

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

TARA SAHN, MICHAEL SAHN, on
behalf of themselves and on behalf of all
others similarly situated,

Plaintiffs,

vs.

LUMBER LIQUIDATORS, INC.,
LUMBER LIQUIDATORS HOLDINGS,
INC., LUMBER LIQUIDATORS
LEASING, LLC, and LUMBER
LIQUIDATORS SERVICES, LLC,

Defendants.

CIVIL ACTION NO.: _____

CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

COME NOW THE PLAINTIFFS, TARA SAHN and MICHAEL SAHN (collectively “Plaintiffs”) on behalf of themselves and all others similarly situated, by and through their undersigned counsel, alleging unto this Honorable Court as follows:

INTRODUCTION

1. This is a proposed class action brought by Plaintiffs on behalf of themselves and a class of similarly situated persons or entities as is more fully defined below against the Defendants, Lumber Liquidators, Inc., Lumber Liquidators Holdings, Inc., Lumber Liquidators Leasing, LLC, and Lumber Liquidators Services, LLC (hereinafter referred to collectively as “Lumber Liquidators” or the “Company”) for damages, as well as injunctive and equitable relief, arising from and relating to their purchase and installation of Lumber Liquidators’ wood flooring material manufactured, sourced and/or imported from China (“Chinese Flooring”).

2. This action arises out of Lumber Liquidators' scheme to import into the United States, and to falsely warrant, advertise and sell Chinese Flooring that fails to comply with relevant and applicable formaldehyde standards and breaches express and implied warranties.

3. Lumber Liquidators manufactured, imported into the United States, and falsely warranted, advertised and sold Chinese Flooring which emits and off-gasses excessive levels of formaldehyde, which is categorized as a known human carcinogen by the United States National Toxicology Program and the International Agency for Research on Cancer.

4. In particular, in contravention of their direct representations that their product complies with strict formaldehyde standards on their product labels, website and elsewhere, the toxic formaldehyde emissions from the Company's Chinese Flooring are in fact multiple times the maximum permissible limits set by those standards at the time of purchase.

5. Defendants' illegal behavior with respect to their manufacturing, marketing, and sale of Chinese Flooring has caused Plaintiffs and the other Class Members to suffer direct financial harm. Plaintiffs' purchases, by failing to comply with the plain warranties of the Chinese Flooring, are markedly less valuable because of their elevated levels of formaldehyde. Plaintiffs would have paid significantly less, assuming they purchased the Chinese Flooring at all, had they known that the products contained elevated levels of the toxin formaldehyde.

6. Defendants' misconduct has also caused damage to other property in the homes of Plaintiffs and other Class Members.

PARTIES

7. Plaintiffs Tara Sahn and Michael Sahn are natural persons and citizens of South Carolina. Plaintiffs own a home on Daniel Island, City of Charleston, County of Berkeley, South Carolina. They purchased Lumber Liquidators' Chinese Flooring and installed it in their home, including their infant's nursery.

8. Defendant Lumber Liquidators, Inc., is a Delaware corporation with its principal place of business located at 3000 John Deere Road, Toano, Virginia 23168.

9. Lumber Liquidators, Inc. is registered to do business in South Carolina and is doing business in South Carolina.

10. Defendant Lumber Liquidators Holdings, Inc., is a Delaware corporation with its principal place of business located at 3000 John Deere Road, Toano, Virginia 23168.

11. Defendant Lumber Liquidators Leasing, LLC, is a Delaware limited liability company with its principal place of business located at 3000 John Deere Road, Toano, Virginia 23168.

12. Defendant Lumber Liquidators Services, LLC, is a Delaware limited liability company with its principal place of business located at 3000 John Deere Road, Toano, Virginia 23168.

13. These Defendants act in concert, control each other and act as agents for each other such that they are not legally distinct and each are liable for the actions of the other.

JURISDICTION and VENUE

14. This Court has jurisdiction over the subject matter of this action pursuant to the Class Action Fairness Act and 28 U.S.C. § 1332(d)(2) in that (i) there is complete diversity (Plaintiffs are citizens of South Carolina and Defendants are domiciled and incorporated in a state other than South Carolina), (ii) the aggregate of the amount in controversy exceeds Five Million Dollars (\$5,000,000.00) exclusive of interests and costs, and (iii) there are more than one hundred (100) members of the proposed Class.

