

1 Shaun Setareh (SBN 204514)  
shaun@setarehlaw.com  
2 H. Scott Leviant (SBN 200834)  
scott@setarehlaw.com  
3 SETAREH LAW GROUP  
9454 Wilshire Blvd., Suite 907  
4 Beverly Hills, California 90212  
Telephone: (310) 888-7771  
5 Facsimile: (310) 888-0109

6 Attorneys for Plaintiff JIMMIE JARELL

7 JOSEPH D. LEE (State Bar No. 110840)  
joseph.lee@mto.com  
8 MUNGER, TOLLES & OLSON LLP  
355 South Grand Avenue, Thirty-Fifth Floor  
9 Los Angeles, CA 90071-1560  
Tel.: (213) 683-9100 / Fax: (213) 687-3702

10 MALCOM A. HEINICKE (State Bar No. 194174)  
malcom.heinicke@mto.com  
11 AARON D. PENNEKAMP (State Bar No. 290550)  
aaron.pennekamp@mto.com  
12 MUNGER, TOLLES & OLSON LLP  
560 Mission Street  
13 San Francisco, CA 94105-2907  
14 Tel.: (415) 512-4000 / Fax: (415) 644-6929

15 Attorneys for Defendant AMERIGAS PROPANE, INC.

16 UNITED STATES DISTRICT COURT  
17  
18 NORTHERN DISTRICT OF CALIFORNIA

19 JIMMIE JARRELL, an individual, on behalf  
of himself and all others similarly situated,

20 Plaintiff,

21 vs.

22 AMERIGAS PROPANE, Inc.; a Pennsylvania  
corporation; and DOES 1 through 50,  
23 inclusive,

24 Defendants.

Case No. 3:16-CV-01481-JST

**[PROPOSED] STIPULATED  
PROTECTIVE ORDER**

Judge: Hon. Jon S. Tigar

26 1. PURPOSES AND LIMITATIONS

27 Disclosure and discovery activity in this action are likely to involve production of  
28 confidential, proprietary, or private information for which special protection from public

3:16-CV-01481-JST

**[PROPOSED] STIPULATED PROTECTIVE ORDER**

1 disclosure and from use for any purpose other than prosecuting this litigation will be warranted.  
2 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
3 Protective Order.

4           2.       DEFINITIONS

5                   2.1       “CONFIDENTIAL” Information or Items: Information (regardless of how  
6 it is generated, stored, or maintained), testimony, or a tangible thing that reveals or contains  
7 commercial or business information that is commercially sensitive, that is maintained as  
8 confidential in the normal course of business under the law or custom generally applicable to the  
9 business at issue and has not been released into the public domain; personal information  
10 (including without limitation social security, driver’s license, resident registration, national  
11 pension, and public health insurance numbers; personal address, email address, and phone  
12 number; medical records; and compensation information) that is protected from disclosure by a  
13 state or federal constitution, statute, regulation, or other legal authority; and any other information  
14 for which a good faith claim of need of protection can be made under the Federal Rules of Civil  
15 Procedure or applicable law.

16                   2.2       Challenging Party: A Party or non-party that challenges the designation of  
17 information or items under this Order.

18                   2.3       Designating Party: A Party or non-party that designates information or  
19 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or  
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

21                   2.4       Expert: A person with specialized knowledge or experience in a matter  
22 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert  
23 witness or as a consultant in this action.

24                   2.5       “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information  
25 or Items: Highly sensitive “CONFIDENTIAL Information or Items,” the disclosure of which to  
26 another Party or non-party would create a risk of serious competitive or business harm.

27                   2.6       House Counsel: Attorneys who are employees of a Party to this action.  
28 House Counsel does not include Outside Counsel or any other outside counsel.

1                   2.7     Outside Counsel: Attorneys who are not employees of a Party to this action  
2 but are retained to represent or advise a Party to this action and have appeared in this action on  
3 behalf of that Party or are affiliated with a law firm that has appeared on behalf of that Party.

4                   2.8     Party: Any named party to this action, including all of its officers,  
5 directors, and employees. The term “Party” does not include the members of any putative or  
6 certified class other than the named class member.

7                   2.9     Producing Party: A Party or non-party that produces discovery material in  
8 this action.

