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15 Attorneys for Plaintiffs And The Proposed Class

16 UNITED STATES DISTRICT COURT
 17 CENTRAL DISTRICT OF CALIFORNIA

18 FRANCES ANN HAYGOOD, and
 19 JOSE SALDIVAR, individuals, on
 behalf of themselves and all others
 20 similarly situated,

21 Plaintiffs,

22 vs.

24 LUMBER LIQUIDATORS, INC., a
 25 Delaware corporation,

26 Defendant.

Case No. 2:16-cv-06690

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

DEMAND FOR JURY TRIAL

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1 Plaintiffs Frances Ann Haygood, and Jose Saldivar (“Plaintiffs”), individually
2 and on behalf of all other persons similarly situated, by their undersigned attorney,
3 allege the following based upon personal knowledge as to themselves and their own
4 acts, and upon information and belief as to all other matters based upon the
5 investigation conducted by and through their attorney, which includes, among other
6 things, review and analysis of Lumber Liquidators Holdings, Inc.’s public
7 documents, Securities and Exchange Commission (“SEC”) filings, web sites,
8 announcements, analysts’ reports and investigative journalist reports. Plaintiffs
9 believe that substantial evidentiary support will exist for the allegations set forth
10 herein after 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 Texas for all claims for relief, seeking
19 to recover damages caused by the Company’s failure to deliver durable flooring that
20 complied with the specified industry standard contained in the product description.
21 These products are not durable as represented, and are not merchantable for general
22 household use because they do not meet the claimed industry standard. Lumber
23 Liquidators’ failure to disclose that the Laminates were substandard and defective
24 caused Plaintiffs and the proposed class to overpay for the subject flooring.

25 2. Lumber Liquidators is one of the largest specialty retailers of hardwood
26 flooring and laminates in the United States. The Company sells directly to
27 homeowners or to contractors acting on behalf of homeowners through its network
28

1 of approximately 300 retail stores in 46 states, including Texas.

2 **GENERALIZED FACTUAL ALLEGATIONS**

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

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

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

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

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

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

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

22 10. Plaintiffs and class members purchased the Laminates through one of
23 Lumber Liquidators' company-owned retail outlets, based upon express oral
24 representations of the Laminates' durability, made by Lumber Liquidators sales staff
25 that the Laminates were "very durable," "extremely durable," "scratch resistant,"
26 "harder than hardwood," could withstand "high traffic in a residential home," and
27 had a "30 year warranty."

28 11. Plaintiffs and many putative Class Members had, before purchase of

1 the Laminates, specific concerns regarding the susceptibility of laminate flooring to
2 scratching and discoloration from normal use. Lumber Liquidators told them that
3 they had nothing to worry about: that the Laminates were very durable and would
4 even stand up to pet claws, as attested to in a video posted on its website focused on
5 this very concern.

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

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

- 14 a. Its in-store sales staff represents that the Laminates are “durable,” “very
15 durable,” “extremely durable,” “scratch resistant,” and “harder than
16 hardwood”;
- 17 b. Its Laminates “landing page” on its website (from which the consumer
18 can select model-specific web pages containing detailed descriptions of
19 each model) have represented that the Laminates are each “very
20 durable” and “very scratch resistant”; and
- 21 c. Lumber Liquidators claims, in its Limited Warranties, that the
22 Laminates each meet the “industry’s highest standards.”

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

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

- 1 a. Visible and unsightly scratching in normal everyday use, including but
- 2 not limited to pet traffic;
- 3 b. Wear patterns that expose and deteriorate the photographic paper layer
- 4 of the laminate that is supposed to be protected by the wear layer for
- 5 twenty-five to thirty years;
- 6 c. Chipping;
- 7 d. Fading;
- 8 e. Warping;
- 9 f. Edge curling; and
- 10 g. Staining.

11 **The Laminates Are Substantially Similar Products**

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

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

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

- 23 a. The bottom backing layer (balancing layer) to create a stable and level
- 24 support for the rest of the plank;
- 25 b. On top of the backing layer is a medium density or high density
- 26 fiberboard core, which are frequently referred to in the industry
- 27 interchangeably as MDF or HDF cores;

