

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

ROUTE 49 GAS & GO, INC. and SURINDER KAUR, INC., individually and on behalf of all those similarly situated,

Plaintiffs,

vs.

AMERIGAS PROPANE, L.P. a/k/a
AMERIGAS CYLINDER EXCHANGE;
AMERIGAS PARTNERS, L.P.; AMERIGAS
PROPANE, INC.; FERELLGAS, L.P. a/k/a
BLUE RHINO; FERELLGAS PARTNERS,
L.P.; and UGI CORPORATION,

Defendants.

Case No. 2:14-cv-04265

CLASS ACTION COMPLAINT

JURY TRIAL DEMAND

CLASS ACTION COMPLAINT

Route 49 Gas & Go, Inc. and Surinder Kaur, Inc., (collectively “Plaintiffs”) on behalf of themselves and all others similarly situated, allege as follows:

I. NATURE OF THE ACTION

1. This action alleges a conspiracy in restraint of trade in exchangeable portable steel tanks containing propane gas, commonly referred to as propane exchange tanks, by Defendants AmeriGas and Blue Rhino, the two largest suppliers of propane in propane exchange tanks in the United States.

2. Blue Rhino and AmeriGas sell propane, stored in propane exchange tanks, directly to retailers across the United States, including grocery stores, convenience stores, and gas stations. Defendants’ propane exchange tanks are available at tens of thousands of retail locations nationwide. At all relevant times, Defendants collectively controlled about 80 percent

of United States wholesale propane exchange tank sales, with Blue Rhino controlling approximately 50 percent and AmeriGas approximately 30 percent.

3. The United States Federal Trade Commission (“FTC”) has initiated an administrative action to enjoin Defendants from engaging in their continuing illegal conspiracy, which is set for a hearing in Washington, D.C. commencing December 2, 2014. *See In the Matter of AmeriGas & Blue Rhino*, FTC File No. 111-01950 (Part III Administrative Compl. filed March 27, 2014), *case file available at* <http://www.ftc.gov/enforcement/cases-proceedings/111-0195/amerigas-blue-rhino-matter>

4. Plaintiffs and members of the Class paid higher prices for propane in propane exchange tanks in the United States during the Class Period than they would have paid in the absence of defendants’ conspiracy. Plaintiffs seek redress in the form of overcharge damages, to be mandatorily trebled under law, and to enjoin Defendants from their continuing conspiracy in restraint of trade.

II. PARTIES

A. Plaintiffs

5. Plaintiff, Route 49 Gas & Go, Inc. is a New Jersey corporation located at 8 North Burlington Road, Bridgeton, New Jersey. During the Class Period, Plaintiff directly purchased propane in propane exchange tanks directly from one or more Defendants.

6. Plaintiff, Surinder Kaur, Inc. is a New Jersey corporation located at 135 Nathan Hale Drive, Woodbury, New Jersey. During the Class Period, Plaintiff purchased propane in propane exchange tanks directly from one or more Defendants.

B. Defendants

1. AmeriGas

7. Defendant AmeriGas Propane, L.P. a/k/a AmeriGas Cylinder Exchange is a Delaware limited partnership with its office and principal place of business located at 460 North Gulph Road, King of Prussia, Pennsylvania. It is engaged in the marketing and sale of propane and propane supply related services, including the distribution and supply of bulk propane to residential, commercial, and agricultural customers, and the preparing, filling, distributing, marketing, and sale of propane in propane exchange tanks. AmeriGas Propane, L.P. often does business as AmeriGas Cylinder Exchange when preparing, filling, distributing, marketing, or selling propane in propane exchange tanks.

8. Defendant AmeriGas Partners, L.P. is a publicly traded master limited partnership, organized under the laws of the State of Delaware, with its office and principal place of business located at 460 North Gulph Road, King of Prussia, Pennsylvania. AmeriGas Partners, L.P. wholly owns, and operates its national propane in propane exchange tanks business through, Defendant AmeriGas Propane, L.P. AmeriGas resides in, and does business in and around Jefferson City, with a location at 2727 W Main Street, Jefferson City, MO.

9. Defendant AmeriGas Propane, Inc. is the general partner of Defendant AmeriGas Partners, L.P., and is a Pennsylvania corporation with its office and principal place of business located at 460 North Gulph Road, King of Prussia, Pennsylvania.

