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18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA
20 SOUTHERN DIVISION

21 PAULA KASTANIS, and BRIAN
22 LANGE; individually and on behalf of
23 all others similarly situated

24 Plaintiff,

25 vs.

26 BEHR PROCESS CORP.; BEHR
27 PAINT CORP.; MASCO CORP.; THE
28 HOME DEPOT, INC.; and HOME
DEPOT U.S.A., INC.,

Defendants.

CLASS ACTION

CLASS ACTION COMPLAINT

Jury Trial Demanded

1 Plaintiffs Paula Kastanis, and Brian Lange (“Plaintiffs”) individually and on
2 behalf of all others similarly situated, by and through undersigned counsel, hereby
3 allege as follows:

4
5 **I. NATURE OF THE CASE**

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

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

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

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

19 5. However, in truth, so-called premium product DeckOver does not
20 live up to its marketing representations and promises. DeckOver is not durable,

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).

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1 nor is it long-lasting. Rather than providing years of protection in exchange for
2 its premium price, it deteriorates quickly within mere months of its application,
3 and in some cases weeks. DeckOver has caused extensive damage to consumers'
4 decks and other outdoor surfaces on which DeckOver is applied. Instead of
5 serving as a premium option for reducing maintenance work, while improving the
6 look, performance, and durability of decks, patios, and outdoor surfaces,
7 DeckOver actually causes consumers to waste considerable time and money.
8 Consumers are induced by Defendants' false representations into purchasing
9 DeckOver at a premium price, only to apply it, and thereafter have to remove it
10 and replace damaged property as a consequence of its performing worse than
11 cheaper options.

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

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

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1 **II. JURISDICTION AND VENUE**

2 8. This Court has subject-matter jurisdiction over this action pursuant
3 to the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332 (a) and (d), because
4 the amount in controversy exceeds \$5,000,000, exclusive of interest and costs,
5 and more than two thirds of the members of the proposed class are citizens of
6 states different from that of each of the Defendants, as identified below.

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

13
14 **III. PARTIES**

15 10. Plaintiff Paula Kastanis is a resident and citizen of the State of New
16 York.

17 11. Plaintiff Brian Lange is a resident and citizen of the State of
18 Missouri.

19 12. Defendants Behr Process Corporation and Behr Paint Corporation
20 (collectively "Behr") are California corporations, with their principal place of
21 business in California. Both Behr Process Corporation and Behr Paint
22 Corporation are located at 3400 W. Segerstrom Ave., Santa Ana, California,
23 92704.

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

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

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15 Masco Corporation is a global leader in the design, manufacture and
16 distribution of branded home improvement and building products.
17 Our portfolio of industry-leading brands includes BEHR® paint;
18 DELTA® and HANSGROHE® faucets, bath and shower fixtures;
19 KRAFTMAID® and MERILLAT® cabinets; MILGARD® windows
20 and doors; and HOT SPRING® spas.⁵

21 15. Upon information and belief, MASCO Corporation oversees the
22 work of Defendant Behr Process Corporation, and, in conjunction with Behr
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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 Process Corporation, designed, manufactured, and purposefully caused the
2 DeckOver Products to be placed into the stream of commerce within this District
3 and throughout the United States. The decisions, acts, and omissions alleged
4 herein were conceived, implemented, and at all times carried out by Defendant
5 MASCO Corporation, directly or in concert with its subsidiary Defendant Behr
6 Process Corporation, and/or The Home Depot.

7 16. Plaintiffs refer to Behr Process Corporation, Behr Paint Corporation,
8 and Masco Corporation collectively as the “Behr Defendants.”

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

18 18. Collectively the Behr Defendants and the Home Depot Defendants
19 are referred to as “Defendants.”

20 19. The Behr Defendants used, commingled, and combined their
21 resources to design, develop, manufacture, market, and sell the DeckOver
22 Products.

