

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

DALE E. CRAGGS, individually and on)
behalf of a class similarly situated individuals,)
)
Plaintiff,)
)
v.)
)
FAST LANE CAR WASH & LUBE, L.L.C.,)
d/b/a IN & OUT CARWASH,)
)
Defendant.)

Case No. 6:19-cv-3081

JURY TRIAL DEMANDED

DEFENDANT’S NOTICE OF REMOVAL

[28 U.S.C. §§ 1332(d), 1441, 1446, and 1453]

Defendant hereby removes to this Court the state court action described below, initiated by the filing of the petition contained in the state court file attached hereto as **Exhibit A**, and subsequently amended by the First Amended Class Action Petition, also included in **Exhibit A**. Removal is proper under the Class Action Fairness Act¹ ("CAFA") and 28 U.S.C. §§ 1332(d), 1441(a) and 1453, because this is a putative class action placing in controversy more than \$5,000,000 and because there is minimal diversity between the parties under § 1332(d). Defendant’s short and plain statement of the grounds for removal is as follows:²

NATURE OF THE CASE

1. Plaintiff filed a Class Action Petition on September 26, 2018, in the Circuit Court for the Greene County, Missouri's Thirty-First Judicial Circuit (the “State Court Action”).
2. On January 29, 2019, Plaintiff filed a First Amended Class Action Petition (the “FAC”). *See Exhibit A.*

¹ Pub.L. No. 109–2, 119 Stat. 4 (2005) (codified in various sections of 28 U.S.C.).

² Defendant reserves the right to supplement this notice with additional facts, affidavits, or memoranda if necessary to effectuate removal.

3. Plaintiff alleges that he, and “thousands of Defendant’s customers have not received the car washes for which they paid at Defendant’s carwash locations.” FAC, ¶ 26.

4. Plaintiff alleges that “components of Defendant’s carwashes 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’.” FAC, ¶ 22.

5. Plaintiff also alleges that “[a]dditional components of Defendant’s carwash that regularly do not function properly include, but are not limited to, the tire cleaning/shining components.” FAC, ¶ 23.

6. Plaintiff further alleges that Defendant’s car wash lasts about two minutes and 25 seconds instead of the full 3 minutes Defendant advertises. FAC, ¶ 23.

7. The First Amended Petition proposes two classes, each for over “5 years from the filing of this petition.” FAC, ¶¶ 28, 29.

8. Defendant is Fast Lane Car Wash & Lube, L.L.C. d/b/a In & Out Carwash (“In & Out Carwash”).

9. Defendant has three locations, including two in Joplin, Missouri, and one in Springfield, Missouri. *See Exhibit B*, ¶ 9 (R. Barks Declaration).

10. In the FAC, Plaintiff alleges that he

“seeks to represent is all customers of Defendant who, within the last 5 years from the filing of this petition:

- a. Purchased a car wash package for consumer or household purposes from Defendant during a time that component(s) of Defendant’s carwash normally used to complete the car wash were not functioning;
- b. Who were not warned that component(s) of Defendant’s carwash were not functioning; and

- c. Who did not receive a full car wash.
- d. The class shall not include any officers, directors, attorneys, agents or employees of Defendant.”

FAC, ¶ 28.

11. In the FAC, Plaintiff also alleges that he

“seeks to represent a second class of similarly situated individuals which is all customers of Defendant who, within the last 5 years from the filing of this petition:

- a. Purchased a car wash package for consumer or household purposes from Defendant during a time that Defendant advertised that its car washes lasted for three minutes; and
- b. Who did not receive a full three-minute car wash.
- c. The class shall not include any officers, directors, attorneys, agents or employees of Defendant.”

FAC, ¶ 29.

12. Plaintiff maintains that Defendant’s alleged conduct violates the Missouri Merchandising Practices Act, which prohibits "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." *See id.* ¶¶ 45-59; Mo. Ann. Stat§ 407.020.

13. Plaintiff also alleges claims of Breach of Contract (Count II), Unjust Enrichment (Count III), and Money Had and Received (Count IV).

14. A copy of all process and pleadings, orders and other documents currently on file in the State Court Action at the time of removal are attached hereto as **Exhibit A**.

BASES FOR REMOVAL

**THE STATE COURT ACTION
IS SUBJECT TO REMOVAL UNDER CAFA AND §§ 1332(d), 1453.**

15. Removal of this action is appropriate under the Class Action Fairness Act, and 28 U.S.C. § 1332(d), because this is a class action placing in excess of \$5 million in controversy and there is at least minimal diversity between the parties.

16. 28 U.S.C. § 1332(d), adopted pursuant to CAFA, provides that:

The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which-

(A) any member of a class of plaintiffs is a citizen of a State different from any defendant

17. Thus, CAFA provides for removal of any action that: (1) is a class action; (2) puts in controversy the "sum or value of \$5,000,000"; and (3) includes any class member whose citizenship is different from any defendant.

A. This is a Class Action.

18. This lawsuit is a class action as defined by CAFA under 28 U.S.C. § 1332. Section 1332(d)(1)(B) defines a "class action" as "any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action." *Id.*

19. Plaintiff brings his petition "on behalf of himself and others similarly situated," *see* FAC, p. 1 (preamble in advance of ¶ 1 of the FAC).

20. Further, Plaintiff seeks certification of two classes, each of “which is all customers of Defendant who, within the last 5 years from the filing of this petition . . . ” FAC ¶¶ 28, 29; *supra*, ¶¶ 10-11 above.

21. Thus, this action is brought on behalf of a class as defined by CAFA.

B. Removal is Timely

22. Defendant was served no earlier than on January 22, 2019.

23. A copy of the summons and State Court Petition served no earlier than on January 22, 2019 are attached hereto as **Exhibit C**.

24. This Notice of Removal is filed within 30 days of January 22, 2019, as required by 28 U.S.C. § 1446(b); *see also Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 356 (1999) (holding that the thirty (30) day removal period does not begin to run until defendant is formally served); *Marano Enters. of Kansas v. Z-Teca Rests., L.P.*, 254 F.3d 753, 756-57 (8th Cir. 2001) (same).

C. There Are More Than 100 Putative Class Members

25. Plaintiff alleges that he, and “thousands of Defendant’s customers have not received the car washes for which they paid at Defendant’s carwash locations.” FAC, ¶ 26.

26. Plaintiff admits that the class he purports to represent consists of thousands of customers. *Id.*; *see also* FAC, ¶ 26; **Exhibit B**, ¶ 12 (R. Barks Declaration) (“Within the last five (5) years, In & Out Carwash has had over 1000 customers.”)

27. Therefore there are more than 100 Putative Class Members.

D. The Amount in Controversy Exceeds \$5,000,000.³

28. In the FAC, Plaintiff alleges that “components of Defendant’s carwashes 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’.” FAC, ¶ 22.

29. Plaintiff also alleges that “[a]dditional components of Defendant’s carwash that regularly do not function properly include, but are not limited to, the tire cleaning/shining components.” FAC, ¶ 23.

30. Plaintiff also alleges that “defendant’s car wash lasts about two minutes and 25 seconds instead of the full 3 minutes Defendant advertises.” FAC ¶ 24.

31. The FAC proposes two classes, each for over “5 years from the filing of this petition.” FAC, ¶¶ 28, 29.

32. The FAC includes claims for attorney fees and costs. FAC, ¶ 58.

33. The Missouri Merchandising Practices (“MMPA”) claim in the FAC includes claims for punitive damages. FAC, ¶ 59 (“Defendant’s actions described above were evil, wanton, willful and malicious justifying the imposition of punitive damages.”).

34. In MMPA cases, punitive damage awards can be substantial. *See, e.g.:*

- *Kerr v. Ace Cash Experts, Inc.*, No. 4:10 CV 1645 DDN, 2010 WL 5177977, at *2 (E.D. Mo. Dec. 14, 2010) (considering the possibility of more than \$4.4 million in attorneys’ fees and punitive damages based upon allegations of \$594,000 in actual damages);

³ Defendant neither confesses any liability nor admits the appropriate amount of damages if found liable for any part of Plaintiff’s claims. Defendant is only stating what the stakes of the litigation could be.

- *Bass v. Carmax Auto Superstores, Inc.*, No. 07-0883-CV-W-ODS, 2008 WL 441962, at *2 (W.D. Mo. Feb. 14, 2008) (noting that if class members had total actual damages of \$658,431, the “total of punitive damages and attorney fees could easily (and legally) be sufficient to bring the total amount in controversy over the [\$5 million] jurisdictional requirement”) (cited with approval by *Harrington Enter., Inc. v. Safety-Kleen Sys., Inc.* 42 F.Supp.3d 1197, 1200 (W.D. Mo. 2013)).

35. The FAC also seeks damages incurred as a result of Defendant’s alleged breach of contracts. FAC, ¶ 63 (and subsequent “Wherefore” clause).

36. The FAC also seeks an award for “Plaintiff and class members” including a “refund of the money they paid to Defendant,” *See* FAC, p. 13 (“Wherefore” Paragraph at conclusion of Count III, “Unjust Enrichment”).

37. The FAC also seeks an award for Plaintiff and class members including “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.” FAC, p. 13 (“Wherefore” Paragraph at conclusion of Count IV, “Money Had and Received”).

38. The FAC was filed on January 29, 2019.

39. During the five (5) year period prior to the filing of the FAC, January 29, 2014 through January 29, 2019, Defendant sold customers in excess of \$5 million in car washes. *See Exhibit B*, ¶ 22 (R. Barks Declaration).

40. Plaintiff previously filed a Class Action Petition (the original petition) in the same action on September 26, 2018.

41. During the five (5) year period prior to the filing of the Class Action Petition, September 26, 2013 through September 26, 2018, Defendant sold customers in excess of \$5 million in car washes. *See Exhibit B*, ¶ 24 (R. Barks Declaration).

42. Addressing the amount-in-controversy requirement, the Supreme Court recently clarified that “a defendant’s notice of removal need include only a plausible allegation” that the jurisdictional requirements are met. *Dart Cherokee Basin Operating Co., LLC v. Owens*, — U.S. —, 135 S.Ct. 547, 554, (2014); *see also Pudlowski v. The St. Louis Rams, LLC*, 829 F.3d 963, 964 (8th Cir. 2016).

43. Plaintiff’s claimed damages therefore plainly exceed \$5,000,000, satisfying the jurisdictional minimum for CAFA removal.

44. And when potential punitive damages and attorneys’ fees are added to the equation, the claimed amount in controversy further exceeds \$5,000,000, satisfying the jurisdictional minimum for CAFA removal.

E. Minimal Diversity Exists Between the Parties.

45. At the time this lawsuit was filed and as of the date of this Notice of Removal, minimal diversity exists.

46. Plaintiff alleges that he is a citizen of Missouri. FAC, ¶ 1.

47. But the putative Plaintiff class also includes natural persons with non-Missouri citizenship. *See Exhibit B*, ¶¶ 13-14, and attachments A, B, and C thereto (R. Barks Declaration with attached Declarations of B. Ramos, C. Glaser, and K. Gool.).

48. Plaintiff’s class definition also creates diversity, and therefore supports CAFA removal, for several reasons.

49. First, customers of Defendant are citizens of states other than Missouri. *See, supra*, ¶ 44. *See Exhibit B*, ¶¶ 13-14, and attachments A, B, and C thereto (R. Barks Declaration with attached Declarations of B. Ramos, C. Glaser, and K. Gool.).

