

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

1. RICKIE MARTIN, individually and on behalf of all others similarly situated,

Plaintiff,

v.

1. LUMBER LIQUIDATORS, INC., a Delaware corporation,

2. LUMBER LIQUIDATORS LEASING, LLC, a Delaware limited liability corporation,

3. LUMBER LIQUIDATORS HOLDING, INC., a Delaware corporation, and

4. LUMBER LIQUIDATORS SERVICES, LLC, a Delaware limited liability corporation,

Defendants.

Case No. CIV-15-233-C

CLASS ACTION COMPLAINT

Demand for Jury Trial

CLASS ACTION COMPLAINT

Plaintiff Rickie Martin (“Plaintiff”), by and through their counsel, bring this Class Action Complaint against Defendant Lumber Liquidators Inc., Defendant Lumber Liquidators Leasing, LLC, Defendant Lumber Liquidators Holding, Inc., and Defendant Lumber Liquidators Services, LLC (collectively “Lumber Liquidators” or “Defendants”), and allege, upon personal knowledge as to their own actions, and upon information and belief and the investigation of their counsel as to all other matters, as follows:

NATURE OF THE CASE

1. This is a consumer protection and false advertising class action. Lumber Liquidators supervises and controls the manufacturing, and packages, distributes, markets and sells a variety of Chinese-manufactured laminate wood flooring materials (the “Products” or “Chinese Flooring”) that it prominently advertises and warrants as fully compliant with California’s strict formaldehyde emission standards promulgated by the California Air Resources Board (“CARB”) and enumerated in California’s Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products (“CARB Regulations”). Cal. Code Regs. tit. 17, §§ 93120-93120.12. Those standards have been adopted as the national standard by the Formaldehyde Standards for Composite-Wood Products Act, 15 U.S.C. § 2697.

2. Defendants also represent and advertise that their Chinese-manufactured laminate wood flooring materials sold throughout the United States, including in Oklahoma, comply with the CARB Regulations.

3. Defendants’ claims that the Products comply with CARB’s standards for formaldehyde emissions and “with all applicable laws, codes and regulations” are false. As detailed herein, the Products emit formaldehyde gas at levels that exceed the strict limits set forth in the CARB standards. Defendants also fail to disclose the unlawful level of formaldehyde emission to consumers.

4. Chinese-made flooring products have come under scrutiny in recent years. According to the Hardwood Plywood and Veneer Association (“HPVA”), Chinese-made flooring sold in North America is known to have high than expected levels of

formaldehyde emissions.¹ The HPVA began testing the Chinese-made flooring and found that “the levels of formaldehyde were so high... some were two to three times over the line.”² Indeed, China is now the largest manufacturer of formaldehyde products and “more than 65% of the Chinese formaldehyde output is used to produce resins mainly found in wood products.”³

5. In an attempt to allay safety concerns regarding its Chinese-made flooring products, Defendants uniformly claim that all of its hardwood and laminate flooring products are compliant with the California Air Resources Board’s (“CARB”) standards for safe formaldehyde emissions. On its website, Defendant states: “commitment to quality and safety extends to everywhere we do business. We require that all of our suppliers comply with California’s advanced environmental requirements, even for products sold outside California.”⁴ As described herein, the packaging for all Lumber Liquidators’ Chinese-made flooring products claim that the products are compliant with California CARB formaldehyde standards.

¹ Gil Shochat, High Levels of formaldehyde found in Chinese-made floors sold in North America, GLOBAL NEWS (Oct. 3, 2014), available at <http://globalnews.ca/news/1594273/high-levels-of-formaldehyde-found-in-chinese-made-floors-sold-in-north-america/> (last visited March 5, 2015).

² *Id.*

³ Xiaojiung Tang et al., Formaldehyde in China: Production, consumption, exposure levels, and health effects, ENVIRONMENTAL INTERNATIONAL VOLUME 36, ISSUE 3 (April 2010), available at http://ac.els-cdn.com/S0160412009002402/1-s2.0-S0160412009002402-main.pdf?_tid=dd4df5ba-c1ea-11e4-9b60-00000aab0f6b&acdnat=1425417700_25414e62d2ab566a9dd77bde3169e4cc (last visited March 5, 2015).

⁴ See <http://www.lumberliquidators.com/sustainability/health-and-safety/> (last visited March 5, 2015).

6. Despite assurances that its flooring products are safe and comply with California formaldehyde regulations, several reports have shown that Lumber Liquidators' Chinese-made flooring products actually contain levels of formaldehyde that exceed the CARB standards. On March 1, 2015, 60 Minutes news aired a story dispelling Lumber Liquidators' claims that its flooring products are compliant with California formaldehyde standards. The news story was prompted by an investigation that was conducted by two environmental advocacy groups. The environmental groups purchased more than 150 boxes of Lumber Liquidators' laminate flooring at stores around California and sent the boxes to three certified labs for a series of tests. The results showed that "every single sample of Chinese-made laminate flooring from Lumber Liquidators failed to meet California formaldehyde emissions standards. Many by a large margin."⁵

7. The results of that investigation prompted 60 Minutes news to conduct its own independent investigation into Lumber Liquidators' Chinese-made Flooring. The 60 Minutes news team went to stores in Virginia, Florida, Texas, and New York and purchased 31 boxes of Lumber Liquidators' Chinese-made flooring. 60 Minutes sent the sample for testing at two certified labs. "It turns out of the 31 samples of Chinese-made laminate flooring, only one was compliant with formaldehyde emissions

⁵ *Lumber Liquidators Linked to Health and Safety Violations*, 60 MINUTES (Mar. 1, 2015), available at <http://www.cbsnews.com/news/lumber-liquidators-linked-to-health-and-safetyviolations/> (last visited March 5, 2015).

standards. Some were more than 13x over the California limit.”⁶ Both of the labs told 60 Minutes that they had never seen formaldehyde levels that high.

8. 60 Minutes then sent undercover investigators with hidden cameras to the city of Changzhou, China. The investigators posed as buyers and visited three different mills that manufacture laminates and flooring on behalf of Defendant. The results of the undercover investigation were alarming:

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

9. Lumber Liquidators’ illegal behavior with respect to its manufacturing, marketing, and sale of Chinese Flooring has caused Plaintiff and the other Class members to suffer direct financial harm. Plaintiff’s purchase is markedly less valuable because of its elevated level of formaldehyde. Plaintiff would have paid significantly less, if he purchased Chinese Flooring at all, had he known that the product contained elevated levels of the toxin formaldehyde.