28 ///

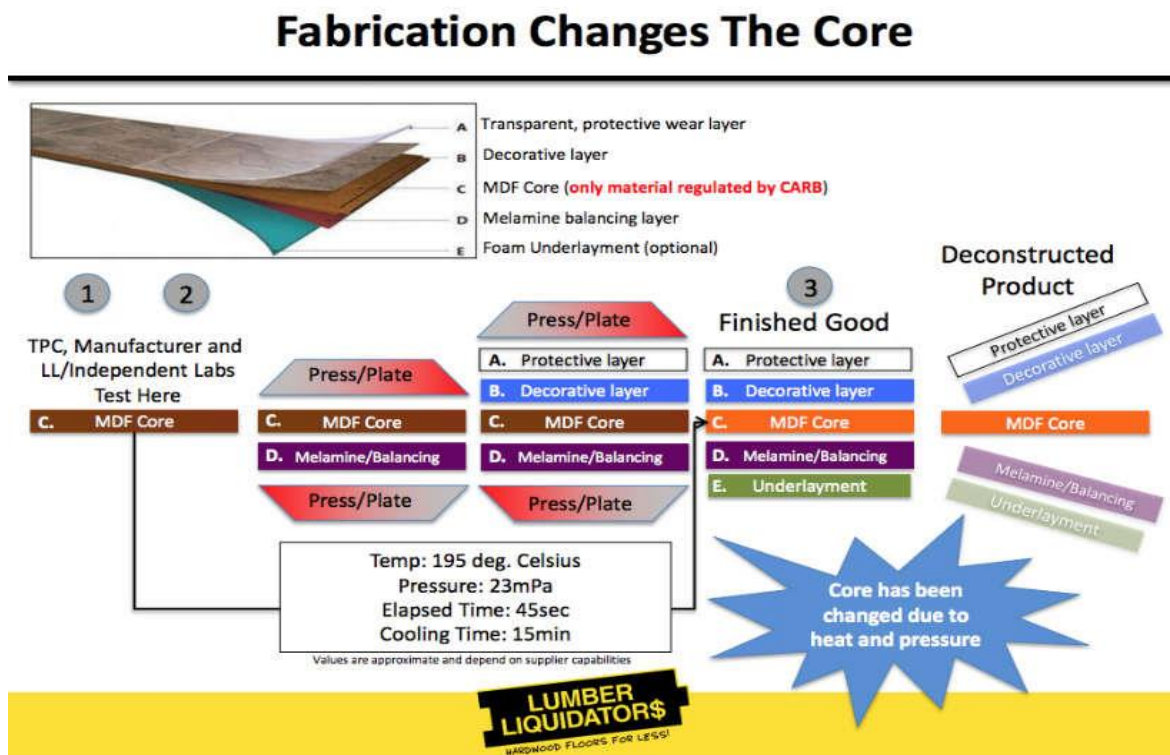
c. On top of the core is a decorative layer (photograph paper) of wood grain or other pattern; and

d. The transparent top layer of a melamine resin, the wear layer, provides protection against wear, scratching, staining, and fading.

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

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

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23 This image was created by Lumber Liquidators to advance its position that its
24 Chinese-manufactured laminates (the same products as the Laminates) do not
25 violate California Air Resources Board regulations for formaldehyde. The fact that

26 _____
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 the Company is able to describe the construction and manufacturing process for
2 each of the Laminates in a single image demonstrates that the Laminates are
3 substantially similar products.

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

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

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

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

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

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

24 The asterisk next to “durability” in the above quote references the following
25 note:

26 “*Wear Claim compared to standard AC-3 laminate flooring and
27 measured in accordance with NALFA/ANSI LF-01 2011 and/or EN
28 13329:2006+A1:2008.”²

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

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

1 flooring product.

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

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

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

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

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

22 **So, what exactly do AC ratings tell us? They represent a
23 laminate’s resistance to abrasion, impact, stains and cigarette
24 burns. AC ratings also indicate that the product has been tested for
25 the effects of furniture legs, castors, and swelling along its edges.**
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,”

1 “harder than hardwood,” or “premium,” such representation constitutes a
2 representation that the subject laminate meets at least the AC3 durability standard.

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

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

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

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

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

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

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

1 under AC3.³

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

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

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

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

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

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25 ³ [http://www.homedepot.com/b/Flooring-Laminate-Flooring-Laminate-
26 Wood-Flooring/N-5yc1vZbejk](http://www.homedepot.com/b/Flooring-Laminate-Flooring-Laminate-Wood-Flooring/N-5yc1vZbejk) (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 false explanations of the nature of its elevated margins for the Laminates, based

1 upon the sale of cheaper, non-CARB Phase 2 compliant Laminates.

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

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

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

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

27 **Defendant's Website and Other Misrepresentations and Omissions**

28 56. When researching a Laminate purchase on the Lumber Liquidators'

1 website, an individual would visit a minimum of two pages shortly before making a
2 purchase:

3 a. a laminates “landing page” (“Laminates Landing Page”)
4 describing the Company’s wood laminate flooring, including the Laminates,
5 and containing specific representations; and

6 b. a product-specific page, accessed by clicking on an image or
7 name shown on the Laminates Landing Page, that provided more particular
8 specification for each Laminate product purchased by Plaintiffs.