50. Defendant is a Missouri limited liability company with its principle place of business in Missouri, and its sole member is a resident and citizen of the state of Missouri, *see Exhibit D; Exhibit B*, ¶¶ 5-7 (R. Barks Declaration), therefore establishing diversity for purposes of 28 U.S.C. § 1332(d). While other federal diversity rules (including those applicable to removal based on § 1332(a)) measure the citizenship of unincorporated associations - such as limited liability companies and partnerships - by reference to the citizenship of their members, CAFA departs from that rule. A limited liability company, such as Defendant, is properly considered “an unincorporated association” within the meaning of 28 U.S.C. § 1332(d)(10), and thus is “deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.” 28 U.S.C. § 1332(d)(10); *see Ferrell v. Express Check Advance of SC LLC*, 591 F.3d 698, 700 (4th Cir.2010).

51. Unlike § 1332(a), which requires "complete diversity," *see Strawbridge v. Curtiss*, 7 U.S. 267, 267 (1806), § 1332(d) provides that removal is appropriate where "any member of [the] class of plaintiffs is a citizen of a State different from any defendant[.]"

52. Further, a “class action may be removed to a district court of the United States in accordance with section 1446 (except that the 1-year limitation under section 1446(c)(1) shall not apply), **without regard to whether any defendant is a citizen of the State in which the action is brought**, except that such action may be removed by any defendant without the consent of all defendants.” 28 U.S.C. § 1453(b) (emphasis added).

53. As a result, for purposes of 18 U.S.C. § 1332(d)) there is "minimum diversity" sufficient for CAFA removal.

54. Further, without waiving any defenses, and expressly reserving same, Defendant states that Tri-State Truck Center, Inc. is customer of Defendant. *See Exhibit B*, ¶ 15. Tri-State Truck Center, Inc. is a Tennessee Corporation with its principle place of business in Tennessee. *See Exhibit E*, Foreign Corporation Registration with the Missouri Secretary of State. As such, Tri-State Truck Center, Inc. is diverse from Defendant, the named Plaintiff, and is diverse from each of the natural person customers identified in the attachments to **Exhibit B**.

Foreign Plaintiffs Create Diversity Sufficient for CAFA Removal.

55. Second, Plaintiff does not define his class by reference to the Missouri citizenship. Instead, Plaintiff seeks to represent “all **customers** of Defendant . . .” *See* FAC, ¶ 28, 29.

56. Because the putative class is not limited to citizens of Missouri, the class as alleged is defined to include numerous non-citizen residents, including not only the declarants cited in Attachments A through C of the R. Barks Declaration, but also members of the military, students from other states, and resident foreign nationals, all of whom retain their former citizenship unless manifesting an intent to remain in Missouri indefinitely. *See McMorris v. TJX Cos.*, 493 F. Supp. 2d 158, 164-65 (D. Mass. 2007) (noting a "reasonable probability" that a class of Massachusetts residents had at least one non-citizen); Wright & Miller, 13E Fed. Prac. & Proc. Juris. §§ 3617; 3619 (3d ed.) (“Service personnel are presumed not to acquire a new domicile when they are stationed in a place pursuant to orders; they retain the domicile they had at the time of entry into the service.”) (“Out-of-state students generally have been viewed as

temporary residents who are located in the state where their school is located only for the duration and for the purpose of their studies.”).

57. Each such non-citizen Missouri resident is a citizen of another state (or foreign country) and each therefore is of diverse citizenship as compared to Defendant.

58. Each such non-citizen Missouri resident is a citizen of another state (or foreign country) and each therefore is also of diverse citizenship as compared to the named Plaintiff Dale E. Craggs. *See* FAC, ¶ 1.

59. For example, Joplin, Missouri is the home of Missouri Southern University. Any student which got her or his car washed at an In & Out Car Wash in Joplin, Missouri, and who was not a Missouri citizen prior to entering school, would be presumed to be domiciled elsewhere. The In & Out Car Wash in Springfield, Missouri is similarly situated near major universities, including Missouri State, which have significant populations of students who are not citizens of Missouri.⁴

60. **Third**, Plaintiffs' class purports to include “all customers,” including customers that are former residents who have moved to other states (and whom have established foreign citizenship). Plaintiffs’ allegations are not limited to citizens of Missouri.

61. In particular, Plaintiff seeks to represent a class of all customers going back “**5 years** from the filing of this petition” irrespective of the customer’s citizenship at the time of the purchase, or now. FAC, ¶¶ 28, 29 (emphasis added). *See Altimore v. Mount Mercy Coll.*, 420

⁴ Springfield is home to Missouri State University, Drury University, Evangel University, and Ozarks Technical College. For Missouri State University alone, in 2017 there were 1,296 students which were from 81 different foreign countries, and 2,482 students from 49 states as well as the territories of Puerto Rico, Military-Pacific, the Trust Territories and the Virgin Island. *See* Bear Stats, fall 2017, *available at* <https://www.missouristate.edu/assets/oir/BearStats2017web.pdf> (last accessed February 21, 2019).

F.3d 763, 768 (8th Cir. 2005) ("Whether diversity of citizenship exists is determined at the time the suit is filed-not when the cause of action arose.").

F. Plaintiffs Have The Burden of Proving a CAFA Exception.

62. Because Defendant has demonstrated that the requirements of 28 U.S.C. § 1332(d), have been met, removal is appropriate. Plaintiffs now have the burden of demonstrating that a CAFA exception applies in the event they seek remand of this action to the state court. *See Westerfeld v. Indep. Processing, LLC*, 621F.3d819, 822 (8th Cir. 2010) ("Once CAFA's initial jurisdictional requirements have been established by the party seeking removal, however, the burden shifts to the party seeking remand to establish that one of CAFA's express jurisdictional exceptions applies."); *accord Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1024 (9th Cir. 2007) ("Consistent with the plain language of the statute and this well-established rule, we conclude that although the removing party bears the initial burden of establishing federal jurisdiction under § 1332(d)(2), once federal jurisdiction has been established under that provision, the objecting party bears the burden of proof as to the applicability of any express statutory exception under §§ 1332(d)(4)(A) and (B).").

G. Further Compliance

63. Copies of all documents received by Defendant in the State Court Action are being filed with this Notice of Removal.

64. This Notice of Removal is filed within 30 days of the service on Defendant of the pleadings setting forth the claim for relief upon which the State Court Action is based.

65. Defendant will promptly provide written notice of the removal of the State Court Action to Plaintiff, through her attorneys of record and to the Circuit Court for Green County, Missouri.

66. Defendant reserves the right to amend or supplement this Notice of Removal.

CONCLUSION

For all the foregoing reasons, Defendant respectfully requests that the Court exercise jurisdiction over this action, as mandated by 28 U.S.C. §§ 1332(d), 1441(a), and 1453.

Defendant intends and makes no admission of liability by this Notice and/or exhibits hereto and expressly reserves all defenses, motions, and pleas, including without limitation objections to the sufficiency of Plaintiffs' pleadings and to the propriety of class certification, whether by rule, statute, or any other basis.

WHEREFORE, Defendant gives notice of the removal of this action from the Circuit Court for Greene County, Missouri, to the United States District Court for the Western District of Missouri.

DATED: February 21, 2019

Respectfully submitted,

By: /s/ Christopher F. Weiss

Christopher F. Weiss, #49314

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*Attorneys for Defendant Fast Lane Car Wash & Lube,
L.L.C. d/b/a In & Out Carwash*

CERTIFICATE OF SERVICE

I certify that on this 21st day of February 2019, the foregoing was filed electronically with the Clerk of the Court by using the CM/ECF system. I further certify that a true and correct copy was served upon the following counsel via U.S. mail to:

DOUGLAS, HAUN & HEIDEMANN, P.C.
Attn.: Craig R. Heindemann
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Nathan A. Duncan
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Bolivar, MO 65613

Attorney for Plaintiffs

By: /s/ Christopher F. Weiss
Christopher F. Weiss, #49314

EXHIBIT A



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1831-CC01295 - DALE E CRAGGS V FAST LANE CAR WASH AND LUBE LLC (E-CASE)

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- 01/29/2019** **Entry of Appearance Filed**
 Entry of Appearance by Atty Nathan A Duncan on behalf of Plt; Electronic Filing Certificate of Service./ba
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- Entry of Appearance Filed**
 Entry of Appearance by Atty Nickolas W Allen on behalf of Plt; Electronic Filing Certificate of Service./ba
Filed By: NICKOLAS WILLIAM ALLEN
- Amended Motion/Petition Filed**
 Plts First Amended Class Action Petition./ba
On Behalf Of: DALE E CRAGGS
- Judge/Clerk - Note**
 CASE RECEIVED. JRB/jlf
- 01/28/2019** **Judge Assigned**
 Case assigned to Division 3. Sent to Court 1/28/19 at 4:30 pm. /kj
- 01/24/2019** **Order for Change of Judge**
 Plaintiff's Motion for Change of Judge is granted. Judge Cordonnier disqualifies. Case to be reassigned. MJC/bss
- 01/23/2019** **Alias Summons Issued**
 Document ID: 19-SMCC-138, for FAST LANE CAR WASH & LUBE, LLC. Alias Summons saved and attached in PDF format for Attorney to retrieve from secure case.net./cb
- Request for Alias Summons**
 Plts Request for Alias Summons./cb
Filed By: CRAIG RICHARD HEIDEMANN
On Behalf Of: DALE E CRAGGS
- 01/17/2019** **Order - Special Process Server**
 Order Appointing Special Process Server Signed and Filed./cb
- Summons Returned Non-Est**
 Document ID - 19-SMCC-11; Served To - FAST LANE CAR WASH & LUBE, LLC; Server - GREENE COUNTY SHERIFF; Served Date - 16-JAN-19; Served Time - 00:00:00; Service Type - Sheriff Department; Reason Description - Non-est; Service Text - Non Est Recall by petitioner attorney.
- 01/16/2019** **Proposed Order Filed**
 Plts Proposed Order Appointing Special Process Server./cb
- Notice of Hearing Filed**
 Plts Notice of Hearing as to its Motion for Change of Judge. Set for 1-24-19 at 9:00 AM./cb
Filed By: CRAIG RICHARD HEIDEMANN
On Behalf Of: DALE E CRAGGS
- Motion for Change of Judge**
 Plts Motion for Change of Judge./cb
Filed By: CRAIG RICHARD HEIDEMANN

Motion Special Process Server

Plts Request for Appointment of Special Process Server./cb

Filed By: CRAIG RICHARD HEIDEMANN**01/03/2019****Alias Summons Issued**

Document ID: 19-SMCC-11, for FAST LANE CAR WASH & LUBE, LLC. Summons saved and attached in PDF format for Attorney to retrieve from secure case.net./cb

01/02/2019**Request for Alias Summons**

Plts Request for Alias Summons./cb

Filed By: CRAIG RICHARD HEIDEMANN**On Behalf Of:** DALE E CRAGGS**09/27/2018****Summons Issued-Circuit**

Document ID: 18-SMCC-2343, for FAST LANE CAR WASH & LUBE, LLC. Summons saved and attached in PDF format for Attorney to retrieve from secure case.net./KC

09/26/2018**Filing Info Sheet eFiling****Filed By:** CRAIG RICHARD HEIDEMANN**Pet Filed in Circuit Ct**

Class Action Petition.

On Behalf Of: DALE E CRAGGS**Judge Assigned**

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI

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

Plaintiff,

vs.

Case No.

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

Serve:

Mark L McQueary
1949 E Sunshine, Ste 1-130
Springfield, MO 65804

Defendant.

