

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

**IN RE: LUMBER LIQUIDATORS)
CHINESE-MANUFACTURED FLOORING)
DURABILITY MARKETING AND SALES) MDL No. 1:16-md-02743 (AJT/TRJ)
PRACTICE LITIGATION)
_____)**

This Document relates to ALL Cases.

**STIPULATED ORDER FOR
PRESERVATION OF EVIDENCE AND TESTING PROTOCOL**

Plaintiffs in the above-captioned case and Defendant Lumber Liquidators, Inc. (collectively, the “Parties”) submit this Stipulated Order for Preservation of Evidence (the “Order”). The Parties have discussed their preservation obligations and needs and have agreed that preservation of potentially relevant evidence, including electronically stored information (ESI), will be reasonable and proportionate. This Order relates to document preservation including ESI, and samples as discussed herein and does not address the relevancy, discoverability, or admissibility of any evidence. The Parties will continue to meet and confer as the case progresses and the Parties learn more about the scope of discovery or the nature of Lumber Liquidators’ document storage systems, and any Party shall be free to seek amendment of this Interim Order.

The terms of this Order regarding temporal and subject matter scope are intended to govern evidence preservation only, and do not constitute findings by the Court regarding any party or entity’s obligation to produce documents in response to a future discovery request in this proceeding.

To reduce the costs and burdens of preservation and to ensure proper evidence is preserved, the Parties are ordered:

1. To preserve all documents, electronically stored information, and tangible things that contain information relevant to the related actions, such as protocols, communications, customer service logs, and test results. As provided by paragraph 17 of this Court's Initial Order: "Documents, data, and tangible things is to be interpreted broadly to include anything in which information of any kind is recorded. Information that serves to identify, locate, or link such material, such as file inventories, file folders, indices, and metadata is also included in the definition. Preservation includes the obligation not to alter any such thing as to its form, content or manner of filing."

2. The relevant time period for these actions for preservation purposes only is, as a general matter, January 1, 2012 through the present day.

3. That documents and ESI will be preserved for the following types of custodians:

- a. Named plaintiffs;
- b. Lumber Liquidators' employees or agents who are likely to have relevant information, including, but not limited to, marketing personnel, regulatory compliance personnel, scientific or engineering personnel, design, sales and finance personnel, and customer service or warranty personnel.

4. To preserve the flooring at issue as follows:

- a. Lumber Liquidators will preserve and not destroy any Chinese-made laminated flooring until plaintiffs' experts have had a reasonable opportunity to inspect or test. Within seven days following the entry of this Order, Lumber Liquidators shall identify the location (including street address, city, state and country) of all Chinese-made laminated flooring within its possession, custody, or control. Lumber Liquidators shall provide access to any facility that contains said

Chinese-made laminated flooring within seven days of Class Counsel's request, Lumber Liquidators agrees that Plaintiffs' experts will be allowed to obtain and test samples of said Chinese-made Laminated flooring.

- b. Named plaintiffs will not remove or replace their Lumber Liquidators' flooring without prior notification to Lead Defense Counsel and without preserving samples of the flooring that they have removed or replaced. Additionally, named plaintiffs will preserve and not destroy:
 - i. Package labeling or a photograph thereof;
 - ii. All documents related to the flooring the named plaintiff purchased from Lumber Liquidators including but not limited to, any receipts, invoices, packaging, installation documents, brochures, samples, etc.;
 - iii. All documents related to the named plaintiff's decision to purchase flooring from Lumber Liquidators;
 - iv. All documents related to any testing of flooring in the named plaintiff's home;
 - v. All documents related to the named plaintiff's claim for damages against Lumber Liquidators; and
 - vi. Any photographs of the Lumber Liquidators flooring as installed in the named plaintiff's home.

5. The Parties recognize that some data sources may not be reasonably accessible because of undue burden or cost pursuant to Fed. R. Civ. P. 26(b)(2)(B).

6. With respect to testing issues, Plaintiffs report that certain named plaintiffs have retained third party testing laboratories to conduct durability of abrasion testing on the products at issue. Defendant Lumber Liquidators, Inc. reports that in its ordinary course of business, it inspects and tests its products. Both parties will produce such non-privileged testing data in discovery. Each Party plans to rely on its own experts to undertake testing for use at trial.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: February 3, 2017

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