

CHAVEZ & GERTLER LLP
Mark A. Chavez (SBN 90858)
Chavez & Gertler LLP
42 Miller Avenue
Mill Valley, CA 94941
Tel: (415) 381-5599
Fax: (415) 381-5572
mark@chavezgertler.com

POGUST BRASLOW & MILLROOD, LLC
Harris L. Pogust (*To be admitted Pro Hac Vice*)
Kevin O'Brien (*To be admitted Pro Hac Vice*)
161 Washington Street, Suite 1520
Conshohocken, PA 19428
Tel: (610) 941-4204
Fax: (610) 941-4248
hpogust@pbmattorneys.com
kobrien@pbmattorneys.com

Attorneys for Plaintiff KAREN PESCE,
individually and on behalf of the proposed class

Additional counsel listed on signature page

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KAREN PESCE, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

LUMBER LIQUIDATORS, INC., a Delaware
Corporation,

Defendant.

Case No.: _____

CLASS ACTION

COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Karen Pesce (hereinafter "Plaintiff"), by and through her undersigned counsel,
2 brings this action on behalf of herself and all others similarly situated against Defendant
3 Lumber Liquidators, Inc. (hereinafter "Defendant" or "Lumber Liquidators"). All allegations
4 in this Complaint are based upon information and belief except for those allegations which
5 pertain to Plaintiff.

6 **I. INTRODUCTION**

7 1. Plaintiff brings this action on behalf of herself and the following class:

8 All persons who purchased laminate wood flooring products
9 manufactured in China from Lumber Liquidators that were
10 represented as CARB Phase 2 compliant ("Subject Flooring") in
11 the State of California from January 1, 2011 to the present.

12 (Such persons are hereinafter referred to as the "Class.") Excluded from the Class are
13 Defendant and its affiliates, employees, officers and directors; persons or entities that
14 purchased Subject Flooring for resale; and the Judge(s) assigned to this case.

15 2. Urea-formaldehyde is a resin plastic made of urea and formaldehyde that
16 possesses many useful properties for use as an adhesive, such as strength, low water absorption,
17 and high surface hardness.

18 3. Urea formaldehyde is used as an adhesive for manufactured wood products,
19 including in the Subject Flooring. If used appropriately, the formaldehyde component of the
20 adhesive dissolves through the manufacturing process and little to no formaldehyde remains in
21 the finished product. Used in higher amounts, finished product, such as the Subject Flooring,
22 emanates formaldehyde gas.

23 4. Lumber Liquidators advertises and represents that all Subject Flooring is
24 compliant with the California Air Resources Board ("CARB") Phase 2 requirements regarding
25 formaldehyde emissions; however, testing reveals that this representation is false.

26 5. All Subject Flooring comes with an express warranty that it is CARB Phase 2
27 compliant, as well as with an implied warranty of merchantability.
28

1 6. As a result of the Subject Flooring's much greater than advertised formaldehyde
2 emissions, which are well above the levels deemed safe for household use by the California Air
3 Resources Board, the Subject Flooring does not meet Class members' objectively reasonable
4 expectations based on Lumber Liquidators' representation that the Subject Flooring is CARB
5 Phase 2 compliant. The Subject Flooring is uniformly and inherently defective in materials,
6 design, and/or workmanship, and was defective at the time of sale to Class members. Due to
7 the excessive formaldehyde emitted by the Subject Flooring, it is defective regardless of
8 installation, use, and compliance with Defendant's care instructions.

9 7. The excessive formaldehyde emitted from the Subject Flooring gives rise to a
10 myriad of safety risks. For example, formaldehyde exposure can lead to development of
11 allergies, asthma attacks, wheezing and coughing, other respiratory difficulties, eye, nose, and
12 throat irritation, skin rash, headaches, and fatigue, among other health and safety risks.
13 Additionally, formaldehyde is a known carcinogen. Formaldehyde exposure is especially
14 harmful to children and the elderly.

15 8. Had Plaintiff and members of the Class known about the high level of
16 formaldehyde emissions at the time of purchase, including the safety hazard posed by the
17 emissions and the fact that Lumber Liquidators has refused to replace the Subject Flooring
18 pursuant to the terms of its warranties, they would not have bought the Subject Flooring or
19 would have paid much less for it. As such, Plaintiff and members of the Class have not
20 received the value for which they bargained when they purchased the Subject Flooring.

21 9. Defendant has actual knowledge of the actual formaldehyde emissions by the
22 Subject Flooring, yet has done nothing to remedy the problem. Further, Lumber Liquidators'
23 refusal to replace the falsely advertised and defective flooring will require Plaintiff and
24 members of the Class to incur out-of-pocket expenses in order to replace their flooring with a
25 safe alternative.

26 **II. JURISDICTION AND VENUE**

27 10. This Court has subject matter jurisdiction over the claims asserted in this action
28 pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332.

