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14 Attorneys for Plaintiff And The Proposed Class

15
16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA

18 ALLEN MYERS, an individual, on
19 behalf of himself and all others
20 similarly situated,

21 Plaintiff,

22 vs.

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

25 Defendant.
26

Case No. 2:16-cv-06698

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

DEMAND FOR JURY TRIAL

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1 Plaintiff Allen Myers (“Plaintiff”), individually and on behalf of all other
2 persons similarly situated, by his undersigned attorneys, alleges the following based
3 upon personal knowledge as to himself and his own acts, and upon information and
4 belief as to all other matters based upon the investigation conducted by and through
5 his counsel, which includes, among other things, review and analysis of Lumber
6 Liquidators Holdings, Inc.’s public documents, Securities and Exchange
7 Commission (“SEC”) filings, web sites, announcements, analysts’ reports and
8 investigative journalist reports. Plaintiff believes that substantial evidentiary support
9 will exist for the allegations set forth herein after reasonable opportunity for
10 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 Plaintiff’s Third Cause of Action, or alternatively on
18 behalf of a class of all persons who reside in Wisconsin 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 Plaintiff 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 of approximately 300 retail stores in 46 states, including Wisconsin.

GENERALIZED FACTUAL ALLEGATIONS

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3. Prior to Plaintiff’s purchase Lumber Liquidators extensively advertised and marketed the Laminates as compliant with an established European abrasion criteria or class, “AC3,” the primary industry standard for durability of laminate flooring. However, the Laminates are not AC3-compliant or durable.

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

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

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

7. Plaintiff sought, was informed and led to believe that he was buying, and intended to buy, laminate flooring suitable for general household use.

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

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

10. Plaintiff and putative Class Members purchased the Laminates through one of Lumber Liquidators’ company-owned retail outlets, based upon express oral representations of the Laminates’ durability, made by Lumber Liquidators sales staff that the Laminates were “very durable,” “extremely durable,” “scratch resistant,” “harder than hardwood,” “great for pets,” “pet proof,” could withstand “high traffic in a residential home,” and had a “30 year warranty.”

11. Plaintiff and many putative Class Members had, before purchase of the Laminates, specific concerns regarding the susceptibility of laminate flooring to

1 scratching from the claws of their pets. Lumber Liquidators told them that they had
2 nothing to worry about: that the Laminates would stand up to pets, as attested to in a
3 video posted on its website focused on this very concern.

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

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

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

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

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

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

- 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.

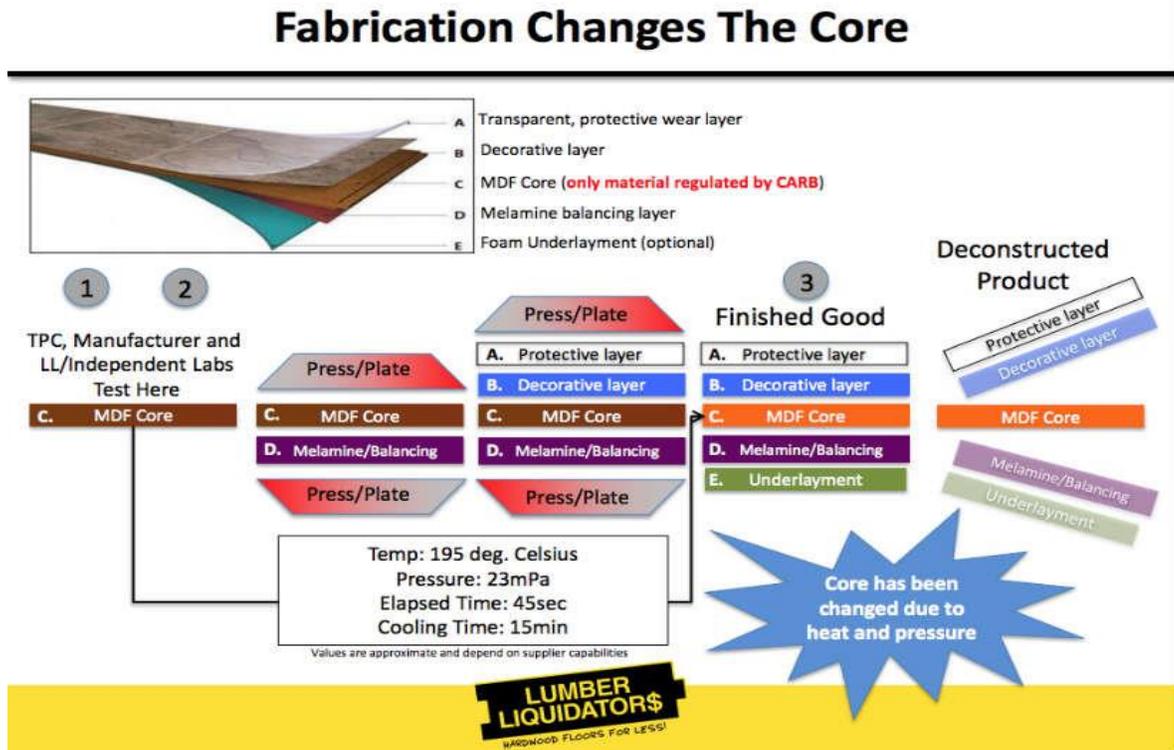
13 17. As set forth in greater detail below, the Laminates comprise a single
14 product, which are substantially similar in every way material to the claims
15 presented herein. The differences among each model of the Laminates are primarily
16 cosmetic—designed to meet varying interior decoration preferences 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:



