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14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 EASTERN DIVISION

17 HARVEY HURD and MELINDA
18 HURD, husband and wife, on behalf of
19 themselves and all others similarly
20 situated,

21 Plaintiffs,

22 v.

23 LUMBER LIQUIDATORS, INC., a
24 Delaware Corporation,

25 Defendant.

26 Case No. 5:15-cv-00424

27 CLASS ACTION COMPLAINT
28 **DEMAND FOR JURY TRIAL**

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I. INTRODUCTION

1. Defendant Lumber Liquidators, Inc. has been selling composite laminate flooring products that emit formaldehyde at levels known to pose serious health risks. The formaldehyde emissions from certain Lumber Liquidators products far exceed the maximums allowed by the California Air Resources Board (“CARB”). For nearly two years, and possibly longer, Lumber Liquidators has known that flooring products it has manufactured in China that are intended to be used in people’s homes emit unsafe levels of formaldehyde. Nonetheless, Lumber Liquidators has continued to specifically and falsely label these products as being as being compliant with all CARB formaldehyde standards and to falsely state on its website and elsewhere that its products “meet the highest quality and environmental standards.” As a result, California consumers have been buying flooring products from Defendant that are unsafe and should not be distributed or sold in California.

2. Laminate wood flooring is generally composed of a base layer of pressed composite wood (particle board or medium-density fiberboard), which is a mixture of sawdust or wood particles bonded together with glue or resin. The base layer is covered with a veneer or other material such as a photographic image of wood, affixed as a decorative surface.

3. Formaldehyde is a common ingredient in the glue used in the laminate flooring base layer. If used in low levels, the formaldehyde will quickly dissipate during installation. However, if used in higher levels the formaldehyde is released as a gas that emanates from the flooring over time. Long term exposure to formaldehyde is linked to increased risk of cancer of the nose and sinuses, nasopharyngeal and oropharyngeal cancer, lung cancer, and leukemia. Formaldehyde also causes burning eyes, nose and throat irritation, coughing, headaches, dizziness, joint pain and nausea. It has also been linked to the exacerbation of asthma in formaldehyde-sensitive individuals and poses a particular acute risk to children.

4. Lumber Liquidators supervises and controls the

1 manufacturing of composite laminate wood flooring products in several mills in
2 China. Lumber Liquidators also packages, distributes, markets and/or sells laminate
3 wood flooring products that have been manufactured in China to consumers in
4 California.

5 5. From October 2013 through November 2014, three accredited
6 laboratories tested the formaldehyde emissions of laminate wood flooring from
7 several nationwide retail outlets, including Home Depot, Lowe's, and Lumber
8 Liquidators. Of the dozens of products tested, by far the highest formaldehyde levels
9 were found in the laminate wood flooring sold by Lumber Liquidators that was
10 produced in China. Similar products manufactured in North America generally had
11 much lower formaldehyde levels that complied with the formaldehyde emission
12 standards promulgated by CARB. Similar products tested from Lumber Liquidators'
13 competitors also showed significantly lower formaldehyde levels that generally
14 complied with the CARB formaldehyde emission standards. The list of products that
15 have been tested and found to exceed the CARB limit for formaldehyde emissions is
16 set forth in paragraph 21 below.

17 6. Despite this discrepancy, Lumber Liquidators did not differentiate
18 between its domestically manufactured floor laminates and those made in China.
19 Defendant's labels on its Chinese laminate wood flooring products state that the
20 products comply with strict formaldehyde emission standards promulgated by CARB
21 by stating "California 93120 Phase 2 Compliant Formaldehyde."

22 7. In 2014 and early 2015, 60 Minutes news conducted an independent
23 investigation into Lumber Liquidators' Chinese-made flooring products.
24 Investigators purchased 31 boxes of various Chinese-made flooring products from
25 various Lumber Liquidators stores around the country and sent the sample for testing
26 at two certified labs. Of the 31 samples, only one was compliant with CARB
27 formaldehyde emissions standards. Some were more than 13 times over the
28

1 California limit.¹

2 8. 60 Minutes also sent undercover investigators to three different mills in
3 China that manufacture laminates and flooring on behalf of Lumber Liquidators. 60
4 Minutes reported that:

5 Employees at the mills openly admitted that they used
6 core boards with higher levels of formaldehyde to make
7 Lumber Liquidators laminates, saving the company 10-
8 15 percent on the price. At all three mills they also
9 admitted [to] falsely labeling the company's laminate
flooring as CARB compliant.²

10 9. Lumber Liquidators does not give consumers any warnings about
11 unlawful Formaldehyde levels in its laminate wood flooring products. Instead, along
12 with its product labels, it represents on its website and its warranties that its flooring
13 products comply with strict formaldehyde standards. Lumber Liquidators has made
14 false and misleading statements that its flooring products comply with CARB
15 formaldehyde standards, and the even more stringent European formaldehyde
16 standards. Lumber Liquidators' website falsely states, "we not only comply with
17 laws-we exceed them." "Highest Quality Flooring. GUARANTEED."³

18 10. Lumber Liquidators has continually sold these products to California
19 customers at its 37 retail stores in California, through its retail website,
20 www.lumberliquidators.com, and using its toll free customer service telephone line.

21 11. On January 26, 2013, Plaintiffs Harvey Hurd and Melinda Hurd
22 ("Plaintiffs") purchased and installed a Lumber Liquidators product that was
23 manufactured in China, labeled as being CARB compliant, and that was of a type
24 found to have formaldehyde levels that exceed CARB limits. Plaintiffs seek to

25 ¹ *Lumber Liquidators Linked to Health and Safety Violations*, 60 Minutes (Mar. 1,
26 2015), available at <http://www.cbsnews.com/news/lumber-liquidators-linked-to-health-and-safety-violations/> (last visited March 4, 2015).

27 ² *Id.*

28 ³ [http://www.lumberliquidators.com/11/flooring/quality?WT.ad-](http://www.lumberliquidators.com/11/flooring/quality?WT.ad-GLOBALFOOTER)
GLOBALFOOTER Quality (last visited on March 2, 2015, Page unavailable as of
March 4, 2015).

