

1 Michael F. Ram (Bar No. 104805)  
2 Susan S. Brown (Bar No. 287986)  
3 **ROBINS KAPLAN LLP**  
4 2440 West El Camino Real  
5 Mountain View CA 94040  
6 Tel: (650) 784-4040  
7 Fax: (650) 784-4041  
8 mram@robinskaplan.com  
9 sbrown@robinskaplan.com

8 Jeffrey B. Cereghino, Bar No. 099480  
9 Matt J. Malone, Bar No. 221545  
10 **ROCK LAW LLP**  
11 101 Montgomery Street, Suite 1800  
12 San Francisco, California 94111  
13 Tel: (415) 433-4949  
14 [jbc@rocklawcal.com](mailto:jbc@rocklawcal.com)  
15 [mjm@rocklawcal.com](mailto:mjm@rocklawcal.com)

16 *Attorneys for Plaintiff*

17 **UNITED STATES DISTRICT COURT FOR THE  
CENTRAL DISTRICT OF CALIFORNIA**

18 GLEN MEYERS,  
19 individually and on behalf of all others  
20 similarly situated,

21 Plaintiff,

22 vs.

23 BEHR PROCESS CORP.; BEHR  
24 PAINT CORP.; and MASCO CORP.;

25 Defendants.  
26  
27  
28

Case No.

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Glenn Meyers, individually and on behalf of all others similarly  
2 situated, by and through undersigned counsel, alleges as follows:

3 **NATURE OF CASE**

4 1. Approximately 75% of American houses have wooden decks and  
5 concrete surfaces. These surfaces require periodic maintenance to maximize their  
6 useful life and maintain their appearances. Homeowners typically apply paints or  
7 stains on their decks and patios to provide a decorative and protective barrier from the  
8 elements and to minimize wear and tear.

9 2. In 2013, Behr, through a national marketing campaign, released a new  
10 patio and deck product exclusively through Home Depot, branded as DeckOver. Behr  
11 represented to homeowners that DeckOver was worth its premium price (3-5 times  
12 more expensive than ordinary paints and stains) because it was a more durable coating  
13 (5 times thicker) and it could repair decks by filling in cracks and stopping splinters.

14 3. But DeckOver is not durable or long-lasting. Instead, within mere  
15 months of application, DeckOver begins to flake, peel, and separate from deck and  
16 concrete surfaces. Thus, rather than providing homeowners with a premium option  
17 for reducing maintenance work and improving the look and performance of their  
18 patios and decks, DeckOver performs worse than cheaper options and requires hours  
19 of scraping, scrubbing, and sanding to remove it (with some homeowners resorting to  
20 replacing their decks entirely).

21 4. Plaintiff brings this class action suit on his own behalf and on behalf of  
22 others similarly situated under California and Ohio consumer protection laws.  
23 Plaintiff seeks an order forcing Behr to stop its deceptive conduct and provide  
24 appropriate remuneration to affected consumers.

25 **JURISDICTION AND VENUE**

26 5. This Court has subject-matter jurisdiction over this action pursuant to the  
27 Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332 (a) and (d), because the amount  
28 in controversy exceeds \$5,000,000, exclusive of interest and costs, and more than two-

1 thirds of the members of the proposed class are citizens of states different from that of  
2 Behr Process Corporation and Behr Paint Corporation.

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

### 8 PARTIES

9 7. Plaintiff Glen Meyers is a resident and citizen of the State of Ohio.

10 8. Defendants Behr Process Corporation and Behr Paint Corporation are  
11 California corporations, with their principal place of business in California. Both  
12 Behr Process Corporation and Behr Paint Corporation are located at 3400 W.  
13 Segerstrom Ave., Santa Ana, California, 92704.

14 9. Defendant Masco Corporation is a Delaware corporation, with its  
15 principal place of business in Michigan. Masco is located at 20001 Van Born Road,  
16 Taylor, Michigan, 48180. Masco acquired Behr Process Corporation in 1999. Masco  
17 conducts Behr-oriented marketing and sales operations in Santa Ana, California.  
18 Plaintiff refers to Behr Process Corporation, Behr Paint Corporation, and Masco  
19 Corporation collectively as "Behr."

### 20 COMMON FACTUAL ALLEGATIONS

#### 21 **I. Deck and Patio Restoration**

22 10. Wooden decks and concrete surfaces are prone to wear and deterioration  
23 through exposure to the elements, which leads to scuffing, decay, cracking, and  
24 splinters. Periodic maintenance is needed to maximize the surfaces' useful life and to  
25 keep up their appearance.  
26

27 11. Typically, homeowners maintain these surfaces through application of  
28 coatings. Coatings include paints and stains that provide a thin decorative and

1 protective barrier (with the stains actually soaking into the fibers themselves).  
2 Although paints and stains provide some surface protection, they typically do not  
3 improve the surfaces' condition (for example, by fixing cracks or splinters). Paints  
4 also need to be reapplied relatively often to maintain their cosmetic and protective  
5 benefits.

6 12. An alternative coating, which is the focus of this case, is a relatively  
7 recent introduction to the marketplace: a protective, restorative coating, known as a  
8 resurfacer. Resurfacers are liquid products that are applied in the same manner as  
9 paint. They are typically marketed as providing substantially more benefits (at a  
10 greater cost) than paints and stains. Resurfacers are expected to provide an attractive  
11 appearance akin to what a paint or stain would provide, but better preserve the surface  
12 by coating it in a significantly thicker protective barrier. The thicker coating provides  
13 the added benefit of filling in large cracks and encapsulating splinters. Resurfacers  
14 are designed and expected to last significantly longer than paints and stains,  
15 eliminating the need for regular maintenance while at the same time substantially  
16 extending the life of wood and concrete surfaces.

17 13. Because of their expected added benefits, resurfacers typically cost  
18 substantially more than paints and stains. A consumer who spends the extra money to  
19 buy a resurfacer may be able to avoid replacing a deck or will have to devote less time  
20 and money to maintaining the deck in the years that follow.

## 21 **II. Behr DeckOver**

22 14. Behr manufactures a line of deck resurfacers: "Behr's Premium  
23 DeckOver." Behr officially introduced its Premium DeckOver product in the spring  
24 of 2013, claiming in a press release that DeckOver was an "advanced formula" that  
25 "revitalize[s] tired decks, patios, porches and even pool decks, and provides a budget-  
26 friendly unique solution that was previously unavailable to consumers." According to  
27 Scott Richards, Senior Vice President of Marketing at Behr Process Corporation, this  
28 product line was the culmination of "years of research and the latest technology."

1           15. Richards described “easy application and durable protection against the  
2 elements, . . . allowing consumers to rejuvenate instead of replacing their decks or  
3 concrete surfaces.” About a year later, Behr introduced a Textured DeckOver  
4 product.