9 57. The following representations are listed by Lumber Liquidators on the
10 Laminates Landing Page:

11 a. “Very durable and scratch-resistant;” or

12 b. “Very scratch-resistant.”

13 58. Each Laminate product-specific webpage expressly described the
14 Laminates as having an AC rating of “AC3.”

15 59. Defendant’s website advertised that the Laminates, including the "St.
16 James Collection", the "Kensington Manor Collection", the “Nirvana” Collection
17 and the "Ispiri Collection" all have an AC rating of "AC3".

18 60. Defendant also represents on its website that the Nirvana Collection
19 comes with a “25 year warranty.”

20 61. Defendant also represents on its website that the St. James Collection is
21 “very durable” and comes with a “30 year warranty.”

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

25 63. Defendant also represents on its website that its Ispiri Collection has
26 certain superior qualities and ingredients, including: "With its new laminate
27 manufacturing process called Liquid Oxide High Definition technology the Ispiri
28 Collection has raised the bar on . . . durability." Further, Defendant's website

1 represents the "Ispiri Collection's Advantages" include an AC rating of AC3 and a
2 30 year warranty.

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

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

10 66. As set forth more particularly below, these employees systematically
11 told Plaintiffs and other customers that the Laminates were "very durable," "just as
12 durable as U.S.-made laminates," "would not scratch," "scratch-resistant," "more
13 durable than hardwood," "harder than hardwood," "wood not scratch from pet
14 nails," and would "hold up" to pets. These representations were made to Plaintiffs
15 and to putative Class Members based upon the Laminates' claimed AC3 compliance.

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

20 68. On the first page of Plaintiffs' invoices provided to them at the time of
21 sale, Lumber Liquidators states that both Laminate products come with a "30 Year
22 Warranty." There is no reference on this first page of the invoices to a "limited
23 warranty," and no indication of any limitation to the warranty on this page. The last
24 page of the invoices recite a disclaimer of all other implied and express warranties,
25 but neither mention the warranty of merchantability. The last page of the invoices
26 included a signature line but it was left blank.

27 69. The subsequent disclaimer on Plaintiffs' invoices are not conspicuous,
28 are vague and do not mention the word "merchantability" as required under the

1 Uniform Commercial Code as a requirement to disclaim the implied warranty of
2 merchantability.

3 70. Lumber Liquidators' purported "limited warranties" were not presented
4 to or shown to Plaintiffs or putative Class Members at the time of the sale.

5 71. Any limitations in the limited warranties fail of their essential purpose,
6 or are otherwise both procedurally and substantively unconscionable, and therefore
7 ineffective.

8 **Why Lumber Liquidators Representations Are False**

9 72. Lumber Liquidators' representations that the Laminates meet the
10 industry AC3 standard are false because the Laminates do not meet this standard.

11 73. Lumber Liquidators' representations that the Laminates are "durable,"
12 "very durable," "very scratch-resistant," "scratch-resistant," and "harder than
13 hardwood" and the oral representations listed above and more particularly below are
14 false because the Laminates do not have these qualities, on account of the defects
15 alleged herein.

16 **Plaintiff's Discovery of the Durability Defect**

17 74. Over the past months, a sample of Plaintiffs' laminate flooring product
18 was tested by a certified and accredited laboratory. The testing method used by the
19 lab is the same standardized test method used worldwide throughout the flooring
20 industry to determine the AC rating of laminate flooring products. The laminate
21 flooring Plaintiffs purchased failed to meet the AC3 rating, which was advertised by
22 Lumber Liquidators.

23 75. Whether a product complies with the AC3 industry standard is not
24 something that would be apparent to consumers. AC3 testing is expensive and
25 requires special expertise and equipment not readily available or accessible to a
26 consumer.

27 76. When Lumber Liquidators, through its customer service department or
28 through store sales personnel, are approached with durability issues such as

1 scratching and the other manifestations of the defect alleged herein, it engages in a
2 pattern and practice of delay and obfuscation.

3 77. Lumber Liquidators personnel did not inform Plaintiffs that their
4 durability problems, as set forth below, resulted from the failure of the Laminate to
5 meet the claimed AC3 industry standard.

6 78. A common practice at Lumber Liquidators has been to blame durability
7 problems and defects on:

- 8 a. Installers or installation problems;
- 9 b. Moisture problems;
- 10 c. Normal product variability; and
- 11 d. Product abuse.

12 79. Lumber Liquidators' lawyers recently attributed the detailed product
13 defect manifestations listed in a prior related proceeding to installation failures,
14 further continuing the pattern of denial by Lumber Liquidators and confirming their
15 client's previous pattern.

