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10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

12 JANICE HUSKEY, individually and on
 13 behalf of all others similarly situated

14 Plaintiff,

15 vs.
 16

17 BEHR PROCESS CORP.; BEHR
 18 PAINT CORP.; MASCO CORP.; THE
 HOME DEPOT, INC.; and HOME
 19 DEPOT U.S.A., INC.,

20 Defendants.
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CASE NO.:

CLASS ACTION

CLASS ACTION COMPLAINT

Jury Trial Demanded

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1 Plaintiff, Janice Huskey (“Plaintiff”) individually and on behalf of all others
2 similarly situated, by and through undersigned counsel, hereby alleges as follows:
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4 **I. NATURE OF THE CASE**

5 1. This is a consumer fraud class action brought by Plaintiff on behalf
6 of a class of all similarly situated purchasers of the Behr Premium
7 DECKOVER® deck and concrete resurfacing and restoration product
8 (“DeckOver” or “DeckOver Product(s)”). Despite knowing that the DeckOver
9 Products are defective, Defendants, as identified below, marketed and sold
10 DeckOver to thousands upon thousands of unsuspecting consumers, causing them
11 to suffer extensive monetary damage.

12 2. By way of background, millions of homes and dwellings throughout
13 the United States are constructed of wood and concrete. Many such homes and
14 dwellings have outdoor wooden decks and similar structures that require upkeep,
15 especially because they are exposed to the elements and surface contact. Owners
16 of homes and dwellings traditionally maintain these outdoor wooden decks and
17 similar structures by annually applying a paint or stain. Such paints or stains
18 provide a decorative and protective barrier from the elements, while also
19 minimizing the wear and tear that such wood surfaces absorb over time, thus
20 maximizing their useful life and the quality of their appearance.

21 3. Behr Process Corporation (“Behr”), a wholly owned subsidiary of
22 MASCO Corporation, (collectively the “Behr Defendants”) has, since at least
23 2013, manufactured and sold a deck resurfacing product called DeckOver that is
24 sold exclusively at Home Depot branded stores. DeckOver is nationally
25 marketed by the Behr Defendants and the Home Depot Defendants, as defined
26 below, to home and dwelling owners with uniform representations ostensibly
27 justifying its premium price (three to five times more expensive than ordinary
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1 paints and stains) because it is a more durable coating (five times thicker) and can
2 repair decks by filling in cracks and stopping splinters. DeckOver is marketed
3 and advertised as being capable of resurfacing and refinishing wood and concrete
4 surfaces with an ease of application, achieving results that resist cracks, peeling
5 and mildew. DeckOver is advertised as being “great for decks, railings, patios,
6 composite decks, pool decks and walkways,” and able to “conceal cracks and
7 splinters up to 1/4 inch,” to “create[] a smooth, slip-resistant finish,” “resists
8 cracking and peeling” and “[b]ring new life to old wood and concrete surfaces.”¹
9 It is represented that DeckOver is capable of bringing decking and other surfaces
10 “back to life” as it “rejuvenate[s]” the look of decks and other surfaces² while
11 offering “excellent adhesion.”³ As such, DeckOver is nationally marketed as a
12 premium product that is superior to alternative traditional paints and stains, and
13 thereby worth paying extra money to purchase.

14 4. These and other representations are printed on DeckOver’s uniform
15 product labeling to which the consumers are uniformly exposed to when
16 purchasing pails of DeckOver at Home Depot locations, and in identical, uniform
17 representations on Home Depot’s web page advertising DeckOver.

18 5. However, in truth, so-called premium product DeckOver does not
19 live up to its marketing representations and promises. DeckOver is not durable,
20 nor is it long-lasting. Rather than providing years of protection in exchange for

21
22 ¹ Behr Premium DeckOver, <http://www.behr.com/consumer/products/wood-stains-finishes-cleaners-and-strippers/behr-premium-deckover> (last visited Aug. 8, 2017).

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24 ² Technical Data Sheet DeckOver Solid Color Coating,
25 http://www.behr.com/cma/BehrPro/Marketing/Products/TDS/5000_R914.pdf (last visited Aug. 8, 2017).

26 ³ Behr Premium DECKOVER Product Information Video,
27 <https://www.youtube.com/watch?v=OjHWwV6J7PU> (last visited Aug. 8, 2017).

1 its premium price, it deteriorates quickly within mere months of its application,
2 and in some cases weeks. DeckOver has caused extensive damage to consumers’
3 decks and other outdoor surfaces on which DeckOver is applied. Instead of
4 serving as a premium option for reducing maintenance work, while improving the
5 look, performance, and durability of decks, patios, and outdoor surfaces,
6 DeckOver actually causes consumers to waste considerable time and money.
7 Consumers are induced by Defendants’ false representations into purchasing
8 DeckOver at a premium price, only to apply it, and thereafter have to remove it
9 and replace damaged property as a consequence of its performing worse than
10 cheaper options.

11 6. Despite their knowledge of DeckOver’s defects, including the fact
12 that it is prone to failure, and their knowledge that their representations are false
13 and misleading, Defendants continue to market and sell the DeckOver products to
14 the public utilizing uniform advertising and point of sale statements that falsely
15 represent DeckOver’s quality, durability and other characteristics.

16 7. Plaintiff brings this suit to enjoin the unlawful sale and marketing of
17 DeckOver by Defendants and for the damages Plaintiff and similarly situated
18 purchasers of DeckOver products have sustained as a result. Plaintiff also seeks
19 an order forcing the Behr Defendants and the Home Depot Defendants, as more
20 fully identified below, to stop their deceptive conduct and to provide appropriate
21 remuneration to affected consumers. Given the substantial quantity of DeckOver
22 that has been sold nationally, a class action is the proper vehicle for addressing
23 Defendants’ misconduct and for attaining needed relief for aggrieved consumers.

