

**ROBERTSON & ASSOCIATES, LLP**

Alexander Robertson, IV (CA SBN 127042)

[arobertson@arobertsonlaw.com](mailto:arobertson@arobertsonlaw.com)

Mark J. Uyeno (CA SBN 189063)

[muyeno@arobertsonlaw.com](mailto:muyeno@arobertsonlaw.com)

32121 Lindero Canyon Road, Suite 200

Westlake Village, California 91361

Telephone (818) 851-3850 • Facsimile (818) 851-3851

**WHITFIELD BRYSON & MASON**

Daniel K. Bryson (*Pro Hac Vice* pending)

[dan@wbmlp.com](mailto:dan@wbmlp.com)

Patrick M. Wallace (*Pro Hac Vice* pending)

[pat@wbmlp.com](mailto:pat@wbmlp.com)

900 W. Morgan Street

Raleigh, North Carolina 27609

Telephone (919) 600-5000 • Facsimile (919) 600-5035

**AHDOOT & WOLFSON, PC**

Robert Ahdoot (CA SBN 172098)

[rahdoot@ahdootwolfson.com](mailto:rahdoot@ahdootwolfson.com)

Tina Wolfson (CA SBN 174806)

[twolfson@ahdootwolfson.com](mailto:twolfson@ahdootwolfson.com)

1016 Palm Avenue

West Hollywood, California 90069

Telephone (310) 474-9111 • Facsimile (310) 474-8585

Attorneys for Plaintiffs and The Proposed Class

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

BRIAN BENNETT, an individual, on  
behalf of himself and all others  
similarly situated,

Plaintiff,

vs.

LUMBER LIQUIDATORS, INC., a  
Delaware corporation,

Defendant.

Case No. 2:16-cv-05299

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

**DEMAND FOR JURY TRIAL**

Plaintiff Brian Bennett ("Plaintiff"), individually and on behalf of all other persons similarly situated, by their undersigned attorneys, allege the following based upon personal knowledge as to themselves and their own acts, and information and

1 belief as to all other matters based upon the investigation conducted by and through  
2 their attorneys, which include, among other things, review and analysis of Lumber  
3 Liquidators Holdings, Inc.'s public documents, Securities and Exchange  
4 Commission ("SEC") filings, web sites, announcements, analysts' reports and  
5 investigative journalist reports. Plaintiff and the proposed Class believe that  
6 substantial evidentiary support will exists for the allegations set forth herein after  
7 reasonable opportunity for discovery.

## 8 **INTRODUCTION**

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

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

27 ///

**GENERALIZED FACTUAL ALLEGATIONS**

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

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

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

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

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

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

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

10. Plaintiff purchased the Laminates through one of Lumber Liquidators' company-owned retail outlets, based upon express representations of the Laminates' durability by Lumber Liquidators' store manager and sales staff.

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

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

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

9           a. Its in-store sales staff represents that the Laminates are “durable,” “very  
10 durable,” “extremely durable,” “scratch resistant,” and “harder than  
11 hardwood”;

12           b. Its Laminates “landing page” on its website (from which the consumer  
13 can select model-specific web pages containing detailed descriptions  
14 of each model) have represented that the Laminates are each “very  
15 durable” and “very scratch resistant”; and

16           c. Lumber Liquidators claims, in its Limited Warranties, that the  
17 Laminates each meet the “industries highest standards.”

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

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

24           a. Visible and unsightly scratching in normal everyday use, including but  
25 not limited to pet traffic;

26           b. Wear patterns that expose and deteriorate the photographic paper layer  
27 of the laminate that is supposed to be protected by the wear layer for  
28 twenty five to thirty years;

- c. Chipping;
- d. Fading;
- e. Warping; and
- f. Staining.