5           **III. Defendants’ Marketing Campaign**

6           16. Since DeckOver was introduced, Behr has marketed it as a durable and  
7 long-lasting alternative to paint and stains, capable of extending the life of surfaces.  
8 For example, Behr’s website claims DeckOver creates a “[l]ong-lasting, durable  
9 finish” that “conceals cracks and splinters up to ¼” and creates a smooth, slip-  
10 resistant finish that also resists cracking and peeling” with “excellent adhesion.” It  
11 also describes DeckOver as “5x thicker than standard paints and stains.”

12           17. Similar representations appear on the product’s packaging:  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



The label states that DeckOver “Brings new life to old wood & concrete”; “Covers up to 75 Sq. Ft. in 2 Coats”; “Creates a Smooth, Slip-Resistant Finish”; and Conceals Splinters & Cracks up to 1/4”.”





19 The

20 label also represents:

- 21 • “Resists Cracking & Peeling”;
- 22 • “Durable, Mildew Resistant Finish”;
- 23 • “Waterproofing, Solid Color Coating”;
- 24 • “Revives Wood & Composite Decks, Railings, Porches & Boat Docks”;
- 25 • “Great for Concrete Pool Decks, Patios & Sidewalks”; and
- 26 • “Interior/Exterior, 100% Acrylic Formula.”

27 18. Behr also airs television commercials advertising DeckOver. The  
28 DeckOver television commercials emphasize the same themes as can be found on

1 DeckOver labeling and in-store displays: the ads feature people standing and dancing  
2 barefoot on decks, with a voiceover saying not to “let cracks and splinters spoil your  
3 fun” and promising DeckOver is “made-to-last,” “extends the life of your deck,” and  
4 is the “ultimate do-over for wood and concrete.”

5 19. Behr hosts a blog entitled “Colorfully Behr” at  
6 [www.behr.com/colorfullybehr](http://www.behr.com/colorfullybehr). A blog entry dated May 31, 2013, markets DeckOver:  
7 “excellent news if you have a wood deck that looks old and weathered, or a pool deck  
8 that’s cracked and ugly, because you don’t have to replace it anymore.” In the  
9 comments portion on this DeckOver entry, Behr describes the “life expectancy” of  
10 DeckOver as “similar to a high quality solid color wood stain (typically 5-10 years on  
11 horizontal surfaces, 15-25 years on vertical surfaces).” Behr also states on Home  
12 Depot’s website that DeckOver “can be expected to last as long as a high quality Solid  
13 Color Wood Stain,” which is “5-10 years on horizontal surfaces and 15-25 years on  
14 vertical surfaces.”

15 20. Behr uses these representations to charge more for DeckOver than it  
16 otherwise would, and more than competitors charge for their products. Behr’s overall  
17 marketing scheme focuses on DeckOver’s superior durability compared to paints and  
18 stains and that it is an alternative to deck replacement (which is several times more  
19 expensive). DeckOver, compared to Behr and other companies’ paints and stains,  
20 covers 3-5 times less area and yet is more expensive per gallon:

Type	Behr Product	Coverage per gallon	Cost per gallon
Resurfacer	DeckOver	“75 sq. ft. in two coats”	\$35
Stain	DeckPlus Waterproofing Wood Stain	250-300 sq. ft. first coat 500-600 sq. ft. second coat	\$27



1	Paint	Porch & Patio Floor	400 sq. ft.	\$28
2		Paint		

3  
4 **IV. As Defendants Know, DeckOver Is Not a Durable Alternative to Paints, Stains, and Other Resurfacers.**

5 21. DeckOver is not capable of reliably coating wood and concrete surfaces  
6 for more than a short period of time. It routinely peels, bubbles, and degrades within  
7 months of application.

8 22. Behr's website has received over 150 consumer complaints since summer  
9 2013 concerning DeckOver's short-lived utility, the damage it causes to the surfaces  
10 to which it is applied, and the time and money spent to either rehabilitate or replace  
11 decks to which DeckOver was applied. Several examples of these complaints are  
12 excerpted below:

- 13
- 14 • "I was extremely happy to hear the supposed benefits and ease of use of this  
15 new product. ... The problem is that upon putting our furniture back on the  
16 deck, any slight movement scratches the finish back down to the bare wood.  
17 We hosted a party this weekend for 30 people and I now have 10 or so areas  
18 to touch up. With the cost and time spent dealing with this product, I expect  
19 years of normal wear and tear, not one week. We are disappointed and  
20 would recommend going a different route."—June 29, 2013
  - 21 • "When it dried the deck looked like plastic rather than wood. And then when  
22 we placed the outdoor furniture back on the deck we found that the slightest  
23 movement of the chairs mars the deck finish. When the dog runs across the  
24 deck her wet/muddy paws mark the deck. The Deck Over finish is too  
25 delicate for a deck. We are very disappointed with the product, with Behr  
26 and with Home Depot."—August 8, 2013
- 27  
28

- 1 • “Don’t waste your money on this product if you have an older deck with  
2 cracks. The coverage is not what [sic] the product advertised and the paint  
3 chips and scratches very easily. The product is way over priced. You would  
4 come out a lot better just to replace the decking boards.”—September 9,  
5 2013  
6
- 7 • “Worst product ever! Waste of money! . . . I bought the Behr Deckover  
8 product in order to redo my deck. I did all the prep work the instructions  
9 stated to do . . . I did all of this in the summer of 2013. It is now February  
10 2014. The product did not even last one year.the product is already peeling  
11 up off of the wood . . . I would have been better to re stain the deck rather  
12 than use this product. I will have to now re-sand all of this off and apply a  
13 coat of deck stain to protect the wood.”—February 27, 2014  
14
- 15 • “Peeling off after 8 months . . . I painted my deck in summer 2013, followed  
16 all instructions from the can. Just after 8 months my deck started to peel off.  
17 Now I have to spend money getting all my deck sanded to be able to get all  
18 this deck over removed.—March 10, 2014  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



(Image from above review dated March 10, 2014)

- “Peeled Badly . . . When I applied the Deck Over product, last summer, it looked beautiful. But now that winter has ended it’s peeling and looks horrible. I’ve only had it down for 9 months and now I’m going to have to completely redo my deck. What an absolute mess!”—April 18, 2015
- “Peeling . . . Did not last one year and very difficult to work with. You need to offer total refunds at the very least. There is no way to return the time spent working with this garbage and no way to put a price on the stress caused when the peeling began after the snow melted.”—May 10, 2015
- “I was so excited to try Deckover on my deck. The pictures made it look like an amazing product. I prepped and sanded the deck using Behr products as I wanted to make sure I applied everything correctly. After the snow melted this year over 50% of my deckover peeled right off. I am sad to say that splurging for the more expensive ‘better’ product certainly did not pay

