

GC 5

Concealment of 2nd floor bathroom floor

When Seller Micah Forstein moved out of his home, there was a structural issue with the 2nd floor bathroom.

Seller's Agent Kent Weinstein of Keller Williams Coastal Estates in Pacific Grove CA suggested Forstein engage with General Contractor John Chatters for remodeling. They agreed to that and Chatters notified him of the floor defect. According to his bio, GC Chatters started out doing work for Clint Eastwood.

Upstairs hall bath floor repair: Kent will send you a video showing movement in the floor. I won't know what the damage is until I remove the vinyl and take a look. But I'm estimating about \$400 labor to repair and then the cost of new vinyl, installed, at about \$375.

A "month" after Forstein had moved out Chatters says, " the upstairs bath floor was wet only on the top underlayment layer. (removed) and the structural subfloor is OK. good news". It was still wet a month later? Yet he doesn't change his quoted price for the repair?

The upstairs bath floor was wet only on the top underpayment layer (removed) and the structural subfloor is OK- good news. I'll be installing new plywood underlayment today and new vinyl will be installed before the week is over. We will be very close to estimated cost.

GC Chatters with or without knowledge of Weinstein, seemingly decided to bury structural defects in the process, as a "gift" to the new owners. In addition to being part of our legal complaint, this is a scrap book to remember them by...



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Summary

A California Licensed Contractor was paid to do work to prepare a home for sale.

The Contractor and the Real Estate Agent organizing the repairs quote sent a video to the Seller of motion in the sub floor in the 2nd floor bathroom.

The Contractor quoted a repair which would then require a new sheet vinyl floor.

The Contractor then exposed the subfloor and told the seller the work did not need to be done. He indicated a 1/4 plywood overlay was fine. . He did NOT change the price for the repair and he put a new sheet vinyl floor down. .

After finding other concealed defects, we investigated the repaired area. We found the floor to be soft. We removed the sheet vinyl and the luan, and we found the deficient subfloor that would have caused floor flex in videos. The subfloor did in fact need to be removed and replaced.

While the seller did not know there was a defective repair and that would only qualify as negligence / constructive fraud, the seller had not provided any indication any work had been done there to prepare the home for sale. He had not provided a summary of work done to prepare the home for sale nor any quotes or invoices.

The seller only produced work quotes and information when demanded to do so in escrow and that's when the buyers discovered work had been done.

For that reason he is still being pursued for disclosure fraud.

Buyer Discovery of Defects (Structural / Health and Safety)

The subfloor by the tub was structurally unsound

The subfloor all around the tub needed to be removed due to damage. This subfloor damage would have been visible to the contractor before he installed the 1/4" overlay.

Photo - July 6, 2021 - this shows the part that had to be cut out...

This was a 3/4 ply subfloor and in some areas 50% of the material was gone. This should not have been overlaid. It should have been cut out and repaired. The contractor likely did not do it because it was up against the edge of the tub and it was not a simple repair.







Seller and Seller's Agent Failure to Disclosure

20210420 Email - Pg 4/5 - Seller admits to behavior that would have led to the wet floor and dryrotted subfloor.

During escrow after providing pressure on the seller's agent, he verbally revealed the fact there was a water event in the 1st floor walls or ceiling in the utility area. That area is directly below the tub and the subfloor defect on the 2nd floor. As part of answering the question about 1st floor defects, his answer explained the defects on the 2nd floor floor as well.

Plumbing bust and repair - There was a plumbing bust In ceiling area above first floor bathroom and laundry? Can we get a bit of info on that (no receipt or documentation)

There wasn't a busted plumbing there it was an **overflowing bathtub**. I have a daughter who believed she was a fish. We did have the drain fixed a number of times, and my understanding is that there was a leak in the plumbing drain of one of the sinks, in the upstairs bathroom recently (after we moved out). but other than that, I don't know of any additional work. We did replace the toilet because I couldn't get any parts for the old one. I don't recall the cost but I think it was \$150 for the toilet.

TDS Page 2 - Items B and C - Are you seller aware of any significant defects in: interior walls, ceilings, exterior walls, other

TDS page 2 - item B

The seller noted defects to floors but he failed to identify any work done in the 2nd floor bathroom floor or any defects.

