

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

ARROW HARDWARE, LLC, 6415 Ventnor Ave.,
Ventnor, NJ, 08406, on behalf of itself and all others
similarly situated,

Plaintiff,

v.

AMERIGAS PARTNERS, L.P., 460 North Gulph
Road, King of Prussia, PA 19406

AMERIGAS PROPANE, L.P., 460 North Gulph
Road, King of Prussia, PA 19406

AMERIGAS PROPANE, INC., 460 North Gulph
Road, King of Prussia, PA 19406

UGI CORPORATION, 460 North Gulph Road, King
of Prussia, PA 19406

FERRELLGAS PARTNERS, L.P., 7500 College
Boulevard, Overland Park, KS 66210, and

FERRELLGAS L.P., 7500 College Boulevard,
Overland Park, KS 66210,

Defendants.

Civil Action No. _____

COMPLAINT -- CLASS ACTION

JURY TRIAL DEMANDED

Plaintiff Arrow Hardware, LLC, on behalf of itself and all others similarly situated, brings this action against AmeriGas Partners, L.P., AmeriGas Propane, L.P., AmeriGas Propane, Inc., and UGI Corporation (“Amerigas”) and Ferrellgas Partners, L.P. and Ferrellgas L.P. (“Blue Rhino”) (collectively “Defendants”) for treble damages and other appropriate relief based on Defendants’ unlawful conspiracy, from at least July 2008 to the present, to fix, raise, maintain

and stabilize the price of propane exchange tanks by reducing their fill levels in violation of the Sherman Act 15 U.S.C. § 1.

NATURE OF THE ACTION

1. Defendants are in the business of the distribution and sale of exchangeable portable steel tanks containing propane gas commonly referred to as “propane exchange tanks.” In 2008, Blue Rhino and AmeriGas agreed to decrease the amount of propane contained in their propane exchange tanks from 17 pounds to 15 pounds (the “fill reduction”) without any reduction in price. Walmart Stores, Inc., a customer of Blue Rhino and AmeriGas resisted this change. In order to successfully lower the fill weight, Blue Rhino and AmeriGas then secretly agreed to maintain a united front to push their customer, Walmart, to accept the fill reduction.

2. Purchasers of portable exchange tanks are typically hardware stores, gas stations, convenience stores, mass merchandisers, and supermarkets. End-user purchasers typically use portable exchange tanks to fuel barbeque grills and patio heaters.

3. Defendants were and are the two largest suppliers of propane exchange tanks in the United States. Blue Rhino controls approximately 50 percent of the market. AmeriGas controls approximately 30 percent of the market.

4. No other competitor controlled more than 9 percent of the market, nor could any other competitor service large national retailers such as Walmart, Inc. (“Walmart”), Lowe’s HIW, Inc. (“Lowe’s”), and The Home Depot, Inc., except on a very limited basis.

5. Until early 2008, all propane tank exchange suppliers filled tanks with 17 pounds of propane.

6. However, beginning in early Spring 2008, Defendants began to conspire to reduce the propane exchange tank fill weight to 15 pounds, while maintaining prices at the 17 pound

level in order to increase their profits. This would have the effect of substantially raising the per pound price of propane to purchasers.

7. Both Defendants knew that the proposed fill reduction and effective price increase would not be successful absent the agreement of the other.

8. As a result of the need for both Defendants to agree in order to successfully implement this scheme, during the Spring and Summer of 2008, Defendants engaged in dozens of communications regarding the proposed fill reduction to coordinate and conspire to implement the fill reduction and price increase.

9. In the Summer of 2008, Defendants began to implement their fill reductions and by October 2008, their conspiratorial scheme was successful and their propane exchange tank fill level was decreased to 15 pounds throughout the United States without a corresponding decrease in price.

10. This concerted action had the purpose and effect of artificially raising the wholesale price of propane exchange tanks in the United States and led to higher prices paid for propane exchange tanks. As a result of Defendants' unlawful conduct, Plaintiff and Class members have paid artificially inflated prices for at least millions of pounds of propane gas.

