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11 Attorneys for Defendant
12 AIRGAS USA, LLC

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15
16 LIT'L PEPPER GOURMET, INC.,
Individually and on behalf of those
17 similarly situated,

18 Plaintiffs,

19 v.

20 AIRGAS USA, LLC,

21 Defendant.
22
23

Case No. **'19CV837 LAB AGS**

[San Diego Superior Court Case No. 37-2019-00016827-CU-BT-CTL]

**DEFENDANT AIRGAS USA, LLC'S
NOTICE OF REMOVAL
PURSUANT TO 28 U.S.C. §§ 1332,
1441, 1446, AND 1453**

24 **PLEASE TAKE NOTICE** that pursuant to 28 U.S.C. §§ 1332, 1441, 1446,
25 and 1453, defendant Airgas USA, LLC ("Airgas") hereby removes this action from
26 the Superior Court of the State of California for the County of San Diego ("San Diego
27 Superior Court") to the United States District Court for the Southern District of
28 California, showing the following as grounds therefore:

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Compliance with the Procedural Requirements for Removal

1 1. Airgas is the sole named defendant in the action styled *Lit'l Pepper*
2 *Gourmet, Inc. v. Airgas USA, LLC*, pending as Case Number 37-2019-00016827-CU-
3 BT-CTL in the Superior Court of the State of California for the County of San Diego
4 (the "State Court Action").

5
6 2. Plaintiff, Lit'l Pepper Gourmet, Inc. ("Plaintiff") filed the Complaint in
7 the State Court Action (the "Complaint") on March 29, 2019.

8 3. Plaintiff served the Complaint on Airgas on April 3, 2019.
9 *See* Declaration of Alexandra Mora, at ¶ 2, attached as **Exhibit "D."**

10 4. In accordance with 28 U.S.C. § 1446(b) and Fed. R. Civ. P. 6(a), Airgas
11 files this Notice of Removal within thirty (30) days of service of the Complaint.

12 5. In accordance with 28 U.S.C. § 1446(a), Airgas attaches true and correct
13 copies of all process, pleadings, and orders served on it in the State Court Action as
14 **Composite Exhibit "A."** *See* Declaration of Alexandra Mora, at ¶ 2.

15 6. Promptly after filing this Notice of Removal, Airgas will give written
16 notice of the removal to Plaintiff through its attorneys of record in the State Court
17 Action, as well as to the Clerk of the Court in the State Court Action, as required by
18 28 U.S.C. § 1446(d).

19 7. This case may be properly removed to the United States District Court
20 for the Southern District of California under 28 U.S.C. §§ 1332, 1441(a), and 1453.
21 The San Diego County Superior Court is located within the jurisdiction of the United
22 States District Court for the Southern District of California.

23 8. As set forth below, removal is proper under 28 U.S.C. §§ 1332(d) and
24 1453 because this case alleges (a) a class action, (b) with proposed classes containing
25 100 or more members in the aggregate, (c) in which Plaintiff is a citizen of a state that
26 is different from Airgas, and (d) the matter in controversy exceeds \$5,000,000,
27 exclusive of interest and costs.

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1 **Citizenship of the Parties**

2 9. Pursuant to 28 U.S.C. § 1332(c), “a corporation shall be deemed to be a
3 citizen of any State by which it has been incorporated and of the State where it has its
4 principal place of business.” The United States Supreme Court has concluded that a
5 corporation’s “principal place of business” is “where a corporation’s officers direct,
6 control, and coordinate the corporation’s activities,” or its “nerve center.” *Hertz Corp.*
7 *v. Friend*, 559 U.S. 77, 78 (2010). “[I]n practice,” a corporation’s nerve center should
8 “normally be the place where the corporation maintains its headquarters.” *Id.* “The
9 public often (though not always) considers it the corporation’s main place of
10 business.” *Id.* at 93.

11 10. A limited liability company is a citizen of every state which its
12 owners/members are citizens. *3123 SMB LLC v. Horn*, 880 F.3d 461, 465 (9th Cir.
13 2018) (quoting *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899
14 (9th Cir. 2006)).

15 11. According to the Complaint, Plaintiff is a California corporation located
16 in San Diego, California. Compl. at ¶ 13. Pursuant to the *Hertz* nerve center test,
17 Plaintiff has its principal place of business in San Diego, California, where its
18 headquarters are located.¹

19 12. Airgas is a limited liability company whose sole member is Airgas, Inc.,
20 a Delaware corporation with its principal place of business in Pennsylvania. *See*
21 Declaration of Shawn Cruikshank, at ¶ 4, attached as **Exhibit “C.”** Pursuant to the
22 *Hertz* nerve center test, Airgas, Inc. has its principal place of business in Radnor,
23 Pennsylvania, where its headquarters are located.

24 ///

25
26
27
28 ¹ In its Complaint, Plaintiff merely alleges that it is a California corporation; Plaintiff does not allege where it has its principal place of business. Plaintiff’s most recent filings with the California Secretary of State on October 31, 2018 and May 9, 2013, reflect that San Diego, California is the company’s current principal place of business. These filings are attached hereto as **Composite Exhibit “B.”** *See* Declaration of Alexandra Mora, at ¶ 4.

1 13. The Complaint seeks relief on behalf of the following putative class:

2 All entities who reside in California who paid Airgas USA a
3 “Fuel Surcharge” from four years before the filing of this
4 action to the date of class certification.

4 Compl. at ¶ 17.

5 14. Thus, there is diversity of citizenship between the named plaintiff and
6 members of the putative class (California), on the one hand, and Airgas (Delaware and
7 Pennsylvania), on the other.

8 **Compliance with the Procedural Requirements for Removal**

9 15. Under the Class Action Fairness Act of 2005 (“CAFA”), a “class action”
10 may be removed where “any member of a class of plaintiffs is a citizen of a State
11 different from any defendant” and “the matter in controversy exceeds the sum or value
12 of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. §§ 1332(d)(2) and 1453.
13 For the \$5,000,000 jurisdictional requirement, “the claims of the individual class
14 members shall be aggregated.” 28 U.S.C. § 1332(d)(6).

15 16. “Congress intended CAFA to be interpreted expansively.” *Ibarra v.*
16 *Manheim Investments, Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015). “The notice of
17 removal ‘need include only a plausible allegation that the amount in controversy
18 exceeds the jurisdictional threshold,’ and need not contain evidentiary submissions.”
19 *Fritsch v. Swift Transp. Co. of Az., LLC*, 899 F.3d 785, 788 (9th Cir. 2018) (quoting
20 *Dart Cherokee Basin Op. Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014)). Evidence
21 establishing the amount is required only when plaintiffs contest the defendant’s
22 assertion of the amount in controversy. *Ibarra*, 775 F.3d at 1197 (citing *Dart*, 135 S.
23 Ct. at 554). “In such a case, both sides submit proof and the court decides, by a
24 preponderance of the evidence, whether the amount-in-controversy requirement has
25 been satisfied.” *Ibarra*, 775 F.3d at 1197 (quoting *Dart*, 135 S. Ct. at 554).

26 17. In support of an allegation that the amount-in-controversy threshold is
27 satisfied, a removing defendant may submit specific factual details—including
28 declarations and affidavits—to support its contentions. *See Ibarra*, 775 F.3d at 1197

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1 (“The parties may submit evidence outside the complaint, including affidavits or
2 declarations, or other ‘summary-judgment-type evidence relevant to the amount in
3 controversy at the time of removal.’”) (quoting *Singer v. State Farm Mut. Auto. Ins.*
4 *Co.*, 116 F.3d 373, 377 (9th Cir. 1997)).

5 18. Plaintiff purports to bring this action as a class action under California
6 law. Compl. at ¶¶ 10, 35, 36–52. California Code of Civil Procedure Section 382
7 pertaining to class actions is similar to Federal Rule of Civil Procedure 23. The State
8 Court Action thus constitutes a “class action.” *See* 28 U.S.C. § 1332(d)(1).

9 19. At least minimum diversity exists because the named plaintiff is a citizen
10 of a state different from Airgas. *See* 28 U.S.C. § 1332(d)(2).

11 20. The amount in controversy exceeds \$5,000,000, exclusive of interest and
12 costs. The Complaint alleges Plaintiff and members of the putative class paid a “Fuel
13 Surcharge” that bore no relation to Airgas’s actual fuel costs. *See, e.g.*, Compl. at ¶ 7
14 (“The ‘Fuel Surcharge’ bears absolutely no relation to Airgas USA’s actual increased
15 fuel costs (or its actual fuel costs) and Airgas USA does not use the proceeds from the
16 ‘Fuel Surcharge’ to offset its increased fuel costs (or its actual fuel costs);” *id.* at ¶ 20
17 (“In actuality, the ‘Fuel Surcharge’ is unrelated to Airgas USA’s actual or increased
18 fuel costs, and is not charged to defray those increased costs.”). Plaintiff alleges
19 instead that the Fuel Surcharge is a hidden rate increase designed to generate profit.
20 *See, e.g., id.* at ¶ 8 (“Airgas uses the ‘Fuel Surcharge’ simply to generate extra profit
21 at its customers’ expense, all the while deceiving customers into believing that the fee
22 is a legitimate charge directly related to actual increased fuel costs it incurs[.]”); *id.* at
23 ¶ 32 (alleging that the “Fuel Surcharge” “is recognized as revenue and contributes
24 directly to Airgas USA’s profit.”); *id.* at ¶ 34 (alleging that Airgas “devised,
25 implemented, and set the amount of the ‘Fuel Surcharge’ simply to increase its
26 profits[.]”). Thus, Plaintiff challenges the entire amount of the Fuel Surcharge.