1 11. This Court has jurisdiction over all causes of action asserted herein pursuant to
2 28 U.S.C. § 1332(d) because the aggregate claims of Plaintiff and members of the Class exceed
3 the sum or value of \$5,000,000, and diversity of citizenship exists between at least one member
4 of the proposed Class and Defendant.

5 12. This Court has personal jurisdiction over Defendant because Defendant has
6 sufficient contacts in this jurisdiction and conducts substantial business in this District,
7 including marketing, distribution, and sale of Subject Flooring.

8 13. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because of the
9 foregoing.

10 **III. PARTIES**

11 14. Plaintiff Karen Pesce resides in Murietta, California. In November 2011,
12 Plaintiff purchased Chinese-manufactured Dream Home Kensington Manor Summer Retreat
13 Teak 12mm laminate flooring from Lumber Liquidators, Inc., in Murietta, California. Plaintiff
14 purchased the laminate flooring primarily for personal, family, or household use and paid
15 approximately \$3,000.00. The laminate flooring was manufactured, sold, distributed,
16 advertised, marketed, and warranted by Defendant, and advertisements and the flooring itself
17 indicated that it was CARB Phase 2 compliant. If Plaintiff had known at the time of purchase
18 that the levels of formaldehyde emissions of her Dream Home flooring were well beyond the
19 allowable amount pursuant to CARB Phase 2 regulations, she would not have purchased the
20 product. After learning about the reports of elevated levels of formaldehyde emissions from
21 her flooring, Plaintiff contacted Lumber Liquidators and requested that they repair the defect.
22 Lumber Liquidators denied her refund request.

23 15. At all times, Plaintiff used the flooring in a foreseeable manner and in the
24 manner in which it was intended to be used.

25 16. At all times, Plaintiff maintained her flooring according to Defendant's
26 specifications and recommendations.

27 17. Plaintiff and members of the Class were damaged because they paid more for
28 the Subject Flooring than they should have. Plaintiff's and Class members' purchase price was

1 based upon the value of the flooring as represented by Defendant as free from defects. Further,
2 as a result of Lumber Liquidators' failure to repair or replace the defective flooring, Plaintiff
3 and members of the Class may incur out-of-pocket expenses, including the costs associated
4 with removal and disposal of the flooring, the purchase price of replacement flooring that does
5 not contain excessive levels of formaldehyde, and the labor costs associated with the removal
6 and replacement of the flooring. For all these reasons, Defendant's representations and/or
7 omissions concern a matter that was material to Plaintiff's and Class members' decisions to
8 purchase the Subject Flooring.

9 18. Defendant Lumber Liquidators, Inc. is a corporation organized and existing
10 under the laws of the State of Delaware with its principal place of business located in Toano,
11 Virginia.

12 19. At all times relevant, Defendant engaged in the business of marketing,
13 distributing, certifying, and selling Subject Flooring throughout the United States.

14 20. At all times relevant, Defendant engaged in or supervised the business of
15 designing, manufacturing, constructing, and assembling the Subject Flooring.

16 21. The Subject Flooring was not altered by Plaintiff, members of the Class,
17 Defendant's distributors, or other personnel in any manner that would affect the floorings'
18 levels of formaldehyde emissions. The Subject Flooring was defective when it left the
19 exclusive control of Defendant, and Defendant knew the Subject Flooring would be used
20 without additional tests for defects. Accordingly, Plaintiff and the members of the Class did
21 not receive the Subject Flooring as marketed or warranted.

22 **IV. FACTUAL BACKGROUND**

23 22. In 2007, the California Air Resources Board enacted regulations regarding the
24 allowable formaldehyde emissions levels for manufactured wood products, including laminate
25 flooring. The regulations consisted of two phases, Phase 1 and the more stringent Phase 2. As
26 of January 1, 2011, all sellers of manufactured wood products that sell product in the State of
27 California, including Lumber Liquidators, are required to comply with CARB's Phase 2
28 requirements.

1 23. CARB's Phase 2 regulations set the maximum level of formaldehyde emissions
2 for composite wood flooring sold and distributed in the State of California. It is illegal to sell
3 composite flooring in California that does not comply with these regulations. The United
4 States Congress adopted these same regulations in 2010, and this year, CARB's Phase 2
5 requirements will apply throughout the United States.

6 24. In addition to setting a maximum permissible level of formaldehyde emissions,
7 CARB's Phase 2 regulations have various other requirements. Companies that sell wood
8 flooring products are required to "label their flooring or their boxes of flooring as having been
9 made with certified compliant composite wood products, to keep records to verify that they
10 have purchased compliant products, and to inform distributors and retailers that their flooring is
11 compliant with California's current requirements." CARB, Facts About Flooring Made with
12 Composite Wood Products, *available at* http://www.arb.ca.gov/html/fact_sheets/composite_wood_flooring_faq.pdf.
13

14 25. CARB developed the Phase 2 requirements regarding formaldehyde emissions,
15 in part, due to the many health risks posed by formaldehyde exposure. Formaldehyde exposure
16 is known to cause eye, nose, and respiratory irritation. It is also known to exacerbate asthma.
17 In 1992, CARB listed formaldehyde as "a Toxic Air Contaminant in California with no safe
18 level of exposure." CARB, Fact Sheet, Airborne Toxic Control Measure (ATCM) to Reduce
19 Formaldehyde Emissions from Composite Wood Products, *available at*
20 <http://www.arb.ca.gov/toxics/compwood/factsheet.pdf>.

