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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LINDA WEBSTER, an individual, on behalf of herself and all others similarly situated

Case No. 2:16-cv-5398

CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

Plaintiff.

vs.

**LUMBER LIQUIDATORS, INC., a
Delaware corporation,**

Defendant.

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1 Plaintiff Linda Webster (“Plaintiff”), individually and on behalf of all other
 2 persons similarly situated, by their undersigned attorneys, allege the following based
 3 upon personal knowledge as to themselves and their own acts, and information and
 4 belief as to all other matters based upon the investigation conducted by and through
 5 their attorneys, which include, 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 Georgia 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

1 of approximately 300 retail stores in 46 states, including Georgia and California.

2 **GENERALIZED FACTUAL ALLEGATIONS**

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

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

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

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

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

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

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

22 10. Plaintiff purchased the Laminates through one of Lumber Liquidators'
23 company-owned retail outlets, based upon express representations of the Laminates'
24 durability and AC3 rating, made not only by Lumber Liquidators on its website
25 product pages for each of the Laminates, but also based upon express oral
26 representations by Lumber Liquidators store manager and sales staff that the
27 Laminates were "very durable," "extremely durable," "scratch resistant," and
28 "harder than hardwood."

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

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

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

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

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

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

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

The Laminates Are Substantially Similar Products

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

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

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

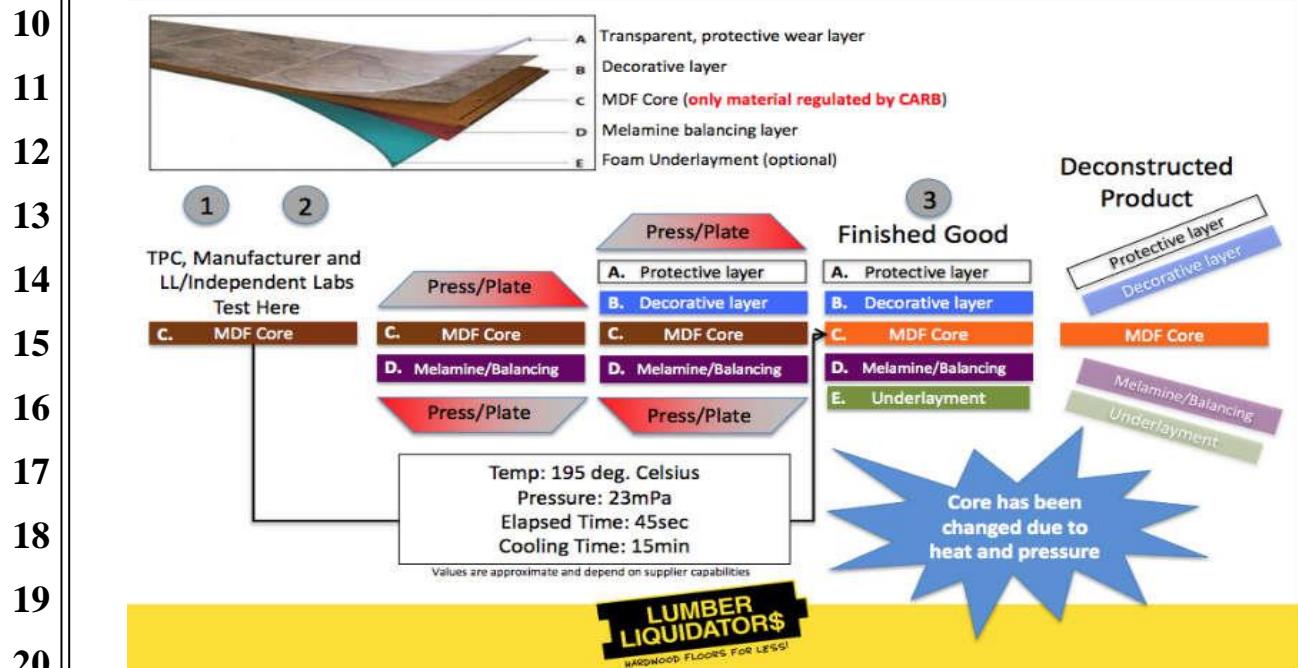
- 22 a. The bottom backing layer (balancing layer) to create a stable and level
23 support for the rest of the plank;
- 24 b. On top of the backing layer is a medium density or high density
25 fiberboard core, which are frequently referred to in the industry
26 interchangeably as MDF or HDF cores;
-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

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

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

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

9 Fabrication Changes The Core



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

25
 26
 27 ¹ Laminate flooring is frequently installed on underlayment material to
 28 improve sound or moisture performance, and occasionally such underlayment is pre-glued to the backing layer for convenience.