#### **The Laminates Are Substantially Similar Products**

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

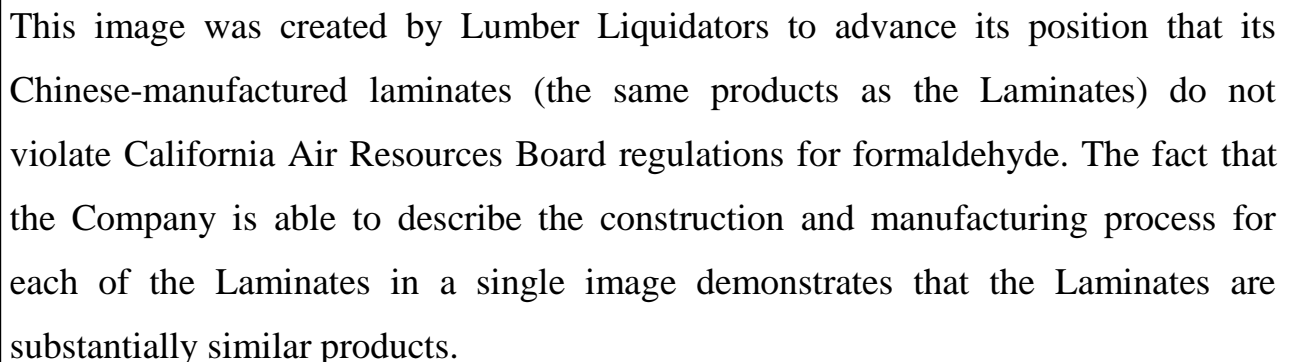
17. As set forth in greater detail below, the Laminates comprise a single product, which are substantially similar in every way material to the claims presented herein. The differences among each model of the Laminates are primarily cosmetic—designed to meet varying interior decoration preferences of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

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

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

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



<sup>1</sup> 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.

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

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

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

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

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

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

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

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

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

28 26. “Durable” in used in the retail residential wood laminate flooring

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<sup>2</sup> [https://na.pergo.com/Care\\_Maintenance/faq](https://na.pergo.com/Care_Maintenance/faq) (visited March 1, 2016).

1 industry means an AC rating of at least AC3.

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

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

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

10 Considering some new laminate thanks to your coupon? You  
11 may think the thicker the laminate the better, and the longer the  
12 warranty the longer it will last! That isn’t always the case, though. **So**  
13 **how do you know which laminate will last in your home** (or  
14 commercial space)? Luckily, **the European Producers of Laminate**  
15 **Flooring (EPLF) developed the Abrasion Rating System to give us**  
16 **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.

17 So, what exactly do AC ratings tell us? They represent a  
18 laminate's resistance to abrasion, impact, stains and cigarette  
19 burns. AC ratings also indicate that the product has been tested for  
20 the effects of furniture legs, castors, and swelling along its edges.  
21 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.

22 The AC rating levels are designated AC1 through AC5, each  
23 reflecting the product's application and durability.

24 . . .

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

27 ///

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

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

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

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

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

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

1           36. Home Depot's website offers some 291 laminate flooring models in its  
2 "residential" or "commercial-residential" lines, all of which have a rating of AC3 or  
3 higher. Home Depot's website offers no laminate flooring with a durability rating  
4 under AC3.<sup>3</sup>

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

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

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

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

22           40. Sullivan, Lynch, Schlegel, and Terrell are individual defendants in a  
23 nationwide class action alleging that each of them and the company committed  
24

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25 <sup>3</sup> [http://www.homedepot.com/b/Flooring-Laminate-Flooring-Laminate-](http://www.homedepot.com/b/Flooring-Laminate-Flooring-Laminate-Wood-Flooring/N-5yc1vZbejk)  
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 securities fraud in violation, *inter alia*, of Section 10(b) of the Securities Exchange  
2 Act of 1934, 15 U.S. Code § 78j, and SEC Rule 10b-5 promulgated thereunder. *In re*  
3 *Lumber Liquidators Holdings, Inc. Securities Litigation*, Case No. 4:13-cv-00157-  
4 (E.D. Va.). An element of a Section 10(b) securities fraud action is “scienter,”  
5 defined as having either an intent to deceive or having been reckless in the making  
6 of false or misleading representations, or with respect to an omission of material  
7 fact.

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

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

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

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

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

28 46. Based on Lynch’s and Schlegel’s prior experience in sourcing products

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

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

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

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

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

reference case, summarized above, concerning Lumber Liquidators’ “sourcing initiatives” and “line reviews” by Lynch and Schlegel, and the Company’s allegedly false explanations of the nature of its elevated margins for the Laminates, based upon the sale of cheaper, non-CARB Phase 2 compliant Laminates.

