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Attorneys for Plaintiff
SARA LATTA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SARA LATTA, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

LUMBER LIQUIDATORS, INC., a
Delaware corporation, LUMBER
LIQUIDATORS LEASING, LLC, a
Delaware limited liability corporation,
LUMBER LIQUIDATORS HOLDING,
INC., a Delaware corporation, and
LUMBER LIQUIDATORS SERVICES,
LLC, a Delaware limited liability
corporation,

Defendants.

CASE NO. 2:15-313

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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

7 **NATURE OF THE CASE**

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

18 2. Defendants also represent and advertise that their Chinese-manufactured
19 laminate wood flooring materials sold throughout the United States comply with the CARB
20 Regulations.

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

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

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

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

15 6. Despite assurances that its flooring products are safe and comply with
 16 California formaldehyde regulations, several reports have shown that Lumber Liquidators’
 17 Chinese-made flooring products actually contain levels of formaldehyde that exceed the
 18 CARB standards. On March 1, 2015, 60 Minutes news aired a story dispelling Lumber
 19 Liquidators’ claims that its flooring products are compliant with California formaldehyde
 20 standards. The news story was prompted by an investigation that was conducted by two

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

24 ² *Id.*

25 ³ Xiaojiong Tang et al., Formaldehyde in China: Production, consumption, exposure levels,
 26 and health effects, ENVIRONMENTAL INTERNATIONAL VOLUME 36, ISSUE 3 (April
 27 2010), available at [http://ac.els-cdn.com/S0160412009002402/1-s2.0-S0160412009002402-](http://ac.els-cdn.com/S0160412009002402/1-s2.0-S0160412009002402-main.pdf?_tid=dd4df5ba-c1ea-11e4-9b60-00000aabb0f6b&acdnat=1425417700_25414e62d2ab566a9dd77bde3169e4cc)
[main.pdf?_tid=dd4df5ba-c1ea-11e4-9b60-](http://ac.els-cdn.com/S0160412009002402/1-s2.0-S0160412009002402-main.pdf?_tid=dd4df5ba-c1ea-11e4-9b60-00000aabb0f6b&acdnat=1425417700_25414e62d2ab566a9dd77bde3169e4cc)
[00000aabb0f6b&acdnat=1425417700_25414e62d2ab566a9dd77bde3169e4cc](http://ac.els-cdn.com/S0160412009002402/1-s2.0-S0160412009002402-main.pdf?_tid=dd4df5ba-c1ea-11e4-9b60-00000aabb0f6b&acdnat=1425417700_25414e62d2ab566a9dd77bde3169e4cc) (last visited
 28 March 5, 2015).

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

1 environmental advocacy groups. The environmental groups purchased more than 150 boxes
2 of Lumber Liquidators' laminate flooring at stores around California and sent the boxes to
3 three certified labs for a series of tests. The results showed that "every single sample of
4 Chinese-made laminate flooring from Lumber Liquidators failed to meet California
5 formaldehyde emissions standards. Many by a large margin."⁵

6 7. The results of that investigation prompted 60 Minutes news to conduct its own
7 independent investigation into Lumber Liquidators' Chinese-made Flooring. The 60 Minutes
8 news team went to stores in Virginia, Florida, Texas, and New York and purchased 31 boxes
9 of Lumber Liquidators' Chinese-made flooring. 60 Minutes sent the sample for testing at
10 two certified labs. "It turns out of the 31 samples of Chinese-made laminate flooring, only
11 one was compliant with formaldehyde emissions standards. Some were more than 13x over
12 the California limit."⁶ Both of the labs told 60 Minutes that they had never seen
13 formaldehyde levels that high.

14 8. 60 Minutes then sent undercover investigators with hidden cameras to the city
15 of Changzhou, China. The investigators posed as buyers and visited three different mills that
16 manufacture laminates and flooring on behalf of Defendant. The results of the undercover
17 investigation were alarming:

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

22 9. Lumber Liquidators' illegal behavior with respect to its manufacturing,
23 marketing, and sale of Chinese Flooring has caused Plaintiff and the other Class members to
24 suffer direct financial harm. Plaintiff's purchase is markedly less valuable because of its
25 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

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

28 ⁶ *Id.*

⁷ *Id.* (emphasis added).

1 formaldehyde.

