 1,638
15 Riverside County Weights and Measures	\$ 1,776
16 San Bernardino Agricultural Commissioner	\$ 1,176
17 San Diego Dept. of Agriculture	\$ 1,523
18 Tuolumne Dept. of Agriculture	\$ 126
19 Ventura Dept. of Agriculture	\$ 2,075

20 7. All checks shall be delivered to the attention of Deputy City Attorney Michael
21 Hudson, Office of the San Diego City Attorney, Consumer and Environmental Protection Unit,
22 1200 Third Avenue, Suite 700, San Diego, California, 92101-4103.

23 8. Except as otherwise provided in this Final Judgment, the parties shall bear their
24 own attorneys' fees and costs in connection with this dispute.

25 RETENTION OF JURISDICTION AND FINALITY

26 9. The Court shall retain jurisdiction for the purpose of enabling any party to this
27 Final Judgment to apply to the Court for such further orders and directions as may be necessary
28 and appropriate for the construction or carrying out of this Final Judgment, for the modification of

1 any of its injunctive provisions, and for the enforcement of, compliance with, and for the
2 punishment of violations of the Final Judgment in accordance with California law, including Code
3 of Civil Procedure section 664.6. At least ninety (90) days prior to the filing of any application,
4 motion, or suit related to the Final Judgment, the parties shall commence a meet and confer
5 process in writing and negotiate in good faith in an effort to resolve any dispute without judicial
6 intervention. If any corrections or modifications are required, Airgas shall be allowed a minimum
7 of ninety days (90) days to make such corrections or modifications prior to judicial intervention,
8 subject to any mutually agreeable extensions of time. If the parties are unable to resolve their
9 dispute after meet and confer discussions, any party may seek a resolution of that dispute by the
10 Court. Further, except as provided in this Paragraph, any party may bring suit in the California
11 state courts located within the County of San Diego to enforce the rights and obligations
12 contained in this Final Judgment.

13 10. All parties to this Action agree not to seek any further relief relating to the matters
14 alleged in the Complaint. This paragraph is intended to make clear that Plaintiff shall not seek
15 further relief or penalties for violations of Business and Professions Code sections 17200 and
16 17500 alleged in the Action which occurred prior to the date of filing of this Final Judgment.

17 11. The parties to this Action agree that this Final Judgment is intended to provide full,
18 fair and adequate relief to protect the interests of Plaintiff and members of the public injured
19 and/or damaged prior to the date of filing of this Final Judgment and that the terms of this Final
20 Judgment shall have the maximum permitted *res judicata* effect.

21 **CALIFORNIA LAW GOVERNS ANY DISPUTES**

22 12. This Final Judgment shall be construed and enforced in accordance with the laws
23 of the State of California.

24 **MODIFICATION OF FINAL JUDGMENT**

25 13. No modification of the Final Judgment shall be binding except upon written
26 consent by all of the parties and approval of the Court, or upon noticed motion by one of the
27 parties with approval of the Court. No waiver or modification of any provision of this Final
28 Judgment or of any breach thereof shall constitute a waiver or modification of any other provision

1 or breach, whether or not similar; nor shall any such waiver or modification constitute a
2 continuing waiver.

3 **INTEGRATION**

4 14. This Final Judgment constitutes the entire agreement between the parties and may
5 not be amended or supplemented except as provided for in the Final Judgment. No oral
6 representations have been made or relied upon other than as expressly set forth herein.

7 **SEVERABILITY**

8 15. In the event any provision of this Final Judgment is held void or unenforceable for
9 any reason, it shall in no way affect the enforceability of the remaining provisions.

10 **DISMISSALS**

11 16. Defendants Airgas, Inc. and Does 1 through 10, inclusive, are dismissed.

12 **ENTRY OF FINAL JUDGMENT**

13 17. The Clerk is directed to immediately enter this Final Judgment.

14

15 Dated: _____

JUDGE OF THE SUPERIOR COURT

16

17

18

19

20

21

22

23

24

25

26

27

28

1 of California. Venue of this action in the County of San Diego is mandated by California Code of
2 Civil Procedure section 393.

