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U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

LINNE ROSE, individually and on behalf of all  
others similarly situated,

Plaintiffs,

vs.

BEHR PROCESS CORP., BEHR PAINT  
CORP., MASCO CORP., THE HOME  
DEPOT, INC., and HOME DEPOT U.S.A.,  
INC.,

Defendants.

NO.  
**CLASS ACTION COMPLAINT**  
**JURY TRIAL DEMANDED**

Plaintiff Linne Rose individually and on behalf of all others similarly situated, by and  
through undersigned counsel, alleges as follows:

**I. NATURE OF THIS ACTION**

1. Millions of Americans have wooden decks and concrete surfaces outside their  
homes. The surfaces require periodic maintenance not only to maximize their useful life, but  
also to keep up their appearance. Traditionally, homeowners apply paints or stains on their  
decks and patios to provide a decorative and protective barrier from the elements and to  
minimize wear and tear.

2. In 2013, Behr, through a national marketing campaign, released a new patio and  
deck product exclusively through Home Depot, branded as DeckOver. Behr and Home Depot  
represented to homeowners that DeckOver was worth its premium price (3-5 times more

1 expensive than ordinary paints and stains) because it was a more durable coating (5 times  
2 thicker) and it could repair decks by filling in cracks and stopping splinters.

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

9 4. Plaintiff brings this class action suit on his own behalf and on behalf of others  
10 similarly situated under Washington's consumer protection laws. Plaintiff seeks an order  
11 forcing Behr and Home Depot to stop their deceptive conduct and to provide appropriate  
12 remuneration to affected consumers.

## 13 II. JURISDICTION AND VENUE

14 5. This Court has subject-matter jurisdiction over this action pursuant to the Class  
15 Action Fairness Act of 2005, 28 U.S.C. §§ 1332 (a) and (d), because the amount in controversy  
16 exceeds \$5,000,000, exclusive of interest and costs, and more than two-thirds of the members  
17 of the proposed class are citizens of states different from that of Behr Process Corporation and  
18 Behr Paint Corporation.

19 6. Venue is proper in this District under 28 U.S.C. § 1391(b) because Defendants  
20 conduct business in this District and Plaintiff resides in, applied the product in, and was  
21 damaged in this District.

## 22 III. PARTIES

23 7. Plaintiff Linne Rose is a resident and citizen of the State of Washington.  
24 Plaintiff resides in Ravensdale, King County, Washington.

25 8. Defendants Behr Process Corporation and Behr Paint Corporation are California  
26 corporations, with their principal place of business in California. Both Behr Process  
27

1 Corporation and Behr Paint Corporation are located at 3400 W. Segerstrom Ave., Santa Ana,  
2 California, 92704.

3 9. Defendant Masco Corporation is a Delaware corporation, with its principal place  
4 of business in Michigan. Masco is located at 20001 Van Born Road, Taylor, Michigan, 48180.  
5 Masco acquired Behr Process Corporation in 1999. Masco conducts Behr-oriented marketing  
6 and sales operations in Santa Ana, California. Plaintiff refer to Behr Process Corporation, Behr  
7 Paint Corporation, and Masco Corporation collectively as “Behr.”

8 10. Defendant The Home Depot Inc. is a Delaware corporation, with its principal  
9 place of business in Georgia. The Home Depot, Inc. is the parent company of Home Depot  
10 U.S.A., Inc. and describes itself in annual reports filed with the Securities Exchange  
11 Commission Home Depot, Inc. as the world’s largest home improvement retailer.

12 11. Defendant Home Depot U.S.A., Inc. is a Delaware corporation, with its  
13 principal place of business in Georgia. Home Depot U.S.A. operates as a subsidiary of The  
14 Home Depot, Inc. There are approximately 2,000 retail stores under the Brand name “The  
15 Home Depot” in the United States, including in Covington, Washington, where Plaintiff  
16 purchased DeckOver.