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

4 **PARTIES**

5 11. Plaintiff Sara Latta is a resident of Sacramento County, California. Plaintiff
6 owns a home in Sacramento, California in which Lumber Liquidators' Chinese Flooring is
7 installed. In July 2014, Plaintiff purchased 12 mm St. James Laminate flooring from Lumber
8 Liquidators and installed it in her home.

9 12. Defendant Lumber Liquidators, Inc. is a corporation organized under the State
10 of Delaware's Corporation Law with its principal place of business at 3000 John Deere Road,
11 Toano, Virginia 23168. Defendant Lumber Liquidators, Inc. markets, advertises, distributes
12 and sells the Products to consumers throughout Oklahoma and the United States.

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

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

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

21 **JURISDICTION AND VENUE**

22 16. The Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2), the
23 Class Action Fairness Act, because the matter in controversy exceeds the sum or value of
24 \$5,000,000 exclusive of interest and costs and because more than two-thirds of the members of
25 the class reside in states other than the state in which Defendants reside.

26 17. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) because
27 Plaintiff is a resident of California and Defendants are Delaware Corporations that maintain
28 their principal place of business in Virginia. The amount in controversy in this action exceeds

1 the sum or value of \$75,000.

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

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

10 **FACTUAL ALLEGATIONS**

11 **A. Lumber Liquidators**

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

17 21. Lumber Liquidators prides itself on having one of the largest inventories of
18 prefinished and unfinished hardwood floors in the industry. Lumber Liquidators carries solid
19 and engineered hardwood, laminate flooring, bamboo flooring, cork flooring and resilient
20 vinyl flooring, butcher blocks, molding, accessories, and tools.

21 22. Lumber Liquidators represents that it negotiates directly with the lumber mills,
22 eliminating the middleman and passing the savings on to its customers. As detailed herein,
23 one of the primary reasons Lumber Liquidators has grown so quickly and its profits have
24 surged has been through the Company's misrepresentations about the formaldehyde levels of
25 its products.

26 **B. Formaldehyde in Wood Flooring**

27 23. Formaldehyde is a colorless, and strong smelling gas. According to the
28 Occupational Safety and Health Administration ("OSHA"), formaldehyde is "commonly used

1 a preservative in medical laboratories and mortuaries, formaldehyde is also found in many
 2 products such as chemicals particle board, household products, glues, permanent press fabrics,
 3 paper product coatings, fiberboard, and plywood.” At high exposure levels, “formaldehyde is a
 4 sensitizing agent that can cause and immune system response upon initial exposure. It is also a
 5 cancer hazard.”⁸ Formaldehyde exposure can be irritating to the eyes, nose, and throat and
 6 severe allergic reactions may occur in the skin, eyes, and respiratory tract.⁹

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

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

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

14 **C. CARB Regulations Regarding Formaldehyde**

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

18 28. In January of 2009, CARB promulgated regulations called the Airborne Toxic
 19 Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products. *See* 17
 20 California Code of Regulations (“CCR”) §§ 93120-93120.12 (the “CARB Regulations”). The
 21 CARB Regulations apply to various wood products, including wood flooring products. Phase
 22 2 of the CARB regulations mandate that composite wood products sold in the State of
 23 California must emit no more than between 0.05 parts per million and 0.13 parts per million of
 24 formaldehyde depending on whether the product is classified as a type of hardwood plywood
 25 or medium density fiberboard.

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

⁹ *Id.*

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

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

7 **D. Lumber Liquidators' Chinese-Made Composite Wood Flooring**

8 31. Lumber Liquidators has distributed, marketed, and sold various laminate
9 flooring products that are manufactured in China (the "Chinese-Made Flooring Products").

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

- 12 a. 8 mm Bristol County Cherry Laminate Flooring;
- 13 b. 8 mm Dream Home Nirvana Royal Mahogany Laminate Flooring;
- 14 c. 8 mm Dream Home Nirvana French Oak Laminate Flooring;
- 15 d. 12 mm Dream Home Ispiri Poplar Forest Oak Laminate Flooring;
- 16 e. 12 mm Dream Home Kensington Manor Antique Bamboo Laminate
17 Flooring;
- 18 f. 12 mm Dream Home St. James Oceanside Plank Laminate Flooring;
- 19 g. 12 mm Dream Home Kensington Manor Warm Springs Chestnut
20 Laminate Flooring;
- 21 h. 15 mm Dream Home St. James Sky Lakes Pine Laminate Flooring;
- 22 i. 12 mm Dream Home Kensington Manor Imperial Teak Laminate
23 Flooring;
- 24 j. 12 mm Dream Home St. James Vintner's Reserve Laminate Flooring;
- 25 k. 12 mm Dream Home Kensington Manor Cape Doctor Laminate
26 Flooring;

27
28 ¹⁰ <http://www2.epa.gov/formaldehyde/formaldehyde-emission-standards-composite-woodproducts#Formaldehyderegs> (last visited March 5, 2015).

