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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CHERYL JACKSON, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

TELEBRANDS CORP., and
MOULTON LOGISTICS
MANAGEMENT,

Defendants.

Case No.: 2:17-cv-04107

CLASS ACTION COMPLAINT

- (1) VIOLATIONS OF THE FLORIDA DECEPTIVE & UNFAIR TRADE PRACTICES ACT, FLA. STAT. § 501.201, et seq.;**
- (2) BREACH OF EXPRESS WARRANTY;**
- (3) BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY;**
- (4) VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT, 15 U.S.C. § 2301 et seq.;**
- (5) UNJUST ENRICHMENT / COMMON LAW CLAIM FOR RESTITUTION.**

JURY TRIAL DEMANDED

1 Plaintiff Cheryl Jackson (“Plaintiff”), on behalf of herself and all persons
2 similarly situated, by and through her attorneys, alleges as follows.

3 **INTRODUCTION**

4 1. This is a class action brought by Plaintiff, individually and on behalf
5 of all other similarly situated consumers who purchased Grassology, a product
6 manufactured, marketed, distributed, warranted and, in some cases, sold by
7 Defendant Telebrands Corp. (“Telebrands”). Telebrands distributed, sold and
8 provided customer support for the product jointly with Moulton Logistics
9 Management (“Moulton,” and, collectively “Defendants”).

10 2. Defendants’ ubiquitous television and internet advertisements tout
11 Grassology as a “breakthrough” and premium alternative to traditional grass seed.
12 According to Defendants, Grassology’s seeds are “Guaranteed to Grow” and result
13 in grass with roots that grow up to four times deeper than traditional grass, but
14 grow more slowly and therefore require much less frequent mowing and watering,
15 and do not require fertilizing or weeding. Defendants’ website and product labels
16 make identical claims.

17 3. Contrary to Defendants’ representations, however, Grassology does
18 not work as advertised. Grassology is little more than unspecified, low quality
19 varieties of various grasses unsuited for many climates and terrains.

20 4. Defendants knew, or should have known, that Grassology is
21 defective, unfit for its ordinary and intended purpose, and incapable of performing
22 as advertised. Moreover, Defendants actively concealed this material fact from
23 Plaintiff and the members of the Class.

24 5. Presumably in response to the thousands of consumer complaints
25 they have received, Defendants ceased directly marketing Grassology in 2016.
26 Defendants nevertheless continue to sell this defective product to consumers
27 throughout the United States through third-party internet and brick-and-mortar
28 retailers such as Amazon and Wal-Mart, causing consumers millions of dollars in

1 damages.

2 **PARTIES**

3 ***Plaintiff***

4 6. Plaintiff Cheryl Jackson (“Jackson”) is a citizen of the state of
5 Florida and currently resides in Tallahassee, Florida. In or around June 2014,
6 Jackson ordered Grassology through Defendants’ website for personal, family or
7 household use. Jackson paid \$32.97, including \$7.99 for shipping and handling,
8 and received two one-pound bags of Grassology and a “complimentary” watering
9 hose. Prior to purchasing Grassology, Plaintiff viewed and relied upon the
10 advertising claims made in Defendants’ television infomercials, on its website, and
11 on the photograph of the product’s label made available on the website, all of
12 which were intended by Defendants and their agents to entice consumers to
13 purchase Grassology at a premium over conventional grass seeds. Jackson spread
14 Grassology seeds throughout her lawn, including on several bald spots, in
15 accordance with Defendants’ instructions. After several weeks, Grassology had
16 yet to grow. Jackson subsequently contacted Defendants by phone and alerted
17 them to the product’s seeming failure only to be told to “give it more time.”
18 Jackson relied on Defendants’ continued misrepresentations and purchased
19 additional Grassology seeds for \$24.99 inclusive of shipping and handling in order
20 to have additional supply at the ready as she waited for the seeds she previously
21 purchased to germinate. However, the seeds never germinated as promised. But
22 for Defendants’ myriad misrepresentations and omissions, Jackson would not have
23 purchased Grassology or would have requested a refund immediately after
24 purchase.

25 ***Defendants***

26 7. Defendant Telebrands Corporation (“Telebrands” or “Defendant”) is
27 a New Jersey corporation with its headquarters and principal place of business
28 located at One Telebrands Plaza in Fairfield, New Jersey. Telebrands is a leading

1 manufacturer and direct marketer of “as seen on TV” consumer products.
2 Telebrands manufactures and warrants all its products, including Grassology, and
3 markets and sells them through infomercials, toll-free numbers and proprietary
4 websites, as well as through traditional and online retailers such as Walmart, Rite-
5 Aid, Walgreens, and Amazon, among others.

