

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

**DALE E. CRAGGS, individually and on
behalf of a class of similarly situated
individuals,**

Plaintiff,

vs.

Case No. 6:19-cv-03081-BP

**FAST LANE CAR WASH & LUBE, L.L.C.,
d/b/a IN & OUT CARWASH,**

Defendant.

SECOND AMENDED CLASS ACTION COMPLAINT

COMES NOW, Plaintiff, on behalf of himself and others similarly situated, through counsel, and for this class action petition states:

1. Plaintiff is a citizen and resident of Greene County, Missouri.
2. Defendant Fast Lane Car Wash & Lube, L.L.C. d/b/a In & Out Carwash (“Fast Lane”), is a Missouri corporation with its registered office located in Greene County, Missouri. Defendant can be served by its registered agent Mark L McQueary at 1949 E. Sunshine, Ste 1-130, Springfield, MO 65804.
3. On information and belief, Defendant owns and operates an automated car wash at 2233 N. Glenstone Ave., Springfield, MO.
4. The acts and omissions giving rise to Plaintiff’s causes of action occurred in Greene County, Missouri.
5. Venue is proper in Greene County, Missouri.
6. Defendant owns and operates an automated car wash and advertises its car wash services at its physical location as well as online at its website.¹

¹ <https://inoutwash.com/>.

7. Defendant began operating car washes as early as 2005. Defendant advertises that it is open “EVERYDAY”.²

8. On a large sign located a few feet from Glenstone Avenue near the entrance to the property where the car wash is located, Defendant advertises that its car wash lasts for “3 minutes”.

9. The sign out front of the business facing southbound traffic is pictured below:



10. The sign out front of the business facing northbound traffic is pictured below:



² <https://www.facebook.com/freevacuums/> (Defendant’s facebook page is available for public viewing; an individual is not required to become a “friend” of Defendant or to “like” Defendant’s page in order to view its public page).

11. Furthermore, Defendant's public facing website and public facing gift cards utilize the \$3 / 3 Minute advertisement and are designed to lead consumers to believe that if they pay \$3 they will receive a 3 minute long car wash. The advertisement looks substantially as follows:



12. Defendant's advertisements are intended and designed to cause consumers to believe that the car wash lasts at least 3 minutes or 180 seconds or more.

13. Plaintiff as well as every single class member viewed the 3 minute wash advertisement every time prior to purchasing car wash services from Defendant as evidenced by the fact that the sign is located feet from the entrance drive and is impossible to miss.

14. Plaintiff and similarly situated consumers would not have purchased Defendant's car wash services if they knew Defendant was lying about or misrepresenting the duration of the wash cycle.

15. The advertisement makes it clear to all, that all car washes will last at least 3 minutes by virtue of the fact that Defendant's automated car wash pulls cars through the car wash on a conveyor powered by a constant speed electric motor.

16. The constant speed electric motor revolves at the same number of revolutions per minute irrespective of which wash is selected at the point of sale.

17. The conveyor is a uniform length and the motor operates at a uniform speed so that no matter which car wash package a customer purchases, each car spends the exact same time moving through the car wash.

18. At Defendant's physical location on the kiosk where each customer makes payment for Defendant's services before they enter the car wash, customers select the various wash option.

19. Defendant's customers select from the following single-use packages:

- a. \$3 "Light Wash & Dry" package;
- b. \$7 "Wheel Express" package which includes "Wheel Brite", "Super Wheel Shine", "Tire & Rim Scrubber" and "Rim Blaster";
- c. \$10 "Super" package which includes "Triple Foam Polish", "Double Soap", "Body Blast", "Wheel Brite" and "Rim Blaster";
- d. \$12 "Deluxe" package which includes everything provided in the "Super" package plus "rainx", "Rust-Oleum" and "Super Wheel Shine"; and
- e. \$15 "Ultimate" package which includes everything provided in the "Deluxe" package plus "Carnauba Hot Wax", "Lava Bath", "Lava Shine" and "Waterfall Rinse".⁴

20. Regardless of the wash purchased, the constant speed electric motor pulls all cars through the wash in the exact same amount of time.

21. Paying more money for a wash does not cause the wash cycle to last longer.

22. Paying more money for a wash simply adds features to the wash cycle such as tire shine, wax, rainx, etc. but the time of the wash cycle does not increase with the price.

