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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

NEIL STEVENS, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

RUST-OLEUM CORPORATION,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Neil Stevens (hereinafter, “Plaintiff”), by and through the undersigned counsel, brings
2 this action against Defendant Rust-Oleum Corporation (“Rust-Oleum” or “Defendant”), individually and
3 on behalf of all others similarly situated, and alleges as follows:

4 **NATURE OF THE CASE**

5 1. This is a consumer class action lawsuit brought by Plaintiff on behalf of purchasers of Rust-
6 Oleum’s water-based acrylic coating products marketed as Rust-Oleum Restore 2X, 4X and Deck Start
7 Wood Primer, and RockSolid 2X, 6X, 20X, and Deck Start Wood Primer (collectively, the “Products”).¹

8 2. Outdoor wooden decks, concrete patios, and similar structures require periodic upkeep due
9 to being exposed to the elements and wear-and-tear from surface contact. Such upkeep typically consists
10 of staining, painting, or use of other coatings and protective or restorative applications.

11 3. Rust-Oleum markets and sells these types of products under the brands “Restore” and
12 “RockSolid” for use by consumers seeking to repair and revitalize their existing decking, patios, and other
13 outdoor structures. On information and belief, the Restore and RockSolid products are substantially
14 similar formulas and products with different branding. The Products are water-based acrylic coatings that
15 purport to be high-quality deck re-surfacing products. Rust-Oleum aggressively markets these products to
16 consumers as durable and weather resistant products that are capable of extending the life of decks and
17 other similar surfaces.

18 4. The Products are defective and prone to failure. Contrary to Rust-Oleum’s advertising and
19 representations, the Products are plagued by flaws that cause them to fail to adhere properly to underlying
20 surfaces. Despite proper product application, the Products prematurely degrade, chip, bubble, peel, flake,
21 strip, and otherwise deteriorate, failing to provide the advertised protection to the decks, patios, and other
22 structures to which these products are applied.

23 5. The various product failures experienced by consumers who purchased the Products are at
24 odds with Rust-Oleum’s marketing representations, including promises and representations it makes
25 regarding product quality and performance directly on the Products’ labeling.

26 6. Examples of images of Rust-Oleum’s product labels for the Products are below:

27 ¹ The list of specific Products involved in this lawsuit is subject to modification as Plaintiff develops
28 the claims in this litigation during discovery.





7. As seen above, Rust-Oleum touts that its Deck Start Wood Primer “works on weathered & worn wood”; “simplifies prep & promotes topcoat adhesion”; and that it “works with any solid topcoat.”

1 8. Regarding its Restore 2X product, Rust-Oleum claims that the product is a “one coat
2 application”; is “algae and mildew resistant”; “extends the life of your deck”; and is a “superior” product.

3 9. As for its Restore 4X product, Rust-Oleum touts that it “restores the beauty of moderately
4 worn decks & patios”; provides “enhanced durability”; provides “ultimate weather resistance”; is
5 “barefoot friendly”; and “fills hairline cracks.”

6 10. Regarding its RockSolid 2X product, Rust-Oleum claims that the product is capable of
7 “transform[ing] your deck in one day”; provides “durability”; is “ideal for lightly worn decks & patios”;
8 provides “one coat coverage”; and provides “superior weather-resistance.” The RockSolid Products even
9 show a “before and after” depicting a deck with RockSolid applied that appears to be in great condition
10 following application, and which conveys that the Products work as depicted and advertised.

11 11. Rust-Oleum makes similar claims regarding its RockSolid 6X and 20X Products.

12 12. These representations are false, misleading, and omit the truth about the performance of
13 the Products. These statements are advertised right on the labels for the Products themselves, which
14 consumers are uniformly exposed to at the time of purchasing cans of the Products in-store, (e.g., at
15 Lowe’s or other hardware and home goods stores). Similar or identical product descriptions, labeling, and
16 advertising representations are and were present on the webpages where consumers purchased the
17 Products, uniformly exposing them to Rust-Oleum’s misstatements and subjecting them to Rust-Oleum’s
18 omissions.

19 13. Rust-Oleum made numerous other representations on the Products labels, on its website,
20 and elsewhere in product literature regarding the high performance and quality of its products.
21 Unfortunately for Plaintiff and consumers, these representations are untrue. As alleged in more detail
22 below, Plaintiff experienced product failure despite proper application of Rust-Oleum’s Products—in his
23 case, the RockSolid 2X product.

24 14. As consumers have now discovered, the Products do not live up to Rust-Oleum’s promises
25 and affirmative representations. Rather than providing protection to surfaces, the Products deteriorate in
26 a short time period. Consumers also soon discover that the defective Products require removal and
27 replacement of the coatings in their entirety, since the Products fail to protect the deck itself. Thus, instead
28 of ending the cycle of repainting and replacing, the Products hasten it.

1 15. Making matters worse, when consumers complain about failed Products, they report that
2 Rust-Oleum will only refund the purchase price or replace defective Products with more defective
3 Products.

4 16. The allegations in this lawsuit are nothing new and should come as no surprise to Rust-
5 Oleum. Indeed, other of its similar products were the subject of a publicly settled class action that asserted
6 similar allegations. *See In Re: Rust-Oleum Restore Marketing, Sales Practices and Products Liability*
7 *Litigation*, No. 1:15-cv-1364, MDL No. 2602 (N.D. Ill.).

8 17. Rust-Oleum knew its Products are defective and prone to failure, yet it marketed and sold
9 them to thousands upon thousands of unsuspecting consumers, causing those consumers to suffer
10 extensive damage to their decks and other structures, and to incur monetary damage.

11 18. Based on previous allegations regarding Rust-Oleum's other similar products, its rigorous
12 pre-sale testing of the Products, and consumer complaints about product failure, Rust-Oleum knew (or
13 should have known) that the Products suffer from a defect prior to placing the Products on the market for
14 sale to consumers, but it omitted, concealed, and otherwise failed to disclose this material information,
15 which it intended Plaintiff and other consumers to rely upon in deciding to purchase their Products.

16 19. Despite knowing that the Products are flawed and prone to failure, Rust-Oleum continued
17 to manufacture, market, and sell the Products—indeed, it changed its branding from “Restore” (the
18 Products are not capable of restoring decks) to “RockSolid” while, on information and belief, using similar
19 or the same formulas for the Products—to the public while making false representations about the
20 Products' quality, durability, and other characteristics, and omitting the truth about these products.

21 20. As a result of Rust-Oleum's conduct, Plaintiff and members of the Class (defined below)
22 have incurred substantial costs relating to their decks and other outdoor surfaces, have experienced
23 property damage to their structures, and have otherwise been injured. Due to the flaws in the Products,
24 Class members will continue expending considerable costs and time attempting to repair the problems.
25 Many likely will end up having to pay for a total replacement of their decks or other structures.

26 21. This class action seeks compensatory and punitive damages, injunctive and declaratory
27 relief, and other relief as a result of Rust-Oleum's violations of state consumer protection laws, breaches
28 of warranties, negligent misrepresentations and fraudulent concealment, and violations of other laws.

THE PARTIES

Plaintiff

22. Plaintiff Neil Stevens is an adult residing in Clovis, California.

Defendant

23. Defendant Rust-Oleum Corporation is an Illinois corporation, with its corporate headquarters located in Vernon Hills, Illinois. Rust-Oleum is owned by, and is a subsidiary of, RPM International, Inc.

JURISDICTION AND VENUE

24. This Court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(a) and (d), because the amount in controversy, exclusive of interest and costs, exceeds the sum or value of five million dollars (\$5,000,000.00), and greater than two-thirds of the Class members reside in states other than the state in which Defendant is a citizen.

25. This Court has personal jurisdiction over Defendant because Defendant is authorized to do business and is conducting substantial business throughout the United States, including in California; Defendant has specifically marketed and sold the Products in California; Defendant has sufficient minimum contacts with the various states of the United States, including California; and/or Defendant sufficiently avails itself of the markets of the various states of the United States, including California, through the promotion, sales, and marketing of Restore and RockSolid Products in California, to render the exercise of jurisdiction by this Court permissible.

26. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events and omissions giving rise to Plaintiff's claims occurred in this District; Defendant's misconduct alleged herein occurred in this District; Defendant regularly conducts and transacts business in this District and is therefore subject to personal jurisdiction in this District; and Plaintiff resides in this District.

FACTUAL ALLEGATIONS

A. Overview of the Products and Residential Coatings

27. Rust-Oleum is a manufacturer and seller of, among other things, protective paints and coatings for home and industrial use in the United States. Rust-Oleum is a flagship brand of RPM International, Inc., which is Rust-Oleum's parent company. Rust-Oleum designs, manufacturers, markets,

1 advertises, warrants, and sells a variety of deck and other surface coatings, including paints, stains, and
2 resurfacers.

3 28. As is known in the coatings industry, consumers purchasing wood and concrete coating
4 products for their homes want products that will withstand harsh weather conditions but maintain aesthetic
5 appeal while lasting for a long time. With a large variety of wood surface coating products available in
6 the marketplace, manufacturers must innovate to distinguish themselves from their competition.

7 29. Outdoor wooden decks, docks, concrete patios, and similar structures typically require
8 upkeep as they are exposed to the elements and to surface contact. Traditionally, that upkeep would have
9 required application of a paint or stain on a yearly or other periodic basis, and then eventual replacement
10 of the structure entirely.

11 30. In recent years, acrylic coatings have come to the market such that homeowners now have
12 the option of applying these “resurfacers”—a thicker, longer lasting coating than paint or stain.
13 Resurfacers are used to extend the life of the surface by repairing splinters, filling cracks, and coating the
14 deck to make it look revitalized or like new. Because resurfacers offer the promise of extending the life
15 of a surface and avoid the hassle of traditional upkeep and/or the great expense and effort of replacing a
16 structure altogether, these products are substantially more expensive than regular paints and stains.

17 31. Rust-Oleum’s Restore and RockSolid brands are two of the numerous brands of surfacing
18 and resurfacing products currently on the market.

19 32. Rust-Oleum’s Restore and RockSolid Deck Start Wood Primer is a water-based acrylic
20 coating that, according to Rust-Oleum, is intended for use on weathered, worn, or previously coated wood
21 decks, docks, and exterior wood furniture.² The Deck Start Wood Primer is a primer product, intended to
22 be applied to surfaces to prime for application of a top coating.

23
24
25 ² RUST-OLEUM, *Restore Deck Start Wood Primer*,
26 https://www.rustoleum.com/~media/DigitalEncyclopedia/Documents/RustoleumUSA/TDS/English/CBG/Restore/RST-16_Restore_Deck_Start_Wood_Primer_TDS.ashx (last visited May 4, 2021); RUST-
27 OLEUM, *RockSolid Deck Start Wood Primer*, [https://www.rustoleum.com/~media/DigitalEncyclopedia/Documents/RustoleumUSA/TDS/English/CBG/Rocksolid/RSD-
28 51_RockSolid_Deck_Start_Wood_Primer_TDS.ashx](https://www.rustoleum.com/~media/DigitalEncyclopedia/Documents/RustoleumUSA/TDS/English/CBG/Rocksolid/RSD-51_RockSolid_Deck_Start_Wood_Primer_TDS.ashx) (last visited May 4, 2021).

