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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOHN P. CHAVEZ, SR., an individual,
on behalf of himself and all others
similarly situated,

Plaintiff,

vs.

AMERIGAS PROPANE, INC., a
Pennsylvania corporation; JEFF JONES,
an individual; and DOES 1 through 100,
inclusive,

Defendants.

Case No. CV13-05813-MMM (MANx)

**PROTECTIVE ORDER
ENTERED PURSUANT TO THE
PARTIES' STIPULATION**

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based on the parties' Stipulation for Entry of Protective Order ("Stipulation") filed on January 30, 2014, the terms of the protective order to which the parties have agreed are adopted as a protective order of this Court (which generally shall govern the pretrial phase of this action) except to the extent, as set forth below, that those terms have been substantively modified by the Court's amendment of paragraphs III, V, VI, IX, and XII of, and Exhibit A to, the Stipulation.

1 The parties are expressly cautioned that the designation of any information,
2 document, or thing as Confidential, or other designation(s) used by the parties, does
3 not, in and of itself, create any entitlement to file such information, document, or
4 thing, in whole or in part, under seal. Accordingly, reference to this Protective
5 Order or to the parties' designation of any information, document, or thing as
6 Confidential, or other designation(s) used by the parties, is wholly insufficient to
7 warrant a filing under seal.

8 There is a strong presumption that the public has a right of access to judicial
9 proceedings and records in civil cases. In connection with non-dispositive motions,
10 good cause must be shown to support a filing under seal. The parties' mere
11 designation of any information, document, or thing as Confidential, or other
12 designation(s) used by parties, does not -- **without the submission of competent**
13 **evidence, in the form of a declaration or declarations, establishing that the**
14 **material sought to be filed under seal qualifies as confidential, privileged, or**
15 **otherwise protectable** -- constitute good cause.

16 Further, if sealing is requested in connection with a dispositive motion or
17 trial, then compelling reasons, as opposed to good cause, for the sealing must be
18 shown, and the relief sought shall be narrowly tailored to serve the specific interest
19 to be protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th
20 Cir. 2010). For each item or type of information, document, or thing sought to be
21 filed or introduced under seal in connection with a dispositive motion or trial, the
22 party seeking protection must articulate compelling reasons, supported by specific
23 facts and legal justification, for the requested sealing order. **Again, competent**
24 **evidence supporting the application to file documents under seal must be**
25 **provided by declaration.**

26 Any document that is not confidential, privileged, or otherwise protectable in
27 its entirety will not be filed under seal if the confidential portions can be redacted.
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1 If documents can be redacted, then a redacted version for public viewing, omitting
2 only the confidential, privileged, or otherwise protectable portions of the document,
3 shall be filed. Any application that seeks to file documents under seal in their
4 entirety should include an explanation of why redaction is not feasible.

5 Notwithstanding any other provision of this Protective Order, in the event
6 that this case proceeds to trial, all information, documents, and things discussed or
7 introduced into evidence at trial will become public and available to all members of
8 the public, including the press, unless sufficient cause is shown in advance of trial
9 to proceed otherwise.

10 **THE PARTIES ARE DIRECTED TO REVIEW CAREFULLY AND**
11 **ACT IN COMPLIANCE WITH ALL ORDERS ISSUED BY THE**
12 **MARGARET M. MORROW, UNITED STATES DISTRICT JUDGE,**
13 **INCLUDING THOSE APPLICABLE TO FILINGS UNDER SEAL.**

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1 2.4 Designating Party: a Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL.”

4 2.5 Disclosure or Discovery Material: all items or information, regardless
5 of the medium or manner in which it is generated, stored, or maintained (including,
6 among other things, testimony, transcripts, and tangible things), that are produced
7 or generated in disclosures or responses to discovery in this matter.

8 2.6 Expert: a person with specialized knowledge or experience in a matter
9 pertinent to the litigation who has been retained by a Party or its counsel to serve as
10 an expert witness or as a consultant in this action.

11 2.7 House Counsel: attorneys who are employees of a party to this action.
12 House Counsel does not include Outside Counsel of Record or any other outside
13 counsel.

14 2.8 Non-Party: any natural person, partnership, corporation, association,
15 or other legal entity not named as a Party to this action.

16 2.9 Outside Counsel of Record: attorneys who are not employees of a
17 party to this action but are retained to represent or advise a party to this action and
18 have appeared in this action on behalf of that party or are affiliated with a law firm
19 which has appeared on behalf of that party.

20 2.10 Party: any party to this action, including all of its officers, directors,
21 employees, consultants, retained experts, and Outside Counsel of Record (and their
22 support staffs).

23 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
24 Discovery Material in this action.

25 2.12 Professional Vendors: persons or entities that provide litigation
26 support services (*e.g.*, photocopying, videotaping, translating, preparing exhibits or
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1 demonstrations, and organizing, storing, or retrieving data in any form or medium)
2 and their employees and subcontractors.

