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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
TACOMA DIVISION

ROBERT DOMSON, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

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

Case No. 3:17-cv-06060

COMPLAINT—CLASS ACTION

JURY DEMAND

Plaintiff ROBERT DOMSON, individually and on behalf of all others similarly situated,
by and through undersigned counsel, allege as follows.

NATURE OF CASE

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. Thus,
5 rather than providing homeowners with a premium option for reducing maintenance work and
6 improving the look and performance of their patios and decks, DeckOver performs worse than
7 cheaper options and requires hours of scraping, scrubbing, and sanding to remove it (with some
8 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 consumer protection statutes, nationwide law, and the laws
11 of Washington. Plaintiff seeks an order forcing Behr and Home Depot to stop their deceptive
12 conduct and to provide appropriate remuneration to affected consumers.

13 **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 of
17 the proposed class are citizens of states different from that of the Defendants Behr Process Corp.,
18 Behr Paint Corp., Masco Corp., The Home Depot, Inc., and Home Depot U.S.A., Inc.

19 6. Venue is proper in this District under 28 U.S.C. § 1391(b) because Defendants'
20 improper conduct alleged in this complaint occurred in, was directed from, and/or emanated
21 from this judicial district, and because plaintiff is a resident of this District.

22 **PARTIES**

23 7. Plaintiff Robert Domson is a resident of Clark County, and a citizen of the State
24 of 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 Corporation
27

1 and Behr Paint Corporation are located at 3400 W. Segerstrom Ave., Santa Ana, California,
2 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 and
6 sales operations in Santa Ana, California. Plaintiff refers to Behr Process Corporation, Behr Paint
7 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 Commission
11 as the world's largest home improvement retailer.

12 11. Defendant Home Depot U.S.A., Inc. is a Delaware corporation, with its principal
13 place of business in Georgia. Home Depot U.S.A. operates as a subsidiary of The Home Depot,
14 Inc.

15 COMMON FACTUAL ALLEGATIONS

16 **I. Deck and Patio Restoration**

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

20 13. One way to maintain the surfaces is through application of coatings. Coatings
21 include paints and stains that provide a thin decorative and protective barrier (with the stains
22 actually soaking into the fibers themselves). Although paints and stains provide some surface
23 protection, they typically do not improve the surfaces' condition (for example, by fixing cracks
24 or splinters). Paints also need to be reapplied relatively often to maintain their cosmetic and
25 protective benefits.

26 14. An alternative coating, which is the focus of this case, is a relatively recent
27 introduction to the marketplace: a protective, restorative coating, known as a resurfacer.

1 Resurfacers are also painted onto surfaces and are typically marketed as providing substantially
2 more benefits (at a greater cost) than paints and stains. Resurfacers are supposed to provide an
3 attractive appearance akin to what a paint or stain would provide, but better preserve the surface
4 by coating it in a significantly thicker protective barrier. The thicker coating provides the added
5 benefit of filling in large cracks and encapsulating splinters. Resurfacers are designed and
6 expected to last significantly longer than paints and stains, eliminating the need for regular
7 maintenance while at the same time substantially extending the life of wood and concrete
8 surfaces.

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

13 **II. Behr DeckOver**

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

21 17. Richards described "easy application and durable protection against the elements,
22 . . . allowing consumers to rejuvenate instead of replacing their decks or concrete surfaces."
23 About a year later, Behr introduced a Textured DeckOver product.

24 18. DeckOver is sold exclusively at Home Depot, both online and at retail locations.
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1 **III. Defendants' Marketing Campaign**

2 19. Since DeckOver was introduced, both Behr and Home Depot have marketed it as
3 a durable and long-lasting alternative to paint and stains, capable of extending the life of
4 surfaces.

5 20. For example, Behr's website claims DeckOver creates a "[l]ong-lasting, durable
6 finish" that "conceals cracks and splinters up to 1/4'" and creates a smooth, slip-resistant finish
7 that also resists cracking and peeling" with "excellent adhesion." It also describes DeckOver as
8 "5x thicker than standard paints and stains."

9 21. Similar representations appear on the product's packaging:



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



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”;
- “Interior/Exterior, 100% Acrylic Formula.”