15. This Court has jurisdiction over Lumber Liquidators because the Defendants transact business in South Carolina, advertise and market their products in South Carolina, disseminated the representations and deceptions throughout South Carolina, and derive a substantial income from the sale of products in South Carolina giving rise to personal jurisdiction over Lumber Liquidators.

16. Venue is proper in this District under 28 U.S.C. § 1391 (a)-(d) because, among other things, Plaintiffs reside in this District and substantial parts of the events or omissions giving rise to Plaintiffs' claims occurred in this District and/or a substantial part of property that is the subject of the action is situated in this District.

FACTUAL ALLEGATIONS

17. Lumber Liquidators is one of the largest specialty retailers of hardwood flooring in the United States. The Company sells primarily to homeowners directly or to contractors acting on behalf of homeowners through their network of over three hundred (300) retail stores in forty-six (46) states. The Company also provides customer sales over the Internet, which are then shipped to a Lumber Liquidators' retail store for pickup.

18. Lumber Liquidators has mills in, and buys many of its source wood flooring material from, China.

19. Upon information and belief, in 2013, approximately fifty percent (50%) of the Company's product was sourced from China. In its 2012 Annual Report filed with the Securities and Exchange Commission on Form 10-K on February 20, 2013, Lumber Liquidators' parent company, Lumber Liquidators Holdings, Inc., admitted that its "experience with the legal and regulatory practices and requirements in China is **limited.**" (emphasis added).

20. Lumber Liquidators represents that it negotiates directly with the lumber mills, eliminating the middleman and passing the savings on to its customers. The Company also represents and warrants that it is "environmentally conscientious."

21. As of December 31, 2014, Lumber Liquidators had net sales of over \$1 billion.

22. Contrary to its representations to Plaintiffs and the other Class Members, Lumber Liquidators has knowingly and intentionally sourced, manufactured, sold, and distributed falsely advertised Chinese Flooring that emit excessively high levels of formaldehyde.

23. Lumber Liquidators has manufactured, marketed, labeled and sold, during the Class Period, toxic Chinese Flooring as being compliant with "CARB regulations in the State of California." CARB is an acronym for the California Air Resources Board, an entity that has promulgated safety standards for the emission of formaldehyde for products sold in California.

24. Formaldehyde (CH₂O) is a naturally occurring chemical that can be synthesized and used in certain industrial processes. Formaldehyde is classified as a volatile organic compound (“VOC”), which is a chemical that becomes a gas at room temperature. It is listed as a known human carcinogen by the National Toxicology Program and the International Agency for Research on Cancer and is associated with myriad other adverse medical conditions even in short term exposure, including asthma and rheumatoid arthritis.

25. According to the U.S. Occupational Safety & Health Administration (“OSHA”): “[t]he concentration of formaldehyde that is immediately dangerous to life and health is 100 ppm. Concentrations above 50 ppm can cause severe pulmonary reactions within minutes. These include pulmonary edema, pneumonia, and bronchial irritation which can result in death. Concentrations above 5 ppm readily cause lower airway irritation characterized by cough, chest tightness and wheezing.” Long term exposure has been linked to an increased risk of cancer of the nose and accessory sinuses, nasopharyngeal and oropharyngeal cancer, and lung cancer in humans.¹ The risk of these health problems is significantly greater for children.

26. CARB’s mission is to promote and protect public health, welfare, and ecological resources through effective reduction of air pollutants while recognizing and considering effects on the economy. CARB oversees all air pollution control efforts in California to attain and maintain health-based air quality standards. Additionally, CARB mandates are typically the model for national standards. For example, the Environmental Protection Agency and the Department of Transportation coordinated

¹ Occupational Safety & Health Administration, Standard 1910.1048 App. C (Medical surveillance – Formaldehyde), https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=standards&p_id=10078

their most recent round of proposed rules with CARB. CARB has served as the model for the federal standard in formaldehyde emissions as well.

27. CARB promulgated the Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products, California Code of Regulations, Title 17, §§ 93120-93120.12 (the “CARB Regulations”), in January 2009. The CARB Regulations apply to a range of composite wood products, including flooring, hardwood plywood, particleboard and fiberboard. The CARB regulations (phase 2) dictate that certain wood products sold in the State of California must emit no more than 0.05 parts per million of formaldehyde as determined per relevant testing methods.

