

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

GINA M. CALARCO, 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.

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Gina M. Calarco, individually and on behalf of a class of all others similarly situated, for her 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 Gina M. Calarco is a citizen of Jackson County, Missouri. From 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 Count I of this action under Fed. R. Civ. P. 23(b)(2) and/or (3) on behalf of herself and a "Nationwide 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. Plaintiff brings Count II of this action under Fed. R. Civ. P. 23(b)(3) and § 407.025.3, R.S. Mo. on behalf of herself and a "Missouri Sub-Class" defined as: All consumers in the State of Missouri who purchased for personal, family or household use 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.

18. Both the Nationwide Class and the Missouri Sub-Class (collectively, the "Class") are comprised of thousands of individuals who are geographically dispersed across either the country or the state, respectively, 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.

19. 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 engaged in an unlawful practice in violation of the Missouri Merchandising Practices Act;
- e. Whether Defendants were unjustly enriched; and
- f. Whether Plaintiffs and the Class are entitled to recover equitable relief from Defendants based on the conduct alleged herein.

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

21. 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.

22. Defendants' conduct alleged as wrongful herein applies generally to the Class, and thus final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole.

23. 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.

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

Count I: Unjust Enrichment

25. Plaintiff incorporates by reference the foregoing paragraphs.

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

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

Count II: Missouri Merchandising Practices Act

28. Plaintiff incorporates by reference the foregoing paragraphs.

29. By surreptitiously raising prices on its propane tanks as described above, Defendants engaged in unlawful practices, including, but not limited to, the act, use, or deception, false pretense, false promise, misrepresentation, unfair practice and/or concealment, suppression, and omission of material facts in connection with the sale or advertisement of merchandise in trade or commerce, in or from the State of Missouri, in violation of the Missouri Merchandising Practices Act, § 407.020, *et seq.*

30. Plaintiff and the Missouri Sub-Class purchased Blue Rhino pre-filled propane tanks primarily for personal, family or household purposes and have suffered and continue to suffer an ascertainable loss of money as a direct and proximate result of

Defendants' use or employment of a method, act, and/or practice declared unlawful under the Missouri Merchandising Practices Act.

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) and/or (3) of the Federal Rules of Civil Procedure, and appointing Plaintiff as Class Representative and undersigned counsel as Class Counsel;

B. Awarding damages in an amount to be determined at trial, including all statutory, consequential, and punitive damages;

C. Awarding pre- and post-judgment interest;

D. Awarding equitable relief in the form of disgorgement or restitution;

E. Awarding Plaintiff her reasonable attorneys fees, costs, and expenses; and

F. Awarding such other relief as the Court deems equitable and just.

Plaintiffs demand a trial by jury.

Respectfully submitted,

STUEVE SIEGEL HANSON LLP

/s/ Norman E. Siegel

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ATTORNEYS FOR PLAINTIFFS

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 THE REVERSE OF THE FORM.)

<p>I. (a) PLAINTIFFS</p> <p>Calarco, Gina M. individually and on behalf of a class of others similarly situated,</p> <p>(b) County of Residence of First Listed Plaintiff <u>Jackson County, MO</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number)</p> <p>Norman E. Siegel and Richard M. Paul III, Stueve Siegel Hanson LLP, 460 Nichols Road, Suite 200, Kansas City, MO 64112 (816) 714-7100; Eric H. Gibbs, Girard Gibbs LLP 601 California Street, 14th Floor, San Francisco, CA 94108 (415) 981-4800</p>	<p>DEFENDANTS</p> <p>FERRELLGAS PARTNERS, L.P., FERRELLGAS, L.P., and FERRELLGAS, INC. County of Residence of First Listed Defendant <u>Johnson County, KS</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:33%;">PTF DEF <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated <i>or</i> Principal Place of Business In This State</td> <td style="width:33%;">PTF DEF <input type="checkbox"/> 4 <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td>PTF DEF <input type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td>Incorporated <i>and</i> Principal Place of Business in Another State</td> <td>PTF DEF <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>PTF DEF <input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td>PTF DEF <input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF DEF <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	PTF DEF <input type="checkbox"/> 4 <input type="checkbox"/> 4	Citizen of Another State	PTF DEF <input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business in Another State	PTF DEF <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	PTF DEF <input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	PTF DEF <input type="checkbox"/> 6 <input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	PTF DEF <input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation	PTF DEF <input type="checkbox"/> 6 <input type="checkbox"/> 6										

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input checked="" type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p> <p>REAL PROPERTY</p> <p><input type="checkbox"/> 210 Lane Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent Lease & Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All other Real Property</p>	<p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employer's Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p>CIVIL RIGHTS</p> <p><input type="checkbox"/> 441 Voting</p> <p><input type="checkbox"/> 442 Employment</p> <p><input type="checkbox"/> 443 Housing/Accommodations</p> <p><input type="checkbox"/> 444 Welfare</p> <p><input type="checkbox"/> 445 Amer. w/Disabilities - Employment</p> <p><input type="checkbox"/> 446 Amer. w/Disabilities - Other</p> <p><input type="checkbox"/> 440 Other Civil Rights</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 362 Personal Injury - Med. Malpractice</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p> <p>PRISONER PETITIONS</p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence</p> <p>Habeas Corpus:</p> <p><input type="checkbox"/> 530 General</p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus & Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 610 Agriculture</p> <p><input type="checkbox"/> 620 Other Food & Drug</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 630 Liquor Law</p> <p><input type="checkbox"/> 640 R.R. & Truck</p> <p><input type="checkbox"/> 650 Airline Regs.</p> <p><input type="checkbox"/> 660 Occupational Safety/Health</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Mgmt. Relations</p> <p><input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 810 Selective Service</p> <p><input type="checkbox"/> 850 Securities/Commondities/Exchange</p> <p><input type="checkbox"/> 875 Customer Challenge 12 USC 3410</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 892 Economic Stabilization Act</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 894 Energy Allocation Act</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access Of Justice</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>

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

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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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. Section 1332

Unjust Enrichment and Missouri Merchandising Practices Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$in excess to be determined

CHECK YES only if demanded in complaint: **JURY DEMAND:** Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 06/18/09 SIGNATURE OF ATTORNEY OF RECORD /s/ Norman E. Siegel

FOR OFFICE USE ONLY RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____