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25 **II. JURISDICTION AND VENUE**

26 8. This Court has subject-matter jurisdiction over this action pursuant
27 to the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332 (a) and (d), because

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1 the amount in controversy exceeds \$5,000,000, exclusive of interest and costs,
2 and more than two thirds of the members of the proposed class are citizens of
3 states different from that of each of the Defendants, as identified below.

4 9. Venue is proper in this District under 28 U.S.C. § 1391(b) because
5 Defendants' improper conduct alleged in this complaint occurred in, was directed
6 from, and/or emanated from this judicial district. Defendants Behr Process
7 Corporation and Behr Paint Corporation are California corporations with their
8 principal places of business in this District. All of the Defendants regularly
9 conduct business in this District.

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11 **III. PARTIES**

12 10. Plaintiff Janice Huskey is a resident and citizen of the State of
13 Oregon.

14 11. Defendants Behr Process Corporation and Behr Paint Corporation
15 (collectively "Behr") are California corporations, with their principal place of
16 business in California. Both Behr Process Corporation and Behr Paint
17 Corporation are located at 3400 W. Segerstrom Ave., Santa Ana, California,
18 92704.

19 12. Defendant MASCO Corporation is a corporation organized and
20 existing under the laws of the State of Delaware, with its principal place of
21 business located at 21001 Van Born Road, Taylor, Michigan. MASCO acquired
22 Behr Process Corporation in 1999. Upon information and belief, MASCO
23 Corporation is and was at all relevant times the parent company of Behr Process
24 Corporation, and is one of the largest manufacturers and suppliers of architectural
25 paint, coatings, and exterior wood care products in the United States. MASCO
26 Corporation is a multinational, publicly traded (NYSE:MAS) corporation
27 comprised of more than twenty companies (including Behr Process Corporation)
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1 operating over sixty manufacturing facilities and over fifty warehouses and
2 distribution locations in the United States and in many other parts of the world,
3 including primarily China, Germany, and the United Kingdom. According to its
4 filings with the Securities and Exchange Commission, MASCO Corporation
5 manufactures, distributes, and installs home improvement and building products,
6 with an emphasis on brand-name consumer products and services.⁴

7 13. MASCO identifies itself as an industry and world leader in, among
8 other things, residential wood coatings:

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10 Masco Corporation is a global leader in the design, manufacture and
11 distribution of branded home improvement and building products.
12 Our portfolio of industry-leading brands includes BEHR® paint;
13 DELTA® and HANSGROHE® faucets, bath and shower fixtures;
14 KRAFTMAID® and MERILLAT® cabinets; MILGARD® windows
15 and doors; and HOT SPRING® spas.⁵
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17 14. Upon information and belief, MASCO Corporation oversees the
18 work of Defendant Behr Process Corporation, and, in conjunction with Behr
19 Process Corporation, designed, manufactured, and purposefully caused the
20 DeckOver Products to be placed into the stream of commerce within this District
21 and throughout the United States. The decisions, acts, and omissions alleged
22 herein were conceived, implemented, and at all times carried out by Defendant
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24 ⁴ MASCO Corp. Form 10-K for the fiscal year ended Dec. 31, 2016,
25 available at
26 https://www.sec.gov/Archives/edgar/data/62996/000006299617000008/mas_20161231x10k.htm (last visited August 8, 2017).

27 ⁵ *Id.*
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1 MASCO Corporation, directly or in concert with its subsidiary Defendant Behr
2 Process Corporation, and/or The Home Depot.

3 15. Plaintiff refers to Behr Process Corporation, Behr Paint Corporation,
4 and Masco Corporation collectively as the “Behr Defendants.”

5 16. Defendant Home Depot U.S.A., Inc. is a Delaware corporation, with
6 its principal place of business in Georgia. Home Depot U.S.A. operates as a
7 subsidiary of The Home Depot, Inc. Defendant The Home Depot, Inc. is a
8 Delaware corporation, with its principal place of business in Georgia. The Home
9 Depot, Inc. is the parent company of Home Depot U.S.A., Inc. and describes
10 itself in annual reports filed with the Securities Exchange Commission as the
11 world’s largest home improvement retailer. Home Depot, U.S.A., Inc. and the
12 Home Depot, Inc. are collectively referred to as “Home Depot” or the “Home
13 Depot Defendants.”

14 17. Collectively the Behr Defendants and the Home Depot Defendants
15 are referred to as “Defendants.”

16 18. The Behr Defendants used, commingled, and combined their
17 resources to design, develop, manufacture, market, and sell the DeckOver
18 Products.

19 19. At all times relevant herein, all Defendants were actual and/or *de*
20 *facto* joint venturers in the marketing and sale of the DeckOver Products.

21 22 **IV. COMMON FACTUAL ALLEGATIONS**

23 24 **A. Overview Regarding Deck and Patio Restoration and the** 25 **DeckOver Products**

26 20. At all times material, the Defendants were aware that outdoor
27 wooden decks and concrete surfaces, docks and similar structures are exposed to
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1 the elements and, as such, are prone to wear and deterioration. In addition, they
2 are exposed to surface contact. As a result of such wear, deterioration and
3 surface contact, such decks, docks, patios and similar structures need periodic
4 maintenance in order to maintain a quality appearance and maximize their useful
5 life. This periodic maintenance typically involves the application of a paint or
6 stain about once a year. Paints and stains are, in essence, coatings that provide a
7 thin and protective barrier. The stains soak into the fibers of the wood. Paints
8 and stains have their limitations because they do not improve the surface's
9 condition if, for example, the surface is cracked or splintered, although they do
10 provide some surface protection.

