

1 Robert Starr (183052)  
2 robert@starrlaw.com  
3 Adam Rose (210880)  
4 starrlawadam@yahoo.com  
5 LAW OFFICE OF ROBERT L. STARR  
6 23277 Ventura Boulevard  
7 Woodland Hills, California 91364  
8 Telephone: (818) 225-9040  
9 Facsimile: (818) 225-9042

6 Shane Rowley (Pro Hac Vice)  
7 srowley@zlk.com  
8 LEVI & KORSINSKY, LLP  
9 30 Broad Street, 24<sup>th</sup> Floor  
10 New York, New York 10004  
11 Telephone: (212) 363-7500  
12 Facsimile: (866) 367-6510

10 Attorneys for Plaintiff  
11 David Peterson

12 UNITED STATES DISTRICT COURT  
13  
14 CENTRAL DISTRICT OF CALIFORNIA

15 David Peterson, individually and on  
16 behalf of all others similarly  
17 situated,

18 Plaintiff,

19 v.

20 The Scotts Miracle-Gro Company,  
21 The Scotts Company, LLC,  
22 Does 1 to 10,

23 Defendants.

Case No. EDCV14-0637-~~ISB~~ JGB  
(SPx)

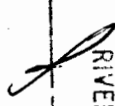
CLASS ACTION

FIRST AMENDED COMPLAINT

1. Magnuson-Moss Warranty Act
2. Consumers Legal Remedies Act
3. Unfair Competition
4. False Advertising Law
5. Breach of Express Warranty
6. Breach of Implied Warranty
7. Unjust Enrichment/Restitution

JURY TRIAL DEMAND

BY FAX

2014 JUN -9 PM 2:58  
CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
RIVERSIDE  
BY: 

FILED

1 **CLASS ACTION COMPLAINT**

2 1. Plaintiff David Peterson ("Plaintiff"), by his attorneys, makes the following  
3 allegations pursuant to the investigation of counsel and upon information and belief, except  
4 as to the allegations specifically pertaining to himself and his counsel, which are based on  
5 personal knowledge:

6 **NATURE OF THE ACTION**

7 2. This is a consumer class action against The Scotts Miracle-Gro Company and  
8 The Scotts Company, LLC (collectively referred to herein as "Scotts" or "Defendants") in  
9 connection with Scotts' misrepresentations and omissions in the marketing, sale, and  
10 advertising of Scotts Lawn Fertilizer Plus 5.17% Iron ("GreenMax").

11 3. GreenMax contains a high concentration of iron which is known to rust in the  
12 presence of oxygen and water. Defendants boast that compared to other fertilizer products,  
13 GreenMax "Contains Triple the Iron for Fast Extreme Greening." As a result of its high  
14 iron content, GreenMax causes unsightly rust stains on concrete and wood surfaces  
15 surrounding the grass upon which GreenMax is intended to be used.

16 4. In its advertising, marketing, and packaging of GreenMax, Scotts falsely  
17 informs consumers that rust stains on hard surfaces will be prevented merely by sweeping  
18 the surrounding areas where GreenMax is applied. When used as directed, however,  
19 GreenMax still causes unsightly rust stains.

20 5. GreenMax's largest competitor in the iron-based lawn fertilizer market is  
21 Ironite® Mineral Supplement ("Ironite®"). The manufacturer of Ironite® informs  
22 consumers that "IRONITE WILL STAIN," (emphasis in original) and admits that "staining  
23 may be impossible to prevent" if concrete surfaces are wet when the product is applied.  
24 Scotts makes no such statement on the GreenMax packaging, even though GreenMax  
25 contains a much higher concentration of iron than Ironite®.

26 6. By virtue of their false and misleading representations and omissions,  
27 Defendants have violated the Magnuson-Moss Warranty Act, California statutes including

1 the Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.*, the Unfair  
2 Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, the False Advertising Law,  
3 Cal. Bus. & Prof. Code §§ 17500, *et seq.*, and express and warranties under California law  
4 and have been unjustly enriched at the expense of Plaintiff and Class members. This action  
5 seeks restitution to Plaintiff and the Class (defined in ¶ 28 herein) for the purchase price of  
6 GreenMax, as well as injunctive relief, damages, restitution, attorneys' fees and costs.

