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14 Attorneys for Plaintiffs And The Proposed Class

15
 16 UNITED STATES DISTRICT COURT
 17 CENTRAL DISTRICT OF CALIFORNIA

18 JEREMY SESTI and BRITTNEY
 19 SESTI, individually and on behalf of all
 others similarly situated,

20 Plaintiffs,

21 vs.

22
 23 LUMBER LIQUIDATORS, INC., a
 24 Delaware corporation,

25 Defendant.

Case No. 2:16-cv-06702

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

DEMAND FOR JURY TRIAL

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

11 INTRODUCTION

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

26 2. Lumber Liquidators is one of the largest specialty retailers of hardwood
27 flooring and laminates in the United States. The Company sells directly to
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1 homeowners or to contractors acting on behalf of homeowners through its network
2 of approximately 300 retail stores in 46 states, including Tennessee.

3 **GENERALIZED FACTUAL ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

27 15. The failure of the Laminates to meet the industry AC3 standard as
28 claimed leads to a host of problems for consumers and Plaintiffs as set forth below,

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

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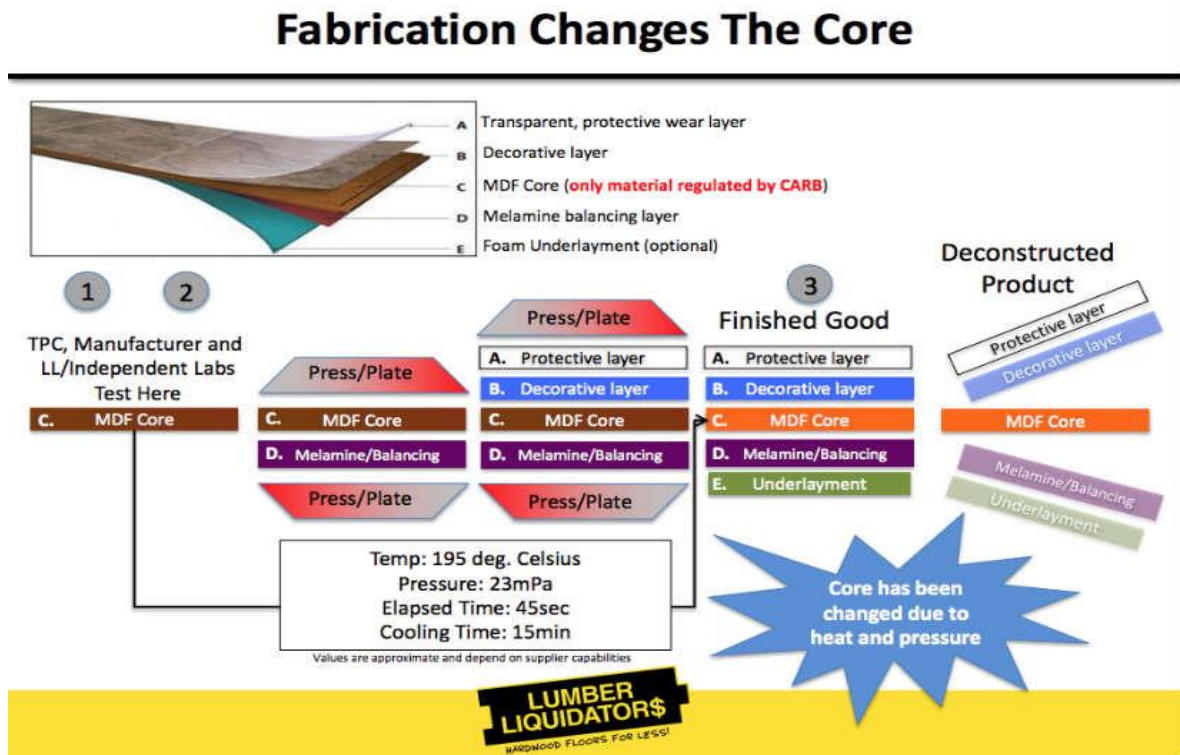
c. On top of the core is a decorative layer (photograph paper) of wood grain or other pattern; and

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

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

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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
create a highly durable and wear-resistant surface that provides twice
the wear and twice the durability* versus ordinary laminates.