27 ///

28 ///

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1 21. Based on these allegations, Plaintiff purports to allege (1) violations of
2 California’s Unfair Competition Law and (2) violations of California’s False
3 Advertising Law. Compl. at ¶¶ 36–52.

4 22. Airgas disputes Plaintiff’s characterization of the “Fuel Surcharge,”
5 denies Plaintiff’s allegations and claims, denies class certification is appropriate,
6 denies liability, and denies Plaintiff or any member of the putative class is entitled to
7 any damages whatsoever. Without prejudice to Airgas’s continued reservation of all
8 defenses to liability, damages, and class certification in this action, Airgas has
9 calculated (a) the amount of Fuel Surcharges, (b) charged by Airgas to entities
10 residing in California, (c) from April 2015 through March 2019. As detailed in
11 paragraph 9 of the Declaration of Shawn Cruikshank, attached as Exhibit “C,” these
12 charges total **\$5,386,059**.

13 23. CAFA’s expanded jurisdiction applies to class actions comprised of 100
14 or more members. The removing defendant must prove by a preponderance of the
15 evidence that CAFA’s numerosity requirement is satisfied. *Coit v. Fidelity Assur.*
16 *Assocs., LLC*, No. C 08-02585, 2008 WL 3286978, *4 (N.D. Cal. Aug. 6, 2008)
17 (citing *Abrego Abrego v. The Dow Chemical Co.*, 443 F.3d 676, 685 (9th Cir. 2006)).
18 In *Coit*, in holding the defendants failed to satisfy CAFA’s numerosity requirement by
19 a preponderance of evidence, the court observed the defendants did not support their
20 assertion the putative class consisted of 106 members with any factual evidence or
21 support, such as with “an attached declaration or document briefly summarizing why
22 106 individuals comprise the putative class.” 2008 WL 3286978 at *4.

23 24. Plaintiff alleges the “number of putative members of the class exceeds 60
24 members” and “is so numerous that separate joinder of each member is
25 impracticable.” Compl. at ¶ 22. As set forth in paragraph 11 of the Declaration of
26 Shawn Cruikshank, Airgas has well over 100 customers that are California residents
27 who were charged the disputed “Fuel Surcharge” during the time period at issue. *See*
28 28 U.S.C. § 1332(d)(5)(B).

1 25. None of CAFA’s discretionary or mandatory exceptions to jurisdiction
2 apply here because, as discussed above, Airgas is a citizen of Delaware and
3 Pennsylvania. *See* 28 U.S.C. §§ 1332(d)(3)-(d)(4).

4 26. Accordingly, because the State Court Action is a putative class action
5 with 100 or more class members, is between citizens of different states, and places
6 more than \$5,000,000 in controversy, removal is proper pursuant to 28 U.S.C.
7 §§ 1332(d) and 1453.

8 WHEREFORE, defendant Airgas hereby removes the State Court Action from
9 the San Diego County Superior Court.

10
11 Respectfully submitted.

12 Dated: May 3, 2019

13 **AKERMAN LLP**

14
15 By /s/ Kanika Corley
16 KANIKA CORLEY
17 Attorneys for Defendant
18 AIRGAS USA, LLC

AKERMAN LLP

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

LIT'L PEPPER GOURMET, INC.,

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Landay Roberts LLP John K. Landay, Esq., 101 W. Broadway, Suite 300, San Diego, CA 92101 (619) 230-5712

DEFENDANTS

AIRGAS USA, LLC,

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) '19CV837 LAB AGS Akerman LLP Kanika Corley, Esq. and Alicia Y. Hou, Esq. 601 W. Fifth St., Suite 300, Los Angeles, CA 90071 (213) 688-9500

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 2 U.S. Government Defendant 3 Federal Question (U.S. Government Not a Party) 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location. Includes categories like Citizen of This State, Citizen of Another State, and Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §§ 1332(d) and 1453 Brief description of cause: Unlawful, Unfair & Fraudulent Business Practices and False Misleading Statements (B&P Code §§ 17200,17500)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 05/03/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Kanika Corley

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

**COMPOSITE
EXHIBIT A**



Superior Court of California, County of San Diego - Register of Actions

Page	Case Number Search	Participant Name Search	Date Search	Unlawful Detainer Search
Printer Friendly Version	FAQ			
				Cart

Register of Actions (ROA)

Case Information

Case Number: 37-2019-00016827-CU-BT-CTL	Date Filed: 03/29/2019
Case Title: LIT L PEPPER GOURMET INC vs Airgas USA LLC [EFILE]	Case Status: Pending
Case Category: Civil - Unlimited	Location: Central
Case Type: Business Tort	Judicial Officer: Randa Trapp
Case Age: 34 days	Department: C-70

Future Events

Event Date	Event Time	Location	Event Type
09/06/2019	10:00 AM	C-70	Civil Case Management Conference - Complaint
<input type="checkbox"/> <input type="checkbox"/> 1 <input type="checkbox"/> <input type="checkbox"/>			

Participants

Name	Role	Representation
Airgas USA LLC	Defendant	
LIT L PEPPER GOURMET INC	Plaintiff	Landay, John K; Licari, Michael A.
<input type="checkbox"/> <input type="checkbox"/> 1 <input type="checkbox"/> <input type="checkbox"/>		

Representation

Name	Address	Phone Number
LANDAY, JOHN K	101 W Broadway 300 San Diego CA 92101	
LICARI, MICHAEL A	7801 Mission Court Court 240 San Diego CA 92108	
<input type="checkbox"/> <input type="checkbox"/> 1 <input type="checkbox"/> <input type="checkbox"/>		

Register of Actions

All Entries	Filing Entries	Minutes Entries	Scheduling Entries		
<input type="text" value="Enter text to search"/>					
<input type="checkbox"/> <input type="checkbox"/> 1 <input type="checkbox"/> <input type="checkbox"/>					
ROA#	Entry Date	Short/Long Entry	Filed By	Document	Cart

ROA#	Entry Date	Short/Long Entry	Filed By	Document	Cart
8	04/12/2019	Proof of Service of 30-day Summons & Complaint - Personal filed by LIT L PEPPER GOURMET INC. Refers to: Airgas USA LLC	LIT L PEPPER GOURMET INC (Plaintiff)	Proof of Service of 30-day Summons & Complaint - Personal - AIRGAS USA	Add to Cart
7	04/02/2019	Case initiation form printed.		Notice of Case Assignment SD	Add to Cart
6	04/02/2019	Civil Case Management Conference scheduled for 09/06/2019 at 10:00:00 AM at Central in C-70 Randa Trapp.			
5	03/29/2019	Case assigned to Judicial Officer Trapp, Randa.			
4	04/02/2019	Summons issued.			
3	03/29/2019	Original Summons filed by LIT L PEPPER GOURMET INC. Refers to: Airgas USA LLC	LIT L PEPPER GOURMET INC (Plaintiff)	Original Summons	Add to Cart
2	03/29/2019	Civil Case Cover Sheet filed by LIT L PEPPER GOURMET INC. Refers to: Airgas USA LLC	LIT L PEPPER GOURMET INC (Plaintiff)	Civil Case Cover Sheet	Add to Cart
1	03/29/2019	Complaint filed by LIT L PEPPER GOURMET INC. Refers to: Airgas USA LLC	LIT L PEPPER GOURMET INC (Plaintiff)		
1	03/29/2019	[A document for ROA# 1]		Complaint	Add to Cart

THE INFORMATION IN THIS REGISTER OF ACTIONS IS PROVIDED AS IS, WITHOUT WARRANTY BY THE SAN DIEGO SUPERIOR COURT AS TO CONTENT OR ACCURACY OF THE INFORMATION. The Entry Date on the Register of Actions may not always reflect the actual filing date of a document and not all documents filed with the Court are listed on the Register of Actions. It is recommended that users refer to the case file for confirmation.