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

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1 **IV. COMMON FACTUAL ALLEGATIONS**

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3 **A. Overview Regarding Deck and Patio Restoration and the**
4 **DeckOver Products**

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

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

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

6
7 **B. Defendants’ False, Deceptive and Misleading DeckOver Product**
8 **Marketing Campaign**

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

18 25. Marketing the product as a better alternative to using traditional
19 paints or stains or replacing worn and old decks, porches, patios and other
20 structures altogether, it was further represented that DeckOver will go over
21 decking and other surfaces, allowing consumers to do a do-over with their
22 structure rather than a total replacement. Behr’s advertising and product
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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 literature urged customers thinking about replacing their decks to, instead,
2 resurface them by using DeckOver, pointedly inducing consumer's purchases by
3 asking "Why replace old wood if you don't have to?" See image below.⁸



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19 26. Defendants' advertising at Home Depot locations, including point of
20 sale advertising, has falsely driven home the promise of DeckOver's durability
21 and its usefulness a long-lasting alternative to paint and stains capable of
22 extending the life of the surfaces, stating:
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26 ⁸ [http://ebook-dl.com/magazine/handy-magazine-sharp-118-jun-jul-](http://ebook-dl.com/magazine/handy-magazine-sharp-118-jun-jul-20136098.pdf)
27 [20136098.pdf](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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2 **Why should I choose BEHR PREMIUM DECKOVER Coating instead of a Solid Color Wood Stain?**

3 BEHR PREMIUM DECKOVER Coating is an innovative solid color coating that is designed specifically for
4 old, weathered wood and concrete. BEHR PREMIUM DECKOVER Coating offers advantages over solid color
5 wood stain by having a 4 times thicker film that covers splinters and cracks up to 1/4" and creates a slightly
6 textured, slip resistant finish.

7 27. Home Depot locations across America have reinforced the notion
8 that DeckOver is a much more affordable way to restore decks and other surfaces
9 rather than completely replacing them, and adopted or largely replicated Behr's
10 advertising and labeling, including, *inter alia* prominently displayed outdoor
11 billboards or signage advertising "DeckOver Wood and Concrete Coating 3 times
12 less expensive than replacing deck boards."

13 28. In addition, in advertising at Home Depot stores, Home Depot
14 asserts that DeckOver "resists cracking and peeling "and "conceals splinters up to
15 1/4."