33. Rust-Oleum Restore 2X is a water-based polyurethane modified acrylic coating which, according to Rust-Oleum, is designed to resurface decks, docks, patios, and walkways.³

34. Rust-Oleum Restore 4X is a “high build” water-based acrylic coating which, according to Rust-Oleum, is designed to resurface aged wood and concrete decks and other surfaces.⁴

35. Rust-Oleum RockSolid 2X is a water-based polyurethane modified acrylic coating which, according to Rust-Oleum, is designed to resurface wood decks, concrete patios, and walkways.⁵

36. Rust-Oleum RockSolid 6X is a “high build” water-based acrylic coating which, according to Rust-Oleum, is designed to resurface moderately worn decks and patios.⁶

37. Rust-Oleum RockSolid 20X is a “high build” water-based acrylic coating which, according to Rust-Oleum, is designed to resurface heavily worn decks and patios.⁷

B. Rust-Oleum’s Marketing of the Restore and RockSolid Products

38. Rust-Oleum promotes its Products as being innovative and of high quality. On its website, Rust-Oleum claims that it offers “some of the most . . . durable . . . products in the industry” and that “[i]f you’ve got a surface you need to protect . . . you’ve come to the right place. We have a coating for every challenge.”⁸

³ RUST-OLEUM, *Restore 2x One Coat Solid Stain*, https://www.rustoleum.com/~media/DigitalEncyclopedia/Documents/RustoleumUSA/TDS/English/CBG/Restore/RST-08_Restore_2X_One_Coat_Solid_Stain_TDS.ashx (last visited May 4, 2021).

⁴ RUST-OLEUM, *Restore 4x Deck Coat*, https://www.rustoleum.com/~media/DigitalEncyclopedia/Documents/RustoleumUSA/TDS/English/CBG/Restore/RST-07_Restore_4X_Deck_Coat_TDS.ashx (last visited May 4, 2021).

⁵ RUST-OLEUM, *RockSolid 2x Solid Stain*, https://www.rustoleum.com/~media/DigitalEncyclopedia/Documents/RustoleumUSA/TDS/English/CBG/Rocksolid/RSD-38_RockSolid_2X_One_Coat_TDS.ashx (last visited May 4, 2021).

⁶ RUST-OLEUM, *RockSolid 6x Deck Coat*, https://www.rustoleum.com/~media/DigitalEncyclopedia/Documents/RustoleumUSA/TDS/English/CBG/Rocksolid/RSD-56_RockSolid_6X_Deck_Coat_TDS.ashx (last visited May 4, 2021).

⁷ RUST-OLEUM, *RockSolid 20x Deck Resurfacer*, https://www.rustoleum.com/~media/DigitalEncyclopedia/Documents/RustoleumUSA/TDS/English/CBG/Rocksolid/RSD-55_RockSolid_20X_Deck_Resurfacer_TDS.ashx (last visited May 4, 2021).

⁸ RUST-OLEUM, *Rust-Oleum’s History*, <https://www.rustoleum.com/about-rust-oleum/our-history> (last visited May 4, 2021).

39. To distinguish itself in the marketplace, Rust-Oleum touts—on the Product labels, product literature and technical data, on the websites where the Products are sold, and elsewhere—the Products’ durability and long-lasting, low maintenance qualities.

40. Rust-Oleum marketed the Products as capable of replacing worn and old decks, porches, patios and other structures, promoting deck facelifting and revitalization over deck replacement.

41. Indeed, a key aspect of its marketing efforts is in the name of its previous brand—“Restore”—which conveys to consumers that the product is actually capable of restoring patios, decks, and other outdoor wood and concrete surfaces, so that consumers do not have to incur the great expense of replacing those structures.

42. Rust-Oleum aggressively marketed the purported durability and quality of the Products.

43. Rust-Oleum made all of the following representations regarding Restore and RockSolid Deck Start Wood Primer on its product labeling and technical data sheets for that product:

- “simplifies prep & promotes topcoat adhesion”;
- “ideal for: wood decks, fences, siding, furniture & more”;
- “for use on weathered, worn or previously coated wood decks, docks and exterior wood furniture”;
- “works with any solid topcoat”;
- “works on weathered & worn wood.”⁹

44. Photographs of pails of Restore and RockSolid Deck Start Wood Primer are below, and contain numerous of these representations:

⁹ RUST-OLEUM, *Restore Deck Start Wood Primer*, https://www.rustoleum.com/~media/DigitalEncyclopedia/Documents/RustoleumUSA/TDS/English/CBG/Restore/RST-16_Restore_Deck_Start_Wood_Primer_TDS.ashx (last visited May 4, 2021); RUST-OLEUM, *RockSolid Deck Start Wood Primer*, https://www.rustoleum.com/~media/DigitalEncyclopedia/Documents/RustoleumUSA/TDS/English/CBG/Rocksolid/RSD-51_RockSolid_Deck_Start_Wood_Primer_TDS.ashx (last visited May 4, 2021).



45. Rust-Oleum made all of the following representations regarding Restore 2X Solid Stain on its product labeling and technical data sheets for that product:

- “one coat application”;
- “algae and mildew resistant”;
- “ideal for: wood decks, fences, siding, furniture & more”;
- “extends the life of your deck”;
- “superior”;
- “designed to resurface wood decks, docks, concrete patios and walkways”;
- “extend[s] the life of deck and patio surfaces”;
- “superior” or “excellent water repellency.”¹⁰

46. A photograph of a pail of Restore 2X is below, and contains numerous of these representations:

¹⁰ RUST-OLEUM, *Restore 2x One Coat Solid Stain*, https://www.rustoleum.com/~media/DigitalEncyclopedia/Documents/RustoleumUSA/TDS/English/CBG/Restore/RST-08_Restore_2X_One_Coat_Solid_Stain_TDS.ashx (last visited May 4, 2021).



47. Rust-Oleum made all of the following representations regarding Restore 4X Deck Coat on its product labeling and technical data sheets for that product:

- “restores the beauty of moderately worn decks & patios”;
- “enhanced durability”;
- “barefoot friendly”;
- “ultimate weather resistance”;
- “fills hairline cracks”;
- “high build”;
- “designed to resurface aged wood and concrete decks, patios, and walkways”;
- “high build finish provide[s] slip resistance and can bridge over or fill small cracks, checks, nail holes, or other minor surface defects.”¹¹

48. A photograph of a pail of Restore 4X Deck Coat is below, and contains numerous of these representations:

¹¹ RUST-OLEUM, *Restore 4x Deck Coat*, https://www.rustoleum.com/~/-media/DigitalEncyclopedia/Documents/RustoleumUSA/TDS/English/CBG/Restore/RST-07_Restore_4X_Deck_Coat_TDS.ashx (last visited May 4, 2021).



49. In other advertising, Rust-Oleum further touts the quality of its Restore Products. In a video on Rust-Oleum’s YouTube page, it claims its Restore Products are “groundbreaking deck coating products that are engineered to add years to the life of your deck.” The video refers to Rust-Oleum 4X as a “superior product” capable of “resurface[ing] almost any wood or composite deck”; capable of “leaving [decks] protected against moisture and damaging effects of the sun.”¹²

50. Rust-Oleum claims Restore 4X was formulated for decks that need to be “refreshed” due to being “weathered.” It claims Restore 4X facelifts these decks as it “coats the deck surface and fills the hairline cracks, beautifying and protecting [decks] for years to come.”¹³

51. Rust-Oleum similarly touts its successor brand, RockSolid.

52. Rust-Oleum made all of the following representations regarding its RockSolid 2X Solid Stain on its product labeling and technical data sheets for that product:

- capable of “resurface[ing] wood decks, docks, concrete patios and walkways”;
- “excellent weather resistance to extend the life of deck and patio surfaces”;
- “one coat application”;

¹² RUST-OLEUM, *Rust-Oleum Restore 4x and Rust-Oleum Restore 10x*, YOUTUBE (June 20, 2014), <https://www.youtube.com/watch?v=ZozauvRFuhM> (last visited May 4, 2021).

¹³ *Id.*

- “excellent water repellency”;
- “algae and mildew resistant coating”;
- provides “extra durability”;
- can “transform your deck in one day”;
- “ideal for lightly worn decks & patios”;
- “one coat coverage”;
- “superior weather-resistance and waterproofing protection.”¹⁴

53. Rust-Oleum made all of the following representations regarding RockSolid 6X Deck Coat on its product labeling, dedicated webpages, and technical data sheets for that product:

- “high build”;
- can “resurface moderately worn decks and patios”;
- “ideal for moderately worn decks and patios”;
- “one coat coverage”;
- “excellent weather resistance”;
- provides “enhanced durability”;
- can “transform your deck in one day”;
- “superior weather-resistance and waterproofing protection”;
- “fills hairline cracks.”¹⁵

54. Rust-Oleum made all of the following representations regarding RockSolid 20X Deck Resurfacer on its product labeling and technical data sheets for that product:

¹⁴ RUST-OLEUM, *RockSolid 2x Solid Stain*, https://www.rustoleum.com/-/media/DigitalEncyclopedia/Documents/RustoleumUSA/TDS/English/CBG/Rocksolid/RSD-38_RockSolid_2X_One_Coat_TDS.ashx (last visited Apr. 27, 2021); RUST-OLEUM, *RockSolid 2x Solid Stain*, <https://www.rustoleum.com/product-catalog/consumer-brands/rocksolid/deck/2x-solid-stain> (last visited May 4, 2021).

¹⁵ RUST-OLEUM, *RockSolid 6x Deck Coat*, https://www.rustoleum.com/-/media/DigitalEncyclopedia/Documents/RustoleumUSA/TDS/English/CBG/Rocksolid/RSD-56_RockSolid_6X_Deck_Coat_TDS.ashx (last visited May 4, 2021); RUST-OLEUM, *RockSolid 6x Deck Coat*, <https://www.rustoleum.com/product-catalog/consumer-brands/rocksolid/deck/6x-deck-coat> (last visited May 4, 2021).

- “designed to resurface heavily worn decks and patios”;
- “ideal for heavily worn decks and patios”;
- “one coat coverage”;
- “excellent weather resistance”;
- provides “maximum durability”;
- can “transform your deck in one day”;
- “superior weather-resistance and waterproofing protection;”
- “fills 1/4” cracks.”¹⁶

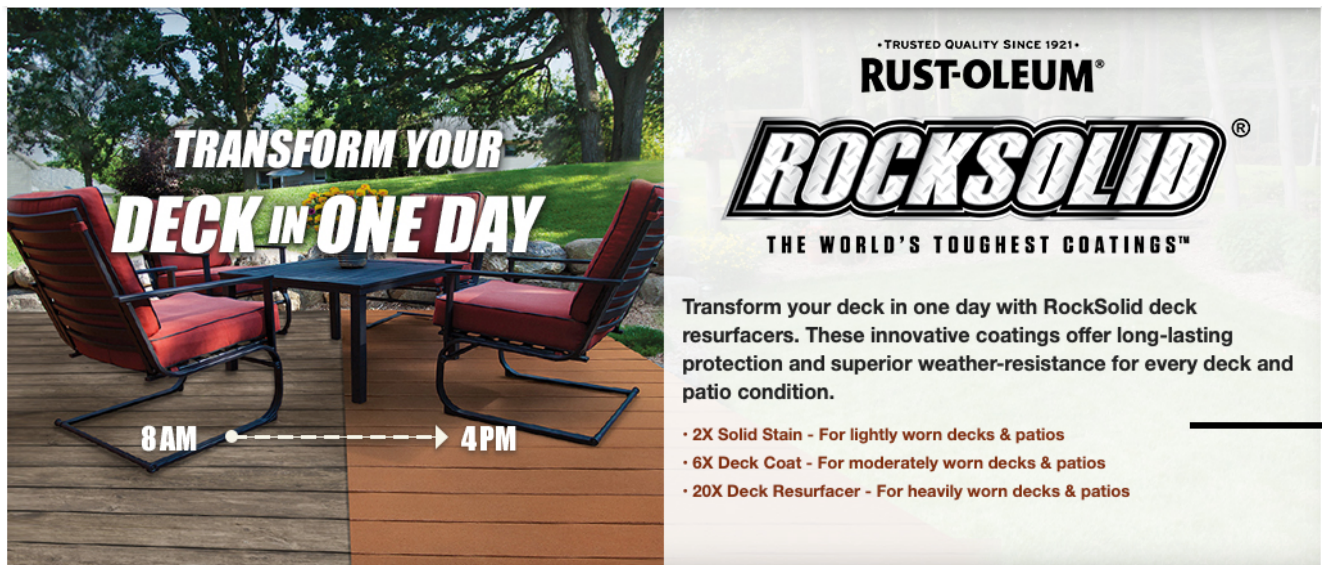
55. Photographs of the RockSolid 2X Solid Stain, 6X Deck Coat, and 20X Deck Resurfacer Products are depicted below, and contain numerous of these representations:



¹⁶ RUST-OLEUM, *RockSolid 20x Deck Resurfacer*, https://www.rustoleum.com/-/media/DigitalEncyclopedia/Documents/RustoleumUSA/TDS/English/CBG/Rocksolid/RSD-55_RockSolid_20X_Deck_Resurfacer_TDS.ashx (last visited May 4, 2021); RUST-OLEUM, *RockSolid 20x Deck Resurfacer*, <https://www.rustoleum.com/product-catalog/consumer-brands/rocksolid/deck/20x-deck-resurfacer> (last visited May 4, 2021).