- 1 each of the Laminates in a single image demonstrates that the Laminates are
- 2 substantially similar products.

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

7 | “Durability” And Similar Descriptions Are Based On The AC3 Rating

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

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

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

The first component is our patented ScratchGuard Advanced surface protection, which is comprised of a melamine resin enriched with aluminum oxide particles for enhanced scratch and scuff protection. In our most premium performance floors, ScratchGuard 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.

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
 13329:2006+A1:2008.”²

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

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

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

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

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

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

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

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

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

21 • • •

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

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

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

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

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

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

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

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

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

1 under AC3.³

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

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

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

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

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

24
 25 ³ <http://www.homedepot.com/b/Flooring-Laminate-Flooring-Laminate-Wood-Flooring/N-5yc1vZbejk> (visited March 1, 2016). In addition to these 291
 26 laminates, Home Depot's website lists three Shaw products that are shown as having
 27 an AC2 rating. However none of these models is actually available for purchase
 28 online or in any identifiable store, and Home Depot's customer care department
 confirms that they are no longer available and have been discontinued.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 **Defendant's Website and Other Misrepresentations And Omissions**

27 56. When researching Laminate purchase on the Lumber Liquidators'
 28 website, an individual must visit a minimum of two pages shortly before purchasing

1 these products:

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

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

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

- 10 a. "Very durable and scratch-resistant;" or
 11 b. "Very scratch-resistant."

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

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

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

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

22 62. Defendant also represents on its website that its Ispiri Collection has
 23 certain superior qualities and ingredients, including, "With its new laminate
 24 manufacturing process called Liquid Oxide High Definition technology the Ispiri
 25 Collection has raised the bar on . . . durability." Further, Defendant's website
 26 represents the "Ispiri Collection's Advantages" include an AC rating of AC3 and a
 27 30 year warranty.

28 63. Lumber Liquidators' store managers and staff, who are employees of

1 Defendant, are trained by Lumber Liquidators to answer customer questions and to
 2 market the Laminates.

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

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

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

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

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

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

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

27 **Why Lumber Liquidators Representations Are False**

28 71. Lumber Liquidators' representations that the Laminates meet the

1 industry AC3 standard are false because the Laminates do not meet this standard.

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

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

8 73. Over the past months, a sample of Plaintiff's laminate flooring product
 9 was tested by a certified and accredited laboratory. The testing method used by the
 10 lab is the same standardized test method used worldwide throughout the flooring
 11 industry to determine the AC rating of laminate flooring products. The laminate
 12 flooring Plaintiff purchased failed to meet the AC3 rating, which was advertised by
 13 Lumber Liquidators, but instead met AC1, the lowest abrasion rating.

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

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

22 76. Lumber Liquidators personnel did not inform Plaintiff that her
 23 durability problems, as set forth below, resulted from the failure of the Laminate to
 24 meet the claimed AC3 industry standard.

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

- 27 a. Installers or installation problems;
- 28 b. Moisture problems;

- 1 c. Normal product variability; and
 2 d. Product abuse.

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

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

12 80. Plaintiff and putative Class Members cannot reasonably be charged
 13 with notice of the defect prior to the discovery of widespread supplier problems
 14 relating to Lumber Liquidators' Chinese-sourced Laminates as a result of the
 15 formaldehyde controversy in 2015.

16 81. Defendant sells the Dream Home line of laminate flooring products,
 17 and others, at Lumber Liquidators' 37 retail stores in California, 12 stores in North
 18 Carolina, 28 stores in Texas, 13 stores in New Jersey, 26 stores in Florida, 3 stores
 19 in Nevada, 8 stores in Connecticut, 10 stores in Georgia, 16 stores in Illinois, 3
 20 stores in Iowa, 8 stores in Indiana, 4 stores in Kentucky, 5 stores in Louisiana, 10
 21 stores in Massachusetts, 10 stores in Maryland, 3 stores in Maine, 10 stores in
 22 Michigan, 6 stores in Minnesota, 2 stores in Mississippi, 5 stores in Missouri, 2
 23 stores in Nebraska, 19 stores in New York, 13 stores in Ohio, 3 stores in Oklahoma,
 24 20 stores in Pennsylvania, 8 stores in South Carolina, 6 stores in Tennessee, 12
 25 stores in Virginia, 7 stores in Washington, 5 stores in Wisconsin and 3 stores in
 26 West Virginia, and 5 stores in Alabama. Lumber Liquidators also sells these
 27 laminate floor products to consumers through the internet at
 28 www.lumberliquidators.com and through telephone sales at 1-800-HARDWOOD.