21 26. In addition to other health risks resulting from formaldehyde exposure, several
22 national and international entities have evaluated the cancer-causing potential of formaldehyde:

23 a. The National Toxicology Program ("NTP") is formed from parts of
24 several different U.S. government agencies, including the National Institutes of Health
25 ("NIH"), the Centers for Disease Control and Prevention ("CDC"), and the Food and
26 Drug Administration ("FDA"). The NTP lists formaldehyde as "known to be a human
27 carcinogen."
28

b. The International Agency for Research on Cancer (“IARC”) is part of the World Health Organization (“WHO”). Its major goal is to identify causes of cancer. IARC has concluded that formaldehyde is “carcinogenic to humans” based on higher risks of nasopharyngeal cancer and leukemia.

c. The U.S. Environmental Protection Agency (“EPA”) maintains the Integrated Risk Information System (“IRIS”), an electronic database that contains information on human health effects from exposure to various substances. The EPA has classified formaldehyde as a “probable human carcinogen.”

d. National Cancer Institute (“NCI”) researchers have concluded that, based on data from studies in people and from lab research, exposure to formaldehyde may cause leukemia, particularly myeloid leukemia, in humans.

A. Lumber Liquidators Aggressively Promotes the Health, Safety, and Environmental Aspects of its Flooring in the Marketplace

27. Lumber Liquidators’ marketing relies heavily on the Subject Flooring’s CARB compliance, safety, and the company’s compliance generally with “the highest quality and environmental standards.” <http://www.lumberliquidators.com/sustainability/health-and-safety/>.

28. Lumber Liquidators makes identical representations regarding each type of Subject Flooring sold throughout the United States, regardless of the state where the product is sold. It “require[s] that all of [its] suppliers comply with California’s advanced environmental requirements, even for products sold outside California.”

29. In accordance with CARB’s Phase 2 requirements, Subject Flooring sold by Defendant is labeled as CARB Phase 2 compliant—either on the box containing the flooring or on the flooring itself.

B. Actual Consumer Experiences with the Subject Flooring Differ Dramatically from Lumber Liquidator’s Representations

30. Lumber Liquidators advertises on all Subject Flooring, all of which was manufactured in China through a process overseen and directed by Defendant, and sold

1 throughout the United States, that it complies with CARB's Phase 2 regulations. Lumber
2 Liquidators labels all laminate flooring as being compliant.

3 31. CBS's *60 Minutes* conducted an investigation into Lumber Liquidators',
4 Lowes', and Home Depot's laminate flooring.¹ As part of its investigation, *60 Minutes* tested
5 31 boxes of Lumber Liquidators' laminate flooring manufactured in China and sold in Virginia,
6 Florida, Texas, Illinois, and New York. All but one of those boxes of laminate flooring
7 contained formaldehyde emissions higher than permissible under CARB Phase 2 regulations.
8 Some boxes contained up to 13 times the allowable levels. Two different certified labs tested
9 the products for emissions and both reported that they had never seen formaldehyde emissions
10 levels that high.²

11 32. Whitney Tilson, a hedge fund manager interviewed by *60 Minutes*, estimated
12 that manufacturing laminate flooring that is not CARB Phase 2 compliant is approximately 10
13 percent cheaper than compliant product and represents a significant cost savings for a seller,
14 which in turn, translates to profits.³

15 33. In 2013, Mr. Tilson noticed that Lumber Liquidators had "unusually high" profit
16 margins compared to its competitors. He attributed that, in part, to Lumber Liquidators' rapid
17 stock price increase from \$13/share in 2011 to \$119/share in 2013. He described the stock
18 jump and large profit margins as an "almost unprecedented" anomaly in a commodity
19 business.⁴

20 34. *60 Minutes* conducted undercover investigations in three of Lumber Liquidators'
21 Chinese manufacturing supplier mills. What *60 Minutes* uncovered was troubling: "Employees
22 at the mills openly admitted that they use core boards with higher levels of formaldehyde to
23

24 ¹ Transcript 3/1/2015 CBS, *60 Minutes*, Lumber Liquidators Linked to Health and Safety
25 Violations, available at [http://www.cbsnews.com/news/lumber-liquidators-linked-to-health-
and-safety-violations/](http://www.cbsnews.com/news/lumber-liquidators-linked-to-health-and-safety-violations/).

26 ² *Id.*

27 ³ *Id.*

28 ⁴ *Id.*

1 make Lumber Liquidators laminates, saving the company 10-15 percent on price. All three
 2 mills also admitted falsely labeling the company's laminate flooring as CARB 2, meaning it
 3 meets California formaldehyde emissions standards, and the new U.S. federal law."