The seller noted other structural components but did not provide any information about the defective deck removal and concealment of defects.

Property Address: 12 Bayview Rd, Castroville, CA 95012-9725 Date: March 16, 2021

B. Are you (Seller) aware of any significant defects/malfunctions in any of the following? ☒ Yes ☐ No. If yes, check appropriate space(s) below.

☐ Interior Walls ☐ Ceilings ☒ Floors ☐ Exterior Walls ☒ Insulation ☐ Roof(s) ☒ Windows ☐ Doors ☐ Foundation ☐ Slab(s)
☐ Driveways ☐ Sidewalks ☐ Walls/Fences ☒ Electrical Systems ☐ Plumbing/Sewers/Septics ☒ Other Structural Components

(Describe: upstairs windows might leak a little during heavy rain. Insulation under structure detached)

If any of the above is checked, explain. (Attach additional sheets if necessary.): minor water damage in dining room floor
solar panels in need of regular maintenance. Power Max is 536kw/Month in last 6 months.
Cracking in cement in Pool house and around pool. Sheds and water House in need of work.

TDS page 2 - item C4

1. The seller failed to note structural not in compliance w/ building codes

C. Are you (Seller) aware of any the following:

1. Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, mold, fuel or chemical storage tanks, and contaminated soil or water on the subject property ☒ Yes ☐ No
2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property ☒ Yes ☐ No
3. Any encroachments, easements or similar matters that may affect your interest in the subject property ☒ Yes ☐ No
4. Room additions, structural modifications, or other alterations or repairs made without necessary permits. ☐ Yes ☒ No
5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes ☐ Yes ☒ No
6. Fill (compacted or otherwise) on the property or any portion thereof ☐ Yes ☒ No

TDS Page 3 - Agent - Additional Items to Disclose

Sellers Agent failed to disclose additional information he was or should have been aware of given a 10 month property management responsibility and construction oversight responsibility including conveying the video with the defect to the seller. . .

Property Address: Red, Castroville, CA 95012-9725 Date: March 16, 2021

Seller certifies this information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller: _____ Date: 3/18/2021

Seller: _____ Date: _____

III. AGENT'S INSPECTION DISCLOSURE

(To be completed only if the Seller is represented by an agent in this transaction.)

THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

☒ See attached Agent Visual Inspection Disclosure (AVID Form)

☐ Agent notes no items for disclosure.

☒ Agent notes the following items: _____

Agent (Broker Representing Seller) KW Coastal Estates By: _____ Date: 3/18/2021

(Please Print) (Associate Licensee or Broker Signature)

IV. AGENT'S INSPECTION DISCLOSURE

(To be completed only if the agent who has obtained the offer is other than the agent above.)

THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

☒ See attached Agent Visual Inspection Disclosure (AVID Form)

☐ Agent notes no items for disclosure.

☐ Agent notes the following items: _____

Agent (Broker Obtaining the Offer) _____ By: _____ Date: 4/1/2021

(Please Print) (Associate Licensee or Broker Signature)

V. BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller _____ Date _____ Buyer _____ Date _____

Seller _____ Date _____ Buyer _____ Date _____

Agent (Broker Representing Seller) KW Coastal Estates By: _____ Date _____

(Please Print) (Associate Licensee or Broker Signature)

Agent (Broker Obtaining the Offer) _____ By: _____ Date _____

(Please Print) (Associate Licensee or Broker Signature)

SECTION 1102.3 OF THE CIVIL CODE PROVIDES A BUYER WITH THE RIGHT TO RESCIND A PURCHASE CONTRACT FOR AT LEAST THREE DAYS AFTER THE DELIVERY OF THIS DISCLOSURE IF DELIVERY OCCURS AFTER THE SIGNING OF AN OFFER TO PURCHASE. IF YOU WISH TO RESCIND THE CONTRACT, YOU MUST ACT WITHIN THE PRESCRIBED PERIOD.