- 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 Home 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 Home 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.

33. 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.

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

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).

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

35. 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 Regulations.



36. 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.”

37. 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 These representations also are false.

38. 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

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

1 Quality Assurance team operates on three continents, seven
2 countries, and in mills around the world. In fact, on a typical
3 day, a production inspector will walk 12 miles up and down the
4 finishing line to ensure you get only the best.

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

11 3) TESTING - We are continually investing in, testing,
12 evaluating and assuring the highest quality. Our Quality
13 Assurance team includes certified Six Sigma professionals with
14 Master's Degrees in Quality Management and various team
15 members with degrees in Biology, Chemistry, Wood Science
16 and Engineering. They work around the world to test your
17 flooring at every stage. We also regularly send product out to an
18 independent lab for additional testing to ensure quality.¹⁴

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

22 *All laminates and engineered flooring products sold by*
23 *Lumber Liquidators are purchased from mills whose*
24 *production method has been certified by a Third Party Certifier*
25 *approved by the State of California to meet the CARB*
26 *standards. The scope of the certification by the Third Party*
27 *Certifier includes the confirmation that the manufacturer has*
28 *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.*¹⁵

40. Lumber Liquidators materially misrepresents the safety of its laminate wood

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

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!PAGETYPE?sf=101133&documentid=415037&action=view (last visited March 5, 2015).

1 flooring products by advertising its flooring products as compliant with the CARB limit when
2 in fact they are not.

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

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

13 43. Lumber Liquidators' Chinese-made flooring was first called into question in
14 June of 2013 when a blogger named Xuhua Zhou reported on the website Seeking Alpha the
15 results of his independent investigation. Zhou sent samples of Lumber Liquidators' Flooring to
16 be tested by independent laboratories and posted the results online. As Zhou explained:

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

27 44. Another set of tests on Lumber Liquidators' Chinese-made flooring were
28 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

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).

1 of Alameda against Lumber Liquidators for its alleged violation of the California Safe
2 Drinking Water and Toxic Enforcement Act of 1986 commonly known as “Proposition 65”
3 (“The Global Community Monitor Lawsuit.”) The complaint states that the groups conducted
4 over fifty tests using various test methods and two different laboratory locations. Test results
5 showed average exposures of formaldehyde at the time of testing exceeded 4,000 micrograms
6 per day (“ug/day) over 100 times above the 40 ug/day threshold established by California’s
7 Proposition 65.

8 45. In accordance with California Health and Safety Code Section 25249.6, an
9 attorney representing Global Community Monitor submitted a Certificate of Merit certifying
10 that he consulted with persons who have the relevant and appropriate experience before filing
11 suit. His consultants determined that there is a “reasonable and meritorious case for the private
12 action” against Lumber Liquidators based on its sales of Chinese-made Flooring Products. The
13 Global Community Monitor Lawsuit seeks injunctive relief and civil penalties as allowed by
14 Proposition 65.

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

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

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

25 Employees at the mills openly admitted that they use core boards
26 with higher levels of formaldehyde to make Lumber Liquidators
27 laminates, saving the company 10-15 percent on the price. At all
28 three mills they also admitted falsely labeling the company’s
laminated flooring as CARB 2, meaning it meets California

1 formaldehyde emissions standards, and the new U.S. federal
2 law.

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

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

6 Investigator: For Lumber Liquidators?

7 Manager: Yeah.

8 Investigator: How long have you been selling this?

9 Manager: From last year.

10 Investigator: Is this CARB 2?

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

13 Investigator: Can I get CARB 2?

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

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

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

22 Employee: Not CARB 2.¹⁷

23 48. Plaintiff and other Class members would not have purchased the Chinese
24 Flooring Products if they had known that the products were not compliant with CARB and that
25 the Products emit unlawful levels of formaldehyde.

