

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JAMIE KELLY AND CHARMAINE  
HURST, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

LUMBER LIQUIDATORS, INC., a  
Delaware corporation, LUMBER  
LIQUIDATORS HOLDINGS, INC. and  
DOES ONE through TEN inclusive,

Defendants.

Civil Action No.

COMPLAINT--CLASS ACTION

JURY TRIAL DEMANDED

Plaintiffs Jamie Kelly (“Kelly”) and Charmaine Hurst (“Hurst”) (collectively referred to as “Plaintiffs”), individually and on behalf of all others similarly situated, allege on personal knowledge and on information and belief as follows:

### **INTRODUCTION**

1. Defendant Lumber Liquidators, Inc. supervises and controls the manufacturing of, and packages, distributes, markets and/or sells laminate wood flooring products to consumers nationwide. Defendant’s labels on these laminate wood flooring products represent that the products comply with 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. Formaldehyde is a substance known to cause cancer. Lumber Liquidators sells to consumers in Pennsylvania and nationwide laminate wood flooring products manufactured in China that emit formaldehyde gas at levels that exceed the limits set forth in the CARB standards. Lumber Liquidators fails to disclose the true level of formaldehyde emission to consumers. Consumers throughout Pennsylvania and across the country are buying flooring products from Lumber Liquidators that it says are safe when in fact they are not.

2. 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. Formaldehyde has also been linked to the exacerbation of asthma in formaldehyde-sensitive individuals.

3. 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, and a top layer which is usually a veneer or other material such as a photographic image or picture of wood, affixed as a decorative surface.

4. Laminate flooring manufacturers use formaldehyde glues and resins to hold the pressed wood together.

5. Lumber Liquidators supervises and controls the manufacturing of laminate wood flooring products from several manufacturing plants in China. Lumber Liquidators sells those laminate wood flooring products at Lumber Liquidators' nineteen retail stores in Pennsylvania. Defendant also sells those laminate wood flooring products to consumers nationwide through Lumber Liquidators' retail website, [www.lumberliquidators.com](http://www.lumberliquidators.com), and through its toll free customer service telephone line, 1-800-HARDWOOD (1-800-427-3966).

6. From October 2013 through November 2014, three certified and accredited laboratories tested the formaldehyde emissions of laminate wood flooring purchased from several nationwide retail outlets, including Home Depot, Lowe's, and Lumber Liquidators. Of the dozens of products tested, by far the highest formaldehyde levels were found in the laminate wood flooring sold by Lumber Liquidators that was produced in China. Similar products manufactured in North America generally had much lower formaldehyde levels that complied with the formaldehyde emission standards promulgated by CARB. Similar products tested from Lumber Liquidators' competitors also showed significantly lower formaldehyde levels that generally complied with the CARB formaldehyde emission standards.

7. Over the past several months, a sample of each available brand of Chinese-made laminate wood flooring product that Defendant sells in Pennsylvania and elsewhere throughout

the United States was tested by a certified laboratory using the testing methodology specified by CARB. As set forth in paragraph 26 below, each sampled product exceeded the CARB limit for formaldehyde emissions.

8. Laminate flooring that does not meet CARB standards is cheaper to produce and lowers Lumber Liquidators' costs. On information and belief, high formaldehyde content resins and glues are less expensive and dry more quickly than low formaldehyde glues and resins. By using high formaldehyde content resins and glues rather than low formaldehyde content resins and glues, Lumber Liquidators' manufacturers in China are able to produce laminate wood flooring more quickly and at higher volumes thereby reducing costs and generating greater profits for Lumber Liquidators.

9. Lumber Liquidators does not give consumers any warnings about the true formaldehyde levels in its laminate wood flooring products, but instead represents on its product labels, website, and warranties that its flooring products comply with strict CARB formaldehyde standards. Lumber Liquidators has made false and misleading statements that its flooring products comply with CARB formaldehyde standards, and the even more stringent European formaldehyde standards. Lumber Liquidators' website falsely states, "Our commitment to the health and safety of our customers includes meeting or exceeding industry standards on formaldehyde emissions through compliance with applicable regulations such as those established by the California Air Resources Board (CARB)."

[http://www.lumberliquidators.com/ll/flooring/quality?WT.ad=GLOBAL\\_FOOTER\\_Quality](http://www.lumberliquidators.com/ll/flooring/quality?WT.ad=GLOBAL_FOOTER_Quality) (last visited on March 13, 2015).

10. With respect to their warranty and common law claims, Plaintiffs seek to represent themselves and similarly-situated persons who have purchased Defendant's laminate

wood flooring products that were manufactured in China, labeled as CARB compliant, and sold to consumers in the United States at any time from January 1, 2009 through the date of judgment herein (the “Nationwide Class”). With regard to their Pennsylvania Deceptive Trade Practices and Consumer Protection Act claim, Plaintiffs seek to represent themselves and similarly-situated persons in Pennsylvania who have purchased Defendant’s laminate wood flooring products that were manufactured in China, labeled as CARB compliant, and sold to consumers in Pennsylvania at any time from January 1, 2009 through the date of judgment herein (the “Pennsylvania Class”). Plaintiffs seek restitution of monies they and the putative class spent on Defendant’s flooring products, damages, statutory damages, and injunctive relief.

#### **THE PARTIES**

11. Plaintiff Jamie Kelly is, and at all relevant times has been, a resident of Bucks County, Pennsylvania. On August 18, 2011, Plaintiff Kelly purchased 12 mm Dream Home St. James Blacksburg Barn Board Laminate Flooring at a Lumber Liquidators store located in Philadelphia County, Pennsylvania.

12. Plaintiff Charmaine Hurst is, and at all relevant times has been, a resident of Philadelphia County, Pennsylvania. On April 20, 2013, Plaintiff purchased 12 mm Dream Home St. James Brazilian Koa Laminate Flooring at a Lumber Liquidators store located in Philadelphia County, Pennsylvania.

13. Defendant Lumber Liquidators Inc. and Defendant Lumber Liquidators Holdings, Inc. (collectively “Lumber Liquidators” or “Defendant”) are Delaware corporations with their headquarters and principal places of business in Toano, Virginia. Lumber Liquidators, Inc. distributes, markets, and/or sells laminate wood flooring products nationwide, including in

Pennsylvania. Lumber Liquidators Inc. is a wholly owned subsidiary of Lumber Liquidators Holdings, Inc.

14. Lumber Liquidators states that it is the largest specialty retailer of flooring in the United States, with over 300 retail stores in 46 states, including nineteen stores in Pennsylvania.

### **JURISDICTION AND VENUE**

15. This Court has original subject matter jurisdiction over this Class Action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2). Plaintiffs are citizens of Pennsylvania. Pursuant to 28 U.S.C. §§ 1332(c) and (d)(10), Defendant Lumber Liquidators Inc. and Lumber Liquidators Holdings, Inc. are Delaware corporations with headquarters and principal places of business in Toano, Virginia. As a result, the named Plaintiffs, Class members, and the Defendant are citizens of different states within the meaning of 28 U.S.C. § 1332(d)(2)(A).

16. On information and belief, the proposed Class exceeds 100 persons. Pursuant to 28 U.S.C. § 1332(d)(6), the aggregate amount of the Class members' claims substantially exceeds \$5,000,000, and thus, exceeds the requisite amount in controversy set forth in 28 U.S.C. § 1332(d)(2).

17. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a) and (b) on the grounds that all or a substantial portion of the acts giving rise to the violations alleged herein occurred in this judicial district.

### **FACTUAL ALLEGATIONS**

#### **A. California's Formaldehyde Standard**

18. On January 1, 1988, the State of California officially listed Formaldehyde (gas) as a chemical known to cause cancer.

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

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

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

22. The CARB Phase 1 Emission Standard for MDF, which was in effect from January 1, 2009 to December 31, 2010, limited formaldehyde emissions to .21 parts per million (“ppm”). The Phase 2 Emission Standard for MDF dictates that as of January 1, 2011, MDF flooring products such as those involved in this action that are sold in California must emit no more than 0.11 parts per million (“ppm”) of formaldehyde. The CARB Phase 1 Emission Standard for Thin MDF, which was in effect from January 1, 2009 to December 31, 2011, limited formaldehyde emissions to .21 ppm. The CARB Phase 2 Emission Standard for Thin MDF dictates that as of January 1, 2012, thin MDF flooring products such as those involved in this action that are sold in California must emit no more than 0.13 ppm of formaldehyde. Cal. Code Regs., tit. 17, § 93120.2(a). Hereinafter, the formaldehyde emission standards for both MDF and Thin MDF will be referred to as the “CARB limit.”

**B. Lumber Liquidators’ Laminated Wood Flooring Products.**

23. Defendant supervises and/or controls the manufacturing and packaging of laminated wood flooring products in China that Defendant then distributes, markets, and/or sells nationwide, including in Pennsylvania. Those laminated wood flooring products contain

formaldehyde and emit formaldehyde gas at levels that exceed, and sometimes grossly exceed, the CARB limit. Those laminate wood flooring products include the following:

- a. 8 mm Dream Home Nirvana Royal Mahogany Laminate Flooring;
- b. 8 mm Dream Home Nirvana French Oak Laminate Flooring;
- c. 12 mm Dream Home Ispiri Poplar Forest Oak Laminate Flooring;
- d. 12 mm Dream Home Kensington Manor Antique Bamboo Laminate Flooring;
- e. 12 mm Dream Home St. James Oceanside Plank Laminate Flooring;
- f. 12 mm Dream Home Kensington Manor Warm Springs Chestnut Laminate Flooring;
- g. 15 mm Dream Home St. James Sky Lakes Pine Laminate Flooring;
- h. 12 mm Dream Home Kensington Manor Imperial Teak Laminate Flooring;
- i. 12 mm Dream Home St. James Vintner's Reserve Laminate Flooring;
- j. 12 mm Dream Home Kensington Manor Cape Doctor Laminate Flooring;
- k. 12 mm Dream Home St. James Golden Acacia Laminate Flooring;
- l. 12 mm Dream Home Kensington Manor Sandy Hills Hickory Laminate Flooring;
- m. 12 mm Dream Home Kensington Manor Tanzanian Wenge Laminate Flooring;
- n. 12 mm Dream Home Ispiri America's Mission Olive Laminate Flooring;
- o. 12 mm Dream Home Kensington Manor Golden Teak Laminate Flooring;
- p. 12 mm Dream Home Kensington Manor Summer Retreat Teak Laminate Flooring;
- q. 12 mm Dream Home Kensington Manor Glacier Peak Poplar Laminate Flooring;
- r. 12 mm Dream Home St. James Brazilian Koa Laminate Flooring;
- s. 12 mm Dream Home St. James Blacksburg Barn Board Laminate



Flooring;

- t. 12 mm Dream Home St. James Nantucket Beech Laminate Flooring;
- u. 12 mm Dream Home St. James African Mahogany Laminate Flooring;
- v. 12 mm Dream Home Kensington Manor Fumed African Ironwood Laminate Flooring; and
- w. 12 mm Dream Home St. James Cumberland Mountain Oak Laminate Flooring.

24. CARB regulations apply to all of these flooring products.

25. On information and belief, each of the Lumber Liquidators' laminate wood flooring products listed in Paragraph 23 above are manufactured in China using a common formula, design, or process.

26. On information and belief, each of the Lumber Liquidators' laminate wood flooring products listed in Paragraph 23 above emit formaldehyde gas at levels that exceed the CARB limit.

**LUMBER LIQUIDATORS MISREPRESENTS THAT ITS LAMINATE WOOD  
FLOORING PRODUCTS MEET CARB STANDARDS**

27. Despite the fact that its laminate wood flooring products contain formaldehyde levels that exceed the CARB limit, Lumber Liquidators misrepresents to consumers on their website, product packaging, and warranties that their laminate wood flooring products meet the CARB standards for formaldehyde emissions.

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

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 the products in California or any other state/country.

What extra steps does Lumber Liquidators take to ensure compliance?

In addition to the California Air Resources Board requirements, Lumber Liquidators regularly selects one or more finished 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 quality control.

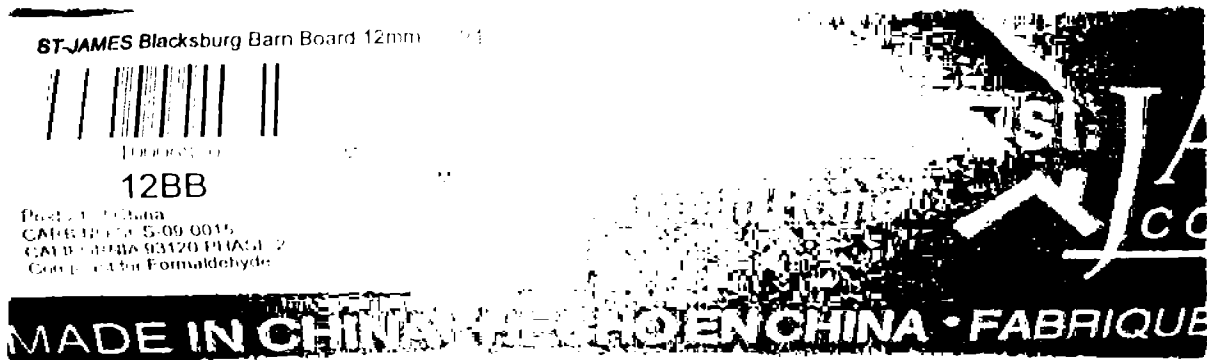
*What are the California Air Resource Board Regulations?*, [lumberliquidators.com](http://www.lumberliquidators.com),

[http://www.lumberliquidators.com/11/flooring/ca-air-resources-board-](http://www.lumberliquidators.com/11/flooring/ca-air-resources-board-regulations?Wt.ad=GLOBAL_FOOTER_CaliRegCARB)