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

25 21. The Laminates are distinguished primarily by aesthetic considerations

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 having to do with the color and wood grain depiction of the decorative layer, the
2 gloss, the width of the boards, and other variables (including thickness) which do
3 not materially affect the durability of the various Laminates.

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

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

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

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

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

20 The asterisk next to “durability” in the above quote references the following
21 note:

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

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

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

27 27. The term “premium” when used in the retail residential laminate

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

1 flooring industry is a reference to—and evaluated by—the relative AC rating of the
2 laminate flooring product.

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

4 29. Lumber Liquidators itself equates its laminates’ AC rating with their
5 durability. On a webpage published by Defendant on its website no later than May
6 7, 2013, at <http://www.lumberliquidators.com/blog/whats-an-ac-rating>, Lumber
7 Liquidators states (emphasis added):

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

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

24 The AC rating levels are designated AC1 through AC5, **each
25 reflecting the product’s application and durability.**

26 . . .

27 **An AC3 for residential use is perfectly adequate. Typically
28 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.

33 31. Additionally, when Lumber Liquidators made express representations
34 regarding the durability, scratch resistance and premium quality of the Laminates on
35 its website, and when it trained its retail store managers and sales staff to describe

1 the Laminates to shoppers as “durable,” “very durable,” “scratch resistant,” “would
2 not scratch,” “would not scratch from pet nails,” “harder than hardwood,” “just as
3 durable as hardwood,” and like representations, it did so based upon its claim that
4 the product met the AC3 industry standard for durability, including wear resistance.

5 **General Residential Laminate Flooring Must Be AC3 Or Better to Be**
6 **Merchantable**

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

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

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

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

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

25 _____
26 ³ [http://www.homedepot.com/b/Flooring-Laminate-Flooring-Laminate-
27 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
28 laminates, Home Depot’s website lists three Shaw products that are shown as having
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 37. In the market for laminate flooring in the United States, in order for
2 laminate residential flooring to pass without objection in the trade for general
3 residential use (including hallways and kitchens), a laminate must meet at least the
4 AC3 durability standard.

5 **Lumber Liquidators’ Responsibility for Marketing Defective Laminates**

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

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

18 40. Sullivan, Lynch, Schlegel, and Terrell are individual defendants in a
19 nationwide class action alleging that each of them and the company committed
20 securities fraud in violation, *inter alia*, of Section 10(b) of the Securities Exchange
21 Act of 1934, 15 U.S. Code § 78j, and SEC Rule 10b-5 promulgated thereunder. *In re*
22 *Lumber Liquidators Holdings, Inc. Securities Litigation*, Case No. 4:13-cv-00157-
23 (E.D. Va.). An element of a Section 10(b) securities fraud action is “scienter,”
24 defined as having either an intent to deceive or having been reckless in the making
25 of false or misleading representations, or with respect to an omission of material
26 fact.

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

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

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

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

12 45. Lumber Liquidators obtained steep discounts from the Chinese mills
13 that manufactured the Laminates. After receiving these discounts, Lumber
14 Liquidators continued to represent to its customers that the Laminates complied with
15 all regulatory and applicable industry standards, including notably the standards for
16 formaldehyde emissions established by the California Air Resources Board (“CARB
17 2”) and the European AC3 durability standard. Lumber Liquidators was selling
18 substandard laminates as premium products, thereby inflating its margins.

19 46. Based on Lynch’s and Schlegel’s prior experience in sourcing products
20 from China and on widespread industry knowledge by American companies
21 sourcing products there, Lumber Liquidators knew, or recklessly disregarded, that
22 negotiating steep price discounts with Chinese manufactures ran a high risk of such
23 manufacturers cutting corners to reduce manufacturing costs in order to maintain
24 margin or profits, regardless of the technical requirements of Lumber Liquidators’
25 supply contracts and product specifications.

26 47. In March 2015, the CBS News program “60 Minutes” broadcast the
27 findings of its extensive investigation, which included hidden on camera interviews
28 of several plant managers at Lumber Liquidators’ Chinese suppliers, revealing that

1 30 out of the 31 boxes of Laminates purchased in the United States by CBS did not
2 comply with the CARB 2 standard as represented on Lumber Liquidators’ website
3 and on its Dream Home product labels.