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

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

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

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

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

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

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

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

2        57. When researching a Laminate purchase on the Lumber Liquidators'  
3 website, an individual would have to visit at a minimum two pages shortly before  
4 purchasing these products:

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

11        58. An individual would see the following representations by Lumber  
12 Liquidators on the Laminates Landing Page:

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

14            b. "Very scratch-resistant."

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

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

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

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

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

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

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

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

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

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

20       68. On page one of its invoice provided to Plaintiff at the time of sale,  
21 Lumber Liquidators states that each Laminate comes with a "30-year warranty."  
22 There is no reference on page one of the invoice to a "limited warranty," and no  
23 indication of any limitation to the warranty on this page.

24       69. Disclaimers on page two of the invoice are not conspicuous, are vague  
25 and in most cases do not mention the word "merchantability" as required under the  
26 Uniform Commercial Code as a requirement to disclaim the implied warranty of  
27 merchantability.

28       70. Lumber Liquidators purported "limited warranties" were not presented

1 to or shown to Plaintiffs at the time of the sale

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

5 **Why Lumber Liquidators Representations Are False**

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

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

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

14 74. Over the past months, a sample of Plaintiff's laminate flooring was  
15 tested by a certified and accredited laboratory. The testing method used by the lab is  
16 the same standardized test method used worldwide throughout the flooring industry  
17 to determine the AC rating of laminate flooring products. The laminate flooring  
18 Plaintiff purchased failed to meet AC1 rating, the lowest abrasion rating.

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

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

27 77. Lumber Liquidators personnel did not inform Plaintiff that his  
28 durability problems, as set forth below, resulted from the failure of the Laminate to

1 meet the claimed AC3 industry standard.

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

- 4 a. Installers or installation problems;
- 5 b. Moisture problems;
- 6 c. Normal product variability; and
- 7 d. Product abuse.

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

12 80. By engaging in a pattern and practice of deflecting durability problems  
13 attributable to the defect alleged herein—failure to meet the claimed industry AC3  
14 standard — or by attributing durability problems to causes other than the defect  
15 (installation, etc.), Lumber Liquidators fraudulently concealed the defect from  
16 Plaintiff and putative Class Members.

17 81. Plaintiff and putative Class Members cannot reasonably be charged  
18 with notice of the defect prior to the discovery of widespread supplier problems  
19 relating to Lumber Liquidators' Chinese-sourced Laminates as a result of the  
20 formaldehyde controversy in 2015.

21 82. Defendant sells the Dream Home line of laminate flooring products,  
22 and others, at Lumber Liquidators' 37 retail stores in California, 12 stores in North  
23 Carolina, 28 stores in Texas, 13 stores in New Jersey, 26 stores in Florida, 3 stores  
24 in Nevada, 8 stores in Connecticut, 10 stores in Georgia, 16 stores in Illinois, 3  
25 stores in Iowa, 8 stores in Indiana, 4 stores in Kentucky, 5 stores in Louisiana, 10  
26 stores in Massachusetts, 10 stores in Maryland, 3 stores in Maine, 10 stores in  
27 Michigan, 6 stores in Minnesota, 2 stores in Mississippi, 5 stores in Missouri, 2  
28 stores in Nebraska, 19 stores in New York, 13 stores in Ohio, 3 stores in Oklahoma,

20 stores in Pennsylvania, 8 stores in South Carolina, 6 stores in Tennessee, 12 stores in Virginia, 7 stores in Washington, 5 stores in Wisconsin and 3 stores in West Virginia, and 5 stores in Alabama. Lumber Liquidators also sells these laminate floor products to consumers through the internet at [www.lumberliquidators.com](http://www.lumberliquidators.com) and through telephone sales at 1-800-HARDWOOD.

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

### **PARTIES**

84. Plaintiff Brian Bennett resides in Asheville, North Carolina.

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

### **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

1 matter is a class action wherein the amount in controversy exceeds the sum or value  
2 of \$5,000,000, exclusive of interest and costs, and members of the Class are citizens  
3 of states different from the Defendant.