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

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

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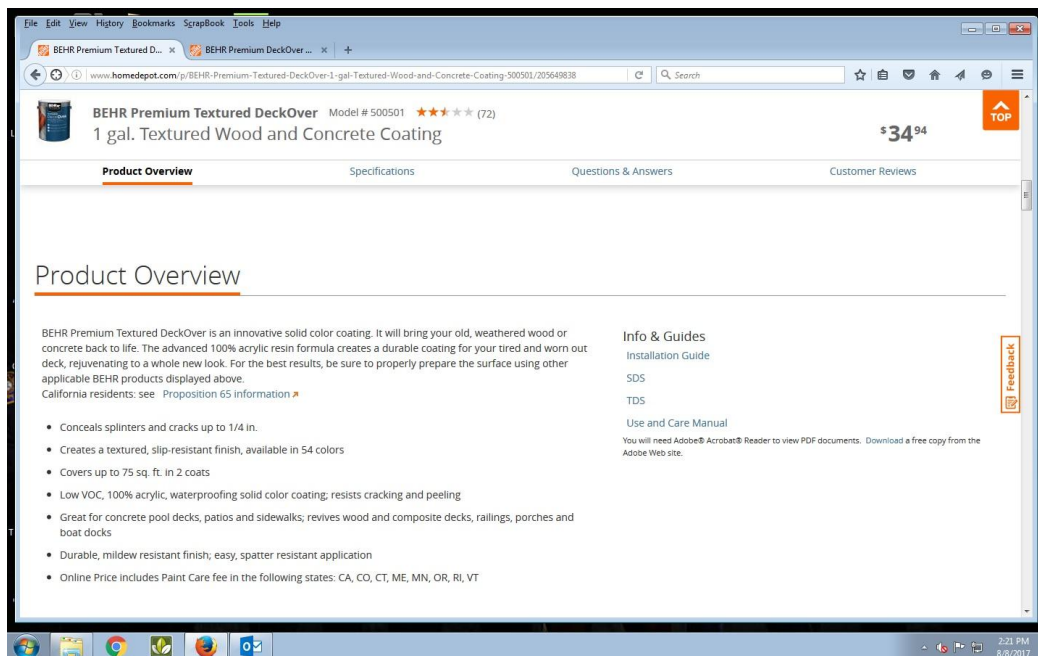
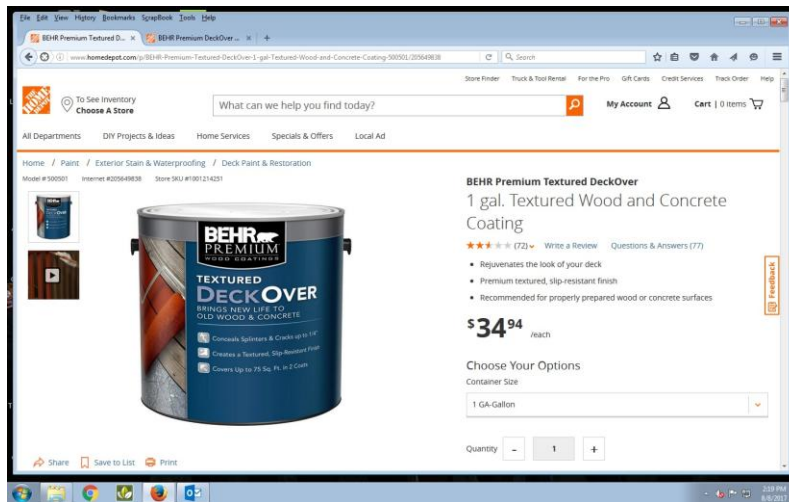


31. The DeckOver Products’ advertising further includes uniform representations that it provides “long lasting results,”⁹ “gives new life to old wood and concrete” and “extends the life of your deck, fills cracks and covers splinters.”¹⁰ The Defendants also issued uniform representations in point of 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=RzQXqkuIUVO> (last visited August 8, 2017).

1 32. 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 August 8, 2017).
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1 33. 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 34. 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 35. 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 36. 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 37. 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.

18
19 **C. Plaintiffs’ Experiences**

20 **Plaintiff Paula Kastanis**

21 38. In 2016, Plaintiff Kastanis purchased and paid a premium price for
22 several cans of DeckOver from Defendant Home Depot’s store in or near
23 Poughkeepsie, New York. Prior to purchasing DeckOver, Plaintiff Kastanis
24 generally saw and relied on advertisements regarding DeckOver’s high quality as
25 a resurfacers, durability and longevity. Prior to the purchase, Plaintiff Kastanis
26 specifically reviewed the product’s label and representations made thereon.
27 Plaintiff Kastanis applied DeckOver to her deck in accordance with the
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1 instructions provided by Defendant Behr. Within months of application, the
2 DeckOver applied to Plaintiff Kastanis's deck began to fail.

3 39. Plaintiff Kastanis has been damaged by DeckOver's premature
4 failure. Had Plaintiff Kastanis known that DeckOver would not perform as
5 represented and/or would prematurely fail, she would have not have purchased or
6 used the product and certainly would not have paid a premium price for it
7 whatsoever.

8 40. Plaintiff Kastanis will also incur out of pocket expenses to repair the
9 damage caused by DeckOver's premature failure. Plaintiff Kastanis is entitled to
10 full reimbursement for these damages and/or the concomitant costs of repair
11 and/or replacement of her deck.