#### 17 **IV. COMMON FACTUAL ALLEGATIONS**

##### 18 **A. Deck and Patio Restoration**

19 12. Wooden decks and concrete surfaces are prone to wear and deterioration  
20 through exposure to the elements, which leads to scuffing, decay, cracking, and splinters.  
21 Periodic maintenance is needed to maximize the surfaces’ useful life and to keep up their  
22 appearance.

23 13. One way to maintain the surfaces is through application of coatings. Coatings  
24 include paints and stains that provide a thin decorative and protective barrier (with the stains  
25 actually soaking into the fibers themselves). Although paints and stains provide some surface  
26 protection, they typically do not improve the surfaces’ condition (for example, by fixing cracks  
27

1 or splinters). Paints also need to be reapplied relatively often to maintain their cosmetic and  
2 protective benefits.

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

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

17 **B. Behr DeckOver**

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

25 17. Richards described DeckOver’s attributes as including “easy application and  
26 durable protection against the elements, . . . allowing consumers to rejuvenate instead of  
27

1 replacing their decks or concrete surfaces.” About a year later, Behr introduced a Textured  
2 DeckOver product. DeckOver is sold exclusively at Home Depot, both online and at retail  
3 locations.

4 **C. Defendants’ Marketing Campaign**

5 18. Since DeckOver was introduced, both Behr and Home Depot have marketed it  
6 as a durable and long-lasting alternative to paint and stains, capable of extending the life of  
7 surfaces.

8 19. 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-resistant finish  
10 that also resists cracking and peeling” with “excellent adhesion.” It also describes DeckOver as  
11 “5x thicker than standard paints and stains.”

12 20. Similar representations appear on the product’s packaging: The label states that  
13 DeckOver “Brings new life to old wood & concrete”; “Covers up to 75 Sq. Ft. in 2 Coats”;  
14 “Creates a Smooth, Slip-Resistant Finish”; and Conceals Splinters & Cracks up to ¼”.”



The label also represents:

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

21. Behr also airs television commercials advertising DeckOver. The DeckOver television commercials emphasize the same themes as can be found on DeckOver labeling and

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

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

13 23. Home Depot markets DeckOver in a virtually identical manner as Behr. On its  
14 website, Home Depot emphasizes the durability and restorative effects of DeckOver, claiming  
15 it “will bring your old, weathered wood or concrete back to life,” that it will “create[] a durable  
16 coating on your tired deck, rejuvenating its look,” and that it will “[b]ring new life to old,  
17 uninviting wood” and make your surfaces “like new,” with a “refreshed look.” Home Depot,  
18 like Behr, emphasizes that DeckOver “[r]esists cracking and peeling,” “conceals splinters and  
19 cracks up to ¼ in,” and is 28 “waterproof[],” providing a “mildew resistant finish.” In-store  
20 displays at Home Depot tout DeckOver’s “long-lasting durability.”

21 24. Behr and Home Depot use these representations to justify charging more for  
22 DeckOver. Behr’s overall marketing scheme focuses on DeckOver’s superior durability  
23 compared to paints and stains and that it is an alternative to deck replacement (which is several  
24 times more expensive). DeckOver, compared to Behr and other companies’ paints and stains,  
25 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
Paint	Porch & Patio Floor Paint	400 sq. ft.	\$28

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

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

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

- “I was extremely happy to hear the supposed benefits and ease of use of this new product. . . . The problem is that upon putting our furniture back on the deck, any slight movement scratches the finish back down to the bare wood. We hosted a party this weekend for 30 people and I now have 10 or so areas to touch up. With the cost and time spent dealing with this product, I expect years of normal wear and tear, not one week. We are disappointed and would recommend going a different route.”—June 29, 2013
- “Worst product ever! Waste of money! . . . I bought the Behr Deckover product in order to redo my deck. I did all the prep work the instructions stated to do . . . I did all of this in the summer of 2013. It is now February 2014. The product did not even last one year the product is already peeling up off of the wood . . . I would have been better to re stain the deck rather than use this product. I will have to now re-sand all of this off and apply a coat of deck stain to protect the wood.”—February 27, 2014