CLASS ACTION PETITION

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 at least three automated car washes at the following locations:
 - a. 2233 N. Glenstone Ave., Springfield, MO;
 - b. 3040 E. 7th St., Joplin, MO; and
 - c. 1001 E. 32nd St., Joplin, MO.

4. A substantial portion of 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 automated car washes and advertises its car wash services at its physical locations as well as online at its website.¹

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

8. Defendant advertises online and at its physical locations that it offers a "Full wash" and provides its customers the option to select from the following single-use packages:

- a. \$3 "Light Wash & Dry" package³;
- 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

¹ <https://inoutwash.com/>

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).

³ This is the price of the "Light Wash & Dry" package at the Springfield location; this single-use package costs \$5 in Joplin.

⁴ <https://inoutwash.com/locations/springfield/services/>; <https://inoutwash.com/locations/joplin/car-wash-services/>

9. 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”.

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

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

12. The other packages provide additional products and services to provide its promised “full wash”.

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

14. 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.

15. The mitters are essentially strips of cloth on a motorized, overhead unit which move back and forth over the vehicle as it passes below. When the mitters are not operational, the top of the vehicle will not be cleaned, and the cleaning services purchased are not provided—this simply is not a “full wash”.

16. On or about August 29, 2018, Plaintiff purchased a single-use “Ultimate” car wash for \$15.00, expecting to receive a “full wash” as promised by Defendant.

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

18. 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.

19. 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.

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

21. On information and belief, components of Defendant’s carwashes 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”.

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

23. 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”.

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

CLASS ACTION ALLEGATIONS

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

26. The class of similarly situated individuals which Plaintiff seeks to represent is all customers of Defendant who, within the last 5 years from the filing of this petition:

- a. Purchased a car wash package for consumer or household purposes from Defendant during a time that component(s) of Defendant's carwash normally used to complete the car wash were not functioning;
- b. Who were not warned that component(s) of Defendant's carwash were not functioning; and
- c. Who did not receive a full car wash.
- d. The class shall not include any officers, directors, attorneys, agents or employees of Defendant.

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

- a. 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.
- b. 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.

- c. 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.
- d. Here, plaintiff seeks money damages and attorney's fees against Defendant.
- e. 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 carwashes;
 - iii. Whether Defendant engaged in a uniform course of dealing with class members wherein they either made false or misleading statements concerning the carwash 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 entered into legally binding contracts with its customers arising out of the sale of its single-use and/or unlimited monthly car wash packages;

- vi. Whether Defendant breached contracts entered into with its customers arising out of the sale of its single-use and/or unlimited monthly car wash packages;
- vii. 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;
- viii. Whether Defendant violated the Missouri Merchandising Practices Act;
- ix. The nature and extent of Plaintiff and class members' actual damages;
- x. Whether Plaintiff and the class are entitled to recover their attorney's fees and costs;
- xi. The nature and extent of all statutory penalties and remedies for which Defendant is liable to Plaintiff and class members; and
- xii. Whether punitive damages are appropriate.

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

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. Certification of a class under Mo. Rule 52.08(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.

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

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

38. 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.

39. 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.

40. Alternatively, certification of class under Rule 52.08(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.

41. Alternatively, certification of a class under Rule 52.08 is also appropriate because Defendants have and continue to (a) represent that its carwashes provide a full wash even though components of its carwashes regularly are not operational or fully functioning resulting in less than a full wash; and (b) fail to warn its customers that its carwashes are not fully functional before taking customers' money; and (c) breach contracts; and (d) 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 I – VIOLATION OF THE MISSOURI MERCHANDISING PRACTICES ACT

42. Plaintiff incorporates the preceding interrogatory as if set out fully herein.

43. 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.

44. 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.

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

46. Defendant represented that its carwashes provided a “full wash”.

47. Defendant knew that components of its carwashes 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 and class members to take their vehicles through the malfunctioning carwashes.

48. Plaintiff and class members did not receive the car washes for which they paid.

49. Defendant’s conduct of representing that its carwashes provided a “full wash” and of failing to warn Plaintiff and class members that its carwashes were not fully functioning 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.

50. 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.

51. 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.

52. 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.

53. 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 her attorney's fees, for her costs incurred herein and for such other relief as the Court deems just and proper.

COUNT II – BREACH OF CONTRACT

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

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

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

57. As a direct and proximate result, Plaintiff and others similarly situated were damaged.

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 III – UNJUST ENRICHMENT

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

59. Plaintiff and class members conferred a benefit on Defendant by purchasing car wash packages from Defendant.

60. 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.

61. 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.

62. 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 IV – MONEY HAD AND RECEIVED

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

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

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

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

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

68. 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.

69. 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.

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

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



IN THE 31ST JUDICIAL CIRCUIT, GREENE COUNTY, MISSOURI

Judge or Division: MICHAEL J CORDONNIER
Case Number: 1831-CC01295
Plaintiff/Petitioner: DALE E CRAGGS
DBA: IN AND OUT CARWASH
Defendant/Respondent: FAST LANE CAR WASH & LUBE, LLC
Nature of Suit: CC Other Miscellaneous Actions

Summons in Civil Case

The State of Missouri to: FAST LANE CAR WASH & LUBE, LLC
Alias:
SERVE: MARK L MCQUEARY
1949 E. SUNSHINE
SUITE 1-130
SPRINGFIELD, MO 65804
COURT SEAL OF GREENE COUNTY
You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service.
Date: 09-27-2018
Clerk: /s/ Thomas R Barr By K.Clark

Sheriff's or Server's Return
Note to serving officer: Summons should be returned to the court within 30 days after the date of issue.
I certify that I have served the above summons by: (check one)
[] delivering a copy of the summons and a copy of the petition to the defendant/respondent.
[] leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the defendant/respondent with a person of the defendant's/respondent's family over the age of 15 years who permanently resides with the defendant/respondent.
[] (for service on a corporation) delivering a copy of the summons and a copy of the complaint to:
[] other:
Served at (address)
in (County/City of St. Louis), MO, on (date) at (time).
Printed Name of Sheriff or Server
Signature of Sheriff or Server
Must be sworn before a notary public if not served by an authorized officer:
Subscribed and sworn to before me on (date).
My commission expires: Date Notary Public

Sheriff's Fees, if applicable
Summons \$
Non Est \$
Sheriff's Deputy Salary
Supplemental Surcharge \$ 10.00
Mileage \$ (miles @ \$ per mile)
Total \$
A copy of the summons and a copy of the petition must be served on each defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.



DOUGLAS
HAUN
HEIDEMANN, P.C.

January 2, 2019

Greene Co. Circuit Clerk
1010 N. Booneville
Springfield, MO

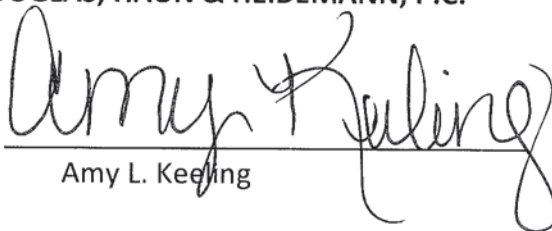
RE: Class Action Against In and Out (\$3) Car Wash
DHH No. 26078-001
DHH Client: Dale E. Craggs

Dear Clerk:

Please issue alias summons for all defendants at your earliest convenience. Thank you for your assistance with this matter.

Yours truly,

DOUGLAS, HAUN & HEIDEMANN, P.C.

By 
Amy L. Keeling

ALK

417.887.4949 
417.887.8618 

901 East St. Louis Street
Suite 1200
Springfield, MO 65806



IN THE 31ST JUDICIAL CIRCUIT, GREENE COUNTY, MISSOURI

Table with case details: Judge or Division (MICHAEL J CORDONNIER), Case Number (1831-CC01295), Plaintiff/Petitioner (DALE E CRAGGS), Defendant/Respondent (FAST LANE CAR WASH & LUBE, LLC), Nature of Suit (CC Other Miscellaneous Actions), and Court Address (JUDICIAL COURTS FACILITY, 1010 N BOONVILLE AVE, SPRINGFIELD, MO 65802).

Alias Summons in Civil Case

The State of Missouri to: FAST LANE CAR WASH & LUBE, LLC
Alias:
1949 E. SUNSHINE
SUITE 1-130
SPRINGFIELD, MO 65804
COURT SEAL OF GREENE COUNTY
You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.
01/03/2019 Date /S/ THOMAS R BARR BY CB Clerk

Sheriff's or Server's Return
Note to serving officer: Summons should be returned to the court within 30 days after the date of issue.
I certify that I have served the above summons by: (check one)
[] delivering a copy of the summons and a copy of the petition to the defendant/respondent.
[] leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the defendant/respondent with _____, a person of the defendant's/respondent's family over the age of 15 years who permanently resides with the defendant/respondent.
[] (for service on a corporation) delivering a copy of the summons and a copy of the complaint to: _____ (name) _____ (title).
[] other: _____
Served at _____ (address)
in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).
Printed Name of Sheriff or Server Signature of Sheriff or Server
Must be sworn before a notary public if not served by an authorized officer:
Subscribed and sworn to before me on _____ (date).
My commission expires: _____ Date Notary Public

Sheriff's Fees, if applicable
Summons \$ _____
Non Est \$ _____
Sheriff's Deputy Salary
Supplemental Surcharge \$ 10.00
Mileage \$ _____ (_____ miles @ \$ _____ per mile)
Total \$ _____
A copy of the summons and a copy of the petition must be served on each defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI

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

Plaintiff,

vs.

Case No. 1831-CC01295

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

Serve:

Mark L McQueary
1949 E Sunshine, Ste 1-130
Springfield, MO 65804

Defendant.

APPLICATION FOR SPECIAL PROCESS SERVER

COMES NOW Plaintiff and requests, pursuant to Rule 54.13 (a) (1) of the Missouri Rules of Civil Procedure, that John Birmingham of Springfield, Missouri be appointed by the Court to serve process in the above-captioned cause. The ground for said request is: the inability of the Greene County Sheriff's Office to serve process within the timeframe needed.

WHEREFORE, Plaintiff prays that the said John Birmingham of Springfield, Missouri be appointed as Special Process Server in the above-captioned case.

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

/s/ Craig R. Heidemann
By _____
Craig R. Heidemann
Missouri Bar No. 42778
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2019, I electronically filed the foregoing with the Clerk of the Court using the Court's electronic filing system which sent notification and an electronic copy of such filing to all registered parties.

DOUGLAS, HAUN & HEIDEMANN, P.C.

By /s/ Craig R. Heidemann

DHH No. 26078-001

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI

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

Plaintiff,

vs.

Case No. 1831-CC01295

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

Serve:

Mark L McQueary
1949 E Sunshine, Ste 1-130
Springfield, MO 65804

Defendant.

MOTION FOR CHANGE OF JUDGE

COMES NOW Plaintiff, pursuant to Rule 55.05, and makes application to move the court for Change of Judge in the above-styled case.

WHEREFORE, Plaintiff prays that the Court grant a change of judge in the above-captioned case.

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

/s/ Craig R. Heidemann

By _____

Craig R. Heidemann
Missouri Bar No. 42778
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2019, I electronically filed the foregoing with the Clerk of the Court using the Court's electronic filing system which sent notification and an electronic copy of such filing to all registered parties.

DOUGLAS, HAUN & HEIDEMANN, P.C.

By /s/ Craig R. Heidemann

DHH No. 26078-001

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI

DALE E. CRAGGS,

Plaintiff,

Case No. 1831-CC1295

vs

FAST LANE CAR WASH & LUBE, LLC,

Defendant.