12
13 **Plaintiff Brian Lange**

14 41. In 2013, Plaintiff Lange purchased and paid a premium price for
15 several cans of DeckOver from Defendant Home Depot's store in Poplar Bluff,
16 Missouri. Prior to purchasing DeckOver, Plaintiff Lange generally saw and relied
17 on advertisements regarding DeckOver's high quality as a resurfacers, durability
18 and longevity. Prior to the purchase, Plaintiff Lange specifically reviewed the
19 product's label and representations made thereon. Plaintiff Lange applied
20 DeckOver to his deck in accordance with the instructions provided by Defendant
21 Behr. Within months of application, the DeckOver applied to Plaintiff Lange's
22 deck began to fail.

23 42. Plaintiff Lange has been damaged by DeckOver's premature failure.
24 Had Plaintiff Lange known that DeckOver would not perform as represented
25 and/or would prematurely fail, he would have not have purchased or used the
26 product and certainly would not have paid a premium price for it whatsoever.

1 43. Plaintiff Lange will also incur out of pocket expenses to repair the
2 damage caused by DeckOver's premature failure. Plaintiff Lange is entitled to
3 full reimbursement for these damages and/or the concomitant costs of repair
4 and/or replacement of his deck.

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

10
11 **V. ESTOPPEL FROM PLEADING AND TOLLING OF APPLICABLE**
12 **STATUTES OF LIMITATIONS**

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

23
24 **VI. CLASS ACTION ALLEGATIONS**

25 46. This action is brought and may be maintained as a class action
26 pursuant to FED. R. CIV. P. 23(a), 23(b)(2) and/or 23(b)(3).
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1 47. Plaintiffs seek to represent the following Nationwide Class defined
2 as follows:

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

5 48. Alternatively, or in addition to the Nationwide Class, Plaintiff
6 Kastanis seeks to represent the following New York Subclass defined as follows:

7 All individuals and entities residing in New York that
8 purchased DeckOver, not for resale.

9 49. Alternatively, or in addition to the Nationwide Class, Plaintiff Lange
10 seeks to represent the following Missouri Subclass defined as follows:

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

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

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

24 52. Plaintiffs reserve the right to redefine the Class(es), and/or requests
25 for relief.

26 53. The members of the proposed Class(es) are so numerous that joinder
27 of all members is impracticable.

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1 54. The exact number of Class members is unknown. Due to the nature
2 of the trade and commerce involved, as well as the number of online and direct
3 complaints, Plaintiffs believe the Class consists of thousands of consumers.

4 55. Common questions of law and fact affect the right of each Class
5 member, and a common relief by way of damages is sought for Plaintiffs and
6 Class members.

7 56. Common questions of law and fact that affect Class members
8 include, but are not limited to:

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

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

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

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

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

19 f. Whether Defendants should be declared financially responsible for
20 such damages and should be enjoined from selling or marketing DeckOver absent
21 issuing a warning to consumers regarding notifying all Class members about
22 DeckOver's propensity to prematurely fail or otherwise enjoined from selling or
23 marketing DeckOver absent removing all false and misleading advertisements and
24 representations regarding the product.

25 57. Plaintiffs' claims are typical of the claims of the Class. Plaintiffs and
26 all members of the Class purchased DeckOver and own homes, residences,
27 dwellings or other structures on which DeckOver has been applied. The product
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1 has failed and will continue to fail prematurely. Plaintiffs, like all Class
2 members, has been damaged by Defendants' conduct in that she has incurred or
3 will incur the costs of replacing DeckOver and repairing and/or replacing her
4 decks and additional property that were damaged by DeckOver's premature
5 failure. Additionally, the factual basis of Defendants' conduct is common to all
6 Class members and represents a common thread of misconduct resulting in injury
7 and damages to all members of the Class.

8 58. Plaintiffs will fairly and adequately assert and protect the interests of
9 the Class. Specifically, she has hired attorneys who are experienced in
10 prosecuting class action claims and will adequately represent the interests of the
11 Class; and she has no conflict of interests that will interfere with the maintenance
12 of this class action.

13 59. A class action provides a fair, efficient, and superior method for the
14 adjudication of this controversy for the following reasons:

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

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

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

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

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

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

8
9 **CAUSES OF ACTION**

10 **COUNT ONE**

11 **(Unjust Enrichment**

12 **On Behalf of All Classes)**

13 60. Plaintiffs re-allege and incorporate by reference the allegations
14 contained in the preceding paragraphs as though set forth fully herein.