26 **E. Plaintiff's Reliance and Damages**

27 49. During the relevant time period, Plaintiff purchased 12 mm St. James Laminate
28 from Lumber Liquidators at a Lumber Liquidators store located in California. On information

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).

1 and belief, the flooring was produced at a laminate mill in China.

2 50. At the time that Plaintiff purchased this laminate wood flooring, Lumber
3 Liquidators falsely represented that the product was compliant with CARB formaldehyde
4 emission standards and was defect free. At the time of the purchase, Lumber Liquidators also
5 failed to inform Plaintiff that the laminate wood flooring product she purchased actually
6 exceeded the CARB formaldehyde emission-limit and that formaldehyde is a chemical known
7 to the State of California to cause cancer.

8 51. Plaintiff relied on Lumber Liquidators' misrepresentations/omissions regarding
9 compliance with CARB formaldehyde emission standards when deciding to purchase the
10 laminate wood flooring products and, as a result, paid Lumber Liquidators for a product she
11 would not have otherwise purchased.

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

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

18 **F. Tolling Of The Statute Of Limitations, Fraudulent Concealment, Equitable**
19 **Tolling And Continuing Violations**

20 54. Plaintiff did not discover, and could not have discovered, through the exercise
21 of reasonable diligence, the existence of the claims sued upon herein until immediately prior to
22 commencing this civil action.

23 55. Any applicable statutes of limitation have been tolled by Defendant's
24 affirmative acts of fraudulent concealment and continuing misrepresentations, as the facts
25 alleged above reveal.

26 56. Because of the self-concealing nature of Defendant's actions and its affirmative
27 acts of concealment, Plaintiff asserts the tolling of any applicable statutes of limitations
28 affecting the claims raised herein, on her behalf and on behalf of all other Class members.

1 57. Defendant continues to engage in the deceptive practice, and consequently,
2 unwary consumers are injured on a daily basis by Defendant's unlawful conduct. Therefore,
3 Plaintiffs and the Classes submit that each instance that Defendant engaged in the conduct
4 complained of herein and each instance that a member of any Class purchased the Product
5 constitutes part of a continuing violation and operates to toll the statutes of limitation in this
6 action.

7 58. Defendant is estopped from relying on any statute of limitations defense
8 because of their unfair or deceptive conduct.

9 59. Defendant's conduct was and is, by its nature, self-concealing. Still, Defendant,
10 through a series of affirmative acts or omissions, suppressed the dissemination of truthful
11 information regarding their illegal conduct, and actively has foreclosed Plaintiff and the
12 Classes from learning of their illegal, unfair, and/or deceptive acts. These affirmative acts
13 included concealing that the Products are not CARB compliant.

14 60. By reason of the foregoing, the claims of Plaintiff and the Classes are timely
15 under any applicable statute of limitations, pursuant to the discovery rule, the equitable tolling
16 doctrine, and fraudulent concealment.

17 **CLASS ACTION ALLEGATIONS**

18 61. Plaintiff seeks relief in her individual capacity and as a class representative of
19 all others who are similarly situated. Pursuant to Fed. R. Civ. P. 23(a) and (b)(2) and/or (b)(3),
20 Plaintiff seeks certification of the following Nationwide and California Classes.

21 62. The Nationwide Damages Class is initially defined as follows:

22 All persons residing in the United States who, during the
23 applicable statute of limitations period through the date notice is
24 disseminated to the Class, purchased from Lumber Liquidators
25 one or more laminate wood flooring products that were for their
26 personal use rather than for resale or distribution, that were
27 manufactured in China, and that were advertised as being CARB
28 compliant.

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

22 All persons residing in the United States who, during the

1 applicable statute of limitations period through the date notice is
2 disseminated to the Class, purchased from Lumber Liquidators
3 one or more laminate wood flooring products that were for their
4 personal use rather than for resale or distribution, that were
5 manufactured in China, and that were advertised as being CARB
6 compliant.

64. The California Class is initially defined as follows:

7 All persons residing in the State of California who, during the
8 applicable statute of limitations period through the date notice is
9 disseminated to the Class, purchased from Lumber Liquidators
10 one or more laminate wood flooring products that were for their
11 personal use rather than for resale or distribution, that were
12 manufactured in China, and that were advertised as being CARB
13 compliant.

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

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

67. Numerosity. Fed. R. Civ. P. 23(a)(1). Each Class is so numerous that joinder of
19 all members is unfeasible and not practicable. While the precise number of Class members has
20 not been determined at this time, Plaintiff is informed and believe that many thousands or
21 millions of consumers have purchased the Products.