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

11. For the purposes of this complaint, “AmeriGas” shall refer to AmeriGas Propane, L.P., AmeriGas Partners, L.P., AmeriGas Propane, Inc., and UGI Corporation, collectively.

2. Blue Rhino

12. Defendant Ferrellgas, L.P. a/k/a Blue Rhino is a Delaware limited partnership with its principal place of business located at 7500 College Boulevard, Overland Park, Kansas. Ferrellgas, L.P., doing business as Blue Rhino, operates a national propane distribution business, and owns or has access to distribution locations nationwide. Its business includes the filling, refilling, refurbishing, sale, and distribution of propane in propane exchange tanks under the Blue Rhino name.

13. Defendant Ferrellgas Partners, L.P., is a Delaware limited partnership organized with its principal place of business located at 7500 College Boulevard, Overland Park, Kansas. It has an office location at 12415 Renz Farm Road, Jefferson City, MO. Ferrellgas, L.P., doing business as Blue Rhino, operates a national propane distribution business, and owns or has access to distribution locations nationwide. It maintains a nearly complete interest in and conducts its business activities primarily through Defendant Ferrellgas, L.P., by which it operates its national propane in propane exchange tanks business.

14. For the purposes of this complaint, “Blue Rhino” shall refer to Ferrellgas, L.P. and Ferrellgas Partners, L.P., collectively.

C. Agents and Co-conspirators

15. Other entities and individuals unknown to Plaintiffs at this time participated as co-conspirators and performed overt acts in furtherance of the conspiracy.

16. Whenever reference is made to any act, deed, or transaction of any corporation or partnership, the allegation means that the corporation or partnership engaged in the act, deed or transaction by or through its officers, directors, agents, employees, representatives, parent, predecessors or successors-in-interest while they were actually engaged in the management, direction, control or transaction of business or affairs of the corporation or partnership.

III. JURISDICTION, VENUE, AND COMMERCE

17. This Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337.

18. Venue is proper in this District pursuant to 15 U.S.C. §§ 15(a) & 22 and 28 U.S.C. § 1391(b), (c) and (d), because during the Class Period, Defendants resided, transacted business, were found, or had agents in this District, and a substantial portion of the alleged activity affected interstate trade and commerce in this District. Further, Defendant AmeriGas has its registered agent in Jefferson City, within the Central Division of the Western District of Missouri.

19. Defendants' conduct was within the flow of, was intended to, and did, in fact, have a substantial effect on the interstate commerce of the United States, including in this District.

20. During the Class Period, Defendants used the instrumentalities of interstate commerce, including interstate wires, to effectuate their illegal scheme.

21. This Court has personal jurisdiction over each Defendant, because each Defendant transacted business, maintained substantial contacts, is located and/or they or their co-conspirators committed overt acts in furtherance of their illegal conspiracy, in the United States, including in this District. The scheme was directed at, and had the intended effect of, causing injury to persons residing in, located in, or doing business in the United States, including in this District.

IV. CLASS ACTION ALLEGATIONS

22. Plaintiffs sue on their own behalf and, under Rules 23(b)(2) & (b)(3) of the Federal Rules of Civil Procedure, on behalf of the following nationwide class:

All persons or entities in the United States that directly purchased propane in propane exchange tanks for resale from one or more Defendants from July 21, 2008, through the present.

23. Excluded from the Class are Defendants, and their officers, directors, management, employees, subsidiaries, or affiliates and all federal governmental entities. Also excluded is the Judge presiding over this action, his or her law clerks, spouse, and any person within the third degree of relationship living in the Judge's household and the spouse of such a person.

24. Plaintiffs are members of the Class it seeks to represent. Class members can be notified of the class action through publication, direct mailings and posted notices. Plaintiffs reserve the right to modify the class definition based upon discovery.

25. Members of the Class are so numerous and geographically dispersed that joinder is impracticable. Further, the Class is readily identifiable from information and records in the possession of Defendants.

26. Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and members of the Class were damaged by the same wrongful conduct of Defendants.

27. Plaintiffs will fairly and adequately protect and represent the interests of the Class. The interests of the Plaintiffs are coincident with, and not antagonistic to, those of the Class.