6 8. Defendant Moulton Logistics Management (“Moulton”) is a
7 California Corporation with its headquarters and principal place of business
8 located at 7850 Ruffner Avenue in Van Nuys, California. According to its
9 website, Moulton “is one of the largest As Seen on TV fulfillment companies in
10 the industry.”¹ Moulton also “provides Omni-Channel Fulfillment services which
11 allows [its partners] to sell and distribute product direct to individual customers,
12 direct to businesses, drop-ship on 3rd party marketplaces, bulk to wholesalers, or
13 bulk to brick-and-mortar retail stores[,]”² as well as customer response services,
14 including customer care, inbound call processing, customer service emails,
15 technical product information to complaining customers.³ On information and
16 belief, Moulton provided channel fulfillment services to Telebrands, including
17 drop-shipping on third-party marketplaces like Amazon. Moreover, Moulton
18 provided many of these services to Telebrands’ and acted as its agent for purposes
19 of distributing Grassology, processing and fulfilling customer orders, processing
20 and deciding customer warranty claims, and providing customer support.

21 9. As evidenced by the invoice attached hereto as Exhibit A, Moulton
22 was an intimate and willing participant in the fraudulent and deceptive scheme
23 described herein. Moulton processed and fulfilled all direct customer orders,
24 received, processed and responded to all customer inquiries and warranty claims,

25 _____
26 ¹ <http://www.moultonlogistics.com/services/drtv-fulfillment> (last visited May 30, 2017).

27 ² <http://www.moultonlogistics.com/how-it-works> (last visited May 30, 2017).

28 ³ <http://www.moultonlogistics.com/services/e-commerce-contact-center-solutions> (last visited May 30, 2017).

1 and deceived complaining customers concerning Grassology's inherently defective
2 nature in an effort to convince them to forego a refund.

3 10. At all times mentioned herein, each and every Defendant was acting
4 as an agent and/or employee of the other Defendant, and at all times mentioned
5 was acting within the course and scope of said agency and/or employment with the
6 full knowledge, permission, and consent of the other Defendant. In addition, each
7 of the acts and/or omissions of each Defendant alleged herein were made known
8 to, and ratified by, the other Defendant. Accordingly, Defendants operated as a
9 single entity such that any individuality or separateness between them has ceased
10 and each of them is the alter ego of the other. Adherence to the fiction of the
11 separate existence of Defendants and each of them, would, under the circumstances
12 set forth in this Complaint, sanction fraud or promote injustice.

13 **JURISDICTION AND VENUE**

14 11. This Court has subject matter jurisdiction of this action pursuant to
15 28 U.S.C. § 1332 of the Class Action Fairness Act of 2005 because: (i) there are
16 100 or more class members, (ii) there is an aggregate amount in controversy
17 exceeding \$5,000,000, exclusive of interest and costs, and (iii) there is minimal
18 diversity because at least one plaintiff and one defendant are citizens of different
19 States.

20 12. This Court has personal jurisdiction over Defendants because they
21 have conducted substantial business in this judicial district, and intentionally and
22 purposefully placed Grassology into the stream of commerce from within the
23 Central District of California and throughout the United States.

24 13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391
25 because Defendants transact business in this district, advertise in this district and
26 have received substantial revenue and profits from the sale of Grassology in this
27 district, including to Plaintiff Jackson and other members of the Class. Therefore,
28 a substantial part of the events and/or omissions giving rise to the claims occurred,

1 in part, within this district.

2 **FACTUAL BACKGROUND**

3 **A. Defendants' Deceptive Marketing Campaign**

4 14. Sometime in 2014, Defendants began manufacturing, marketing,
5 distributing and warranting Grassology, and, like many direct marketers, selling
6 the product through television infomercials and a proprietary website, as well as
7 through various retailers, including Wal-Mart and Amazon. Upon information and
8 belief, consumers have purchased millions of dollars' worth of Grassology.