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

- 26 a. Whether Lumber Liquidators' laminate wood flooring products sold exceed the
27 CARB limit;
- 28 b. Whether Lumber Liquidators' claim that its laminate wood flooring products-

1 comply with the CARB limit is false;

2 c. Whether Lumber Liquidators uniformly conveyed to the classes that the
3 Products complied with CARB regulations;

4 d. Whether Lumber Liquidators failed to disclose material information regarding
5 the emission of unlawful levels of formaldehyde from its laminate wood
6 flooring products;

7 e. Whether Lumber Liquidators' representations that its laminate wood flooring
8 products comply with the CARB limit are material, as judged by an objective
9 standard;

10 f. Whether Lumber Liquidators violated California Civil Code §§ 1750, *et seq.*;

11 g. Whether Lumber Liquidators violated California Business and Professions
12 Code §§ 17200, *et seq.*;

13 h. Whether Lumber Liquidators violated California Business and Professions
14 Code §§ 17500, *et seq.*;

15 i. Whether Lumber Liquidators breached express and implied warranties;

16 j. Whether Lumber Liquidators breached an express and implied warranties;

17 k. Whether Lumber Liquidators was unjustly enriched;

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

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

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

26 71. Superiority of Class Action. Fed. R. Civ. P. 23(b)(3). A class action is superior
27 to other available methods for the fair and efficient adjudication of this controversy since
28 joinder of all the members of the Class is impracticable. Furthermore, the adjudication of this

1 controversy through a class action will avoid the possibility of inconsistent and potentially
2 conflicting adjudication of the asserted claims. There will be no difficulty in the management
3 of this action as a class action.

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

8 **FIRST CAUSE OF ACTION**

9 **Breach of Express Warranty**

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

11 73. Plaintiff incorporates all preceding factual allegations as if fully set forth
12 herein.

13 74. Lumber Liquidators warranted that its flooring was free of defects when it sold
14 those products to Plaintiff and other Class members as described in this Complaint. Lumber
15 Liquidators further represented that its flooring products complied with CARB and EU
16 formaldehyde standards and all applicable laws and regulations. Plaintiff and other Class
17 members reasonably relied upon Lumber Liquidators' representations and/or omissions.

18 75. Lumber Liquidators' warranties became part of the basis of the bargain.

19 76. Lumber Liquidators breached its warranties by:

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

26 77. All conditions precedent to seeking liability under this claim for breach of
27 express warranty have been performed by Plaintiff and other Class members who paid for the
28 Products at issue.

1 78. Any attempt by Defendants to disclaim its express warranties is both
2 procedurally and substantively unconscionable, did not conform to the law and was not
3 conspicuous as required by law.

4 79. On March 6, 2015, Plaintiff provided notice to Lumber Liquidators of its
5 breaches of express warranty. Prior to that date, Lumber Liquidators was on notice regarding
6 the excessively high levels of formaldehyde in its flooring because of the numerous blog
7 postings, consumer complaints and lawsuits asserted against Defendant, as well as the March
8 1, 2015 60 Minutes report.

9 80. Thus, Lumber Liquidators has had actual and/or constructive notice that its
10 express warranty were and are false and to date has taken no action to remedy its breaches of
11 express warranty.

12 81. Defendant's breaches of warranty have caused Plaintiff and Class members to
13 suffer injuries, paying for falsely labeled products, and entering into transactions they would
14 not have entered into for the consideration that Plaintiff and Class members paid. As a direct
15 and proximate result of Defendant's breaches of warranty, Plaintiff and Class members have
16 suffered damages and continue to suffer damages, including economic damages in terms of the
17 difference between the value of the Products as promised and the value of the Products as
18 delivered.

19 82. As a result of the breach of these warranties, Plaintiff and Class members are
20 entitled to legal and equitable relief including damages, costs, attorneys' fees, rescission,
21 and/or other relief as deemed appropriate, for an amount to compensate them for not receiving
22 the benefit of their bargain.

23 **SECOND CAUSE OF ACTION**

24 **Breach of Implied Warranties**

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

26 83. Plaintiff incorporates all preceding factual allegations as if fully set forth
27 herein.

