

EXHIBIT 1

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

IN RE: PRE-FILLED PROPANE TANK
MARKETING AND SALES PRACTICES
LITIGATION

MDL Docket No. 2086

Master Case No. 09-2086-MD-W-GAF

THIS PLEADING RELATES TO:
ALL CASES

DECLARATION OF NORMAN E. SIEGEL

I, Norman E. Siegel, hereby state and declare as follows:

1. I am a member in good standing of the State Bar of Missouri. I am a partner in the law firm Stueve Siegel Hanson LLP (“Stueve Siegel Hanson”).

2. I have personal knowledge of all facts set forth in this Declaration and could testify competently as to the matters set forth in this Declaration if called as a witness.

3. I submit this Declaration in support of Plaintiffs’ Motion for Approval of Attorneys’ Fees, Service Awards, and Reimbursement of Expenses.

4. The settling Defendants in the above-captioned matter are Ferrellgas, Inc., Ferrellgas L.P., and Ferrellgas Partners, L.P. (collectively, “Blue Rhino” or “Ferrellgas”).

5. The Court previously appointed Stueve Siegel Hanson as Plaintiffs’ Liaison Counsel in this MDL proceeding, and appointed the law firms Hagens Berman Sobol Shapiro LLP, Girard Gibbs LLP, and Kaplan Fox & Kilsheimer LLP as Plaintiffs’ Co-Lead Counsel. These four firms have worked together closely and efficiently to prosecute this action, and were appointed by the Court as Settlement Class Counsel to oversee this settlement.

6. As set forth in previously-filed pleadings, and Plaintiffs’ Motion for Final Approval of Amended Class Settlement and accompanying Declaration of Laurence D. King

dated December 27, 2011, the submitted settlement is a fair and reasonable resolution of this dispute between Plaintiffs and Blue Rhino, and was agreed to after extensive, arm's length negotiations that took place over the course of many months.

7. Settlement Class Counsel prosecuted this complex case through extensive briefing on dispositive motions and discovery, and at the time of settlement were preparing to move for class certification. Counsel managed to resolve almost all of the disputes that arose in this litigation without Court intervention, thereby conserving judicial resources.

8. With the aid of an experienced mediator, John Phillips of Husch Blackwell LLP, Settlement Class Counsel skillfully negotiated a fair resolution of class members' claims, claims that because of their individually small size could never practically be pursued on an individual, hourly-fee basis. Blue Rhino denied and continues to deny all of Plaintiffs' allegations, and defense counsel advocated this position strenuously throughout the extensive settlement negotiations. Had the parties not reached a fair and reasonable compromise, this litigation would no doubt have proceeded for the foreseeable future, delaying relief to class members, with the risk of obtaining no relief at all, and unnecessarily expending judicial resources.

9. Because each of the Settlement Class Counsel's firms prosecuted this case on a fully contingent basis, including advancing all fees and expenses during the litigation, counsel faced the very real risk of an unsuccessful outcome and no fee of any kind.

10. In addition to providing substantial monetary and non-monetary relief to the nationwide settlement class, the Settlement Agreement, Doc. 250-1 ("Settlement Agreement") also contains the parties' agreement on attorneys' fees, which was negotiated at arm's length by experienced counsel on all sides only after the parties negotiated the class relief. Pursuant to the Settlement Agreement, Blue Rhino agrees not to oppose "an application for the award of

Attorneys' Fees and Expenses in this Action not to exceed a total of \$7,250,000." Settlement Agreement at ¶ 14.1.

11. The award of attorneys' fees in this case will not reduce the benefits to the class under the settlement, and will be paid separately by Defendants. *See* Settlement Agreement at ¶¶ 14.1, 14.3.

12. In my role as Liaison Counsel, I asked Settlement Class Counsel to provide me their time and expenses in the litigation associated with the prosecution of the claims against Blue Rhino and the time associated with achieving this settlement. Each firm exercised their billing judgment to ensure that the time submitted was reasonably related to the Blue Rhino litigation. No time that was previously submitted in connection with the AmeriGas matter is included.

13. From the beginning of this case against Blue Rhino through December 21, 2011, Settlement Class Counsel have spent 5,989 hours in lawyer and professional time on this case. This time was split roughly equally among the four firms designated as Settlement Class Counsel. The firms took particular care to avoid duplication of efforts and to prosecute this matter as efficiently as possible.