7 **PARTIES**

8 7. Plaintiff is a citizen of California, residing in Riverside County, California.  
9 In November 2012, Plaintiff purchased a 16.80 lb. bag of GreenMax at a Home Depot retail  
10 store in Temecula, California for a purchase price of approximately \$20.00 for his personal  
11 use. Prior to his purchase, Plaintiff reviewed the Quick Start Guide on the product  
12 packaging, which provided that staining of hard surfaces would be prevented by sweeping  
13 those areas after application of GreenMax. Plaintiff saw this representation prior to and at  
14 the time of purchase, and understood it as a representation and warranty that when used as  
15 directed GreenMax would not stain the hard surfaces of his property. Plaintiff relied on this  
16 representation and warranty in deciding to purchase GreenMax. Accordingly, this  
17 representation and warranty was part of the basis of the bargain, in that he would not have  
18 purchased GreenMax had he known that the product would cause unsightly rust stains when  
19 used as directed. In reliance on the representation and warranty, Plaintiff paid a tangible  
20 increased cost for GreenMax, which was worth less than a product that does not cause such  
21 rust stains. Plaintiff also understood that in making the sale, Home Depot was acting with  
22 the knowledge and approval of Scotts and/or as the agent of Scotts. Plaintiff further  
23 understood that the purchase involved a direct transaction between himself and Scotts,  
24 because the product came with Scotts' representation and warranty that the product would  
25 not cause stains when used as directed. Plaintiff followed Scotts' directions on the Quick  
26 Start Guide. However, GreenMax still left unsightly rust stains on his property. In an  
27 effort to remove these stains, plaintiff purchased a product called Iron Out. However, Iron

1 Out did nothing to remove the unsightly rust stains caused by Plaintiff's use of GreenMax  
2 as directed. Plaintiff suffered damages in addition to the purchase price of the GreenMax  
3 product, because the product caused staining on the concrete surfaces of his property.  
4 Plaintiff incurred costs in connection with the purchase of a stain removal product which  
5 did not remove the unsightly rust stains caused by his use of GreenMax.

6 8. Defendant The Scotts Miracle-Gro Company ("Scotts MG") is a publicly-  
7 traded Ohio corporation with its corporate headquarters located at 14111 Scottslawn Road,  
8 Marysville, Ohio, 43041. Scotts is the world's largest marketer of branded consumer lawn  
9 and garden products, including a variety of fertilizers.

10 9. Defendant The Scotts Company LLC ("Scotts LLC") is an Ohio limited  
11 liability company headquartered in Marysville, Ohio. Scotts LLC is a wholly-owned  
12 subsidiary of Scotts MG.

### 13 JURISDICTION AND VENUE

14 10. This Court has subject matter jurisdiction under 28 U.S.C. § 1332 (diversity  
15 jurisdiction) and supplemental jurisdiction over Plaintiff's state law claims pursuant to 28  
16 U.S.C. § 1367.

17 11. Specifically, the Class Action Fairness Act, 28 U.S.C. § 1332(d), provides  
18 that federal jurisdiction exists for class actions when the following exist: 1) there are at least  
19 100 class members in the proposed plaintiff classes, 2) the combined claims of all class  
20 members exceed \$5 million, exclusive of interest and costs, and there is "minimal  
21 diversity" meaning any class member is a citizen of a different state than any defendant.

22 12. All three conditions for jurisdiction under the Class Action Fairness Act exist  
23 in this case, as Plaintiff and most class members are generally citizens of California, and the  
24 defendants are citizens of Ohio.

25 13. This Court has personal jurisdiction over Defendants because they conduct  
26 substantial business in California, such that Defendants have significant, continuous and  
27 pervasive contacts with the State of California.