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): John K Landay (SBN 257573) Landay Roberts LLP 101 W. Broadway, Suite 300 San Diego, CA 92101 TELEPHONE NO.: (619) 230-5712 FAX NO.: ATTORNEY FOR (Name): Plaintiffs		FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 03/29/2019 at 11:11:37 PM Clerk of the Superior Court By Marc David, Deputy Clerk	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: 330 W. Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central			
CASE NAME: LIT'L PEPPER GOURMET, INC., etc. v. AIRGAS USA, LLC			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 37-2019-00016827-CU-BT-CTL JUDGE: Judge Randa Trapp DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): Two
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: March 29, 2019
 John K. Landay, Esq. ▶

(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

<p>Auto Tort</p> <ul style="list-style-type: none"> Auto (22)—Personal Injury/Property Damage/Wrongful Death Uninsured Motorist (46) <i>(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)</i> <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <ul style="list-style-type: none"> Asbestos (04) <ul style="list-style-type: none"> Asbestos Property Damage Asbestos Personal Injury/Wrongful Death Product Liability <i>(not asbestos or toxic/environmental)</i> (24) Medical Malpractice (45) <ul style="list-style-type: none"> Medical Malpractice—Physicians & Surgeons Other Professional Health Care Malpractice Other PI/PD/WD (23) <ul style="list-style-type: none"> Premises Liability (e.g., slip and fall) Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) Intentional Infliction of Emotional Distress Negligent Infliction of Emotional Distress Other PI/PD/WD <p>Non-PI/PD/WD (Other) Tort</p> <ul style="list-style-type: none"> Business Tort/Unfair Business Practice (07) Civil Rights (e.g., discrimination, false arrest) <i>(not civil harassment)</i> (08) Defamation (e.g., slander, libel) (13) Fraud (16) Intellectual Property (19) Professional Negligence (25) <ul style="list-style-type: none"> Legal Malpractice Other Professional Malpractice <i>(not medical or legal)</i> Other Non-PI/PD/WD Tort (35) <p>Employment</p> <ul style="list-style-type: none"> Wrongful Termination (36) Other Employment (15) 	<p>Contract</p> <ul style="list-style-type: none"> Breach of Contract/Warranty (06) Breach of Rental/Lease Contract <i>(not unlawful detainer or wrongful eviction)</i> Contract/Warranty Breach—Seller Plaintiff <i>(not fraud or negligence)</i> Negligent Breach of Contract/Warranty Other Breach of Contract/Warranty <p>Collections (e.g., money owed, open book accounts) (09)</p> <ul style="list-style-type: none"> Collection Case—Seller Plaintiff Other Promissory Note/Collections Case <p>Insurance Coverage (not provisionally complex) (18)</p> <ul style="list-style-type: none"> Auto Subrogation Other Coverage <p>Other Contract (37)</p> <ul style="list-style-type: none"> Contractual Fraud Other Contract Dispute <p>Real Property</p> <ul style="list-style-type: none"> Eminent Domain/Inverse Condemnation (14) Wrongful Eviction (33) Other Real Property (e.g., quiet title) (26) <ul style="list-style-type: none"> Writ of Possession of Real Property Mortgage Foreclosure Quiet Title Other Real Property <i>(not eminent domain, landlord/tenant, or foreclosure)</i> <p>Unlawful Detainer</p> <ul style="list-style-type: none"> Commercial (31) Residential (32) Drugs (38) <i>(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)</i> <p>Judicial Review</p> <ul style="list-style-type: none"> Asset Forfeiture (05) Petition Re: Arbitration Award (11) Writ of Mandate (02) <ul style="list-style-type: none"> Writ—Administrative Mandamus Writ—Mandamus on Limited Court Case Matter Writ—Other Limited Court Case Review Other Judicial Review (39) <ul style="list-style-type: none"> Review of Health Officer Order Notice of Appeal—Labor Commissioner Appeals 	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)</p> <ul style="list-style-type: none"> Antitrust/Trade Regulation (03) Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (28) Environmental/Toxic Tort (30) Insurance Coverage Claims <i>(arising from provisionally complex case type listed above)</i> (41) <p>Enforcement of Judgment</p> <ul style="list-style-type: none"> Enforcement of Judgment (20) <ul style="list-style-type: none"> Abstract of Judgment (Out of County) Confession of Judgment <i>(non-domestic relations)</i> Sister State Judgment Administrative Agency Award <i>(not unpaid taxes)</i> Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Case <p>Miscellaneous Civil Complaint RICO (27)</p> <ul style="list-style-type: none"> Other Complaint <i>(not specified above)</i> (42) Declaratory Relief Only Injunctive Relief Only <i>(non-harassment)</i> Mechanics Lien Other Commercial Complaint Case <i>(non-tort/non-complex)</i> Other Civil Complaint <i>(non-tort/non-complex)</i> <p>Miscellaneous Civil Petition Partnership and Corporate Governance (21)</p> <ul style="list-style-type: none"> Other Petition <i>(not specified above)</i> (43) <ul style="list-style-type: none"> Civil Harassment Workplace Violence Elder/Dependent Adult Abuse Election Contest Petition for Name Change Petition for Relief From Late Claim Other Civil Petition
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4/3/19 2:04 pm

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

Airgas USA, LLC, a Delaware limited liability company

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

03/29/2019 at 11:11:37 PM

Clerk of the Superior Court
By Marc David, Deputy Clerk

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

LIT'L PEPPER GOURMET, INC., a California corporation, individually and on behalf of those similarly situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Diego Superior Court
330 W. Broadway
San Diego, CA 92101
Central Division

CASE NUMBER:

(Número del Caso): 37-2019-00016827-CU-BT-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

John K. Landay (SBN 257573) Landay Roberts LLP (619) 230-5712
101 W. Broadway, Suite 300
San Diego, CA 92101

DATE: 04/02/2019
(Fecha)

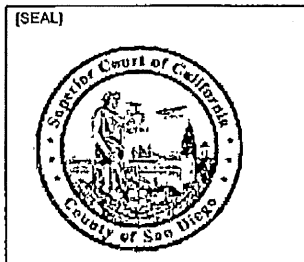
Clerk, by _____
(Secretario)


M. David

_____, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify): **Air Gas USA LLC**

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
- other (specify):

4. by personal delivery on (date): **4/3/19**

1 John K. Landay, Esq. (257573)
2 jlanday@landayroberts.com
3 **LANDAY ROBERTS LLP**
4 101 West Broadway, Suite 300
San Diego, CA 92101
Telephone: (619) 230-5712

5 Michael A. Licari, Esq. (265241)
6 mike@SL2Law.com
7 **SPRINKLE LLOYD & LICARI LLP**
8 2801 B Street, Suite 556
San Diego, CA 92102
Telephone: (858) 717-0013

9 Attorneys for Plaintiff

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
03/29/2019 at 11:11:37 PM
Clerk of the Superior Court
By Marc David, Deputy Clerk

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN DIEGO**

13
14 LIT'L PEPPER GOURMET, INC., a
California corporation, individually and on
15 behalf of those similarly situated,

16 Plaintiff,

17 vs.

18 Airgas USA, LLC, a Delaware limited
19 liability company,

20 Defendant.

Case No. 37-2019-00016827-CU-BT-CTL

CLASS ACTION COMPLAINT FOR

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1. Unlawful, Unfair and Fraudulent Practices (Cal. Bus. & Prof. Code §17200 et. seq.); and
 2. Unfair, Deceptive, and Misleading Advertising (Cal. Bus. & Prof. Code § 17500 et. seq.).

JURY TRIAL DEMANDED

1 COMES NOW the Plaintiff Lit'l Pepper Gourmet, Inc. individually and on behalf of
2 classes of all California persons and entities who are similarly situated, and assert this Class Action
3 Complaint against Airgas USA, LLC.
4

5 **NATURE OF THE CASE**

6 1. Airgas USA, LLC (hereinafter "Airgas USA") manufactures and distributes
7 industrial gases, medical and specialty gases, welding supplies, and related safety products. This
8 includes the manufacture and delivery of specialty gases to breweries, wineries, bottlers, and
9 dispensers, including Carbon Dioxide, to restaurants, such as Plaintiff, and other establishments
10 that dispense carbonated beverages.
11

12 2. In addition to the amount Airgas USA charges its customers for the sale and
13 delivery of its products, Airgas USA charges its California customers a fee it calls a "Fuel
14 Surcharge Flat." The term "Fuel Surcharge" has a specific and understood meaning
15

16 3. Airgas USA uses the term "Fuel Surcharge" to create the false impression that the
17 fee is a legitimate charge related to increased fuel costs Airgas USA incurs in delivering products
18 to its customers.

19 4. Airgas USA further uses the term "Fuel Surcharge" to create the false impression
20 that the fee varies in accordance with its increased fuel costs and that the revenue from the "Fuel
21 Surcharge" is used to offset those increased costs.
22

23 5. Airgas USA states in its contracts that "Buyer shall pay Seller a surcharge in the
24 event of any extraordinary or emergency increases in the cost of ... fuel" but charges this "Fuel
25 Surcharge" on an ongoing basis absent such notice or the existence of such events.
26

27 6. Airgas represents that it is this nation's leading single-source supplier of gases,
28
--

1 welding equipment and supplies, and safety products¹, thereby giving it significant leverage over
2 its customers to whom it charges this “Fuel Surcharge.”