3 **DEFENDANTS**

4 3. Defendant AirGas, Inc. (AirGas) is a Delaware corporation. AirGas has its
5 headquarters at 259 Radnor-Chester Road, Suite 100, in Radnor, Pennsylvania. Through its
6 wholly-owned subsidiary, AirGas operates wholesale distribution and retail outlet stores
7 throughout California in which it advertises and sells items using electronic point-of-sale
8 equipment. Through its subsidiary AirGas USA, LLC, AirGas operates and has operated at least
9 six (6) stores in the County of San Diego, one of which is located in the City of San Diego.

10 4. Defendant AirGas USA, LLC (AirGas LLC) is a Delaware Limited Liability
11 Company, and is a subsidiary of AirGas. AirGas LLC has its headquarters at 259 Radnor-Chester
12 Road, Suite 100, in Radnor, Pennsylvania. It operates wholesale distribution and retail outlet
13 stores throughout California. AirGas LLC advertises and sells items in its stores and utilizes
14 electronic point-of-sale equipment in many if not all of its stores.

15 5. The true names and capacities of Defendants sued in this Complaint under the
16 fictitious names of DOES 1 through 10, inclusive, are unknown to Plaintiff, who therefore sues
17 those Defendants by such fictitious names under the provisions of California Code of Civil
18 Procedure section 474. Defendants DOES 1 through 10 are in some manner responsible for the
19 events and happenings alleged in this Complaint. Plaintiff will amend this Complaint to show
20 their true names and capacities when the same have been ascertained.

21 6. Whenever in this Complaint reference is made to any act or omission of one or
22 more of the Defendants, such shall be deemed to mean the act of each and every Defendant acting
23 individually, jointly and severally.

24 7. Whenever in this Complaint reference is made to any act or omission of a
25 corporate Defendant, that allegation shall mean that corporation did the acts alleged in this
26 Complaint through its principals, officers, directors, agents, servants and employees while they
27 were actively engaged in the management, direction, operation or control of the affairs of the
28 corporate Defendant, and while acting within the course and scope of their actual or ostensible

1 scope of their authority. Plaintiff further alleges that the individual Defendants were, and are, the
2 alter ego of the corporate Defendant.

3 8. At all times mentioned in this Complaint, each Defendant was the agent, employee
4 or principal of each of the remaining Defendants and was acting in the course and scope of
5 his/her/its agency and employment.

6 **FIRST CAUSE OF ACTION**

7 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION**
8 **17500 (FALSE ADVERTISING) ALLEGED BY PLAINTIFF AGAINST**
9 **ALL DEFENDANTS**

10 9. Beginning on an exact date unknown to Plaintiff, but within three years prior to the
11 filing of this Complaint, and continuing to the present, Defendants, and each of them, with the
12 intent, directly or indirectly, to induce members of the public to purchase Defendants' welding
13 supplies and other products, have made and caused to be made statements to the public in
14 California that were untrue or misleading in violation of Business and Professions Code section
15 17500. The untrue or misleading statements made by Defendants include, but are not limited to,
16 representing a price on an item, store shelf, or sign near the item, and/or verbally quoting a price
17 for an item, and charging a greater price at the time the product was purchased. These include, but
18 are not limited to the following:

- 19 A. Advertised, posted, marked and/or displayed prices for products that did
20 not reflect the true cost of the product to the consumer.
- 21 B. Price quotes for products that did not reflect the true cost of the product to
22 the consumer.
- 23 C. Representations that hazardous materials fees were, in whole or in part,
24 required by, or payable to, a governmental entity.
- 25 D. Representations that hazardous materials fees were charged by suppliers to
26 AirGas.
- 27 E. Representations that hazardous materials fees were mandatory or could not
28 be waived by store clerks.
- F. Representations that hazardous materials fees were of recent origin.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

G. Representations that hazardous materials fees were for “fumes” or “chemicals” that would be released into the air when the products subject to the fees were used.