4 35. In November 2013, several investors in Lumber Liquidators stock sued the
 5 company relating to its cost-cutting methods. While Lumber Liquidators has known of these
 6 allegations since at least when that lawsuit was filed, it continues to falsely advertise and
 7 warranty the Subject Flooring as "CARB compliant" and has failed to investigate the veracity
 8 of these claims, seemingly putting profits over the truth.

9 36. Consumers, including Plaintiff and Class members, rely on Lumber Liquidators'
 10 representations regarding the safety of the Subject Flooring, and Defendant intends that
 11 consumers rely on those representations.

12 **C. Consumers Complain to Lumber Liquidators and Governmental Officials Call for**
 13 **an Investigation**

14 37. Following the *60 Minutes* exposé, hundreds of consumers have complained
 15 about Lumber Liquidators' false representations regarding its CARB compliance. The *60*
 16 *Minutes* Web page regarding its report alone has over 300 comments discussing the story,
 17 including many complaints, such as the following:

18 JUDYT898 March 3, 2015 9:9AM

19 I am horrified to learn that this is the flooring my contractor used
 20 in 2012 for the entire first floor of my home. What course of
 21 action should I take if he won't replace it now and absorb the
 22 whole cost?

23 FLOORS4YOU March 3, 2015 8:8AM

24 Its funny. Usually, every day I receive a notice from Lumber
 25 Liquidators alerting me of some sort of sale. Some notice of
 26 'Floors for Less.' But during this debacle I have received
 27 nothing. No rebuttal. No denial. No information regarding 'what
 28 to do.' They have set up NO hotline for previous consumers.
 They are hoping this just goes away. I realize that to LL, I am
 just a previous dollar but I expected more out of this company. I
 somehow wanted them to realize that I am a person with a

family. That I have children crawling around amidst the toxic fumes emitting from their product. I wanted them to care that my pets are going to experience unspoken degenerative issues. Nothing. Well, from this point forward, I have a story to tell about LL. And believe me, I'll tell everyone.

TRENTKELP March 2, 2015 2:2PM

I just wrote to LL demanding answers or i will be thinking about legal action.....I hope you all do the same~

MRSMBENTON March 2, 2015 1:1PM

We bought a house in September 2014 that had LL's Morningstar Bamboo installed in 2004. Within a month of living here, my husband developed nose polyps which lead physicians to find a mass in his pituitary gland. This flooring was pre CARB2 requirements. How far back will these tests go? How long will the formaldehyde last in the floor? It would have been great if 60 minutes provided some guidance for viewers of where to find answers, or maybe get our floors tested!

FLOORS4YOU March 2, 2015 5:5PM

. . . As contractors we were well aware of this years ago. This is not new ! LL had plenty of time to correct this but they were too busy counting their money.

LISA1735 March 2, 2015 11:11AM

. . . I have 3 children crawling and running around on POTENTIALLY HAZARDOUS material. i called and they looked up my product and said yes mine was from china. but i do not know whee [sic] to get it tested..

<http://www.cbsnews.com/news/lumber-liquidators-linked-to-health-and-safety-violations/> (last visited Mar. 19, 2015).

38. Despite Lumber Liquidators' notice of the excessive formaldehyde emissions from independent testing reports, consumer complaints, lawsuits, and consumers' and Class members' demands for answers, Defendant has failed to notify Plaintiff and consumers of the mislabeled Subject Flooring, remove the mislabeled products from the shelves, replace the mislabeled product with safer and as-advertised flooring, or otherwise to address consumer concerns.

D. Lumber Liquidators Denies Test Results and Refuses to Address Customer Complaints

39. As recently as March 10, 2015, Lumber Liquidators has decried the testing methodology utilized by *60 Minutes*, offered an unfounded conspiracy theory regarding the testing of the products, and continued to re-state its compliance with CARB Phase 2 regulations.

40. While presented with overwhelming evidence, including independent laboratory testing results from several different qualified laboratories, that the Subject Flooring is not CARB compliant, and in fact, far exceeds levels for acceptable formaldehyde emissions, Defendant continues aggressively to advertise its product as CARB compliant. *See* <http://www.lumberliquidators.com/sustainability/health-and-safety/> (“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).”) (last visited March 10, 2105).

V. TOLLING OF STATUTES OF LIMITATIONS

41. Defendant had exclusive knowledge of the excessive formaldehyde emissions by the Subject Flooring and knew that the excessive omissions would not be discovered by Plaintiff and members of the Class unless and until the formaldehyde emissions caused adverse health effects. Only Defendant had access to information about its suppliers’ manufacturing processes and the CARB testing and certification process.

