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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

1.800.VENDING, Inc., a Utah corporation,

Plaintiff,

vs.

CHRIS WYLAND, an individual, GROW  
FRANCHISE GROUP, LLC, a California  
limited liability company; SPROUT  
HEALTHY VENDING, LLC, a Wyoming  
limited liability company, GROW  
HEALTHY INCORPORATED, a California  
corporation, and DOES 1-50,

Defendants.

**COMPLAINT and  
DEMAND FOR JURY TRIAL**

Case No. \_\_\_\_\_

Judge \_\_\_\_\_

Plaintiff 1.800.Vending, Inc., by and through counsel, alleges and complains as follows:

**PARTIES**

1. Plaintiff 1.800.Vending, Inc., (“Plaintiff”) is a Utah corporation with its principal place of business in Davis County, State of Utah.

2. Upon information and belief, Defendant Chris Wyland (“Wyland”) is a resident of Multnomah County, State of Oregon.

3. Upon information and belief, Defendant Grow Franchise Group, LLC (“Grow Franchise”) is a California limited liability company, with its principal place of business in Orange County, State of California.

4. Upon information and belief, Defendant Sprout Healthy Vending, LLC (“Sprout”) is a Wyoming limited liability company, with its principal place of business in Orange County, State of California.

5. Upon information and belief, Defendant Grow Healthy Incorporated (“Grow Healthy”) is a California corporation with its principal place of business in Orange County, State of California.

6. Does 1-25 are person or entities not yet identified who participated or acted in concert with, acted on behalf of, or caused the conduct by the named Defendants described herein. The true identities of Does 1-25, inclusive, are presently unknown to Plaintiff; when Plaintiff discovers the true identities of Does 1-25, Plaintiff will amend this Complaint to allege their true identities.

7. Does 26-50 are owners and/or operators of various websites that serve as a portal for defamatory and disparaging statements regarding Plaintiff and/or that specifically encourage and are responsible for the development of defamatory and disparaging content regarding Plaintiff. The true identities of Does 26-50, inclusive, are presently unknown to Plaintiff; when

Plaintiff discovers the true identities of Does 26-50, Plaintiff will amend this Complaint to allege their true identities.

### **JURISDICTION AND VENUE**

8. This Court has jurisdiction and venue over this matter and the parties by reason of diversity jurisdiction and federal question jurisdiction, inasmuch as the parties are citizens of different states and the amount in controversy exceeds, exclusive of interest and costs, the sum of \$75,000 and inasmuch as Plaintiff brings claims under the Lanham Act, 15 U.S.C. §1125(a). 28 U.S.C. §§1332, 1338, 1391.

9. This Court has personal jurisdiction over Defendants. Specifically, in addition to doing business in this judicial district, Defendants' conduct complained of herein was and is purposefully directed toward Plaintiff in this judicial district and was intended to cause, and has caused, injury to Plaintiff in this judicial district.

### **GENERAL ALLEGATIONS**

10. Plaintiff is engaged in the business of selling and distributing vending machines throughout the world. Plaintiff sells its vending machines to entrepreneurs and operators who place the vending machines in businesses and other locations. Plaintiff does business under the trade names 1.800.Vending and HealthyYOU Vending.

11. Defendants Grow Franchise, Grow Healthy, and Sprout are an associated set of businesses which are also engaged in the business of selling and distributing vending machines; thus, they compete with Plaintiff. Defendant Chris Wyland is a principal of one or more of these

entities. Wyland, Grow Franchise, Grow Healthy, and Sprout are sometimes referred to collectively herein as “Defendants.”

12. Defendants operate their business using a business opportunity model which has not been properly registered in all states in which they do business. After their lack of registration became a competitive issue for Defendants, Wyland threatened to spread rumors critical of Plaintiff on the Internet.

13. Through marketing materials they distribute to prospective customers, Defendants disparage Plaintiff’s products and services. For example, in a section written specifically about Plaintiff, Defendants write as follows:

Healthy You Vending is a division of 1-800 Vending based out of Kayesville, [sic] Utah. ... At close inspection, a consumer will notice several deficiencies in the Healthy You/1800 Vending Machine.

1. The machines are actually 2 pieces. A drink section and a snack section.

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5. The machines are made of a low-grade sheet metal, tack welded and contain an inferior refrigeration compressor.

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Healthy You Vending/1-800 Vending also employs the use of outside vending locating service companies. ... The chance of a Healthy You/1800 Vending machine being placed in a school setting is almost non-existent unless the operator places the machine themselves.

This company is widely known for its heavy handed sales tactics and drastic discounts to get consumers to buy. The machines are manufactured overseas ... ***Another quick search of the internet under the various rip off reports and complaint boards will find several negative postings regarding the equipment and services Healthy You/ 1800 Vending Operators have experienced.***

14. The foregoing statements in Defendants' marketing materials regarding Plaintiff's products, services, and commercial activities are false and misleading statements themselves. But, the invitation to search the Internet was to direct Plaintiff's potential customers to postings on the Internet which were even more scurrilous and defamatory. And, as Plaintiff recently discovered, Defendants made such postings themselves, doing so anonymously or with pseudonyms, pretending to be Plaintiff's dissatisfied customers.