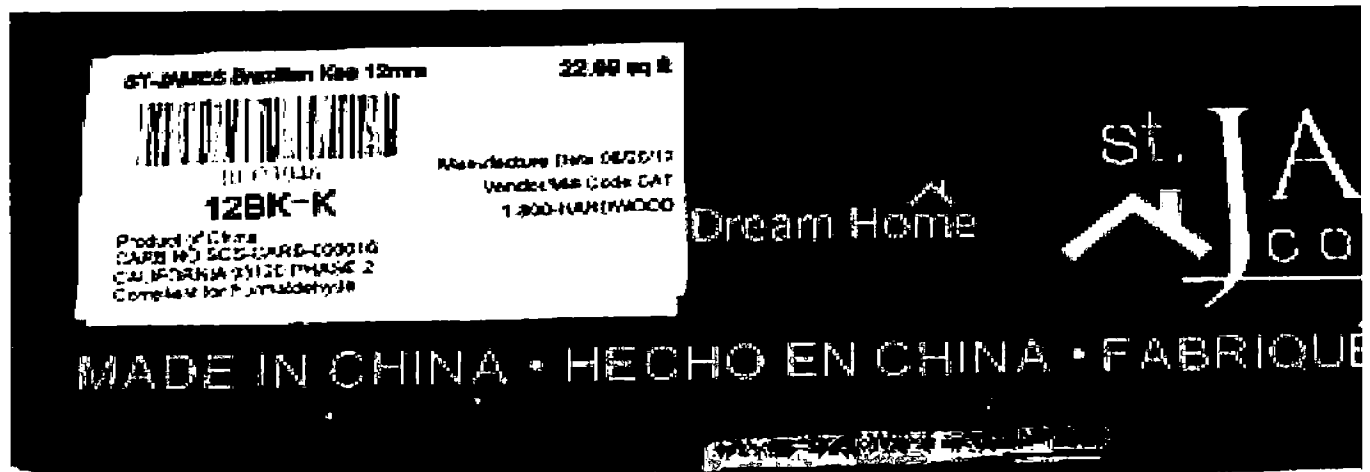
[regulations?Wt.ad=GLOBAL\\_FOOTER\\_CaliRegCARB](http://www.lumberliquidators.com/11/flooring/ca-air-resources-board-regulations?Wt.ad=GLOBAL_FOOTER_CaliRegCARB) (last visited on March 4, 2015).

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

30. Plaintiff's laminate flooring product packaging clearly states "CARB . . . PHASE 2 Compliant for Formaldehyde." By way of example, a true and accurate image of the packaging that accompanied Plaintiff Kelly's laminate flooring appears below.



A true and accurate image of the packaging that accompanied Plaintiff Hurst's laminate flooring appears below.



31. Lumber Liquidators' purchase orders come with a warranty stating that the customer's purchased flooring products comply "with all applicable laws, codes and regulations," and "bear all warnings, labels, and markings required by applicable laws and regulations." Purchase Order Terms and Conditions, [lumberliquidators.com](http://www.lumberliquidators.com), <http://www.lumberliquidators.com/11/customer-care/potc800201> (last visited on March 16, 2015).

32. Lumber Liquidators website guarantees the “highest quality” flooring, and states:

“We inspect your flooring at every stage: before it’s finished, during production, and as it’s shipped . . . . **to ensure you get only the best.**”

Highest Quality Flooring. GUARANTEED.,

[lumberliquidators.com](http://www.lumberliquidators.com),

[http://www.lumberliquidators.com/assets/web/Highest\\_Quality\\_Flooring\\_Guarantee/index.html](http://www.lumberliquidators.com/assets/web/Highest_Quality_Flooring_Guarantee/index.html)

(last visited on March 16, 2015) (emphasis in original).

33. 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.

To comply with the CARB standards, applicable laminate and engineered flooring and accessories sold by Lumber Liquidators are purchased from manufacturers whose production methods have been certified by a Third Party Certifier approved by the State of California to meet the CARB standards; or from suppliers who source composite wood raw materials only from certified manufacturers. 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 composite wood products conform to the specified emission limits. The Third Party Certifier also provides ongoing oversight to validate the manufacturers’ compliance and manufacturers must be periodically re-certified.

Health and Safety [Lumberliquidators.com](http://www.lumberliquidators.com),

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

34. 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.

35. Lumber Liquidators makes the material omission of failing to tell consumers that they are buying laminate wood flooring products with levels of formaldehyde that exceed CARB limits.

36. These laminate wood flooring products have been sold by Lumber Liquidators for use nationwide and in Pennsylvania since at least Jan. 1, 2009.

37. Lumber Liquidators continues to distribute and sell its laminate wood flooring products to customers in Pennsylvania and throughout the United States with the representation that they are CARB compliant, even though they are not.

**LUMBER LIQUIDATORS KNOWINGLY MISREPRESENTS  
THE SAFETY OF ITS LAMINATE WOOD FLOORING PRODUCTS**

38. On information and belief, at all times relevant to this action, Lumber Liquidators has knowingly misrepresented its laminate wood flooring products as CARB compliant and knowingly failed to disclose to consumers the levels of formaldehyde emissions from its laminate wood flooring products.

39. At the same time that Lumber Liquidators is representing in its public statements to consumers that the laminate wood products it sells are sourced from mills whose production methods are CARB compliant and that the products conform to CARB's specified formaldehyde emission limits, Lumber Liquidators has acknowledged in statements made to the Securities and Exchange Commission that:

While our suppliers agree to operate in compliance with applicable laws and regulations, including those relating to environmental and labor practices, we do not control our suppliers. Accordingly, we cannot guarantee that they comply with such laws and regulations or operate in a legal, ethical and responsible manner. Violation of environmental, labor or other laws by our suppliers or their failure to operate in a legal, ethical and responsible manner, could . . . lead to litigation and recall, which could damage our reputation and our brands, increase our costs, and otherwise hurt our business.

Lumber Liquidators February 25, 2015 10-K to the United States Securities and Exchange Commission at p. 14, which is available for download at:

<http://investors.lumberliquidators.com/sec-filings> (last visited March 18, 2015). Nevertheless, Lumber Liquidators admits in the same SEC filing that it has the ability to oversee 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 certain mills, coordinating inspection and assurance procedures.” Lumber Liquidators February 25, 2015 10-K to the United States Securities and Exchange Commission at p. 5. Despite its stated concern that its suppliers might not comply with environmental regulations, Lumber Liquidators has failed to sufficiently exercise its acknowledged quality control over those suppliers to ensure that they comply with CARB standards. Lumber Liquidators continues to sell laminate wood flooring products to consumers in Pennsylvania and nationwide that it obtains from those suppliers.

40. On June 20, 2013, Seeking Alpha, a news website, published a lengthy article documenting high formaldehyde levels in Chinese-made laminate flooring sold by Lumber Liquidators. The author of the article, Xuhua Zhou, retained a certified laboratory to test three samples of Chinese-made laminate flooring sold by Lumber Liquidators. Zhou’s article states, “The tested product, Mayflower 5/16” x 5” Bund Birch Engineered, emits a staggering three and half times over the government mandated maximum emission level. The product is clearly not CARB compliant yet Lumber Liquidators tagged CARB compliance on the box.” Xuhua Zhou, *Illegal Products Could Spell Big Trouble At Lumber Liquidators*, Seeking Alpha (June 20, 2013, 2:33 PM ET), <http://seekingalpha.com/article/1513142-illegal-products-could-spell-big-trouble-at-lumber-liquidators> (last visited on March 4, 2015).

41. On information and belief, high formaldehyde content resins and glues are less expensive and dry more quickly than low formaldehyde glues and resins. By using high formaldehyde content resins and glues rather than low formaldehyde content resins and glues, Lumber Liquidators' manufacturers in China are able to produce laminate wood flooring more quickly and at higher volumes thereby reducing costs and generating greater profits for Lumber Liquidators.

42. On or about November 26, 2013, a putative federal securities class action lawsuit was filed against Lumber Liquidators in the United States District Court in the Eastern District of Virginia based on drops in the stock price following the Seeking Alpha article and its allegations concerning the formaldehyde emissions from Lumber Liquidators' laminate wood flooring products. *Kiken v. Lumber Liquidators Holdings, Inc., et al.*, 4:2013-cv-00157 (E.D.Va). This case is currently pending.