28 84. At all times relevant hereto, there was a duty imposed by law which requires

1 that a manufacturer or seller's product be reasonably fit for the purposes for which such
2 products are used and that the product be acceptable in trade for the product description.

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

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

7 87. Any attempt by Defendants to disclaim its express warranties is both
8 procedurally and substantively unconscionable, did not conform to the law and was not
9 conspicuous as required by law.

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

12 **THIRD CAUSE OF ACTION**

13 **Violation of the Magnuson-Moss Warranty Act**

14 89. Plaintiff incorporates all preceding factual allegations as if fully set forth
15 herein.

16 90. Plaintiff and the other Class members are "consumers" within the meaning of
17 the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

18 91. Lumber Liquidators is a "supplier" and "warrantor" within the meaning of 15
19 U.S.C. §§ 2301(4)-(5).

20 92. Lumber Liquidators flooring purchased separate from the initial construction of
21 the structure constitutes a "consumer product" within the meaning of 15 U.S.C. § 2301(1).

22 93. Lumber Liquidators' express warranties and written affirmations of fact
23 regarding the nature of the flooring, including that the flooring was free from defects and was
24 in compliance with CARB and EU formaldehyde standards and all other applicable laws and
25 regulations, constitute written warranties within the meaning of 15 U.S.C. § 2301(6).

26 94. Lumber Liquidators breached their warranties by:

- 27 a. Manufacturing, selling and/or distributing flooring that exceeds the
28 CARB formaldehyde standards;

1 contain unsafe and dangerous levels of formaldehyde gas.

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

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

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

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

14 106. Plaintiff disclaimed any purported Limited Warranties.

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

19 **FIFTH CAUSE OF ACTION**

20 **Fraudulent Misrepresentation**

21 108. Plaintiff incorporates all preceding factual allegations as if fully set forth
22 herein.

23 109. Lumber Liquidators falsely and fraudulently represented to Plaintiff and other
24 Class members that Lumber Liquidators' products would be free from defects and fit for their
25 customary and normal use. Lumber Liquidators also falsely and fraudulently represented to
26 Plaintiff and other Class members that Lumber Liquidators' products complied with CARB
27 and EU formaldehyde standards and all applicable laws and regulations. Plaintiff and other
28 Class members reasonably relied upon Lumber Liquidators' representations.

110. 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.

111. 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.

112. 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.

113. 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.

114. 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.

115. 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.

116. 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.

117. 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

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

1 herein.

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

4 120. Those representations were false.

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

8 122. Lumber Liquidators knew that Plaintiff and other Class members were relying
9 on the representations.

10 123. In reliance upon the representations, Plaintiff and other Class Members
11 purchased the Chinese Flooring and installed it in Plaintiff's and Class members' homes.

12 124. As a direct and proximate result of Lumber Liquidators negligent
13 misrepresentations, Plaintiff and Class members have been damaged as set forth in this
14 Complaint.

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

19 **SEVENTH CAUSE OF ACTION**

20 **Fraudulent Omission/Concealment**

21 126. Plaintiff incorporates all preceding factual allegations as if fully set forth
22 herein.

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

27 128. Lumber Liquidators fraudulently concealed from and/or intentionally failed to
28 disclose to Plaintiff and the Class that the Chinese Flooring is defective.

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

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

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

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

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

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

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

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

EIGHTH CAUSE OF ACTION

Violation of Consumers Legal Remedies Act – Civil Code § 1750, *et seq.*

(On Behalf of Plaintiff and the California and Nationwide Classes)

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

138. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.* (the “CLRA”) because Defendant’s actions and conduct described herein constitute transactions that have resulted in the sale or lease of goods or services to consumers.

139. Plaintiff and each member of the California Class are consumers as defined by California Civil Code §1761(d).

140. The Products are goods within the meaning of Civil Code §1761(a).

141. Defendant violated the CLRA in at least the following respects:

a. in violation of §1770(a)(5), Defendant represented that the Products have characteristics, ingredients, and benefits (CARB compliant and defect free) which they do not have;

b. in violation of §1770(a)(7), Defendant represented that the Products are of a particular standard, quality or grade (CARB compliant and defect free) when they are of another;

c. in violation of §1770(a)(9), Defendant has advertised the Products (as being CARB compliant and defect free) with intent not to sell them as advertised; and

d. in violation of §1770(a)(16), Defendant represented that the Products have been supplied in accordance with previous representations (as CARB compliant and defect free), when they were not.