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

PARTIES

15 || 83. Plaintiff Linda Webster resides in Chickamauga, Georgia.

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

JURISDICTION AND VENUE

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

26 86. This Court has personal jurisdiction over the parties in this action by
27 the fact that Defendant is a corporation that is authorized to conduct business in

1 California and Georgia and it has intentionally availed itself of the laws and markets
2 of California and Georgia through the promotion, marketing, distribution and sale of
3 its laminate wood flooring products. Plaintiff purchased her laminate flooring from
4 Lumber Liquidators in June of 2011.

5 87. Venue is proper in this District pursuant to 28 U.S.C. §1331(b),
6 because a substantial part of the events or omissions giving rise to Plaintiff's claims
7 occurred in this District. Venue is also proper under 18 U.S.C. §1965(a), because
8 Defendant transacts a substantial amount of its business in this District.

PARTICULARIZED FACTUAL ALLEGATIONS

88. On or about June 11, 2011, Plaintiff Linda Webster purchased
Kensington Manor Summer Retreat Teak 12mm laminate flooring from Lumber
Liquidators' store #1138 located in Chattanooga, Tennessee. Prior to making her
purchase, Plaintiff visited Defendant's store in Chattanooga and asked Defendant's
salesman if the laminate flooring product she had selected was durable. Defendant's
salesman told Plaintiff that the laminate flooring was "very durable" and would "last
for 30 years." Plaintiff relied upon these representations in making the decision to
purchase this product from Defendant. However, within a year after installation,
Plaintiff noticed scratches, warping, and buckling of her flooring. Plaintiff has used
Defendant's product as it was intended to be used for normal residential traffic, but
the flooring does not withstand normal wear and tear during normal use and has
failed and deteriorated long before its advertised useful life. Plaintiff would not
have purchased the Kensington Manor Summer Retreat laminate product had she
known that it was defective, not durable, and had an inferior ability to withstand
abrasion, buckling and delamination.

25 89. At the time she purchased her flooring Ms. Webster received a two
26 page invoice. The first page of the invoice mentioned a "30 year warranty." The
27 second page of the invoice recited a disclaimer of all other implied and express
28 warranties, including the warranty of merchantability. The second page of the

1 invoice was not signed.

CLASS ALLEGATIONS

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

8 91. Class Definition: Without prejudice to later revisions, the Class which
9 Plaintiff seeks to represent is composed of:

- 10 a. All persons in the United States who purchased the Laminates
11 from Defendant. This proposed class is only for Plaintiff's Third Cause
12 of Action; and;

13 b. All persons who purchased in Georgia the Laminates from
14 Defendant. This proposed class includes Plaintiff's First, Second, and
15 Fourth Causes of Action, and alternatively includes Plaintiff's Third
16 Cause of Action.

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

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

25 94. Class Members Are Numerous: While Plaintiff does not know the
26 exact number of Class Members, Plaintiff is informed and believes that there are
27 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 95. 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
 intended or in a reasonably foreseeable manner;
- 10 b. Whether Defendant's laminate flooring has an AC Rating less than
 AC3;
- 11 c. Whether Defendant's laminate flooring was fit for its intended purpose;
- 12 d. Whether Defendant has breached the implied warranty of fitness for a
 particular purpose;
- 13 e. Whether Defendant has breached the implied warranty of
 merchantability;
- 14 f. Whether Defendant knew that its laminate flooring was defective and
 had an Abrasion Class rating of less than AC3;
- 15 g. Whether Defendant omitted and concealed material facts from its
 communications and advertising to Plaintiff regarding the durability of
 its laminate flooring;
- 16 h. Whether Defendant falsely advertised that its laminate flooring
 products were "AC3" rated, "very durable" and "very scratch-resistant"
 when in fact they were not;
- 17 i. Whether Defendant's misrepresentations or omissions constitute unfair
 or deceptive practices under the respective consumer protection statutes
 of each of the states represented herein;
- 18 j. Whether Plaintiff and proposed Class Members have been harmed and
 the proper measure of relief;
- 19 k. Whether Plaintiff and proposed Class Members are entitled to an award
 of punitive damages, attorneys' fees and expenses against Defendant;
 and
- 20 l. Whether, as a result of Defendant's misconduct, Plaintiff is entitled to
 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 Georgia, 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