43. On or about December 3, 2013, another putative class action lawsuit was filed against Lumber Liquidators in the same federal court alleging claims related to illegal formaldehyde emissions from Lumber Liquidators' laminate wood flooring products. *Williamson v. Lumber Liquidators Holdings, Inc.*, 1:13-cv-01487-AJT-TCB (E.D.Va.). Although the case was dismissed, Lumber Liquidators was made aware during the pendency of that lawsuit of complaints and allegations that its laminate wood flooring products from China emit formaldehyde gas at levels that violate the CARB limit.

44. Numerous Lumber Liquidators customers have posted internet complaints on the Consumer Affairs website, [www.consumeraffairs.com](http://www.consumeraffairs.com), concerning formaldehyde emissions from Lumber Liquidators' laminate wood flooring products, including Deborah of North Fork, California, who posted the following on September 11, 2014:

We spent thousands of dollars and went with the LL recommended professional installer... the product we were sold was supposedly Made in the USA--nope, China. One of my children cannot walk barefoot on the 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 bit. This has been a devastating blow to our family.

Consumer Complaints & Reviews,

[http://www.Consumeraffairs.com/homeowners/lumber\\_liquidators.html](http://www.Consumeraffairs.com/homeowners/lumber_liquidators.html) (last visited on March 16, 2015.)

45. On March 1, 2015, the nationally televised CBS news program *60 Minutes* aired a 15 minute report on Lumber Liquidators' laminate flooring, and reported the same test results described above that drastically exceed CARB standards for formaldehyde emission. See Lumber Liquidators Linked to Health and Safety Violations, 60 Minutes, CBS News <http://www.cbsnews.com/news/lumber-liquidators-linked-to-health-and-safety-violations/> (transcript of segment) (last visited March 16, 2015).

46. On March 2, 2015, following the *60 Minutes* report, Lumber Liquidators Inc. Founder and Chairman Tom Sullivan issued a formal response on the Lumber Liquidators website. In response to the data presented in the *60 Minutes* program, Mr. Sullivan denied that any of Lumber Liquidators' laminate flooring fails to comply with CARB formaldehyde emission standards, and claimed that all reports and testing showing non-compliance are part of a scheme by investors to lower the value of Lumber Liquidators stock:

Recently some questions have been raised about our laminate products. Let me make one thing very clear—our laminate products, all of our products, are 100% safe.

These attacks are driven by a small group of short-selling investors who are working together for the sole purpose of making money by lowering our stock price. They are using any means to try and scare our customers with inaccurate allegations. Their motives and



methods are wrong and we will fight these false attacks on all fronts.

\* \* \*

All of us at Lumber Liquidators personally stand by every single plank of wood and laminate we sell around the country, and we will continue to deliver the best quality product as the best price to you.

Tom Sullivan,  
Founder & Chairman  
Lumber Liquidators, Inc.

*60 Minutes Letter from Tom*, LumberLiquidators.com,

<http://www.lumberliquidators.com/sustainability/60-minutes-letter-from-tom/> (last visited March 13, 2015). At no time has Mr. Sullivan or any representative for Lumber Liquidators admitted that its laminate flooring fails to comply with CARB formaldehyde emission standards.

47. In the wake of the *60 Minutes* report and other reports exposing the formaldehyde emission levels in Lumber Liquidators' laminate flooring, Lumber Liquidators did not remove its defective laminate flooring from stores or issue any voluntary recall or warning, but instead placed numerous of its faulty flooring brands on sale at deep discounts on its website.

48. Based on the lawsuits, articles, and blog posts described above, Defendant knew or should have known that its laminate wood flooring products were not compliant with CARB standards. Despite this knowledge, Lumber Liquidators: 1) failed to reformulate its flooring products so that they are CARB compliant; 2) failed to disclose to consumers that these products emit unlawful levels of formaldehyde; 3) sold and continued to sell laminate wood flooring products in Pennsylvania and nationwide that exceed the CARB limit; and 4) represented and continues to represent to consumers that these products are CARB compliant.

49. In summary, Plaintiffs make the following allegations with as much specificity as possible absent access to the information solely and necessarily in the possession, custody and control of Lumber Liquidators:

a. Lumber Liquidators misrepresented that the models of laminate wood flooring products listed in Paragraphs 23 (a)-(w) above complied with California's CARB limits for formaldehyde emission when they did not, and for many models grossly exceeded the legal limit. Lumber Liquidators concealed and misrepresented the true formaldehyde emission levels of its laminate wood flooring products from Plaintiffs and the Class. Plaintiffs are unaware of, and therefore unable to identify, the true names and identities of those individuals at Lumber Liquidators responsible for such decisions.

b. Lumber Liquidators knew, or was reckless or negligent in not knowing, that its models of laminate wood flooring products listed in Paragraph 23 (a)-(w) above do not comply with California's CARB limits for formaldehyde emission. Lumber Liquidators affirmatively misrepresented the CARB compliance of its models of laminate wood flooring products and concealed their true emission levels.

c. Lumber Liquidators affirmatively misrepresented and concealed material information regarding the true formaldehyde emission levels of the laminate wood flooring products listed in Paragraph 23 (a)-(w) above, starting no later than January 1, 2009, continuing through the time of sale, and on an ongoing basis, and continuing to this day. Lumber Liquidators has not at any point disclosed the true levels of formaldehyde emissions from its laminate flooring models to anyone outside the company. Lumber Liquidators has never taken any action to inform consumers about the true formaldehyde emission levels from its laminate wood flooring products. Lumber Liquidators' active concealment and misrepresentation regarding the true formaldehyde emission levels of its laminate flooring products continues to this day. As recently as last week, Lumber Liquidators actively concealed and misrepresented the true formaldehyde emissions, both through public denials on Lumber Liquidators' website as

described above in Paragraph 46, and in direct communications with concerned customers. A true and correct copy of the letter from Lumber Liquidators to a customer denying the 60 *Minutes* report is attached as Exhibit A.

d. Lumber Liquidators affirmatively misrepresented and concealed material information regarding formaldehyde emission from its laminate flooring in every communication it had with Plaintiffs and the Class. Plaintiffs are aware of no document, communication, or other place or thing in which Lumber Liquidators disclosed the truth about the levels of formaldehyde emission from its laminate wood flooring products, or its laminate wood flooring products' non-compliance with California's CARB standards for formaldehyde emission. No such disclosure appears in any sales documents, display, advertisement, warranty, owner's manual, or Lumber Liquidators' webpage. Lumber Liquidators' website expressly denies that Lumber Liquidators laminate flooring fails to comply with CARB formaldehyde standards, as described above.

e. Lumber Liquidators affirmatively misrepresented and concealed this material information by promising in its marketing materials and packaging that its laminate flooring complies with California's CARB emission standards for formaldehyde, and actively concealing the true levels of its laminate floorings' formaldehyde emission from Plaintiffs and the Class, at any time or place or in any manner, even though it knew this information and knew that it would be important to a reasonable consumer.

f. Lumber Liquidators affirmatively misrepresented and concealed this material information about the levels of formaldehyde emission from its laminate flooring and its laminate floorings' failure to comply with the CARB limit for the purpose of inducing Plaintiffs and Class members to purchase its laminate flooring, including those models listed above, and purchase them at full price, rather than purchasing competitors' laminate flooring products or

paying Lumber Liquidators less for the flooring. Had Lumber Liquidators disclosed the truth, Plaintiffs (and reasonable consumers) would not have bought the non-compliant laminate flooring, or would have paid less for it.