23. Defendant also advertises that its customers can purchase these packages for unlimited use by paying a monthly rate for the package chosen by the customer. These unlimited monthly rates are:

- a. \$14.99 for the "Light Wash & Dry";

- b. \$19.99 for the “Wheel Express”;
- c. \$24.99 for the “Super”;
- d. \$29.99 for the “Deluxe”; and
- e. \$34.99 for the “Ultimate”.

24. On its facebook page, Defendant provides a video of its automated carwash which appears to be fully functioning.

25. As part of the “Light Wash & Dry” package, Defendant’s car wash provides a simple wash, rinse and dry of the vehicle.

26. The other packages provide additional products and services to fully wash the vehicle.

27. The use of brushes and mitters are necessary, with the all packages, to clean the vehicles.

28. Defendant utilizes over-head mitters which scrub the top of the vehicle as it passes below and is intended to clean windshield eyebrow and the tops of vehicles.

29. The mitters are essentially strips of cloth on a motorized, overhead unit which move back and forth over the vehicle as it passes below.

30. When the mitters are not operational, the top of the vehicle will not be cleaned, and the cleaning services purchased are not provided.

31. On or about August 2, 2018, Plaintiff purchased a \$7 “Wheel Express” package.

32. The car wash only shined portions of his wheels and did not provide a full shine.

33. The fact the tire shining component had not fully shined Plaintiff’s tires was obvious to anyone that looked at the tires.

⁴ <https://inoutwash.com/locations/springfield/services/>.

34. Prior to this incident, Plaintiff had informed Defendant's employees that the tire shining components were not working.

35. On or about August 29, 2018, Plaintiff purchased a single-use "Ultimate" car wash for \$15.00, expecting his vehicle to be fully washed.

36. However, as his vehicle entered the carwash, Plaintiff noticed that the over-head mitters were not functioning.

37. After moving through the car wash, Plaintiff exited his vehicle and saw that the top of his vehicle was not cleaned and that soap and other cleaning products he purchased with the "Ultimate" package still remained on his vehicle as residue, because the mitters were not functioning.

38. At no time did Defendant warn Plaintiff or other customers that its car wash was not operating properly or that they would not receive a full wash due to the non-functioning mitters.

39. In this case, the mitter motor had been burned out for days.

40. On information and belief, components of Defendant's car wash fail to perform or are wholly inoperative on a regular basis, yet Defendant does not warn its customers prior to taking their money that the carwash is not fully functional or that they will not receive a full wash.

41. Additional components of Defendant's carwash that regularly do not function properly include, but are not limited to, the tire cleaning/shining components.

42. Defendant's car wash lasts about two minutes and 25 seconds instead of the full "3 minutes" Defendant advertises.

43. Plaintiff and other customers suffer an ascertainable loss each time they use Defendant's car wash in that the value of a car wash that last two minutes and 25 seconds is less than the value of the same car wash that lasts a full "3 minutes".

44. Defendant refuses to refund Plaintiff or its other customers their money when components of its carwash are not properly functioning and result in less than a full wash.

45. Upon information and belief, thousands of Defendant's customers have not received the car washes for which they paid at Defendant's carwash locations.

**COUNT I – VIOLATION OF THE MISSOURI MERCHANDISING PRACTICES ACT –
PLAINTIFF'S INDIVIDUAL CLAIMS**

46. Plaintiff incorporates the preceding paragraphs as if set out fully herein.

47. The purchase of the car wash packages described above qualify as "merchandise" under the Missouri Merchandising Practices Act found at Mo. Rev. Stat. § 407.010, et seq.

48. Section 407.020.1 provides:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri, is declared to be an unlawful practice. The use by any person, in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri of the fact that the attorney general has approved any filing required by this chapter as the approval, sanction or endorsement of any activity, project or action of such person, is declared to be an unlawful practice. Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation.

49. Defendant marketed its car wash packages to Plaintiff.

50. As set out in detail above, Defendant:

- a. represented that its car wash would provide the wash packages purchased by Plaintiff; and
- b. represented that its car wash would shine the tires of Plaintiff's vehicle.

51. Defendant knew that components of its car wash regularly were not operational or fully functioning, but failed to warn its customers of these issues prior to taking their money for the car wash packages and allowing Plaintiff to take his vehicles through the malfunctioning carwashes.