11 21. DeckOver is a "resurfacer" that was introduced to the marketplace
12 and offered as a protective, restorative coating as an option for home and
13 dwelling owners. Like other acrylic coatings, this resurfacer is thicker than paint
14 or stains, thereby coating the surface with a significantly thicker protective
15 barrier that is supposed to last longer and extend the life of the surface by
16 repairing splinters and filling cracks.

17 22. Because resurfacers such as DeckOver (a) offer the promise of
18 extending the life of the surface and last significantly longer than paints or stains;
19 (b) avoid the hassle of traditional upkeep and/or the great expense and effort of
20 completely replacing the surface altogether; and (c) eliminate the need for regular
21 maintenance, while at the same time substantially extending the life of the wood
22 and concrete surfaces, consumers are charged substantially more money for such
23 products when compared to paints and stains. Consumers who spend extra
24 money to buy DeckOver at a premium price hope to avoid replacing the deck or
25 surface and thereby save money, and they expect to devote less time and money
26 to maintain the deck in the years that follow.

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1 **B. Defendants’ False, Deceptive and Misleading DeckOver Product**
2 **Marketing Campaign**

3 23. Behr officially introduced its premium DeckOver product in May
4 2013 in a press release that claimed it was an “advanced formula” that
5 “revitalize[s] tired decks, patios, porches and even pool decks, and provides a
6 budget-friendly unique solution that was previously unavailable to consumers.”⁶
7 Scott Richards, Behr’s Senior Vice President of Marketing, stated that the
8 premium DeckOver product line was the culmination of “years of research and
9 the latest technology,” and provided “easy application and durable protection
10 against the elements ... allowing consumers to rejuvenate instead of replacing
11 their decks or concrete surfaces.”⁷

12 24. Marketing the product as a better alternative to using traditional
13 paints or stains or replacing worn and old decks, porches, patios and other
14 structures altogether, it was further represented that DeckOver will go over
15 decking and other surfaces, allowing consumers to do a do-over with their
16 structure rather than a total replacement. Behr’s advertising and product
17 literature urged customers thinking about replacing their decks to, instead,
18 resurface them by using DeckOver, pointedly inducing consumer’s purchases by

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23 _____
24 ⁶ Behr Press Release Introducing New BEHR DECKOVER®,
25 <http://newsroom.behr.com/news/introducing-new-behr-deckover-246353> (last
visited Aug. 8, 2017)

26 ⁷ *Id.*
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1 asking “Why replace old wood if you don’t have to?” See image below.⁸



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25. Defendants’ advertising at Home Depot locations, including point of sale advertising, has falsely driven home the promise of DeckOver’s durability and its usefulness a long lasting alternative to paint and stains capable of extending the life of the surfaces, stating:

⁸ <http://ebook-dl.com/magazine/handy-magazine-sharp-118-jun-jul-20136098.pdf> at p. 7 (last visited August 7, 2017).

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28. The product packaging itself, which was replicated in Home Depot’s advertising, further drives home the representation that DeckOver “brings new life to old wood and concrete” while it “creates a smooth, slip-resistant finish” and “conceals splinters and cracks up to 1/4.”

29. The DeckOver product marketing and product packaging consistently states with regard to the characteristics and promise of the product that it “resists cracking and peeling,” has a “durable, mildew resistant finish,” provides “waterproofing, solid color coating,” “revives wood and composite decks, railings, porches and boat decks,” and is “great for concrete pool decks, patios and sidewalks.”

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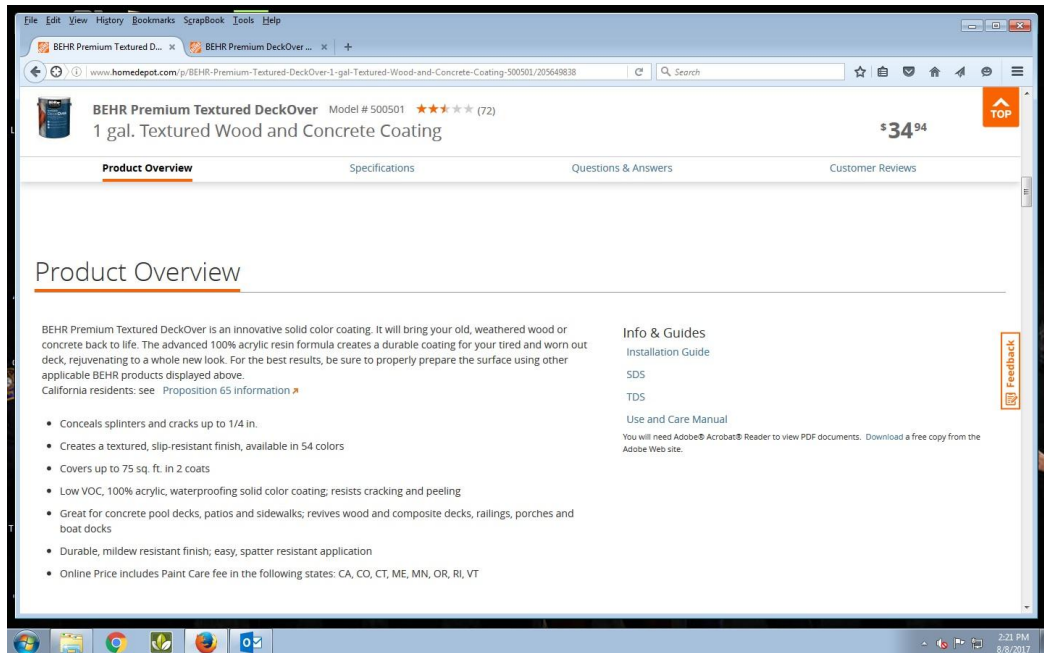
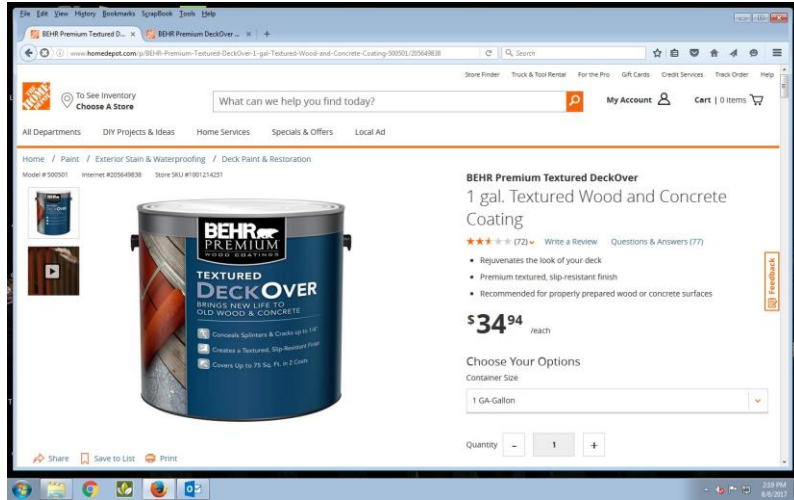