NOTICE OF HEARING

TAKE NOTICE that Plaintiff will call up for hearing his **Motion for Change of Judge** in the Circuit Court of Greene County, Missouri, on January 24, 2019 at 9:00 AM, or as soon thereafter as counsel may be heard.

DOUGLAS, HAUN & HEIDEMANN, P.C.

111 West Broadway, P. O. Box 117

Bolivar, Missouri 65613-0117

Telephone: (417) 326-5261

craig@dhhlawfirm.com

/s/ Craig R. Heidemann

By _____

Craig R. Heidemann

Missouri Bar No. 42778

Attorney for Plaintiff

**IN THE CIRCUIT COURT OF GREENE COUNTY
STATE OF MISSOURI**

DALE E. CRAGGS,

Plaintiff,

vs.

Case No. 1831-CC01295

FAST LANE CAR WASH & LUBE, LLC,

Defendant

**ORDER GRANTING APPOINTMENT OF
SPECIAL PROCESS SERVER**

NOW ON THIS ____ day of January 2019, this cause coming on to be heard, upon the Application of the Plaintiff pursuant to Rule 54.13 (a) (1) of the Missouri Rules of Civil Procedure, for appointment of John Birmingham of Springfield, Missouri to serve process in the above-captioned cause and the Court being fully advised in the premises hereby appoints said John Birmingham of Springfield, Missouri as Special Process Server in the above-captioned case.

DHH No. 26078-001



IN THE 31ST JUDICIAL CIRCUIT, GREENE COUNTY, MISSOURI

FILED 43

| | | |
|---|---|--|
| Judge or Division: MICHAEL J CORDONNIER | Case Number: 1831-CC01295 | JAN 17 2019 CIRCUIT CLERK GREENE COUNTY Greene County Sho... |
| Plaintiff/Petitioner: DALE E CRAGGS DBA: IN AND OUT CARWASH | Plaintiff's/Petitioner's Attorney/Address CRAIG RICHARD HEIDEMANN P O BOX 117 111 WEST BROADWAY BOLIVAR, MO 65613 | |
| Defendant/Respondent: FAST LANE CAR WASH & LUBE, LLC | Court Address: JUDICIAL COURTS FACILITY 1010 N BOONVILLE AVE SPRINGFIELD, MO 65802 | JAN 15 2019 REC... CIVIL (Date File Stamp) |
| Nature of Suit: CC Other Miscellaneous Actions | | |

Alias Summons in Civil Case

The State of Missouri to: **FAST LANE CAR WASH & LUBE, LLC**
 Alias: **MARK McQUEARY**
 1949 E. SUNSHINE SUITE 1-130 SPRINGFIELD, MO 65804
 COURT SEAL OF GREENE COUNTY

MAKING DILIGENT SEARCH FOR AND CALLING TO FIND THE WITHIN NAME DEFENDANT **Recall FAST LANE CAR WASH LLC**

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

01/03/2019 Date /S/ THOMAS R BARR BY CB Clerk

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within 30 days after the date of issue.

I certify that I have served the above summons by: (check one)

delivering a copy of the summons and a copy of the petition to the defendant/respondent.

leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the defendant/respondent with _____, a person of the defendant's/respondent's family over the age of 15 years who permanently resides with the defendant/respondent.

(for service on a corporation) delivering a copy of the summons and a copy of the complaint to: **NON EST** (name) _____ (title).

other: **RECALL BY PETITIONER ATTORNEY**

Served at _____ (address)
 in **Greene** (County/City of St. Louis), MO, on **1/16/19** (date) at **1700** (time).

Arvid R. Malloy 43 Printed Name of Sheriff or Server **Dep. R. Malloy** Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:
 Subscribed and sworn to before me on _____ (date).
 My commission expires: _____ Date _____ Notary Public _____

Sheriff's Fees, if applicable

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary Supplemental Surcharge \$ 10.00

Mileage \$ _____ (_____ miles @ \$ _____ per mile)

Total \$ _____

A copy of the summons and a copy of the petition must be served on each defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.



901 E St Louis Street, Suite 1200
Springfield, MO 65806

**DOUGLAS
HAUN
HEIDEMANN PC**

ADDRESS SERVICE REQUESTED




Douglas, Haun & Heidemann, P.C.
901 E St. Louis St.
Suite 1200
Springfield, MO 65806



IN THE 31ST JUDICIAL CIRCUIT, GREENE COUNTY, MISSOURI

| | |
|---|---|
| Judge or Division: MICHAEL J CORDONNIER | Case Number: 1831-CC01295 |
| Plaintiff/Petitioner: DALE E CRAGGS DBA: IN AND OUT CARWASH | Plaintiff's/Petitioner's Attorney/Address CRAIG RICHARD HEIDEMANN P O BOX 117 111 WEST BROADWAY BOLIVAR, MO 65613 |
| Defendant/Respondent: FAST LANE CAR WASH & LUBE, LLC | Court Address: JUDICIAL COURTS FACILITY 1010 N BOONVILLE AVE SPRINGFIELD, MO 65802 |
| Nature of Suit: CC Other Miscellaneous Actions | (Date File Stamp) |

Alias Summons in Civil Case

| | |
|--|---|
| <p>The State of Missouri to: FAST LANE CAR WASH & LUBE, LLC Alias:</p> <p>1949 E. SUNSHINE SUITE 1-130 SPRINGFIELD, MO 65804 COURT SEAL OF</p>  <p>GREENE COUNTY</p> | <p>You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.</p> <p>01/03/2019 Date</p> <p>/S/ THOMAS R BARR BY CB Clerk</p> |
| Further Information: | |

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within 30 days after the date of issue.

I certify that I have served the above summons by: (check one)

delivering a copy of the summons and a copy of the petition to the defendant/respondent.

leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the defendant/respondent with _____, a person of the defendant's/respondent's family over the age of 15 years who permanently resides with the defendant/respondent.

(for service on a corporation) delivering a copy of the summons and a copy of the complaint to: _____ (name) _____ (title).

other: _____

Served at _____ (address)
in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server _____ Signature of Sheriff or Server _____

Must be sworn before a notary public if not served by an authorized officer:

(Seal) Subscribed and sworn to before me on _____ (date).

My commission expires: _____ Date _____ Notary Public _____

| | |
|--|---|
| Sheriff's Fees, if applicable | |
| Summons | \$ _____ |
| Non Est | \$ _____ |
| Sheriff's Deputy Salary | |
| Supplemental Surcharge | \$ 10.00 |
| Mileage | \$ _____ (_____ miles @ \$ _____ per mile) |
| Total | \$ _____ |
| A copy of the summons and a copy of the petition must be served on each defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54. | |

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI

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

Plaintiff,

vs.

Case No.

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

Serve:

Mark L McQueary
1949 E Sunshine, Ste 1-130
Springfield, MO 65804

Defendant.

CLASS ACTION PETITION

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 at least three automated car washes at the following locations:
 - a. 2233 N. Glenstone Ave., Springfield, MO;
 - b. 3040 E. 7th St., Joplin, MO; and
 - c. 1001 E. 32nd St., Joplin, MO.

4. A substantial portion of 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 automated car washes and advertises its car wash services at its physical locations as well as online at its website.¹

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

8. Defendant advertises online and at its physical locations that it offers a "Full wash" and provides its customers the option to select from the following single-use packages:

- a. \$3 "Light Wash & Dry" package³;
- 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

¹ <https://inoutwash.com/>

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).

³ This is the price of the "Light Wash & Dry" package at the Springfield location; this single-use package costs \$5 in Joplin.

⁴ <https://inoutwash.com/locations/springfield/services/>; <https://inoutwash.com/locations/joplin/car-wash-services/>

9. 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”.

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

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

12. The other packages provide additional products and services to provide its promised “full wash”.

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

14. 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.

15. The mitters are essentially strips of cloth on a motorized, overhead unit which move back and forth over the vehicle as it passes below. When the mitters are not operational, the top of the vehicle will not be cleaned, and the cleaning services purchased are not provided—this simply is not a “full wash”.

16. On or about August 29, 2018, Plaintiff purchased a single-use “Ultimate” car wash for \$15.00, expecting to receive a “full wash” as promised by Defendant.

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

18. 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.

19. 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.

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

21. On information and belief, components of Defendant’s carwashes 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”.

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

23. 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”.

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

CLASS ACTION ALLEGATIONS

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

26. The class of similarly situated individuals which Plaintiff seeks to represent is all customers of Defendant who, within the last 5 years from the filing of this petition:

- a. Purchased a car wash package for consumer or household purposes from Defendant during a time that component(s) of Defendant's carwash normally used to complete the car wash were not functioning;
- b. Who were not warned that component(s) of Defendant's carwash were not functioning; and
- c. Who did not receive a full car wash.
- d. The class shall not include any officers, directors, attorneys, agents or employees of Defendant.

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

- a. 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.
- b. 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.

- c. 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.
- d. Here, plaintiff seeks money damages and attorney's fees against Defendant.
- e. 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 carwashes;
 - iii. Whether Defendant engaged in a uniform course of dealing with class members wherein they either made false or misleading statements concerning the carwash 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 entered into legally binding contracts with its customers arising out of the sale of its single-use and/or unlimited monthly car wash packages;

- vi. Whether Defendant breached contracts entered into with its customers arising out of the sale of its single-use and/or unlimited monthly car wash packages;
- vii. 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;
- viii. Whether Defendant violated the Missouri Merchandising Practices Act;
- ix. The nature and extent of Plaintiff and class members' actual damages;
- x. Whether Plaintiff and the class are entitled to recover their attorney's fees and costs;
- xi. The nature and extent of all statutory penalties and remedies for which Defendant is liable to Plaintiff and class members; and
- xii. Whether punitive damages are appropriate.

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

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. Certification of a class under Mo. Rule 52.08(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.

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

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

38. 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.

39. 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.

40. Alternatively, certification of class under Rule 52.08(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.

41. Alternatively, certification of a class under Rule 52.08 is also appropriate because Defendants have and continue to (a) represent that its carwashes provide a full wash even though components of its carwashes regularly are not operational or fully functioning resulting in less than a full wash; and (b) fail to warn its customers that its carwashes are not fully functional before taking customers' money; and (c) breach contracts; and (d) 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 I – VIOLATION OF THE MISSOURI MERCHANDISING PRACTICES ACT

42. Plaintiff incorporates the preceding interrogatory as if set out fully herein.

43. 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.

44. 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.

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

46. Defendant represented that its carwashes provided a “full wash”.

47. Defendant knew that components of its carwashes 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 and class members to take their vehicles through the malfunctioning carwashes.

48. Plaintiff and class members did not receive the car washes for which they paid.

49. Defendant’s conduct of representing that its carwashes provided a “full wash” and of failing to warn Plaintiff and class members that its carwashes were not fully functioning 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.

50. 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.

51. 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.

52. 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.

53. 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 her attorney's fees, for her costs incurred herein and for such other relief as the Court deems just and proper.

COUNT II – BREACH OF CONTRACT

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

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

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

57. As a direct and proximate result, Plaintiff and others similarly situated were damaged.

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 III – UNJUST ENRICHMENT

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

59. Plaintiff and class members conferred a benefit on Defendant by purchasing car wash packages from Defendant.

60. 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.

61. 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.

62. 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 IV – MONEY HAD AND RECEIVED

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

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

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

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

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

68. 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.

69. 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.