22. Behr also airs television commercials advertising DeckOver. The DeckOver television commercials emphasize the same themes as can be found on DeckOver labeling and in-store displays: the ads feature people standing and dancing barefoot on decks, with a

1 voiceover saying not to "let cracks and splinters spoil your fun" and promising DeckOver is
2 "made-to-last," "extends the life of your deck," and is the "ultimate do-over for wood and
3 concrete."

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

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

20 25. Behr and Home Depot use these representations to charge more for DeckOver.
21 Behr's overall marketing scheme focuses on DeckOver's superior durability compared to paints
22 and stains and that it is an alternative to deck replacement (which is several times more
23 expensive). DeckOver, compared to Behr and other companies' paints and stains, covers 3-5
24 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

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

26. 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.

27. 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. In addition to on-line consumer complaints, Defendants have received countless formal warranty claims and complaints. Several examples of the on-line 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
- “When it dried the deck looked like plastic rather than wood. And then when we placed the outdoor furniture back on the deck we found that the slightest movement of the chairs mars the deck finish. When the dog runs across the deck her wet/muddy paws mark the deck. The Deck Over finish is too delicate for a deck. We are very disappointed with the product, with Behr and with Home Depot.”—August 8, 2013
- “Don’t waste your money on this product if you have an older deck with cracks. The coverage is not want [sic] the product advertised and the paint chips and scratches very easily. The product is way over priced.

1 You would come out a lot better just to replace the decking boards.”—
2 September 9, 2013

- 3 • “Worst product ever! Waste of money! . . . I bought the Behr Deckover
4 product in order to redo my deck. I did all the prep work the instructions
5 stated to do . . . I did all of this in the summer of 2013. It is now
6 February 2014. The product did not even last one year.the product is
7 already peeling up off of the wood . . . I would have been better to re
8 stain the deck rather than use this product. I will have to now re-sand all
9 of this off and apply a coat of deck stain to protect the wood.”—
10 February 27, 2014
- 11 • “Peeling off after 8 months . . . I painted my deck in summer 2013,
12 followed all instructions from the can. Just after 8 months my deck
13 started to peel off. Now I have to spend money getting all my deck
14 sanded to be able to get all this deck over removed.—March 10, 2014.



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20 (Image from above review dated March 10, 2014)

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

1 the snow melted this year over 50% of my deckover peeled right off. I
2 am sad to say that splurging for the more expensive ‘better’ product
3 certainly did not pay off for me. Product states it will last on a deck for
up to 10 years yet it hasn’t even lasted a full year on my deck. I am very
disappointed in Behr and their deckover product”—May 12, 2015

- 4 • In less than a year of putting this Deck over on our deck, I started to see
5 some bubbling starting along the trim boards of the deck. Not much
6 longer and the whole deck showed signs of the bubbling and then
7 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
- 8 • “Followed all the instructions . . . Started peeling after about 60 days to
9 a point where large chunks were blowing off. Now comes the hard part
of using sandpaper, sanding discs, chemicals, power washer, scrapers
10 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
11 spindles!!!!!!”—April 3, 2017
- 12 • “This is the worst product I have ever purchased. Advertised to bring
13 back old wood to life, it ruined what old wood I had and caused me to
replace my entire deck! Would NEVER recommend this product to
anyone.”—May 9, 2017

14 28. The negative reviews on Behr’s website are not prominently featured, particularly
15 when compared to positive reviews. For example, when visiting the page for Behr Premium
16 Deckover, Behr prominently lists the “Latest Featured Reviews” toward the top of the page in
17 large font. Each of those reviews is positive in nature and is highlighted in large gold print. To
18 locate the many negative reviews, on the other hand, it is necessary to either click to a separate
19 webpage entirely, or to scroll toward the bottom of the page to an area that is not visible on most
20 computer monitors and devices without scrolling down the webpage. Once near the bottom of
21 the page, it is possible to toggle from a “Product Usage” tab, which appears by default, to the
22 “Ratings & Reviews” tab. Only after that toggle is it possible to see the negative reviews. An
23 “Avg. Rating” appears toward the top of the page, but it is in smaller print than the featured
24 reviews and is in black text, rather than the gold text of the featured reviews. Also of note, while
25 Behr’s website allows reviews of 1-, 2-, 3-, 4-, and 5-stars, the posted reviews do not show
26 anything approaching a bell curve distribution. Instead, there are fewer 2-, 3-, and 4-star reviews
27 combined than there are either 1- or 5-star reviews. One explanation for this would be that Behr

1 or a surrogate has “stuffed the ballot box,” by placing positive reviews to balance out the
2 hundreds of negative reviews. This is a fairly common practice for websites that post customer
3 reviews.