11. On March 27, 2014, the Federal Trade Commission (the "FTC") filed an administrative complaint against Defendants for violations of the Federal Trade Commission Act, 15 U.S.C. § 45, for actions identical to those alleged in this Complaint. The FTC charges that the Defendants' unlawful actions had the purpose, capacity, tendency, and effect of restricting or eliminating competition in the wholesale sale of propane exchange tanks and had the effect of raising the price per pound of propane to Defendants' customers.

THE PARTIES

12. Plaintiff Arrow Hardware, LLC, a New Jersey limited liability corporation, is a hardware store located in Ventnor, New Jersey (“Plaintiff”). Plaintiff directly purchased propane exchange tanks from Defendants AmeriGas and Blue Rhino throughout the relevant time period and has therefore paid inflated per-pound prices for their propane exchange tanks due to Defendants’ unlawful scheme.

13. AmeriGas Partners, L.P. is a Delaware limited partnership with its principal place of business located at 460 North Gulph Road, King of Prussia, Pennsylvania. It operates a nationwide propane business through its subsidiary AmeriGas Propane, L.P. AmeriGas Partners, L.P., through AmeriGas Propane, L.P., is engaged in the marketing and distribution of propane and propane supply related services, including the preparing, filling, distributing, marketing, and sale of propane exchange tanks. AmeriGas Propane, L.P. often does business through its AmeriGas Cylinder Exchange program when preparing, filling, distributing or selling propane exchange tanks.

14. AmeriGas Propane, L.P., a Delaware limited partnership, is the general partner of AmeriGas Partners, L.P. Its principal place of business is located at 460 North Gulph Road, King of Prussia, Pennsylvania. AmeriGas Propane, L.P. markets and sells propane and propane-related services, including distributing and supplying bulk propane to residential, commercial, and agricultural customers, as well as filling, distributing, marketing, and selling propane exchange tanks.

15. AmeriGas Propane, Inc., a Pennsylvania corporation, is the general partner of both AmeriGas Partners, L.P. and AmeriGas Propane, L.P. and manages their operations. Its principal place of business is located at 460 North Gulph Road, King of Prussia, Pennsylvania.

16. UGI Corporation, a Pennsylvania corporation with its principal place of business at 460 North Gulph Road, King of Prussia, Pennsylvania, is the parent and sole owner of AmeriGas Propane, Inc.

17. Ferrellgas Partners, L.P. is a Delaware limited partnership with its principal place of business located at 7500 College Boulevard, Overland Park, Kansas. Ferrellgas Partners, L.P. conducts its business activities mostly through Ferrellgas, L.P.

18. Ferrellgas, L.P. is a Delaware limited partnership, with its principal place of business located at 7500 College Boulevard, Overland Park, Kansas. Ferrellgas, L.P. operates a national propane distribution business, and owns or has access to distribution locations across the United States. Its businesses include filling, refilling, refurbishing, selling, and distributing propane exchange tanks and services to customers in all 50 states.

AGENTS AND CO-CONSPIRATORS

19. The acts of Defendants alleged in this Complaint were authorized, ordered, or done by their officers, agents, employees, or representatives, while actively engaged in the management and operation of Defendants' businesses or affairs.

20. Various persons or firms not named as Defendants have participated as coconspirators in the violations alleged herein and have performed acts and made statements in furtherance thereof.

21. Each Defendant acted as the principal or agent for other participants in the conspiracies in which they participated as alleged herein.

CLASS ALLEGATIONS

22. Plaintiff brings this action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of a class (the "Class") consisting of:

All persons or entities that purchased or exchanged propane exchange tanks in the United States directly from or with any of the Defendants or their co-conspirators, their subsidiaries, affiliates or joint-ventures from July 21, 2008 through the present (the "Class Period"). Excluded from the Class are Defendants, their parent companies, subsidiaries and affiliates, any co-conspirators, federal governmental entities and instrumentalities of the federal government.

23. The Class is so numerous that joinder of all members is impracticable. Many thousands of individuals and entities purchased propane exchange tanks directly from Defendants during the Class Period.

24. The Class is easily ascertainable through Defendants' records.

25. Plaintiff's claims are typical of the claims of the members of the Class because it was damaged by the actions of Defendants, which caused it to pay artificially inflated prices for propane exchange tanks.

26. Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff's interests coincide with, and are not antagonistic to, those of the other Class members.

27. Plaintiff is represented by counsel who are experienced and respected in the prosecution of class action and antitrust litigation.