15 61. Plaintiffs and Class members conferred a tangible economic benefit
16 upon Defendants by purchasing DeckOver. Plaintiffs and Class members would
17 not have purchased DeckOver had they known that DeckOver had a propensity to
18 prematurely fail and would not perform as represented.

19 62. Failing to require Defendants to provide remuneration under these
20 circumstances would result in Defendants being unjustly enriched at the expense
21 of Plaintiffs and the Class members.

22 63. Defendants' retention of the benefit conferred upon them by
23 Plaintiffs and members of the Class would be unjust and inequitable.

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1 **COUNT TWO**

2 **(Negligent Misrepresentation On Behalf of All Classes)**

3 64. Plaintiffs re-allege and incorporate by reference the allegations
4 contained in the preceding paragraphs as though set forth fully herein.

5 65. Defendants manufactured, marketed, advertised, sold, and
6 represented DeckOver to Plaintiffs as a deck resurfacers.

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

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

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

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

22 70. Defendants intended that Plaintiffs rely upon their material
23 misrepresentations and omissions to purchase more DeckOver. Plaintiffs
24 reviewed and reasonably relied upon Defendants' misrepresentations and
25 omissions and incurred damages as a direct and proximate result, in an amount to
26 be determined at trial, including repair and replacement costs and/or damages to
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1 other property. Any limitation on economic loss is precluded by Defendants'
2 fraudulent 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 71. Plaintiffs re-allege and incorporate by reference the allegations
9 contained in the preceding paragraphs as though set forth fully herein.

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

12 73. 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 74. 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 75. 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 76. 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, Plaintiffs, class members, and reasonable consumers would not have
3 purchased DeckOver or would have paid significantly less for it.

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

6 a. The gravity of harm to Plaintiffs 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 Plaintiffs and the members of the proposed
10 Nationwide 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 78. As a direct and proximate result of the Defendants' business
16 practices, Plaintiffs 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.
19 Plaintiffs and the proposed Nationwide Class are entitled to an injunction and
20 other equitable relief, including restitutionary disgorgement of all profits accruing
21 to Defendants, because of their unfair and deceptive practices, and such other
22 orders as may be necessary to prevent the future use of these practices.

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1 **COUNT FOUR**

2 **(Violation of the California Consumers Legal Remedies Act**

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

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

5 79. Plaintiffs re-allege and incorporate by reference the allegations
6 contained in the preceding paragraphs as though set forth fully herein.

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

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

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

14 83. Plaintiffs and members of the Class are “consumers” within the
15 meaning of the CLRA. Cal. Civ. Code §§ 1761(d).

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

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

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

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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 86. 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 resurfacers 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 87. Plaintiffs 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 88. 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 89. 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 90. The facts concealed and omitted by Defendants to Plaintiffs 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 91. Had Defendants been truthful about premature failure in DeckOver,
8 Plaintiffs, members of the proposed Class, and reasonable consumers would not
9 have purchased or would have paid less for DeckOver.

10 92. This cause of action seeks injunctive relief at this time. However,
11 Plaintiffs are sending a demand letter to each Defendant *via* certified mail
12 pursuant to the requirements of the CLRA providing the notice required by Cal.
13 Civ. Code § 1782(a). If Defendants do not correct or otherwise rectify the harm
14 alleged by Plaintiffs in their letter or this Complaint within the statutorily
15 proscribed thirty-day period, Plaintiffs will amend this Complaint to seek
16 monetary damages against Defendants pursuant to Cal. Civ. Code §§ 1781 and
17 1782.

18 93. Plaintiffs further seeks an order awarding costs of court and
19 attorneys' fees under Cal. Civ. Code § 1780(e).

20
21 **COUNT FIVE**

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

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

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

25 94. Plaintiffs re-allege and incorporates by reference the allegations
26 contained in the preceding paragraphs as though set forth fully herein.

