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15
16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA

18 JASON GONZALEZ and KATIE
19 GONZALEZ individuals, on behalf of
themselves and all others similarly
20 situated,

21 Plaintiffs,

22 vs.

23 LUMBER LIQUIDATORS, INC., a
Delaware corporation,

24 Defendant.

Case No. 2:16-cv-06567

**CLASS ACTION COMPLAINT
FOR DAMAGES AND
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

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1 Plaintiffs Jason Gonzalez and Katie Gonzalez (“Plaintiffs”), individually and
2 on behalf of all other persons similarly situated, by their undersigned attorneys,
3 allege the following based upon personal knowledge as to themselves and their own
4 acts, and information and belief as to all other matters based upon the investigation
5 conducted by and through their attorneys, which include, among other things,
6 review and analysis of Lumber Liquidators Holdings, Inc.’s public documents,
7 Securities and Exchange Commission (“SEC”) filings, web sites, announcements,
8 analysts’ reports and investigative journalist reports. Plaintiffs believe that
9 substantial evidentiary support will exist for the allegations set forth herein after
10 reasonable opportunity for discovery.

11 INTRODUCTION

12 1. This is a breach of warranty, fraudulent omission/concealment, and
13 federal and state statutory class action on behalf of a class consisting of all persons
14 who reside in United States who purchased from Lumber Liquidators, Inc.
15 (“Lumber Liquidators,” “the Company,” or “Defendant”) laminate flooring products
16 manufactured in China under the private-label “Dream Home” brand (the
17 “Laminates”) concerning Plaintiffs’ Third Cause of Action, or alternatively on
18 behalf of a class of all persons who reside in Connecticut for all claims for relief,
19 seeking to recover damages caused by the Company’s failure to deliver durable
20 flooring that complied with the specified industry standard contained in the product
21 description. These products are not durable as represented, and are not merchantable
22 for general household use because they do not meet the claimed industry standard.
23 Lumber Liquidators’ failure to disclose that the Laminates were substandard and
24 defective caused Plaintiffs and the proposed class to overpay for the subject
25 flooring.

26 2. Lumber Liquidators is one of the largest specialty retailers of hardwood
27 flooring and laminates in the United States. The Company sells directly to
28

1 homeowners or to contractors acting on behalf of homeowners through its network
2 of approximately 300 retail stores in 46 states, including Connecticut and California.

3 **GENERALIZED FACTUAL ALLEGATIONS**

4 3. Prior to Plaintiffs' purchases Lumber Liquidators extensively
5 advertised and marketed the Laminates as compliant with an established European
6 abrasion criteria or class, "AC3," the primary industry standard for durability of
7 laminate flooring. However, the Laminates are not AC3-compliant or durable.

8 4. An AC3-rated laminate is considered in the industry as suitable for
9 general household use, including high traffic areas such as hallways and kitchens.

10 5. Lumber Liquidators, on its website, describes the suitability of AC3-
11 rated laminates as "Residential, Heavy Traffic: Suitable for all areas."

12 6. In the United States, laminates with less than an AC3 rating are not
13 considered suitable for general household use.

14 7. Plaintiffs sought, intended, was informed and led to believe that they
15 were buying, and intended to buy, laminate flooring suitable for general household
16 use.

17 8. The "Dream Home" brand is a private-label brand owned, marketed,
18 and sold exclusively by Lumber Liquidators. The Dream Home brand includes the
19 St. James, Ispiri, Kensington Manor, and Nirvana flooring lines.

20 9. From time to time Lumber Liquidators has sourced laminates under the
21 "Dream Home" brand from plants located in different countries, including the
22 United States. The Laminates that are the subject to this action are limited to
23 Lumber Liquidators' Chinese-manufactured laminates.

24 10. Plaintiffs purchased the Laminates through one of Lumber Liquidators'
25 company-owned retail outlets.

26 11. Many putative Class Members had, before purchase of the Laminates,
27 specific concerns regarding the susceptibility of laminate flooring to scratching from
28 the claws of their pets. Lumber Liquidators told them that they had nothing to

1 worry about: that the Laminates would stand up to pets, as attested to in video
2 posted on its website focused on this very concern.

3 12. Lumber Liquidators has promoted the Laminates through its in-store
4 management and sales staff, who are trained based upon—and are encouraged to
5 consult and repeat—the product specifications, features, and supposed “advantages”
6 described on product pages for each of the Laminates on the Lumber Liquidators
7 web site. Each of the individual Laminates’ product pages describe the Laminate as
8 meeting the industry AC3 standard.

9 13. The AC3 standard that Lumber Liquidators claims that its Laminates
10 adhere to is the primary basis upon which:

11 a. Its in-store sales staff represents that the Laminates are “durable,” “very
12 durable,” “extremely durable,” “scratch resistant,” and “harder than
13 hardwood”;

14 b. Its Laminates “landing page” on its website (from which the consumer
15 can select model-specific web pages containing detailed descriptions
16 of each model) have represented that the Laminates are each “very
17 durable” and “very scratch resistant”; and

18 c. Lumber Liquidators claims, in its Limited Warranties, that the
19 Laminates each meet the “industries highest standards.”

20 14. Despite Defendant’s pervasive representations, the Laminates are not
21 AC3 compliant and not durable, as revealed by extensive recent product testing as
22 part of the investigation leading to this action.

23 15. The failure of the Laminates to meet the industry AC3 standard as
24 claimed leads to a host of problems for consumers and Plaintiffs as set forth below,
25 including but not limited to:

26 a. Visible and unsightly scratching in normal everyday use, including but
27 not limited to pet traffic;

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- 1 b. Wear patterns that expose and deteriorate the photographic paper layer
- 2 of the laminate that is supposed to be protected by the wear layer for
- 3 twenty five to thirty years;
- 4 c. Chipping;
- 5 d. Fading;
- 6 e. Warping; and
- 7 f. Staining.

8 **The Laminates Are Substantially Similar Products**

9 16. Laminate flooring is considered in the industry and by financial
10 analysts as a commodity product, in the sense that its construction is relatively
11 uniform across brands and models, with each seller competing largely on the basis
12 of price.

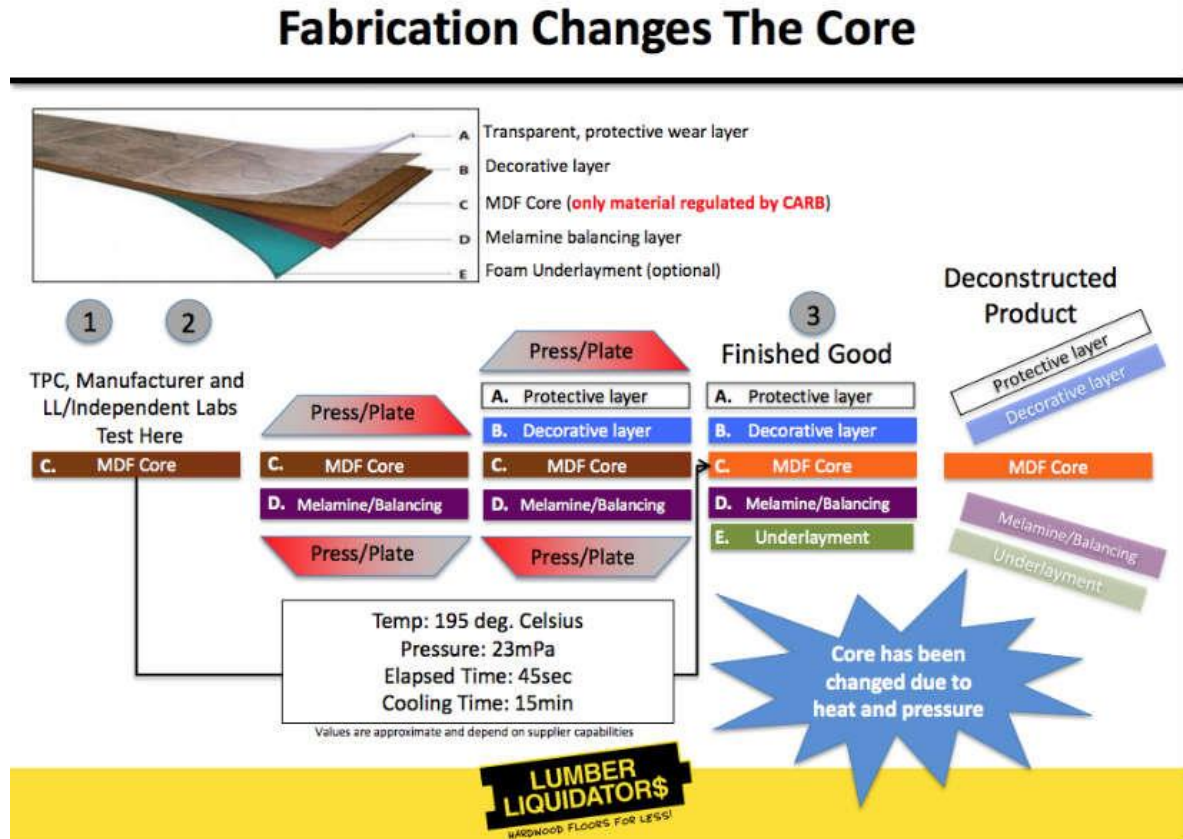
13 17. As set forth in greater detail below, the Laminates comprise a single
14 product, which are substantially similar in every way material to the claims
15 presented herein. The differences among each model of the Laminates are primarily
16 cosmetic—designed to meet varying interior decoration preferences of consumers
17 (including color, style of wood grain image, board width, etc.).