28. Plaintiffs are represented by counsel with experience in the prosecution of class action antitrust litigation.

29. Questions of law and fact common to the members of the Class predominate over questions that may affect only individual Class members, thereby making damages with respect to the Class as a whole appropriate. Questions of law and fact common to the Class include, but are not limited to the:

- a. Existence of the conspiracy;
- b. Scope of conspiracy;
- c. Length of the conspiracy; and
- d. Damages resulting from the conspiracy; and
- e. Whether Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

30. Class action treatment is a superior method for the fair and efficient adjudication of the controversy. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of evidence, effort or expense that numerous individual actions would require.

31. The benefits of proceeding through the class mechanism, including providing injured persons or entities a method for obtaining redress on claims that could not practicably be pursued individually, substantially outweighs potential difficulties in management of this class action.

32. Plaintiffs know of no special difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

V. INDUSTRY BACKGROUND

33. Propane in propane exchange tanks is commonly used to operate gas grills. It is also used for other applications, such as for patio heaters and outdoor fireplaces.

34. Home improvement stores, hardware stores, mass merchandisers, supermarkets, convenience stores and gas stations typically sell propane to consumers in propane exchange tanks. Purchasers are offered the option of: (a) purchasing propane in a prefilled tank of propane

while exchanging their empty tank; or (b) purchasing a prefilled tank for a higher price, without exchanging an empty tank.

35. Propane exchange tanks sold in the United States are highly standardized products consisting of a standardized tank and a standardized valve system. Propane and propane exchange tanks are commodity products.

36. Propane exchange tanks have a maximum capacity of 25 pounds, but pre-2002 safety regulations forbade filling such tanks beyond 80 percent of their capacity, *i.e.*, 20 pounds. Beginning in 2002, the National Fire Protection Association modified its standards to require that propane exchange tanks be equipped with an overfilling protection device (“OPD”). Following the implementation of the OPD standard, Defendants adopted the custom of filling their propane exchange tanks with 17 or 17.5 pounds of propane – a reduction from the previous 20 pound fill.

37. Propane exchange tanks in the United States are functionally interchangeable, and Defendants, their competitors, and the retailers who sell propane in propane exchange tanks treat them as such. Consumers can exchange any propane exchange tank at any store that carries propane exchange tanks without regard for which company supplied the tank to be exchanged.

38. To serve retail outlets that sell propane in propane exchange tanks, a competitor needs access to refurbishing and refilling facilities, where empty tanks can be cleaned, refurbished, repainted, and refilled. 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 for the other company at certain of each company’s facilities. Today, each Defendant processes slightly less than ten percent of the other company’s used empty tanks pursuant to co-packing agreements. Blue Rhino refurbishes and refills exchange tanks for AmeriGas at Blue Rhino facilities in Florida, Colorado, Washington and Missouri.

AmeriGas refurbishes and refills exchange tanks for Blue Rhino at AmeriGas facilities in California and New Hampshire.

39. Pursuant to the co-packing agreements, Defendants had the opportunity to, and did, exchange competitively sensitive information that had the purpose, tendency, and capacity to facilitate conspiracy.

VI. DEFENDANTS' CONTINUING CONSPIRACY

40. In early 2008, Defendants faced rapid increases in propane exchange tank input costs. These inputs included propane, steel for the tanks and diesel fuel for delivery trucks.

41. In or about January 2008, Defendant AmeriGas considered a plan to recoup its rising input costs by reducing the fill level in its propane exchange tanks. AmeriGas decided not to pursue the fill reduction plan because, among other reasons, AmeriGas believed it could be competitively disadvantaged if other companies in the industry did not follow AmeriGas's lead by also reducing the fill level in their propane exchange tanks.

42. In April 2008, Blue Rhino management approved a proposal to reduce the fill level in the company's propane exchange tanks from the then-standard 17 pounds to 15 pounds, without a corresponding price reduction, to offset the increased input costs. The Blue Rhino proposal included a plan to ask AmeriGas in advance whether their co-packing facilities could handle the proposed fill reduction.

43. This reduction in fill level was in effect a 13% increase in the price of the propane.

44. Blue Rhino understood that unilaterally reducing the fill level in its exchange tanks risked putting the company at a competitive disadvantage if its principal competitor, AmeriGas, did not also reduce fill levels. Blue Rhino was particularly concerned about its

competitive standing with its second-largest customer, Wal-Mart, because Wal-Mart purchased tanks from both Blue Rhino and AmeriGas.