56. On its website, Rust-Oleum displays the following regarding its RockSolid coatings:



57. The above image makes similar claims as RockSolid's product canisters, but additionally states that the RockSolid coatings "offer long-lasting protection and superior weather-resistance for every deck and patio condition."

58. This image, as well as the product labels for the RockSolid Products, even shows a "before and after" depicting a deck with RockSolid applied that appears to be in great condition following application, and which conveys that the Products work as depicted and advertised.

59. The various websites where consumers purchase the Products contain(ed) the same or similar statements and representations regarding the Products. For example, on The Home Depot's website, the following description for Restore 4X Deck Coat is provided:

Product Overview

Restore 4X Deck Coat is a water based problem solving coating, formulated to make light repairs and is 4X thicker than ordinary paint. It beautifies and protects old previously coated wood, bare wood, broom swept concrete and most synthetic decking with proper surface preparation. 4X is ideal for wood and composite decking, concrete docks and more.

- Superior coverage
- Long lasting protection
- Conceals hairline cracks
- Outlasts typical deck stains
- Barefoot friendly
- For horizontal and vertical surfaces
- Covers 400 sq. ft., two coats required¹⁷

60. Consumers paid a premium for the Products. A one-gallon pale of Deck Start Wood Primer retails for approximately \$30-40, and a pale of the other Products retail for between \$30-35.

C. Defendant Falsely Markets the Characteristics and Quality of the Products While Omitting the Truth About the Products

61. As identified above, Rust-Oleum prominently advertises and markets the purported high quality and durability of the Products, including directly on product labeling.

62. The Product labels all build on the same themes present in online advertising and in product literature: that the Products are high quality, durable, superior, and provide lasting results so that consumers can resurface or restore decks and other surfaces, rather than replacing these structures. Defendant specifically advertises that the Products are "high build" or have a "high build finish" and provide "durability," which consumers understand would allow the Products to resist cracking and

¹⁷ THE HOME DEPOT, *5 Gal. Gray Exterior Deck Coat*, https://www.homedepot.com/p/Rust-Oleum-Restore-5-gal-4X-Gray-Deck-Coat-41528/204981352?MERCH=REC_-PIPHorizontal1_rr_-204958468-_-%7B%7BproductId%7D%7D-_N (last visited May 4, 2021).

1 peeling, and that the products, when applied properly, fill cracks and other wear and tear on decks and
2 other similar surfaces, revitalizing those surfaces.

3 63. Rust-Oleum advertises that the Products were long-lasting and reliable, leading reasonable
4 consumers to believe that the Products are premier and superior products, and Rust-Oleum has charged
5 and continues to charge consumers premium prices for Products upon these pretenses, among others
6 alleged herein.

7 64. When consumers purchase the Products—whether at The Home Depot or Lowe’s
8 locations, online, or elsewhere—they are uniformly exposed to and see Rust-Oleum’s representations
9 regarding the Products’ characteristics, which are visible on all Products labeling (and in other in-store
10 advertising).

11 65. As discussed *supra*, when consumers purchase Products online, e.g., through The Home
12 Depot’s or Lowe’s’ website, they are also uniformly exposed to the same representations and advertising
13 concerning the Products

14 66. The purpose of Defendant’s advertising and marketing of the Products, and dissemination
15 of advertising materials regarding Products, e.g., long-lasting, durable, superior coverage, etc., could only
16 be to persuade consumers that its Products possess these qualities and are functional with the ability to act
17 as a weather barrier for many years while making decks and other surfaces look like new or “Restore[d].”

18 67. Rust-Oleum’s guarantees, promises, and other representations about its Products induced
19 Plaintiff and other customers into purchasing the products and lead consumers to believe that the Products
20 are long-lasting, durable, capable of performing as represented, and that Rust-Oleum stands behind its
21 advertising and representations.

22 68. However, the Products do not live up to these promises. Rust-Oleum’s representations
23 about the quality, durability, longevity, and other characteristics of the Products are instead false and
24 materially misleading.

25 69. Rust-Oleum is aware and had actual or constructive notice that the Products are of inferior
26 quality and susceptible to failure shortly after application, and that the Products do not, in fact, provide
27 lasting results and enhanced durability, even when applied properly in compliance with the product
28 instructions.

1 70. The Products routinely crack, chip, bubble, peel, strip, and otherwise fail or degrade, and
2 they do so in weather conditions that the products are advertised as capable of withstanding.

3 71. Furthermore, despite Rust-Oleum's representations to the contrary, the Products do not
4 successfully protect and revitalize decks and other surfaces to which they are applied, as consumers
5 routinely report that the Products chip, bubble, and do not fill cracks, and do not seal their structures and
6 permits moisture intrusion, often leading to mildew and degradation of the underlying structure.

7 72. Despite knowledge that the Products are flawed and do not perform as represented, Rust-
8 Oleum continued to market them as high-quality products, while masking and failing to disclose the
9 Products' inferiority.

10 73. Rust-Oleum knowingly and intentionally concealed and failed to disclose—
11 notwithstanding statements on its websites, brochures, technical data sheets, advertisements, product
12 labels, and elsewhere—that the Products often fail shortly, i.e., within weeks and months, after proper
13 application, which is inconsistent with the advertised “long-lasting protection” the Products purport to
14 provide. Indeed, the fact that the Products deteriorate at such a fast rate and will continue to deteriorate
15 quickly demonstrates a lack of durability and long-lasting capabilities.

16 74. Defendant also made numerous material omissions in relevant advertisements and
17 literature, and uniformly withheld important information relating to the design, reliability, and
18 performance of the Products.

19 75. Purchasers of the Products made and make purchasing decisions based upon the
20 information presented by Rust-Oleum, including on its website, in marketing literature, advertisements,
21 commercials, product labels, and warranties.

22 76. Rust-Oleum had notice of the deficiencies described herein and has been routinely notified
23 by customers that the Products do not function as advertised.

24 77. Indeed, this is not the first time Rust-Oleum has been sued regarding the defective nature
25 and inferiority of its deck coating products, including its Restore brand. Different products marketed and
26 sold by Rust-Oleum under the “Restore” brand were previously the subject of a well-known class action
27 lawsuit that asserted similar allegations regarding product failures in those Restore products. *See In Re:*
28 *Rust-Oleum Restore Marketing, Sales Practices and Products Liability Litigation*, No. 1:15-cv-1364,

MDL No. 2602 (N.D. Ill.). This lawsuit also put Rust-Oleum on notice that its similar Restore Products and successor line of substantially similar RockSolid Products are flawed and result in product failure.

78. Rust-Oleum made each of the above-described assertions, statements, representations, and warranties with the intent and purpose of inducing consumers to purchase and apply its Restore and RockSolid Products on structures throughout the United States. However, it knew that these representations were not true and that the Products would not function as promised and advertised.

79. Had Rust-Oleum not withheld and omitted material information about the design, reliability, and performance of the Products, Plaintiff and the members of the Class would not have purchased them, or would have paid considerably less for them than they did.

D. Internet Complaints About Restore and RockSolid Products

80. Plaintiff's circumstances are not an isolated incident. Indeed, the internet is replete with consumer complaints about the low quality and premature failure of the Products. The following represents a small sampling of numerous internet postings by disappointed and aggrieved purchasers of the Products (all sic and emphasis added):

(Restore 4X)

★★★★★ 1 out of 5 stars.

Frank981

11 months ago

Worst product ever!

I would like to warn everyone of this product's inferior quality! I wish I had never bought this for my deck! The **parts that have not peeled off on their own now have to be removed before the entire deck rots as the stain holds in the moisture where it still is on the deck and won't let it dry.** Stays wet! Beware. I would NOT never recommend it or ever use this product on anything.¹⁸

(Restore 4X)

**it peeled 1st year! had to repaint
October 17, 2019**

¹⁸ Frank981, Comment to *Rust-Oleum Restore 4x Deck Cover, 5-Gallon*, TRUEVALUE, <https://www.truevalue.com/restore-4x-deck-cover-5-gal> (last visited May 4, 2021).

1 it **peeled 1st year!** had to repaint¹⁹

2 (Restore 2X)

3 Applied this product ~1 year ago following the manufacture's
4 recommended wood preparation instructions and Restore Deck Start
5 Primer. At first the deck looked great **but after a year the entire deck is
6 peeling and needs to be redone.**²⁰

7 (Restore 2X)

8 **Applied as instructions said.** Cleaned deck prior to applying and used
9 primer as suggested. Looked wonderful on my old deck at first **but after
10 one year it is peeling and looks AWFUL.** The primer is intact but
11 **Restore 2X is peeling in numerous places on 36 x14 ft deck. Much too
12 expensive to do again. Very disappointed in this product**²¹

13 (Restore products, generally)

14 Don't use this product at all. Worst stuff I have ever used. **Did not last
15 one year and it starts to peel off.** I am refinishing my deck this year by
16 using a belt sander for the small area that has not peeled off. **I also have
17 to replace several boards that have rotted through.** Will not use this
18 product or anything they make again.²²

19 (Restore products, generally)

20 We put the Restore product on our deck after letting our Yellowwood
21 construction weather and dry for about a year and a half. It was to serve 2

22 ¹⁹ DONALD, Comment to *5 gal. 4X Gray Deck Coat*, THE HOME DEPOT (Oct. 17, 2019),
23 [https://www.homedepot.com/p/Rust-Oleum-Restore-5-gal-4X-Gray-Deck-Coat-
24 41528/204981352?MERCH=REC_-PIPHorizontal1_rr_-204958468-_%7B%7BproductId%7D%7D_-N](https://www.homedepot.com/p/Rust-Oleum-Restore-5-gal-4X-Gray-Deck-Coat-41528/204981352?MERCH=REC_-PIPHorizontal1_rr_-204958468-_%7B%7BproductId%7D%7D_-N) (last visited May 4, 2021).

25 ²⁰ FlagHomeowner, Comment to *1gal. 2X Cool Touch Timberline Deck Stain*, THE HOME DEPOT (May
26 30, 2017), [https://www.homedepot.com/p/reviews/Rust-Oleum-Restore-1-gal-2X-Cool-Touch-
27 Timberline-Deck-Stain-286831/205614394/3?reviewsRating=2&sort=Most-helpful](https://www.homedepot.com/p/reviews/Rust-Oleum-Restore-1-gal-2X-Cool-Touch-Timberline-Deck-Stain-286831/205614394/3?reviewsRating=2&sort=Most-helpful) (last visited Feb. 25,
28 2021).

²¹ Deb, Comment to *1 gal. 2X Cool Touch Timberline Deck Stain*, THE HOME DEPOT (Oct. 29, 2017),
[https://www.homedepot.com/p/reviews/Rust-Oleum-Restore-1-gal-2X-Cool-Touch-Timberline-Deck-
Stain-286831/205614394/3?reviewsRating=2&sort=Most-helpful](https://www.homedepot.com/p/reviews/Rust-Oleum-Restore-1-gal-2X-Cool-Touch-Timberline-Deck-Stain-286831/205614394/3?reviewsRating=2&sort=Most-helpful) (last visited Feb. 25, 2021).