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

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TDS REVISED 8/20 (PAGE 3 OF 3)

REAL ESTATE TRANSFER DISCLOSURE STATEMENT (TDS PAGE 3 OF 3)

Produced with Lane Wolf Transactform (pdfForm Editor) 231 Shearson Ct. Cambridge, Ontario, Canada N1T 1J8 www.lawolf.com 12 Boardwalk

SPQ Page 2 - Item 6A - Are you seller aware of: Repairs and alterations

Seller indicated there were alterations but the details did not include anything related to 2nd floor bathroom defects or repairs.

DocuSign Envelope ID: AB09BBE4-4B52-4BD6-97B7-1992C61DAF2E

Property Address: 12 Bayview Rd, Castroville, CA 95012-9725

6. REPAIRS AND ALTERATIONS: **ARE YOU (SELLER) AWARE OF...**

A. Any alterations, modifications, replacements, improvements, remodeling or material repairs on the Property (including those resulting from Home Warranty claims) ☒ Yes ☐ No

B. Any alterations, modifications, replacements, improvements, remodeling, or material repairs to the Property done for the purpose of energy or water efficiency improvement or renewable energy? ☒ Yes ☐ No

C. Ongoing or recurring maintenance on the Property pool maintenance; solar panels pressure washed (for example, drain or sewer clean-out, tree or pest control service) ☒ Yes ☐ No

D. Any part of the Property being painted within the past 12 months ☒ Yes ☐ No

E. Whether the Property was built before 1978 ☒ Yes ☐ No

(a) If yes, were any renovations (i.e., sanding, cutting, demolition) of lead-based paint surfaces started or completed. ☒ Yes ☐ No

(b) If yes to (a), were such renovations done in compliance with the Environmental Protection Agency Lead-Based Paint Renovation Rule? ☒ Yes ☐ No

Explanation: Removal of Popcorn Ceiling and Paneling in all parts of house, painted inside and out,
plumbing work throughout, (solar power add), floors replaced, stairs rebuilt, kitchen countertop replaced, as was sink/tile in kitchen

SPQ Page 2 - Item 7A - Are you seller aware of: Structural Systems and Appliances

Seller indicated there were defects in a list of words including floors, but the details did not include anything related to 2nd floor bathroom defects or repairs.

7. STRUCTURAL, SYSTEMS AND APPLIANCES: **ARE YOU (SELLER) AWARE OF...**

A. Defects in any of the following, (including past defects that have been repaired): heating, air conditioning, electrical, plumbing (including the presence of polybutylene pipes), water, sewer, waste disposal or septic system, sump pumps, well, roof, gutters, chimney, fireplace, foundation, crawl space, attic, soil, grading, drainage, retaining walls, interior or exterior doors, windows, walls, ceilings, floors or appliances ☒ Yes ☐ No

B. The leasing of any of the following on or serving the Property: solar system, water softener system, water purifier system, alarm system, or propane tank (s) ☒ Yes ☐ No

C. An alternative septic system on or serving the Property ☐ Yes ☒ No

Explanation: heating system repaired, electrical, plumbing, water all repaired, well pressure vessels replaced 6/2020 roof replaced 2016, chimney in need of repair (fire place works).

SPQ Page 4 - Item 17A - List of reports for representation

The seller indicates he is going to provide reports and/or other documents for representation.

No reports or documents were provided detailing defects or repairs to the 2nd floor bathroom floor.

NOTE: this document was signed 3/18/2021. That was two days after the MLS listing went live and 2 weeks prior to forming a contract with buyers.

