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

IN RE: PRE-FILLED PROPANE TANK ANTITRUST LITIGATION	)	**MDL NO. 2567**
	)	
	)	**Master Case No. 14-02567-MD-W-GAF**
	)	
	)	**ORDER GRANTING DIRECT**
This Document Relates To:	)	**PURCHASER PLAINTIFFS' MOTION FOR**
Direct Purchaser Actions	)	**PRELIMINARY APPROVAL OF CLASS**
	)	**ACTION SETTLEMENTS WITH**
	)	**FERRELLGAS AND AMERIGAS**

WHEREAS direct purchaser plaintiffs Morgan Larson LLC, Johnson Auto Electric, Inc., Speed Stop 32, Inc., and Yocum Oil Company, Inc. ("Plaintiffs"), on behalf of themselves and of the proposed settlement class ("Settlement Class"), and each of (i) defendants Ferrellgas, L.P. and Ferrellgas Partners, L.P., also doing business as Blue Rhino (collectively, "Ferrellgas") and (ii) defendants AmeriGas Partners, L.P., AmeriGas Propane L.P., AmeriGas Propane, Inc., and UGI Corporation (collectively, "AmeriGas"), have separately agreed, subject to Court approval following notice to the Settlement Class and a hearing, to settle the above-captioned matter ("Lawsuit") upon the terms set forth in the Ferrellgas Settlement Agreement and AmeriGas Settlement Agreement (collectively, "Settlement Agreements");

WHEREAS, this Court has reviewed and considered the Settlement Agreements entered into among the parties, together with all exhibits and addenda thereto, the record in this case, and the briefs and arguments of counsel;

WHEREAS, Plaintiffs have applied for an order granting preliminary approval of the Settlement Agreements;

WHEREAS, this Court preliminarily finds, for purposes of settlement only, that the action meets all prerequisites of Rule 23 of the Federal Rules of Civil Procedures;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Unless otherwise defined herein, all terms that are capitalized herein shall have the same meaning ascribed to those terms in the Settlement Agreements.

2. The Court has jurisdiction over this Action (and all actions and proceedings consolidated in the Action), Plaintiffs, Settlement Class Members, Ferrellgas, AmeriGas, and any party to any agreement that is part of or related to the Settlement Agreements.

3. Federal Rule of Civil Procedure 23 was amended in 2018 to codify the "preliminary approval" process that is customary in class settlements. Fed. R. Civ. P. 23, advisory committee's note to 2018 amendment. "As amended, Rule 23(e)(1) provides that the court must direct notice to the class regarding a proposed class-action settlement only after determining that the prospect of class certification and approval of the proposed settlement justifies giving notice." *Id.*

4. In particular, "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties' showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment of the proposal." Fed. R. Civ. P. 23(e). Under Rule 23(e)(2), a court may finally approve a settlement binding class members "only after a hearing and only on a finding that it is fair, reasonable, and adequate after considering whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate . . . ; and (D) the proposal treats class members equitably relative to each other." *Id.*

5. The requirement that a class action settlement be "fair, reasonable, and adequate" is nothing new, as "each circuit has developed its own vocabulary for expressing these

concerns." Fed. R. Civ. P. 23, advisory committee's note to 2018 amendment. In the Eighth Circuit, courts have long described the inquiry as focusing on four factors, to be considered in the trial court's sound discretion: "the merits of the plaintiff's case, weighed against the terms of the settlement; the defendant's financial condition; the complexity and expense of further litigation; and the amount of opposition to the settlement." *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988).[1] "A strong public policy favors agreements, and courts should approach them with a presumption in their favor." *Little Rock Sch. Dist. v. Pulaski Cty. Special Sch. Dist. No. 1*, 921 F.2d 1371, 1388 (8th Cir. 1990).