4 29. Home Depot has also received hundreds of DeckOver complaints through its
5 website:

- 6 • "Doing my deck over . . . Don't buy this product. I hope it holds up
7 during the winter. Otherwise I'll be doing my deck over in the spring. It
8 definitely will not be Behr's DeckOver or anything by Behr for that
9 matter."-August 3, 2013
- 10 • "Peeling after 6 mos . . . I followed all of the directions & replaced all
11 rotted deck boards. Deck over is peeling & bubbling all over my deck!
12 A disaster"-May 14, 2014
- 13 • "Did not last a year . . . Labor intensive to install. did not hold up over
14 northern Illinois winter. i would pass."-May 24, 2014
- 15 • "the worst stuff on the market, didn't last 3months and when I want my
16 money back this paint is GARBAGE."-July 3, 2014
- 17 • "We used this product on an older deck, after buying our home. Spent
18 tons of money and time on this project with Deck Over last fall, in
19 September. It's only May, and the whole area is peeling off. Needs
20 totally redone again, and it hasn't even been a year."-May 14, 2014
- 21 • "Worst product I have ever bought. We used over 6 gallons for our large
22 deck. The sales person told us it would last 10 year. We followed the
23 instructions exactly and within SIX months it was peeling! Not to
24 mention it does not fill in cracks like promised."-June 3, 2015
- 25 • "We feel the product was misrepresented by Home Depot and Behr and
26 therefore did not meet our expectations. It did not do a good job of
27 covering the concrete surface of our lanai."-March 5, 2017
- "I should've read the reviews before using this product. We actually paid
a professional to apply it to our deck. They followed all of the
instructions and it looked great for about a month and then we had a few
late spring snow storms not it is peeling right off the wood. It is starting
to look terrible. What a waste of money!"-May 17, 2017
- "This paint is terrible!!! Did every step Bahr [sic] called for last summer
2016 to prep deck and paint with deck over. It is now April or 2017 and
my deck is peeling badly. You can take the paint and peel it up like tape.
Absolutely horrible. Spent 500.000 (sic) dollars and one week to paint
deck and railings."-April 9, 2017.
- Within 7 months this product will peel (sic) up. I have no idea why this
product is still on the market. You will be scraping it off in a year. Don't
waste your time or money on it."-June 6, 2016

- 1 • "Mine is bubbling up after ONE month. Applied exactly as specified.
Horrible product."-October 1, 2016
- 2 • "HORRIBLE PRODUCT. I would never recommend this!!!! . . . We
3 spent so much money and time using a product that turned out to be an
4 utter disaster. Home depot should have tested this product thoroughly . .
5 . very laborious, not long lasting, deck looks worse since using product,
6 does not hold up to normal weather conditions, high price for sub-par
7 product."-May 1, 2014
- 8 • "This product is just awful, less than a year after application and my
9 deck is peeling and the flakes of paint are literally covering my lawn
10 and being tracked into the house. We followed all the manufacturer
11 instructions on preparing the wood for this product but all that money
12 and time we spent using this product was a waste. The worst part is now
13 I have to try to fix it. Please, please save yourself and do not try this
14 product!"-May 17, 2016
- 15 • "We purchased 3 cans and all the supplies needed. Followed the
16 instructions to a tea. Looked great for a very short few months and
17 peeled and chipped and now looks worse than it did before all my time,
18 work, and money!! So. Mad!!"-May 15, 2015
- 19 • "after 6 months this is peeling . . . We are seniors that live on SS and
20 bought this product for our deck. It was very expensive, but it was
21 highly recommended and we used it as the directions recommended. We
22 had a lot of snow and cold weather this year, but we thought this was
23 the purpose of this product. We would never recommend this product."-
24 March 20, 2015
- 25 • Like on the Behr website, the negative customer reviews of DeckOver
26 on the Home Depot website are not prominent. On the Behr Premium
27 Deckover page, for example, the reviews do not appear until the lower
half of the page, which requires scrolling down well past what would be
visible on the typical computer monitor or device. In addition, the
reviews on Home Depot's website, like on Behr's, do not follow a bell
curve distribution and instead are mostly 1- and 5-star reviews.
- It is common for manufacturers and sellers of consumer products to
monitor media reports, internet forums, and other public reactions and
treatment of their product. In May 2016, CBC News published an article
entitled: "Behr Deckover subject of customer complaints over peeling
paint; Company removed Facebook page with numerous complaints
after CBC inquiry." The article describes, among others, homeowner
Paul Rhyno, who first used DeckOver in 2014. But "[w]ithin about three
months after [Mr. Rhyno] put it on, it started peeling off in big swaths
and bubbling." He tried again the following year but got the same
results. The article contains photographs of Mr. Rhyno's damaged deck:

30. Like on the Behr website, the negative customer reviews of DeckOver on the
Home Depot website are not prominent. On the Behr Premium Deckover page, for example, the

1 reviews do not appear until the lower half of the page, which requires scrolling down well past
2 what would be visible on the typical computer monitor or device. In addition, the reviews on
3 Home Depot's website, like on Behr's, do not follow a bell curve distribution and instead are
4 mostly 1- and 5-star reviews.

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6 media reports, internet forums, and other public reactions and treatment of their product. In May
7 2016, CBC News published an article entitled: "Behr Deckover subject of customer complaints
8 over peeling paint; Company removed Facebook page with numerous complaints after CBC
9 inquiry." The article describes, among others, homeowner Paul Rhyno, who first used DeckOver
10 in 2014. But "[w]ithin about three months after [Mr. Rhyno] put it on, it started peeling off in big
11 swaths and bubbling." He tried again the following year but got the same results. The article
12 contains photographs of Mr. Rhyno's damaged deck:





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7 32. Negative consumer reactions to Behr's DeckOver can also be found elsewhere
8 across the internet. For example, about 100 customers have written complaints about DeckOver
9 on pissedconsumer.com, including the following:

- 10
- 11 • I applied deckover last fall and now it is all peeling off and my deck
12 looks worse than when I first did it. I am very disappointed in this
13 product. I spent well over a hundred dollars on this product . . . I thought
14 it was guaranteed to last up to 10 years."—May 15, 2015
 - 15 • "I spent a great deal of money painting two decks with this garbage.
16 One year later it is peeling off everywhere . . . I now am having to
17 replace several rotted boards, pay for pressure washing again and when
18 cured, repainted. It will obviously cost me more to fix the problem than
19 when I initially paid to have the deck painted, as I am sure a lot of
20 scraping will also have to be done."—October 19, 2016
 - 21 • "I had this product put on my deck last fall and it began to peel by
22 spring. Now I have multiple places that the deck over has completely
23 peeled off . . . It's a shame you pay hat [sic] much for a product that
24 does not last one year."—December 30, 2016.

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

34. After it went on the market, complaints were widespread and persistent:
Defendants have received phone calls and emails complaining about DeckOver, and consumers
have been uploading negative reviews of DeckOver on Behr's own website, Home Depot's own
website, and elsewhere since summer 2013. Behr reviews the complaints on these websites and
has responded to some of them. The complaints on these websites are not prominent. For

1 example, Behr highlights on its DeckOver product page the "Latest Featured Reviews" which
2 consists of four and five star reviews, but only through scrolling well down the page or clicking
3 to a separate webpage is it revealed that there are hundreds of negative reviews. Likewise the
4 reviews on Defendants' websites do not follow a bell curve distribution and instead are mostly 1-
5 and 5-star reviews. In addition, there is at least one report by the media that Behr removed online
6 complaints on its own Facebook page containing DeckOver complaints.

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

16 36. Ignoring its deficiencies and the large amount of claims and complaints is has
17 received, Defendants continue to sell DeckOver, continue to market it as "durable," "long-
18 lasting," and an alternative to replacing one's deck, and do not warn customers beforehand that
19 the product fails after only a few months, often leaving the surface looking worse than before
20 DeckOver was applied.

21 37. As a result, consumers continue to spend hundreds of dollars purchasing and
22 applying DeckOver, and spend time and money removing and replacing DeckOver when it peels,
23 bubbles, chips, cracks, discolors, and damages their decks.