9 15. Defendants market Grassology as a premium alternative to
10 traditional grass seed. Specifically, Defendants represented on the original
11 Grassology website⁴ that:

12 Unlike regular grass that requires constant water and
13 fertilizer, Grassology grows roots that are four times
14 deeper than ordinary grass to find their own water and
15 nutrients instead of depending on you for constant
16 watering and feeding! And, Grassology slowly grows to a
17 dwarf height so there's less mowing, guaranteed! You
18 can use it to fix bad spots, or you can sprinkle it over
19 your entire lawn. And before you know it, you'll have
20 barefoot soft grass that naturally resists disease, resists
21 insects, and even resists weeds! With Grassology, you
22 save time and money because there's no more high
23 watering bills, no more weekly mowing, no more
24 ongoing fertilizing and no more weeding! This original
25 low maintenance seed blend is so revolutionary it even
26 has a patent pending by the US Government! So get
27 Grassology today and create the easiest, low
28 maintenance, beautiful lawn you've ever had!

16. Defendants' product packaging⁵ also makes bold claims concerning
the durability and performance properties of Grassology. Defendants claim
Grassology:

⁴ The website originally available at <https://www.grassology.com> was closed sometime in 2016. Plaintiff's allegations are based on an archived version of the website available at <https://web.archive.org/web/20140718100534/https://www.grassology.com/index.jsp> (archived July 18, 2014).

⁵ Available at <https://www.amazon.com/Telebrands-Grassology-LB-LWN-Care/dp/B00XZCW4ZO> (last visited May 30, 2017).

- Is a “breakthrough” and “patented” alternative to traditional grass seeds
- “Guaranteed To Grow”
- “Ultra Low Maintenance”
- Grows roots “Up To 4X Deeper!”
- “Defends against Disease, Weeds & Insects”



17. Defendants’ commercials make similarly false advertising claims. Their primary television commercial, which it also publicized on its website, touted that (emphasis added):

Has Rover gone all over and left your lawn with bald spots? Do you have high traffic areas or shady areas that look like this? It’s time to fix it fast with new Grassology. The all new all natural grass seed that turns problem areas into lush green grass. **Quick and easy. Just sprinkle the amazing Grassology seeds and you’ll be amazed at how fast those ugly patches and worn**

1 **areas fill in with gorgeous green, barefoot soft grass.**
 2 The secret's in the seed blend. The scientists and lawn
 3 experts at Grassology have taken 10 years to blend the
 4 best seeds for the best grass. **Grassology grows smart,
 5 fast, is hearty and easy to maintain. It grows
 6 practically anywhere, even on slopes and steep areas.**
 7 **Grassology's roots grow four times longer, reaching
 8 deep down water and nutrient sources combined with
 9 thick gorgeous green blades that grow to the perfect
 10 dwarf height.** Grassology is the science of grass -
 11 perfected. Which also means less mowing and
 12 practically no watering or fertilizing. **It's time to get rid
 13 of those bald spots and bad patches for good – with
 14 Grassology. You can even make over your entire
 15 lawn. Simply spread Grassology over your existing
 16 lawn and watch it transform into a lush, plush,
 17 picture-perfect landscape. If your bald spots aren't
 18 gone and your lawn isn't thicker, fuller and greener
 19 in 60 days, we'll give you your money back.** Order
 20 now and get 1 lb. of Grassology, enough for 250 square
 21 feet of gorgeous, barefoot soft lawn, for just \$14.99. But
 22 if you call right now, you can double the order to 2 lbs.
 23 That's more than 500 square feet. Plus, you can also get
 24 a 25 ft. Pocket Hose Ultra. The number 1 expandable
 25 garden hose in the world is now three times stronger.
 26 Grassology for \$14.99. Call now. Grassology by Pearl's
 27 Premium.

18 18. Defendants also contracted world-famous handyman Bob Vila to add
 19 the appearance of expertise to its product and commercials. In one such
 20 commercial, now available on YouTube,⁷ Vila makes similarly misleading claims
 21 designed by Defendants to lure unsuspecting consumers:

22 A great lawn can make a house look like a home, add
 23 value to your property and it's fun for the whole family.
 24 Hi. Bob Vila here, with a breakthrough in grass seed that
 25 can give you great green grass. It's called Grassology.
 26 It's grass seed based on science that's **guaranteed to
 27 give you great green grass. And once it's established,
 28 you quickly begin to see a gorgeous green lawn that's
 29 virtually maintenance free.** Grassology is patent
 30 pending and it's the original low maintenance seed blend
 31 developed by Pearl's Premium. You've probably seen it
 32 in the news. You see, regular grass requires frequent
 33 watering and fertilizing. **But Grassology's roots extend
 34 4 times deeper than ordinary grass to reach the good
 35 stuff that's underground, like water and nutrients.**

36 ⁶ Transcription of commercial available at <https://www.5secondfix.com/> (last visited May 30, 2017).