14. At an average blended hourly rate of \$429 per hour (less than the \$495 in the approved AmeriGas award), Settlement Class Counsel's lodestar for this matter is \$2,566,842. Settlement Class Counsel's time is billed at or below their normal and usual rates for such matters, using the same hourly rates this Court previously approved in the AmeriGas matter. These rates are also consistent with rates charged to hourly clients and consistent with rates recently approved elsewhere in this District. *See In re H&R Block, Inc., Express IRA Marketing*

Litigation, No. 4:06-md-01786 (Doc. 232), attached for the Court's convenience here as Exhibit A) (W.D. Mo. May 17, 2010).

15. These figures do not include the anticipated additional time preparing for and attending the Final Approval Hearing and the additional time to administer to the Settlement and finalize payments to class members. It has been our experience in similar class actions that Settlement Class Counsel will spend between 500 to 1,000 hours following final approval to finalize the administration of this settlement.

16. In addition to the time spent by Settlement Class Counsel, time and expenses were incurred by other law firms who were counsel in cases underlying this proceeding. In total, these firms have reported expending approximately 2,420 additional hours on this matter. When these firms' time is included with Settlement Class Counsel's time, the total time is approximately 8,409 hours constituting lodestar of \$3,467,195.

17. Separate from and in addition to the substantial time spent on this litigation, Settlement Class Counsel have incurred unreimbursed costs and expenses related to this matter totaling \$139,200. The calculations of expenses incurred by Settlement Class Counsel are derived from their firms' books and records, which are supported by documentation for the expenses.

18. In addition to the expenses incurred by Settlement Class Counsel, additional plaintiffs' counsel have reported expenses in the amount of \$20,793, bringing the total expenses for all plaintiffs' counsel to \$159,993. The inclusion of expenses in the fee and expense award reduces the actual requested fee to \$7,090,007. This reflects a multiplier of 2.76 if only Settlement Class Counsel's time is considered and 2.04 if other plaintiffs' counsel's time is considered.

EXHIBIT A

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

IN RE: H&R BLOCK, INC.,) MDL DOCKET NO. 1786
EXPRESS IRA MARKETING LITIGATION) Master Case No. 4:06-md-01786
)
) ALL ACTIONS

**ORDER GRANTING PLAINTIFFS' MOTION FOR APPROVAL OF ATTORNEYS'
FEES, SERVICE FEES, AND REIMBURSEMENT OF EXPENSES**

On May 17, 2010, the Court held a hearing to consider Plaintiffs' Motion for Approval of Attorneys' Fees, Service Fees, and Reimbursement of Expenses. Pursuant to the terms of the Settlement, Defendants have agreed to pay an award of attorneys' fees and reimbursement of expenses up to \$6,000,000 and agreed to pay service fees to the Class and Deposited Representatives up to \$15,000.

After review of the Motion (Doc. 225), the Memorandum in Support (Doc. 226), the Reply in Support (Doc. 228) and the argument at the hearing, the Court hereby GRANTS Plaintiffs' Motion for Approval of Attorneys' Fees, Service Fees, and Reimbursement of Expenses for the following reasons:

1. "The Eighth Circuit has identified four factors in setting a reasonable fee using the lodestar method: (1) the number of hours spent by counsel; (2) counsel's 'reasonable hourly rate'; (3) the contingent nature of success; and (4) the quality of the attorneys' work." In re UnitedHealth Group Inc. S'holder Derivative Litig., 631 F. Supp. 2d 1151, 1158-59 (D. Minn. 2009) (citing Grunin v. Int'l House of Pancakes, 513 F.2d 114, 127 (8th Cir. 1975)).
2. After review of these factors, the Court finds and concludes that Class Counsel's request for \$6,000,000 in attorneys' fees and reimbursement of expenses is fair and reasonable.

3. The fee award sought by Plaintiffs was separately negotiated by experienced counsel only after an agreement on behalf of the Class was reached. The award of attorneys' fees will be paid separately by Defendants and will not reduce the benefits to the class under the Settlement.

4. This award is further justified by the time and expenses incurred by counsel throughout four years of contested litigation.

5. As of approximately March 31, 2010, Class Counsel alone have reported spending more than 9,500 hours on this litigation. In calculating the lodestar in this MDL lawsuit, Class Counsel used rates that are comparable to firms in the marketplace engaged in complex litigation on a nationwide basis. Class Counsel's rates varied between \$425-\$750 for partner time, \$225-\$485 for associate time, and \$75-\$290 per hour for professional support staff time. When multiplying the total hours by the hourly fees, the total lodestar for Class Counsel is \$5,033,325.50. The Court finds that both the total hours spent and the hourly billing rates charged by Class Counsel are reasonable.

6. Class Counsel additionally incurred approximately \$244,370.51 in un-reimbursed expenses.

7. Class Counsel's lodestar, combined with the reimbursement for Class Counsel's expenses and the additional hours and expenses Class Counsel anticipate spending on completing the settlement administration going forward, justifies Class Counsel's request for \$6,000,000 in fees and reimbursement of expenses.

8. Moreover, the Court also finds that Class Counsel obtained excellent results for the Class from this hard fought litigation. Class Counsel faced considerable risk in pursuing this litigation and obtained results similar to those that would be available at trial for all Class

Members.

9. In light of the results obtained for the class and the substantial amount of time expended and expenses incurred, the \$6,000,000 request is fair and reasonable. See, e.g., *Nelson v. Wal-Mart Stores, Inc.*, No. 2:04CV0000171 WRW, 2009 WL 2486888, at *2 (E.D. Ark. Aug. 12, 2009) (citing cases within the 8th Circuit approving lodestar multipliers of up to 5.6); *Cohn v. Nelson*, 375 F. Supp. 2d 844, 861 (E.D. Mo. 2005) (approving a requested 2.9 multiplier and stating that "courts typically apply a multiplier of 3 to 5 to compensate counsel for the risk of contingent representation.").

10. The Court hereby awards Class Counsel \$6,000,000 in attorneys' fees, which includes reimbursement for all expenses incurred by counsel. The Court also Orders that Class Counsel shall allocate the \$6,000,000 award of attorneys' fees among themselves according to their own agreement, and among any other additional counsel for Plaintiffs in a fashion that, in the sole opinion of Class Counsel, fairly compensates such counsel for their contribution to the prosecution of the litigation.

11. The Court has also considered Class Counsel's request for service fees for the thirteen Class and Deposed Representative in this litigation. The Court finds that the time and effort the Class and Deposed Representatives devoted to this matter contributed to the overall result and benefited the class.

12. The Court finds that Class Counsel's request for service fees for Class and Deposed Representatives is also reasonable. See *In re US Bancorp Litig.*, 291 F.3d 1035, 1037 (8th Cir. 2002) (approving incentive awards of \$2,000 to five representative plaintiffs whose efforts in the litigation resulted in a class fund of approximately \$3.5 million); *In re Aquila ERISA Litig.*, No. 04-00865-CV-DW, 2007 WL 4244994, at *3 (W.D. Mo. Nov. 29, 2007)

(awarding incentive awards between \$5,000 and \$25,000 for named plaintiffs because they "rendered valuable service to the Plan and all Plan Participants. Without this participation, there would have been no case and no settlement.").

13. The Court hereby approves incentives awards of \$1,000 to each of the following: Class Representatives Carol Bronson, Rhonda Ranae Harris, and Sarah Walter McLean; and \$1,000 to each of the ten additional individuals who were deposed in this lawsuit, Tonya Adams, Brian M. Baxter, Christie Boyd Crowder, Jennifer Conoley, Robert Dowda, Debra Kessler, Lynn Kohan, Carol Johnson Ruffing, Pascha Perkins, ~~and~~ Neil Terrelonge *and Laura Starks*.

14. Defendants are hereby ORDERED to pay Class Counsel in accordance with and subject to the terms of the Settlement Agreement. Moreover, Defendants are hereby ORDERED to pay service fees to all Class and Deposed Representatives in accordance with and subject to the terms of the Settlement Agreement.

15. Without affecting the finality of this Order, the Court retains exclusive jurisdiction over this MDL Proceeding to consider all further matters arising out of or in connection with: (a) the enforcement of this Order; (b) the enforcement of the Settlement Agreement; and (c) the distribution of the Settlement Fund. See *Kokkohnen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994) (providing that a district court must indicate in its dismissal order that it retains continuing jurisdiction regarding the settlement agreement; otherwise, a district court does not have continuing jurisdiction over such agreements).

IT IS SO ORDERED.

DATED: May 17, 2010



THE HONORABLE RICHARD E. DORR
UNITED STATES DISTRICT JUDGE