10. Plaintiff asserts claims individually and on behalf of the other members of the proposed Class.

PARTIES

11. Plaintiff Rickie Martin is a resident of Comanche County, Oklahoma. Plaintiff owns a home in Geronimo, Oklahoma in which Lumber Liquidators’ Chinese

⁶ *Id.*

⁷ *Id.* (emphasis added).

Flooring is installed. In June 2012, Plaintiff purchased 12 mm St. James Blacksburg Barn Board Laminate from Lumber Liquidators and installed it in his home. Plaintiff relied on the representation of Defendant Lumber Liquidators' representatives, and the express warranties on the Chinese Flooring in selecting Lumber Liquidators' Chinese Flooring over all other brands of flooring.

12. Defendant Lumber Liquidators, Inc. is a corporation organized under the State of Delaware's Corporation Law with its principal place of business in Toano, Virginia. Defendant Lumber Liquidators, Inc. markets, advertises, distributes and sells the Products to consumers throughout Oklahoma and the United States.

13. Defendant Lumber Liquidators Leasing, LLC, is a Delaware Limited Liability Corporation with its principal place of business at 3000 John Deere Road, Toano, Virginia 23168.

14. Defendant Lumber Liquidators Holding, Inc., is a Delaware corporation with its principal place of business at 3000 John Deere Road, Toano, Virginia 23618.

15. Defendant Lumber Liquidators Services, LLC, is a Delaware Limited Liability Corporation with its principal place of business at 3000 John Deere Road, Toano, Virginia 23168.

JURISDICTION AND VENUE

16. The Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2), the Class Action Fairness Act, because the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest and costs and because more than two-thirds of the members of the class reside in states other than the state in which Defendants reside.

17. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) because Plaintiff is a resident of Oklahoma and Defendants are Delaware Corporations that maintain their principal place of business in Virginia. The amount in controversy in this action exceeds the sum or value of \$75,000.

18. This Court has personal jurisdiction over Defendants because they conduct business in Oklahoma and otherwise intentionally avail themselves of the markets in Oklahoma to render the exercise of jurisdiction by this Court proper. Defendants have marketed, promoted, distributed, and sold the Products in Oklahoma and throughout the United States.

19. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the alleged claims occurred in this District given that Plaintiff resides in this District and Lumber Liquidators markets, promotes, distributes and sells the Products in this District.

FACTUAL ALLEGATIONS

A. Lumber Liquidators

20. Lumber Liquidators is one of the largest specialty retailers of hardwood flooring in the United States, with over 300 retail stores in 46 states. Lumber Liquidators sells primarily to homeowners directly or to contractors acting on behalf of homeowners. Consumers may also purchase the Company's products online, and any purchases made over the Internet are shipped to the Lumber Liquidators retail location of the customers choosing.

21. Lumber Liquidators prides itself on having one of the largest inventories of

prefinished and unfinished hardwood floors in the industry. Lumber Liquidators carries solid and engineered hardwood, laminate flooring, bamboo flooring, cork flooring and resilient vinyl flooring, butcher blocks, molding, accessories, and tools.

22. Lumber Liquidators represents that it negotiates directly with the lumber mills, eliminating the middleman and passing the savings on to its customers. The Company also represents and warrants that it is “environmentally conscientious” and “only purchases from suppliers who practice sustainable harvesting, which allows forests to heal and re-grow faster.”

23. As detailed herein, one of the primary reasons Lumber Liquidators has grown so quickly and its profits have surged has been through the Company’s misrepresentations about the formaldehyde levels of its products.

B. Formaldehyde in Wood Flooring

24. Formaldehyde is a colorless, and strong smelling gas. According to the Occupational Safety and Health Administration (“OSHA”), formaldehyde is “commonly used a preservative in medical laboratories and mortuaries, formaldehyde is also found in many products such as chemicals particle board, household products, glues, permanent press fabrics, paper product coatings, fiberboard, and plywood.” At high exposure levels, “formaldehyde is a sensitizing agent that can cause and immune system response upon initial exposure. It is also a cancer hazard.”⁸ Formaldehyde exposure can be irritating to the eyes, nose, and throat and severe allergic reactions may occur in the skin, eyes, and

⁸ https://www.osha.gov/OshDoc/data_General_Facts/formaldehyde-factsheet.pdf (last visited March 5, 2015).

respiratory tract.⁹

25. When wood flooring is manufactured, layers of wood particles are “pressed together and sealed with adhesives containing urea formaldehyde resin” (“UFR”). UFR is “highly water-soluble and therefore is the most problematic mixture for indoor air pollution.”

26. Pressed-wood products, like hardwood plywood and particleboard, are considered a major source of indoor formaldehyde emissions.

27. All of the Lumber Liquidators Chinese-made Flooring Products contain a UFR formaldehyde or other formaldehyde resin.

C. CARB Regulations Regarding Formaldehyde

28. The California Air Resource Board, or “CARB,” is a department of the California Environmental Protection Agency. CARB oversees all air pollution control efforts in California to maintain air quality standards.

29. In January of 2009, CARB promulgated regulations called the Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products. *See* 17 California Code of Regulations (“CCR”) §§ 93120-93120.12 (the “CARB Regulations”). The CARB Regulations apply to various wood products, including wood flooring products. Phase 2 of the CARB regulations mandate that wood flooring products Sold in the State of California must emit no more than between 0.05 parts per million and 0.13 parts per million of formaldehyde depending on whether the

⁹ *Id.*

product is classified as a type of hardwood plywood or medium density fiberboard. *Id.*

30. On July 7, 2010, the federal Formaldehyde Standards for Composite Wood Products Act of 2010 was signed into law by President Obama. *See* 15 U.S.C. § 2697.

31. Significantly, the federal Formaldehyde Standards Act adopted the same standards established by CARB as a nationwide standard.¹⁰ The comment period for the Environmental Protection Agency’s proposed rules governing this statute is now closed and implementing regulations are expected to be released sometime this year.

D. Lumber Liquidators’ Chinese-Made Composite Wood Flooring

32. Lumber Liquidators has distributed, marketed, and sold various laminate flooring products that are manufactured in China (the “Chinese-Made Flooring Products”).