45. Wal-Mart is the largest propane exchange tank retailer in the United States. Defendants supply 95% of its propane in propane exchange tanks for resale. Blue Rhino services approximately 60% of the Wal-Mart locations nationwide, while AmeriGas services approximately 35%. Ozark Mountain Propane Company (“Ozark”), a smaller regional propane supplier, services the remaining Wal-Mart locations.

46. The Blue Rhino Director of Strategic Accounts responsible for Wal-Mart reported to his manager that the fill reduction could put Blue Rhino at a competitive disadvantage 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. [Wal-Mart’s] other 2 suppliers. . . . Once we explain this is a done deal (and that we are not asking for [Wal-Mart’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. . . . 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.

47. On or about April 22, 2008, Blue Rhino decided to inform Wal-Mart of its fill reduction plan.

48. On or about April 28, 2008, Blue Rhino’s Director of Strategic Accounts met with the Wal-Mart buyer and announced Blue Rhino’s intention to reduce the fill in its propane exchange tanks. Wal-Mart rejected the proposed fill reduction. Wal-Mart’s buyer told the Blue Rhino Director of Strategic Accounts that the fill reduction was a price increase to which Wal-Mart would not agree. He also told Blue Rhino’s Director of Strategic Accounts that Wal-Mart did not want to carry propane exchange tanks with different fill levels—that is, tanks at 15

pounds in stores serviced by Blue Rhino and tanks at 17 pounds in stores serviced by AmeriGas and Ozark.

49. On or about April 29, 2008, a senior Blue Rhino manager ordered production managers to “stand down” on implementation of the fill reduction because “[t]he call with WalMart did not go according to plan.”

50. On May 29, 2008, Blue Rhino proposed the fill reduction to Lowe’s, Blue Rhino’s largest retail customer. Lowe’s recognized that selling propane exchange tanks with 15 pound fills would place it at a competitive disadvantage with retailers able to sell the tanks at 17 pound fills. Consumers naturally prefer to minimize the number of exchanges they must make as exchanges require time and travel expense, and propane exchange tanks are large, heavy, and cumbersome. Accordingly, Lowe’s accepted the fill reduction only on the condition that all of Blue Rhino’s other customers – including Wal-Mart – would also accept the higher priced, less convenient propane exchange tanks.

51. Blue Rhino was met with stiff resistance from Wal-Mart. Wal-Mart refused to accept the fill reduction, recognizing that it was a disguised price increase.

52. On June 18, 2008, Blue Rhino’s President telephoned AmeriGas’s Director of National Accounts. The two men called each other six more times over the next 30 hours.

53. Because of Wal-Mart’s ability to purchase from either Blue Rhino or AmeriGas, neither company could unilaterally implement the fill reduction without risking the loss of Wal-Mart’s business. Defendants could only implement their conspiracy after first colluding to force Wal-Mart to accept the change.

54. The following day, Blue Rhino account executives again discussed the fill reduction with Wal-Mart. Following the last of 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.

55. On June 20, 2008, AmeriGas management produced a draft budget with a plan for reducing the fill level of AmeriGas's exchange tanks from 17 to 15 pounds.

56. By the last week of June 2008, Blue Rhino and AmeriGas formed an agreement on the fill reduction implementation plan.

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

58. On or about July 11, 2008, Blue Rhino's Vice President of Sales called AmeriGas's Director of National Accounts. The two sales executives spoke at length by telephone.

59. On or about July 21 and 22, Blue Rhino's Vice President of Sales and AmeriGas's Director of National Accounts spoke at length by telephone. Blue Rhino internal documents confirm that the AmeriGas and Blue Rhino sales executives discussed AmeriGas's plans for responding to Wal-Mart's rejection of the fill reduction.

60. Blue Rhino would begin selling tanks with only 15 pounds of propane on July 21, 2008. AmeriGas would do the same on August 1, 2008. AmeriGas described the change in the propane tank exchange program to its employees by a memorandum dated July 15, 2008:

In an attempt to offset some of these expenses, achieve desired product margins, and maintain retail prices at an attractive level for consumers, AmeriGas Cylinder Exchange and other national providers are transitioning to a 15 pound cylinder. This slight decrease from current 17 pound levels will quickly become the industry standard

The "other national providers" and "major competitors" in the propane exchange industry referred to by AmeriGas include primarily, if not solely, Blue Rhino.