24 **PLAINTIFF'S EXPERIENCES:**

25 38. In Summer of 2015, Plaintiff Robert Domson purchased one container of Behr
26 DeckOver paint product from a Home Depot store in Vancouver, Washington. Pre-purchase, Mr.
27 Domson spoke with a Home Depot sales representative and viewed an in-store advertisement.

1 Mr. Domson chose DeckOver, in part, because of internet advertisements indicating that the
2 DeckOver product would make older decks look brand new and in part because of the Home
3 Depot representative's statements that the product was good and would work great.

4 39. Mr. Domson applied the DeckOver to his deck in Summer of 2015. He carefully
5 reviewed the application instructions on the label prior to applying DeckOver, and applied the
6 product as instructed. Within just one year, the DeckOver began to bubble and pull off the wood
7 surfaces, and cracks appeared in the coating. Soon after, the DeckOver was peeling off in large
8 strips, completely exposing the wood underneath.

9 40. Had Mr. Domson known that DeckOver was incapable of providing durable
10 surface coating, he would not have purchased or used the product.

11 41. Mr. Domson continues to own a home, located at 218 Northwest 103rd Street,
12 Vancouver, WA 98685 with wooden surfaces outside and reasonably intends to continue to
13 maintain those surfaces in the years to come, including by purchasing resurfacers or other
14 coatings. He is concerned that without an injunction forcing Behr and Home Depot to disclose
15 which resurfacers are incapable of providing a long-lasting, durable finish, that he and others
16 may again fall victim to purchasing and overpaying for resurfacers like DeckOver which crack
17 and peel within a year of application.

18 **CLASS ACTION ALLEGATIONS**

19 42. This action is brought and may be maintained under Fed. R. Civ. P. 23 as a class
20 action.

21 43. Plaintiff seeks to represent the following class:

22 Washington Class by Plaintiff Robert Domson and all those similarly situated:

23 All Washington residents who purchased a Behr Premium DeckOver product.

24 44. Excluded from the class are: (1) Defendants, and any entity in which Defendants
25 have a controlling interest or which have a controlling interest in Defendant; (2) Defendants'
26 legal representatives, assigns and successors; (3) the judge(s) to whom this case is assigned, his
27

1 or her spouse, and members of the judge's staff; and (4) anyone who purchased DeckOver for
2 resale.

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

7 46. **Numerosity:** Behr has manufactured, and Home Depot has sold, DeckOver to at
8 least thousands of proposed class members. Members of the proposed class are thus too
9 numerous to practically join in a single action. Class members may be notified of the pendency
10 of this action by mail, supplemented by published notice (if deemed necessary or appropriate by
11 the Court).

12 47. **Commonality and Predominance:** Common questions of law and fact exist as to
13 all proposed class members and predominate over questions affecting only individual class
14 members. These common questions include whether:

- 15 a. Defendants marketed DeckOver as a durable resurfacer capable of
16 providing long-lasting protection for wood and concrete surfaces;
- 17 b. DeckOver is a durable resurfacer and is capable of providing long-lasting
18 protection for wood and concrete surfaces, or if instead, is prone to
19 promptly peeling, chipping, bubbling, and degrading within months of
20 application;
- 21 c. Defendants' marketing of DeckOver was false, deceptive, and
22 misleading to reasonable consumers;
- 23 d. Defendants knew DeckOver was not a durable resurfacer capable of
24 providing long-lasting protection for wood and concrete surfaces and is
25 instead susceptible to peeling, chipping, bubbling, and degrading within
26 months of application;

- 1 e. DeckOver's propensity to peel, chip, bubble, and generally degrade
2 within months of application, rather than provide long-lasting protection
3 for wood and concrete surfaces, would be important to a reasonable
4 consumer;
- 5 f. Defendants failed to disclose DeckOver's propensity for peeling,
6 chipping, bubbling, and degrading within months of application; and
- 7 g. Whether Defendants' conduct violates various state consumer protection
8 statutes.

9 48. **Typicality:** Plaintiff's claims are typical of the claims of the proposed class.
10 Plaintiff and the members of the proposed class all purchased DeckOver, giving rise to
11 substantially the same claims.

12 49. **Adequacy:** Plaintiff is an adequate representative of the proposed class because
13 his interests do not conflict with the interests of the members of the class that he seeks to
14 represent. Plaintiff has retained counsel competent and experienced in complex class action
15 litigation, and will prosecute this action vigorously on class members' behalf.