1 14. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391, as  
 2 Defendants do business throughout this district, and a substantial part of the events giving  
 3 rise to Plaintiff's claims took place within this judicial district, including his purchase of  
 4 GreenMax.

### 5 FACTUAL ALLEGATIONS

6 15. Scotts sells numerous lawn and garden products in California to consumers,  
 7 including GreenMax. GreenMax is a fertilizer intended to help consumers grow grass on  
 8 their lawns faster and greener than the natural greening process.  
 9

10 16. What sets GreenMax apart from  
 11 most of its competitor's products is its high  
 12 concentration of iron. Indeed, GreenMax's iron  
 13 content is its primary selling point. In its  
 14 GreenMax advertising and on the package itself,  
 15 Defendants boast that GreenMax *"Contains*  
 16 *Triple the Iron for Fast Extreme Greening."*



17 17. Most fertilizer products contain  
 18 less than 2% iron. In contrast, GreenMax  
 19 contains a whopping 5.17% iron, which is higher than all its major competitor products.  
 20 Ironite® Mineral Supplement, the largest competitor to GreenMax in the high iron fertilizer  
 21 market, contains only 4.5% iron.

22 18. High iron fertilizers represent only a small portion of the larger lawn fertilizer  
 23 market, in part because they cause unsightly stains on hard surfaces surrounding the grass  
 24 due to a chemical reaction between iron and oxygen and water or air moisture. The  
 25 chemical process is unavoidable.

26 19. The packaging for GreenMax provides users with instructions about how to  
 27 properly apply GreenMax and prevent rust stains. These instructions are set forth in a  
 28

1 "Quick Start Guide," which informs the consumers that "You're just three simple steps  
2 away from a beautiful Scotts® lawn." First, consumers are instructed to fill a spreader with  
3 the appropriate amount of fertilizer in accordance with the amounts described on the  
4 packaging. Second, they are told to "apply evenly to a wet or dry lawn." Lastly, users are  
5 instructed to clean up, and expressly warrants that "sweeping product from hard surfaces  
6 onto the lawn keeps product on the grass and **prevents staining.**" (Emphasis in original).

7 20. After these three steps are completed, the packaging says: "**You're Done.**  
8 **What's Next?** People or pets may reenter immediately after the product is applied."



22 21. Scotts' express warranty and representation that strict adherence to the Quick  
23 Start Guide, including the clean-up instructions listed in step three, will prevent staining is  
24 untrue. Indeed, GreenMax causes unsightly rust-like stains to consumers' property even  
25 though they complied with Scotts' clean-up instructions.

26 22. Scotts' official website and a number of retailer websites are replete with a  
27 litany of complaints by GreenMax consumers stating that even when following the

1 directions on the Quick Start Guide, GreenMax caused unsightly rust stains on their  
2 property.

3 23. Consumers have complained as follows:

- 4 • I read all reviews about stains so I was extra careful to sweep my driveway after  
5 application. Next day we had rain and spots appeared all over my driveway. Will  
6 have to spend more money removing the stains than cost of product. My lawn  
7 looked ok, but no different than other scotts fertilizers. Was not worth buying.
- 8 • I was extremely careful to try not to get the fertilizer on my drive way and sidewalk  
9 as I had read all the bad reviews about the staining. Like always, I blew everything  
10 off after I was done with the yard and even swept along the edges of the grass like  
11 the instructions say to do. It didn't matter. The pieces are so small that you can't  
12 possibly get them all.
- 13 • I bought Scott's GreenMax and applied it per the directions with a Scott's Edge  
14 Guard spreader. I then swept the concrete drove and walks and then used my blower  
15 to be sure it was all off the concrete. Next morning I had rust streaks everywhere.  
16 The label warnings are grossly understated and I NEVER WOULD HAVE USED  
17 THE PRODUCT HAD I REALIZED THE EXTENT OF THE DAMAGE IT CAN  
18 CAUSE. I now have to figure a way to remove the stains - waiting to let it fade is  
19 NOT an option! I WILL NEVER USE THIS AGAIN NO MATTER WHAT THE  
20 RESULTS ON THE GRASS ARE! My wife is in tears and I am furious!
- 21 • Although the instructions say the grass can be wet or dry, there is nothing mentioned  
22 about the horrible rust staining that this product causes to wet surfaces other than  
23 grass. I spread GreenMax during a light rain. I tried to sweep off the driveway and  
24 such but the damage was done. I have horrible rust stains on my driveway, sidewalk,  
25 landscape rocks, house siding, and pool deck. I have spent several hours and dollars  
26 trying different methods to remove the stains. The stains have not faded at all. Not  
27 the smallest bit. Even if my lawn were to turn into the greenest green, nobody would