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- 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
- “In less than a year of putting this Deck over on our deck, I started to see some bubbling starting along the trim boards of the deck. Not much longer and the whole deck showed signs of the bubbling and then complete peeling.... . . This was intended as a hot tub deck but now it sits empty as we cannot afford to buy any other stain/paint. Plus take the time to peel all the defective Behr Deck over paint and put another cleaner on the deck.” - October 27, 2016
- “Followed all the instructions . . . Started peeling after about 60 days to a point where large chunks were blowing off. Now comes the hard part of using sandpaper, sanding discs, chemicals, power washer, scrapers and anything else I can think of to remove what’s left. Behr owes me 48 hours of my life back. Thank goodness I didn’t do the railings and spindles!!!!!”—April 3, 2017

27. Home Depot has also received hundreds of DeckOver complaints through its website:

- “Doing my deck over . . . Don’t buy this product. I hope it holds up during the winter. Otherwise I’ll be doing my deck over in the spring. It definitely will not be Behr’s DeckOver or anything by Behr for that matter.”—August 19, 2013
- “Peeling after 6 mos . . . I followed all of the directions & replaced all rotted deck boards. Deck over is peeling & bubbling all over my deck! A disaster”—May 14, 2014
- “Worst product I have ever bought. We used over 6 gallons for our large deck. The sales person told us it would last 10 year. We followed the instructions exactly and within SIX months it was peeling! Not to mention it does not fill in cracks like promised.”—June 3, 2015

- 1 • “Within 7 months this product will peel (sic) up. I have no idea  
2 why this product is still on the market. You will be scraping it off  
3 in a year. Don’t waste your time or money on it.”—June 6, 2016
- 4 • “We feel the product was misrepresented by Home Depot and Behr  
5 and therefore did not meet our expectations. It did not do a good  
6 job of covering the concrete surface of our lanai.”—March 5, 2017
- 7 • “I should’ve read the reviews before using this product. We  
8 actually paid a professional to apply it to our deck. They followed  
9 all of the instructions and it looked great for about a month and  
10 then we had a few late spring snow storms not it is peeling right off  
11 the wood. It is starting to look terrible. What a waste of money!”—  
12 May 17, 201

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

21 29. Negative consumer reactions to Behr’s DeckOver can also be found elsewhere  
22 across the internet. For example, about 100 customers have written complaints about DeckOver  
23 on pissedcustomer.com, including the following:

- 24 • “I applied deckover last fall and now it is all peeling off and my  
25 deck looks worse than when I first did it. I am very disappointed in  
26 this product. I spent well over a hundred dollars on this product . . .  
27 I thought it was guaranteed to last up to 10 years.”—May 15, 2015
- “I had this product put on my deck last fall and it began to peel by  
spring. Now I have multiple places that the deck over has  
completely peeled off . . . It’s a shame you pay hat [sic] much for a  
product that does not last one year.”—December 30, 2016

1           30. Behr also researched and tested DeckOver before beginning to sell it. Given  
2 how quickly it becomes apparent that DeckOver is not capable of performing as a durable  
3 alternative coating on wood and concrete surfaces, Behr certainly discovered that DeckOver  
4 begins to peel, chip, bubble, and crack within months of application before introducing  
5 DeckOver to the market.