27 95. The FAL provides, in pertinent part:
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 96. 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 Plaintiffs and Class members.

17 97. 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 98. Plaintiffs 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, Plaintiffs and Class
24 members relied on the false advertising, misrepresentations, and/or omissions of
25 Defendants alleged herein.

26 99. All of the wrongful conduct alleged herein occurred, and continues
27 to occur, in the conduct of Defendants’ business. Defendants’ wrongful conduct
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1 is part of a pattern or generalized course of conduct that is still being perpetuated
2 and repeated nationwide.

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

16
17 **COUNT SIX**

18 **(Violation of New York State General Business Law §349**

19 **On Behalf of New York Subclass)**

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

23 102. Plaintiff Kastanis brings this cause of action on behalf of herself and
24 the New York Subclass against all Defendants.

25 103. Plaintiff Kastanis, the New York Subclass members, and all
26 Defendants are "persons" under N.Y. Gen. Bus. Law § 349(h), the New York
27 Deceptive Acts and Practices Act ("NY DAPA").
28

1 104. The NY DAPA makes unlawful “[d]eceptive acts or practices in the
2 conduct of any business, trade or commerce.” N.Y. Gen. Bus. Law §349.
3 Defendants’ conduct, as set forth herein, constitutes deceptive acts or practices
4 under this section.

5 105. In the course of their business, Defendants intentionally or
6 negligently concealed and suppressed material facts concerning the defective
7 nature of DeckOver resulting in its premature failure.

8 106. Defendants thus violated the provisions of the NY DAPA by, at a
9 minimum: (1) representing that DeckOver has characteristics, uses, benefits, and
10 qualities which it does not have; (2) representing that DeckOver is of a particular
11 standard, quality, and grade when it is not; (3) advertising DeckOver with the
12 intent not to sell the product as advertised; and (4) failing to disclose information
13 concerning DeckOver with the intent to induce consumers to purchase DeckOver.

14 107. Defendants have known of the true, defective, nature of its
15 DeckOver product for many years but has concealed all of that information.

16 108. Defendants owed Plaintiff Kastanis and New York Subclass
17 members a duty to disclose truthfully, all the facts concerning the defective
18 nature of DeckOver because they:

- 19 a. Possessed exclusive knowledge that they were manufacturing,
20 selling, and distributing a product throughout the United States that
21 was defective in nature and did not comport with Defendants’
22 representations.
- 23 b. Intentionally concealed the foregoing from Plaintiffs and other
24 members of the Nationwide Class and the New York Subclass.
- 25 c. Made incomplete or negligent representations about the standard,
26 quality, and grade of DeckOver while purposefully withholding
27 material facts from Plaintiffs and other members of the Nationwide
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1 Class and New York Subclass that contradicted these
2 representations.

3 d. Information regarding the true standard, quality, and grade of
4 DeckOver was/is material.

5 109. Defendants' unfair and deceptive acts or practices were likely to and
6 did in fact deceive reasonable consumers, including Plaintiff Kastanis and New
7 York Subclass members, about the true standard, quality, and grade of DeckOver;
8 the quality of Defendants' brands, and the value of DeckOver.

9 110. Plaintiffs and the New York Subclass members suffered
10 ascertainable loss and actual damages as a direct and proximate result of
11 Defendants' misrepresentations and its concealment of and failure to disclose
12 material information. Plaintiffs and the New York Subclass members who
13 purchased DeckOver would not have purchased the product and/or would have
14 paid less for it.

15 111. As a result of the foregoing willful, knowing, and wrongful conduct
16 of Defendants, Plaintiff and the New York Subclass have been damaged in an
17 amount to be proven at trial, and seek all just and proper remedies, including but
18 not limited to actual damages or \$50, whichever is greater, treble damages up to
19 \$1,000, punitive damages to the extent available under the law, reasonable
20 attorneys' fees and costs, an order enjoining Defendants' deceptive and unfair
21 conduct, and all other just and appropriate relief available under the NY DAPA.