15. By way of example, on or about February 20, 2014, Wyland published an anonymous online post about Plaintiff (the "February 20 Post"). The February 20 Post was made on the online site [www.pissedconsumer.com](http://www.pissedconsumer.com) and was entitled "healthy you vending scam."

16. The February 20 Post reads in relevant part:

[1.800.Vending] is a complete scam ran [sic] by crooks and pedophiles ... Their owner Jeff Marsh has been indicted for lewd acts with children and I am sure they are under investigation by the government for stealing money from people. They took my money, sent me to some locating service company that promised good locations and a year later I still don't have any and they won't return my calls.

17. The February 20 Post is false and defamatory.

18. Because the February 20 Post was made anonymously, Plaintiff was unable to discover the identity of the person or persons who made the Post until it undertook legal process. Through legal process, Plaintiff discovered that the February 20 Post was made by a user operating from an IP address assigned to one Dawna Wyland in Portland, Oregon. Plaintiff did not discover this information until on or about September 4, 2014.

19. Upon information and belief, Chris Wyland and Dawna Wyland are husband and wife, and Dawna Wyland is an employee and/or agent of one or more of Defendants.

20. Upon information and belief, the February 20 Post was not the only defamatory and disparaging Internet posting regarding Plaintiff made by Defendants. Instead, Defendants and/or others acting in concert with them or on their behalf have made other defamatory and disparaging posts or statements regarding Plaintiff. Such posts have been made anonymously or under pseudonyms such that Plaintiff cannot yet ascertain the true identity of the responsible party.

21. For example, in addition to the February 20 Post, there are other defamatory and disparaging posts on [www.pissedconsumer.com](http://www.pissedconsumer.com), such as the following post dated January 17, 2014 from a user identified only as “Furious”:

You know, it’s pretty funny that the employees at 1800vending actually believe their own lies!! Their product is \*\*\* .... I fell for their tricks and have continued to have nothing but problems with the machines. ... Don’t fall for their sales pitch!! You will be sorry for spending a huge amount of money for something that’s worthless!!

**FIRST CLAIM FOR RELIEF**  
**(Defamation)**

22. Plaintiff hereby incorporates the allegations of the preceding paragraphs as if set forth in full herein.

23. Defendants have published false and untrue statements which defame Plaintiff.

24. For example, the statements published in the February 20 Post are false and defamatory. They impeach Plaintiff’s honesty, integrity, and professional reputation and expose

it to public hatred, contempt or ridicule. The statements made in the February 20 Post charge conduct that is incompatible with the exercise of Plaintiff's lawful business. Accordingly, these statements constitute defamation per se.

25. Upon information and belief, Defendants have published other such false, defamatory, unprivileged statements which charge conduct that is incompatible with the exercise of Plaintiff's lawful business, and Plaintiff has been damaged thereby.

26. By publishing statements on pissedconsumer.com and, upon information and belief, other websites and venues, Defendants published defamatory statements to a wide range of persons in the public.

27. The defamatory statements made by Defendants were made, at the very least, negligently, and are not subject to any privilege. Even if the statements were subject to a privilege, upon information and belief, Defendants made the statements with knowledge of their falsity or with reckless disregard thereto. Further, the defamatory statements were excessively published.

28. Plaintiff has suffered damages as a result of Defendants' defamatory statements, including damages to its reputation and the loss of customers.

29. Plaintiff is entitled to recover its damages in an amount to be proven at trial. Further, upon information and belief, Defendants made the defamatory statements alleged herein with knowledge of their falsity or with reckless disregard thereto, and Plaintiff is entitled to punitive damages.

**SECOND CLAIM FOR RELIEF**  
**(Commercial Disparagement)**

30. Plaintiff hereby incorporates the allegations of the preceding paragraphs as if set forth in full herein.

31. The statements made by Defendants on pissedconsumer.com and, upon information and belief, other websites and venues, are false and untrue and impute dishonest and reprehensible conduct to Plaintiff, thereby disparaging Plaintiff's products and services.

32. By posting on pissedconsumer.com and, upon information and belief, other websites, Defendants published disparaging statements to a wide range of persons in the public.

33. Defendants published false and disparaging statements about Plaintiff, causing Plaintiff to suffer special and general damages, including the monetary loss of customers and injury to the reputation of Plaintiff and its products and services.

34. Defendants published the false and disparaging statements with the knowledge that the statements were false or with reckless disregard as to the falsity of the statements.

35. Plaintiff is entitled to recover its damages in an amount to be proven at trial. Further, upon information and belief, Defendants' disparaging statements alleged herein were willful and malicious, intentionally fraudulent or manifested a knowing and reckless indifference toward, and a disregard of, the rights of others, and Plaintiff is entitled to punitive damages.

**THIRD CLAIM FOR RELIEF**  
**(Violation of § 43(a) of the Lanham Act – 15 U.S.C. §1125(a))**

36. Plaintiff hereby incorporates the allegations of the preceding paragraphs as if set forth in full herein.



37. Defendants—Plaintiff’s competitors—have disseminated false and misleading statements concerning Plaintiff and its principals, products, services, and commercial activities in violation of §43(a) of the Lanham Act.