30. The DeckOver Products’ advertising further includes uniform representations that it provides “long lasting results,”⁹ “gives new life to old wood and concrete” and “extends the life of your deck, fills cracks and covers splinters.”¹⁰ The Defendants also issued uniform representations in point of sale displays and advertising at Home Depot locations that were designed to entice consumers to believe that DeckOver products were low maintenance, high quality, “resists cracking and peeling” and, at bottom, are premier and superior products justifying the charging of consumers of premium prices.

⁹ Behr Premium DECKOVER Product Information Video, <https://www.youtube.com/watch?v=OjHWwV6J7PU> (last visited Aug. 8, 2017).

¹⁰ BEHR Paints DeckOver TV Commercial, 'Dance Party', <https://www.youtube.com/watch?v=RzQXqkuIUV0> (last visited August 8, 2017).

1 31. Defendants also marketed DeckOver on Home Depot’s website,
 2 which further made uniform representations concerning DeckOver’s ostensible
 3 performance and qualities. On its website, Home Depot asserts that DeckOver
 4 creates a “durable, mildew resistant finish” that “brings new life to your old wood
 5 deck or concrete patio.”¹¹ Home Depot further claims that DeckOver “resists
 6 cracking, peeling” and “conceals splinters and cracks up to 1/4 in.” *Id.*



26 ¹¹ [http://www.homedepot.com/p/BEHR-Premium-DeckOver-1-gal-Wood-](http://www.homedepot.com/p/BEHR-Premium-DeckOver-1-gal-Wood-and-Concrete-Coating-500001/206031374)
 27 [and-Concrete-Coating-500001/206031374](http://www.homedepot.com/p/BEHR-Premium-DeckOver-1-gal-Wood-and-Concrete-Coating-500001/206031374) (last visited August8, 2017).
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1 32. Thousands and thousands of consumers were induced by such
2 representations and advertising to purchase DeckOver products believing that the
3 DeckOver products are long-lasting and that Defendants would stand behind their
4 advertising and representations, when in truth, Defendants advertising and
5 representations were false, deceptive and misleading. DeckOver does not live up
6 to the promise made by Defendants regarding quality, durability, longevity and
7 characteristics ostensibly making it superior to paints and stains.

8 33. As Defendants were aware at all times material, DeckOver products
9 are of inferior quality. DeckOver Products are susceptible to failure shortly after
10 they are applied. They do not, in fact, provide lasting results. These defects and
11 deficiencies manifest even when the product is applied properly in compliance
12 with the product instructions. The DeckOver Products routinely crack, chip,
13 peel, bubble, fail, or degrade. DeckOver does not successfully waterproof decks
14 or other surfaces to which it is applied. As customers have routinely complained,
15 DeckOver does not seal their structures. It permits moisture intrusion leading to
16 mildew and degradation of the underlying structure. They fail even in weather
17 conditions that the products are advertised as supposedly capable of
18 withstanding.

19 34. Defendants knowingly and intentionally concealed and failed to
20 disclose these various defects with regard to DeckOver products. They failed to
21 disclose that DeckOver's defects manifest themselves within months after proper
22 application and thus, DeckOver does not provide "lasting results." Defendants
23 failed to disclose that the product deteriorates at such a fast rate that it is not
24 durable or resilient. Defendants continue to assert their false and misleading
25 representations in order to charge more for DeckOver than other comparable
26 paints and stains. Consumers have paid and continue to pay more for DeckOver
27 even though it is not capable of reliably coating wood and concrete surfaces for
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1 more than a short period of time, routinely peels, bubbles and degrades within
2 months of application, covers three to five times less area and is more expensive
3 per gallon than other Behr paints and stains.

4 35. Defendants cannot deny that they have been and are fully aware of
5 the many defects and deficiencies associated with DeckOver. There have been
6 widespread and persistent consumer complaints regarding DeckOver that are
7 known to Defendants. Behr has regularly reviewed these complaints and has
8 even responded to some of them. At least one report by the media notes that
9 Behr actually removed online complaints on its own Facebook page containing
10 such DeckOver complaints.

11 36. Yet, despite receiving scores and scores of complaints and despite
12 their knowledge as to how costly it is to remove DeckOver, reprepare the surface,
13 coat it, replace the outdoor decks or surfaces entirely, and its defects and
14 deficiencies, Defendants continue to sell DeckOver and market it as “durable”
15 and an alternative to replacing one’s deck, wholly failing to warn consumers
16 beforehand that the product fails after only a few months and often leaves the
17 surfaces looking worse than before DeckOver was applied.