1 represent themselves and similarly situated persons in California who have
2 purchased Defendant's laminate wood flooring products that were manufactured in
3 China, labeled as CARB compliant, and sold to consumers in California at any time
4 from March 5, 2011 through the date of judgment herein ("the putative class").
5 Pursuant to California Business & Professions Code §§ 17203, 17500 *et seq.*,
6 Plaintiffs seek restitution of monies they and the putative class spent on Defendant's
7 flooring products. Pursuant to California Business & Professions Code § 17203,
8 Plaintiffs seek injunctive relief enjoining Defendant's ongoing unlawful, unfair, and
9 fraudulent business practices. Pursuant to California Uniform Commercial Code §
10 2313, Plaintiffs seek damages on behalf of themselves and the putative class.

11 12. Plaintiffs are in the process of providing Defendant with a Notice of
12 Violations of the Consumer Legal Remedies Act, Cal. Civ. Code §1750 *et seq.* In the
13 event Defendant does not take the appropriate actions itemized in the notice within
14 30 days, Plaintiffs intend to amend their complaint to add a claim under the Act.

15 **II. JURISDICTION**

16 13. This Court has subject matter jurisdiction over this action under 28
17 U.S.C. § 1332(d)(2) in that the matter is a class action wherein the amount in
18 controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs,
19 and members of the Class are citizens of a State different from the Defendants.

20 14. This Court has personal jurisdiction over the parties in this action by the
21 fact that Defendants are corporations that are licensed to do business in the state of
22 California or otherwise conduct business in the state of California.

23 15. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) inasmuch
24 as the unlawful practices are alleged to have been committed in this District,
25 Defendants regularly conduct business in this District, and the named Plaintiffs
26 reside in this District.

27 **III. PARTIES**

28 16. Plaintiffs Harvey Hurd and Melinda Hurd are residents of

1 Riverside, California. The Plaintiffs are consumers within the meaning of California
2 Civil Code § 1761.

3 17. Defendant Lumber Liquidators Inc. is a Delaware corporation with its
4 headquarters and principal place of business in Toano, Virginia. Lumber Liquidators,
5 Inc. distributes, markets, and/or sells laminate wood flooring products in California.
6 Lumber Liquidators, Inc. sells goods within the meaning of California Civil Code §
7 1761.

8 IV. FACTUAL ALLEGATIONS

9 A. California's Formaldehyde Standards

10 18. In 1988, the State of California officially listed formaldehyde (gas) as a
11 chemical known to cause cancer.

12 19. In 1992, the CARB formally listed formaldehyde as a Toxic Air
13 Contaminant in California with no safe level of exposure.

14 20. The CARB approved the Airborne Toxic Control Measure to Reduce
15 Formaldehyde Emissions from Composite Wood Products in April 2007. The
16 formaldehyde emission standards became effective January 2009 and set decreasing
17 limits in two Phases. Cal. Code Regs., tit. 17, § 93120.2(a).

18 21. The CARB Regulations apply to composite wood (“laminate”) products
19 including flooring. Cal Code-Regs., tit. 17, § 93120.2(a).

20 22. The CARB Phase 1 Emission Standard for MDF in effect from January
21 1, 2009 to December 31, 2010, limited formaldehyde emissions to 0.21 parts per
22 million (“ppm”). The Phase 2 Emission Standard for MDF dictates that as of January
23 1, 2011, MDF flooring products such as those involved in this action must emit no
24 more than 0.11 parts per million (“ppm”) of formaldehyde. The CARB Phase 1
25 Emission Standard for Thin MDF, which was in effect from January 1, 2009 to
26 December 31, 2011, limited formaldehyde emissions to 0.21 ppm. The CARB Phase
27 2 Emission Standard for Thin MDF dictates that as of January 1, 2012, thin MDF
28 flooring products such as those involved in this action must emit no

1 more than 0.13 ppm of formaldehyde. Cal. Code Regs., tit. 17, § 93120.2(a).
2 (Hereinafter, the formaldehyde emission standards for both MDF and Thin MDF will
3 be referred to as the “CARB limit.”)

4 **B. Lumber Liquidators’ Laminate Wood Flooring Products**

5 23. Defendant supervises and/or controls the manufacturing and packaging
6 of laminate wood flooring products in China that Defendant then distributes,
7 markets, and/or sells in California. Those laminate wood flooring products contain
8 formaldehyde and emit formaldehyde gas at levels that exceed, and sometimes
9 grossly exceed, the CARB limit. Those laminate wood flooring products include the
10 following:

- 11 a. 8 mm Bristol County Cherry Laminate Flooring;
- 12 b. 8 mm Dream Home Nirvana French Oak Laminate Flooring;
- 13 c. 8 mm Dream Home Nirvana Royal Mahogany Laminate Flooring;
- 14 d. 12 mm Dream Home Ispiri Americas Mission Olive Laminate
15 Flooring;
- 16 e. 12 mm Dream Home Ispiri Chimney Tops Smoked Oak Laminate
17 Flooring;
- 18 f. 12 mm Dream Home Ispiri Poplar Forest Oak Laminate Flooring;
- 19 g. 12 mm Dream Home Kensington Manor Antique Bamboo Laminate
20 Flooring;
- 21 h. 12 mm Dream Home Kensington Manor Cape Doctor Laminate
22 Flooring;
- 23 i. 12 mm Dream Home Kensington Manor Fumed African Ironwood
24 Laminate Flooring;
- 25 j. 12 mm Dream Home Kensington Manor Glacier Peak Poplar
26 Laminate Flooring;
- 27 k. 12 mm Dream Home Kensington Manor Golden Teak Laminate
28 Flooring;