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

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

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

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

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

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

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

10 29. Lumber Liquidators itself equates its laminates’ AC rating with their
11 durability. On a webpage published by Defendant on its website no later than May
12 7, 2013, at <http://www.lumberliquidators.com/blog/whats-an-ac-rating>, Lumber
13 Liquidators states (emphasis added):

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

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

 The AC rating levels are designated AC1 through AC5, **each
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.**

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

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

12 **General Residential Laminate Flooring Must Be AC3 Or Better to Be**
13 **Merchantable**

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

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

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

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

28 36. Home Depot’s website offers some 291 laminate flooring models in its

1 “residential” or “commercial-residential” lines, all of which have a rating of AC3 or
2 higher. Home Depot’s website offers no laminate flooring with a durability rating
3 under AC3.³

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

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

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

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

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

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

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

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

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

20 45. Lumber Liquidators obtained steep discounts from the Chinese mills
21 that manufactured the Laminates. After receiving these discounts, Lumber
22 Liquidators continued to represent to its customers that the Laminates complied with
23 all regulatory and applicable industry standards, including notably the standards for
24 formaldehyde emissions established by the California Air Resources Board (“CARB
25 2”) and the European AC3 durability standard. Lumber Liquidators was selling
26 substandard laminates as premium products, thereby inflating its margins.

27 46. Based on Lynch’s and Schlegel’s prior experience in sourcing products
28 from China and on widespread industry knowledge by American companies

1 sourcing products there, Lumber Liquidators knew, or recklessly disregarded, that
2 negotiating steep price discounts with Chinese manufactures ran a high risk of such
3 manufacturers cutting corners to reduce manufacturing costs in order to maintain
4 margin or profits, regardless of the technical requirements of Lumber Liquidators’
5 supply contracts and product specifications.

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

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

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

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

1 initiatives” and “line reviews” by Lynch and Schlegel, and the Company’s allegedly
2 false explanations of the nature of its elevated margins for the Laminates, based
3 upon the sale of cheaper, non-CARB Phase 2 compliant Laminates.

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

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

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

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

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

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

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

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1 Defendant's Website and Other Misrepresentations and Omissions

2 56. When researching a Laminate purchase on the Lumber Liquidators'
3 website, an individual would visit a minimum of two pages shortly before making a
4 purchase:

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

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

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

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

14 b. "Very scratch-resistant."

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

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

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

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

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

27 63. Defendant also represents on its website that its Ispiri Collection has
28 certain superior qualities and ingredients, including: "With its new laminate

1 manufacturing process called Liquid Oxide High Definition technology the Ispiri
2 Collection has raised the bar on . . . durability." Further, Defendant's website
3 represents the "Ispiri Collection's Advantages" include an AC rating of AC3 and a
4 30 year warranty.

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

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

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

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

22 68. On page 1 of its invoice for the Dream Home St. James Vintner's
23 Reserve 12mm laminate provided to Plaintiffs at the time of sale, Lumber
24 Liquidators states that the Laminate comes with a "30 Year Warranty." There is no
25 reference on page 1 of the invoice to a "limited warranty," and no indication of any
26 limitation to the warranty on this page. The second page of the invoice recited a
27 disclaimer of all implied and express warranties. However, the second page of the
28 invoice included a signature line that was left blank.

1 69. The subsequent disclaimer on Plaintiffs' invoice is not conspicuous and
2 is vague.