²² Herb, Comment to *Class Action Lawsuit against Rust-Oleum (RockSolid) Deck Restore*,
DECKSTAINHELP.COM (Feb. 14, 2021), [https://www.deckstainhelp.com/class-action-lawsuit-against-
rust-oleum-deck-restore/](https://www.deckstainhelp.com/class-action-lawsuit-against-rust-oleum-deck-restore/) (last visited May 4, 2021).

1 purposes. The first yo protect our new deck. The second to make it slip
2 proof for my husband who had polio as a child and wears a brace. It was
3 great for purpose number 2. As far as protecting our deck, no, Seven years
4 after installing our deck we **have already had ti replace numerous
boards and more need it. The boards seem to rot from underneath.
What a waste!**²³

5 (Restore 4X)

6 I went to Ace Hardware store and purchased 1 gallon of Restore 10X and
7 one gallon of **Restore 4X deck stain for \$60.00**. Date of purchase
8 8/16/2020. My husband and daughter worked for two days, one day of
9 prepping the deck and the entire next day applying the stain to our deck.
10 I am enclosing pictures of the results which are devastating. **The deck
feels rough and sandy and brittle. You can not walk on it with bare
feet. We don't know what to do. I can't believe that this product is
still on the shelf and we were unaware of the lawsuit.**²⁴

11 (Restore 4X)

12 Was Deck Restore 4X Not happy...and this was recoated a second time!
13 **Peeled off within a year.**²⁵

14 (Restore 2X)

15 We used this I believe the first time was 2016. It peeled easily and came
16 off in strips. We contacted the company by email. They sent new product
17 so we tried again which was a lot of time and aggravation. Again, **the
product failed**. We contacted the company and received this:

18 Hello Kevin,

19 Thank you for sending me the new pictures of the deck. I have reviewed
20 your case with management and here is what we can do to assist:

21 **Option #1: Replacement**

22
23 ²³ Jean Carrell, Comment to *Class Action Lawsuit against Rust-Oleum (RockSolid) Deck Restore*,
24 DECKSTAINHELP.COM (JAN. 2021), <https://www.deckstainhelp.com/class-action-lawsuit-against-rust-oleum-deck-restore/> (last visited May 4, 2021).

25 ²⁴ Linda Lamberson, Comment to *Class Action Lawsuit against Rust-Oleum (RockSolid) Deck Restore*,
26 DECKSTAINHELP.COM, <https://www.deckstainhelp.com/class-action-lawsuit-against-rust-oleum-deck-restore/> (last visited May 4, 2021).

27 ²⁵ Les Schumacher, Comment to *Class Action Lawsuit against Rust-Oleum (RockSolid) Deck Restore*,
28 DECKSTAINHELP.COM, <https://www.deckstainhelp.com/class-action-lawsuit-against-rust-oleum-deck-restore/> (last visited May 4, 2021).

We would be willing to offer you **enough replacement** products so that you could clean, prime and recoat your entire deck with the Rock Solid 6X Deck Coat. We would ship the products directly to you and tint the product to your color. It would take 10 – 14 business days to receive the product via Fed Ex Ground. If you choose this option then I would let you know exactly what we will send you.

Option #2: Refund

As you do not have a receipt, we would only be able to do a **general refund** or the original Restore products that you physically have in your possession which would be one gallon of **Restore 2X**. The total general refund amount would be \$24.97. If you choose this option then let me know and I will have a refund check issued within 7 – 10 days and you would receive the check via US Mail.

Once you choose to either receive a refund or replacement for the products we would consider the “Satisfaction Guarantee” complete and there would be no future refunds, replacements or warranty claims.

Please let me know if you have any questions.

Sincerely,
Geoff Augello
Rust-Oleum Corporation
Product Support Representative
Ph: 877-815-3258

SERIOUSLY! WE NOT HAVE SPENT HOURS TRYING TO REMOVE THIS AND WILL NOT USE AGAIN. WE ARE CURRENTLY IN PROCESS OF THIS AND IT IS A HORRIBLE, TIME CONSUMING MESS. USING VACATION TIME TO DO THIS AS WELL. REPLACING ROTTEN BOARDS. MAY END UP SPENDING MUCH MORE AS I CANNOT SEE HOW WE CAN REMOVE ALL OF THIS. WE HAVE A HUGE DECK, STAIRS, AND POOL DECK. THIS COMPANY SHOULD BE HELD ACCOUNTABLE. MY HUSBAND IS RECOVERING FROM CANCER AND INSTEAD OF RESTING, HE IS DOING THIS. UNBELIEVABLE THAT THIS IS STILL ON THE SHELF.²⁶

(RockSolid 2X)

does not hold up (1 star rating)

²⁶ Mary Hanne, Comment to *Class Action Lawsuit against Rust-Oleum (RockSolid) Deck Restore*, DECKSTAINHELP.COM, <https://www.deckstainhelp.com/class-action-lawsuit-against-rust-oleum-deck-restore/> (last visited May 4, 2021).

So disappointed. Did this fall 2020 and here is what it looks like now. Spent good money having a. Professional put this down, now i have to pay all over again !²⁷

(RockSolid 2X)

Way too thin (1 star rating)

This product is pretty horrible. It didn't cover anything at all.²⁸

(RockSolid 6X)

Horrible (1 star rating)

I purchased this product several days ago and installed it. Hours and hours of labor! I used the deck coat primer also. I followed the directions to the letter. I had great weather for over 48 Hours and a light rain came after the 48 hours and it bubbled! What am I to do now? It's a horrible product! I do not like to write bad reviews but this product warrants it. I implore you to seek another product if you wish to save yourself a headache.²⁹

(RockSolid 6X)

Only last a few months (1 star rating)

²⁷ patty, Comment to *Rust-Oleum RockSolid 2x*, LOWES.COM (Apr. 1, 2021), https://www.lowes.com/pd/Rust-Oleum-RockSolid-Tintable-Tintable-Resurfacer-Actual-Net-Contents-116-fl-oz/1000437195?cm_mmc=shp_-c_-prd_-pnt_-google_-lia_-220_-exteriorstains_-1000437195_-0&placeholder=null&ds_rl=1286981&gclid=CjwKCAjw7J6EBhBDEiwA5UUM2oQmk_ezl5H0RxN5F7zdXrV0oYlwkaApQjw9_nToe177TslkAcNduRoCE74QAvD_BwE&gclsrc=aw.ds (last visited May 4, 2021).

²⁸ amber, Comment to *Rust-Oleum RockSolid 2x*, LOWES.COM (Apr. 6, 2021), https://www.lowes.com/pd/Rust-Oleum-RockSolid-Tintable-Tintable-Resurfacer-Actual-Net-Contents-116-fl-oz/1000437195?cm_mmc=shp_-c_-prd_-pnt_-google_-lia_-220_-exteriorstains_-1000437195_-0&placeholder=null&ds_rl=1286981&gclid=CjwKCAjw7J6EBhBDEiwA5UUM2oQmk_ezl5H0RxN5F7zdXrV0oYlwkaApQjw9_nToe177TslkAcNduRoCE74QAvD_BwE&gclsrc=aw.ds (last visited May 4, 2021).

²⁹ LOWES, *Rust-Oleum RockSolid Tilttable Resurfacer (1-Gallon)*, <https://www.lowes.com/pd/Rust-Oleum-RockSolid-Tintable-Tintable-Resurfacer-Actual-Net-Contents-116-fl-oz/1000437191> (last visited May 4, 2021).

1 The product was applied in the fall of 2018, by spring of 2019 this was
2 the condition of my deck [depicting stripped and peeled deck].³⁰

3 (RockSolid 6X)

4 **Bubbles, wast of money and time** (1 star rating)

5 am very disappointed with this product. I followed all directions and had
6 proper drying time. This was a lot of time and money wasted. Now I'll
7 have to either re sand and paint or replace my whole decking, which will
8 cost more money & time. It bubbles every time it rains and starts to peel.
9 It looks absolutely terrible. I went on the Rust-Oleum web site and filled
out the product issue form, but never heard back. I'm sure they know that
their product is a wast of money and will try anything to...³¹

10 (RockSolid 20X)

11 **Disappointed**

12 I watched all of the Rust-Oleum videos to make sure that I applied this
13 product correctly. I purchased all of the recommended supplies, from the
14 deck cleaner to the roller cover. I painted Monday morning, & then let it
15 dry (48 hrs before rain). I noticed that it didn't look great as it dried—the
16 color was uneven and it **looked bubbly**. It rained Wednesday, and after
the rain cleared I checked the deck, & m I am devastated. The paint is not
hard, but gooey and **bubbly all over. I can see that it is going to peel.**
17 This wasn't a cheap product, & I expected a much better finish. Not sure
18 what I'm going to do now.³²

19 (RockSolid 20X)

20 **Not Happy**

21
22
23 ³⁰ LOWES, *Rust-Oleum RockSolid Tintable Resurfacer (1-Gallon)*, [https://www.lowes.com/pd/Rust-](https://www.lowes.com/pd/Rust-Oleum-RockSolid-Tintable-Tintable-Resurfacer-Actual-Net-Contents-116-fl-oz/1000437191)
24 [Oleum-RockSolid-Tintable-Tintable-Resurfacer-Actual-Net-Contents-116-fl-oz/1000437191](https://www.lowes.com/pd/Rust-Oleum-RockSolid-Tintable-Tintable-Resurfacer-Actual-Net-Contents-116-fl-oz/1000437191) (last
visited May 4, 2021).

25 ³¹ LOWES, *Rust-Oleum RockSolid Tintable Resurfacer (1-Gallon)*, [https://www.lowes.com/pd/Rust-](https://www.lowes.com/pd/Rust-Oleum-RockSolid-Tintable-Tintable-Resurfacer-Actual-Net-Contents-116-fl-oz/1000437191)
26 [Oleum-RockSolid-Tintable-Tintable-Resurfacer-Actual-Net-Contents-116-fl-oz/1000437191](https://www.lowes.com/pd/Rust-Oleum-RockSolid-Tintable-Tintable-Resurfacer-Actual-Net-Contents-116-fl-oz/1000437191) (last
visited May 4, 2021).

27 ³² THE HOME DEPOT, *4 Gal. White Exterior 20X Deck Resurfacer*, [https://www.homedepot.com/p/Rust-](https://www.homedepot.com/p/Rust-Oleum-RockSolid-4-Gal-White-Exterior-20X-Deck-Resurfacer-319609/307428233)
28 [Oleum-RockSolid-4-Gal-White-Exterior-20X-Deck-Resurfacer-319609/307428233](https://www.homedepot.com/p/Rust-Oleum-RockSolid-4-Gal-White-Exterior-20X-Deck-Resurfacer-319609/307428233) (last visited May 4,
2021).

1 Applied 20x Product two years back to get textured look on a new deck
2 with proper instruction. Applied Primer first and then product to get
3 maximum durability but still last week **when I cleaned deck with just a**
4 **regular hose there is lot of paint that chipped away.** I used thick and
5 expensive product to save myself from putting them again for 4-5 years.
When i called Rustoleum support they asked me to re coat it....If i have to
recoat it every 2 years i should use some other cheaper stain instead.³³

6 81. Below are pictures from the internet taken by dissatisfied consumers who applied the
7 Products to their decks or other structures, which have been ruined or left in disrepair by the product:



25 ³³ THE HOME DEPOT, 4 Gal. White Exterior 20X Deck Resurfacer, [https://www.homedepot.com/p/Rust-](https://www.homedepot.com/p/Rust-Oleum-RockSolid-4-Gal-White-Exterior-20X-Deck-Resurfacer-319609/307428233)
26 [Oleum-RockSolid-4-Gal-White-Exterior-20X-Deck-Resurfacer-319609/307428233](https://www.homedepot.com/p/Rust-Oleum-RockSolid-4-Gal-White-Exterior-20X-Deck-Resurfacer-319609/307428233) (last visited May 4,
2021).