4 87. This Court has personal jurisdiction over the parties in this action by  
5 the fact that Defendant is a corporation that is authorized to conduct business in  
6 California and North Carolina and it has intentionally availed itself of the laws and  
7 markets of California and North Carolina through the promotion, marketing,  
8 distribution and sale of its laminate wood flooring products. Plaintiff purchased his  
9 laminate flooring from Lumber Liquidators in Arden, North Carolina.

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

14 **PARTICULARIZED FACTUAL ALLEGATIONS**

15 89. On or about July 25, 2014 and again on July 31, 2014, Plaintiff Brian  
16 Bennett purchased Kensington Manor Golden Teak 12mm laminate flooring from  
17 Lumber Liquidators' store #1191 located in Arden, North Carolina. Defendant's  
18 webpage for this product represents "Kensington Manor is a premium 12mm + 3mm  
19 pre-glued underlayment product line." The landing page immediately before the  
20 page for the Kensington Manor Golden Teak laminate product stated that Lumber  
21 Liquidators' laminate flooring is "very durable and scratch resistant." Defendant's  
22 webpage also represents the "Kensington Manor Flooring Advantages" include an  
23 AC rating of AC3 and a 30 year warranty. The label on this product also  
24 prominently displayed that it had a "30 Year Warranty." On the day of his purchase,  
25 Brian Bennett visited the Lumber Liquidators' Arden store and was originally  
26 interested in bamboo flooring. However, a Lumber Liquidators' salesman told Mr.  
27 Bennett that laminate flooring was more durable than bamboo, and even more  
28

1 durable than hardwood flooring. Plaintiff relied upon these oral representations by  
2 Lumber Liquidators' salesman, and also relied upon the "30 year warranty" label on  
3 the packaging of the flooring he purchased in making his decision to purchase this  
4 product. However, within a month after installation of Defendant's product, Mr.  
5 Bennett noticed scratches and bubbling of his laminate flooring. Mr. Bennett has  
6 used Defendant's product as it was intended to be used for normal residential traffic,  
7 but the flooring does not withstand normal wear and tear during normal use and has  
8 failed and deteriorated long before its advertised useful life. The results of the  
9 abrasion testing on Mr. Bennett's type of laminate floor resulted in a finding that it  
10 did not even meet the AC1 rating, the lowest abrasion classification on the scale.  
11 Mr. Bennett would not have purchased the Kensington Manor Golden Teak laminate  
12 product had he known that it was defective, not durable, and had an inferior ability  
13 to withstand abrasion and scratches.

14 90. At the time he purchased his flooring Mr. Bennett received two  
15 separate two page invoices. The first page of both invoices mentioned a "30 year  
16 warranty." The second page of both invoices recited a disclaimer of all other implied  
17 and express warranties, but did not mention the warranty of merchantability. The  
18 second page of both invoices included a signature line but it was left blank.

### 19 **CLASS ALLEGATIONS**

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

25 92. Class Definition: Without prejudice to later revisions, the Class which  
26 Plaintiff seeks to represent is composed of:  
27  
28

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

4 b. All persons who purchased in North Carolina the Laminates from  
5 Defendant. This proposed class includes Plaintiff's First, Second, and Fourth  
6 Causes of Action, and alternatively includes Plaintiff's Third Cause of  
7 Action.

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

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

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

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

27 a. Whether Defendant's laminate flooring is defective when used as  
28 intended or in a reasonably foreseeable manner;

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

19 97. Typicality: Plaintiff's claims are typical of the claims of the members  
20 of the proposed class. Plaintiff and all Class Members have been injured by the  
21 same wrongful practices of Defendant. Defendant made the same uniform  
22 representations on its website and on the labels affixed to their product packaging.  
23 Plaintiff is informed and believes that these representations were made by  
24 Defendant nationally and throughout North Carolina, on its website, and other forms  
25 of advertisements which were identical. Plaintiff's claims arise from the same  
26 practices and conduct that give rise to the claims of all Class Members and are based  
27 on the same legal theories.