16 80. Lumber Liquidators' lawyers recently attributed the detailed product
17 defect manifestations listed in a prior related proceeding to installation failures,
18 further continuing the pattern of denial by Lumber Liquidators and confirming their
19 client's previous pattern.

20 81. By engaging in a pattern and practice of deflecting durability problems
21 attributable to the defect alleged herein—failure to meet the claimed industry AC3
22 standard — or by attributing durability problems to causes other than the defect
23 (installation, etc.), Lumber Liquidators fraudulently concealed the defect from
24 Plaintiffs and putative Class Members.

25 82. Plaintiffs and putative Class Members cannot reasonably be charged
26 with notice of the defect prior to the discovery of widespread supplier problems
27 relating to Lumber Liquidators' Chinese-sourced Laminates as a result of the
28 formaldehyde controversy in 2015.

1 83. Defendant sells the Dream Home line of laminate flooring products,
2 and others, at Lumber Liquidators' 37 retail stores in California, 12 stores in North
3 Carolina, 28 stores in Texas, 13 stores in New Jersey, 26 stores in Florida, 3 stores
4 in Nevada, 8 stores in Connecticut, 10 stores in Georgia, 16 stores in Illinois, 3
5 stores in Iowa, 8 stores in Indiana, 4 stores in Kentucky, 5 stores in Louisiana, 10
6 stores in Massachusetts, 10 stores in Maryland, 3 stores in Maine, 10 stores in
7 Michigan, 6 stores in Minnesota, 2 stores in Mississippi, 5 stores in Missouri, 2
8 stores in Nebraska, 19 stores in New York, 13 stores in Ohio, 3 stores in Oklahoma,
9 20 stores in Pennsylvania, 8 stores in South Carolina, 6 stores in Tennessee, 12
10 stores in Virginia, 7 stores in Washington, 5 stores in Wisconsin and 3 stores in
11 West Virginia, and 5 stores in Alabama. Lumber Liquidators also sells these
12 laminate floor products to consumers through the internet at
13 www.lumberliquidators.com and through telephone sales at 1-800-HARDWOOD.

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

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PARTIES

85. Plaintiff Frances Ann Haygood resides in Houston, Texas.

86. Plaintiff Jose Saldivar resides in Texas City, Texas.

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

JURISDICTION AND VENUE

88. This Court has subject matter jurisdiction over this action under the Class Action Fairness Act of 2005, 28 U.S.C. §1332(d)(2) (“CAFA”), in that the matter is a class action wherein the amount in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and members of the Class are citizens of states different from the Defendant.

89. This Court has personal jurisdiction over the parties in this action by the fact that Defendant is a corporation that is authorized to conduct business in Texas and it has intentionally availed itself of the laws and markets of Texas through the promotion, marketing, distribution and sale of its laminate wood flooring products. Plaintiffs all purchased their laminate flooring from Lumber Liquidators in Texas.

90. Venue is proper in this District pursuant to 28 U.S.C. §1391(b), because a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this District. Venue is also proper under 18 U.S.C. §1965(a), because Defendant transacts a substantial amount of its business in this District.

PARTICULARIZED FACTUAL ALLEGATIONS

91. On or about July 30, 2013, Plaintiff Frances Ann Haygood purchased Dream Home Ispiri Americas Mission Olive 12mm from Lumber Liquidators' store #1271 located in League City, Texas. Defendant's webpage for this product represents "With its new laminate manufacturing process called Liquid Oxide High

1 Definition technology the Ispiri Collection has raised the bar on . . . durability."
2 Defendant's website also represents that one of the "Ispiri Collection Advantages"
3 include an AC rating of AC3 and a 30 year warranty. The landing page immediately
4 before the page for the Dream Home Ispiri Americas Mission Olive laminate
5 flooring stated that Lumber Liquidators' laminate flooring is "very durable and
6 scratch resistant." Further, the label on the product packaging prominently displays
7 a "30 Year Warranty." Plaintiff saw these representations and relied upon them in
8 making her decision to purchase this product. However, shortly after installation of
9 Defendant's product, the flooring began to fail, and continues to fail, including
10 damage from edge curling and dimpling. Ms. Haygood has used Defendant's
11 product as it was intended to be used for normal residential traffic, but the flooring
12 does not withstand normal wear and tear during normal use and has failed and
13 deteriorated long before its advertised useful life. The results of the abrasion testing
14 on Ms. Haygood's type of laminate floor resulted in a finding that it only meets the
15 AC1 rating. Ms. Haygood would not have purchased the Ispiri Americas Mission
16 Olive laminate product had she known that it was defective, not durable, and had an
17 inferior ability to withstand abrasion, scratches and edge curling.