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

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

13 50. On December 21, 2015, Judge Arenda L. Wright Allen of the United
14 States District Court for the Eastern District of Virginia entered a ruling denying
15 Lumber Liquidators’, Sullivan’s, Lynch’s, and Schlegel’s motions to dismiss the
16 security fraud claims, finding that the allegations met the heightened pleading
17 standards for scienter set forth in the Private Securities Litigation Reform Act of
18 1995. The court did so in part based upon the allegations in the Consolidated
19 Amended Complaint for violation of the Federal Securities Laws in the above-
20 reference case, summarized above, concerning Lumber Liquidators’ “sourcing
21 initiatives” and “line reviews” by Lynch and Schlegel, and the Company’s allegedly
22 false explanations of the nature of its elevated margins for the Laminates, based
23 upon the sale of cheaper, non-CARB Phase 2 compliant Laminates.

24 51. Similar to the formaldehyde non-compliance of the Laminates (which
25 is not the basis of any claims made in this action), Lumber Liquidators’ Chinese
26 suppliers have the capacity to manufacture AC3 laminate flooring, but it is more
27 expensive to do so (versus manufacturing AC2, AC1, or laminates that fail even the
28 AC1 standard, such as the Laminates). This is because the incorporation of more

1 resilient wear layers is more expensive.

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

7 53. In a “limited warranty” that Lumber Liquidators contends it extended
8 to Plaintiff and all putative Class Members in conjunction with their purchases of
9 the St. James, Ispiri, Kensington Manor, and Nirvana lines of Dream Home brand
10 Laminates, Lumber Liquidators states:

11 Each board is meticulously inspected throughout the manufacturing
12 process to make sure it complies with [St James’s] unwavering
 standards.

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

15 54. In its limited warranties for the Laminates, Lumber Liquidators states
16 that the Laminates are “free of defects.”

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

20 **Defendant’s Website and Other Misrepresentations and Omissions**

21 56. When researching a Laminate purchase on the Lumber Liquidators’
22 website, an individual must visit a minimum two pages shortly before purchasing
23 Lumber Liquidators’ product:

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

27 b. a product-specific page, accessed by clicking on an image or
28 name shown on the Laminates Landing Page, that provided more particular

1 specification for each Laminate product.

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

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

5 b. "Very scratch-resistant."

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

8 59. Defendant's website advertised that the Laminates, including the "St.
9 James Collection", the "Kensington Manor Collection", the "Nirvana Collection"
10 and the "Ispiri Collection" all have an AC rating of "AC3".

11 60. Defendant also represents on its website that the Nirvana Collection
12 comes with a "25 year warranty."

13 61. Defendant also represents on its website that the St. James Collection is
14 "very durable" and comes with a "30 year warranty."

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

18 63. Defendant also represents on its website that its Ispiri Collection has
19 certain superior qualities and ingredients, including: "With its new laminate
20 manufacturing process called Liquid Oxide High Definition technology the Ispiri
21 Collection has raised the bar on . . . durability." Further, Defendant's website
22 represents the "Ispiri Collection's Advantages" include an AC rating of AC3 and a
23 30 year warranty.

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

27 65. These employees are encouraged and trained to use Lumber
28 Liquidators product descriptions contained on Defendants' website, including the

1 Laminate Landing Page and product-specific pages for the Laminates, to describe
2 the Laminates' characteristics and qualities.

3 66. As set forth more particularly below, these employees systematically
4 told Plaintiff and other customers that the Laminates were "very durable," "just as
5 durable as U.S.-made laminates," "scratch-resistant," "more durable than
6 hardwood," "harder than hardwood," and that they "would not scratch," "wood not
7 scratch from pet nails," and would "hold up" to pets. These representations were
8 made to Plaintiff and to putative Class Members based upon the Laminates' claimed
9 AC3 compliance.

10 67. Defendant, and its employees, failed to disclose to Plaintiff and to each
11 putative Class Member that the Laminates were not AC3 compliant, were not
12 durable, were not scratch-resistant, and would not resist fading, staining, and the
13 other problems alleged herein relating to the defect.

14 68. On page 1 of its invoices provided to Plaintiff at the time of sale,
15 Lumber Liquidators states that the Kensington Manor Dream Home Laminate
16 comes with a "30 year warranty." There is no reference on page one of the invoices
17 to a "limited warranty," and no indication of any limitation to the warranty on this
18 page.

19 69. The subsequent disclaimer appearing on page 2 of Plaintiff's invoices,
20 is not conspicuous, is vague and does not mention the word "merchantability" as
21 required under the Uniform Commercial Code as a requirement to disclaim the
22 implied warranty of merchantability.

23 70. Lumber Liquidators' purported "limited warranties" were not presented
24 to or shown to Plaintiff or putative Class Members at the time of the sale.

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

28 ///

1 Why Lumber Liquidators Representations Are False

2 72. Lumber Liquidators’ representations that the Laminates meet the
3 industry AC3 standard are false because the Laminates do not meet this standard.