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19 **C. Plaintiff’s Experiences**

20 37. In April 2015, Plaintiff purchased and paid a premium price for
21 several cans of DeckOver from Defendant Home Depot’s store in Warrenton,
22 Oregon. Prior to purchasing DeckOver, Plaintiff generally saw and relied on
23 advertisements regarding DeckOver’s high quality as a resurfacers, durability and
24 longevity. Prior to the purchase, Plaintiff specifically reviewed the product’s
25 label and representations made thereon. Plaintiff applied DeckOver to her deck
26 in accordance with the instructions provided by Defendant Behr. Within months
27 of application, the DeckOver applied to Plaintiff’s deck began to fail.
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1 38. Plaintiff has been damaged by DeckOver's premature failure. Had
2 Plaintiff known that DeckOver would not perform as represented and/or would
3 prematurely fail, she would have not have purchased or used the product and
4 certainly would not have paid a premium price for it whatsoever.

5 39. Plaintiff will also incur out of pocket expenses to repair the damage
6 caused by DeckOver's premature failure. Plaintiff's entitled to full
7 reimbursement for these damages and/or the concomitant costs of repair and/or
8 replacement of her deck.

9 40. Thousands of consumers have been damaged as a consequence of
10 purchasing DeckOver based on false and deceptive misrepresentations and
11 advertising and without being warned by Defendants of DeckOver's product
12 deficiencies and defects before such consumers paid premium prices for what
13 they thought was a premium product, as advertised.

14
15 **V. ESTOPPEL FROM PLEADING AND TOLLING OF APPLICABLE**
16 **STATUTES OF LIMITATIONS**

17 41. Plaintiff and members of the Class are within the applicable statute
18 of limitation for the claims presented here. Defendants have non-public
19 information detailing DeckOver's propensity to prematurely degrade, but failed
20 to disclose this information to and concealed it from consumers. Plaintiff and
21 Class members therefore could not reasonably have known that DeckOver would
22 prematurely degrade. Rather, consumers relied upon Defendants'
23 misrepresentations and omissions, including the statements on the product
24 labeling as set forth above. Defendants are estopped from asserting any statute of
25 limitation defense that might otherwise be applicable to the claims asserted
26 herein.

1 **VI. CLASS ACTION ALLEGATIONS**

2 42. This action is brought and may be maintained as a class action
3 pursuant to FED. R. CIV. P. 23(a), 23(b)(2) and/or 23(b)(3).

4 43. Plaintiff seeks to represent the following Nationwide Class defined
5 as follows:

6 All individuals and entities residing in the United States that
7 purchased DeckOver, not for resale.

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9 44. Alternatively, or in addition to the Nationwide Class, Plaintiff seeks
10 to represent the following Oregon Class defined as follows:

11
12 All individuals and entities residing in Oregon that purchased
13 DeckOver, not for resale.

14
15 45. Excluded from the Classes are (1) the court and its officers,
16 employees and relatives and (2) Defendants and their subsidiaries, officers,
17 directors, employees, contractors and agents.

18 46. Class members seek relief under both Rule 23(b)(2) and (b)(3).
19 Specifically, Class members who need to replace decking material and/or repair
20 decks and other property seek to have the Court declare any purported limits on
21 full recovery to be unenforceable and otherwise null and void. Under Rule
22 23(b)(3), the central issues for each and every Class member are the same:
23 whether DeckOver has the propensity to prematurely fail, whether Defendants
24 acted unlawfully and wilfully, and whether the Class is entitled to common
25 remedies.

26 47. Plaintiff reserves the right to redefine the Class(es), and/or requests
27 for relief.

1 48. The members of the proposed Class(es) are so numerous that joinder
2 of all members is impracticable.

3 49. The exact number of Class members is unknown. Due to the nature
4 of the trade and commerce involved, as well as the number of online and direct
5 complaints, Plaintiff believes the Class consists of thousands of consumers.

6 50. Common questions of law and fact affect the right of each Class
7 member, and a common relief by way of damages is sought for Plaintiff and
8 Class members.

9 51. Common questions of law and fact that affect Class members
10 include, but are not limited to:

11 a. Whether Defendants' uniform marketing representations and
12 advertisements respecting DeckOver were false, deceptive, and/or misleading to
13 reasonable consumers;

14 b. Whether Defendants knowingly engaged in fraudulent, unfair, or
15 deceptive conduct with respect to the advertising and marketing of DeckOver;

16 c. Whether DeckOver's defective propensities and failure to perform as
17 uniformly advertised and marketed would be material to a reasonable consumer;

18 d. Whether Defendants were unjustly enriched by the sale of DeckOver;

19 e. Whether members of the proposed Class have sustained damages
20 and, if so, the proper measure of such damages; and

21 f. Whether Defendants should be declared financially responsible for
22 such damages and should be enjoined from selling or marketing DeckOver absent
23 issuing a warning to consumers regarding notifying all Class members about
24 DeckOver's propensity to prematurely fail or otherwise enjoined from selling or
25 marketing DeckOver absent removing all false and misleading advertisements and
26 representations regarding the product.
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1 52. Plaintiff's claims are typical of the claims of the Class. Plaintiff and
2 all members of the Class purchased DeckOver and own homes, residences,
3 dwellings or other structures on which DeckOver has been applied. The product
4 has failed and will continue to fail prematurely. Plaintiff, like all Class members,
5 has been damaged by Defendants' conduct in that she has incurred or will incur
6 the costs of replacing DeckOver and repairing and/or replacing her decks and
7 additional property that were damaged by DeckOver's premature failure.
8 Additionally, the factual basis of Defendants' conduct is common to all Class
9 members and represents a common thread of misconduct resulting in injury and
10 damages to all members of the Class.

11 53. Plaintiff will fairly and adequately assert and protect the interests of
12 the Class. Specifically, she has hired attorneys who are experienced in
13 prosecuting class action claims and will adequately represent the interests of the
14 Class; and she has no conflict of interests that will interfere with the maintenance
15 of this class action.