18 18. Typically, laminate flooring sold at retail for residential use is
19 constructed using four basic layers:

- 20 a. The bottom backing layer (balancing layer) to create a stable and level
- 21 support for the rest of the plank;
- 22 b. On top of the backing layer is a medium density or high density
- 23 fiberboard core, which are frequently referred to in the industry
- 24 interchangeably as MDF or HDF cores;
- 25 c. On top of the core is a decorative layer (photograph paper) of wood
- 26 grain or other pattern; and
- 27 d. The transparent top layer of a melamine resin, the wear layer, provides
- 28 protection against wear, scratching, staining, and fading.

1 19. The laminate floor is created when the four layers are pressed together
 2 under pressure and heat. The sheets are then cut into individual planks and
 3 frequently have tongue and groove edges cut into them.¹

4 20. An image found on Lumber Liquidators' website confirms that the
 5 Laminates are substantially similar:



21 This image was created by Lumber Liquidators to advance its position that its
 22 Chinese-manufactured laminates (the same products as the Laminates) do not
 23 violate California Air Resources Board regulations for formaldehyde. The fact that
 24 the Company is able to describe the construction and manufacturing process for
 25 each of the Laminates in a single image demonstrates that the Laminates are

27 ¹ Laminate flooring is frequently installed on underlayment material to
 28 improve sound or moisture performance, and occasionally such underlayment is pre-
 glued to the backing layer for convenience.

1 substantially similar products.

2 21. The Laminates are distinguished primarily based upon aesthetic
3 considerations having to do with the color and wood grain depiction of the
4 decorative layer, the gloss, the width of the boards, and other variables (including
5 thickness) which do not materially affect the durability of the various Laminates.

6 **“Durability” And Similar Descriptions Are Based On The AC3 Rating**

7 22. Whether or not a laminate meets the AC3 standard is dependent upon
8 the thickness, uniformity, and composition of the top wear layer.

9 23. In the residential laminate flooring industry, AC rating is closely
10 associated with “durability.”

11 24. An example is Pergo. Pergo is the most prominent brand of laminate
12 flooring sold in the United States. On its website, www.pergo.com, under the tab
13 “Information & Help” and the pick list “FAQs” for the question “How is Pergo
14 laminate flooring constructed?” is explained:

15 The first component is our patented ScratchGuard Advanced surface
16 protection, which is comprised of a melamine resin enriched with
17 aluminum oxide particles for enhanced scratch and scuff protection. In
18 our most premium performance floors, ScratchGuard Advanced is
19 combined with our innovative PermaMax™ wear layer to create a
20 highly durable and wear-resistant surface that provides twice the wear
21 and twice the durability* versus ordinary laminates.

22 The asterisk next to “durability” in the above quote references the following
23 note:

24 “*Wear Claim compared to standard AC-3 laminate flooring
25 and measured in accordance with NALFA/ANSI LF-01 2011 and/or
26 EN 13329:2006+A1:2008.”²

27 25. The term “durable” when used in the retail residential laminate flooring
28 industry is a reference to—and evaluated by—the relative AC rating of the laminate
flooring product.

² https://na.pergo.com/Care_Maintenance/faq (visited March 1, 2016).

1 26. “Durable” in used in the retail residential wood laminate flooring
2 industry means an AC rating of at least AC3.

3 27. The term “premium” when used in the retail residential laminate
4 flooring industry is a reference to—and evaluated by—the relative AC rating of the
5 laminate flooring product.

6 28. “Premium” as used in this industry means an AC rating of at least AC3.

7 29. Lumber Liquidators itself equates its laminates’ AC rating with their
8 durability. On a webpage published by Defendant on its website no later than May
9 7, 2013, at <http://www.lumberliquidators.com/blog/whats-an-ac-rating>, Lumber
10 Liquidators states (emphasis added):

11 Considering some new laminate thanks to your coupon? You
12 may think the thicker the laminate the better, and the longer the
13 warranty the longer it will last! That isn’t always the case, though. **So
14 how do you know which laminate will last in your home (or
15 commercial space)? Luckily, the European Producers of Laminate
16 Flooring (EPLF) developed the Abrasion Rating System to give us
17 a way of determining durability and recommended usage level of
18 different laminate floors. The common term used to denote the
19 durability of laminate flooring is the Abrasion Criteria or “AC”
20 rating.**

21 **So, what exactly do AC ratings tell us? They represent a
22 laminate’s resistance to abrasion, impact, stains and cigarette
23 burns. AC ratings also indicate that the product has been tested for
24 the effects of furniture legs, castors, and swelling along its edges.**
25 When a laminate flooring product has a rating, then it has passed all of
26 the test criteria. Failing just one test will disqualify a product.

27 The AC rating levels are designated AC1 through AC5, **each
28 reflecting the product's application and durability.**

• • •

**An AC3 for residential use is perfectly adequate. Typically the
higher the laminate flooring rating, the higher the price may be.**

29 30. Accordingly, when sellers of residential laminate flooring in the United
30 States refer to a laminate product as “durable,” “very durable,” “scratch resistant,”
31 “harder than hardwood,” or “premium,” such representation constitutes a
32 representation that the subject laminate meets at least the AC3 durability standard.

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1 31. Additionally, when Lumber Liquidators made express representations
2 regarding the durability and scratch resistance and premium quality of the
3 Laminates on its website, and when it trained its retail store managers and sales staff
4 to describe the Laminates to shoppers as “durable,” “very durable,” “scratch
5 resistant,” “would not scratch,” “would not scratch from pet nails,” “harder than
6 hardwood,” “just as durable as hardwood,” and like representations, it did so based
7 upon its claim that the product met the AC3 industry standard for durability,
8 including wear resistance.

9 **General Residential Laminate Flooring Must Be AC3 Or Better to Be**
10 **Merchantable**

11 32. Lumber Liquidators’ primary competition in the residential flooring
12 market, and in particular the market for laminate flooring, have for many years been
13 the “big box” stores Lowe's and Home Depot.

14 33. Lowe's and Home Depot, as well as smaller independent flooring
15 retailers, sell non-private-label laminate flooring in addition to any private-label
16 laminate that they sell. The following branded laminate flooring manufacturers each
17 specify a minimum rating of AC3 for the U.S. market: Pergo, Bruce Laminate,
18 Armstrong Laminate, QuickStep Laminate, and Alloc Laminate.

19 34. Major retail sellers of residential laminate flooring in the United
20 States—including Lumber Liquidators, Lowe's, and Home Depot—have settled on
21 AC3 as the suitable minimum product standard in terms of durability for general use
22 residential flooring.

23 35. Lowe's does not offer any laminate flooring with a durability rating less
24 than AC3 on its website or in its stores.

25 36. Home Depot’s website offers some 291 laminate flooring models in its
26 “residential” or “commercial-residential” lines, all of which have a rating of AC3 or
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1 higher. Home Depot's website offers no laminate flooring with a durability rating
2 under AC3.³

3 37. In the market for laminate flooring in the United States, in order for
4 laminate residential flooring to pass without objection in the trade for general
5 residential use (including hallways and kitchens), a laminate must meet at least the
6 AC3 durability standard.

7 **Lumber Liquidators' Responsibility for Marketing Defective Laminates**

8 38. In January 2011, Lumber Liquidators, whose stock is publically traded,
9 under the direction of founder, Thomas D. Sullivan, hired Robert M. Lynch as
10 President and Chief Executive Officer. Lynch brought with him to Lumber
11 Liquidators William K. Schlegel as the new Chief Merchandising Officer for the
12 Company.