6. While the Court is not to consider at this stage whether final approval is warranted, all the relevant factors weigh in favor of approving the proposed Settlement Agreements. First, the Settlement Agreements are fair, reasonable, and adequate because they were entered into by named plaintiffs and class counsel that have adequately represented the settlement class. Second, the Settlement Agreements are the result of arm's length negotiations among experience counsel, following extensive motions practice, appeals, and discovery on both sides. Third, the total agreed-upon consideration of $12,562,500 is more than adequate when considering the Rule 23(e) factors, including the substantial costs, risks, and delay of proceeding to trial and appeal; Ferrellgas's uncertain financial condition and ability to satisfy a treble damages judgment in the future; that settlement funds will be distributed automatically, with no need for a claim form, to all Settlement Class Members; and that any award of attorneys' fees to Settlement Class Counsel will be subject to further review and approval of the Court. In particular, the statute of limitations has been a hotly contested issue in this case. This Court initially dismissed Plaintiffs' consolidated amended class action complaint on statute of

[1] "The fourth factor (opposition to the settlement) is irrelevant at this time, as notice has not been distributed." *Swinton v. SquareTrade, Inc.*, No. 418CV00144SMRSBJ, 2019 WL 617791, at *9 (S.D. Iowa Feb. 14, 2019). Opposition to the settlements, if any, can only be considered after notice and during the final approval process.

limitations grounds, and an Eighth Circuit panel agreed and affirmed that dismissal. Although an *en banc* Eighth Circuit granted rehearing, reversed the dismissal, and held that plaintiffs had sufficiently alleged a continuing antitrust conspiracy, Defendants continue to pursue that defense, and that statute of limitations issue undoubtedly injects uncertainty into the ultimate outcome of this case. Fourth, the proposed Plan of Allocation treats Settlement Class Members equitably relative to each other and is fair and adequate because it distributes the settlement funds according to each Settlement Class Member's injury and *pro rata* share of total purchases of all Filled Propane Exchange Tanks, and any award of service fees to named Plaintiffs will be subject to further review and approval of this Court.

7. The Court further finds that the proposed Plan of Allocation, which is attached to the Motion, is fair, reasonable, and adequate, and is hereby preliminarily approved, subject to further consideration at the Fairness Hearing.

8. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court preliminarily certifies, for purposes of effectuating these Settlements, a Settlement Class as follows:

> All entities in the United States who purchased for resale Filled Propane Exchange Tanks directly from Ferrellgas or AmeriGas, or paid to exchange a previously purchased Filled Propane Exchange Tank directly with Ferrellgas or AmeriGas, between July 21, 2008 and January 9, 2015.

9. The Court hereby conditionally certifies the Settlement Class, subject to final approval of the Settlements. Although "[t]he ultimate decision to certify the class for purposes of settlement cannot be made until the hearing on final approval of the proposed settlement," Fed. R. Civ. P. 23, advisory committee's note to 2018 amendment, the record plainly supports approval of the Settlement Class. Rule 23 requires a two-step process to certify a class. First, under Rule 23(a), the proposed class must satisfy the "requirements of numerosity, commonality,

typicality, and fair and adequate representation." *Luiken v. Domino's Pizza, LLC*, 705 F.3d 370, 372 (8th Cir. 2013).[2] Second, the proposed class must satisfy at least one of the provisions of Rule 23(b). *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013). A class may be maintained under Rule 23(b)(3) if "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Each of these requirements is addressed below.

10. The Settlement Class is comprised of several thousand retailers who purchased or exchanged Filled Propane Exchange Tanks directly from Ferrellgas or AmeriGas for resale during the Settlement Class Period. This number of class members easily satisfies the numerosity requirement.

11. The Settlement Class also satisfies Rule 23(a)(2)'s commonality requirement. Plaintiffs' claims present myriad questions of law and fact common to the Settlement Class. Each Settlement Class Member alleges the same injury—paying inflated prices for Filled Propane Exchange Tanks—from the same unlawful conduct: defendants' conspiracy to eliminate competition and raise prices to supracompetitive levels through agreements to reduce the amount of propane they would put in their tanks and to allocate customers and markets between themselves. "Where an antitrust conspiracy has been alleged, courts have consistently held that 'the very nature of a conspiracy antitrust action compels a finding that common questions of law and fact exist.'" *In re High-Tech Employee Antitrust Litig.*, 985 F. Supp. 2d 1167, 1180 (N.D. Cal. 2013). "[F]or purposes of Rule 23(a)(2) even a single common question will do." *Wal-Mart*

[2] Although "[a] separate threshold ascertainability requirement is not the law in this circuit," *In re Dollar Gen. Corp. Motor Oil Mktg. & Sales Practices Litig.*, No. 16-02709-MD-W-GAF, 2019 WL 1418292, at *12 (W.D. Mo. Mar. 21, 2019), the proposed Settlement Class is also ascertainable: the class is defined objectively to include any entity that purchased Filled Propane Exchange Tanks for resale, directly from one or more of the defendants, during a defined time period. Indeed, all Settlement Class Members are readily identifiable from defendants' sales records.