1 off for me. Product states it will last on a deck for up to 10 years yet it  
2 hasn't even lasted a full year on my deck. I am very disappointed in Behr  
3 and their deckover product"—May 12, 2015  
4

- 5 • “In less than a year of putting this Deck over on our deck, I started to see  
6 some bubbling starting along the trim boards of the deck. Not much longer  
7 and the whole deck showed signs of the bubbling and then complete peeling  
8 . . . This was intended as a hot tub deck but now it sits empty as we cannot  
9 afford to buy any other stain/paint. Plus take the time to peel all the  
10 defective Behr Deck over paint and put another cleaner on the deck.”—  
11 October 27, 2016  
12

- 13 • “Followed all the instructions . . . Started peeling after about 60 days to a  
14 point where large chunks were blowing off. Now comes the hard part of  
15 using sandpaper, sanding discs, chemicals, power washer, scrapers and  
16 anything else I can think of to remove what's left. Behr owes me 48 hours  
17 of my life back. Thank goodness I didn't do the railings and  
18 spindles!!!!!”—April 3, 2017  
19

- 20 • “This is the worst product I have ever purchased. Advertised to bring back  
21 old wood to life, it ruined what old wood I had and caused me to replace my  
22 entire deck! Would NEVER recommend this product to anyone.”—May 9,  
23 2017  
24

25 23. The negative reviews on Behr's website are not prominently featured,  
26 particularly when compared to positive reviews. For example, when visiting the page  
27 for Behr Premium Deckover, Behr prominently lists the “Latest Featured Reviews”  
28 toward the top of the page in large font. Each of those reviews is positive in nature

1 and is highlighted in large gold print. To locate the many negative reviews, on the  
2 other hand, it is necessary to either click to a separate webpage entirely, or to scroll  
3 toward the bottom of the page to an area that is not visible on most computer monitors  
4 and devices without scrolling down the webpage. Once near the bottom of the page, it  
5 is possible to toggle from a “Product Usage” tab, which appears by default, to the  
6 “Ratings & Reviews” tab. Only after that toggle is it possible to see the negative  
7 reviews. An “Avg. Rating” appears toward the top of the page, but it is in smaller  
8 print than the featured reviews and is in black text, rather than the gold text of the  
9 featured reviews. Also of note, while Behr’s website allows reviews of 1-, 2-, 3-, 4-,  
10 and 5-stars, the posted reviews do not show anything approaching a bell curve  
11 distribution. Instead, there are fewer 2-, 3-, and 4-star reviews combined than there  
12 are either 1- or 5-star reviews. One explanation for this would be that Behr or a  
13 surrogate has “stuffed the ballot box,” by placing positive reviews to balance out the  
14 hundreds of negative reviews. This is a fairly common practice for websites that post  
15 customer reviews.

16 24. Home Depot has also received hundreds of DeckOver complaints  
17 through its website:

- 18 • “Doing my deck over . . . Don’t buy this product. I hope it holds up during  
19 the winter. Otherwise I’ll be doing my deck over in the spring. It definitely  
20 will not be Behr’s DeckOver or anything by Behr for that matter.”—August  
21 3, 2013
- 22
- 23 • “Peeling after 6 mos . . . I followed all of the directions & replaced all rotted  
24 deck boards. Deck over is peeling & bubbling all over my deck! A  
25 disaster”—May 14, 2014
- 26
- 27 • “Did not last a year . . . Labor intensive to install. did not hold up over  
28 northern Illinois winter. i would pass.”—May 24, 2014

- 1 • “the worst stuff on the market, didn’t last 3months and when I want my  
2 money back this paint is GARBAGE.”—July 3, 2014  
3
- 4 • “We used this product on an older deck, after buying our home. Spent tons  
5 of money and time on this project with Deck Over last fall, in September.  
6 It’s only May, and the whole area is peeling off. Needs totally redone again,  
7 and it hasn’t even been a year.”—May 14, 2014  
8
- 9 • “Worst product I have ever bought. We used over 6 gallons for our large  
10 deck. The sales person told us it would last 10 year. We followed the  
11 instructions exactly and within SIX months it was peeling! Not to mention  
12 it does not fill in cracks like promised.”—June 3, 2015  
13
- 14 • “We feel the product was misrepresented by Home Depot and Behr and  
15 therefore did not meet our expectations. It did not do a good job of covering  
16 the concrete surface of our lanai.”—March 5, 2017  
17
- 18 • “I should’ve read the reviews before using this product. We actually paid a  
19 professional to apply it to our deck. They followed all of the instructions  
20 and it looked great for about a month and then we had a few late spring  
21 snow storms not it is peeling right off the wood. It is starting to look  
22 terrible. What a waste of money!”—May 17, 2017  
23
- 24 • “This paint is terrible!!! Did every step Bahr [sic] called for last summer  
25 2016 to prep deck and paint with deck over. It is now April or 2017 and my  
26 deck is peeling badly. You can take the paint and peel it up like tape.  
27 Absolutely horrible. Spent 500.000 (sic) dollars and one week to paint deck  
28 and railings.”—April 9, 2017.

- 1 • “Within 7 months this product will peel (sic) up. I have no idea why this  
2 product is still on the market. You will be scraping it off in a year. Don’t  
3 waste your time or money on it.”—June 6, 2016  
4
- 5 • “Mine is bubbling up after ONE month. Applied exactly as specified.  
6 Horrible product.”—October 1, 2016  
7
- 8 • “HORRIBLE PRODUCT. I would never recommend this!!!! . . . We spent  
9 so much money and time using a product that turned out to be an utter  
10 disaster. Home depot should have tested this product thoroughly . . . very  
11 laborious, not long lasting, deck looks worse since using product, does not  
12 hold up to normal weather conditions, high price for sub-par product.”—  
13 May 1, 2014  
14
- 15 • “This product is just awful, less than a year after application and my deck is  
16 peeling and the flakes of paint are literally covering my lawn and being  
17 tracked into the house. We followed all the manufacturer instructions on  
18 preparing the wood for this product but all that money and time we spent  
19 using this product was a waste. The worst part is now I have to try to fix it.  
20 Please, please save yourself and do not try this product!”—May 17, 2016  
21
- 22 • “We purchased 3 cans and all the supplies needed. Followed the instructions  
23 to a tea. Looked great for a very short few months and peeled and chipped  
24 and now looks worse than it did before all my time, work, and money!! So.  
25 Mad!!”—May 15, 2015  
26
- 27 • “after 6 months this is peeling . . . We are seniors that live on SS and bought  
28 this product for our deck. It was very expensive, but it was highly