- 1 l. 12 mm Dream Home Kensington Manor Handscraped Imperial Teak
2 Laminate Flooring (SKU 10029601);
- 3 m. 12 mm Dream Home Kensington Manor Handscraped Imperial Teak
4 Laminate Flooring (SKU 10023958);
- 5 n. 12 mm Dream Home Kensington Manor Handscraped Summer
6 Retreat Teak Laminate Flooring;
- 7 o. 12 mm Dream Home Kensington Manor Sandy Hills Hickory
8 Laminate Flooring;
- 9 p. 12 mm Dream Home Kensington Manor Tanzanian Wenge Laminate
10 Flooring;
- 11 q. 12 mm Dream Home Kensington Manor Warm Springs Chestnut
12 Laminate Flooring;
- 13 r. 12 mm Dream Home St. James African Mahogany Laminate
14 Flooring;
- 15 s. 12 mm Dream Home St. James Blacksburg Barn Board Laminate
16 Flooring;
- 17 t. 12 mm Dream Home St. James Brazilian Koa Laminate Flooring;
- 18 u. 12 mm Dream Home St. James Chimney Rock Charcoal Laminate
19 Flooring;
- 20 v. 12 mm Dream Home St. James Cumberland Mountain Oak
21 Laminate Flooring;
- 22 w. 12 mm Dream Home St. James Golden Acacia Laminate Flooring;
- 23 x. 12 mm Dream Home St. James Nantucket Beech Laminate Flooring;
- 24 y. 12 mm Dream Home St. James Oceanside Plank Bamboo Laminate
25 Flooring;
- 26 z. 12 mm Dream Home St. James Vintner's Reserve Laminate
27 Flooring; and
- 28 aa. 15 mm Dream Home St. James Sky Lakes Pine

1 Laminate Flooring.

2 24. CARB regulations apply to all of the above listed flooring products.

3 25. On information and belief, each of the Lumber Liquidators' laminate
4 wood flooring products listed in paragraph 21 above are manufactured in China
5 using a common formula, design or process.

6 26. On information and belief, each of the Lumber Liquidators' laminate
7 wood flooring products listed in paragraph 21 above emit formaldehyde gas at levels
8 that exceed the CARB limits.

9 **C. Lumber Liquidators Misrepresents that Its Laminate Wood Flooring**
10 **Products Meet California Emissions Standards**

11 27. Despite unlawful levels of formaldehyde emissions from its laminate
12 wood flooring products, Defendant misrepresents to consumers on their website,
13 product packaging, and warranties that their laminate wood flooring products meet
14 the CARB standards for formaldehyde emissions.

15 28. Lumber Liquidators' website leads consumers to believe that the
16 company's laminate wood flooring products comply with the CARB formaldehyde
17 standards when they do not. The website states as follows:

18 Is Lumber Liquidators Compliant with the California
19 law?

20 **Laminate and engineered flooring products sold by**
21 **Lumber Liquidators are purchased from mills whose**
22 **production method has been certified by a Third**
23 **Party Certifier approved by the State of California to**
24 **meet the CARB standards.** The scope of the
25 certification by the Third Party Certifier includes the
26 confirmation that the manufacturer has implemented the
27 quality systems, process controls, and testing procedures
28 outlined by CARB and that their products conform to the
specified regulation limits. The Third Party Certifier also
provides ongoing oversight to validate the manufacturers'
compliance and manufacturers must be periodically re-
certified. [Emphasis in original]

1 Does CARB only apply to California?

2 Though it currently applies only to products sold in
3 California, **Lumber Liquidators made a decision to**
4 **require all of our vendors to comply with the**
5 **California Air Resources Board regulations**
6 **regardless of whether we intended** to sell the products
7 in California or any other state/country. [Emphasis in
8 original]

9 What extra steps does Lumber Liquidators take to ensure
10 compliance?

11 In addition to the California Air Resources Board
12 requirements, **Lumber Liquidators regularly selects**
13 **one or more finished products from each of its**
14 **suppliers and submits them for independent third-**
15 **party lab testing.** This is done as a monitoring activity
16 to validate ongoing quality control. [Emphasis in
17 original.]⁴

18 29. After the dangerous formaldehyde levels in Lumber Liquidators’
19 products was featured on the news program “60 Minutes,” Lumber Liquidator
20 responded by posting a letter from its Chairman on its website stating:

21 Let me make one thing very clear – our laminate
22 products, all of our products, are 100% safe.

23 ...

24 We comply with applicable regulations regarding our
25 products, including California standards for
26 formaldehyde emissions for composite wood products –
27 the most stringent rules in the country. We take our
28 commitment to safety even further by employing
29 compliance personnel around the world and utilizing the
30 latest in cutting- edge technology to provide our
31 customers with top quality and high value flooring.⁵

32

⁴ <http://www.lumberliquidators.com/11/flooring/ca-air-resources-boardregulations?Wt.ad>—GLOBAL FOOTER CaliRegCARB (last visited on March 4, 2015).

33 ⁵ <http://www.lumberliquidators.com/sustainability/60-minutes-letter-from-tom/>
(last visited March 4, 2015)

1
2 30. In addition, the product packaging for Lumber Liquidators' laminate
3 wood flooring states: "CARB . . . CALIFORNIA 93120 Phase 2 Compliant
4 Formaldehyde." On information and belief, this statement is presented on all Lumber
5 Liquidators' laminate flooring product packaging regardless of whether the flooring
6 inside the packaging complies with the CARB standards.

7 31. Lumber Liquidators' purchase orders come with a warranty stating that
8 the customer's purchased flooring products comply "with all applicable laws, codes
9 and regulations," and "bear all warnings, labels, and markings required by applicable
10 laws and regulations."

11 32. Instead of warning consumers about formaldehyde emissions from its
12 laminate wood flooring products, Lumber Liquidators' website states that it has
13 Third Party Certifiers approve its flooring products to meet CARB standards.

14 Regulations and Lumber Liquidators' Compliance

15 The California Air Reform Bill (CARB) requires that
16 products containing Hardwood Plywood Veneer Core
17 (HWP-VC), Hardwood Plywood Composite Core
18 (HWPC), Particleboard and MDF be tested for
19 emissions and products not meeting the strict standards
20 for emissions may not be sold in California.