52. Plaintiff did not receive the car washes for which he paid.

53. Defendant's conduct of representing that its carwashes provided the washes purchased and of failing to warn Plaintiff that its car wash was not fully functioning was done for the purpose to induce Plaintiff to purchase car wash packages, which conferred a benefit on Defendant and was detrimental to Plaintiff.

54. Defendant's acts and omissions described above constitute the act, use or employment of deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of merchandise in trade or commerce and was unlawful under the MMPA.

55. As a direct and proximate result, Plaintiff has been damaged as set forth more fully above, constituting an ascertainable loss of money.

56. Plaintiff is entitled to recover his attorney's fees and costs under Mo. Rev. Stat. § 407.025, et seq.

57. Defendant's actions described above were evil, wanton, willful and malicious justifying the imposition of punitive damages.

WHEREFORE, Plaintiff prays for judgment against the Defendant, for damages in a fair and reasonable amount, for punitive damages, for his attorney's fees, for his costs incurred herein and for such other relief as the Court deems just and proper.

CLASS ACTION ALLEGATIONS

58. Plaintiff incorporates the preceding paragraphs as if set out fully herein.

59. The class of similarly situated individuals which Plaintiff seeks to represent is all customers of Defendant who, from September 26, 2013 to present:

- a. Purchased and used a car wash package from Defendant at Defendant's Springfield location for consumer or household purposes;
- b. During a time that Defendant advertised that its car washes lasted for three minutes; and
- c. Did not receive a full three-minute wash.
- d. The class shall not include any officers, directors, attorneys, agents or employees of Defendant.

60. The requirements for maintaining this action as a class action are satisfied, as set forth immediately below.

- e. The proposed class is so numerous and so geographically dispersed that the individual joinder of all absent class members is impracticable. While the exact number of absent class members is unknown to Plaintiff at this time, on information and belief, Plaintiff believes the total number of class members numbers in the thousands. The requirement of numerosity is therefore satisfied.
- f. The particular members of the class are capable of being described without difficult managerial or administrative problems from the outset of this litigation. The members of the class are readily identifiable from the information and records in the possession or control of Defendant.
- g. Common questions of law or fact exist as to all proposed class members and predominate over any questions which affect only individual members of the

proposed class. In fact, the wrongs suffered and remedies sought by Plaintiff and the other members of the class are premised upon a common and illegal course of conduct perpetrated by Defendant directed towards class members.

h. Here, plaintiff seeks money damages and attorney's fees against Defendant.

i. The common questions of law or fact include, but are not limited to, the following:

- i. Whether Defendant has liability under Missouri law;
- ii. Whether Defendant engaged in a uniform course of dealing with class members wherein they either made false or misleading statements concerning the performance of its car wash;
- iii. Whether Defendant engaged in a uniform course of dealing with class members wherein they either made false or misleading statements concerning the car wash packages it was selling to its customers;
- iv. Whether Defendant engaged in a uniform course of dealing with class members wherein they concealed material facts in connection with the sale or advertisement of its car wash packages;
- v. Whether Defendant's failure to warn its customers that components of its carwashes were not operational or fully functioning is a violation of Missouri law;
- vi. Whether Defendant violated the Missouri Merchandising Practices Act;
- vii. The nature and extent of Plaintiff and class members' actual damages;
- viii. Whether Plaintiff and the class are entitled to recover their attorney's fees and costs;

ix. The nature and extent of all statutory penalties and remedies for which Defendant is liable to Plaintiff and class members; and

x. Whether punitive damages are appropriate.

61. Plaintiff's claims are typical of the claims of the class.

62. Plaintiff will fairly and adequately represent the interests of the members of the class.

Plaintiff has no interest adverse to the interests of the members of the class.

63. Plaintiff has retained competent attorneys who have experience in class action litigation and who have been appointed as national class counsel in multiple class actions.

64. Counsel has been appointed national class counsel in multiple class actions and, without exception, all previous cases counsel has been appointed as class counsel have resulted in judgments and/or settlements favorable to class members.

65. A class action is a superior method for the fair and efficient adjudication of this controversy. The adjudication of a separate action by individual members of the class would create a risk of a) inconsistent or varying adjudications with respect to individual members of the class; or b) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

66. Questions of law or fact common to the members of the class predominate over any questions affecting only individual members. There is no special interest in the members of the class individually controlling the prosecution of separate actions; the damages sustained by individual class members may be relatively small; and the expense and burden of individual litigation make it impossible for the class members individually to address the wrongs done to them.