1 recommended and we used it as the directions recommended. We had a lot  
2 of snow and cold weather this year, but we thought this was the purpose of  
3 this product. We would never recommend this product.”—March 20, 2015  
4

5 25. It is common for manufacturers and sellers of consumer products to  
6 monitor media reports, Internet forums, and other public reactions and treatment of  
7 their products. In May 2016, CBC News published an article entitled: “Behr  
8 Deckover subject of customer complaints over peeling paint; Company removed  
9 Facebook page with numerous complaints after CBC inquiry.” The article describes,  
10 among others, homeowner Paul Rhyno, who first used DeckOver in 2014. But  
11 “[w]ithin about three months after [Mr. Rhyno] put it on, it started peeling off in big  
12 swaths and bubbling.” He tried again the following year but got the same results. The  
13 article contains photographs of Mr. Rhyno’s damaged deck:  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



21  
22  
23  
24

26. Negative consumer reactions to Behr’s DeckOver can also be found elsewhere across the Internet. For example, about 100 customers have written complaints about DeckOver on [pissedcustomer.com](http://pissedcustomer.com), including the following.

- 25  
26  
27  
28
- “I applied deckover last fall and now it is all peeling off and my deck looks worse than when I first did it. I am very disappointed in this product. I spent well over a hundred dollars on this product . . . I thought it was guaranteed to last up to 10 years.”—May 15, 2015

- 1 • “I spent a great deal of money painting two decks with this garbage. One  
2 year later it is peeling off everywhere . . . I now am having to replace several  
3 rotted boards, pay for pressure washing again and when cured, repainted. It  
4 will obviously cost me more to fix the problem than when I initially paid to  
5 have the deck painted, as I am sure a lot of scraping will also have to be  
6 done.”—October 19, 2016  
7
- 8 • “I had this product put on my deck last fall and it began to peel by spring.  
9 Now I have multiple places that the deck over has completely peeled off . . .  
10 It’s a shame you pay hat [sic] much for a product that does not last one  
11 year.”—December 30, 2016.  
12

13 27. Behr also researched and tested DeckOver before beginning to sell it.  
14 Given how quickly it becomes apparent that DeckOver is not capable of performing as  
15 a durable alternative coating on wood and concrete surfaces, Behr certainly discovered  
16 that DeckOver begins to peel, chip, bubble, and crack within months of application  
17 before introducing DeckOver to the market.

18 28. After it went on the market, complaints were widespread and persistent:  
19 Defendants have received phone calls and emails complaining about DeckOver, and  
20 consumers have been uploading negative reviews of DeckOver on Behr’s own website  
21 and elsewhere since summer 2013. Behr reviews the complaints on these websites  
22 and has responded to some of them. The complaints on these websites are not  
23 prominent. For example, Behr highlights on its DeckOver product page the “Latest  
24 Featured Reviews” which consists of four and five star reviews, but only through  
25 scrolling well down the page or clicking to a separate webpage is it revealed that there  
26 are hundreds of negative reviews. Likewise the reviews on Defendants websites do  
27 not follow a bell curve distribution and instead are mostly 1- and 5-star reviews. In  
28

1 addition, there is at least one report by the media that Behr removed online complaints  
2 on its own Facebook page containing DeckOver complaints.

3 29. Fixing the damage to one's deck that results from applying DeckOver is  
4 difficult and costly. As the reviews above describe, DeckOver cracks, peels, bubbles,  
5 and chips, exposing the underlying surface to the elements. All these forms of  
6 exposure both fail to protect wood from precipitation and trap water onto wooden  
7 boards underneath the DeckOver that remains, causing mildew and rot. Repairing  
8 loose areas in patches does not solve these problems as other areas of DeckOver will  
9 inevitably loosen. Full removal of DeckOver requires stripping the deck and  
10 reapplying a protective coating, which takes hours. Given how costly it is to remove  
11 DeckOver, re-prepare the surface, and re-coat it, some deck owners resort to replacing  
12 their decks entirely.

13 30. Yet Defendant continues to sell DeckOver, continue to market it as  
14 "durable," "long-lasting," and an alternative to replacing ones deck, and do not warn  
15 customers beforehand that the product fails after only a few months, often leaving the  
16 surface looking worse than before DeckOver was applied.

17 31. As a result, consumers continue to spend hundreds of dollars purchasing  
18 and applying DeckOver, and spend time and money removing and replacing  
19 DeckOver when it peels, bubbles, chips, cracks, discolors, and damages their decks.

20 **PLAINTIFF'S EXPERIENCE:**

21 32. Plaintiff Glen Meyers purchased about six 1-gallon containers of Behr  
22 DeckOver in May 2015 from a Home Depot store in Mentor, Ohio. Mr. Meyers had  
23 seen DeckOver advertised in the Home Depot Store. Mr. Meyers also reviewed the  
24 product label before buying DeckOver.

25 33. Mr. Meyers applied the DeckOver to his deck, stairs, railing and spindles.  
26 in May 2015. He carefully reviewed the application instructions on the label prior to  
27 applying DeckOver, and applied the product as instructed. Within a few months, by  
28

1 around September 2015, the DeckOver began to bubble, peel and chip. Soon after, the  
2 DeckOver was peeling off in large strips, exposing the wood underneath.

3 34. Had Mr. Meyers known that DeckOver was incapable of providing  
4 durable surface coating, he would not have purchased or used the product.

5 35. Mr. Meyers continues to own a home with wooden surfaces outside and  
6 intends to continue to maintain those surfaces in the years to come, including by  
7 purchasing resurfacers or other coatings. He is concerned that without an injunction  
8 forcing Behr to disclose which resurfacers are incapable of providing a long-lasting,  
9 durable finish, that he and others may again fall victim to purchasing and overpaying  
10 for resurfacers like DeckOver which crack and peel within a year of application.

11 **CLASS ACTION ALLEGATIONS**

12 36. This action is brought and may be maintained under Fed. R. Civ. P. 23 as  
13 a class action.

14 37. Plaintiff seeks to represent the following Nationwide Class and New  
15 York Class:

16 Nationwide Class: All persons who purchased a Behr Premium DeckOver  
17 product in the United States.

18 Ohio Class: All persons who purchased a Behr Premium DeckOver product in  
19 the state of Ohio.

20 38. Excluded from both classes are: (1) Defendants, and any entity in which  
21 Defendants have a controlling interest or which have a controlling interest in  
22 Defendants; (2) Defendants' legal representatives, assigns and successors; (3) the  
23 judge(s) to whom this case is assigned, his or her spouse, and members of the judge's  
24 staff; and (4) anyone who purchased DeckOver for resale.

25 39. Plaintiff and class members seek relief under Rule 23(b)(2). The  
26 injunctive relief Plaintiff and class members seek is a significant reason for bringing  
27 this case and, on its own, justifies the prosecution of this litigation. Plaintiff and class  
28 members also seek relief under Rule (b)(3) and/or (c)(4).