3 7. Airgas USA’s representations, omissions, and practices in charging the “Fuel
4 Surcharge” are deceptive and unfair. The “Fuel Surcharge” bears absolutely no relation to Airgas
5 USA’s actual increased fuel costs (or its actual fuel costs) and Airgas USA does not use the
6 proceeds from the “Fuel Surcharge” to offset its increased fuel costs (or its actual fuel costs). The
7 amount of the “Fuel Surcharge” generally does not change, despite decreases in Airgas USA’s fuel
8 costs. Further, Airgas USA includes any increases in fuel costs it might incur in delivering
9 products in the standard prices it charges customers.
10

11 8. Airgas USA uses the “Fuel Surcharge” simply to generate extra profit at its
12 customers’ expense, all the while deceiving customers into believing that the fee is a legitimate
13 charge directly related to actual increased fuel costs it incurs, which it falsely claims it cannot
14 control.
15

16 9. By charging this relatively small “Fuel Surcharge” to hundreds, if not thousands,
17 of its customers, Airgas USA reaps a handsome profit without expectation of challenge, all but
18 insulated from liability that otherwise would be imposed under California law.
19

20 10. Airgas USA’s conduct constitutes a violation of California’s Unfair Competition
21 Law (Cal. Bus. & Prof. § 17200, *et seq.*), and a violation of California’s False Advertising Law
22 (Cal. Bus. & Prof. § 17500, *et seq.*). Plaintiff and hundreds of similarly situated individuals and
23 small businesses in California have been damaged through this conduct by paying inflated and
24 unlawful fees that acted as hidden rate increases. Plaintiff brings this action to recover those fees.
25

26 11. Finally, this case presents a prototypical situation for class treatment. Airgas
27

28
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¹ See *Our Company* <<https://www.airgas.com/company>> (as of March 28, 2019).

1 USA’s conduct—including all relevant practices, deception, representations, and omissions—is
2 uniform among all customers. Airgas USA uniformly uses the term “Fuel Surcharge” on its
3 invoices. The application of common California law to a shared course of conduct will determine
4 liability for the class as a whole, ensuring that the rights of thousands of small businesses and
5 individuals are vindicated through the efficiency of a single trial.
6

7
8 **JURISDICTION AND VENUE**

9 12. This Court has jurisdiction over this action and venue is proper in this Court
10 because jurisdiction and venue in that a substantial portion of Defendant’s conduct that forms the
11 basis of this action occurred in San Diego County, California. Defendant does business here and
12 has received and continues to receive substantial revenue and profits from its unlawful conduct in
13 San Diego County, California. Plaintiff also resides here.
14

15
16
17 **PARTIES**

18 13. Plaintiff Lit’l Pepper Gourmet, Inc. (hereinafter, “Lit’l Pepper Gourmet”) is a
19 California corporation located in San Diego, California. Plaintiff was invoiced for and paid a “Fuel
20 Surcharge” on multiple occasions. (See, e.g., Exhibit A).
21

22 14. Defendant Airgas USA is a Delaware limited liability company with its principal
23 place of business in Radnor, Pennsylvania. Defendant Airgas USA has dozens of locations in
24 southern California

25 15. Defendant is registered in California as a foreign limited liability company.
26 Defendant’s whose California appointed agent for service of process is C T Corporation System,
27 818 West Seventh Street, Suite 930, Los Angeles, California, 90017.
28

1 16. Defendant Airgas USA received all of the "Fuel Surcharges" at issue and is
2 responsible, either directly or indirectly, for the conduct at issue in this matter.

3
4 **CLASS REPRESENTATION ALLEGATIONS**

5
6 17. Plaintiff brings this action as a class action and proposes the following class:

7 All entities who reside in California who paid Airgas USA a "Fuel Surcharge" from
8 four years before the filing of this action to the date of class certification.

9 18. Plaintiff excludes entities in bankruptcy, entities whose obligations have been
10 discharged in bankruptcy, governmental entities, and judicial officers who preside over this case.

11 19. Plaintiff maintains the right to create additional subclasses or classes, if necessary,
12 and to revise these definitions to maintain a cohesive class that does not require individual inquiry
13 to determine liability.

14
15 20. The exact number of class members is unknown to Plaintiff at this time, but such
16 information can be ascertained through appropriate discovery, specifically from records
17 maintained by Airgas USA its agents. Upon information and belief, the number of putative
18 members of the class exceeds 60 members.

19
20
21 **EXISTENCE AND PREDOMINANCE OF**
22 **COMMON QUESTIONS OF LAW AND FACT**

23 21. There are common questions of law and fact common and of general interest to the
24 class. These common questions of law and fact predominate over any questions affecting only
25 individual members of the class. Such common questions include, but are not limited to, the
26 following:

- 27
28 a. Whether Airgas USA charges excessive amounts for its "Fuel Surcharge."

- 1 b. Whether the “Fuel Surcharge” is directly related to Airgas USA’s increased cost of fuel
2 or actual cost of fuel.
3
4 c. Whether Airgas USA uses the “Fuel Surcharge” to offset its increased fuel costs.
5
6 d. Whether the “Fuel Surcharge” fluctuates as Airgas USA’s actual fuel costs fluctuate.
7
8 e. Whether the “Fuel Surcharge” is tied to any extraordinary or emergency increase in the
9 price of fuel.
10
11 f. Whether Airgas USA’s use of the term “Fuel Surcharge” is deceptive.
12
13 g. Whether Airgas USA has misrepresented facts about the “Fuel Surcharge”.
14
15 h. Whether Airgas USA has omitted material facts about the “Fuel Surcharge.”
16
17 i. Whether the “Fuel Surcharge” bears any relation to Defendant’s increased costs of fuel
18 or its actual cost of fuel.
19
20 j. Whether Airgas USA’s representations and omissions regarding the “Fuel Surcharge”
21 constitute a deceptive trade practice.
22
23 k. Whether Airgas USA has been unjustly enriched by charging the “Fuel Surcharge.”
24
25 l. Whether the term “Fuel Surcharge” is likely to mislead a reasonable person.
26
27 m. Whether Plaintiff and class members are entitled to class relief as requested herein.
28
n. Whether Airgas USA is recovering for the same alleged cost twice, i.e., once in the
actual rate and then again in the actual surcharge or fee.

24 **TYPICALITY AND NUMEROSITY**

25 22. The claims of the named Plaintiff are typical of the claims of the respective classes.
26 Upon information and belief, the total number of members of each putative class exceeds 60
27 members and is so numerous that separate joinder of each member is impracticable.
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ADEQUATE REPRESENTATION

23. Plaintiff will fairly and adequately protect the interests of the members of the class and have no interest antagonistic to those of other class members. Plaintiff has retained class counsel competent to prosecute class actions, and such class counsel is financially able to represent the classes.

SUPERIORITY

24. The class action is superior to other available methods for the fair and efficient adjudication of this controversy since individual joinder of all members of the class is impracticable. The interests of judicial economy favor adjudicating the claims for the Plaintiff class rather than on an individual basis. The class action mechanism provides the benefit of unitary adjudication, economies of scale and comprehensive supervision by a single court.

25. Questions of law and fact predominate over any questions affecting only individual members.

FACTUAL ALLEGATIONS

26. Plaintiff is a restaurant in San Diego, California.

27. Airgas USA is a nation-wide multi-billion-dollar manufacturer and distribution company headquartered in Radnor, Pennsylvania. Airgas USA marketed, sold, and delivered products, including Carbon Dioxide, to Plaintiff in exchange for a per item cost. But in addition to this amount, Airgas USA also charged Plaintiff the fee that is the subject of this lawsuit.

28. Airgas is one of the nation's leading single-source supplier of gases, welding equipment and supplies, and safety products, thereby giving it significant bargaining over its customers to whom it charges this "Fuel Surcharge."

1 29. Airgas USA has Carbon Dioxide manufacturing facilities located in northern,
2 central and southern California that would mitigate the need for the “Fuel Surcharge.”

3 30. Plaintiff did not have full knowledge of all facts when it paid the “Fuel Surcharge.”
4 Among other things, Plaintiff did not know Airgas USA’s fuel costs, did not know that the “Fuel
5 Surcharge” does not, in fact, reflect Airgas USA increased fuel costs, and did not know the “Fuel
6 Surcharge” bears no relationship to Airgas USA fuel costs or to an emergency or extraordinary
7 rise its fuel costs.
8

9 31. Airgas USA calls this fee a “Fuel Surcharge.” The naming of the fee is not an
10 accident. The term “Fuel Surcharge” has a specific and understood meaning. Airgas USA labeled
11 it as such to create the impression that the purpose of the “Fuel Surcharge” is to recover the
12 increased fuel costs it incurs in delivering products to its customers. As such, Airgas USA
13 represents that the “Fuel Surcharge” is directly related to its increased cost of fuel, that this fee
14 fluctuates as Airgas USA’s fuel cost fluctuates, and that this fee is used to offset those increased
15 fuel costs. By using the term “Fuel Surcharge”—a term which Airgas USA has uniformly used
16 on every invoice received by every Class Member charged this fee—Airgas USA represents that
17 this fee is directly related to its increased fuel costs and that this fee will be used to defray such
18 costs.
19
20