13 39. Between February 22, 2012, and February 27, 2015, these officers and
14 Chief Financial Officer Daniel Terrell reported record gross margins which were
15 significantly higher than its major competitors (Home Depot and Lowe's). Through
16 these officers Lumber Liquidators misrepresented that the major driver of its high
17 margins were legitimate "sourcing initiatives" implemented by the company in
18 China designed to reduce the cost of goods, cut out middlemen, increase control by
19 the company, and strengthen relationships with its suppliers.

20 40. Sullivan, Lynch, Schlegel, and Terrell are individual defendants in a
21 nationwide class action alleging that each of them and the company committed
22 securities fraud in violation, *inter alia*, of Section 10(b) of the Securities Exchange
23 Act of 1934, 15 U.S. Code § 78j, and SEC Rule 10b-5 promulgated thereunder. *In re*
24 *Lumber Liquidators Holdings, Inc. Securities Litigation*, Case No. 4:13-cv-00157-

25 ³ [http://www.homedepot.com/b/Flooring-Laminate-Flooring-Laminate-
26 Wood-Flooring/N-5ycIvZbejk](http://www.homedepot.com/b/Flooring-Laminate-Flooring-Laminate-Wood-Flooring/N-5ycIvZbejk) (visited March 1, 2016). In addition to these 291
27 laminates, Home Depot's website lists three Shaw products that are shown as having
28 an AC2 rating. However none of these models is actually available for purchase
online or in any identifiable store, and Home Depot's customer care department
confirms that they are no longer available and have been discontinued.

1 (E.D. Va.). An element of a Section 10(b) securities fraud action is “scienter,”
2 defined as having either an intent to deceive or having been reckless in the making
3 of false or misleading representations, or with respect to an omission of material
4 fact.

5 41. Lynch and Schlegel had extensive prior experience in sourcing
6 products from Chinese manufacturing plants prior to joining Lumber Liquidators.

7 42. Among flooring retailers, laminates fill a product niche as a relatively
8 inexpensive alternative to real (natural) solid wood flooring, generally offering the
9 look of wood at a lower price point. This is the niche that Lumber Liquidators’
10 Dream Home private-label brand of laminates filled at the company.

11 43. For many years laminates and solid wood flooring have constituted the
12 most significant product ranges for Lumber Liquidators in terms of sales.

13 44. Soon after they joined Lumber Liquidators, Lynch and Schlegel
14 engaged in a so-called “sourcing initiative” regarding Lumber Liquidators’
15 regarding the Laminates. As part of this initiative, they travelled to China and
16 conducted “line reviews,” consisting of requiring competing Chinese laminate mills
17 to re-bid for Lumber Liquidators’ laminate business.

18 45. Lumber Liquidators obtained steep discounts from the Chinese mills
19 that manufactured the Laminates. After receiving these discounts, Lumber
20 Liquidators continued to represent to its customers that the Laminates complied with
21 all regulatory and applicable industry standards, including notably the standards for
22 formaldehyde emissions established by the California Air Resources Board (“CARB
23 2”) and the European AC3 durability standard. Lumber Liquidators was selling
24 substandard laminates as premium products, thereby inflating its margins.

25 46. Based on Lynch’s and Schlegel’s prior experience in sourcing products
26 from China and on widespread industry knowledge by American companies
27 sourcing products there, Lumber Liquidators knew, or recklessly disregarded, that
28 negotiating steep price discounts with Chinese manufactures ran a high risk of such

1 manufacturers cutting corners to reduce manufacturing costs in order to maintain
2 margin or profits, regardless of the technical requirements of Lumber Liquidators’
3 supply contracts and product specifications.

4 47. In March 2015, the CBS News program “60 Minutes” broadcast the
5 findings of its extensive investigation, which included hidden on camera interviews
6 of several plant managers at Lumber Liquidators’ Chinese suppliers, revealing that
7 30 out of the 31 boxes of Laminates purchased in the United States by CBS did not
8 comply with the CARB 2 standard as represented on Lumber Liquidators’ website
9 and on its Dream Home product labels.

10 48. In an on-camera interview broadcast by CBS 60 Minutes, a plant
11 manager of one of Lumber Liquidators Laminates suppliers, referring to a package
12 of Lumber Liquidators’ Dream Home laminate flooring on the plant floor, admitted
13 that the product was not CARB 2 compliant. He further stated that the plant was
14 capable of manufacturing CARB 2 laminate, but that it would be more expensive to
15 do so.

16 49. On May 7, 2015, Lumber Liquidators discontinued all sales of Chinese-
17 sourced laminates, when it had approximately \$20 million inventory of this product
18 on hand.

19 50. On December 21, 2015, Judge Arenda L. Wright Allen of the United
20 States District Court for the Eastern District of Virginia entered a ruling denying
21 Lumber Liquidators’, Sullivan’s, Lynch’s, and Schlegel’s motions to dismiss the
22 security fraud claims, finding that the allegations met the heightened pleading
23 standards for scienter set forth in the Private Securities Litigation Reform Act of
24 1995. The court did so in part based upon the allegations in the Consolidated
25 Amended Complaint for violation of the Federal Securities Laws in the above-
26 reference case, summarized above, concerning Lumber Liquidators’ “sourcing
27 initiatives” and “line reviews” by Lynch and Schlegel, and the Company’s allegedly
28

1 false explanations of the nature of its elevated margins for the Laminates, based
2 upon the sale of cheaper, non-CARB Phase 2 compliant Laminates.

3 51. Similar to the formaldehyde non-compliance of the Laminates (which
4 is not the basis of any claims made in this action), Lumber Liquidators' Chinese
5 suppliers have the capacity to manufacture AC3 laminate flooring, but it is more
6 expensive to do so (versus manufacturing AC2, AC1, or laminates that fail even the
7 AC1 standard, such as the Laminates). This is because the incorporation of more
8 resilient wear layers is more expensive.

9 52. Similar to the formaldehyde non-compliance of the Laminates (which
10 is not the basis for any claims made in this action), Lumber Liquidators knew that its
11 Laminates did not comply with AC3, or was reckless in continuing to represent AC3
12 compliance without independently verifying same, after negotiating discounts with
13 its Laminates suppliers.

14 53. In a "limited warranty" that Lumber Liquidators contends it extended
15 to Plaintiffs and all putative class members in conjunction with their purchases of
16 the St. James, Ispiri, Kensington Manor, and Nirvana lines of Dream Home brand
17 Laminates, Lumber Liquidators states:

18 Each board is meticulously inspected throughout the
19 manufacturing process to make sure it complies with [St James's]
unwavering standards.

20 If these statements are true, then Lumber Liquidators must have known that the
21 Laminates were not AC3 compliant, as extensive testing has now revealed.

22 54. In its limited warranties for the Laminates, Lumber Liquidators states
23 that the Laminates are "free of defects."

24 55. Lumber Liquidators knew that its Laminates did not comply with AC3,
25 or was reckless in continuing to represent AC3 compliance without independently
26 verifying same after negotiating discounts with its Laminates suppliers.

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1 Defendant's Website and Other Misrepresentations And Omissions

2 56. When Plaintiffs Jason Gonzalez and Katie Gonzalez researched their
3 Laminate flooring on the Lumber Liquidators' website, they visited at a minimum
4 two pages shortly before their purchase:

5 a. a laminates "landing page" ("Laminates Landing Page")
6 describing the Company's wood laminate flooring, including the Laminates, and
7 containing specific representations; and

8 b. a product-specific page, accessed by clicking on an image or
9 name shown on the Laminates Landing Page, that provided more particular
10 specification for the Laminate product purchased by Plaintiffs Jason Gonzalez and
11 Katie Gonzalez.

12 57. An individual would see the following representations by Lumber
13 Liquidators on the Laminates Landing Page:

14 a. "Very durable and scratch-resistant;" or

15 b. "Very scratch-resistant."

16 58. Each Laminate product-specific webpage expressly described the
17 Laminate as having an AC rating of "AC3."

18 59. Defendant's website advertised that the Laminates, including the "St.
19 James Collection", the "Kensington Manor Collection" and the "Ispiri Collection"
20 all have an AC rating of "AC3".

21 60. Defendant also represents on its website that the St. James Collection is
22 "very durable" and comes with a "30 year warranty."

23 61. Defendant also represents on its website that "Kensington Manor is a
24 premium 12mm laminate" and lists the "Kensington Manor Flooring Advantages",
25 which include an AC Rating of AC3 and a 30 year warranty.

26 62. Defendant also represents on its website that its Ispiri Collection has
27 certain superior qualities and ingredients, including, "With its new laminate
28 manufacturing process called Liquid Oxide High Definition technology the Ispiri

1 Collection has raised the bar on . . . durability." Further, Defendant's website
2 represents the "Ispiri Collection's Advantages" include an AC rating of AC3 and a
3 30 year warranty.