21 The Environmental Protection Agency has drafted
22 national standards for formaldehyde emissions in
23 composite wood products that are similar to those of
24 California. Those standards have not yet been enacted.

25 All laminates and engineered flooring products- sold- by
26 Lumber Liquidators are-purchased from-mills whose
27 production method has been certified by a Third Party
28 Certifier approved by the State of California to meet the
CARB standards. The scope of the certification by the
Third Party Certifier includes the confirmation that the
manufacturer has implemented the quality systems,
process controls, and testing procedures outlined by
CARB -and that their products conform to the

1 specified formaldehyde- emission-limits. The Third
2 Party- Certifier also provides ongoing oversight to
3 validate the manufacturers' compliance and
4 manufacturers must be periodically re-certified. Though
5 it currently applies- only to products sold in California,
6 Lumber Liquidators made a decision to require all of our
7 suppliers to comply with CARB regardless of whether
8 we intended to-sell.-the products in California or-any
9 other state/country. In addition, our suppliers
10 manufacture their products in accordance with the
11 European standard which has stricter guidelines than the
12 California. In -addition to the CARB requirements,
13 Lumber Liquidators regularly selects one or more
14 products from each of its suppliers and submits them for
15 independent third-party lab testing. This is done as a
16 monitoring activity to validate ongoing compliance.⁶

17
18 33. Lumber Liquidators materially misrepresents the safety of its laminate
19 wood flooring products by advertising and representing that its flooring products are
20 compliant with the CARB limit when in fact they are not.

21 34. Lumber Liquidators makes the material omission of failing to tell
22 consumers that they are buying laminate wood flooring products with unlawfully
23 high levels of formaldehyde.

24 35. These laminate wood flooring products have been sold by Defendant for
25 use in California for more than four years.

26 36. Defendant continues to distribute and sell its laminate wood flooring
27 products to customers in California with the representation that they are CARB
28 compliant, even though they are not.

**D. Lumber Liquidators Knew that its Representations of California-
Compliant Formaldehyde Levels in its Laminate Wood Flooring was
False**

37. On information and belief, at all times relevant to this action, Lumber
Liquidators has knowingly misrepresented its laminate wood flooring products as

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http://www.lumberliquidators.com/ll/flooring/Flooring101?Wt.ad=RIGHTNAV_Flooring101 (last visited March 4, 2015).

1 CARB compliant and knowingly failed to disclose to consumers the unlawful levels
2 of formaldehyde emissions from its laminate wood flooring products.

3 38. At the same time that Defendant made public statements to consumers
4 that the laminate wood products it sells are sourced from mills whose production
5 methods are CARB compliant, that the products conform to CARB's specified
6 formaldehyde emission limits, and the measures Lumber Liquidators takes to ensure
7 full compliance by its suppliers, Defendant acknowledged the opposite to the U.S.
8 Securities and Exchange Commission, stating, "While our suppliers agree to operate
9 in compliance with applicable laws and regulations, including those relating to
10 environmental and labor practices, *we do not control our suppliers*. Accordingly, we
11 cannot guarantee that they comply with such laws and regulations or operate in a
12 legal, ethical and responsible manner Violation of environmental, labor or other laws
13 by our suppliers or their failure to operate in a legal, ethical and responsible manner,
14 could . . . expose us to legal risks as a result of our purchase of product from non-
15 compliant suppliers."⁷

16 39. Despite its stated concern that its suppliers might not comply with
17 environmental regulations, Defendant has failed to sufficiently exercise its quality
18 control over those suppliers to ensure that they comply with CARB standards, and
19 Defendant continues to sell to California consumers laminate wood flooring products
20 that Defendant obtains from those suppliers.

21 40. On June 20, 2013, the news website Seeking Alpha published a lengthy
22 article based on a letter to the California Air Resources Board. The letter and article
23 documented high formaldehyde levels in Chinese-made laminate flooring sold by
24 Lumber Liquidators., as shown by tests a certified laboratory conducted on three
25 samples of Chinese-made laminate flooring sold by Lumber Liquidators. Enclosed

26 ⁷ Lumber Liquidators February 25, 2014 10-K at p. 14,
27 <http://investors.lumberliquidators.com/index.php?o=25&s=127> (emphasis added). In
28 the same filing, Lumber Liquidators acknowledges that it oversees quality control in
its Chinese mills: "We are able to set demanding specifications for product quality
and our own quality control and assurance teams are on-site at the mills,
coordinating inspection and assurance procedures." *Id.* at p. 5.

1 with the letter were the actual test results showing that the tested product, Mayflower
2 5/16” x 5” Bund Birch Engineered, emits three and half times the maximum
3 formaldehyde emission level. Nonetheless, the letter notes that Lumber Liquidators
4 labeled the product as being CARB compliant.

5 41. On information and belief, high formaldehyde content resins and glues
6 are less expensive and dry more quickly than low formaldehyde glues and resins. By
7 using high formaldehyde content resins and glues rather than low formaldehyde
8 content resins and glues, Lumber Liquidators’ Chinese manufacturers are able to
9 produce laminate wood flooring more quickly and at higher volumes thereby
10 reducing costs and generating greater profits for Lumber Liquidators.

11 42. On or about November 26, 2013, a putative federal securities class
12 action lawsuit was filed against Lumber Liquidators in the United States District
13 Court in the Eastern District of Virginia based on drops in the stock price following
14 the Seeking Alpha article and its allegations concerning the formaldehyde emissions
15 from Defendant’s laminate wood flooring products. *Kiken v. Lumber Liquidators*
16 *Holdings, Inc., et al.*, No. 4:2013-cv-00157 (E.D. Va). This case is currently pending.
17 Lumber Liquidators was made aware during the pendency of this and other lawsuits
18 of complaints and allegations that its laminate wood flooring products from China
19 emit formaldehyde gas at levels that violate the CARB limit.