37 ⁷ Transcription of commercial available at <https://www.youtube.com/watch?v=ZHiXqEVoa4Q> (last
 38 visited May 30, 2017).

1 **And the best part, Grassology reaches a dwarf height**
2 **so there's a lot less mowing. Guaranteed.** With
3 Grassology, you'll have more time to enjoy your lawn.
4 **Check this out (before and after comparison) – that's**
5 **the Grassology difference.** We've all seen bare patches,
6 bald spots or brown spots caused by pets. Try
7 Grassology. It naturally fights disease, insects, even
8 weeds so you have a lawn that looks like a fairway. No
9 one mowed this lawn in months. Check out the
10 Grassology difference after a harsh drought. **If your**
11 **lawn isn't thicker, fuller and greener in sixty days,**
12 **you'll get your money back.** And best of all, it's made
13 right here in the U.S.A.

14 19. Plaintiff and Class members viewed and relied on Defendants'
15 marketing materials and/or product labels prior to purchasing Grassology, and
16 believed their representations regarding the product's performance properties to be
17 true.

18 **B. Grassology Does Not Perform as Advertised**

19 20. Contrary to Defendants' representations, however, Grassology does
20 not provide low-maintenance grass that is guaranteed to grow. Instead, Grassology
21 appears to consist of little more than low-quality, unspecified varieties (commonly
22 referred to as VNS) of traditional grass seeds—as well as what customers have
23 described as but seeds that result in additional unsightly weeds—that sell at a
24 premium over grass seeds that provide superior performance and appearance.
25 Simply put, Grassology is unsuited for its intended purpose and does not live up to
26 its baseless marketing claims.

27 21. Grassology purchasers have attempted to use the product only to learn
28 that Defendants' aggressive marketing claims were false and intended to deceive
29 them into buying the product. A number of internet blogs and other websites
30 publish consumer complaints describing the exact same performance issues as
31 those described herein and suffered by Plaintiff and the Class. On Amazon.com,
32 for example, 49% of customers reviewing Grassology give the product 1 or 2 out
33 of 5 stars and lodge countless complaints including the following, which represent
34 only a small sampling of the hundreds of negative customer reviews:

1 **One Star**, August 4, 2016⁸

2 Didnt grow at all even with following the instructions

3 **Bad Purchase**, April 10, 2014⁹

4 Don't waste your money and time. Can't even get it to
5 sprout. Just another one of those hyped up TV products
6 that looks wonderful on TV but little or no results at
7 home. I'm surprised at Amazon .Com for selling this
8 product. Also I paid \$25.01 for a 3 lb bad at Amazon and
9 could have purchased it for \$19.99 at a local store. This is
10 the first time I have been disappointed in an Amazon
11 purchase.

12 **This product is junk!**, April 26, 2014¹⁰

13 Great marketing program but if it sounds too good to be
14 true it probably is. I grew up on a farm and knew better
15 but thought with the new technologies available it might
16 be worth evaluating. Very expensive for grass seed but I
17 spent almost \$150 and when it didn't grow after a month
18 I contacted customer service at Grassology. After a fairly
19 long conversation with their representative who defended
20 the product, I asked the representative if they had ever
21 used the product and they the answer was no so I asked
22 them how they knew that it was such a great product,
23 they then offered me a refund of \$20. After asking about
24 their 100% satisfaction guarantee, they indicated if I
25 returned the product, I had obviously planted the grass
26 seed and it was not recoverable, they would refund me
27 the seed cost. I don't consider this a quality product or
28 company.

22 ⁸ https://www.amazon.com/gp/customer-reviews/R398L1ULXWPTYH/ref=cm_cr_getr_d_rvw_ttl?ie=UTF8&ASIN=B00XZCW4ZO (last visited
23 May 30, 2017).

24 ⁹ https://www.amazon.com/gp/customer-reviews/R12RNQ14R9C58A/ref=cm_cr_getr_d_rvw_ttl?ie=UTF8&ASIN=B00XZCW4ZO (last visited
25 May 30, 2017).

26 ¹⁰ https://www.amazon.com/gp/customer-reviews/R36CXIU8J0DKV9/ref=cm_cr_getr_d_rvw_ttl?ie=UTF8&ASIN=B00XZCW4ZO (last visited
27 May 30, 2017).

