

July 26, 2018

**Via Email and ECF**

Hon. Anthony J. Trenga  
Albert V. Bryan U.S. Courthouse  
401 Courthouse Square  
Alexandria, VA 22314

***Re: In Re: Lumber Liquidators Chinese-Manufactured Laminate Flooring Products Marketing, Sales Practices and Products Liability Litigation, MDL No. 1:15-md-02627 and In Re: Lumber Liquidators Chinese-Manufactured Laminate Flooring Durability Marketing and Sales Practices Litigation, No. 1:16-md-02743***

Dear Judge Trenga:

After notice had been underway in the Lumber Liquidators cases (MDL 2627 and 2743), Plaintiffs' counsel were informed by Lumber Liquidators that the data file for purchasers of laminate flooring provided by Lumber Liquidators and used by the Claims Administrator (Angeion), contained all laminate flooring purchased during the settlement class period, and not just purchases of the Chinese-manufactured flooring at issue in the litigation, and identified in the settlement. As described in the supplemental declaration of Angeion's Steve Weisbrot, the class member information included approximately 230,000 persons who were not class members, and should not have received mail notice. In addition, about four persons who had not been included in the class due to a "net negative purchase" history (refunded more by Lumber for laminate floors than they paid), and for whom Lumber has address information, require notice. With this reduced total class size, we estimate that claimants will likely see a slight increase in their settlement benefits; however, that potential increase does not in our opinion, and that of counsel for Lumber Liquidators, appear to justify the approximately \$500,000 required to mail a supplemental notice to the whole class.

To address these issues, the parties and Angeion have developed a cost-effective corrective and supplemental notice plan. This plan 1) provides mailed notice to the few persons not previously notified; 2) alerts the few opt outs and objectors of the possibly increased recovery if they participate; 3) notifies ineligible recipients that they receive the notice in error and to please disregard, and 4) revises the settlement website FAQ to include the upwardly revised estimates.

We wanted to apprise the Court of what has occurred and our plan going forward. Please let us know if the Court would like further information. The parties are available for an in person or telephonic conference if the Court desires.

Sincerely,

/s/ Steven J. Toll  
Steven J. Toll

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UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

IN RE: LUMBER LIQUIDATORS CHINESE- )  
MANUFACTURED LAMINATE FLOORING )  
PRODUCTS MARKETING, SALES ) MDL No. 1:15-md-02627 (AJT/TRJ)  
PRACTICES AND PRODUCTS LIABILITY )  
LITIGATION )  
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)

IN RE: LUMBER LIQUIDATORS CHINESE- )  
MANUFACTURED LAMINATE FLOORING )  
DURABILITY MARKETING AND SALES ) MDL No. 1:16-md-02743 (AJT/TRJ)  
PRACTICES LITIGATION )  
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**SUPPLEMENTAL DECLARATION OF STEVEN WEISBROT, ESQ.**

I, STEVEN WEISBROT, ESQ., of full age, pursuant to section 1746 of title 28 of the United States Code, hereby declare under penalty of perjury as follows:

1. I am a partner at the class action notice and settlement administration firm, Angeion Group, LLC (“Angeion”). I am fully familiar with the facts contained herein based upon my personal knowledge.
2. My credentials were provided to this Court, as outlined in my previously-filed Declaration in Support of Preliminary Approval of Settlement (ECF Docket No. 1339-4).
3. This Declaration is filed to update the court concerning a factual discovery that affects the class member data and the notice program.
4. Angeion Group was recently made aware that when the Defendant provided their data records to Angeion, they inadvertently included Stock Keeping Unit (“SKU”) codes for products that were excluded from the class definition because they were not manufactured in China. Angeion relied on this data set to determine the class size and to work with the parties to generate an illustrative range of potential recoveries. This range of recoveries was outlined in the various notice forms and was reproduced in response to FAQ No. 9 on the settlement website.
5. Based on Angeion’s initial review of the records provided in the Defendant’s data, the total class size that was reported to the court was 1,005,470. However, after removing the SKU codes

for purchases keyed to Non-Chinese Laminate products, and removing Net Negative Purchases<sup>1</sup>, the total class size is now 761,390.

6. Specifically, the class is now composed of 520,809 CARB2 only class members, 231,220 CARB1 only class members, and 9,361 class members who are in both CARB1 and CARB 2 classes. 230,389 individuals who had previously received notice, have now been determined to not be in the class, because they purchased Non-Chinese Laminate products.. Also, there were 12 class members, who were previously defined as only CARB1 or only CARB2, who are now considered both CARB1 and CARB2 class members. Likewise, 1,142 class members who were previously considered both CARB1 and CARB2 class members, are now only CARB1 or CARB2 only class members. Additionally, there are 414 class members who previously did not qualify as class members because they were Net Negative purchasers, but who are now eligible class members because the products they returned were Non-Chinese Laminate and should not have been used to offset their qualifying purchases.

7. Angeion, after consultation with the parties, suggests the following notice program to alert the affected class members and incorrectly notified individuals.

#### **INELIGIBLE CLASS MEMBERS**

8. For the 230,389 customers that received a Notice but that are ineligible, we suggest sending a corrective letter indicating this error and alerting these individuals that they are not currently class members and never were eligible class members because they did not purchase Chinese Laminate Flooring during the class period. The letter will alert these individuals that if they already filed a claim or plan to file a claim, that their claim is or will be denied. Further, we suggest adding a page to the settlement website to communicate the same messaging to any individual in this group who attempts to login using the information from their Notice form. By creating this page, these individuals would be instantly notified they are not a class member if they were to try

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<sup>1</sup> The Net Negative purchasers are those customers whose returns of the Chinese-manufactured laminate exceed purchases during the class period.

to log in and file a claim. However, if they still wish to assert that they are a class member and seek to dispute their classification, we will include a link to the generic claims filing page where they will have the opportunity to upload supporting documentation along with their claim submission for further review.