16 54. A class action provides a fair, efficient, and superior method for the
17 adjudication of this controversy for the following reasons:

18 a. The common questions of law and fact set forth herein predominate
19 over any questions affecting only individual Class members;

20 b. The Class is so numerous as to make joinder impracticable but not so
21 numerous as to create manageability problems;

22 c. There are no unusual legal or factual issues which would create
23 manageability problems, and depending on discovery, manageability will not be
24 an issue as much information is solely in Defendants' possession;

25 d. Prosecution of separate actions by individual members of the Class
26 would create a risk of inconsistent and varying adjudications against Defendants
27 when confronted with incompatible standards of conduct;

28

1 e. Adjudications with respect to individual members of the Class could,
2 as a practical matter, be dispositive of any interest of other members not parties to
3 such adjudications, or substantially impair their ability to protect their interests;
4 and

5 f. The claims of the individual Class members are small in relation to
6 the expenses of litigation, making a Class action the only procedure in which
7 Class members can, as a practical matter, recover. However, the claims of
8 individual Class members are collectively large enough to justify the expense and
9 effort in maintaining a class action.

10
11 **CAUSES OF ACTION**

12 **COUNT ONE**

13 **(Unjust Enrichment**

14 **On Behalf of All Classes)**

15 55. Plaintiff re-alleges and incorporates by reference the allegations
16 contained in the preceding paragraphs as though set forth fully herein.

17 56. Plaintiff and Class members conferred a tangible economic benefit
18 upon Defendants by purchasing DeckOver. Plaintiff and Class members would
19 not have purchased DeckOver had they known that DeckOver had a propensity to
20 prematurely fail and would not perform as represented.

21 57. Failing to require Defendants to provide remuneration under these
22 circumstances would result in Defendants being unjustly enriched at the expense
23 of Plaintiff and the Class members.

24 58. Defendants' retention of the benefit conferred upon them by Plaintiff
25 and members of the Class would be unjust and inequitable.

COUNT TWO

(Negligent Misrepresentation On Behalf of All Classes)

59. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs as though set forth fully herein.

60. Defendants manufactured, marketed, advertised, sold, and represented DeckOver to Plaintiff as a deck resurfacers.

61. Among other things, Defendants made numerous material misrepresentations regarding DeckOver, as more fully alleged above.

62. These representations are false and misleading because DeckOver leads to a shorter life of a deck by requiring repairs due to its premature failure, fails to conceal cracks, results in bubbling, cracking, and peeling, is not durable, and does not revive decks.

63. At the time of sale, Defendants knew or should have known about DeckOver's propensity to prematurely fail, by and through, direct online complaints and other complaints made directly to Defendants. Thus, Defendants either knew their representations were false or had no reasonable grounds for believing that their representations were true.

64. Defendants also failed to disclose, concealed, suppressed and omitted material information concerning DeckOver, including the DeckOver was inherently susceptible to cracking, peeling, flaking, chipping, bubbling, puckering, separating, generally degrading and otherwise prematurely failing.

65. Defendants intended that Plaintiff rely upon their material misrepresentations and omissions to purchase more DeckOver. Plaintiff reviewed and reasonably relied upon Defendants' misrepresentations and omissions and incurred damages as a direct and proximate result, in an amount to be determined at trial, including repair and replacement costs and/or damages to other property.

1 Any limitation on economic loss is precluded by Defendants' fraudulent
2 misrepresentations.

3
4 **COUNT THREE**

5 **(Violation of the California Unfair Competition Law Cal. Bus. & Prof. Code**
6 **§§ 17200, *et seq.* ("UCL")**

7 **On Behalf of the Nationwide Class)**

8 66. Plaintiff re-alleges and incorporates by reference the allegations
9 contained in the preceding paragraphs as though set forth fully herein.

10 67. Defendants have violated and continue to violate California's UCL,
11 which prohibits unlawful, unfair, and fraudulent business acts or practices.

12 68. Defendants' acts and practices, as alleged in this complaint,
13 constitute unlawful, unfair, and fraudulent business practices, in violation of the
14 UCL. In particular, Defendants marketed, distributed, advertised, and sold
15 DeckOver even though DeckOver is not a durable deck/patio resurfacers and is
16 not capable of providing long-lasting protection for wood and concrete surfaces.

17 69. Instead, DeckOver is prone to promptly peeling, chipping, bubbling,
18 degrading, and otherwise failing shortly after application, and despite proper
19 surface preparation and application. Defendants failed to disclose material facts
20 concerning DeckOver's performance at the point of sale and otherwise, despite
21 touting and advertising DeckOver as a high-quality, durable product.

22 70. Defendants' business acts and practices are unlawful in that they
23 violate the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750,
24 *et seq.*, for the reasons set forth in this complaint.

25 71. Defendants' acts and practices also constitute fraudulent practices in
26 that they are likely to deceive a reasonable consumer. As described above, the
27 Defendants knowingly misrepresent(ed) and conceal(ed) material facts related to
28

1 DeckOver's performance. Had the Defendants not misrepresented and concealed
2 these facts, Plaintiff, class members, and reasonable consumers would not have
3 purchased DeckOver or would have paid significantly less for it.

4 72. The Defendants' conduct also constitutes unfair business practices
5 for at least the following reasons:

6 a. The gravity of harm to Plaintiff and the proposed Class from the
7 Defendants' acts and practices far outweighs any legitimate utility of that conduct;

8 b. Defendants' conduct is immoral, unethical, oppressive, unscrupulous,
9 or substantially injurious to Plaintiff and the members of the proposed Nationwide
10 Class; and

11 c. Defendants' conduct undermines and violates the stated policies
12 underlying the Consumers Legal Remedies Act—to protect consumers against
13 unfair and sharp business practices and to promote a basic level of honesty and
14 reliability in the marketplace.