4 63. Lumber Liquidators' store managers and staff, who are employees of
5 Defendant, are trained by Lumber Liquidators to answer customer questions and to
6 market the Laminates.

7 64. These employees are encouraged and trained to use Lumber
8 Liquidators product descriptions contained on Defendant's website, including the
9 Laminate Landing Page and product-specific pages for the Laminates, to describe
10 the Laminates' characteristics and qualities.

11 65. These employees systematically told customers that the Laminates
12 were "very durable," or "just as durable as U.S.-made laminates," "would not
13 scratch," "scratch-resistant," "more durable than hardwood," "harder than
14 hardwood," "wood not scratch from pet nails," and would "hold up" to pets.

15 66. Defendant, and its employees, failed to disclose to Plaintiffs and to
16 each putative Class Member that the Laminates were not AC3 compliant, were not
17 durable, were not scratch-resistant, and would not resist fading, staining, and the
18 other problems alleged herein relating to the defect.

19 67. On page one of its invoices provided to Plaintiffs at the time of sale,
20 Lumber Liquidators states that each Laminate comes with a "30 year warranty."
21 There is no reference on page one of the invoices to a "limited warranty," and no
22 indication of any limitation to the warranty on this page.

23 68. The invoices do not mention the word "merchantability" as required
24 under the Uniform Commercial Code as a requirement to disclaim the implied
25 warranty of merchantability.

26 69. Lumber Liquidators purported "limited warranties" were not presented
27 to or shown to Plaintiffs at the time of the sale.

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1 70. Any limitations in the limited warranties fail of their essential purpose,
2 or are otherwise both procedurally and substantively unconscionable, and therefore
3 ineffective.

4 **Why Lumber Liquidators Representations Are False**

5 71. Lumber Liquidators' representations that the Laminates meet the
6 industry AC3 standard are false because the Laminates do not meet this standard.

7 72. Lumber Liquidators' representations that the Laminates are "durable,"
8 "very durable," "very scratch-resistant," "scratch-resistant," and "harder than
9 hardwood" and the oral representations listed above and more particularly below are
10 false because the Laminates do not have these qualities, on account of the defect
11 alleged herein.

12 **Plaintiffs' Discovery of the Durability Defect**

13 73. Over the past months, samples of Plaintiffs' laminate flooring was
14 tested by a certified and accredited laboratory. The testing method used by the lab is
15 the same standardized test method used worldwide throughout the flooring industry
16 to determine the AC rating of laminate flooring products. The laminate flooring
17 Plaintiffs purchased both failed to meet AC1, the lowest abrasion rating.

18 74. Whether a product complies with the AC3 industry standard is not
19 knowledge that would be apparent to consumers. AC3 testing is expensive and
20 requires special expertise and equipment not readily available or accessible to a
21 consumer.

22 75. When Lumber Liquidators, through its customer service department or
23 through store sales personnel, are approached with durability issues such as
24 scratching and the other manifestations of the defect alleged herein, it engages in a
25 pattern and practice of delay and obfuscation.

26 76. Lumber Liquidators personnel did not inform Plaintiffs that their
27 durability problems, as set forth below, resulted from the failure of the Laminate to
28 meet the claimed AC3 industry standard.

1 77. A common practice at Lumber Liquidators has been to blame durability
2 problems and defects on:

- 3 a. Installers or installation problems;
- 4 b. Moisture problems;
- 5 c. Normal product variability; and
- 6 d. Product abuse.

7 78. Lumber Liquidators' lawyers recently attributed the detailed product
8 defect manifestations listed in a prior related proceeding to installation failures,
9 further continuing the pattern of denial by Lumber Liquidators and confirming their
10 client's previous pattern.

11 79. By engaging in a pattern and practice of deflecting durability problems
12 attributable to the defect alleged herein—failure to meet the claimed industry AC3
13 standard — or by attributing durability problems to causes other than the defect
14 (installation, etc.), Lumber Liquidators fraudulently concealed the defect from
15 Plaintiffs and putative Class Members.

16 80. Plaintiffs and putative Class Members cannot reasonably be charged
17 with notice of the defect prior to the discovery of widespread supplier problems
18 relating to Lumber Liquidators' Chinese-sourced Laminates as a result of the
19 formaldehyde controversy in 2015.

20 81. Defendant sells the Dream Home line of laminate flooring products,
21 and others, at Lumber Liquidators' 37 retail stores in California, 12 stores in North
22 Carolina, 28 stores in Texas, 13 stores in New Jersey, 26 stores in Florida, 3 stores
23 in Nevada, 8 stores in Connecticut, 10 stores in Georgia, 16 stores in Illinois, 3
24 stores in Iowa, 8 stores in Indiana, 4 stores in Kentucky, 5 stores in Louisiana, 10
25 stores in Massachusetts, 10 stores in Maryland, 3 stores in Maine, 10 stores in
26 Michigan, 6 stores in Minnesota, 2 stores in Mississippi, 5 stores in Missouri, 2
27 stores in Nebraska, 19 stores in New York, 13 stores in Ohio, 3 stores in Oklahoma,
28 20 stores in Pennsylvania, 8 stores in South Carolina, 6 stores in Tennessee, 12

1 stores in Virginia, 7 stores in Washington, 5 stores in Wisconsin and 3 stores in
2 West Virginia, and 5 stores in Alabama. Lumber Liquidators also sells these
3 laminate floor products to consumers through the internet at
4 www.lumberliquidators.com and through telephone sales at 1-800-HARDWOOD.

5 82. Plaintiffs seek to represent themselves and all similarly-situated
6 persons who have purchased Dream Home laminate flooring products from
7 Defendant in the United States for the Third Cause of Action, as well as all similarly
8 situated persons who have purchased Dream Home laminate flooring in Connecticut
9 for the First, Second, Fourth, and alternatively Third Causes of Action, at any time
10 from the date the products were first placed into the marketplace through the date
11 last sold to the public, reportedly in May 2015 (the "putative class"). Plaintiffs seek
12 damages and equitable relief on behalf of the Class, which relief includes but is not
13 limited to restitution to the Plaintiffs and Class Members of the full amount of the
14 purchase price and out-of-pocket expense paid to install their laminate flooring, the
15 cost or replacing the defective flooring, injunctive relief and declaratory relief; and
16 any additional relief that this Court determines to be necessary to provide complete
17 relief to Plaintiffs and the Class.

18 **PARTIES**

19 83. Plaintiffs Jason Gonzalez and Katie Gonzalez reside in Trumbell,
20 Connecticut.

21 84. Defendant Lumber Liquidators, Inc. is a Delaware corporation with its
22 headquarters and principal place of business at 3000 John Deere Road, Toano,
23 Virginia. Lumber Liquidators, Inc. distributes, markets, and/or sells the laminate
24 flooring at issue and actively conducts business in Connecticut.

25 **JURISDICTION AND VENUE**

26 85. This Court has subject matter jurisdiction over this action under the
27 Class Action Fairness Act of 2005, 28 U.S.C. §1332(d)(2) ("CAFA"), in that the
28 matter is a class action wherein the amount in controversy exceeds the sum or value

1 of \$5,000,000, exclusive of interest and costs, and members of the Class are citizens
2 of states different from the Defendant.

3 86. This Court has personal jurisdiction over the parties in this action by
4 the fact that Defendant is a corporation that is authorized to conduct business in
5 California and Connecticut and it has intentionally availed itself of the laws and
6 markets of California and Connecticut through the promotion, marketing,
7 distribution and sale of its laminate wood flooring products. Plaintiffs purchased her
8 laminate flooring from Lumber Liquidators in Connecticut.

9 87. Venue is proper in this District pursuant to 28 U.S.C. §1391(b),
10 because a substantial part of the events or omissions giving rise to Plaintiffs' claims
11 occurred in this District. Venue is also proper under 18 U.S.C. §1965(a), because
12 Defendant transacts a substantial amount of its business in this District.

13 **PARTICULARIZED FACTUAL ALLEGATIONS**

14 88. On or about May 22, 2013, Plaintiffs Jason Gonzalez and Katie
15 Gonzalez purchased Kensington Manor Golden Teak 12mm laminate flooring from
16 Lumber Liquidators' store #1094 located in Norwalk, Connecticut.

