

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MICHAEL BADEN, MICHAEL ALLEN,
CYNTHIA SCAGLIONE and INESE
BLANCHARD, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

RUST-OLEUM CORPORATION,

Defendant.

CASE NO. _____

CLASS ACTION COMPLAINT

Plaintiffs Michael Baden, Michael Allen, Cynthia Scaglione, and Inese Blanchard on behalf of themselves and all others similarly situated, allege as follows:

NATURE OF CASE

1. Defendant Rust-Oleum manufactures and sells a variety of do-it-yourself surface treatments. In 2013, Rust-Oleum introduced a supposedly new-and-improved treatment for wooden decks called “Restore.” According to Rust-Oleum, Restore was designed to extend the life of decks and to spare consumers the hassle of the needing to routinely repaint, re-stain, resurface, and eventually replace their decks. Rust-Oleum marketed Restore as a long-lasting alternative to these practices—Restore would not chip or peel away, but would instead fill cracks, lock down splinters, and withstand the elements for years to come.

2. Restore has failed to live up to Rust-Oleum’s promises. Rather than providing ten years or more of protection, Restore begins to bubble and peel away in just months, leaving the decks not only unprotected but also looking significantly worse than before the Restore product was applied. Thus, far from ending the usual cycle of repairing and repainting, Restore actually

hastens the need for additional time, attention, and money to be devoted to deck upkeep. Rust-Oleum has been flooded with complaints from dissatisfied customers, but rather than acknowledging the problem, Rust-Oleum continues to sell Restore products and persists with the same deceptive marketing.

3. Rust-Oleum's conduct violates a variety of state laws. By marketing and selling Restore products that neither live up to its billing nor functions as even minimally functional surface treatment, Rust-Oleum violates state consumer protection statutes and breaches its warranties. Plaintiffs bring this suit to compel Rust-Oleum to halt its unlawful conduct and to provide remuneration to all of those affected.

PARTIES

4. Plaintiff Michael Baden is a citizen and resident of Littleton, Colorado, located in Douglas County.

5. Plaintiff Michael Allen is a citizen and resident of Mercer Island, Washington, located in King County.

6. Plaintiff Cynthia Scaglione is a citizen and resident of Livonia, Michigan, located in Wayne County.

7. Plaintiff Inese Blanchard is a citizen and resident of Grandville, Michigan, located in Kent County.

8. Defendant Rust-Oleum Corporation is a subsidiary of RPM International, Inc. Rust-Oleum's corporate headquarter is located in Vernon Hills, Illinois.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d). The aggregated claims of the individual proposed class members exceed

the sum or value of \$5,000,000, exclusive of interest in costs. This is a class action in which more than two-thirds of the proposed plaintiff class, on the one hand, and Defendant Rust-Oleum, on the other, are citizens of different states

10. This Court also has jurisdiction over Rust-Oleum because it maintains its principal headquarters in Illinois; is registered to conduct business in Illinois; has sufficient minimum contacts with Illinois; or otherwise intentionally avails itself of the markets within Illinois through the promotion, sale, marketing, and distribution of its braided hoses such that the exercise of jurisdiction by this Court is proper and necessary. Moreover, Rust-Oleum's wrongful conduct (as described further below) emanates from Illinois and foreseeably affects consumers in Illinois. Most of the events complained of below occurred in or emanated from Rust-Oleum's corporate headquarters in Vernon Hills, Illinois.

11. Venue is proper in this District under 28 U.S.C. § 1391 (b) because Rust-Oleum resides in this District and a substantial part of the events or omissions giving rise to the Plaintiffs' claims occurred in this District.

FACTUAL ALLEGATIONS

Rust-Oleum Corporation

12. Rust-Oleum manufactures, markets, warrants, and sells protective paints and coatings for homes and businesses. A large part of its sales come from do-it-yourself products for the consumer home improvement market.

13. Rust-Oleum is the flagship brand of RPM International (Rust-Oleum's parent company). Rust-Oleum is best known for developing products that prevent corrosion and other forms of surface damage. Rust-Oleum markets itself as developing innovative products that are

also surface protectors, and claims to have developed more than one thousand new products over the last four years.

Restore Surface Treatment

14. In or around September 2012, Rust-Oleum purchased Synta, Inc. which included the sale of Synta's line of deck resurfacing products – Restore. Shortly thereafter Rust-Oleum released their Restore product including the following products:

- Rust-Oleum Deck & Concrete Restore;
- Rust-Oleum Extreme Concrete Restore;
- Rust-Oleum Vertical Restore.

