

**UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

JEREMY DRUCKER, individually and on
behalf of a class of others similarly situated,

Plaintiffs,

v.

FERRELLGAS PARTNERS, L.P.,
FERRELLGAS, L.P., and FERRELLGAS,
INC.,

Defendants.

Case No. 09-CV-2305 KHV/GLR

CLASS ACTION COMPLAINT

Plaintiff Jeremy Drucker, individually and on behalf of a class of all others similarly situated, for his Complaint against defendants Ferrellgas Partners, L.P., Ferrellgas, L.P., and Ferrellgas, Inc., alleges on information and belief:

Nature of Action

1. Defendants own and operate the nation's largest provider of pre-filled 20-pound propane tanks that are sold at retail outlets. In 2008, Defendants covertly increased the price of their pre-filled propane tanks by failing to disclose that they were under-filling the tanks and, in doing so, concealing material facts or misrepresenting what customers were purchasing. This case arises out of this wrongful practice and seeks to provide a remedy to those persons who purchased a 20-pound propane tank from Defendants that was not filled with at least 17 pounds of propane.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over this case under 28 U.S.C. § 1332(d)(2)(A) because the case is brought as a class action between citizens of different states and the matter in controversy exceeds \$5,000,000, exclusive of interest and costs.

3. This Court has personal jurisdiction over the Defendants because they conduct sufficient business in this state to satisfy due process.

4. Venue in this district is proper under 28 U.S.C. § 1391(b) and (c) because Defendants conduct business in this district and the unlawful conduct giving rise to the claims occurred, in part, in this district.

Parties

5. Plaintiff Jeremy Drucker is a citizen of Marin County, California. From early 2007 to the present, Plaintiff has purchased pre-filled propane tanks from Defendants at various retail outlets.

6. Defendant Ferrellgas Partners, L.P. is a Delaware limited partnership with its principal place of business in Overland Park, Kansas and is publicly-traded on the NYSE under the ticker symbol FGP. Its general partner is defendant Ferrellgas, L.P., a Delaware partnership with its principal place of business in Overland Park, Kansas.

7. Defendant Ferrellgas, Inc. is a Delaware corporation with its principal place of business in Overland Park, Kansas. Ferrellgas, Inc. manages the day-to-day operations of Ferrellgas Partners, L.P. The company sells pre-filled propane tanks under the trade name “Blue Rhino” at convenience stores and discount stores nationwide. Defendants are collectively referred to herein as “Blue Rhino” or “Defendants.”

General Allegations

8. Propane gas tanks are widely used by American consumers for barbeque grills, outdoor heaters, and other ordinary household usages.

9. The standard propane gas tank is a metal tank with the physical capacity to hold up to 20 pounds of propane gas. But, because propane gas expands when heated, industry standards mandate that propane tanks contain an Overfill Prevention Device that limits the capacity of the tank to 17-18 pounds of propane gas.

10. Blue Rhino sells pre-filled 20-pound propane tanks through a variety of retail partners nationwide, including convenience and merchandise stores. Customers may simply purchase a pre-filled propane tank or exchange their empty tank for a filled tank.

11. Before 2008, Blue Rhino sold pre-filled propane tanks that were full—meaning they were filled with at least 17 pounds of propane.

12. Starting in 2008, Blue Rhino began under-filling their 20-pound pre-filled propane tanks with only 15 pounds of propane gas. The price of the tank did not decrease. Therefore, Defendants' effectively implemented a price increase without disclosing that they were doing so.

13. Plaintiff and the Class reasonably expected that the 20-pound propane tanks they purchased would be filled to their legal capacity and, if they were not, it would be clearly disclosed.

14. Plaintiffs and the Class did not know they were purchasing an under-filled propane tank and had no reasonable way of learning this fact.

15. Plaintiffs and the Class were harmed by Defendants' actions in that they received a partially-full, rather than a full, propane tank at the time of purchase.

Class Action Allegations

16. Plaintiff brings this action under Fed. R. Civ. P. 23(b)(3) on behalf of himself and a Class defined as: All persons who purchased a pre-filled propane gas tank owned by Blue Rhino during the applicable limitations period that was not filled with at least 17 pounds of propane gas. Excluded from the Class are the Defendants' officers, directors, and employees, and any Judge to whom this case is or may be assigned, as well as his or her immediate family.

17. The Class is comprised of thousands of individuals who are geographically dispersed across the country and thus joinder is impracticable. Class members can be identified from, among other things, credit card records of the sale of pre-filled propane tanks at the retail outlets where they are sold.

18. Plaintiff's claims present common questions of law and fact that predominate over the questions affecting only individual Class members, including:

- a. Whether and when Defendants began under-filling 20-pound pre-filled propane tanks sold to customers;
- b. Whether Defendants misrepresented or failed to disclose to Plaintiff and the Class that their pre-filled 20-pound propane tanks were only partially filled;
- c. Whether the misrepresented and undisclosed facts were material to Plaintiff and the Class;
- d. Whether Defendants were unjustly enriched; and
- e. Whether Plaintiffs and the Class are entitled to recover equitable relief from Defendants based on the conduct alleged herein.

19. Plaintiff's claims are typical of the claims of the Class because they arise out of the same conduct by the Defendants.

20. Plaintiff will fairly and adequately protect the interests of the Class and has no conflicts with other members of the Class in pursuing these claims. Further, Plaintiff has retained counsel that are experienced in class litigation of this type and agrees to diligently prosecute this case.

21. A class action is superior to other available means for the fair and efficient adjudication of the claims of Plaintiff and the Class because the amount at issue for each customer is relatively small compared to the expense of individualized litigation and it would thus be inefficient and practically improbable to do so.

22. Class-wide litigation of this case is manageable and promotes judicial economy compared to thousands of individual cases.

Count I: Unjust Enrichment

23. Plaintiff incorporates by reference the foregoing paragraphs.

24. Defendants have been, and continue to be, unjustly enriched as a result of their wrongful conduct to the detriment of Plaintiff and the Class.

25. Plaintiff and the Class seek disgorgement and restitution of all wrongfully-obtained gains received by Defendants as a result of their wrongful conduct.

Prayer for Relief

WHEREFORE, Plaintiff and the Class request that the Court enter an order or judgment against Defendant including the following:

- A. Certifying the case as a class action under Rule 23(b)(2) of the Federal Rules of Civil Procedure, and appointing Plaintiff as Class Representative and undersigned counsel as Class Counsel;
- B. Awarding pre- and post-judgment interest;
- C. Awarding equitable relief in the form of disgorgement or restitution;
- D. Awarding Plaintiff his reasonable attorneys fees, costs, and expenses; and
- E. Awarding such other relief as the Court deems equitable and just.

DESIGNATION OF PLACE OF TRIAL

Plaintiff designates Kansas City, Kansas as the place for trial.

Respectfully submitted,

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