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

- 1 51. In the alternative, the proposed class may be certified because:
- 2 a. The prosecution of separate actions by the individual members of the
- 3 proposed class would create a risk of inconsistent adjudications, which
- 4 could establish incompatible standards of conduct for Defendants;
- 5 b. The prosecution of individual actions could result in adjudications,
- 6 which, as a practical matter, would be dispositive of the interests of non-
- 7 party class members or which would substantially impair their ability to
- 8 protect their interests; and
- 9 c. Defendants have acted or refused to act on grounds generally applicable
- 10 to the proposed class, thereby making appropriate final and injunctive
- 11 relief with respect to the members of the proposed class as a whole.

12 **TOLLING OF STATUTES OF LIMITATIONS**

13 52. Discovery Rule: Plaintiff and class members' claims accrued upon discovery that

14 DeckOver is not a durable resurfacer and is not capable of providing long-lasting protection for

15 wood and concrete surfaces, but is instead prone to promptly peeling, chipping, bubbling, and

16 degrading within months of application. While Defendants knew, and concealed, these facts,

17 Plaintiff and class members could not and did not discover these facts through reasonable

18 diligent investigation until after they experienced the aftermath of DeckOver application and

19 learned that the problem was not isolated to their DeckOver.

20 53. Active Concealment Tolling: Any statutes of limitations are tolled by Defendants'

21 knowing and active concealment of the facts set forth above. Defendants kept Plaintiff and all

22 class members ignorant of vital information essential to the pursuit of their claim, without any

23 fault or lack of diligence on the part of Plaintiff. The details of Defendants' efforts to conceal its

24 above-described unlawful conduct are in its possession, custody, and control, to the exclusion of

25 Plaintiff and class members, and await discovery. Plaintiff could not have reasonably discovered

26 these facts, nor that Defendants failed to disclose material facts concerning its performance

27

1 60. Defendants engaged in deceptive acts and practices in the conduct of business,
2 trade, and commerce by manufacturing, distributing, marketing, and selling DeckOver to class
3 members while misrepresenting and concealing material facts about DeckOver, including
4 representing that is a durable resurfacer and is capable of providing long-lasting protection for
5 wood and concrete surfaces, when in reality it is prone to promptly peeling, chipping, bubbling,
6 and degrading within months of application.

7 61. Defendants had exclusive knowledge of the fact that DeckOver is not a durable
8 resurfacer and is not capable of providing long-lasting protection for wood and concrete surfaces,
9 and instead is prone to promptly peeling, chipping, bubbling, and degrading within months of
10 application. Defendants failed to disclose these facts despite having a duty to disclose this
11 material information to Plaintiff and class members.

12 62. Plaintiff and class members were unaware, and did not have reasonable means of
13 discovering, the material facts that Defendants both misrepresented and failed to disclose.

14 63. Defendants' failure to disclose material facts concerning performance and the fact
15 that DeckOver did not work as represented was misleading in a material respect because a
16 reasonable consumer acting reasonably under the circumstances would have been misled by
17 Defendants' conduct.

18 64. Defendants' failure to disclose these material facts and their deceptive conduct
19 induced Plaintiff and the proposed class members to purchase DeckOver and pay a premium
20 price for it.

21 65. Defendants' conduct was also unfair. By failing to disclose material facts with its
22 products, Defendants engaged in unfair acts or practices. Defendants made representations
23 discussed above to attract consumers-including Plaintiff and members class.

24 66. These acts and practices were consumer-oriented because they had a broad impact
25 on consumers at large, affecting all purchasers of DeckOver.

1 67. As a direct and proximate result of Defendants' unlawful methods, acts, and
2 practices, Plaintiff and proposed class members were injured because, among other reasons, they
3 purchased DeckOver and did not receive the full value of their purchase.

4 68. Defendants' acts and practices were willful and knowing.

5 69. As a result of Defendant's unfair and deceptive practices, Plaintiff and the class
6 are entitled, pursuant to RCW 19.86.090, to recover treble damages, reasonable attorneys' fees,
7 and costs.