28 ///

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

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

14            a. The individual amounts of damages involved, while not  
15 insubstantial, are such that individual actions or other individual  
16 remedies are impracticable and litigating individual actions  
17 would be too costly;

18            b. If each Class Member was required to file an individual lawsuit,  
19 the Defendant would necessarily gain an unconscionable  
20 advantage since they would be able to exploit and overwhelm the  
21 limited resources of each individual Class Member with vastly  
22 superior financial and legal resources;

23            c. The costs of individual suits could unreasonably consume the  
24 amounts that would be recovered;

25            d. Given the size of individual proposed Class Members' claims and  
26 the expense of litigating those claims, few, if any, proposed  
27 Class Members could afford to or would seek legal redress  
28

- 1 individually for the wrongs Defendant committed against them  
2 and absent proposed Class Members have no substantial interest  
3 in individually controlling the prosecution of individual actions;
- 4 e. This action will promote an orderly and expeditious  
5 administration and adjudication of the proposed class claims,  
6 economies of time, effort and resources will be fostered and  
7 uniformity of decisions will be insured;
- 8 f. Without a class action, proposed Class Members will continue to  
9 suffer damages, and Defendant's violations of law will proceed  
10 without remedy while Defendant continues to reap and retain the  
11 substantial proceeds of its wrongful conduct;
- 12 g. Plaintiff knows of no difficulty that will be encountered in the  
13 management of this litigation that would preclude its  
14 maintenance as a class action;
- 15 h. Proof of a common business practice or factual pattern which  
16 Plaintiff experienced is representative of that experienced by the  
17 Class and will establish the right of each member of the Class to  
18 recover on the causes of action alleged; and
- 19 i. Individual actions would create a risk of inconsistent results and  
20 would be unnecessary and duplicative of this litigation.

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

27 ///

28

1 **FIRST CAUSE OF ACTION**

2 **Breach of Implied Warranty**

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

6 102. 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 Plaintiff 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 its own product testing, its "robust Quality Assurance program," numerous  
28

1 customer complaints, and its customer service and warranty operations, well before  
2 Plaintiff and proposed Class Members filed suit.

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

## 6 **SECOND CAUSE OF ACTION**

### 7 **Fraudulent Concealment**

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

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

22 111. Plaintiff is informed and believe that Lumber Liquidators knew, or  
23 recklessly disregarded that the Laminates were defective based upon literally  
24 hundreds of complaints posted by Lumber Liquidators' customers on websites,  
25 including but not limited to, [www.ths.gardenweb.com](http://www.ths.gardenweb.com), [www.consumeraffairs.com](http://www.consumeraffairs.com),  
26 [www.complaintlist.com](http://www.complaintlist.com), [www.my3cents.com](http://www.my3cents.com) and others describe scratching,  
27 bubbling, delaminating, peeling and curling of Lumber Liquidators' Dream Home  
28 laminate flooring identical to the damages suffered by Plaintiff herein.

1 112. For example, on June 1, 2005, "kitchenlover" posted the following  
2 question on [www.ths.gardenweb.com](http://www.ths.gardenweb.com):

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

4 113. On or about September 14, 2005 "pat111153" responded to the above-  
5 referenced question by posting the following, in relevant part, on  
6 [www.ths.gardenweb.com](http://www.ths.gardenweb.com):

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

8 114. On or about January 25, 2007, "sammyswife" posted the following  
9 another response on [www.ths.gardenweb.com](http://www.ths.gardenweb.com):

10 "I HATE this flooring!! Does anyone have the Dream Home parent company  
11 info? LL is no help! The salesman incorrectly told us how to install it. After a year  
12 of it being down, we are ripping it up because it looks horrible! It chips and peels  
13 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!"

14 115. On or about June 12, 2011 "grandpe02" posted his/her response on  
15 [www.ths.gardenweb.com](http://www.ths.gardenweb.com):

16 "I recently purchased (*sic*) 1000sq ft. of dream home French oak. Big  
17 mistake. LL was no help at all. The boards were very warped and chipped after  
18 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..."

19 116. On or about April 11, 2013, "poorchoice" posted his response on  
20 [www.ths.gardenweb.com](http://www.ths.gardenweb.com) as follows:

21 "Finished laying Dream Home Nirvana Plus on Saturday. Job went well and  
22 Wife was pleased. Floor was beautiful with tight joints and a warm rich color.  
23 While replacing furniture, Wife dragged a plant with a plastic saucer under it and  
24 made some scratches across the middle of the room. Scratches are not too bad, but  
25 raised suspicions. I moved the recliner, which has plastic pads on it to find that in  
26 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  
where you walk. I have some question about its longevity since the recliner wore  
through to white in 4 days...."