17. OTHER:	ARE YOU (SELLER) AWARE OF...
A. Reports, inspections, disclosures, warranties, maintenance recommendations, estimates, studies, surveys or other documents, pertaining to (i) the condition or repair of the Property or any improvement on this Property in the past, now or proposed; or (ii) easements, encroachments or boundary disputes affecting the Property whether oral or in writing and whether or not provided to the Seller (If yes, provide any such documents <u>in your possession</u> to Buyer.)	☒ Yes ☐ No
B. Any occupant of the Property smoking any substance on or in the Property	☐ Yes ☒ No
C. Any past or present known material facts or other significant items affecting the value or desirability of the Property not otherwise disclosed to Buyer	☐ Yes ☒ No
Explanation: <u>Well/water reports, septic provided, pest report</u>	
18. ☒ (IF CHECKED) ADDITIONAL COMMENTS: The attached addendum contains an explanation or additional comments in response to specific questions answered "yes" above. Refer to line and question number in explanation. Seller represents that Seller has provided the answers and, if any, explanations and comments on this form and any attached addenda and that such information is true and correct to the best of Seller's knowledge as of the date signed by Seller. Seller acknowledges (i) Seller's obligation to disclose information requested by this form is independent from any duty of disclosure that a real estate licensee may have in this transaction; and (ii) nothing that any such real estate licensee does or says to Seller relieves Seller from his/her own duty of disclosure.	
Seller <u>Micah A. Forstein</u>	Signed by <u>Micah A Forstein</u> Date <u>3/18/2021</u>

SPQ Page 4 - Item 17C - Material facts or defects affecting property not otherwise disclosed to Buyer

17. OTHER:	ARE YOU (SELLER) AWARE OF...
A. Reports, inspections, disclosures, warranties, maintenance recommendations, estimates, studies, surveys or other documents, pertaining to (i) the condition or repair of the Property or any improvement on this Property in the past, now or proposed; or (ii) easements, encroachments or boundary disputes affecting the Property whether oral or in writing and whether or not provided to the Seller (If yes, provide any such documents <u>in your possession</u> to Buyer.)	☒ Yes ☐ No
B. Any occupant of the Property smoking any substance on or in the Property	☐ Yes ☒ No
C. Any past or present known material facts or other significant items affecting the value or desirability of the Property not otherwise disclosed to Buyer	☐ Yes ☒ No
Explanation: <u>Well/water reports, septic provided, pest report</u>	
18. ☒ (IF CHECKED) ADDITIONAL COMMENTS: The attached addendum contains an explanation or additional comments in response to specific questions answered "yes" above. Refer to line and question number in explanation. Seller represents that Seller has provided the answers and, if any, explanations and comments on this form and any attached addenda and that such information is true and correct to the best of Seller's knowledge as of the date signed by Seller. Seller acknowledges (i) Seller's obligation to disclose information requested by this form is independent from any duty of disclosure that a real estate licensee may have in this transaction; and (ii) nothing that any such real estate licensee does or says to Seller relieves Seller from his/her own duty of disclosure.	
Seller <u>Micah A. Forstein</u>	Signed by <u>Micah A Forstein</u> Date <u>3/18/2021</u>

SPQ Page 1 - Item 5J - Material facts or defects affecting property not otherwise disclosed to Buyer

The seller indicates yes, but nothing addresses the 2nd floor defects or repairs.

5. STATUTORILY OR CONTRACTUALLY REQUIRED OR RELATED:	ARE YOU (SELLER) AWARE OF...
A. Within the last 3 years, the death of an occupant of the Property upon the Property	☐ Yes ☒ No
B. An Order from a government health official identifying the Property as being contaminated by methamphetamine. (If yes, attach a copy of the Order.)	☐ Yes ☒ No
C. The release of an illegal controlled substance on or beneath the Property	☐ Yes ☒ No
D. Whether the Property is located in or adjacent to an "industrial use" zone	☐ Yes ☒ No
(In general, a zone or district allowing manufacturing, commercial or airport uses.)	
E. Whether the Property is affected by a nuisance created by an "industrial use" zone	☐ Yes ☒ No
F. Whether the Property is located within 1 mile of a former federal or state ordnance location	☐ Yes ☒ No
(In general, an area once used for military training purposes that may contain potentially explosive munitions.)	
G. Whether the Property is a condominium or located in a planned unit development or other common interest subdivision	☐ Yes ☒ No
H. Insurance claims affecting the Property within the past 5 years	☒ Yes ☐ No
I. Matters affecting title of the Property	☐ Yes ☒ No
J. Material facts or defects affecting the Property not otherwise disclosed to Buyer	☒ Yes ☐ No
K. Plumbing fixtures on the Property that are non-compliant plumbing fixtures as defined by Civil Code Section 1101.3	☐ Yes ☐ No

Explanation, or ☒ (if checked) see attached; storm Damage of old fence now replaced. Best Internet 300Mbs Through Comcast Cable.