1 notice it due to the ugly rust stains covering everything. The rust stains even cover  
2 the street and gutters from where the rain washed it away. It's a good, permanent  
3 reminder of where the runoff goes.

- 4 • If you use this you will get a great lawn, but you will have so many stains on your  
5 concrete, (as if you use Ironite). I sweep the concrete (driveway and sidewalk) very,  
6 very well. I had read the reviews and was aware of the staining problems, but like  
7 they say hard head makes a soft..... I thought that if I sweep well ,it would be fine.  
8 Nope, I applied it before rain and the granules from the lawn ran onto the driveway  
9 and sidewalk. I have to buy a rust remover to get rid of all the stains.

- 10 • ...applied /max and swept.... (needed to sweep off every little granuel..just I would  
11 leave a bad stain especially with just a little water over spray Thursday today  
12 watered 7am.... Stains all over. Just sick totally unexpected Scotts user I decided to  
13 do the max green instead of the regular.. Big mistake Do not use near concrete at  
14 least 10 ft. or just use the std stuff...wife called Scotts..because I was MAD.

15 24. Since Plaintiff filed the initial complaint in this action, Scotts' customers  
16 have continued to complain about the product, noting:

- 17 • 5/2/2014- I purchased this Green Max Fertilizer in the hopes of helping my lawn;  
18 however, it ruined my concrete. I applied it before it rained so that it would soak in.  
19 The bag instructions only states "sweeping product from hard surfaces onto the lawn  
20 keeps product on the grass and prevents staining." When I went outside today, I was  
21 totally surprised (and not in a good way) as my sidewalk and driveway turned a  
22 horrible golden orange. How does sweeping this fertilizer onto the lawn help taking  
23 into consideration that rain runs from a lawn onto the sidewalk. Scotts really needs  
24 to put a bigger statement of CAUTION on its bag. When people fertilize their  
25 lawns, they definitely do not expect the fertilizer to ruin everything else surrounding  
26 the lawn. I will never again use Scotts.



- 1 • 5/24/2014- I do not recommend this product. The potion of the product that landed  
2 on my driveway, stained it permanently. I had to pay a professional cleaner to come  
3 out to my house because no matter what I tried I couldn't get it out. Unfortunately,  
4 the professional cleaner was also unsuccessful, so now I have a stained driveway  
5 and brick pavers. I will never buy this product again. Stick with the turf builder in  
6 the summer and the bonus \$ when temperatures are cooler.
- 7 • 4/25/2014... after four days that included one day of rain on the third day, I was  
8 shocked to see bad orange stains on the concrete. I immediately searched on the  
9 Internet for orange stains resulting from Green Max. It appeared to be quite a  
10 common issue among Green Max customers. Thankfully after some searching, I  
11 was able to find a product that could remove the stains. I tested a small portion of  
12 unsightly concrete and was happy to see that it reduced the harsh orange of the  
13 stain. Unfortunately the product is not cheap and it takes a good deal of time and  
14 work to remove the stain. I estimate that it will take me around 6 to 7 hours this  
15 weekend to remove the majority of the orange stain from the concrete. I am not  
16 happy about this but what makes me more upset is that there seems to be no  
17 warning on the Green Max product page and no clear indication on the Green Max  
18 bag of potential stain problems. I'm sure this potential problem is common  
19 knowledge among those that have experience with fertilizer, but this was an  
20 unwelcome surprise to someone that doesn't. I would avoid this.