21 32. In actuality, the “Fuel Surcharge” is unrelated to Airgas USA’s actual or increased
22 fuel costs and is not charged to defray those increased costs. The “Fuel Surcharge” does not vary
23 or fluctuate in accordance with Airgas USA’s actual increased fuel costs and the method by which
24 Airgas USA determines the “Fuel Surcharge” has no relation to its increased fuel costs or any
25 changes in those costs. Airgas USA has done no legitimate analysis to determine the proper
26 amount of the “Fuel Surcharge” in connection to its increased fuel costs. Airgas USA does not
27
28

1 apply the money received from the “Fuel Surcharge” to offset its increased fuel costs; rather, it is
2 recognized as revenue and contributes directly to Airgas USA’s profit. Airgas USA’s per gallon
3 fuel costs are lower today than when the “Fuel Surcharge” was implemented, yet Airgas USA still
4 charges this fee.
5

6 33. Airgas USA also has omitted material facts regarding the “Fuel Surcharge.” For
7 example, Airgas USA does not disclose that the “Fuel Surcharge” is not related to Airgas USA’s
8 increased fuel or actual fuel costs, that the “Fuel Surcharge” is not applied to Airgas USA’s fuel
9 costs, that Airgas USA’s actual cost of fuel is not a factor in the amount of the “Fuel Surcharge,”
10 or that the “Fuel Surcharge” is recognized as profit. Airgas USA does not disclose its actual fuel
11 costs to customers nor does it disclose the methodology, to the extent there is one, used to
12 determine the amount of the “Fuel Surcharge.” And Airgas USA never discloses that the amount
13 of “Fuel Surcharges” charged to customers substantially exceeds its actual increased fuel costs if
14 any.
15

16
17 34. In truth, Airgas USA devised, implemented, and set the amount of the “Fuel
18 Surcharge” simply to increase its profits without any intent of recovering the increased fuel costs
19 it incurs in selling goods to customers.
20

21 35. This naming, implementation, and charging of the “Fuel Surcharge” is designed by
22 Airgas USA to deceive its customers, is likely to deceive those customers acting reasonably under
23 the circumstances and did, in fact, deceive Plaintiff and Airgas USA’s other customers to their
24 detriment in that each paid a “Fuel Surcharge.”² Airgas USA’s misrepresentations, omissions,
25

26 _____
27 ² Plaintiff does not claim that it did not know about the “Fuel Surcharge.” Rather, Plaintiff’s claims
28 arise from the fact that the “Fuel Surcharge” (labeled as such by Airgas USA), was not – in intent
or effect – designed to recover Airgas USA’s increased or actual fuel costs. In other words, while

1 and deceptive practices violate California’s Unfair Competition Law (Cal. Bus. & Prof. § 17200,
2 *et seq.*) and California’s False Advertising Law (Cal. Bus. & Prof. § 17500, *et seq.*).
3

4
5 **FIRST CAUSE OF ACTION**

6 **Unlawful, Unfair and Fraudulent Business Practices**

7 (Cal. Bus. & Prof. § 17200, *et seq.*)

8 36. All allegations and paragraphs in this complaint are incorporated by reference.

9 37. Plaintiff alleges that the Fuel Surcharge is unlawful, unfair, and fraudulent.

10 38. Through the conduct described herein, and particularly through the charging and
11 collecting of unlawful, misrepresented, and excessive fees to Plaintiff and members of the public,
12 Airgas USA has engaged in unlawful, deceptive, and unfair business acts within the meaning of
13 California Business and Professions Code § 17200 *et seq.* Airgas USA’s acts and practices offend
14 an established public policy, and Airgas USA has engaged in immoral, unethical, oppressive, and
15 unscrupulous activities that are substantially injurious to consumers including Plaintiff.
16

17 39. Airgas USA’s acts of unlawful, unfair, and fraudulent business practices include
18 violations of the California Civil Code §§1572, 1573, 1709, 1711, 1770, 1670.5, among other
19 provisions, and the common law. Such acts include, but are not limited to:
20

- 21 a. charging Fuel Surcharges which are excessive, unreasonable, and unlawful;
- 22 b. misrepresenting the purpose and nature of the Fuel Surcharges;
- 23 c. misrepresenting and omitting that the Fuel Surcharges bear no relation to Airgas
24 USA’s cost of fuel or increased cost of fuel;
- 25

26
27 Airgas USA may have made Plaintiff and other class members aware of the existence of the fee,
28 Airgas USA did not disclose to its customers that its “Fuel Surcharge” was not designed to recover
its increased fuel costs as the name of the fee suggests.

- d. misrepresenting and omitting to reveal that the Fuel Surcharges are not designed to cover Airgas USA's fuel costs or increased fuel costs;
- e. omitting to reveal the Fuel Surcharges are used to create profit for Airgas USA;
- f. misrepresenting and omitting to reveal that Airgas USA recovers for all fuel costs and increased fuel costs through other fees and charges apart from the Fuel Surcharges;
- g. charging Fuel Surcharges which are unconscionable;
- h. charging a "Fuel Surcharge" which bears no relation to Airgas USA's actual or increased costs;
- i. charging a "Fuel Surcharge" which does not include Airgas USA's actual costs in the calculation of the amount the "Fuel Surcharge"; and
- j. charging a "Fuel Surcharge" when Airgas USA's fuel costs decrease.

40. Plaintiff reserves the right to allege other violations that constitute other unlawful business acts or practices. Upon information and belief, Airgas USA's wrongful conduct in violation of § 17200, *et seq.* is ongoing and continues to this date.

41. There were reasonably available alternatives to further Airgas USA's legitimate business interests, other than its conduct described herein.

42. Airgas USA's actions, nondisclosures, and misleading statements, as alleged in this Complaint, were and are likely to deceive Plaintiff and the public and are intended to deceive Plaintiff and members of the public. Plaintiff has in fact been deceived and has relied on Airgas USA representations and omissions. This reliance has caused harm to Plaintiff and Plaintiff has suffered injury in fact and lost money as a result of Airgas USA's unlawful, unfair, and fraudulent practices. Plaintiff has paid the unlawful fees.

1 43. As a result of its unlawful, unfair, and fraudulent practices, Airgas USA has been
2 able to reap unjust revenue and profit. Further, upon information and belief, unless restrained and
3 enjoined, Airgas USA will continue to engage in the above-described conduct. Accordingly,
4 injunctive relief is appropriate here.
5

6 44. Airgas USA's actions also constitute "unfair" business acts or practices because, as
7 alleged above, *inter alia*, Airgas USA engages in false advertising, misrepresents and omits
8 material facts regarding the improper fees, and thereby offends an established public policy, and
9 engages in immoral, unethical, oppressive, and unscrupulous activities that are substantially
10 injurious to consumers including Plaintiff and the general public.
11

12 45. As a result of the deceptive and unfair practices described above, Plaintiff and each
13 putative class member paid the improper "Fuel Surcharges" to their detriment.
14

15 **SECOND CAUSE OF ACTION**

16 **False and Misleading Statements**

17 (Cal. Bus. & Prof. § 17500, *et seq.*)

18 46. All allegations and paragraphs in this complaint are incorporated by reference.
19

20 47. Through the conduct described herein, and particularly through the charging and
21 collecting of unreasonable fuel surcharges from Plaintiff and members of the public, Airgas USA
22 has engaged in unfair, deceptive, and misleading advertising within the meaning of California
23 Business and Professions Code § 17500 *et seq.* Airgas USA's acts and practices offend an
24 established public policy, and Airgas USA has engaged in immoral, unethical, oppressive, and
25 unscrupulous activities that are substantially injurious to consumers including Plaintiff.
26

27 48. Airgas USA made and disseminated false and misleading statements to Plaintiff
28 and members of the public regarding the nature, purpose, and effect of the fees, as well as regarding
..

1 the fuel costs Airgas USA incurs. Airgas USA created false impressions which it failed to correct
2 and concealed material information regarding the fees.

3 49. Upon information and belief, Airgas USA’s wrongful conduct in violation of
4 Business & Professions Code § 17500, *et seq.* is ongoing and continues to this date. Airgas USA
5 acted knowingly and intentionally. There were reasonably available alternatives to further Airgas
6 USA legitimate business interests, other than the conduct described herein.

7
8 50. Airgas USA’s actions, claims, nondisclosures, and misleading statements, as
9 alleged in this Complaint, are likely to deceive Plaintiff and the public, and were intended to
10 deceive Plaintiff and members of the public. Plaintiff has in fact been deceived and has relied on
11 Airgas USA’s representations and omissions. This reliance has caused harm to Plaintiff and
12 Plaintiff has suffered injury in fact and lost money as a result of Airgas USA unlawful, unfair, and
13 fraudulent practices. Plaintiff has paid the unlawful Fuel Surcharges.

14
15 51. As a result of its deception, Airgas USA has been able to reap unjust revenue and
16 profit. Further, upon information and belief, unless restrained and enjoined, Airgas USA will
17 continue to engage in the above-described conduct. Accordingly, injunctive relief is appropriate.

18
19 52. Plaintiff, on behalf of itself, all others similarly situated, and the general public,
20 seeks restitution of all money improperly obtained from Plaintiff and class members; an injunction
21 prohibiting Airgas USA from continuing such practices; and all other relief the Court deems proper
22 and just, consistent with, *inter alia*, Business & Professions Code §17203.