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

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

**IN THE CIRCUIT COURT OF GREENE COUNTY
STATE OF MISSOURI**

DALE E. CRAGGS,

Plaintiff,

vs.

Case No. 1831-CC01295

FAST LANE CAR WASH & LUBE, LLC,

Defendant

**ORDER GRANTING APPOINTMENT OF
SPECIAL PROCESS SERVER**

NOW ON THIS 17 day of January 2019, this cause coming on to be heard, upon the Application of the Plaintiff pursuant to Rule 54.13 (a) (1) of the Missouri Rules of Civil Procedure, for appointment of John Birmingham of Springfield, Missouri to serve process in the above-captioned cause and the Court being fully advised in the premises hereby appoints said John Birmingham of Springfield, Missouri as Special Process Server in the above-captioned case.

/S/ THOMAS R BARR BY CB

CIRCUIT CLERK

DHH No. 26078-001



DOUGLAS
HAUN
HEIDEMANN P.C.

January 22, 2019

Greene Co. Circuit Clerk
1010 N. Booneville
Springfield, MO

RE: Class Action Against In and Out (\$3) Car Wash
DHH No. 26078-001
DHH Client: Dale E. Craggs

Dear Clerk:

Please issue an alias summons for Defendant Fast Lane Car Wash & Lube, LLC via their Registered Agent, Mark McQueary, at 1949 E. Sunshine, Suite 1-130, Springfield, MO 65804.


Thank you for your prompt assistance with this matter.

Yours truly,

DOUGLAS, HAUN & HEIDEMANN, P.C.

By 
Amy L. Keeling

ALK

417.887.4949 
417.887.8618 

901 East St. Louis Street
Suite 1200
Springfield, MO 65806

DHHLAWFIRM.COM



IN THE 31ST JUDICIAL CIRCUIT, GREENE COUNTY, MISSOURI

Table with case details: Judge or Division (MICHAEL J CORDONNIER), Case Number (1831-CC01295), Plaintiff/Petitioner (DALE E CRAGGS), Defendant/Respondent (FAST LANE CAR WASH & LUBE, LLC), Nature of Suit (CC Other Miscellaneous Actions), and Court Address (JUDICIAL COURTS FACILITY, 1010 N BOONVILLE AVE, SPRINGFIELD, MO 65802).

Alias Summons in Civil Case

The State of Missouri to: FAST LANE CAR WASH & LUBE, LLC
Alias:
RA: MARK MCQUEARY
1949 E SUNSHINE STE 1-130
SPRINGFIELD, MO 65804
COURT SEAL OF GREENE COUNTY
You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service.
01/23/2019 Date /S/ THOMAS R BARR BY CB Clerk

Sheriff's or Server's Return
Note to serving officer: Summons should be returned to the court within 30 days after the date of issue.
I certify that I have served the above summons by: (check one)
[] delivering a copy of the summons and a copy of the petition to the defendant/respondent.
[] leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the defendant/respondent with _____, a person of the defendant's/respondent's family over the age of 15 years who permanently resides with the defendant/respondent.
[] (for service on a corporation) delivering a copy of the summons and a copy of the complaint to: _____ (name) _____ (title).
[] other: _____
Served at _____ (address)
in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).
Printed Name of Sheriff or Server Signature of Sheriff or Server
Must be sworn before a notary public if not served by an authorized officer:
Subscribed and sworn to before me on _____ (date).
My commission expires: _____ Date Notary Public

Sheriff's Fees, if applicable
Summons \$ _____
Non Est \$ _____
Sheriff's Deputy Salary
Supplemental Surcharge \$ 10.00
Mileage \$ _____ (_____ miles @ \$ _____ per mile)
Total \$ _____
A copy of the summons and a copy of the petition must be served on each defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI

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

Plaintiff,

vs.

Case No. 1831-CC01295

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

Defendant.

FIRST AMENDED CLASS ACTION PETITION

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 at least three automated car washes at the following locations:
 - a. 2233 N. Glenstone Ave., Springfield, MO;
 - b. 3040 E. 7th St., Joplin, MO; and
 - c. 1001 E. 32nd St., Joplin, MO.
4. A substantial portion of 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 automated car washes and advertises its car wash services at its physical locations as well as online at its website.¹

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

8. Defendant advertises online and at its physical locations that it offers a “Full wash” and provides its customers the option to select from the following single-use packages:

- a. \$3 “Light Wash & Dry” package³;
- 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

9. 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”;

¹ <https://inoutwash.com/>

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).

³ This is the price of the “Light Wash & Dry” package at the Springfield location; this single-use package costs \$5 in Joplin.

⁴ <https://inoutwash.com/locations/springfield/services/>; <https://inoutwash.com/locations/joplin/car-wash-services/>

- 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”.

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

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

12. The other packages provide additional products and services to provide its promised “full wash”.

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

14. 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.

15. The mitters are essentially strips of cloth on a motorized, overhead unit which move back and forth over the vehicle as it passes below. When the mitters are not operational, the top of the vehicle will not be cleaned, and the cleaning services purchased are not provided—this simply is not a “full wash”.

16. Defendant also advertises that its car wash lasts for three minutes.

17. On or about August 29, 2018, Plaintiff purchased a single-use “Ultimate” car wash for \$15.00, expecting to receive a “full wash” as promised by Defendant.

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

19. 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.

20. 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.

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

22. On information and belief, components of Defendant’s carwashes 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”.

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

24. Defendant’s car wash lasts about two minutes and 25 seconds instead of the full 3 minutes Defendant advertises.

25. 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”.

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

CLASS ACTION ALLEGATIONS

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

28. The class of similarly situated individuals which Plaintiff seeks to represent is all customers of Defendant who, within the last 5 years from the filing of this petition:

- a. Purchased a car wash package for consumer or household purposes from Defendant during a time that component(s) of Defendant's carwash normally used to complete the car wash were not functioning;
- b. Who were not warned that component(s) of Defendant's carwash were not functioning; and
- c. Who did not receive a full car wash.
- d. The class shall not include any officers, directors, attorneys, agents or employees of Defendant.

29. Plaintiff seeks to represent a second class of similarly situated individuals which is all customers of Defendant who, within the last 5 years from the filing of this petition:

- a. Purchased a car wash package for consumer or household purposes from Defendant during a time that Defendant advertised that its car washes lasted for three minutes; and
- b. Who did not receive a full three-minute car wash.
- c. The class shall not include any officers, directors, attorneys, agents or employees of Defendant.

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

- a. 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.

- b. 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.
- c. 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.
- d. Here, plaintiff seeks money damages and attorney's fees against Defendant.
- e. 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 carwashes;
 - iii. Whether Defendant engaged in a uniform course of dealing with class members wherein they either made false or misleading statements concerning the carwash 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 entered into legally binding contracts with its customers arising out of the sale of its single-use and/or unlimited monthly car wash packages;
- vi. Whether Defendant breached contracts entered into with its customers arising out of the sale of its single-use and/or unlimited monthly car wash packages;
- vii. 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;
- viii. Whether Defendant violated the Missouri Merchandising Practices Act;
- ix. The nature and extent of Plaintiff and class members' actual damages;
- x. Whether Plaintiff and the class are entitled to recover their attorney's fees and costs;
- xi. The nature and extent of all statutory penalties and remedies for which Defendant is liable to Plaintiff and class members; and
- xii. Whether punitive damages are appropriate.

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

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. Certification of a class under Mo. Rule 52.08(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.

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

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

41. 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.

42. 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.

43. Alternatively, certification of class under Rule 52.08(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.

44. Alternatively, certification of a class under Rule 52.08 is also appropriate because Defendants have and continue to (a) represent that its carwashes provide a full wash even though components of its carwashes regularly are not operational or fully functioning resulting in less than a full wash; and (b) fail to warn its customers that its carwashes are not fully functional before taking customers' money; and (c) breach contracts; and (d) 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 I – VIOLATION OF THE MISSOURI MERCHANDISING PRACTICES ACT

45. Plaintiff incorporates the preceding interrogatory as if set out fully herein.

46. 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.

47. 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.

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

49. Defendant represented that its carwashes provided a “full wash”.

50. Defendant represented that its carwashes last for three minutes.

51. Defendant knew that components of its carwashes 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 and class members to take their vehicles through the malfunctioning carwashes.

52. Defendant knew that its carwashes last only two minutes and 25 seconds instead of the advertised three minutes.

53. Plaintiff and class members did not receive the car washes for which they paid.

54. Defendant's conduct of representing that its carwashes provided a "full wash" and of failing to warn Plaintiff and class members that its carwashes were not fully functioning 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.

55. 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.

56. 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.

57. 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.

58. 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.

59. 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 her attorney's fees, for her costs incurred herein and for such other relief as the Court deems just and proper.

COUNT II – BREACH OF CONTRACT

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

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

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

63. As a direct and proximate result, Plaintiff and others similarly situated were damaged.

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 III – UNJUST ENRICHMENT

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

65. Plaintiff and class members conferred a benefit on Defendant by purchasing car wash packages from Defendant.

66. 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 and of its representation that its carwashes last for three minutes instead of the actual time of two minutes and 25 seconds.

67. 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 and/or did not last the full three minutes as advertised, which retention under these circumstances is unjust and inequitable.

68. 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 IV – MONEY HAD AND RECEIVED

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

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

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

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

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

74. 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.

75. 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.

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

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



Dale Craggs,
Plaintiff,

vs.

Fast Lane Car Wash & Lube, Llc,
Defendant.

Case Number: 1831-CC01295

Entry of Appearance

Comes now undersigned counsel and enters his/her appearance as attorney of record for Dale E Craggs, Plaintiff, in the above-styled cause.

/s/ Nickolas W. Allen
Nickolas William Allen
Mo Bar Number: 69582
Attorney for Plaintiff
901 E. St. Louis St.
Suite 1200
Springfield, MO 65806
Phone Number: (417) 422-4093
nick@dhhlawfirm.com

Certificate of Service

I hereby certify that on January 29th, 2019, a copy of the foregoing was sent through the Missouri eFiling system to the registered attorneys of record and to all others by facsimile, hand delivery, electronic mail or U.S. mail postage prepaid to their last known address.

/s/ Nickolas W. Allen
Nickolas William Allen



Dale Craggs,
Plaintiff,

vs.
Fast Lane Car Wash & Lube, LLC,
Defendant.

Case Number: 1831-CC01295

Entry of Appearance

Comes now undersigned counsel and enters his/her appearance as attorney of record for Dale E Craggs, Plaintiff, in the above-styled cause.

/s/ Nathan A. Duncan
Nathan Arvel Duncan
Mo Bar Number: 60186
Attorney for Plaintiff
111 W. Broadway
P.O. Box 117
Bolivar, MO 65613
Phone Number: (417) 326-5261
nathan@dhhlawfirm.com

Certificate of Service

I hereby certify that on January 29th, 2019, a copy of the foregoing was sent through the Missouri eFiling system to the registered attorneys of record and to all others by facsimile, hand delivery, electronic mail or U.S. mail postage prepaid to their last known address.

/s/ Nathan A. Duncan
Nathan Arvel Duncan

EXHIBIT B

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

DALE E. CRAGGS, individually and on)
behalf of a class similarly situated)
individuals,)
)
Plaintiff,)
)
v.)
)
FAST LANE CAR WASH & LUBE, L.L.C.,)
d/b/a IN & OUT CARWASH,)
)
Defendant.)

DECLARATION OF JAMES R. ("RON") BARKS

COMES NOW James R. ("Ron") Barks, upon his oath duly sworn, and deposes and states as follows:

1. My legal name is James Ronald Barks.
2. I am generally known as "Ron Barks."
3. I am over the age of eighteen years, of sound mind, and capable of testifying to the facts contained in this declaration.
4. The facts contained in this declaration are based upon my personal knowledge.
5. I am the sole member of Fast Lane Car Wash & Lube, L.L.C.
6. I reside in and am a citizen of the state of Missouri.
7. Defendant Fast Lane Care Wash & Lube, L.L.C. is a Missouri limited liability company with its principle place of business in Missouri.
8. Fast Lane Car Wash & Lube, L.L.C. does business as In & Out Carwash.
9. Fast Lane Car Wash & Lube, L.L.C. d/b/a In & Out Carwash ("In & Out Carwash") has three locations, including two in Joplin, Missouri, and one in Springfield, Missouri.

10. The First Amended Petition filed by Plaintiff Dale E. Craggs against In & Out Carwash states that Plaintiff

“seeks to represent is all customers of Defendant who, within the last 5 years from the filing of this petition:

- a. Purchased a car wash package for consumer or household purposes from Defendant during a time that component(s) of Defendant’s carwash normally used to complete the car wash were not functioning;
- b. Who were not warned that component(s) of Defendant’s carwash were not functioning; and
- c. Who did not receive a full car wash.
- d. The class shall not include any officers, directors, attorneys, agents or employees of Defendant.”

First Amended Petition, ¶ 28.

11. The First Amended Petition also states that Plaintiff

“seeks to represent a second class of similarly situated individuals which is all customers of Defendant who, within the last 5 years from the filing of this petition:

- a. Purchased a car wash package for consumer or household purposes from Defendant during a time that Defendant advertised that its car washes lasted for three minutes; and
- b. Who did not receive a full three-minute car wash.
- c. The class shall not include any officers, directors, attorneys, agents or employees of Defendant.”

First Amended Petition, ¶ 29.

12. Within the last five (5) years, In & Out Carwash has had over 1000 customers.

13. Within the last five (5) years, In & Out Carwash customers include natural persons who are not citizens of state of the Missouri.

14. The following natural persons are In & Out Carwash customers who are not citizens of state of the Missouri:

- a. Brian Ramos, a citizen of Arkansas,
- b. Cody Glaser, a citizen of Kansas, and
- c. Kent Gool, a citizen of Oklahoma.

See Attachments A, B and C, Declarations of B. Ramos, C. Glaser, and K. Gool.

15. In & Out Carwash customers also include companies. For example, Tri-State Truck Center, Inc. and Quest Diagnostics are customers.

16. In the First Amended Petition, Plaintiff alleges that “components of Defendant’s carwashes 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.” First Amended Petition, ¶ 22.

17. Plaintiff also alleges that “[a]dditional components of Defendant’s carwash that regularly do not function properly include, but are not limited to, the tire cleaning/shining components.” First Amended Petition, ¶ 23.

18. The First Amended Petition proposes two classes, each for over “5 years from the filing of this petition.” First Amended Petition, ¶¶ 28, 29.

19. The First Amended Petition also seeks an award for “Plaintiff and class members” including a “refund of the money they paid to Defendant” First Amended Petition, p. 13 (“Wherefore” Paragraph at conclusion of Count III, “Unjust Enrichment”).

20. The First Amended Petition also seeks an award for Plaintiff and class members including “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.” First Amended Petition, p. 13 (“Wherefore” Paragraph at conclusion of Count IV, “Money Had and Received”).

21. The First Amended Class Action Petition was filed on January 29, 2019.

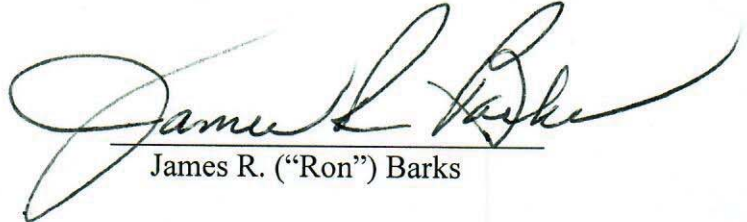
22. During the five (5) year period prior to the filing of the First Amended Petition, January 29, 2014 through January 29, 2019, Defendant sold customers in excess of \$5 million in car washes.

23. Plaintiff previously filed a Class Action Petition in the same action on September 26, 2018.

24. During the five (5) year period prior to the filing of the Class Action Petition, September 26, 2013 through September 26, 2018, Defendant sold customers in excess of \$5 million in car washes.

25. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on February 21, 2019.



James R. ("Ron") Barks

EXHIBIT A

DECLARATION

I, BRIAN RAMOS, upon my oath duly sworn, state and affirm as follows:

1. My name is BRIAN RAMOS.
2. I am over the age of eighteen years, of sound mind, and capable of testifying to the facts contained in this declaration. The facts contained in this declaration are based upon my personal knowledge.
3. In the past five years I have paid to have my vehicle washed at In & Out Carwash located at 7th & RANGELINE Joplin Missouri.
4. I reside at Rogers, ARKANSAS.
5. I have resided at this address during the time I have been a customer of In & Out Carwash.
6. I consider this address as my home address and have no present intent to move to any other state.
7. I am registered to vote in the state of ARKANSAS.
8. I am a citizen of the state of ARKANSAS.
9. I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 19, 2019.

Brian Ramos

Signature

BRIAN RAMOS

Print Name

EXHIBIT B

DECLARATION

I, Cody Glaser, upon my oath duly sworn, state and affirm as follows:

1. My name is Cody Glaser.
2. I am over the age of eighteen years, of sound mind, and capable of testifying to the facts contained in this declaration. The facts contained in this declaration are based upon my personal knowledge.
3. In the past five years I have paid to have my vehicle washed at In & Out Carwash located at 3040 E 7th St Joplin, Mo and Missouri.
1101 E 32nd St, Joplin, Mo
4. I reside at 114 N Grandview Columbus, KS.
5. I have resided at this address during the time I have been a customer of In & Out Carwash.
6. I consider this address as my home address and have no present intent to move to any other state.
7. I am registered to vote in the state of Kansas.
8. I am a citizen of the state of Kansas.
9. I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 19, 2019.



Signature
Cody Glaser

Print Name

EXHIBIT C

DECLARATION

I, Kent Gool, upon my oath duly sworn, state and affirm as follows:

1. My name is Kent Gool.
2. I am over the age of eighteen years, of sound mind, and capable of testifying to the facts contained in this declaration. The facts contained in this declaration are based upon my personal knowledge.
3. In the past five years I have paid to have my vehicle washed at In & Out Carwash located at 7th Rangeline Joplin Missouri.
4. I reside at Miami, Ok.
5. I have resided at this address during the time I have been a customer of In & Out Carwash.
6. I consider this address as my home address and have no present intent to move to any other state.
7. I am registered to vote in the state of Oklahoma.
8. I am a citizen of the state of Oklahoma.
9. I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 19, 2019.



Signature

Kent Gool

Print Name

EXHIBIT D

FILED

JUL 11 2002

1
**ARTICLES OF ORGANIZATION OF
FAST LANE CAR WASH & LUBE, L.L.C.**


SECRETARY OF STATE

The undersigned hereby makes, acknowledges and files these Articles of Organization for the purpose of forming a limited liability company under the Missouri Limited Liability Company Act (the "Act"):

ARTICLE I

The name of the limited liability company (the "L.L.C.") is FAST LANE CAR WASH & LUBE, L.L.C.

ARTICLE II

The purpose of the L.L.C. is to engage in the business of a full service car wash and express car detailing service, and express car lubrication center, and to do any and all things incident and necessary to carry on a general contracting business, together with the transaction of any or all other lawful business and activities as may be approved by the members of the L.L.C., and for which a limited liability company may be organized under the Act.

ARTICLE III

The address of the registered office of the L.L.C. in the State of Missouri is 1949 East Sunshine, Suite 1-130, Springfield, Missouri 65804, and the name of its registered agent at such office is Mark L. McQueary.

ARTICLE IV

The management of the L.L.C. shall be vested in one manager elected by the members as set forth in the Operating Agreement of the L.L.C.

ARTICLE V

The term of the L.L.C. shall commence on the date these Articles of Organization are filed in the office of the Missouri Secretary of State in accordance with the Act and shall continue until dissolved as provided in the Act or in the Operating Agreement of the L.L.C., but in no event shall the L.L.C. continue in existence beyond December 31, 2052.

ARTICLE VI

Upon the occurrence of an event of withdrawal of a member of the L.L.C., the remaining members have the right to continue the business and affairs of the L.L.C. upon the consent of all of the remaining members.

ARTICLE VII

For tax purposes only, the L.L.C. shall be treated as a partnership.

ARTICLE VIII

The name of the Organizer of the L.L.C. is Gregory W. Byler. The address of the Organizer is 8115 East Panther Hollow, Rogersville, Missouri 65742.

IN WITNESS WHEREOF, these Articles of Organization have been signed this 10 day of 2002.



Gregory W. Byler

FILED

JUL 11 2002


SECRETARY OF STATE

No. LC0067601

STATE OF MISSOURI



Matt Blunt
Secretary of State

CERTIFICATE OF ORGANIZATION
LIMITED LIABILITY COMPANY

WHEREAS,

FAST LANE CAR WASH & LUBE, L.L.C.

filed its ARTICLES OF ORGANIZATION with this office on the 11th day of JULY, 2002, and that filing was found to conform to the Missouri Limited Liability Company Act;

NOW, THEREFORE, I, MATT BLUNT, Secretary of State of the State of Missouri, by virtue of authority vested in me by law, do certify and declare that on the 11th day of JULY, 2002, the above entity is a Limited Liability Company, organized in this state and entitled to any rights granted to Limited Liability Companies.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 11th day of JULY, 2002.



Matt Blunt

\$105.00

Secretary of State

EXHIBIT E

John R. Ashcroft Secretary of State
 2017-2018 BIENNIAL REGISTRATION REPORT
 BUSINESS

F01343834
Date Filed: 11/2/2017
John R. Ashcroft
Missouri Secretary of State

I ELECT TO FILE A BIENNIAL REGISTRATION REPORT

* SECTION 1, 3 & 4 ARE REQUIRED

REPORT DUE BY: 12/31/2017

F01343834
 Tri-State Truck Center, Inc.
 MARTHA CAIN
 2527 NORTH EASTGATE
 SPRINGFIELD MO 65803

RENEWAL MONTH:
SEPTEMBER
 I OPT TO CHANGE THE CORPORATION'S
 RENEWAL MONTH TO FOR A \$25.00 FEE

1 PRINCIPAL PLACE OF BUSINESS OR CORPORATE HEADQUARTERS: *
 494 E H Crump Blvd (Required)
 STREET
Memphis TN 38126
 CITY / STATE ZIP

2 If changing the registered agent and/or registered office address, please check the appropriate box(es) and fill in the necessary information.
 The new registered agent _____
 IF CHANGING THE REGISTERED AGENT, AN ORIGINAL WRITTEN CONSENT FROM THE NEW REGISTERED AGENT MUST BE ATTACHED AND FILED WITH THIS REGISTRATION REPORT.
 The new registered office address _____
 Must be a Missouri address, PO Box alone is not acceptable. This section is not applicable for Banks, Trusts and Foreign Insurance.