H. Representations that hazardous materials fees were “disposal” fees.

I. Representations that hazardous materials fees were similar to fees or surcharges imposed by governmental entities to encourage recycling.

J. Representations that hazardous materials fees applied to products to which they did not apply.

K. Representations that hazardous materials fees did not apply to products to which they did apply.

10. Defendants knew, or by the exercise of reasonable care should have known, that the statements set forth in paragraph 9 above were untrue or misleading when made.

11. Unless enjoined by this Court, Defendants, and each of them, will or may continue to make such untrue or misleading statements as alleged above.

SECOND CAUSE OF ACTION

VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200 (UNFAIR COMPETITION) ALLEGED BY THE PEOPLE AGAINST ALL DEFENDANTS

12. Plaintiff incorporates paragraphs 1 through 11 of this Complaint as though set forth here in their entirety.

13. Beginning on an exact date unknown to Plaintiff, but within four years prior to the filing of this Complaint, and continuing to the present, Defendants, and each of them, have engaged in unfair competition in violation of Business and Professions Code section 17200, including but not limited to one or more unlawful, unfair or fraudulent business acts or practices and/or unfair, deceptive, untrue or misleading advertising. Such acts, practices and/or advertising engaged in by Defendants include, but are not limited to, the following:

A. Committing the violations of Business and Professions Code section 17500 set forth in the First Cause of Action.

1 B. Computing at the time of the sale of a commodity, a value which was more than
2 the price then advertised, posted or quoted, in violation of Business and
3 Professions Code section 12024.2.

4 C. Using a point-of-sale system to sell goods to consumers and failing to
5 conspicuously display the price of each good to the consumer at the time that the
6 price is interpreted by the system, in violation of Business and Professions Code
7 section 13300.

8 D. Failing to display a notice to consumer concerning overcharges and local agency
9 contact information, in violation of San Diego County Code section 21.2010.

10 14. Unless enjoined by this Court, Defendants, and each of them, will or may continue
11 to engage in unfair competition as alleged above.

12 **PRAYER**

13 Plaintiff prays for judgment against Defendants, and each of them, as follows:

14 1. Pursuant to Business and Professions Code sections 17203 and 17535, and the
15 Court's inherent equity powers, Defendants and their officers, directors, employees, agents,
16 representatives, successors, assignees, and all natural persons, corporations or other entities acting
17 under, by, through, on behalf of or in concert with Defendants, with actual or constructive notice
18 of this injunction, shall be permanently enjoined and restrained from making untrue or misleading
19 statements and engaging in acts and practices of unfair competition, including those set forth in
20 Paragraph 13 above.

21 2. Pursuant to Business and Professions Code section 17536, Defendants, and each of
22 them, shall be assessed a civil penalty of two thousand five hundred dollars (\$2,500) for each and
23 every untrue or misleading statement by them to each potential or actual consumer, as proven at
24 trial, in an amount not less than ten million dollars (\$10,000,000.00).

25 3. Pursuant to Business and Professions Code section 17206, Defendants, and each of
26 them, shall be assessed a civil penalty of two thousand five hundred dollars (\$2,500) for each and
27 every violation of Business and Professions Code section 17200, as proven at trial, in an amount
28 not less than ten million dollars (\$10,000,000.00).


1 4. Pursuant to Business and Professions Code sections 17203 and 17535, and the
2 Court's inherent equity powers, this Court orders Defendants to restore to any person any money
3 or property which has been acquired by means of Defendants' violations, as proven at trial.

4 5. Plaintiff recovers its costs, including its costs of investigation and prosecution, and
5 those of other law enforcement or regulatory agencies as appropriate; and

6 6. Plaintiff shall have such other and further relief as the nature of the case may
7 require and the Court deems appropriate.

8 Dated: 2.1.13

JAN I. GOLDSMITH, City Attorney

9
10 By 
11 Michael R. Hudson
12 Deputy City Attorney

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Attorneys for Plaintiff