33. Specifically, the Chinese-made Flooring Products include, but are not limited to:

- a. 8 mm Bristol County Cherry Laminate Flooring;
- b. 8 mm Dream Home Nirvana Royal Mahogany Laminate Flooring;
- c. 8 mm Dream Home Nirvana French Oak Laminate Flooring;
- d. 12 mm Dream Home Ispiri Poplar Forest Oak Laminate Flooring;
- e. 12 mm Dream Home Kensington Manor Antique Bamboo Laminate Flooring;
- f. 12 mm Dream Home St. James Oceanside Plank Laminate

¹⁰ <http://www2.epa.gov/formaldehyde/formaldehyde-emission-standards-composite-woodproducts#Formaldehyderegs> (last visited March 5, 2015).

Flooring;

- g. 12 mm Dream Horne Kensington Manor Warm Springs Chestnut Laminate Flooring;
- h. 15 mm Dream Home St. James Sky Lakes Pine Laminate Flooring;
- i. 12 mm Dream Home Kensington Manor Imperial Teak Laminate Flooring;
- j. 12 mm Dream Home St. James Vintner's Reserve Laminate Flooring;
- k. 12 mm Dream Home Kensington Manor Cape Doctor Laminate Flooring;
- l. 12 mm Dream Home St. James Golden-Acacia Laminate Flooring;
- m. 12 mm Dream Home Kensington Manor Sandy Hills Hickory Laminate Flooring;
- n. 12 mm Dream Horne Kensington Manor Tanzanian Wenge Laminate Flooring;
- o. 12 mm Dream Home Ispiri America's Mission Olive Laminate Flooring;
- p. 12 mm Dream Home Kensington Manor Golden Teak Laminate Flooring;
- q. 12 mm Dream Home Kensington Manor Summer Retreat Teak Laminate Flooring;
- r. 12 mm Dream Horne Kensington Manor Glacier Peak Poplar

Laminate Flooring;

- s. 12 mm Dream Home St. James Brazilian Koa Laminate Flooring;
- t. 12 mm Dream Home St. James Blacksburg Barn Board Laminate Flooring;
- u. 12 mm Dream Home St. James Nantucket Beech Laminate Flooring;
- v. 12 mm Dream Home St. James Chimney Rock Charcoal Laminate Flooring;
- w. 12 mm Dream Home St. James African Mahogany Laminate Flooring;
- x. 12 mm Dream Home Kensington Manor Fumed African Ironwood Laminate Flooring.
- y. 12 mm Dream Home St. James Oceanside Plank Bamboo Laminate Flooring;
- z. 12 mm Dream Home Kensington Manor Warm Springs Chestnut Laminate Flooring;
- aa. 15 mm Dream Home St. James Sky Lakes Pine Laminate Flooring;
- bb. 12 mm Dream Home Ispiri Chimney Tops Smoked Oak Laminate Flooring;
- cc. 12 mm Dream Home Kensington Manor Imperial Teak Laminate Flooring;
- dd. 12 mm Dream Home St. James Cumberland Mountain Oak.

34. The Lumber Liquidators Chinese-made Flooring Products state in a uniform manner on the packaging that they are “California 93120 Phase 2 Compliant for Formaldehyde,” which indicates that the Chinese Flooring Products meet the CARB emission standards for formaldehyde.¹¹ This statement is false and misleading for the reasons described herein.

35. On the Lumber Liquidators website, Defendants also make false and misleading statement about their CARB compliance:

Is Lumber Liquidators Compliant with the California law?

Laminate and engineered flooring products sold by Lumber Liquidators are purchased from mills whose production method has been certified by a Third Party 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 specified regulation limits. The Third Party Certifier also provides ongoing oversight to validate the manufacturers’ compliance and manufacturers must be periodically re-certified.

Does CARB only apply to California?

Though it currently applies only to products sold in California, Lumber Liquidators made a decision to require all of our vendors to comply with the California Air Resources Board regulations regardless of whether we intended to sell

¹¹ http://www.arb.ca.gov/toxics/compwood/consumer_faq.pdf (explaining that “Manufactures typically will label their products as ‘California 93120 Compliant for Formaldehyde’ or ‘California Phase 2 Compliant’ if the products meet the stringent CARB regulations for formaldehyde.”) (last visited March 5, 2015).

the products in California or any other state/country.¹²

36. In addition, the product packaging for the Products states: “CARB ...Phase 2 Compliant for Formaldehyde.” On information and belief, this statement is presented on all of Lumber Liquidators’ Products regardless of whether the flooring inside the package complied with CARB standards.



37. According to CARB, “The label seen on panels and finished goods indicates that the product meets the California Air Resources Board’s (CARB) stringent emission standards for formaldehyde emissions from composite wood products, including HWPW, PB, and MDF. The CWP Regulation took effect in 2009, and manufacturers and fabricators of finished goods that use any of these materials are required to use composite wood that meets the formaldehyde emission limits in the CWP Regulation. They are also

¹² See http://www.lumberliquidators.com/ll/flooring/ca-air-resources-board-regulations?Wt.ad=GLOBAL_FOOTER_CaliRegCARB (last visited March, 5, 2015).

required to label their products as complying, either on the products or the packaging for the finished goods. Manufacturers typically will label their products as “California 93120 Compliant for Formaldehyde” or “California Phase 2 Compliant,” although other variations may also be used. California’s CWP Regulation is one of the most stringent regulations in effect to limit formaldehyde emissions from composite wood products.”

38. Lumber Liquidators’ purchase orders come with a warranty from the manufacturers/packagers stating that the PRODUCTS comply “with all applicable laws, codes and regulations,” and “bear all warnings, labels, and markings required by applicable laws and regulations.”¹³

39. Lumber Liquidators’ website also guarantees the “highest quality” flooring, and states (emphasis in the original):

1) INSPECTION - We inspect your flooring at every stage: before it’s finished, during production, and as it’s shipped. Our Quality Assurance team operates on three continents, seven countries, and in mills around the world. In fact, on a typical day, a production inspector will walk 12 miles up and down the finishing line to ensure you get only the best.

2) COMPLIANCE - We not only comply with laws - we exceed them. For example, California has the highest standards regarding laminate and engineered flooring. All of our mills that produce these products are certified by a Third Party approved by the State of California - and we apply these standards nationwide.

3) TESTING - We are continually investing in, testing, evaluating and assuring the highest quality. Our Quality Assurance team includes certified Six Sigma professionals with Master’s Degrees in Quality Management and various

¹³ See www.lumberliquidators.com//ll/customer-care/potc800201 (last visited March 5, 2015).

team members with degrees in Biology, Chemistry, Wood Science and Engineering. They work around the world to test your flooring at every stage. We also regularly send product out to an independent lab for additional testing to ensure quality.¹⁴

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

Regulations and Lumber Liquidators' Compliance

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

All laminates and engineered flooring products sold by Lumber Liquidators are purchased from mills whose production method has been certified by a Third Party 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 specified formaldehyde emission limits. The Third Party Certifier also provides ongoing oversight to validate the manufacturers' compliance and manufacturers must be periodically re-certified.