**FACTS RELATING TO NAMED PLAINTIFFS**

50. In August 2011, Plaintiff Kelly purchased 12 mm Dream Home St. James Blacksburg Barn Board Laminate Flooring at a Lumber Liquidators store located in Philadelphia, Pennsylvania. On information and belief, the flooring was produced at the laminate mill in China. A true and accurate image of the packaging label on Plaintiff Kelly's 12 mm Dream Home St. James Blacksburg Barn Board Laminate Flooring, stating that it was manufactured in China and warranting that it complies with CARB standards for formaldehyde emission, appears above at Paragraph 30.

51. In April 2013, Plaintiff Hurst purchased 12 mm Dream Home St. James Brazilian Koa Laminate Flooring at a Lumber Liquidators store located in Philadelphia, Pennsylvania. On information and belief, the flooring was produced at the laminate mill in China. A true and accurate image of the packaging on Charmaine Hurst's 12 mm Dream Home St. James Brazilian Koa Laminate Flooring, stating that it was manufactured in China and warranting that it complies with CARB emission standards for formaldehyde emission, appears above at Paragraph 30.

52. At the time that Plaintiffs purchased their laminate wood flooring products, Lumber Liquidators falsely represented that its laminate flooring products made in China comply with CARB formaldehyde emission standards. At the time of the purchase, Lumber Liquidators also failed to inform Plaintiffs that its Chinese-made laminate wood flooring products actually exceed the CARB formaldehyde emission limit and that formaldehyde is a chemical known to

cause cancer. Plaintiffs relied on Lumber Liquidators' misrepresentations/omissions regarding compliance with CARB formaldehyde emission standards when deciding to purchase the laminate wood flooring products and, as a result, paid Lumber Liquidators for products they would not have otherwise purchased.

53. Plaintiffs would not have purchased this flooring if they knew it emitted levels of formaldehyde that are considered unsafe.

54. If Lumber Liquidators' laminate wood flooring becomes CARB compliant, Plaintiffs would likely purchase it in the future.

### **STATUTES OF LIMITATION**

55. **Fraudulent Concealment Tolling.** Upon information and belief, Lumber Liquidators has known that its models of laminate flooring do not meet California's CARB emission standards for formaldehyde since at least January 1, 2009, if not earlier, and has concealed from and failed to notify Plaintiffs, Class Members, and the public of the true formaldehyde emission levels from its laminate flooring. Any applicable statutes of limitation have been tolled by Lumber Liquidators' knowing, active, ongoing concealment and denial of the facts as alleged herein. Plaintiffs and the Class have been kept ignorant by Lumber Liquidators of vital information essential to the pursuit of these claims, without any fault or lack of diligence on their part. Plaintiffs and members of the Class could not reasonably have discovered that Lumber Liquidator's laminate wood flooring products uniformly fail to comply with California's CARB emission standards for formaldehyde.

56. **Estoppel.** Lumber Liquidators was and is under a continuous duty to disclose to the Plaintiffs and the Class the true character, quality, and nature of its laminate flooring. Lumber Liquidators knowingly and affirmatively misrepresented and actively concealed the true

character, quality, and nature of its wood laminate flooring products. Plaintiffs reasonably relied upon Lumber Liquidators' knowing and affirmative misrepresentations and/or active concealment. Based on the foregoing, Lumber Liquidators is estopped from relying on any statutes of limitation in defense of this action.

57. **Discovery Rule.** The causes of action alleged herein did not accrue until Plaintiffs and the Class Members discovered that the laminate wood flooring products they purchased from Lumber Liquidators failed to comply with California's CARB standards for formaldehyde emissions. However, Plaintiffs and the Class Members had no realistic ability to discern that the Lumber Liquidators laminate wood flooring products they purchased were defective until—at the earliest—independent testing verified that such flooring does not comply with CARB standards for formaldehyde. Not only did Lumber Liquidators fail to notify Plaintiffs or the Class Members about the non-compliance of its laminate wood flooring products with the CARB limit, but Lumber Liquidators also denied and continues to deny that its laminate wood flooring products fail to comply with the CARB limit. Thus Plaintiffs and the Class Members were not reasonably able to discover the laminate wood flooring products' non-compliance until after they had purchased the laminate flooring, despite their exercise of due diligence, and their causes of action did not accrue until they discovered that their laminate wood flooring product emitted formaldehyde at levels greater than the CARB limit.

#### **CLASS ACTION ALLEGATIONS**

58. Plaintiffs bring this lawsuit as a class action on behalf of themselves and all others similarly situated as members of a proposed Plaintiff Class pursuant to Federal Rule of Civil Procedure 23. This action satisfies the ascertainability, numerosity, commonality, typicality, adequacy, predominance and superiority requirements of those provisions.

59. The Class is defined as:

All persons in the United States who purchased from Lumber Liquidators one or more Chinese-made laminate flooring products, advertised as CARB compliant, from January 1, 2009, through the date of judgment.

60. The Class includes a Subclass (the “Pennsylvania Subclass”) defined as:

All persons living in Pennsylvania who purchased from Lumber Liquidators one or more Chinese-made laminate flooring products, advertised as CARB compliant, from January 1, 2009, through the date of judgment.

61. Excluded from the Class and Subclass are (1) Lumber Liquidators, any entity in which Lumber Liquidators has a controlling interest, and its legal representatives, officers, directors, employees, assigns and successors; (2) the judge to whom this case is assigned and any member of the judge’s immediate family; (3) persons or entities who distribute or resell Lumber Liquidators’ laminate flooring, and (4) claims for personal injury, wrongful death and/or emotional distress.

**Numerosity & Ascertainability**

62. Plaintiffs are representative of all other consumers who have purchased laminate wood flooring products from Lumber Liquidators in the United States that were advertised as compliant with CARB standards, and are acting on behalf of those consumers’ interests. The similarly situated consumers are readily identifiable through Lumber Liquidators’ business records, including but not limited to customer receipts or invoices for Lumber Liquidators’ flooring products. Class members may also self-identify based upon their own purchase records, invoices, and payment receipts for the purchase of Lumber Liquidators’ laminate wood flooring products.

63. On information and belief, the Class is comprised of thousands of owners of Lumber Liquidators' laminate wood flooring products throughout the United States, making joinder impractical.

#### **Typicality**

64. Plaintiffs purchased Lumber Liquidators' laminate wood flooring products in Pennsylvania during the period prior to the date of the filing of this action as stated above in the class definition at Paragraphs 59 and 60 ("the Class Period"). The products purchased by Plaintiffs were labeled as compliant with the CARB standards.

65. During the Class Period, Class Members purchased laminate wood flooring products from Defendant that were falsely represented as being compliant with CARB standards. Instead, the flooring products emitted levels of formaldehyde that exceed CARB limits, which Defendant failed to disclose.

66. The claims of the representative Plaintiffs are typical of the claims of the Class, in that the representative Plaintiffs, like all members of the Class, own Lumber Liquidators' laminate wood flooring products that were labeled, marketed, and sold as CARB compliant when they were not and are not. The factual bases of Lumber Liquidators' misconduct are common to all Class members and represent a common thread of misconduct resulting in injury to all members of the Class.