1 **No grass growing**, April 28, 2014 ¹¹

2 This was a waste of my money nothing is growing at all
3 and I followed the direction like it said

4

Does not grow- do not buy, May 12, 2014 ¹²

5 Same experience as others- not a single blade of grass.
6 Zero seeds germinated.
7 A lot of work to prepare area, rake, then straw, water, etc.
8 Very disappointed - especially in Bob Villa!!

9 22. Consumer complaints regarding Grassology on the Walmart
10 website are strikingly similar: roughly half of all reviews give the product low
11 marks and note the product’s failure to germinate and grow as advertised.

12 23. Grassology’s shortcomings are hardly surprising. Experts report
13 Grassology is not a miracle product, but a mix of seven types of VNS seeds—a
14 designation typically applied to low-quality, low-cost seeds.¹³ Moreover, many
15 of the seed-types included in the mix are suitable only for certain climates.
16 Consumers also have reported that when Grassology seeds germinate, the seeds
17 result in additional weeds rather than the aesthetically pleasing dwarf grass
18 Defendants promise. Grassology is anything but “Guaranteed to Grow[.]”
19 Indeed, Grassology’s only honest facet of Defendants’ fraudulent advertising
20 campaign is that its product requires more infrequent mowing and gardening, but
21 only because the grass will not grow.

22 24. Defendants were, and are, under a continuing duty to disclose the
23 defective nature of Grassology to consumers, but instead continues to

24 ¹¹ [https://www.amazon.com/gp/customer-](https://www.amazon.com/gp/customer-reviews/RBDUWITR7B84W/ref=cm_cr_getr_d_rvw_ttl?ie=UTF8&ASIN=B00XZCW4ZO)
25 [reviews/RBDUWITR7B84W/ref=cm_cr_getr_d_rvw_ttl?ie=UTF8&ASIN=B00XZCW4ZO](https://www.amazon.com/gp/customer-reviews/RBDUWITR7B84W/ref=cm_cr_getr_d_rvw_ttl?ie=UTF8&ASIN=B00XZCW4ZO) (last visited
26 May 30, 2017).

27 ¹² [https://www.amazon.com/gp/customer-](https://www.amazon.com/gp/customer-reviews/R2ECB2WYF5NSC0/ref=cm_cr_getr_d_rvw_ttl?ie=UTF8&ASIN=B00XZCW4ZO)
28 [reviews/R2ECB2WYF5NSC0/ref=cm_cr_getr_d_rvw_ttl?ie=UTF8&ASIN=B00XZCW4ZO](https://www.amazon.com/gp/customer-reviews/R2ECB2WYF5NSC0/ref=cm_cr_getr_d_rvw_ttl?ie=UTF8&ASIN=B00XZCW4ZO) (last visited
29 May 30, 2017).

30 ¹³ http://turf.uark.edu/turfhelp/archives/042114_Grassology.html (last visited May 30, 2017).

1 fraudulently market the remaining stock of its product through third-party
2 retailers

3 25. Defendants also frequently tell complaining customers that the
4 product simply requires more time and care to germinate and grow. For instance,
5 Plaintiff Jackson contacted Defendants to complain about Grassology's failure to
6 germinate, only for Defendants to deny that Grassology did not work as
7 advertised, and insist that the product's claims were accurate and that Jackson
8 simply needed to "give it more time." Rather than insist on a refund, Plaintiff
9 continued to reasonably rely on Defendants' misrepresentations and purchased
10 additional product only to ultimately realize that Grassology simply does not
11 work as advertised. And frustrated consumers that refuse to accept anything less
12 than a refund are informed, that they are ineligible for a full refund because they
13 cannot return the product unopened and unused, thus ensuring Defendants retain
14 their ill-gotten gains.

15 26. Defendants' fraudulent, deceptive and unfair practices have caused,
16 and continue to cause, Plaintiff and Class members significant out-of-pocket loss
17 in the amount of the price paid for this defective product.

18 **CLASS ACTION ALLEGATIONS**

19 27. This action is brought on behalf of Plaintiff, individually and as a
20 class action, pursuant to Federal Rules of Civil Procedure, Rule 23(a), 23(b)(2)
21 and/or 23(b)(3) on behalf of a nationwide class of consumers. Specifically, the
22 nationwide class consists of:

23 All persons in the United States who purchased
24 Grassology (the "Nationwide Class" or "Class").

25 Excluded from the Nationwide Class are Defendants, any entities in which
26 Defendants have a controlling interest or which has a controlling interest in
27 Defendants, and Defendants' legal representatives, assigns and successors. Also
28 excluded are the judge to whom this case is assigned and any member of the

1 judge's immediate family.