15. Then in mid-2013, Rust-Oleum introduced their second iteration of the Restore product line which included the follow products:

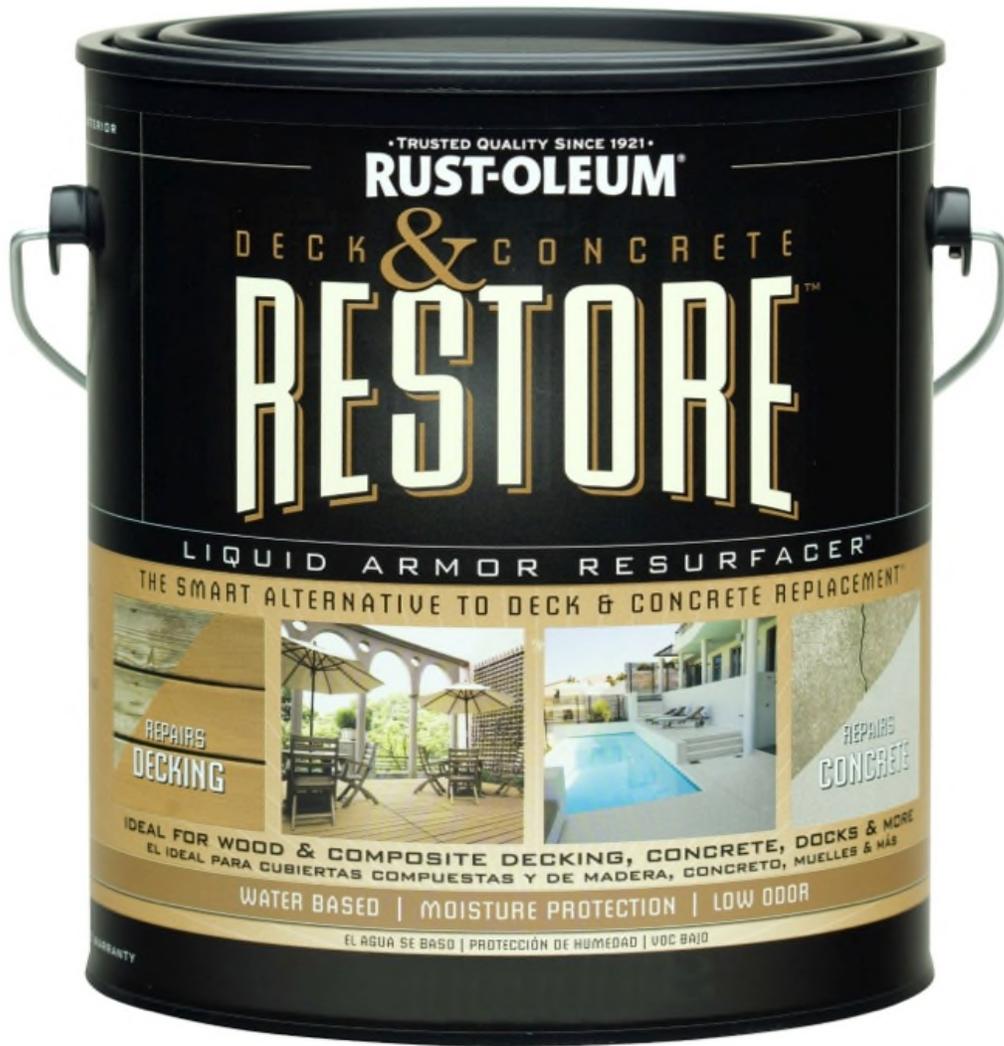
- Rust-Oleum Restore 10X
- Rust-Oleum Restore 4X¹

16. Restore products are intended to allow consumers to easily make old decks and concrete look brand new and keep them that way. Ordinarily, owners of wooden decks must resurface them every few years in order to keep the decks presentable. Because Restore is significantly thicker than ordinary surface treatments, Rust-Oleum claims that it can fill in existing cracks, while forming a tough surface that will last for years.

17. According to Rust-Oleum, Restore products are an alternative to regularly repainting, resurfacing, and replacing decks. The Restore webpage, for example, promises that it is a “low-maintenance, long-lasting alternative to the endless cycle of repairing and repainting.”

¹ Rust-Oleum Deck and Concrete Restore; Rust-Oleum Extreme Concrete Restore; Rust-Oleum Vertical Restore; Rust-Oleum Restore 10X; and Rust-Oleum Restore 4X, collectively referred to hereinafter as: “Restore products” or “Restore”

The packaging for Restore sends the same message—Restore boxes and cans call it “the smart alternative to deck & concrete replacement.” One example appears below:



18. Rust-Oleum’s online marketing makes a number of claims about how the Restore products improve decks’ appearance and life span:

- Restore can “achieve a new finished look . . . often better than new!”;
- Restore has thickness that creates a “solid yet flexible protective barrier” designed to encapsulate splinters and fill cracks in deck surfaces;
- Restore can “extend the life” of a deck by providing a “tough, durable coating,” that provides a “protective barrier from Mother Nature’s harsh elements”;

- Restore resists peeling by allowing “water vapor to pass through the film”; and
- Restore has “superior weather resistance” and “ultimate water repellency.”