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 **Plaintiffs' Discovery of the Durability Defect**

17 74. Over the past months, a sample of the St. James Vintner's Reserve
18 laminate product was tested by a certified and accredited laboratory. The testing
19 method used by the lab is the same standardized test method used worldwide
20 throughout the flooring industry to determine the AC rating of laminate flooring
21 products. The type of laminate flooring Plaintiff purchased failed to meet the AC1
22 rating, the lowest abrasion.

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

21 81. Plaintiffs and putative Class Members cannot reasonably be charged
22 with notice of the defect prior to the discovery of widespread supplier problems
23 relating to Lumber Liquidators' Chinese-sourced Laminates as a result of the
24 formaldehyde controversy in 2015.

25 82. Defendant sells the Dream Home line of laminate flooring products,
26 and others, at Lumber Liquidators' 37 retail stores in California, 12 stores in North
27 Carolina, 28 stores in Texas, 13 stores in New Jersey, 26 stores in Florida, 3 stores
28 in Nevada, 8 stores in Connecticut, 10 stores in Georgia, 16 stores in Illinois, 3

1 stores in Iowa, 8 stores in Indiana, 4 stores in Kentucky, 5 stores in Louisiana, 10
2 stores in Massachusetts, 10 stores in Maryland, 3 stores in Maine, 10 stores in
3 Michigan, 6 stores in Minnesota, 2 stores in Mississippi, 5 stores in Missouri, 2
4 stores in Nebraska, 19 stores in New York, 13 stores in Ohio, 3 stores in Oklahoma,
5 20 stores in Pennsylvania, 8 stores in South Carolina, 6 stores in Tennessee, 12
6 stores in Virginia, 7 stores in Washington, 5 stores in Wisconsin and 3 stores in
7 West Virginia, and 5 stores in Alabama. Lumber Liquidators also sells these
8 laminate floor products to consumers through the internet at
9 www.lumberliquidators.com and through telephone sales at 1-800-HARDWOOD.

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

23 **PARTIES**

24 84. Plaintiffs Jeremy and Brittney Sesti reside in Germantown, Tennessee.

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

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JURISDICTION AND VENUE

86. 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.

87. 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 California and Tennessee and it has intentionally availed itself of the laws and markets of California and Tennessee through the promotion, marketing, distribution and sale of its laminate wood flooring products. Plaintiffs purchased their laminate flooring from Lumber Liquidators in Memphis, Tennessee.

88. 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 Plaintiffs’ 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

89. On or about May 18, 2013, Plaintiffs Jeremy and Brittney Sesti purchased St. James Vintner’s Reserve 12mm laminate flooring from Lumber Liquidators’ store #1071 located in Memphis, Tennessee. Lumber Liquidator’s website represented “At 12mm, the St. James Collection is very durable and comes with a 30 year warranty!” The website also represented the “St. James Collection’s Advantages” included an AC rating of 3. The landing page immediately before the page for St. James Vintner’s Reserve laminate product stated that Lumber Liquidators’ laminate flooring is “very durable and scratch resistant.” On the day of their purchase, Plaintiffs visited Defendant’s Memphis store and told Defendant’s salesman they were looking for floor which would not scratch from their dog’s claws and would hold up to their granddaughter’s walker and dropping baby toys on

1 the floor. Defendant’s salesman told the Plaintiffs that he had two large dogs at
2 home, that he had Defendant’s laminate flooring installed in his home, and that the
3 floors never sustained any scratches from his pets. Defendant’s salesman also told
4 the Plaintiffs that the laminate flooring was “harder” than hardwood and that
5 hardwood would scratch from pet traffic. Relying upon these representations,
6 Plaintiffs purchased this flooring product from Defendant. However, almost
7 immediately after installation, Plaintiffs noticed scratching and chipping of their
8 flooring. Plaintiffs have used Defendant's product as it was intended to be used for
9 normal residential traffic, but the flooring does not withstand normal wear and tear
10 during normal use and has failed and deteriorated long before its advertised useful
11 life. Laboratory testing on Defendant’s Vintner’s Reserve laminate flooring revealed
12 it only meets the AC1 rating. Plaintiffs would not have purchased the Dream Home
13 St. James Vintner’s Reserve laminate product had they known that it was defective,
14 not durable, and had an inferior ability to withstand chips, scratches and other
15 abrasion.