| | |
|---|--|
| <p>3 OFFICERS NAME AND PHYSICAL ADDRESS (P.O. BOX ALONE NOT ACCEPTABLE). <u>MUST LIST PRESIDENT AND SECRETARY BELOW</u> A</p> <p><u>PRESIDENT</u> Maddox, James D STREET 494 E H Crump Blvd CITY/STATE/ZIP <u>Memphis TN 38126</u></p> <p><u>SECRETARY</u> McAlister, Jason STREET 494 E H Crump Blvd CITY/STATE/ZIP <u>Memphis TN 38126</u></p> <p>STREET _____ CITY/STATE/ZIP _____</p> <p>STREET _____ CITY/STATE/ZIP _____</p> | <p>BOARD OF DIRECTORS NAME AND PHYSICAL ADDRESS (P.O. BOX ALONE NOT ACCEPTABLE). <u>MUST LIST AT LEAST ONE DIRECTOR BELOW</u> B</p> <p><u>NAME</u> Maddox, Rodney STREET 494 E H Crump Blvd CITY/STATE/ZIP <u>Memphis TN 38126</u></p> <p><u>NAME</u> _____ STREET _____ CITY/STATE/ZIP _____</p> <p><u>NAME</u> _____ STREET _____ CITY/STATE/ZIP _____</p> <p><u>NAME</u> _____ STREET _____ CITY/STATE/ZIP _____</p> |
|---|--|

NAMES AND ADDRESSES OF ALL OTHER OFFICERS AND DIRECTORS ARE ATTACHED

4 The undersigned understands that false statements made in this report are punishable for the crime of making a false declaration under Section 575.060 RSMo. Photocopy or stamped signature not acceptable. *

Authorized party or officer sign here Janice Barrett (Required)

Please print name and title of signer: Janice Barrett / Other
 NAME TITLE

REGISTRATION REPORT FEE IS:
 ___\$40.00 If filed on or before 12/31/2017
 ___\$55.00 If filed on or before 1/31/2018
 ___\$70.00 If filed on or before 2/28/2018
 ___\$85.00 If filed on or before 3/31/2018
 ADD AN ADDITIONAL \$25.00 FEE IF CHANGING THE RENEWAL MONTH.

WHEN THIS FORM IS ACCEPTED BY THE SECRETARY OF STATE, BY LAW IT WILL BECOME A PUBLIC DOCUMENT AND ALL INFORMATION PROVIDED IS SUBJECT TO PUBLIC DISCLOSURE

E-MAIL ADDRESS (OPTIONAL): _____

REQUIRED INFORMATION MUST BE COMPLETE OR THE REGISTRATION REPORT WILL BE REJECTED
 RETURN COMPLETED REGISTRATION REPORT AND PAYMENT TO: Secretary of State, P.O. Box 1366, Jefferson City, MO 65102

Jason Kander Secretary of State
 2015-2016 BIENNIAL REGISTRATION REPORT
 BUSINESS

F01343834
Date Filed: 11/16/2015
Jason Kander
Missouri Secretary of State

I ELECT TO FILE A BIENNIAL REGISTRATION REPORT

* SECTION 1, 3 & 4 ARE REQUIRED

REPORT DUE BY: 12/31/2015

F01343834
 Tri-State Truck Center, Inc.
 MARTHA CAIN
 2527 NORTH EASTGATE
 SPRINGFIELD MO 65803

RENEWAL MONTH:
SEPTEMBER
 I OPT TO CHANGE THE CORPORATION'S
 RENEWAL MONTH TO FOR A \$25.00 FEE

PRINCIPAL PLACE OF BUSINESS OR CORPORATE HEADQUARTERS: *
 494 E H Crump Blvd (Required)
 1
 STREET
 Memphis TN 38126
 CITY / STATE ZIP

If changing the registered agent and/or registered office address, please check the appropriate box(es) and fill in the necessary information.
 The new registered agent
 IF CHANGING THE REGISTERED AGENT, AN ORIGINAL WRITTEN CONSENT FROM THE NEW REGISTERED AGENT MUST BE ATTACHED AND FILED WITH THIS REGISTRATION REPORT.
 The new registered office address
 Must be a Missouri address, PO Box alone is not acceptable. This section is not applicable for Banks, Trusts and Foreign Insurance.

| | | | |
|--|----------|---|----------|
| <p style="text-align: center;">OFFICERS</p> <p>NAME AND PHYSICAL ADDRESS (P.O. BOX ALONE NOT ACCEPTABLE). MUST LIST PRESIDENT AND SECRETARY BELOW</p> <p><u>PRESIDENT</u> Maddox, James D 494 E H Crump Blvd STREET CITY/STATE/ZIP <u>Memphis TN 38126</u></p> <p><u>SECRETARY</u> McAllister, Jason 494 E H Crump Blvd STREET CITY/STATE/ZIP <u>Memphis TN 38126</u></p> <p>STREET CITY/STATE/ZIP</p> <p>STREET CITY/STATE/ZIP</p> | A | <p style="text-align: center;">BOARD OF DIRECTORS</p> <p>NAME AND PHYSICAL ADDRESS (P.O. BOX ALONE NOT ACCEPTABLE). MUST LIST AT LEAST ONE DIRECTOR BELOW</p> <p><u>NAME</u> Maddox, Rodney 494 E H Crump Blvd STREET CITY/STATE/ZIP <u>Memphis TN 38126</u></p> <p><u>NAME</u> STREET CITY/STATE/ZIP</p> <p><u>NAME</u> STREET CITY/STATE/ZIP</p> <p><u>NAME</u> STREET CITY/STATE/ZIP</p> | B |
|--|----------|---|----------|

NAMES AND ADDRESSES OF ALL OTHER OFFICERS AND DIRECTORS ARE ATTACHED

The undersigned understands that false statements made in this report are punishable for the crime of making a false declaration under Section 576.060 RSMo. Photocopy or stamped signature not acceptable. *

4 Authorized party or officer sign here Janice Barrett (Required)

Please print name and title of signer: Janice Barrett / Other
 NAME TITLE

REGISTRATION REPORT FEE IS:
 ___\$40.00 If filed on or before 12/31/2015
 ___\$55.00 If filed on or before 1/31/2016
 ___\$70.00 If filed on or before 2/29/2016
 ___\$85.00 If filed on or before 3/31/2016
 ADD AN ADDITIONAL \$25.00 FEE IF CHANGING THE RENEWAL MONTH.

WHEN THIS FORM IS ACCEPTED BY THE SECRETARY OF STATE, BY LAW IT WILL BECOME A PUBLIC DOCUMENT AND ALL INFORMATION PROVIDED IS SUBJECT TO PUBLIC DISCLOSURE

E-MAIL ADDRESS (OPTIONAL): _____

REQUIRED INFORMATION MUST BE COMPLETE OR THE REGISTRATION REPORT WILL BE REJECTED
 RETURN COMPLETED REGISTRATION REPORT AND PAYMENT TO: Secretary of State, P.O. Box 1366, Jefferson City, MO 65102

Jason Kander Secretary of State
 2014 ANNUAL REGISTRATION REPORT
 BUSINESS

F01343834
Date Filed: 11/5/2014
Jason Kander
Missouri Secretary of State

* SECTION 1, 3 & 4 ARE REQUIRED

REPORT DUE BY: 12/31/2014

F01343834
 Tri-State Truck Center, Inc.
 MARTHA CAIN
 2527 NORTH EASTGATE
 SPRINGFIELD MO 65803

RENEWAL MONTH:
SEPTEMBER

I OPT TO CHANGE THE CORPORATION'S RENEWAL MONTH TO FOR A \$25.00 FEE

PRINCIPAL PLACE OF BUSINESS OR CORPORATE HEADQUARTERS: *

494 E H Crump Blvd (Required)

1

STREET
Memphis TN 38126

CITY / STATE ZIP

2 If changing the registered agent and/or registered office address, please check the appropriate box(es) and fill in the necessary information.

The new registered agent

IF CHANGING THE REGISTERED AGENT, AN ORIGINAL WRITTEN CONSENT FROM THE NEW REGISTERED AGENT MUST BE ATTACHED AND FILED WITH THIS REGISTRATION REPORT.

The new registered office address

Must be a Missouri address, PO Box alone is not acceptable. This section is not applicable for Banks, Trusts and Foreign Insurance.

| OFFICERS | | BOARD OF DIRECTORS | |
|---|---|---|--------------------------------------|
| NAME AND PHYSICAL ADDRESS (P.O. BOX ALONE NOT ACCEPTABLE). MUST LIST PRESIDENT AND SECRETARY BELOW | | NAME AND PHYSICAL ADDRESS (P.O. BOX ALONE NOT ACCEPTABLE). MUST LIST AT LEAST ONE DIRECTOR BELOW | |
| A | | B | |
| <u>PRESIDENT</u> | Maddox, James D 494 E H Crump Blvd | <u>NAME</u> | Maddox, Rodney 494 E H Crump Blvd |
| STREET | | STREET | |
| CITY/STATE/ZIP | Memphis TN 38126 | CITY/STATE/ZIP | Memphis TN 38126 |
| <u>SECRETARY</u> | McAllister, Jason 494 E H Crump Blvd | <u>NAME</u> | |
| STREET | | STREET | |
| CITY/STATE/ZIP | Memphis TN 38126 | CITY/STATE/ZIP | |
| STREET | | STREET | |
| CITY/STATE/ZIP | | CITY/STATE/ZIP | |
| STREET | | STREET | |
| CITY/STATE/ZIP | | CITY/STATE/ZIP | |

NAMES AND ADDRESSES OF ALL OTHER OFFICERS AND DIRECTORS ARE ATTACHED

3

4 The undersigned understands that false statements made in this report are punishable for the crime of making a false declaration under Section 576.060 RSMo. Photocopy or stamped signature not acceptable. *

Authorized party or officer sign here Janice Barrett (Required)

Please print name and title of signer: Janice Barrett / Other

NAME TITLE

REGISTRATION REPORT FEE IS:

___\$20.00 If filed on or before 12/31/2014

___\$35.00 If filed on or before 1/31/2015

___\$50.00 If filed on or before 2/28/2015

___\$65.00 If filed on or before 3/31/2015

ADD AN ADDITIONAL \$25.00 FEE IF CHANGING THE RENEWAL MONTH.

WHEN THIS FORM IS ACCEPTED BY THE SECRETARY OF STATE, BY LAW IT WILL BECOME A PUBLIC DOCUMENT AND ALL INFORMATION PROVIDED IS SUBJECT TO PUBLIC DISCLOSURE

E-MAIL ADDRESS (OPTIONAL): _____

REQUIRED INFORMATION MUST BE COMPLETE OR THE REGISTRATION REPORT WILL BE REJECTED
 RETURN COMPLETED REGISTRATION REPORT AND PAYMENT TO: Secretary of State, P.O. Box 1366, Jefferson City, MO 65102

Jason Kander Secretary of State
 2013 ANNUAL REGISTRATION REPORT
 BUSINESS

File Number:
 F01343834
 Date Filed: 04/01/2014
 Jason Kander
 Secretary of State

* SECTION 1, 3 & 4 ARE REQUIRED

REPORT DUE BY: 12/31/2013

F01343834
 Tri-State Truck Center, Inc.
 Miller, Milan J
 7679 North Farm Rd 181
 Springfield, MO 65803

RENEWAL MONTH:
September
 I OPT TO CHANGE THE CORPORATION'S RENEWAL MONTH TO _____ FOR A \$25.00 FEE.