18 92. At the time she purchased her flooring Ms. Haygood received a two
19 page invoice. The first page of the invoice mentioned a "30 year warranty." The
20 second page of the invoice recited a disclaimer of all other implied and express
21 warranties, but did not mention the warranty of merchantability. The second page of
22 the invoice included a signature line but it was left blank.

23 93. On or about March 4, 2015, Plaintiff Jose Saldivar purchased Kensington
24 Manor Imperial Teak 12mm laminate flooring from Lumber Liquidators' store
25 #1271 located in League City, Texas. Defendant's webpage for this product
26 represents "Kensington Manor is a premier 12mm + 3mm pre-glued underlayment
27 laminate product line." The landing page immediately before the page for the
28 Kensington Manor Imperial Teak laminate flooring stated that Lumber Liquidators'

1 laminate flooring is “very durable and scratch resistant.” Defendant's webpage also
2 lists the "Kensington Manor Advantages" include an AC rating of AC3 and a 30
3 year warranty. The label on the product packaging also prominently displays a "30
4 Year Warranty." On the day of his purchase, Mr. Saldivar visited Lumber
5 Liquidators' store in League City and a salesman told him that the laminate flooring
6 product he had selected was just as durable as, but cheaper, than hardwood flooring.
7 Based upon these representations, Plaintiff believed this was a durable product that
8 would last for at least 30 years. However, a month after installation, Plaintiff noticed
9 warping, chipping and scratches in his flooring. Plaintiff has used Defendant's
10 product as it was intended to be used for normal residential traffic, but the flooring
11 does not withstand normal wear and tear during normal use and has failed and
12 deteriorated long before its advertised useful life. The results of the abrasion testing
13 on Plaintiff's type of laminate floor resulted in a finding that it only meets the AC1
14 rating. Mr. Saldivar would not have purchased the Kensington Manor Imperial
15 Teak laminate product had he known that it was defective, not durable, and had an
16 inferior ability to withstand abrasion, scratches, and warping.

17 94. At the time he purchased his flooring Mr. Saldivar received a two page
18 invoice. The first page of the invoice mentioned a “30 year warranty.” The second
19 page of the invoice recited a disclaimer of all other implied and express warranties,
20 but did not mention the warranty of merchantability. The second page of the invoice
21 included a signature line but it was left blank.

22 CLASS ALLEGATIONS

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

28

1 96. Class Definition: Without prejudice to later revisions, the Class
2 Plaintiffs seek to represent is composed of:

3 a. All persons in the United States who purchased the Laminates
4 from Defendant. This proposed class is only for Plaintiffs' Third Cause
5 of Action; and;

6 b. All persons who purchased in Texas the Laminates from
7 Defendant. This proposed class includes Plaintiffs' First, Second, and
8 Fourth Causes of Action, and alternatively includes Plaintiffs' Third
9 Cause of Action.

10 97. Excluded from the Class are governmental entities, Defendant, its
11 affiliates and subsidiaries, Defendant's current and former employees, officers,
12 directors, agents, representatives, their family members, and the members of the
13 Court and its staff.

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

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

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

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

28 101. Typicality: Plaintiffs' claims are typical of the claims of the members of the proposed class. Plaintiffs and all Class Members have been injured by the same wrongful practices of Defendant. Defendant made the same uniform representations on its website and on the labels affixed to their product packaging. Plaintiffs are informed and believes that these representations were made by Defendant nationally and throughout Texas, on its website, and other forms of advertisements which were identical. Plaintiffs' claims arise from the same practices

1 and conduct that give rise to the claims of all Class Members and are based on the
2 same legal theories.

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

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

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

1 Class Members could afford to or would seek legal redress
2 individually for the wrongs Defendant committed against them
3 and absent proposed Class Members have no substantial interest
4 in individually controlling the prosecution of individual actions;

5 e. This action will promote an orderly and expeditious
6 administration and adjudication of the proposed class claims,
7 economies of time, effort and resources will be fostered and
8 uniformity of decisions will be insured;

9 f. Without a class action, proposed Class Members will continue to
10 suffer damages, and Defendant's violations of law will proceed
11 without remedy while Defendant continues to reap and retain the
12 substantial proceeds of its wrongful conduct;

13 g. Plaintiffs know of no difficulty that will be encountered in the
14 management of this litigation that would preclude its
15 maintenance as a class action;

16 h. Proof of a common business practice or factual pattern which
17 Plaintiffs experienced is representative of that experienced by the
18 Class and will establish the right of each member of the Class to
19 recover on the causes of action alleged; and

20 i. Individual actions would create a risk of inconsistent results and
21 would be unnecessary and duplicative of this litigation.

