

CONFIRM

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Superior Court of California
County of Los Angeles

OCT 19 2020

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Room 106

10 Attorneys for Plaintiffs and the Proposed Class

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE

13 YVETTE THOR, individually, on behalf of
14 herself and all others similarly situated,

15 Plaintiffs,

16 vs.

17 L.A. HARDWOOD FLOORING, INC., a
California Corporation, d/b/a ETERNITY
FLOORS; and DOES 1 through 50, inclusive,

18 Defendants.

Case No. BC685349
[Related to Case No. BC644600]

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT, AWARD OF
ATTORNEY'S FEES AND COSTS, AND
APPROVAL OF CLASS
REPRESENTATIVE SERVICE AWARDS**

Assigned for all purpose to:
Honorable Ann I. Jones, Department "11"

Action filed: December 21, 2016

20
21 AND RELATED ACTION.

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23 Plaintiffs' Motion for Final Approval of the Settlement in this matter came on for hearing
24 on October 8, 2020. The Court, having considered whether to order final approval of the
25 settlement of the above-entitled action pursuant to the Class Action Settlement Agreement
26 (hereinafter referred to as "Settlement Agreement"), attached hereto as Exhibit "A", having read
27 and considered all of the papers and argument of the parties and their counsel, having granted
28 preliminary approval of the settlement on December 5, 2019, having directed that notice be given

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1 to all Class Members of preliminary approval of the settlement and the final approval hearing and
2 the right to be excluded from the settlement, and having received no valid objections and for good
3 cause appearing:

4 **IT IS HEREBY ORDERED AS FOLLOWS:**

5 1. All defined terms contained herein shall have the same meaning as set forth in the
6 Settlement Agreement attached hereto as Exhibit "A".

7 2. The Court finds that certification of the following class is appropriate:

8 "All persons in the United States who purchased the Subject
9 Products from Defendant, or any of its retail distributors, between
10 January 1, 2012 and December 31, 2016, who submitted a Claim
within the Claim Deadline." (Settlement Agreement, ¶ 1(h)).

11 3. Excluded from the Class are (1) Defendant, (2) all present and former affiliates
12 and/or officers or directors of Defendant, (3) the Judge of this Court, the Judge's family and staff,
13 (4) all individuals who have already entered a Release and Settlement Agreement with Defendant
14 related to their purchase of the Subject Products during the Class Period, and (5) all persons who
15 timely request to be excluded from the Settlement Class or Settlement Classes in accordance with
16 the provisions of the Notice.

17 4. The Court hereby finds that the Notice of Settlement published through the Claims
18 Administrator's digital internet banner ad campaign and posted on the following website devoted
19 to this Settlement: www.chineselaminatesettlement.com ("Settlement Website") starting on
20 December 17, 2019, fairly and adequately described the proposed settlement, the manner in which
21 Class Members could object to or participate in the settlement, and the manner in which Class
22 Members could opt out of the settlement class; was the best notice practicable under the
23 circumstances; was valid, due and sufficient notice to all Class members; and complied fully with
24 *Code of Civil Procedure* section 382, *Civil Code* section 1781, due process, *California Rules of*
25 *Court*, Rules 3.766 and 3.769, the California Constitution and the United States Constitution, and
26 any other applicable laws.

27 5. The Court further finds that a full and fair opportunity has been afforded to Class
28 Members to participate in the proceedings convened to determine whether the proposed settlement

1 should be given final approval. Accordingly, the Court determines that all Class Members who
2 did not file a timely and proper request to be excluded from the settlement are bound by this Order
3 of Final Approval.

4 6. The Court further finds that the settlement, including the settlement amount, is fair,
5 reasonable, and adequate to the Class, Plaintiffs and Defendants, and is the product of good faith,
6 arms-length negotiations between the parties, and further, that the settlement is consistent with
7 public policy, and fully complies with all applicable provisions of law. The Court makes this
8 finding based on a weighing of the strength of Plaintiffs' claims and Defendants' defenses with the
9 risk, expense, complexity, and duration of further litigation.

10 7. The Court also finds that the settlement is the result of non-collusive arms-length
11 negotiations between experienced counsel representing the interests of the Class and Defendants,
12 after thorough factual and legal investigation. In granting final approval of the settlement, the
13 Court considered the nature of the claims, the amounts paid in settlement, the allocation of
14 settlement proceeds among the Class Members, and the fact that the settlement represents a
15 compromise of the parties' respective positions rather than the result of a finding of liability after
16 appeal. Additionally, the Court finds that the terms of the settlement have no obvious deficiencies
17 and do not improperly grant preferential treatment to any individual Class Member.

18 8. The Court orders the parties to implement, and comply with, the terms of the
19 settlement. Additionally, the Court finds in its discretion to allow for the four (4) late-filed but
20 otherwise valid claims identified by the claims administrator.