42. Since Plaintiff and members of the Class cannot detect the formaldehyde emissions until they suffer adverse health consequences, Plaintiff and members of the Class exercising due diligence were not reasonably able to discover the allegedly fraudulent certifications until at least November 2014 when the first class action complaint was filed. Plaintiff and members of the Class reasonably relied on Defendant’s certification that the Subject Flooring was CARB compliant. Therefore, the discovery rule applies to all claims asserted by Plaintiff and members of the Class.

1 43. Defendant has known about its misrepresentations regarding its CARB
2 compliance since at least 2013, if not earlier, and has failed to alert members of the Class to the
3 misrepresentation. To the contrary, Defendant told members of the Class and the public that
4 the Subject Flooring is CARB compliant and the test results that prove otherwise used incorrect
5 methodology.

6 44. Thus, any applicable statute of limitations has been tolled by Defendant's
7 actions, and Defendant is estopped from pleading the statute of limitations as an affirmative
8 defense because it failed to disclose facts that it was obligated to disclose concerning the
9 Subject Flooring's compliance with CARB standards.

10 **VI. CLASS ACTION ALLEGATIONS**

11 45. Plaintiff repeats and re-alleges every allegation above as if set forth herein in
12 full.

13 46. Plaintiff brings this action under Rule 23 of the Federal Rules of Civil
14 Procedure, on behalf of herself and the Class under federal warranty law (Count I), California's
15 express warranty laws (Count II), California's implied warranty laws (Count III), state
16 consumer protection laws (Count IV), and declaratory relief law (Count V), as set forth in each
17 count below.

18 47. Plaintiff does not know the exact size or identities of the members of the
19 proposed Class, since such information is in the exclusive control of Defendant. Plaintiff
20 believes that the Class encompasses many thousands of individuals whose identities can be
21 readily ascertained from Defendant's books and records. Therefore, the proposed Class is so
22 numerous that joinder of all members is impracticable.

23 48. Based on the size of the Class, Plaintiff believes the amount in controversy
24 exceeds \$5 million.

25 49. All members of the Class have been subject to and affected by the same
26 conduct. All purchased laminate wood flooring products from the Defendant that were falsely
27 advertised and labeled as compliant with CARB standards for formaldehyde and were therefore
28 safe to install in homes or businesses. Instead, the levels of formaldehyde in the flooring

1 products were, at a minimum, unknown and emitting unlawful levels of formaldehyde. The
2 lack of monitoring to ensure CARB compliance and the resulting lack of CARB compliance
3 was not disclosed to any members of the Class. There are questions of law and fact that are
4 common to all members of the Class, and predominate over any questions affecting only
5 individual members of the Class. These questions include, but are not limited to, the following:

- 6 a. Whether Lumber Liquidators properly and adequately monitored its
7 Chinese manufacturing plants to ensure CARB compliance;
- 8 b. Whether Lumber Liquidators' laminate wood flooring products that were
9 manufactured in China and sold throughout the United States exceed the
10 CARB limit;
- 11 c. Whether Lumber Liquidators falsely labeled and advertised its Chinese
12 manufactured laminate wood flooring products as being CARB
13 compliant;
- 14 d. Whether any false representations regarding CARB compliance were
15 made knowingly and willfully;
- 16 e. Whether Lumber Liquidators concealed and omitted material facts from
17 its communications with and disclosure to all Class members regarding
18 the levels of formaldehyde in its laminate wood flooring products;
- 19 f. Whether Lumber Liquidators breached express warranties to members of
20 the Class regarding its laminate wood flooring products;
- 21 g. Whether Lumber Liquidators breached implied warranties of
22 merchantability to members of the Class regarding its laminate wood
23 flooring products;
- 24 h. Whether Lumber Liquidators' misrepresentations or omissions constitute
25 unfair or deceptive practices under California's consumer protection
26 statutes;
- 27 i. Whether the above practices caused members of the Class to suffer
28 injury; and

1 j. The proper measure of damages and the appropriate injunctive relief.

2 50. The claims of the individual named Plaintiff are typical of the claims of the
3 Class she seeks to represent and do not conflict with the interests of any other members of the
4 Class.

5 51. The individual named Plaintiff will fairly and adequately represent the interests
6 of the Class. She is committed to the vigorous prosecution of her Class's claims and has
7 retained attorneys who are qualified to pursue this litigation and have experience in class
8 actions—in particular, consumer protection actions.

9 52. A class action is superior to other methods for the fair and efficient adjudication
10 of this controversy. The damages suffered by individual Class member are small compared to
11 the expense and burden of individual prosecution of this litigation. Individual plaintiffs may
12 lack the financial resources to vigorously prosecute a lawsuit against Defendant to recover
13 damages stemming from Defendant's unfair and unlawful practices.

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

16 **CAUSES OF ACTION**

17 **COUNT I**

18 **VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT,** 19 **15 U.S.C. §§ 2301 *et seq.*** **(On Behalf of Plaintiff and the Class)**

20 54. Plaintiff re-alleges and incorporates all paragraphs above as though fully set
21 forth herein.