28. This case presents many common questions of law and fact that will predominate over any questions that may affect individual members of the Class, such as:

- a. Whether Defendants engaged in a conspiracy to raise, fix, and maintain prices of propane exchange tanks sold in the United States by lowering the fill level from 17 pounds to 15 pounds;
- b. Whether Defendants engaged in a conspiracy to raise, fix, and maintain prices of propane exchange tanks sold in the United States by forcing the fill reduction on its customers;

- c. The duration and extent of Defendants' conspiracy;
- d. Whether Defendants' actions violated Section 1 of the Sherman Act;
- e. Whether the Defendants' conspiracy had the effect of artificially inflating the price of propane exchange tanks sold in the United States during the Class Period;
- f. The definition of the relevant market;
- g. Whether Defendants' conduct caused injury to Class members; and
- h. The measure and amount of damages suffered by the Class.

JURISDICTION AND VENUE

29. Plaintiff brings this action under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, to recover treble damages and costs of suit, including reasonable attorneys' fees, against Defendants for the injuries that Plaintiff and the other Class members have suffered from Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1.

30. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26.

31. Venue is proper in this District pursuant to 15 U.S.C. §§ 15(a) and 22, and 28 U.S.C. § 1391(b), (c) and (d) because, during the Class Period, Defendants had a principal place of business, resided, transacted business, were found, or had agents in this District, and a substantial portion of the affected interstate trade and commerce discussed below has been carried out in this District.

32. This Court has personal jurisdiction over each Defendant, because each Defendant—throughout the United States and including in the Eastern District of Pennsylvania—transacted business, sold propane exchange tanks, maintained substantial

contacts, and/or committed overt acts in furtherance of their illegal scheme and price-fixing conspiracy. The conspiracy was directed at, and had the intended effect of, causing injury to persons residing in, located in, or doing business throughout the United States, including in the Eastern District of Pennsylvania.

INTERSTATE TRADE AND COMMERCE

33. Throughout the relevant time period, Defendants produced, sold, distributed, and shipped substantial quantities of propane exchange tanks in a continuous and uninterrupted flow of transactions in interstate commerce throughout the United States, including into, through and within this District.

34. The conspiracies in which Defendants participated had a direct and substantial effect on interstate trade and commerce.

FACTUAL BACKGROUND

A. The Propane Exchange Tank Industry

35. Propane exchange tanks are portable steel tanks, prefilled with propane, and used for supplying fuel for barbeque grills and patio heaters, among other things. These tanks are commonly called “20-pound tanks” (regardless of the amount of fuel they contain).

36. Propane exchange tanks have a maximum capacity of 25 pounds, but safety regulations have limited the filling of such tanks to 80 percent of their capacity in other words, 20 pounds.

37. Beginning in 2002, the National Fire Protection Association standards required that propane exchange tanks be equipped with an overfilling protection device. After this change in standards was adopted, Defendants and their competitors adopted the custom of filling their propane exchange tanks with 17 to 17.5 pounds of propane.

38. Propane exchange tanks and propane are interchangeable, homogenous products. Propane exchange tanks sold in the United States are standardized products consisting of a standardized tank and valve system. Therefore, a propane exchange tank from one supplier is interchangeable with a propane exchange tank from any other supplier. Similarly, propane sold by one supplier is interchangeable with propane sold by any other supplier.

39. Propane exchange tanks are typically sold directly to home improvement stores, hardware stores, mass merchandisers, supermarkets, convenience stores and gas stations. Direct purchasers of propane exchange tanks usually sell a prefilled tank in exchange for an empty tank, or, for a higher price, a prefilled tank without the return of an empty tank.

40. To serve direct purchasers of propane exchange tanks, Defendants need access to refurbishing and refilling facilities, where empty tanks can be cleaned, refurbished, repainted and refilled.

41. Propane exchange tanks sold in the United States are functionally interchangeable, and the Defendants treat them as such. Beginning in or about 2006, Defendants entered into a series of “co-packing agreements.” Pursuant to these agreements, each company agreed to refurbish and refill propane exchange tanks at certain locations, regardless of the supplier of the propane exchange tank, at its own refilling and refurbishing facilities.