38. The February 20 Post and, upon information belief, other statements made by Defendants, are false and deceptive commercial advertisements and promotions which misrepresent the nature, characteristics, and quality of Plaintiff’s products, services, and commercial activities. These statements are commercial speech, directly targeted to Plaintiff, and were intended to destroy Plaintiff’s reputation, goodwill, and market position and to influence consumers to not purchase Plaintiff’s products and services and, instead, to purchase Defendants’ products and services.

39. Defendants’ false and misleading statements deceived and have a tendency to continue to deceive, a substantial segment of their intended audience.

40. Defendants’ false and misleading statements are material, and have influenced and will continue to influence, the purchasing decisions of Plaintiff’s potential customers.

41. By placing the February 20 Post on pissedconsumer.com and, upon information and belief, making other false and misleading statements on other websites and other venues, Defendants placed their deceptive advertisements into interstate commerce and disseminated them so widely as to constitute commercial advertising or promotion within the industry.

42. As a direct and proximate cause of Defendants’ unlawful advertisements and promotions, Plaintiff has suffered, is suffering, and will continue to suffer damage to its business,

reputation, and goodwill, and the loss of sales and profits Plaintiff would have made but for Defendants' acts.

43. As a direct and proximate cause of Defendants' unlawful acts and practices, including those set forth above, Defendants have caused, are causing, and unless immediately enjoined by this Court, will continue to cause immediate and irreparable harm to Plaintiff, for which there is no adequate remedy at law, and for which Plaintiff is entitled to injunctive relief.

44. Defendants' acts, as described herein, are, and unless enjoined, will continue to be, in violation of §43(a) of the Lanham Act, codified at 15 U.S.C. § 1125(a), which prohibits Defendants from using false, misleading, or disparaging representations of fact that misrepresent the nature, characteristics, or qualities of their own or Plaintiff's products and services.

45. Defendants have acted in bad faith and have willfully engaged in false advertising with the intent to injure Plaintiff and deceive the public. Thus, in addition to the injunctive relief requested herein, Plaintiff is entitled to costs and attorney's fees pursuant to 25 U.S.C. §1117(a).

**FOURTH CLAIM FOR RELIEF**  
**(Intentional Interference with Existing and Prospective Economic Relations)**

46. Plaintiff hereby incorporates the allegations of the preceding paragraphs as if set forth in full herein.

47. Plaintiff has existing and potential economic relations with customers and potential customers throughout the world who seek out information regarding Plaintiff through various search engines and on various websites.

48. Defendants have made and, upon information and belief, continue to make false, misleading, disparaging and defamatory statements with the intent to interfere with Plaintiff's existing and prospective consumer relations.

49. Defendants' intentional interference with Plaintiff's economic relations with existing and potential customers has been through improper means and for an improper purpose. Defendants' conduct is prohibited by federal and state law and established standards of the parties' trade.

50. Plaintiff has been damaged by Wyland and Defendants' intentional interference. Among other damage, Plaintiff has lost sales to existing and prospective customers.

51. Plaintiff will suffer irreparable harm absent an injunction precluding Defendants' conduct.

52. Further, upon information and belief, Defendants' intentional interference with Plaintiff's business relationships is the result of willful and malicious or intentionally fraudulent conduct, or conduct that manifests a knowing and reckless indifference toward, and in disregard of the rights of others. Accordingly, Plaintiff is entitled to punitive damages.

**FIFTH CLAIM FOR RELIEF**  
**(Preliminary and Permanent Injunctive Relief)**

53. Plaintiff hereby incorporates the allegations of the preceding paragraphs as if set forth in full herein.

54. Plaintiff is without an adequate remedy at law for the protection of its rights, including, but not limited to its business reputation and goodwill.

55. Plaintiff has suffered and will continue to suffer immediate and irreparable harm, injury, and loss unless this Court issues a preliminary injunction enjoining and restraining Defendants from publishing any advertising materials, including, online posts or any other statements that falsely represent Plaintiff's business. Damage to Plaintiff's reputation and business relationships is precisely the type of harm that is irreparable because the damage is difficult, if not impossible, to determine and/or quantify.

56. Plaintiff has a substantial likelihood of success on the ultimate merits of the relief requested in this Complaint because the offending statements in the February 20 Post are demonstratively false and misleading and are in clear violation of the Lanham Act and Utah law.

57. Defendants will not suffer any hardship by being immediately enjoined from further dissemination of false advertising materials and defamatory statements and by being ordered to remove and retract the February 20 Post and any other defamatory and/or disparaging statements they published. On the other hand, Plaintiff will be irreparably injured if such injunctive relief is not issued.

58. A preliminary injunction further serves the public interest in protecting against false advertising and unfair competition.

59. Based on the foregoing, Plaintiff requests that the Court enter preliminary injunctive relief until a full trial on the merits can be held, at which time Plaintiff requests that the Court enter permanent injunctive relief.

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