22 55. Plaintiff brings this claim on her own behalf and on behalf of each member of
23 the Class.

24 56. Plaintiff and the members of the Class are “consumers” within the meaning of
25 the Magnusson-Moss Warranty Act, 15 U.S.C. § 2301(3).

26 57. Lumber Liquidators is a “supplier” and “warrantor” within the meaning of 15
27 U.S.C. §§ 2301(4) – (5).
28

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

4 59. Lumber Liquidators’ express warranties and written affirmations of fact
5 regarding the nature of the flooring, *i.e.*, that the flooring was in compliance with CARB
6 formaldehyde standards, constitutes a written warranty within the meaning of 15 U.S.C. §
7 2301(6).

8 60. Lumber liquidators breached its warranties by manufacturing, selling and/or
9 distributing flooring products with levels of formaldehyde that exceed the CARB standards,
10 and/or by making affirmative representations regarding CARB compliance without knowledge
11 of its truth.

12 61. Lumber Liquidators’ breach deprived Plaintiff and members of the Class of the
13 benefit of their bargains.

14 62. The amount in controversy of Plaintiff’s individual claims exceeds the value of
15 \$25. In addition, the amount in controversy exceeds the value of \$50,000 (exclusive of interest
16 and costs) computed on the basis of all claims to be determined in this action.

17 63. Defendant has been notified of its breach of written warranties and has failed to
18 adequately cure those breaches. As a direct and proximate result of Defendant’s breaches of its
19 written warranties, Plaintiff and members of the Class sustained damages in amounts to be
20 determined at trial.

21 COUNT II

22 **BREACH OF EXPRESS WARRANTY** 23 **(Violation of California Commercial Code § 2313)** 24 **(On Behalf of Plaintiff and the Class)**

25 64. Plaintiff re-alleges and incorporates all paragraphs above as though fully set
26 forth herein.

27 65. Throughout the Class Period, Lumber Liquidators has expressly warranted that
28 its laminate wood flooring products comply with CARB formaldehyde standards and all other
applicable laws and regulations.

66. Defendant's express warranty that its laminate wood flooring products comply with the CARB standards appears on every package of laminate wood flooring Defendant sells or has sold in the states in which all state Class members reside, including those sold to Plaintiff. This express warranty also appears on Defendant's Web site, product invoices and instruction materials.

67. Lumber Liquidators' warranties became part of the basis of the bargain in selling laminate wood flooring products to Plaintiff and the members of the Class pursuant to California Commercial Code § 2313.

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

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

70. As a result of this breach, Plaintiff and members of the Class suffered injury and deserve to be compensated for the damages they suffered.

71. Plaintiff and members of the Class are therefore entitled to recover compensatory damages, declaratory relief, and other relief as specifically prayed for herein.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY (Violation of California Civil Code §§ 1792 *et seq.*) (On Behalf of Plaintiff and the Class)

72. Plaintiff re-alleges and incorporates all paragraphs above as though fully set forth herein.

73. California law provides that every sale of consumer goods by a merchant includes an implied warranty of merchantability. (California Civil Code §§ 1792 *et seq.*)

74. At all relevant times, Lumber Liquidators was a merchant in the business of selling Subject Flooring to Plaintiff and Class members.

75. At the time of Lumber Liquidators' sale of the Subject Flooring to Plaintiff and Class members, each piece or box of flooring was stated as CARB Phase 2 compliant.

76. At the time of Lumber Liquidators' sale of the Subject Flooring to Plaintiff and Class members, it was illegal to sell that product in California without compliance with CARB's Phase 2 requirements.

77. Despite Lumber Liquidators' promises on its labels, boxes, and flooring, the Subject Flooring was not CARB Phase 2 compliant.

78. Lumber Liquidators breached its implied warranty of merchantability to Plaintiff and Class members, because (1) the Subject Flooring did not comply with the promises stated on the labels, boxes, and flooring; (2) was not of the quality generally accepted in the trade; and (3) was not fit for the ordinary purpose for which it was intended to be used.

79. As a direct result of Defendant's breaches of the implied warranty of merchantability, Plaintiff and members of the Class suffered injury in fact and lost money or property.

COUNT IV

VIOLATION OF STATE CONSUMER FRAUD AND DECEPTIVE TRADE PRACTICES ACTS (Violation of California Civil Code §§ 1750 *et seq.* and Bus. & Prof. Code §§ 17200 *et seq.* & 17500, *et seq.*) (On Behalf of Plaintiff and the Class)

80. Plaintiff re-alleges and incorporates all paragraphs above as though fully set forth herein.

81. The California Consumer Fraud and Deceptive Trade Practices Acts, as set forth below, prohibit unlawful, unfair, or fraudulent business acts or practices.

82. Plaintiff and members of the Class are consumers who purchased from Defendant laminate wood flooring primarily for personal, family or household purposes.

1 83. Defendant engaged in the conduct alleged in this Complaint in transactions
2 intended to result, and which did result, in the sale of goods or services to consumers, including
3 Plaintiff and members of the Class.