22 104. Plaintiffs and Class Members have all similarly suffered irreparable
23 harm and damages as a result of Defendant's unlawful and wrongful conduct. This
24 action will provide substantial benefits to Plaintiffs, the Class and the public
25 because, absent this action, Plaintiffs and Class Members will continue to suffer
26 losses, thereby allowing Defendant's violations of law to proceed without remedy
27 and allowing Defendant to retain proceeds of its ill-gotten gains.
28

FIRST CAUSE OF ACTION

Breach of Implied Warranty

1
2
3 105. Plaintiffs individually and on behalf of all others similarly situated,
4 adopts and incorporates by reference all foregoing allegations as though fully set
5 forth herein.

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

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

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

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

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

26 111. Defendant received notice that the Laminates were not merchantable
27 through Plaintiffs' correspondence, its own product testing, its "robust Quality
28 Assurance program," numerous customer complaints, its customer service and

1 warranty operations, and through a putative class action filed in Los Angeles well
2 before Plaintiffs and proposed Class Members filed suit. Defendant has had
3 adequate and reasonable opportunity to cure its breaches but has failed to do so.

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

7 **SECOND CAUSE OF ACTION**

8 **Fraudulent Concealment**

9 113. Plaintiffs individually and on behalf of all others similarly situated,
10 adopts and incorporates by reference all foregoing allegations as though fully set
11 forth herein.

12 114. Defendant represented on its website that its Nirvana line of laminate
13 flooring products have an Abrasion Class rating of AC3 and a "25 year warranty".
14 Defendant also represented on its website that its St. James Collection line of
15 laminate flooring products is "very durable" and the "St. James Collection's
16 Advantages" include an Abrasion Class rating of "AC3" and a "30 Year Warranty".
17 Defendant also represented that its Kensington Manor Collection line of laminate
18 flooring products is a "premium 12 mm" laminate product line and that the
19 "Kensington Manor Collection Advantages" include an AC rating of AC3 and a "30
20 Year Warranty". Defendant also represented on its website that its Ispiri Collection
21 line of laminate flooring "has raised the bar on . . . durability." Defendant's website
22 also represents the "Ispiri Collection's Advantages" include an AC rating of AC3
23 and a 30 Year Warranty. Further, the product packaging of all of Defendant's Dream
24 Home brand of laminate flooring states it comes with a "30 Year Warranty."

25 115. Plaintiffs are informed and believe that Lumber Liquidators knew, or
26 recklessly disregarded that the Laminates were defective based upon hundreds of
27 complaints posted by Lumber Liquidators' customers on websites, including but not
28 limited to, www.ths.gardenweb.com, www.consumeraffairs.com,

1 www.complaintlist.com, www.my3cents.com and others, which describe scratching,
2 bubbling, delaminating, peeling and curling of Lumber Liquidators' Dream Home
3 laminate flooring identical to the damages suffered by Plaintiffs herein.

4 116. For example, on June 1, 2005, "kitchenlover" posted the following
5 question on www.ths.gardenweb.com:

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

7 117. On or about September 14, 2005 "pat111153" responded to the above-
8 referenced question by posting the following, in relevant part, on
9 www.ths.gardenweb.com:

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

11 118. On or about January 25, 2007, "sammyswife" posted the following
12 another response on www.ths.gardenweb.com:

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

17 119. 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
never heard this from anyone before. Wish I would have checked out the internet
first. This stuff is garbage..."

22 120. On or about April 11, 2013, "poorchoice" posted his response on
23 www.ths.gardenweb.com as follows:

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

1 where you walk. I have some question about its longevity since the recliner wore
through to white in 4 days...."

2
3 121. On or about November 4, 2013, "KDraper" posted his response as
4 follows on www.ths.gardenweb.com:

5 "We had this product professionally installed. HATE it. Six months after it
6 was put in we started seeing areas delaminate. Some were high traffic some were
low/no traffic...We contacted the company through LL. Their answer was we our
7 area was either too wet or too dry and it wasn't their problem that we had almost
8 1000sf of this flooring that looked like crap. I will never use LL again...."

9
10 122. On www.complaintslist.com "Pat" wrote on April 23, 2013:

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

17
18 123. On www.mythreecents.com, "AllenB" wrote on November 23, 2009:

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

27
28 124. On www.mythreecents.com, "JR in Arizona" wrote on March 20, 2010:

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

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

"If we had someone take photos of the flooring it would have been in support
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

1 rather some installation or site condition...I'm sorry to hear this lead to some
2 dissatisfaction as the problem would be the same no matter where you shopped; you
3 would most likely pay more elsewhere. Read the information provided – Dan
4 Gordon often provides some good advice as well with his replies – Bob Villa also
5 knows how important it is to read the installation instructions/warranty."