142. Defendant knew, or should have known, that its representations and advertisements were false and misleading.

143. On March 6, 2015, Plaintiff notified Defendant in writing, by certified mail, of

1 the violations alleged herein and demanded that Defendant remedy those violations.

2 144. If Defendant fails to remedy the violations alleged herein within 30 days of
3 receipt of Plaintiff's notice, Plaintiff will amend this Complaint to add claims for actual,
4 punitive, and statutory damages pursuant to the CLRA.

5 145. Defendant's conduct is malicious, fraudulent, and wanton in that Defendant
6 intentionally and knowingly provided misleading information to the public.

7 **NINTH CAUSE OF ACTION**

8 **California False Advertising Law – Cal. Bus. & Prof. Code § 17500, *et seq.***

9 **(On Behalf of Plaintiff and the California and Nationwide Classes)**

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

12 147. Defendant publicly disseminated untrue or misleading advertising or intended
13 not to sell the Products as advertised in violation of California's False Advertising Law
14 ("FAL"), Business & Professional Code § 17500, *et seq.*, by representing that the Products are
15 "CARB compliant," when they are not.

16 148. Defendant committed such violations of the False Advertising Law with actual
17 knowledge or in the exercise of reasonable care should have known was untrue or misleading.

18 149. Plaintiff reasonably relied on Defendant's representations and/or omissions
19 made in violation of California Business & Professional Code § 17500, *et seq.*

20 150. As a direct and proximate result of Defendant's violations, Plaintiff suffered
21 injury in fact and lost money.

22 151. Plaintiff, on behalf of themselves and the California Class, seek: (a) injunctive
23 relief in the form of an order requiring Defendant to cease the acts of unfair competition
24 alleged herein and to correct its advertising, promotion and marketing campaigns; (b) full
25 restitution of all monies paid by Plaintiff and all Class members because of Defendant's
26 deceptive practices including, but not limited to, disgorgement of all profits derived from the
27 sale of the Products; (c) interest at the highest rate allowable by law; and (d) the payment of
28 Plaintiff's attorneys' fees and costs pursuant to, *inter alia*, California Code of Civil Procedure

Section 1021.5.

TENTH CAUSE OF ACTION

California Unfair Competition Law – Cal. Bus. & Prof. Code § 17200, *et seq.*

(On Behalf of Plaintiff and the California and Nationwide Classes)

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

153. Defendant engaged in unlawful, unfair, and/or fraudulent conduct under California’s Unfair Competition Law (“UCL”), California Business & Professions Code § 17200, *et seq.*

154. Defendant’s conduct is unlawful in the following:

a. Defendant’s conduct is unlawful in that it violates the Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.*, California’s False Advertising Law, California Business & Professions Code §§ 17500 *et seq.*;

b. Defendant’s Products, deceptive statements and sale of the Products violate Title 17 of the California Code of Regulations, Sections 93120-93120.12 *et seq.*, specifically “Phase 2,” which mandates that hardwood flooring products like the Lumber Liquidators’ Chinese-made Flooring Products cannot emit formaldehyde at a level exceeding between 0.05 and 0.11 parts per million;

c. Defendant’s Products, deceptive statements and sale of the Products violate California Health and Safety Code § 25249.6 (Proposition 65), which requires that products emitting formaldehyde levels beyond 40 microgram per day must contain a health hazard warning;

d. Defendant’s Products, deceptive statements and sale of the Products violate 15 U.S.C. § 2697, which mandates that hardwood flooring products like the Lumber Liquidators’ Chinese-made Flooring Products cannot emit formaldehyde at a level exceeding between 0.05 and 0.11 parts per million.

155. Defendant’s conduct is unfair in that it offends established public policy and/or

1 is immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to Plaintiff and
2 Class members, and offends public policy by seeking to profit from Chinese-made Flooring
3 Products that emit dangerous levels of formaldehyde in violation of state and federal laws. The
4 harm to Plaintiff and Class members arising from Defendant's conduct outweighs any
5 legitimate benefit Defendant derived from the conduct. Defendant's conduct undermines and
6 violates the stated spirit and policies underlying the Consumers Legal Remedies Act, the False
7 Advertising Law, and federal laws and regulations as alleged herein.

8 156. Defendant's actions and practices constitute "fraudulent" business practices in
9 violation of the UCL because, among other things, they are likely to deceive reasonable
10 consumers. Plaintiff relied on Defendant's representations and omissions.