27 117. On or about November 4, 2013, "KDraper" posted his response as  
28 follows on [www.ths.gardenweb.com](http://www.ths.gardenweb.com):

1 "We had this product professionally installed. HATE it. Six months after it  
2 was put in we started seeing areas delaminate. Some were high traffic some were  
3 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  
1000sf of this flooring that looked like crap. I will never use LL again...."

4 118. On [www.complaintslist.com](http://www.complaintslist.com) "Pat" wrote on April 23, 2013:

5 "When we went there, we were met by the store manager, 'Dave' (He was  
6 very sick at the time, remember!) and informed him we were looking for a floor that  
7 would not scratch as we had two small dogs. Dave showed us some flooring  
8 samples and said to us, 'it will not scratch from your dogs, I have a dog and the same  
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."

9 119. On [www.mythreecents.com](http://www.mythreecents.com), "AllenB" wrote on November 23, 2009:

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

14 120. On [www.mythreecents.com](http://www.mythreecents.com), "JR in Arizona" wrote on March 20, 2010:

15 "In 2007 I bought the Asian Birch Flooring. Within 6 months it started to  
16 delaminate. It is engineered wood flooring. I finally made a complaint to LL asking  
17 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."

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

21 "If we had someone take photos of the flooring it would have been in support  
22 of your warranty as a need to hold a manufacturer accountable for quality should a  
23 defect be found. Flooring will react to changing conditions and we not the invoice,  
24 warranty and installation instructions, as well as some boxes also note requirements  
25 for maintaining ideal conditions. The problem is most consumers don't read this  
26 information until a problem occurs...a little too late, then expect LL to compensate  
27 for issues out of our control...In some situations we even send a complimentary box  
to help with repairs, but it sounds like the problem was not with the flooring, but  
rather some installation or site condition...I'm sorry to hear this lead to some  
dissatisfaction as the problem would be the same no matter where you shopped; you  
would most likely pay more elsewhere. Read the information provided – Dan  
Gordon often provides some good advice as well with his replies – Bob Villa also  
knows how important it is to read the installation instructions/warranty."

28 ///

1 122. On [www.consumeraffairs.com](http://www.consumeraffairs.com), Lana of Trabuco Canyon, CA wrote on  
2 August 6, 2015:

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

12 I researched online regarding warranty claims of customers of Lumber  
13 Liquidators and that it is their reasoning to other customers regarding warranty  
14 claims. Note this is prior to any inspection that Matt came to the conclusion. Rather  
15 insulting when myself and fiancé had to deal with 8 months of delays, avoidance,  
16 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  
18 want potential customers or customers their actual warranty practices and poor  
19 customer service because Lumber Liquidators advertises warranty and customer  
20 service as their key points to why customers go to them."

21 123. On [www.consumeraffairs.com](http://www.consumeraffairs.com) Will of Sandia Park, NM wrote on June  
22 10, 2015:

23 "We purchased America's Mission Olive 12mm laminate flooring from  
24 Lumber Liquidators in December of 2014 and had it installed throughout our home  
25 (except bathrooms) in our new remodel. We chose this floor after speaking with  
26 their sales people who convinced us that this is a very durable floor, which would  
27 hold up great to pets and kids. We had the floors installed by a professional and  
28 were very happy with the results for about a month. That was when we started  
noticing the chips all over the floor and the bubbling along the edges of the planks.  
If a drop of liquid came into contact with these floors, even if wiped up  
immediately, the surface of the product would start to peel away from the backing.  
And anytime anything was dropped on the floor they would chip.

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

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

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

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

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

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

32 125. Defendant concealed and suppressed material facts concerning the  
33 durability of its Dream Home laminate flooring products. Defendant failed to  
34 disclose that its Dream Home laminate flooring products were defective, not AC3  
35 rated, not "very durable", were not "premium" and would scratch, fade, stain,  
36 bubble, delaminate and curl during ordinary residential foot and pet traffic. As  
37 alleged above, the Laminates were defective, were of a lesser quality than advertised  
38 and had an inferior ability to withstand abrasion than advertised. These facts were

1 not known to Plaintiff and the proposed Class at the time of their purchase. These  
2 omitted and concealed facts were material because they directly impact the useful  
3 life and durability of the products.