61. On or about August 11, 2008, the AmeriGas Director of National Accounts, who was responsible for dealing with Wal-Mart, called Blue Rhino's Vice President of Sales and told him that he was having trouble getting in touch with Wal-Mart to discuss the reduction in fill levels.

62. On or about August 13, 2008, the Blue Rhino sales executives responsible for dealing with Wal-Mart 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 Wal-Mart would be more likely to accept the fill reduction if it knew that The Home Depot had already accepted it.

63. On August 21, 2008, the Blue Rhino and AmeriGas sales executives spoke several times by telephone, and shortly after these communications, the AmeriGas sales executive and AmeriGas's operations manager directed their colleagues to ensure that The Home Depot store in Rogers, Arkansas (near Wal-Mart's Bentonville headquarters) carried only 15-pound tanks.

64. 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 respective efforts to convert their customers to 15-pound tanks, as well as the current retail pricing of tanks at Lowe's.

65. 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 Wal-Mart. AmeriGas's Director of National Accounts suggested that it was time to issue an ultimatum to Wal-Mart. Blue Rhino's Vice President of Sales responded by

telling him that Blue Rhino was continuing to work with Wal-Mart and that AmeriGas should “hang in there.”

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

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

68. On October 6, 2008, the Lowe’s buyer emailed his Blue Rhino sales executive with an ultimatum. Lowe’s had agreed to accept 15-pound tanks on the condition that all other Blue Rhino customers would be converted within 30 days. Lowe’s observed that Wal-Mart was still selling 17-pound tanks and that Lowe’s was therefore at a competitive disadvantage. The Lowe’s buyer demanded that either all of Blue Rhino’s customers must be at 15 pounds or Lowe’s be converted back to 17-pound tanks at the same price it was paying for the 15-pound tanks.

69. The Lowe’s demand confirmed to Blue Rhino that it needed Wal-Mart to accept the fill reduction or risk the fill reduction unraveling. It also highlighted the need for Blue Rhino and AmeriGas to continue to push Wal-Mart to accept the fill reduction.

70. On October 6, 2008, Blue Rhino’s President forwarded the Lowe’s email to his Vice President of Sales and directed him to finalize Wal-Mart’s acceptance of the fill reduction that day. Within a half hour, the Blue Rhino Vice President of Sales called his counterpart at AmeriGas. The two spoke for 16 minutes.

71. Following this call with his counterpart at AmeriGas, the Blue Rhino Vice President of Sales emailed Wal-Mart to demand that it accept the fill reduction.

72. Early the following morning, the AmeriGas Director of National Accounts, using language similar to Blue Rhino's communication, emailed Wal-Mart urging it to implement the fill reduction.

73. On October 10, 2008, believing it had no alternative to the fill reduction, Wal-Mart agreed to accept propane exchange tanks filled to 15 pounds from both Blue Rhino and AmeriGas.

74. The secret agreement between Blue Rhino and AmeriGas that neither would deviate from their proposal to Wal-Mart when faced with resistance from Wal-Mart, and their combined efforts to push Wal-Mart to promptly accept the fill reduction had the effect of raising the price per pound of propane to Wal-Mart and to Plaintiffs and members of the Class.

75. Absent their unlawful agreement, Defendants would not have been able to reduce the fill levels of their tanks to 15 pounds.

VII. ANTICOMPETITIVE EFFECTS

76. Defendants' conspiracy has continued until the present and remains ongoing. Defendants have continued to maintain the reduced fill levels of propane in propane exchange tanks despite the fact that propane prices have decreased substantially from their 2008 high.

77. Plaintiffs and members of the class purchased propane in propane exchange tanks directly from Defendants during the class period. In furtherance of their unlawful conspiracy in restraint of trade, Defendants overcharged Plaintiffs and members of the class in selling, and in continuing to sell, propane in propane exchange tanks at supra-competitive prices directly to Plaintiffs and members of the Class. Plaintiffs and the members of the Class paid, and continue to pay, supra-competitive prices for propane in propane exchange tanks directly to Defendants.