19. Rust-Oleum makes similar representations on the Restore product cans themselves. Restore 10X cans, for example, claim that the product “revives wood & broom swept concrete”; provides “lasting moisture protection”; “fills up to 1/4” cracks”; and “locks down wood splinters.” An exemplar can appears below:



20. The Restore product’s key selling point is that it is long-lasting product and Rust-Oleum’s marketing consistently emphasizes this quality. For example, Rust-Oleum’s director of marketing claims that Restore “lasts ten to twelve years” in a YouTube promotional video. The

same message is delivered on Rust-Oleum's website and on the Restore packaging. The website consistently promotes Restore as "long-lasting deck care protection" and claims that it will "last for years with little maintenance." And cans and boxes of Restore claim that it provides "lasting moisture protection." Indeed, without promoting it as a long-lasting product, Restore would have little worth as an alternative to the often yearly repainting and resurfacing that the product purportedly enables consumers to avoid.

21. Because Restore is supposed to be long-lasting, Rust-Oleum is able to sell Restore at a premium. Consumers pay extra up-front to purchase Restore and some pay to have it professionally applied, because it is supposed to be worth it in the long run.

22. Rust-Oleum backs up its claims that Restore products will be long-lasting by hyping the pre-sale testing the company performed. Rust-Oleum's website, for example, states that the company performed "torture test[s]" on Restore several years before it began to sell Restore. Rust-Oleum purportedly subjected Restore to "high winds, salt air, torrential rains, exposure to the hot sun and high foot-traffic." Rust-Oleum uses the so-called torture tests as another bona fide way to try to convince consumers that Restore products will last long enough to warrant spending the extra money to purchase and apply the supposedly premium product (as opposed to spending their money on either a less expensive treatment made by another company, or paying to repaint, resurface, or replace their decks instead).

23. As another way of representing that Restore products will last for many years, Rust-Oleum provides a "Lifetime" limited warranty with Restore. The warranty guarantees Restore's performance as long as the purchaser owns or resides in his or her home (as long as Restore is applied according to the label's directions). The warranty appears on the back of all Restore cans, as well as on Rust-Oleum's website.

Restore Surface Treatment Does Not Perform As Promised

24. Despite Rust-Oleum's marketing and warranty, the Restore products do not perform as promised and in fact fail to provide the basic function for which consumers purchased it.

25. Restore commonly begins to flake off, bubble, and separate from the surface within a few months after application. Restore begins to chip off in increasingly larger sizes as time goes on. Some consumers have reported Restore separating from the deck in foot-long strips.

26. For example, one Restore purchaser posted a video of his problems with Restore.² The following picture is a screenshot from that video, which shows the appearance of a deck to which Restore products had been applied six to seven months earlier:



27. Making matters worse, it is not easy for consumers to remove Restore once it begins to deteriorate. Restore contains crystalline silica, which makes removal and replacement

² <https://www.youtube.com/watch?v=Vv3c4-Xyk4k> (last accessed March 25, 2015).

a labor-intensive and expensive process. According to Rust-Oleum's website, crystalline silica is dangerous in its particulate form, so consumers who are removing Restore products must take additional precautions when sanding or abrading. Crystalline silica, according to Rust-Oleum, "has been shown to cause lung damage and cancer under long-term exposure." The presence of the silica also creates a risk of damaging or deteriorating the underlying substrate during removal.

28. Rust-Oleum knows that Restore products are unlikely to work as promised and is unlikely to provide value to those who purchase it. Consumers consistently complained in large numbers about Restore products shortly after Rust-Oleum began to sell it. There are hundreds of customer complaints on internet forums, YouTube videos detailing customers' frustrations, and Rust-Oleum's Facebook page is filled with consumer complaints. Likewise, consumers have complained directly to Rust-Oleum and have submitted warranty claims. The following customer complaints are just a few of over one hundred complaints that appear on Amazon.com:

This product promises a lot (10 years of wear, fill cracks, restore old wood, etc) and delivers NOTHING!!!! I had my deck redone with this product less than 3 months ago and spent well over \$200 for the product and all the "special" rollers that they want you to use. I paid for professional painters to apply this and they did exactly as the product states it must be done. I am now looking at a deck that is covered in a flaking, brittle, ugly paint that is going to cost me well over \$1000 to have it removed and a new product applied. I was warned prior to buying this product by a friend who stated they tried the old formula from a few years ago and it did the same thing.... should have listened! My advice to anyone looking at this product is to STAY AWAY!!!! You will be disappointed if you don't, not to mention the \$\$\$ you will be throwing down the drain. Very disappointed in Rustoleum for putting out such a terrible product. I have contacted their warranty/claims office, but doubt anything will be done to compensate me for my lost \$ and time.

(Jan. 19, 2014 – A R)

I thought I had finally found the perfect product for my concrete porch.

Now I have a perfectly chipped up concrete porch.

I used 6 cans of this paint, following the instructions, in 60-70 degree fall

weather. Three coats in most places. Looked great! Briefly....

Within two months it started flaking. Now 5 months later, it's horrible again.

(April 7, 2014 - Christopher Bryan)

We bought 4 5gal. cans (lots of money). Power sprayed, waited with 4 days of sun to dry. Rolled on first coat. Waited 24 hrs. and rolled on second coat. It is all cracking, peeling off. Wasted big bucks!!!