21 9. The claims administrator is ordered to distribute valid cash and store credit voucher
22 claims in accordance with the settlement. The claims administrator shall distribute checks to cash
23 claimants within sixty (60) days following the Effective Date, with a deadline for cash such checks
24 within sixty (60) days of issuance. The parties are ordered to work with the claims administrator
25 on the mechanics of the distribution of the store credit vouchers to class members electing the
26 same.

27 10. Any amount remaining from uncashed checks after the expiration of the sixty (60)
28 day period from issuance shall be provided to a *cy pres* recipient in accordance with *Code of Civil*

1 *Procedure* 384. Within 120 days from the Effective Date, class counsel shall report to the Court
2 the total amount that was actually paid to the class members. Thirty (30) days after this final
3 report, the parties shall prepare and file a stipulation and proposed order and proposed amended
4 judgment. The stipulation and proposed order shall include, *inter alia*, the amount of the
5 distribution of unpaid cash residue, and unclaimed or abandoned funds to the non-party, accrued
6 interest on that sum and any other information required to be set forth pursuant to Section 68520
7 of the Government Code, as incorporated into CCP Section 384.5. The stipulation shall be signed
8 by class counsel, Defendants' counsel, and counsel for (or authorized representative of) the non-
9 party ("cy pres") recipient. The stipulation shall include a statement to the effect that all interested
10 persons are in accord with the amended judgment and have no objection to the entry of an
11 amended judgment. If there are objections by any party, class counsel shall immediately notify
12 the Court and the matter will be set for further hearing.

13 11. Class counsel requests \$500,000 in attorneys' fees. The Court finds this amount is
14 within an average range for class action litigation. The Court approves Class counsel's request for
15 attorney's fees in the amount of \$500,000, which represents a reasonable percentage of the
16 settlement fund and is well-supported by the submitted lodestar.

17 12. Class counsel submitted litigation costs, which all appear to be reasonable in
18 amount and all appear to have been necessary to the litigation. The Court approves Class
19 counsel's request for litigation costs in the amount of \$67,315.90.

20 13. Class counsel requests incentive awards for the four (4) named class representatives
21 and supported this request with evidence that quantifies the time and effort expended by them and
22 a reasoned explanation of the risks undertaken by them. Accordingly, the Court approves Class
23 counsel's request for enhancement/service award payments of \$5,000 each to the following four
24 (4) class representatives: Christopher Santiago, Julia Santiago, Tim Tagle, and Yvette Thor.

25 14. The claims administrator's costs for settlement administration were estimated at the
26 time of preliminary approval at \$100,000. This amount was disclosed to the settlement class
27 members and deemed unobjectionable. The Court approves the request for the claims
28 administrator's, Angeion Group, Inc., for \$100,000 in costs and fees.

1 15. The Court orders the parties to provide notice of the Final Judgment to the class by
2 posting a copy of it on the website created for this settlement
3 www.chineselaminatesettlement.com.

4 16. The Court determines that the methodology used to calculate and pay each
5 settlement Class Member's individual settlement payment is fair and reasonable, and therefore is
6 approved. The Claims Administrator is authorized to distribute the individual settlement
7 payments to settlement Class Members in accordance with the terms of the Settlement Agreement.

8 17. ~~Since no member of the Class has objected to the Settlement and there being no just~~
9 ~~reason for delay, the Court determines that the Effective Date of the Settlement Agreement is the~~
10 ~~date of the signing of this order.~~

11 18. Upon the Effective Date, Plaintiffs, for and on behalf of themselves, and every
12 member of the Settlement Classes, including each of their respective heirs and assigns ("Releasing
13 Parties"), hereby release, hold harmless, forever discharge Defendants and the Released Parties,
14 and shall forever be enjoined from prosecuting against Defendants and the Released Parties any
15 and all claims asserted, or which could have been asserted, in the Complaints, which include but
16 are not limited to the causes of action stated therein for (1) breach of implied warranties; (2)
17 violation of the Song-Beverly Consumer Warranty Act; (3) Fraudulent Concealment; (4)
18 Negligent Misrepresentation; (5) violation of the Magnuson-Moss Warranty Act; (6) violation of
19 California's Unfair Competition Law, Bus. & Prof. Code § 17200, et seq.; (7) violation of
20 California's False Advertising Law, Bus. & Prof. Code § 17500, et seq.; (8) violation of
21 California's Consumer Legal Remedies Act, *Civil Code* § 1750, et seq.; and (9) violation of
22 Nevada's Deceptive Trade Practices Act, NRS § 41.600 and § 598.0915, et seq. and any other
23 matter whatsoever related directly or indirectly to: 1) the Plaintiffs' and Class Members' purchase
24 and use of the Subject Products distributed by Defendant during the Class Period ; 2) the
25 manufacture, sale, distribution, labeling, marketing or advertising of the Subject Products sold by
26 Defendant during the Class Period; 3) Defendant's compliance with state or federal labeling laws
27 and regulations related to the Subject Products sold by Defendant during the Class Period; and/or
28 4) any claim by Plaintiffs of any nature related to the Subject Products sold or distributed by

1 Defendant during the Class Period, and additionally, only the named Plaintiffs' claims for personal
2 injuries as set forth in paragraph 56 of the First Amended Complaint (hereinafter the "Released
3 Claims"). The "Released Parties" shall mean Defendant as defined in Section 1. (n) of the
4 Settlement Agreement.