6 126. On www.consumeraffairs.com, Lana of Trabuco Canyon, CA wrote on
7 August 6, 2015:

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

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

26 127. On www.consumeraffairs.com Will of Sandia Park, NM wrote on June
27 10, 2015:

28 "We purchased America's Mission Olive 12mm laminate flooring from
Lumber Liquidators in December of 2014 and had it installed throughout our home
(except bathrooms) in our new remodel. We chose this floor after speaking with
their sales people who convinced us that this is a very durable floor, which would
hold up great to pets and kids. We had the floors installed by a professional and
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

1 our fault" letter. They said that they had done internal testing and that based off of
2 the pictures we had sent them and their "internal testing" it was moisture damage.
3 The funny thing is that we didn't even send pictures of the bubbling from moisture,
4 we had just send pictures of the chipping. This showed us that they hadn't even
5 bothered to review our claims before writing us off!!

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

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

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

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

129. Defendant concealed and suppressed material facts concerning the
durability of its Dream Home laminate flooring products. Defendant failed to
disclose that its Dream Home laminate flooring products were defective, not AC3
rated, not "very durable", were not "premium" and would scratch, fade, stain,

1 bubble, delaminate and curl during ordinary residential foot and pet traffic. As
2 alleged above, the Laminates were defective, were of a lesser quality than advertised
3 and had an inferior ability to withstand abrasion than advertised. These facts were
4 not known to Plaintiffs and the proposed Class at the time of their purchase. These
5 omitted and concealed facts were material because they directly impact the useful
6 life and durability of the products.

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

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

27 132. Defendant intended to deceive Plaintiffs and the Class by failing to
28 disclose that its laminate flooring products are not fit for their intended purpose,

1 will fail prematurely long before the end of the 25 and 30 year warranty periods,
2 were not "very durable" and do not have the AC3 rating.

3 133. Defendant's failure to disclose these facts was material. Plaintiffs and
4 the proposed Class would not have purchased their laminate flooring had they
5 known that their laminate flooring products were not fit for their intended use,
6 would prematurely fail long before the end of the 25 and 30 year warranty periods,
7 were not "very durable" and did not have an AC rating of AC3.

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

12 135. Defendant's concealment was a substantial factor in causing that harm.

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

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THIRD CAUSE OF ACTION

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

(On behalf of the National Class, or alternatively, the Texas Class)

137. Plaintiffs, individually and on behalf of all others similarly situated, adopts and incorporates by reference all foregoing allegations as though fully set forth herein.

138. Plaintiffs bring this claim on behalf of themselves and on behalf of each and every member of the proposed Class.

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

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

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

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

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

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

145. Lumber Liquidators breached its warranties (express and implied) by manufacturing, selling, and/or distributing the Laminates that are not "very durable",

1 not “scratch resistant,” which fail prematurely long before the expiration of the
2 stated warranty duration, and have an Abrasion Class rating below "AC3", without
3 knowledge of the truth of such representations.

4 146. Defendant further violated 15 U.S.C. §2302 by failing to make a full
5 and conspicuous disclosure of the terms and conditions of the 25 and 30 year
6 warranties advertised on Defendant's website and on page 1 of the Invoice in the
7 product description of Laminates sold to Plaintiffs and the Members of the proposed
8 Class.

9 147. Lumber Liquidators breached its warranties to Plaintiffs and the
10 Members of the proposed Class because these written affirmations of fact or written
11 promises made in connection with the sale of the Laminates relate to the nature of
12 the material and affirms or promises that such material will meet a specified level of
13 performance over a specified period of time and in fact fail to do so. 15 U.S.C.
14 § 2301(6)(A).

15 148. Lumber Liquidators' breach deprived Plaintiffs and the members of the
16 proposed Class of the benefit of their bargain.

17 149. The amount in controversy of Plaintiffs' individual claim exceeds the
18 value of \$25. In addition, the amount in controversy exceeds the value of \$50,000
19 (exclusive of interest and costs) computed on the basis of all claims to be
20 determined in this action.

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

27 151. Pursuant to the provisions of 15 U.S.C. § 2310(e), in the case of a class
28 action (as is the case here), Plaintiffs will provide Defendant with further notice and

1 reasonable opportunity to cure, once the representative capacity of the named
2 Plaintiffs have been established in the application of Rule 23 of the Federal Rules of
3 Civil Procedure.

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

7 **FOURTH CAUSE OF ACTION**

8 **Violations of The Texas Deceptive Trade Practices – Consumer Protection Act**
9 **Tex. Bus. & Com. Code § 17.41, et seq.**

10 153. Plaintiffs, individually and on behalf of all others similarly situated,
11 adopts and incorporates by reference all foregoing allegations as though fully set
12 forth herein.