1           40. **Numerosity**: Behr has manufactured and distributed DeckOver to at least  
2 thousands of proposed class members. Members of the proposed classes are thus too  
3 numerous to practically join in a single action. Class members may be notified of the  
4 pendency of this action by mail, supplemented by published notice (if deemed  
5 necessary or appropriate by the Court).

6           41. **Commonality and Predominance**: Common question of law and fact  
7 exist as to all proposed class members and predominate over questions affecting only  
8 individual class members. These common questions include whether:

- 9           a. Defendants marketed DeckOver as a durable resurfacer capable of  
10 providing long-lasting protection for wood and concrete surfaces;  
11           b. DeckOver is not a durable resurfacer and is not capable of providing  
12 long-lasting protection for wood and concrete surfaces, but is instead  
13 prone to promptly peeling, chipping, bubbling, and degrading within  
14 months of application;  
15           c. Defendants' marketing of DeckOver was false, deceptive, and  
16 misleading to reasonable consumers;  
17           d. Defendants knew DeckOver was not a durable resurfacer capable of  
18 providing long-lasting protection for wood and concrete surfaces and  
19 is instead susceptible to peeling, chipping, bubbling, and degrading  
20 within months of application;  
21           e. DeckOver's propensity to peel, chip, bubble, and generally degrade  
22 within months of application, rather than provide long-lasting  
23 protection for wood and concrete surfaces, would be important to a  
24 reasonable consumer;  
25           f. Defendants failed to disclose DeckOver's propensity for peeling,  
26 chipping, bubbling, and degrading within months of application; and  
27           g. Whether Defendants' conduct violates various state consumer  
28 protection statutes.



1           42.    **Typicality**: Plaintiff’s claims are typical of the claims of the proposed  
2 classes. Plaintiff and the members of the proposed classes all purchased DeckOver,  
3 giving rise to substantially the same claims.

4           43.    **Adequacy**: Plaintiff is an adequate representative of the proposed classes  
5 because his interests do not conflict with the interests of the members of the classes he  
6 seeks to represent. Plaintiff has retained counsel competent and experienced in  
7 complex class action litigation, and will prosecute this action vigorously on class  
8 members’ behalf.

9           44.    **Superiority**: A class action is superior to other available means for the  
10 fair and efficient adjudication of this dispute. The injury suffered by each class  
11 member, while meaningful on an individual basis, is not of such magnitude as to make  
12 the prosecution of individual actions against Defendants economically feasible. Even  
13 if class members themselves could afford such individualized litigation, the court  
14 system could not. In addition to the burden and expense of managing many actions  
15 arising from this issue, individualized litigation presents a potential for inconsistent or  
16 contradictory judgments. Individualized litigation increases the delay and expense to  
17 all parties and the court system presented by the legal and factual issues of the case.  
18 By contrast, a class action presents far fewer management difficulties and provides the  
19 benefits of single adjudication, economy of scale, and comprehensive supervision by a  
20 single court.

21           45.    In the alternative, the proposed classes may be certified because:

- 22           a. The prosecution of separate actions by the individual members of the  
23 proposed class would create a risk of inconsistent adjudications,  
24 which could establish incompatible standards of conduct for  
25 Defendants;
- 26           b. The prosecution of individual actions could result in adjudications,  
27 which, as a practical matter, would be dispositive of the interests of  
28



1 non-party class members or which would substantially impair their  
2 ability to protect their interests; and

3 c. Defendants have acted or refused to act on grounds generally  
4 applicable to the proposed classes, thereby making appropriate final  
5 and injunctive relief with respect to the members of the proposed  
6 classes as a whole.

7 **CHOICE OF LAW ALLEGATIONS**

8 46. The State of California has sufficient contacts to the conduct alleged  
9 herein such that California law may be uniformly applied to the claims of the  
10 proposed nationwide class against Behr.

11 47. Behr does substantial business in California. Home Depot, where Behr  
12 products are sold, maintains over 200 locations in California. Behr Process  
13 Corporation and Behr Paint Corporation are both headquartered in California, and  
14 Behr's promotional activities arise from conduct in the State of California. Further, a  
15 significant portion of the proposed Nationwide Class is located in California.

16 48. On the "Standard Sales Terms and Conditions" page of its website, Behr  
17 purports to require that the "sale of [Behr's] products" be "construed and interpreted,  
18 and the rights of the parties determined, in accordance with the laws of the State of  
19 California . . . ."

20 49. In addition, the conduct that forms the basis for each and every class  
21 member's claims against Defendants emanated from Behr Process Corporation and  
22 Behr Paint Corporation's headquarters in Santa Ana, California. Behr marketing  
23 executives are based in California, including Behr Process Corporation's Vice  
24 President of Digital Marketing, Masco's Coating Group's Vice President of Marketing  
25 Communications, and Behr's Marketing Director.

26 50. The State of California also has the greatest interest in applying its law to  
27 class members' claims. Its governmental interests include not only an interest in  
28 compensating resident consumers under its consumer protection laws, but also what

1 the State has characterized as a “compelling” interest in using its laws to regulate a  
2 resident corporation and preserve a business climate free of fraud and deceptive  
3 practices. *Diamond Multimedia Sys., Inc. v. Super. Ct.*, 19 Cal. 4th 1036, 1064  
4 (1999).

5 51. If other states’ laws were applied to class members’ claims, California’s  
6 interest in discouraging resident corporations from engaging in the sort of unfair and  
7 deceptive practices alleged in this complaint would be significantly impaired.  
8 California could not effectively regulate a company like Behr Process Corporation or  
9 Behr Paint Corporation that does business throughout the United States if it can ensure  
10 that consumers from only one of the fifty states affected by conduct that runs afoul of  
11 its laws are compensated.

#### 12 **TOLLING OF STATUTES OF LIMITATIONS**

13 52. Discovery Rule: Plaintiff’s and class members’ claims accrued upon  
14 discovery that DeckOver is not a durable resurfacer and is not capable of providing  
15 long-lasting protection for wood and concrete surfaces, but is instead prone to  
16 promptly peeling, chipping, bubbling, and degrading within months of application.  
17 While Defendants knew, and concealed, these facts, Plaintiff and class members could  
18 not and did not discover these facts through reasonable diligent investigation until  
19 after they experienced the aftermath of DeckOver application and learned that the  
20 problem was not isolated to their DeckOver.