27 ³⁴ Marge Gawronski, Comment to *Class Action Lawsuit against Rust-Oleum (RockSolid) Deck Restore*,
28 [DECKSTAINHELP.COM](https://www.deckstainhelp.com/class-action-lawsuit-against-rust-oleum-deck-restore/), [https://www.deckstainhelp.com/class-action-lawsuit-against-rust-oleum-deck-](https://www.deckstainhelp.com/class-action-lawsuit-against-rust-oleum-deck-restore/)
[restore/](https://www.deckstainhelp.com/class-action-lawsuit-against-rust-oleum-deck-restore/) (last visited May 4, 2021).



³⁵ Les Schumacher, Comment to *Class Action Lawsuit against Rust-Oleum (RockSolid) Deck Restore*, DECKSTAINHELP.COM, <https://www.deckstainhelp.com/class-action-lawsuit-against-rust-oleum-deck-restore/> (last visited May 4, 2021).

³⁶ June Maybaugh-Stickel, Comment to *Class Action Lawsuit against Rust-Oleum (RockSolid) Deck Restore*, DECKSTAINHELP.COM, <https://www.deckstainhelp.com/class-action-lawsuit-against-rust-oleum-deck-restore/> (last visited May 4, 2021).



37

82. Rust-Oleum’s response to consumer complaints about failed Products is to blame them for improper application—even when consumers indicate application was proper—and simply to offer a purchase price refund or offer to replace defective Products with more defective products. These offers are unacceptable to consumers, as Rust-Oleum does not compensate consumers for the time they waste applying the Products and attempting to remove the products when they inevitably fail, and the monetary expenses incurred when the defective Products damage consumers’ underlying decks and other structures, including the cost to replace deck boards or even full decks.

83. Rust-Oleum’s product literature for its Products identify that “we can guarantee these products only to conform to our standards of quality, and our liability, if any, will be limited to replacement of defective materials.”³⁸ Putting aside that Rust-Oleum does not actually adhere to its purported warranty limitation that its “liability . . . will be limited to replacement of defective materials”—indeed, it offers refunds to some customers—this “exclusive remedy” limitation is unconscionable and fails under U.C.C. § 2-302.

³⁷ Coal, Comment to *Rust-Oleum RockSolid Tintable Resurfacer (1 Gallon)*, LOWES.COM (April 25, 2019), <https://www.lowes.com/pd/Rust-Oleum-RockSolid-Tintable-Tintable-Resurfacer-Actual-Net-Contents-116-fl-oz/1000437191> (last visited May 4, 2021).

³⁸ RUST-OLEUM, *Restore 4X Deck Coat*, https://www.rustoleum.com/~media/DigitalEncyclopedia/Documents/RustoleumUSA/TDS/English/CBG/Restore/RST-07_Restore_4X_Deck_Coat_TDS.ashx (last visited May 4, 2021).

E. Plaintiff Neil Stevens' Experiences With the Products

84. In or about late 2019, Plaintiff Neil Stevens purchased two pails of RockSolid 2X from his local Lowe's store in Clovis, California. He applied the RockSolid 2X to the deck at his home in Clovis.

85. Plaintiff sought to resurface his deck which was lightly worn. The deck resurfacing project he planned involved replacing some deck board, and then using RockSolid to resurface the entire deck.

86. Prior to purchasing the 2X Product, Plaintiff heard about Rust-Oleum and was aware of the company's supposed reputation for quality. Plaintiff saw materials online, including on Lowe's website, and observed the product labeling on the RockSolid 2X container in-store, touting that the product was capable of protecting and transforming his deck. Plaintiff was particularly drawn to the 2X Product's purported qualities, including promises about durability, weather resistance, and being suitable for lightly worn decks, like his.

87. Prior to purchase, Plaintiff saw specific representations regarding the qualities and characteristics of RockSolid 2X on the product container he purchased, namely that the product could "transform your deck in one day"; provide "durability"; was suited ("ideal") for "lightly worn decks & patios"; provided "one coat coverage"; and provided "superior weather resistance." Plaintiff relied upon these representations in making a decision to purchase the Products.

88. In or about April of 2019, Plaintiff coated his deck with the 2X Product. Prior to applying the 2X Product, Plaintiff prepared his deck according to the product instructions. He spent approximately thirty (30) hours working on resurfacing the deck with the RockSolid Products, including time spent preparing the surface and actually applying the Products.

89. By approximately May 2020, Plaintiff had noticed the deck and Product was peeling, forcing him to refinish and re-touch the deck. Then in or about March 2021, the Product began to fail again. Plaintiff's deck has become unsightly and was in a state of disrepair due to the Products failing. He has made numerous attempts to touch up his deck with RockSolid, but these attempts have failed, and the deck continues to deteriorate and degrade due to the faulty RockSolid Product.

90. Photographs of Plaintiff's deck coated with failed and degrading RockSolid 2X Product are shown below:









91. To date, Plaintiff's deck remains unsightly and in a state of disrepair, as the RockSolid 2X still cracks, chips, strips, and otherwise fails and degrades.

1 92. Despite spending an inordinate amount of time properly preparing the deck, applying the
2 Products, and reapplying new RockSolid 2X in hopes to touch up his deck, Plaintiff will likely have pay
3 a contractor or undertake the labor himself to strip the Product and resurface his deck with products that
4 are not defective.

5 93. Had Plaintiff known that the Products were not durable, capable of transforming his deck,
6 suitable for his slightly worn deck, capable of providing weather resistance, and otherwise provide the
7 performance advertised, and that the Products are not a quality product suitable for application to decks
8 and other surfaces, he would not have purchased the RockSolid Products.

9 94. Plaintiff would consider buying additional Rust-Oleum Restore, RockSolid, or other
10 similar Rust-Oleum deck coating products in the future, but would not do so unless its advertising,
11 labeling, and other disclosures and statements regarding the Products are accurate.

12 95. Had Defendant disclosed to consumers like Plaintiff through marketing materials or
13 product packaging that its Restore and RockSolid Products are defective and have the propensity to crack,
14 peel, flake, chip, bubble, strip, and generally prematurely fail and degrade, Plaintiff and other consumers
15 would not have purchased the Products.

16 96. As a result of purchasing and applying the Products to his deck, Plaintiff has suffered harm,
17 including damage to his deck, out of pocket expenses, and unreimbursed labor.

18 97. To date, Plaintiff and Class members have not obtained an adequate remedy for the
19 defective Products they purchased. Their decks and other surfaces to which they applied the Products are
20 damaged and will continue to suffer further damage as the Products continue to degrade. Defendant has
21 not offered to remedy this sustained and/or ongoing harm. It simply makes an inadequate offer to replace
22 defective Products with more defective Products, or to issue a refund. Furthermore, Defendant continues
23 to utilize inaccurate or misleading advertising and labeling in connection with the marketing and sale of
24 the Products. Without the benefit of discovery, it is for all practical purposes unknown at this time whether
25 a remedy at law or in equity will provide the appropriate full relief for Plaintiffs and members of the Class.
26 As a result, Plaintiff, at this stage of the litigation, seeks both restitution and a remedy at law, where the
27 claims so permit. Further, Plaintiff seeks an injunction enjoining Defendant and its agents, servants, and
28

employees, and all persons acting under, in concert with, or for it from selling defective Products without accurate product labeling and advertising, or a notice that the Products are defective.

TOLLING OF APPLICABLE STATUTE OF LIMITATIONS

98. Plaintiff and members of the Class are within the applicable statute of limitations for the claims presented here. Rust-Oleum has non-public information detailing the propensity of the Products to prematurely degrade, including internal pre-release product testing information, but failed to disclose this information to consumers. Plaintiff and Class members therefore could not reasonably have known that the Products prematurely fail. Rather, consumers relied upon Rust-Oleum's misrepresentations and omissions, including the statements on the product labeling as set forth above. Rust-Oleum intended Plaintiff and consumers to rely upon its marketing misrepresentations and omissions, which they did.

99. Once Plaintiff incurred damages, Plaintiff promptly acted to preserve all rights, filing this action. Rust-Oleum is estopped from asserting any statute of limitation defense that might otherwise apply to the claims asserted herein based upon the discovery rule and due to Rust-Oleum's active concealment of the fact that the Products prematurely degrade and fail.

CLASS ACTION ALLEGATIONS

100. Plaintiff brings this lawsuit as a class action under Federal Rule of Civil Procedure 23, on behalf of himself and all others similarly situated.

101. Plaintiff seeks to represent the following Class:

California Class

All individuals and entities residing in the state of California that have purchased, not for resale, Rust-Oleum Restore or RockSolid Deck Start Wood Primer, Restore 2X, Restore 4X, RockSolid 2X, RockSolid 6X, or RockSolid 20X products.

102. The above defined class is referred to as the "Class." Plaintiff reserves the right to re-define the Class prior to class certification. Plaintiff reserves the right to modify the class definition as discovery in this action progresses.

103. Excluded from the Class are Rust-Oleum, any entity in which Rust-Oleum have a controlling interest or which has a controlling interest in Rust-Oleum, and Rust-Oleum's legal

representatives, assigns and successors. Also excluded are the judge(s) to whom this case is assigned and any member of the judge's immediate family.

104. Class members seek relief under both Rule 23(b)(2) and (b)(3). Specifically, Class members who need to replace decking or patio material and/or repair decks and patios and other surfaces or property seek to have the Court declare any limits on full recovery by the class members to be unenforceable and otherwise null and void. This relief is based solely upon Rust-Oleum's past and current systematic practices and policy of limiting remedies of the Class members, and thus declaratory relief is thus appropriate for the Class as whole. Under Rule 23(b)(3), the central issues for each and every Class member are the same: whether the Products have the propensity to prematurely fail, whether Rust-Oleum acted unlawfully and deceitfully, and whether the Class is entitled to common remedies.

105. **Numerosity**: The number of persons who are members of the Class is so numerous that joinder of all members in one action is impracticable. The exact number of Class members is unknown. Due to the nature of the trade and commerce involved, as well as the number of complaints by consumers about the problems alleged herein, Plaintiff believes the Class consists of many thousands of consumers in California.

106. **Commonality and Predominance**: Questions of law and fact that are common to the entire Class predominate over individual questions because the actions of Rust-Oleum complained of herein were generally applicable to the entire Class. These legal and factual questions include, but are not limited to:

- whether Rust-Oleum's marketing of the Products was false, deceptive, and/or misleading to reasonable consumers;
- whether Rust-Oleum's conduct was unfair, unlawful, and/or fraudulent, and violated California's Unfair Competition Law;
- whether Rust-Oleum's conduct violated California's Consumers Legal Remedies Act;
- whether Rust-Oleum's conduct violated California's False Advertising Law;
- whether the Products are unfit for their ordinary purpose of providing lasting protection to deck and patio surfaces and related structures;
- whether the Products are defective and susceptible to premature failure;

- whether Rust-Oleum knew or should have known of the defective nature of the Products;
- when Rust-Oleum discovered that the Products are susceptible to premature failure;
- whether Rust-Oleum disclosed knowledge that the Products are susceptible to premature failure;
- whether information about the defective and flawed nature of the Products, and their propensity to fail, was material to consumers;
- whether Rust-Oleum's marketing and advertising representations about the qualities of the Products created warranties;
- whether the Products failed to perform as warranted;
- whether Rust-Oleum breached express and implied warranties;
- whether Rust-Oleum was unjustly enriched by the sale of defective Products;
- whether any limitations and terms in Rust-Oleum's warranties and any terms and conditions are unconscionable and unenforceable;
- whether, and to what extent, Plaintiff and the Class suffered damages as a result of Rust-Oleum's conduct; and
- whether Defendant should be declared financially responsible for notifying all Class members about the Products' propensity to prematurely fail and for all damages associated with application of the product on Class members' decks, patios, and similar property/structures.