23
24
25 **REQUEST FOR JUDGMENT**

26 Plaintiff asks for judgment against Airgas USA in its and the putative classes’ favor, as
27 follows:
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- 1. For an order certifying this action as a class action;
- 2. For full restitution of the excessive portion of the Fuel Surcharges paid by the class;
- 3. For damages in the amount of the excessive portion of the Fuel Surcharges paid by the classes;
- 4. For injunctive relief enjoining Airgas from continuing to charge the Fuel Surcharges to its California customers in violation of California law;
- 4. For attorneys' fees; and
- 5. For all other relief which is deemed equitable and just.

DEMAND FOR JURY TRIAL

Plaintiffs and members of the Class hereby request a trial by jury of all issues triable by jury.

DATED: March 29, 2019

Respectfully submitted,

By: John K. Landay
 John K. Landay, Esq.
 LANDAY ROBERTS, LLP

Michael Licari
 Michael A. Licari, Esq. (265241)
 SPRINKLE LLOYD & LICARI LLP
 Attorneys for Plaintiff

EXHIBIT A

ENSURE PROPER CREDIT. PLEASE RETURN THE UPPER PORTION WITH YOUR REMITTANCE. FOR QUESTIONS ON YOUR ACCOUNT PLEASE CALL: 800-224-7427

ORDER NO.	INVOICE NO.	INVOICE DATE	SOLD TO NO.		SOLD TO NAME				
1068704147	9075660591	05/02/2018	1658108		LIT'L PEPPER GOURMET				
PO / RELEASE	ORDERED BY	SHIP VIA	PAYMENT TERMS		ORDER DATE				
	Yasmin 619-277-8259	ARGTRK	NET 30		05/01/2018				
DELIVERY NO. / DESCRIPTION	MATERIAL NUMBER	QTY SHIP'D	UOM	QTY B/O	CYLINDER SHP'D	RET'D	UNIT PRICE	UOM	AMOUNT
8075211753	CD FG50	2	CL	2	2		77.02	CL	154.04 N
CARBON DIOXIDE FG/IND 50LB (Vol: 50 LBS)									(H)
Delivery Flat Fee									154.04
Fuel Surcharge Flat									27.75
Airgas Hazmat Charge									10.30
									21.70
Sale subtotal:									154.04

Airgas Hazmat Charge (H) - see Itemized Charges on reverse or visit www.Airgas.com/terms-of-sale

AMOUNT	213.79
--------	--------



an Air Liquide company
 AIRGAS USA, LLC
 PO Box 93500
 Long Beach, CA 90809-3500

SHIP TO: 1658108
 LIT'L PEPPER GOURMET
 8911 COMPLEX DR STE C
 SAN DIEGO CA 92123-1412

FOR WIRE TRANSFER PAYMENTS

Airgas USA, LLC
 Acct No 8606074158
 PNC Bank, ABA No 031000053

For change of address
 email to: wdiv_adrss@airgas.com
 or call 562-627-3279

TO ENSURE PROPER CREDIT, PLEASE RETURN THE UPPER PORTION WITH YOUR REMITTANCE. FOR QUESTIONS ON YOUR ACCOUNT PLEASE CALL: 800-224-7427

ORDER NO		INVOICE NO		INVOICE DATE		SOLD TO NO		SOLD TO NAME		
1073125830		9080936706		10/01/2018		1658108		LIT'L PEPPER GOURMET		
PO/RELEASE			ORDERED BY			SHIP VIA		PAYMENT TERMS		ORDER DATE
						ARGTRK		NET 30		09/28/2018
DELIVERY NO./DESCRIPTION	MATERIAL NUMBER	QTY SHIP'D	UOM	QTY B/O	CYLINDER		UNIT PRICE	UOM	AMOUNT	
					SHPP	RETD				
8080116030	CD FG50		2 CL		2	2	77.02	CL	154.04 N	
	CARBON DIOXIDE FG/IND 50LB (Vol: 100 LBS)								(H)	
	Cyl Maintenance Fee								4.50	
							Sale subtotal:		158.54	
	Delivery Flat Fee								27.75	
	Fuel Surcharge Flat								10.10	
	Airgas Hazmat Charge								21.70	

Airgas Hazmat Charge (H) - see Itemized Charges on reverse or visit www.Airgas.com/terms-of-sale

AMOUNT	218.09
--------	--------



SHIP TO: 1658108
LIT'L PEPPER GOURMET
8911 COMPLEX DR STE C
SAN DIEGO CA 92123-1412

FOR WIRE TRANSFER PAYMENTS

Airgas USA, LLC
Acct No 8606074158
PNC Bank, ABA No 031000053

AIRGAS USA, LLC
PO Box 93500
Long Beach, CA 90809-3500

For change of address
email to: wdiv_adrss@airgas.com
or call 562-627-3279





**Service of Process
Transmittal**

04/03/2019
CT Log Number 535224926

TO: Mary Charlotte Doherty
AIRGAS, INC.
259 N Radnor Chester Rd Ste 100
Radnor, PA 19087-5283

RE: Process Served in California

FOR: Airgas USA, LLC (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: LIT'L PEPPER GOURMET, INC., etc., Pltf. vs. Airgas USA, LLC, etc., Dft.

DOCUMENT(S) SERVED: Summons, Cover sheet, Instructions, Complaint, Notice, Attachment(s)

COURT/AGENCY: San Diego County - Superior Court, CA
Case # 37201900016827CUBTCTL

NATURE OF ACTION: Product Liability Litigation - Records related to product liability litigation

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 04/03/2019 at 14:21

JURISDICTION SERVED : California

APPEARANCE OR ANSWER DUE: Within 30 Calendar Days

ATTORNEY(S) / SENDER(S): Michael A. Licari
SPRINKLE LLOYD & LICARI LLP
2801 B Street, Suite 556
San Diego, CA 92102
(858) 717-0013

ACTION ITEMS: CT has retained the current log, Retain Date: 04/03/2019, Expected Purge Date: 04/08/2019

Image SOP

Email Notification, Lola Lin Lola.Lin@airgas.com

Email Notification, Kathleen MacMurray Kat.MacMurray@airgas.com

Email Notification, Amy Bashore Amy.Bashore@airgas.com

Email Notification, Mary Charlotte Doherty Mary.Charlotte.Doherty@Airgas.com

Email Notification, MONICA MUEHSAM monica.muehsam@airgas.com

SIGNED: C T Corporation System

ADDRESS: 818 West Seventh Street
Los Angeles, CA 90017

TELEPHONE: 213-337-4615

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 W Broadway MAILING ADDRESS: 330 W Broadway CITY AND ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central TELEPHONE NUMBER: (619) 450-7070	
PLAINTIFF(S) / PETITIONER(S): LIT L PEPPER GOURMET INC	
DEFENDANT(S) / RESPONDENT(S): Airgas USA LLC	
LIT L PEPPER GOURMET INC VS AIRGAS USA LLC [EFILE]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2019-00016827-CU-BT-CTL

CASE ASSIGNMENT

Judge: Randa Trapp

Department: C-70

COMPLAINT/PETITION FILED: 03/29/2019

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	09/06/2019	10:00 am	C-70	Randa Trapp

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

MANDATORY eFILE: Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at www.onelegal.com. Refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases or guidelines and procedures.

COURT REPORTERS: Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at www.sdcourt.ca.gov.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	FOR COURT USE ONLY
PLAINTIFF(S): LIT L PEPPER GOURMET INC	
DEFENDANT(S): Airgas USA LLC	
SHORT TITLE: LIT L PEPPER GOURMET INC VS AIRGAS USA LLC [EFILE]	
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: 37-2019-00016827-CU-BT-CTL

Judge: Randa Trapp

Department: C-70

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- | | |
|---|--|
| <input type="checkbox"/> Mediation (court-connected) | <input type="checkbox"/> Non-binding private arbitration |
| <input type="checkbox"/> Mediation (private) | <input type="checkbox"/> Binding private arbitration |
| <input type="checkbox"/> Voluntary settlement conference (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial) |
| <input type="checkbox"/> Neutral evaluation (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
| <input type="checkbox"/> Other (specify e.g., private mini-trial, private judge, etc.): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

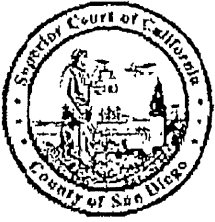
It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

Dated: 04/02/2019

JUDGE OF THE SUPERIOR COURT



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2019-00016827-CU-BT-CTL CASE TITLE: LIT L PEPPER GOURMET INC vs Airgas USA LLC [EFILE]

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
(2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
(3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
Saves money
Gives parties more control over the dispute resolution process and outcome
Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at http://www.sdcourt.ca.gov/adr.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

**COMPOSITE
EXHIBIT B**

13-680701



**State of California
Secretary of State**

S

Statement of Information

5

(Domestic Stock and Agricultural Cooperative Corporations)

FEES (Filing and Disclosure): \$25.00.

If this is an amendment, see Instructions.