21 53. Active Concealment Tolling: Any applicable statutes of limitations are  
22 tolled by Defendants’ knowing and active concealment of the facts set forth above.  
23 Defendants kept Plaintiff and all class members ignorant of vital information essential  
24 to the pursuit of their claim, without any fault or lack of diligence on the part of  
25 Plaintiff. The details of Defendants’ efforts to conceal its above-described unlawful  
26 conduct are in its possession, custody, and control, to the exclusion of Plaintiff and  
27 class members, and await discovery. Plaintiff could not have reasonably discovered  
28

1 these facts, nor that Defendants failed to disclose material facts concerning its  
2 performance.

3 54. Estoppel: Defendants was and is under a continuous duty to disclose to  
4 Plaintiff and all class members the true character, quality, and nature of DeckOver. At  
5 all relevant times, and continuing to this day, Defendants knowingly, affirmatively,  
6 and actively concealed the true character, quality, and nature of DeckOver. The  
7 details of Defendants' efforts to conceal its above-described unlawful conduct are in  
8 its possession, custody, and control, to the exclusion of Plaintiff and class members,  
9 and await discovery. Plaintiff reasonably relied on Defendants' active concealment.  
10 Based on the foregoing, Defendants are estopped from relying on any statutes of  
11 limitation in defense of this action.

12 Equitable Tolling: Defendants took active steps to conceal and misrepresent material  
13 facts relating to DeckOver's performance. The details of Defendants' efforts are in its  
14 possession, custody, and control, to the exclusion of Plaintiff and class members, and  
15 await discovery. When Plaintiff learned about this material information, he exercised  
16 due diligence by thoroughly investigating the situation, retaining counsel, and  
17 pursuing his claims. Should such tolling be necessary, therefore, all applicable  
18 statutes of limitation are tolled under the doctrine of equitable tolling

## 19 CAUSES OF ACTION

### 20 **Count I**

#### 21 **Unlawful, Unfair, and Fraudulent Business Practices**

#### 22 **Cal. Bus. & Prof. Code § 17200, *et seq.***

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

24 55. Plaintiff re-alleges the paragraphs above as if set forth fully herein.

25 56. Defendants have violated and continue to violate California's Unfair  
26 Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*, which prohibits unlawful,  
27 unfair, and fraudulent business acts or practices.

1           57. Defendants' acts and practices, as alleged in this complaint, constitute  
2 unlawful, unfair, and fraudulent business practices, in violation of the Unfair  
3 Competition Law. In particular, Behr manufactured and distributed DeckOver and  
4 authorized and marketed its sale to the public even though DeckOver is not a durable  
5 resurfacers and is not capable of providing long-lasting protection for wood and  
6 concrete surfaces, but is instead prone to promptly peeling, chipping, bubbling, and  
7 degrading within months of application. Defendants failed to disclose material facts  
8 concerning DeckOver's performance at the point of sale and otherwise.

9           58. Defendants' business acts and practices are unlawful in that they violate  
10 the California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, for the  
11 reasons set forth in this complaint.

12           59. Defendants' acts and practices also constitute fraudulent practices in that  
13 they are likely to deceive a reasonable consumer. As described above, Defendants  
14 knowingly misrepresent and conceal material facts related to DeckOver's  
15 performance. Had Defendants not misrepresented and concealed these facts, Plaintiff,  
16 class members, and reasonable consumers would not have purchased DeckOver or  
17 would have paid significantly less for them.

18           60. Defendants' conduct also constitutes unfair business practices for at least  
19 the following reasons:

- 20           a. The gravity of harm to Plaintiff and the proposed class from  
21           Defendants' acts and practices far outweighs any legitimate utility of  
22           that conduct;
- 23           b. Defendants' conduct is immoral, unethical, oppressive, unscrupulous,  
24           or substantially injurious to Plaintiff and the members of the proposed  
25           nationwide class; and
- 26           c. Defendants' conduct undermines and violates the stated policies  
27           underlying the Consumers Legal Remedies Act—to protect  
28

1 consumers against unfair and sharp business practices and to promote  
2 a basic level of honesty and reliability in the marketplace.

3 61. As a direct and proximate result of Defendants' business practices,  
4 Plaintiff and proposed class members suffered injury in fact and lost money or  
5 property, because they purchased and paid for products that they otherwise would not  
6 have, or in the alternative, would have paid less for. Plaintiff and the proposed  
7 nationwide class are entitled to an injunction and other equitable relief, including  
8 restitutionary disgorgement of all profits accruing to Defendants, because of their  
9 unfair and deceptive practices, and such other orders as may be necessary to prevent  
10 the future use of these practices.

11 **Count II**

12 **Violation of California Consumers Legal Remedies Act**

13 **Cal. Civ. Code § 1750, *et seq.***

14 **(On Behalf of the Nationwide Class)**

15 62. Plaintiff re-alleges and incorporates by reference the allegations  
16 contained in all preceding paragraphs of this complaint, as though set forth fully  
17 herein.

18 63. Defendants are each a "person" within the meaning of Civil Code §§  
19 1761(c) and 1770, and have provided "goods" within the meaning of Civil Code §§  
20 1761(b) and 1770.

21 64. Plaintiff and members of the proposed class are "consumers" within the  
22 meaning of Civil Code §§ 1761(d) and 1770, and have engaged in a "transaction"  
23 within the meaning of Civil Code §§ 1761(e) and 1770.

24 65. Defendants' acts and practices were intended to result and did result in  
25 the sale of DeckOver, and violate § 1770 of the Consumers Legal Remedies Act for at  
26 least the following reasons:

- 27 a. Defendants represent DeckOver has characteristics, uses, and benefits  
28 which it does not have;

- b. Defendants represent that DeckOver is of a particular standard, quality, and grade when it is not;
- c. Defendants represent that transactions involving DeckOver conferred or involved rights, remedies, and obligations which they do not; and
- d. Defendants represent that DeckOver has been supplied in accordance with a previous representation when it has not.

66. As described above, Defendants manufactured, distributed, and marketed DeckOver for sale to class members while misrepresenting and concealing material facts about DeckOver, including representing that is a durable resurfacer and is capable of providing long-lasting protection for wood and concrete surfaces, when in reality it is prone to promptly peeling, chipping, bubbling, and degrading soon after application.

67. Had Defendants not misrepresented and concealed material facts about DeckOver, Plaintiff, members of the proposed class, and reasonable consumers would not have purchased or would have paid less for DeckOver.

68. Pursuant to the provisions of Cal. Civ. Code § 1782(a), Plaintiff will send a notice letter to Defendants to provide them with the opportunity to correct their business practices. If Defendants do not thereafter correct their business practices, Plaintiff will amend (or seek leave to amend) the complaint to add claims for monetary relief, including restitution and actual damages under the Consumers Legal Remedies Act.

69. Pursuant to California Civil Code § 1780, Plaintiff seeks injunctive relief, his reasonable attorney fees and costs, and any other relief that the Court deems proper.