22

23

COUNT SEVEN

24

(Violation of New York State General Business Law §350

25

On Behalf of New York Subclass)

26

27

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

28

1 113. Plaintiff Kastanis brings this cause of action on behalf of herself and
2 the New York Subclass against all Defendants.

3 114. Defendants are engaged in the “conduct of business, trade or
4 commerce,” within the meaning of N.Y. Gen. Bus. Law §350, the New York
5 False Advertising Act (“NY FAA”).

6 115. The NY FAA makes unlawful “[f]alse advertising in the conduct of
7 any business, trade or commerce.” N.Y. Gen. Bus. Law § 350. False advertising
8 includes “advertising, including labeling, of a commodity . . . if such advertising
9 is misleading in a material respect,” taking into account “the extent to which the
10 advertising fails to reveal facts material in light of ... representations [made] with
11 respect to the commodity” N.Y. Gen. Bus. Law § 350-a.

12 116. Defendants caused to be made or disseminated through New York,
13 through advertising, marketing, and other publications, statements and omissions
14 that were untrue or misleading in relation to its DeckOver Product, and that were
15 known by Defendants, or that through the exercise of reasonable care should
16 have been known by Defendants, to be untrue and misleading to Plaintiffs and the
17 New York class.

18 117. Defendants made numerous material misrepresentations and
19 omissions of fact with intent to mislead and deceive concerning DeckOver,
20 particularly concerning the standard, quality, and grade of the product.
21 Specifically, Defendants intentionally concealed and suppressed material facts
22 concerning the use and durability of Deckover in order to intentionally and
23 grossly defraud and mislead the Plaintiffs and the New York Class members.
24 Defendants’ DeckOver did not/does not perform as advertised.

25 118. The misrepresentations and omissions regarding DeckOver set forth
26 above were material and likely to deceive a reasonable consumer.

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1 119. Defendants intentionally and knowingly misrepresented material
2 facts regarding DeckOver with intent to mislead Plaintiffs and the New York
3 Subclass.

4 120. Plaintiff Kastanis and the New York Subclass members who
5 purchased DeckOver either would not have purchased the product or paid less but
6 for Defendants' false advertising in violation of the NY FAA.

7 121. Plaintiff Kastanis and the New York Subclass have suffered injury-
8 in-fact and/or actual damages and ascertainable loss as a direct and proximate
9 result of Defendants' false advertising in violation of the NY FAA; including but
10 not limited to, having purchasing DeckOver, having lost or diminished use,
11 enjoyment and utility of the product, and having experienced annoyance,
12 aggravation and inconvenience resulting from Defendants' violations of the NY
13 FAA.

14 122. Plaintiff Kastanis and the New York Subclass seek monetary relief
15 against Defendants measured as the greater of (a) actual damages in an amount to
16 be determined at trial, and (b) statutory damages in the amount of \$500 each for
17 New York Subclass members. Because Defendants' conduct was committed
18 willingly and knowingly, New York Subclass members are entitled to recover
19 three times actual damages, up to \$10,000.

20
21 **COUNT EIGHT**

22 **(Violation of Missouri State Consumer Protection Law**

23 **On Behalf of the Missouri Subclass)**

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

26 124. Plaintiff Lange brings this cause of action on behalf of himself and
27 the Missouri Subclass against all Defendants.
28

1 125. Plaintiff Lange and the Missouri Subclass members are “persons”
2 within the meaning of Mo. Rev. Stat. § 407.010(5).

3 126. Defendants are engaged in “trade” or “commerce” in the State of
4 Missouri within the meaning of Mo. Rev. Stat. § 407.010(7).

5 127. The Missouri Merchandising Practices Act (“Missouri MPA”)
6 makes unlawful the “act, use or employment by any person of any deception,
7 fraud, false pretense, misrepresentation, unfair practice, or the concealment,
8 suppression, or omission of any material fact in connection with the sale or
9 advertisement of any merchandise Mo. Rev. Stat. § 407.020.