6           31. After it went on the market, complaints were widespread and persistent:  
7 Defendants have received phone calls and emails complaining about DeckOver, and consumers  
8 have been uploading negative reviews of DeckOver on Behr's own website, Home Depot's  
9 own website, and elsewhere since summer 2013. Behr reviews the complaints on these  
10 websites and has responded to some of them. The complaints on these websites are not  
11 prominent. For example, Behr highlights on its DeckOver product page the "Latest Featured  
12 Reviews" which consists of four and five star reviews, but only through scrolling well down the  
13 page or clicking to a separate webpage is it revealed that there are hundreds of negative  
14 reviews. Likewise, the reviews on Defendants' websites do not follow a bell curve distribution  
15 and instead are mostly 1- and 5-star reviews. In addition, there is at least one report by the  
16 media that Behr removed online complaints on its own Facebook page containing DeckOver  
17 complaints.

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

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1 33. Yet Defendants continue to sell DeckOver, continue to market it as “durable,”  
2 “long-lasting,” and an alternative to replacing one’s deck, and do not warn customers  
3 beforehand that the product fails after only a few months, often leaving the surface looking  
4 worse than before DeckOver was applied.

5 34. As a result, consumers continue to spend hundreds of dollars purchasing and  
6 applying DeckOver, and spend time and money removing and replacing DeckOver when it  
7 peels, bubbles, chips, cracks, discolors, and damages their decks.

8 **E. PLAINTIFF ROSE’S EXPERIENCE**

9 35. Plaintiff Linne Rose purchased five 5-gallon containers of Behr DeckOver in  
10 March 2015, from a Home Depot store in Covington, Washington. Before his purchase, Mr.  
11 Rose had seen television advertisements for DeckOver. Mr. Rose also reviewed the product  
12 label before buying DeckOver. Mr. Rose was told by a Home Depot employee before his  
13 purchase that DeckOver would last ten to fifteen years.

14 36. Plaintiff applied the DeckOver to the wood deck on his home, in August 2014.  
15 He carefully reviewed the application instructions on the label prior to applying DeckOver, and  
16 applied the product as instructed. Within a year, the DeckOver began to peel, bubble, and flake.  
17 Additionally, Plaintiff observed the DeckOver cause cracks in the wood deck that allowed rot  
18 to develop.

19 37. In 2016, Mr. Rose called Behr and told them about the problems DeckOver was  
20 causing his deck. Behr offered to send him more DeckOver and sandpaper. Mr. Rose rejected  
21 this offer as a wholly inadequate remedy. Then, Behr offered him \$500, which was likewise  
22 rejected as wholly inadequate.

23 38. The DeckOver on Mr. Rose’s deck has continued to peel off in large strips,  
24 bubble, flake, cause cracks, and develop wood rot.

25 39. Had Mr. Rose known that DeckOver was incapable of providing a durable  
26 surface coating, he would not have purchased or used the product.

27



1 of this action by mail, supplemented by published notice (if deemed necessary or appropriate  
2 by the Court).

3 46. **Commonality and Predominance**: Common question of law and fact exist as  
4 to all proposed class members and predominate over questions affecting only individual class  
5 members. These common questions include whether:

- 6 a. Defendants marketed DeckOver as a durable resurfacer capable of  
7 providing long-lasting protection for wood and concrete surfaces;
  - 8 b. DeckOver is not a durable resurfacer and is not capable of providing  
9 long-lasting protection for wood and concrete surfaces, but is instead  
10 prone to promptly peeling, chipping, bubbling, and degrading within  
11 months of application;
  - 12 c. Defendants' marketing of DeckOver was false, deceptive, and  
13 misleading to reasonable consumers;
  - 14 d. Defendants knew DeckOver was not a durable resurfacer capable of  
15 providing long-lasting protection for wood and concrete surfaces and is  
16 instead susceptible to peeling, chipping, bubbling, and degrading within  
17 months of application;
  - 18 e. DeckOver's propensity to peel, chip, bubble, and generally degrade  
19 within months of application, rather than provide long-lasting protection  
20 for wood and concrete surfaces, would be important to a reasonable  
21 consumer;
  - 22 f. Defendants failed to disclose DeckOver's propensity for peeling,  
23 chipping, bubbling, and degrading within months of application; and
  - 24 g. Defendants' conduct violates various state consumer protection statutes.
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1           47.     **Typicality:** Plaintiff's claims are typical of the claims of the proposed classes.  
2 Plaintiff and the members of the proposed classes all purchased DeckOver, giving rise to  
3 substantially the same claims.