67. There will be no difficulty managing this lawsuit as a class action in this Court. Furthermore, Defendants transact substantial business in Greene County, Missouri and will therefore not be prejudiced or inconvenienced by the maintenance of the action in this forum.

68. Certification of a class under Fed. R. Civ. Pro. 23(b)(3) is appropriate in that Plaintiff and class members seek monetary damages and common questions predominate over any individual questions and a class action is superior for the fair and efficient adjudication of this controversy.

69. Notice must be issued in a manner directed by the Court.

70. Common questions predominate over any individual questions and a class action is superior for the fair and efficient adjudication of this controversy.

71. A class action will cause an orderly and expeditious administration of class members' claims and economies of time, effort and expense will be fostered and uniformity of decisions will be ensured.

72. Moreover, the individual class members are likely to be unaware of their rights and not in a position (either through experience or financially) to commence individual litigation against Defendant.

73. Alternatively, certification of class under Rule 23(b)(1) is appropriate because inconsistent or varying adjudications with respect to individual members of the class would establish incompatible standards of conduct for the Defendant or adjudications with respect to individual members of the Class as a practical matter would be dispositive of the interests of the other members not parties to the adjudications or would substantially impair or impede their ability to protect their interests.

74. Alternatively, certification of a class under Rule 23(b)(2) is also appropriate because Defendants have and continue to (a) represent that its car washes last for “3 minutes”; and (b) wrongfully induce parties to purchase new car wash packages, thereby causing Missourians damage and Defendants must be barred and enjoined from continuing to do so.

**COUNT II – VIOLATION OF THE MISSOURI MERCHANDISING PRACTICES ACT –
CLASS CLAIM**

75. Plaintiff incorporates the preceding paragraphs as if set out fully herein.

76. The purchase of the car wash packages described above qualify as “merchandise” under the Missouri Merchandising Practices Act found at Mo. Rev. Stat. § 407.010, et seq.

77. Section 407.020.1 provides:

The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri, is declared to be an unlawful practice. The use by any person, in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri of the fact that the attorney general has approved any filing required by this chapter as the approval, sanction or endorsement of any activity, project or action of such person, is declared to be an unlawful practice. Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation.

78. Defendant marketed its car wash packages to Plaintiff and to class members.

79. Defendant represented that its carwashes last for “3 minutes”.

80. Defendant knew or should have known that its carwashes last only two minutes and 25 seconds instead of the advertised three minutes.

81. Plaintiff and class members did not receive the car wash that defendant advertised and for which they paid.

82. Defendant's conduct of representing that its carwashes last for three minutes as opposed to the two minutes and 25 seconds the washes actually last was done for the purpose to induce Plaintiff and class members to purchase car wash packages, which conferred a benefit on Defendant and was detrimental to Plaintiff and class members.

83. By reducing the time of the car wash from the advertised three minutes, Defendant was able to expend less money per car on (a) soap; (b) machinery wear and tear; (c) chemicals; (d) water; (e) sewer; (f) electricity; (g) overhead costs; and (h) maintenance.

84. Defendant's acts and omissions described above constitute the act, use or employment of deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of merchandise in trade or commerce and was unlawful under the MMPA.

85. As a direct and proximate result, Plaintiff and other similarly situated class members have been damaged as set forth more fully above, constituting an ascertainable loss of money.

86. Plaintiff and other similarly situated class members are entitled to recover their attorney's fees and costs under Mo. Rev. Stat. § 407.025, et seq.

87. Defendant's actions described above were evil, wanton, willful and malicious justifying the imposition of punitive damages.

WHEREFORE, on behalf of himself and class members, Plaintiff prays for judgment against the Defendant, for damages in a fair and reasonable amount, for punitive damages, for his attorney's fees, for his costs incurred herein and for such other relief as the Court deems just and proper.

COUNT III – BREACH OF CONTRACT

88. Plaintiff incorporates the preceding paragraphs as if set out fully herein.

89. Defendant entered into contracts with Plaintiff and class members which were supported by good and valuable consideration.

90. The terms of the contract expressly provided that every single wash cycle would last 3 minutes or longer.

91. Defendant's offer to provide a three minute wash cycle was made on its sign.

92. Plaintiff and class members accepted the offer by paying for wash services at the point of sale kiosk varying from the \$3 wash up to the "ultimate" package.