42. Pursuant to these co-packing agreements, Blue Rhino processes, refills, and refurbishes approximately 10 percent of AmeriGas’s volume of propane exchange tanks at its facilities in Florida, Colorado, Washington, and Missouri.

43. Pursuant to these co-packing agreements, AmeriGas processes, refills, and refurbishes approximately 10 percent of Blue Rhino’s volume of propane exchange tanks at its facilities in California and New Hampshire.

B. Relevant Market Characteristics

44. The relevant market for purposes of this complaint is the wholesale marketing and sale of propane exchange tanks in the United States.

45. Defendants collectively account for approximately 80 percent of the relevant market. No other competitor controls more than 9 percent of the market.

46. There are no widely-used substitutes for propane exchange tanks that provide similar ease of use, and no other product significantly constrains the prices of propane exchange tanks.

47. The relevant geographic market is the United States. To compete effectively for sales to national retailers, such as Walmart, The Home Depot, and Lowe's, propane exchange tank manufacturers need access to refilling and refurbishing facilities located throughout the country. Propane exchange tank suppliers that lack nationwide access to such assets are unable to constrain the prices of propane exchange tanks.

48. The high level of market concentration and Defendants' exclusive nationwide distribution of propane exchange tanks facilitated the conspiracy. Furthermore, because Defendants own and control approximately 80 percent of the propane exchange tank market, they collectively have the market power to impose and sustain the fill reduction and effective price increase described herein.

ANTICOMPETITIVE CONDUCT

A. Defendants Increase Prices by Reducing the Tank Fill Level

49. In early 2008, Defendants both evaluated and considered a plan to lower propane exchange tank fill levels from 17 pounds to 15 pounds in order to increase profitability. Prior to early 2008, most, if not all, suppliers filled their tanks at a standard 17 to 17.5 pounds.

50. AmeriGas initially decided not to pursue that plan, because it knew it would be competitively disadvantaged if its competitors, specifically, Blue Rhino, did not follow AmeriGas's lead by also reducing the fill level in its propane exchange tanks without a corresponding decrease in price.

51. In April 2008, Blue Rhino management approved a plan to lower propane exchange tank fill levels from 17 pounds to 15 pounds, without a corresponding price reduction, in order to increase profitability. The Blue Rhino plan included communicating with AmeriGas regarding the proposed fill reduction before it was adopted.

52. Like AmeriGas, Blue Rhino knew it would be competitively disadvantaged if it unilaterally reduced the fill level in its propane exchange tanks without a corresponding reduction in price.

53. Blue Rhino was particularly concerned that acting unilaterally would damage its competitive standing with its second-largest customer, Walmart. During this time period, Walmart purchased tanks from both Blue Rhino and AmeriGas.

54. Blue Rhino supplied approximately 60 percent of Walmart locations nationwide with propane exchange tanks, while AmeriGas supplied approximately 35 percent. The remaining 5 percent of Walmart locations are supplied by Ozark Mountain Propane Company ("Ozark"), a small, regional supplier.

55. Confirming these concerns, Blue Rhino Director of Strategic Accounts responsible for Walmart reported to his manager that the proposed fill reduction could put Blue Rhino at a competitive disadvantage with regard to AmeriGas. He stated: "[I]n my mind the 'watch out' is the competitive difference between [Blue Rhino, AmeriGas] and Ozark. We are offering less product vs. [Walmart's] other 2 suppliers. . . . Once we explain this is a done deal

(and that we are not asking for [Walmart's] input or letting him decide), he may become resentful and threaten to take states. . . . Then, we need to pray that [AmeriGas] takes a similar move as soon as possible. If [AmeriGas] doesn't move, we will have a BIG issue." He elaborated: "The only thing that can make this go away is if AmeriGas goes to 15 as well, but it has to happen very soon after us to legitimize our move."

56. These fears proved to be founded as on or about April 28, 2008, Blue Rhino's Director of Strategic Accounts met with the Walmart buyer and announced Blue Rhino's intended fill level reduction for its propane exchange tanks. Walmart's buyer refused to agree to the proposed fill reduction and told the Blue Rhino Director of Strategic Accounts that the fill reduction was a price increase. The Walmart buyer also communicated that Walmart would not carry propane exchange tanks with different fill levels—that is, some tanks at 15 pounds and some tanks at 17 pounds.