4 73. Lumber Liquidators’ representations that the Laminates are “durable,”
5 “very durable,” “very scratch-resistant,” “scratch-resistant,” and “harder than
6 hardwood” and the oral representations listed above and more particularly below are
7 false because the Laminates do not have these qualities, on account of the defects
8 alleged herein.

9 Plaintiff’s Discovery of the Durability Defect

10 74. Over the past months, a sample of Plaintiff’s laminate flooring product
11 was tested by a certified and accredited laboratory. The testing method used by the
12 lab is the same standardized test method used worldwide throughout the flooring
13 industry to determine the AC rating of laminate flooring products. The laminate
14 flooring Plaintiff purchased failed to meet the AC3 rating, which was advertised by
15 Lumber Liquidators.

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

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

24 77. Lumber Liquidators personnel did not inform Plaintiff that his
25 durability problems, as set forth below, resulted from the failure of the Laminate to
26 meet the claimed AC3 industry standard.

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28 ///

1 78. 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 79. 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 80. 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 Plaintiff and putative Class Members.

16 81. Plaintiff 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 82. 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 83. Plaintiff seeks to represent himself and all similarly-situated persons
6 who have purchased Dream Home laminate flooring products from Defendant in the
7 United States for his Third Cause of Action, as well as all similarly situated persons
8 who have purchased Dream Home laminate flooring in Wisconsin for the First,
9 Second, Fourth, and alternatively Third Causes of Action, at any time from the date
10 the products were first placed into the marketplace through the date last sold to the
11 public, reportedly in May 2015 (the "putative class"). Plaintiff seeks damages and
12 equitable relief on behalf of the Class, which relief includes but is not limited to
13 restitution to the Plaintiff and Class Members of the full amount of the purchase
14 price and out-of-pocket expense paid to install their laminate flooring, the cost or
15 replacing the defective flooring, injunctive relief and declaratory relief; and any
16 additional relief that this Court determines to be necessary to provide complete relief
17 to Plaintiff and the Class.

18 **PARTIES**

19 84. Plaintiff Allen Myers resides in Eau Claire, Wisconsin.

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

24 **JURISDICTION AND VENUE**

25 86. This Court has subject matter jurisdiction over this action under the
26 Class Action Fairness Act of 2005, 28 U.S.C. §1332(d)(2) ("CAFA"), in that the
27 matter is a class action wherein the amount in controversy exceeds the sum or value
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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 87. 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 Wisconsin and it has intentionally availed itself of the laws and markets of
6 Wisconsin through the promotion, marketing, distribution and sale of its laminate
7 wood flooring products.

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

12 **PARTICULARIZED FACTUAL ALLEGATIONS**

13 89. On or about May 17, 2014 and June 13, 2014, Plaintiff Allen Myers
14 purchased Kensington Manor 12mm Golden Teak laminate flooring from Lumber
15 Liquidators' store # 1231 located in Woodbury, Minnesota. Barely a year after
16 purchase, the laminate has worn through badly. Prior to his purchase, Allen Myers
17 spoke to a store manager and stated that he had pets and was seeking a durable floor
18 suitable for pets. The store manager stated that the floor was extremely durable and
19 would withstand animal claws. Based upon these representations, Plaintiff made the
20 decision to purchase this product. Plaintiff has used Defendant's product as it was
21 intended to be used for normal residential traffic, but the flooring does not withstand
22 normal wear and tear during normal use and has failed and deteriorated long before
23 its advertised useful life. Plaintiff would not have purchased the Kensington Manor
24 Golden Teak laminate product had he known that it was defective, not durable, and
25 had an inferior ability to withstand abrasion.

26 90. On the two occasions he purchased his flooring, Mr. Myers received
27 invoices. The first page of the invoices mentioned a "30 year warranty." The second
28

1 page of the invoices recited a disclaimer of all other implied and express warranties,
2 but did not mention the warranty of merchantability.

3 **CLASS ALLEGATIONS**

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

9 92. Class Definition: Without prejudice to later revisions, the Class
10 Plaintiff seeks to represent is composed of:

- 11 a. All persons in the United States who purchased the Laminates
12 from Defendant. This proposed class is only for Plaintiff's Third Cause
13 of Action; and,
- 14 b. All persons who purchased in Wisconsin the Laminates from
15 Defendant. This proposed class includes Plaintiff's First, Second, and
16 Fourth Causes of Action, and alternatively includes Plaintiff's Third
17 Cause of Action.

18 93. Excluded from the Class are governmental entities, Defendant, its
19 affiliates and subsidiaries, Defendant's current and former employees, officers,
20 directors, agents, representatives, their family members, and the members of the
21 Court and its staff.