28. The United States statute that governs permissible formaldehyde emissions, the Formaldehyde Standards for Composite Wood Products Act of 2010, 15 U.S.C. § 2697 (the “Formaldehyde Standards Act”), was signed into law on July 7, 2010. The Formaldehyde Standards Act adopted the standards established by CARB as a nationwide standard.

29. Lumber Liquidators’ Chinese Flooring is not what it purports to be. The Chinese Flooring contains a dangerous level of formaldehyde gas which exceeds the “CARB regulations in the State of California” and the standards promulgated in the Toxic Substance Control Act, 15 U.S.C. § 2601 *et seq.*, and the Formaldehyde Standards Act, 15 U.S.C. § 2697 and is hazardous to human health.

30. Formaldehyde is the sort of toxic substance to which people may be exposed without knowing they are at risk.

31. As such, the Chinese Flooring Lumber Liquidators sold to Plaintiffs and other customers poses great health risks.

32. Because the Chinese Flooring emits excessive formaldehyde levels, the Chinese Flooring violates the South Carolina building code, industry standards, CARB standards, as well as Lumber Liquidators' express representations and warranties.

33. The defects and deficiencies are due to fundamental design, engineering and manufacturing errors well within Lumber Liquidators' area of expertise.

34. As such, Lumber Liquidators negligently manufactured, marketed, labeled and sold the Chinese Flooring.

35. Moreover, when selling the Chinese Flooring, Lumber Liquidators concealed its knowledge of defects in the Chinese Flooring.

36. Further, Lumber Liquidators' marketing materials for the Chinese Flooring contain false and misleading information relating to compliance with California standards and was designed to increase sales of the product at issue.

37. Despite knowing of the defects in the Chinese Flooring, Lumber Liquidators have not notified all purchasers, homeowners, builders or contractors with the Chinese Flooring of the defect, nor provided uniform relief. To the contrary, as of the date of this filing, Lumber Liquidators' website continues to maintain that their flooring is safe and meets CARB standards.

38. Plaintiffs and Class Members have not received the value for which they bargained when the Chinese Flooring was purchased. There is a substantial difference in value between the Chinese Flooring as warranted and the Chinese Flooring containing toxic levels of formaldehyde.

39. Plaintiffs and the Class have been damaged by Lumber Liquidators' dangerous Chinese Flooring and deceptive acts. Plaintiffs and the Class are entitled to

a return of the full purchase price paid for the Chinese Flooring and other damages to be proven at trial.

CLASS ACTION ALLEGATIONS

40. Plaintiffs bring this class action pursuant to Fed. R. Civ. P. 23. The requirements of Fed. R. Civ. P. 23(a), (b)(2), (b)(3) and (c)(4) are met with respect to the class defined below:

**All persons and entities who purchased and installed wood flooring from Lumber Liquidators either directly or through an agent, that was sourced, manufactured or processed in China.
(the “Class”)**

Excluded from the Class are: (a) any Judge or Magistrate presiding over this action and members of their families; (b) Lumber Liquidators, its affiliates, employees, officers and directors, persons or entities that distribute or sell Lumber Liquidators’ flooring; (c) all persons who properly execute and file a timely request for exclusion from the Class; and (d) the attorneys of record in this case.

41. The Class includes individuals who are members of a “South Carolina Subclass” defined as: “All members of the Class who were residents of South Carolina at the time of their purchases.”

42. *Numerosity:* The Class is composed of thousands of persons geographically dispersed, the joinder of whom in one action is impractical. Moreover, upon information and belief, the Class Members are ascertainable and identifiable from Lumber Liquidators’ records or documents.