57. After this communication with Walmart, Blue Rhino began its communication and coordination with AmeriGas to implement the fill reduction and force it on Walmart and other customers.

58. Blue Rhino implemented its plan to let AmeriGas know "well in advance" of and about the fill reduction. In a series of continuing communications spanning a period of three months, Blue Rhino advised AmeriGas of its plan to raise prices by reducing the fill level in their exchange tanks from 17 to 15 pounds without a corresponding price decrease.

59. On or about May 29, 2008, Blue Rhino proposed the fill reduction to Lowe's, Blue Rhino's largest retail customer. Lowe's agreed to accept the fill reduction on the condition that all Blue Rhino customers were converted to 15 pound propane exchange tanks within 30 days.

60. Beginning on June 18, 2008, over the course of seven calls and 30 hours, Blue Rhino's President communicated with AmeriGas's Director of National Accounts. The next day, Blue Rhino account executives again discussed the fill reduction with Walmart.

61. Following these calls, Blue Rhino's President reported, "I've continued to have a lot of inquiries from [AmeriGas] regarding the lower fuel fill due to their need to adjust production. I've been told that it would be very challenging to produce two different size products long-term . . . once again, messaging that they'll follow closely behind us in the market."

62. On June 20, 2008, the day after these calls between AmeriGas and Blue Rhino executives concluded, AmeriGas management created a draft budget that included a plan for reducing the fill level of AmeriGas's exchange tanks from 17 to 15 pounds.

63. On June 25, 2008, Blue Rhino began to notify its customers of its plans to reduce the fill level in its propane exchange tanks effective July 21, 2008.

64. Despite AmeriGas's previous rejection of a plan to reduce fill levels, due to its belief that it would be competitively disadvantaged, after learning that Blue Rhino planned to reduce the fill level of its exchange tanks, AmeriGas reconsidered its earlier decision and decided to implement the fill reduction.

B. Defendants Collude to Secure Walmart's Agreement to the Fill Reduction

65. Because Lowe's would not accept the price increase and fill reduction unless all customers converted to 15-pound tanks, Blue Rhino and AmeriGas knew that they could not successfully implement the fill reduction absent Walmart's agreement. Therefore, the Defendants agreed that they would not deviate from the planned fill reduction in their proposals to Walmart

and worked together to force Walmart's agreement so the fill reduction and price increase would be successful.

66. AmeriGas framed the fill reduction as an "industry standard." On July 10, 2008, AmeriGas's Director of National Accounts e-mailed Walmart's buyer and informed him that "the cylinder exchange industry is planning a move to a standard weight of propane in a tank from 17 lbs. net to 15 lbs. net."

67. Subsequently, Walmart rejected this proposal, as it had previously rejected the identical Blue Rhino proposal.

68. Over the course of several phone calls and other communications, AmeriGas and Blue Rhino discussed their plans to address Walmart's rejection of the fill reduction and price increase.

69. On or about July 11, 2008, Blue Rhino's Vice President of Sales telephoned AmeriGas's Director of National Accounts. The two sales executives spoke at length. This discussion included Walmart's rejection of AmeriGas's proposal to begin shipping 15-pound exchange tanks.

70. On or about July 21, Blue Rhino's Vice President of Sales and AmeriGas's Director of National Accounts spoke at length by telephone. This discussion included AmeriGas's strategy and plans to respond to Walmart's rejection of the fill reduction.

71. On or about August 11, 2008, the AmeriGas Director of National Accounts with responsibility for dealing with Walmart, called Blue Rhino's Vice President of Sales and informed him that he was having trouble getting in touch with Walmart to discuss the fill reduction.

72. On or about August 13, 2008, the Blue Rhino sales executives with responsibility for dealing with Walmart discussed plans for advising AmeriGas of the need to ensure that The Home Depot, AmeriGas's largest retail customer, was supplied with 15-pound, not 17-pound, tanks, because Walmart would be more likely to accept the fill reduction if it knew that The Home Depot had already accepted it.

73. On August 21, 2008, the Blue Rhino and AmeriGas sales executives spoke several times by telephone. Shortly after these communications, the AmeriGas sales executive and AmeriGas's operations manager instructed their colleagues to only supply The Home Depot store in Rogers, Arkansas (near Walmart's Bentonville headquarters) with 15-pound propane exchange tanks.