Though it currently applies only to products sold in California, Lumber Liquidators made a decision to require all of our suppliers to comply with CARB regardless of whether we intended to sell the products in California or any other state/country. In addition, our suppliers manufacture their products in accordance with the European standard which has stricter guidelines than the California.

¹⁴ See <http://web.archive.org/web/20130731042457/http://www.lumberliquidators.com/ll/flooring/Quality> (emphasis added) (last visited March 5, 2015).

In addition to the CARB requirements, Lumber Liquidators regularly selects one or more products from each of its suppliers and submits them for independent third-party lab testing. This is done as a monitoring activity to validate ongoing compliance.¹⁵

41. Lumber Liquidators materially misrepresents the safety of its laminate wood flooring products by advertising its flooring products as compliant with the CARB limit when in fact they are not.

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

43. However, Lumber Liquidators does not comply with CARB regulations when selling and distributing the Chinese-made Flooring Products. Several independent tests conducted by certified laboratories reveal that the Chinese Flooring Products emit formaldehyde levels well beyond what is allowable by CARB regulations. These test results have shown that average formaldehyde exposures during testing exceeded the 0.05 to 0.11 parts per million as allowed under CARB regulations set forth in 17 CCR §§ 93120-93120.12, *et seq.*

44. Lumber Liquidators' Chinese-made flooring was first called into question in June of 2013 when a blogger named Xuhua Zhou reported on the website Seeking Alpha the results of his independent investigation. Zhou sent samples of Lumber

¹⁵ See Formaldehyde-What is it? Regulations and Lumber Liquidators' Compliance, available at http://server.iad.liveperson.net/hc/s-13045352/cmd/kbresource/kb-752012092953572339/view_question!PAGE?sf=101133&documentid=415037&action=view (last visited March 5, 2015).

Liquidators' Flooring to be tested by independent laboratories and posted the results online. As Zhou explained:

I recently conducted independent lab testing –engaging Berkeley Analytical, an IAS accredited testing laboratory – on a sample of Lumber Liquidators house brand flooring (“Mayflower” brand), and the results that came back weren't pretty: Over 3.5x the maximum legal level for formaldehyde. Fully understanding the importance of this finding, we submitted samples from the same package to a second laboratory, this one the “gold standard” lab for the National Wood Flooring Association, NTW. The second lab confirms the product is in violation of the legal limit for formaldehyde.¹⁶

45. Another set of tests on Lumber Liquidators' Chinese-made flooring were conducted by the environmental advocacy groups Global Community Monitor and Sunshine Park, LLC. The two companies have filed suit in the California Superior Court for the County of Alameda against Lumber Liquidators for its alleged violation of the California Safe Drinking Water and Toxic Enforcement Act of 1986 commonly known as “Proposition 65” (“The Global Community Monitor Lawsuit.”) The complaint states that the groups conducted over fifty tests using various test methods and two different laboratory locations. Test results showed average exposures [of formaldehyde] at the time of testing exceeded 4,000 micrograms per day (“ug/day) over 100 times above the 40 ug/day threshold established by [California's Proposition 65].

46. In accordance with California Health and Safety Code Section 25249.6, an attorney representing Global Community Monitor submitted a Certificate of Merit

¹⁶ Xuhua Zhou, Illegal Products Could Spell Big Trouble at Lumber Liquidators, SEEKING ALPHA, (Jun. 20, 2013) <http://seekingalpha.com/article/1513142-illegal-products-couldspell-big-trouble-at-lumber-liquidators> (last visited March 5, 2015).

certifying that he consulted with persons who have the relevant and appropriate experience before filing suit. His consultants determined that there is a “reasonable and meritorious case for the private action” against Lumber Liquidators based on its sales of Chinese-made Flooring Products. The Global Community Monitor Lawsuit seeks injunctive relief and civil penalties as allowed by Proposition 65.

47. The most recent investigation into Lumber Liquidators flooring was conducted by 60 Minutes News. 60 Minutes purchased 31 boxes of Chinese-made Flooring Products from Lumber Liquidators stores in five different states and sent samples to two certified labs for testing. Out of the 31 samples, only one was found to be compliant with CARB formaldehyde emissions standards. Some were even more than 13x over the California limit.

48. Moreover, manufacturers in China admitted on camera to 60 Minutes News that the Chinese-made Flooring Products sold by Lumber Liquidators are not compliant with CARB regulations. A transcript from the 60 Minutes news report reads as follows:

Posing as buyers, and using hidden cameras, the investigators visited three different mills that manufacture laminates for Lumber Liquidators.

Employees at the mills openly admitted that they use core boards with higher levels of formaldehyde to make Lumber Liquidators laminates, saving the company 10-15 percent on the price. At all three mills they also admitted falsely labeling the company’s laminate flooring as CARB 2, meaning it meets California formaldehyde emissions standards, and the new U.S. federal law.

At this factory, the general manager told investigators Lumber Liquidators is one of their biggest customers.

Manager: This is a best-seller for Lumber Liquidators.

Investigator: For Lumber Liquidators?

Manager: Yeah.

Investigator: How long have you been selling this?

Manager: From last year.

Investigator: Is this CARB 2?

Manager: No, no, no . . . I have to be honest with you. It's not CARB 2.

Investigator: Can I get CARB 2?

Manager: Yes, you can. It's just the price issue. We can make CARB 2 but it would be very expensive.

And that's the same thing the undercover team was told at all three mills they visited.

Investigator: All this stuff here, Lumber Liquidators... All their labeling is CARB 2 right? But it's not CARB 2?

Employee: Not CARB 2.¹⁷

49. Plaintiff and the class members would not have purchased the Chinese Flooring Products if they had known that the products were not compliant with CARB and that the Products emit unlawful levels of formaldehyde.

E. Plaintiff's Reliance and Damages

50. During the relevant time period, Plaintiff purchased 12 mm St. James Blacksburg Barn Board Laminate from Lumber Liquidators at a Lumber Liquidators store located in Oklahoma. On information and belief, the flooring was produced at a

¹⁷ *Lumber Liquidators Linked to Health and Safety Violations*, 60 MINUTES (Mar. 1, 2015), available at <http://www.cbsnews.com/news/lumber-liquidators-linked-to-health-and-safetyviolations/> (last visited March 5, 2015).

laminated mill in China.