43. *Commonality:* Questions of law and fact common to the Class exist as to all members of the Class and predominate over any questions affecting only individual

members of the Class. These common legal and factual issues include, but are not limited to, the following:

- a. Whether Lumber Liquidators' Chinese Flooring products emit excessive levels of formaldehyde;
- b. Whether Lumber Liquidators represented and warranted that their Chinese Flooring products complied with their label descriptions;
- c. Whether Lumber Liquidators knew or should have known that their Chinese Flooring did not conform to its label description;
- d. Whether Lumber Liquidators omitted and concealed material facts from their communications and disclosures to Plaintiffs and other Class Members regarding the illegal sourcing of their Chinese Flooring products;
- e. Whether Lumber Liquidators breached their express or implied warranties to Plaintiffs and other Class Members with respect to their Chinese Flooring products;
- f. Whether, as a result of Lumber Liquidators' conduct, Plaintiffs and the other Class Members have suffered damages; and, if so, the appropriate measure of damages to which they are entitled;
- g. Whether, as a result of Lumber Liquidators' conduct, Lumber Liquidators was unjustly enriched; and
- h. Whether, as a result of Lumber Liquidators' misconduct, Plaintiffs and the other Class Members are entitled to equitable relief and/or other relief, and, if so, the nature of such relief.

44. *Typicality*: Plaintiffs' claims are typical of the claims of the other Class Members. Plaintiffs and each of the other Class members have been injured by the same wrongful practices of Lumber Liquidators. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the other Class members' claims and are based on the same legal theories.

45. *Adequate Representation*: Plaintiffs will fully and adequately assert and protect the interests of the other Class Members and have no interests antagonistic to

those of the Class. In addition, Plaintiffs have retained class counsel who are experienced and qualified in prosecuting class action cases. Neither Plaintiffs nor their attorneys have any interests contrary to or conflicting with the interests of other Class Members.

46. *Predominance and Superiority:* This matter is appropriate for class certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and Class action practice is superior to other available methods for the fair and efficient adjudication of this controversy, since, among other reasons, individual joinder of all members of the Class is impracticable. Should individual Class Members be required to bring separate actions, this Court and courts throughout South Carolina would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing a unitary adjudication, economies of scale and comprehensive supervision by a single Court. Additionally, Lumber Liquidators has acted or refused to act on grounds generally applicable to the Class and, as such, relief to the Class Members as a whole is appropriate.

COUNT I

(Violation of the Magnuson-Moss Warranty Act)

47. Plaintiffs hereby incorporate the allegations of the foregoing paragraphs as if fully restated herein.

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

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

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

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

52. Lumber Liquidators breached their warranties by:

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

53. Lumber Liquidators’ breach of their express warranties deprived Plaintiffs and the other Class Members of the benefits of their bargains and caused damage to other property.

54. The amount in controversy of Plaintiffs’ individual claims meets or exceeds the sum or value of twenty-five dollars (\$25.00). In addition, the amount in controversy

meets or exceeds the sum or value of fifty thousand dollars (\$50,000.00), exclusive of interests and costs, computed on the basis of all claims to be determined in this suit.

55. As a direct and proximate result of Lumber Liquidators' violation of the Magnusson-Moss Warranty Act, Plaintiffs and other Class Members sustained damages in an amount to be determined at trial. Lumber Liquidators' conduct damaged Plaintiffs and the other Class Members, who are entitled to recover damages, consequential damages, specific performance, diminution in value, costs, attorneys' fee, rescission, and other relief as appropriate.

COUNT II
(Negligence/Gross Negligence)

56. Plaintiffs hereby incorporate the allegations of the foregoing paragraphs as if fully restated herein.

57. Lumber Liquidators owed a duty to Plaintiffs and all Class Members to manufacture and sell flooring that was free of excessive formaldehyde levels that would cause damage to Plaintiffs' person and property.

58. Lumber Liquidators had a duty to Plaintiffs and all Class Members to test the Chinese Flooring to ensure safe levels of formaldehyde.

59. Lumber Liquidators had a duty to Plaintiffs and to all Class Members to ensure that the Chinese Flooring complied with all industry standards and all applicable building codes throughout South Carolina.

60. Lumber Liquidators designed, manufactured, imported, marketed, labeled, advertised and sold the Chinese Flooring.

61. Lumber Liquidators failed to exercise ordinary and reasonable care in the design, manufacture, import, marketing, labeling, advertising and sale of the Chinese Flooring.

62. Lumber Liquidators failed to exercise ordinary and reasonable care to ensure that the Chinese Flooring did not contain a latent defect that would result in dangerous and potentially life threatening levels of formaldehyde emissions.