74. On September 2, 2008, Blue Rhino's Vice President of Sales and AmeriGas Director of National Accounts spoke by telephone again. They discussed the status of their efforts to implement the fill level reduction, as well as the current retail pricing of tanks at Lowe's.

75. On September 12, 2008, Blue Rhino's Vice President of Sales and AmeriGas's Director of National Accounts spoke by telephone again. They discussed the status of their negotiations with Walmart. Expressing frustration at Walmart's refusal to accept the fill reduction, AmeriGas's Director of National Accounts suggested that Defendants issue an ultimatum to Walmart. Blue Rhino's Vice President of Sales responded by telling him that Blue Rhino was continuing its discussions with Walmart and that AmeriGas should "hang in there."

76. On September 15 and 22, 2008, Blue Rhino's Vice President of Sales and AmeriGas' Director of National Accounts spoke again by telephone.

77. On September 30, 2008, the AmeriGas Director of National Accounts emailed Blue Rhino's Vice President of Sales and informed him that Walmart management was meeting the following day to discuss the proposed fill reduction.

78. On October 6, 2008, the Lowe's buyer emailed his Blue Rhino sales executive reminding him of Lowe's agreement to accept 15-pound tanks on the condition that all other Blue Rhino customers would be converted to 15-pound tanks within 30 days. Lowe's noted that Walmart had not converted to the 15-pound tanks, thus putting Lowe's at a competitive disadvantage. The Lowe's buyer demanded that either all of Blue Rhino's customers, including Walmart, be converted to 15-pound tanks or Blue Rhino must convert Lowe's back to 17-pound tanks at the same price it was paying for the 15-pound tanks.

79. The Lowe's demand highlighted the need for Blue Rhino and AmeriGas to continue to push Walmart to accept the fill reduction or risk the reduction and price increase unravelling.

80. That same day, on October 6, 2008, Blue Rhino's President forwarded the Lowe's e-mail to his Vice President of Sales and directed him to finalize Walmart's acceptance of the fill reduction that day. Within a half hour of that e-mail, the Blue Rhino Vice President of Sales called his counterpart at AmeriGas. These executives talked for 16 minutes.

81. Following that conversation with the AmeriGas Director of National Accounts, the Blue Rhino Vice President of Sales e-mailed Walmart to demand that Walmart accept the fill reduction.

82. Early the next morning, the AmeriGas Director of National Accounts e-mailed Walmart and urged it to implement the fill reduction, using language similar to Blue Rhino's communication.

83. On October 10, 2008, believing it had no alternative other than to accept the fill reduction from the suppliers of 95 percent of its volume of its propane exchange tank business, Walmart agreed to accept propane exchange tanks filled to 15 pounds instead of 17 pounds from both Blue Rhino and AmeriGas.

84. The secret agreement between Blue Rhino and AmeriGas that neither would deviate from their proposal to Walmart to reduce fill levels and their combined efforts to push Walmart to promptly accept the fill reduction had the effect of raising the price per pound of propane to Walmart and other purchasers.

85. If both Defendants, which supplied 95 percent of Walmart's propane exchange tank business, had not mutually agreed to present a united front to Walmart, they likely would not have been able to convince Walmart to accept their proposal. If Walmart had not agreed to the reduction in fill levels, Lowe's would not have agreed to the fill reduction, which would have likely caused the scheme to unravel.

86. The concerted acts and practices of Defendants, as alleged herein, have the purpose, capacity, tendency, and effect of restricting or eliminating competition in the wholesale sale of propane exchange tanks and increasing prices per pound for filled propane exchange tanks.

87. There are no legitimate, procompetitive efficiencies that justify the conduct of Respondents, as alleged herein, or that outweigh its anticompetitive effects.

VIOLATIONS OF THE ANTITRUST LAWS

88. Beginning by at least July 2008 and continuing through the present, Defendants engaged in a continuing agreement, understanding, and conspiracy in restraint of trade to artificially raise, fix, maintain, or stabilize propane exchange tank prices in the United States.