51. At the time that Plaintiff purchased this laminated wood flooring, Lumber Liquidators falsely represented that the product was compliant with CARB formaldehyde emission standards. At the time of the purchase, Lumber Liquidators also failed to inform Plaintiff that the laminated wood flooring product he purchased actually exceeded the CARB formaldehyde emission-limit and that formaldehyde is a chemical known to the State of California to cause cancer. Plaintiff relied on Lumber Liquidators' misrepresentations/omissions regarding compliance with CARB formaldehyde emission standards when deciding to purchase the laminated wood flooring products and, as a result, paid Lumber Liquidators for products he would not have otherwise purchased.

52. If Lumber Liquidators' laminated wood flooring becomes CARB compliant, Plaintiff would likely purchase it in the future.

53. Plaintiff paid for CARB compliant products, but received Products that were not CARB compliant. By purchasing Products in reliance on advertising that is false, Plaintiff has suffered injury in fact and lost money as a result of the unfair business practices alleged here.

CLASS ACTION ALLEGATIONS

54. Plaintiff seeks relief in his individual capacity and as class representatives of all others who are similarly situated. Pursuant to Fed. R. Civ. P. 23(a) and (b)(2) and/or (b)(3), Plaintiff seeks certification of the following Nationwide and Oklahoma Classes.

55. The Nationwide Damages Class is initially defined as follows:

All persons residing in the United States who, during the applicable statute of limitations period through the date notice is disseminated to the Class, purchased any of Lumber Liquidators' Chinese-made composite wood flooring products.

56. The Nationwide Injunctive Relief Only Class is initially defined as follows:

All persons residing in the United States who, during the applicable statute of limitations period through the date notice is disseminated to the Class, purchased any of Lumber Liquidators' Chinese-made composite wood flooring products.

57. The Oklahoma Class is initially defined as follows:

All persons residing in the State of Oklahoma who, during the applicable statute of limitations period through the date notice is disseminated to the Class, purchased any of Lumber Liquidators' Chinese-made composite wood flooring products.

58. Excluded from each of the above Classes are Defendant, including any entity in which Lumber Liquidators has a controlling interest, is a parent or subsidiary, or which is controlled by Defendant, as well as the officers, directors, affiliates, legal representatives, predecessors, successors, and assigns of Defendant. Also excluded are the judges and court personnel in this case and any members of their immediate families, as well as any person who purchased the Product for the purpose of resale.

59. Plaintiff reserves the right to amend or modify the Class definitions with greater specificity or division into subclasses after having had an opportunity to conduct discovery.

60. Numerosity. Fed. R. Civ. P. 23(a)(1). Each Class is so numerous that joinder of all members is unfeasible and not practicable. While the precise number of

Class members has not been determined at this time, Plaintiff is informed and believe that many thousands or millions of consumers have purchased the Products.

61. Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3). There are questions of law and fact common to each Class, which predominate over any questions affecting only individual Class members. These common questions of law and fact include, without limitation:

- a. Whether Lumber Liquidators' laminate wood flooring products sold exceed the CARB limit;
- b. Whether Lumber Liquidators' claim that its laminate wood flooring products-comply with the CARB limit is false;
- c. Whether Lumber Liquidators uniformly conveyed to the classes that the Products complied with CARB regulations;
- d. Whether Lumber Liquidators failed to disclose material information regarding the emission of unlawful levels of formaldehyde from its laminate wood flooring products;
- e. Whether Lumber Liquidators' representations that its laminate wood flooring products comply with the CARB limit are material, as judged by an objective standard;
- f. Whether Lumber Liquidators violated Oklahoma Consumer Protection Act, 15 Okla. Stat. § 753, *et seq.*;
- g. Whether Lumber Liquidators breached an express and implied warranties;
- h. Whether Lumber Liquidators was unjustly enriched;

i. The nature of the relief, including equitable relief, to which Plaintiff and the Class members are entitled.

62. Typicality. Fed. R. Civ. P. 23(a)(3). Plaintiff's claims are typical of the claims of the Class. Plaintiff and all Class members were exposed to uniform practices and sustained injury arising out of and caused by Lumber Liquidators' unlawful conduct.

63. Adequacy of Representation. Fed. R. Civ. P. 23(a)(4). Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff's Counsel are competent and experienced in litigating class actions.

64. Superiority of Class Action. Fed. R. Civ. P. 23(b)(3). A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all the members of the Class is impracticable. Furthermore, the adjudication of this controversy through a class action will avoid the possibility of inconsistent and potentially conflicting adjudication of the asserted claims. There will be no difficulty in the management of this action as a class action.

65. Injunctive and Declaratory Relief. Fed. R. Civ. P. 23(b)(2). Lumber Liquidators' misrepresentations are uniform as to all members of the Class. Lumber Liquidators has acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief or declaratory relief is appropriate with respect to the Class as a whole.

FIRST CAUSE OF ACTION

**Negligence
(On Behalf of Plaintiff And All Classes)**

66. Plaintiff incorporates all preceding factual allegations as if fully set forth herein.

67. Lumber Liquidators were under a legal duty to exercise reasonable care to design, manufacture and distribute Chinese Flooring that would conform to all industry standards and codes.

68. Lumber Liquidators breached its legal duty and was negligent in its design and/or manufacturer of its Chinese Flooring described herein. Lumber Liquidators' design and/or manufacture of the Chinese Flooring is inherently defective, in that the flooring emits unsafe levels of formaldehyde, causing damage to Plaintiff's and the Class Members' person and residences/structures as well as other property throughout the residences/structures.

69. As a result of the defects described herein, Plaintiff and Class Members' homes contain unsafe and dangerous levels of formaldehyde gas.

70. As a result of Lumber Liquidators' practices, Plaintiff's and the Class Members' residences contain defective and dangerous Chinese Flooring that require replacement as well as repair of damages and other property incidental thereto.

71. Lumber Liquidators knew or, in the exercise of reasonable care, should have known that its Chinese Flooring was negligently designed and/or manufactured to allow for unsafe levels of formaldehyde emissions which will cause damage to Plaintiff's and Class Member's persons, wellbeing, and property and would not perform as expected

by Plaintiff, Class Members and/or a reasonable consumer.

72. Lumber Liquidators knew or, in the exercise of reasonable care, should have known that its Chinese Flooring was negligently designed and/or manufactured.