10 128. Defendant’s actions, as described throughout this Complaint,
11 violated the Missouri MPA, specifically Mo. Rev. Stat. § 407.020 and Mo. Rev.
12 Stat. § 407.025.

13 129. Defendants have violated (and continue to violated) each one of
14 these provisions by misrepresenting that DeckOver have or had certain
15 characteristics, are or were of a particular standard, quality, or grade, and
16 committed (and continues to commit) various other acts of deception, false
17 pretense, false promise, or misrepresentation in connection with their consumer
18 transactions regarding DeckOver including, among other things:

- 19 a. Manufacturing, selling, and/or distributing DeckOver that is of a
20 particular standard, grade, or quality contrary to what Defendants
21 represent;
- 22 b. Making false and misleading statements and omitting to disclose
23 material information regarding the defects in Defendants’ DeckOver
24 product; and
- 25 c. Refusing to properly reimburse class members for the purchase of
26 DeckOver and/or the damage its application ahs caused.
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1 130. The misrepresentations and omissions regarding DeckOver set forth
2 above were material and likely to deceive a reasonable consumer.

3 131. Defendants intentionally and knowingly misrepresented material
4 facts regarding DeckOver with intent to mislead Plaintiffs and the Missouri
5 Subclass.

6 132. Plaintiff Lange and the Missouri Subclass members who purchased
7 DeckOver either would not have purchased the product or paid less but for
8 Defendants’ false advertising in violation of the Missouri MPA.

9 133. As a direct and proximate result of Defendants’ violations of the
10 Missouri MPA, Plaintiffs and the Missouri Subclass have suffered injury-in-fact
11 and/or actual damage.

12 134. Defendants are liable to Plaintiff Lange and the Missouri Subclass
13 for damages in amounts to be proven at trial, including attorneys’ fees, costs, and
14 punitive damages, as well as injunctive relief enjoining Defendants’ unfair and
15 deceptive practices, and any other just and proper relief under the Missouri MPA.

16 17 **CHOICE OF LAW ALLEGATIONS**

18 135. Behr’s “Standard Sales Terms and Conditions” (“T&C”), available
19 on Behr Defendants’ website, state that they “exclusively govern the sale of
20 [Behr] products” to consumers.¹² Purchases of DeckOver are therefore subject to
21 Behr’s T&C. The Home Depot – where Behr products are exclusively sold –
22 maintains 234 locations in California.

23 136. Pursuant to Section 16 of the T&C, pertaining to “Governing Law
24 and Forum”, all transactions for purchase of Behr products, including DeckOver,
25

26 ¹² *Id.* (emphasis in original).
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1 are “construed and interpreted, and the rights of the parties determined, in
2 accordance with the laws of the State of California without regard to any conflict
3 of laws provisions that might otherwise apply.”¹³

4 137. Accordingly, California law is applicable to the claims of Plaintiffs
5 and all respective Class members.

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

10
11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiffs pray that this case be certified and maintained
13 as a class action and for judgment to be entered against Defendants as follows:

14 A. Enter an order certifying the proposed Class (and subclasses, if
15 applicable), designating Plaintiffs as the class representatives, and designating the
16 undersigned as class counsel;

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

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

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

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25
26 ¹³ <http://www.behr.com/consumer/standard-sales-terms-and-conditions> (last
27 visited June 23, 2017).

1 E. For economic and compensatory damages on behalf of Plaintiffs and
2 all members of the Class;

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

4 G. For punitive or exemplary damages;

5 H. For injunctive and declaratory relief;

6 I. For reasonable attorneys' fees and reimbursement of all costs for the
7 prosecution of this action; and

8 J. For such other and further relief as this Court deems just and
9 appropriate.

10
11 **DEMAND FOR JURY TRIAL**

12 Plaintiffs demand a trial by jury of all issues so triable.

13 DATED: August 28, 2017

Respectfully submitted,

14
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**pro hac application to be submitted*
***Admitted pro hac vice*

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