15 73. As a direct and proximate result of the Defendants' business
16 practices, Plaintiff and proposed Class members suffered injury in fact and lost
17 money or property, because they purchased and paid for products that they
18 otherwise would not have, or in the alternative, would have paid less for. Plaintiff
19 and the proposed Nationwide Class are entitled to an injunction and other
20 equitable relief, including restitutionary disgorgement of all profits accruing to
21 Defendants, because of their unfair and deceptive practices, and such other orders
22 as may be necessary to prevent the future use of these practices.

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24 ///

25 ///

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27 ///

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COUNT FOUR

(Violation of the California Consumers Legal Remedies Act

Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”)

On Behalf of the Nationwide Class)

74. Plaintiff re-alleges and incorporates by reference the allegations contained in the preceding paragraphs as though set forth fully herein.

75. The CLRA proscribes “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale of goods or services to any consumer.”

76. Defendants are “persons” within the meaning of the CLRA. Cal. Civ. Code §§ 1761(c).

77. DeckOver is a “good” within the meaning of the CLRA. Cal. Civ. Code §§ 1761(a).

78. Plaintiff and members of the Class are “consumers” within the meaning of the CLRA. Cal. Civ. Code §§ 1761(d).

79. As alleged herein, Defendants made numerous representations concerning the benefits, performance, qualities, and quality of DeckOver that were misleading. In purchasing DeckOver, Plaintiff and the other Class members were deceived by Defendants’ failure to disclose that DeckOver is prone to premature degradation and failure, despite proper preparation of and application to decks, patios, porches, and other wood and concrete surfaces.

80. Defendants’ conduct, as described herein, was and is in violation of the CLRA. Defendants’ conduct violates at least the following enumerated CLRA provisions:

a. § 1770(a)(5): Representing that goods have characteristics, uses, benefits, or quantities which they do not have;

1 b. § 1770(a)(7): Representing that goods are of a particular standard,
2 quality, or grade, if they are of another;

3 c. § 1770(a)(14): Representing that a transaction confers or involves
4 rights, remedies, or obligations that it does not have or involve; and

5 d. § 1770(a)(16): Representing that goods have been supplied in
6 accordance with a previous representation when they have not.

7 81. As described herein, the Defendants manufactured, distributed,
8 marketed, and advertised DeckOver for sale to Class members while
9 misrepresenting and concealing material facts about DeckOver, including
10 representing that is a durable resurfacer and is capable of providing long-lasting
11 protection for wood and concrete surfaces, when in reality it is prone to
12 premature degradation, including peeling, chipping, bubbling, and otherwise
13 failing soon after application.

14 82. Plaintiff and the other Class members have suffered injury in fact
15 and actual damages resulting from Defendants' material omissions and
16 misrepresentations because, *inter alia*, they lost money when they purchased
17 DeckOver or paid an inflated purchase price for DeckOver, have paid out of
18 pocket for repairing or replacing their decks, have had their decks and other
19 structures damaged and/or devalued, and have expended countless hours of
20 uncompensated labor attempting to remedy damaged decks and/or failed
21 DeckOver applications.

22 83. Defendants knew, should have known, or were reckless in not
23 knowing that DeckOver was and is prone to premature failure, rendering it
24 unsuitable for its intended use.

25 84. Defendants had a duty to disclose that DeckOver is prone to
26 premature failure because Defendants had exclusive knowledge of this prior to
27 making sales of DeckOver and because Defendants made partial representations
28

1 about the quality of DeckOver, but failed to fully disclose the truth about
2 DeckOver.

3 85. The facts concealed and omitted by Defendants to Plaintiff and the
4 other Class members – namely that DeckOver is flawed and fails prematurely –
5 are material in that a reasonable consumer would have considered them to be
6 important in deciding whether to purchase DeckOver or pay a lower price for it.

7 86. Had Defendants been truthful about premature failure in DeckOver,
8 Plaintiff, members of the proposed Class, and reasonable consumers would not
9 have purchased or would have paid less for DeckOver.

10 87. This cause of action seeks injunctive relief at this time. However,
11 Plaintiff is sending a demand letter to each Defendant *via* certified mail pursuant
12 to the requirements of the CLRA providing the notice required by Cal. Civ. Code
13 § 1782(a). If Defendants do not correct or otherwise rectify the harm alleged by
14 Plaintiff in her letter or this Complaint within the statutorily proscribed thirty-day
15 period, Plaintiff will amend this Complaint to seek monetary damages against
16 Defendants pursuant to Cal. Civ. Code §§ 1781 and 1782.

17 88. Plaintiff further seeks an order awarding costs of court and
18 attorneys' fees under Cal. Civ. Code § 1780(e).

19
20 **COUNT FIVE**

21 **(Violation Of The California False Advertising Law**

22 **Cal. Bus. & Prof. Code § 17200, *et. seq.* (“FAL”)**

23 **On Behalf of the Nationwide Class)**

24 89. Plaintiff re-alleges and incorporates by reference the allegations
25 contained in the preceding paragraphs as though set forth fully herein.

26 90. The FAL provides, in pertinent part:
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28

1 “It is unlawful for any . . . corporation . . . with intent directly or
2 indirectly to dispose of real or personal property . . . to induce the
3 public to enter into any obligation relating thereto, to make or
4 disseminate or cause to be made or disseminated . . . from this state
5 before the public in any state, in any newspaper or other publication,
6 or any advertising device, . . . or in any other manner or means
7 whatever, including over the Internet, any statement . . . which is
8 untrue or misleading, and which is known, or which by the exercise of
9 reasonable care should be known, to be untrue or misleading.”