67. Plaintiffs and all Class Members have suffered damages, including the cost of their flooring purchases resulting from Lumber Liquidators' wrongful conduct, and the cost of installation of the unlawfully sold flooring products. In addition, Plaintiffs and the Class Members are entitled to injunctive and equitable relief, as permitted by law, because Lumber Liquidators' violations of state statutes have harmed the Class Members in a concrete and



particular way, the violations are ongoing, and harm the public interest, especially when compared to Defendant's competitors who comply with the law.

**Predominance of Common Issues**

68. There are numerous questions of law and fact common to all Class members, and those questions predominate over any questions that may affect only individual Class members. The common questions will generate common answers that are likely to drive the resolution of this action.

69. The predominant common questions include the following:

- a. Whether Lumber Liquidators' laminate wood flooring products fail to meet the CARB emission standards for formaldehyde;
- b. Whether Lumber Liquidators breached their express or implied warranties to Plaintiffs and the Class;
- c. Whether Lumber Liquidators' laminate wood flooring products are not of merchantable quality;
- d. Whether the fact that Lumber Liquidators' laminate wood flooring products do not meet the CARB emission standards for formaldehyde is a material fact reasonable purchasers would have considered in deciding whether to purchase laminate flooring products from Lumber Liquidators;
- e. Whether Lumber Liquidators knew and/or was reckless or negligent in not knowing the true formaldehyde emission levels of its laminate wood flooring products;
- f. Whether Lumber Liquidators affirmatively misrepresented to Plaintiffs and the Class the true formaldehyde emission levels of its laminate wood flooring products;

g. Whether Lumber Liquidators had a duty to Plaintiffs and the Class to disclose the true formaldehyde emission levels of its laminate wood flooring products;

h. Whether Lumber Liquidators' misrepresentations regarding the true formaldehyde emission levels of its laminate flooring induced Plaintiffs and the Class to act to their detriment by purchasing laminate wood flooring products from Lumber Liquidators that did not comply with CARB emission standards;

i. Whether Lumber Liquidators represented, through its words and conduct, that its laminate wood flooring products had certifications that they did not actually have, in violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL");

j. Whether Lumber Liquidators represented, through its words and conduct, that its laminate wood flooring products had characteristics or benefits that they did not actually have, in violation of the UTPCPL;

k. Whether Lumber Liquidators represented, through its words and conduct, that its laminate flooring was of a particular standard, quality or grade when they were of another, in violation of the UTPCPL;

l. Whether Lumber Liquidators advertised its laminate flooring with the intent not to sell them as advertised, in violation of the UTPCPL;

m. Whether Lumber Liquidators' representations that its laminate wood flooring products comply with the CARB limit for formaldehyde emissions was fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding, in violation of the UTPCPL.

n. Whether as a result of its conduct, Lumber Liquidators was unjustly enriched;

o. Whether Lumber Liquidators should be declared financially responsible for notifying all Class members of the true formaldehyde emissions levels of its laminate flooring and for the costs and expenses of replacing its laminate flooring with products that have all of the promised features of the laminate flooring, including formaldehyde emissions levels that comply with CARB standards;

p. Whether Plaintiffs and the Class are entitled to compensatory damages, and the amount of such damages;

q. Whether, as a result of Lumber Liquidators' fraud, Plaintiffs and the Class are entitled to civil penalties, treble damages, and/or punitive damages, and the amount of such damages;

r. Whether Lumber Liquidators should be enjoined from engaging in the methods, acts or practices alleged herein; and

s. Whether Lumber Liquidators should be ordered to disgorge, for the benefit of the Class, all or part of its ill-gotten profits received from the sale of its Chinese-made laminate wood flooring products.

#### **Adequacy**

70. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs have retained counsel with substantial experience in prosecuting consumer class actions, including actions involving defective products.

71. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Class, and have the financial resources to do so. Neither Plaintiffs nor their Counsel have interests adverse to those of the Class.

**Superiority**

72. Absent class treatment, Plaintiffs and members of the Class will continue to suffer harm and damages as a result of Lumber Liquidators' unlawful and wrongful conduct.

73. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Without a class action, individual Class members would face burdensome litigation expenses, deterring them from bringing suit or adequately protecting their rights. Class members would continue to incur harm without remedy absent a class action, while Lumber Liquidators would continue to reap the benefits of its misconduct. In addition, class litigation is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about the legality of Defendant's sales and advertising practices.

74. Further, a class action is superior as Defendant has acted in a manner that applies generally to the class, so that final injunctive relief and corresponding declaratory relief are appropriate respecting the class as a whole, thereby making it desirable to concentrate the litigation of class members' claims in a single forum. The consideration of common questions of fact and law will conserve judicial resources and promote a fair and consistent resolution of these claims.

**COUNT I**  
**VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT**

75. The preceding paragraphs of this Complaint are realleged and incorporated by reference and asserted by Plaintiffs on behalf of themselves and the Proposed Class.

76. Plaintiffs and the members of the Class are consumers within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 (3).

77. Lumber Liquidators is a supplier and warrantor within the meaning of 15 U.S.C. §§ 2301 (4) – (5).

78. Lumber Liquidators flooring is a consumer product within the meaning of 15 U.S.C. § 2301(1) as it was purchased separate from the initial construction of their home.

79. Lumber Liquidators' express warranties and written representations of fact about the flooring, including that it was free from defects, was in compliance with CARB and EU formaldehyde standards, and complied with all applicable laws and regulations constitute written warranties within the meaning of 15 U.S.C. § 2301 (6).

80. Lumber Liquidators breached its warranties by:

- a. Manufacturing, packaging, distributing, marketing and selling laminate wood flooring products that fail to comply with the CARB emission standards for formaldehyde;
- b. Manufacturing, packaging, distributing, marketing and selling laminate wood flooring products that fail to comply with all applicable laws and regulations; and
- c. Failing and/or refusing to replace or properly repair the defective laminate wood flooring products in breach of their express warranty.

81. These breaches of the express warranty provided by Lumber Liquidators to Plaintiffs and the Class deprive them of the benefits of their bargain.

82. As a direct and proximate result, Plaintiffs and the Class sustained damages in an amount to be proven at trial.

**COUNT II**  
**BREACH OF EXPRESS WARRANTY**

83. The preceding paragraphs of this Complaint are realleged and incorporated by reference and asserted by Plaintiffs on behalf of themselves and the Proposed Class.

84. Lumber Liquidators warranted by and through written affirmations of fact in its marketing materials and packaging that its laminate flooring complied with CARB standards for formaldehyde emission.

85. Because Lumber Liquidators' promise regarding the formaldehyde emission levels of its laminate flooring was part of the basis of the bargain, Lumber Liquidators' description of the characteristics of its laminate flooring created an express warranty that the its laminate flooring would comply with CARB standards for formaldehyde emission.

86. Lumber Liquidators' description the formaldehyde emission levels from its laminate flooring was an affirmation of fact, not an affirmation merely of the value of its laminate flooring or a statement of the seller's opinion or commendation of its laminate flooring.

87. Contrary to Lumber Liquidators' express warranty regarding its laminate flooring, Lumber Liquidators' laminate flooring products do not meet CARB emission standards for formaldehyde.

88. Lumber Liquidators breached its express warranty regarding compliance with CARB formaldehyde emission standards by selling its laminate flooring that did not meet those standards.