22 94. Throughout discovery in this litigation, Plaintiff may find it appropriate
23 and/or necessary to amend the definition of the Class. Plaintiff reserves the right to
24 amend the Class definitions if discovery and further investigation reveal that the
25 Class should be expanded or otherwise modified.

26 95. Class Members Are Numerous: While Plaintiff does not know the
27 exact number of Class Members, Plaintiff is informed and believes that there are
28 thousands of Class Members. The precise number of members can be ascertained

1 through discovery, which will include Defendant's sales, service and other business
2 records. The Class is so numerous that the individual joinder of all members of the
3 Class is impractical under the circumstances of this case.

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

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

1 97. Typicality: Plaintiff’s claims are typical of the claims of the members
2 of the proposed class. Plaintiff and all Class Members have been injured by the
3 same wrongful practices of Defendant. Defendant made the same uniform
4 representations on its website and on the labels affixed to their product packaging.
5 Plaintiff is informed and believes that these representations were made by
6 Defendant nationally and throughout Wisconsin, on its website, and other forms of
7 advertisements which were identical. Plaintiff’s claims arise from the same practices
8 and conduct that give rise to the claims of all Class Members and are based on the
9 same legal theories.

10 98. Adequacy: Plaintiff will fairly and adequately represent and protect the
11 interests of the Class in that they have no disabling conflicts of interest that would
12 be antagonistic to those of the other members of the Class. Plaintiff seeks no relief
13 that is antagonistic or adverse to the members of the Class and the infringement of
14 the rights and the damages they have suffered are typical of all other Class
15 Members. Plaintiff has retained attorneys experienced in consumer class actions and
16 complex litigation as counsel.

17 99. Superiority: The disposition of Plaintiff’s and proposed Class Members’
18 claims in a class action will provide substantial benefits to both the parties and the
19 Court. The nature of this action and the nature of laws available to Plaintiff and the
20 Class make the use of the class action device a particularly efficient and appropriate
21 procedure to afford relief to Plaintiff and the Class for the wrongs alleged because:

- 22 a. The individual amounts of damages involved, while not
23 insubstantial, are such that individual actions or other individual
24 remedies are impracticable and litigating individual actions
25 would be too costly;
- 26 b. If each Class Member was required to file an individual lawsuit,
27 the Defendant would necessarily gain an unconscionable
28 advantage since they would be able to exploit and overwhelm the

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- limited resources of each individual Class Member with vastly superior financial and legal resources;
- c. The costs of individual suits could unreasonably consume the amounts that would be recovered;
 - d. Given the size of individual proposed Class Members' claims and the expense of litigating those claims, few, if any, proposed Class Members could afford to or would seek legal redress individually for the wrongs Defendant committed against them 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. Plaintiff knows 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 Plaintiff 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.

1 Plaintiff and the proposed Class Members had no meaningful alternative to
2 accepting Defendant's attempted pro forma limitation of the duration of any
3 warranties.

4 107. Defendant received notice that the Laminates were not merchantable
5 through Plaintiff's written complaints to Lumber Liquidators, his correspondence,
6 its own product testing, its "robust Quality Assurance program," numerous customer
7 complaints, and its customer service and warranty operations, and through a putative
8 class action filed in Los Angeles well before Plaintiff and proposed Class Members
9 filed suit. Defendant has had adequate and reasonable opportunity to cure its
10 breaches but has failed to do so.

11 108. As a result, Plaintiff and all proposed Class Members have been
12 damaged in, *inter alia*, the amount they paid to purchase and replace Defendant's
13 un-merchantable laminate flooring.

14 **SECOND CAUSE OF ACTION**

15 **Fraudulent Concealment**

16 109. Plaintiff individually and on behalf of all others similarly situated,
17 adopts and incorporates by reference all foregoing allegations as though fully set
18 forth herein.

19 110. Defendant represented on its website that its Nirvana line of laminate
20 flooring products have an Abrasion Class rating of AC3 and a "25 year warranty."
21 Defendant also represented on its website that its St. James Collection line of
22 laminate flooring products is "very durable" and the "St. James Collection's
23 Advantages" include an Abrasion Class rating of "AC3" and a "30 Year Warranty."
24 Defendant also represented that its Kensington Manor Collection line of laminate
25 flooring products is a "premium 12 mm" laminate product line and that the
26 "Kensington Manor Collection Advantages" include an AC rating of AC3 and a "30
27 Year Warranty." Defendant also represented on its website that its Ispiri Collection
28 line of laminate flooring "has raised the bar on . . . durability." Defendant's website

1 also represents the "Ispiri Collection's Advantages" include an AC rating of AC3
2 and a 30 Year Warranty. Further, the product packaging of all of Defendant's Dream
3 Home brand of laminate flooring states it comes with a "30 Year Warranty."