93. The washes did not in fact last 3 minutes or longer.

94. Plaintiff and class members' cars received truncated, shorter car wash cycles than they contracted for.

95. As the cars enter the wash, an attendant must manually press a button to start the wash cycle.

96. At no time did the attendant tell Plaintiff or any class members that they would not be receiving the 3 minute wash they were promised on the sign out front.

97. Defendant materially breached its contracts with Plaintiff and class members.

98. As a direct and proximate result, Plaintiff and others similarly situated were damaged in that they received less wash services than they contracted for.

WHEREFORE, Plaintiff prays for judgment in favor of Plaintiff and class members awarding their damages incurred as a result of Defendant's breach, for their costs and expenses incurred herein and for such other relief as the Court deems just and proper.

COUNT IV – UNJUST ENRICHMENT

99. Plaintiff incorporates the preceding paragraphs as if set out fully herein.

100. Plaintiff and class members specifically relied upon the 3 minute car wash cycle representation made by Defendant as set forth more fully above.

101. Plaintiff and class members did reasonably rely upon the statement made by Defendant that the wash would last for “three minutes”.

102. Plaintiff and class members had no reason to know that the statement made by Defendant that the wash would finish prematurely was false, misleading or inaccurate.

103. Plaintiff and class members reliance was justifiable, reasonable, and induced by Defendant’s statements, advertisements and representations.

104. Plaintiff and class members conferred a benefit on Defendant by purchasing car wash packages from Defendant in various amounts depending upon the type of wash and upgrades selected.

105. Defendant was aware of this benefit, and intended for this to occur as a result of its failure to disclose that its carwashes were not fully functional.

106. Defendant has been unjustly enriched in retaining the profits derived from Plaintiff’s and class members’ purchases at a time when Defendant’s carwashes were not fully functional, which retention under these circumstances is unjust and inequitable.

107. Because Defendant’s retention of the profits and benefit conferred on it by Plaintiff and class members is unjust and inequitable, Defendant must disgorge its gross profit associated with the purchases made by Plaintiff and class members for its unjust enrichment.

WHEREFORE, Plaintiff prays this Court enter its judgment against Defendant disgorging Defendant of its gross profits associated with the purchases made by Plaintiff and class members and awarding Plaintiff and class members a refund of the money they paid to

Defendant, their costs and expenses incurred herein and for such other relief as the Court deems just and proper.

COUNT V – MONEY HAD AND RECEIVED

108. Plaintiff incorporates the preceding paragraphs as if set out fully herein.

109. Plaintiff and class members specifically relied upon the 3 minute car wash cycle representation made by Defendant as set forth more fully above.

110. Plaintiff and class members did reasonably rely upon the statement made by Defendant that the wash would last for “three minutes”.

111. Plaintiff and class members had no reason to know that the statement made by Defendant that the wash would finish prematurely was false, misleading or inaccurate.

112. Plaintiff and class members reliance was justifiable, reasonable, and induced by Defendant’s statements, advertisements and representations.

113. Plaintiffs and class members made actual payments to defendant for the car wash packages.

114. Defendant retained funds given to them by Plaintiff and class members.

115. Plaintiffs and class members demanded refunds of Defendant, but Defendant refused to provide them with a refund.

116. For the reasons set out above, Defendant’s retention of this money was unjust and/or inequitable.

117. As a result of Defendant’s illegal conduct, Plaintiff and class members have incurred, and will continue to incur, attorney’s fees and costs in prosecuting their claim against Defendant.

118. In order for Plaintiff and class members to receive complete justice, they are entitled to their attorney's fees and costs incurred herein.

WHEREFORE, Plaintiff prays this Court enter judgment against Defendant for the total sum Plaintiff and class members paid to Defendant for car wash packages at a time when Defendant's carwashes were not fully functional, for Plaintiff's and class members' costs and attorneys fees incurred herein and for such other relief as the Court deems just and proper.

JURY TRIAL REQUESTED

Plaintiff hereby requests a trial by jury on all counts of this action.

DOUGLAS, HAUN & HEIDEMANN, P.C.

111 West Broadway, P.O. Box 117

Bolivar, Missouri 65613

Telephone: (417) 326-5261

Facsimile: (417) 326-2845

craig@dhhlawfirm.com

nick@dhhlawfirm.com

By /s/ Craig R. Heidemann

Craig R. Heidemann

Missouri Bar No. 42778

Nickolas W. Allen

Missouri Bar No. 69582

Attorneys for Plaintiff

DHH No. 26078-001