89. Lumber Liquidators received timely notice of the breach of warranty alleged herein. Lumber Liquidators has been put on notice by the Class as a whole by reason of its own knowledge of the impermissibly high levels of formaldehyde emission from its laminate

flooring, by warranty claims and other complaints made by Class members, by numerous news reports, and by virtue of this Complaint, which brings suit on behalf of all Class members.

90. Lumber Liquidators has failed to provide to Plaintiffs and Proposed Class members, as a warranty replacement, a laminate wood flooring product that has all the promised features of its laminate flooring, including CARB emission standard compliance.

91. As a direct and proximate result of Lumber Liquidators' breach of warranty regarding the CARB emission standard compliance, Plaintiffs and the Class have suffered actual and consequential damages in that they purchased Lumber Liquidators' laminate wood flooring products that do not perform as promised, and they will have to incur additional expense to replace their laminate flooring with alternative products that include the promised features of Lumber Liquidators' laminate flooring, including formaldehyde emission levels that comply with CARB standards.

92. Plaintiffs, on behalf of themselves and all others similarly situated, demand judgment against Lumber Liquidators for damages, including compensatory, incidental and consequential damages (excepting damages for personal injuries) for themselves and each member of the Class, plus attorneys' fees, interest and costs.

**COUNT III**  
**BREACH OF IMPLIED WARRANTY**

93. The preceding paragraphs of this Complaint are realleged and incorporated by reference and asserted by Plaintiffs on behalf of themselves and the Proposed Class.

94. 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 purpose for which such products are used and that the product be acceptable in the trade for the product description.

95. Defendant breached this duty by selling flooring to Plaintiffs and the other members of the Class that was not merchantable.

96. Defendant was notified that its product was not merchantable within a reasonable time after the defect manifested itself to Plaintiffs and the Class.

97. As a result of the non-merchantability of Lumber Liquidators' laminate flooring described herein, Plaintiffs and the members of the Class sustained a loss and were damaged.

**COUNT IV**  
**VIOLATION OF THE PENNSYLVANIA UNFAIR**  
**TRADE PRACTICES AND CONSUMER PROTECTION LAW**

98. The preceding paragraphs of this Complaint are realleged and incorporated by reference and asserted by Plaintiffs on behalf of themselves and the Proposed Class.

99. Plaintiffs and the Pennsylvania Subclass purchased Lumber Liquidators' laminate flooring primarily for personal, family, and/or household purposes.

100. Plaintiffs and the Pennsylvania Subclass members are "person[s]" as defined by 73 Pa.C.S. § 201-2(2).

101. Pennsylvania's Unfair Trade Practices and Consumer Protection Law ("UTPCPL") makes unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce unlawful. 73 Pa.C.S. § 201-3.

102. Lumber Liquidators' affirmative misrepresentations within its advertisements of its laminate flooring and its failure to notify purchasers of the defects in its laminate flooring and of the true nature in which it implements its warranty process took place within the Commonwealth of Pennsylvania and constitute violations of sections 201-2(4)(v), (vii), (xiv), (ix), and (xxi) of the UTPCLP. 73 Pa.C.S. § 201-2(4)(v), (vii), (xiv), (ix), and (xxi).



103. The UTPCPL is applicable to the claims of Plaintiffs and the Pennsylvania Subclass because the conduct of Lumber Liquidators, which constitutes a violation of the statute, occurred in the Commonwealth of Pennsylvania.

104. Lumber Liquidators intended that Plaintiffs and the Pennsylvania Subclass would rely on the false information or deceptive practices so that they would purchase Lumber Liquidators' laminate flooring and increase the consumption of Lumber Liquidators' products.

105. Had Lumber Liquidators disclosed the material information regarding its laminate flooring to Plaintiffs and the other members of the Pennsylvania Subclass, they would not have purchased the flooring.

106. As a result of the nature of Lumber Liquidators' deceptive conduct, Plaintiffs and the Pennsylvania Subclass suffered pecuniary loss as set forth in greater detail above. A finding the Lumber Liquidators' conduct violated the law will also operate as a finding that each and every member of the Pennsylvania Subclass suffered pecuniary loss.

107. The conduct of Lumber Liquidators described herein was knowing, willful, and intentional, and constitutes the employment of fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice upon Plaintiffs and the Pennsylvania Subclass within the meaning of the UTPCPL.

108. By falsely representing that Lumber Liquidators' laminate flooring was free of defect, despite knowing that this was untrue, Lumber Liquidators acted maliciously toward Plaintiffs and the members of the Pennsylvania Subclass, and also acted with intention, or at a minimum, reckless disregard of their rights.

109. Lumber Liquidators' conduct described in this Complaint was not isolated or unique to Plaintiffs but was widespread, affecting thousands of consumers, and was a regular and

intended business practice, which was instituted and implemented with a view towards unfairly profiting at the expense of Lumber Liquidators' consumers. Lumber Liquidators had special knowledge of material facts to which Plaintiffs and the Pennsylvania Subclass did not have access and, therefore, had a duty to disclose these facts to the other party so as to prevent its statements from being misleading.

110. Upon information and belief, Lumber Liquidators knew that, at the time laminate flooring left its control, the laminate flooring contained the defect described herein resulting in dangerous levels of formaldehyde emissions. At the time of sale, the laminate 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 causing the resulting damage described herein.

111. Based on the repeated representations that its flooring sold in Pennsylvania complied with CARB levels, Lumber Liquidators owed Plaintiffs and the Pennsylvania Subclass a duty to ensure that its products complied with CARB formaldehyde emission limits.

112. Lumber Liquidators' unfair and deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiffs.

113. Lumber Liquidators either knew or should have known that the laminate flooring was defectively designed and/or manufactured and would emit unsafe levels of formaldehyde, which would result in severe damages to the Plaintiffs' person and property.

114. As a direct and proximate result of the violation of the UTPCPL described above, Plaintiffs and the Pennsylvania Subclass have been injured in that they purchased unsafe and dangerous laminate flooring based on the nondisclosure of the material facts alleged above. Had

Plaintiffs and the Pennsylvania Subclass known the defective nature of the laminate flooring, they would not have purchased it or would have paid a lower price for it.

115. As a direct and proximate result of Lumber Liquidators' unfair and deceptive acts and practices, Plaintiffs and the members of the Pennsylvania subclass will suffer damages, which include, without limitation, costs to inspect, repair, or replace their flooring, in an amount to be determined at trial.

116. Pursuant to section 201-9.2 of the UTPCPL, and as a result of Lumber Liquidators' bad faith conduct, Plaintiffs and the Pennsylvania Subclass are entitled to three times the damages sustained and such other relief as the Court deems appropriate.

**COUNT V**  
**UNJUST ENRICHMENT**

117. The preceding paragraphs of this Complaint are realleged and incorporated by reference and asserted by Plaintiffs on behalf of themselves and the Proposed Class.

118. To the detriment of Plaintiffs and the Class, Lumber Liquidators has been, and continues to be, unjustly enriched as a result of the unlawful and/or wrongful collection of, inter alia, payments for its laminate flooring.

119. Lumber Liquidators has unjustly benefited through the unlawful and/or wrongful collection of, inter alia, payments for its laminate flooring and continues to so benefit to the detriment and at the expense of Plaintiff and the Proposed Class.