20 43. Numerous Lumber Liquidators customers have posted Internet
21 complaints on Defendant’s website concerning formaldehyde emissions, including
22 Deborah of North Fork, California who posted on the Consumer Affairs website on
23 September 11, 2014:

24 We spent thousands of dollars and went with the LL
25 recommended professional installer... the product we
26 were sold was supposedly Made in the USA--nope,
27 China. One of my children cannot walk barefoot on the
28 floor because he will blister from the formaldehyde
content. We saved for years for this floor, it will need to
be replaced. Please RUN to another dealer. This
company does not care about the customer one

1 bit. This has been a devastating blow to our family.⁸

2
3 44. Based on lawsuits, articles, and blog posts, Defendant knew or should
4 have known that its laminate wood flooring products were not compliant with CARB
5 standards. Despite this knowledge, Defendant failed to reformulate its flooring
6 products so that they are CARB compliant or to disclose to consumers that these
7 products emit unlawful levels of formaldehyde. Instead, Defendant has sold and
8 continues to sell laminate wood flooring products in California that exceed the
9 CARB limit while continually representing to consumers that those products are
10 CARB compliant.

11 45. In light of the false representations Lumber Liquidators has made
12 regarding formaldehyde levels, and in light of the health risks posed by
13 formaldehyde, Plaintiffs and members of the class would reasonably fear for their
14 safety by allowing the laminate flooring to remain in their homes. It would therefore
15 be reasonably prudent to incur the cost of replacing the laminate flooring rather than
16 continue to incur the risks posed by the laminate flooring that may contain high
17 levels of formaldehyde.

18 **V. FACTS RELATING TO NAMED PLAINTIFFS**

19 46. On January 26, 2013, Plaintiffs purchased approximately 1,000 square
20 feet of “12 mm w/ pad” “Dream Home laminate floors” “ISP Americas Mission
21 Olive 1”, also described as “LAM Americas Mission Olive” Laminate Flooring
22 (SKU 10023424 (also listing SKUs 10022140/A; SKU 10022145; 10022148)) at a
23 Lumber Liquidators store located in Moreno Valley, California (Store # 281). On
24 information and belief, the flooring was produced at the laminate mill in China.

25 ///

26 ///

27 ///

28 ⁸ <http://www.Consumeraffairs.com/homeowners/lumber-liquidators.html>
December 2, 2014.



47. Plaintiffs purchased the laminate flooring for the purpose of installing it in their home that Mr. Hurd shares with his wife and a dog. Plaintiff Mr. Hurd has no amateur building experience and relied upon Lumber Liquidators' store list of "approved installers" that were required by the store for installations, and in fact relied on the training, experience and recommendation by the Lumber Liquidator store representatives in selecting both the flooring and the installer (Precision Flooring, John Narhuminti, license #957122) who actually installed the wood into Plaintiffs' home in February 2013. Plaintiffs were generally aware of the risks inherent in formaldehyde but relied upon Defendant's training, experience and specialized knowledge in both recommending the type of flooring to be purchased and installed, selecting the installer, informing Plaintiffs of the presence and prevalence of formaldehyde in Lumber Liquidators' building materials. It was critical and important to Plaintiffs that the formaldehyde levels in the products they purchased complied with California law.

48. At the time he purchased the laminate flooring from the Lumber Liquidators retail store, Mr. Hurd specifically recalled that there was no product label or warning concerning the wood on the box of wood provided to

1 him concerning the formaldehyde level of the product itself. The only statement in
2 the paperwork provided to Plaintiffs concerning possible health risks was a statement
3 in the Invoice that “Installation of any wood flooring product may create wood dust
4 and/or expose chemicals known by the state of California to cause cancer or
5 reproductive harm.”

6 49. Plaintiffs relied on the training, experience and specialized knowledge
7 of Lumber Liquidators’ representatives in choosing a safe wood product that was
8 CARB formaldehyde compliant and informing them if the product was in fact not
9 CARB formaldehyde compliant or had an additional safety risk not adequately
10 warned of in the wording above. Defendant’s representatives stated to Plaintiffs
11 (and Plaintiffs relied on their representations) that the product was a “more durable”
12 product that was “safer” and had a “longer lifespan” for Plaintiffs’ intended and
13 stated use: “in their house where they live with their kids and grandkids playing on
14 the wooden floors.” Defendant’s representatives reasonably understood both
15 Plaintiffs’ intended use and that Plaintiffs were relying on their expertise,
16 knowledge, specialized training and experience, as well as their assurances about the
17 product’s safety, durability, and appropriateness for their intended use personally and
18 with kids and grandkids. Plaintiffs would not have purchased the product absent
19 these express and implied misrepresentations and omissions of material fact
20 concerning the safety of the product and its compliance with safety standards,
21 including CARB formaldehyde standards.

22 50. At the time that Plaintiffs purchased this laminate wood flooring,
23 Lumber Liquidators’ express and implied misrepresentations that the product was a
24 “more durable”, “safer” and had a “longer lifespan” implied that it was compliant
25 with industry standards, including CARB formaldehyde emission standards. All
26 such representations have been determined to be false.

27 51. At the time of the purchase, Lumber Liquidators also failed to inform
28 Plaintiffs that the laminate wood flooring product purchased actually

1 exceeded the CARB formaldehyde emission limit for a chemical known in the State
2 of California to cause cancer. In February 2013, Plaintiffs installed the flooring with
3 the help of Defendant's "approved installer" who is a professional contractor. The
4 installer likewise never informed Plaintiffs that the product was not compliant with
5 industry standards, including CARB formaldehyde emission standards.

6 52. After installation of the wood products in 2013, both Plaintiffs began
7 experiencing symptoms that include extreme dizziness, vertigo, weakness, fatigue,
8 coughing and sneezing. Plaintiff Melinda Hurd has also sustained additional
9 symptoms including but not limited to extreme shortness of breath, respiratory
10 problems, sinusitis, heart fluttering, disorientation, and symptoms she has been told
11 by doctors are consistent with Parkinson's Disease (a condition commonly linked to
12 trichloroethylene and formaldehyde exposure). The symptoms have continued to the
13 present.

14 53. On March 1, 2015, Plaintiffs could not have discovered or learned of the
15 fact Defendant's express and implied representations and omissions regarding the
16 safety of the product and its formaldehyde CARB compliance were false. In light of
17 the risks to their health, and particularly to the health of their family, Plaintiffs intend
18 to have their flooring replaced.

19 54. Had the Lumber Liquidators' laminate wood flooring been CARB
20 compliant, Plaintiffs would have been satisfied with their purchase.

21 VI. CLASS ACTION ALLEGATIONS

22 55. Plaintiffs repeat and re-allege every allegation above as if set forth
23 herein in full.

24 56. Plaintiffs bring this action under Rule 23 of the Federal Rules of Civil
25 Procedure, on behalf of themselves and a Class consisting of:

26 All persons who, from March 6, 2011 to the present
27 purchased from Defendant in California one or more
28 laminate wood flooring products that were for their
personal use rather than for resale or distribution, that
were manufactured in China, and that were

1 advertised as being CARB compliant.

2 57. Excluded from the Class are governmental entities, Defendant, its
3 affiliates and subsidiaries, Defendant's current or former employees, officers,
4 directors, agents, representatives, their family members, the members of this Court
5 and its staff.

6 58. Plaintiffs do not know the exact size or identities of the members of the
7 proposed class, since such information is in the exclusive control of Defendant.
8 Plaintiffs believe that the Class encompasses many hundreds and perhaps thousands
9 of individuals whose identities can be readily ascertained from Defendant's books
10 and records. Therefore, the proposed Class is so numerous that joinder of all
11 members is impracticable.

12 59. Based on the size of the modifications at issue, Plaintiffs believe the
13 amount in controversy exceeds \$5 million.

14 60. All members of the Class have been subject to and affected by the same
15 conduct. All purchased laminate wood flooring products from the Defendant that
16 were falsely advertised as being known to be compliant with CARB standards for
17 formaldehyde and were therefore safe to install in homes or businesses. Instead, the
18 levels of formaldehyde in the flooring products were, at a minimum, unknown and in
19 many cases emitting unlawful levels of formaldehyde. The lack of monitoring to
20 ensure CARB compliance and the resulting lack of CARB compliance was not
21 disclosed to any class members. There are questions of law and fact that are common
22 to the class, and predominate over any questions affecting only individual members
23 of the Class. These questions include, but are not limited to the following:

- 24 a. Whether Lumber Liquidators properly and adequately monitored
25 their Chinese manufacturing plants to ensure CARB compliance;
26 b. Whether Lumber Liquidators' laminate wood flooring products
27 that were manufactured in China and sold in California exceed
28 the CARB limit;

- c. Whether Lumber Liquidators falsely labeled and advertised its Chinese manufactured laminate wood flooring products as being CARB compliant;
- d. Whether any false representations regarding CARB compliance were made knowingly and willfully;
- e. Whether Lumber Liquidators concealed and omitted material facts from its communications with and disclosure to all class members regarding the levels of formaldehyde in its laminate wood flooring products;
- f. Whether Lumber Liquidators breached express warranties to class members regarding its laminate wood flooring products pursuant to California Commercial Code § 2313;
- g. Whether Lumber Liquidators' misrepresentations or omissions constitute unfair or deceptive practices under the California Unfair Competition Law ("UCL");
- h. Whether Lumber Liquidators' representations that its Chinese manufactured laminate wood flooring products are CARB compliant violate the California False Advertising Law ("FAL");
- i. Whether Lumber Liquidators' conduct entitles class members to injunctive relief under the Consumer Legal Remedies Act ("CLRA");
- j. Whether the above practices caused Class members to suffer injury; and
- k. The proper measure of damages and the appropriate injunctive relief.

61. The claims of the individual named Plaintiffs are typical of the claims of the Class and do not conflict with the interests of any other members of the Class.

62. The individual named Plaintiffs will fairly and adequately

1 represent the interests of the Class. They are committed to the vigorous prosecution
2 of the Class’s claims and have retained attorneys who are qualified to pursue this
3 litigation and have experience in class actions – in particular, consumer protection
4 actions.

5 63. A class action is superior to other methods for the fast and efficient
6 adjudication of this controversy. Each Class Member is entitled to restitution of the
7 price of the laminate wood flooring product, and the cost of installation and removal
8 of the unlawfully sold flooring products. The damages suffered by individual Class
9 Members are small compared to the expense and burden of individual prosecution of
10 this litigation. Individual plaintiffs may lack the financial resources to vigorously
11 prosecute a lawsuit against Defendant to recover damages stemming from
12 Defendant’s unfair and unlawful practices.

13 64. This putative class action meets the requirements of Fed. R. Civ. P.
14 23(b)(2) and Fed. R. Civ. P. 23(b) (3).

15 **VII. CAUSES OF ACTION**

16 **COUNT I**

17 **VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT, 18 15 U.S.C. §§ 2301, *ET SEQ***

19 65. Plaintiffs re-allege and incorporate all paragraphs above as though fully
20 set forth herein.

21 66. Plaintiffs bring this claim on their own behalf and on behalf of each
22 member of the Class described above.

23 67. Plaintiffs and the other members of the class are “consumers” within the
24 meaning of the Magnusson-Moss Warranty Act, 15 U.S.C. § 2301(3).

25 68. Lumber Liquidators is a “supplier” and “warrantor” within the meaning
26 of 15 U.S.C. §§ 2301(4) – (5).

27 69. Lumber Liquidators flooring that was purchased separate from the
28 initial construction of the structure into which it was to be installed constitutes a
“consumer product” within the meaning of 15 U.S.C. § 2301(1).