5 19. In agreeing to the foregoing waiver, the Releasing Parties expressly acknowledge
6 and understand that they may hereafter discover facts in addition to or different from those which
7 they now believe to be true with respect to the subject matter of the claims released herein, but
8 expressly agree that they have taken these possibilities into account in electing to participate in
9 this release, and that the release given herein shall be and remain in effect as a full and complete
10 release notwithstanding the discovery or existence of any such additional or different facts, as to
11 which the Releasing Parties expressly waive their rights to and assume the risk.

12 20. The Released Claims, however, shall not include any claims to enforce the
13 Settlement Agreement or the request of Class Counsel for fees and costs/expenses and expenses
14 related to this Settlement Agreement (all said amounts to come from the Settlement Fund). All
15 Parties shall bear their own expense to enforce the Settlement Agreement.

16 21. As of the Effective Date, by operation of the entry of the Order of Final Approval
17 and Judgment, each Class Member who does not file a valid Request for Exclusion, automatically,
18 upon entry of the Order of Final Approval and Judgment, shall be held to have fully released,
19 waived, relinquished, and discharged the Released Parties from the Released Claims, to the fullest
20 extent permitted by law, and shall be enjoined from continuing, instituting, or prosecuting any
21 legal proceeding against the Released Parties relating in any way whatsoever to the Released
22 Claims.

23 22. The Releasing Parties, on behalf of themselves and their respective assigns, agree
24 not to sue or otherwise make a claim against any of the Released Parties that is in any way related
25 to the Released Claims.

26 23. As of the Effective Date, by operation of the entry of the Order of Final Approval
27 and Judgment, each Class Member who does not file a valid Request for Exclusion, automatically,
28 upon entry of the Order of Final Approval and Judgment, shall be held to have fully released,

1 waived, relinquished, and discharged the Released Parties from the Released Claims, to the fullest
2 extent permitted by law, and shall be enjoined from continuing, instituting, or prosecuting any
3 legal proceeding against the Released Parties relating in any way whatsoever to the Released
4 Claims. The Releasing Parties, on behalf of themselves and their respective assigns, agree not to
5 sue or otherwise make a claim against any of the Released Parties that is in any way related to the
6 Released Claims.

7 24. With respect to the Released Claims, the Plaintiffs shall expressly waive any and
8 all provisions, rights, and benefits conferred by any law of any state or territory of the United
9 States which is similar, comparable or equivalent to California *Civil Code Section* 1542, which
10 provides:

11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
12 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
13 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING
14 THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST
 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
 WITH THE DEBTOR.

15 25. The Plaintiffs acknowledge and represent that they have had an opportunity to
16 consult with the Class Counsel before entering this Settlement Agreement and that the Plaintiffs
17 understand its meaning, including the effect of the waiver of Section 1542 of the California *Civil*
18 *Code*, and expressly consents that this Settlement Agreement shall be given full force and effect
19 according to each and all of its express terms and provisions, including, without limitation, those
20 relating to the release of unknown and unsuspected claims, demands and causes of action.

21 26. Except as set forth herein, it is the intention of the Releasing Parties and Defendant
22 in executing this Settlement Agreement that this instrument is a general release as between
23 Releasing Parties and Released Parties which shall be effective as a bar to each and every claim,
24 demand or cause of action released herein, except as provided herein. The Releasing Parties
25 recognize that they may have some claim, demand, or cause of action against the Released Parties,
26 whether arising out of, resulting from, or in any way related to the Released Claims, of which
27 Releasing Parties are totally unaware and unsuspecting and which Releasing Parties are giving up
28 by execution of this Settlement Agreement. It is the intention of the Releasing Parties in executing

1 this instrument that it will deprive them of each such claim, demand, or cause of action and
2 prevent them from asserting it against the Released Parties. This includes, but is not limited to the
3 claims, demands, or causes of action arising out of, related to, or in any way connected to or with
4 the Released Claims.

5 27. Neither the settlement of the case nor any of the terms set forth in the Settlement
6 Agreement constitute an admission by Defendants of liability to the named Plaintiffs or any Class
7 Member, nor does this Order of Final Approval constitute a finding by the Court of the validity of
8 any of the claims alleged in the lawsuit.

9 **IT IS SO ORDERED.**

10 Dated: 10-19, 2020

11 **ANN I. JONES**

12 **THE HONORABLE ANN I. JONES**
13 Judge of the Superior Court of the State of California
14 for the County of Los Angeles
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