### **Count III**

#### **Unjust Enrichment**

**Based on California Common Law**

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

1 70. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

2 71. As described above, the Behr Defendants marketed, distributed, and sold  
3 DeckOver as a long-lasting, durable deck resurfacer without disclosing that in reality,  
4 the coating begins to strip and peel off soon after application.

5 72. As a result of its fraudulent acts and omissions related to DeckOver,  
6 Defendants obtained monies which rightfully belong to Plaintiff and the proposed  
7 Nationwide Class members to the detriment of Plaintiff and the proposed Nationwide  
8 Class members.

9 73. Behr appreciated, accepted, and retained the non-gratuitous benefits  
10 conferred by Plaintiff and the proposed Nationwide Class members, who, without  
11 knowledge that the DeckOver would not perform as advertised, paid a higher price for  
12 the product than it was worth. Behr also received monies for DeckOver that Plaintiff  
13 and the proposed Nationwide Class members would not have otherwise purchased.

14 74. It would be inequitable and unjust for Behr to retain these wrongfully  
15 obtained profits.

16 75. Behr's retention of these wrongfully obtained profits would violate the  
17 fundamental principles of justice, equity, and good conscience.

18 76. Plaintiff and the proposed Nationwide Class are entitled to restitution of  
19 the profits unjustly obtained, plus interest.

20 **Count IV**

21 **Violation of Ohio Consumer Sales Practices Act, ORC §1345**

22 **(On Behalf of the Ohio Class)**

23 77. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

24 78. Plaintiff and class members are "consumers" within the meaning of ORC  
25 §1345.01(D).

26 79. Each Defendant is a "supplier" within the meaning of ORC §1345.01(C).

27 80. Under the Ohio Consumer Sales Practices Act, it is an unlawful, unfair  
28 deceptive act or practice to represent that "the subject of a consumer transaction has



1 sponsorship, approval, performance characteristics, accessories, uses, or benefits that  
2 it does not have” or that “the subject of a consumer transaction is of a particular  
3 standard, quality, grade, style, prescription, or model, if it is not.” ORC  
4 §1345.02(B)(1) and (2).

5 81. Defendants offered a solicitation of DeckOver to Plaintiff and class  
6 members for personal, family, or household use while engaged in the business of  
7 soliciting and effecting consumer transactions.

8 82. Defendants committed an unfair, deceptive, and unconscionable act or  
9 practice in connection with these transactions by misrepresenting that DeckOver is a  
10 more durable coating than other paints or stains and representing that it can repair  
11 decks by filling in cracks and stopping splinters, when in fact, within mere months of  
12 application, DeckOver begins to flake, peel, bubble, and separate from deck and  
13 concrete surfaces.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff requests that the Court enter a judgment awarding the  
16 following relief:

- 17 a. An order certifying the proposed classes and appointing Plaintiff’s  
18 counsel to represent the classes;
- 19 b. An order awarding Plaintiff and the class members their actual  
20 damages, treble damages, and/or any other form of monetary relief  
21 provided by law, except that no monetary relief is presently sought for  
22 violations of the Consumers Legal Remedies Act;
- 23 c. An order awarding Plaintiff and the classes restitution, disgorgement,  
24 or other equitable relief as the Court deems proper, except that no  
25 monetary relief is presently sought for violations of the Consumers  
26 Legal Remedies Act;
- 27 d. An order enjoining Defendants from their unlawful conduct;
- 28

- 1 e. An order awarding Plaintiff and the classes pre-judgment and post-  
2 judgment interest as allowed under the law;  
3 f. An order awarding Plaintiff and the classes reasonable attorneys' fees  
4 and costs of suit, including expert witness fees; and  
5 g. An order awarding such other and further relief as this Court may  
6 deem just and proper.

7 **JURY DEMAND**

8 Plaintiff hereby demands a trial by jury on all issues so properly triable thereby.  
9

10 Dated: June 18, 2017

Respectfully submitted,

11 **ROBINS KAPLAN LLP**

12  
13 By: /s/ Michael F. Ram

14 Michael F. Ram  
15 Susan S. Brown  
16 2440 West El Camino Real  
17 Mountain View CA 94040  
18 Tel: (650) 784-4040  
19 Fax: (650) 784-4041  
mram@robinskaplan.com  
sbrown@robinskaplan.com

20  
21 Jeffrey B. Cereghino  
22 Matt J. Malone  
23 **ROCK LAW LLP**  
24 101 Montgomery Street, Suite 1800  
25 San Francisco, California 94111  
26 Tel: (415) 433-4949  
[jbc@rocklawcal.com](mailto:jbc@rocklawcal.com)  
[mjm@rocklawcal.com](mailto:mjm@rocklawcal.com)

27  
28 *Attorneys for Plaintiff*

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

<b>I. (a) PLAINTIFFS</b> ( Check box if you are representing yourself <input checked="" type="checkbox"/> )  Glen Meyers, Individually and on behalf of all others similarly situated	<b>DEFENDANTS</b> ( Check box if you are representing yourself <input type="checkbox"/> )  Behr Process Corporation
---	---

<b>(b) County of Residence of First Listed Plaintiff</b> (EXCEPT IN U.S. PLAINTIFF CASES)	<b>County of Residence of First Listed Defendant</b> <u>Orange</u> (IN U.S. PLAINTIFF CASES ONLY)
--	--

<b>(c) Attorneys (Firm Name, Address and Telephone Number)</b> If you are representing yourself, provide the same information. Robins Kaplan LLP 2440 W El Camino Real Mountain View, CA 94040 (650) 784-4040	<b>Attorneys (Firm Name, Address and Telephone Number)</b> If you are representing yourself, provide the same information.
---	--

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1. U.S. Government Plaintiff <input type="checkbox"/> 2. U.S. Government Defendant <input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> -For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td></td> <td style="text-align: center;">1</td> <td style="text-align: center;">1</td> <td></td> <td style="text-align: center;">4</td> <td style="text-align: center;">4</td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td></td> <td></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;">2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;">5</td> <td style="text-align: center;">5</td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;"><input type="checkbox"/></td> <td></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">3</td> <td>Foreign Nation</td> <td style="text-align: center;">6</td> <td style="text-align: center;">6</td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;"><input type="checkbox"/></td> <td></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>	Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business in this State	PTF	DEF		1	1		4	4			<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	Citizen of Another State	<input checked="" type="checkbox"/>	2	Incorporated and Principal Place of Business in Another State	5	5			<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	Citizen or Subject of a Foreign Country	<input type="checkbox"/>	3	Foreign Nation	6	6			<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business in this State	PTF	DEF																																						
	1	1		4	4																																						
		<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>																																						
Citizen of Another State	<input checked="" type="checkbox"/>	2	Incorporated and Principal Place of Business in Another State	5	5																																						
		<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>																																						
Citizen or Subject of a Foreign Country	<input type="checkbox"/>	3	Foreign Nation	6	6																																						
		<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>																																						