107. All questions as to the representations and publicly disseminated advertisements and statements attributable to Rust-Oleum at issue herein are similarly common. A determination of Rust-Oleum's knowledge regarding the misleading and deceptive nature of the statements made and alleged herein on websites, brochures, advertisements, commercials, product labels, and warranties will be applicable to all members of the Class. Further, whether Rust-Oleum violated any applicable state laws and pursued the course of conduct complained of herein, acted intentionally or recklessly in engaging in the conduct described herein, and the extent of the appropriate measure of injunctive and declaratory relief,

1 damages, and restitutionary relief are common questions to the Class. Common questions of fact and law
2 outweigh any potential individual ones.

3 108. **Typicality:** Plaintiff's claims are typical of the claims of members of the Class. Plaintiff
4 and all Class members were injured through Rust-Oleum's uniform misconduct and assert identical claims
5 against Rust-Oleum arising from a uniform course of conduct. Plaintiff, like all members of the Class, has
6 suffered damages associated with the use of defective Products.

7 109. **Adequacy of Representation:** Plaintiff's interests are aligned with those of the Class
8 Plaintiff seeks to represent, and Plaintiff will fully and adequately represent and protect the interests of
9 the Class. Plaintiff has retained counsel who are competent and experienced in the prosecution of class
10 action litigation, including complex consumer fraud and product defects litigation. Plaintiff has no
11 interests that are antagonistic, contrary to, or in conflict with those of the Class. The Class's interests are
12 well-represented by Plaintiff and undersigned counsel.

13 110. **Superiority:** A class action is the superior—and only realistic—mechanism to fairly and
14 efficiently adjudicate Plaintiff's and other Class members' claims. The injury suffered by each individual
15 Class member is relatively small in comparison to the burden and expense of individual prosecution of
16 complex and expensive litigation. It would be very difficult if not impossible for Class members
17 individually to effectively redress Rust-Oleum's wrongdoing. Even if Class members could afford such
18 individual litigation, the court system could not. Individualized litigation presents a potential for
19 inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all
20 parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast,
21 the class action device presents far fewer management difficulties and provides the benefits of single
22 adjudication, economy of scale, and comprehensive supervision by a single court.

23 **CAUSES OF ACTION**

24 **COUNT I**

25 **Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.***

26 111. Plaintiff re-alleges and incorporates by reference the preceding paragraphs.

27 112. There is an actual controversy between Rust-Oleum and Plaintiff concerning, *inter alia*:

28 a. Whether the Products are defective thus causing them to fail;

- b. Whether Rust-Oleum knew or should have known of the defects;
- c. Whether Rust-Oleum misrepresented the nature and quality of the Products;
- d. Whether Rust-Oleum marketed the Products as a superior, longer-lasting alternative to other deck surfacing and resurfacing products that is capable of revitalizing and extending the life of decks and other structures to which the products are applied;
- e. Whether Rust-Oleum's marketing of Products was false, deceptive, unfair, and/or misleading to reasonable consumers;
- f. Whether Rust-Oleum concealed and/or omitted the defective qualities associated with Products;
- g. Whether the Products are unfit for their ordinary purposes;
- h. Whether Rust-Oleum knew that the Products were susceptible to premature failure;
- i. Whether disclosure of the Products' propensity to degrade and fail is material to reasonable consumers;
- j. Whether Rust-Oleum was unjustly enriched by the sale of the defective Products;
- k. Whether Rust-Oleum breached express and implied warranties;
- l. Whether any warranty limitations are unconscionable and void;
- m. Whether Rust-Oleum acted fraudulently, deceptively, or in an unfair manner in handling warranty claims;
- n. Whether Plaintiff and members of the Class sustained damages and the proper measure thereof; and
- o. Whether Rust-Oleum should be declared financially responsible for notifying class members about the Products' propensity to fail and for all damage to structures to which the defective products are applied.

113. Pursuant to 28 U.S.C. §§ 2201, the Court may “declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.”

114. Declaratory relief is intended to minimize “the danger of avoidable loss and unnecessary accrual of damages.” 10B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2751 (3d ed. 1998).

115. Accordingly, Plaintiff seeks a declaration that:

- a. the Products are defective as set forth herein and cause property damage;
- b. the defective nature of Products is material;
- c. Rust-Oleum knew or should have known that the Products are prone to premature failure and cause damage to consumers’ property;
- d. the defective nature of the Products requires disclosure, at Rust-Oleum’s expense, to all consumers who purchase(d) them;
- e. Rust-Oleum’s offer of only a refund of purchase price or product replacement as a remedy for defective Products is unconscionable;
- f. Rust-Oleum’s warranties fail of their essential purpose and any purported limitation on Rust-Oleum’s warranties are unconscionable; and
- g. Defendant is required to review and re-audit all prior warranty claims, including those that were denied in part or in whole.

116. The declaratory relief requested herein will generate common answers that will settle the parties’ controversy. There is an economy to resolving these issues as they have the potential to eliminate the need for continued and repeated litigation.

COUNT II

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

117. Plaintiff re-alleges and incorporates by reference the preceding paragraphs.

118. The UCL proscribes “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.” Cal. Bus. & Prof. Code § 17200.

119. Defendant's acts and practices, as alleged herein, constitute unlawful, unfair, and fraudulent business practices, in violation of the UCL.

Unlawful

120. Defendant's acts and practices are unlawful in violation of the UCL because they violate the California Consumers Legal Remedies Act and the Song-Beverly Consumer Warranty Act.

Unfair

121. Defendant's conduct is unfair in violation of the UCL because it violates California public policy, legislatively declared in the Song-Beverly Consumer Warranty Act, requiring a manufacturer to ensure that goods it places on the market are fit for their ordinary and intended purposes. Defendant violated the Song-Beverly Act because the Products are unfit for their core function of resurfacing and protecting decks.

122. Defendant acted in an unethical, unscrupulous, outrageous, oppressive, and substantially injurious manner. Defendant engaged in unfair business practices and acts in at least the following respects:

- Defendant promoted and sold its Products it knew were defective and prone to premature failure and degradation;
- Defendant promoted and sold the defective Products knowing that consumers do not expect immediate degradation;
- Defendant failed to disclose that the Products are defective, and represented through advertising, its website, third-party retailer websites, product labeling, and other sources that the Products possess particular qualities that were inconsistent with Rust-Oleum's actual knowledge of the products and that it knew were inconsistent with the products' actual performance;
- Defendant offered replacement product that it knew would result repeated instances of failure, rendering its warranty useless;
- Defendant failed to exercise adequate quality control and due diligence over the Products before placing the products on the market; and

- Defendant minimized the scope and severity of the problems with the Products, refusing to acknowledge that the products are defective and prone to premature failure, failing to provide adequate relief to consumers, and suggesting to consumers that they could try to resolve the problems by simply using replacement Products when Defendant knew that doing so would not be effective.

123. The gravity of harm resulting from Rust-Oleum's unfair conduct outweighs any potential utility. The practice of selling defective Products without providing an adequate remedy to cure the defect—and continuing to sell the Products and even offer them as replacement products without full and fair disclosure of the defect—harms the public at large and is part of a common and uniform course of wrongful conduct.

124. The harm from Defendant's conduct was not reasonably avoidable by consumers. The Products suffer from a latent defect, and even after receiving numerous consumer complaints, Rust-Oleum did not disclose the defect. Plaintiff did not know of, and had no reasonable means of discovering, that the Products are defective.

125. There were reasonably available alternatives that would have furthered Rust-Oleum's business interests of satisfying and retaining its customers while maintaining profitability, such as: (1) acknowledging the defect and providing a fix or reformulation of the Products; (2) adequately disclosing premature failure of the Products to prospective purchasers; (3) extending or otherwise enhancing the warranty for the Products; and (4) offering refunds for the defective Products, compensation for decks or other surfaces that the Products damage, and/or providing suitable non-defective replacement Products.

Fraudulent

126. Defendant's acts and practices also constitute fraudulent practices in that they are likely to deceive a reasonable consumer. As described above, Defendant knowingly misrepresented and concealed material facts related to the Products' performance. Had Rust-Oleum not misrepresented and concealed these facts, Plaintiff, Class members, and reasonable consumers would not have purchased the Products or would have paid significantly less for them.

127. Rust-Oleum's conduct is fraudulent in violation of the UCL because it is likely to deceive a reasonable consumer and:

- Defendant knowingly and intentionally concealed from Plaintiff and Class members that the Products contain a defect, making them prone to failure;
- Defendant volunteered information to Plaintiff and Class members through advertising and other means that the Products were high-quality, durable, premium products capable of performing as advertised, without disclosing facts that would have materially qualified those partial representations;
- Defendant promoted qualities of the Products, despite knowing the products are defective and prone to premature failure, and failed to correct its misleading partial disclosures.

128. Defendant had ample means and opportunities to alert Plaintiff and Class members of the defective nature of the Products, including on its website for the products; in its advertisements of the Products; on the Products' external labeling; and on webpages where consumers can purchase the Products from third-party retailers, such as The Home Depot or Lowe's. Defendant uniformly failed to disclose that the Products are defective and prone to premature failure. Had Defendant disclosed that the Products are defective, Plaintiff and Class members would not have purchased the Products, would not have purchased them at the prices they did, or would have returned the products during the respective buyer's remorse periods.

129. Rust-Oleum was under a duty to disclose the defect because of its exclusive knowledge of the defect before selling the Products and because it made partial representations about the Products without disclosing the defect.

130. Plaintiff and Class members suffered injury in fact, including lost money or property and lost time spent on labor, as a result of Defendant's unlawful, unfair, and fraudulent acts and omissions.

131. Through its unlawful, unfair, and fraudulent conduct, Defendant acquired Plaintiff's and Class members' money either directly or as passed on by resellers of Products.

132. Plaintiff and Class members accordingly seek appropriate relief, including (1) restitution under the UCL and (2) such orders or judgments as may be necessary to enjoin Rust-Oleum from continuing its unfair, unlawful, and fraudulent practices. Plaintiff also respectfully seeks reasonable attorneys' fees and costs under applicable law, including under Code of Civil Procedure section 1021.5.

COUNT III

**Violation of the California Consumers Legal Remedies Act
Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”)**

133. Plaintiff re-alleges and incorporates by reference the preceding paragraphs.

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

135. Defendant Rust-Oleum is a “person” within the meaning of California Civil Code sections 1761(c) and 1770, and provided “goods” within the meaning of sections 1761(a) and 1770.

136. Defendant’s acts and practices, as alleged in this complaint, violate California Civil Code sections 1770(a)(5), (7), and (9) because they include unfair and deceptive acts and practices in connection with transactions—the sale of the defective Products.

137. Defendant’s conduct violates at least the following enumerated CLRA provisions:

- § 1770(a)(5): representing that goods have characteristics, uses, benefits, or quantities which they do not have;
- § 1770(a)(7): representing that goods are of a particular standard, quality, or grade, if they are of another; and
- § 1770(a)(9): advertising goods with intent not to sell them as advertised.

138. Through its design, development, and pre-release testing of the Products, as well as through consumer complaints and previous litigation concerning highly similar deck coating products, Defendant knew or should have known that the Products are defective and prone to premature failure.

139. Defendant was under a duty to disclose that the Products are defective because it had superior knowledge of the defect—through research, pre-release testing, and consumer complaints—and because it made partial, materially misleading representations about the Products’ quality and performance.

140. Defendant had ample means and opportunities to alert Plaintiff and Class members of the

defective nature of the Products, including on its website for the products; in its advertisements of the Products; on the Products' external labeling; and on webpages where consumers can purchase Products from third-party retailers, such as The Home Depot or Lowe's. Despite its exclusive knowledge and opportunities to disclose the Products' defect and premature failure, Defendant failed to disclose the defect to Plaintiff and Class members either prior to purchase or before Plaintiff's and Class members' respective buyer's remorse periods expired.

141. Rust-Oleum's misrepresentations and omissions were material. Had Plaintiff and Class members known that the Products are defective, they would not have purchased the Products, would not have purchased them at the prices they did, or would have returned the Products during their respective buyer's remorse periods.

142. This cause of action seeks injunctive relief at this time. However, under California Civil Code section 1782(a), on his own behalf and on behalf of the Class, Plaintiff Neil Stevens sent a CLRA notice on May 4, 2021 to Defendants, pursuant to the requirements of the CLRA. If Defendant does not correct or otherwise rectify the harm alleged by Plaintiff in his letter or this Complaint within the statutorily proscribed 30-day period, Plaintiff will amend this Complaint to seek monetary damages against Defendant pursuant to Cal. Civ. Code §§ 1781 and 1782.

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

144. In accordance with California Civil Code § 1780(d), Plaintiff's CLRA venue declaration is attached as **Exhibit A** to this complaint.

COUNT IV

Violation of the California False Advertising Law Cal. Bus. & Prof. Code §§ 17500, *et. seq.* ("FAL")

145. Plaintiff re-alleges and incorporates by reference the preceding paragraphs.

146. The FAL provides, in pertinent part:

It is unlawful for any . . . corporation . . . with intent directly or indirectly to dispose of real or personal property . . . to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated . . . from this state before the

public in any state, in any newspaper or other publication, or any advertising device, . . . or in any other manner or means whatever . . . any statement . . . which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

Cal. Bus. & Prof. Code § 17500.

147. Defendant violated the FAL by using false and misleading statements, and material omissions to market and sell the Products. Defendant promoted false and misleading statements and representations through advertising, marketing, and other publications and channels. Defendant knew, or through the exercise of reasonable care should have known, that its statements and material omissions were untrue and misleading to Plaintiff and Class members.

148. Defendant's misrepresentations and omissions regarding the performance, quality, reliability, and other characteristics of the Products as set forth herein were material and likely to deceive (and did deceive) reasonable consumers.

149. Plaintiff and Class members have suffered an injury in fact, including the loss of money or property, as a result of Defendant's material misstatements and omissions. In purchasing the Products, Plaintiff and Class members relied on the false advertising, misrepresentations, and/or omissions of Defendant alleged herein.

150. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendant's business. Defendant's wrongful conduct is part of a pattern or generalized course of conduct that is still being perpetuated and repeated nationwide.

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

COUNT V

Breach of Express Warranty-by-Representation

152. Plaintiff re-alleges and incorporates by reference the preceding paragraphs.

153. Defendant made numerous representations regarding the Products on product labeling, in product literature, in stores where the Products are sold, and online, as alleged herein, constituting warranties regarding the Products. These include, but are not limited to, the following:

Restore/RockSolid Deck Start Wood Primer

- “simplifies prep & promotes topcoat adhesion”;
- “ideal for: wood decks, fences, siding, furniture & more”;
- “for use on weathered, worn or previously coated wood decks, docks and exterior wood furniture”;
- “works with any solid topcoat”
- “works on weathered & worn wood.”

Restore 2X

- “one coat application”;
- “algae and mildew resistant”;
- “ideal for: wood decks, fences, siding, furniture & more”
- “extends the life of your deck”;
- “superior” product;
- “designed to resurface wood decks, docks, concrete patios and walkways”;
- “extend[s] the life of deck and patio surfaces”;
- “excellent water repellency.”

Restore 4X

- “restores the beauty of moderately worn decks & patios”;
- “enhanced durability”;
- “barefoot friendly”;
- “ultimate weather resistance”;
- “fills hairline cracks”;
- “high build”;
- “designed to resurface aged wood and concrete decks, patios, and walkways”;

- “high build finish provide[s] slip resistance and can bridge over or fill small cracks, checks, nail holes, or other minor surface defects.”

RockSolid 2X

- capable of “resurface[ing] wood decks, docks, concrete patios and walkways”;
- “excellent weather resistance to extend the life of deck and patio surfaces”;
- “one coat application”;
- “excellent water repellency”;
- “algae and mildew resistant coating”;
- provides “extra durability”;
- can “transform your deck in one day”;
- “ideal for lightly worn decks & patios”;
- “one coat coverage”;
- “superior weather-resistance and waterproofing protection.”

RockSolid 6X

- “high build”;
- can “resurface moderately worn decks and patios”;
- “ideal for moderately worn decks and patios”;
- “one coat coverage”;
- “excellent weather resistance”;
- provides “enhanced durability”;
- can “transform your deck in one day”;
- “superior weather-resistance and waterproofing protection”;
- “fills hairline cracks.”

RockSolid 20X

- “designed to resurface heavily worn decks and patios”;
- “ideal for heavily worn decks and patios”;
- “one coat coverage”;

- “excellent weather resistance”;
- provides “maximum durability”;
- can “transform your deck in one day”;
- “superior weather-resistance and waterproofing protection;”
- “fills 1/4" cracks.”

154. Specifically, Rust-Oleum’s product labeling represented to Plaintiff that the RockSolid 2X would “transform your deck in one day”; provides “durability”; is “ideal for lightly worn decks & patios”; provides “one coat coverage”; and provides “superior weather resistance.”

155. These representations and promises became a part of the basis of the bargain between the parties and created a collective “express warranty” by representation that the Products would conform to Rust-Oleum’s affirmations and promises.

156. Defendant is obligated under the terms of its warranty-by-representation to repair and/or replace Products sold to Plaintiff as well as to repair and/or replace any structural damages caused by the products.

157. Defendant has breached the express warranty by supplying Products in a condition that does not satisfy warranty obligations, including because the Products do not conform to Defendant’s express warranties, and by failing to compensate Plaintiff for damages caused by the products.

158. Plaintiff has complied with all warranty terms, including application instructions. Defendant, after notice of the problems, has failed to comply with the warranty terms.

159. Any purported limitations in Rust-Oleum’s warranty, are procedurally and substantively unconscionable and thus fail. Defendant knew or should have known that the Products were defective and susceptible to premature failure. Defendant had unequal bargaining power and misrepresented the Products’ reliability, and any limitations on remedies unreasonably favor Defendant and fail Plaintiff’s reasonable expectations for product performance.

160. Defendant had actual or constructive notice of the breaches of these warranties, and Defendant has failed to cure these breaches.

161. To the extent privity is required, Defendant was and is in privity with Plaintiff and Class

1 members. Plaintiff has had sufficient direct dealings with Defendant or its authorized retailers of Products,
2 representatives, and agents to establish privity of contract.

3 162. Alternatively, Plaintiff and Class members are intended third-party beneficiaries of
4 contracts (including Defendant's implied warranties) between Defendant and its dealers, representatives,
5 and agents; Defendant's advertisements were aimed at Plaintiff and Class members; and Defendant's
6 warranties were written for the benefit of Plaintiff and Class members as end users of the Products.
7 Defendant's authorized dealers, representatives, and agents, on the other hand, were not intended to be the
8 ultimate consumers of the Products and have no rights under any warranty; these intermediary entities
9 made no changes to the Products, nor made any additions to (and merely adopted) the warranties issued
10 by Defendant. Accordingly, Defendant is estopped from limiting claims for common law and statutory
11 violations based on a defense of lack of privity.

12 163. As a direct and proximate result of Defendant's breach of express warranties, Plaintiff and
13 Class members have suffered damages, injury in fact, and ascertainable loss in an amount to be determined
14 at trial, including repair and replacement costs and damages to decks, patios, and other structures or
15 property.

16 164. Defendant had pre-suit notice of the conduct underlying Plaintiff's warranty claims,
17 including through consumer complaints, previous litigation relating to similar products, and similar
18 lawsuits relating to the same products at issue in this case. Furthermore, on May 4, 2021, Plaintiff sent
19 Defendant a pre-suit demand letter notifying Defendant of and requesting remedies for its breaches of
20 warranties.

21 **COUNT VI**

22 **Breach of the Implied Warranty of Merchantability**

23 165. Plaintiff re-alleges and incorporates by reference the preceding paragraphs.

24 166. Pursuant to U.C.C. § 2-314, a warranty that goods are merchantable is implied in a contract
25 for sale of goods if the seller is a merchant with respect to the specific goods.

26 167. To be "merchantable", goods must be fit for the ordinary purposes for which such goods
27 are used.

1 168. Defendant is a “merchant” with respect to acrylic residential coatings like the Products, as
2 Defendant is in the business of manufacturing, designing, supplying, marketing, advertising, warranting,
3 and/or selling the Products.

4 169. Defendant impliedly warranted to Plaintiff and Class members that the Products are of a
5 certain quality, free from defects, fit for the ordinary purpose of resurfacing decks and similar structures,
6 and suitable for providing protection to decks, patios, and other similar structures from harsh weather
7 conditions, and that the Products are long-lasting and a better alternative to using ordinary deck paints and
8 stains or simply replacing a deck.

9 170. However, the Products are unfit for ordinary use and are not of merchantable quality as
10 warranted by Defendant at the time of sale because the Products are defective and have the propensity to
11 crack, peel, flake, chip, strip, bubble, and generally prematurely fail and degrade. Before purchase,
12 Plaintiff could not have readily discovered that the Products he purchased were not merchantable for use
13 as deck resurfacing and restoration products, were not of the same quality as those generally acceptable
14 in the trade, and did not conform to the quality previously represented.

15 171. Defendant has not sufficiently (i.e., specifically and conspicuously) disclaimed the implied
16 warranty of merchantability, including any remedy for recovery of labor and costs of labor associated with
17 application and removal of flawed Products.

18 172. Defendant has failed to provide adequate remedies under its implied warranties, which
19 have caused the implied warranties to fail their essential purpose, thereby permitting the remedies sought
20 herein under these implied warranties.

21 173. Any purported limitations in the Products’ limited warranty, including limiting the
22 exclusive remedy to a refund or replacement, are procedurally and substantively unconscionable and thus
23 fail under U.C.C. § 2-302.

24 174. Defendant knew or should have known that the Products are susceptible to premature
25 failure; Defendant had unequal bargaining power and misrepresented the reliability, quality, performance,
26 and qualities of the Products; and any limitations on remedies unreasonably favor Defendant and fail
27 Plaintiff’s and consumers’ reasonable expectations for product performance.

175. Defendant had actual or constructive notice of the breaches of these warranties, and Defendant has failed to cure these breaches.

176. To the extent privity is required, Defendant was and is in privity with Plaintiff and Class members by law or by fact. Plaintiff has had sufficient direct dealings with Defendant or its authorized retailers of the Products, representatives, and agents to establish privity of contract.

177. Alternatively, Plaintiff and Class members are intended third-party beneficiaries of contracts (including Defendant's implied warranties) between Defendant and its dealers, representatives, and agents; Defendant's advertisements were aimed at Plaintiff and Class members; and Defendant's warranties were written for the benefit of Plaintiff and Class members as end users of the Products. Defendant's authorized dealers, representatives, and agents, on the other hand, were not intended to be the ultimate consumers of the Products and have no rights under any warranty; these intermediary entities made no changes to the Products, nor made any additions to (and merely adopted) the warranties issued by Defendant. Accordingly, Defendant is estopped from limiting claims for common law and statutory violations based on a defense of lack of privity.

178. As a direct and proximate result of Defendant's breach of the implied warranty of merchantability, Plaintiff and Class members have suffered damages, injury in fact, and ascertainable loss in an amount to be determined at trial, including repair and replacement costs and damages to decks, patios, and other structures or property.

COUNT VII

Violation of the Song-Beverly Consumer Warranty Act Cal. Civ. Code §§ 1792, *et. seq.*

179. Plaintiff re-alleges and incorporates by reference the preceding paragraphs.

180. Plaintiff is a "buyer" within the meaning of Cal. Civ. Code § 1791(b), as he purchased Products in California.

181. Rust-Oleum is a "manufacturer" within the meaning of Cal. Civ. Code § 1791(j). Rust-Oleum manufactured the Products and directed and was involved in all stages of the production and manufacturing processes.

182. The Products are "consumer goods" within the meaning of Cal. Civ. Code § 1791(a).

183. Defendant impliedly warranted to Plaintiff that the Products he purchased were “merchantable” under Cal. Civ. Code § 1791.1(a) and 1792.

184. Defendant breached the implied warranty of merchantability by producing, manufacturing, and selling the Products that were not of merchantable quality and unfit for the ordinary purposes for which deck resurfacing products are used, and would not pass without objection in the deck resurfacing products trade.

185. The defect in the Products is latent. The defect existed in the product at and after the time of sale. Accordingly, any subsequent discovery of the defect beyond that time does not bar an implied warranty claim under the Song-Beverly Act.

186. Any attempt by Rust-Oleum to disclaim its implied warranty obligations under the Song-Beverly Act is ineffective due to its failure to adhere to Cal. Civ. Code § 1792.3 and 1792.4. Those sections provide that, in order to validly disclaim the implied warranty of merchantability, a manufacturer must “in simple and concise language” state: “(1) The goods are being sold on an ‘as is’ or ‘with all faults’ basis. (2) The entire risk as to the quality and performance of the goods is with the buyer. (3) Should the goods prove defective following their purchase, the buyer and not the manufacturer, distributor, or retailer assumes the entire cost of all necessary servicing or repair.” Defendant’s attempted warranty disclaimer does not conform to sections 1792.3 and 1792.4.

187. As a direct and proximate cause of Rust-Oleum’s breaches of the Song-Beverly Consumer Warranty Act, Plaintiff Stevens and Class members have been damaged in an amount to be proven at trial.

188. Plaintiff seeks costs and expenses, including reasonable attorneys’ fees, under Cal. Civ. Code § 1794.

COUNT VIII
Fraud/Fraudulent Concealment

189. Plaintiff re-alleges and incorporates by reference the preceding paragraphs.

190. Defendant misrepresented and concealed or suppressed material facts concerning the performance and quality of the Products. Specifically, Rust-Oleum knew (or should have known) that the Products are prone to premature failure despite proper use and application, which it knew through consumer complaints about the Products; pre-release testing of the Products; and through other litigation that notified Rust-Oleum that its Products are prone to failure. Rust-Oleum knew, at the time it sold

Products to Plaintiff and Class members, that its advertising and marketing representations were false.

191. However, Rust-Oleum failed to disclose this information prior to or at the time it sold the Products to Plaintiff and consumers, which was material to their purchasing decision. Defendant did so in order to boost sales of the Products and profits in general. It also did so because it intended consumers, like Plaintiff, to rely upon its positive product marketing and advertising in deciding to purchase the Products.

192. Plaintiff and Class members had no way of knowing that Defendant's representations were false and gravely misleading, or that Defendant had omitted imperative details about the Products. Plaintiff and Class members did not, and could not, unravel Defendant's deception on their own.

193. Defendant had a duty to disclose the true performance of the Products because knowledge of the products' premature failure and the details related thereto were known and/or accessible only to Defendant; Defendant had superior knowledge and access to the facts; and Defendant knew the facts were not known to, or reasonably discoverable, by Plaintiff and the Class. Defendant also had a duty to disclose because they made many general affirmative representations about the about the qualities of the Products, constituting misleading half-truths.

194. On information and belief, Defendant still has not made full and adequate disclosures, and continues to defraud consumers by concealing material information regarding the Products and the performance and quality of the Products.

195. Plaintiff and the Class were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased the Products (or would have paid less for them). The actions of Plaintiff and the Class were justified, and Plaintiff was justified in relying upon Defendant's marketing and advertising lies and omissions in deciding to purchase RockSolid 2X. Defendant was in exclusive control of the material facts and such facts were not known to the public, Plaintiff, or the Class.

196. Plaintiff and the Class were uniformly exposed to uniform advertising by Defendant—including but not limited to the advertisements and representations in store locations where Rust-Oleum sold its Products, on websites where Rust-Oleum's Products are sold, and on the Products' containers and labeling—before or at the time they purchased the Products. Plaintiff and Class members justifiably relied

1 upon Defendant's representations and omissions regarding the advertised quality and characteristics of
2 the Products in deciding to purchase the Products. Plaintiff and Class members did not know, and had no
3 reason to know, that the Products were defective prior to purchasing them.

4 197. Because of the concealment and/or suppression of the facts, Plaintiff and the Class
5 sustained damage because they did not receive the value of the premium price paid for the Products and
6 the benefit of their bargain, in addition to other monetary losses and property damage sustained.

7 198. Accordingly, Defendant is liable to Plaintiff and the Class for damages in an amount to be
8 proven at trial.

9 199. Defendant's acts were malicious, oppressive, and deliberate, with intent to defraud, and in
10 reckless disregard of Plaintiff's and Class members' rights and well-being to enrich Defendant.
11 Defendant's conduct warrants an assessment of punitive damages in an amount sufficient to deter such
12 conduct in the future.

13 **COUNT IX**
14 **Negligent Misrepresentation**
15 **(On Behalf of the Class)**

16 200. Plaintiff re-alleges and incorporates by reference the preceding paragraphs.

17 201. Defendant manufactured, marketed, advertised, sold, and represented the Products to
18 Plaintiff and Class members as a deck resurfer and restorative product that is of superior quality, and
19 charged a premium for those products accordingly.

20 202. Defendant made numerous material misrepresentations regarding the Products, as alleged
21 herein. Those representations are false and misleading because the Products do not possess these qualities
22 and capabilities, and proper product application actually results in decking and other surfaces requiring
23 greater upkeep and having a shorter lifespan by requiring repairs (or replacement) due to premature failure.

24 203. For example, the Products do not achieve or possess any of the following: "transform your
25 deck in one day"; "work[] on weathered & worn wood"; restore "lightly worn decks & patios"; "simplify[]
26 prep & promote[] topcoat adhesion"; "work[] with any solid topcoat"; require only a "one coat
27 application"; "algae and mildew resistant"; "extends the life of your deck"; a "superior" product; "superior
28 weather resistance"; "one coat coverage"; "restore[] the beauty of moderately worn decks & patios";

1 “durability”; “enhanced durability”; “ultimate weather resistance”; “barefoot friendly”; “fill[] hairline
2 cracks.”

3 204. The Products fail to conceal cracks, and proper application results in cracking, bubbling,
4 peeling, stripping, etc. The products are not durable, do not properly adhere, are not durable, are not
5 superior, are not “weather resistan[t],” and do not allow consumers to “Restore” weathered and worn
6 decks. Rust-Oleum’s marketing representations are false and misrepresent the quality and capabilities of
7 the Products.

8 205. At the time of sale, Defendant had actual or constructive notice of the Products’ propensity
9 to prematurely fail, including through previous product failures and related litigation, online complaints,
10 in-store complaints, or through complaints made directly to Defendant over the telephone or through its
11 websites. Thus, Defendant either knew its representations about the Products were false or they had no
12 reasonable grounds for believing that their representations were true.

13 206. Defendant also failed to disclose, concealed, suppressed and omitted material information
14 concerning the Products, including that the Products are susceptible to cracking, peeling, flaking,
15 chipping, separating, stripping, generally degrading and otherwise prematurely failing, and causing
16 significant damage to the underlying structures to which the Products are applied.

17 207. Defendant had a duty to disclose this information as set forth herein. Defendant intended
18 that Plaintiff and Class members rely upon Defendant’s material misrepresentations and omissions to
19 purchase the Products, and Plaintiff reasonably relied upon Defendant’s false advertising, marketing, and
20 other misrepresentations and omissions in deciding to purchase the Products.

21 208. As a direct and proximate result of Defendant’s conduct, Plaintiff and Class members have
22 been damaged in an amount to be determined at trial, including repair and replacement costs and/or
23 damages to other property.

24 **COUNT X**

25 **Unjust Enrichment/Restitution**

26 209. Plaintiff re-alleges and incorporates by reference the preceding paragraphs.

27 210. This claim is pleaded in the alternative to the other claims pleaded herein.
28

211. As described herein, Defendant marketed, distributed, and sold the Products as a long-lasting, durable deck resurfacing and restoration product without disclosing the truth about the product, namely that the Products prematurely fail despite proper application.

212. As the intended and expected result of its conscious wrongdoing, Defendant has profited and benefited from Plaintiff's and Class members' purchases of the Products.

213. Plaintiff and Class members conferred a benefit upon, and thereby enriched, Defendant by purchasing Products that are flawed, defective, and prematurely fail or degrade.

214. Defendant has voluntarily accepted and retained these profits and benefits, with full knowledge and awareness that, as a result of Defendant's misconduct, Plaintiff and the Class were not receiving products of the quality, nature, fitness, or value that had been represented by Defendant, and that reasonable consumers expected.

215. Defendant has been unjustly enriched by its fraudulent and deceptive withholding of benefits to Plaintiff and the Class, at the expense of these parties.

216. Equity and good conscience militate against permitting Defendant to retain these profits and benefits.

217. Defendant's ill-gotten gains should be disgorged, and Plaintiff and members of the proposed Class are entitled to restitution of the profits unjustly obtained by Defendant, with interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff individually and on behalf of all others similarly situated, pray for relief and judgment to be entered upon Defendant Rust-Oleum Corporation as follows:

- A. Enter an order certifying the proposed class, designating Plaintiff and Plaintiff's counsel to represent the proposed Class;
- B. Declare that Defendant is financially responsible for notifying all Class members of the problems with the Products alleged herein;
- C. Declare that any limitations on Class members' remedies under any warranties are unconscionable and void;

- 1 D. Declare that Defendant must disgorge, for the benefit of the Class, all or part of the ill-
2 gotten profits it received from sales of the Products, or order Defendant to make full
3 restitution to Plaintiff and the Class members;
- 4 E. Require Defendant to re-audit and reassess all prior warranty claims regarding the
5 Products, including claims previously denied in whole or in part, where the denial was
6 based on warranty or other grounds;
- 7 F. Award economic and compensatory damages on behalf of Plaintiff and the Class members;
- 8 G. Award actual damages, treble damages, and/or any other form of monetary relief provided
9 by law;
- 10 H. Award punitive or exemplary damages, as applicable;
- 11 I. Enter an Order enjoining Defendant from its unlawful conduct, for declaratory relief, all
12 other equitable relief as the Court deems proper;
- 13 J. Award Plaintiff and the Class pre-judgment and post-judgment interest as allowed under
14 the law;
- 15 K. Award Plaintiff and the Class reasonable attorney's fees and costs of suit; and
- 16 L. Award such other and further relief as this Court may deem just and proper.

17
18 **JURY DEMAND**

19 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury on all claims
20 so triable.

21
22 Dated: May 6, 2021

Respectfully submitted,

23 s/ Tina Wolfson

24 TINA WOLFSON (SNB 174806)

25 twolfson@ahdootwolfson.com

26 CHRISTOPHER STINER (276033)

27 cstiner@ahdootwolfson.com

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310.474.8585 (*facsimile*)

Attorneys for Plaintiff and Proposed Class

CIVIL COVER SHEET

Case 1:21-cv-00743-NONE-BAM Document 1-1 Filed 05/06/21 Page 1 of 2

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

Neil Stevens, individually and on behalf of all others
similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Tina Wolfson, Ahdoot & Wolfson, PC
2600 West Olive Ave, Suite 500, Burbank, CA 91505
T: 310-474-9111; F: 310-474-8585

DEFENDANTS

Rust-Oleum Corporation

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 ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 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)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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. §§ 2201, et seq.; Cal. Bus. & Prof. Code §§ 17200 and 17500; Cal. Civ. Code §§ 1750, 1792.

Brief description of cause:

Breach of Express Warranty-by-Representation & Implied Warranty of Merchantability; Fraud/Fraudulent Concealment; Negligent Misrepresentation

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

SIGNATURE OF ATTORNEY OF RECORD

May 6, 2021

/s/ Tina Wolfson

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Case 1:21-cv-00743-NONE-BAM Document 1-1 Filed 05/06/21 Page 2 of 2
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.
- 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.