PRINCIPAL PLACE OF BUSINESS OR CORPORATE HEADQUARTERS: *
 1 494 E.H. Crump Blvd (Required)
 STREET
Memphis TN 38126
 CITY/STATE ZIP

If changing the registered agent and/or registered office address, please check the appropriate box(es) and fill in the necessary information.
 The new registered agent JASON McAlister
 IF CHANGING THE REGISTERED AGENT, AN ORIGINAL WRITTEN CONSENT FROM THE NEW REGISTERED AGENT MUST BE ATTACHED AND FILED WITH THIS REGISTRATION REPORT.
 The new registered office address _____
 Must be a Missouri address, PO Box alone is not acceptable. This section is not applicable for Banks, Trusts and Foreign Insurance.

| OFFICERS | | BOARD OF DIRECTORS * | |
|--|-----------------------------------|--|--------------------------------|
| NAME AND PHYSICAL ADDRESS (P.O. BOX ALONE NOT ACCEPTABLE). (MUST LIST PRESIDENT AND SECRETARY BELOW) A | | NAME AND PHYSICAL ADDRESS (P.O. BOX ALONE NOT ACCEPTABLE). (MUST LIST AT LEAST ONE DIRECTOR BELOW) B | |
| <u>PRES</u> | <u>James P. Maddy (Required)</u> | <u>NAME</u> | <u>Robert Maddy (Required)</u> |
| STREET/RT | <u>494 E.H. Crump Blvd</u> | STREET/RT | <u>494 E.H. Crump Blvd</u> |
| CITY/STATE/ZIP | <u>Memphis TN 38126</u> | CITY/STATE/ZIP | <u>Memphis TN 38126</u> |
| V-PRES | ..... | NAME | ..... |
| STREET/RT | ..... | STREET/RT | ..... |
| CITY/STATE/ZIP | ..... | CITY/STATE/ZIP | ..... |
| <u>SECY</u> | <u>Jason McAlister (Required)</u> | NAME | ..... |
| STREET/RT | <u>494 E.H. Crump Blvd</u> | STREET/RT | ..... |
| CITY/STATE/ZIP | <u>Memphis TN 38126</u> | CITY/STATE/ZIP | ..... |
| TREAS | ..... | NAME | ..... |
| STREET/RT | ..... | STREET/RT | ..... |
| CITY/STATE/ZIP | ..... | CITY/STATE/ZIP | ..... |

NAMES AND ADDRESSES OF ALL OTHER OFFICERS AND DIRECTORS ARE ATTACHED.

The undersigned understands that false statements made in this report are punishable for the crime of making a false declaration under Section 575.060 RSMo. Photocopy or stamped signature not acceptable. *

4 Jason McAlister (Required)
 Authorized party or officer sign here

Please print name and title of signer: Jason McAlister , Secretary
 NAME TITLE

REGISTRATION REPORT FEE IS:
 ___ \$45.00 If filed on or before 12/31
 ___ \$60.00 If filed on or before 1/31
 ___ \$75.00 If filed on or before 2/28
 \$90.00 If filed on or before 3/31
 ADD AN ADDITIONAL \$25.00 FEE IF CHANGING THE RENEWAL MONTH.

WHEN THIS FORM IS ACCEPTED BY THE SECRETARY OF STATE, BY LAW IT WILL BECOME A PUBLIC DOCUMENT AND ALL INFORMATION PROVIDED IS SUBJECT TO PUBLIC DISCLOSURE

E-MA. State of Missouri
 Annual Report - General Business 1 Page(s)

REQUIRED INFORMATION MUST BE COMPLETE OR TH MAKE CHECK PAYABLE TO DI RETURN COMPLETED REGISTRATION REPORT AND PAYMENT



T1409260590



State of Missouri
Jason Kander, Secretary of State

Corporations Division
PO Box 778 / 600 W. Main St., Rm. 322
Jefferson City, MO 65102

File Number:
F01343834
Date Filed: 09/20/2013
Jason Kander
Secretary of State

**Application for Certificate of Authority
For a Foreign For-Profit Corporation**
(Submit with filing fee of \$155.00)

- The corporation's name is TRI-STATE TRUCK CENTER, INC.
and it is organized and existing under the laws of TENNESSEE
- The name it will use in Missouri is TRI-STATE TRUCK CENTER, INC
- The date of its incorporation was 9/1/1945, and the period of its duration is 68 years
month/day/year
- The address of its principal place of business is 494 EH Crump Blvd., Memphis, TN 38126
Address City/State/Zip
- The name and physical address of its registered agent and office in the State of Missouri is
Milava J. Miller 7679 North Farm Rd 181 Springfield 65803
Name Address City/State/Zip
- The specific purpose(s) of its business in Missouri are: Sales & Service of Heavy Duty Trucks

7. The name of its officers and directors and their business addresses are as follows:

| Officers | Name | Address | City/State/Zip |
|----------------|-----------------|------------------|------------------------|
| President | James D Maddox | 2262 Jefferson | Memphis TN 38104 |
| Vice President | Steve Dupuis | 127 Park Ave | Olive Branch, MS 38215 |
| Secretary | Jason McAlister | 435 Ponkview Dr, | Piperton, TN 38017 |
| Treasurer | " | | |

Board of Directors

- Director Rodney A Maddox
- Director James D Maddox
- Director Earl Triplett
- Director Steve Dupuis
- Director Jason McAlister

(Please see next page)

Name and address to return filed document:
Name: James D Maddox
Address: 494 EH Crump Blvd
City, State, and Zip Code: Memphis, TN 38126

State of Missouri
Creation - General Business - Foreign 3 Page(s)



T1326319512

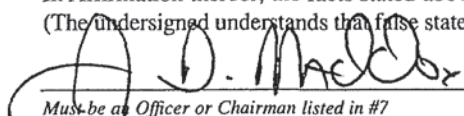
Corp. 42 (11/2008)

8. The effective date of this document is the date it is filed by the Secretary of State of Missouri unless a future date is otherwise indicated: 9/30/2013

(Date may not be more than 90 days after the filing date in this office)

In Affirmation thereof, the facts stated above are true and correct:

(The undersigned understands that false statements made in this filing are subject to the penalties provided under Section 575.040, RSMo)

| | | | |
|---|-----------------------|------------------|-----------------|
|  | <u>James D Maddox</u> | <u>President</u> | <u>9/6/2013</u> |
| <i>Must be an Officer or Chairman listed in #7</i> | <i>Printed Name</i> | <i>Title</i> | <i>Date</i> |

Note: A current (not more than 60 days old) original certificate of good standing or certificate of existence must be submitted with this application. This may be obtained from the Secretary of State or other authority that issues corporate charters in the state of domicile.



STATE OF TENNESSEE
Tre Hargett, Secretary of State
Division of Business Services
William R. Snodgrass Tower
312 Rosa L. Parks AVE, 6th FL
Nashville, TN 37243-1102

YATES MAUCK BOHRER ELLIFF & FELS, P.C.
MARK C. FELS
2121 S. EASTGATE AVENUE
SPRINGFIELD, MO 65809

September 11, 2013

Request Type: Certificate of Existence/Authorization
Request #: 0108045

Issuance Date: 09/11/2013
Copies Requested: 1

Document Receipt

Receipt #: 1153037

Filing Fee: \$22.25

Payment-Credit Card - State Payment Center - CC #: 152100486

\$22.25

Regarding: TRI-STATE TRUCK CENTER, INC.

Filing Type: Corporation For-Profit - Domestic

Control #: 32224

Formation/Qualification Date: 02/15/1965

Date Formed: 02/15/1965

Status: Active

Formation Locale: TENNESSEE

Duration Term: Perpetual

Inactive Date:

Business County: SHELBY COUNTY

CERTIFICATE OF EXISTENCE

I, Tre Hargett, Secretary of State of the State of Tennessee, do hereby certify that effective as of the issuance date noted above

TRI-STATE TRUCK CENTER, INC.

* is a Corporation duly incorporated under the law of this State with a date of incorporation and duration as given above;

* has paid all fees, taxes and penalties owed to this State (as reflected in the records of the Secretary of State and the Department of Revenue) which affect the existence/authorization of the business;

* has filed the most recent corporation annual report required with this office;

* has appointed a registered agent and registered office in this State;

* has not filed Articles of Dissolution or Articles of Termination. A decree of judicial dissolution has not been filed.

Tre Hargett
Secretary of State

Processed By: Cert Web User

Verification #: 004288629

Phone 615-741-6488 * Fax (615) 741-7310 * Website: <http://tnbear.tn.gov/>

STATE OF MISSOURI



Jason Kander
Secretary of State

CERTIFICATE OF AUTHORITY

WHEREAS,

Tri-State Truck Center, Inc.

using in Missouri the name

Tri-State Truck Center, Inc.
F01343834

has complied with the General and Business Corporation Law which governs Foreign Corporations; by filing in the office of the Secretary of State of Missouri authenticated evidence of its incorporation and good standing under the Laws of the State of Tennessee.

NOW, THEREFORE, I, JASON KANDER, Secretary of State of the State of Missouri, do hereby certify that said corporation is from this date duly authorized to transact business in this State, and is entitled to all rights and privileges granted to Foreign Corporations under the General and Business Corporation Law of Missouri.

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the GREAT SEAL of the State of Missouri, Done at the City of Jefferson, this 20th day of September, 2013.


Secretary of State



JS 44 (Rev 09/10)

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI****CIVIL COVER SHEET**

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Western District of Missouri.

The completed cover sheet must be saved as a pdf document and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s):**First Listed Plaintiff:**

Dale E. Craggs, individually and on behalf of a class of similarly situated individuals ;

1 Citizen of This State; Missouri

County of Residence: Greene County

Defendant(s):**First Listed Defendant:**

Fast Lane Car Wash & Lube, L.L.C. d/b/a In & Out Carwash ;
4 Incorporated or Principal Place of Business in This State;

Missouri

County of Residence: Greene County

County Where Claim For Relief Arose: Greene County

Plaintiff's Attorney(s):

Craig R. Heidemann (Dale Craggs, individually and on behalf of a class of similarly situated individuals)

Douglas, Haun & Heidemann, P.C.

111 West Broadway, P.O. Box 117

Bolivar, Missouri 65613

Phone: 417-326-5261

Fax:

Email: craig@dhhlawfirm.com

Defendant's Attorney(s):

Glennon P. Fogarty (Fast Lane Car Wash & Lube, L.L.C.
d/b/a In & Out Carwash)

Husch Blackwell LLP

190 Carondelet Plaza

St. Louis, Missouri 63105

Phone: 314-480-1500

Fax:

Email: glennon.fogarty@huschblackwell.com

Christopher F. Weiss (Fast Lane Car Wash & Lube, L.L.C.
d/b/a In & Out Carwash)

Husch Blackwell LLP

901 St. Louis Street, Suite 1800

Springfield, Missouri 65806-2545

Phone: 417-268-4134

Fax:

Email: chris.weiss@huschblackwell.com

Basis of Jurisdiction: 4. Diversity of Citizenship

Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff: 1 Citizen of This State

Defendant: 4 Incorporated or Principal Place of Business in This State

Origin: 2. Removed From State Court

State Removal County: Greene County

State Removal Case Number: 1831-CC01295

Nature of Suit: 370 Fraud Actions

Cause of Action: 28 U.S.C. § 1332(d); Class Action Fairness Act

Requested in Complaint

Class Action: Class Action under State Statute or Rule

Monetary Demand (in Thousands): in excess of \$5,000,000

Jury Demand: No

Related Cases: Is NOT a refiling of a previously dismissed action

Signature: /s/ Christopher F. Weiss

Date: 02/21/2019

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.

ClassAction.org

This complaint is part of ClassAction.org's searchable [class action lawsuit database](#)