(October 22, 2013 – Fowler007)

I applied Restore to my backyard deck this past Summer 2013. The deck was prepped and I followed the directions exactly. It required 2x the amount of product I had purchased on my first trip to the store and much more energy in the application than I anticipated. My first purchase was based on the coverage the can listed.

The deck looked fantastic and I was absolutely thrilled with the results, even though it was double the cost I estimated. It is now April 2014 and the product is flaking off in large chips and peels. It looks awful! I have been very careful with this product, not using the hose or blower on the deck. Today, I decided to use the blower to clean off the chips and loose peelings lying on the deck. What I noticed is under the areas that are chipping and peeling off, there appears to be moisture. I can't understand this and assure you that every inch of this deck was treated. This product did not live up to its promises. I love the garage coating that Rustoleum sells and have been very happy with that product. This product is definitely a disappointment. Now I have to decide if I want to scrape or put an outdoor rug on my deck until the remaining product peels off.

(April 11, 2014 – JK)

I applied the deck restore to my parents deck in July of 2013. By the time I was back in Pennsylvania for Christmas the product was starting to come off. I followed the directions to a T! I watched the video many times and even talked to a rep from Rustoleum because I had some questions about the weather. My parents did not use the deck for 30 days after the product was applied. By March, after all the snow and rain the product was peeling off in large strips. Rustoleum has offered to replace the product but I will not waste my time again. Now I have to redo the deck, but I won't be using Rustoleum.

(May 10, 2014 – Rosanne Bonaventura)

29. Even without these complaints, Rust-Oleum would know of the problems with Restore products. Because the problems appear so rapidly after application, routine pre-sale development and testing would have revealed the issue. In addition, Rust-Oleum performed the so-called “torture tests” described above, which create a testing environment is designed to

simulate long-term exposure to extreme levels of sunlight, temperature, and humidity. The results of this testing would have informed Rust-Oleum that the Restore products were not suitable for use as marketed and that Restore would provide no value to those who purchase it.

30. Rather than spending the money necessary to reformulate Restore products, Rust-Oleum chose to sell it with a formula it knew would not hold up over the long term. Consumers have thus spent hundreds or thousands of dollars purchasing Restore and paying to apply it.

31. Once Restore quickly begins to flake, bubble, and separate, deck owners have to spend even more money to remove the Restore, potentially repair damage to their decks, and then either repaint, re-treat, re-stain or otherwise maintain their decks going forward.

32. Rust-Oleum never disclosed at the point of sale or otherwise that Restore products do not work as promised. Accordingly, the problems with Restore products were not known or reasonably discoverable by Plaintiffs and proposed class members before their purchases or without experiencing the problems first hand.

33. As a result of Rust-Oleum's misrepresentations and concealment, consumers continue to spend money on Restore products even though it will need to be replaced in less than a year. As Rust-Oleum knows, a reasonable person would not purchase Restore products (or would pay substantially less for it) if they knew that Restore did not perform the basic functions for which it is typically purchased. Despite this, Rust-Oleum has not offered refunds to its customer en masse, has not warned potential customers about the mass of complaints, and has not provided assistance to purchasers who have incurred expenses removing Restore or repairing their decks to resultant damages.

PLAINTIFFS' EXPERIENCES

Michael Baden

34. Mr. Baden purchased approximately six gallons of Rust-Oleum Deck and Concrete Restore from Home Depot in or around September 2013 for use on his home deck.

35. Prior to purchasing Rust-Oleum Deck and Concrete Restore, he spoke with a representative at Home Depot who emphasized the product's lifetime warranty. He also viewed Rust-Oleum in-store video advertisements suggesting that Restore lasted longer and needed less maintenance than stained or painted decks. He relied on these representations, as well as Rust-Oleum's reputation, in making his purchase decision.

36. Mr. Baden followed Rust-Oleum's instructions for preparing his deck and applying the Restore.

37. In January 2014, Mr. Baden began to notice areas of his deck where the Restore product was bubbling and separating from the underlying wood. By March 2014, the Restore was deteriorating and separating from the underlying wood in one to two foot-long strips.

38. Around March 2014, Mr. Baden contacted Rust-Oleum to discuss what could be done to remedy the damage. Representatives from Rust-Oleum attempted to troubleshoot the damage, but Mr. Baden informed them that the damage was too extensive to keep the deck in its current condition.

39. Rust-Oleum representatives then explained the process for removing Restore from the deck, which Mr. Baden followed. During the removal process Mr. Baden discovered that a number of the underlying wood boards were damaged by Restore to the point that they required replacement.

40. Due to the damage to the underlying boards caused by Restore, Mr. Baden spent approximately \$1,500 to replace deck boards that were permanently damaged by Restore.

Michael Allen

41. Mr. Allen bought approximately fifteen gallons of Rust-Oleum Deck and Concrete Restore from Lowe's around August 2013. Before his purchase, he reviewed Rust-Oleum advertising, such as online promotional videos, and advertising supplied at Lowe's.

42. He relied on these advertisements, as well as on Rust-Oleum's reputation in deciding to purchase Rust-Oleum Deck and Concrete Restore. Mr. Allen also reviewed and relied upon Restore's lifetime warranty in making his decision purchasing.

43. After purchasing Rust-Oleum Deck and Concrete Restore, Plaintiff Allen applied it to his deck and followed Rust-Oleum's instructions for preparation and application.

44. Within four months of applying the Restore, it began to crack, chip, and peel off of Mr. Allen's deck.

45. Mr. Allen notified Lowe's of the damage to his deck. Representatives at Lowe's informed him that he would have to contact Rust-Oleum to receive any reimbursement.

46. After researching online how to submit a warranty claim, Mr. Allen decided not to do so because he believed that any such reimbursement would be inadequate to cover the cost of the removal, repair and replacement he will incur.

47. The severe cracking, chipping peeling and deterioration occurring on Mr. Allen's deck will require repair, removal, and replacement of the Restore product.

Cynthia Scaglione

48. Ms. Scaglione purchased about thirty gallons of Rust-Oleum Deck and Concrete Restore from Home Depot around May 2013.

49. Before her purchase, she spoke with a Rust-Oleum representative at Home Depot who emphasized the product's lifetime warranty. Ms. Scaglione also watched Rust-Oleum in-store video advertisements suggesting that Restore lasted longer and needed less maintenance than stained or painted decks.

50. Ms. Scaglione relied on these advertisements and representations in making her decision to buy Restore, as well as on Rust-Oleum's reputation.

51. She then applied Restore to her deck and followed Rust-Oleum's instructions for preparation and application.

52. In spring 2014, Ms. Scaglione noticed that small patches of the Restore product were peeling off the underlying deck. The Restore was bubbling and separating from the deck. Within a few weeks the small patches had become approximately foot-long strips of Restore.

53. Ms. Scaglione requested that Home Depot reimburse her for the damage to her deck in or around May 2014. Representatives from Home Depot instructed her to contact Rust-Oleum directly.

54. Ms. Scaglione contacted Rust-Oleum in or around June 2014. She submitted a warranty claim and requested reimbursement for her expenses.

55. On or around July 1, 2014, she spoke with a Rust-Oleum representative who offered to reimburse Ms. Scaglione for the cost of the Restore. Ms. Scaglione declined this offer as it was inadequate to cover the cost the repair, and replacement of the Restore that she will incur.

56. The peeling and severe deterioration occurring on Ms. Scaglione's deck requires repair, removal and replacement of the Restore product.

57. Ms. Scaglione has received an estimate from a contractor to remove the Restore product for approximately \$3,875.00. The estimate further details that a full replacement of the deck including the boards and railings will cost approximately \$12,800.00.

Inese Blanchard

58. Ms. Blanchard hired Dan Mora of Mora Building Solutions to apply Rust-Oleum Deck and Concrete Restore to her 1600 square foot deck in or around August 2013. Mr. Mora purchased Restore and the associated Restore products (such as rollers) to complete the job.

59. Mr. Mora power-washed and sanded Ms. Blanchard's deck, and followed Rust-Oleum's instructions for preparation and application of the Restore.

60. Ms. Blanchard paid Mr. Mora approximately \$6,245.00 to apply the Restore to her deck.

61. Within a year, the Restore began to bubble, peel and separate from the underlying wood deck.

62. Upon noticing the damage, Ms. Blanchard contacted Mr. Mora to address the damage. He contacted Rust-Oleum to notify them of damage, and ultimately received a check for \$1,317.62 to reimburse the cost of the Restore and associated application products.

63. Mr. Mora reimbursed Ms. Blanchard for the amount of compensation he received from Rust-Oleum, but she did not receive reimbursement for the cost or repair, removal and replacement of the Restore product.

64. The damage caused to Ms. Blanchard's deck will necessitate repair, removal and replacement of the Restore. She has received an estimate of approximately \$8,000.00 to repair, remove and replace the Restore from her deck.

65. Plaintiff Blanchard attempted to contact Rust-Oleum herself to discuss reimbursement for the repair, removal, and replacement expenses, but received no response.

CLASS ACTION ALLEGATIONS

66. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs bring this action on behalf of themselves and a proposed class seeking injunctive and declaratory relief, initially defined as:

All persons who purchased a Restore products in the United States.

Additionally or alternatively, Plaintiffs seek to represent the following subclasses, defined as follows:

Colorado Class:

All persons who purchased Restore products in the State of Colorado.

Washington Class:

All persons who purchased Restore products in the State of Washington.

Michigan Class:

All persons who purchased Restore products in the State of Michigan.

67. Excluded from the proposed classes are Rust-Oleum; any affiliate, parent, or subsidiary of Rust-Oleum; any entity in which Rust-Oleum has a controlling interest; any officer, director, or employee of Rust-Oleum; any successor or assign of Rust-Oleum; any judge to whom this case is assigned, his or her spouse, and all persons within the third degree of relationship to either of them, as well as the spouses of such persons; and anyone who purchased Restore for the purposes of resale.

68. Numerosity: Rust-Oleum has sold Restore products to many thousands of individuals, far too many to be practically joined in a single action. Class members may be

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

69. Existence and predominance of common questions: Common questions of law and fact exist as to all members of the proposed class and predominate over questions affecting only individual class members. These common questions include:

- a. Whether Rust-Oleum marketed Restore products as long-lasting protections for decks and concrete and as an alternative to repainting, resurfacing, and replacement;
- b. Whether Rust-Oleum's representations with respect to Restore products were false, misleading, or likely to deceive a reasonable consumer;
- c. Whether Restore is unsuitable for its intended use;
- d. Whether Rust-Oleum's conduct violates various states' consumer protection statutes;
- e. Whether Rust-Oleum breached the implied warranty of merchantability; and
- f. Whether Plaintiffs and the proposed class are entitled to injunctive and/or monetary relief.

70. Typicality: Plaintiffs' claims are typical of the claims of the proposed classes. Plaintiffs and members of the proposed classes have all purchased Restore products, which fails to perform as marketed and which is unsuitable for its intended purpose, giving rise to substantially the same claims for all class members.

71. Adequacy: Plaintiffs are adequate representatives of the proposed classes because their interests do not conflict with the interests of the class members they seek to represent.

Plaintiffs have retained counsel competent and experienced in complex class action litigation, and intend to prosecute this action vigorously.

72. Superiority: The action may be certified under Rule 23(b)(3) because common questions predominate as described above and because a class action is the best available method for the fair and efficient adjudication of this controversy. This litigation involves technical issues that will require expert testimony and targeted discovery of a sophisticated defendant, and could not practically be taken on by individual litigants. In addition, individual litigation of class members' claims would be impracticable and unduly burdensome to the court system and has the potential to lead to inconsistent results. A class action presents fewer management problems and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

73. In the alternative to class certification under Rule 23(b)(3), the proposed class may be certified under Rule 23(b)(2) because Rust-Oleum has acted or refused to act on grounds generally applicable to the class, thereby making final injunctive relief or corresponding declaratory appropriate with respect to the class as a whole.

TOLLING OF APPLICABLE STATUTES OF LIMITATIONS

74. Plaintiffs and members of the proposed class are within the applicable statute of limitation for the claims presented here. Because of Rust-Oleum's knowing misrepresentations and omissions, and because Plaintiffs and the proposed class members could not have reasonably learned this information, Rust-Oleum is estopped from asserting any statute of limitation defenses that might otherwise be applicable.

FIRST CAUSE OF ACTION

For Violation of the Magnuson-Moss Warranty Act

15 U.S.C. § 2301, *et seq.*

Plaintiffs, individually, and on behalf of the Class

75. Plaintiffs reallege, as if fully set forth, each and every allegation herein.
76. Restore is a consumer product as defined by 15 U.S.C. § 2301(1).
77. Plaintiffs and members of the proposed class are consumers, as defined by § 2301(3).
78. Rust-Oleum is a supplier and warrantor as defined by §§ 2301(4)-(5).
79. Rust-Oleum provided a written warranty, as defined under § 2301(6), under which it guaranteed product performance for as long as purchasers owned or resided in their home.
80. Rust-Oleum also impliedly warranted that Restore products were fit for the general purpose for which they are sold.
81. Despite these warranties, Rust-Oleum has failed to remedy the defects associated with Restore products, despite its knowledge of the product's propensity to prematurely deteriorate.
82. Rust-Oleum breached its obligations under its warranties by failing to reimburse Plaintiffs and members of the proposed class for the cost of Restore, as well as for consequential damages.
83. As a direct and proximate cause of Rust-Oleum's breach of written warranty, Plaintiffs and members of the proposed class sustained damages and other losses in an amount to be determined at trial.

84. As a result, Plaintiffs and members of the proposed class are entitled to revoke their acceptance of the Restore product, recover damages and equitable relief, and obtain attorneys' fees, costs of suit, and other relief as appropriate, pursuant to 15 U.S.C. § 2310(d).

85. Rust-Oleum has been afforded a reasonable opportunity to cure its breach of warranties, including when Plaintiffs contacted Rust-Oleum. In addition, concurrent with the filing of this complaint, Plaintiffs will make a further demand of Rust-Oleum on behalf of the proposed class, to comply with its warranty obligations.

SECOND CAUSE OF ACTION

Breach of Implied Warranties

Plaintiffs, individually, and on behalf of the Class

86. Plaintiffs reallege, as if fully set forth, each and every allegation herein.

87. Rust-Oleum designed, manufactured, marketed, sold, and warranted Restore products for purposes of its eventual sale to consumers.

88. As a result, Rust-Oleum impliedly warranted that Restore products were fit for the ordinary purpose for which it was supposed to be used and that it would conform to affirmations of fact made on the container and in its advertising.

89. Restore products do not meet these warranties because they prematurely degrade in a way that renders them unable to perform its basic function of coating and protecting decks within a very short time. As a result, it does not conform to the affirmations of fact made on the container and advertising.

90. Rust-Oleum's breach of implied warranty has deprived Plaintiffs and other proposed class members of the benefit of their bargain.

91. As a direct and proximate result of this breach of implied warranty, Plaintiffs and the proposed class members sustained damages and other losses in an amount to be determined at trial.

92. Plaintiffs and the proposed class members are entitled to recover damages, consequential damages, specific performance, diminution in value, costs, attorneys' fees, rescission and other appropriate relief.

THIRD CAUSE OF ACTION

Breach of Express Warranties

Plaintiffs, individually, and on behalf of the Class

93. Plaintiffs reallege, as if fully set forth, each and every allegation herein.

94. Rust-Oleum made several affirmations of fact and promises to Plaintiffs and members of the proposed class, including the express lifetime warranty described above. These affirmations of fact and promises became part of the basis of the bargain between the parties.

95. As a result, these affirmations of fact and promises created an express warranty that Restore products would conform to Rust-Oleum's representations.

96. Rust-Oleum breached its written warranty, as set forth above, by supplying Restore products in a condition which does not meet the warranty obligations undertaken by Rust-Oleum, and by failing to repair the damages caused by the defective product.

97. The representations were made by Rust-Oleum to induce Plaintiffs and the members of the proposed class to purchase, and were material factors in their decisions to purchase Restore products.

98. Rust-Oleum is obligated to reimburse Plaintiffs and proposed class members for the cost of Restore products, as well as for repair costs resulting from damage to their decks caused by Restore products.

99. As a direct and proximate result of the Restore product's failure to conform to Rust-Oleum's representations, in breach of Rust-Oleum's express warranties, Plaintiffs and proposed class members have suffered damages and other losses in an amount to be determined at trial.

100. Plaintiffs and the proposed class members are entitled to recover damages, consequential damages, specific performance, diminution in value, costs, attorneys' fees, rescission and other appropriate relief.

FOURTH CAUSE OF ACTION

Violations of the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-101, et seq.

Plaintiff Baden, individually, and on behalf of the Colorado Class

101. Plaintiff Baden, on behalf of himself and the proposed Colorado class, reallege, as if fully set forth, each and every allegation herein.

102. Rust-Oleum is a person, as defined by Colo. Rev. Stat. § 6-1-102(6).

103. Rust-Oleum violated the Colorado Consumer Protection Act by engaging in deceptive trade practices that were intended to result and did result in the sale of Restore products to Plaintiff Baden and the proposed Colorado class.

104. Specifically, Rust-Oleum violated §§ 6-1-105(e), (g), (i) and (u) by:

a. Knowingly making false representations as to the characteristics, uses, and benefits associated with Restore products;

b. Knowingly representing that Restore products was of a particular standard and quality when it knew or should have known that it was of another;

c. Advertising Restore products with the intent not to sell them as advertised;
and

d. Failing to disclose material information about Restore products that it knew at the time of sale and where the failure to disclose was intended to induce consumers into purchasing Restore products.

105. These deceptive trade practices occurred in the course of Rust-Oleum's regular business operations.

106. Rust-Oleum's conduct injured Plaintiff Baden and members of the proposed Colorado class because as a direct and proximate result of Rust-Oleum's conduct, they paid for a product that was worth less than Rust-Oleum represented. Plaintiff Baden and members of the proposed class would not have bought the product had they known that it did not accomplish its basic purpose of protecting decks. They have also suffered harm to their personal property as a result of damage to their decks caused by Restore. Meanwhile, Rust-Oleum has sold more than it otherwise would have and charged inflated prices, unjustly enriching itself.

107. Rust-Oleum's actions are against the public interest because they are part of a generalized course of conduct that has the strong likelihood to continue to injure consumers in exactly the same fashion as Plaintiff Baden. Rust-Oleum's practices have already harmed thousands of consumers by providing them with products that do not accomplish their essential purpose and cause further property damage instead.

108. Plaintiff Baden and the proposed class members seek actual damages and appropriate equitable relief, including an order requiring Rust-Oleum to remedy harms caused by Restore products, as well as attorneys' fees and costs.

FIFTH CAUSE OF ACTION

**Violations of the Washington Consumer Protection Act,
Wash. Rev. Code § 19.86.010, et seq.**

Plaintiff Allen, individually, and on behalf of the Washington Class

109. Plaintiff Allen, on behalf of himself and the proposed Washington class, realleges, as if fully set forth, each and every allegation herein.

110. Rust-Oleum's sales of Restore products to consumers constitute trade or commerce within the meaning of Wash. Rev. Code § 19.86.010(2) because they are the sale of assets and are commerce that affects the people of the state of Washington.

111. Rust-Oleum violated the Washington Consumer Protection Act, by engaging in deceptive practices in connection with transactions—namely, the sale of Restore products to Plaintiff Allen and the proposed class—that were intended to result and did result in the sale of goods to consumers.