16 90. At the time they purchased their flooring, Plaintiffs received a two-page
17 invoice for their laminate product. The first page of the invoice mentioned a “30
18 year warranty,” and did not mention any “limited warranty.” The second page of the
19 invoice recited a disclaimer of all other implied and express warranties, but did not
20 mention the warranty of merchantability. The second page of the invoice also
21 included a signature line but it was left blank.

22 **CLASS ALLEGATIONS**

23 91. 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 92. Class Definition: Without prejudice to later revisions, the Class

1 Plaintiffs seek to represent is composed of:

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

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

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

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

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

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

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- 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 Tennessee 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 97. 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 Tennessee, 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 98. 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 seeks 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 99. 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.

22 100. 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.
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FIRST CAUSE OF ACTION

Breach of Implied Warranty

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

6 102. 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.

9 103. 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.

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

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

16 106. 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.

26 107. 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.

4 108. 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**

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

12 110. 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.”

25 111. 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.

4 112. 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?"

7 113. 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...."

11 114. 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!"

17 115. 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..."

22 116. 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
2 through to white in 4 days...."

3 117. 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
7 low/no traffic...We contacted the company through LL. Their answer was we our
8 area was either too wet or too dry and it wasn't their problem that we had almost
9 1000sf of this flooring that looked like crap. I will never use LL again...."

10 118. 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."

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

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

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

27 "In 2007 I bought the Asian Birch Flooring. Within 6 months it started to
28 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."

121. 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

1 to help with repairs, but it sounds like the problem was not with the flooring, but
2 rather some installation or site condition...I'm sorry to hear this lead to some
3 dissatisfaction as the problem would be the same no matter where you shopped; you
4 would most likely pay more elsewhere. Read the information provided – Dan
5 Gordon often provides some good advice as well with his replies – Bob Villa also
6 knows how important it is to read the installation instructions/warranty."

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

"Warranty claim unresolved due to company unresponsiveness spanning 8
months. We noticed some surface chipping away on a little area in the formal living
room that we rarely use. It had been only 2.5 years from purchasing the engineered
wood with a 30 year warranty. We initiated the warranty process with the worst
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.

I researched online regarding warranty claims of customers of Lumber
Liquidators and that it is their reasoning to other customers regarding warranty
claims. Note this is prior to any inspection that Matt came to the conclusion. Rather
insulting when myself and fiancé had to deal with 8 months of delays, avoidance,
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."

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

"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.

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

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

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

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

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

39 125. Defendant concealed and suppressed material facts concerning the
40 durability of its Dream Home laminate flooring products. Defendant failed to
41 disclose that its Dream Home laminate flooring products were defective, were not

1 AC3 rated, were not “very durable,” were not “premium” and would scratch, fade,
2 stain, bubble, delaminate and curl during ordinary residential foot and pet traffic. As
3 alleged above, the Laminates were defective, were of a lesser quality than advertised
4 and had an inferior ability to withstand abrasion than advertised. These facts were
5 not known to Plaintiffs and the proposed Class at the time of their purchase. These
6 omitted and concealed facts were material because they directly impact the useful
7 life and durability of the products.

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

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

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1 128. Defendant intended to deceive Plaintiffs and the Class by failing to
2 disclose that its laminate flooring products are not fit for their intended purpose, will
3 fail prematurely long before the end of the 25 and 30 year warranty periods, were
4 not “very durable” and do not have the AC3 rating.

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

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

14 131. Defendant’s concealment was a substantial factor in causing that harm.

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

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

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

135. 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).

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

137. 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).

138. 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, . . .”

139. 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.”

140. 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).