21 25. Scotts has actual knowledge that GreenMax's high iron content stains hard  
22 surfaces, including (but not limited to) driveways, walkways, patios, porches, decks, and  
23 other surfaces even when users strictly comply with the Quick Start Guide on GreenMax's  
24 packaging.<sup>1</sup>

25  
26  
27 <sup>1</sup> Defendants claim they has changed its practices, however the product still has the misrepresentation.

1           26.    Scotts also has knowledge that the property damage caused by GreenMax will  
2 not go away over time. In its boilerplate response to repeated customer complaints about  
3 GreenMax, Scotts admits that “[s]unlight and water will help to fade the iron stains from  
4 the product on outdoor surfaces, but will not completely remove them.” (Emphasis  
5 added).

6           27.    Scotts also has knowledge that costly and extraordinary measures are  
7 necessary in order to remove the stains to consumers’ hard surfaces caused by GreenMax.  
8 In the same boiler plate response to customer complaints, Scotts identifies a number of rust  
9 removing products that the complainants can purchase (at their own expense), to remove  
10 the unsightly rust stains caused by the use of GreenMax. Scotts notes:

11           While not endorsed or guaranteed by Scotts, the following products have  
12 shown to be effective at removing iron stains from regular concrete and are  
13 registered for this use: Signature Concrete Rust Remover, Goof Off Rust  
14 Stain Remover Outdoors or Super Iron Out Outdoor.

15           28.    In addition, Scotts stated in a brief filed in this action that it has revised its  
16 label to provide additional warnings and admits that “THIS PRODUCT WILL STAIN  
17 SIDEWALKS DRIVEWAYS AND OTHER CONCRETE OR HARD SURFACES....”  
18 Scotts’ revision suggests that its previous label was insufficient to properly inform  
19 consumers of the product’s inherent staining properties.

20           29.    Moreover, Scotts has failed to recall or even sticker the product labels that it  
21 has introduced into the marketplace containing the false and misleading statements and  
22 omissions.

23           30.    Despite its knowledge, Scotts does not inform consumers of those improperly  
24 labeled products that GreenMax will and does stain. To the contrary, the Quick Start Guide  
25 described above expressly warrants that compliance with the Quick Start Guide, including  
26 the clean-up instructions, will prevent staining.

27  
28





1 to Plaintiff at this time but may be determined through discovery. Class members may be  
2 notified of the pendency of this action by mail and/or publication through the distribution  
3 records of Scotts and third party retailers or vendors.

4 36. Common questions of law and fact exist as to all Class members and  
5 predominate over questions affecting only individual Class members. Common legal and  
6 factual questions include, but are not limited to:

- 7 a. Whether Defendants violated the Magnuson-Moss Warranty Act;
- 8 b. Whether Defendants violated the Consumers Legal Remedies Act, Cal. Civ.  
9 Code §§ 1750, *et seq.*;
- 10 c. Whether Defendants violated the Unfair Competition Law, Cal. Bus. & Prof.  
11 Code §§ 17200, *et seq.*;
- 12 d. Whether Defendants violated the False Advertising Law, Cal. Bus. & Prof.  
13 Code §§ 17500, *et seq.*;
- 14 e. Whether Defendants breached an express warranty made to Plaintiff and the  
15 Class;
- 16 f. Whether Defendants were unjustly enriched by their conduct;
- 17 g. Whether Defendants conduct was false, misleading, or reasonably likely to  
18 deceive ordinary consumers;
- 19 h. Whether Class members have been injured by Defendants' conduct;
- 20 i. Whether Class members suffered an ascertainable loss as a result of  
21 Defendants' false and/or misleading representations;
- 22 j. Whether Class members are entitled to restitution, and/or injunctive relief,  
23 and if so, the amount and nature of such relief;

24 37. Plaintiff's claims are typical of the claims of the Class in that the named  
25 Plaintiff was exposed to Defendants' false and misleading marketing and express  
26 warranties of GreenMax and lost money or property a result of his purchase and use of the  
27 product.