112. In connection with the sale of Restore products to Plaintiff Allen and proposed class members, Rust-Oleum misrepresented the characteristics of Restore products and failed to disclose the significant and material problems it knew about. These deceptive practices were likely to mislead a reasonable consumer, have the capacity to deceive substantial portions of the public, and are in violation of the public interest.

113. Rust-Oleum's conduct injured Plaintiff Allen and members of the proposed class, because as a direct and proximate result of Rust-Oleum's conduct, they paid for a product that was worth less than Rust-Oleum represented. Plaintiff Allen and members of the proposed class would not have bought the product had they known about the defect. They have also suffered harm to their personal property as a result of the harm caused by Restore products to their decks. Meanwhile, Rust-Oleum has sold more Restore products than it otherwise would have and charged inflated prices, unjustly enriching itself.

114. Rust-Oleum's actions are against the public interest because they are part of a generalized course of conduct that has the strong likelihood to continue to injure consumers in

exactly the same fashion as Plaintiff Allen. Rust-Oleum's practices have already harmed thousands of consumers by providing them with products that do not accomplish their essential purpose and cause further property damage instead.

115. Pursuant to Wash. Rev. Code § 19.86.090, Plaintiff Allen seeks actual damages and appropriate equitable relief, including an order requiring Rust-Oleum to remedy harms caused by Restore products, as well as attorneys' fees and costs.

SIXTH CAUSE OF ACTION

Violations of the Michigan Consumer Protection Act, Mich. Comp. Laws § 445.901, *et seq.*

Plaintiffs Scaglione and Blanchard, individually, and on behalf of the Michigan Class

116. Plaintiffs Scaglione and Blanchard, on behalf of themselves and the proposed Michigan class, reallege, as if fully set forth, each and every allegation herein.

117. Rust-Oleum's transactions with Plaintiffs Scaglione and Blanchard, constitute trade or commerce within the meaning of Mich. Comp. Laws § 445.902(g) because Plaintiffs Scaglione and Blanchard purchased goods primarily for personal, family, or household purposes.

118. Rust-Oleum engaged in unfair and deceptive practices by knowingly making material misrepresentations about Restore products—namely, that the Restore products would protect and make decks look new for years to come. In fact, Restore fails within months and begins to bubble, flake off, and separate from deck surfaces shortly after application. Rust-Oleum also intentionally failed to disclose and concealed these known problems from consumers.

119. Rust-Oleum made these representations with the intent that Plaintiffs Scaglione, Blanchard, and the members of the proposed class would rely upon them and decide to purchase Restore products.

120. As a direct and proximate result of Rust-Oleum's deceptive practices, Plaintiffs Scaglione, Blanchard, and the members of the proposed class have suffered damages because they paid for a product that was worth less than Rust-Oleum represented, and they would not have bought the product had they known about the problems it had. They have also suffered harm to their decks caused by Restore products. Meanwhile, Rust-Oleum has sold more Restore products than it otherwise would have and charged inflated prices, unjustly enriching itself.

121. Plaintiffs Scaglione and Blanchard seek actual damages and appropriate equitable relief, including an order requiring Rust-Oleum to remedy harms caused by Restore products, as well as attorneys' fees and costs.

SEVENTH CAUSE OF ACTION

Declaratory and Injunctive Relief

Plaintiffs, individually, and on behalf of the Class

122. Plaintiffs reallege, as if fully set forth, each and every allegation herein.

123. Rust-Oleum acted or refused to act on grounds that apply generally to the proposed nationwide class, such that injunctive or declaratory relief are appropriate to the class as a whole..

124. Plaintiffs, on behalf of themselves and proposed class members, seek a declaration of the following:

- a. Restore prematurely degrades and fails resulting in damage to decks;
- b. Rust-Oleum knew of this premature degradation at the point of sale;
- c. Rust-Oleum shall reassess all prior warranty claims on Restore, including claims previously denied in whole or in part; and

- d. Rust-Oleum shall establish an inspection program, which will require it to inspect deck structures owned by proposed class members to determine whether damage was caused by Restore products.

PRAYER FOR RELIEF

125. Plaintiffs pray for judgment as follows:

- A. For an order certifying the proposed nationwide and state classes and appointing Plaintiffs and their counsel to represent the classes;
- B. For an order awarding Plaintiffs and members of the classes:
 - a. Damages, consequential damages, specific performance, and/or rescission;
 - b. Restitution, disgorgement of profits, or other equitable relief as the court deems proper;
 - c. Pre-judgment and post-judgment interest; and
 - d. Reasonable attorneys' fees and costs of suit, including but not limited to expert witness fees.
- C. For an order enjoining Rust-Oleum from continuing to engage in unlawful business practices as alleged above; and
- D. For an order awarding such other and further relief as this Court may deem proper.

JURY DEMAND

126. Plaintiffs hereby demand a trial by jury on all issues so properly triable.

Respectfully submitted,

Dated: April 1, 2015

/s/ Edward A. Wallace _____

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