IMPORTANT – READ INSTRUCTIONS BEFORE COMPLETING THIS FORM

FILED
Secretary of State
State of California

MAY 09 2013

1. CORPORATE NAME

Lil' Pepper Gourmet, Inc.
8911 Complex Dr., # C & D
San Diego, CA 92123

2. CALIFORNIA CORPORATE NUMBER

C2993881

WFLPC 26/PC/25 Ref 6/2013
-This Space for Filing Use Only

No Change Statement (Not applicable if agent address of record is a P.O. Box address. See Instructions.)

3. If there have been any changes to the information contained in the last Statement of Information filed with the California Secretary of State, or no statement of information has been previously filed, this form must be completed in its entirety.

If there has been no change in any of the information contained in the last Statement of Information filed with the California Secretary of State, check the box and proceed to Item 17.

Complete Addresses for the Following (Do not abbreviate the name of the city. Items 4 and 5 cannot be P.O. Boxes.)

	CITY	STATE	ZIP CODE
4. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE 8911 Complex Drive, #C & D	San Diego	CA	92123
5. STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA, IF ANY 8911 Complex Drive, #C & D	San Diego	CA	92123
6. MAILING ADDRESS OF CORPORATION, IF DIFFERENT THAN ITEM 4 8911 Complex Drive, #C & D	San Diego	CA	92123

Names and Complete Addresses of the Following Officers (The corporation must list these three officers. A comparable title for the specific officer may be added; however, the preprinted titles on this form must not be altered.)

	ADDRESS	CITY	STATE	ZIP CODE
7. CHIEF EXECUTIVE OFFICER/ Hany Nashed	8911 Complex Drive, #C & D	San Diego	CA	92123
8. SECRETARY Lina Nashed	8911 Complex Drive, #C & D	San Diego	CA	92123
9. CHIEF FINANCIAL OFFICER/ Hany Nashed	8911 Complex Drive, #C & D	San Diego	CA	92123

Names and Complete Addresses of All Directors, including Directors Who are Also Officers (The corporation must have at least one director. Attach additional pages, if necessary.)

	ADDRESS	CITY	STATE	ZIP CODE
10. NAME Hany Nashed	8911 Complex Drive, #C & D	San Diego	CA	92123
11. NAME Lina Nashed	8911 Complex Drive, #C & D	San Diego	CA	92123
12. NAME	ADDRESS	CITY	STATE	ZIP CODE

13. NUMBER OF VACANCIES ON THE BOARD OF DIRECTORS, IF ANY:

Agent for Service of Process If the agent is an individual, the agent must reside in California and Item 16 must be completed with a California street address, a P.O. Box address is not acceptable. If the agent is another corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1605 and Item 16 must be left blank.

14. NAME OF AGENT FOR SERVICE OF PROCESS

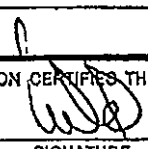
Hany Nashed

15. STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL CITY STATE ZIP CODE
8911 Complex Drive, #C & D San Diego CA 92123

Type of Business

16. DESCRIBE THE TYPE OF BUSINESS OF THE CORPORATION
Restaurant

17. BY SUBMITTING THIS STATEMENT OF INFORMATION TO THE CALIFORNIA SECRETARY OF STATE, THE CORPORATION CERTIFIES THE INFORMATION CONTAINED HEREIN, INCLUDING ANY ATTACHMENTS, IS TRUE AND CORRECT.

1/10/13 Hany Nashed President 
DATE TYPE/PRINT NAME OF PERSON COMPLETING FORM TITLE SIGNATURE



**State of California
Secretary of State**

S

Statement of Information

(Domestic Stock and Agricultural Cooperative Corporations)

FEES (Filing and Disclosure): \$25.00.

If this is an amendment, see instructions.

IMPORTANT – READ INSTRUCTIONS BEFORE COMPLETING THIS FORM

G143967

FILED

In the office of the Secretary of State
of the State of California

OCT-31 2018

1. **CORPORATE NAME**
LIT'L PEPPER GOURMET, INC

2. **CALIFORNIA CORPORATE NUMBER**
C2993881

This Space for Filing Use Only

No Change Statement (Not applicable if agent address of record is a P.O. Box address. See instructions.)

3. **If there have been any changes to the information contained in the last Statement of Information filed with the California Secretary of State, or no statement of information has been previously filed, this form must be completed in its entirety.**

If there has been no change in any of the information contained in the last Statement of Information filed with the California Secretary of State, check the box and proceed to **Item 17**.

Complete Addresses for the Following (Do not abbreviate the name of the city. Items 4 and 5 cannot be P.O. Boxes.)

4. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE	CITY	STATE	ZIP CODE
5. STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA, IF ANY	CITY	STATE	ZIP CODE
6. MAILING ADDRESS OF CORPORATION, IF DIFFERENT THAN ITEM 4	CITY	STATE	ZIP CODE

Names and Complete Addresses of the Following Officers (The corporation must list these three officers. A comparable title for the specific officer may be added; however, the preprinted titles on this form must not be altered.)

7. CHIEF EXECUTIVE OFFICER/	ADDRESS	CITY	STATE	ZIP CODE
8. SECRETARY	ADDRESS	CITY	STATE	ZIP CODE
9. CHIEF FINANCIAL OFFICER/	ADDRESS	CITY	STATE	ZIP CODE

Names and Complete Addresses of All Directors, Including Directors Who are Also Officers (The corporation must have at least one director. Attach additional pages, if necessary.)

10. NAME	ADDRESS	CITY	STATE	ZIP CODE
11. NAME	ADDRESS	CITY	STATE	ZIP CODE
12. NAME	ADDRESS	CITY	STATE	ZIP CODE

13. NUMBER OF VACANCIES ON THE BOARD OF DIRECTORS, IF ANY:

Agent for Service of Process If the agent is an individual, the agent must reside in California and Item 15 must be completed with a California street address, a P.O. Box address is not acceptable. If the agent is another corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1505 and Item 15 must be left blank.

14. NAME OF AGENT FOR SERVICE OF PROCESS				
15. STREET ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL	CITY	STATE	ZIP CODE	

Type of Business

16. DESCRIBE THE TYPE OF BUSINESS OF THE CORPORATION

17. BY SUBMITTING THIS STATEMENT OF INFORMATION TO THE CALIFORNIA SECRETARY OF STATE, THE CORPORATION CERTIFIES THE INFORMATION CONTAINED HEREIN, INCLUDING ANY ATTACHMENTS, IS TRUE AND CORRECT.

10/31/2018 HANY S NASHED OWNER
DATE TYPE/PRINT NAME OF PERSON COMPLETING FORM TITLE SIGNATURE

EXHIBIT C

AKERMAN LLP

601 WEST FIFTH STREET SUITE 300
LOS ANGELES, CALIFORNIA 90071
TEL.: (213) 688-9500 – FAX: (213) 627-6342

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2 email: kanika.corley@akerman.com
Alicia Hou (SBN 254157)
3 email: alicia.hou@akerman.com
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4 Los Angeles, California 90071
Telephone: (213) 688-9500
5 Facsimile: (213) 627-6342

6 AKERMAN LLP
Lawrence D. Silverman (*pro hac vice* petition to be filed)
7 email: lawrence.silverman@akerman.com
Alexandra Mora (*pro hac vice* petition to be filed)
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Three Brickell City Centre
9 98 Southeast Seventh Street, Suite 1100
Miami, Florida 33131
10 Phone: (305) 374-5600
Facsimile: (305) 374-5095

11 Attorneys for Defendant
12 AIRGAS USA, LLC

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15
16 LIT’L PEPPER GOURMET, INC.,
Individually and on behalf of those
17 similarly situated,

18 Plaintiffs,

19 v.

20 AIRGAS USA, LLC,

21 Defendant.

Case No.

**DECLARATION OF
SHAWN CRUIKSHANK
IN SUPPORT OF NOTICE OF
REMOVAL OF ACTION TO
FEDERAL COURT**

[Filed concurrently with Civil Cover Sheet; Notice of Removal; Notice of Party with Financial Interest; and Request for Judicial Notice]

22
23 I, Shawn Cruikshank, declare as follows:

24 1. I am the Director of Pricing and Profitability for Airgas USA, LLC’s
25 (“Airgas”) Western Division.
26

27 2. I am authorized to make this Declaration on behalf of Airgas. In
28

AKERMAN LLP

601 WEST FIFTH STREET SUITE 300
LOS ANGELES, CALIFORNIA 90071
TEL.: (213) 688-9500 – FAX: (213) 627-6342

1 providing this Declaration, Airgas denies all liability for the matters addressed in
2 Plaintiff’s Class Action Complaint, but gives this Declaration for jurisdictional
3 purposes only.

4 3. I make this Declaration based upon my personal knowledge and based
5 upon my review of Airgas’s books and records. In my capacity as Director of
6 Pricing and Profitability for the Western Division, I have access to Airgas’s books
7 and records regarding the alleged “Fuel Surcharges” to California customers at issue
8 in this case, specifically including but not limited to the California Fuel Surcharge
9 spreadsheet for April 2015 through March 2019, a true and correct copy attached
10 hereto as **Exhibit “1.”** These records are kept and maintained by Airgas in the
11 course of its regularly conducted business activity, and it is the regular practice of
12 Airgas to make and maintain these records. These records reflect entries that are
13 noted in the records at or near the time the event recorded occurred, by either a
14 person with knowledge or by a person whose duties include recording this
15 information, which was transmitted by a person with knowledge. Airgas regularly
16 uses and relies upon these records in the course of its business.