2 28. In the alternative to the Nationwide Class, and pursuant to FED. R.
3 CIV. P. 23(c)(5), Plaintiff seeks to represent the following state subclasses
4 (collectively, the "State Classes"):

5 All persons in Florida who purchased Grassology (the
6 "Florida Class").

7 Excluded from the State Classes are Defendants, any entity in which Defendants
8 have a controlling interest or which has a controlling interest in Defendants, and
9 Defendants' legal representatives, assigns and successors. Also excluded are the
10 judge to whom this case is assigned and any member of the judge's immediate
11 family.

12 29. This action has been brought and may be properly maintained as a
13 class action for the following reasons:

14 a. Numerosity: Members of the Class are so numerous that their
15 individual joinder is impracticable. Plaintiff is informed and believe that the
16 proposed Class contains at least thousands of consumers. Upon information and
17 belief, Defendants sold Grassology to at least thousands of people throughout the
18 United States. The Class is therefore sufficiently numerous to make joinder
19 impracticable, if not impossible. The precise number of Class members is
20 unknown to Plaintiff.

21 b. Existence and Predominance of Common Questions of Fact and
22 Law: Common questions of law and fact exist as to all members of the Class.
23 These questions predominate over any questions affecting individual Class
24 members. These common legal and factual questions include, but are not limited
25 to, the following:

- 26 i. whether Grassology does not perform as advertised;
27 ii. whether Defendants knew that Grassology does not
28 perform as advertised;

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- iii. whether Defendants intentionally concealed or failed to disclose to Plaintiff and the Class the inherently defective nature of Grassology;
 - iv. whether Defendants had a duty to Plaintiff and the Class to disclose that Grassology cannot perform as advertised, and whether Defendants breached that duty;
 - v. whether a reasonable consumer would consider the defective nature of Grassology material in deciding to purchase the product;
 - vi. whether Defendants' advertising claims give rise to actionable express warranties;
 - vii. whether Defendants breached express and implied warranties by selling a defective product and failing to refund Plaintiff and Class members all funds paid;
 - viii. the appropriate nature of class-wide equitable relief; and
 - ix. the appropriate measure of damages to award to Plaintiff and Class members.

These and other questions of law or fact common to the members of the Class predominate over any questions affecting only individual Class members.

c. Typicality: Plaintiff's claims are typical of the claims of the Class since Plaintiff purchased Grassology, designed, manufactured, marketed, distributed, warranted and supported by Defendants, as did each member of the Class. Furthermore, Plaintiff and all members of the Class sustained monetary and economic injuries arising out of Defendants' wrongful conduct. Plaintiff is advancing the same claims and legal theories on behalf of themselves and all absent class members.

1 d. Adequacy: Plaintiff is an adequate representative of the Class
2 because her interests do not conflict with the interests of the Class she seeks to
3 represent; she has retained counsel competent and highly experienced in complex
4 class action litigation; and she intends to prosecute this action vigorously. The
5 interests of the Class will therefore be fairly and adequately protected by Plaintiff
6 and her counsel.

7 e. Superiority: A class action is superior to other available means
8 of fair and efficient adjudication of the claims of Plaintiff and members of the
9 Class. The injury suffered by each individual Class member is relatively small in
10 comparison to the burden and expense of individual prosecution of the complex
11 and extensive litigation required by Defendants' conduct. It would be virtually
12 impossible for members of the Class individually to effectively redress the wrongs
13 done to them. Even if the members of the Class could afford such individual
14 litigation, the court system could not. Individualized litigation presents a potential
15 for inconsistent or contradictory judgments. Individualized litigation would
16 substantially increase the delay and expense to all parties, and to the court system,
17 presented by the complex legal and factual issues of the case. By contrast, the
18 class action device presents far fewer management difficulties, and provides the
19 benefits of single adjudication, economy of scale, and comprehensive supervision
20 by a single court.

21 f. Defendants have acted, and refused to act, on grounds generally
22 applicable to the Class, thereby making appropriate final injunctive relief with
23 respect to the class as a whole.

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1 **VIOLATIONS ALLEGED**

2 **COUNT I**

3 **VIOLATIONS OF THE FLORIDA DECEPTIVE & UNFAIR TRADE**
4 **PRACTICES ACT**

5 **Fla. Stat. § 501.201, *et seq.***

6 **(On Behalf of the Florida Class)**

7 22. Plaintiff and the Florida Class incorporate by reference each
8 preceding and succeeding paragraph as though fully set forth at length herein.