Buyer's Initials BC AB Seller's Initials TS

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SPQ REVISED 6/18 (PAGE 1 OF 4)

SELLER PROPERTY QUESTIONNAIRE (SPQ PAGE 1 OF 4)

Tracy Traville, Broker, PO Box 326 Pacific Grove CA 93950 Tracy Traville	Phone: 8315216999 Produced with Lone Wolf Transactions (zipForm Edition) 231 Shearson Cr. Cambridge, Ontario, Canada N1T 1J5	Fax: 8886789838 www.lwolf.com	12 Boardwalk -
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General Contractor - Concealment of Structural Defects

Quote From GC - 20200925 - Includes ref to video showing floor movement

From: John Chatter [jowsh@son.com]
Sent: Friday, September 25, 2020 6:22:13 PM
To: Mark Forstein [forstein@thinkurgical.com]
Subject: Additional work estimates

Hi Mark,

Here are a few more estimates to keep things moving forward while I'm waiting for the cost of deck materials to rebuild outside master bedroom deck and remove North side deck. Below are combined ideas from both me and K that will make the home more presentable. There are no casings (window trim) on living room windows and one upstairs closet. Provide and install: \$150.

No baseboards in downstairs bath or laundry. Provide and install: \$170.

Smoke detectors (every bedroom and top of stairs) and carbon monoxide detectors on each floor are mandatory. Provide and install: \$250.

Repair the hole in the ceiling in the master closet \$95.

Reverse the swing on downstairs bath door, to open into hallway. (New toilets will not clear.) \$140.

Upstairs hall bath floor repair: Ken will send you a video showing movement in the floor. I won't know what the damage is until I remove the vinyl and take a look. But I'm estimating about \$400 labor to repair and then the cost of new vinyl, installed, at about \$375.

Remove shed attached to pool house: (I will need to include the rental of a large dumpster for

debris removal @ cost of \$675) total cost with dumpster and labor \$2500.

Paint inside of front door, (Prime and two coats paint) labor and materials \$275.

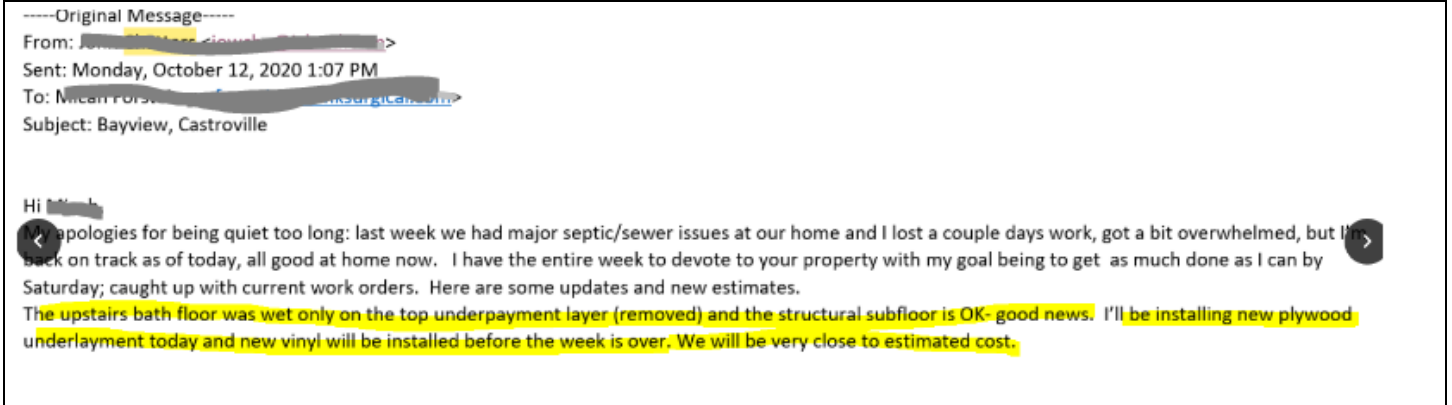
David W. [redacted] will be submitting a quote to paint the inside of the garage- walls and ceiling- leave cabinets as-is.