Stores, Inc. v. Dukes, 564 U.S. 338, 359 (2011) (brackets and quotations omitted). Exemplary common questions of fact and law include whether defendants entered into an illegal agreement to reduce fill levels and allocate customers and markets; whether defendants artificially inflated the prices of Filled Propane Exchange Tanks; and whether Settlement Class Members were injured by that conduct and, if so, the appropriate measure of aggregate damages. In addition, defendants' statute of limitations defense also presents common questions of law and fact as to all members of the Settlement Class.

12. Rule 23(a)(3)'s typicality requirement also is satisfied because named Plaintiffs and all Settlement Class Members allege the same injuries arising from common conduct: paying supracompetitive prices due to defendants' illegal agreement to reduce fill levels and allocate customers and markets. Typicality just "means that there are 'other members of the class who have the same or similar grievances as the plaintiff.'" *Alpern v. UtiliCorp United, Inc.*, 84 F.3d 1525, 1540 (8th Cir. 1996). It is "fairly easily met," and "[f]actual variations in the individual claims will not normally preclude class certification if the claim arises from the same event or course of conduct as the class claims, and gives rise to the same legal or remedial theory." *Postawko v. Mo. Dep't of Corr.*, 910 F.3d 1030, 1039 (8th Cir. 2018). "Thus, typicality in the antitrust context will be established by plaintiffs and all class members alleging the same antitrust violations by the defendants," and as such, "claims in antitrust price-fixing cases generally satisfy Rule 23(a)(3)'s typically requirement, even if members purchase different quantities and pay different prices." *In re Playmobil Antitrust Litig.*, 35 F. Supp. 2d 231, 241 (E.D.N.Y. 1998).

13. The court further finds, under Rule 23(a)(4), that Plaintiffs will fairly and adequately represent the interests of the Settlement Class. "The focus of Rule 23(a)(4) is

whether: (1) the class representatives have common interests with the members of the class, and (2) whether the class representatives will vigorously prosecute the interests of the class through qualified counsel." *Paxton*, 688 F.2d at 562–63. Plaintiffs allege they suffered the same injuries as the rest of the Settlement Class, and together they share an interest in proving defendants' conduct violated antitrust laws and artificially inflated the prices they paid for Filled Propane Exchange Tanks. Plaintiffs do not have any conflicts of interest with the Settlement Class Members and have demonstrated a willingness to vigorously prosecute the interests of the Settlement Class—by agreeing to be named plaintiffs and participating in discovery. Further, Interim Co-Lead and Liaison Counsel are accomplished litigators with ample experience in complex antitrust class actions like this one.

14. In order to certify a Rule 23(b)(3) class, the Court must further find "that the questions of law or fact common to class members predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). However, the predominance requirement is relaxed in the settlement context: "Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, . . . for the proposal is that there be no trial." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). In this Circuit, "[c]ertification is appropriate if the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." *Stuart v. State Farm Fire & Cas. Co.*, 910 F.3d 371, 374–75 (8th Cir. 2018) (quotation and citation omitted). The test is not whether any individual issues exist, but is simply whether one or more of the central issues in the case is common to the class; indeed, "[a] class may be certified based on common issues 'even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to

some individual class members.'" *Id.* (citation omitted).

15. The Court finds that the predominance inquiry is satisfied here with respect to the proposed Settlement Class because the central issues underlying the Settlement Class Members' claims relate to defendants' conduct, and do not vary from class member to class member or require any individualized proof for purposes of these Settlements. Plaintiffs allege that defendants conspired to inflate the prices of Filled Propane Exchange Tanks across the country by agreeing to reduce the amount of propane they included in those tanks, and by agreeing to allocate customers and markets between themselves to eliminate competition and maintain supracompetitive prices. Plaintiffs allege that defendants' illegal scheme had a common impact on all Settlement Class Members by artificially inflating the prices that all direct purchasers paid for Filled Propane Exchange Tanks.