10 CAL. BUS. & PROF. CODE § 17500.

11 91. Defendants violated the FAL by using false and misleading
12 statements, and material omissions to advertise and sell DeckOver. Defendants
13 promoted false and misleading statements and representations through
14 advertising, marketing, and other publications. Defendants knew, or through the
15 exercise of reasonable care should have known, that their statements and material
16 omissions were untrue and misleading to Plaintiff and Class members.

17 92. Defendants’ misrepresentations and omissions regarding the
18 performance, quality, reliability, and other characteristics of DeckOver as set
19 forth herein were material and likely to deceive (and did deceive) reasonable
20 consumers.

21 93. Plaintiff and Class members have suffered an injury in fact,
22 including the loss of money or property, as a result of Defendants’ material
23 misstatements and omissions. In purchasing DeckOver, Plaintiff and Class
24 members relied on the false advertising, misrepresentations, and/or omissions of
25 Defendants alleged herein.

26 94. All of the wrongful conduct alleged herein occurred, and continues
27 to occur, in the conduct of Defendants’ business. Defendants’ wrongful conduct
28

1 is part of a pattern or generalized course of conduct that is still being perpetuated
2 and repeated nationwide.

3 95. Plaintiff, individually and on behalf of the Class, requests that this
4 Court enter such orders or judgments as may be necessary to prohibit Defendants
5 from continuing their pattern of using misleading statements and omissions and
6 to restore to Plaintiff and Class members' the money Defendants acquired
7 through such statements and omissions, including restitution or restitutionary
8 disgorgement, and for such other relief set forth below.

9 96. Behr Process Corporation is headquartered in California, and the
10 Behr Defendants' promotional activities arise from conduct in the state of
11 California. Furthermore, a significant portion of the proposed Nationwide Class
12 is located or resides in California. The conduct that forms the basis for each and
13 every Class member's claims against Defendants emanated from Behr
14 Defendants' headquarters in Santa Ana, California. Behr's marketing executives
15 are likewise based in California.

16
17 **COUNT SIX**

18 **(Violation of Oregon State Consumer Protection Law**
19 **On Behalf of Oregon Subclass)**

20 97. Plaintiff re-alleges and incorporates by reference the allegations
21 contained in the preceding paragraphs as though set forth fully herein.

22 98. Defendants market and sell goods, including DeckOver, to
23 consumers throughout the United States, including Oregon, to Plaintiff and the
24 Class.

25 99. Plaintiff and her respective fellow class members are consumers
26 who purchased and used DeckOver primarily for personal, family and/or
27 household purposes.
28

1 100. Defendants violated state consumer protection laws by engaging in
2 unfair methods of competition and unfair, deceptive, fraudulent, unconscionable
3 and/or unlawful acts or practices, including without limitation, by defective
4 design and manufacture of DeckOver as well as misleading marketing,
5 advertising, selling, and representing of DeckOver to consumers. In connection
6 with these sales, Defendants omitted material information about DeckOver that
7 they were legally obligated to disclose. Defendants never informed Plaintiff or
8 Class members, at the point of sale or otherwise, that DeckOver would
9 prematurely fail shortly after application.

10 101. Defendants failed to disclose this information well after they were
11 aware of these conditions.

12 102. Defendants have also failed or refused to pay for resulting expenses
13 that consumers have incurred.

14 103. Among other things, Defendants made numerous deceptive
15 statements regarding DeckOver as set forth above.

16 104. Through their conduct, Defendants have violated the Oregon Unfair
17 Trade Practices Act, Or. Rev. Stat. §§ 646.608 (1)(e)(g) and (a), et seq.
18 prohibiting unfair methods of competition and unfair, deceptive, unconscionable,
19 fraudulent and/or unlawful acts or practices:

20 105. As a direct and proximate result of Defendants' unfair methods of
21 competition and unfair, deceptive, fraudulent, unconscionable and/or unlawful
22 acts or practices, Plaintiff and the Class have suffered ascertainable losses and
23 injuries, including without limitation: (1) monetary costs of purchasing,
24 removing, and replacing DeckOver, which was susceptible to premature failure;
25 (2) monetary costs of repairing and replacing decks and other property upon
26 which defective DeckOver was applied; (3) other damages resulting from
27 DeckOver's propensity to prematurely fail.

28

1 110. Accordingly, California law is applicable to the claims of Plaintiff
2 and all respective Class members.

3 111. Furthermore, and irrespective that California law applies to the
4 claims herein under the T&C, the State of California has ample contacts to the
5 conduct alleged herein such that California law may be uniformly applied to the
6 claims of the proposed Nationwide Class against Defendants.

7
8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiff prays that this case be certified and maintained
10 as a class action and for judgment to be entered against Defendants as follows:

11 A. Enter an order certifying the proposed Class (and subclasses, if
12 applicable), designating Plaintiff as the class representatives, and designating the
13 undersigned as class counsel;

14 B. Declare that Defendants are financially responsible for notifying all
15 Class members of the problems with DeckOver;

16 C. Declare that Defendants must disgorge, for the benefit of the Class,
17 all or part of the ill-gotten profits it received from the sale of DeckOver, or order
18 Defendants to make full restitution to Plaintiff and the members of the Class;

19 D. Defendants shall audit and reassess all prior customer claims
20 regarding DeckOver, including claims previously denied in whole or in part;

21 E. For economic and compensatory damages on behalf of Plaintiff and
22 all members of the Class;

23 F. For actual damages sustained and/or treble damages;

24 G. For punitive or exemplary damages;

25 H. For injunctive and declaratory relief;

26 I. For reasonable attorneys' fees and reimbursement of all costs for the
27 prosecution of this action; and
28

1 J. For such other and further relief as this Court deems just and
2 appropriate.

3
4 **DEMAND FOR JURY TRIAL**

5 Plaintiff demands a trial by jury of all issues so triable.

6
7 DATED: August 9, 2017

Respectfully submitted,

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27 **pro hac application to be submitted*

28 *Attorneys for Plaintiff*