120. As between the parties, it would be unjust for Lumber Liquidators to retain the benefits attained by its actions. Accordingly, Plaintiffs and the Proposed Class seek full restitution of Lumber Liquidators' enrichment, benefits, and ill-gotten gains acquired as a result of the unlawful and/or wrongful conduct alleged herein.

**COUNT VI**  
**DECLARATORY RELIEF 28 U.S.C. § 2201**

121. The preceding paragraphs of this Complaint are realleged and incorporated by reference and asserted by Plaintiffs on behalf of themselves and the Proposed Class.

122. Lumber Liquidators has acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole. Fed.R.Civ.P. 23(b) (2).

123. Plaintiffs seek a ruling that:

a. Defendants' laminate wood flooring products manufactured in China do not comply with CARB limits;

b. Defendants' laminate wood flooring products emit unsafe levels of formaldehyde gas;

c. Defendants' laminate wood flooring products contain a defect in workmanship and materials that allow for unsafe levels of formaldehyde emissions;

d. The failure of Defendants' laminate wood flooring products to comply with CARB limits or otherwise limit the emission of unsafe levels of formaldehyde gas is material and requires notice to Plaintiffs and the members of the Class and Subclass, the cost of which shall be borne by Defendant.

e. Defendants remove and replace with CARB compliant flooring the laminate wood flooring products sold to Plaintiffs and the Class.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs and Class members request that the Court enter an Order or judgment against Lumber Liquidators, including the following:

- A. An Order certifying this action as a Class Action (and certifying any appropriate subclasses), appointing Plaintiffs as Class Representatives and their counsel as Class Counsel;
- B. Damages in the amount of monies paid for Lumber Liquidators' Chinese-made laminate wood flooring products;
- C. Actual damages, statutory damages, punitive or treble damages, and such other relief as provided by the statutes cited herein;
- D. Prejudgment and post-judgment interest on such monetary relief;
- E. Equitable relief in the form of restitution and/or restitutionary disgorgement of sums received by Lumber Liquidators as a result of the unfair, unlawful and/or deceptive conduct alleged in herein;
- F. Declaratory and injunctive relief;
- G. The costs of bringing this suit, including reasonable attorneys' fees; and
- H. All other relief to which Plaintiffs and members of the Class may be entitled at law or in equity and which the Court deems proper.

**JURY DEMAND**

Plaintiffs, individually and on behalf of the Class and Subclass, hereby request a jury trial on the claims so triable.

Dated: March 25, 2015

  
Robert S. Kitchenoff (Pa. Bar Id. 45993)  
WEINSTEIN KITCHENOFF & ASHER LLC  
1845 Walnut Street, Suite 1100  
Philadelphia, PA 19103  
Telephone: (215) 545-7200  
Facsimile: (215) 545-6535  
kitchenoff@wka-law.com

Attorney for Plaintiffs and the Proposed Class

# **EXHIBIT A**

**From:** Dennis <dennis@lumberliquidators.com>

**Date:** March 3, 2015 at 4:08:19 PM PST

**To:** [REDACTED]

**Sub:** [REDACTED]

Dear [REDACTED]

Thanks you for contacting us with your concern. Lumber Liquidators takes pride in the quality of its products and is a leader in safety! We comply with all applicable regulations regarding our products, including our laminates. We take numerous steps above and beyond what the law requires so that our customers get safe, high quality products, most covered by detailed warranties. We believe our quality assurance and compliance processes are among the most advanced and thorough in the industry. We do not sell products that do not pass both regulatory standards as well as our own internal testing. If a product or supplier does not pass at any point, we will not purchase or sell the product from the supplier.

Some of the testing cited by 60 Minutes was conducted based on sample preparation methods that have not been independently verified by an accredited standards organization and do not reflect the manner in which the product will be used in the home. We comply with California regulations and our quality processes include testing in accordance with, and in addition, to CARB protocols. Our products are safe to use as intended.

Lumber Liquidators is committed to transparency. To learn more about our efforts to ensure high quality, safe products for customers like you, visit <http://www.lumberliquidators.com/safety>

You can see we did the testing. Lumber Liquidators disclosed our test results from these same factories and this was not shared in the broadcast even though we offered it in advance. We also post the MSDS sheets on our website for public display for the products we sell: [http://server.iad.liveperson.net/hc/s-13045352/cmd/kbresource/kb-191990306540407210/front\\_page!PAGE TYPE?category=73](http://server.iad.liveperson.net/hc/s-13045352/cmd/kbresource/kb-191990306540407210/front_page!PAGE TYPE?category=73)

It is unfortunate that there are some out there, whether it is certain competitors or hedge-fund short-sellers, who are trying to scare our customers with inaccurate allegations. We stand by every single plank of wood and laminate we sell all around the country and will continue to deliver the best product at the best price to our growing base of valued customers. Please take a moment to visit the safety site where we publicly disclosed results, results that 60 Minutes did not mention but were aware of before the broadcast. There is no need for air quality testing or further product testing. There is no need to replace the flooring, or return any unused boxes!

Please review the following response to the 60 Minutes broadcast and the inaccuracies and allegations made against Lumber Liquidators:

<http://finance.yahoo.com/news/lumber-liquidators-says-60-minutes-161000313.html>

We believe it's critically important for the public and our customers to hear the whole story. Please view the links right away.

Lumber Liquidators

Dennis

Team Lead, Customer Care

Lumber Liquidators, Inc.

3000 John Deere Road

Toano, Va. 23168

800-366-4204 ext. 7590

757-259-7292 Fax

LUMBER LIQUIDATORS...Hardwood Flooring For Less! 1-800-HARDWOOD

[www.lumberliquidators.com](http://www.lumberliquidators.com)



## UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 73 Deep Dale Drive East, Levittown, PA 19056, and 52 W. Sharpnack Street, Philadelphia, PA 19119

Address of Defendant: 3000 John Deere Road, Toano, Virginia 23168

Place of Accident, Incident or Transaction: Philadelphia, PA

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?  
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities? Yes ☒ No ☐

RELATED CASE, IF ANY:

Case Number: 2:15-cv-01222

Judge C. Darnell Jones II

Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☒ No ☐
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases  
(Please specify) \_\_\_\_\_

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify) \_\_\_\_\_
7. ☒ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases  
(Please specify) \_\_\_\_\_

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Robert S. Kitchenoff, counsel of record do hereby certify:

- ☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☒ Relief other than monetary damages is sought.

DATE: 3/23/2015

Robert S. Kitchenoff  
Attorney-at-Law

45993

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: \_\_\_\_\_

Attorney-at-Law

Attorney I.D.#



**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Jaime Kelly and Charmaine Hurst

**(b)** County of Residence of First Listed Plaintiff Bucks County, PA  
(EXCEPT IN U.S. PLAINTIFF CASES)

**(c)** Attorneys (Firm Name, Address, and Telephone Number)  
WEINSTEIN KITCHENOFF & ASHER LLC  
1845 Walnut Street, Suite 1100  
Philadelphia, PA 19103  
(215) 545-7200

**DEFENDANTS**

Lumber Liquidators Inc. and Lumber Liquidators Holdings Inc.

County of Residence of First Listed Defendant James City County, VA  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input checked="" type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 IIIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. sec. 1332(a) and (d)  
Brief description of cause:  
Breach of warranty and other causes of action

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ &gt; \$5,000,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions)

JUDGE C. Darrell Jones, II

DOCKET NUMBER 2:15-cv-01222

DATE

03/23/2015

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG JUDGE