4 111. Plaintiff is informed and believes that Lumber Liquidators knew, or
5 recklessly disregarded that the Laminates were defective based upon hundreds of
6 complaints posted by Lumber Liquidators' customers on websites, including but not
7 limited to, www.ths.gardenweb.com, www.consumeraffairs.com,
8 www.complaintlist.com, www.my3cents.com and others, which describe scratching,
9 bubbling, delaminating, peeling and curling of Lumber Liquidators' Dream Home
10 laminate flooring identical to the damages suffered by Plaintiff herein.

11 112. For example, on June 1, 2005, "kitchenlover" posted the following
12 question on www.ths.gardenweb.com:

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

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

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

18 114. On or about January 25, 2007, "sammyswife" posted the following
19 another response on www.ths.gardenweb.com:

20 "I HATE this flooring!! Does anyone have the Dream Home parent company
21 info? LL is no help! The salesman incorrectly told us how to install it. After a year
22 of it being down, we are ripping it up because it looks horrible! It chips and peels
23 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!"

24 115. On or about June 12, 2011 "grandpe02" posted his/her response on
25 www.ths.gardenweb.com:

26 "I recently purchased (*sic*) 1000sq ft. of dream home French oak. Big
27 mistake. LL was no help at all. The boards were very warped and chipped after
28 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..."

1 116. On or about April 11, 2013, "poorchoice" posted his response on
2 www.ths.gardenweb.com as follows:

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

13 117. On or about November 4, 2013, "KDraper" posted his response as
14 follows on www.ths.gardenweb.com:

15 "We had this product professionally installed. HATE it. Six months after it
16 was put in we started seeing areas delaminate. Some were high traffic some were
17 low/no traffic...We contacted the company through LL. Their answer was we our
18 area was either too wet or too dry and it wasn't their problem that we had almost
19 1000sf of this flooring that looked like crap. I will never use LL again...."

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

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

27 118. On www.mythreecents.com, "AllenB" wrote on November 23, 2009:

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

119. 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."

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

4 "If we had someone take photos of the flooring it would have been in support
5 of your warranty as a need to hold a manufacturer accountable for quality should a
6 defect be found. Flooring will react to changing conditions and we not the invoice,
7 warranty and installation instructions, as well as some boxes also note requirements
8 for maintaining ideal conditions. The problem is most consumers don't read this
9 information until a problem occurs...a little too late, then expect LL to compensate
10 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."

11 121. On www.consumeraffairs.com, Lana of Trabuco Canyon, CA wrote on
12 August 6, 2015:

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

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

23 122. On www.consumeraffairs.com Will of Sandia Park, NM wrote on June
24 10, 2015:

25 "We purchased America's Mission Olive 12mm laminate flooring from
26 Lumber Liquidators in December of 2014 and had it installed throughout our home
27 (except bathrooms) in our new remodel. We chose this floor after speaking with
28 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

1 immediately, the surface of the product would start to peel away from the backing.
2 And anytime anything was dropped on the floor they would chip.

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

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

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

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

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

123. Plaintiff is informed and believes 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

1 webpage for the Dream Home line of laminate flooring products, implying that
2 these products are durable enough to withstand scratches from pet traffic.

3 124. Defendant concealed and suppressed material facts concerning the
4 durability of its Dream Home laminate flooring products. Defendant failed to
5 disclose that its Dream Home laminate flooring products were defective, not AC3
6 rated, not "very durable", were not "premium" and would scratch, fade, stain,
7 bubble, delaminate and curl during ordinary residential foot and pet traffic. As
8 alleged above, the Laminates were defective, were of a lesser quality than advertised
9 and had an inferior ability to withstand abrasion than advertised. These facts were
10 not known to Plaintiff and the proposed Class at the time of their purchase. These
11 omitted and concealed facts were material because they directly impact the useful
12 life and durability of the products.

13 125. Alternatively, Defendant intentionally failed to disclose the fact that the
14 Laminates were defective in that they were not fit for their intended use, a fact only
15 known to Defendant. Plaintiff and the proposed Class could not have discovered it
16 through the exercise of reasonable diligence. Plaintiff is informed and thereon
17 believes that Defendant knew of the durability defects of the Laminates from its
18 product testing and Defendant's self-proclaimed "robust Quality Assurance
19 program" performed prior to placing the laminate flooring products into the stream
20 of commerce.

21 126. Plaintiff and the proposed Class reasonably relied on Defendant's
22 representations. Defendant knew or ought to have known that Plaintiff and the
23 proposed Class relied and/or would have reasonably relied upon Defendant to sell
24 laminate wood flooring products in which the entire lifetime of the goods could be
25 fully used without prematurely becoming damaged and/or failing. Defendant's
26 knowledge that its laminate flooring products were not fit for their intended use,
27 combined with Defendant's knowledge that Plaintiff and the proposed Class relied
28 upon Defendant to communicate the true durability, or lack thereof, of its laminate

1 flooring products creates a legal obligation on Defendant's part to disclose to
2 Plaintiff and the Class these facts. Defendant is in a superior position to know the
3 truth about, and the nature of, the durability and useful life of its laminate flooring
4 products.