17 4. Airgas is a limited liability company whose sole member is Airgas, Inc.,
18 a Delaware corporation with its principal place of business in Pennsylvania, where
19 its headquarters are located.

20 5. Plaintiff, Lit’l Pepper Gourmet, Inc., (“Plaintiff”), filed a complaint
21 seeking to bring a class action involving a proposed class defined as “[a]ll entities
22 who reside in California who paid Airgas USA a ‘Fuel Surcharge’ from four years
23 before the filing of this action to the date of class certification.” Compl. at ¶ 17.

24 6. Plaintiff alleges that it is a California corporation located in San Diego,
25 California. Compl. at ¶ 13.

26 7. Airgas’s books and records reflect that it imposed from time-to-time
27 “Fuel Surcharges” on customers in California.

AKERMAN LLP

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LOS ANGELES, CALIFORNIA 90071
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1 8. Based on Plaintiff’s allegations, I understand Plaintiff is challenging the
2 alleged imposition of a “Fuel Surcharge,” which Plaintiff maintains Airgas
3 implements “to create the false impression that the fee is a legitimate charge related
4 to increased fuel costs [incurred] in delivering products to its customers.” Compl. at
5 ¶ 3.

6 **Plaintiff’s Proposed “Fuel Surcharge” Class**

7 9. I recently reviewed Airgas’s data regarding Fuel Surcharges to California
8 customers from 2015 through 2019, and I have attached a true and correct copy of
9 this report as Exhibit “1.” The business records for Airgas, specifically including
10 but not limited to the spreadsheet attached as Exhibit “1,” reflects the Fuel
11 Surcharges charged by Airgas to entities residing in California from April 2015
12 through March 2019. This data is kept and maintained in the ordinary course of
13 business. The total amount of these Fuel Surcharges during the relevant time period
14 is **\$5,386,059**.

15 10. The report attached as Exhibit “1” and the amounts referred to
16 hereinabove do not set forth any amounts derived from charges other than the one
17 type of Fuel Surcharge challenged in the Complaint.

18 11. Based on my review and familiarity with the information described
19 above, as well as based on my own personal knowledge and access to Airgas’s
20 business records, Airgas charged more than 100 California customers for a Fuel
21 Surcharge during the period of 2015 through 2019. Based on Airgas’s business
22 records, the number of California customers billed for Fuel Surcharges for that time
23 period exceeds 25,400.

24 **Plaintiff’s Proposed “Fuel Surcharge” Class**


25 12. In summary, Airgas’s business records reflect that, during the class
26 period, Airgas charged California entities \$5,386,059 in Fuel Surcharges from April
27 2015 through March 2019. These figures reflect amounts challenged by Plaintiff’s
28

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Complaint.¹

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2nd day of May, 2019 in Long Beach, California.



Shawn Cruikshank

AKERMAN LLP

601 WEST FIFTH STREET SUITE 300
LOS ANGELES, CALIFORNIA 90071
TEL.: (213) 688-9500 – FAX: (213) 627-6342

¹ This figure excludes transportation revenue described by any other term, such as delivery, pickup, mileage, freight, etc., and fuel revenue associated with refueling fees paid in advance of the rental, as well as the other charges associated with refueling, such as fuel delivery fees, and fuel charges for propane tank rentals and refills of propane tanks.

EXHIBIT 1

25,412 # of unique Sold To Customers over 4 year span

Fuel Surcharge billed per month (Whole Dollars)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Yearly Total
2015				73,487	71,608	76,166	86,802	83,147	72,516	69,870	59,991	63,585	657,173
2016	53,410	51,421	58,414	53,377	55,714	68,289	62,987	72,515	66,305	117,560	74,629	95,741	830,361
2017	106,830	94,209	117,223	99,436	112,053	107,547	102,068	128,115	116,989	120,532	131,181	129,450	1,365,633
2018	163,429	147,919	148,931	154,014	191,092	184,862	187,427	191,849	164,240	208,891	172,620	147,205	2,062,479
2019	163,655	149,578	157,180										470,413
Total	487,325	443,126	481,748	380,314	430,467	436,864	439,283	475,626	420,048	516,853	438,422	435,982	5,386,059

EXHIBIT D

AKERMAN LLP

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3 email: kanika.corley@akerman.com
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7 Lawrence D. Silverman (*pro hac vice* petition to be filed)
8 email: lawrence.silverman@akerman.com
9 Alexandra Mora (*pro hac vice* petition to be filed)
10 email: alexandra.mora@akerman.com
11 Three Brickell City Centre
12 98 Southeast Seventh Street, Suite 1100
13 Miami, Florida 33131
14 Phone: (305) 374-5600
15 Facsimile: (305) 374-5095

11 Attorneys for Defendant
12 AIRGAS USA, LLC

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

16 LIT'L PEPPER GOURMET, INC.,
17 Individually and on behalf of those
18 similarly situated,

18 Plaintiffs,

19 v.

20 AIRGAS USA, LLC,

21 Defendant.

Case No.

**DECLARATION OF
ALEXANDRA MORA**

22 I, Alexandra Mora, declare as follows:
23

24 1. I am an attorney at law admitted to practice before the Courts of the State
25 of Florida, and will file an application to appear *pro hac vice* in this matter promptly.
26 I am a partner in the law firm of Akerman LLP. I have personal knowledge of the
27 facts set forth below and, if called as a witness, could and would testify competently

1 thereto.

2 2. Plaintiff Lit'l Pepper Gourmet, Inc. ("Lit'l Pepper") served the
3 Complaint in this matter on Defendant Airgas USA, LLC ("Airgas") on April 3, 2019.
4 True and correct copies of all process, pleadings, and orders served on Airgas in the
5 State Court Action and the Superior Court's Register of Actions is attached to the
6 Notice of Removal as Composite Exhibit "A."

7 3. This Notice of Removal is timely because it is filed less than thirty (30)
8 days after service of the Summons and Complaint on Airgas.

9 4. True and correct copies of Lit'l Pepper's most recent filings with the
10 California Secretary of State for 2018 and 2013 are attached to the Notice of Removal
11 as Composite Exhibit "B."

12 I declare under penalty of perjury pursuant to the laws of the United States that
13 the foregoing is true and correct.

14 Executed this 3rd day of May, 2019 at Miami, Florida.

15 

16
17 Alexandra Mora

AKERMAN LLP

601 WEST FIFTH STREET SUITE 300
LOS ANGELES, CALIFORNIA 90071
TEL.: (213) 688-9500 - FAX: (213) 627-6342

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12 AIRGAS USA, LLC

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15
16 LIT'L PEPPER GOURMET, INC.,
Individually and on behalf of those
17 similarly situated,

18 Plaintiffs,

19 v.

20 AIRGAS USA, LLC,

21 Defendant.
22

Case No.

[San Diego Superior Court Case No.
37-2019-00016827-CU-BT-CTL]

**DEFENDANT AIRGAS USA, LLC'S
PROOF OF SERVICE**

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

PROOF OF SERVICE

I am employed in the City and County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 601 West Fifth Street, Suite 300, Los Angeles, California 90071.

On **May 3, 2019**, I served the following documents by placing a true copy thereof in a sealed envelope(s)

- 1. DEFENDANT AIRGAS USA, LL'S NOTICE OF REMOVAL**
- 2. CIVIL CASE COVER SHEET**
- 3. DEFENDANT AIRGAS USA, LL'S NOTICE OF PARTY WITH FINANCIAL INTEREST**
- 4. DEFENDANT AIRGAS USA, LL'S CORPORATE DISCLOSURE STATEMENT**

on the persons below as follows:

<p>John K. Landay, Esq. LANDAY ROBERTS LU 101 West Broadway, Suite 300 San Diego, CA 92101 Telephone: (619) 230-5712 Email: jlandaylandayroberts.com</p> <p><i>Attorneys for Plaintiff</i> LIT'L PEPPER GOURMET, INC.</p>	<p>Michael A. Licari, Esq. SPRINKLE LLOYD & LICARI LLP 2801 B Street, Suite 556 San Diego, CA 92102 Telephone: (858) 717-0013 Email: mike@SL2Law.com</p> <p><i>Attorneys for Plaintiff</i> LIT'L PEPPER GOURMET, INC.</p>
---	---

(MAIL) I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Los Angeles, California.

(Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on May 3, 2019, at Los Angeles, California.

Suzanne I. Jimenez
(Type or print name)


(Signature)

AKERMAN LLP

601 WEST FIFTH STREET SUITE 300
LOS ANGELES, CALIFORNIA 90071
TEL.: (213) 688-9500 - FAX: (213) 627-6342

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Airgas USA Sued by Customer Over 'Deceptive and Unfair' Fuel Surcharge](#)