1 flooring products in California that exceed the CARB limit for formaldehyde
2 emissions from composite wood products set forth in Title 17 of the California Code
3 of Regulations, § 93120 –93120.12 et seq., specifically “Phase 2,” which mandates
4 the maximum levels of formaldehyde that laminate flooring products can emit.

5 78. Defendant’s deceptive statements detailed above further violate
6 California Health and Safety Code §25249.6 (Proposition 65), which requires
7 products emitting formaldehyde at levels above 40 micrograms per day to contain a
8 health hazard warning.

9 79. Defendant further engaged in unlawful business acts and/or practices by
10 not informing consumers that Defendant’s laminate wood flooring products sold in
11 California emit formaldehyde at levels that exceed the formaldehyde emission limit
12 set forth in the CARB standards. These actions were misleading and deceptive, and
13 violated the False Advertising Law, California Business & Professions Code §§
14 17500, et seq. and the Consumer Legal Remedies Act, California Civil Code §§
15 1750, et seq.

16 80. Throughout the Class Period, Defendant engaged in unlawful business
17 acts and/or practices by making untrue, deceptive, or misleading environmental
18 marketing claims on the labels of its laminate wood flooring products’ packaging
19 and on promotional materials including pages of the Lumber Liquidators’ website, in
20 violation of California’s “Greenwashing” Statute, Cal. Bus. & Prof. Code § 17580.5.
21 Such claims include, but are not limited to: overstating the environmental attributes
22 of the laminate wood flooring products it distributes in California, failing to
23 substantiate that the laminate wood flooring products it distributes in California have
24 received third-party certification of CARB compliance, and misrepresenting
25 explicitly or through implication that the laminate wood flooring Defendant
26 distributes in California is non-toxic. See Cal. Bus. & Prof. Code § 17580.5(a).

27 81. Throughout the Class Period, Defendant has engaged in unlawful
28 business acts and/or practices by expressly warranting on every package

1 of laminate wood flooring products it distributes and sells in California, as well as in
2 promotional materials and product invoices, that the products comply with CARB
3 formaldehyde standards and all other applicable laws and regulations when they do
4 not. This express warranty also appears on Defendant's website, and product
5 invoices and instruction materials. Defendant's breach of this express warranty
6 violates California state warranty law, California Commercial Code § 2313.

7 82. The acts, omissions, and practices alleged herein also constitute unfair
8 business acts and practices in that Defendant's conduct is immoral, unscrupulous,
9 and offends public policy by seeking to profit from Chinese-made laminate flooring
10 products that emit dangerous levels of formaldehyde in violation of California law.

11 83. The acts, omissions, and practices alleged herein also constitute
12 fraudulent business acts and practices in that Defendant's representations regarding
13 its compliance with CARB emission standards, regarding its measures to ensure
14 CARB compliance by its Chinese manufacturers, and regarding the safety and
15 quality of its laminate flooring are false, misleading, and are likely to deceive
16 California customers.

17 84. Plaintiffs relied on Defendant's misrepresentations.

18 85. As a direct result of Defendant's unlawful, unfair, or fraudulent business
19 acts and/or practices, Plaintiffs and Class Members suffered injury in fact and lost
20 money or property.

21 86. Defendant profited from its sales of its falsely and deceptively
22 advertised products to unwary California customers.

23 87. Accordingly, Plaintiffs, on behalf of themselves and all others similarly
24 situated, seek restitution, injunctive relief against Defendants in the form of an order
25 prohibiting Defendant from engaging in the alleged misconduct described herein,
26 and other relief as specifically prayed for herein.

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28 ///

1 **COUNT III**

2 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §**
3 **17500, ET SEQ.**

4 88. Plaintiffs re-allege and incorporate all paragraphs above as though fully
5 set forth herein.

6 89. Throughout the Class Period, Defendant engaged in unlawful and/or
7 fraudulent conduct under California Business & Professions Code §§ 17500, et seq.
8 (“the False Advertising Law”), by engaging in the sale of laminate wood flooring
9 products, and publically disseminating various advertisements that Defendant knew
10 or reasonably should have known were untrue and misleading. Defendant committed
11 such violations of the False Advertising Law with actual knowledge or knowledge
12 fairly implied on the basis of objective circumstances.

13 90. Defendant’s advertisements, representations, and labeling as described
14 herein were designed to, and did, result in the purchase and use of the Chinese-made
15 laminate flooring products and Defendant profited from its sales of these products to
16 unwary consumers.

17 91. Plaintiffs reasonably relied on Defendant’s representations made in
18 violation of California Business and Professions Code §§ 17500, et seq.

19 92. As a direct result of Defendant’s violations, Plaintiffs suffered injury in
20 fact and lost money.

21 93. Accordingly, Plaintiffs, on behalf of themselves and all others similarly
22 situated, seek restitution and injunctive relief against Defendant in the form of an
23 order prohibiting Defendant from engaging in the alleged misconduct described
24 herein, and other relief as specifically prayed for herein.

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1 **COUNT IV**

2 **VIOLATION OF CALIFORNIA CONSUMER LEGAL REMEDIES ACT,**
3 **CAL. CIV. CODE § 1750 ET SEQ.**

4 94. Plaintiffs re-allege and incorporate by reference all the above
5 allegations as if fully set forth herein.

6 95. Defendant is a “person” within the meaning of California Civil Code §§
7 1761(c) and 770, and provides “goods” within the meaning of Civil Code §§ 1761(a)
8 and 1770. Defendant’s customers, including Plaintiffs and Class members, are
9 “consumers” within the meaning of Civil Code §§ 1761(d) and 1770. Each purchase
10 of Defendant’s laminate wood flooring products by Plaintiffs and each Class member
11 constitutes a “transaction” within the meaning of Civil Code §§ 1761(e) and 1770.

12 96. Each class member purchased goods from Defendant that was primarily
13 for personal, family, or household purposes.