63. Lumber Liquidators breached their duties to Plaintiffs and other Class Members by, but not limited to, the following particulars:

- a. In failing to ensure safe levels of formaldehyde emissions;
- b. In failing to test the Chinese Flooring or in failing to verify third-party test results;
- c. In failing to ensure the Chinese Flooring complied with industry standards and the applicable building codes;
- d. In failing to forewarn Plaintiffs and other purchasers, installers and users regarding the known risk of formaldehyde emissions in the Chinese Flooring; and
- e. In concealing information concerning the dangerous levels of formaldehyde emissions in the Chinese Flooring from Plaintiffs and Class Members while knowing that the Chinese Flooring was defective, unsafe, and not in conformance with accepted industry standards.

64. Plaintiffs and the Class Members have been damaged because the Chinese Flooring does not perform its ordinary purpose and emits high levels of formaldehyde gas.

65. As a direct, foreseeable and proximate cause of Lumber Liquidators' negligence, gross negligence, willful and wanton conduct, Plaintiffs and Class Members

have been damaged and are entitled to an award of all actual, consequential, direct, indirect, special and punitive damages against Lumber Liquidators.

COUNT III
(Breach of Express Warranty)

66. Plaintiffs hereby incorporate the allegations of the foregoing paragraphs as if fully restated herein.

67. Lumber Liquidators warranted that their flooring was free of defects when they sold their Chinese Flooring products to Plaintiffs and Class Members. Lumber Liquidators further represented that their flooring products complied with CARB and EU formaldehyde standards and all applicable laws and regulations. Plaintiffs and the Class Members reasonably relied upon these express warranties.

68. Lumber Liquidators' warranties became part of the basis of the bargain.

69. Lumber Liquidators breached their warranties by, but not limited to, the following particulars:

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

70. Lumber Liquidators was on notice regarding the excessively high levels of formaldehyde in its flooring from Plaintiffs as well as complaints and requests for refunds they received from Class Members, Internet message boards, published product reviews, and media reports.

71. As a direct and proximate result of Lumber Liquidators' misconduct, Plaintiffs and Class Members have suffered damages and continue to suffer damages, including economic damages at the point of sale. Additionally, Plaintiffs and Class Members have either incurred or will incur economic damages at the point of repair in the form of the cost of repair and/or the cost of purchasing non-defective flooring to replace the Lumber Liquidators' flooring and the cost of repair of other components of their homes damaged by the removal of the defective Chinese Flooring.

72. Plaintiffs and Class Members are entitled to legal and equitable relief against Lumber Liquidators, including damages, consequential damages, specific performance, rescission, attorneys' fees, costs of suit, and other relief as appropriate.

73. Any limitations in the published warranty should be deemed void as unconscionable, in violation of law, in violation of public policy and/or should be reformed.

COUNT IV
(Breach of Implied Warranties)

74. Plaintiffs hereby incorporate the allegations of the foregoing paragraphs as if fully restated herein.

75. At all times relevant hereto, by operation of law, Lumber Liquidators owed a duty to Plaintiffs and Class Members that their products be adequately contained, packaged, and labeled and conform to the promises or affirmations of fact made on the container or label.

76. At all times relevant hereto, by operation of law, Lumber Liquidators owed a duty to Plaintiffs and Class Members that their products be reasonably fit for the

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

77. Lumber Liquidators breached these duties owed to Plaintiffs and the Class by selling flooring that was not merchantable and could not pass without objection in the trade at the time of sale.

78. Lumber Liquidators was notified that their product was not merchantable within a reasonable time after the defect manifested itself to Plaintiffs and Class Members.

79. As a result of the non-merchantability of Lumber Liquidators' Chinese Flooring, Plaintiffs and Class Members sustained a loss or damages, entitling Plaintiffs and Class Members to injunctive relief, compensatory damages, equitable and declaratory relief, costs, reasonable attorneys' fees and rescission.

80. Any attempts by Lumber Liquidators to disclaim or limit these implied warranties should be deemed void as unconscionable, in violation of law, in violation of public policy and/or should be reformed.

COUNT V
(Strict Liability)

81. Plaintiffs hereby incorporate the allegations of the foregoing paragraphs as if fully restated herein.

82. At all times relevant herein, Lumber Liquidators was in the business of designing, engineering, manufacturing, marketing, labeling, distributing and/or selling products and owed a statutory duty of care to Plaintiffs and Class Members.