73. Lumber Liquidators possessed the knowledge to cure the defect in the Chinese Flooring, but it continued to sell, to market and to advertise defective Chinese Flooring.

74. Plaintiff disclaimed any purported Limited Warranties.

75. As a direct, proximate, reasonably probable and foreseeable consequence of Lumber Liquidators' negligent acts and/or omissions in connection with its design, manufacture and distribution of its Chinese Flooring, Plaintiff and the Class Members have suffered and will continue to suffer loss and damage.

SECOND CAUSE OF ACTION
Breach of Express Warranty
(On Behalf of Plaintiff And All Classes)

76. Plaintiff incorporates all preceding factual allegations as if fully set forth herein.

77. Lumber Liquidators warranted that its flooring was free of defects when it sold those products to Plaintiff and the members of the Class as described in this Complaint. Defendants further represented that its flooring products complied with CARB formaldehyde standards and all applicable laws and regulations. Plaintiff and members of the Class reasonably relied upon these representations.

78. Lumber Liquidators' express representations and warranties became part of the basis of the bargain.

79. Lumber Liquidators breached their warranties by:
- a. Manufacturing, selling and/or distributing flooring that exceeds the CARB formaldehyde standards;
 - b. Manufacturing, importing, selling and/or distributing flooring that fails to comply with all applicable laws and regulations; and
 - c. Refusing to honor the express warranty by refusing to properly repair or replace the defective flooring.

80. Plaintiff, on behalf of himself and the other Class members, provided Lumber Liquidators with timely notice of its breach of warranty. Lumber Liquidators was also on notice regarding the excessively high levels of formaldehyde in its flooring from the complaints and requests for refund it received from Class members, Internet message boards and from published product reviews.

81. Any attempt by Defendant to disclaim its express warranties is both procedurally and substantively unconscionable, did not conform to the law and was not conspicuous as required by law.

82. As a direct and proximate result of Lumber Liquidators' misconduct, Plaintiff and the other Class members have suffered damages and continue to suffer damages, including economic damages at the point of sale. Additionally, Plaintiff and the other Class members have either incurred or will incur economic damages at the point of repair in the form of the cost of repair and/or the cost of purchasing non-defective flooring to replace the Lumber Liquidators' flooring.

83. Plaintiff and the other Class members are entitled to legal and equitable

relief against Lumber Liquidators, including damages, consequential damages, specific performance, rescission, attorneys' fees, costs of suit, and other relief as appropriate.

THIRD CAUSE OF ACTION
Breach of Implied Warranties
(On Behalf of Plaintiff And All Classes)

84. Plaintiff incorporates all preceding factual allegations as if fully set forth herein.

85. At all times relevant hereto, there was a duty imposed by law which requires that a manufacturer or seller's product be reasonably fit for the purposes for which such products are used and that the product be acceptable in trade for the product description.

86. Defendants breached this duty by selling flooring to Plaintiff and the other members of the Class that was not merchantable.

87. Defendants were notified that its product was not merchantable within a reasonable time after the defect manifested itself to Plaintiff and the members of the Class.

88. Any attempt by Defendant to disclaim its implied warranties is both procedurally and substantively unconscionable, did not conform to the law and was not conspicuous as required by law.

89. As a result of the non-merchantability of Lumber Liquidators' flooring described herein, Plaintiff and other members of the Class sustained a loss or damages.

FOURTH CAUSE OF ACTION

**Violation of Oklahoma Consumer Protection Act, 15 Okla. Stat. § 753, et seq.
(On behalf of Plaintiff and Oklahoma Class Members)**

90. Plaintiff incorporates all preceding factual allegations as if fully set forth herein.

91. The Oklahoma Consumer Protection Act provides that it is unlawful, when dealing with a consumer, for a person to “Commit[] an unfair or deceptive trade practice as defined in Section 752 of this title[.] 15 Okla. Stat. § 753. The definitions in § 752 are:

92. “Deceptive trade practice” means a misrepresentation, omission or other practice that has deceived or could reasonably be expected to deceive or mislead a person to the detriment of that person. Such a practice may occur before, during or after a consumer transaction is entered into and may be written or oral.

93. “Unfair trade practice” means any practice which offends established public policy or if the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers[.]

94. The conduct described above and throughout this Complaint took place within the State of Oklahoma and constitutes unfair and deceptive trade practices in violation of the Oklahoma Consumer Protection Act, 15 Okla. Stat. § 753, *et seq.*

95. 15 Okla. Stat. § 753, *et seq.* applies to the claims of Plaintiff and all Oklahoma Class members because the conduct which constitutes violations of the act by Lumber Liquidators occurred within the State of Oklahoma.

96. Lumber Liquidators engaged in the concealment, suppression, or omission in violation of the Oklahoma Consumer Protection Act, 15 Okla. Stat. § 753, *et seq.*,

when, in selling and advertising the Chinese Flooring, Lumber Liquidators knew that there were defects in the Chinese Flooring which would result in dangerous levels of formaldehyde gas emissions.

97. Lumber Liquidators engaged in the concealment, suppression, or omission of the aforementioned material facts with the intent that others, such as Plaintiff, Plaintiff's Builders, Class Members, Class Member's Builders, and/or the general public would rely upon the concealment, suppression, or omission of such material facts and purchase Lumber Liquidators' Chinese Flooring containing said defect.

98. Plaintiff, Plaintiff's Builder, Class Members, and/or Class Member's builders would not have purchased the Chinese Flooring had they known or become informed of the material defects in the Chinese Flooring.

99. Lumber Liquidators' concealment, suppression, or omission of material facts as alleged herein constitute unfair, deceptive and fraudulent business practices within the meaning of the Oklahoma Consumer Protection Act, 15 Okla. Stat. § 753, et seq.

100. Lumber Liquidators has acted unfairly and deceptively by misrepresenting the quality of the Chinese Flooring

101. Lumber Liquidators either knew, or should have known, that the Chinese Flooring was defectively designed and/or manufactured and would emit unsafe levels of formaldehyde, which would result in severe damages to the Plaintiff's person and property.

102. Upon information and belief, Lumber Liquidators knew that, at the time

Chinese Flooring left Lumber Liquidators' control, the Chinese Flooring contain the defect described herein resulting in dangerous levels of formaldehyde emissions. At the time of sale, the Chinese Flooring contained the defects. The defects permit unsafe levels of formaldehyde gas emission and rendered the flooring unable to perform the ordinary purposes for which it was used as well as cause the resulting damage described herein.