**IV. ORIGIN** (Place an X in one box only.)

<input checked="" type="checkbox"/> 1. Original Proceeding	<input type="checkbox"/> 2. Removed from State Court	<input type="checkbox"/> 3. Remanded from Appellate Court	<input type="checkbox"/> 4. Reinstated or Reopened	<input type="checkbox"/> 5. Transferred from Another District (Specify)	<input type="checkbox"/> 6. Multidistrict Litigation - Transfer	<input type="checkbox"/> 8. Multidistrict Litigation - Direct File
--	--	---	--	---	---	--

**V. REQUESTED IN COMPLAINT: JURY DEMAND:**  Yes  No (Check "Yes" only if demanded in complaint.)

**CLASS ACTION under F.R.Cv.P. 23:**  Yes  No **MONEY DEMANDED IN COMPLAINT:** \$ \_\_\_\_\_

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
 Class Action Fairness Act; 28 USC 1332

**VII. NATURE OF SUIT** (Place an X in one box only).

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	<b>TORTS</b>	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 140 Negotiable Instrument	<b>TORTS</b>	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 370 Other Fraud	<b>Other:</b> <input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	<b>SOCIAL SECURITY</b>
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 320 Assault, Libel & Slander	<input checked="" type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 330 Fed. Employers' Liability	<b>BANKRUPTCY</b>	<b>FORFEITURE/PENALTY</b>	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 690 Other	<b>FEDERAL TAX SUITS</b>
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 350 Motor Vehicle	<b>CIVIL RIGHTS</b>	<b>LABOR</b>	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<b>REAL PROPERTY</b>	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 740 Railway Labor Act	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 751 Family and Medical Leave Act	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision		<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 790 Other Labor Litigation	
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	
		<input type="checkbox"/> 448 Education			



**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

**VIII. VENUE:** Your answers to the questions below will determine the division of the Court to which this case will be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

<b>QUESTION A: Was this case removed from state court?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," skip to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question E, below, and continue from there.	STATE CASE WAS PENDING IN THE COUNTY OF:		INITIAL DIVISION IN CACD IS:		
	<input type="checkbox"/> Los Angeles, Ventura, Santa Barbara, or San Luis Obispo		Western		
	<input type="checkbox"/> Orange		Southern		
	<input type="checkbox"/> Riverside or San Bernardino		Eastern		
<b>QUESTION B: Is the United States, or one of its agencies or employees, a PLAINTIFF in this action?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," skip to Question C. If "yes," answer Question B.1, at right.	<b>B.1.</b> Do 50% or more of the defendants who reside in the district reside in Orange Co.?  <i>check one of the boxes to the right</i> →	<input type="checkbox"/> YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there.  <input type="checkbox"/> NO. Continue to Question B.2.			
	<b>B.2.</b> Do 50% or more of the defendants who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.)  <i>check one of the boxes to the right</i> →	<input type="checkbox"/> YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there.  <input type="checkbox"/> NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.			
	<b>QUESTION C: Is the United States, or one of its agencies or employees, a DEFENDANT in this action?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," skip to Question D. If "yes," answer Question C.1, at right.	<b>C.1.</b> Do 50% or more of the plaintiffs who reside in the district reside in Orange Co.?  <i>check one of the boxes to the right</i> →	<input type="checkbox"/> YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there.  <input type="checkbox"/> NO. Continue to Question C.2.		
		<b>C.2.</b> Do 50% or more of the plaintiffs who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.)  <i>check one of the boxes to the right</i> →	<input type="checkbox"/> YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there.  <input type="checkbox"/> NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.		
<b>QUESTION D: Location of plaintiffs and defendants?</b>	<b>A.</b>	<b>B.</b>	<b>C.</b>		
	Orange County	Riverside or San Bernardino County	Los Angeles, Ventura, Santa Barbara, or San Luis Obispo County		
Indicate the location(s) in which 50% or more of <i>plaintiffs who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Indicate the location(s) in which 50% or more of <i>defendants who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<b>D.1. Is there at least one answer in Column A?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "yes," your case will initially be assigned to the SOUTHERN DIVISION.  Enter "Southern" in response to Question E, below, and continue from there.  If "no," go to question D2 to the right. →	<b>D.2. Is there at least one answer in Column B?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  If "yes," your case will initially be assigned to the EASTERN DIVISION.  Enter "Eastern" in response to Question E, below.  If "no," your case will be assigned to the WESTERN DIVISION.  Enter "Western" in response to Question E, below. ↓				
<b>QUESTION E: Initial Division?</b>  Enter the initial division determined by Question A, B, C, or D above: →	INITIAL DIVISION IN CACD  EASTERN				
<b>QUESTION F: Northern Counties?</b>  Do 50% or more of plaintiffs or defendants in this district reside in Ventura, Santa Barbara, or San Luis Obispo counties? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

**IX(a). IDENTICAL CASES:** Has this action been previously filed in this court?

NO  YES

If yes, list case number(s): \_\_\_\_\_

**IX(b). RELATED CASES:** Is this case related (as defined below) to any civil or criminal case(s) previously filed in this court?

NO  YES

If yes, list case number(s): 8:17-CV-1016

**Civil cases** are related when they (check all that apply):

- A. Arise from the same or a closely related transaction, happening, or event;
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. For other reasons would entail substantial duplication of labor if heard by different judges.

Note: That cases may involve the same patent, trademark, or copyright is not, in itself, sufficient to deem cases related.

**A civil forfeiture case and a criminal case** are related when they (check all that apply):

- A. Arise from the same or a closely related transaction, happening, or event;
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. Involve one or more defendants from the criminal case in common and would entail substantial duplication of labor if heard by different judges.

**X. SIGNATURE OF ATTORNEY**

**(OR SELF-REPRESENTED LITIGANT):** \_\_\_\_\_

*Michael J. Rao*

DATE: 07/18/17

**Notice to Counsel/Parties:** The submission of this Civil Cover Sheet is required by Local Rule 3-1. This Form CV-71 and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. For more detailed instructions, see separate instruction sheet (CV-071A).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Central District of California

GLEN MEYERS, individually and on behalf of all
others similarly situated

Plaintiff(s)

v.

Behr Process Corporation; Behr Paint Corporation;
and Masco Corporation

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Behr Process Corporation; Behr Paint Corporation; and Masco Corporation

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael F. Ram (SBN 104805); Susan S. Brown (SBN 287986)
ROBINS KAPLAN LLP
2440 W El Camino Real, Suite 100
Mountain View, CA 94040

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 07/18/2017

Signature of Clerk or Deputy Clerk