83. In designing, engineering, manufacturing, marketing, labeling, distributing and/or selling the Chinese Flooring, Lumber Liquidators placed the Chinese Flooring into the stream of commerce.

84. Lumber Liquidators defectively designed, engineered, manufactured, marketed, labeled, distributed and/or sold a product that is unreasonably dangerous to persons and property in that their product emits unsafe and toxic levels of formaldehyde gas.

85. The Chinese Flooring posed a substantial likelihood of harm to Plaintiffs and Class Members at the time they were sold. Plaintiffs and Class Members could not have discovered the defects nor perceived the Chinese Flooring's defective and dangerous condition through the exercise of reasonable care.

86. Were the defects known at the time of engineering, design and manufacture, a reasonable person would conclude that the utility of the product did not outweigh the risk inherent in marketing and selling a product designed and manufactured in that manner.

87. Feasible alternatives existed to make the Chinese Flooring safer for intended use at the time of engineering, design and manufacture. Lumber Liquidators were aware or should have been aware that feasible alternatives existed which would maintain the utility of the product and eliminate the harm.

88. The Chinese Flooring reached Plaintiffs and Class Members, and were intended and expected to reach Plaintiffs and Class Members, without substantial change in the condition in which they were sold.

89. Lumber Liquidators, in violation of South Carolina Code § 15-73-10, engineered, designed, manufactured, marketed, labeled, sold and otherwise placed into the stream of commerce the Chinese Flooring, which were defective and dangerous to Plaintiffs and Class Members and their property.

90. As a direct, foreseeable and proximate result of the sale of defective Chinese Flooring, Plaintiffs and Class Members have suffered damages including but not limited to physical damage to their properties, other contamination and deterioration as well as diminution in value of their properties, entitling Plaintiffs and Class Members to damages in an amount to be shown at trial.

COUNT VI
(Fraudulent Misrepresentation)

91. Plaintiffs hereby incorporate the allegations of the foregoing paragraphs as if fully restated herein.

92. Lumber Liquidators was in a position of superiority over Plaintiffs and Class Members with respect to knowledge of the unacceptably high formaldehyde levels in the Chinese Flooring, which they failed to disclose to Plaintiffs and other Class Members.

93. Lumber Liquidators affirmatively and falsely misled Plaintiffs and Class Members by representing that their Chinese Flooring met the highest standards for formaldehyde compliance, including CARB standards, and was free from defects and fit for its customary and normal use as flooring installed inside a dwelling.

94. At all relevant times, Lumber Liquidators continuously and consistently failed to correct their misrepresentations concerning the formaldehyde levels in their Chinese Flooring when they knew those representations to be false and they willfully,

wantonly and recklessly disregarded whether the representations were true. Lumber Liquidators' failure persisted despite countless opportunities to correct their representations through their employees, sales literature, advertising, and its website.

95. Upon information and belief, these representations were made by Lumber Liquidators with the intent of defrauding and deceiving Plaintiffs, the Class Members and the consuming public, all of which evinced reckless, willful indifference to the safety and welfare of Plaintiffs and the Class Members.

96. Upon information and belief, in one such instance where Lumber Liquidators was informed of third-party testing that identified excessive levels of formaldehyde in a particular product, they announced a clearance sale of that particular product in an effort to get rid of it and sell it to the consuming public rather than take it off the market or correct the dangerous defect.

97. At the time these representations were made by Lumber Liquidators, the Plaintiffs and Class Members were unaware of the falsity of the representations and reasonably believed them to be true.

98. Lumber Liquidators failed to disclose material facts and correct material misrepresentations, and, as a proximate result, Plaintiffs and the Class have been damaged because they purchased defective Chinese Flooring that cause damage to other property and they have suffered and continue to suffer other financial damage and injury.

COUNT VII
(Unjust Enrichment)

99. Plaintiffs hereby incorporate the allegations of the foregoing paragraphs as if fully restated herein.

100. Plaintiffs and Class Members conferred a benefit on Lumber Liquidators when they purchased the Chinese Flooring.

101. Lumber Liquidators has been unjustly enriched in retaining the revenues derived from Plaintiffs and Class Members' purchases of the Chinese Flooring, the retention of which under these circumstances is unjust and inequitable because of the defective Chinese Flooring that has caused Plaintiffs and Class Members' damages.