17 89. The landing page immediately before the page for the Kensington
18 Manor Golden Teak laminate product stated that Lumber Liquidators' laminate
19 flooring is "very durable and scratch resistant." Plaintiffs researched this product on
20 Lumber Liquidators' website, which represented that "Kensington Manor is a
21 premium 12mm laminate" and that the "Kensington Manor Flooring Advantages"
22 included "AC Rating: 3" and a "30 Year Warranty." Prior to making their purchase,
23 Mr. Gonzalez called the Norwalk store and spoke to a Lumber Liquidators'
24 salesman. Mr. Gonzalez had researched Defendant's laminate flooring on the
25 internet and had found several negative customer reviews saying Defendant's
26 laminate flooring products had failed due to chipping and warping. When he asked
27 Defendant's salesman about these negative customer reviews, Defendant's salesman
28 told Mr. Gonzalez that the chipping and warping photos he saw in those negative

1 customer reviews were the result of improper installation by the customers, and
2 were not the result of any problem with the laminate flooring. Based upon these
3 representations, Mr. Gonzalez made his decision to purchase this product.
4 However, shortly after installation, the Plaintiffs noticed that their flooring began to
5 chip, scratch and warp. Laboratory testing on Defendant's Golden Teak laminate
6 flooring indicates that it does not even meet the AC1 rating. Plaintiffs have used
7 Defendant's product as it was intended to be used for normal residential traffic, but
8 the flooring does not withstand normal wear and tear during normal use and has
9 failed and deteriorated long before its advertised useful life. Plaintiff would not
10 have purchased the Kensington Manor Golden Teak laminate product had they
11 known that it was defective, not durable, and had an inferior ability to withstand
12 abrasion, warping and scratches.

13 90. At the time they purchased their flooring, Jason Gonzalez and Katie
14 Gonzalez received a three page invoice. The first page of the invoice mentioned a
15 "30 Year Warranty." The third page of the invoice recited a disclaimer of all other
16 implied and express warranties, but did not mention the warranty of merchantability.
17 The third page of the invoice included a signature line but it was left blank.

18 **CLASS ALLEGATIONS**

19 91. This action may properly be maintained as a class action pursuant to
20 Federal Rules of Civil Procedure Rule 23. The Class is sufficiently numerous, since
21 it is estimated to include tens of thousands of consumers, the joinder of whom in one
22 action is impracticable, and the disposition of whose claims in a class action will
23 provide substantial benefits to the parties and the Court.

24 92. Class Definition: Without prejudice to later revisions, the Class which
25 Plaintiffs seek to represent is composed of:

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1 a. All persons in the United States who purchased the Laminate
2 from Defendant. This proposed class is only for Plaintiffs’ Third Cause
3 of Action; and;

4 b. All persons who purchased in Connecticut the Laminates from
5 Defendant. This proposed class alternatively includes Plaintiffs’ Third
6 Cause of Action.

7 93. Excluded from the Class are governmental entities, Defendant, its
8 affiliates and subsidiaries, Defendant's current and former employees, officers,
9 directors, agents, representatives, their family members, and the members of the
10 Court and its staff.

11 94. Throughout discovery in this litigation, Plaintiffs may find it
12 appropriate and/or necessary to amend the definition of the Class. Plaintiffs reserve
13 the right to amend the Class definitions if discovery and further investigation reveal
14 that the Class should be expanded or otherwise modified.

15 95. Class Members Are Numerous: While Plaintiffs do not know the exact
16 number of Class Members, Plaintiffs are informed and believes that there are
17 thousands of Class Members. The precise number of members can be ascertained
18 through discovery, which will include Defendant’s sales, service and other business
19 records. The Class is so numerous that the individual joinder of all members of the
20 Class is impractical under the circumstances of this case.

21 96. Common Questions of Law and Fact Predominate: There is a well-
22 defined community of interest among the Class. The questions of law and fact
23 common to the Class predominate over questions that may affect individual Class
24 Members. These questions of law and fact include, but are not limited to, the
25 following:

- 26 a. Whether Defendant's laminate flooring is defective when used as
27 intended or in a reasonably foreseeable manner;
- 28 b. Whether Defendant's laminate flooring has an AC Rating less than
AC3;

- 1 c. Whether Defendant's laminate flooring was fit for its intended purpose;
- 2 d. Whether Defendant has breached the implied warranty of fitness for a
- 3 particular purpose;
- 4 e. Whether Defendant has breached the implied warranty of
- 5 merchantability;
- 6 f. Whether Defendant knew that its laminate flooring was defective and
- 7 had an Abrasion Class rating of less than AC3;
- 8 g. Whether Defendant omitted and concealed material facts from its
- 9 communications and advertising to Plaintiffs regarding the durability of
- 10 its laminate flooring;
- 11 h. Whether Defendant falsely advertised that its laminate flooring
- 12 products were "AC3" rated, "very durable" and "very scratch-resistant"
- 13 when in fact they were not;
- 14 i. Whether Defendant's misrepresentations or omissions constitute unfair
- 15 or deceptive practices under the Connecticut consumer protection
- 16 statute;
- 17 j. Whether Plaintiffs and proposed Class Members have been harmed and
- 18 the proper measure of relief;
- 19 k. Whether Plaintiffs and proposed Class Members are entitled to an
- 20 award of punitive damages, attorneys' fees and expenses against
- 21 Defendant.

22 97. Whether, as a result of Defendant's misconduct, Plaintiffs are entitled to

23 equitable relief, and if so, the nature of such relief.

24 98. Typicality: Plaintiffs' claims are typical of the claims of the members

25 of the proposed class. Plaintiffs and all Class Members have been injured by the

26 same wrongful practices of Defendant. Defendant made the same uniform

27 representations on its website and on the labels affixed to their product packaging.

28 Plaintiffs are informed and believe that these representations were made by

Defendant nationally and throughout Connecticut, on its website, and other forms of

advertisements which were identical. Plaintiffs' claims arise from the same practices

and conduct that give rise to the claims of all Class Members and are based on the

same legal theories.

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1 99. Adequacy: Plaintiffs will fairly and adequately represent and protect
2 the interests of the Class in that they have no disabling conflicts of interest that
3 would be antagonistic to those of the other members of the Class. Plaintiffs seek no
4 relief that is antagonistic or adverse to the members of the Class and the
5 infringement of the rights and the damages they have suffered are typical of all other
6 Class Members. Plaintiffs have retained attorneys experienced in consumer class
7 actions and complex litigation as counsel.

8 100. Superiority: The disposition of Plaintiffs’ and proposed Class
9 Members’ claims in a class action will provide substantial benefits to both the
10 parties and the Court. The nature of this action and the nature of laws available to
11 Plaintiffs and the Class make the use of the class action device a particularly
12 efficient and appropriate procedure to afford relief to Plaintiffs and the Class for the
13 wrongs alleged because:

- 14 a. The individual amounts of damages involved, while not
15 insubstantial, are such that individual actions or other individual
16 remedies are impracticable and litigating individual actions
17 would be too costly;
- 18 b. If each Class Member was required to file an individual lawsuit,
19 the Defendant would necessarily gain an unconscionable
20 advantage since they would be able to exploit and overwhelm the
21 limited resources of each individual Class Member with vastly
22 superior financial and legal resources;
- 23 c. The costs of individual suits could unreasonably consume the
24 amounts that would be recovered;
- 25 d. Given the size of individual proposed Class Members' claims and
26 the expense of litigating those claims, few, if any, proposed
27 Class Members could afford to or would seek legal redress
28 individually for the wrongs Defendant committed against them

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- and absent proposed Class Members have no substantial interest in individually controlling the prosecution of individual actions;
- e. This action will promote an orderly and expeditious administration and adjudication of the proposed class claims, economies of time, effort and resources will be fostered and uniformity of decisions will be insured;
- f. Without a class action, proposed Class Members will continue to suffer damages, and Defendant's violations of law will proceed without remedy while Defendant continues to reap and retain the substantial proceeds of its wrongful conduct;
- g. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action;
- h. Proof of a common business practice or factual pattern which Plaintiffs experienced is representative of that experienced by the Class and will establish the right of each member of the Class to recover on the causes of action alleged; and
- i. Individual actions would create a risk of inconsistent results and would be unnecessary and duplicative of this litigation.

101. Plaintiffs and Class Members have all similarly suffered irreparable harm and damages as a result of Defendant's unlawful and wrongful conduct. This action will provide substantial benefits to Plaintiff, the Class and the public because, absent this action, Plaintiffs and Class Members will continue to suffer losses, thereby allowing Defendant's violations of law to proceed without remedy and allowing Defendant to retain proceeds of its ill-gotten gains.

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FIRST CAUSE OF ACTION

Breach of Implied Warranty

102. Plaintiffs individually and on behalf of all others similarly situated, adopt and incorporate by reference all foregoing allegations as though fully set forth herein.

103. Defendant impliedly warranted that the Laminates were merchantable, fit for their intended purpose and suitable for general residential use, including high traffic areas.