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

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

24 128. Defendant intended to deceive Plaintiff and the Class by failing to  
25 disclose that its laminate flooring products are not fit for their intended purpose,  
26 will fail prematurely long before the end of the 30 year warranty period, were not  
27 "very durable" and do not have the AC3 rating.

28 ///

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

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

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

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

### 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 North Carolina Class)

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

/ / /

1           134. Plaintiff brings this claim on behalf of himself and on behalf of each  
2 and every member of the proposed Class.

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

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

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

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

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

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

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

26           142. Defendant further violated 15 U.S.C. §2302 by failing to make a full  
27 and conspicuous disclosure of the terms and conditions of the 30 year warranty  
28

1 advertised on Defendant's website, on page 1 of the Invoices in the product  
2 description, of Laminates sold to Plaintiff and the members of the proposed Class.

3 143. Lumber Liquidators breached its warranties to Plaintiff and the  
4 members of the proposed Class because these written affirmations of fact or written  
5 promises made in connection with the sale of the Laminates relate to the nature of  
6 the material and affirms or promises that such material will meet a specified level of  
7 performance over a specified period of time and in fact fail to do so. 15 U.S.C.  
8 § 2301(6)(A).

9 144. Lumber Liquidators' breach deprived Plaintiff and the members of the  
10 proposed Class of the benefit of their bargain.

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

15 146. Before filing this action, Plaintiff notified Defendant of its breach of  
16 written warranties and of its violations of the Magnuson-Moss Warranty Act, and  
17 Defendant has failed to adequately cure those breaches. Additionally, Defendant  
18 was notified of its breaches, *inter alia*, through a putative class action filed in Los  
19 Angeles, California. Defendant has had adequate and reasonable opportunity to cure  
20 its breaches of or fulfill its warranty obligations, but has failed to do so.

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

26 ///

27 ///

28 ///

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

#### 4 **FOURTH CAUSE OF ACTION**

##### 5 **Violation of North Carolina Unfair and Deceptive Trade Practice Act** 6 **N.C.G.S. §§ 75-1.1 et seq.**

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

10 150. The conduct described above and throughout this herein Complaint  
11 took place within the State of North Carolina and constitutes unfair and deceptive  
12 trade practices in violation of North Carolina's Unfair and Deceptive Trade Practice,  
13 N.C.G.S. §§ 75-1.1, et seq.

14 151. N.C.G.S. §§ 75-1.1 applies to the claims of Plaintiff and all North  
15 Carolina Class Members because the conduct which constitutes violations of the act  
16 by Lumber Liquidators occurred within the State of North Carolina.

17 152. Lumber Liquidators engaged in the concealment, suppression, or  
18 omission in violation of N.C.G.S. §§ 75-1.1 when, in selling and advertising the  
19 Chinese Flooring, Lumber Liquidators advertised the Dream Home laminate  
20 flooring to have an Abrasion Rating of AC3 when in fact it does not.

21 153. Lumber Liquidators engaged in the concealment, suppression, or  
22 omission of the aforementioned material facts with the intent that others, such as  
23 Plaintiff and Class Members and/or the general public would rely upon the  
24 concealment, suppression, or omission of such material facts and purchase Lumber  
25 Liquidators' Dream Home laminate flooring containing said defect.

26 154. Plaintiff and Class Members would not have purchased the Dream  
27 Home laminate flooring had they known or become informed of the lower Abrasion  
28 Rating in the laminate flooring.

1        155. Lumber Liquidators' concealment, suppression, or omission of material  
2 facts as alleged herein constitute unfair, deceptive and fraudulent business practices  
3 within the meaning of N.C.G.S. §§ 75-1.1.

4        156. Lumber Liquidators has acted unfairly and deceptively by  
5 misrepresenting the quality of the Dream Home laminate flooring.

6        157. Lumber Liquidators either knew, or should have known, that the Dream  
7 Home laminate flooring was defectively designed and/or manufactured and did not  
8 have an Abrasion Rating of AC3 as expressly represented by Lumber Liquidators,  
9 which would result in severe damages to the Plaintiff property.