16. The Court further finds that proceeding here via the class action mechanism is superior to other available methods in light of the common claims and issues that predominate among the Settlement Class Members, as described above. *Accord* Wright, Miller & Kane, Federal Practice and Procedure: Civil Procedure § 1781, at 254–55 (3d ed. 2004) ("[I]f common questions are found to predominate in an antitrust action, . . . courts generally have ruled that the superiority prerequisite of Rule 23(b)(3) is satisfied."). Without a class action approach, a significant number of individual lawsuits could be filed, and "[s]eparate proceedings would produce duplicate efforts, unnecessarily increase the costs of litigation, impose an unwarranted burden on this Court and other courts throughout the country, and create the risk of inconsistent results for similarly situated parties." *In re Potash Antitrust Litig.*, 159 F.R.D. 682, 699 (D. Minn. 1995). Moreover, "the cost associated with individual claims may require claimants with potentially small claim amounts to abandon otherwise valid claims simply because pursuing

those claims would not be economical. This in turn would result in unjustly enriching the Defendants; precisely the result antitrust laws are designed to remedy." *Id.*

17. Based on the findings herein, and the documents and pleading submitted in this case, the Court conditionally certifies the Settlement Class.

18. The Court designates the following as Settlement Class Counsel: Berger & Montague, P.C.; Cohen Milstein Sellers & Toll, PLLC; Susman Godfrey L.L.P., and Shaffer Lombardo Shurin, P.C.

NOTICE TO SETTLEMENT CLASS MEMBERS

19. The Court appoints the firm of JND Legal Administration as Claims Administrator.

20. The Court approves the Proposed Notice, which is attached to the Motion, and finds that the dissemination plan complies fully with the requirements of Rule 23 and due process of law, and is the best notice practicable under the circumstances. Hence, when notice is completed, it shall constitute due and sufficient notice of the proposed Settlement Agreements and the Fairness Hearing to all persons affected by and/or entitled to participate in the Settlement Agreements, in full compliance with the applicable requirements of Rule 23 and due process.

21. The Claims Administrator will be responsible for providing notice to potential Settlement Class Members consistent with Rule 23(c)(2)(B). The Claims Administrator will mail and/or email notice to the potential class members, and post notice on the interest, within 31 days of receipt of the contact information for customers of the defendants who appear to match the Settlement Class definition. The proposed forms of notice submitted by the parties are approved.

ADMINISTRATION OF THE SETTLEMENT FUND

22. The Proposed Notice satisfies the requirements of due process and the Federal

Rules of Civil Procedure and, accordingly, is approved for dissemination to the Settlement Class. By no later than 31 days after receiving from all defendants the contact information for customers of defendants who appear to match the Settlement Class definition, the Claims Administrator shall cause the Settlement Notice to be emailed and/or mailed to Settlement Class Members and potential Settlement Class Members pursuant to the procedures described in the Settlement Agreements and Proposed Notice, and to any potential Settlement Class Member who requests one; and, in conjunction with Class Counsel, shall create a case-specific website with case information, court documents relating to the Settlement Agreements and the Proposed Notice. By no later than 14 days after the opt-out deadline, the Claims Administrator shall file with the Court an Affidavit of Compliance with Notice Requirements.

23. All costs incurred in disseminating Notice and administering the Settlements shall be paid from the Settlement Funds pursuant to the Settlement Agreements.

CLASS MEMBER RESPONSE AND SCHEDULING OF FAIRNESS HEARING

24. Settlement Class Members will have until 45 days after the Notice is mailed to opt out (the "Opt–Out Deadline") of the proposed Settlements. Settlement Class Members have the option of opting out of none, either, or both Settlements.

25. Any Settlement Class Member who wishes to be excluded (opt out) from the Settlement Class must send a written request for exclusion to the Notice and Claims Administrator on or before the close of the Opt–Out Deadline. Settlement Class Members may not exclude themselves by filing requests for exclusion as a group or class, but must in each instance individually and personally execute a request for exclusion. Settlement Class Members who exclude themselves from the Settlement Class will not be eligible to receive any benefits under the Settlements, will not be bound by any further orders or judgments entered for or

against the Settlement Class related thereto, and will preserve their ability independently to pursue any claims they may have against Ferrellgas or AmeriGas.