104. The Laminates are not merchantable. In breach of the implied warranty of merchantability, the Laminates are defective because they do not have an AC rating of AC3, prematurely fail due to scratches, impacts, warping, fading, stains and edge curling and are not suitable for general residential use.

105. The Laminates were defective when they left Defendant's control and entered the market.

106. The Laminates' defects were not open and/or obvious to consumers.

107. Any purported disclaimer or limitation of the duration and scope of the implied warranty of merchantability given by Defendant is ineffective, not conspicuous, unreasonable, unconscionable and void, because Defendant knew or recklessly disregarded that the defect in the Laminates existed and might not be discovered, if at all, until the flooring had been used for a period of time, and Defendant willfully withheld information about the defect from purchasers of flooring. Moreover, due to the unequal bargaining power between the parties, Plaintiffs and the proposed Class Members had no meaningful alternative to accepting Defendant's attempted pro forma limitation of the duration of any warranties.

108. Defendant received notice that the Laminates were not merchantable through its own product testing, its "robust Quality Assurance program," numerous

1 customer complaints, and its customer service and warranty operations, well before
2 Plaintiffs and proposed Class Members filed suit.

3 109. As a result, Plaintiffs and all proposed Class Members have been
4 damaged in, *inter alia*, the amount they paid to purchase and replace Defendant's
5 un-merchantable laminate flooring.

6 **SECOND CAUSE OF ACTION**

7 **Fraudulent Concealment**

8 110. Plaintiffs individually and on behalf of all others similarly situated,
9 adopt and incorporate by reference all foregoing allegations as though fully set forth
10 herein.

11 111. Defendant represented on its website that its St. James Collection line
12 of laminate flooring products is "very durable" and the "St. James Collection's
13 Advantages" include an Abrasion Class rating of "AC3" and a "30 Year Warranty".
14 Defendant also represented that its Kensington Manor Collection line of laminate
15 flooring products is a "premium 12 mm" laminate product line and that the
16 "Kensington Manor Collection Advantages" include an AC rating of AC3 and a "30
17 Year Warranty". Defendant represented on its website that its Ispiri Collection line
18 of laminate flooring "has raised the bar on . . . durability." Defendant's website also
19 represents the "Ispiri Collection's Advantages" include an AC rating of AC3 and a
20 30 Year Warranty. Further, the product packaging of all of Defendant's Dream
21 Home brand of laminate flooring states it comes with a "30 Year Warranty."

22 112. Plaintiffs are informed and believe that Lumber Liquidators knew, or
23 recklessly disregarded, that the Laminates were defective based upon literally
24 hundreds of complaints posted by Lumber Liquidators' customers on websites,
25 including but not limited to, www.ths.gardenweb.com, www.consumeraffairs.com,
26 www.complaintlist.com, www.my3cents.com and others describe scratching,
27 bubbling, delaminating, peeling and curling of Lumber Liquidators' Dream Home
28 laminate flooring identical to the damages suffered by Plaintiffs herein.

1 113. For example, on June 1, 2005, "kitchenlover" posted the following
2 question on www.ths.gardenweb.com:

3 "Anyone used the Dream Home laminate from LL?"

4 114. On or about September 14, 2005 "pat111153" responded to the above-
5 referenced question by posting the following, in relevant part, on
6 www.ths.gardenweb.com:

7 "...chips show up on edges later...."

8 115. On or about January 25, 2007, "sammyswife" posted the following
9 another response on www.ths.gardenweb.com:

10 "I HATE this flooring!! Does anyone have the Dream Home parent company
11 info? LL is no help! The salesman incorrectly told us how to install it. After a year
12 of it being down, we are ripping it up because it looks horrible! It chips and peels
13 and is awful! LL blames our installation, but thanks to their own people, we cannot
14 get anywhere with the so-called warranty. I want to write the company directly and
15 can't seem to find them anywhere. If anyone knows a link or number of where I can
16 call, please email me at [redacted for privacy], thanks!"

17 116. On or about June 12, 2011 "grandpe02" posted his/her response on
18 www.ths.gardenweb.com:

19 "I recently purchased (*sic*) 1000sq ft. of dream home French oak. Big
20 mistake. LL was no help at all. The boards were very warped and chipped after
21 laying. And it can't be cleaned without leaving streaks. And seems LL they have
22 never heard this from anyone before. Wish I would have checked out the internet
23 first. This stuff is garbage..."

24 117. On or about April 11, 2013, "poorchoice" posted his response on
25 www.ths.gardenweb.com as follows:

26 "Finished laying Dream Home Nirvana Plus on Saturday. Job went well and
27 Wife was pleased. Floor was beautiful with tight joints and a warm rich color.
28 While replacing furniture, Wife dragged a plant with a plastic saucer under it and
29 made some scratches across the middle of the room. Scratches are not too bad, but
30 raised suspicions. I moved the recliner, which has plastic pads on it to find that in
31 just 4 days the laminate is worn through the 'warm rich color'. Wife says the
32 salesman said that this stuff wont scratch with anything but a knife. LL warrants it
33 for foot traffic for 25 years, so I guess you are supposed to keep it covered except
34 where you walk. I have some question about its longevity since the recliner wore
35 through to white in 4 days...."

36 118. On or about November 4, 2013, "KDraper" posted his response as
37 follows on www.ths.gardenweb.com:

1 "We had this product professionally installed. HATE it. Six months after it
2 was put in we started seeing areas delaminate. Some were high traffic some were
3 low/no traffic...We contacted the company through LL. Their answer was we our
area was either too wet or too dry and it wasn't their problem that we had almost
1000sf of this flooring that looked like crap. I will never use LL again...."

4 119. On www.complaintslist.com "Pat" wrote on April 23, 2013:

5 "When we went there, we were met by the store manager, 'Dave' (He was
6 very sick at the time, remember!) and informed him we were looking for a floor that
7 would not scratch as we had two small dogs. Dave showed us some flooring
8 samples and said to us, 'it will not scratch from your dogs, I have a dog and the same
9 flooring in my house and mine has no scratches.' Well not more than two weeks
after it was installed, we noticed scratches on the floor."

10 120. On www.mythreecents.com, "AllenB" wrote on November 23, 2009:

11 "Spent almost 10,000 dollars on a prefinished floor by Lumber Liquidators.
12 After only a week of normal use I notices serious scratching. I took closer notice
13 and marked over 100 scratches on these floors, many all the way through the finish!
14 Three salesman we spoke to before buying this product all answered the same
15 questions we asked, 'Will our dogs or children scratch this floor with their normal
16 use?' They assured me we would have no problem, explained how these floors are
17 ideal with pets and even gave us promotional material that showed a large dog on
this floor."

18 121. On www.mythreecents.com, "JR in Arizona" wrote on March 20, 2010:

19 "In 2007 I bought the Asian Birch Flooring. Within 6 months it started to
20 delaminate. It is engineered wood flooring. I finally made a complaint to LL asking
21 for repairs where the floor is clearly separating from the wood backing...After a
22 week they sent me a letter saying they were not responsible. I guess they get to
23 rewrite their warranties as they please."

24 122. In response to this complaint, Lumber Liquidators posted the following
25 response on March 29, 2010, proving it was monitoring customer complaints on this
26 website:

27 "If we had someone take photos of the flooring it would have been in support
28 of your warranty as a need to hold a manufacturer accountable for quality should a
defect be found. Flooring will react to changing conditions and we not the invoice,
warranty and installation instructions, as well as some boxes also note requirements
for maintaining ideal conditions. The problem is most consumers don't read this
information until a problem occurs...a little too late, then expect LL to compensate
for issues out of our control...In some situations we even send a complimentary box
to help with repairs, but it sounds like the problem was not with the flooring, but
rather some installation or site condition...I'm sorry to hear this lead to some
dissatisfaction as the problem would be the same no matter where you shopped; you
would most likely pay more elsewhere. Read the information provided _ Dan
Gordon often provides some good advice as well with his replies - Bob Villa also
knows how important it is to read the installation instructions/warranty."

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1 123. On www.consumeraffairs.com, Lana of Trabuco Canyon, CA wrote on
2 August 6, 2015:

3 "Warranty claim unresolved due to company unresponsiveness spanning 8
4 months. We noticed some surface chipping away on a little area in the formal living
5 room that we rarely use. It had been only 2.5 years from purchasing the engineered
6 wood with a 30 year warranty. We initiated the warranty process with the worst
7 encounters of customer service that I have experienced. For the last 8 months we
8 have experienced months of delays, avoidance, ignored, and being forwarded to
9 multiple customer service representatives. Matt, representative of Lumber
10 Liquidators stated that it was impossible that it was Lumber Liquidator's faulty
11 wood and that it was the installers fault just by looking at the pictures.