- 1 limited resources of each individual Class Member with vastly
2 superior financial and legal resources;
- 3 c. The costs of individual suits could unreasonably consume the
4 amounts that would be recovered;
- 5 d. Given the size of individual proposed Class Members' claims and
6 the expense of litigating those claims, few, if any, proposed
7 Class Members could afford to or would seek legal redress
8 individually for the wrongs Defendant committed against them
9 and absent proposed Class Members have no substantial interest
10 in individually controlling the prosecution of individual actions;
- 11 e. This action will promote an orderly and expeditious
12 administration and adjudication of the proposed class claims,
13 economies of time, effort and resources will be fostered and
14 uniformity of decisions will be insured;
- 15 f. Without a class action, proposed Class Members will continue to
16 suffer damages, and Defendant's violations of law will proceed
17 without remedy while Defendant continues to reap and retain the
18 substantial proceeds of its wrongful conduct;
- 19 g. Plaintiff knows of no difficulty that will be encountered in the
20 management of this litigation that would preclude its
21 maintenance as a class action;
- 22 h. Proof of a common business practice or factual pattern which
23 Plaintiff experienced is representative of that experienced by the
24 Class and will establish the right of each member of the Class to
25 recover on the causes of action alleged; and
- 26 i. Individual actions would create a risk of inconsistent results and
27 would be unnecessary and duplicative of this litigation.
- 28

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

FIRST CAUSE OF ACTION

Breach of Implied Warranty

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

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

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

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

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

22 106. Any purported disclaimer or limitation of the duration and scope of the
23 implied warranty of merchantability given by Defendant is ineffective, not
24 conspicuous, unreasonable, unconscionable and void, because Defendant knew or
25 recklessly disregarded that the defect in the Laminates existed and might not be
26 discovered, if at all, until the flooring had been used for a period of time, and
27 Defendant willfully withheld information about the defect from purchasers of
28 flooring. Moreover, due to the unequal bargaining power between the parties,

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 its own product testing, its "robust Quality Assurance program," numerous
 6 customer complaints, and its customer service and warranty operations, well before
 7 Plaintiff and proposed Class Members filed suit.

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

SECOND CAUSE OF ACTION

Fraudulent Concealment

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

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

27 111. Plaintiff is informed and believe that Lumber Liquidators knew, or
 28 recklessly disregarded that the Laminates were defective based upon literally

1 hundreds of complaints posted by Lumber Liquidators' customers on websites,
 2 including but not limited to, www.ths.gardenweb.com, www.consumeraffairs.com,
 3 www.complaintlist.com, www.my3cents.com and others describe scratching,
 4 bubbling, delaminating, peeling and curling of Lumber Liquidators' Dream Home
 5 laminate flooring identical to the damages suffered by Plaintiff herein.

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

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

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

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

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

15 "I HATE this flooring!! Does anyone have the Dream Home parent company
 16 info? LL is no help! The salesman incorrectly told us how to install it. After a year
 17 of it being down, we are ripping it up because it looks horrible! It chips and peels
 18 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!"

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

21 "I recently purchased (*sic*) 1000sq ft. of dream home French oak. Big
 22 mistake. LL was no help at all. The boards were very warped and chipped after
 23 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..."

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

26 "Finished laying Dream Home Nirvana Plus on Saturday. Job went well and
 27 Wife was pleased. Floor was beautiful with tight joints and a warm rich color.
 28 While replacing furniture, Wife dragged a plant with a plastic saucer under it and
 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

1 just 4 days the laminate is worn through the 'warm rich color'. Wife says the
 2 salesman said that this stuff wont scratch with anything but a knife. LL warrants it
 3 for foot traffic for 25 years, so I guess you are supposed to keep it covered except
 where you walk. I have some question about its longevity since the recliner wore
 through to white in 4 days...."

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

6 "We had this product professionally installed. HATE it. Six months after it
 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
 area was either too wet or too dry and it wasn't their problem that we had almost
 8 1000sf of this flooring that looked like crap. I will never use LL again...."

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

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

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

14 "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
 15 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
 16 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
 17 ideal with pets and even gave us promotional material that showed a large dog on
 18 this floor."

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

20 "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
 21 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
 22 rewrite their warranties as they please."

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

26 "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
 27 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
 28 for maintaining ideal conditions. The problem is most consumers don't read this

1 information until a problem occurs...a little too late, then expect LL to compensate
 2 for issues out of our control...In some situations we even send a complimentary box
 3 to help with repairs, but it sounds like the problem was not with the flooring, but
 4 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."

5

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

8 "Warranty claim unresolved due to company unresponsiveness spanning 8
 9 months. We noticed some surface chipping away on a little area in the formal living
 10 room that we rarely use. It had been only 2.5 years from purchasing the engineered
 11 wood with a 30 year warranty. We initiated the warranty process with the worst
 12 encounters of customer service that I have experienced. For the last 8 months we
 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.