10       158. Lumber Liquidators knew that, at the time Dream Home laminate  
11 flooring left Lumber Liquidators' control, the flooring contain the defect described  
12 herein resulting in lower Abrasion Ratings and a lower quality product than Plaintiff  
13 believed he was receiving. At the time of sale, the flooring contained the defects.  
14 The defects cause the flooring to be damaged more easily and cause the resulting  
15 damage described herein.

16       159. As a direct and proximate cause of the violation of N.C.G.S. §§ 75-1.1,  
17 described above, Plaintiff and members of the Class have been injured in that they  
18 have purchased the Dream Home laminate flooring based on nondisclosure of  
19 material facts alleged above. Had Plaintiff and Class Members known the true  
20 Abrasion Rating of the Dream Home laminate flooring, they would not have  
21 purchased their flooring, or would have paid a lower price for it.

22       160. Plaintiff and Class Members reasonably relied upon Lumber  
23 Liquidators representations that the Dream Home laminate flooring met all  
24 applicable standards and had an Abrasion Rating of AC3.

25       161. Lumber Liquidators used unfair methods of competition and unfair or  
26 deceptive acts or practices in conducting their businesses. This conduct constitutes  
27 fraud within meaning of the N.C.G.S. §§ 75-1.1. This unlawful conduct is  
28 continuing, with no indication that Lumber Liquidators will cease.

1 162. As a direct and proximate result of Lumber Liquidators' unfair and  
2 deceptive acts and practices, Plaintiff and the other members of the Class will suffer  
3 damages, which include, without limitation, costs to inspect, repair or replace their  
4 flooring and other property, in an amount to be determined at trial.

5 163.. As a direct and proximate result of Lumber Liquidators' unfair and  
6 deceptive acts and practices, Plaintiff and the other members of the Class will suffer  
7 damages, which include, without limitation, damage to their flooring and other  
8 elements.

9 164. As a result of the acts of consumer fraud described above, Plaintiff and  
10 the Class have suffered ascertainable loss in the form of actual damages that include  
11 the purchase price of the products for which Lumber Liquidators is liable to the  
12 Plaintiff and the Class for treble their ascertainable losses, plus attorneys' fees and  
13 costs, along with equitable relief prayed for herein in this herein Complaint.

14 **PRAYER FOR RELIEF**

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

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

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

- 23 • Lumber Liquidators has not effectively disclaimed the implied
- 24 warranty of merchantability, and that the Laminates continue to
- 25 be subject to such implied warranties;
- 26 • The warranty limitations contained in Defendant's "limited
- 27 warranties" are unenforceable;
- 28 • Plaintiff and proposed Class members are entitled to restitution,

- 1 including reimbursement for any installation, removal, and  
2 replacement costs; and that
- 3 • Plaintiff and proposed Class members may be entitled to other  
4 relief as awarded by this Court;
- 5 C. Restitution of all monies Defendant received from Plaintiff and the  
6 proposed Class;
- 7 D. Damages to be determined at trial including actual, compensatory, and  
8 consequential damages incurred by Plaintiff and proposed Class  
9 Members;
- 10 E. Punitive damages where allowed;
- 11 F. An award of reasonable attorney's fees and costs; and
- 12 G. That the Court award such other and further relief as this Court may  
13 deem appropriate.

14 DATED: July 14, 2016 ROBERTSON & ASSOCIATES, LLP

15 / s / Alexander Robertson, IV  
16 Bv: Alexander Robertson, IV (Pro Hac Vice Pending)  
17 Mark J. Uyeno (Pro Hac Vice Pending)

18 WHITFIELD BRYSON & MASON, LLP  
19 Daniel K. Bryson (Pro Hac Vice Pending)  
20 Patrick Wallace (Pro Hac Vice Pending)

21 AHDOOT & WOLFSON, PC  
22 Robert Ahdoot (Pro Hac Vice Pending)

23 LAW OFFICE OF ANDREW J. MCGUINNESS  
24 Andrew J. McGuinness, Esq. (Pro Hac Vice  
25 Pending)

26 *Attorneys for Plaintiffs and The Proposed Class*  
27  
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