8 **COUNT II**

9 **Breach of Express Warranty**

10 **(On Behalf of the Class Against the Behr and Home Depot Defendants)**

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

12 71. Plaintiff and the proposed class members formed a contract with Defendants at
13 the time they purchased the DeckOver. As part of that contract, Defendants represented that
14 DeckOver was “[l]ong-lasting, durable finish,” “conceals cracks and splinters up to ¼” and
15 creates a smooth, slip-resistant finish that also resists cracking and peeling” with “excellent
16 adhesion.” Defendants also falsely advertised that DeckOver “Resists Cracking & Peeling;” is
17 “Durable, Mildew Resistant Finish”; is suitable for “Waterproofing, Solid Color Coating;”
18 “Revives Wood & Composite Decks, Railings, Porches & Boat Docks;” is “Great for Concrete
19 Pool Decks, Patios & Sidewalks,” and has a life expectancy of 5 to 25 years. These
20 representations constitute express warranties and became part of the basis of the bargain between
21 Plaintiff and the proposed class members, on the one hand, and Defendants, on the other.

22 72. Defendants made the above-described representations to induce Plaintiff and the
23 proposed class members to purchase DeckOver, and Plaintiff and the proposed class members
24 relied on the representations in purchasing DeckOver.

25 73. All conditions precedent to Defendants' liability under the above-referenced
26 contract have been performed by Plaintiff and the other proposed class members.

1 74. Defendants breached their express warranties about DeckOver because, as alleged
2 above, DeckOver is prone to promptly peeling, chipping, bubbling, and degrading within months
3 of application. Consequently, Defendants breached their express warranties.

4 75. As a result of Defendants' breaches of express warranties, Plaintiff and the
5 proposed class members have suffered damages because they did not get the benefit of the
6 bargain, including but not limited to the difference in the value between the product's worth and
7 the price paid. Plaintiff and the proposed class members were damaged in the amount of the
8 purchase price or a premium they paid for DeckOver, in an aggregate amount that Plaintiff will
9 prove at trial.

10 **COUNT III**

11 **Quasi-Contract/Restitution/Unjust Enrichment**

12 **(On Behalf of the Class Against the Behr Defendants)**

13 76. Plaintiff re-alleges the paragraphs above as if fully set forth herein.

14 77. Plaintiff brings this claim in the alternative.

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

18 79. The Behr Defendants' conduct violated, inter alia, state and federal law by
19 manufacturing, advertising, marketing, and selling their Products while misrepresenting and
20 omitting material facts.

21 80. As a result of their unlawful and fraudulent acts and omissions related to
22 DeckOver, Plaintiff and the proposed class members conferred significant financial benefits and
23 paid substantial compensation for DeckOver, which was not as the Behr Defendants represented
24 it to be.

25 81. As a further result of their unlawful and fraudulent acts and omission, the Behr
26 Defendants knowingly obtained substantial revenue from selling DeckOver, at the expense of
27

1 and to the detriment of Plaintiff and the proposed class members and to the Behr Defendants'
2 own benefit and enrichment.

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

8 83. It would be inequitable and unjust for the Behr Defendants to retain these
9 wrongfully obtained profits.

10 84. The Behr Defendants' retention of these wrongfully obtained profits would
11 violate the fundamental principles of justice, equity, and good conscience.

12 85. Plaintiff and the proposed class are entitled to disgorgement and restitution of the
13 profits unjustly obtained, plus interest.

14 **PRAYER FOR RELIEF**

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

- 17 a. An order certifying the proposed class and appointing Plaintiff's counsel
18 to represent the class;
- 19 b. An order awarding Plaintiff and the class members their actual damages,
20 treble damages, and/or any other form of monetary relief provided by
21 law;
- 22 c. An order awarding Plaintiff and the class restitution, disgorgement, or
23 other equitable relief as the Court deems proper;
- 24 d. An order enjoining Defendants from their unlawful conduct;
- 25 e. An order awarding Plaintiff and the class pre-judgment and post-
26 judgment interest as allowed under the law;
- 27

- 1 f. An order awarding Plaintiff and the class reasonable attorneys' fees and
2 costs of suit, including expert witness fees; and
3 g. An order awarding such other and further relief as this Court may deem
4 just and proper.