3 2.13 Protected Material: any Disclosure or Discovery Material that is
4 designated as “CONFIDENTIAL.”

5 2.14 Receiving Party: a Party that receives Disclosure or Discovery
6 Material from a Producing Party.

7 **III. SCOPE**

8 The protections conferred by this **Protective** Order cover not only Protected
9 Material (as defined above) but also: (1) any information copied or extracted from
10 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
11 Material; and (3) any **deposition** testimony, conversations, or presentations by
12 Parties or their Counsel that might reveal Protected Material. However, the
13 protections conferred by this **Protective** Order do not cover the following
14 information: (a) any information that is in the public domain at the time of
15 disclosure to a Receiving Party or becomes part of the public domain after its
16 disclosure to a Receiving Party as a result of publication not involving a violation
17 of this **Protective** Order, including becoming part of the public record through trial
18 or otherwise; and (b) any information known to the Receiving Party prior to the
19 disclosure or obtained by the Receiving Party after the disclosure from a source
20 who obtained the information lawfully and **is** under no obligation of confidentiality
21 to the Designating Party. Any use of Protected Material at trial shall be governed
22 by a separate agreement or order.

23 **IV. DURATION**

24 Even after final disposition of this litigation, the confidentiality obligations
25 imposed by this **Protective** Order shall remain in effect until a Designating Party
26 agrees otherwise in writing or a court order otherwise directs. Final disposition
27 shall be deemed to be the later of: (1) dismissal of all claims and defenses in this
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1 action, with or without prejudice; and (2) final judgment herein after the completion
2 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
3 including the time limits for filing any motions or applications for extension of time
4 pursuant to applicable law.

5 **V. DESIGNATING PROTECTED MATERIAL**

6 5.1 Exercise of Restraint and Care in Designating Material for Protection.

7 Each Party or Non-Party **who or which** designates information or items for
8 protection under this **Protective** Order must take care to limit any such designation
9 to specific material that qualifies under the appropriate standards. The Designating
10 Party must designate for protection only those parts of material, documents, items,
11 or oral or written communications that qualify – so that other portions of the
12 material, documents, items, or communications for which protection is not
13 warranted are not swept unjustifiably within the ambit of this **Protective** Order.

14 If it comes to a Designating Party’s attention that information or items it
15 designated for protection do not qualify for protection, that Designating Party must
16 promptly notify all other Parties that it is withdrawing the mistaken designation.

17 5.2 Manner and Timing of Designations. Except as otherwise provided in
18 this **Protective** Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as
19 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
20 protection under this **Protective** Order must be clearly so designated before the
21 material is disclosed or produced.

22 Designation in conformity with this **Protective** Order requires:

23 (a) for information in documentary form (*e.g.*, paper or electronic
24 documents, but excluding transcripts of depositions), that the Producing Party affix
25 the legend “CONFIDENTIAL” to each page that contains protected material. If
26 only a portion or portions of the material on a page qualifies for protection, the
27 Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making
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1 appropriate markings in the margins).

2 A Party or Non-Party that makes original documents or materials available
3 for inspection need not designate them for protection until after the inspecting Party
4 has indicated which material it would like copied and produced. During the
5 inspection and before the designation, all of the material made available for
6 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
7 identified the documents it wants copied and produced, the Producing Party must
8 determine which documents, or portions thereof, qualify for protection under this
9 **Protective** Order. Then, before producing the specified documents, the Producing
10 Party must affix the “CONFIDENTIAL” legend to each page that contains
11 Protected Material. If only a portion or portions of the material on a page qualifies
12 for protection, the Producing Party also must clearly identify the protected
13 portion(s) (e.g., by making appropriate markings in the margins).

14 (b) for testimony given in deposition, that the Designating Party identify on
15 the record, before the close of the deposition, unless the Parties jointly agree on the
16 record to an alternative timeframe for such designations or otherwise are ordered by
17 the Court.

18 (c) for information produced in some form other than documentary and for
19 any other tangible items, that the Producing Party affix in a prominent place on the
20 exterior of the container or containers in which the information or item is stored the
21 legend “CONFIDENTIAL.” If only a portion or portions of the information or item
22 warrant protection, the Producing Party, to the extent practicable, shall identify the
23 protected portion(s).

24 5.3 Inadvertent Failures to Designate. If timely corrected after discovery,
25 an inadvertent failure to designate qualified information or items does not, standing
26 alone, waive the Designating Party’s right to secure protection under this
27 **Protective** Order for such material. Upon timely correction of a designation, the
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1 Receiving Party must make reasonable efforts to assure that the material is treated
2 in accordance with the provisions of this **Protective** Order.