78. By reason of Defendants' conspiracy, Plaintiffs and members of the Class paid, and continue to pay, a higher price per pound for propane in propane exchange tanks than they

would in a but-for world free of Defendants' violations of law. Plaintiffs and members of the Class and were injured in, and face the imminent threat of future injuries to their business or property in the form of overcharge damages—injuries the antitrust trust laws were designed to prevent and flow from that which make Defendants' conspiracy, and acts in furtherance thereof, unlawful.

VIII. TOLLING OF STATUTE OF LIMITATIONS

79. Until the Federal Trade Commission filed its administrative complaint against Defendants in March 2014, Plaintiffs 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 email exchanges and telephone calls.

80. Defendants actively misled Plaintiffs and the Class into believing that they had unilaterally decided to decrease the fill level of their propane exchange tanks, and gave Wal-Mart pre-textual reasons for the reduction, citing technical complications with the fill level. Defendants concealed from Plaintiffs and the Class their secret phone and email conversations in which they (1) jointly agreed to decrease the fill level, and (2) jointly agreed not to deviate from their plan to decrease the fill level, 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.

81. On March 27, 2014, the FTC issued an administrative complaint against Defendants alleging that they colluded in 2008 to persuade their customers, including Plaintiffs and the Class, to accept the tank fill reduction from 17 pounds to 15 pounds. In the Matter of AmeriGas & Blue Rhino, FTC File No. 111-01950 (Part III Administrative Compl. filed March 27, 2014), case file available at <http://www.ftc.gov/enforcement/cases-proceedings/111-0195/amerigas-blue-rhino-matter>

82. The administrative complaint detailed phone calls and documents that Defendants had concealed from their customers, which evidence these unlawful acts, and, on which Plaintiffs base allegations made herein. Plaintiffs and the Class did not and could not have discovered Defendants' conspiracy in restraint of trade as alleged herein until after March 27, 2014, when excerpts from these documents and summaries of these phone calls became available to the public.

83. Accordingly, the statute of limitations presents no bar to Plaintiffs' claims against Defendants for their continuing conspiracy in restraint of trade.

IX. CLAIM FOR RELIEF

COUNT I: Section 1 of the Sherman Antitrust Act

84. Plaintiffs reassert each of the preceding allegations as if fully set forth herein.

85. The conspiracy alleged herein is a *per se* violation of Section 1 of the Sherman Antitrust Act.

86. Defendants intended to and actually did restrain trade. They shared a conscious commitment to a common scheme designed to achieve the unlawful objective of artificially fixing, raising, pegging, maintaining, stabilizing, and otherwise manipulating the price and output of propane in propane exchange tanks sold in the United States during the Class Period.

87. Alternatively, the conspiracy alleged herein is a rule of reason violation of Section 1 of the Sherman Antitrust Act.

88. The conspiracy unreasonably restrained trade. There is no legitimate business justification for, or procompetitive benefits caused by, Defendants' unreasonable restraint of trade. Any ostensible procompetitive benefit was pre-textual or could have been achieved by less restrictive means.

89. Plaintiffs and members of the Class have been injured in their business and property by reason of Defendants' violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, within the meaning of Section 4 of the Clayton Antitrust Act, 15 U.S.C. § 15.

90. Plaintiffs and members of the Class are threatened with impending future injury to their business and property by reason of Defendants' continuing violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, within the meaning of Section 16 of the Clayton Antitrust Act, 15 U.S.C. § 26.

X. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the members of the Class, respectfully pray that the Court:

A. Adjudge and decree that Defendants violated Section 1 of the Sherman Antitrust Act of 1890 (as amended), 15 U.S.C. § 1, and enter joint and several judgments against Defendants in favor of Plaintiffs and members of the Class;

B. Order that this action may be maintained as a class action, that it be named a Class Representative, and that reasonable notice of this action be given to the members of the Class, under Rule 23 of the Federal Rules of Civil Procedure;

C. Award under Section 16 of the Clayton Antitrust Act: three times the damages suffered by reason of Defendants' violations of law; reasonable costs of suit, including expert fees; reasonable attorneys' fees; and pre- and post-judgment interest;

D. Enjoin Defendants from further violations under Section 16 of the Clayton Antitrust Act; and

E. Grant such other, further and different relief as is just and proper.

XI. DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs, on behalf of themselves and members of the proposed Class, respectfully demand a trial by jury on all issues so triable.

Dated: September 26, 2014

Respectfully submitted.

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