New counter tops in kitchen, Formica (or equivalent) a new version of what is there now, \$3900. I remove the old, a specialty contractor installs the new, then I reinstall sink, etc.

Hopefully I'll have all deck numbers by tomorrow, I'm waiting on my lumberman to price out my materials list.

Sincerely, John Chatter, GC #3947

Update from GC - 20201012 - "floor was wet only, structural subfloor is okay. Good news"



The scope of work changed dramatically but the cost to repair was going to be the same?

Photo of the defects



Invoice for Work from General Contractor to Seller

JOHN SMITHERS, GENERAL CONTRACTOR #224709
SINCE 1980
445 SAREFON DRIVE
BELLEVUE OAKS, CA 95040
PH/FAX 925-899-7447
801-241-8036
INVOICE

11.18.20

12 Bonanza Rd.
Castroville, CA

Extra work requested during project:
Remove damaged flooring in upstairs hall bath, provide and install new
Removal labor 3 hrs. @ \$40.00 120.00
Install new plywood 2 @ \$70.00 140.00
Plywood and screws 175.00
new vinyl installed 350.00

3 hours to remove damaged flooring is absurd. It took us under 1 hour to remove all he had done.
\$175 for 2 piece of 1/4" plywood and screws is absurd. .That should have been about \$60 maximum
\$350 to install that sheet vinyls was absurd.
This was a gouge.

Photo of Completed Work



Quote for Repairs**\$2,415 - Contractor 1**

https://home-Purchase-2021.bryancanary.com

https://contractor-complaints-2023.bryancanary.com

Estimate for Repairs - General Contractor Related Defects

GC-5 - 2nd Floor bathroom floor (5x12 bathroom)

Please provide pricing for the following work. If you want to provide a price range please use Price 1 for lower range and price 2 for upper. Otherwise just use Price 1 to represent your estimate.

Description of Work	Price 1	Price 2
Remove toilet		
Remove vinyl sheet flooring (3x5 area plus 5x3 area)		
Remove 1/4 Luan overlay		
Remove screws from floor used to install overlay		
Remove 18" x 5' of deteriorated 3/4 subfloor		
Install 18" x 5' of 3/4 subfloor		
Install 1/4 Luan overlay		
Install sheet flooring (assume you were able to salvage original)	\$2,415 [±]	
Total	\$2,415 [±]	

Date 8/12/23Contractor Name Harold W SnellgroseCompany Name Renaissance BuilderContractor License 768983Contractor Signature [Signature]

\$3,500 - Contractor 2

<https://home-Purchase-2021.bryancanary.com><https://contractor-complaints-2023.bryancanary.com>

Estimate for Repairs - General Contractor Related Defects

GC-5 - 2nd Floor bathroom floor (5x12 bathroom)

Please provide pricing for the following work. If you want to provide a price range please use Price 1 for lower range and price 2 for upper. Otherwise just use Price 1 to represent your estimate.

Description of Work	Price 1	Price 2
Remove toilet Remove vinyl sheet flooring (3x5 area plus 5x3 area) Remove 1/4 Luan overlay Remove screws from floor used to install overlay Remove 18" x 5' of deteriorated 3/4 subfloor Install 18" x 5' of 3/4 subfloor Install 1/4 Luan overlay Install sheet flooring (assume you were able to salvage original)		
Total	\$3,500 ⁰⁰ \$3,500 ⁰⁹	

Date 8-12-23

Contractor Name

Lance Holt

Company Name

Lance Holt Construction Inc

Contractor License

B863670

Contractor Signature



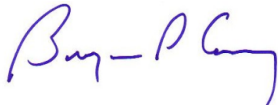
Revisions

11/21/2024 - reformatted and added email / tds / spq content

12/16/2024 - unredacted quotes

Verification

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct as of the last revision date or other date noted below.



Plaintiff

Date as of last revision date



Plaintiff

Date: as of last revision date