39. The class mechanism is superior to other available means for fair and efficient adjudication of the claims of the Class members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendants' liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court in the issue of Defendants' liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

40. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set forth herein.

41. Plaintiff brings this cause of action individually and on behalf of the members of the Class against all Defendants.

42. GreenMax is a consumer product as defined in 15 U.S.C. § 2301.

43. Plaintiff and the Class members are consumers as defined in 15 U.S.C. § 2301(3).





1        50. Plaintiff brings this cause of action on behalf of the Class against all  
2 Defendants.

3        51. CLRA § 1770(a)(5) prohibits “[r]epresenting that goods or services have  
4 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they  
5 do not have or that a person has a sponsorship, approval, status, affiliation, or connection  
6 which he or she does not have.” Defendants have violated this provision by making  
7 misrepresentations in the Quick Start Guide that sweeping after use will prevent staining.

8        52. CLRA § 1770(a)(7) prohibits “[r]epresenting that goods or services are of a  
9 particular standard, quality, or grade, or that goods are of a particular style or model, if they  
10 are of another.” Defendants have violated this provision by making misrepresentations in its  
11 Quick Start Guide that sweeping after use will prevent staining.

12        53. CLRA § 1770(a)(9) prohibits “advertising goods or services with intent not to  
13 sell them as advertised.” Defendants violated this provision by making misrepresentations  
14 in the Quick Start Guide that sweeping after use will prevent staining.

15        54. Plaintiff and the Class members suffered injuries caused by Defendants’ false  
16 and/or misleading representations because: (a) they would not have purchased GreenMax if  
17 they had known that staining can be impossible to avoid; (b) they paid a premium price for  
18 the product based on Defendants’ express warranty; (c) GreenMax did not have the  
19 characteristics, uses or benefits as promised; and (d) many of them were required to incur  
20 expenses in connection with the removal of unsightly rust stains caused by GreenMax.

21        55. On March 19, 2014, prior to the filing of this Complaint, a CLRA notice letter  
22 was served on Defendants that complied in all respects with California Civil Code §  
23 1782(a). Plaintiff, by and through his counsel, sent Defendants his letter via certified mail,  
24 return receipt requested, advising Defendants they were in violation of the CLRA and must  
25 correct, repair, replace, or otherwise rectify the goods alleged to be in violation of CLRA §  
26 1770.



1 product based on Defendants' false and/or misleading representations and omissions; (c)  
 2 GreenMax did not have the characteristics, uses or benefits as promised; and (d) many of  
 3 them were required to incur expenses in connection with the removal of unsightly rust  
 4 stains caused by GreenMax and/ or suffered irreversible property damage.

5 ///

6 ///

7 65. As a result, Plaintiff and the Class seek restitution either in the full amount of  
 8 the purchase price of GreenMax or the difference in value between the product purchased  
 9 and the product as actually marketed, advertised.

#### 11 FOURTH CAUSE OF ACTION

12 (False Advertising Law ("FAL"), Calif. Bus. & Prof. Code §§ 17500 *et seq.*)

13 66. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set forth  
 14 herein.

15 67. Plaintiff brings this cause of action on behalf of the members of the Class  
 16 against Defendants.

17 68. California's FAL, Bus. & Prof. Code §§ 17500, *et seq.*, makes it "unlawful  
 18 for any person to make or disseminate or cause to be made or disseminated before the public  
 19 in this state, ... in any advertising device ... or in any other manner or means whatever,  
 20 including over the Internet, any statement, concerning ... personal property or services,  
 21 professional or otherwise, or performance or disposition thereof, which is untrue or  
 22 misleading and which is known, or which by the exercise of reasonable care should be  
 23 known, to be untrue or misleading."

24 69. Defendants committed acts of false advertising, as defined by FAL § 17500,  
 25 by making the misrepresentations about the Quick Start Guide.

26 70. Defendants knew or should have known, through the exercise of reasonable  
 27 care that the misrepresentations about the Quick Start Guide were untrue and misleading.





1 required to incur expenses in connection with the removal of unsightly rust stains caused by  
2 GreenMax.