5 127. Defendant intended to deceive Plaintiff and the Class by failing to
6 disclose that its laminate flooring products are not fit for their intended purpose,
7 will fail prematurely long before the end of the 25 and 30 year warranty periods,
8 were not "very durable" and do not have the AC3 rating.

9 128. Defendant's failure to disclose these facts was material. Plaintiff and
10 the proposed Class would not have purchased their laminate flooring had they
11 known that their laminate flooring products were not fit for their intended use,
12 would prematurely fail long before the end of the 25 and 30 year warranty periods,
13 were not "very durable" and did not have an AC rating of AC3.

14 129. Plaintiff and the proposed Class were harmed. As a proximate result of
15 Defendant's conduct as set forth in this cause of action, Plaintiff and the proposed
16 Class will now be required to remove and replace their defective and damaged
17 laminate flooring.

18 130. Defendant's concealment was a substantial factor in causing that harm.

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

3 **THIRD CAUSE OF ACTION**

4 **Violation of The Magnuson-Moss Warranty Act**

5 **15 U.S.C. §§ 2301, et seq.**

6 **(On behalf of the National Class, or alternatively, the Wisconsin Class)**

7 132. Plaintiff, individually and on behalf of all others similarly situated,
8 adopts and incorporates by reference all foregoing allegations as though fully set
9 forth herein.

10 133. Plaintiff brings this claim on behalf of himself and on behalf of each
11 and every member of the proposed Class.

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

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

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

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

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

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28 ///

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

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

9 141. Defendant further violated 15 U.S.C. §2302 by failing to make a full
10 and conspicuous disclosure of the terms and conditions of the 25 and 30 year
11 warranties advertised on Defendant's website and on page 1 of the Invoices in the
12 product description of Laminates sold to Plaintiff and the Members of the proposed
13 Class.

14 142. Lumber Liquidators breached its warranties to Plaintiff and the
15 members of the proposed Class because these written affirmations of fact or written
16 promises made in connection with the sale of the Laminates relate to the nature of
17 the material and affirms or promises that such material will meet a specified level of
18 performance over a specified period of time and in fact fail to do so. 15 U.S.C.
19 § 2301(6)(A).

20 143. Lumber Liquidators' breach deprived Plaintiff and the members of the
21 proposed Class of the benefit of their bargain.

22 144. The amount in controversy of Plaintiff's individual claim exceeds the
23 value of \$25. In addition, the amount in controversy exceeds the value of \$50,000
24 (exclusive of interest and costs) computed on the basis of all claims to be
25 determined in this action.

26 145. Before filing this action, Plaintiff notified Defendant of its breach of
27 written warranties and of its violations of the Magnuson-Moss Warranty Act, and
28 Defendant has failed to adequately cure those breaches. Additionally, Defendant

1 was notified of its breaches, *inter alia*, through a putative class action filed in Los
2 Angeles, California. Defendant has had adequate and reasonable opportunity to cure
3 its breaches of or fulfill its warranty obligations, but has failed to do so.

4 146. Pursuant to the provisions of 15 U.S.C. § 2310(e), in the case of a class
5 action (as is the case here), Plaintiff will provide Defendant with further notice and
6 reasonable opportunity to cure, once the representative capacity of the named
7 Plaintiff has been established in the application of Rule 23 of the Federal Rules of
8 Civil Procedure.

9 147. As a direct and proximate result of Defendant's breaches of its written
10 and implied warranties, Plaintiff and the other members of the proposed Class
11 sustained damages in amounts to be determined at trial.

12 **FOURTH CAUSE OF ACTION**

13 **Violation of Wisconsin Deceptive Trade Practices Act**

14 **WIS. STAT. § 100.18**

15 **(On Behalf of Plaintiff and Wisconsin Class Members)**

16 148. Plaintiff, individually and on behalf of all others similarly situated,
17 adopts and incorporates by reference all foregoing allegations as though fully set
18 forth herein.

19 149. The conduct described above and throughout this Complaint took place
20 within the State of Wisconsin and constitutes unfair business practices in violation
21 of Wisconsin Deceptive Trade Practices Act, 100.18 (hereinafter, "DTPA").

22 150. The DTPA applies to the claims of Plaintiff and all Wisconsin Class
23 Members because the conduct which constitutes violations of the DTPA by the
24 Defendant occurred within the State of Wisconsin.

25 151. Wisconsin's DTPA provides in relevant part: "No...corporation...,
26 with intent to sell, distribute, increase the consumption of or in any wise dispose of
27 any real estate, merchandise, securities, employment, service, or anything offered by
28 such . . . corporation . . . , directly or indirectly, to the public for sale, . . . shall make,

1 publish, disseminate, circulate, or place before the public, . . . in this state, . . . an
2 advertisement, announcement, statement or representation of any kind to the public
3 relating to such . . . sale . . . of such real estate, merchandise, securities, service or
4 employment . . . , which advertisement, announcement, statement or representation
5 contains any assertion, representation or statement of fact which is untrue, deceptive
6 or misleading.”