9                   2.10    Professional Vendors: Persons or entities that provide litigation support  
10 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
11 organizing, storing, or retrieving data in any form or medium), and their employees and  
12 subcontractors.

13                  2.11    Protected Material: Any items or information, regardless of the medium or  
14 manner in which it is generated, stored, or maintained (including, among other things, testimony,  
15 transcripts, and tangible things) that are designated as “CONFIDENTIAL” or “HIGHLY  
16 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

17                  2.12    Receiving Party: A Party that receives discovery material from a Producing  
18 Party.

19           3.     SCOPE

20                         The protections conferred by this Protective Order cover not only Protected  
21 Material (as defined above), but also (1) any information copied or extracted from Protected  
22 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any  
23 testimony, conversations, or presentations by Parties or their counsel that might reveal Protected  
24 Material. However, the protections conferred by this Stipulation and Order do not cover the  
25 following information: (a) any information that is in the public domain at the time of disclosure to  
26 a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
27 a result of publication not involving a violation of this Order, including becoming part of the  
28 public record through trial or otherwise; and (b) any information known to the Receiving Party

1 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
2 obtained the information lawfully and under no obligation of confidentiality to the Designating  
3 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4 4. DURATION

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

12 5. DESIGNATING CONFIDENTIAL OR HIGHLY CONFIDENTIAL MATERIAL

13 5.1 Designating Material for Protection: Each Party or non-party that  
14 designates information or items for protection under this Protective Order must exercise its  
15 reasonable good faith judgment in so designating. The designation by any Designating Party of  
16 any discovery material as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
17 EYES ONLY” shall constitute a representation that such discovery material has been reviewed by  
18 an attorney for the Designating Party, and that there is a reasonable good faith basis for such  
19 designation. Mass, indiscriminate, or routinized designations are prohibited. Designations that  
20 are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
21 unnecessarily encumber or retard the case development process or to impose unnecessary  
22 expenses and burdens on the other parties) expose the Designating Party to sanctions.

23 5.2 Manner and Timing of Designations: Except as otherwise provided in this  
24 Protective Order (see, e.g., section 5.2.2 below), or as otherwise stipulated or ordered, discovery  
25 material that qualifies for protection under this Protective Order must be clearly so designated  
26 before the material is disclosed or produced.

27 Designation in conformity with this Protective Order requires:  
28

1                   5.2.1 For information in documentary form (e.g., paper or electronic documents  
2 produced as images, but excluding transcripts of depositions or other pretrial or trial proceedings),  
3 that the Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
4 ATTORNEYS’ EYES ONLY” to each page of any document that contains protected material.  
5 Where it is not practicable for a Designating Party to affix a confidentiality designation to  
6 documents produced in electronic or native form, including Excel and PowerPoint documents, the  
7 Designating Party shall include the appropriate “CONFIDENTIAL” or “HIGHLY  
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” designation in the file name.

9                   A Party or non-party that makes original documents or materials available for  
10 inspection need not designate them for protection until after the inspecting Party has indicated  
11 which material it would like copied and produced. During the inspection and before the  
12 designation, all of the material made available for inspection shall be deemed “HIGHLY  
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the  
14 documents it wants copied and produced, the Producing Party will determine which documents, or  
15 portions thereof, qualify for protection under this Protective Order. Then, before producing the  
16 specified documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL”  
17 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each document, or  
18 portion(s) thereof, that contains Protected Material in accordance with the procedures just  
19 described.

20                   5.2.2 For testimony given in deposition, that the Designating Party identify on the  
21 record before the close of the deposition all protected testimony. Alternatively, a Designating  
22 Party may designate a deposition transcript or any portion of a transcript as protected testimony  
23 within 30 days after receipt of the final transcript from the court reporter, by sending to Outside  
24 Counsel for each Party a written notice identifying the transcript or a portion thereof (by pages and  
25 line numbers) that contain protected information and requesting that the transcript be marked as  
26 described in the next paragraph.

27                   Transcripts containing Protected Material shall have an obvious legend on the title  
28 page that the transcript contains Protected Material, and the title page shall be followed by a list of

1 all pages and line numbers that have been designated as Protected Material and the level of  
2 protection being asserted by the Designating Party. Such legend and list shall be applied by the  
3 court reporter for designations that occur on the record of the deposition, and the Designating  
4 Party shall inform the court reporter of these requirements. In the event that the transcript or a  
5 portion thereof is designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
6 ATTORNEY’S EYES ONLY” after preparation of the final transcript, the legend shall be applied  
7 by any recipient of the written notice described in the preceding paragraph, and (in the case of  
8 designations of less than the entire transcript) the Designating Party shall provide a list of the  
9 designated pages and lines, which the recipient shall affix or append to any copies of the  
10 deposition in its possession (including electronic copies). If it so chooses, the recipient of such  
11 written notice may comply with the requirements of this paragraph by affixing the Designating  
12 Party’s complete written notice, including the list of designated pages and lines, to the cover of  
13 each transcript.

14                 Prior to the expiration of the 30-day period for designation, all deposition testimony  
15 shall be treated as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
16 ONLY,” unless otherwise agreed. After the expiration of that period, the transcript shall be treated  
17 only as actually designated.

18                 Any Party may challenge a proposed designation of testimony given in a deposition  
19 as Protected Material. Upon such challenge, the parties shall follow the procedures described in  
20 section 6 (“CHALLENGING CONFIDENTIALITY DESIGNATIONS”). Until such challenge is  
21 resolved, the designated transcripts or portions of transcripts shall be treated as  
22 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as  
23 appropriate.

24                 5.2.3 For testimony given in other pretrial or trial proceedings, that the  
25 Designating Party state on the record before the testimony commences that the Designating Party  
26 has a reasonable good-faith basis to believe the testimony will contain protected testimony and  
27 specify the level of protection being asserted. The court shall take such reasonable steps as  
28 appropriate under the circumstances to protect such testimony from public disclosure, such as

1 receiving the testimony in camera and designating the appropriate portion of the transcript as  
2 protected pursuant to the procedures set forth in section 5.2.2.

3           5.3     Inadvertent Failures to Designate: If timely corrected, an inadvertent failure  
4 to designate qualified information or items as “CONFIDENTIAL” or “HIGHLY  
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” shall not waive the Designating Party’s right  
6 to secure protection under this Protective Order for such material. Upon timely correction of a  
7 designation, the Receiving Party shall thereafter treat materials so designated as  
8 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” as the case  
9 may be, and such materials, including any notes or other materials derived therefrom, shall be  
10 fully subject to this Protective Order as if they had been initially so designated. The Designating  
11 Party shall promptly supply replacement material that correctly applies the corrected designation.  
12 A Party that has disclosed discovery material that is subsequently designated as  
13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” shall in  
14 good faith assist the Designating Party in retrieving such discovery material from all recipients not  
15 entitled to receive such discovery material under the terms of this Protective Order and prevent  
16 further disclosures except as authorized under the terms of this Protective Order.

17           6.     CHALLENGING CONFIDENTIALITY DESIGNATIONS

18           6.1     Timing of Challenges: Any Party or non-party shall challenge a designation  
19 of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
20 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
21 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
22 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
23 original designation is disclosed.

24           6.2     Meet and Confer: The Challenging Party shall initiate the dispute  
25 resolution process by providing written notice to the Producing Party of each designation it is  
26 challenging and describing the basis for each challenge. To avoid ambiguity as to whether a  
27 challenge has been made, the written notice must recite that the challenge to confidentiality is  
28 being made in accordance with this specific paragraph of the Protective Order. The parties shall

1 attempt to resolve each challenge in good faith and must begin the process by conferring directly,  
2 either in person, via video conferencing service (such as Skype), or by telephone, within 14 days  
3 of the date of service of notice. In conferring, the Challenging Party must explain the basis for its  
4 belief that the confidentiality designation was not proper and must give the Designating Party an  
5 opportunity to review the designated material, to reconsider the circumstances, and, if no change  
6 in designation is offered, to explain the basis for the chosen designation. A Challenging Party  
7 may proceed to the next stage of the challenge process only if it has engaged in this meet and  
8 confer process first or establishes that the Designating Party is unwilling to participate in the meet  
9 and confer process in a timely manner.

10               6.3     Judicial Intervention: If the Parties cannot resolve a challenge without court  
11 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
12 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 30 days of  
13 the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer  
14 process will not resolve their dispute, whichever is earlier. Each such motion must be  
15 accompanied by a competent declaration affirming that the movant has complied with the meet  
16 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to  
17 make such a motion including the required declaration within 30 days (or 14 days, if applicable)  
18 shall waive the confidentiality designation for each challenged designation, absent extension  
19 agreed to by all Parties in writing, or a showing of a good faith basis for not filing the motion  
20 sooner. In addition, the Challenging Party may file a motion challenging a confidentiality  
21 designation at any time if there is good cause for doing so. Any motion brought pursuant to this  
22 provision must be accompanied by a competent declaration affirming that the movant has  
23 complied with the meet and confer requirements imposed by the preceding paragraph.

24               The burden of persuasion in any such challenge proceeding shall be on the  
25 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass  
26 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party  
27 to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
28 file a motion to retain confidentiality as described above, all parties shall continue to afford the



1 material in question the level of protection to which it is entitled under the Producing Party's  
2 designation until the court rules on the challenge.

3       7.     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 case only for  
6 prosecuting or defending this litigation. Such Protected Material may be disclosed only to the  
7 categories of persons and under the conditions described in this Protective Order. When the  
8 litigation has been terminated, a Receiving Party must comply with the provisions of section 13  
9 below ("FINAL DISPOSITION").

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

13            7.2     Additional Parties: In the event additional persons or entities become  
14 Parties to this Action, none of such Parties' counsel, experts, or expert consultants retained to  
15 assist said counsel, shall have access to "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –  
16 ATTORNEYS' EYES ONLY" information or items produced by or obtained from any  
17 Designating Party until that Party has executed and filed with the Court its agreement to be fully  
18 bound by this Protective Order. No "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –  
19 ATTORNEYS' EYES ONLY" discovery material may be provided to such Parties' counsel,  
20 experts, or expert consultants unless and until such Party has executed and filed such an agreement  
21 with the Court. Thereafter, all the provisions of this order shall apply to such Party and its  
22 counsel, experts, and experts consultants, including those provisions requiring execution of a  
23 Declaration of Compliance substantially in the form attached to this Protective Order as Exhibit A.

24            7.3     Disclosure of "CONFIDENTIAL" Information and Items: Unless  
25 otherwise ordered by the court or permitted in writing by the Designated Party, a Receiving Party  
26 may disclose any information or item designated "CONFIDENTIAL" only to:

27            7.3.1   The Receiving Party's Outside Counsel in this action, as well as employees  
28 of said Outside Counsel to whom it is reasonably necessary to disclose the information for this

1 litigation and who have signed the “Declaration of Compliance” that is attached hereto as Exhibit  
2 A;

3 7.3.2 Any named class representative who has signed the “Declaration of  
4 Compliance” (Exhibit A) and the officers, directors, and employees (including House Counsel) of  
5 the Receiving party to whom disclosure is reasonably necessary for this litigation and who have  
6 signed the “Declaration of Compliance” (Exhibit A);

7 7.3.3 Experts (as defined in this Protective Order) of the Receiving Party to  
8 whom disclosure is necessary for this litigation and who have signed the “Declaration of  
9 Compliance” (Exhibit A), provided that such Experts must return to the Producing Party or  
10 destroy the original, any copy, or any notes of any “CONFIDENTIAL” or “HIGHLY  
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” materials no later than 60 days following final  
12 disposition of this action;

13 7.3.4 The court and its personnel;

14 7.3.5 Court reporters and their staff, professional jury or trial consultants, mock  
15 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and  
16 who have signed the “Declaration of Compliance” (Exhibit A);

17 7.3.6 During their depositions, witnesses in the action to whom disclosure is  
18 reasonably necessary and who have signed the “Declaration of Compliance” (Exhibit A), unless  
19 otherwise agreed by the Designating Party or ordered by the court; and

20 7.3.7 The author or any recipient of a document containing Protected Material or  
21 a custodian or other person who otherwise possessed or knew that material.

22 7.4 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
23 ONLY” Information or Items: Unless otherwise ordered by the court or permitted in writing by  
24 the Designating Party, a Receiving Party may disclose any information or item designated  
25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

26 7.4.1 The Receiving Party’s Outside Counsel in this action, as well as employees  
27 of said Outside Counsel to whom it is reasonably necessary to disclose the information for this  
28

1 litigation and who have signed the “Declaration of Compliance” that is attached hereto as Exhibit  
2 A;

3 7.4.2 Experts of the Receiving Party (a) to whom disclosure is reasonably  
4 necessary for this litigation; and (b) who have signed the “Declaration of Compliance” (Exhibit  
5 A);

6 7.4.3 The court and its personnel;

7 7.4.4 Court reporters and their staff, professional jury or trial consultants, and  
8 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
9 signed the “Declaration of Compliance” (Exhibit A); and

10 7.4.5 The author or any recipient of a document containing the Protected Material  
11 or a custodian or other person who otherwise possessed or knew that material.

12 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
13 OTHER LITIGATION

14 If a Party is served with a subpoena or a court order issued in other litigation that  
15 compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or  
16 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” that Party must:

17 8.1 Promptly notify in writing the Designated Party. Such notification shall  
18 include a copy of the subpoena or court order;

19 8.2 Promptly notify in writing the party who caused the subpoena or order to  
20 issue in the other litigation that some or all of the material covered by the subpoena or order is  
21 subject to this Protective Order. Such notification shall include a copy of this Stipulated  
22 Protective Order; and

23 8.3 Cooperate with respect to all reasonable procedures sought to be pursued by  
24 the Designating Party whose Protected Material may be affected.

25 If the Designating Party timely seeks a protective order, the Party served with the  
26 subpoena or court order shall not produce any information designated in this action as  
27 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a  
28 determination by the court from which the subpoena or order issued, unless the Party has obtained

3:16-CV-01481-JST

1 the Designating Party's permission. The Designating Party shall bear the burden and expense of  
2 seeking protection in that court of its confidential material, and nothing in this protective order  
3 should be construed as authorizing or encouraging a Receiving Party in this action to disobey a  
4 lawful directive from another court.

5 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN  
6 THIS LITIGATION

7 9.1 The terms of this Protective Order are applicable to information produced  
8 by a non-party in this action and designated as "CONFIDENTIAL" or "HIGHLY  
9 CONFIDENTIAL – ATTORNEYS' EYES ONLY." Such information produced by non-parties in  
10 connection with this litigation, whether pursuant to subpoena or by agreement, is protected by the  
11 remedies and relief provided by this Protective Order. Nothing in these provisions should be  
12 construed as prohibiting a non-party from seeking additional protections.

13 9.2 In the event that a Party is required, by a valid discovery request in this  
14 litigation, to produce a non-party's Protected Material in its possession, and the Party is subject to  
15 an agreement with the non-party not to produce the non-party's Protected Material, then the Party  
16 shall:

17 9.2.1 Promptly notify in writing the Requesting Party and the non-party that some  
18 or all of the information requested is subject to a confidentiality agreement with a non-party;

19 9.2.2 Promptly provide the non-party with a copy of the Stipulated Protective  
20 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of  
21 the information requested; and

22 9.2.3 Make the information requested available for inspection by the non-party.

23 9.3 If the non-party fails to object or seek a protective order from this court  
24 within 14 days of receiving the notice and accompanying information, the Receiving Party may  
25 produce the non-party's Protected Material responsive to the discovery request. If the non-party  
26 timely seeks a protective order, the Receiving Party shall not produce any information in its  
27 possession or control that is subject to the confidentiality agreement with the non-party before a  
28

1 determination by the court. Absent a court order to the contrary, the non-party shall bear the  
2 burden and expense of seeking protection in this court of its Protected Material.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4 If a Receiving Party learns that, by inadvertence or otherwise, it has or may have  
5 disclosed Protected Material to any person or in any circumstance not authorized under this  
6 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the  
7 Designating Party of the unauthorized disclosures; (b) use its best efforts to retrieve all  
8 unauthorized copies of the Protected Material, including any notes or other materials derived  
9 therefrom; (c) inform the person or persons to whom unauthorized disclosures were made of all  
10 the terms of this Protective Order; (d) request such person or persons to execute the “Declaration  
11 of Compliance” that is attached hereto as Exhibit A; and (e) provide a copy of the executed  
12 “Declaration of Compliance” to the Producing Party.

13 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
14 PROTECTED MATERIAL

15 The inadvertent production or disclosure of any discovery material that is  
16 privileged or otherwise protected from discovery under Federal Rule of Evidence 502 or any other  
17 statutory or common-law rule, including without limitation under the attorney-client privilege and  
18 the work product doctrine, shall not constitute a waiver of any applicable privilege or protection,  
19 and no Party or non-party shall be held to have waived any rights by such inadvertent production  
20 or disclosure. As provided in Federal Rule of Evidence 502(d), disclosure connected with the  
21 present litigation shall not constitute a waiver in the present litigation or in any other federal or  
22 state proceeding.

23 If a claim of inadvertent production or disclosure is made pursuant to this  
24 Paragraph with respect to information then in the custody of another Party or non-party, such  
25 Party or non-party shall promptly return to the claiming Party or non-party, sequester, or destroy  
26 that material as to which the claim of inadvertent production or disclosure has been made and all  
27 copies thereof, and the receiving Party or non-party shall not use such information for any  
28 purpose, except as provided by Federal Rule of Civil Procedure 26(b)(5)(B). If a Receiving Party

1 encounters any discovery material produced by another Party or non-party that the Receiving  
2 Party believes may be privileged or protected from discovery, and may have been produced  
3 inadvertently, such Receiving Party shall immediately cease any review of such material,  
4 sequester it, and promptly notify the Producing Party, in writing (which may be email), of the  
5 possibility that such material may be privileged and may have been inadvertently produced. The  
6 Producing Party shall promptly advise the Receiving Party as to whether, in fact, such material  
7 was inadvertently produced.

8           12.     MISCELLANEOUS

9                   12.1   Right to Further Relief: Nothing in this Protective Order abridges the right  
10 of any person to seek its modification by the court in the future.

11                   12.2   Filing Protected Material: Without written permission from the Designating  
12 Party or a court order secured after appropriate notice to all interested persons, a Party may not file  
13 in the public record in this action any Protected Material. A Party that seeks to file under seal any  
14 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
15 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at  
16 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request  
17 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or  
18 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected  
19 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving  
20 Party may file the information in the public record pursuant to Civil Local Rule 79-5(e) unless  
21 otherwise instructed by the court.

22           13.     FINAL DISPOSITION

23                   Within 60 days after the final disposition of this action, as defined in section 4  
24 (“DURATION”), each Receiving Party must return all Protected Material to the Producing Party  
25 or destroy such material. As used in this subdivision, “all Protected Material” includes all copies,  
26 abstracts, compilations, summaries, and any other format reproducing or capturing any of the  
27 Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party  
28 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 (a) identifies (by category, where appropriate)  
2 all the Protected Material that was returned or destroyed and (b) affirms that the Receiving Party  
3 has not retained any copies, abstracts, compilations, summaries, or any other format reproducing  
4 or capturing any of the Protected Material. Notwithstanding this provision, counsel are entitled to  
5 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
6 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work  
7 product, and consultant and expert work product, even if such materials contain Protected  
8 Material. Any such archival copies that contain or constitute Protected Material remain subject to  
9 this Protective Order as set forth in section 4.

10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

11 DATED: November 1, 2016

SETAREH LAW GROUP

12 By: /s/ H. Scott Leviant

13 H. Scott Leviant

14 Counsel for Plaintiff Jimmie Jarrell

15 DATED: November 1, 2016

MUNGER, TOLLES & OLSON LLP

16 JOSEPH D. LEE

MALCOLM A. HEINICKE

17 AARON D. PENNEKAMP

18 By: /s/ Joseph D. Lee

19 Joseph D. Lee

Attorneys for Defendant AMERIGAS PROPANE, INC.

20 Pursuant to Civil Local Rule 5-1(ii)(3), the filer attests that concurrence in the filing of this  
21 document has been obtained from each of the above signatories.

22  
23 PURSUANT TO STIPULATION, IT IS SO ORDERED.

24  
25 DATED: November 1, 2016

By: 

26 Honorable Jon S. Tigar

27 United States District Judge

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT A

DECLARATION OF COMPLIANCE

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read  
in its entirety and understand the Stipulated Protective Order that was issued by the United States  
District Court for the Northern District of California on October \_\_\_\_, 2016 in the case of *Jarrell v.*  
*AmeriGas Propane*, No. 16-CV-01481-JST. I agree to comply with and to be bound by all the  
terms of this Stipulated 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  
Stipulated Protective Order to any person or entity except in strict compliance with the provisions  
of this Order.

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

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and telephone number]  
as my California agent for service of process in connection with this action or any proceedings  
related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_