13 I researched online regarding warranty claims of customers of Lumber
 14 Liquidators and that it is their reasoning to other customers regarding warranty
 15 claims. Note this is prior to any inspection that Matt came to the conclusion. Rather
 16 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
 17 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."

18 122. On www.consumeraffairs.com Will of Sandia Park, NM wrote on June
 19 10, 2015:

20 "We purchased America's Mission Olive 12mm laminate flooring from
 21 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
 22 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
 23 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
 24 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.

25 We were extremely disappointed because these floors had been sold to us as
 26 being extremely durable and multiple employees at the Albuquerque store told us
 27 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

28

1 large would have some pride in their products and stand behind what they sold.
 2 Unfortunately this has not been the case at all.

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

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

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

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

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

12 ///

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

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

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

1 truth about, and the nature of, the durability and useful life of its laminate flooring
2 products.

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

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

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

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

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

28 ///

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 Georgia Class)

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

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

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

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

136. Lumber Liquidators' Dream Home proprietary line of laminate flooring
products was purchased separate and apart from the initial construction of the homes
of the Plaintiff 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).

137. 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, ..."

138. 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."

139. 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).

28 / / /

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

6 141. 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 30 year warranty
 8 advertised on Defendant's website, on page 1 of the Invoice in the product
 9 description, of Laminates sold to Plaintiff and the members of the proposed Class.

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

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

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

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

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

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

FOURTH CAUSE OF ACTION

Violation of Georgia's Fair Business Practices Act

O.C.G.A. Sections 10-1-390 et seq.

12 148. Plaintiff individually and on behalf of all others similarly situated,
13 adopts and incorporates by reference all allegations contained herein as though fully
14 set forth herein.

15 149. This action is brought to secure redress for the unlawful, deceptive
16 and unfair trade practices perpetrated by Lumber Liquidators on behalf of Plaintiff
17 and the Class Members.

18 150. Defendant's actions and/or omissions as described herein violated
19 Georgia's Fair Business Practices Act ("FBPA") O.C.G.A. §§10-1-370 et seq. and
20 §§10-1-390 et seq., which was enacted to protect the consuming public from those
21 who engage in unconscionable, deceptive or unfair acts or practices in the conduct
22 of any business, trade or commerce.

23 151. Specifically, Defendant knowingly misrepresented and intentionally
24 omitted material information regarding its Dream Home laminate flooring by falsely
25 representing its Abrasion Rating to be AC3, which it was not.

26 152. Defendant's misrepresentations and concealment of material facts
27 constitute unconscionable commercial practices, deception, fraud, false pretenses,
28 misrepresentation, and/or the knowing concealment, suppression, or omission of

1 materials facts with the intent that others rely on such concealment, suppression, or
2 omission in connection with the sale and use of Defendant's Dream Home laminate
3 flooring in violation of the FBPA.

4 153. Defendant violated the FBPA by knowingly and falsely representing
5 that Defendant's Dream Home laminate flooring had an Abrasion Rating of AC3
6 and were fit to be used for the purpose for which they were intended, when
7 Defendant knew they had a lower Abrasion Rating, and defective, unreliable, and
8 unsafe.

9 154. Georgia has enacted statutes to protect consumers from deceptive,
10 fraudulent, and unconscionable trade and business practices such as those alleged in
11 this Third Amended Complaint.

12 155. Defendant's violation of the FBPA is continuing, with no indication
13 that Defendant will cease.

14 156. As a direct and proximate result of Defendant's violations of FBPA,
15 Plaintiff and Class Members have suffered and will continue to suffer ascertainable
16 damages and are entitled to all appropriate relief, including but not limited to
17 damages, costs, and attorneys' fees.

PRAAYER FOR RELIEF

19 WHEREFORE, Plaintiff, on behalf of herself and all other individuals
20 similarly situated, requests the following relief:

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

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

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

13 C. Restitution of all monies Defendant received from Plaintiff and the
14 proposed Class;

15 D. Damages to be determined at trial including actual, compensatory, and
16 consequential damages incurred by Plaintiff and proposed Class
17 Members;

18 E. Punitive damages where allowed;

19 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.

3 DATED: July 20, 2016 ROBERTSON & ASSOCIATES, LLP

4 */ s / Alexander Robertson, IV*
5 Bv: _____
6 Alexander Robertson, IV (CA SBN 127042)
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11
12 ***Attorneys for Plaintiff and The Proposed Class***

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