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

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

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

17 144. Lumber Liquidators’ breach deprived Plaintiffs and the Members of the
18 proposed Class of the benefit of their bargain.

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

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

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

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

9 **FOURTH CAUSE OF ACTION**

10 **Violation of the Tennessee Consumer Protection Act**

11 **Tenn. Code Ann. § 47-18-1**

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

14 150. The Tennessee Consumer Protection Act (the “Act”) provides “[u]nfair
15 or deceptive acts or practices affecting the conduct of any trade or commerce
16 constitute unlawful acts or practices.” Tenn. Code Ann. § 47-18-104.

17 151. Lumber Liquidators is a “person” as defined by Tenn. Code Ann. § 47-
18 18-103(13).

19 152. Plaintiffs are consumers as defined by Tenn. Code Ann. § 47-18-103(2).

20 153. The Dream Home laminate flooring constitutes “goods” as defined by
21 Tenn. Code Ann. § 47-18-103(7).

22 154. At all relevant times, Defendant conducted “trade,” “commerce” or
23 “consumer transaction” in Tennessee as defined in Tenn. Code Ann. § 47-18-
24 1103(19).

25 155. Lumber Liquidators violated and continues to violate the Act by
26 engaging in the following unfair or deceptive acts or practices proscribed by the
27 following subsections of the Act:

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1 (b)(2) Causing likelihood of confusion or of misunderstanding as to the
2 source, sponsorship, approval or certification of goods or services;

3 (b)(3) Causing likelihood of confusion or misunderstanding as to affiliation,
4 connection or association with, or certification by, another;

5 (b)(5) Representing that goods or services have sponsorship, approval,
6 characteristics, ingredients, uses, benefits or quantities that they do not have
7 or that a person has sponsorship, approval, status, affiliation or connection
8 that such person does not have;

9 (b)(7) Representing that goods or services are of a particular standard, quality
10 or grade, or that goods are of a particular style or model, if they are of
11 another;

12 (b)(9) Advertising goods or services with intent not to sell them as
13 advertised;

14 (b)(11) Making false or misleading statements of fact concerning the reasons
15 for, existence of, or amounts of price reductions;

16 (b)(21) Using statements or illustrations in any advertisement which create a
17 false impression of the grade, quality, quantity, make, value, age, size, color,
18 usability or origin of the goods or services offered, or which may otherwise
19 misrepresent the goods or services in such a manner that later, on disclosure
20 of the true facts, there is a likelihood that the buyer may be switched from the
21 advertised goods or services to other goods or services.

22 156. The acts of Lumber Liquidators, as described herein, constitute an
23 unfair and deceptive practice in violation of the Act. Lumber Liquidators' wrongful
24 acts were committed willfully and knowingly, thereby entitling Plaintiffs to a
25 recovery of treble their actual damages and recovery of their reasonable attorneys'
26 fees and costs.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiffs, on behalf of themselves and all other individuals
similarly situated, request the following relief:

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

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

- 1 • Lumber Liquidators has not effectively disclaimed the implied
2 warranty of merchantability, and that the Laminates continue to
3 be subject to such implied warranties;
4 • the warranty limitations contained in Defendant’s “limited
5 warranties” are unenforceable;
6 • Plaintiffs and proposed Class members are entitled to restitution,
7 including reimbursement for any installation, removal, and
8 replacement costs; and that
9 • Plaintiffs and proposed Class members may be entitled to other
10 relief as awarded by this Court;

11 C. Restitution of all monies Defendant received from Plaintiffs and the
12 proposed Class;

13 D. Damages to be determined at trial including actual, compensatory, and
14 consequential damages incurred by Plaintiffs and proposed Class
15 Members;

16 E. Punitive damages where allowed;

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

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

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4 DATED: September 6, 2016 ROBERTSON & ASSOCIATES, LLP

5 By: */ s / Alexander Robertson, IV*
6 _____
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