3 **VI. CHALLENGING CONFIDENTIALITY DESIGNATION**

4 6.1 If any Party objects to the designation of any Protected Material as
5 “CONFIDENTIAL,” the Receiving Party may request in writing **that** the
6 **Designating Party remove** such designation. The written request shall specifically
7 identify the precise material or information at issue.

8 6.2 The **Designating Party** shall respond in writing within seven (7)
9 business days of the receipt of the written request, or within such other time as may
10 be designated by order of the Court or agreement of the parties. If the **Designating**
11 **Party** refuses to remove the “CONFIDENTIAL” designation, the **Designating**
12 **Party’s** written response shall state the reasons for such refusal. Notwithstanding
13 the foregoing, failure to provide a timely written response shall be deemed a refusal
14 of the request.

15 6.3 If the **Designating Party** fails to respond to a request or refuses to
16 remove the “CONFIDENTIAL” designation, the Receiving Party shall have twenty
17 (20) days from the date the objecting party received the **Designating Party’s**
18 refusal (or, in the case of failure to respond, twenty (20) days from the date such
19 response would have been due) to file an appropriate motion or application
20 challenging the designation with the Court. It shall be the burden of the
21 **Designating Party** to establish that the designated information is
22 “CONFIDENTIAL” within the meaning of this Protective Order or otherwise
23 should be subject thereto. In the event of such a motion or application, the material
24 at issue may be submitted to the Court for an *in camera* inspection.

25 6.4 All Protected Material designated as “CONFIDENTIAL” hereunder
26 shall be given the full protection of this Protective Order unless and until the Court
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1 enters an order changing the designation or modifying or **terminating** this
2 Protective Order.

3 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is
5 disclosed or produced by another Party or by a Non-Party in connection with this
6 case only for prosecuting, defending, or attempting to settle this litigation. Such
7 Protected Material may be disclosed only to the categories of persons and under the
8 conditions described in this **Protective Order**. When the litigation has been
9 terminated, a Receiving Party must comply with the provisions of Section 13 below
10 (FINAL DISPOSITION).

11 Protected Material must be stored and maintained by a Receiving Party at a
12 location and in a secure manner that ensures that access is limited to the persons
13 authorized under this **Protective Order**.

14 7.2 Names and Contact Information of Putative Class Members. With
15 respect to the names and contact information of putative class members produced
16 subject to this Protective Order, and designated as “CONFIDENTIAL,” the
17 following shall apply:

18 (a) Plaintiff’s counsel shall maintain the names and contact information of
19 the putative class members as private and confidential;

20 (b) Plaintiff’s counsel agrees not to use the names and contact information
21 of the putative class members to solicit or cause another to solicit any of the
22 putative class members to assert any new claim, charge, or complaint of any kind
23 whatsoever against Defendant or for any other purpose other than for the limited
24 purpose of: (i) seeking information relevant to class certification issues; (ii)
25 Plaintiff’s claims as set forth in the First Amended Complaint; and/or (iii)
26 Defendant’s defenses to Plaintiff’s claims as set forth in Plaintiff’s First Amended
27 Complaint.
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1 (c) The names and contact information of the putative class members shall
2 not be disclosed by Plaintiff or his counsel to any other person except the
3 following: (a) the legal, clerical, paralegal, or other staff of Plaintiff’s counsel, who
4 will abide by the terms of this **Protective Order**; (b) persons retained by Plaintiff’s
5 counsel to furnish expert or consulting services or advice in this action, who will
6 abide by the terms of this **Protective Order**; and (c) the Court and **its personnel**.
7 The Parties agree that this Paragraph, rather than Paragraph 7.3, shall apply to the
8 disclosure of the names and contact information of the putative class members.

9 7.3 Disclosure of “CONFIDENTIAL” Information or Items. Unless
10 otherwise ordered by the Court or permitted in writing by the Designating Party, or
11 as separately set forth in Paragraph 7.2, a Receiving Party may disclose any
12 information or item designated “CONFIDENTIAL” only to:

13 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
14 as employees of said Outside Counsel of Record to whom it is reasonably necessary
15 to disclose the information for this litigation;

16 (b) the officers, directors, and employees (including House Counsel) of the
17 Receiving Party to whom disclosure is reasonably necessary for this litigation;

18 (c) Experts (as defined in this **Protective Order**) of the Receiving Party to
19 whom disclosure is reasonably necessary for this litigation and who have signed the
20 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 (d) the Court and its personnel;

22 (e) court reporters and their staff, professional jury or trial consultants, mock
23 jurors, and Professional Vendors to whom disclosure is reasonably necessary for
24 this litigation and who have signed the “Acknowledgment and Agreement to Be
25 Bound” (Exhibit A);

26 (f) during their depositions, witnesses in the action to whom disclosure is
27 reasonably necessary and who have signed the “Acknowledgment and Agreement
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1 to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or
2 ordered by the Court. Pages of transcribed deposition testimony or exhibits to
3 depositions that reveal Protected Material may not be disclosed to anyone except as
4 permitted under this Protective Order.