4 84. Defendant is engaged in, and its acts and omissions affect, trade and commerce.
5 Defendant's acts, practices and omissions were done in the course of its business of marketing,
6 offering for sale and selling goods and services throughout the United States.

7 85. Throughout the Class Period, Defendant engaged in unlawful business acts
8 and/or practices by selling and/or distributing laminate wood flooring products in California
9 that exceed the CARB limit for formaldehyde emissions from composite wood products set
10 forth in Title 17 of the California Code of Regulations, §§ 93120-93120.12, specifically "Phase
11 2," which mandates the maximum levels of formaldehyde that laminate flooring products can
12 emit.

13 86. Defendant's deceptive statements detailed above further violate California
14 Health and Safety Code § 25249.6 (Proposition 65), which requires products emitting
15 formaldehyde at levels above 40 micrograms per day to contain a health hazard warning.

16 87. Defendant further engaged in unlawful business acts and/or practices by not
17 informing consumers that Defendant's laminate wood flooring products sold in California emit
18 formaldehyde at levels that exceed the formaldehyde emission limit set forth in the CARB
19 standards. These actions were misleading and deceptive, and violated the state consumer laws
20 set forth below.

21 88. Furthermore, Defendant's advertisements, representations and labeling as
22 described herein were designed to, and did, result in the purchase and use of Chinese-made
23 laminate flooring products and Defendants profited from its sales of these products to unwary
24 consumers.

25 89. Throughout the Class Period, Defendant engaged in unlawful business acts
26 and/or practices by making untrue, deceptive, or misleading environmental marketing claims
27 on the labels of its laminate wood flooring products' packaging and on promotional materials
28 including pages of the Lumber Liquidators' Web site. Such claims include, but are not limited

1 to: overstating the environmental attributes of the laminate wood flooring products it distributes
2 throughout the United States, failing to substantiate that the laminate wood flooring products it
3 distributes throughout the United States have received third-party certification of CARB
4 compliance, and misrepresenting explicitly or through implication that the laminate wood
5 flooring Defendant distributes throughout the United States is non-toxic.

6 90. Throughout the Class Period, Defendant has engaged in unlawful business acts
7 and/or practices by expressly warranting on every package of laminate wood flooring products
8 it distributes and sells throughout the United States, as well as in promotional materials and
9 product invoices, that the products comply with CARB Phase 2 formaldehyde standards and all
10 other applicable laws and regulations when they do not. This express warranty also appears on
11 Defendant's Web site, and product invoices and instruction materials.

12 91. The acts, omissions, and practices alleged herein also constitute unfair business
13 acts and practices in that Defendant's conduct is immoral, unscrupulous, and offends public
14 policy by seeking to profit from Chinese-made laminate flooring products that emit dangerous
15 levels of formaldehyde in violation of the laws set forth below.

16 92. The acts, omissions, and practices alleged herein also constitute fraudulent
17 business acts and practices in that Defendant's representations regarding its compliance with
18 CARB emission standards, regarding its measures to ensure CARB compliance by its Chinese
19 manufacturers, and regarding the safety and quality of its laminate flooring are false,
20 misleading, and are likely to deceive reasonable customers.

21 93. The acts, omissions, and practices alleged herein constitute unfair methods of
22 competition and unfair, deceptive, unconscionable, fraudulent and/or unlawful acts or practices
23 in violation of the following California consumer statutes: The California Consumers Legal
24 Remedies Act, Civil Code §§ 1750, *et seq.*, and the California Unfair Competition Law, Bus. &
25 Prof. Code §§ 17200 *et seq.* & 17500, *et seq.*

26 94. Prior to the filing of this Complaint, Plaintiff Pesce requested that Lumber
27 Liquidators refund her money, but Lumber Liquidators refused to do so. Additionally,
28 Defendant has long had notice of Plaintiff's allegations, claims, and demands including from

1 the filing of numerous actions by various plaintiffs against Defendant based upon the facts
2 alleged herein.

3 95. Plaintiff and members of the Class relied on Defendant's misrepresentations.

4 96. As a direct result of Defendant's unlawful, unfair, or fraudulent business acts
5 and/or practices, Plaintiff and members of the Class suffered injury in fact and lost money or
6 property.

7 97. Defendant profited from its sales of its falsely and deceptively advertised
8 products to Plaintiff and Class members.

9 98. Accordingly, Plaintiff, on behalf of herself and the Class, seeks injunctive relief
10 against Defendant in the form of an order prohibiting Defendant from engaging in the alleged
11 misconduct described herein, and other relief as specifically prayed for herein. Plaintiff intends
12 to amend her complaint to assert claims for damages pursuant to these acts once the required
13 notice has been given.

14 **COUNT V**

15 **DECLARATORY RELIEF** 16 **(On Behalf of Plaintiff and the Class)**

17 99. Plaintiff incorporates by reference the foregoing allegations as if set fully herein.