103. As a direct and proximate cause of the violation of the Oklahoma Consumer Protection Act, 15 Okla. Stat. § 753, *et seq.*, described above, Plaintiff and members of the Class have been injured in that they have purchased the unsafe and dangerous Chinese Flooring based on nondisclosure of material facts alleged above. Had Plaintiff and Class Members known the defective nature of the Chinese Flooring used on their structures, they would not have purchased their structures, or would have paid a lower price for their structures.

104. Plaintiff and Class Members reasonably relied upon Lumber Liquidators representations that the Chinese Flooring met all applicable codes and standards.

105. Lumber Liquidators used unfair methods of competition and unfair or deceptive acts or practices in conducting their businesses. This conduct constitutes fraud within meaning of the Oklahoma Consumer Protection Act, 15 Okla. Stat. § 753, *et seq.* This unlawful conduct is continuing, with no indication that Lumber Liquidators will cease.

106. As a direct and proximate result of Lumber Liquidators' unfair and deceptive acts and practices, Plaintiff and the other members of the Class will suffer damages, which include, without limitation, costs to inspect, repair or replace their

flooring and other property, in an amount to be determined at trial.

107. As a direct and proximate result of Lumber Liquidators' unfair and deceptive acts and practices, Plaintiff and the other members of the Class will suffer damages, which include, without limitation, to their health and wellbeing in an amount to be determined at trial.

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

FIFTH CAUSE OF ACTION
Fraudulent Misrepresentation

109. Plaintiff incorporates all preceding factual allegations as if fully set forth herein.

110. Lumber Liquidators falsely and fraudulently represented to Plaintiff, the Class members, and/or the consuming public in general that Lumber Liquidators' products complied with California strict formaldehyde emission standards and that they would be free from defects and fit for their customary and normal use.

111. In particular, Lumber Liquidators represented to Plaintiff and all Class members that its Chinese flooring was "California 93120 Phase 2 Compliant for Formaldehyde."

112. Lumber Liquidators falsely represented to consumers that the Chinese

Flooring was warranted against defects in material and workmanship when in fact the Limit Warranty was so limited as to prevent and preclude any warranty protection against the known defect in the Chinese Flooring.

113. When said representations were made by Lumber Liquidators, upon information and belief, they knew those representations to be false and they willfully, wantonly, and recklessly disregarded whether the representations were true.

114. These representations were made by Lumber Liquidators with the intent of defrauding and deceiving the Plaintiff, the Class members and/or the consuming public, all of which evinced reckless, willful, indifference to the safety and welfare of the Plaintiff and the Class members.

115. At the time the aforesaid representations were made by Lumber Liquidators, Plaintiff and the Class members were unaware of the falsity of said representations and reasonably believed them to be true.

116. In reliance upon said representations, the Plaintiff's and Class members' properties were built using Lumber Liquidators' Chinese Flooring, which were installed and used on Plaintiff's and the Class members' properties thereby sustaining damage and injury and/or being at an increased risk of sustaining damage and injury in the future.

117. Lumber Liquidators knew and was aware, or should have been aware, that Lumber Liquidators' Chinese Flooring was defective and not fit for their customary and normal use.

118. Lumber Liquidators knew, or should have known, that Lumber Liquidators' Chinese Flooring had a potential to, could, and would cause severe damage and injury to

property owners.

119. Lumber Liquidators brought its Chinese Flooring to the market and acted fraudulently, wantonly, and maliciously to the detriment of the Plaintiff and the Class members.

120. By reason of the foregoing, Plaintiff and the Class members suffered, and continue to suffer, financial damage and injury.

SIXTH CAUSE OF ACTION
Negligent Misrepresentation

121. Plaintiff incorporates all preceding factual allegations as if fully set forth herein.

122. Lumber Liquidators made representations about the Chinese Flooring to Plaintiff, Class members, and their agents or predecessors, as set forth in this complaint.

123. Those representations were false.

124. When Lumber Liquidators made the representations, it knew they were untrue or it had a reckless disregard for whether they were true, or it should have known they were untrue.

125. Lumber Liquidators knew that Plaintiff, Class members, and their agents or predecessors, were relying on the representations.

126. In reliance upon the representations, Plaintiff and Class Members purchased the Chinese Flooring and installed on the Plaintiff's and Class members' homes.

127. As a direct and proximate result of Lumber Liquidators negligent

misrepresentations, Plaintiff and Class members have been damaged as set forth in this Complaint.

128. As a direct and proximate result of the foregoing, Plaintiff and the Class Members suffered, and continue to suffer, financial damage and injury, and are entitled to all damages, including punitive damage, in addition to costs, interest and fees, including attorneys' fees, as allowed by law.

SEVENTH CAUSE OF ACTION
Fraudulent Omission/Concealment

129. Plaintiff incorporates all preceding factual allegations as if fully set forth herein.

130. Lumber Liquidators knew or should have known that the Chinese Flooring was defective in design, were not fit for their ordinary and intended use, and performed in accordance with neither the advertisements, marketing materials and warranties disseminated by Lumber Liquidators nor the reasonable expectations of ordinary consumers.

131. Lumber Liquidators fraudulently concealed from and/or intentionally failed to disclose to Plaintiff and the Class that the Chinese Flooring is defective and that it did not comply with California's formaldehyde emissions standards.

132. Lumber Liquidators had exclusive knowledge of the defective nature of the Chinese Flooring at the time of sale. The defect is latent and not something that Plaintiff or Class members, in the exercise of reasonable diligence, could have discovered independently prior to purchase, because it is not feasible.

133. Lumber Liquidators had the capacity to, and did, deceive Plaintiff and Class members into believing that they were purchasing flooring free from defects.

134. Lumber Liquidators undertook active and ongoing steps to conceal the defect. Plaintiff is aware of nothing in Lumber Liquidators' advertising, publicity or marketing materials that disclosed the truth about the defect, despite Lumber Liquidators' awareness of the problem.

135. The facts concealed and/or not disclosed by Lumber Liquidators to Plaintiff and the Class members are material facts in that a reasonable person would have considered them important in deciding whether to purchase (or to pay the same price for) the flooring from their builders.

136. Lumber Liquidators intentionally concealed and/or failed to disclose material factors for the purpose of inducing Plaintiff and the Class to act thereon.

137. Plaintiff and the Class justifiably acted or relied upon the concealed and/or nondisclosed facts to their detriment, as evidenced by their purchase of the Chinese Flooring.