**CLASS MEMBERS WHO WENT FROM CARB1 OR CARB2 TO BOTH GROUPS**

9. We recommend sending the 12 class members in this group a Notice to indicate their Claim Category has now changed to Both CARB1 and CARB2. If any of these class members had already filed a claim in the CARB1 category for example but are now designated in the CARB1 and CARB2 category, they have a right to indicate their Benefit Selection (cash or voucher), so we recommend sending them a separate Notice that indicates the category change and providing them with their login information to log in and provide their Benefit Selection.

**CLASS MEMBERS WHO WENT FROM BOTH GROUPS TO CARB1 ONLY OR CARB2 ONLY**

10. We recommend sending the 1,142 class members a Notice to indicate their Claim Category has now changed from Both categories to either CARB1 or CARB2 only. Given that if any of these class members had filed a CARB2 claim they would have already selected their benefit, so there is no need to for them to take further action about benefit selection for this group.

**NEWLY ELIGIBLE CLASS MEMBERS**

11. There are a total of 414 previously ineligible class members, who are now considered eligible under the settlement for the reasons described above. However, of the 414 class members, 410 were “cash and carry” purchasers for whom Lumber Liquidators does not have names, email addresses, or U.S. Postal addresses. These 410 class members would have already received notice of the settlement via the publication plan set out in my prior declaration. Therefore, only four of the previously ineligible class members will be notified via direct notice of their membership in the class (the remainder may already have been notified of their potential eligibility by the media notice program.) On July 25, 2018, for those four class members, Angeion mailed a true and correct copy of their individualized Notice

postcard --keyed to their specific class, per the processes and procedures outlined in my previous declaration. Providing notice to these newly discovered class members affords them over 30 days prior to the opt-out and objection deadline and over 75 days prior to the claims filing deadline, to exercise their rights and/or options in the litigation. In my opinion, this timeline provides these four class members full and proper notice without unduly delaying the timelines previously set by the Court.

### **EXPECTED RECOVERY RANGE**

12. As outlined in my previous declaration, the post-card notices for CARB2/Durability claimants, the website FAQ's, and the long form notice, all noted that based upon past settlement data in similar consumer cases, class members selecting the cash award could expect to receive about 20% - 56% of the purchase price of their flooring. It further noted that Class members electing to receive a voucher could potentially expect approximately 38% -104% of their purchase price. The notice forms and FAQ emphasized that that the ranges were "for illustration purposes only" given that the ultimate benefits to be paid were dependent on several currently unknown factors, including the number of claims that are ultimately filed.

13. Specifically, the text of the original Notice forms read as follows:

The awards will be allocated on a pro rata basis. This means that the final amount each participant receives is unknown until all Settlement Class Members have decided if they will participate and select cash or a voucher as their benefit. Based upon past settlement data, CARB2/Durability Class Members selecting the cash award could receive about 20%-56% of the purchase price of their flooring—this benefit does not include the cost of installation. Class members selecting a voucher can expect 38%-104% of their purchase price.

By way of example, a class member who paid \$1,000 for his Class Flooring could expect to receive a voucher with an approximate value of \$380 to \$1,040. If the same class member selected the cash option, he could expect an approximate cash award of \$200 to \$560. These are estimates for illustration purposes only. The final award amounts will depend on, among other things, the actual purchase price you paid for your Class Flooring, and the participation and award selection of settlement participants.

14. After accounting for the change in class size and other adjustments noted above, the expected recovery percentages increased slightly across the board. The average purchase price per Customer for CARB2 only is now \$1,082.69 and the total number of CARB2 Class Members is 520,809. Therefore, the revised Cash percentage recovery range has improved to 28% to 72% (\$280 to \$720 for a

purchase of \$1,000). The revised Voucher percentage recovery range has improved to 50% to 134% (\$500 to \$1,340 for a purchase of \$1,000).

15. Given that the notice forms were clear that these ranges were being provided for illustration purposes only, and were dependent on several other factors, we do not feel it is necessary to mail revised notices to class members. However, we respectfully suggest that the court grant permission to update FAQ # 9 on the settlement website to include the revised percentages. We will also alert the seven opt-outs and two objectors of the upwardly revised projections to give them an opportunity to reconsider their choice.

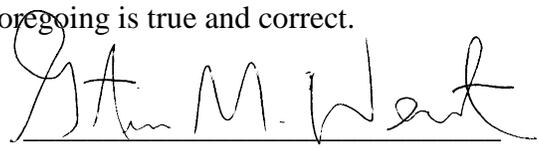
16. As outlined in my previous declaration, the notice program included the creation of a case website, [www.LaminateSettlement.com](http://www.LaminateSettlement.com), where Class Members can easily view general information about this class action, review relevant Court documents, and view important dates and deadlines pertinent to the Settlement. The website was designed to be user-friendly and make it easy for class members to find information about the case or file a claim. In my opinion, given that the website is a central mechanism to keep class members informed of their rights and options under the settlement, updating the website regarding class members potential, albeit illustrative, recovery amount, is appropriate and cost effective.

### **CONCLUSION**

43. It is my opinion that the Notice Program continues to provide class members Due Process of Law and is the best notice that is practicable under the circumstances and is fully compliant with Rule 23 of the Federal Rules of Civil Procedure.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: July 26, 2018

  
STEVEN WEISBROT