5 **JURY DEMAND**

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

7 DATED this 20th day of December, 2017.

8 STOLL STOLL BERNE LOKTING & SHLACHTER P.C.

9
10 By: s/Timothy S. DeJong
11 **Timothy S. DeJong**, WSBA No. 20941

12 209 SW Oak Street, Suite 500
13 Portland, OR 97204
14 Telephone: (503) 227-1600
15 Facsimile: (503) 227-6840
16 Email: tdejong@stollberne.com

17 -and-

18 **Michael McShane** (to be admitted *pro hac vice*)
19 **S. Clinton Woods** (to be admitted *pro hac vice*)
20 **Ling Y. Kuang** (to be admitted *pro hac vice*)
21 AUDET & PARTNERS, LLP
22 711 Van Ness Avenue, Suite 500
23 San Francisco, CA 94102
24 Telephone: (415) 568-2555
25 Facsimile: (415) 568-2556
26 Email: mmcshane@audetlaw.com
27 cwoods@audetlaw.com
lkuang@audetlaw.com

-and-

Charles E. Schaffer (to be admitted *pro hac vice*)
LEVIN, SEDRAN & BERMAN
510 Walnut Street, Suite 500
Philadelphia, PA 19106
Telephone: (215) 592-1500
Facsimile: (215) 592-4663
Email: cschaffer@lfsblaw.com

-and-

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Charles LaDuca (to be admitted *pro hac vice*)
CUNEO GILBERT & LADUCA LLP
4725 Wisconsin Avenue, NW, Suite 200
Washington, DC 20016
Telephone: (202) 789-3960
Facsimile: (202) 789-1813
Email: charles@cuneolaw.com

-and-

Melissa S. Weiner (to be admitted *pro hac vice*)
HALUNEN LAW
80 South 8th Street
IDS Center
Suite 1650
Minneapolis, MN 55402
Telephone: (612) 548-5286
Facsimile: (612) 605-4099
Email: weiner@halunenlaw.com

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

ROBERT DOMSON, individually and on behalf of all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Steve D. Larson Stoll Berne, 209 SW Oak Street, Suite 500, Portland, OR 97204 (503) 227-1600

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, PRISONER PETITIONS, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, 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. Brief description of cause: Defective Product

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 12/20/2017 SIGNATURE OF ATTORNEY OF RECORD s/Timothy S. DeJong

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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

UNITED STATES DISTRICT COURT

for the

Western District of Washington

ROBERT DOMSON, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

BEHR PROCESS CORP.; BEHR PAINT CORP.; 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. c/o VIVIAN IMPERIAL CT CORPORATION SYSTEM 818 WEST SEVENTH ST. SUITE 930 LOS ANGELES, CA 90017

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: Timothy S. DeJong STOLL STOLL BERNE LOKTING & SHLACHTER P.C. 209 SW Oak Street, Suite 500 Portland, Oregon 97204

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

ROBERT DOMSON, individually and on behalf of all
others similarly situated,

Plaintiff(s)

v.

BEHR PROCESS CORP.; BEHR PAINT CORP.;
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.
c/o VIVIAN IMPERIAL
CT CORPORATION SYSTEM
818 WEST SEVENTH ST.
SUITE 930
LOS ANGELES, CA 90017

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: Timothy S. DeJong
STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 SW Oak Street, Suite 500
Portland, Oregon 97204

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. _____

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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

ROBERT DOMSON, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

BEHR PROCESS CORP.; BEHR PAINT CORP.; 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. c/o THE CORPORATION TRUST COMPANY CORPORATION TRUST CENTER 1209 ORANGE ST WILMINGTON, DE 19801

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: Timothy S. DeJong STOLL STOLL BERNE LOKTING & SHLACHTER P.C. 209 SW Oak Street, Suite 500 Portland, Oregon 97204

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

ROBERT DOMSON, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

BEHR PROCESS CORP.; BEHR PAINT CORP.; 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. c/o CORPORATION SERVICE COMPANY 251 LITTLE FALLS DR WILMINGTON, DE 19808

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: Timothy S. DeJong STOLL STOLL BERNE LOKTING & SHLACHTER P.C. 209 SW Oak Street, Suite 500 Portland, Oregon 97204

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

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was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
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_____, 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

ROBERT DOMSON, individually and on behalf of all
others similarly situated,

Plaintiff(s)

v.

BEHR PROCESS CORP.; BEHR PAINT CORP.;
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.
c/o CORPORATION SERVICE COMPANY
251 LITTLE FALLS DR
WILMINGTON, DE 19808

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: Timothy S. DeJong
STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 SW Oak Street, Suite 500
Portland, Oregon 97204

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))

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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,
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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: