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6 Attorneys for Plaintiff JIMMIE JARRELL

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

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

13 Plaintiff,

14 vs.

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

16 Defendants.  
17  
18  
19  
20

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

CLASS ACTION

**DECLARATION OF H. SCOTT LEVIANT  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR AN AWARD OF (1) ATTORNEY'S  
FEES TO CLASS COUNSEL (2)  
ATTORNEY'S COSTS TO CLASS  
COUNSEL; AND (3) ENHANCEMENT  
AWARD TO PLAINTIFF**

Date: January 11, 2018  
Time: 2:00 p.m.  
Courtroom: Courtroom 9 – 19<sup>th</sup> Fl.  
Judge: Hon. Jon S. Tigar

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DECLARATION OF H. SCOTT LEVIANT

I, H. Scott Leviant, declare as follows:

1. I am admitted, in good standing, to practice as an attorney in the State of California, the United States Supreme Court, the Eighth Circuit Court of Appeals, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Eastern, Northern and Southern Districts of California. I have never been subject to discipline by the State Bar of California. I am a fully qualified, adult resident of the State of California, and, if called as a witness herein, I would testify truthfully to the matters set forth herein. All of the matters set forth herein are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true.

2. I am employed as a Senior Associate at the law firm of Setareh Law Group, LLP. My business address is 9454 Wilshire Blvd., Suite 907, Beverly Hills, California 91212 and my business telephone number is (310) 888-7771. I am counsel for Plaintiff.

3. This Declaration is submitted in support of Plaintiff's Motion for An Award Of (1) Attorney's Fees To Class Counsel (2) Attorney's Costs To Class Counsel; And (3) Enhancement Award To Plaintiff.

BACKGROUND

4. On February 16, 2016, Plaintiff filed this Litigation in the Superior Court of the State of California for the County of Alameda as a putative Rule 23 class action on behalf of himself and others allegedly similarly situated in California and a putative collective action under the federal Fair Labor Standards Act ("FLSA") on behalf of those allegedly similarly situated in California. Plaintiff filed a First Amended Complaint on March 15, 2016, in which Plaintiff alleged that AmeriGas had violated certain state and federal employment laws, including without limitation the FLSA, the California Labor Code, and the California Business and Professions Code, by reason of the following alleged conduct: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay hourly wages, (4) failure to provide accurate written wage statements, (5) failure to timely pay all final wages; (6) unfair competition;

1 (7) civil penalties; and (8) failure to pay employees for all hours worked.

2 5. On March 25, 2016, the Litigation was removed on AmeriGas' motion to the United  
3 States District Court for the Northern District of California.

4 6. Following the filing of the Complaint and the exchange of significant amounts of  
5 documents and information, counsel for AmeriGas and Class Counsel, both of whom are experienced  
6 in these types of cases, began a series of arms-length negotiations which led to the scheduling of a  
7 mediation session with a professional mediator, Mark Rudy.

8 7. On January 25, 2017, the Settling Parties held an all-day mediation session with Mr.  
9 Rudy and reached the agreement that is the subject of this Motion.

10 8. The STIPULATION RE: SETTLEMENT OF CLASS AND COLLECTIVE ACTION  
11 ("Stipulation") is intended to result in the creation of a settlement class comprised of all Persons who  
12 were employed by AmeriGas as a Service Technician (a non-exempt or hourly position) in California  
13 from February 16, 2012, through the date of preliminary approval. There are roughly 250 Settlement  
14 Class Members.

15 9. Solely for the purpose of settling this case, the parties stipulate and agree that the  
16 requirements for establishing class and collective action certification with respect to this class have  
17 been met and are met. If this Settlement is not approved by the Court for any reason, AmeriGas  
18 reserves its rights to contest class and/or collective action certification. This Stipulation, if approved by  
19 the Court, will result in the termination with prejudice of the Litigation through the entry of the  
20 Judgment, and the release of all Released Claims for all Class Members. The Class Representative will  
21 also execute a general release of all claims.

22  
23 SUMMARY OF THE SETTLEMENT TERMS

24 10. Key provisions of the proposed settlement include the following:

- 25 (a) The Settlement Class is: all Persons who were employed by AmeriGas as a  
26 Service Technician (a non-exempt or hourly position) in California from February  
27 16, 2012, through the date of preliminary approval. (Stipulation, ¶¶ 1.4, 1.30.)  
28

1 (b) Defendant agrees that \$800,000.00 represents the maximum amount that it will  
2 pay out under this Stipulation, inclusive of the following: (a) Maximum  
3 Settlement Portion for Payments to Participating Class Members; (b) the  
4 maximum gross amount for Class Counsel's attorneys' fees to be paid in  
5 accordance with the terms set forth in Paragraph 2.8.1, which is \$266,640; (c)  
6 the maximum gross amount for all of Class Counsel's and the Class  
7 Representative's taxable litigation costs and associated expenses, which is  
8 \$35,000; (d) the anticipated gross amount for claims administration costs, which  
9 is \$20,000; (e) the maximum gross amount for the enhancement payments to be  
10 made by AmeriGas to the Class Representative, in accordance with the terms  
11 set forth in Paragraph 2.8.2, which is a maximum \$10,000; (f) the maximum  
12 gross amount for payment to the California Labor Workforce Development  
13 Agency as part of the consideration for the release of all Released Claims under  
14 the California Private Attorney Generals Act of 2004, codified at California  
15 Labor Code sections 2698 et seq., which is \$30,000; and (g) Payroll Taxes.  
16 (Stipulation, ¶ 1.20.)

17 (c) Each current employee Class Member who does not opt out will be paid his/her  
18 share of the settlement, subject to certain taxes and withholdings, and each  
19 former employee Class Member who submits a valid claim form and does not  
20 opt out will be paid his/her share of the settlement, subject to certain taxes and  
21 withholdings. (Stipulation, ¶ 2.5.2.)

22 (d) Class Counsel will not seek an amount greater than \$266,640 for attorneys'  
23 fees. (Stipulation, ¶ 2.8.1.)

24 (e) Class Counsel will not seek an amount greater than \$35,000 for litigation costs.  
25 (Stipulation, ¶ 2.8.1.)

26 (f) The Class Representative enhancement award will be \$10,000. (Stipulation, ¶  
27 2.8.2.)  
28

1 (g) If a Class Member has not cashed his or her check within sixty (60) days of  
2 issuance, the Claims Administrator shall send the Class Member in question a  
3 postcard reminder about the deadline for cashing the check and information on  
4 how to request a replacement check. The funds associated with any checks that  
5 are not properly or timely negotiated within ninety (90) days from the date of  
6 mailing shall be deposited by the Claims Administrator into the State of  
7 California Department of Industrial Relations Unclaimed Wages Fund with the  
8 identity of the Participating Claimants to whom the funds belong.

9 11. A true and correct copy of the STIPULATION RE: SETTLEMENT OF CLASS AND  
10 COLLECTIVE ACTION is attached hereto as Exhibit "A."

11  
12 A REASONABLE RESULT WAS OBTAINED ON BEHALF OF THE CLASS

13 12. Plaintiff and his counsel have diligently investigated the claims of the Settlement Class  
14 Members. Plaintiff and Class Counsel concluded, after taking into account the disputed factual and  
15 legal issues involved in this Action, the substantial risks attending further prosecution, including risks  
16 related to the outcome of certification and possible summary judgment efforts, and the substantial  
17 benefits to be received pursuant to the compromise and settlement of the Action as set forth in the  
18 Settlement, that settlement on the terms agreed to are in the best interest of Plaintiff and the putative  
19 Class and are fair and reasonable. Plaintiff's counsel brought to bear a great deal of experience with  
20 class actions in negotiating the settlement of this case.

21 13. One fundamental purpose of the class action device is to promote efficiency.  
22 Resolution at this time will forestall the need for additional expensive and time-consuming litigation  
23 that could very well result in an outcome less satisfactory than that proposed under this settlement. But,  
24 before any other consideration, we have agreed to this settlement because it is objectively reasonable.  
25 The potential for resolution benefits the class members, since they do not have to wait additional years  
26 for a similar recovery. The efficiency of this litigation benefits the Court, the parties and their counsel.  
27 A class-wide resolution is the most realistic method for addressing the claims raised in this matter.

28 14. We have engaged in the necessary investigation in this case that made it possible for us

1 to exercise informed judgment in those aspects of the settlement process in which we were involved.  
2 Settlement occurred only after discovery commenced. That discovery included two sets of  
3 interrogatories and one set of some 52 requests for production to AmeriGas. AmeriGas produced  
4 almost 8,000 pages in response to formal discovery (followed by still more data about class  
5 composition requested and produced prior to mediation). The information produced in discovery, and  
6 the additional data about class composition produced for mediation, were sufficient to permit Plaintiff's  
7 counsel to adequately evaluate the settlement. Plaintiff had more than enough information upon which  
8 to evaluate a fair and reasonable settlement amount. After mediation, Plaintiff pursued and obtained  
9 additional confirmatory discovery from Defendant, further improving Plaintiff's understanding of the  
10 issues in this matter and a fair valuation of the case.

11 15. In addition to disputing the merits of Plaintiff's claims at trial, Defendant intended to  
12 aggressively challenge Plaintiff's case at the certification stage. Defendant believes that Plaintiff could  
13 not prevail on that certification motion. Plaintiff believes that his case was viable through to a trial.  
14 However, while Plaintiff asserts his belief that this is a viable case for trial, Plaintiff realizes that there  
15 are always significant risks associated with certification and trials, and those risks, which cannot be  
16 eliminated in this case, are undeniable. Continued litigation of this lawsuit presented Plaintiff and  
17 Defendant with substantial legal risks that were (and continue to be) very difficult to assess. The risks  
18 associated with this matter include:

- 19 • the risk that Plaintiff would be unable to establish liability for allegedly unpaid straight time  
20 or overtime wages, *see Duran v. US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & fn. 33 (2014)  
21 ("*Duran*"), *citing Dilts v. Penske Logistics, LLC* 2014 WL 205039 (S.D. Cal. 2014)  
22 (dismissing certified off-the-clock claims based on proof at trial);
- 23 • the risk that Defendant's challenged employment policies might not ultimately support class  
24 certification or a class-wide liability finding, *see, Duran*, 59 Cal. 4th at 14 & fn. 28 (citing  
25 Court of Appeal decisions favorable on class certification issue without expressing opinion  
26 as to ultimate viability of proposition);
- 27 • the risk that uncertainties pertaining to the ultimate legality of Defendant's policies and  
28 practices could preclude class-wide awards of statutory penalties under Labor Code §§ 203

1 and 226(e);

- 2 • the risk that individual differences between Settlement Class Members could be construed
- 3 as pertaining to liability, and not solely to damages, *see, Duran*, 59 Cal. 4th at 19;
- 4 • the risk that any civil penalties award under the PAGA could be reduced by the Court in its
- 5 discretion, see Labor Code § 2699(e)(1);
- 6 • the risk that class treatment could be deemed improper as to one or more claims except for
- 7 settlement purposes; and,
- 8 • the risk that lengthy appellate litigation could ensue.

9 These risks are non-exhaustive. While we remain confident that we possess credible strategies for  
10 responding to the legal and factual risks facing them, those risks cannot be disregarded. Plaintiff carefully  
11 considered the risks created by all of these uncontrollable factors when evaluating the reasonableness of  
12 this proposed settlement.

13 16. The Settlement is the product of arm's-length negotiations between the Parties  
14 occurring throughout the litigation. In light of the uncertainties of protracted litigation and the state of  
15 the law regarding the legal positions of the Parties, the settlement amount reflects the best feasible  
16 recovery for the Settlement Class Members. The settlement amount is, of course, a compromise figure,  
17 affected by many uncertainties, but it is a good result. By necessity it took into account risks related to  
18 liability, damages, and all the defenses asserted by the Defendant, through counsel experienced in  
19 handling wage and hour litigation. Moreover, each Settlement Class Member will be given the  
20 opportunity to opt out of the Settlement, allowing those who feel they have claims that are greater than  
21 the benefits they can receive under this Settlement, to pursue their own claims. For the approximate  
22 250 members of the Settlement Class, the average gross recovery will be at least \$3,200 per class  
23 member. Given the strong case that Defendant could bring to bear to challenge certification and  
24 liability, this is not an inconsequential sum in these challenging economic times. And, confirming the  
25 fundamental fairness of the settlement, each Class Member will be compensated ratably based on the  
26 number of workweeks they worked during the class period.

27 17. The Class Settlement Amount is approximately equal to the risk-adjusted recovery at this  
28 stage in the litigation. While Plaintiff would certainly have preferred to recover more (and Defendant

1 would have preferred to pay less), this outcome is in line with a carefully constructed estimate of the  
2 current fair value of the case. On that basis, it would be unwise to pass up this settlement opportunity.  
3 The maximum damage values are estimates based on average wage rates, numbers of employees, and the  
4 amount of time covered by the class period. After analyzing the claims in this matter, Plaintiff has  
5 concluded that the value of this Settlement is fair, adequate and reasonable. For example, the estimated  
6 exposure for rest break violations over the class period was calculated to be \$562,000. With risk factor  
7 discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to  
8 be approximately \$150,000. A similar valuation applies to the meal period claim. Similarly, the unpaid  
9 vacation pay claim has a potential value of up to \$500,000, but, again, with risk factors for certification  
10 and merits proof, the realistic current value is approximately \$100,000. Performing similar risk-adjusted  
11 valuations for all claims yields a total value in the range of \$750,00 - \$900,000. This result here is fully  
12 supportable as reasonable. The goals of this litigation have certainly been met.

13 18. Many risks are eliminated through settlement. First, rest break and meal period claims have  
14 been challenging to certify for many years, even after *Brinker*. Second, on-call pay claims have  
15 consistently proven to be extremely difficult to certify. Third, certification rates are lower than  
16 conventional wisdom holds. *See, e.g.,* H. Scott Leviant, *Second Interim Report on class actions in*  
17 *California sheds new light on certification* (February 19, 2010), [www.thecomplexlitigator.com](http://www.thecomplexlitigator.com), available  
18 at [http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html)  
19 [california-sheds-n.html](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html); *see also, Findings of the Study of California Class Action Litigation, 2000-2006*,  
20 available at <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf> (finding, at page 5,  
21 and in Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a settlement  
22 *or* as part of a contested certification motion). In estimating risk adjustments here, Plaintiff's counsel has  
23 assumed estimated certification probabilities of 40% - 50%, depending on the claim, assumptions that  
24 substantially *exceed* the average rate at which cases were certified in California over the study years, based  
25 upon data available through the California Courts website. Given that well under 20% of all cases filed in  
26 California as proposed class actions are ultimately certified by way of a contested motion, and a similar  
27 trend is seen in federal courts, it is fair to say that, if anything, the use of high estimates for certification  
28 *overstates* the realistic current claim value. It would also be appropriate to evaluate the result by

1 examining only the premium wages at issue, excluding penalties and interest. Under that metric, the  
2 settlement recovered substantially than the realistic current claim value for the premium wages at issue.  
3 Viewed either way, this Settlement achieves the goals of the litigation. The result obtained here is  
4 reasonable.

5 19. To the best of my knowledge, other than this Action, there are no other like claims  
6 asserted or filed by Class Members. To the best of my knowledge, no Class Member has refrained  
7 from bringing an action with claims similar to those raised in the Action, whether in reliance on the  
8 Action or otherwise, and who thus might be prejudiced by dismissal of the Action.

9  
10 THE EXPERIENCE OF CLASS COUNSEL SUPPORTING LODESTAR CALCULATIONS

11 20. Setareh Law Group LLP has been engaged in the practice of employment and labor law  
12 for roughly a decade. The firm and its lawyers have handled hundreds of wage-related class actions  
13 between them. The firm and its lawyers have successfully settled more than 100 cases during that time.  
14 Setareh Law Group is routinely appointed lead or co-lead class counsel (or counsel for representative  
15 plaintiffs in FLSA representative actions) in federal and state courts in California and elsewhere, by  
16 way of motion for class certification or motion for settlement approval. Claims litigated in the  
17 hundreds of cases handled by lawyers at Setareh Law Group include all of the claims at issue in this  
18 matter.

19 21. Mr. Shaun Setareh received his undergraduate degree at UCLA in 1996 and his law  
20 degree from Loyola Law School in 1999. Since being admitted to the State Bar of California in 1999,  
21 he has actively practiced civil litigation for the entirety of that time period.

22 22. Mr. Setareh has been involved as lead or co-lead class counsel in numerous wage and  
23 hour, consumer, and antitrust class action cases. The following is a sampling of class actions in which  
24 he has been appointed as class counsel:

- 25 (a) *Padilla v. UPS*, U.S. District Court, Central District of California, Case No. 08-  
26 CV-1590 (granted final approval in a case involving claims for failure to  
27 provide meal periods to part time employees engaged in sort operations and  
28 failure to pay final wages in a timely manner to terminated employees).

- 1 (b) *Vang v. Burlington Coat Factory Warehouse Corp.*, U.S. District Court, Central  
2 District of California Case No. 09-CV-8061 (granted final approval in a case  
3 involving, among other things, vacation pay forfeitures, failures to provide meal  
4 and rest periods, and failures to pay overtime wages based on employee  
5 misclassification).
- 6 (c) *Garcia v. Am. Gen. Fin. Mgmt. Corp.*, U.S. District Court, Central District of  
7 California, Case No. 09-CV-1916 (granted final approval in a case filed on  
8 behalf of account managers in case involving, among other things, alleged  
9 overtime miscalculations and meal and rest period violations).
- 10 (d) *O'Neill v. Genesis Logistics, Inc.*, U.S. District Court, Northern District of  
11 California, Case No. 08-CV-4707 (granted final approval in a case involving  
12 claims for failure to provide meal periods to employees who worked as drivers  
13 delivering goods to 7-11 stores throughout California and failure to pay final  
14 wages in a timely manner to terminated employees).
- 15 (e) *Spokes v. Lush Cosmetics, LLC*, Los Angeles Superior Court, Case No.  
16 BC391397 (granted final approval in a case alleged failures to provide meal and  
17 rest periods and failure to timely pay all final wages to California sales  
18 associates and key holders).
- 19 (f) *Green v. Staples Contract and Commercial, Inc.*, Los Angeles Superior Court,  
20 Case No. BC389789 (granted final approval in a case involving claims for  
21 unprovided meal and rest periods, inaccurate wage statements, waiting time  
22 penalties, and unfair business practices on behalf of truck drivers delivering  
23 Staples office supplies in California).
- 24 (g) *Green v. Universal Music Group*, Los Angeles Superior Court, Case No.  
25 BC374253 (granted final approval in a case involving misclassification claims  
26 of current or former IT Support employees, including engineers, server analysts,  
27 desktop support, and technical leads).
- 28 (h) *Jones v. Shred-It USA, Inc.*, U.S. District Court, Central District of California,

1 Case No. 11-CV-00526 (granted final approval in a case brought on behalf of  
2 customer service representatives and balers for alleged off-the-clock work and  
3 meal and rest period violations).

4 (i) *Alvarez v. Gary Grace Enterprises, LP*, Marin Superior Court, Case No. CIV  
5 1002553 (granted final approval in a case on behalf of hair salon employees for  
6 overtime miscalculation and related claims).

7 (j) *Calderon v. GreatCall, Inc.*, San Diego Superior Court, Case No. 37-2010-  
8 00093743-CU-OE-CTL (granted final approval in a case on behalf of customer  
9 service employees for, among other things, alleged meal and rest period  
10 violations and overtime calculation errors).

11 (k) *Douglas v. California Credit Union*, Los Angeles Superior Court, Case No.  
12 BC445050 (granted final approval in a case on behalf of customer service  
13 representatives alleging overtime miscalculation claims).

14 (l) *Cerdenia v. USA Truck, Inc.*, U.S. District Court, Central District of California,  
15 Case No. 10-CV-1489-JVS (granted final approval in an action on behalf of  
16 truck drivers for meal and rest period violations, off-the-clock pre- and post-  
17 shift work, and unauthorized wage deductions).

18 (m) *Butler v. Lexxiom, Inc.*, San Bernardino Superior Court, Case No. CIVRS  
19 1001579 (granted final approval in an action on behalf of debt resolution center  
20 employees alleging, among other things, meal and rest period violations and  
21 overtime calculation errors).

22 (n) *Valencia v. SCIS Air Security Corp.*, Los Angeles Superior Court, Case No.  
23 BC421485 (granted class certification through contested motion in case on  
24 behalf of former security workers based on late final wage payments in  
25 violation of Labor Code §§ 201–203; subsequently granted preliminary  
26 approval of proposed class action settlement).

27 (o) *Sandoval v. Rite Aid Corp.*, Los Angeles County Superior Court, Case No.  
28 BC431249 (granted class certification through contested motion in case on

1                   behalf of former pharmacy employees based on late final wage payments in  
2                   violation of Labor Code §§ 201–203; subsequently granted final approval of  
3                   class action settlement).

4           23.     I received my undergraduate degree from Occidental College. Graduating cum laude, I  
5           majored in economics and received a “minor” emphasis in mathematics. Along with my study of  
6           economics and mathematics, I also had an emphasis in physics. This combination of scientific and  
7           economic education has been of assistance during my litigation of complex civil actions. I received my  
8           Juris Doctor degree from the University of Southern California Law Center.

9           24.     My experience relevant to class action litigation includes the following:

10          (a)     I have been involved in the litigation of class actions since 1997, working as a  
11                 law clerk on a number of class action matters. Since 1999, I have participated  
12                 as an attorney in the litigation of well over 100 class actions, in California  
13                 Superior Courts and in federal courts in California, Illinois, and Louisiana, and  
14                 the number of class actions that I have helped to litigate is closer to 150 class  
15                 actions. I emphasized litigation of wage and hour class actions beginning in  
16                 2005, but I have focused on complex litigation of different types at all times  
17                 since 1999.

18          (b)     Dating back to 1999, some of the earliest cases in which I contributed to my  
19                 then-firm’s efforts as co-lead/liaison counsel include:

20                         i.    *In re Paradise Memorial Park Litigation*, Los Angeles Superior  
21                                 Court Lead Case No. BC130375; and,

22                         ii.   *In re Lincoln Memorial Park Litigation*, Los Angeles Superior  
23                                 Court Lead Case No. BC133643.

24          (c)     I have prosecuted appeals in approximately 20 class action matters alone,  
25                 arguing before the United States Court of Appeals for the Ninth Circuit Court  
26                 and several of California’s Courts of Appeal. I have taken several appeals  
27                 through to Petitions for Writs of Certiorari to the United States Supreme Court.  
28                 In connection with the appeals I have handled, I have participated in appeals

1 resulting in decisions concerning or relating to class actions or wage and hour  
2 issues. Among others, those include:

- 3 i. *Gillings v. Time Warner Cable LLC*, 583 Fed.Appx. 712 (9th Cir.  
4 2014);
- 5 ii. *Ghazaryan v. Diva Limousine, LTD.*, 169 Cal.App.4th 1524 (2009),  
6 pet. for rev. denied;
- 7 iii. *Laliberte v. Pacific Mercantile Bank*, 147 Cal.App.4th 1 (2007), rev.  
8 denied, pet. for cert. denied;
- 9 iv. *Alvarez v. May Dept. Stores Co.*, 143 Cal.App.4th 1223 (2006), rev.  
10 denied, pet. for cert. denied;
- 11 v. *Johnson v. Glaxosmithkline, Inc.*, 166 Cal.App.4th 1497 (2008), rev.  
12 denied;
- 13 vi. *Howard, et al. v. America Online, Inc.*, 208 F.3d 741 (9th Cir.  
14 2000), pet. for cert. denied;
- 15 vii. *Brown v. Ralphs Grocery Company*, 197 Cal. App. 4th 489 (2011)  
16 (amicus counsel);
- 17 viii. *D. R. Horton, Inc. and Michael Cuda*, Case 12–CA–25764, 357  
18 NLRB No. 184 (January 3, 2012) (amicus counsel). This NLRB  
19 matter is of particular note, as it is at the center of a dispute  
20 regarding the interplay between the Federal Arbitration Act (FAA)  
21 and two labor relations laws, the National Labor Relations Act  
22 (NLRA) and Norris-LaGuardia Act. Cases highlighting that issue  
23 have been accepted by the United States Supreme Court.

24 (d) I am currently the lead appellate author in a matter before the California  
25 Supreme Court and generating substantial interest in the field of wage and hour  
26 litigation. That matter, *Troester v. Starbucks Corporation*, will likely resolve  
27 the significant issue of whether, under California law, a *de minimis* defense  
28 exists to the employer’s obligation to pay all wages for all compensable time

1 worked by an employee.

2 (e) I am currently the lead appellate author in a matter before the Ninth Circuit that  
3 focuses on wage and hour issues. That matter, *Rodriguez v. Taco Bell Corp.*,  
4 will, of necessity, address a core aspect of the nature of meal period  
5 requirements in California.

6 (f) In addition to my work on complex litigation matters and class actions, I have  
7 authored published articles and columns on issues related to class actions and  
8 other litigation issues, including:

9 i. H. Scott Leviant, *Unintended Consequences*, 6 U.C. Davis Bus. L.J.

10 18 (2006), at <http://blj.ucdavis.edu/article.asp?id=636> (May 1,  
11 2006);

12 ii. Dennis F. Moss and H. Scott Leviant: *Class Actions: One step*  
13 *forward after two steps back*, DAILY JOURNAL (Los Angeles),  
14 January 11, 2012;

15 iii. H. Scott Leviant, *Arbitration: A Look Back, a Look Ahead*, DAILY  
16 JOURNAL (Los Angeles), December 28, 2010;

17 iv. H. Scott Leviant, *Witnesses Cannot Hide*, Daily Journal (Los  
18 Angeles), April 21, 2010;

19 v. H. Scott Leviant, *Divide and Conquer: The New Paradigm of Class*  
20 *Action Defense?*, FORUM, January/February 2009

21 vi. H. Scott Leviant, *Class Action Appellate Report*, FORUM, 2009-  
22 2010 (Ongoing series);

23 vii. H. Scott Leviant & Linh Hua, *Legislature Using Purse Strings to*  
24 *Bind Judiciary*, Daily Journal (San Francisco), March 15, 2010;

25 viii. H. Scott Leviant, *Wrongfully Recused?*, DAILY JOURNAL (Los  
26 Angeles), December 2, 2009;

27 ix. H. Scott Leviant, *Cutting Class*, DAILY JOURNAL (Los Angeles),  
28 April 15, 2008;

- 1 x. H. Scott Leviant, *Leveling The Playing Field*, DAILY JOURNAL (Los  
2 Angeles), May 4, 2007;
- 3 xi. H. Scott Leviant, *A Bad Meal Deal: 'Brinker' Gets the Incentive*  
4 *Question Wrong*, DAILY JOURNAL (Los Angeles), August 6, 2008;
- 5 xii. H. Scott Leviant & Jason E. Barsanti, *Maximize Recovery in Unpaid*  
6 *Wage Cases*, FORUM, January/February 2008;
- 7 xiii. H. Scott Leviant, et al., *Electronic Evidence: No Longer an*  
8 *Optional Element in a Comprehensive Litigation Plan*,  
9 ADVOCATE, April 2006;
- 10 xiv. H. Scott Leviant, *Improving Rule 12(b)(6) survival odds: Some*  
11 *considerations for effective RICO pleading*, CIVIL RICO REPORT,  
12 Volume 15, Number 22, April 26, 2000 (LRP Publications).

13 (g) In addition to publications in industry newspapers, periodicals and journals, I  
14 am the Supervising Editor, primary author and founder of the legal blog The  
15 Complex Litigator (<http://www.thecomplexlitigator.com>). The Complex  
16 Litigator reports and comments on news and topics relevant to class action and  
17 complex litigation practice, with a primary emphasis on wage and hour  
18 litigation issues. Through my blog, I have also, on occasion, published podcasts  
19 of round table discussions with preeminent members of the wage and hour  
20 practice bar on both the plaintiff and defense sides. My blog has been cited to  
21 the California Supreme Court in at least one Petition for Review. The Complex  
22 Litigator has been in existence since 2008, having outlasted many other legal  
23 blogs, and it has a unique readership that numbers in the tens of thousands.

24 (h) I have also lectured on issues related to class actions and complex litigation,  
25 including the following educational seminars:

- 26 i. *Strategies for Settlement of Individual and Wage & Hour Class*  
27 *Actions*, Bridgeport's Eighth Annual Wage & Hour Litigation  
28 Conference (December 16, 2011)



1 to preserve the right of California’s consumers and employees to bring proposed  
2 class actions. For example, I provided assistance to CAOC in its successful  
3 effort to defeat AB 298, which would have substantially impaired the ability of  
4 plaintiffs to prosecute class actions in California. More recently, on behalf of  
5 CAOC, I co-authored several requests for publication of unpublished class  
6 action decisions, including one such request in *Jaimez v. Daihls USA, Inc.*, 181  
7 Cal. App. 4th 1286 (2010), and authored amicus briefs for CAOC in the Eighth  
8 Circuit matter entitled *Avritt v. Reliastar Life. Ins. Co.*, Case No. 09-2843, the  
9 California Supreme Court matter entitled *Californians for Disability Rights v.*  
10 *Mervyn’s, LLC*, 39 Cal. 4th 223 (2006), and the California Court of Appeal  
11 matter entitled *Brown v. Ralphs Grocery Company*, 197 Cal. App. 4th 489  
12 (2011).

13 25. My current contingent billing rate is consistent with my practice area, legal market and  
14 accepted hourly rates:

- 15 (a) In the December 8, 2008 article “Billable Hours Aren’t the Only Game in Town  
16 Anymore,” *NATIONAL LAW JOURNAL*, the following hourly billing rates were  
17 reported by Sheppard Mullin Richter & Hampton, a leading firm in the defense of  
18 wage-and-hour class actions that I have frequently opposed when litigating wage-  
19 and-hour class actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year  
20 - \$310, 3rd Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th  
21 Year - \$435, 8th Year - \$455.
- 22 (b) In 2009 I was retained as appellate counsel in the appeal of a denial of class  
23 certification. For the specialized work on that appeal, I charged an hourly rate of  
24 \$650.00 per hour, a rate the hiring co-counsel accepted.
- 25 (c) In the wage and hour class action *Savaglio, et al, v. WalMart*, Alameda County  
26 Superior Court No. C-835687-7, Order Granting Class Counsel's Motion for  
27 Attorneys' Fees, filed September 10, 2010, the Court approved hourly rates from  
28 \$435 per hour for four years of experience to \$875 per hour for 51 years of

1 experience.

2 (d) The 2016-17 Adjusted Laffey Matrix states that an attorney with 11 to 19 years  
3 experience can reasonably charge \$685 per hour. However, that rate is derived  
4 from the Washington, D.C. area and requires a costs of living correction for Los  
5 Angeles. Using federal statistics for average attorney salaries, attorney pay is 3.9%  
6 higher in Los Angeles, compared to Washington, D.C., indicating a 3.9% upward  
7 adjustment to the Laffey Matrix is appropriate.

8 <https://www.bls.gov/oes/current/oes231011.htm>.<sup>1</sup> However, using federal  
9 employee pay tables, federal employee wages are 2.0% higher in Los Angeles,  
10 compared to Washington, D.C., indicating a 2.0% upward adjustment to the Laffey  
11 Matrix is appropriate. [https://www.opm.gov/policy-data-oversight/pay-  
12 leave/salaries-wages/2017/general-schedule/](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2017/general-schedule/).<sup>2</sup> And, using Schedule 9 of 5 U.S.C.  
13 § 5332, there is a 3% differential. Thus, something in the range of a 2.0% to 4.0%  
14 locality increase appears appropriate here. Applying the adjustment factor, the  
15 locality corrected Adjusted Laffey Matrix hourly rate for attorneys with 11 to 19  
16 years of experience is \$705.55.

17 (e) I have been selected to Super Lawyers from 2012-2017. I was selected for the  
18 Rising Stars edition of Super Lawyers in 2009.

19 (f) Based upon my practice area, geographic market, experience, including all of the  
20 above information, reputation, and generally accepted hourly rates, my regular  
21 hourly billing rate is now \$650.00.

### 22 23 REASONABLENESS OF THE REQUESTED FEE AWARD

24 26. When this case was taken on a contingent fee basis, with the firm agreeing to assume  
25 responsibility for litigation costs, the ultimate result was far from certain. In the course of this

26  
27 <sup>1</sup> Last viewed March 3, 2017.

28 <sup>2</sup> Last viewed March 3, 2017.

1 litigation, Setareh Law Group LLP paid filing fees, copy charges, Westlaw fees, and mailing, telephone  
2 and costs mail charges. There was never a guarantee that Setareh Law Group LLP would recoup those  
3 expenditures.

4 27. Moreover, proposed Class Counsel contributed its experience, time, and resources with  
5 no guarantee that it would be compensated for its time. The firm took on this case, which necessarily  
6 required the firm to forego other opportunities, given finite resources to devote to cases.

7 28. Class Counsel's experience in wage and hour class actions was integral in evaluating  
8 the strengths and weaknesses of the case against Defendant and the reasonableness of the settlement.  
9 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the  
10 rapidly evolving substantive law (state and federal), as well as the procedural law of class action  
11 litigation. This case, in a global sense, was not of the highest nor lowest complexity, though on-call  
12 claims, in particular, always present a substantial measure of difficulty.

13 29. In the past 5 years, Setareh Law Group LLP has settled many dozens of wage & hour  
14 class actions. Just as the Court in *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008)  
15 observed, it has been the experience at Setareh Law Group LLP that attorney fee awards of one-third of  
16 a common settlement fund are the rule, rather than the exception. Here, Class Counsel agrees that they  
17 will seek no more than one third of the settlement amount in fees. This is consistent with common  
18 practice, consistent with California law approving the percentage of the fund method to award fees  
19 from a common fund, *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016), and not  
20 inappropriate in light of the many hundreds of hours expended by attorneys and paralegals performing  
21 work for Plaintiff before and after the filing of this matter.

22 30. It is only fair that every class member who benefits from the opportunity to claim a  
23 share of the settlement pay his or her pro rata share of attorney's fees, and Plaintiff's request for fees  
24 here means that Class Counsel seek an amount of fees less than the amount Class Counsel would likely  
25 receive if they represented each class member individually. Typical contingent fee contracts of  
26 plaintiffs' counsel provide for attorney's fees of about 40% of any recovery obtained for a client.

27 31. Looking at the work of attorneys for Plaintiff in this matter (and excluding paralegals), the  
28 lodestar calculation is as follows:

Attorney	Hours	Rate	Total
Shaun Setareh	92.90	\$700	\$65,030.00
H. Scott Leviant	147.10	\$650	\$95,615.00
H. Scott Leviant (est.)	40	\$650	\$26,000.00
Thomas Segal	9.7	\$625	\$6,062.50
Farrah Grant	12	\$350	\$4,200.00
Alice Kim	28.2	\$400	\$11,280.00
Stacey Shim	27.8	\$250	\$6,950.00
		<b>Total:</b>	<b>\$215,137.50</b>

The figures for estimated (“est.”) time above reflect my best estimate, based on my experience and the settlement class size, for the time that will be expended between the preparation of this motion and the hearing of Plaintiff’s Motion for Final Approval. This lodestar figure is in line with the requested fee, requiring a very *small* multiplier of 1.24. The multiplier needed to align the negotiated fee award with the attorney hours expended is well below the multipliers of three or more routinely approved in class actions. Accordingly, the lodestar cross-check affirms that the fee award that has been preliminarily approved does in fact fall easily within the range of reasonableness.

REASONABLE COSTS ARE REQUESTED

32. Class Counsel will not seek an amount greater than \$35,000 for litigation costs. At this time, the final amount of costs that will be requested is unknown, but costs that will be requested currently total a little less than \$15,000. Plaintiff’s current costs include \$6,250 for the mediation, \$1,474 for complex court filing fees in the California Superior Court, Westlaw charges of \$970 and \$528, Southwest airline charges for court appearances and mediation, hotel charges, printing costs, postage charges, transportation charges (BART fares, Uber charges, and taxis), and filing and service of process charges. With travel costs for the final approval hearing, total costs that will be requested will likely be less than \$16,000, which is far less than the \$35,000 allocated for costs.

1  
2 THE CONTRIBUTION OF PLAINTIFF AND THE REASONABLENESS OF THE REQUESTED  
3 INCENTIVE AWARD

4 33. Here, Plaintiff seeks an Enhancement Payments that may not exceed \$10,000.  
5 Compared to the amount available to Settlement Class Members, the enhancement is not unreasonably  
6 high. The amount of the enhancement award requested for Plaintiff is only three times the average  
7 recovery for Class Members, which is proportionate and very reasonable given the risks undertaken by  
8 Plaintiff. Taking the risk of filing a lawsuit against an employer deserves recognition, especially in  
9 light of the settlement achieved by Plaintiff. Additionally, Plaintiff was actively involved in the  
10 litigation and settlement negotiations of this Action, expending considerable effort in advancing the  
11 interests of the Class. Plaintiff reviewed documents; assisted with mediation; and regularly conferred  
12 with his counsel regarding the case. I estimate that Plaintiff contributed more than 35 hours of his time  
13 to the prosecution of this matter. Plaintiff will provide a declaration confirming these facts at the time  
14 this Motion and the motion for final approval are filed.

15  
16 EXHIBITS

17 34. As noted above, a true and correct copy of the STIPULATION RE: SETTLEMENT OF  
18 CLASS AND COLLECTIVE ACTION is attached hereto as Exhibit "A." The Stipulation includes  
19 Exhibits attached thereto. Notice will be provided to the Class as required by the Court's Preliminary  
20 Approval Order and the terms of Settlement and posted online on the date of execution of this Declaration.

21 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is  
22 true and correct.

23 Executed this 25th day of August 2017, at Beverly Hills, California.

24 

25  
26 H. Scott Leviant, "Declarant"

# **EXHIBIT “A”**

1 JOSEPH D. LEE (State Bar No. 110840)  
joseph.lee@mto.com  
2 MUNGER, TOLLES & OLSON LLP  
355 South Grand Avenue, 35<sup>th</sup> Floor  
3 Los Angeles, California 90071-1560  
Tel.: (213) 683-9100 / Fax: (213) 687-3702  
4

MALCOM A. HEINICKE (State Bar No. 194174)  
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5 AARON D. PENNEKAMP (State Bar No. 290550)  
aaron.pennekamp@mto.com  
6 MUNGER, TOLLES & OLSON LLP  
7 560 Mission Street, 27th Floor  
San Francisco, CA 94105-2907  
8 Tel.: (415) 512-4029 / Fax: (415) 644-6929

9 Attorneys for Defendant AMERIGAS  
PROPANE, INC.  
10  
11

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14

15 JIMMIE JARRELL, an individual, on behalf  
of himself and all others similarly situated,  
16

Plaintiff,  
17

vs.  
18

19 AMERIGAS PROPANE, Inc.; a Pennsylvania  
corporation; and DOES 1 through 50,  
inclusive,  
20

Defendants.  
21  
22  
23  
24  
25  
26  
27  
28

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

**STIPULATION RE: SETTLEMENT OF  
CLASS AND COLLECTIVE ACTION;  
[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL (EXHIBIT  
1);**

**[PROPOSED] NOTICES RE: PENDENCY  
OF CLASS AND COLLECTIVE ACTION  
AND SETTLEMENT (EXHIBITS 2 AND  
3);**

**[PROPOSED] ORDER GRANTING  
FINAL APPROVAL OF SETTLEMENT  
(EXHIBIT 4); AND**

**[PROPOSED] JUDGMENT (EXHIBIT 5)**

1 IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Jimmie  
2 Jarrell (as Plaintiff and as Class Representative), on behalf of himself and the proposed Class of  
3 similarly situated individuals, on the one hand, and Defendant AmeriGas Propane, Inc., on the  
4 other hand, as set forth below:

5 **I. The Conditional Nature of This Stipulation.**

6 This Stipulation Re: Settlement of Class and Collective Actions is made for the sole  
7 purpose of attempting to consummate settlement of this action on a class and collective action  
8 basis. This Stipulation and the settlement it evidences is made in compromise of disputed claims.  
9 Because this Stipulation purports to settle this action on a class and collective action basis, this  
10 settlement must receive preliminary and final approval from the Court. Accordingly, the Settling  
11 Parties enter into this Stipulation and associated settlement on a conditional basis. In the event  
12 that the Court does not execute and file the Order Granting Final Approval of Settlement, or in the  
13 event that the associated Judgment does not become Final for any reason, this Stipulation shall be  
14 deemed null and void *ab initio*, it shall be of no force or effect whatsoever, it shall not be referred  
15 to or utilized for any purpose whatsoever, and the negotiation, terms, and entry of the Stipulation  
16 shall remain subject to the provisions of Federal Rule of Evidence 408 and California Evidence  
17 Code sections 1119 and 1152.

18 AmeriGas denies all of the allegations and claims, including as to liability,  
19 damages, penalties, interest, fees, restitution and all other forms of relief as well as the class and  
20 collective action allegations asserted in the Litigation. AmeriGas has agreed to resolve the  
21 Litigation via this Stipulation, but to the extent this Stipulation is disapproved by the Court,  
22 deemed void, or does not otherwise take effect, AmeriGas does not waive, but rather expressly  
23 reserves, all rights to challenge all such claims and allegations in the Litigation upon all procedural  
24 and factual grounds, including without limitation the ability to challenge class and/or collective  
25 action treatment on any grounds or assert any and all defenses or privileges. The Class  
26 Representative and Class Counsel agree that AmeriGas retains and reserves these rights, and agree  
27 not to take positions to the contrary; specifically, the Class Representative and Class Counsel  
28 agree not to argue or present any argument, and hereby waive any argument, that this Stipulation

1 estops or otherwise precludes from AmeriGas contesting class and/or collective action  
2 certification on any grounds if this Litigation were to proceed.

3 **II. The Parties to this Stipulation.**

4 This Stipulation (with the associated exhibits) is made and entered into by and  
5 among the following Settling Parties: (i) Class Representative Jimmie Jarrell (on behalf of himself  
6 and each of the Class Members), with the assistance and approval of Class Counsel; and (ii)  
7 AmeriGas, with the assistance of its counsel of record in the Litigation. This Stipulation is  
8 intended by the Settling Parties to fully, finally and forever resolve, discharge and settle the  
9 Released Claims upon and subject to the terms and conditions hereof. This Stipulation is also  
10 intended to result in the resolution with prejudice of the underlying Litigation. This Stipulation is  
11 intended to and will also result in the execution of general releases of all claims of any nature held  
12 by the Class Representative.

13 **III. The Litigation.**

14 On February 16, 2016, Plaintiff filed this Litigation in the Superior Court of the  
15 State of California for the County of Alameda as a putative Rule 23 class action on behalf of  
16 himself and others allegedly similarly situated in California and a putative collective action under  
17 the federal Fair Labor Standards Act (“FLSA”) on behalf of those allegedly similarly situated in  
18 California. Plaintiff filed a First Amended Complaint on March 15, 2016, in which Plaintiff  
19 alleged that AmeriGas had violated certain state and federal employment laws, including without  
20 limitation the FLSA, the California Labor Code, and the California Business and Professions  
21 Code, by reason of the following alleged conduct: (1) failure to provide meal periods; (2) failure to  
22 provide rest periods; (3) failure to pay hourly wages, (4) failure to provide accurate written wage  
23 statements, (5) failure to timely pay all final wages; (6) unfair competition; (7) civil penalties; and  
24 (8) failure to pay employees for all hours worked.

25 On March 25, 2016, the Litigation was removed on AmeriGas’ motion to the  
26 United States District Court for the Northern District of California.

27 Following the filing of the Complaint and the exchange of significant amounts of  
28 documents and information, counsel for AmeriGas and Class Counsel, both of whom are

1 experienced in these types of cases, began a series of arms-length negotiations which led to the  
2 scheduling of a mediation session with a professional mediator, Mark Rudy. On January 25, 2017,  
3 the Settling Parties held an all-day mediation session with Mr. Rudy and reached the agreement  
4 reflected herein.

5 This Stipulation is intended to result in the creation of a settlement class comprised  
6 of all Persons who were employed by AmeriGas as a Service Technician (a non-exempt or hourly  
7 position) in California from February 16, 2012, through the date of preliminary approval.

8 Solely for the purpose of settling this case, the parties stipulate and agree that the  
9 requirements for establishing class and collective action certification with respect to this class  
10 have been met and are met. If this Settlement is not approved by the Court for any reason,  
11 AmeriGas reserves its rights to contest class and/or collective action certification.

12 This Stipulation, if approved by the Court, will result in the termination with  
13 prejudice of the Litigation through the entry of the Judgment, and the release of all Released  
14 Claims for all Class Members. The Class Representative will also execute a general release of all  
15 claims.

16 **IV. Defendant's Denial of Wrongdoing or Liability.**

17 AmeriGas denies all of the claims and contentions alleged by the Class  
18 Representative in the Litigation. Nonetheless, AmeriGas has concluded that further conduct of the  
19 Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully  
20 and finally settled in the manner and upon the terms and conditions set forth in this Stipulation.  
21 AmeriGas has also taken into account the uncertainty and risks inherent in any litigation,  
22 especially in multi-party cases like this Litigation. AmeriGas has therefore determined that it is  
23 desirable and beneficial that the Litigation be settled in the manner and upon the terms and  
24 conditions set forth in this Stipulation.

25 **V. Claims of the Class Representative and Benefits of Settlement.**

26 The Class Representative and Class Counsel believe that the claims presently  
27 asserted in the Litigation have merit and that evidence developed to date supports the claims.  
28 However, the Class Representative and Class Counsel recognize and acknowledge the expense

1 and length of the type of continued proceedings necessary to prosecute the Litigation against  
2 AmeriGas through trial and through appeals. The Class Representative and Class Counsel have  
3 also taken into account the uncertain outcome and the risk of any litigation, as well as the  
4 difficulties and delays inherent in such litigation. Based upon their evaluation, the Class  
5 Representative and Class Counsel have determined that the settlement set forth in the Stipulation  
6 is in the best interests of the Class Representative and the Class.

7 **VI. Terms of Stipulation and Agreement of Settlement.**

8 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and  
9 between the Class Representative (for himself and the Class Members) and AmeriGas, with the  
10 assistance of their respective attorneys of record, that, as among the Settling Parties, including all  
11 Class Members, the Litigation and the Released Claims shall be finally and fully compromised,  
12 settled, and released, and the Litigation shall be resolved with prejudice, as to all Settling Parties,  
13 upon and subject to the terms and conditions of the Stipulation and the Judgment.

14 1. Definitions.

15 As used in all parts of this Stipulation, the following terms have the meanings  
16 specified below:

17 1.1. “AmeriGas” means AmeriGas Propane, Inc., a corporation and the  
18 defendant in the Litigation. “AmeriGas Releasees” means AmeriGas and each of its parents,  
19 affiliates, subsidiaries, predecessors, successors, divisions, joint venturers, attorneys, and assigns  
20 and each of these entities’ past or present owners, directors, officers, employees, partners,  
21 members, principals, agents, insurers, co-insurers, re-insurers, shareholders, attorneys, employee  
22 benefit plans, employee benefit plan trustees, fiduciaries, and administrators, and personal or legal  
23 representatives.

24 1.2. “Claim Form” means the form attached as Form B to the Notice, in the  
25 same or substantially the same manner as set forth in Exhibit 2. Claim Forms will be included  
26 with Notices to Former Employee Class Members only.

27 1.3. “Claims Administrator” means the third-party claims administration firm of  
28 Rust Consulting, Inc.

1           1.4.   “Class” means the collective group of Persons who were employed by  
2 AmeriGas as a Service Technician in California at any point during the Class Period.

3           1.5.   “Class Counsel” means Setareh Law Group.

4           1.6.   “Class Member” or “Member of the Class” means a Person who is a  
5 member of the Class.

6           1.7.   “Class Notice” or “Notice” or “Notice to Class Members” means a notice  
7 (and associated response forms) to be approved by the Court, which shall be submitted to the  
8 Court substantially in the form attached hereto as Exhibit 2 and Exhibit 3. Exhibit 2 will be the  
9 Notice sent to Former Employee Class Members and Exhibit 3 will be the Notice sent to Current  
10 Employee Class Members. These documents will be formatted by the Claims Administrator, and  
11 they will not appear on pleading paper when ultimately mailed to Class Members. The Notices  
12 will be posted on the website established by the Claims Administrator per section 2.11.22.

13           1.8.   “Class Period” means the period from February 16, 2012 through and  
14 including the Preliminary Approval Date.

15           1.9.   “Class Representative” means Plaintiff Jimmie Jarrell.

16           1.10. “Current Employee” means any employee of AmeriGas who is a member of  
17 the Class and who is employed by AmeriGas as of the Preliminary Approval Date.

18           1.11. “Court” means the United States District Court for the Northern District of  
19 California.

20           1.12. “Service Technician” means the non-exempt (hourly or premium overtime  
21 eligible) position or job title of Service Technician as that term is commonly used at AmeriGas.

22           1.13. “Effective Date” means the date on which the Judgment becomes Final.

23           1.14. “Final” means the point at which the Judgment has become final and  
24 irreversible because the latest of the following dates has occurred: (i) the date of final affirmance  
25 on an appeal of the Judgment; (ii) the date of final dismissal with prejudice of the last pending  
26 appeal from the Judgment; or (iii) if no appeal is filed, the expiration date of the time for the filing  
27 or noticing of any form of valid appeal from the Judgment. Notwithstanding the foregoing, any  
28 proceeding or order, or any appeal or petition for a writ pertaining solely to the award of attorneys’

1 fees or costs shall not, by itself, in any way delay or preclude the Judgment from becoming Final.

2 1.15. "FLSA" means the Federal Labor Standards Act, 29 U.S.C. § 201 *et seq.*

3 1.16. "Former Employee" means any individual who is a member of the Class,  
4 and who is not employed by AmeriGas as of the Preliminary Approval Date.

5 1.17. "Judgment" means the judgment to be rendered by the Court pursuant to  
6 this Stipulation, substantially in the form attached hereto as Exhibit 5. "Approval Date" shall  
7 mean the date on which the Judgment is entered.

8 1.18. "Last Known Address" or "Last Known Addresses" means the most  
9 recently recorded mailing address for a Class Member as such information is contained in  
10 employment or personnel records maintained by AmeriGas.

11 1.19. "Litigation" means the lawsuit captioned *Jimmie Jarrell v. AmeriGas*  
12 *Propane, Inc.*, United States District Court for the Northern District of California, Case No. 3:16-  
13 CV-01481-JST.

14 1.20. "Maximum Settlement Amount" means the maximum gross amount that  
15 AmeriGas shall pay under the terms of this Stipulation, which is \$800,000. This amount shall  
16 cover all expenses associated with the settlement, including (a) Maximum Settlement Portion for  
17 Payments to Participating Class Members; (b) the maximum gross amount for Class Counsel's  
18 attorneys' fees to be paid in accordance with the terms set forth in Paragraph 2.8.1, which is  
19 \$266,640; (c) the maximum gross amount for all of Class Counsel's and the Class  
20 Representative's taxable litigation costs and associated expenses, which is \$35,000; (d) the  
21 anticipated gross amount for claims administration costs, which is \$20,000; (e) the maximum  
22 gross amount for the enhancement payments to be made by AmeriGas to the Class Representative,  
23 in accordance with the terms set forth in Paragraph 2.8.2, which is a maximum \$10,000; (f) the  
24 maximum gross amount for payment to the California Labor Workforce Development Agency as  
25 part of the consideration for the release of all Released Claims under the California Private  
26 Attorney Generals Act of 2004, codified at California Labor Code sections 2698 *et seq.*, which is  
27 \$30,000; and (g) Payroll Taxes. AmeriGas will not under any circumstances pay more than the  
28 Maximum Settlement Amount.

1                   1.21. “Maximum Settlement Portion for Payments to Participating Claimants”  
2 means the maximum amount for payments to those Class Members who are Participating  
3 Claimants.

4                   1.22. “Non-Settlement Class” consists of all Class Members who properly and  
5 timely elect to opt out of the Settlement Class by submitting Opt Outs pursuant to Paragraph 2.5.1  
6 of this Stipulation.

7                   1.23. “Non-Settlement Class Member” or “Member of the Non-Settlement Class”  
8 means a Person who is a member of the Non-Settlement Class.

9                   1.24. “Notice Mailing Deadline” means the date forty (40) days after the  
10 Preliminary Approval Date.

11                   1.25. “Notice Response Deadline” means the date forty-five (45) days after the  
12 date that the Claims Administrator mails the Notice to the Class.

13                   1.26. “Opt Out” or “Opt Outs” means written requests by Class Members, in the  
14 form specified in the Class Notice, to be excluded from the Settlement Class.

15                   1.27. “Order of Final Approval” or “Order Granting Final Approval of  
16 Settlement” means an order to be entered and filed by the Court, to be submitted to the Court  
17 substantially in the form attached hereto as Exhibit 4.

18                   1.28. “Participating Claimant” means (a) all Current Employees who are  
19 Members of the Settlement Class, and (b) all Former Employees who are Members of the  
20 Settlement Class and who also submit a Qualifying Claim Form.

21                   1.29. “Payroll Taxes” shall mean the payroll taxes and associated payments that  
22 an employer is required to make when making standard wage payments to employees, i.e., the  
23 employer share of the payroll tax.

24                   1.30. “Person” means a natural person.

25                   1.31. “Preliminary Approval Date” means the date on which the Court enters the  
26 Preliminary Approval Order.

27                   1.32. “Preliminary Approval Order” means an order executed and filed by the  
28 Court, to be submitted to the Court substantially in the form attached hereto as Exhibit 1.

1           1.33. A “Qualifying Settlement Claim Certification Form” or “Qualifying Claim  
2 Form” means a Claim Form that is fully completed, is properly executed, and is timely returned to  
3 the Claims Administrator, *i.e.*, returned with a postmark on or before the Notice Response  
4 Deadline.

5           1.34. A “Qualifying Work Week” is any calendar week in which a Class Member  
6 was employed by AmeriGas in California as a Service Technician during the Class Period.

7           1.35. A “Reasonable Address Verification Measure” means the utilization of the  
8 National Change of Address Database maintained by the United States Postal Service to review  
9 the accuracy of and, if possible, update a mailing address.

10           1.36. “Released Claims” means any and all claims (including without limitation  
11 Unknown Claims), demands, rights, liabilities and causes of action of every nature and description  
12 whatsoever, including without limitation statutory, constitutional, contractual or common law  
13 claims, whether known or unknown, whether or not concealed or hidden, whether arising under  
14 federal or state law, against the AmeriGas Releasees, or any of them, including without limitation  
15 claims for wages, damages, unpaid costs, penalties, liquidated damages, punitive damages,  
16 interest, attorneys’ fees, litigation costs, restitution, or equitable relief, that accrued during the  
17 period from February 16, 2012 through and including the Approval Date as a result of the Class  
18 Member’s employment as a Service Technician in California for AmeriGas, based on the  
19 following categories of claims or allegations: (a) (i) failure to pay any and all regular or premium  
20 wages; (ii) failure to provide sufficient meal and/or rest periods and/or to pay premiums in lieu  
21 thereof; (iii) failure to pay minimum wages; (iv) failure to pay wages to discharged, quitting or  
22 otherwise terminated employees; (v) failure to furnish accurate itemized wage statements; (vi)  
23 failure to comply with payroll or wage record-keeping requirements; and (vii) failure to maintain  
24 compliant vacation and floating holiday policies; (b) any and all claims alleging statutory  
25 violations arising from the same categories of allegations set forth above in Paragraph 1.36(a),  
26 including without limitation claims under the Fair Labor Standards Act (“FLSA”), the Portal to  
27 Portal Act, California Labor Code sections 218, 226, 226.7 1194 and 2698 *et seq.* and California  
28 Business & Professions Code sections 17200 *et seq.*; (c) any and all claims for penalties or

1 liquidated damages or other available remedies arising from the categories of allegations set forth  
2 above in Paragraph 1.36(a) and (b), including without limitation claims under the FLSA, Portal to  
3 Portal Act, California Labor Code sections 203, 226, 226.7, 512, 1194, and 2698 *et seq.*, and  
4 applicable California Industrial Welfare Commission Wage Orders; and (d) any and all claims for  
5 interest, costs, or attorneys' fees arising from the categories of allegations set forth above in  
6 Paragraph 1.36(a) and (b), including without limitation claims under California Labor Code  
7 sections 218.5, 1194, and 2699(g)(1), California Code of Civil Procedure section 1021.5, and  
8 Federal Rule of Civil Procedure 23(h); and (e) to the extent not covered by the above, any and all  
9 claims pled in the Litigation. The Settling Parties understand and agree that the Released Claims  
10 include claims under the California Private Attorneys General Act of 2004, codified at California  
11 Labor Code sections 2698 *et seq.*, for which the Class is being granted additional consideration,  
12 which is already part of, and not in addition to, the Maximum Settlement Amount, including the  
13 amount of \$30,000, which shall be paid to the California Labor and Workforce Development  
14 Agency pursuant to this Stipulation. The Settling Parties further agree and understand that  
15 notwithstanding the foregoing, Former Employee Settlement Class Members who do not become  
16 Participating Claimants will not be deemed to have released claims arising directly under the  
17 FLSA (as opposed to indirect FLSA claims, such as a claim under the California Unfair  
18 Competition Law, codified at California Business and Professions Code section 17200, predicated  
19 on an alleged violation of the FLSA, which indirect claims are being released and waived pursuant  
20 to this Stipulation), but will be deemed to have and will have released all other Released Claims.

21           1.37. "Settlement Class" or "Settlement Class Members" means the group of all  
22 Class Members who do not opt out of the Class by submitting Opt Outs pursuant to Paragraph  
23 2.5.1, and thus means the collective group of all of the Class Members who will become subject to  
24 and bound by the Judgment if the Effective Date occurs, regardless of whether they submit Claim  
25 Forms.

26           1.38. "Settlement Sum" means the total, gross amount due to an individual  
27 Participating Claimant, which shall be the product of the Settlement Sum Variable multiplied by  
28 the number of Qualifying Work Weeks worked by that Participating Claimant. Because of the

1 withholdings described in Paragraphs 2.1.2 and 2.2.1, the net amount ultimately received by each  
2 Participating Claimant may be less than his or her gross Settlement Sum.

3 1.39. "Settlement Sum Variable" means the number which is the quotient of the  
4 Maximum Settlement Portion for Payments to Participating Claimants divided by the total number  
5 of Qualifying Work Weeks for all Participating Claimants.

6 1.40. "Settlement Hearing" means a hearing set by the Court to take place on or  
7 about the date which is sixty (60) days after the Notice Response Deadline for the purpose of (i)  
8 determining the fairness, adequacy and reasonableness of the Stipulation and associated settlement  
9 pursuant to class and collective action procedures and requirements; (ii) determining the good  
10 faith of the Stipulation and associated settlement; (iii) awarding attorneys' fees, costs, and  
11 enhancement awards; and (iv) entering Judgment.

12 1.41. "Settlement Hearing Motion Date" shall mean the date on which the motion  
13 for final approval is filed pursuant to Paragraph 2.5.7, and this date shall be approximately 28 days  
14 prior to the Settlement Hearing.

15 1.42. "Settling Parties" means (a) AmeriGas, on the one hand; and (b) the Class  
16 Representative on behalf of himself and all Members of the Settlement Class, on the other hand.

17 1.43. "Stipulation" means this agreement and all of its attachments and exhibits,  
18 which the Settling Parties understand and agree sets forth all material terms and conditions of the  
19 settlement between them, and which is subject to Court approval.

20 1.44. "Unknown Claims" means those Released Claims which the Class  
21 Representative or any Class Member does not know or suspect to exist in his or her favor at the  
22 time of the entry of the Judgment, and which, if known by him or her might have affected his or  
23 her settlement with or release of the AmeriGas Releasees, or might have affected his or her  
24 decision to opt out of the Settlement Class or to object to this settlement. With respect to Released  
25 Claims only, the Settling Parties stipulate and agree that, upon the Effective Date, the Class  
26 Representative shall expressly, and each of the Settlement Class Members shall be deemed to  
27 have, and by operation of the Judgment shall have, waived the provisions, rights, and benefits of  
28 California Civil Code § 1542 or any like provision of the law of any other pertinent jurisdiction.

1 California Civil Code § 1542 provides:

2           A general release does not extend to claims which the creditor does  
3           not know or suspect to exist in his or her favor at the time of  
4           executing the release, which if known by him or her must have  
5           materially affected his or her settlement with the debtor.

6 The Class Representative and each Settlement Class Member may hereafter discover facts in  
7 addition to or different from those which he or she now knows or believes to be true with respect  
8 to the subject matter of the Released Claims, but the Class Representative and each Settlement  
9 Class Member, upon the Effective Date, shall be deemed to have, and by operation of the  
10 Judgment shall have, fully, finally, and forever settled and released the Released Claims. The  
11 Class Representative acknowledges, and the Settlement Class Members shall be deemed by  
12 operation of the Judgment to have acknowledged, that the foregoing waiver was separately  
13 bargained for and a key element of the settlement of which this release is a part. It is understood  
14 and agreed that Unknown Claims include only those claims that meet the definition of Released  
15 Claims and therefore do not include, for example, claims for wrongful termination, workplace  
16 harassment or discrimination or Workers Compensation Claims.

17           1.45. “Updated Address” means a mailing address that was updated via a  
18 Reasonable Address Verification Measure or via an updated mailing address provided by the  
19 United States Postal Service or a Class Member.

20           1.46. “Wage” or “Wages” Or “wage” or “wages” shall have the same meaning as  
21 the term wages under California Labor Code section 200.

22           2.     The Settlement.

23           2.1.    *Consideration to Settlement Class Members*

24           2.1.1.    Within fifteen (15) days of the Effective Date, and only if the Effective  
25 Date occurs, AmeriGas, through the Claims Administrator, and according to the terms, conditions,  
26 and procedures set forth in this Stipulation, shall pay each Participating Claimant his or her  
27 Settlement Sum. The Settlement Sums shall be allocated for reporting reasons as follows: (a)  
28 twenty percent (33%) shall be deemed payment in settlement of claims for unpaid wages; and (b)  
eighty percent (67%) shall be deemed payment for penalties, liquidated damages, and interest.

1 Payroll Taxes on the wage portion of these payments will be paid out of the Maximum Settlement  
2 Amount through an adjustment to each individual Participating Claimant's Settlement Sum.

3 2.1.2. As further detailed in this Section 2, AmeriGas, itself or through the  
4 Claims Administrator, will report each payment made pursuant to this Stipulation to government  
5 authorities, including the Internal Revenue Service, as required by law, and it shall make all  
6 required deductions and/or withholdings.

7 2.1.3. The only Class Members entitled to any payment under this Stipulation  
8 and the associated Judgment are Participating Claimants.

9 2.2. *Taxes*

10 2.2.1. Those payments (or portions thereof) allocated to the settlement of claims  
11 for unpaid wages (a) shall be subject to required withholdings and deductions, and so the net  
12 amounts payable will be less than the gross amounts; and (b) shall be reported in the year of  
13 payment as wage income to the Participating Claimants on a Form W-2 or analogous form. Those  
14 payments (or portions thereof) allocated to any other claims, including without limitations claims  
15 for penalties, liquidated damages, and interest (a) shall not be subject to withholdings and  
16 deductions, and so the net amounts payable will be equal to the gross amounts; and (b) shall be  
17 reported in the year of payment as non-wage income to the Participating Claimants on a Form  
18 1099 or analogous form. Other than as set forth above, AmeriGas will not, unless otherwise  
19 required by law, make any deductions, withholdings or additional payments from the Settlement  
20 Sum of any Participating Claimant, including without limitation, medical or other insurance  
21 payments or premiums, employee 401(k) contributions or matching employer contributions, wage  
22 garnishments, or charity withholdings, and entry of the Order of Final Approval by the Court shall  
23 be deemed authority not to make such deductions, withholdings, or additional payments. Any  
24 amount paid to Participating Claimants shall not create any credit or otherwise affect the  
25 calculation of any deferred compensation, benefit, or other compensation plan provided by  
26 AmeriGas.

27 2.2.2. Other than the withholding and reporting requirements set forth in  
28 Paragraphs 2.1.2 and 2.2.1, the Participating Claimants shall be solely responsible for the

1 reporting and payment of any federal, state and/or local income or other tax or any other  
2 withholdings, if any, on any of the payments made pursuant to this Stipulation. AmeriGas makes  
3 no representations, and it is understood and agreed that AmeriGas has made no representations, as  
4 to the taxability of any portions of the settlement payments to any Participating Claimants, the  
5 payment of any costs or attorneys' fee awards, any payments to the Class Representative, or any  
6 other payments made pursuant to this Stipulation. The Notice will advise Class Members to seek  
7 their own tax advice prior to acting in response to that notice.

8           2.3.    *Approval of Notice to the Classes and Scheduling of a Settlement Hearing.*

9           2.3.1.    The Class Representative, through Class Counsel, shall file this  
10 Stipulation with the Court and move for preliminary approval of this Stipulation. (Class Counsel  
11 will provide an advance copy of this motion to counsel for AmeriGas, and Class Counsel will  
12 confirm existing or forthcoming compliance with CAFA per section 2.11.19.) Via this  
13 submission, and a supporting motion, the Class Representative, through Class Counsel, will  
14 request that the Court enter the Preliminary Approval Order thereby scheduling the Settlement  
15 Hearing for the purposes of determining the good faith of this settlement, granting final approval  
16 of the settlement, granting final approval of this Stipulation, and entering Judgment. Via this same  
17 motion, the Class Representative, through Class Counsel shall advise the Court of the agreements  
18 set forth in Paragraphs 2.8.1, 2.8.2 and 2.8.3 of this Stipulation.

19           2.3.2.    Subject to Court availability, the Class Representative shall endeavor to  
20 notice the motion for entry of the Preliminary Approval Order described in Paragraph 2.3.1 for a  
21 hearing before the Court as soon as possible. Failure of the Court to enter the Preliminary  
22 Approval Order in its entirety or in a substantially similar form following the efforts of the  
23 Settling Parties to obtain such entry will be grounds for the Settling Parties to terminate the  
24 settlement and the terms of this Stipulation.

25           2.3.3.    If the Court enters the Preliminary Approval Order more than twenty (20)  
26 days after the hearing date for the motion for preliminary approval, Class Counsel and counsel for  
27 AmeriGas shall meet and confer to reach agreement on any necessary revisions of the deadlines  
28 and timetables set forth in this Stipulation. In the event that the Settling Parties fail to reach such

1 agreement, any of the Settling Parties may apply to the Court via a noticed motion for  
2 modification of the dates and deadlines in this Stipulation, provided that such a request to the  
3 Court may seek only reasonable modifications of the dates and deadlines contained in this  
4 Stipulation and no other changes.

5           2.3.4.     If the Court enters the Preliminary Approval Order, then at the resulting  
6 Settlement Hearing, the Class Representative and AmeriGas, through their counsel of record, shall  
7 address any written objections from Class Members, any concerns from Class Members who  
8 attend the hearing, and any concerns of the Court. Unless the Stipulation is terminated or voided  
9 per its terms, the Settling Parties and their counsel will seek approval of the Stipulation and entry  
10 of the Judgment by the Court.

11           2.4.     *Notice to Class Members.*

12           2.4.1.     If, by entering the Preliminary Approval Order, the Court provides  
13 authorization to send the Class Notice to Class Members, AmeriGas, through the Claims  
14 Administrator, will facilitate the mailing of the Notice to all Class Members at their Last Known  
15 Addresses. The Notice attached as Exhibit 2 shall be for Former Employee Class Members, and  
16 the Notice attached as Exhibit 3 shall be for Current Employee Class Members. All the Notices  
17 shall be mailed via first class mail through the United States Postal Service, postage pre-paid, and  
18 they will be posted on a website established by the Claims Administrator as set forth in this  
19 Stipulation. The Notice shall include, as attached forms, a pre-printed change of address form for  
20 both Notices and a pre-printed Claim Form on the Former Employee Notice. The Notices shall  
21 also include instructions on how a Class Member can submit an Opt Out. The Former Employee  
22 Notice shall include a postage-prepaid return envelope for the Claim Form. No other materials  
23 will be included with the mailings enclosing these notices. No Settling Party shall send any other  
24 materials to any Class Member, provided that Class Counsel may respond to individual inquiries  
25 from Class Members, and provided further that AmeriGas may communicate with Class Members  
26 who are Current Employees in the normal course of business, including with respect to this  
27 settlement.

1                   2.4.2.     The Notice and their envelopes or coverings shall be marked to denote  
2 the return address of the Claims Administrator as listed on the Claim Form.

3                   2.4.3.     AmeriGas shall compile information respecting the name, Last Known  
4 Address, and number of Qualifying Work Weeks for each Class Member for the Claims  
5 Administrator so that the Claims Administrator can state in the Notice each individual's minimum,  
6 gross Settlement Sum, engage in the processing and mailing of each Notice, and carry out the  
7 associated claims and payment process. This information will not be provided to the Class  
8 Representative or Class Counsel. By preliminarily approving this settlement, the Court will be  
9 deemed to have authorized AmeriGas to provide the Claims Administrator with the Social  
10 Security Number of each Class Member. The number of Qualifying Work Weeks and the  
11 associated calculation of Settlement Sums will be determined by reference to AmeriGas's records,  
12 which shall be presumed to be correct. In the event that a Class Member disputes his or her  
13 Settlement Sum or number of Qualifying Work Weeks, the Claims Administrator shall consult  
14 with AmeriGas and provide it the opportunity to honor the dispute and make the increased  
15 payment. If AmeriGas disputes the challenge, the Settling Parties shall meet and confer in an  
16 effort to resolve the matter, and if they are unable to do so, they shall seek a determination from  
17 the Claims Administrator as to the proper Settlement Sum for the individual in question before  
18 raising any such issue with the Court. Unless the number of Qualifying Work Weeks for all Class  
19 Members increases by more than ten percent, as a result of this process, there shall be no increase  
20 in the Maximum Settlement Amount.

21                   2.4.4.     Prior to mailing the Notice to each Class Member, the Claims  
22 Administrator shall include in the space provided on each such notice the minimum, gross  
23 Settlement Sum for the Class Member in question.

24                   2.4.5.     Prior to mailing the Notice to each Class Member, the Claims  
25 Administrator shall undertake a Reasonable Address Verification Measure to ascertain the current  
26 accuracy of the Last Known Address of each Class Member. To the extent this process yields an  
27 Updated Address, that Updated Address shall replace the Last Known Address and be treated as  
28

1 the new Last Known Address for purposes of this Stipulation and for subsequent mailings in  
2 particular.

3           2.4.6.     The Notice Mailing Deadline is the last date for the Claims Administrator  
4 to mail the Notices to the Last Known Address of each Class Member and post the Notices on the  
5 website established per this Stipulation.

6           2.4.7.     All costs of the mailing described in Paragraph 2.4.1 (including, for  
7 example, the fees charged by the Claims Administrator, the cost of the envelopes in which the  
8 Notice will be mailed, the cost of reproducing the Notice, the cost of postage to send the Notice,  
9 the cost of return envelopes and pre-paid postage for the return envelopes for Claim Forms, and  
10 the costs of maintaining the website established per this Stipulation), shall be included in the  
11 portion of the Maximum Settlement Amount allocated for claims administration costs.

12           2.4.8.     Unless the Claims Administrator receives a Notice returned from the  
13 United States Postal Service for reasons discussed below in this paragraph, each Notice shall be  
14 deemed mailed and received by the Class Member upon mailing. In the event that subsequent to  
15 the first mailing of a Notice, and prior to the Notice Response Deadline, a Notice is returned to the  
16 Claims Administrator by the United States Postal Service with a forwarding address for the  
17 recipient, the Claims Administrator shall re-mail that Notice to the forwarding address, that Notice  
18 will be deemed mailed and received at that point, and the forwarding address shall be deemed the  
19 Updated Address for that Class Member. In the event that subsequent to the first mailing of a  
20 Notice, and prior to the Notice Response Deadline, a Notice is returned to the Claims  
21 Administrator by the United States Postal Service because the address of the recipient is no longer  
22 valid, e.g., the envelope is marked "Return to Sender," the Claims Administrator shall undertake  
23 another Reasonable Address Verification Measure to attempt to ascertain the current address of  
24 the particular Class Member in question and, if such an address is ascertained, the Claims  
25 Administrator will re-send that Notice within five (5) days of receiving such information. If no  
26 Updated Address is obtained for that Class Member through this second effort, the Notice shall be  
27 sent again to the Last Known Address, and in either event, the Notice shall be deemed received  
28 once it is mailed for the second time. In the event that subsequent to the second mailing of a

1 Notice, and on or after the Notice Response Deadline, a Notice is returned to the Claims  
2 Administrator by the United States Postal Service because the address of the recipient is no longer  
3 valid, i.e., the envelope is marked “Return to Sender,” the Claims Administrator shall be required  
4 to take no further action with that Notice and it shall be deemed to have been delivered. Nothing  
5 in this Paragraph 2.4.8 shall be deemed to extend the Notice Response Deadline.

6           2.5.    *Responses to the Notice; Motion for Final Approval.*

7           2.5.1.    Class Members may elect to “opt out” of the Class and thus exclude  
8 themselves from the Class. Class Members who wish to exercise this option must mail to the  
9 Claims Administrator a timely, fully completed Opt Out form consistent with the instructions  
10 contained in the Notice. If an Opt Out is not received by the Claims Administrator from a Class  
11 Member postmarked on or before the Notice Response Deadline, then that Class Member will be  
12 deemed to have forever waived his or her right to opt out of the Settlement. Class Members who  
13 do not properly submit Opt Outs shall be deemed Members of the Settlement Class. Class  
14 Members who properly submit Opt Outs and become Non-Settlement Class Members shall have  
15 no further role in the Litigation, and for all purposes they shall be regarded as if they never were  
16 parties to this Litigation. To the extent that any Class Members properly submit Opt Outs and  
17 become Non-Settlement Class Members, the funds that would have been allocated to them for  
18 payment of the Settlement Sums shall remain the property of AmeriGas and will not be included  
19 in any distributions to Class Members.

20           2.5.2.    Class Members who have not filed a valid Opt Out may become  
21 Participating Claimants. Current Employee Class Members who do not submit a valid and timely  
22 Opt Out will be deemed Participating Claimants automatically. Former Employee Class Members  
23 who wish to exercise this option and certify their entitlement to payment under this settlement  
24 must fully complete, execute, and mail, per the instructions therein, the form entitled “Settlement  
25 Claim Form” attached to the Notice as Form B. If a Qualifying Settlement Claim Certification  
26 Form is not received by the Claims Administrator from a Class Member who is a Former  
27 Employee, postmarked on or before the Notice Response Deadline, then that Class Member will  
28 be deemed to have forever waived his or her right to be a Participating Claimant and receive

1 payment under this settlement. As long as they do not properly submit Opt Outs, Class Members  
2 who do not submit Qualifying Settlement Claim Certification Forms in a timely and proper  
3 fashion shall be deemed Members of the Settlement Class and shall be subject to the Judgment,  
4 except with respect to direct FLSA claims as provided further herein. Only Participating  
5 Claimants shall be entitled to payment pursuant to the Judgment. To the extent any Former  
6 Employee Settlement Class Members do not file Qualifying Claim Forms and become  
7 Participating Claimants, the funds allocated to them for payments of the Settlement Sums shall not  
8 revert to AmeriGas; instead, these funds shall be redistributed to Participating Claimants on a pro  
9 rata basis according to Qualifying Work Weeks.

10           2.5.3. Class Members who have not filed a valid Opt Out have the option to  
11 participate in this Litigation at their own expense by obtaining their own attorney(s). Class  
12 Members who choose this option will be responsible for any attorneys' fees or costs incurred as a  
13 result of this election. The Notice will advise Class Members of this option.

14           2.5.4. Class Members who have not filed a valid Opt Out may object to the  
15 Stipulation by submitting written objections to the Claims Administrator no later than the Notice  
16 Response Deadline. The Notice shall advise Class Members of this option. The Claims  
17 Administrator shall immediately provide any such objections to the Settling Parties, who shall  
18 subsequently provide them to the Court during the final approval process. The Settling Parties  
19 agree to respond to any objections at a hearing before the Court.

20           2.5.5. To the extent that a Former Employee Class Member timely submits an  
21 incomplete Claim Form (i.e., not all spaces have been completed), the Claims Administrator shall  
22 promptly send that person a "cure letter" advising him or her of the deficiency and giving him or  
23 her the opportunity to correct the deficiency no later than the Notice Response Deadline or fifteen  
24 (15) days after the cure letter is sent, whichever is later, provided that this paragraph shall in no  
25 way extend the Notice Response Deadline for any Class Members to whom a cure letter is not  
26 sent. If no response to this cure letter is received, the Settlement Parties shall meet and confer to  
27 determine if the original Claim Form was indeed deficient. The submission of an incomplete  
28 Claim Form will create a presumption that the Class Member intended to become a Participating

1 Claimant. To the extent that a Class Member timely submits both an Opt Out and a Qualifying  
2 Claim Form (i.e., contradictory forms), the Claims Administrator shall send that person a “cure  
3 letter” advising him or her of the contradiction and giving him or her the opportunity to select  
4 which form should be deemed submitted, and if no response is received, the Class Member shall  
5 be deemed a Participating Claimant.

6           2.5.6. Class Members who, for future reference and mailings from the Court or  
7 Claims Administrator, if any, wish to change the name or address listed on the envelope in which  
8 the Notice was first mailed to them, must either (a) add their new address information to a timely  
9 submitted Opt Out or Claim Form; or (b) fully complete, execute, and mail, per the instructions  
10 therein, the form entitled “Change of Name or Address Information” attached to both the Notices  
11 as Form A. All name or address change requests must be postmarked or received on or before the  
12 Notice Response Deadline. To the extent that a Class Member requests a replacement Notice or  
13 associated forms prior to the Notice Response Deadline, the Claims Administrator shall provide  
14 that Class Member with a replacement Notice.

15           2.5.7. Prior to the Settlement Hearing and consistent with the rules imposed by  
16 the Court, the Class Representative shall move the Court for entry of the Order of Final Approval  
17 (and the associated entry of Judgment). (Class Counsel shall provide advance notice of this  
18 motion to AmeriGas.) Through this motion, the Class Representative shall advise the Court of the  
19 agreements in Paragraphs 2.8.1, 2.8.2, and 2.8.3 of this Stipulation. The Class Representative and  
20 Class Counsel shall be responsible for justifying the agreed upon payments set forth in Paragraphs  
21 2.8.1, 2.8.2, and 2.8.3 of this Stipulation. The Settling Parties shall make all reasonable efforts to  
22 secure entry of the Order of Final Approval. If the Court rejects the Stipulation, or fails to enter  
23 the Order of Final Approval, or enter the Judgment, this Stipulation shall be void ab initio, and  
24 AmeriGas shall have no obligations to make any payments under the Stipulation. In the event that  
25 the Stipulation becomes void for this or any other reason, AmeriGas agrees to pay the reasonable  
26 fees and costs already incurred by the Claims Administrator and retains all rights to challenge all  
27 claims and allegations in the Litigation upon all procedural and factual grounds, including without  
28

1 limitation the ability to challenge class or collective action treatment on any grounds or assert any  
2 and all defenses.

3                   2.6.     *Timing of Payment to Claimants.*

4                   2.6.1.     Within fifteen (15) days of, and only after, the Effective Date, AmeriGas,  
5 through the Claims Administrator, shall pay to each Participating Claimant his or her respective  
6 Settlement Sum, including any funds that are being redistributed to such Participating Claimant on  
7 a pro rata basis according to Qualifying Work Weeks, as provided in Paragraphs 2.5.1, 2.5.2,  
8 2.8.1, and 2.8.2.

9                   2.6.2.     In accordance with the terms of Paragraphs 2.1.1 and 2.1.2, AmeriGas,  
10 through the Claims Administrator, shall issue to each Participating Claimant a check or checks  
11 from an account administered by the Claims Administrator but funded by AmeriGas, less required  
12 withholdings. AmeriGas, through the Claims Administrator, shall mail this check(s) to each  
13 Participating Claimant at his or her Last Known Address, or Updated Address if obtained, on or  
14 before the date which is fifteen (15) days after the Effective Date. Checks issued to Participating  
15 Class Members will contain a notice that, by cashing the check, that individual will be confirming  
16 the release of claims under the FLSA. Checks issued to Participating Claimants pursuant to this  
17 Agreement shall remain negotiable for a period of ninety (90) days from the date of mailing. If a  
18 check has not been cashed within sixty (60) days of issuance, the Claims Administrator shall send  
19 the Class Member in question a postcard reminder about the deadline for cashing the check and  
20 information on how to request a replacement check. The funds associated with any checks that are  
21 not properly or timely negotiated within ninety (90) days from the date of mailing shall be  
22 deposited by the Claims Administrator into the State of California Department of Industrial  
23 Relations Unclaimed Wages Fund with the identity of the Participating Claimants to whom the  
24 funds belong. Participating Claimants who fail to negotiate their settlement checks in a timely  
25 fashion shall remain subject to the terms of the Judgment.

26                   2.6.3.     Following the mailing of the payments pursuant to Paragraph 2.6.2, the  
27 Claims Administrator shall provide counsel for the Settling Parties with a written confirmation  
28 that such payments have been made. Upon receipt of this confirmation, Class Counsel will file a

1 notice or acknowledgement of satisfaction of judgment with the Court in the Litigation on behalf  
2 of the Class Representative and the Settlement Class.

3           2.7.    *Releases and Dismissals.*

4           2.7.1.    Upon the Effective Date, Class Representative and each of the Settlement  
5 Class Members shall be deemed to have, and by operation of the Judgment shall have, fully,  
6 finally, and forever released, dismissed with prejudice, relinquished, and discharged all Released  
7 Claims; provided, however, that Former Employee Settlement Class Members who have not  
8 timely submitted a Qualifying Claim Form shall not be deemed to have waived or released any  
9 claims arising directly under the FLSA (as opposed to indirect FLSA claims, such as a claim under  
10 the California Unfair Competition Law, predicated on an alleged violation of the FLSA, which  
11 indirect claims are being released and waived).

12           2.7.2.    This settlement shall result in the release by the Settlement Class  
13 Members of all Released Claims arising under the California Private Attorneys General Act of  
14 2004 (“PAGA”), codified at California Labor Code section 2698 *et seq.* The Settling Parties agree  
15 that AmeriGas’s payment of \$30,000 to the California Labor Workforce Development Agency (as  
16 part of the Maximum Settlement Amount) to settle these claims is appropriate and proper  
17 consideration. As part of this settlement, and subject to Court approval, AmeriGas will pay  
18 through the Claims Administrator \$3,000 out of the Maximum Settlement Amount to the  
19 California Labor and Workforce Development Agency. It is the intent of the Settling Parties to  
20 have the Released Claims include PAGA claims.

21           2.8.    *Payment of Costs, Attorneys’ Fees, and Class Representative*  
22 *Enhancements.*

23           2.8.1.    Class Counsel shall be entitled, subject to Court approval and the  
24 occurrence of the Effective Date, to an award of reasonable attorneys’ fees and litigation costs and  
25 associated expenses, not to exceed the amounts specified herein. Subject to Court approval, Class  
26 Counsel may seek a gross amount up to, but not to exceed, \$266,640 for all attorneys’ fees, and a  
27 gross amount up to, but not to exceed, \$35,000 for all allowable litigation costs and associated  
28 expenses. The Class Representative and Class Counsel agree that they shall be responsible for

1 justifying their requested fee, cost, and expense awards to the Court, and they agree to submit the  
2 necessary materials to justify the requested fee, cost and enhancement awards along with an  
3 application/motion for approval of fees and costs prior to the Notice Mailing Deadline, provided  
4 the hearing on any request for fees shall be noticed for and not heard until the Settlement Hearing.  
5 Within five (5) days of the filing of this motion for fees and costs, the Claims Administrator shall  
6 post the motion on the website established for the settlement per this Stipulation. AmeriGas  
7 agrees not to oppose any submission regarding, or request for approval of, an award of attorneys'  
8 fees, costs, and expenses, provided that it is consistent with this Paragraph 2.8.1 of this Stipulation  
9 and, in particular, provided that AmeriGas not be required to pay any more than \$266,640 in total  
10 to Class Counsel for all attorneys' fees, costs, and expenses combined. In the event that the Court  
11 (or appellate court) awards less than the \$266,640 maximum gross amount for attorneys' fees,  
12 costs and expenses, only the awarded amounts shall be paid and shall constitute full satisfaction of  
13 any claims for attorneys' fees, costs and expenses in the Litigation, and any remaining or  
14 unawarded portion of the maximum gross amount for attorneys' fees, costs, or expenses shall be  
15 allocated to the Participating Claimants pro rata and included in the distributions to Participating  
16 Claimants pursuant to this Stipulation. If the Effective Date occurs, no more than fifteen (15) days  
17 after the Effective Date, AmeriGas shall make payment of any attorneys' fees, costs, and expenses  
18 awarded by the Court pursuant to this Paragraph 2.8.1 to Class Counsel through the Claims  
19 Administrator, and prior to AmeriGas making this payment, Class Counsel shall provide counsel  
20 for AmeriGas and the Claims Administrator with the pertinent taxpayer identification numbers for  
21 the payees and Form(s) W-9. Other than any reporting of this fee payment as required by this  
22 Stipulation or law, which AmeriGas shall make, Class Counsel and the Class Representative shall  
23 alone be responsible for the reporting and payment of any federal, state and/or local income or  
24 other form of tax on any payment made pursuant to this paragraph. Payments awarded and made  
25 pursuant to this paragraph shall constitute full satisfaction of any claim for attorneys' fees, costs,  
26 or expenses incurred in this Litigation, and the Class Representative and Class Counsel, on behalf  
27 of themselves and all Settlement Class Members, agree that they shall neither seek nor be entitled  
28 to any additional attorneys' fees, costs, or expenses under any theory, nor shall they seek amounts

1 in excess of those specified herein. Other than as provided in this Paragraph 2.8.1 for the limited  
2 purpose discussed herein, no party shall be deemed the prevailing party in the Litigation for any  
3 purpose.

4           2.8.2.     Provided that the Effective Date occurs, and following and within fifteen  
5 (15) days of the execution of the general releases discussed below, AmeriGas, through the Claims  
6 Administrator, will forward a check payable to Jimmie Jarrell, in his personal capacity only and  
7 via his counsel of record, in the gross amount of ten thousand United States dollars (\$10,000);  
8 provided, however, that if the Court approves a lesser amount, payment shall be in such amount(s)  
9 as the Court orders. These payments shall be the total compensation and consideration for (i) such  
10 individual's efforts as class representative in the Litigation; and (ii) his execution of a full, general  
11 release to the benefit of AmeriGas. This full and general release shall be executed immediately  
12 following the Effective Date, and through it, Mr. Jarrell (and not on behalf of the Class or any  
13 members of the class) shall release, acquit, and discharge AmeriGas from any and all claims,  
14 demands, claims for costs and attorneys' fees, or causes of action of any kind whatsoever (upon  
15 any legal or equitable theory whether contractual, common law, statutory, federal, state or  
16 otherwise), whether known or unknown, that arose, accrued or took place at any time on or prior  
17 to the date on which the full and general release is executed, including without limitation all  
18 claims pled in the Litigation, which will also be dismissed with prejudice per the Judgment.  
19 Through the full and general release discussed in this Paragraph 2.8.2, Mr. Jarrell will expressly  
20 waive the benefit of Section 1542 of the California Civil Code, and will agree and represent that  
21 he has not assigned or in any way conveyed, transferred or encumbered all or any portion of the  
22 claims or rights otherwise released. Expressly excluded from the general release provided by Mr.  
23 Jarrell are all claims alleged (whether explicitly or that could be alleged based upon the facts and  
24 allegations alleged) by Mr. Jarrell in the matter of *Jarrell v. AmeriGas Propane, Inc.*, Case No.  
25 SCUK CVG 16-68133 ("the Wrongful Termination Lawsuit"), now pending in the Mendocino  
26 County Superior Court. It is the intent of the Settling Parties to exclude from the full and general  
27 release sought in this Paragraph 2.8.2 the claims asserted in the Wrongful Termination Lawsuit,  
28 and AmeriGas warrants that it will not assert this release in the Wrongful Termination Lawsuit. If

1 Mr. Jarrell does not execute the full and general release discussed in this Paragraph 2.8.2, with all  
2 of the specific terms required herein, including the exclusionary provisions relating to the  
3 Wrongful Termination Lawsuit, AmeriGas shall not be required to make any payment whatsoever  
4 pursuant to this Paragraph 2.8.2. This enhancement award of \$10,000 is separate from and in  
5 addition to any payments from the Settlement Sum to which Mr. Jarrell is entitled to under this  
6 Stipulation. Mr. Jarrell shall be deemed a Participating Claimant such that he will not be sent a  
7 Class Notice. In the event that the Court (or appellate court) awards less than the \$10,000  
8 enhancement award to Mr. Jarrell, the unawarded portion shall be included in the distributions to  
9 Participating Claimants pursuant to this Stipulation.

10           2.8.3. Unless otherwise expressly provided, AmeriGas shall have no  
11 responsibility for, and no liability whatsoever with respect to, the allocation among Mr. Jarrell,  
12 Class Counsel, and/or any other Person who may assert some claim thereto, of any award or  
13 payment issued or made in the Litigation or pursuant to this Stipulation, including, but not limited  
14 to, any award or payment made pursuant to Paragraph 2.8.1. or 2.8.2.

15           2.9. *Claims Administrator.*

16           2.9.1. All fees and expenses reasonably incurred by the Claims Administrator as  
17 a result of procedures and processes expressly required by this Stipulation shall be paid by  
18 AmeriGas and taken from the Maximum Settlement Amount. The Class Representative and Class  
19 Counsel shall have no responsibility for such fees or expenses, whether or not the Effective Date  
20 occurs. The total amount charged by the Claims Administrator shall not exceed \$20,000.

21           2.9.2. The actions of the Claims Administrator shall be governed by the terms  
22 of this Stipulation. The Settling Parties shall work cooperatively to ensure that the Claims  
23 Administrator receives information necessary to carrying out its responsibilities. The Claims  
24 Administrator shall, on a reasonable basis, keep Class Counsel and AmeriGas's Counsel apprised  
25 of its progress, its efforts, and of the response from Class Members and of any other  
26 communications received by members of the Class, concerning the settlement. The Claims  
27 Administrator shall provide the Court, at least ten (10) days prior to the Final Approval Hearing, a  
28 declaration of due diligence and proof of mailing with respect to (i) the mailing of the Notice, (ii)

1 attempts to locate Class members, (iii) the number of Class Members for whom the Notice was  
2 ultimately undeliverable; and (iv) participation, objection and Opt Out rates.

3           2.9.3. In the event that any of the Settling Parties take the position that the  
4 Claims Administrator is not acting in accordance with the terms of the Stipulation, that party's  
5 counsel shall meet and confer with counsel for the other Settling Parties prior to raising any such  
6 issue with the Claims Administrator or the Court.

7           2.10. Termination or Voidance of Settlement or Stipulation

8           2.10.1. In the event that the Stipulation is not substantially approved by the Court  
9 or the settlement set forth in the Stipulation is terminated, cancelled, or declared void, or fails to  
10 become effective in accordance with its terms, or if the Judgment does not become Final, the  
11 Settling Parties shall resume the Litigation at that time as if no Stipulation had been entered, with  
12 each of the Settling Parties bearing their own costs and fees with regard to the efforts to implement  
13 this Stipulation and obtain Court approval, and no payments whatsoever being made by AmeriGas  
14 to anyone in accordance with the terms of this Stipulation, except that AmeriGas will be  
15 responsible for any reasonable costs incurred by the Claims Administrator up to the point in time  
16 that the Stipulation is terminated, cancelled, or declared void. In such event, any Judgment or  
17 order entered by the Court in accordance with the terms of the Stipulation shall be treated as  
18 vacated nunc pro tunc, and the Stipulation shall have no further force and effect with respect to the  
19 Settling Parties, and shall not be used in this Litigation or in any other proceeding for any purpose,  
20 including in relation to issues of class or collective action certification. Specifically, the Class  
21 Representative and Class Counsel agree not to argue or present any argument, and hereby waive  
22 any argument, that this Stipulation precludes AmeriGas from contesting class or collective action  
23 certification on any grounds if this Litigation were to proceed. This Stipulation shall not be  
24 deemed an admission by, or ground for estoppel against, AmeriGas that class and/or collective  
25 action certification in the Litigation is proper or cannot be contested on any grounds. The terms,  
26 negotiation, and entry of this Stipulation and the settlement shall remain subject to Federal Rule of  
27 Evidence 408 and California Evidence Code sections 1119 and 1152, regardless of whether this  
28 Stipulation or the settlement are terminated, cancelled, or declared void.

1           2.10.2. If the Court changes the dates of hearings provided for in this Stipulation  
2 by fewer than three (3) months, this shall not be deemed a substantial change necessitating  
3 termination of the settlement, providing that the Settling Parties agree to adjust other dates and  
4 deadlines in the Stipulation accordingly.

5           2.10.3. In the event that more than five percent (5%) of Class Members opt out of  
6 the Settlement Class by submitting Opt Outs pursuant to Paragraph 2.5.1, AmeriGas shall have the  
7 right (but shall not be required) to terminate and void this settlement and Stipulation.

8           2.10.4. Notwithstanding any other provision of this Stipulation, no order of the  
9 Court or modification or reversal on appeal of any order of the Court concerning the amount or  
10 allocation of any attorneys' fee or litigation cost or expense awards or class representative  
11 enhancement award to be paid by AmeriGas shall constitute grounds for cancellation or  
12 termination of the Stipulation or grounds for limiting any other provision of the Judgment,  
13 provided that AmeriGas shall never be required to pay in excess of the total gross amounts for  
14 attorneys' fees and litigation costs and expenses and enhancement awards specified in Paragraphs  
15 2.8.1 and 2.8.2. It is further agreed that no order of the Court, including any order concerning  
16 attorneys' fees, may alter the Maximum Settlement Amount.

17           2.10.5. Any finding that California Code of Civil Procedure section 384 applies  
18 to this Stipulation to require payment by AmeriGas other than as set forth in this Stipulation is  
19 grounds for AmeriGas to void the settlement.

20           2.10.6. Unless otherwise ordered by the Court, in the event the Stipulation shall  
21 be terminated, cancelled, or declared void, or fails to become effective in accordance with its  
22 terms, or if the Judgment is reversed on appeal, within thirty (30) days after written notification of  
23 such event, AmeriGas and Class Counsel shall notify each other of this event in writing.

24           2.11. Miscellaneous Provisions.

25           2.11.1. No Person shall have any claim against Class Counsel, the Claims  
26 Administrator, or counsel for AmeriGas based on the payments made or other actions taken  
27 substantially in accordance with the Stipulation and the settlement contained therein or further  
28 orders of the Court.

1                   2.11.2. The Settling Parties (a) acknowledge that it is their intent to consummate  
2 this agreement; and (b) agree to exercise their best efforts to obtain Court approval, secure the  
3 effectiveness of the Judgment, and implement all terms and conditions of the Stipulation.

4                   2.11.3. The Stipulation compromises claims which are contested in good faith,  
5 and it shall not be deemed an admission by any of the Settling Parties as to the merits of any claim  
6 or defense. The Settling Parties agree that the amounts paid in settlement and the other terms of  
7 the settlement were negotiated at arms-length and in good faith by the Settling Parties, and reflect  
8 a settlement that was reached voluntarily after consultation with competent legal counsel.

9                   2.11.4. The Settling Parties agree that the Notice Response Deadline shall not be  
10 extended, and no untimely submissions or claims will be honored, under any circumstances,  
11 unless, and only unless, a Class Member can sufficiently demonstrate that his or her failure to  
12 respond to the Notice was the product of proven good cause, such as the fact that he or she was  
13 legally incompetent during the notice response period, e.g., he or she was incarcerated or  
14 hospitalized, or her or she was away from his or her address for the entire notice period due to  
15 military service; provided, however, no untimely submissions or claims will be honored for any  
16 reason or under any circumstances if they are not received by the Claims Administrator or Class  
17 Counsel prior to the Settlement Hearing Motion Date. If there are disputes about whether a Class  
18 Member has proven good cause to make an untimely submission, the Settling Parties shall meet  
19 and confer and attempt to resolve the issue prior to raising it with the Court. The Settling Parties  
20 agree that the establishment and enforcement of the Notice Response Deadline is valuable  
21 consideration to AmeriGas, and the finality provided thereby is a material aspect of this  
22 agreement. Any ruling to the contrary by the Court or any ruling allowing the filing of any  
23 responses to the Notice following the Notice Response Deadline shall be grounds for AmeriGas to  
24 void the Stipulation.

25                   2.11.5. Neither the Stipulation nor the settlement, nor any act performed or  
26 document executed pursuant to, or in furtherance of, the Stipulation or the settlement: (a) is or may  
27 be deemed to be or may be used as an admission of, or evidence of, the validity of any Released  
28 Claim, or of any wrongdoing or liability of AmeriGas; or (b) is or may be deemed to be or may be

1 used as an admission of, or evidence of, any fault or omission of AmeriGas, in any civil, criminal  
2 or administrative proceeding in any court, administrative agency, or other tribunal.

3           2.11.6. All of the exhibits to the Stipulation are material and integral parts hereof  
4 and are fully incorporated herein by this reference.

5           2.11.7. The Stipulation may be amended or modified only by a written  
6 instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

7           2.11.8. The Stipulation constitutes the entire agreement among the Settling  
8 Parties hereto and no representations, warranties, or inducements have been made to any party  
9 concerning the Stipulation or its exhibits other than the representations, warranties, and covenants  
10 contained and memorialized in such documents. Except as otherwise provided herein, each party  
11 shall bear its own costs.

12           2.11.9. Class Counsel are expressly authorized by the Class Representative to  
13 take all appropriate action required or permitted to be taken by the Class pursuant to the  
14 Stipulation to effect its terms, and also are expressly authorized to enter into any modifications or  
15 amendments to, or documents or pleadings filed in support of, the Stipulation on behalf of the  
16 Class which they deem appropriate.

17           2.11.10. Each counsel or other Person executing the Stipulation or any of its  
18 exhibits on behalf of any party hereto hereby warrants that such Person has the full authority to do  
19 so.

20           2.11.11. The Stipulation may be executed in one or more counterparts by email or  
21 facsimile. All executed counterparts and each of them shall be deemed to be one and the same  
22 instrument. A complete set of original executed counterparts shall be filed with the Court.

23           2.11.12. The Stipulation shall be binding upon, and inure to the benefit of, the  
24 successors and assigns of the parties hereto; but this Stipulation is not designed to and does not  
25 create any third party beneficiaries.

26           2.11.13. The Court shall retain jurisdiction with respect to implementation and  
27 enforcement of the terms of the Stipulation, and all parties hereto submit to the jurisdiction of the  
28 Court for purposes of implementing and enforcing the settlement embodied in the Stipulation.

1                   2.11.14. The Stipulation and the exhibits hereto shall be considered to have been  
2 negotiated, executed, and delivered, and to have been wholly performed, in the State of California,  
3 and the rights and obligations of the parties to the Stipulation shall be construed and enforced in  
4 accordance with, and governed by, the internal, substantive laws of the State of California without  
5 giving effect to that State's choice of law principles.

6                   2.11.15. The language of all parts of this Stipulation shall in all cases be construed  
7 as a whole, according to its fair meaning, and not strictly for or against either party. No party shall  
8 be deemed the drafter of this Stipulation. The parties acknowledge that the terms of the  
9 Stipulation are contractual and are the product of negotiations between the parties and their  
10 counsel. Each party and their counsel cooperated in the drafting and preparation of the  
11 Stipulation. In any construction to be made of the Stipulation, the Stipulation shall not be  
12 construed against any party and the canon of contract interpretation set forth in California Civil  
13 Code § 1654 and other similar statutory provisions shall not be applied.

14                   2.11.16. AmeriGas will not retaliate against Class Members for any actions taken  
15 or not taken with respect to this settlement.

16                   2.11.17. AmeriGas will not assert any claims against Class Counsel for their  
17 conduct in connection with the Litigation. AmeriGas acknowledges that Class Counsel, and Class  
18 Counsel acknowledge that AmeriGas's counsel, have complied with the requirements of Rule 11  
19 of the Federal Rules of Civil Procedure to this point in the Litigation.

20                   2.11.18. At no time shall the Claims Administrator or AmeriGas be requested or  
21 required to provide Class Counsel or the Class Representative with the Social Security Number,  
22 Last Known Address, or other contact information of Class Members.

23                   2.11.19. The Settling Parties agree to take all reasonable steps to comply with the  
24 requirements of the Class Action Fairness Act of 2005, including the notice requirements. It is the  
25 intent of the parties that the Judgment be binding on all Settlement Class Members. No more than  
26 ten (10) days after this Stipulation and the motion for preliminary approval of this Stipulation is  
27 filed with the Court, AmeriGas, itself or through the Claims Administrator, shall provide notice of  
28 this Stipulation as set forth below to the Attorney General of the United States, the Attorney

1 Generals of each state in which AmeriGas employed Class Members, the California Department of  
2 Industrial Relations and the California Labor and Workforce Development Agency (which shall be  
3 submitted online per agency procedures, and which the Class Representative and Class Counsel  
4 agree is sufficient notice under Labor Code section 2699(1)), and any other entities or agencies that  
5 AmeriGas deems appropriate. Said notice shall be mailed, can be in an electronic or disc format,  
6 and shall include to the extent then available and feasible: (1) the current complaint in the  
7 Litigation; (2) the notice of motion and motion for preliminary approval of the settlement, which  
8 shall include the proposed final approval hearing date and shall confirm that there are no  
9 additional agreements among the Settling Parties not reflected in the Stipulation; (3) the Notice;  
10 (4) this Stipulation, which shall include the proposed Judgment; and (5) the names of each Class  
11 Member and his or her projected number of Qualifying Work Weeks. The Settling Parties agree  
12 that this notice shall be sufficient to satisfy the terms of 28 U.S.C. § 1715, and that subject to the  
13 occurrence of the Effective Date, this Stipulation and the associated Judgment shall be binding on  
14 all Settlement Class Members.

15           2.11.20. The parties to this agreement recognize and acknowledge that at the time  
16 of the execution of this Stipulation, there are issues of law that may be unresolved which could  
17 impact the claims at issue in the Litigation absent this Stipulation. The parties further recognize  
18 that they are reaching this settlement in light of the risks created by these and all other issues of  
19 unsettled law, and that all parties will take all efforts to enforce this Stipulation and obtain Court  
20 approval for this settlement regardless of any subsequent legal developments. The Settling Parties  
21 and Class Counsel agree that the proposed classes are receiving benefit from this settlement by  
22 obtaining a settlement (and associated consideration) prior to such possible developments, and the  
23 Settling Parties and their counsel agree not to argue otherwise or seek to void this settlement or  
24 prevent court approval on the basis of any subsequent precedent.

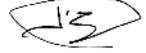
25           2.11.21. Prior to the submission of this Stipulation and settlement agreement for  
26 preliminary approval by the Court, neither the Class Representative nor Class Counsel shall  
27 communicate any terms of this settlement to any third parties. Following the submission for  
28 preliminary approval and thereafter, the Class Representative and Class Counsel shall not

1 publicize the settlement in this action or the terms thereof via (a) press releases; (b) Internet  
2 postings except for simply posting publicly filed court documents; or (c) any form of  
3 communications with the media. This shall not prohibit Class Counsel from (1) discussing this  
4 case or any aspect of this settlement with the Class Representative, any Class Member (absent or  
5 otherwise) in this case, or any court or opposing counsel; (2) disclosing their mere status as  
6 counsel in the case; or (3) posting on Class Counsel’s websites the mere fact of a pending  
7 settlement and the relevant court documents.

8           2.11.22. The Claims Administrator shall establish a website for the settlement and  
9 make it operational no later than the date on which the Notices are mailed. The website shall  
10 contain, when available, the mailing address and telephone number for the Claims Administrator,  
11 the operative complaint, this Stipulation, the Notice for Current Employee Class Members, the  
12 Notice for Former Employee Class Members, the Preliminary Approval Order, the motion for  
13 attorneys’ fees and costs, the Final Approval Order, and the Judgment, so that the relevant  
14 documents may be viewed and downloaded by Class Members. The website shall remain  
15 operational until the Effective Date, at which point it shall be removed from the Internet and not  
16 available for access.

17           IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be  
18 executed.

19 DATED: April 18, 2017

DocuSigned by:  
  
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\_\_\_\_\_  
JIMMIE JARRELL  
Plaintiff and Class Representative

24 DATED: April \_\_, 2017

\_\_\_\_\_  
Authorized Agent  
for AMERIGAS PROPANE, INC.

1 publicize the settlement in this action or the terms thereof via (a) press releases; (b) Internet  
2 postings except for simply posting publicly filed court documents; or (c) any form of  
3 communications with the media. This shall not prohibit Class Counsel from (1) discussing this  
4 case or any aspect of this settlement with the Class Representative, any Class Member (absent or  
5 otherwise) in this case, or any court or opposing counsel; (2) disclosing their mere status as  
6 counsel in the case; or (3) posting on Class Counsel's websites the mere fact of a pending  
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11 the operative complaint, this Stipulation, the Notice for Current Employee Class Members, the  
12 Notice for Former Employee Class Members, the Preliminary Approval Order, the motion for  
13 attorneys' fees and costs, the Final Approval Order, and the Judgment, so that the relevant  
14 documents may be viewed and downloaded by Class Members. The website shall remain  
15 operational until the Effective Date, at which point it shall be removed from the Internet and not  
16 available for access.

17           IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be  
18 executed.

19 DATED: April \_\_, 2017

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\_\_\_\_\_  
JIMMIE JARRELL  
Plaintiff and Class Representative

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24 DATED: April 19, 2017

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\_\_\_\_\_  
Authorized Agent  
for AMERIGAS PROPANE, INC.

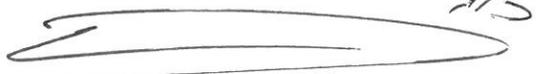
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1 APPROVED AS TO FORM:

2 DATED: April \_\_, 2017

SETAREH LAW GROUP, PC  
SHAUN SETAREH  
H. SCOTT LEVIANT

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5   
6 By: \_\_\_\_\_  
SHAUN SETAREH

7  
8 Attorneys for Plaintiff  
JIMMIE JARRELL

9  
10 DATED: April \_\_, 2017

MUNGER, TOLLES & OLSON LLP  
JOSEPH D. LEE  
MALCOLM A. HEINICKE  
AARON D. PENNEKAMP

11  
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14 By: \_\_\_\_\_  
15 JOSEPH D. LEE  
16 Attorneys for Defendant AMERIGAS PROPANE, INC.  
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1 APPROVED AS TO FORM:

2 DATED: April \_\_, 2017

SETAREH LAW GROUP, PC  
SHAUN SETAREH  
H. SCOTT LEVIANT

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By: \_\_\_\_\_  
SHAUN SETAREH

6

7

Attorneys for Plaintiff  
JIMMIE JARRELL

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9

10 DATED: April 19, 2017

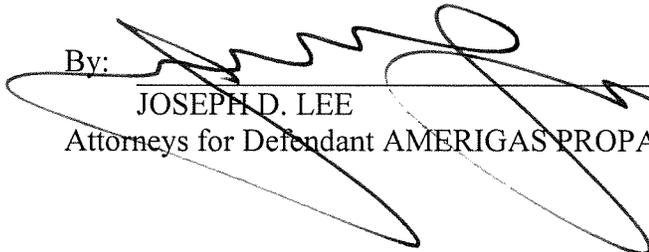
MUNGER, TOLLES & OLSON LLP  
JOSEPH D. LEE  
MALCOLM A. HEINICKE  
AARON D. PENNEKAMP

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By:  \_\_\_\_\_  
JOSEPH D. LEE  
Attorneys for Defendant AMERIGAS PROPANE, INC.

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# **EXHIBIT 1**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JIMMIE JARRELL, an individual, on behalf  
of himself and all others similarly situated,  
  
Plaintiff,  
  
vs.  
  
AMERIGAS PROPANE, Inc.; a Pennsylvania  
corporation; and DOES 1 through 50,  
inclusive,  
  
Defendants.

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

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL AND  
SETTING SETTLEMENT HEARING**

Date:  
Time:  
Crtrm.:  
Judge: The Honorable Jon S. Tigar

1 Plaintiff Jimmie Jarrell's motion for an order preliminarily approving a class action  
2 and collective action settlement and setting a settlement hearing, came on for hearing on or about  
3 [INSERT DATE]. Defendant AmeriGas Propane, Inc. does not oppose the motion. The Court has  
4 considered the Stipulation Re: Settlement of Class and Collective Actions (and its exhibits), the  
5 submissions of counsel, and all other papers filed in this action. The matter having been submitted  
6 and good cause appearing therefore, the Court finds as follows:

7 1. All defined terms contained herein shall have the same meanings as set  
8 forth in the Stipulation Re: Settlement of Class and Collective Actions executed by the Settling  
9 Parties and filed with this Court (the "Stipulation");

10 2. The Class Representative and AmeriGas, through their counsel of record in  
11 the Litigation and per the terms of the Stipulation, have reached an agreement to resolve the  
12 Litigation and settle all Released Claims;

13 3. The Class consists of:

14 The collective group of Persons who were employed by AmeriGas  
15 as a Service Technician in California at any point during the Class  
16 Period of February 16, 2012 through and including the date on  
which the Court enters the Preliminary Approval Order.

17 4. The Court conditionally finds that, for the purposes of approving this  
18 settlement only and for no other purpose and with no other effect, the proposed Class meets the  
19 requirements for certification under Rule 23 of the Federal Rules of Civil Procedure: (a) the  
20 proposed Class is ascertainable and so numerous that joinder of all members of the class is  
21 impracticable; (b) there are questions of law or fact common to the proposed Class; (c) the claims  
22 of the Class Representative Jimmie Jarrell (the "Class Representative") are typical of the claims of  
23 the members of the proposed Class; (d) the Class Representative will fairly and adequately protect  
24 the interests of the proposed Class Members; (e) a class action is superior to other available  
25 methods for an efficient adjudication of this controversy, especially given the settlement context  
26 here; and (f) the counsel of record for the Class Representative are qualified to serve as counsel for  
27 the Class Representative in his own capacity as well as his representative capacity and for the  
28 Class;

1                   5.       The Court conditionally finds that, for the purpose of approving this  
2 settlement only and for no other purpose and with no other effect, in the context of this Settlement,  
3 the proposed Class meets the requirements for certification as a collective action class under 29  
4 U.S.C. § 216(b) because a sufficient initial showing has been made that the Class Members are  
5 similarly situated;

6                   6.       The moving party has presented to the Court for review a Stipulation Re:  
7 Settlement of Class and Collective Actions. The Stipulation is within the range of reasonableness  
8 and meets the requirements for preliminary approval;

9                   7.       The moving party has also presented to the Court for review a plan to  
10 provide notice to the Members of the proposed Class which sets out the terms of the settlement  
11 and the Class Members' options including, inter alia, their options (i) to opt out of the Class, (ii) to  
12 remain in the Class (and opt into the FLSA claim asserted on behalf of the class); (iii) to be  
13 represented by counsel of their choosing, (iv) to object to the terms of the settlement, and (v) in the  
14 case of former AmeriGas employees, to seek to become Participating Claimants by submitting  
15 Claim Forms (provided that Class Members employed by AmeriGas as of the date of entry of this  
16 order shall not be required to submit such a claim form in order to receive payment pursuant to  
17 this settlement). The Notices will be mailed to all Class Members at their Last Known Addresses.  
18 The plan regarding Notices proposed by the Settling Parties is the best practical under the  
19 circumstances and satisfies pertinent due process requirements and the requirements of Federal  
20 Rule of Civil Procedure 23.

21                   Good cause appearing therefore, IT IS HEREBY ORDERED that:

22                   1.       Pursuant to Rule 23 of the Federal Rules of Civil Procedure and 29 U.S.C. §  
23 216(b), the Class is provisionally certified, and the Stipulation of Settlement is preliminarily  
24 approved;

25                   2.       Notice of the proposed settlement, and the rights of Class Members to opt  
26 out of the settlement or become Participating Claimants, shall be given by mailing of the Notice  
27 by first class mail, postage prepaid, to all Class Members pursuant to the applicable provisions in  
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1 the Stipulation. AmeriGas shall provide the Claims Administrator with the information necessary  
2 to conduct this mailing as set forth in the Stipulation;

3           3.       The Court hereby appoints, for settlement purposes only, Plaintiff Jimmie  
4 Jarrell as Class Representative;

5           4.       The Court hereby appoints, for settlement purposes only, Setareh Law  
6 Group as Class Counsel;

7           5.       The Court hereby appoints Rust Consulting, Inc. as the Claims  
8 Administrator;

9           6.       AmeriGas has agreed to pay Class Counsel their reasonable attorneys' fees  
10 in this matter in the maximum total gross amount not to exceed \$266,640 as well as certain  
11 allowable costs in this matter up to the maximum gross amount of \$35,000, and AmeriGas has  
12 agreed to pay enhancement awards in the total maximum gross amount of \$10,000 to the Class  
13 Representative to reimburse him for his unique services and execution of general releases. The  
14 Court preliminarily finds that these agreements are fair and reasonable;

15           7.       A hearing shall be held before this Court on [INSERT DATE] at \_\_\_\_\_  
16 \_\_m. to consider whether the settlement should be given final approval by the Court:

17           (a)       Written objections by Class Members to the proposed settlement or to Class  
18 Counsel's request for attorneys' fees, costs, or enhancement awards will be considered if received  
19 by the Claims Administrator on or before the Notice Response Deadline;

20           (b)       At the Settlement Hearing, Class Members who have filed timely written  
21 objections may be heard orally in support of, or in opposition to, the settlement or the award of  
22 attorneys' fees, costs, or enhancement awards;

23           (c)       Class Counsel and counsel for AmeriGas should be prepared at the hearing  
24 to respond to objections filed by Class Members, if any, and to provide, as appropriate, other  
25 information bearing on whether or not the settlement should be approved; and

26           8.       In the event that the Effective Date occurs, all Settlement Class Members  
27 will be deemed to have forever released and discharged the Released Claims. In the event that the  
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1 Effective Date does not occur for any reason whatsoever, the Stipulation shall be deemed null and  
2 void and shall have no effect whatsoever;

3 9. Prior to the Settlement Hearing, Plaintiff shall file a motion for final  
4 approval of the settlement, and Class Counsel shall file a motion for an award of attorneys' fees,  
5 costs, and enhancement awards; and

6 10. The Court orders the following implementation schedule for further  
7 proceedings:

Event	Timing
(a) Notice Mailing Deadline (i.e., deadline for settlement administrator to mail class action notices to class members)	_____, 2017 (40 days after Preliminary Approval Date)
(b) Deadline for Class Counsel to file motion for attorneys' fees, costs, and Class Representative enhancement award	_____, 2017 (40 days after Preliminary Approval Date)
(c) Notice Response Deadline (i.e., deadline to opt out, object, or for former employees to file claims)	_____ 2017 (45 days after Class Notices are mailed)
(d) Deadline for Class Counsel to file motion for final approval of settlement	_____ 2017 (28 days before Final Approval Hearing)
(f) Final Approval Hearing	_____ 2017 at 8:30 a.m. (145 days after Preliminary Approval Date)

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25 PURSUANT TO STIPULATION, IT IS SO ORDERED.  
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1 DATED: \_\_\_\_\_, 2017

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The Honorable Jon S. Tigar  
United States District Court Judge

# **EXHIBIT 2**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

vs.

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

Defendants.

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

**[PROPOSED] NOTICE TO FORMER  
EMPLOYEES RE: PENDENCY OF  
CLASS ACTION AND SETTLEMENT**

1 **NOTICE OF PENDING CLASS AND COLLECTIVE ACTION – PLEASE READ THIS**  
2 **NOTICE CAREFULLY AS YOUR LEGAL RIGHTS MAY BE AFFECTED.**

3 YOU ARE RECEIVING THIS NOTICE BECAUSE RECORDS INDICATE THAT YOU  
4 WERE EMPLOYED BY AMERIGAS PROPANE, INC. (“AMERIGAS”) AS A SERVICE  
5 TECHNICIAN IN THE STATE OF CALIFORNIA FOR SOME PERIOD OF TIME BETWEEN  
6 FEBRUARY 16, 2012 AND [DATE OF PRELIMINARY APPROVAL].

7 THIS NOTICE PROVIDES YOU WITH INFORMATION ON A CLASS AND  
8 COLLECTIVE ACTION SETTLEMENT, WHICH MAY AFFECT YOUR RIGHTS AS WELL  
9 AS YOUR ABILITY TO PARTICIPATE IN THE SETTLEMENT.

10 THE FOLLOWING RECITATION DOES NOT CONSTITUTE THE FINDINGS OF  
11 THE COURT. IT SHOULD NOT BE UNDERSTOOD TO BE AN EXPRESSION OF THE  
12 COURT’S VIEWS ON THE MERITS OF ANY CLAIM OR DEFENSE RAISED BY THE  
13 PARTIES.

14 **I. INTRODUCTION AND SUMMARY**

15 This is to notify you of a lawsuit entitled *Jimmie Jarrell v. AmeriGas Propane, Inc.*, Case  
16 No. 3:16-CV-01481-JST, United States District Court for the Northern District of California,  
17 which concerns the compensation of AmeriGas Service Technicians in California. You have  
18 received this Notice because AmeriGas’s records indicate that you may be one of the Service  
19 Technicians who was employed by AmeriGas in California during the pertinent period but is no  
20 longer employed by AmeriGas. This Notice provides instructions on the options available to you  
21 – in particular, it will explain your options:

22

<p>23 <b>Receive a Settlement</b> 24 <b>Payment</b></p>	<p>If you do not opt out of the settlement, you can participate in the settlement by submitting a claim form. Your claim form must be postmarked no later than the NOTICE RESPONSE DEADLINE. If your claim confirms that you are eligible to participate in this settlement, you will receive a payment in the gross amount of at least \$[MERGE SETTLEMENT SUM] and possibly more if some former employee class members do not submit valid claims or some class members opt out of the settlement.</p> <p>If you participate in the settlement by submitting a claim form, you will release pertinent claims as set forth below in Section VI.</p>
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<p><b>You Can Object to the Settlement</b></p>	<p>If you want to object to the settlement, you must do so by [NOTICE RESPONSE DEADLINE]. Instructions on how to do this appear below in Section IV, D.</p>
<p><b>You Can Exclude Yourself from (or “opt out of”) the Settlement</b></p>	<p>If you do not want to be a part of the settlement and do not want to be subject to the release of claims set forth below, you must exclude yourself by [NOTICE RESPONSE DEADLINE]. Instructions on how to do this are below in Section IV. C.</p>

**II. THE PEOPLE RECEIVING THIS NOTICE**

Jimmie Jarrell, a former AmeriGas Service Technician, is pursuing this lawsuit as a class and collective action. In class and collective actions, one or more persons bring claims on behalf of themselves and also seek to bring those claims on behalf of others who allegedly have similar claims.

AmeriGas denies all of Mr. Jarrell’s claims. It contends that it has always paid its Service Technicians properly, and that if this lawsuit were to proceed, it could not go forward on a class or collective basis. Nevertheless, AmeriGas has agreed to resolve this lawsuit in the fashion set forth herein, to avoid the expense and disruption of litigation.

This Notice is being mailed to the last known addresses of all former employee class members. A separate notice is being sent to the current employees who are class members in this lawsuit.

If other former employee Service Technicians do not submit qualifying claims, the funds that would have been paid to them will be redistributed *pro rata* to the current employees who do not exclude themselves from the settlement, as well as the former employees who have submitted qualifying claim forms.

**III. THE ALLEGATIONS BY MR. JARRELL**

Mr. Jarrell asserts several claims against AmeriGas under various laws, including the federal Fair Labor Standards Act (referred to in this Notice as the “FLSA”), the California Labor Code, and the California Business and Professions Code. Mr. Jarrell’s claims all relate to the compensation of Service Technicians. He claims that AmeriGas did not provide him and other Service Technicians with proper meal and rest periods, did not properly calculate the regular rate

1 of pay for overtime purposes, did not pay properly for on-call shifts, did not maintain proper wage  
2 records, imposed improper wage deductions, did not make wage payments timely, and did not  
3 maintain vacation and floating holiday policies that complied with California law. Mr. Jarrell  
4 sought to bring the lawsuit on behalf of all current and former Service Technicians employed by  
5 AmeriGas in California at any point after February 16, 2012 (all these persons are referred to in  
6 this Notice as the “Class”).

7 AmeriGas has reviewed the claims in this lawsuit in detail, and it denies them. Although  
8 AmeriGas believes that it has always compensated its employees properly and has very strong  
9 arguments to prevail in the lawsuit, it has chosen to work with Mr. Jarrell and his lawyers to  
10 resolve this matter to avoid the expense and disruption of litigation.

#### 11 **IV. DESCRIPTION OF THE SETTLEMENT**

##### 12 **A. Summary of the Settlement**

13 On behalf of the Class, Mr. Jarrell has reached a voluntary settlement agreement with  
14 AmeriGas. The total maximum amount of the settlement is \$800,000. This amount is referred to  
15 below as the “Maximum Settlement Amount.” This amount will cover payments to participating  
16 class members as well as (i) Mr. Jarrell’s attorneys’ fees, (ii) court costs, (iii) an enhancement  
17 payment to Mr. Jarrell, (iv) the costs of administering the settlement, (v) a required payment to the  
18 California Labor and Workforce Development Agency, and (vi) the employer’s share of payroll  
19 taxes.

20 Neither AmeriGas nor its employees have admitted any liability or wrongdoing. A full  
21 copy of the settlement agreement, which is entitled the Stipulation Re: Settlement of Class and  
22 Collective Actions, as well as other public documents filed with regard to this matter, can be  
23 inspected in the Office of the Court Clerk (see below) or at this website: [WEBSITE ADDRESS].  
24 The Court has granted preliminary approval of the settlement, and the Court has directed the  
25 parties to send this Notice.

26 **As set forth in greater detail in the Release of Claims section below, class members**  
27 **who do not opt out of the settlement will give up any claims against AmeriGas and its**  
28 **affiliates relating to their compensation, up through the entry of judgment. Class members**

1 **who opt out of the settlement will not give up their claims, but they cannot receive any**  
2 **payment under this settlement.**

3 **B. What Will I Get Under the Settlement?**

4 To obtain payment, you must submit a claim form establishing your eligibility to  
5 participate in the settlement. A claim form is attached to this Notice as Form B.

6 The payments to class members will be calculated according to the number of weeks they  
7 actively worked as a Service Technician for AmeriGas in California between February 16, 2012  
8 and <insert date of preliminary approval order> (this period of time is referred to as the “Class  
9 Period”). Your estimated settlement payment is at least \$[MERGE]. The amount of your  
10 payment may increase if some of the former employee class members do not timely submit  
11 qualifying claim forms or if some class members opt out of the settlement.

12 **C. Is My Settlement Payment Taxed?**

13 A portion of the payment you receive under the settlement will be subject to required wage  
14 withholdings and deductions. These amounts will be deducted from the payment you receive.  
15 AmeriGas will report thirty-three percent (33%) of any payment you receive to relevant  
16 government entities as a wage payment, and will report the remaining sixty-seven percent (67%)  
17 as a non-wage payment.

18 Each class member will be solely responsible for tax reporting of any payment received  
19 under this settlement and for paying any taxes associated with the payment. Neither AmeriGas,  
20 Mr. Jarrell, nor his attorneys (referred to below as “Class Counsel”) make any representations  
21 concerning the tax consequences of this settlement or your participation in it. If you have any  
22 questions about the tax consequences of the payments you may receive under the settlement, you  
23 should consult your tax advisor.

24 **D. How Much Will Class Counsel Be Paid in Attorneys’ Fees?**

25 Class Counsel will request that the Court award them attorneys’ fees of \$266,640, which is  
26 one-third of the Maximum Settlement Amount described above. Class Counsel will also seek  
27 reimbursement of up to \$35,000 in out-of-pocket expenses incurred in this case, which will also be  
28 subject to Court approval. Any amounts approved by the Court will constitute full payment for all

1 legal fees of Class Counsel and expenses incurred in the lawsuit, including any work they do in  
2 the future. The application for these fees and costs is on file with the Court, and it can be  
3 reviewed in the same manner as other court documents as set forth below (see Section VIII,  
4 “Examination of Papers Filed in this Lawsuit”).

5 **E. What Deductions Will Be Made From the Settlement Amount?**

6 The Maximum Settlement Amount will be used for the payments to class members and the  
7 attorneys’ fees and costs set forth above, and it will also be used to pay for (1) settlement  
8 administration expenses, estimated to be \$20,000; (2) an enhancement payment of \$10,000 to Mr.  
9 Jarrell; (3) a payment of \$30,000 to the California Labor and Workforce Development Agency;  
10 and (4) the employer’s share of payroll taxes. These estimated payments are all subject to the  
11 approval of the Court.

12 **V. THE RIGHTS AND OPTIONS OF CLASS MEMBERS**

13 Former AmeriGas employees such as you who are members of the Class have several  
14 options:

- 15 (i) You may obtain a settlement payment by **completing and submitting the enclosed Claim**  
16 **Form** as detailed below no later than [NOTICE RESPONSE DEADLINE] (see below for  
17 more details). Submitting a valid and timely claim form and participating in the settlement  
18 (ii) You may **opt out of the settlement** by sending a written request to the claims  
19 administrator no later than [NOTICE RESPONSE DEADLINE] (see below for more  
20 details). If you opt out, you will **not** receive a settlement payment, and you will not release  
21 (iii) You may **object to the settlement** by submitting your written objections in the manner  
22 described below no later than [NOTICE RESPONSE DEADLINE]. If you object to the  
23 settlement, you will still remain in the class and participate in the settlement (see below for  
24 more details).

23 **A. How Do I Make Corrections to Name or Address?**

24 If you wish to change the name or address listed on the envelope in which this Notice was  
25 sent, please complete Form A attached hereto and submit it before the deadline specified on the  
26 form.

1           **B.       How Do I Receive Payment?**

2           Former employee class members, including you, must submit a qualifying claim form  
3 demonstrating their eligibility to participate in the settlement and receive payment. **You must**  
4 **complete a claim form (Form B attached to this Notice) and mail the completed claim form**  
5 **to the Claims Administrator at [CLAIMS ADMINISTRATOR ADDRESS] postmarked no**  
6 **later than <NOTICE RESPONSE DEADLINE>**. Class members who remain in the class will  
7 be represented by the Mr. Jarrell and Class Counsel. The lawyers acting as Class Counsel in this  
8 matter are the following:

9           SETAREH LAW GROUP  
10           SHAUN SETAREH  
11           H. SCOTT LEVIANT  
12           9454 Wilshire Boulevard, Suite 907  
13           Beverly Hills, CA 90212  
14           Telephone: (310) 888-7771

15           Class members who remain in the class may choose to retain their own attorneys. Class  
16 members who choose this option will be responsible for their own attorneys’ fees and costs.

17           Class members who do not opt out of the settlement may also object to the terms or nature  
18 of the settlement at or prior to the hearing on the settlement using the procedure set forth below.

19           **C.       How Do I Opt Out of the Settlement?**

20           Class members may elect to “opt out” of the settlement and thus exclude themselves from  
21 this lawsuit and the associated settlement and judgment. **Class members who opt out will NOT**  
22 **receive a payment** and will remain free, subject to the statute of limitations and other similar  
23 restrictions, to bring claims against AmeriGas relating to the alleged violations described above.

24           Class members who wish to opt out of this settlement must mail a timely written request to  
25 the Claims Administrator at [CLAIMS ADMINISTRATOR ADDRESS]. The opt out request  
26 must state the class member’s full name, address, date of birth, and the dates of employment by  
27 AmeriGas, and it must make the following or a substantially similar statement: “I wish to opt out  
28 of the Jarrell settlement, and I understand by doing so, I will not receive a payment.” To be  
effective, the request to opt out must be postmarked on or before [Notice Response Deadline].

1 This deadline is final, and opt out requests that are not postmarked on or before that date will not  
2 be honored.

3 **D. How Do I Object to the Settlement?**

4 If you have not opted out, you can submit a written objection to any terms of the  
5 settlement. Your objection must be in writing and include your full name, address, telephone  
6 number, and signature. The objection must include a statement that you object to the settlement in  
7 Jarrell v. AmeriGas Propane, Inc., Case No. 3:16-CV-01481-JST and the reason(s) for your  
8 objection. The objection must be mailed to [CLAIMS ADMINISTRATOR ADDRESS] no later  
9 than [NOTICE RESPONSE DEADLINE]. If the Court overrules your objection, you will still  
10 remain in the class and release pertinent claims as set forth below in Section VI.

11 **VI. RELEASE OF CLAIMS**

12 All class members who do not opt out of the settlement will be subject to the judgment  
13 connected with this lawsuit and associated settlement. This means they shall be deemed to have  
14 forever released and discharged AmeriGas and all its past and present affiliates, predecessors,  
15 successors, acquired entities, and any of their directors, officers, employees, partners, members,  
16 principals, agents, insurers, co-insurers, re-insurers, shareholders, attorneys, and personal or legal  
17 representatives (herein collectively, “AmeriGas Releasees”) from any demands, rights, liabilities,  
18 and causes of action of every nature and description whatsoever, including without limitation  
19 statutory, constitutional, contractual or common law claims, whether known or unknown, whether  
20 or not concealed or hidden, whether arising under federal or state law, including without limitation  
21 claims for wages, damages, unpaid costs, penalties, liquidated damages, punitive damages,  
22 interest, attorneys’ fees, litigation costs, restitution, or equitable relief, that accrued at any point on  
23 or prior to the entry of judgment as a result of the class member’s employment as a Service  
24 Technician in California for AmeriGas, based on the following categories of claims or allegations:

- 25 (a) (i) failure to pay any and all regular or premium wages; (ii) failure to provide sufficient  
26 meal and/or rest periods and/or to pay premiums in lieu thereof; (iii) failure to pay minimum  
27 wages; (iv) failure to pay wages to discharged, quitting or otherwise terminated employees; (v)  
28 failure to furnish accurate itemized wage statements; (vi) failure to comply with payroll or wage

1 record-keeping requirements; and (vii) failure to maintain vacation and floating holiday policies in  
2 compliance with California law;

3 (b) any and all claims alleging statutory violations arising from the same categories of  
4 allegations set forth above in subsection (a), including without limitation claims under the FLSA,  
5 the Portal to Portal Act, California Labor Code sections 218, 226, 226.7 1194 and 2698 *et seq.* and  
6 California Business & Professions Code sections 17200 *et seq.*;

7 (c) any and all claims for penalties or liquidated damages or other available remedies  
8 arising from the categories of allegations set forth above in subsections (a) and (b), including  
9 without limitation claims under the FLSA, Portal to Portal Act, California Labor Code sections  
10 203, 226, 226.7, 512, 1194, and 2698 *et seq.*, and applicable California Industrial Welfare  
11 Commission Wage Orders;

12 (d) any and all claims for interest, costs, or attorneys' fees arising from the categories of  
13 allegations set forth above in subsections (a) and (b), including without limitation claims under the  
14 California Labor Code sections 218.5, 1194, and 2699(g)(1), California Code of Civil Procedure  
15 section 1021.5, and Federal Rule of Civil Procedure 23(h); and

16 (e) to the extent not covered by the above, any and all claims pled in this lawsuit.

17 All of these released claims are collectively referred to in this Notice as "Released  
18 Claims." The Released Claims include claims under the California Private Attorneys General Act  
19 of 2004, codified at California Labor Code sections 2698 *et seq.*, for which the Class is being  
20 granted additional consideration, including a payment of \$30,000, to the California Labor and  
21 Workforce Development Agency pursuant to this settlement. The Released Claims also include  
22 claims under the federal Fair Labor Standards Act ("FLSA"), and all class members who do not  
23 opt out of the settlement will be deemed to have opted into this lawsuit and released covered  
24 FLSA claims when they cash their payments.

25 Each class member who does not opt out of the settlement will release those Released  
26 Claims which the class member does not know or suspect to exist in his or her favor at the time of  
27 the entry of the court's judgment, and which, if known by him or her might have affected his or  
28 her settlement with or release of the AmeriGas Releasees, or might have affected his or her

1 decision to opt out of the settlement or to object to this settlement. With respect to the Released  
2 Claims only, each class member who does not opt out shall be deemed to have, and by operation  
3 of the court’s judgment shall have, waived the provisions, rights, and benefits of California Civil  
4 Code § 1542 or any like provision of the law of any other pertinent jurisdiction. California Civil  
5 Code § 1542 provides: “A general release does not extend to claims which the creditor does not  
6 know or suspect to exist in his or her favor at the time of executing the release, which if known by  
7 him or her must have materially affected his or her settlement with the debtor.” Unknown claims  
8 released by class members who do not opt out include only those claims that meet the definition of  
9 Released Claims and therefore do not include, for example, claims for wrongful termination,  
10 workplace harassment or discrimination, or Workers Compensation Claims.

11 **VII. HEARING ON SETTLEMENT**

12 Following a hearing on [INSERT DATE], the Court granted preliminary approval for the  
13 settlement of this lawsuit as a class and collective action and scheduled a hearing on final approval  
14 for [INSERT DATE]. This hearing will take place before the Honorable Jon S. Tigar in  
15 Courtroom 9 of the United States District Court for the Northern District of California, located at  
16 450 Golden Gate Avenue, San Francisco, CA 94102. Class members can express their views on  
17 the settlement at or before this hearing but you are not required to do so, nor are you required to  
18 attend this hearing to receive payment or exercise other rights.

19 At this hearing, Class Counsel will present any timely written objections to the Court. Late  
20 written objections will not be valid.

21 **Again, your attendance at this hearing is completely optional, and class members like**  
22 **you need not appear at this hearing or take any other action to receive payment.**

23 **VIII. EXAMINATION OF PAPERS FILED IN THIS LAWSUIT**

24 This Notice does not fully describe this settlement. Members of the public, including but  
25 not limited to persons whose rights may be affected by the lawsuit, may inspect the files  
26 (including the full settlement agreement) through the Court Clerk at the following address: Office  
27 of the Clerk, United States District Court for the Northern District of California, 450 Golden Gate  
28 Avenue, San Francisco, CA 94102. In addition, at this website [WEBSITE ADDRESS], you can

1 obtain copies of the following documents: (a) the operative complaint in the lawsuit; (b) the  
2 operative answer to the complaint filed by AmeriGas in the lawsuit; (c) the complete settlement  
3 agreement; (d) the motion for preliminary approval; (e) the order granting preliminary approval  
4 and setting the <date> hearing on the settlement; and (f) Class Counsel's application for attorneys'  
5 fees and costs.

6 *PLEASE DO NOT CALL OR WRITE THE COURT OR AMERIGAS WITH*  
7 *QUESTIONS REGARDING THIS ACTION.*

8 *IF YOU HAVE ANY QUESTIONS, PLEASE CALL, EMAIL OR WRITE THE*  
9 *CLAIMS ADMINISTRATOR AT:*

10 [INSERT ADDRESS]

11 [INSERT TELEPHONE NUMBER AND EMAIL ADDRESS]

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**FORM A**

**FOR**

**NOTICE TO CLASS MEMBERS RE: PENDENCY OF A CLASS ACTION**

**AND NOTICE**

**OF HEARING ON PROPOSED SETTLEMENT**

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**Change of Name and/or Address Information**

Pursuant to Section V.A to the Notice to Class Members, I wish to change my name and/or mailing address information to the following:

Name:

Street and Apt. No., if any:

City, State and Zip Code:

For purposes of verification only, I began working at AmeriGas in

\_\_\_\_\_, \_\_\_\_\_.

(Month) (Year)

I understand that all future correspondence in this action, including but not necessarily limited to important notices or payments to which I am entitled (if any), will be sent to the address listed above and not to the address previously used. I hereby request and consent to the use of the address listed above for these purposes.

DATED: \_\_\_\_\_, 2017

Submitted by:

\_\_\_\_\_

Print Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Date

PLEASE RETURN THIS FORM VIA UNITED STATES MAIL TO:

<settlement administrator>

Re: Jarrell v. AmeriGas Matter

ADDRESS

**THIS FORM MUST BE POSTMARKED BY**

**[NOTICE RESPONSE DEADLINE],**

**TO CHANGE YOUR ADDRESS**

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**FORM B**

**FOR**

**NOTICE TO CLASS MEMBERS RE: PENDENCY OF A CLASS ACTION  
AND NOTICE OF HEARING ON PROPOSED SETTLEMENT**

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**Settlement Claim Form**

Pursuant to the Notice I have received, I wish to participate in the *Jarrell v. AmeriGas* settlement, and I hereby submit this claim for payment under the settlement:

I declare that I was employed by AmeriGas in California at some point between April 7, 2011 and <insert date of preliminary approval order> as a Service Technician.

\_\_\_\_\_ (YOU MUST CHECK THIS BOX TO RECEIVE PAYMENT)

I understand that by submitting this claim form, I am making a claim for a settlement payment to be paid by AmeriGas in connection with contested litigation in which Mr. Jarrell is alleging, among other things, that he and others, including me, earned and are entitled to additional compensation from AmeriGas beyond the compensation I received. By submitting this claim form, I also acknowledge that I am consenting to opt into this lawsuit and settlement pursuant to the federal Fair Labor Standards Act and 29 U.S.C. § 216(b). By submitting this claim form, I further acknowledge that I understand that by not electing to opt out of this settlement, I will be subject to the judgment, waive the protections of California Civil Code section 1542<sup>1</sup> with respect to the Released Claims only, as set forth in the foregoing Notice, and be precluded from pursuing all of the Released Claims, known or unknown, described in the Notice.

\_\_\_\_\_

<sup>1</sup> California Civil Code section 1542 provides that “[a] general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”



# **EXHIBIT 3**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JIMMIE JARRELL, an individual, on behalf  
of himself and all others similarly situated,  
  
Plaintiff,  
  
vs.  
  
AMERIGAS PROPANE, Inc.; a Pennsylvania  
corporation; and DOES 1 through 50,  
inclusive,  
  
Defendants.

Case No. 3:16-CV-01481-JST  
  
**[PROPOSED] NOTICE TO CURRENT  
EMPLOYEES RE: PENDENCY OF  
CLASS AND COLLECTIVE ACTION  
AND SETTLEMENT**

AMERIGAS PROPANE, INC. (“AMERIGAS”) HAS AGREED TO MAKE PAYMENTS  
TO ITS CURRENT SERVICE TECHNICIANS IN CALIFORNIA AS PART OF THE  
RESOLUTION OF THIS LAWSUIT. BECAUSE YOU ARE A CURRENT EMPLOYEE, YOU  
WILL NOT NEED TO FILE A CLAIM TO GET THIS PAYMENT – INSTEAD, AS SET  
FORTH BELOW, AMERIGAS HAS AGREED TO AUTOMATIC PAYMENTS TO  
CURRENTLY EMPLOYED SERVICE TECHNICIANS WHO DO NOT EXCLUDE  
THEMSELVES FROM THIS PROCESS.

AMERIGAS STRENUOUSLY CONTENDS THAT IT HAS COMPENSATED ITS  
SERVICE TECHNICIANS PROPERLY. NEVERTHELESS, AMERIGAS HIGHLY VALUES  
ITS EMPLOYEES, AND INSTEAD OF SPENDING ADDITIONAL RESOURCES ON

1 LITIGATION, IT HAS AGREED TO MAKE PAYMENTS TO CURRENTLY EMPLOYED  
2 SERVICE TECHNICIANS IN CALIFORNIA WITHOUT REQUIRING THEM TO SUBMIT A  
3 CLAIM OR PROVE THAT THEY WERE IMPROPERLY COMPENSATED. (THERE ARE  
4 SOME FORMER EMPLOYEES WHO CAN ALSO RECEIVE PAYMENTS, BUT THEY WILL  
5 NEED TO SUBMIT QUALIFYING CLAIMS TO DO SO.)

6 THE AMOUNT OF EACH SERVICE TECHNICIAN'S PAYMENT WILL BE BASED  
7 ON TENURE. YOUR SPECIFIC, GROSS PAYMENT AMOUNT WILL BE  
8 APPROXIMATELY <merge payment amount>, LESS RELEVANT WITHHOLDINGS. THIS  
9 PAYMENT AMOUNT WILL LIKELY INCREASE BECAUSE THE PAYMENTS  
10 EARMARKED FOR FORMER EMPLOYEES WHO DO NOT FILE CLAIMS WILL BE  
11 REDISTRIBUTED AMONG CURRENT EMPLOYEES (AS WELL AS THOSE COVERED  
12 FORMER EMPLOYEES WHO FILE VALID CLAIMS).

13 IT IS PRESENTLY ANTICIPATED THAT THE PAYMENTS WILL BE MADE IN  
14 <month >.

15 PLEASE REVIEW THIS NOTICE. IF YOU TAKE NO ACTION, YOU WILL  
16 RECEIVE A SETTLEMENT PAYMENT AND YOU WILL ALSO BE SUBJECT TO A  
17 RELEASE OF CLAIMS AGAINST AMERIGAS.

18 **I. INTRODUCTION AND SUMMARY**

19 This notice relates to a lawsuit entitled *Jarrell v. AmeriGas Propane, Inc.*, Case No. 3:16-  
20 CV-01481-JST. The lawsuit is pending in the United States District Court for the Northern  
21 District of California. The lawsuit was filed by a former AmeriGas Service Technician named  
22 Jimmie Jarrell. Mr. Jarrell argued that AmeriGas failed to properly compensate him and other  
23 Service Technicians in California during a specified period. This notice will refer to Mr. Jarrell as  
24 Plaintiff or Plaintiff Jarrell.

25 You have received this notice because you are a current AmeriGas Service Technician in  
26 California. This Notice provides instructions on the options available to you, which in short are  
27 the following:  
28

<p><b>Receive a Settlement Payment</b></p>	<p>Because you are still employed by AmeriGas, you can automatically receive payment without submitting any claim or taking any other action. <b><u>Your settlement share will be at least \$[MERGE SETTLEMENT SUM] and possibly more if former employee class members do not submit valid claims or class members opt out of the settlement.</u></b></p> <p>If you do nothing, you will receive a settlement check and you will be included in the class and release pertinent claims as set forth below in Section VI.</p>
<p><b>You Can Object to the Settlement</b></p>	<p>If you want to object to the settlement, you must do so by [NOTICE RESPONSE DEADLINE]. Instructions on how to do this appear below in Section IV, D.</p>
<p><b>You Can Exclude Yourself from (or “opt out of”) the Settlement</b></p>	<p>If you do not want to be a part of the settlement and do not want to receive a settlement payment, you must exclude yourself by [NOTICE RESPONSE DEADLINE]. Instructions on how to do this are below in Section IV. C.</p>

**II. THE PEOPLE RECEIVING THIS NOTICE**

Mr. Jarrell is pursuing this matter as a class and collective action. In class and collective actions, one or more persons bring claims on behalf of themselves and also seek to bring those claims on behalf of others who allegedly have similar claims.

AmeriGas denies all of Plaintiff’s claims. It contends that it has always paid its Service Technicians properly, and that if this lawsuit were to proceed, it could not go forward on a class or collective basis. Nevertheless, AmeriGas has agreed to resolve this matter in the fashion set forth herein to avoid the expense of litigation and instead provide automatic payments to its current Service Technicians in California.

This Notice is being mailed to the last known addresses of all current employee class members. A separate notice is being sent to the former employees also at issue in this case. These former employee class members are receiving separate notices because they will be required to submit claim forms to obtain payment. To the extent former employee Service Technicians do not submit qualifying claims, the funds that would have otherwise been paid to them will be redistributed *pro rata* to the current employees who do not exclude themselves, as well as the former employees who submit qualifying claims forms.

1 AmeriGas will not retaliate against any class members for exercising the rights described  
2 in this Notice. Whether and how you respond to this notice will have no effect on your  
3 employment at AmeriGas.

4 **III. THE ALLEGATIONS BY MR. JARRELL**

5 Mr. Jarrell asserts several claims against AmeriGas under various laws, including the  
6 federal Fair Labor Standards Act (“FLSA”), the California Labor Code, and the California  
7 Business and Professions Code, in connection with the compensation of Service Technicians. He  
8 claims that AmeriGas did not provide him and other Service Technicians with proper meal and  
9 rest periods, did not properly calculate the regular rate of pay for overtime purposes, did not pay  
10 properly for on-call shifts, did not maintain proper wage records, imposed improper wage  
11 deductions, did not make wage payments timely, and did not maintain vacation and floating  
12 holiday policies that complied with California law. Mr. Jarrell sought to bring the action on behalf  
13 of all current and former Service Technicians employed by AmeriGas in California at any point  
14 after February 16, 2012.

15 AmeriGas has reviewed the claims in this lawsuit in detail, and it denies them. Although  
16 AmeriGas believes that it has always compensated its employees properly and has very strong  
17 arguments to prevail in this litigation, it has chosen to work with Mr. Jarrell and his lawyers to  
18 resolve this matter to avoid the expense and disruption of litigation and instead provide for  
19 essentially automatic payments to currently employed Service Technicians in California, as  
20 described in this notice.

21 **IV. DESCRIPTION OF THE SETTLEMENT**

22 **A. Summary of the Settlement**

23 On behalf of the Class, Mr. Jarrell has reached a voluntary settlement agreement with  
24 AmeriGas. The total maximum amount of the settlement is \$800,000. This amount is referred to  
25 below as the “Maximum Settlement Amount.” This amount will cover payments to participating  
26 class members as well as (i) Mr. Jarrell’s attorney fees, (ii) court costs, (iii) an enhancement  
27 payment to Mr. Jarrell, (iv) the costs of administering the settlement, (v) a required payment to the  
28

1 California Labor and Workforce Development Agency, and (vi) the employer's share of payroll  
2 taxes.

3         Neither AmeriGas nor its employees have admitted any liability or wrongdoing. A full  
4 copy of the settlement agreement, which is entitled the Stipulation Re: Settlement of Class and  
5 Collective Actions, as well as other public documents filed with regard to this matter, can be  
6 inspected in the Office of the Court Clerk (see below) or at this website: [WEBSITE ADDRESS].  
7 The Court has granted preliminary approval of the settlement, and the Court has directed the  
8 parties to send this Notice.

9         **As set forth in greater detail in the Release of Claims section below, class members**  
10 **who do not opt out of the settlement will give up any claims against AmeriGas and its**  
11 **affiliates relating to their compensation, up through the entry of judgment. Class members**  
12 **who opt out of the settlement will not give up their claims, but they will not receive any**  
13 **payment under this settlement.**

14         **B.       What Will I Get Under the Settlement?**

15         Current employees are not required to submit a claim. Instead, current employee Service  
16 Technicians who do not opt out of the settlement will automatically receive payment from  
17 AmeriGas. The payments to class members will be calculated according to the number of weeks  
18 you actively worked as a Service Technician for AmeriGas in California between February 16,  
19 2012 and <insert date of preliminary approval order> (this period of time is referred to as the  
20 "Class Period"). Your estimated settlement payment is at least \$[MERGE]. The amount of your  
21 payment may increase if some of the former employee class members do not timely submit  
22 qualifying claim forms or if some class members opt out of the settlement.

23         **C.       Is My Settlement Payment Taxed?**

24         A portion of the payment you receive under the settlement will be subject to required wage  
25 withholdings and deductions. These amounts will be deducted from the payment you receive.  
26 AmeriGas will report thirty-three percent (33%) of any payment you receive to relevant  
27 government entities as a wage payment, and will report the remaining sixty-seven percent (67%)  
28 as a non-wage payment.

1 Each class member will be solely responsible for tax reporting of any payment received  
2 under this settlement and for paying any taxes associated with the payment. Neither AmeriGas,  
3 Mr. Jarrell, nor his attorneys (referred to below as “Class Counsel”) make any representations  
4 concerning the tax consequences of this settlement or your participation in it. If you have any  
5 questions about the tax consequences of the payments you may receive under the settlement, you  
6 should consult your tax advisor.

7 **D. How Much Will Class Counsel Be Paid in Attorneys’ Fees?**

8 Class Counsel will request that the Court award them attorneys’ fees of \$266,640, which is  
9 one-third of the Maximum Settlement Amount described above. Class Counsel will also seek  
10 reimbursement of up to \$35,000 in out-of-pocket expenses incurred in this case, which will also be  
11 subject to Court approval. Any amounts approved by the Court will constitute full payment for all  
12 legal fees of Class Counsel and expenses incurred in the lawsuit, including any work they do in  
13 the future. The application for these fees and costs is on file with the Court, and it can be  
14 reviewed in the same manner as other court documents as set forth below (see Section VIII,  
15 “Examination of Papers Filed in this Lawsuit”).

16 **E. What Deductions Will Be Made From the Settlement Amount?**

17 The Maximum Settlement Amount will be used for the payments to class members and the  
18 attorneys’ fees and costs set forth above, and it will also be used to pay for (1) settlement  
19 administration expenses, estimated to be \$20,000; (2) an enhancement payment of \$10,000 to Mr.  
20 Jarrell; (3) a payment of \$30,000 to the California Labor and Workforce Development Agency;  
21 and (4) the employer’s share of payroll taxes. These estimated payments are all subject to the  
22 approval of the Court.

23 **V. THE RIGHTS AND OPTIONS OF CLASS MEMBERS**

24 Current employee class members like you have several options, as follows:

- 25 (i) You may **do nothing and automatically receive a settlement payment**. If you take no  
26 action, you will remain in the settlement class, and you will release your covered claims  
27 against AmeriGas as set forth below. In addition, upon cashing the check you receive, you  
28 will also release your claims against AmeriGas under the FLSA (see below for more  
details).

1 (ii) You may **opt out of the settlement** by sending a written request to the claims  
2 administrator no later than [NOTICE RESPONSE DEADLINE] (see below for more  
3 details). If you opt out, you will not receive a settlement payment, and you will not release  
any claims against AmeriGas (see below for more details).

4 (iii) You may **object to the settlement** by submitting your written objections in the manner  
5 described below no later than [NOTICE RESPONSE DEADLINE]. If you object to the  
settlement, you will still remain in the class and participate in the settlement (see below for  
more details).

6 **A. How Do I Make Corrections to Name or Address?**

7 If you wish to change the name or address listed on the envelope in which this Notice was  
8 sent, please complete Form A attached hereto and submit it before the deadline specified on the  
9 form.

10 **B. How Do I Receive Payment?**

11 Current employee class members, including you, need not take any action to participate in  
12 the settlement and receive payment. Unless you opt out of the settlement, AmeriGas will send the  
13 payment. Class members who take no action and remain in the class will give up any claims  
14 relating to their compensation by AmeriGas or its affiliates at any time up through the entry of  
15 judgment. When you cash the check sent to you per this settlement, you will also be deemed to  
16 have released and discharged any claims arising under the FLSA, in addition to the other claims  
17 you are releasing as described above.

18 Class members who remain in the class will be represented by Mr. Jarrell and Class  
19 Counsel. The lawyers acting as Class Counsel in this matter are the following:

20 SETAREH LAW GROUP  
21 SHAUN SETAREH  
22 H. SCOTT LEVIANT  
23 9454 Wilshire Boulevard, Suite 907  
24 Beverly Hills, CA 90212  
25 Telephone: (310) 888-7771

26 Class members who remain in the class may choose to retain their own attorneys. Class  
27 members who choose this option will be responsible for their own attorneys' fees and costs.

28 Class members who do not opt out of the settlement may also object to the terms or nature  
of the settlement at or prior to the hearing on the settlement using the procedure set forth below.

1           **C.     How Do I Opt Out of the Settlement?**

2           Class members may elect to “opt out” of the settlement and thus exclude themselves from  
3 this lawsuit and the associated settlement and judgment. **Class members who opt out will NOT**  
4 **receive a payment** and will remain free, subject to the statute of limitations and other similar  
5 restrictions, to bring claims against AmeriGas relating to the alleged violations described above.

6           Class members who wish to opt out of this settlement must mail a timely written request to  
7 the Claims Administrator at [CLAIMS ADMINISTRATOR ADDRESS]. The opt out request  
8 must state the class member’s full name, address, date of birth, and the dates of employment by  
9 AmeriGas, and it must make the following or a substantially similar statement: “I wish to opt out  
10 of the *Jarrell* settlement, and I understand by doing so, I will not receive a payment.” To be  
11 effective, the request to opt out must be postmarked on or before [**Notice Response Deadline**].  
12 This deadline is final, and opt out requests that are not postmarked on or before that date will not  
13 be honored.

14           **D.     How Do I Object to the Settlement?**

15           If you have not opted out, you can submit a written objection to any terms of the  
16 settlement. Your objection must be in writing and include your full name, address, telephone  
17 number, and signature. The objection must include a statement that you object to the settlement in  
18 *Jarrell v. AmeriGas Propane, Inc.*, Case No. 3:16-CV-01481-JST and the reason(s) for your  
19 objection. The objection must be mailed to [CLAIMS ADMINISTRATOR ADDRESS] no later  
20 than [NOTICE RESPONSE DEADLINE]. If the Court overrules your objection, you will still  
21 remain in the class and release pertinent claims as set forth below in Section VI.

22           **VI.    RELEASE OF CLAIMS**

23           All class members who do not opt out of the settlement will be subject to the judgment  
24 connected with this lawsuit and associated settlement. This means they shall be deemed to have  
25 forever released and discharged AmeriGas and all its past and present affiliates, predecessors,  
26 successors, acquired entities, and any of their directors, officers, employees, partners, members,  
27 principals, agents, insurers, co-insurers, re-insurers, shareholders, attorneys, and personal or legal  
28 representatives (herein collectively, “AmeriGas Releasees”) from any demands, rights, liabilities,

1 and causes of action of every nature and description whatsoever, including without limitation  
2 statutory, constitutional, contractual or common law claims, whether known or unknown, whether  
3 or not concealed or hidden, whether arising under federal or state law, including without limitation  
4 claims for wages, damages, unpaid costs, penalties, liquidated damages, punitive damages,  
5 interest, attorneys' fees, litigation costs, restitution, or equitable relief, that accrued at any point on  
6 or prior to the entry of judgment as a result of the class member's employment as a Service  
7 Technician in California for AmeriGas, based on the following categories of claims or allegations:

8 (a) (i) failure to pay any and all regular or premium wages; (ii) failure to provide sufficient  
9 meal and/or rest periods and/or to pay premiums in lieu thereof; (iii) failure to pay minimum  
10 wages; (iv) failure to pay wages to discharged, quitting or otherwise terminated employees; (v)  
11 failure to furnish accurate itemized wage statements; (vi) failure to comply with payroll or wage  
12 record-keeping requirements; and (vii) failure to maintain vacation and floating holiday policies in  
13 compliance with California law;

14 (b) any and all claims alleging statutory violations arising from the same categories of  
15 allegations set forth above in subsection (a), including without limitation claims under the FLSA,  
16 the Portal to Portal Act, California Labor Code sections 218, 226, 226.7, 1194 and 2698 *et seq.* and  
17 California Business & Professions Code sections 17200 *et seq.*;

18 (c) any and all claims for penalties or liquidated damages or other available remedies  
19 arising from the categories of allegations set forth above in subsections (a) and (b), including  
20 without limitation claims under the FLSA, Portal to Portal Act, California Labor Code sections  
21 203, 226, 226.7, 512, 1194, and 2698 *et seq.*, and applicable California Industrial Welfare  
22 Commission Wage Orders;

23 (d) any and all claims for interest, costs, or attorneys' fees arising from the categories of  
24 allegations set forth above in subsections (a) and (b), including without limitation claims under the  
25 California Labor Code sections 218.5, 1194, and 2699(g)(1), California Code of Civil Procedure  
26 section 1021.5, and Federal Rule of Civil Procedure 23(h); and

27 (e) to the extent not covered by the above, any and all claims pled in the lawsuit.

1 All of these released claims are collectively referred to in this Notice as “Released  
2 Claims.” The Released Claims include claims under the California Private Attorneys General Act  
3 of 2004, codified at California Labor Code sections 2698 *et seq.*, for which the Class is being  
4 granted additional consideration, including a payment of \$15,000, to the California Labor and  
5 Workforce Development Agency pursuant to this settlement. The Released Claims also include  
6 claims under the federal Fair Labor Standards Act (“FLSA”), and all class members who do not  
7 opt out of the settlement will be deemed to have opted into this lawsuit and released covered  
8 FLSA claims when they cash their payments.

9 Each class member who does not opt out of the settlement will release those Released  
10 Claims which the class member does not know or suspect to exist in his or her favor at the time of  
11 the entry of the court’s judgment, and which, if known by him or her might have affected his or  
12 her settlement with or release of the AmeriGas Releasees, or might have affected his or her  
13 decision to opt out of the settlement or to object to this settlement. With respect to the Released  
14 Claims only, each class member who does not opt out shall be deemed to have, and by operation  
15 of the court’s judgment shall have, waived the provisions, rights, and benefits of California Civil  
16 Code § 1542 or any like provision of the law of any other pertinent jurisdiction. California Civil  
17 Code § 1542 provides: “A general release does not extend to claims which the creditor does not  
18 know or suspect to exist in his or her favor at the time of executing the release, which if known by  
19 him or her must have materially affected his or her settlement with the debtor.” Unknown claims  
20 released by class members who do not opt out include only those claims that meet the definition of  
21 Released Claims and therefore do not include, for example, claims for wrongful termination,  
22 workplace harassment or discrimination or Workers Compensation Claims.

## 23 **VII. HEARING ON SETTLEMENT**

24 Following a hearing on [INSERT DATE], the Court granted preliminary approval for the  
25 settlement of this lawsuit as a class and collective action and scheduled a hearing on final approval  
26 for [INSERT DATE]. This hearing will take place before the Honorable Jon S. Tigar in  
27 Courtroom 9 of the United States District Court for the Northern District of California, located at  
28 450 Golden Gate Avenue, San Francisco, CA 94102. Class members can express their views on

1 the settlement at or before this hearing but you are not required to do so, nor are you required to  
2 attend this hearing to receive payment or exercise other rights.

3 At this hearing, Class Counsel will present any timely written objections to the Court. Late  
4 written objections will not be valid.

5 Again, your attendance at this hearing is completely optional, and current employees like  
6 you need not appear at this hearing or take any other action to receive payment.

7 **VIII. EXAMINATION OF PAPERS FILED IN THIS LAWSUIT**

8 This Notice does not fully describe this settlement. Members of the public, including but  
9 not limited to persons whose rights may be affected by the lawsuit, may inspect the files  
10 (including the full settlement agreement) through the Court Clerk at the following address: Office  
11 of the Clerk, United States District Court for the Northern District of California, 450 Golden Gate  
12 Avenue, San Francisco, CA 94102. In addition, at this website [WEBSITE ADDRESS], you can  
13 obtain copies of the following documents: (a) the operative complaint in the lawsuit; (b) the  
14 operative answer to the complaint filed by AmeriGas in the lawsuit; (c) the complete settlement  
15 agreement; (d) the motion for preliminary approval; (e) the order granting preliminary approval  
16 and setting the <date> hearing on the settlement; and (f) Class Counsel's application for attorneys'  
17 fees and costs.

18 *PLEASE DO NOT CALL OR WRITE THE COURT OR AMERIGAS WITH QUESTIONS*  
19 *REGARDING THIS ACTION.*

20  
21 *IF YOU HAVE ANY QUESTIONS, PLEASE CALL, EMAIL OR WRITE THE*  
22 *CLAIMS ADMINISTRATOR AT:*

23 [INSERT ADDRESS]

24 [INSERT TELEPHONE NUMBER AND EMAIL ADDRESS]

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**FORM A**

**FOR**

**NOTICE TO CLASS MEMBERS RE: PENDENCY OF A CLASS ACTION**

**AND NOTICE**

**OF HEARING ON PROPOSED SETTLEMENT**

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**Change of Name and/or Address Information**

Pursuant to the Notice to Current Employee Class Members, I wish to change my name and/or mailing address information to the following:

Name:

Street and Apt. No., if any:

City, State and Zip Code:

For purposes of verification only, I began working at AmeriGas in

\_\_\_\_\_, \_\_\_\_\_.

(Month) (Year)

I understand that all future correspondence in this action, including but not necessarily limited to important notices or payments to which I am entitled (if any), will be sent to the address listed above and not to the address previously used. I hereby request and consent to the use of the address listed above for these purposes.

DATED: \_\_\_\_\_, 2017

Submitted by:

\_\_\_\_\_

Print Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Date

PLEASE RETURN THIS FORM VIA UNITED STATES MAIL TO:

<settlement administrator>

Re: Jarrell Matter

ADDRESS

**THIS FORM MUST BE POSTMARKED BY**

**[NOTICE RESPONSE DEADLINE],**

**TO CHANGE YOUR ADDRESS**

# **EXHIBIT 4**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JIMMIE JARRELL, an individual, on behalf  
of himself and all others similarly situated,  
  
Plaintiff,  
  
vs.  
  
AMERIGAS PROPANE, Inc.; a Pennsylvania  
corporation; and DOES 1 through 50,  
inclusive,  
  
Defendants.

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

**[PROPOSED] ORDER DETERMINING  
GOOD FAITH AND GRANTING FINAL  
APPROVAL OF SETTLEMENT**

Date:  
Time:  
Crtrm.:  
Judge: The Honorable Jon S. Tigar



# **EXHIBIT 5**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

vs.

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

Defendants.

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

**[PROPOSED] JUDGMENT**

Date:  
Time:  
Crtrm.: 9  
Judge: The Honorable Jon S. Tigar

1           This matter came on for hearing upon the application of the Plaintiff Jimmie Jarrell  
2 for approval of the settlement set forth in the Stipulation Re: Settlement of Class and Collective  
3 Actions in this matter. Due and adequate notice having been given to the Class, and the Court  
4 having considered the Stipulation, all papers filed and proceedings had herein, and all oral and  
5 written comments received regarding the proposed settlement, and having reviewed the record in  
6 this litigation, and good cause appearing for issuance of this order,

7           IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

8           1.       The Court, for purposes of this Judgment, adopts all defined terms as set  
9 forth in the Stipulation Re: Settlement of Class and Collective Actions (“Stipulation”) filed in this  
10 case.

11           2.       The Court has jurisdiction over the subject matter of the Litigation and the  
12 Class Representative, the Members of the Class, and AmeriGas.

13           3.       The Court finds that the distribution of the Notice as provided for in the  
14 Order Granting Preliminary Approval and Settlement Hearing constituted the best notice  
15 practicable under the circumstances to all Persons within the definition of the Class, and fully met  
16 the requirements of due process under the United States Constitution and California law. Based  
17 on evidence and other material submitted in conjunction with the Settlement Hearing, the actual  
18 notices to the Class were adequate. The Court further finds that AmeriGas has satisfied the  
19 requirements of notice to pertinent government agencies set forth in the federal Class Action  
20 Fairness Act of 2005.

21           4.       The Court finds that the Litigation presented a good faith dispute over the  
22 payment of wages, and the Court finds in favor of settlement approval.

23           5.       The Court approves the settlement of the above-captioned action, as set  
24 forth in the Stipulation, including the releases and other terms set forth in the Stipulation, as fair,  
25 just, reasonable, and adequate as to the Settling Parties. The Settling Parties are directed to  
26 perform in accordance with the terms set forth in the Stipulation. The Settling Parties are to bear  
27 their own costs, except as otherwise provided in the Stipulation.

1           6.       Those Persons (identified in Attachment A hereto) who have validly and  
2 timely requested exclusion from the Class shall not be bound by the terms of this Judgment.

3           7.       Solely for purposes of effectuating this settlement, this Court has certified a  
4 class consisting of all Class Members, as that term is defined in the Stipulation, and the Court  
5 deems this definition sufficient for purposes of due process and Rule 23, Fed. R. Civ. P.

6           8.       For purposes of approving this settlement only, this Court finds and  
7 concludes that: (a) the Members of the Class are ascertainable and so numerous that joinder of all  
8 members is impracticable; (b) there are questions of law or fact common to the Class, and there is  
9 a well-defined community of interest among Members of the Class with respect to the subject  
10 matter of the Litigation; (c) the claims of the Class Representative are typical of the claims of the  
11 Members of the Class; (d) the Class Representative has fairly and adequately protected the  
12 interests of the Members of the Class; (e) a class action is superior to other available methods for  
13 an efficient adjudication of this controversy; and (f) Class Counsel are qualified to serve as  
14 counsel for the plaintiff in his individual and representative capacities and for the Class.

15           9.       For purposes of approving this settlement only, this Court finds and  
16 concludes that the Class meets the requirements for certification as a collective action class under  
17 29 U.S.C. § 216(b) because the Class Members are similarly situated.

18           10.      By this Judgment, subject to the occurrence of the Effective Date as defined  
19 in the Stipulation, the Class Representative shall release, relinquish, and discharge, and each of the  
20 Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have,  
21 fully, finally, and forever released, relinquished, and discharged all Released Claims (including  
22 Unknown Claims).

23           11.      Neither the Stipulation nor the settlement contained therein, nor any act  
24 performed or document executed pursuant to or in furtherance of the Stipulation or the settlement:  
25 (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of  
26 any Released Claim, or of any wrongdoing or liability of AmeriGas; or (ii) is or may be deemed to  
27 be or may be used as an admission of, or evidence of, any fault or omission of AmeriGas in any  
28 civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal.

1 In the event that the Effective Date does not occur, AmeriGas shall not be estopped or otherwise  
2 precluded from contesting class or collective action certification in the Litigation on any grounds.  
3 AmeriGas may file the Stipulation and/or the Judgment from the Litigation in any other action that  
4 may be brought against them in order to support a defense or counterclaim based on principles of  
5 *res judicata*, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any  
6 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

7           12. The only Class Members entitled to payment pursuant to this Judgment are  
8 Participating Claimants. The funds associated with any checks that are not properly or timely  
9 negotiated within ninety (90) days from the date of mailing shall be deposited by the Claims  
10 Administrator into the State of California Department of Industrial Relations Unclaimed Wages  
11 Fund with the identity of the Participating Claimants to whom the funds belong. Participating  
12 Claimants who fail to negotiate their settlement checks in a timely fashion shall remain subject to  
13 the terms of this Judgment.

14           13. As contemplated by the Stipulation, Class Counsel have filed a motion for  
15 approval of certain fees, costs, and enhancement payments, and the Court has approved the  
16 following payments: (a) attorneys' fees payable to Class Counsel in this matter in the amount of  
17 \$\_\_\_\_\_; (b) allowable costs in this matter in the amount of \$\_\_\_\_\_, and (c) an  
18 enhancement award of \$\_\_\_ to the Class Representative to reimburse him for his unique services  
19 and execution of general releases. The Court finds that such amounts, and AmeriGas' agreement  
20 to pay such amounts, are fair and reasonable. AmeriGas is directed to make such payments out of  
21 the Maximum Settlement Amount in accordance with the terms of the Stipulation.

22           14. The Court reserves exclusive and continuing jurisdiction over the  
23 Litigation, the Class Representative, the Class, and AmeriGas for the purposes of supervising the  
24 implementation, enforcement, construction, administration and interpretation of the Stipulation  
25 and this Judgment.

26           15. This document shall constitute a judgment for purposes of Federal Rule of  
27 Civil Procedure 58.

28           IT IS SO ORDERED.

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DATED: \_\_\_\_\_, 2017

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The Honorable Jon S. Tigar  
United States District Court Judge