26. Class Counsel shall file their motion for payment of attorneys' fees, costs, and for Plaintiff Service Awards, no later than 31 days after Notice is mailed.

27. All Settlement Class Members who did not properly and timely request exclusion from the Settlement Class shall, upon entry of the Final Approval Order and Judgment, be bound by all the terms and provisions of the Settlement Agreements, including the release provisions, whether or not such Settlement Class Member objected to the Settlements and whether or not such Settlement Class Member received consideration under the Settlement Agreements.

28. A final hearing on the Settlement Agreements ("Fairness Hearing") shall be held before the Court at 1:30 p.m., on May 28, 2020, in Courtroom 8A of the Charles Evans Whittaker United States Courthouse, United States District Court for the Western District of Missouri, Western Division, 400 E. 9th Street, Kansas City, MO 64106.

29. At the Fairness Hearing, the Court will consider (a) the fairness, reasonableness, and adequacy of the Settlement Agreements and whether either or both of the Settlement Agreements should be granted final approval by the Court; (b) approval of the proposed Plan of Allocation; and (c) entry of a Final Approval Order and Judgment including the Settlement Releases. Class Counsel's application for payment of costs, and request for the Court to approve service awards to the named Plaintiffs, shall also be heard at the time of the hearing.

30. The date and time of the Fairness Hearing shall be subject to adjournment by the Court without further notice to the Settlement Class Members, other than by the Claims Administrator on the case-specific website and any notice that may be posted by the Court. Should the Court adjourn the date for the Fairness Hearing, such adjournment shall not alter the

deadlines for mailing of the Notice, nor the deadlines for submissions of settlement objections, claims, requests for exclusion, or notices of intention to appear at the Fairness Hearing unless those dates are explicitly changed by subsequent Order.

31. Any Settlement Class Member who did not elect to be excluded from the Settlements may, but need not, enter an appearance through his or her own attorney. For settlement purposes, Class Counsel will continue to represent Settlement Class Members who do not timely object and do not have an attorney enter an appearance on their behalf.

32. Any Settlement Class Member who did not elect to be excluded from the Settlements may, but need not, submit comments or objections to (a) either or both of the Settlement Agreement(s), (b) entry of a Final Approval Order and Judgment approving the Settlement Agreement(s), (c) Class Counsel's application for payment of costs and anticipated application for fees, and/or (d) service award requests, by mailing a written comment or objection to the addresses provided by the Claims Administrator in the Notice.

33. Any Settlement Class Member making an objection (an "Objector") must sign the objection personally even if represented by counsel, and provide the Settlement Class Member's name and full residence or business address and a statement that the Settlement Class Member is a member of the Settlement Class. An objection must state which Settlement Agreement(s) he/she is objecting to, why the Objector objects to the Settlement Agreement(s) and provide a basis in support, together with any documents such person wishes to be considered in support of the objection. If an Objector intends to appear at the hearing, personally or through counsel, the Objector should include with the objection a statement of the Objector's intent to appear at the hearing. The Objector must also list any other objections by the Objector, or the Objector's attorney, to any class action settlements submitted to any court in the United States in the

previous five years.

34. Objections, along with any statements of intent to appear, must be postmarked no later than 45 days after notice is mailed, and mailed to the addresses provided by the Claims Administrator in the Notice. If counsel is appearing on behalf of more than one Settlement Class Member, counsel must identify each such Settlement Class Member and each such Settlement Class Member must have complied with this Order.

35. Only Settlement Class Members who have mailed valid and timely objections accompanied by notices of intent to appear shall be entitled to be heard at the Fairness Hearing unless the Court rules otherwise. Any Settlement Class Member who does not timely mail an objection in writing in accordance with the procedure set forth in the Notice and mandated in this Order shall be deemed to have waived any objection to (a) the Settlement Agreements; (b) entry of a Final Approval Order and Judgment; (c) Class Counsel's application for payment of costs and anticipated request for fees; and (d) service award requests for the named Plaintiffs, whether by appeal, collateral attack, or otherwise.