5 (g) the author or recipient of a document containing the information or a
6 custodian or other person who otherwise possessed or knew the information.

7 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
8 **PRODUCED IN OTHER LITIGATION**

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10 If a Party is served with a subpoena or a court order issued in other litigation
11 that compels disclosure of any information or items designated in this action as
12 “CONFIDENTIAL,” that Party must:

13 (a) promptly notify in writing the Designating Party. Such notification shall
14 include a copy of the subpoena or court order;

15 (b) promptly notify in writing the party who caused the subpoena or order to
16 issue in the other litigation that some or all of the material covered by the subpoena
17 or order is subject to this Protective Order. Such notification shall include a copy
18 of this Protective Order; and

19 (c) cooperate with respect to all reasonable procedures sought to be pursued
20 by the Designating Party whose Protected Material may be affected.

21 If the Designating Party timely seeks a protective order, the Party served with
22 the subpoena or court order shall not produce any information designated in this
23 action as “CONFIDENTIAL” before a determination by the court from which the
24 subpoena or order issued, unless the Party has obtained the Designating Party’s
25 permission. The Designating Party shall bear the burden and expense of seeking
26 protection in that court of its confidential material – and nothing in these provisions
27 should be construed as authorizing or encouraging a Receiving Party in this action
28 to disobey a lawful directive from another court.

1 shall bear the burden and expense of seeking protection in this court of its Protected
2 Material. **Nothing in these provisions should be construed as authorizing or**
3 **encouraging a Receiving Party in this action to disobey a lawful directive from**
4 **another court.**

5 **X. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

6 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
7 Protected Material to any person or in any circumstance not authorized under this
8 Protective Order, the Receiving Party must immediately: (a) notify in writing the
9 Designating Party of the unauthorized disclosures; (b) use its best efforts to retrieve
10 all unauthorized copies of the Protected Material; (c) inform the person or persons
11 to whom unauthorized disclosures were made of all the terms of this **Protective**
12 **Order**; and (d) request such person or persons to execute the “Acknowledgment and
13 Agreement to Be Bound” that is attached hereto as Exhibit A.

14 **XI. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
15 **PROTECTED MATERIAL**

16 When a Producing Party gives notice to Receiving Parties that certain
17 inadvertently produced material is subject to a claim of privilege or other
18 protection, the obligations of the Receiving Parties are those set forth in Federal
19 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
20 whatever procedure may be established in an e-discovery order that provides for
21 production without prior privilege review. Pursuant to Federal Rule of Evidence
22 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
23 of a communication or information covered by the attorney-client privilege or work
24 product protection, the parties may incorporate their agreement in the stipulated
25 protective order submitted to the court.
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XII. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this **Protective** Order abridges the right of any person to seek its modification by the **Court** in the future.

12.2 Right to Assert Other Objections. By **having stipulated** to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. If the Party seeking to file papers containing information or materials designated “CONFIDENTIAL” is not the Designating Party of those materials, the Party must first file and serve an application to file under seal and a proposed order in accordance with **the requirements of Local Rule 79-5 and this Protective Order**.

12.4 Jurisdiction. The Central District of California shall retain jurisdiction to enforce the terms and conditions of this Protective Order, even after the final disposition of this action, as defined in paragraph 4.

XIII. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to

1 the Designating Party) by the 60 day deadline that: (1) identifies (by category,
2 where appropriate) all the Protected Material that was returned or destroyed; and
3 (2) affirms that the Receiving Party has not retained any copies, abstracts,
4 compilations, summaries, or any other format reproducing or capturing any of the
5 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
6 an archival copy of all pleadings, motion papers, trial, deposition, and hearing
7 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
8 reports, attorney work product, and consultant and expert work product, even if
9 such materials contain Protected Material. Any such archival copies that contain or
10 constitute Protected Material remain subject to this Protective Order as set forth in
11 Section 4 (DURATION).

12 **IT IS SO ORDERED.**

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14 Dated: February 19, 2014

Margaret A. Nagle

MAGARET A. NAGLE
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name]
declare under penalty of perjury that I have read in its entirety and understand the
Protective Order that was issued by the United States District Court for the Central
District of California on February 19, 2014, in the case of *John P. Chavez, Sr. v.*
AmeriGas Propane, Inc., Case No. 13-cv-05813-MMM(MANx). I agree to
comply with and to be bound by all the terms of this Protective Order, and I
understand and acknowledge that failure to so comply could expose me to sanctions
and punishment in the nature of contempt. I solemnly promise that I will not
disclose in any manner any information or item that is subject to this Protective
Order to any person or entity except in strict compliance with the provisions of this
Protective Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Protective Order, even if such enforcement proceedings occur after termination of
this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____