9 30. Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA")
10 prohibits "[u]nfair methods of competition, unconscionable acts or practices, and
11 unfair or deceptive acts or practices in the conduct of any trade or commerce." Fla.
12 Stat. § 501.204(1).

13 31. Defendants' misrepresentations and material omissions regarding the
14 defective nature of Grassology constitute false, misleading, and deceptive acts or
15 practices in violation of the FDUTPA in that Defendants' misrepresentations and
16 omissions were likely to mislead the consumer acting reasonably in the
17 circumstances, to the consumer's detriment.

18 32. Defendants intended their misrepresentations and omissions to
19 induce Plaintiff and Class members to purchase an inferior product at a premium
20 price. Defendants' conduct therefore was immoral, unethical, oppressive,
21 unscrupulous or substantially injurious to consumer, and thereby also constitute
22 unfair practices in violation of the FDUTPA.

23 33. Defendants' false, misleading, and deceptive acts and omissions took
24 place in the course of trade or commerce.

25 34. Defendants' conduct proximately caused injuries to Plaintiff and
26 other Class members. But for Defendants' myriad misrepresentations and
27 omissions, Jackson would not have purchased Grassology, would have requested a
28 refund immediately after purchase or would have paid less for the product than she

1 did.

2 **COUNT II**

3 **BREACH OF EXPRESS WARRANTY**

4 **(On Behalf of the Nationwide Class or, Alternatively, the Florida Class)**

5 35. Plaintiff and the Class incorporate by reference each preceding and
6 succeeding paragraph as though fully set forth herein.

7 36. Plaintiff brings this count on behalf of herself and the members of
8 the Class.

9 37. Defendants' packaging and commercials expressly warrant that
10 Grassology (1) is "Guaranteed To Grow"; (2) is "Ultra Low Maintenance"; (3)
11 Grows roots "Up To 4X Deeper!"; (4) "Defends against Disease, Weeds &
12 Insects" when it does not; (5) is "**Quick and easy**" to plant and cultivate; (6)
13 **grows anywhere; and (7) results in a "a lush, plush, picture-perfect landscape.**

14 38. These promises became part of the basis of the bargain between the
15 parties and created collective express warranties that Grassology would conform to
16 Defendants' affirmations and promises.

17 39. Defendants breached these express warranties by supplying a product
18 that does not and cannot perform as warranted, and by failing to compensate
19 Plaintiff for damages caused by the Products.

20 40. Plaintiff and members of the Class notified Defendants of the breach
21 within a reasonable time, and/or were not required to do so because affording
22 Defendants a reasonable opportunity to cure their breach of written warranty would
23 have been futile. Defendants also know of Grassology's inherently inability to
24 conform to Defendants' warranties, yet have chosen to conceal this fact from
25 Plaintiff and Class members and refuse to comply with their warranty obligations.

26 41. As a direct result of Defendants' breach, Plaintiff and the Class
27 bought Grassology when they otherwise would not have, and did not receive the
28 benefit of their bargain. Plaintiff has therefore suffered damages, injury in fact,

1 and ascertainable loss in an amount to be determined at trial.

2 **COUNT III**

3 **BREACH OF THE IMPLIED WARRANTY OF**
4 **MERCHANTABILITY**

5 **(On Behalf of the Nationwide Class or, Alternatively, the Florida Class)**

6 42. Plaintiff and the Class incorporate by reference each preceding and
7 succeeding paragraph as though fully set forth herein.

8 43. At all times mentioned herein, Defendants manufactured and sold
9 Grassology, and impliedly warranted that Grassology was of merchantable quality
10 when it is in fact unfit for its ordinary and intended use.

11 44. As a direct and proximate result of the breach of said warranties,
12 Plaintiff and the members of the Class suffered and will continue to suffer losses as
13 alleged herein.