4           48.     **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 seeks to  
6 represent. Plaintiff has retained counsel competent and experienced in complex class action  
7 litigation, and will prosecute this action vigorously on class members' behalf.

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

19           50.     In the alternative, the proposed classes may be certified because:

- 20           a.       The prosecution of separate actions by the individual members of the  
21                   proposed class would create a risk of inconsistent adjudications, which  
22                   could establish incompatible standards of conduct for Defendants;
- 23           b.       The prosecution of individual actions could result in adjudications,  
24                   which, as a practical matter, would be dispositive of the interests of non-  
25                   party class members or which would substantially impair their ability to  
26                   protect their interests; and  
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1 c. Defendants have acted or refused to act on grounds generally applicable  
2 to the proposed classes, thereby making appropriate final and injunctive  
3 relief with respect to the members of the proposed classes as a whole.

4 **VI. TOLLING OF STATUTES OF LIMITATIONS**

5 51. Discovery Rule: Plaintiff's and class members' claims accrued upon discovery  
6 that DeckOver is not a durable resurfacers and is not capable of providing long-lasting  
7 protection for wood and concrete surfaces, but is instead prone to promptly peeling, chipping,  
8 bubbling, and degrading within months of application. While Defendants knew, and concealed,  
9 these facts, Plaintiff and class members could not and did not discover these facts through  
10 reasonable diligent investigation until after they experienced the aftermath of DeckOver  
11 application and learned that the problem was not isolated to their DeckOver.

12 52. Active Concealment Tolling: Any statutes of limitations are tolled by  
13 Defendants' knowing and active concealment of the facts set forth above. Defendants kept  
14 Plaintiff and all class members ignorant of vital information essential to the pursuit of their  
15 claim, without any fault or lack of diligence on the part of Plaintiff. The details of Defendants'  
16 efforts to conceal its above-described unlawful conduct are in its possession, custody, and  
17 control, to the exclusion of Plaintiff and class members, and await discovery. Plaintiff could not  
18 have reasonably discovered these facts, nor that Defendants failed to disclose material facts  
19 concerning its performance.

20 53. Estoppel: Defendants were and are under a continuous duty to disclose to  
21 Plaintiff and all class members the true character, quality, and nature of DeckOver. At all  
22 relevant times, and continuing to this day, Defendants knowingly, affirmatively, and actively  
23 concealed the true character, quality, and nature of DeckOver. The details of Defendants'  
24 efforts to conceal its above-described unlawful conduct are in its possession, custody, and  
25 control, to the exclusion of Plaintiff and class members, and await discovery. Plaintiff  
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1 reasonably relied on Defendants' active concealment. Based on the foregoing, Defendants are  
2 estopped from relying on any statutes of limitation in defense of this action.

3 54. Equitable Tolling: Defendants took active steps to conceal and misrepresent  
4 material facts relating to DeckOver's performance. The details of Defendants' efforts are in its  
5 possession, custody, and control, to the exclusion of Plaintiff and class members, and await  
6 discovery. When Plaintiff learned about this material information, they exercised due diligence  
7 by thoroughly investigating the situation, retaining counsel, and pursuing their claims. Should  
8 such tolling be necessary, therefore, all applicable statutes of limitation are tolled under the  
9 doctrine of equitable tolling.

## 10 **VII. CAUSES OF ACTION**

### 11 **Count I**

#### 12 **Breach of Implied Warranty**

13 **(On Behalf of the Nationwide Class or Alternatively on Behalf of the Washington Class  
14 Against All Defendants)**

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

16 56. Defendants are in the business of manufacturing, designing, supplying,  
17 marketing, advertising, warranting, and selling DeckOver. Defendants impliedly warranted to  
18 Plaintiff and class members that DeckOver was of a certain quality, was fit for the ordinary  
19 purpose for which DeckOver would be used, and conformed to the promises or affirmations of  
20 fact made on the container or label.