3  
4 **SIXTH CAUSE OF ACTION**

5 **(Breach of Implied Warranty of Merchantability, Cal. Com. Code § 2314)**

6 78. Plaintiff repeats the allegations in the foregoing paragraphs as if fully set forth  
7 herein.

8 79. Plaintiff brings this cause of action on behalf of the members of the Class  
9 against Defendants.

10 80. Defendants, as the designers, manufacturers, marketers, distributors, and/or  
11 sellers impliedly warranted in the Quick Start Guide that GreenMax would not leave  
12 unsightly rust stains on Plaintiff's and the Class's real property if they followed the Quick  
13 Start Guide.

14 81. Defendants breached the warranty implied in the contract for the sale of  
15 GreenMax in that GreenMax could not pass without objection in the trade under the  
16 contract description, the goods were not of fair average quality within the description, and  
17 the goods were unfit for their intended and ordinary purpose. As a result, Plaintiff and the  
18 Class members did not receive the goods as impliedly warranted by Defendants to be  
19 merchantable.

20 82. In reliance upon Defendants' skill and judgment and the implied warranties of  
21 fitness for the purpose, Plaintiff and the Class members purchased GreenMax for use as  
22 fertilizer with the expectation that it would not stain their homes and/or real property.

23 83. Plaintiff and the Class did not alter GreenMax.

24 84. GreenMax was defective when it left the exclusive control of Defendants.

25 85. Defendants knew that GreenMax would be purchased and used without  
26 additional testing for efficacy by Plaintiff and the Class members.

1           86.     GreenMax was defectively designed and unfit for its intended purpose, and  
2 Plaintiff and the Class did not received the goods as warranted.

3           87.     Plaintiff and the Class members suffered lost money or property as a result of  
4 Defendants' violations of their implied warranty because: (a) they would not have  
5 purchased GreenMax if they had known that staining can be impossible to avoid; (b) they  
6 paid a premium price for the product based on Defendants' express warranty; (c) GreenMax  
7 did not have the characteristics, uses or benefits as promised; and (d) many of them were  
8 required to incur expenses in connection with the removal of unsightly rust stains caused by  
9 GreenMax and/or suffered irreversible property damage.

10

11

#### **SEVENTH CAUSE OF ACTION**

12

##### **(Unjust Enrichment/Common Law Restitution)**

13

14           88.     Plaintiff repeats the allegations in the foregoing paragraphs as if fully set forth  
15 herein.

15

16           89.     Plaintiff brings this cause of action on behalf of the members of the Class  
17 against Defendants.

17

18           90.     Plaintiff and the Class members conferred benefits on Defendants by  
19 purchasing GreenMax.

19

20           91.     Defendants have been unjustly enriched in retaining the revenues derived  
21 from Plaintiff's and the Class's purchase of GreenMax. Retention of those moneys under  
22 these circumstances is unjust and inequitable because Defendants' made misrepresentations  
23 in the Quick Start Guide about GreenMax and Plaintiff and the Class would not have  
24 purchased GreenMax if the truth had been known.

24

25           92.     Because Defendants' retention of the non-gratuitous benefits conferred on  
26 them by Plaintiff and the Class is unjust and inequitable, Defendants must pay restitution to  
27 Plaintiff and the Class for their unjust enrichment, as ordered by the Court.

27

28



**RELIEF DEMANDED**

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendants, as follows:

- A. For an order certifying the Class as a class under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiff as representative of the Class and Plaintiff's attorneys as Class Counsel to represent the Class;
- B. For an order declaring the Defendants' conduct violates the statutes referenced herein;
- C. For an order finding in favor of Plaintiff's and the Class on all accounts asserted herein; and
- D. For an award of restitution, actual, consequential, incidental, and punitive damages, injunctive relief, pre and post-judgment interest, attorneys' fees, costs and disbursements.

**JURY DEMAND**

Plaintiff demands a trial by jury on all causes of action and issues that so triable.

Date: June 9, 2014

Respectfully submitted:



Adam Rose