7 152. Lumber Liquidators is a “corporation” under the meaning of the DTPA.

8 153. Plaintiff and Wisconsin Class Members constitute the “public” under
9 the meaning of the DTPA.

10 154. Lumber Liquidators’ Dream Home laminate flooring constitutes
11 “merchandise” under the meaning of the DTPA.

12 155. Lumber Liquidators engaged in untrue, deceptive or misleading
13 statements of fact in violation of the DTPA when, in selling and advertising the
14 Dream Home laminate flooring, Lumber Liquidators advertised the flooring to have
15 an Abrasion Rating of AC3 when Lumber Liquidators knew that the flooring had a
16 lower AC rating which result in a lower quality and durability of the product.

17 156. Lumber Liquidators engaged in untrue, deceptive or misleading
18 statements of aforementioned material facts with the intent that others, such as
19 Plaintiff, Plaintiff’s builder, Class Members, Class Members’ builders, and/or the
20 general public would rely upon the untrue, deceptive or misleading statements of
21 material fact regarding the Abrasion Rating and purchase the Lumber Liquidators’
22 flooring containing a lower Abrasion Rating than represented.

23 157. Plaintiff, Plaintiff’s builders, Class Members, and/or Class Members’
24 builders would not have purchased the Dream Home laminate flooring had they
25 known or become informed of the true lower Abrasion Rating of the flooring.

26 158. Lumber Liquidators untrue, deceptive or misleading statement of
27 material fact regarding the Abrasion Rating and “30-year Warranty” as alleged
28 herein constitute fraudulent misrepresentations within the meaning of the DTPA.

1 159. Lumber Liquidators has violated the DTPA by fraudulently
2 misrepresenting the quality of its Dream Home laminate flooring.

3 160. Lumber Liquidators either knew, or should have known, that the Dream
4 Home laminate flooring did not have an Abrasion Rating of AC3 as represented by
5 Lumber Liquidators.

6 161. Lumber Liquidators knew that, at the time the Dream Home laminate
7 flooring left Lumber Liquidators' control, the flooring had a lower Abrasion Rating
8 than represented by Lumber Liquidators as described herein resulting in the floors
9 having a lesser quality and durability than represented.

10 162. As a direct and proximate cause of the violation of the DTPA,
11 described above, Plaintiff and members of the Class have been injured in that they
12 have purchased homes or other structures with the Dream Home laminate flooring
13 based on nondisclosure of material facts alleged above. Had Plaintiff and Class
14 Members known the lower Abrasion Rating and quality of the flooring used on their
15 structures, they would not have purchased their structures, or would have paid a
16 lower price for their structures.

17 163. Lumber Liquidators engaged in untrue and deceptive methods of
18 advertising and trade practices in conducting their businesses, which violates the
19 DTPA. This unlawful conduct is continuing, with no indication that Lumber
20 Liquidators will cease.

21 164. As a direct and proximate result of Lumber Liquidators' unfair and
22 deceptive methods of advertising and trade practices, Plaintiff and the other
23 members of the Class will suffer damages, which include, without limitation, costs
24 to inspect, repair or replace their Dream Home laminate flooring and other property,
25 in an amount to be determined at trial.

26 165. As a direct and proximate result of Lumber Liquidators' violation of
27 WIS. STAT. § 100.18, Plaintiff and the Class Members have suffered and continue
28 to suffer damages. Plaintiff and the Class Members are entitled to compensatory

1 damages, equitable and declaratory relief, punitive damages, costs and reasonable
2 attorneys' fees.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff, on behalf of himself and all other individuals
5 similarly situated, requests the following relief:

6 A. An order certifying this action as a class action under F.R.C.P. 23,
7 defining the Class as requested herein, appointing the undersigned as
8 Class counsel, and finding that Plaintiff is a proper representative of the
9 proposed Class;

10 B. Injunctive relief requiring Defendant to inform Plaintiff and members
11 of the proposed Class that:

- 12 • Lumber Liquidators has not effectively disclaimed the implied
13 warranty of merchantability, and that the Laminates continue to
14 be subject to such implied warranties;
- 15 • the warranty limitations contained in Defendant's "limited
16 warranties" are unenforceable;
- 17 • Plaintiff and proposed Class members are entitled to restitution,
18 including reimbursement for any installation, removal, and
19 replacement costs; and that
- 20 • Plaintiff and proposed Class members may be entitled to other
21 relief as awarded by this Court;

22 C. Restitution of all monies Defendant received from Plaintiff and the
23 proposed Class;

24 D. Damages to be determined at trial including actual, compensatory, and
25 consequential damages incurred by Plaintiff and proposed Class
26 Members;

27 E. Punitive damages where allowed;

28 F. An award of reasonable attorney's fees and costs; and