36. Settlement Class Members need not appear at the hearing or take any other action to indicate their approval.

37. Upon entry of the Final Approval Order and Judgment, all Settlement Class Members who have not personally and timely requested to be excluded from the Settlement Class will be enjoined from proceeding against Ferrellgas, AmeriGas, and all other released parties as defined in the Settlement Agreements, with respect to all of the released claims as defined in the Settlement Agreements.

38. The schedule by which the events referenced above shall occur is as follows:

EVENT	DUE DATE
Claims Administrator receives Ferrellgas and AmeriGas data on potential class members	60 days from Order preliminary approving Settlements.
Notice mailed and posted on internet	31 days after Claims Administrator receives the data.
Deadline for motion for attorneys' fees, costs, and service awards	31 days after Notice mailed.
Objections deadlines	45 days after Notice mailed.
Exclusions deadlines/end of opt-out period	45 days after Notice mailed.
Claims Administrator files Affidavit of Compliance with Court regarding notice requirements	14 days after opt-out deadline.
Final Fairness Hearing	90 days after Notice mailed, or at the Court's convenience.

39. All further proceedings in this Action are hereby stayed, except for any actions required to effectuate or enforce the Settlement Agreements, or matters related to the Settlement Funds, including applications for attorneys' fees, payment of costs, and service awards to Named Plaintiffs.

40. With respect to the Ferrellgas Settlement Agreement only, in the event the Ferrellgas Agreement is terminated pursuant to the applicable provisions of the Ferrellgas Agreement, the Ferrellgas Agreement and all related proceedings shall, except as expressly provided in the Ferrellgas Agreement, become void and shall have no further force or effect, and Settlement Class Members and Plaintiffs shall retain all of their current rights against Ferrellgas, and Ferrellgas shall retain any and all of its current defenses and arguments thereto so that the parties may take such litigation steps (including without limitation serving discovery, engaging

in expert discovery, and filing motions) that the parties otherwise would have been able to take absent the pendency of the Ferrellgas Settlement. This Action shall thereupon revert forthwith to its procedural and substantive status prior to date of the Ferrellgas Settlement Agreement, and shall proceed as if the Ferrellgas Agreement had not been executed.

41. With respect to the AmeriGas Settlement Agreement only, in the event the AmeriGas Agreement is terminated pursuant to the applicable provisions of the AmeriGas Agreement, the AmeriGas Agreement and all related proceedings shall, except as expressly provided in the AmeriGas Agreement, become void and shall have no further force or effect, and Settlement Class Members and Plaintiffs shall retain all of their current rights against AmeriGas, and AmeriGas shall retain any and all of its current defenses and arguments thereto so that the parties may take such litigation steps (including without limitation serving discovery, engaging in expert discovery, and filing motions) that the parties otherwise would have been able to take absent the pendency of the AmeriGas Settlement. This Action shall thereupon revert forthwith to its procedural and substantive status prior to date of the AmeriGas Settlement Agreement, and shall proceed as if the AmeriGas Agreement had not been executed.

42. Neither this Order nor the Settlement Agreements, nor any other Settlement-related document nor anything contained or contemplated therein, nor any proceedings undertaken in accordance with the terms set forth in the Settlement Agreements or herein or in any other Settlement-related document, shall constitute, be construed as or be deemed to be evidence of or an admission or concession by Ferrellgas or AmeriGas as to (a) the validity of any claim that has been or could have been asserted against either or as to any liability by either as to any matter encompassed by the Settlement Agreements or (b) the propriety of certifying any litigation class against Ferrellgas or AmeriGas.

43. Neither the Settlement Agreements, nor any of their terms or provisions, nor any of the negotiations or proceedings connected with them, shall be construed as an admission or concession by Plaintiffs or Defendants, respectively, of the truth or falsity of any of the allegations in the Lawsuit, or of any liability, fault or wrongdoing of any kind.

44. All members of the Settlement Class are temporarily barred and enjoined from instituting or continuing the prosecution of any action asserting the claims released in the proposed Settlements, until the Court enters final judgment with respect to the fairness, reasonableness, and adequacy of the Settlements.

IT IS SO ORDERED.

s/ Gary A. Fenner
GARY A. FENNER, JUDGE
UNITED STATES DISTRICT COURT

DATED: November 20, 2019