21 57. Defendants are in privity with Plaintiff and class members by law and fact. First,  
22 Plaintiff has had sufficient direct dealings with Defendants and/or their representatives and  
23 agents to establish privity of contract. Second, Plaintiff and class members are intended third-  
24 party beneficiaries of contracts, including between the Behr Defendants and the Home Depot  
25 Defendants. Third, Defendants' advertisements were aimed at Plaintiff and class members.  
26 Defendants are estopped from limiting claims by class members for common law and statutory  
27 violations based on a defense of lack of privity.



1 66. Defendants are “suppliers” and “warrantors” within the meanings of 15 U.S.C. §  
2 2301(4)-(5).

3 67. DeckOver products are “consumer products” within the meaning of 15 U.S.C. §  
4 2301(1).

5 68. There exists an implied warranty for sale of DeckOver within the meaning of the  
6 Act.

7 69. For the reasons detailed above, Defendants breached this implied warranty, as  
8 DeckOver was not fit for its intended use.

9 70. Defendants’ breach of warranty has deprived Plaintiff and class members of the  
10 benefit of their bargain.

11 71. The amount in controversy of Plaintiff’s individual claims meets or exceeds the  
12 sum or value of \$25. In addition, the amount in controversy meets or exceeds the sum or value  
13 of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be  
14 determined in this suit.

15 72. Defendants have been afforded reasonable opportunity to cure its breach of  
16 warranty. Pursuant to the provisions of 15 U.S.C. § 2310(e), Plaintiff has notified Defendants’  
17 and provided them with reasonable opportunity to correct their business practices and cure their  
18 breach of warranties. Defendants have not cured the breach of warranty.

19 73. In addition, resorting to any informal dispute settlement procedure or affording  
20 Defendants another opportunity to cure its breach of warranty is unnecessary and futile. Any  
21 remedies available through any informal dispute settlement procedure would be inadequate  
22 under the circumstances, as Defendants continue not to disclose DeckOver’s propensity to  
23 rapidly peel, crack, bubble, and degrade, or to provide repairs at no cost. Any requirement  
24 under the Act or otherwise that Plaintiffs resort to any informal dispute settlement procedure or  
25 afford Defendants a reasonable opportunity to cure the breach of warranty described above is  
26 excused or, alternatively, has been satisfied.  
27



1           81. Defendants engaged in the concealment, suppression, or omission of the  
2           aforementioned material facts with the intent that others, such as Plaintiff, Class, and/or the  
3           general public would rely upon the concealment, suppression, omission of such material facts  
4           and purchase DeckOver from Defendants.

5           82. The concealment, suppression, or omission of the aforementioned material facts  
6           had the capacity to and did so deceive a substantial portion of the public, including Plaintiff and  
7           the members of the Class, into believing DeckOver was durable and long-lasting.

8           83. Plaintiff and Class Members would not have purchased DeckOver had they  
9           known or become informed of DeckOver would peel, bubble, flake, crack, or rot.

10          84. Defendants' concealment, suppression, or omission of material facts as alleged  
11          herein constitutes unfair, deceptive and fraudulent business practices within the meaning of the  
12          CPA.

13          85. Defendants have acted unfairly and deceptively by misrepresenting the quality,  
14          longevity, and reliability of DeckOver.

15          86. Defendants either knew, or should have known, that DeckOver was defectively  
16          designed and/or manufactured, would fail prematurely.

17          87. Defendants knew at the time DeckOver left its control, the product contained the  
18          defects described herein. At the time of sale, the DeckOver contained defects. The defects  
19          reduced the effectiveness and durability of the DeckOver and render it unable to perform the  
20          ordinary purposes for which it is used, as well as cause the resulting damage described herein.