18 100. Plaintiff, on behalf of herself and each member of the Class, contends that
19 Defendant's sale of laminate wood flooring products in California does not comply with the
20 CARB standards. On information and belief, Defendant contends that its sale of all laminate
21 wood flooring products does comply with the CARB Phase 2 standards.

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

24 **PRAYER FOR RELIEF**

25 **WHEREFORE**, Plaintiff, on behalf of herself and all Class members, seeks the
26 following relief against Defendant:

27 A. An order certifying this action as a class action and appointing Plaintiff as Class
28 Representative and the undersigned as Class Counsel;

1 B. A finding and declaration that Defendant's policies and practices of labeling and
2 advertising the laminate wood products it sells in California as CARB compliant is unlawful
3 pursuant to Title 17 of the California Code Regulations, §§ 93120-93120.12;

4 C. Injunctive relief prohibiting Defendant from continuing to distribute and/or sell
5 laminate flooring products that violate the CARB standards;

6 D. Damages in an amount to be determined at trial for damages including actual,
7 compensatory, and consequential damages incurred by Plaintiff and Class members;

8 E. An award to Plaintiff and Class members of reasonable attorneys' fees and
9 costs; and

10 F. An award of such other and further relief as this Court may deem appropriate.

11
12 **DEMAND FOR JURY TRIAL**

13 Plaintiff hereby demands trial by jury on all issues so triable.

14
15 Dated: March 20, 2015

CHAVEZ & GERTLER LLP

16
17 /s/ Mark A. Chavez

18 _____
19 Mark A. Chavez
Attorney for Plaintiff and the
Proposed Plaintiff Class

20 *Additional Counsel for Plaintiff and the Proposed Class:*

21 **Cafferty Clobes Meriwether & Sprengel, LLP**

22 Bryan L. Clobes (*To be admitted Pro Hac Vice*)

23 Kelly L. Tucker (*To be admitted Pro Hac Vice*)

1101 Market Street, Suite 2650

Philadelphia, PA 19107

Tel: (215) 864-2800

25 Fax: (215) 864-2810

26 bclobes@caffertyclobes.com

ktucker@caffertyclobes.com

1 Nyran R. Rasche (*To be admitted Pro Hac Vice*)
2 Christopher B. Sanchez (*To be admitted Pro Hac Vice*)
3 Cafferty Clobes Meriwether & Sprengel, LLP
4 30 N. LaSalle Street, Suite 3200
5 Chicago, IL 60602
6 Tel: (312) 782-4880
7 Fax: (312) 782-4485
8 nrasche@caffertyclobes.com
9 csanchez@caffertyclobes.com
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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

Karen Pesce

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Mark A. Chavez
Chavez & Gertler LLP
42 Miller Ave.
Mill Valley, CA 94941
(415) 381-5599

Additional attorneys on attached.

DEFENDANTS

Lumber Liquidators, Inc.

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)
William Stern, Morrison & Foerster
425 Market St.
San Francisco, CA 94105

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

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 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 |
|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 |
| Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| 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	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 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 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):
15 U.S. Code § 2301
Brief description of cause:
Breach of warranty and unfair and deceptive practices, sale of hazardous flooring

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$ Over \$5 million
CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Edward M. Chen DOCKET NUMBER 3:15-cv-01005-EMC

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)

(x) SAN FRANCISCO/OAKLAND () SAN JOSE () EUREKA

DATE

SIGNATURE OF ATTORNEY OF RECORD

3/20/2015



1 *Additional Counsel for Plaintiff and the Proposed Class:*

2 **POGUST BRASLOW & MILLROOD, LLC**

3 Harris L. Pogust (*To be admitted Pro Hac Vice*)

4 Kevin O'Brien (*To be admitted Pro Hac Vice*)

5 161 Washington Street, Suite 1520

6 Conshohocken, PA 19428

7 Tel: (610) 941-4204

8 Fax: (610) 941-4248

9 hpogust@pbmattorneys.com

10 kobrien@pbmattorneys.com

11 **CAFFERTY CLOBES MERIWETHER & SPRENGEL, LLP**

12 Bryan L. Clobes (*To be admitted Pro Hac Vice*)

13 Kelly L. Tucker (*To be admitted Pro Hac Vice*)

14 1101 Market Street, Suite 2650

15 Philadelphia, PA 19107

16 Tel: (215) 864-2800

17 Fax: (215) 864-2810

18 bclobes@caffertyclobes.com

19 ktucker@caffertyclobes.com

20 Nyran R. Rasche (*To be admitted Pro Hac Vice*)

21 Christopher B. Sanchez (*To be admitted Pro Hac Vice*)

22 Cafferty Clobes Meriwether & Sprengel, LLP

23 30 N. LaSalle Street, Suite 3200

24 Chicago, IL 60602

25 Tel: (312) 782-4880

26 Fax: (312) 782-4485

27 nrasche@caffertyclobes.com

28 csanchez@caffertyclobes.com