89. Defendants and their co-conspirators engaged in anticompetitive activities, the purpose and effect of which were to artificially raise, fix, maintain, or stabilize propane exchange tank prices in the United States. These activities included:

- a. participation in meetings, conversations, and communications to discuss, and fix, raise, maintain, or stabilize the price and fill levels for the sale of propane exchange tanks in the United States;
- b. agreement during those meetings, conversations, and communications to charge prices and fill propane exchange tanks at specified levels and otherwise to fix, raise, maintain, or stabilize prices of propane exchange tanks sold in the United States;
- c. agreement during those meetings, conversations, and communications to force customers to accept the fill reduction, in furtherance of their conspiracy to fix, raise, maintain, or stabilize the prices of propane exchange tanks sold in the United States; and
- d. taking numerous steps, as set forth above, to implement and maintain the conspiracy.

90. Defendants and their co-conspirators engaged in the activities described above for the purpose of effectuating the unlawful agreement described in this Complaint.

91. Throughout the Class Period, Plaintiff and the other Class members purchased propane exchange tanks directly from Defendants at prices that were artificially inflated due to the conspiracy.

92. Defendants' contract, combination, or conspiracy constitutes an unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

ANTI-COMPETITIVE EFFECTS

93. As a result of Defendants' unlawful conduct, Plaintiff and the other Class members have been injured in their business and property because they have paid more for propane exchange tanks than they would have paid absent collusion.

94. Defendants' unlawful contract, combination or conspiracy has had at least the following effects:

- a. price competition in the market for propane exchange tanks has been artificially restrained;
- b. prices for propane exchange tanks sold by Defendants have been raised, fixed, maintained and/or stabilized at supra-competitive levels; and
- c. purchasers of propane exchange tanks from Defendants have been deprived of the benefit of free and open competition in the market for propane exchange tanks.

STATUTE OF LIMITATIONS

95. Defendants continue to fill propane exchange tanks with the reduced 15 pounds of propane, thereby causing Plaintiff and the Class to continue to suffer by paying an artificially inflated price and from the suppression of competition as a result of Defendants' unlawful conspiracy.

96. Because Defendants illegal, anticompetitive conduct continues, Plaintiff and the Class can recover for damages suffered throughout the entire period of the conspiracy.

97. Furthermore, any applicable statute of limitations was partially tolled by prior actions filed against Defendants related to their same conduct as alleged herein.

98. On August 6, 2009, an antitrust class action, *Downs v. Ferrellgas Partners, L.P.*, No. 09-cv-2412 (D. Kan.), was filed against Defendants on behalf of a class of “[a]ll persons who purchased one or more of Defendants’ pre-filled 20-pound capacity Propane Gas Tanks, during the applicable limitations that contained under 17 pounds of propane gas.” This proposed class included direct purchasers such as Arrow Hardware as absent class members.

99. That and other related actions were transferred by the Judicial Panel for Multidistrict Litigation to the District Court for the Western District of Missouri for coordinated pretrial proceedings. *In re Pre-Filled Propane Tank Marketing and Sales Practices Litigation*, No. 4:09-md-02086 (W.D. Mo.).

100. On December 9, 2009, plaintiffs in the consolidated action filed a motion for preliminary approval of a proposed settlement and certification of a class of “[a]ll people in the United States who purchased or exchanged an AmeriGas 20-pound propane gas cylinder, not for resale, between August 1, 2008 and November 30, 2009.” *Id.* at Dkt. No. 37. Plaintiff and direct purchaser class members purchase propane exchange tanks for resale and thus were not part of the proposed settlement class. On October 6, 2010, that settlement was finally approved.

101. On October 6, 2011, plaintiffs in the consolidated action filed a motion for preliminary approval of a proposed settlement and certification of a class of “[a]ll people in the United States who purchased or exchanged one or more of Ferrellgas’s 20-pound propane gas cylinders, not for resale, between June 15, 2005, and the date of Preliminary Approval.” *Id.* At Dkt. No. 249. Plaintiff and direct purchaser class members purchase propane exchange tanks for resale and thus were not part of the proposed settlement class. On May 31, 2012, that settlement was finally approved.

102. On March 27, 2014, the FTC filed an administrative complaint against Ferrellgas Partners, L.P., Ferrellgas, L.P., AmeriGas Partners, L.P., and UGI Corp., alleging substantially the same conspiracy as alleged herein.