14 45. To the extent any Plaintiff or Class members are required to establish
15 privity in order to state a claim for breach of the implied warranty, Plaintiff and
16 Class members are intended third-party beneficiaries of contracts, including
17 express warranties, between Defendants and their dealers, franchisees,
18 representatives and agents. On information and belief, Defendants' authorized
19 dealers, franchisees, representatives, and agents purchased Grassology from
20 Defendants pursuant to valid and enforceable agreements. Because Plaintiff and
21 Class members—rather than Defendants' authorized dealers, franchisees,
22 representatives, and agents—were the intended end users of Grassology, Plaintiff
23 and Class members were the intended (and not incidental) third party beneficiaries
24 of the agreements entered into among Defendants and their authorized dealers,
25 franchisees, representatives, and agents, and any warranties, express or implied,
26 flowing therefrom. Indeed, Defendants' authorized dealers, franchisees,
27 representatives, and agents did not and would not purchase Grassology for
28 personal use, therefore the implied warranties flowing to them actually are

1 intended to protect their customers from the losses Defendants' Grassology
2 product has caused and will continue to cause them. Accordingly, Defendants are
3 estopped from limiting claims for common law and statutory violations based on a
4 defense of lack of privity.

5 **COUNT IV**

6 **VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT**

7 **(15 U.S.C. § 2301 *et seq.*)**

8 **(On behalf of the Nationwide Class)**

9 46. Plaintiff and the Class incorporate by reference each preceding and
10 succeeding paragraph as though fully set forth herein.

11 47. Congress enacted the Magnuson-Moss Warranty Act, 15 U.S.C.
12 § 2301 *et seq.*, in response to widespread consumer complaints regarding
13 misleading and deceptive warranties. The Act imposes civil liability on any
14 "warrantor" for failing to comply with any obligation under written and implied
15 warranties. 15 U.S.C. § 2310(d)(1).

16 48. Grassology is a "consumer product," as defined by 15 U.S.C.
17 § 2301(1).

18 49. Plaintiff and the Class are "consumers" as defined by 15 U.S.C.
19 § 2301(3).

20 50. Defendants are "warrantor[s]" and "supplier[s]" as defined by
21 15 U.S.C. §§ 2301(4) and (5).

22 51. Defendants have failed to remedy the defects plaguing Grassology.

23 52. Defendants' packaging and commercials expressly warrant that
24 Grassology (1) is "Guaranteed To Grow"; (2) is "Ultra Low Maintenance";
25 (3) Grows roots "Up To 4X Deeper!"; (4) "Defends against Disease, Weeds &
26 Insects" when it does not; (5) is "Quick and easy" to plant and cultivate; (6) grows
27 anywhere; and (7) results in a "a lush, plush, picture-perfect landscape.

28 53. At the time Defendants issued written warranties covering

1 Grassology, Defendants knew and had notice that Grassology does not, and cannot,
2 perform as advertised. Defendants' continued misrepresentations and omissions
3 concerning Grassology are "[u]nfair methods of competition in or affecting
4 commerce, and [are] unfair or deceptive acts or practices in or affecting
5 commerce." Accordingly, Defendants' behavior is unlawful under 15 U.S.C.
6 §§ 2310(b), 45(a)(1).

7 54. Plaintiff seeks to recover damages caused as a direct result of
8 Defendants' breach of written and implied warranties, and its deceitful and
9 unlawful conduct. Damages include monies paid for Grassology.

10 55. The Act also provides for "other legal and equitable" relief. 15 U.S.C.
11 § 2310(d)(1). Accordingly, Plaintiff seeks to enjoin Defendants from acting
12 unlawfully as alleged, including but not limited to ceasing its fraudulent and
13 deceptive marketing campaign and actively discouraging Plaintiff from seeking all
14 remedies available under the law.

15 56. The Act also provides for an award of costs and expenses, including
16 attorneys' fees, to prevailing consumers in the Court's discretion. 15 U.S.C.
17 § 2310(d)(2). Plaintiff intends to seek such an award as prevailing consumers at the
18 conclusion of this case.

19 **COUNT V**

20 **UNJUST ENRICHMENT / COMMON LAW CLAIM FOR RESTITUTION**

21 **(On Behalf of the Nationwide Class or, Alternatively, the Florida Class)**

22 57. Plaintiff and the Class incorporate by reference each preceding and
23 succeeding paragraph as though fully set forth herein.

24 58. Plaintiff brings this count on behalf of themselves and the members
25 of the Class.

26 59. Because of their wrongful acts and omissions, Defendants charged a
27 higher price for Grassology than its true value and obtained monies which
28 rightfully belong to Plaintiff and the Class.

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25 *Counsel for Plaintiff and the Class*
26 ** Pro Hac Vice Applications to be Submitted*

27 **JURY DEMAND**

28 Plaintiff, on behalf of herself and the putative class, demand a trial by jury on all issues so triable.

Dated: June 1, 2017

Respectfully submitted,

By: /s/ David C. Wright
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