21          88. As a direct and proximate cause of the violation of CPA described above,  
22          Plaintiff and Class Members have been injured in that they purchased DeckOver based on  
23          nondisclosure of material facts alleged above. Had Plaintiff and Class Members known about  
24          the defects, they would not have purchased it.

1 89. Defendants used unfair methods of competition and unfair or deceptive acts or  
2 practices in conducting its business. This unlawful conduct is continuing, with no indication  
3 that Defendants will cease.

4 90. Defendants' actions in connection with the distributing, marketing, warranting,  
5 and sale of the DeckOver as set forth herein evidences a lack of good faith, honesty in fact and  
6 observance of fair dealing so as to constitute unconscionable commercial practices, in violation  
7 of the CPA.

8 91. Defendants acted willfully, knowingly, intentionally, unconscionably and with  
9 reckless indifference when it committed these acts of consumer fraud.

10 92. Said acts and practices on the part of Defendants were and are illegal and  
11 unlawful pursuant to RCW 19.86.020.

12 93. As a direct and proximate result of Defendants' violations of the CPA, Plaintiff  
13 has suffered damages. Plaintiff is entitled to actual damages, including, but not limited to, the  
14 difference in value between the DeckOver as it was originally delivered and as it should have  
15 been delivered, equitable and declaratory relief, punitive damages, treble damages, costs and  
16 reasonable attorney's fees.

17 **Count IV**  
18 **Unjust Enrichment**  
19 **Based on Washington Common Law**  
20 **(On Behalf of the Nationwide Class Against the Behr Defendants)**

21 94. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

22 95. As described above, the Behr Defendants marketed, distributed, and sold  
23 DeckOver as a long-lasting, durable deck resurfacers without disclosing that in reality, the  
24 coating begins to strip and peel off soon after application.

25 96. As a result of its fraudulent acts and omissions related to DeckOver, Behr  
26 obtained monies which rightfully belong to Plaintiff and the proposed Nationwide 28 Class  
27 members to the detriment of Plaintiff and the proposed Nationwide Class members.

1 97. Behr appreciated, accepted, and retained the non-gratuitous benefits conferred  
2 by Plaintiff and the proposed Nationwide Class members, who, without knowledge that the  
3 DeckOver would not perform as advertised, paid a higher price for the product than it was  
4 worth. Behr also received monies for DeckOver that Plaintiff and the proposed Nationwide  
5 Class members would not have otherwise purchased.

6 98. It would be inequitable and unjust for Behr to retain these wrongfully obtained  
7 profits.

8 99. Behr's retention of these wrongfully obtained profits would violate the  
9 fundamental principles of justice, equity, and good conscience.

10 100. Plaintiff and the proposed Nationwide Class are entitled to restitution of the  
11 profits unjustly obtained, plus interest.

12 **VIII. PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff requests that the Court enter a judgment awarding the  
14 following relief:

15 A. An order certifying the proposed classes and appointing Plaintiff's counsel to  
16 represent the classes;

17 B. An order awarding Plaintiff and the class members their actual damages, treble  
18 damages, and/or any other form of monetary relief provided by law;

19 C. An order awarding Plaintiff and the classes restitution, disgorgement, or other  
20 equitable relief as the Court deems proper;

21 D. An order enjoining Defendants from their unlawful conduct;

22 E. An order awarding Plaintiff and the classes pre-judgment and post- judgment  
23 interest as allowed under the law;

24 F. An order awarding Plaintiff and the classes reasonable attorneys' fees and costs  
25 of suit, including expert witness fees; and  
26  
27