102. Plaintiffs and Class Members have suffered a monetary loss as a result of Lumber Liquidators' unjust enrichment because: (a) they would not have purchased the Chinese Flooring on the same terms if the true facts concerning the unsafe condition had been known; (b) they paid a price premium due to the fact that the Chinese Flooring would be free from defects and met stringent CARB and other standards; (c) Lumber Liquidators charged a higher price than the true value of the Chinese Flooring; and (d) the Chinese Flooring did not perform as promised.

103. Because Lumber Liquidators' retention of the non-gratuitous benefit conferred on them by Plaintiffs and Class Members is unjust and inequitable, Lumber Liquidators must pay restitution to Plaintiffs and Class Members for their unjust enrichment.

104. Plaintiffs and Class Members did not confer these benefits gratuitously and it would be inequitable and unjust for Lumber Liquidators to retain the wrongfully obtained profits. Plaintiffs and Class Members are entitled to restitution of, disgorgement of, and/or the imposition of a construction trust upon all profits, benefits and other compensation obtained by Lumber Liquidators from their deceptive, misleading and unlawful conduct.

COUNT VIII
(Declaratory Relief)

105. Plaintiffs hereby incorporate the allegations of the foregoing paragraphs as if fully restated herein.

106. Plaintiffs and Class Members bring this claim pursuant to 28 U.S.C § 2201.

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

108. Plaintiffs and the Class seek a declaration that:

- a. The Chinese Flooring has a defect which results in unsafe levels of formaldehyde emissions. The defect may not be detectable until after the warranty provided by Lumber Liquidators has expired;
- b. The Chinese Flooring has a defect in workmanship and material that allows for unsafe levels of formaldehyde emissions. The defect may not be detectable until after the warranty provided by Lumber Liquidators has expired;
- c. All persons or entities who own structures containing Chinese Flooring should be provided the best practicable notice of the defect, which cost shall be borne by Lumber Liquidators;
- d. Certain provisions of Lumber Liquidators' warranty are void as unconscionable;
- e. Lumber Liquidators shall re-audit and reassess all prior warranty claims, including claims previously denied in whole or in part, where the denial was based on warranty or other grounds, and pay the full cost of repairs and damages; and
- f. Lumber Liquidators shall establish an inspection program and protocol, under Court supervision, to be communicated to Class Members, which will require Lumber Liquidators to inspect, upon request, a Class Member's structure to determine formaldehyde emission levels are

safe. Any disputes over coverage shall be adjudicated by a Special Master appointed by the Court and/or agreed to by the parties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, prays this Honorable Court inquire into the matters set forth herein and award judgment for Plaintiffs and the Class against Defendants as follows:

- a. For an order certifying this case as a Class action pursuant to Fed. R. Civ. P. 23, appointing Plaintiffs as representatives of the Class, and appointing the undersigned Plaintiffs' counsel as Class Counsel;
- b. For compensatory damages sustained by Plaintiffs and the Class;
- c. For all actual damages, direct damages, consequential damages, specific performance, restitution, rescission sustained by Plaintiffs and the Class;
- d. For declaratory relief as requested herein;
- e. For injunctive relief enjoining Lumber Liquidators from further deceptive sales practices with respect to the Company's flooring;
- f. For all costs associated with prosecuting this action;
- g. For both pre-judgment and post-judgment interest;
- h. For punitive damages;
- i. For reasonable attorneys' fees and expert fees; and
- j. For all such other relief as this Court may deem just and proper.

DEMAND FOR A JURY TRIAL

Plaintiffs, on behalf of themselves and on behalf of the Class Members, hereby demand a trial by jury as to all issues so triable.

Respectfully submitted,

THURMOND KIRCHNER TIMBES & YELVERTON, P.A.

By: s/ Jesse A. Kirchner
JESSE A. KIRCHNER
Federal Bar No.: 8067
MATTHEW S. BYZET
Federal Bar No.: 11338
15 Middle Atlantic Wharf
Charleston, SC 29401
T: 843-937-8000
F: 843-937-4200
jkirchner@tktylawfirm.com
mbyzet@tktylawfirm.com

Attorneys for Plaintiffs

March 12, 2015

Charleston, South Carolina.