12 I researched online regarding warranty claims of customers of Lumber
13 Liquidators and that it is their reasoning to other customers regarding warranty
14 claims. Note this is prior to any inspection that Matt came to the conclusion. Rather
15 insulting when myself and fiancé had to deal with 8 months of delays, avoidance,
16 being ignored, and being forwarded to multiple customer service representatives just
17 to have him state that via e-mail. We're taking them to small claims court but, I just
18 want potential customers or customers their actual warranty practices and poor
19 customer service because Lumber Liquidators advertises warranty and customer
20 service as their key points to why customers go to them."

21 124. On www.consumeraffairs.com Will of Sandia Park, NM wrote on June
22 10, 2015:

23 "We purchased America's Mission Olive 12mm laminate flooring from
24 Lumber Liquidators in December of 2014 and had it installed throughout our home
25 (except bathrooms) in our new remodel. We chose this floor after speaking with
26 their sales people who convinced us that this is a very durable floor, which would
27 hold up great to pets and kids. We had the floors installed by a professional and
28 were very happy with the results for about a month. That was when we started
noticing the chips all over the floor and the bubbling along the edges of the planks.
If a drop of liquid came into contact with these floors, even if wiped up
immediately, the surface of the product would start to peel away from the backing.
And anytime anything was dropped on the floor they would chip.

We were extremely disappointed because these floors had been sold to us as
being extremely durable and multiple employees at the Albuquerque store told us
that they would be great for a family with pets and kids. We contacted their
customer care line, sure that they would make this right since this was obviously a
misrepresentation of the product they were selling. We figured that a company this
large would have some pride in their products and stand behind what they sold.
Unfortunately this has not been the case at all.

After jumping through hoops we were told to send them a box of our
unopened flooring. We did this and a few days later we contacted with an "it's not
our fault" letter. They said that they had done internal testing and that based off of
the pictures we had sent them and their "internal testing" it was moisture damage.
The funny thing is that we didn't even send pictures of the bubbling from moisture,
we had just send pictures of the chipping. This showed us that they hadn't even
bothered to review our claims before writing us off!!

1 After this, we requested to see the report on our floors from their "internal
2 tests" and were told "there is no report, just a notation made on the file that the
3 issues of concern are not manufacturing related. I don't know what the inspection
4 process is except for what I have already shared with you as this is done by a
5 separate entity." ARE YOU KIDDING ME?? What reputable, ethical company runs
6 "internal testing" and doesn't document it? At this point we were very frustrated
7 with the company because it is obvious that they have been giving us the runaround.
8 So after many more emails and calls (most of which were never even
9 acknowledged) we were told they would send out a "third party inspector". The
10 inspector finally came and took some pictures and moisture readings and left
11 without giving us any information.

12 We were contact by Lumber Liquidators a few days later with another not
13 saying it is all moisture related and not their fault. However, their own warranty
14 states that "Your Ispiri floor is warranted against finish wear from normal household
15 conditions resulting in exposure of the paper layer". This is exactly what is
16 happening in our home! We have since asked multiple times to see a copy of the
17 report be the "third party inspector" and have been ignored. We have also requested
18 multiple times to speak with a supervisor, only to be ignored each time.

19 I would never recommend Lumber Liquidators to anyone. In fact, I will be
20 doing just the opposite. For the amount of money we spent it would be nice if they
21 would stand behind their product and make sure their customers were satisfied and
22 that they were selling good quality product, but unfortunately this is not the case at
23 all."

24 125. Plaintiffs are informed and believe that Lumber Liquidators' website
25 advertising its Dream Home brand of laminate flooring products includes a video
26 testimonial which features a family with two dogs and two cats, and the Lumber
27 Liquidators' salesman shown on that video claims, "Kensington Manor has a high,
28 high durability factor. That's something people are looking for when they have
29 animals." The screen shot of the video depicting a large dog appears on every
30 webpage for the Dream Home line of laminate flooring products, implying that
31 these products are durable enough to withstand scratches from pet traffic.

32 126. Defendant concealed and suppressed material facts concerning the
33 durability of its Dream Home laminate flooring products. Defendant failed to
34 disclose that its Dream Home laminate flooring products were defective, not AC3
35 rated, not "very durable", were not "premium" and would scratch, fade, stain,
36 bubble, delaminate and curl during ordinary residential foot and pet traffic. As
37 alleged above, the Laminates were defective, were of a lesser quality than advertised
38 and had an inferior ability to withstand abrasion than advertised. These facts were

1 not known to Plaintiffs and the proposed Class at the time of their purchase. These
2 omitted and concealed facts were material because they directly impact the useful
3 life and durability of the products.

4 127. Alternatively, Defendant intentionally failed to disclose the fact that the
5 Laminates were defective in that they were not fit for their intended use, a fact only
6 known to Defendant. Plaintiffs and the proposed Class could not have discovered it
7 through the exercise of reasonable diligence. Plaintiffs are informed and thereon
8 believe that Defendant knew of the durability defects of the Laminates from its
9 product testing and Defendant's self-proclaimed "robust Quality Assurance
10 program" performed prior to placing the laminate flooring products into the stream
11 of commerce.

12 128. Plaintiffs and the proposed Class reasonably relied on Defendant's
13 representations. Defendant knew or ought to have known that Plaintiffs and the
14 proposed Class relied and/or would have reasonably relied upon Defendant to sell
15 laminate wood flooring products in which the entire lifetime of the goods could be
16 fully used without prematurely becoming damaged and/or failing. Defendant's
17 knowledge that its laminate flooring products were not fit for their intended use,
18 combined with Defendant's knowledge that Plaintiffs and the proposed Class relied
19 upon Defendant to communicate the true durability, or lack thereof, of its laminate
20 flooring products creates a legal obligation on Defendant's part to disclose to
21 Plaintiffs and the Class these facts. Defendant is in a superior position to know the
22 truth about, and the nature of, the durability and useful life of its laminate flooring
23 products.

24 129. Defendant intended to deceive Plaintiffs and the Class by failing to
25 disclose that its laminate flooring products are not fit for their intended purpose,
26 will fail prematurely long before the end of the 30 year warranty period, were not
27 "very durable" and do not have the AC3 rating.

28 ///

1 130. Defendant's failure to disclose these facts was material. Plaintiffs and
2 the proposed Class would not have purchased their laminate flooring had they
3 known that their laminate flooring products were not fit for their intended use,
4 would prematurely fail long before the end of the 30 year warranty period, were not
5 "very durable" and did not have an AC rating of AC3.

6 131. Plaintiffs and the proposed Class were harmed. As a proximate result of
7 Defendant's conduct as set forth in this cause of action, Plaintiffs and the proposed
8 Class will now be required to remove and replace their defective and damaged
9 laminate flooring.

10 132. Defendant's concealment was a substantial factor in causing that harm.

11 133. The wrongful conduct of Defendant, as alleged herein, was willful,
12 oppressive, immoral, unethical, unscrupulous, substantially injurious, malicious,
13 and/or in conscious disregard for the wellbeing of Plaintiffs and the proposed Class.
14 Defendant intended to cause injury to the Plaintiffs and the proposed Class placing
15 profits over providing a higher quality product which was advertised to Plaintiffs.
16 Defendant engaged and continues to engage in despicable conduct with a willful and
17 conscious disregard of the rights or safety of others. Defendant subjected, and
18 continues to subject, Plaintiffs and the proposed Class to cruel and unjust hardship.
19 Accordingly, Plaintiffs and the proposed Class members are entitled to an award of
20 punitive damages against Defendant in an amount to deter it from similar conduct in
21 the future.

22 **THIRD CAUSE OF ACTION**

23 **Violation of The Magnuson-Moss Warranty Act**
24 **15 U.S.C. §§ 2301, et seq.**

25 **(On behalf of the National Class, or alternatively, the Connecticut Class)**

26 134. Plaintiffs individually and on behalf of all others similarly situated,
27 adopt and incorporate by reference all foregoing allegations as though fully set forth
28 herein.

28 ///

1 135. Plaintiffs brings this claim on behalf of themselves and on behalf of
2 each and every member of the proposed Class.

3 136. Plaintiffs and the other members of the Class are "consumers" within
4 the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

5 137. Lumber Liquidators is a "supplier" and "warrantor" within the meaning
6 of 15 U.S.C. § 2301(4)-(5).

7 138. Lumber Liquidators' Dream Home proprietary line of laminate flooring
8 products was purchased separate and apart from the initial construction of the homes
9 of the Plaintiffs and the members of the proposed Class into which it was installed
10 and constitutes a "consumer product" within the meaning of 15 U.S.C. § 2301(1).

