



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

December 13, 2013

DMS NOTICE
QC - 13 - 12
DISCARD: RETAIN

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Settlement - Ferrellgas Partners, LP and Ferrellgas LP; DBA Blue Rhino

Enclosed is a copy of the Stipulated Final Judgment issued against Ferrellgas Partners, LP and Ferrellgas LP; doing business as Blue Rhino. The case was filed by the District Attorney's Offices of Ventura, Alameda, Monterey, Fresno, San Joaquin, Santa Clara, 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 \$1,000,000. Civil penalties amounted to \$967,185, agency costs were \$20,315, 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

By *Carlye Johnson*

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

Received: NOV 20 2013
Electronics Section/Clerk

[Signature] Deputy

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

FERRELLGAS PARTNERS, LP; and
FERRELLGAS LP;

Defendants.

CASE NO. HA13703958

[PROPOSED]
STIPULATED FINAL JUDGMENT

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. Irej;
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, FERRELLGAS PARTNERS, LP and FERRELLGAS
11 LP, both Delaware Limited Partnerships, through their attorneys, Peter Herzog, Esq., of Bryan Cave
12 LLP and William Stern, Esq., of Morrison & Foerster LLP, have stipulated to the entry of this
13 Stipulated Final Judgment without the Court taking evidence, without the Defendants admitting or
14 denying any wrongdoing, and without this Stipulated Final Judgment ("Judgment") constituting an
15 admission or denial by any party regarding any issue of fact or law, and the Court having considered
16 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 FERRELLGAS
27 PARTNERS, LP and FERRELLGAS LP, (sometimes hereinafter "Defendants"), and to Defendants'

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

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

7 **INJUNCTION**

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

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

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

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

1 officers, employees, agents, representatives, successors and assigns, and to all persons acting in concert
2 or participation with any of them, with actual or constructive knowledge of the terms of this judgment.
3 Defendants shall within five (5) business days of receipt of this Judgment provide actual notice of this
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5 4. This Final Judgment shall resolve all claims against Defendants that were known to
6 Plaintiff's counsel herein as of the date this Final Judgment was lodged with the Court.

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24 reasons other than those enumerated in Business and Professions Code section 12606,
25 subdivision (b)(1) through (15), such that the exchange canister is filled as to be misleading, in
26 violation of Business and Professions Code section 12606, subdivision (b). For purposes of this
27 Final Judgment, an exchange canister that otherwise complies with applicable law and bears or

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

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

22 **NO ADMISSION OF LIABILITY**

23 6. This Judgment is not to be construed as an admission of liability by any party, or a
24 finding of liability against any party. This Judgment was entered into as a result of a stipulation of the
25 parties, without admissions or findings of fact or law, and without any admission by the Defendants or
26 by any party of liability, wrongdoing, illegality, or of any fact alleged in the Complaint. To the extent
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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 One Million Dollars (\$1,000,000) as civil penalties pursuant to Business and
6 Professions Code sections 17206 and 17536, and for costs of investigation, by checks made payable as
7 follows:

8 a. The sum of Ninety-two Thousand, Five Hundred and Seventy-five dollars
9 (\$92,575) 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 Forty-five Thousand, Five Hundred and Ninety-six Dollars (\$45,596)
12 payable to the Alameda County District Attorney's Office, as costs and attorney fees;

13 c. The sum of One Hundred and Thirty-eight Thousand, One Hundred and Sixty-
14 nine Dollars (\$138,169) payable to the Fresno County District Attorney's Office, as civil
15 penalties, pursuant to Business and Professions Code sections 17206 and 17536;

16 d. The sum of One Hundred and Thirty-eight Thousand, One Hundred and Sixty-
17 nine Dollars (\$138,169) 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 Thirty-eight Thousand, One Hundred and Sixty-
20 nine Dollars (\$138,169) 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 Thirty-eight Thousand, One Hundred and Sixty-
23 nine Dollars (\$138,169) 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 Thirty-eight Thousand, One Hundred and Sixty-
26 nine Dollars (\$138,169) payable to the Sonoma County District Attorney's Office, as civil
27 penalties, pursuant to Business and Professions Code sections 17206 and 17536;

1 h. The sum of One Hundred and Thirty-eight Thousand, One Hundred and Sixty-
2 nine Dollars (\$138,169) payable to the Ventura County District Attorney's Office, as civil
3 penalties, pursuant to Business and Professions Code sections 17206 and 17536;

4 i. The sum of Sixteen Thousand One Hundred and Fifty Dollars (\$16,150), as costs
5 of investigation, payable to the California Department of Food & Agriculture, Division of
6 Measurement Standards;

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 Five Hundred and Fifteen Dollars (\$515), as costs of investigation,
10 payable to the Sonoma County Division of Weights & Measures;

11 l. The sum of Nine Hundred and Fifty-two Dollars (\$952), as costs of
12 investigation, payable to the Tulare County Division of Weights & Measures;

13 m. The sum of One Thousand Six Hundred and Ninety-Eight Dollars (\$1,698), as
14 costs of investigation, payable to the Ventura County Division of Weights & Measures; and

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

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

22 **RETENTION OF JURISDICTION**

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

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

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

7 b. After five (5) years from May 31, 2012, the date on which Defendants settled a
8 private class action that included injunctive relief (*In re: Pre-filled Propane Tank Marketing*
9 *and Sales Practices Litigation*, U.S.D.Ct. for the Western District of Missouri, Western
10 Division, Master Case No. 09-2086-MD-W-GAF), the Defendants may file a motion requesting
11 that the prohibitory injunctive provisions of Paragraphs 5.a. through c., above, shall have no
12 prospective force or effect.

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

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1 11. The clerk is ordered to enter this Judgment immediately and to provide notice to counsel
2 for the People.

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4 DATED: 12-3-, 2013


JUDGE OF THE SUPERIOR COURT

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