11 157. As a direct and proximate result of Defendant's violations, Plaintiff suffered
12 injury in fact and lost money because they purchased the Products at the price they paid
13 believing them to be CARB compliant when they were not.

14 158. Plaintiff, on behalf of themselves and the California Class, seek: (a) injunctive
15 relief in the form of an order requiring Defendant to cease the acts of unfair competition
16 alleged herein and to correct its advertising, promotion, and marketing campaigns; (b) full
17 restitution of all monies paid by Plaintiff and all Class members because of Defendant's
18 deceptive practices including, but not limited to, disgorgement of all profits derived from the
19 sale of the Products; (c) interest at the highest rate allowable by law; and (d) the payment of
20 Plaintiff's attorneys' fees and costs pursuant to, *inter alia*, California Code of Civil Procedure
21 Section 1021.5.

22 **REQUEST FOR RELIEF**

23 **WHEREFORE**, Plaintiff, individually and on behalf of the other members of the
24 Classes proposed in this Complaint, respectfully requests that the Court enter judgment in their
25 favor and against Defendants, as follows:

26 A. Declaring that this action is a proper class action, certifying the Class as
27 requested herein, designating Plaintiff as Class Representative and appointing the undersigned
28

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 Defendants 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;

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

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

4 **JURY DEMAND**

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

6 Dated: March 6, 2015

Respectfully submitted,

8 **AHDOOT & WOLFSON, PC**

9 

10
11 Robert Ahdoot
12 Tina Wolfson
13 Keith Custis, Of Counsel
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16 West Hollywood, California 90069
17 Tel: 310-474-9111
18 Fax: 310-474-8585

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28
Counsel for Plaintiff and the Proposed Class

AFFIDAVIT OF ROBERT AHDOOT

I, Robert Ahdoot, declare as follows:

1. I am an attorney with the law firm of Ahdoot & Wolfson, PC, counsel for Plaintiff Sara Latta ("Plaintiff") in this action. I am admitted to practice law in California and before this Court, and am a member in good standing of the State Bar of California. This declaration is made pursuant to California Civil Code Section 1780(d). I make this declaration based on my research of public records and upon personal knowledge and, if called upon to do so, could and would testify competently thereto.

2. Based on my research and personal knowledge, Defendant Lumber Liquidators, Inc. does business within Sacramento County and Plaintiff Latta purchased Defendant's products within Sacramento County, as alleged in the Class Action Complaint.

I declare under penalty of perjury under the laws of the United States and the State of California this 6th day of March 2015 in West Hollywood, California that the foregoing is true and correct.



By: Robert Ahdoot

CIVIL COVER SHEET

Case 2:15-at-00313 Document 1-1 Filed 03/06/15 Page 1 of 3

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

SARA LATTA, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff Sacramento
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Robert Ahdoot, Ahdoot & Wolfson, PC
1016 Palm Avenue, West Hollywood, CA 90069
T: 310-474-9111; F: 310-474-8585; E: rahdoot@ahdootwolfson.com

DEFENDANTS

LUMBER LIQUIDATORS, INC., et al. (see ATTACHMENT)

County of Residence of First Listed Defendant _____
(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 checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <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	PERSONAL INJURY <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 PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <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 IMMIGRATION <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 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (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)) FEDERAL TAX SUITS <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
REAL PROPERTY <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	CIVIL RIGHTS <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	PRISONER PETITIONS Habeas Corpus: <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 Other: <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. Section 1332(d)(2)

Brief description of cause:

Breach of express warranty and fraud for laminate wood flooring with formaldehyde emissions

VII. REQUESTED IN COMPLAINT:

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

DEMAND \$

5,000,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

03/06/2015

SIGNATURE OF ATTORNEY OF RECORD

/s/ Robert Ahdoot

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG JUDGE

Print

Save As...

Reset

Case 2:15-at-00313 Document 1-1 Filed 03/06/15 Page 2 of 3
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ATTACHMENT

DEFENDANTS:

LUMBER LIQUIDATORS, INC., a Delaware corporation, LUMBER LIQUIDATORS LEASING, LLC, a Delaware limited liability corporation, LUMBER LIQUIDATORS HOLDING, INC., a Delaware corporation, and LUMBER LIQUIDATORS SERVICES, LLC, a Delaware limited liability corporation,