11 139. Pursuant to section 2308(a) of the Magnuson-Moss Warranty Act, "No
12 supplier may disclaim or modify ... any implied warranty to a consumer with
13 respect to such consumer product if (1) such supplier makes any written warranty to
14 the consumer with respect to such consumer product, ..."

15 140. Furthermore, section 2308(c) provides that "A disclaimer, modification,
16 or limitation made in violation of this section shall be ineffective for purposes of this
17 chapter and State law."

18 141. Lumber Liquidators' express warranties and written affirmations of fact
19 regarding the durability and level of performance over time of the Laminates
20 constitutes a written warranty within the meaning of 15 U.S.C. § 2301(6)(A).

21 142. Lumber Liquidators breached its warranties (express and implied) by
22 manufacturing, selling, and/or distributing the Laminates that are not "very durable,"
23 not "scratch resistant," which fail prematurely long before the expiration of the
24 stated warranty duration, and have an Abrasion Class rating below "AC3," without
25 knowledge of the truth of such representations.

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1 143. Defendant further violated 15 U.S.C. §2302 by failing to make a full
2 and conspicuous disclosure of the terms and conditions of the 30 year warranty
3 advertised on Defendant's website, on page 1 of the Invoice in the product
4 description of Laminates sold to Plaintiffs and the members of the proposed Class.

5 144. Lumber Liquidators breached its warranties to Plaintiffs and the
6 members of the proposed Class because these written affirmations of fact or written
7 promises made in connection with the sale of the Laminates relate to the nature of
8 the material and affirms or promises that such material will meet a specified level of
9 performance over a specified period of time and in fact fail to do so. 15 U.S.C.
10 § 2301(6)(A).

11 145. Lumber Liquidators' breach deprived Plaintiffs and the members of the
12 proposed Class of the benefit of their bargain.

13 146. The amount in controversy of Plaintiffs' individual claim exceeds the
14 value of \$25. In addition, the amount in controversy exceeds the value of \$50,000
15 (exclusive of interest and costs) computed on the basis of all claims to be
16 determined in this action.

17 147. Before filing this action, Plaintiffs notified Defendant of its breach of
18 written warranties and of its violations of the Magnuson-Moss Warranty Act, and
19 Defendant has failed to adequately cure those breaches. Additionally, Defendant
20 was notified of its breaches, *inter alia*, through a putative class action filed in Los
21 Angeles, California. Defendant has had adequate and reasonable opportunity to cure
22 its breaches of or fulfill its warranty obligations, but has failed to do so.

23 148. Pursuant to the provisions of 15 U.S.C. § 2310(e), in the case of a class
24 action (as is the case here), Plaintiffs will provide Defendant with further notice and
25 reasonable opportunity to cure, once the representative capacity of the named
26 Plaintiffs has been established in the application of Rule 23 of the Federal Rules of
27 Civil Procedure.

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1 149. As a direct and proximate result of Defendant's breaches of its written
2 and implied warranties, Plaintiffs and the other members of the proposed Class
3 sustained damages in amounts to be determined at trial.

4 **FOURTH CAUSE OF ACTION**

5 **Violation of Connecticut Unfair Trade Practices Act**

6 **Conn. Gen. Stat. § 42-110b**

7 150. The Connecticut Unfair Trade Practice Act (“CUTPA”) provides “[n]o
8 person shall engage in unfair methods of competition and unfair or deceptive acts or
9 practices in the conduct of any trade or commerce.” Conn. Gen. Stat. § 42-110b(a).

10 151. Defendant is a “person” as defined in Conn. Gen. Stat. § 42-110a(3).

11 152. At all relevant times, Defendant conducted “trade” or “commerce” in
12 Connecticut as defined in Conn. Gen. Stat. § 42-110a(4).

13 153. Lumber Liquidators engaged in unfair methods of competition and
14 unfair or deceptive acts or practices in the conduct of trade or commerce by
15 representing that its Dream Home laminate flooring had an Abrasion Rating of AC3
16 and was of a certain quality when it was not and the flooring was not fit for its
17 ordinary and intended purpose at the time the flooring left Lumber Liquidators’
18 control.

19 154. Lumber Liquidators engaged in unfair methods of competition and
20 unfair or deceptive acts or practices in the conduct of trade or commerce by
21 warranting that its Dream Home laminate flooring had an Abrasion Rating of AC3
22 and would last for 30 years, when in fact, the flooring did not comply with this
23 standard. Lumber Liquidators never disclosed this information to Plaintiffs and
24 Class Members.

25 155. Lumber Liquidators made these representations even though the Dream
26 Home laminate flooring had an Abrasion Rating lower than AC3. Lumber
27 Liquidators never disclosed this information to Plaintiffs and Class Members.

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1 156. In connection with the sale, Lumber Liquidators never disclosed to
2 Plaintiffs and Class Members that the Dream Home laminate flooring had an
3 Abrasion Rating of lower than AC3.

4 157. The facts as set forth herein that Lumber Liquidators failed to disclose
5 were material, and Lumber Liquidators' failure to disclose them tended to mislead
6 or deceive Plaintiffs and Class Members. Lumber Liquidators should have revealed
7 the facts that were material to the transaction in light of the representations of fact
8 made in a positive matter. Lumber Liquidators' failure to disclose the facts
9 constitutes an unfair method of competition.

10 158. Lumber Liquidators failed to give Plaintiffs and Class Members
11 adequate warning and notice regarding the quality and durability of the Dream
12 Home laminate flooring despite the fact that Lumber Liquidators knew or should
13 have known of the low Abrasion Rating, with the intent that Plaintiffs and the Class
14 Members would rely upon Lumber Liquidators' failure to disclose the rating when
15 purchasing the flooring. Thus, Lumber Liquidators knew of the low Abrasion Rating
16 of the flooring and yet continued to sell and distribute them to Class Members and
17 concealed its known lower rating from them.

18 159. Lumber Liquidators also engaged in unfair methods of competition by
19 failing to ensure that all Class Members were provided with an express warranty as
20 owners of structures clad with its Dream Home laminate flooring.

21 160. Lumber Liquidators also engaged in unfair methods of competition by
22 failing to honor its obligations under the terms of the express warranty.

23 161. Lumber Liquidators engaged in unfair methods of competition by
24 attempting to exclude or modify the implied warranties of merchantability and/or
25 attempting to exclude or modify the consumer's remedies for breach of those
26 warranties.

27 162. Lumber Liquidators engaged in unfair methods of competition by
28 failing to honor its obligations under the implied warranties of merchantability.

1 163. Lumber Liquidators’ acts and practices were unfair in that they caused
2 or were likely to cause substantial injury to Plaintiffs and Class Members which was
3 not reasonable avoidable by Plaintiffs and Class Members and not outweighed by
4 countervailing benefits to consumers or to competition.

5 164. As a direct and proximate result of these unfair, deceptive and
6 unconscionable commercial practices, Plaintiffs and Class Members have suffered a
7 loss. Plaintiffs and Class Members have incurred damages in that their Dream Home
8 laminate flooring have warped, scratched, swelled and become damaged.

9 165. If Plaintiffs and Class Members knew about the true nature of the
10 Dream Home laminate flooring, they would not have purchased it or would have
11 paid less for it.

12 166. Lumber Liquidators is engaging in or about to engage in conduct
13 described herein and will continue to do so unless restrained.

14 167. Plaintiffs and Class Members are entitled pursuant to CUTPA to
15 recover actual damages, equitable and injunctive relief and attorneys’ fees. Conn.
16 Gen. Stat. § 42-110g(g)

17 168. Plaintiffs shall mail a copy of the Third Amended Complaint to the
18 Attorney General and the Commissioner of Consumer Protection and, upon entry of
19 any judgment or decree in the action, shall mail a copy of such judgment or decree
20 to the Attorney General and the Commissioner of Consumer Protection. Conn. Gen.
21 Stat. § 42-110g(c).

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs, on behalf of themselves and all other individuals
24 similarly situated, requests the following relief:

- 25 A. An order certifying this action as a class action under F.R.C.P. 23,
26 defining the Class as requested herein, appointing the undersigned as
27 Class counsel, and finding that Plaintiffs are proper representatives of
28 the proposed Class;

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G. That the Court award such other and further relief as this Court may deem appropriate.

DATED: August 31, 2016 ROBERTSON & ASSOCIATES, LLP

/ s / Alexander Robertson, IV
Bv: _____
Alexander Robertson, IV (CA SBN 127042)
Mark J. Uyeno (CA SBN 189063)

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