138. Plaintiff and Class members suffered a loss of money in an amount to be proven at trial as a result of Pella's fraudulent concealment and nondisclosure because: (a) they would not have purchased the Chinese Flooring on the same terms if the true facts concerning the defective flooring had been known; (b) they paid a price premium due to fact that the flooring would be free from defects; and (c) the flooring did not perform as promised. Plaintiff also would have initiated this suit earlier had the defect been disclosed to him.

139. By reason of the foregoing, Plaintiff and the Class members suffered, and continue to suffer, financial damage and injury.

EIGHTH CAUSE OF ACTION
Unjust Enrichment
(Pleading in the Alternative)

140. Plaintiff incorporates all preceding factual allegations as if fully set forth herein.

141. Plaintiff and Class members conferred a benefit on Defendants when they purchased the Chinese Flooring.

142. Lumber Liquidators has been unjustly enriched in retaining the revenues derived from Class members' purchases of the Chinese Flooring, the retention of which under these circumstances is unjust and inequitable because Lumber Liquidators' Chinese Flooring is defective in design, were not fit for their ordinary and intended use, and performed in accordance with neither the advertisements, marketing materials and warranties disseminated by Lumber Liquidators nor the reasonable expectations of ordinary consumers and caused the Plaintiff and Class members to lose money as a result thereof.

143. Plaintiff and Class members suffered a loss of money as a result of Lumber Liquidators' unjust enrichment because: (a) they would not have purchased the Chinese Flooring on the same terms if the true facts concerning the unsafe Chinese Flooring had been known; (b) they paid a price premium due to the fact the Chinese Flooring would be free from defects; and (c) the Chinese Flooring did not perform as promised.

144. Because Lumber Liquidators' retention of the non-gratuitous benefit

conferred on them by Plaintiff and Class members is unjust and inequitable, Lumber Liquidators must pay restitution to Plaintiff and the Class members for their unjust enrichment, as ordered by the Court.

145. Plaintiff and the Class Members are entitled to restitution of, disgorgement of, and/or the imposition of the constructive trust upon, all profits, benefits, and other compensation obtained by the Defendants from their deceptive, misleading, and unlawful conduct.

NINTH CAUSE OF ACTION
Violation of the Magnuson-Moss Warranty Act

146. Plaintiff incorporates all preceding factual allegations as if fully set forth herein.

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

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

149. Lumber Liquidators flooring purchased separate from the initial construction of the structure constitutes a “consumer product” within the meaning of 15 U.S.C. § 2301(1).

150. Lumber Liquidators’ express warranties and written affirmations of fact regarding the nature of the flooring, including that the flooring was free from defects and was in compliance with CARB and EU formaldehyde standards and all other applicable laws and regulations, constitute written warranties within the meaning of 15 U.S.C. §

2301(6).

151. Lumber Liquidators breached their warranties by:

- a. Manufacturing, selling and/or distributing flooring that exceeds the CARB formaldehyde standards;
- b. Manufacturing, importing, selling and/or distributing flooring that fails to comply with all applicable laws and regulations; and
- c. Refusing to honor the express warranty by refusing to properly repair or replace the defective flooring.

152. Lumber Liquidators' breach of its express warranties deprived Plaintiff and the other Class members of the benefits of their bargains.

153. Any attempt by Defendant to disclaim its express warranties is both procedurally and substantively unconscionable, did not conform to the law and was not conspicuous as required by law.

154. As a direct and proximate result of Lumber Liquidators' breaches of its written warranties, Plaintiff and the other Class members sustained damages in an amount to be determined at trial. Lumber Liquidators' conduct damaged Plaintiff and the other Class members, who are entitled to recover damages, consequential damages, specific performance, diminution in value, costs, attorneys' fees, rescission, and/or other relief as appropriate.

TENTH CAUSE OF ACTION
Declaratory Relief (28 U.S.C. § 2201)
(Pleading in the Alternative)

155. Plaintiff incorporates all preceding factual allegations as if fully set forth

herein.

156. Lumber Liquidators has acted or refused to act on grounds that apply generally to the Declaratory Relief Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole within the meaning of Fed. R. Civ. P. 23(b)(2). Plaintiff seeks a ruling that:

- a. the Chinese Flooring has a defect which results in unsafe levels of formaldehyde emissions. The Court finds that this defect is material and requires disclosure for all of this flooring;
- b. the Chinese Flooring has a defect that allows for unsafe levels of formaldehyde emissions. The court declares that all persons who own structures containing Chinese Flooring are to be provided the best practicable notice of the defect, which cost shall be borne by Lumber Liquidators;
- c. Lumber Liquidators will establish an inspection program and protocol, under Court supervision, to be communicated to class members, which will require Lumber Liquidators to inspect, upon request, a class member's structure to determine formaldehyde emissions levels are safe. Any disputes over coverage shall be adjudicated by a Special Master appointed by the Court and/or agreed to by the parties.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the other members of the Classes proposed in this Complaint, respectfully request that the Court enter judgment in

their favor and against Defendants, as follows:

A. Declaring that this action is a proper class action, certifying the Class as requested herein, designating Plaintiff as Class Representative and appointing the undersigned counsel as Class Counsel;

B. Ordering Defendants to pay actual damages (and no less than the statutory minimum damages) and equitable monetary relief to Plaintiff and the other members of the Class and Subclasses;

C. Ordering Defendants to pay punitive damages, as allowable by law, to Plaintiff and the other members of these Classes;

D. Ordering Lumber Liquidators to pay statutory damages, as allowable by the statutes asserted herein, to Plaintiff and the other members of these Classes;

E. Awarding injunctive relief as permitted by law or equity, including enjoining Defendants from continuing the unlawful practices as set forth herein, and ordering Defendants to engage in a corrective advertising campaign;

F. Ordering Defendants to pay attorneys' fees and litigation costs to Plaintiff and the other members of the Classes;

G. Ordering Defendants to pay both pre- and post-judgment interest on any amounts awarded; and

H. Ordering such other and further relief as may be just and proper.

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JURY DEMAND

Plaintiff demands a trial by jury of all claims in this Complaint that are so triable.

Dated: March 5, 2015

Respectfully submitted,

/s/Fletcher D. Handley, Jr.
Fletcher D. Handley, Jr.
The Handley Law Center
PO Box 310
111 South Rock Island Ave.
El Reno, OK 73036
fdh@handleylaw.com

and

Daniel K. Bryson
Whitfield Bryson & Mason LLP
900 W. Morgan Street
Raleigh, NC 27603
dan@wbmlp.com

*Attorneys for Plaintiff and the Proposed
Classes*