103. Prior to August 6, 2009, when the first antitrust claim was filed, Plaintiff did not know and through the exercise of diligence could not have known of the anticompetitive conduct alleged herein because Defendants conducted their conspiracy in non-public and confidential e-mail exchanges and telephone calls. Defendants actively misled Plaintiff and the Class into believing that the propane exchange tank market was highly competitive through statements in their Securities and Exchange Commission filings. Defendants concealed from Plaintiff and the Class their secret phone and email conversations in which they jointly agreed to a fill reduction and to not deviate from their plan regarding the same, despite any customer resistance. Defendants also concealed that they secretly and repeatedly verified with each other that each co-conspirator was adhering to their agreement to stand firm against any customer resistance to their fill reduction.

104. From August 6, 2009 through and until at least October 6, 2010, when the settlement between plaintiffs in *In re Pre-Filled Propane Tank Marketing and Sales Practices Litigation*, No. 4:09-md-02086 (W.D. Mo.) and AmeriGas excluding direct purchasers was finally approved, the statute of limitations was tolled.

105. On February 22, 2010, plaintiffs in that litigation filed a consolidated amended complaint against Blue Rhino that continued to seek to represent a nationwide class of all purchasers of propane exchange tanks, including direct purchasers such as Plaintiff and Class members.

106. From August 6, 2009 through and until at least May 31, 2012, when the settlement between plaintiffs in *In re Pre-Filled Propane Tank Marketing and Sales Practices Litigation*, No. 4:09-md-02086 (W.D. Mo.) and Blue Rhino excluding direct purchasers was finally approved, the statute of limitations was tolled.

107. Therefore, the statute of limitations was tolled as to claims by Arrow Hardware and direct purchaser Class Members as to AmeriGas for the period from at least August 6, 2009 through October 6, 2010 and as to Blue Rhino for the period from at least August 6, 2009 through May 31, 2012.

108. The statute of limitations was further tolled as of March 27, 2014 when the FTC filed its still-pending administrative complaint alleging substantially identical anticompetitive conduct pursuant to 15 U.S.C. § 16(i).

CAUSE OF ACTION—VIOLATIONS OF SHERMAN ACT § 1

109. Plaintiff incorporates and re-allege each allegation set forth in the preceding paragraphs of this Complaint.

110. Beginning in at least early 2008, and continuing thereafter to the present, Defendants and their co-conspirators, by and through their officers, directors, employees, agents, or other representatives, engaged in anticompetitive activities, the purpose and effect of which were to artificially raise, fix, maintain, or stabilize the price of propane exchange tanks sold in the United States, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

111. Defendants entered into a continuing agreement, understanding and conspiracy in restraint of trade to artificially raise, fix, maintain, or stabilize prices for propane exchange tanks in the United States.

112. Plaintiff and other Class members have been injured in their business and property by reason of Defendants' unlawful combination, contract, conspiracy and agreement.

113. Plaintiff and Class members paid more for propane exchange tanks than they otherwise would have paid in the absence of Defendants' anticompetitive conduct. This injury is of the type the federal antitrust laws were designed to prevent and flows from that which makes Defendants' conduct unlawful.

114. Accordingly, Plaintiffs and Class members seek damages, to be trebled pursuant to federal antitrust law, costs of suit, including reasonable attorneys' fees, and all other appropriate relief.

DEMAND FOR JURY TRIAL

115. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial as to all issues triable by a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Arrow Hardware, LLC, on behalf of itself and a Class of all others similarly situated, hereby demands judgment against Defendants as follows:

- a. Declaring this action to be a proper class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the Class as defined herein;
- b. Ordering that the contract, combination, or conspiracy, and the acts done in furtherance thereof by Defendants be adjudged to have violated Section 1 of the Sherman Act, 15 U.S.C. § 1;
- c. Entering judgment for Plaintiff and Class members against Defendants for three times the amount of damages sustained by Plaintiff and the Class as allowed by law;
- d. Awarding Plaintiff and the Class recover pre-judgment and post-judgment interest as permitted by law;
- e. Awarding Plaintiff and the Class their costs of the suit, including attorneys' fees, as provided by law; and
- f. Awarding Plaintiff and the Class such other and further relief as is just and proper under the circumstances.

Dated: July 7, 2014

Respectfully submitted,



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