14 97. The Consumer Legal Remedies Act makes it unlawful for a company
15 to:

- 16 a. Misrepresent the certification of goods. Cal. Civ. Code §
17 1770(a)(2)(3);
- 18 b. Represent that goods have characteristics or approval which they
19 do not have. Cal. Civ. Code § 1770(a)(5);
- 20 c. Represent that goods are of a particular standard, quality, or
21 grade, if they are of another. Cal. Civ. Code § 1770(a)(7);
- 22 d. Advertise goods with intent not to sell them as advertised. Cal.
23 Civ. Code § 1770(a) (9).
- 24 e. Represent that the subject of a transaction has been supplied in
25 accordance with a previous representation when it has not. Cal.
26 Civ. Code § 1770(a) (16).

27 98. Throughout the Class Period, Defendant violated and continues to
28 violate the above mentioned provisions.

1 and product invoices and instruction materials.

2 105. Lumber Liquidators' warranties became part of the basis of the bargain
3 in selling laminate wood flooring products to Plaintiffs and Class Members.

4 106. Lumber Liquidators breached these express warranties by selling,
5 and/or distributing the laminate wood flooring products, which fail to comply with
6 the CARB standards.

7 107. Plaintiffs and members of the Class paid money for the laminate wood
8 flooring and paid to have the flooring installed in their homes, work, and other
9 spaces. However, Plaintiffs and the members of the Class did not obtain the full
10 value of the advertised products. If Plaintiffs and other members of the Class had
11 known the true nature of the flooring products, that they emitted unlawful levels of a
12 cancer-causing chemical, they would not have purchased the laminate wood flooring
13 products.

14 108. As a result of this breach, Plaintiffs and the members of the Class
15 suffered injury and deserve to be compensated for the damages they suffered.

16 109. Plaintiffs and the Class are therefore entitled to recover compensatory
17 damages, declaratory relief, and other relief as specifically prayed for herein.

18 **COUNT VI**

19 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

20
21 110. Plaintiffs re-allege and incorporate all paragraphs above as though fully
22 set forth herein.

23 111. Defendant is a merchant as defined by California Commercial Code
24 section 2104(1), and sold the laminate wood flooring products to Plaintiffs and
25 members of the Class for personal use.

26 112. Defendant impliedly warranted to Plaintiffs and members of the Class
27 that the laminate wood flooring products were free of defects, and was merchantable
28 and fit for the ordinary purpose for which such goods are used, including for

1 personal use in homes and businesses.

2 113. Plaintiffs, or their agents, relied on the skill and judgment of Defendant
3 in using the laminate wood flooring products.

4 114. As alleged herein, Defendant's sales of the laminate wood flooring
5 products breached the implied warranty of merchantability because the laminate
6 wood flooring products were not compliant with industry standards, including CARB
7 formaldehyde emission standards. The laminate wood flooring products are
8 therefore defective, unmerchantable, and unfit for their intended purpose at the time
9 of sale.

10 115. As a result of the aforementioned breach of implied warranties by
11 Defendant and each of them, Plaintiffs suffered injuries and damages as alleged
12 herein.

13 **COUNT VII**

14 **DECLARATORY RELIEF**

15 116. Plaintiffs re-allege and incorporate by reference the foregoing
16 allegations as if set fully herein.

17 117. Plaintiffs on behalf of themselves and all others similarly situated,
18 contend that Defendant's sale of laminate wood flooring products in California do
19 not comply with the CARB standards. On information and belief, Defendant
20 contends that its sale of laminate wood flooring products in California complies with
21 the CARB standards.

22 118. A judicial declaration is necessary and appropriate at this time in order
23 that each of the parties may know their respective rights and duties and act
24 accordingly.
25

26 **VIII. PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs, on behalf of themselves and all Class Members,
28 seek the following relief against Defendant:

- 1 A. An order certifying this action as a class action under California Code of
2 Civil Procedure § 382, defining the Class as requested herein, and
3 appointing the undersigned as class counsel;
- 4 B. A finding and declaration, pursuant to California Code of Civil
5 Procedure § 1060, that Defendant's policies and practices of labeling
6 and advertising the laminate wood products it sells in California as
7 CARB compliant is unlawful pursuant to Title 17 of the California Code
8 Regulations, §§ 93120- 93120.12;
- 9 C. A finding and declaration, pursuant to California Code of Civil
10 Procedure § 1060, that Defendant's policies and practices of distributing
11 and/or selling laminate wood products in California with formaldehyde
12 emissions that violate the CARB standards is unlawful pursuant to Title
13 17 of the California Code Regulations, §§ 93120-93120.12;
- 14 D. Injunctive relief prohibiting Defendant from continuing to distribute
15 and/or sell laminate flooring products that violate the CARB standards,
16 pursuant to California Business and Professions Code, §§ 17202 and
17 17203, and California Civil Code § 1780;
- 18 E. Restitution of all money and/or property that Plaintiffs and Class
19 Members provided to Defendant for the purchase and installation of
20 Defendant's laminate wood flooring products that were sold in violation
21 of Title 17 of the California Code Regulations, §§ 93120-93120.12 and
22 California Business and Professions Code § 17200 et seq.;
- 23 F. Damages in an amount to be determined at trial for damages including
24 actual, compensatory, and consequential damages incurred by Plaintiffs
25 and Class Members;
- 26 G. An award to Plaintiffs and Class Members of reasonable attorneys' fees
27 and costs; and
28

1 H. An award of such other and further relief as this Court may deem
2 appropriate.

3 DATED: March 5, 2015

4 By: /s/ Daniel S. Robinson
5 Mark P. Robinson, Jr. (SBN 054426)
6 Daniel S. Robinson (SBN 244245)
7 Wesley K. Polischuk (SBN 254121)
8 ROBINSON CALCAGNIE ROBINSON
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13 Facsimile: (949) 720-1292

14 *Attorneys for Plaintiffs and the Proposed*
15 *Class*

1 **JURY TRIAL DEMAND**

2 Plaintiff demands a trial by jury on all issues so triable.

3 DATED: March 5, 2015

4 By: /s/ Daniel S. Robinson
5 Mark P. Robinson, Jr. (SBN 054426)
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15 *Class*