13 154. This claim is brought only on behalf of Class Members who are Texas
14 Residents (the "Texas Class").

15 155. Plaintiffs and members of the Class Members are individuals who
16 qualify as "consumers" under Texas Bus. & Com. Code §17.45(4).

17 155. The Texas Deceptive Trade Practices-Consumer Protection Act (the
18 "Texas DTPA") provides a private right of action to a consumer where the consumer
19 suffers economic damage as a result of either (a) the use of false, misleading or
20 deceptive act or practice specifically enumerated in Texas Bus. & Com. Code 14.46
21 or any unconscionable action or course of action by any person.

22 156. "False, misleading, or deceptive acts or practices" is defined by Texas
23 Bus. & Com. Code § 1746(b) as including: "(5) representing that goods or services
24 have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities
25 which they do not have or that a person has a sponsorship, approval, status,
26 affiliation, or connection which he does not have"; or "(7) representing that goods or
27 services are of a particular standard, quality or grade, or that goods are of a
28 particular style or model, if they are of another". Lumber Liquidators engaged in

1 "false, misleading, or deceptive acts or practices" by misrepresenting that its Dream
2 Home laminate flooring products had an Abrasion Class rating of "AC3", were
3 "very durable" and implied that they would last as least as long as the 30 year
4 warranty, when in fact these products have a much lower, or non-existent, durability
5 than advertised.

6 157. An "unconscionable action or course of action" means "an act or
7 practice which, to a consumer's detriment, takes advantage of the lack of knowledge,
8 ability, experience, or capacity of the consumer to a grossly unfair degree." Texas
9 Bus. & Com. Code § 17.45(5). Lumber Liquidators has engaged in an
10 "unconscionable action or course of action" by advertising and selling its Dream
11 Home laminate flooring products with an Abrasion Class rating of "AC3" when in
12 fact these products have a much lower, or non-existent, Abrasion Class rating which
13 makes these flooring products far less durable than represented and advertised by
14 Lumber Liquidators.

15 158. In the course of Lumber Liquidators' business, it willfully failed to
16 disclose and actively concealed the true Abrasion Class ratings of its Dream Home
17 laminate flooring products to consumers.

18 159. Lumber Liquidators intentionally and knowingly misrepresented
19 material facts regarding the Abrasion Class ratings of its Dream Home laminate
20 flooring products to consumers.

21 160. Lumber Liquidators' unfair or deceptive acts or practices were likely to
22 and did in fact deceive reasonable consumers, including Plaintiffs, about the true
23 Abrasion Class rating of its Dream Home laminate flooring products.

24 161. Lumber Liquidators knew or should have known that its conduct
25 violated the Texas DTPA.

26 162. Plaintiffs and Class Members suffered ascertainable loss caused by
27 Lumber Liquidators' misrepresentations. As the result of Lumber Liquidators'
28 deceptive practices, and of unconscionable actions and course of action, as set forth

1 above, Plaintiffs Class Members have incurred damages in the form of the purchase
2 price of the defective laminate flooring and the cost to remove and replace the
3 defective flooring.

4 163. Pursuant to Texas Bus. & Com. Code § 17.50(a)(1) and (b), Plaintiffs
5 and Class Members seek monetary relief against Lumber Liquidators measured as
6 actual damages in an amount to be determined at trial, treble damages for Lumber
7 Liquidators' knowing violations of the Texas DTPA, and any other just and proper
8 relief available under the Texas DTPA.

9 164. Alternatively, or additionally, pursuant to Texas Bus. & Com. Code §
10 17.50(b)(3) & (4), Plaintiffs and Class Members are entitled to disgorgement or to
11 any other relief necessary to restore any money or property that was acquired from
12 them based upon violations of the Texas DTPA or which the court deems proper.

13 165. Plaintiffs and Class Members are also entitled to recover court costs
14 and reasonable attorney's fees under Texas Bus. & Com. Code § 17.50(d).

15 **PRAYER FOR RELIEF**

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

- 18 A. An order certifying this action as a class action under F.R.C.P. 23,
19 defining the Class as requested herein, appointing the undersigned as
20 Class counsel, and finding that Plaintiffs are proper representatives of
21 the proposed Class;
- 22 B. Injunctive relief requiring Defendant to inform Plaintiffs and members
23 of the proposed Class that:
- 24 • Lumber Liquidators has not effectively disclaimed the implied
25 warranty of merchantability, and that the Laminates continue to
26 be subject to such implied warranties;
 - 27 • the warranty limitations contained in Defendant's "limited
28 warranties" are unenforceable;