1 G. An order awarding such other and further relief as this Court may deem just and  
2 proper.

3 **IX. JURY DEMAND**

4 Plaintiff demands a jury trial on all issues so triable.

5 RESPECTFULLY SUBMITTED AND DATED this 20th day of November, 2017.

6 TERRELL MARSHALL LAW GROUP PLLC

7 By: /s/ Beth E. Terrell, WSBA #26759

8 Beth E. Terrell, WSBA #26759

9 Email: bterrell@terrellmarshall.com

Eric R. Nusser, WSBA #51513

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17 WHITFIELD BRYSON & MASON, LLP

900 West Morgan Street

18 Raleigh, North Carolina 27603

19 Telephone: (919) 600-5000

Facsimile: (919) 600-5002

20 *Attorneys for Plaintiff*



CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

LINNE ROSE, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff King County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Beth E. Terrell, WSBA #26759 Terrell Marshall Law Group PLLC, 936 N. 34th Street, Suite 300 Seattle, Washington 98103; 206-816-6603

DEFENDANTS

Behr Process Corp, Behr Paint Corp., Masco Corp., The Home Depot, Inc., and Home Depot U.S.A., Inc.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location. Includes categories like Citizen of This State, Citizen of Another State, and Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332 (a) and (d) Brief description of cause: Product defect/consumer fraud

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 11/20/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Beth E. Terrell, WSBA #26759

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

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

UNITED STATES DISTRICT COURT

for the

Western District of Washington

LINNE ROSE, individually and on behalf of all others
similarly situated,

Plaintiff(s)

v.

BEHR PROCESS CORP., BEHR PAINT COPR.,
MASCO CORP., THE HOME DEPOT, INC., and
HOME DEPOT U.S.A., INC.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Behr Process Corp.

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:

Beth E. Terrell, WSBA #26759
Terrell Marshall Law Group PLLC
936 North 34th Street, Suite 300
Seattle, Washington 98103

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:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

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

UNITED STATES DISTRICT COURT

for the

Western District of Washington

LINNE ROSE, individually and on behalf of all others
similarly situated,

Plaintiff(s)

v.

BEHR PROCESS CORP., BEHR PAINT COPR.,
MASCO CORP., THE HOME DEPOT, INC., and
HOME DEPOT U.S.A., INC.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Behr Paint Corp.

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:

Beth E. Terrell, WSBA #26759
Terrell Marshall Law Group PLLC
936 North 34th Street, Suite 300
Seattle, Washington 98103

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:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

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

UNITED STATES DISTRICT COURT

for the

Western District of Washington

LINNE ROSE, individually and on behalf of all others
similarly situated,

Plaintiff(s)

v.

BEHR PROCESS CORP., BEHR PAINT COPR.,
MASCO CORP., THE HOME DEPOT, INC., and
HOME DEPOT U.S.A., INC.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Masco Corp.

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:

Beth E. Terrell, WSBA #26759
Terrell Marshall Law Group PLLC
936 North 34th Street, Suite 300
Seattle, Washington 98103

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:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



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

UNITED STATES DISTRICT COURT

for the

Western District of Washington

LINNE ROSE, individually and on behalf of all others
similarly situated,

Plaintiff(s)

v.

BEHR PROCESS CORP., BEHR PAINT COPR.,
MASCO CORP., THE HOME DEPOT, INC., and
HOME DEPOT U.S.A., INC.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) The Home Depot, Inc.

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:

Beth E. Terrell, WSBA #26759
Terrell Marshall Law Group PLLC
936 North 34th Street, Suite 300
Seattle, Washington 98103

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:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

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

UNITED STATES DISTRICT COURT

for the

Western District of Washington

LINNE ROSE, individually and on behalf of all others
similarly situated,

Plaintiff(s)

v.

BEHR PROCESS CORP., BEHR PAINT COPR.,
MASCO CORP., THE HOME DEPOT, INC., and
HOME DEPOT U.S.A., INC.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Home Depot U.S.A., Inc.

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:

Beth E. Terrell, WSBA #26759
Terrell Marshall Law Group PLLC
936 North 34th Street, Suite 300
Seattle, Washington 98103

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:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: