

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

Adam White and Julia White, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

vs.

LUMBER LIQUIDATORS, INC., a  
Delaware corporation,

Defendant.

Case No. \_\_\_\_\_

JURY TRIAL DEMANDED

**CLASS ACTION COMPLAINT**

Plaintiffs, Adam White and Julia White, individually and on behalf of all others similarly situated, allege the following against Defendant Lumber Liquidators, Inc. (“Lumber Liquidators” or “Defendant”).

**Introduction**

1. Plaintiffs bring this class action against Lumber Liquidators on behalf of themselves and the Class, as set forth herein, arising from their purchase and installation of Lumber Liquidators’ laminate wood flooring products manufactured in China (“Chinese Flooring”).

2. Lumber Liquidators controls and supervises the manufacturing of its Chinese Flooring in several mills located in China. Lumber Liquidators packages, distributes, markets, and sells its Chinese Flooring to consumers within South Carolina and throughout the United States.

3. In direct contrast with its warranties, product labels, and representations, Lumber Liquidators manufactures, sells, and distributes its Chinese Flooring products that emit and off-gas excessive levels of formaldehyde in violation of formaldehyde emission standards.

4. Formaldehyde is a known human carcinogen by the United States National Toxicology Program and the International Agency for Research on Cancer. Long term exposure to formaldehyde is linked to increased risk of cancer of the nose and sinuses, nasopharyngeal and oropharyngeal cancer, lung cancer, and leukemia. Short term exposure to formaldehyde is also linked to a myriad of adverse medical conditions, including asthma.

5. Contrary to Lumber Liquidators' express representations that its Chinese Flooring complies with stringent formaldehyde standards on its product labels, its website, and elsewhere, the toxic formaldehyde emissions from its Chinese Flooring products are multiple times the maximum permissible limits set by those standards at the time of consumer purchase.

6. Upon information and belief, Lumber Liquidators knows and has known for almost two years that its Chinese Flooring contains and emits unsafe levels of formaldehyde and fails to comply with relevant and applicable formaldehyde standards in direct contradiction with its representations and express and implied warranties. Still, Lumber Liquidators has knowingly continued to falsely label, warrant, advertise, and sell its Chinese Flooring to consumers within South Carolina and throughout the United States.

7. From October 2013 through November 2014, three reputable and accredited laboratories tested the formaldehyde emission levels of laminate wood flooring from numerous retail outlets, including Lumber Liquidators. The highest formaldehyde levels, by far, were found in the Chinese Flooring manufactured and sold by Lumber Liquidators.

8. Subsequently, in 2014 and early 2015, 60 Minutes news conducted an independent investigation into Lumber Liquidators' Chinese Flooring. Thirty-one boxes of various Chinese Flooring products were purchased by investigators from various Lumber Liquidators stores and samples of this flooring were sent for testing at two certified laboratories. Of the thirty-one samples, only one was compliant with formaldehyde emission standards, and "[s]ome were more than 13 times over the California [emission] limit." *See 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-safety-violations/> (last visited Mar. 10, 2015).

9. Undercover investigators were sent by 60 Minutes to three Chinese mills that manufacturer Chinese Flooring on behalf of Lumber Liquidators. 60 Minutes reported as follows:

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

*See 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-safety-violations/> (last visited Mar. 10, 2015).

10. Despite its knowledge to the contrary, Lumber Liquidators has not provided its consumers with any warnings relating to the unsafe and unlawful formaldehyde levels in its Chinese Flooring. Instead, it continues to this day to represent on its Chinese Flooring product labels, on its website, and its warranties that its flooring products comply with stringent formaldehyde standards.

11. Lumber Liquidators' illegal and unlawful behavior with respect to its manufacturing, marketing, and sale of its Chinese Flooring to Plaintiffs and the members of the Class has caused Plaintiffs and the Class to suffer direct financial harm and economic loss. Lumber Liquidators has failed to comply with the express and implied warranties of its Chinese Flooring at the time of consumer purchase, resulting in a markedly less valuable product due to the elevated formaldehyde levels. If purchased at all, Plaintiffs would have paid significantly less had they known that the Chinese Flooring contained elevated levels of the known toxin and carcinogen formaldehyde.

12. Plaintiffs assert claims individually and on behalf of all others similarly situated for breach of express and implied warranty arising from Lumber Liquidators' scheme to import, market, sell, and make false representations relating to its Chinese Flooring.

### **Parties**

13. Defendant Lumber Liquidators, Inc. is, at all relevant times, a Delaware corporation with its principal place of business and headquarters in Toano, Virginia. Lumber Liquidators, Inc. is one of the largest specialty retailers of hardwood flooring in the United States and has been engaged in the business of designing, manufacturing, distributing, marketing, and selling laminate wood flooring products, including its Chinese Flooring, to consumers in South Carolina. Lumber Liquidators has seven locations in South Carolina and regularly conducted and continues to conduct business in South Carolina, and its products, including its Chinese Flooring products, are regularly sold and used by consumers in South Carolina. Lumber Liquidators has, therefore, submitted itself to the jurisdiction of this Court.

14. Plaintiffs, Adam White and Julia White, are and at all relevant times have been residents and citizens of Charleston, South Carolina. In or about June 2012, and in or about

March 2013, Plaintiffs purchased Chinese Flooring for their home directly from Lumber Liquidators at its store located at 2049 Savannah Highway, Charleston, South Carolina. At the time of Plaintiffs' purchase, Lumber Liquidators falsely represented and warranted the Chinese Flooring to be compliant with stringent formaldehyde emission standards. Plaintiffs relied on Lumber Liquidators' representations regarding its compliance with United States laws and regulations when deciding to purchase flooring. As a direct result of Lumber Liquidators' representations, Plaintiffs paid more for the Chinese Flooring than they would have or would not have purchased the Chinese Flooring at all but for Lumber Liquidators' representations and deceptive conduct.

#### **Jurisdiction and Venue**

15. This Court has subject matter jurisdiction under 28 U.S.C. § 1332, which provides for federal jurisdiction in class actions with minimal diversity when damages exceed five million dollars, exclusive of interest and costs. This Court has supplemental subject matter jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

16. Plaintiffs reside in this district and Plaintiffs purchased Lumber Liquidators' Chinese Flooring while residing in this district. The unlawful practices of Defendant are alleged to have been committed in this district, and Defendant has locations in and regularly conducts business in this district. Venue is thus appropriate within the contemplation of 28 U.S.C. § 1391.

#### **Factual Background**

17. Lumber Liquidators was created in Massachusetts in 1993 by building contractor Tom Sullivan. Within several years, the company expanded and in 1999 it moved its headquarters from Boston to Colonial Heights, Virginia. In 2004, Lumber Liquidators moved to its current headquarters in Toano, Virginia.

18. Lumber Liquidators is known as the nation's largest specialty retailer of hardwood flooring and is a major manufacturer with more than 350 locations throughout the United States, including seven locations in South Carolina, two of which are in this district. Lumber Liquidators represents that it negotiates "directly with the mills" to eliminate the "middleman" and pass savings on to its customers. It further represents and warrants that it is "environmentally conscientious" and "only purchases from suppliers who practice sustainable harvesting, which allows forests to heal and re-grow faster."

19. Lumber Liquidators supervises and controls the manufacturing and packaging of its laminate wood flooring products in China that it then distributes, markets, and sells in South Carolina. This Chinese Flooring contains formaldehyde and emits formaldehyde gas at levels that exceed, and sometimes grossly exceed, formaldehyde emission standards in direct contradiction with Lumber Liquidators' labeling, representations, and warranties. These Chinese Flooring products include at least the following:

- (a) 8 mm Bristol County Cherry Laminate Flooring
- (b) 8 mm Dream Home Nirvana French Oak Laminate Flooring
- (c) 8 mm Dream Home Nirvana Royal Mahogany Laminate Flooring
- (d) 12 mm Dream Home Kensington Manor Antique Bamboo Laminate Flooring
- (e) 12 mm Dream Home St. James Oceanside Plank Bamboo Laminate Flooring
- (f) 12 mm Dream Home Kensington Manor Warm Springs Chestnut Laminate Flooring
- (g) 15 mm Dream Home St. James Sky Lakes Pine Laminate Flooring
- (h) 12 mm Dream Home Ispiri Chimney Tops Smoked Oak Laminate Flooring
- (i) 12 mm Dream Home Kensington Manor Imperial Teak Laminate Flooring
- (j) 12 mm Dream Home St. James Vintner's Reserve Laminate Flooring

- (k) 12mm Dream Home St. James Toasted Chicory Laminate Flooring
- (l) 12 mm Dream Home Kensington Manor Cape Doctor Laminate Flooring
- (m) 12 mm Dream Home St. James Cumberland Mountain Oak Laminate Flooring
- (n) 12 mm Dream Home Ispiri Americas Mission Olive Laminate Flooring
- (o) 12 mm Dream Home Kensington Manor Glacier Peak Poplar Laminate Flooring
- (p) 12 mm Dream Home Kensington Manor Golden Teak Laminate Flooring
- (q) 12 mm Dream Home Kensington Manor Handscraped Imperial Teak Laminate Flooring
- (r) 12 mm Dream Home Kensington Manor Handscraped Summer Retreat Teak Laminate Flooring
- (s) 12 mm Dream Home Kensington Manor Sandy Hills Hickory Laminate Flooring
- (t) 12 mm Dream Home Kensington Manor Tanzanian Wenge Laminate Flooring
- (u) 12 mm Dream Home St. James Blacksburg Barn Board Laminate Flooring
- (v) 12 mm Dream Home St. James Brazilian Koa Laminate Flooring
- (w) 12 mm Dream Home St. James Golden Acacia Laminate Flooring
- (x) 12 mm Dream Home Ispiri Poplar Forest Oak Laminate Flooring
- (y) 12 mm Dream Home Kensington Manor Fumed African Ironwood Laminate Flooring
- (z) 12 mm Dream Home St. James African Mahogany Laminate Flooring
- (aa) 12 mm Dream Home St. James Chimney Rock Charcoal Laminate Flooring
- (bb) 12 mm Dream Home St. James Nantucket Beech Laminate Flooring

20. Upon information and belief, Lumber Liquidators' Chinese Flooring products, including those listed above, are manufactured in China using a common formula, design, or process and emit formaldehyde gas that exceeds formaldehyde emission standards.

21. Formaldehyde is classified as a volatile organic compound (“VOC”) 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 a myriad of diseases and other adverse medical conditions even with short term exposure, including asthma and rheumatoid arthritis. Due to the harmful effects of formaldehyde on human health, various laws have been enacted to reduce exposure.

22. Unbeknownst to consumers and contrary to its product labels, website, and other materials, Lumber Liquidators has manufactured, distributed, marketed, and sold Chinese Flooring that emits unlawful and dangerous levels of formaldehyde gas. Not only was this hidden from consumers at the time of purchase, as more fully set forth below, Lumber Liquidators expressly states and represents to consumers on its product labels that its Chinese Flooring is “Compliant for Formaldehyde.”

23. Lumber Liquidators’ marketing materials, including its website, specifically represent to consumers that all of its flooring products, including its Chinese Flooring products, comply with the strict formaldehyde emission regulations set forth by the California Air Resources Board (“CARB”). For example, Lumber Liquidators expressly states and warrants on its website as follows:

Is Lumber Liquidators Compliant with the California law?

**Laminate and engineered flooring products sold by Lumber Liquidators are purchased from mills whose production method has been certified by a Third Party Certifier approved by the State of California to meet the CARB standards.** The scope of the certification by the Third Party Certifier includes the confirmation that the manufacturer has implemented the quality systems, process controls, and testing procedures outlined by CARB and that their products conform to the specified regulation limits. The Third Party Certifier also provides ongoing oversight to validate the manufacturers’ compliance and manufacturers must be periodically re-certified. [Emphasis in original.]



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.** [Emphasis in original.]

What extra steps does Lumber Liquidators take to ensure compliance?

In addition to the California Air Resources Board requirements, **Lumber Liquidators regularly selects one or more finished products from each of its suppliers and submits them for independent third-party lab testing.** This is done as a monitoring activity to validate ongoing quality control. [Emphasis in original.]

See <http://lumberliquidators.com/ll/flooring/ca-air-resources-board-regulations> (last visited Mar. 10, 2015).

24. On Lumber Liquidators' Purchase Order Terms and Conditions, which are also available on its website, Lumber Liquidators expressly warrants as follows:

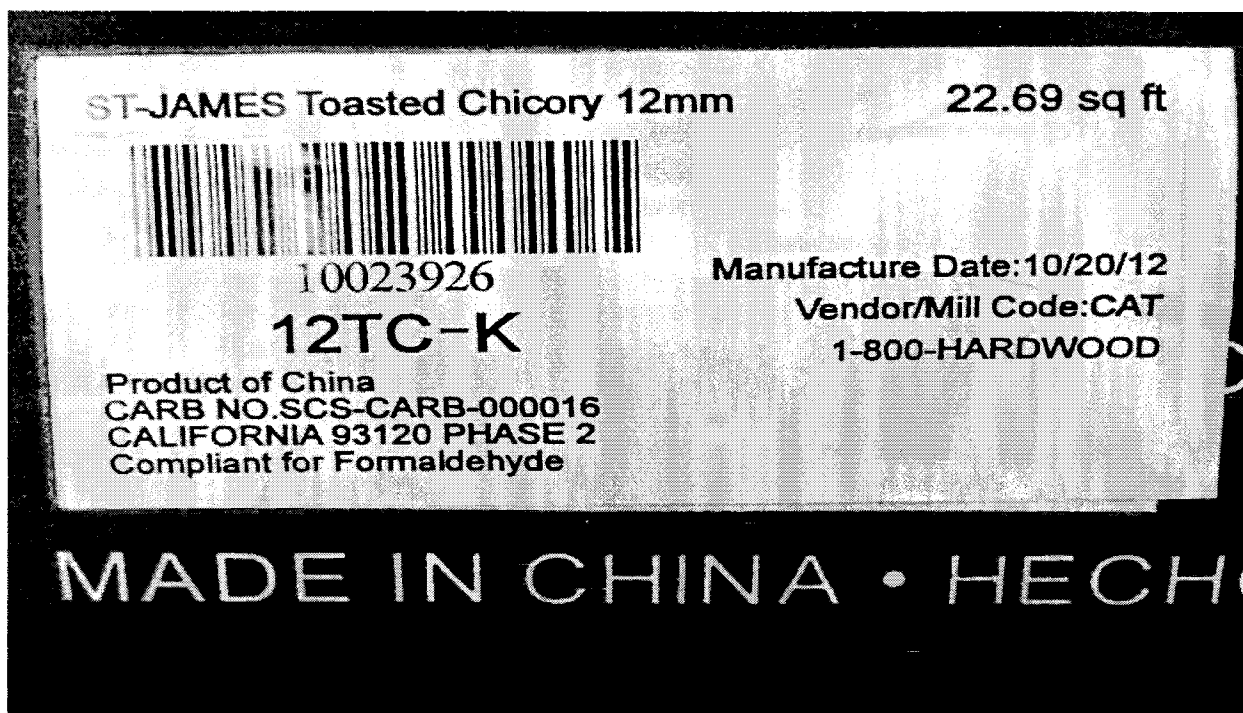
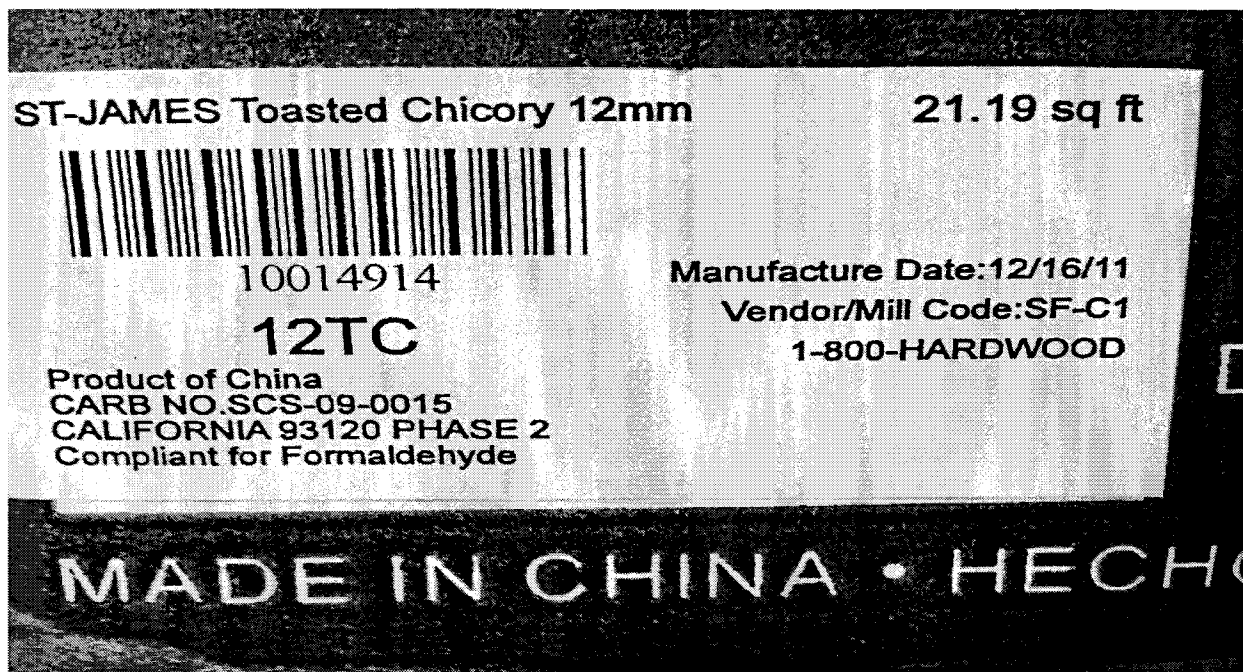
SELLER'S WARRANTIES: Seller expressly warrants that all goods covered by this Purchase Order will: (a) strictly conform to Seller's specifications, drawings, samples and other written materials and descriptions. . . . (b) be free from defects in design, material and workmanship; (c) be of merchantable quality and suitable for the particular purposes intended, whether express or reasonably implied; and (d) bear all warnings, labels, and markings required by applicable laws and regulations. In addition, Seller warrants that: (e) none of the goods covered hereby, to the extent they are subject to laws prohibiting adulteration or misbranding, is adulterated or misbranded within the meaning of such laws as of the date of delivery to Lumber Liquidators; (f) all goods covered hereby may be introduced into the stream of commerce without violation of applicable laws and regulations; and (g) all goods furnished or supplied pursuant to this Purchase Order have been sourced, produced, sold, delivered, declared, packaged, labeled, manufactured, and/or rendered to Lumber Liquidators in compliance with all applicable laws, codes and regulations.

See <http://www.lumberliquidators.com/ll/customer-care/potc800201> (last visited Mar. 10, 2015).

This warranty applies to all of Lumber Liquidators' products.

25. In addition, the product packaging labels for Lumber Liquidators' Chinese

Flooring, including Plaintiffs' Chinese Flooring labels depicted below, provides, "CARB NO. . . CALIFORNIA 93120 Phase 2 Compliant for Formaldehyde."



Upon information and belief, this statement is included on all Lumber Liquidators' laminate flooring product packaging, including its Chinese Flooring, regardless of whether the flooring

products actually comply with CARB standards.

26. After information relating to the dangerous formaldehyde levels in Lumber Liquidators' products was featured on 60 Minutes, Lumber Liquidators responded by posting a letter on its website from its founder and chairman, Tom Sullivan. Blaming the "attacks" against it on a "small group of short-selling investors who are working together for the sole purpose of making money by lowering our stock price[,]" Mr. Sullivan expressly states and warrants as follows:

Let me make one thing very clear – our laminate products, all of our products, are 100% safe.

...

We comply with applicable regulations regarding our products, including California standards for formaldehyde emissions for composite wood products – the most stringent rules in the country. We take our commitment to safety even further by employing compliance personnel around the world and utilizing the latest in cutting-edge technology to provide our customers with top quality and high value flooring.

See <http://www.lumberliquidators.com/sustainability/60-minutes-letter-from-tom/> (last visited Mar. 10, 2015).

27. Contrary to Lumber Liquidators' detailed representations and warranties, its Chinese Flooring products off-gas formaldehyde at the time of purchase at levels that far exceed the standards propounded by CARB resulting in financial harm and economic loss to Plaintiffs and the members of the Class who purchased these products.

28. Upon information and belief, Lumber Liquidators has knowingly misrepresented its Chinese Flooring products as compliant with formaldehyde emission standards and knowingly failed to disclose to consumers that its Chinese Flooring products emit unlawful and unsafe levels of formaldehyde gas.

29. At the time Lumber Liquidators publically announced to consumers that the laminate wood products it sells are sourced from mills whose production methods are CARB compliant and that its products conform to CARB's specified formaldehyde emission limits, and at the time that it publically touted that it takes additional special measures to ensure full compliance by its suppliers, Lumber Liquidators disclosed the opposite to the SEC:

While our suppliers agree to operate in compliance with applicable laws and regulations, including those relating to environmental and labor practices, **we do not control our suppliers**. Accordingly, **we cannot guarantee that they comply with such laws and regulations or operate in a legal, ethical and responsible manner**. Violation of environmental, labor or other laws by our suppliers or their failure to operate in a legal, ethical and responsible manner, could reduce demand for our products if, as a result of such violation or failure, we were to attract negative publicity. Further, such conduct could expose us to legal risks as a result of our purchase of product from non-compliant suppliers.

See Lumber Liquidators' February 19, 2014 10-K at 14, available at

<http://app.quotemedia.com/data/downloadFiling?webmasterId=101533&ref=9405301&type=HTML&symbol=LL&companyName=Lumber+Liquidators+Holdings&formType=10-K&dateFiled=2014-02-19> (last visited Mar. 10, 2015) (emphasis added).

30. Despite its disclosed concern that its suppliers might not comply with laws and regulations, Lumber Liquidators has failed to exercise sufficient and effective quality control over its suppliers to ensure that they comply with CARB standards as expressly warranted by Lumber Liquidators.

31. In addition to the investigation conducted by 60 Minutes, on June 20, 2013, blogger Xuhua Zhou published the results of his independent investigation of the formaldehyde levels present in Lumber Liquidators' Chinese Flooring on the website *Seeking Alpha*. Two separate and independent accredited testing laboratories confirmed that the Chinese Flooring manufactured, distributed, and sold by Lumber Liquidators emitted and off-gassed formaldehyde

at levels that were 3.5 times the maximum level for formaldehyde. The letter from Zhou indicated that Lumber Liquidators labeled the product that was tested as being CARB compliant.

32. Further, a putative federal securities class action lawsuit was filed in November 2013 against Lumber Liquidators following the publication of the *Seeking Alpha* article, and Lumber Liquidators' customers have posted complaints on Lumber Liquidators' website concerning unsafe formaldehyde emissions.

33. Based on investigations, independent test results, lawsuits, articles, and consumer complaints, Lumber Liquidators was on notice and knew or should have known that its laminate wood flooring products were not compliant with formaldehyde emission standards.

34. Lumber Liquidators has knowingly misrepresented and continues to knowingly misrepresent that its Chinese Flooring products are CARB compliant. It has downplayed the formaldehyde off-gassing defect of its Chinese Flooring and has failed to properly investigate and inform the consuming public of the formaldehyde compliance failures and issues associated with its Chinese Flooring.

35. Despite Lumber Liquidators' superior knowledge of the defect alleged herein, it has knowingly and deliberately concealed and continues to conceal the nature of the defect and its repeated breaches of its express and implied warranties.

36. Plaintiffs purchased Lumber Liquidators' Chinese Flooring (12mm St. James Toasted Chicory) from Lumber Liquidators Store Number 1041, 2049 Savannah Highway, Charleston, South Carolina in or about June 2012 and in or about March 2013. Plaintiffs lacked knowledge of the formaldehyde emission defect at the time of purchase.

37. In light of the false representations made by Lumber Liquidators regarding the formaldehyde levels in its Chinese Flooring, and in light of the health risks posed by

formaldehyde, Plaintiffs and the members of the Class would reasonably fear for their safety by allowing the Chinese Flooring to remain in their homes. It would therefore be reasonably prudent to incur the cost of replacing the laminate flooring rather than continue to incur the risks posed by the Chinese Flooring.

38. Plaintiffs and the members of the Class would not have purchased Lumber Liquidators' Chinese Flooring products or would have paid significantly less money for the products had they known the true nature of the defect as alleged herein.

39. Lumber Liquidators' flagrant violations of law and systematic warranty breaches have caused and will continue to cause significant financial harm and economic loss to Plaintiffs and the members of the Plaintiff Class.

#### **Class Action Allegations**

40. Under Fed. R. Civ. P. 23, Plaintiffs bring this action on behalf of themselves and the Plaintiff Class, initially defined as:

All persons and entities residing in South Carolina that purchased laminate wood flooring products that were manufactured in China from Defendant or Defendant's authorized retailers.

41. Excluded from the Plaintiff Class are:

- A. Defendant and any entity in which Defendant has a controlling interest, and its legal representatives, employees, officers, directors, assigns, and successors;
- B. The judge, magistrate, and any special master to whom this case is assigned, and any member of their immediate families; and
- C. To the extent the class certification order permits exclusion, all persons who timely submit proper requests for exclusion from the Plaintiff Class.

42. The Plaintiff Class consists of all persons and entities residing in South Carolina that purchased laminate wood flooring products that were manufactured in China from Defendant or Defendant's authorized retailers.

43. These products, upon information and belief, were sold to hundreds if not thousands of South Carolina residents whose identities can be readily ascertained from Defendant's books and records, thus making individual joinder impracticable pursuant to Fed. R. Civ. P. 23(a)(1). The disposition of the claims in a single class action will provide substantial benefits to all parties and to the Court.

44. The factual and legal bases of the claims are common to all Plaintiff Class members and represent a common injury. *See* Fed. R. Civ. P. 23(a)(2).

45. There are many common questions of law and fact. These common issues include, but are not limited to, the following:

- A. Whether Defendant conceived, designed, manufactured, and sold Chinese Flooring that contains defects;
- B. Whether the Chinese Flooring was conceived, designed, and manufactured under a common protocol;
- C. Whether Defendant properly and adequately monitored its Chinese manufacturing plants to ensure its flooring products complied with CARB;
- D. Whether Defendant's laminate wood flooring products manufactured in China exceed CARB limits;
- E. Whether Defendant formulated common procedures for testing its Chinese Flooring;

F. Whether Defendant utilized common warranty procedures in South Carolina;

G. Whether Defendant falsely labeled, advertised, and warranted its Chinese Flooring products as being CARB compliant;

H. Whether Defendant breached its express warranties in violation of S.C. Code Ann. § 36-2-313;

I. Whether Defendant breached its implied warranties in violation of S.C. Code Ann. § 36-2-314; and

J. Whether Defendant's actions and practices as described herein caused Plaintiffs' damage.

These common questions of law and fact predominate over individual questions and a class action is the superior means to litigate the claims. *See* Fed. R. Civ. P. 23(b)(3).

46. Plaintiffs will fairly and adequately represent and protect the interests of the Plaintiff Class as required by Fed. R. Civ. P. 23(a)(4). The named Plaintiffs identified in this complaint reside in South Carolina and purchased Lumber Liquidators' Chinese Flooring from Lumber Liquidators in South Carolina and are thus are typical of the members of the Class as required by Fed. R. Civ. P. 23(a)(3). Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Plaintiff Class and have the financial resources to do so. Neither Plaintiffs nor their counsel have any interests adverse to those of the class.

**Breach of Express Warranty by Affirmation, Promise, Description, Sample**  
**S.C. Code Ann. § 36-2-313**

47. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.



48. At all times, Lumber Liquidators is and has been engaged in the business of designing, manufacturing, distributing, marketing, and selling laminate wood flooring products, including its Chinese Flooring, throughout the United States, including South Carolina.

49. At all times, Lumber Liquidators is and has been a merchant and seller of the Chinese Flooring products at issue, and Lumber Liquidators sold such products to the consumer Plaintiffs and the members of the Class.

50. Lumber Liquidators expressly warranted to Plaintiffs and the members of the Class that its Chinese Flooring products conformed to formaldehyde emission standards and were merchantable and fit for their ordinary, particular, and intended use and purpose.

51. However, the Chinese Flooring products sold by Lumber Liquidators to Plaintiffs and the members of the Class did not conform to formaldehyde emission standards and were not in merchantable condition, were not fit for the ordinary purpose for which flooring products are used, and were not of the same quality as those generally acceptable in the trade. In fact, the defective Chinese Flooring, including the Chinese Flooring products purchased by Plaintiffs, were defective from the point of manufacture and sale, thus rendering the product unmerchantable at the time of purchase.

52. Plaintiffs and the members of the Class have had sufficient direct dealings with either Lumber Liquidators or their agents (authorized retailers) to establish vertical privity of contract between themselves and Lumber Liquidators. Notwithstanding this, privity is not required in this case because Plaintiffs and the members of the Class are intended third-party beneficiaries of contracts between Lumber Liquidators and its authorized retailers; specifically, they are the intended beneficiaries of Lumber Liquidators' warranties. The authorized retailers were not intended to be the ultimate consumers of the defective Chinese Flooring products and

have no rights under the warranty agreements provided with these products; the warranty agreements were designed for and intended to benefit the ultimate consumers only. Finally, privity is also not required because formaldehyde is a known VOC and human carcinogen, thus making the defective Chinese Flooring products a dangerous instrumentality due to the aforementioned defects and nonconformities.

53. Given the facts as alleged herein and Lumber Liquidators' continued misrepresentations regarding its Chinese Flooring Products, Plaintiffs have taken reasonable steps to notify Lumber Liquidators within a reasonable time that their Chinese Flooring products were not as represented by the filing of this lawsuit. Further, additional notice of Lumber Liquidators' breaches of its warranties would be futile. As previously alleged, Lumber Liquidators has been repeatedly put on notice by numerous and repeated failed independent test results indicating elevated levels of formaldehyde in violation of CARB limits, by other lawsuits filed against it, by news investigations and reports, and by consumer complaints on its website.

54. As a direct and proximate result of Lumber Liquidators' breaches, Plaintiffs and the members of the Class have suffered monetary loss.

**Breach of Implied Warranty of Merchantability**  
**S.C. Code Ann. § 36-2-314**

55. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

56. Lumber Liquidators is and was at all relevant times a merchant with respect to laminate wood flooring products.

57. Plaintiffs purchased their defective Lumber Liquidators' Chinese Flooring from Lumber Liquidators. At the time of purchase, Lumber Liquidators was in the business of selling

flooring products and by course of business held itself out as having special knowledge or skill regarding these products.

58. A warranty that the defective Chinese Flooring products were in merchantable condition was implied by law in the instant transaction. Said warranty was also expressly included in Lumber Liquidators' Purchase Orders, as previously set forth herein.

59. The defective Chinese Flooring, when sold and at all times thereafter, was not in merchantable condition and was not fit for the ordinary purpose for which flooring products are used or was not of the same quality as those generally acceptable in the trade. In fact, the defective Chinese Flooring, including the Chinese Flooring purchased by Plaintiffs, was defective from the point of manufacture and sale, thus rendering the product unmerchantable at the time of purchase. Specifically, the defective Chinese Flooring was designed, manufactured, distributed, and sold with excessive amounts of formaldehyde that emits and off-gasses excessive amounts of formaldehyde gas in violation of formaldehyde emission standards.

60. Plaintiffs and the members of the Class have had sufficient direct dealings with either Lumber Liquidators or their agents (authorized retailers) to establish vertical privity of contract between themselves and Lumber Liquidators. Notwithstanding this, privity is not required in this case because Plaintiffs and the members of the Class are intended third-party beneficiaries of contracts between Lumber Liquidators and their authorized retailers; specifically, they are the intended beneficiaries of Lumber Liquidators' warranties. The authorized retailers were not intended to be the ultimate consumers of the defective flooring at issue and have no rights under the warranty agreements provided with the defective Chinese Flooring; the warranty agreements were designed for and intended to benefit the ultimate consumers only. Finally, privity is also not required because formaldehyde is a known VOC and

human carcinogen, thus making the defective Chinese Flooring products a dangerous instrumentality due to the aforementioned defects and nonconformities.

61. Given the facts as alleged herein, and Lumber Liquidators' continued representations regarding its Chinese Flooring Products, Plaintiffs have taken reasonable steps to notify Lumber Liquidators within a reasonable time that their Chinese Flooring products were not as represented by the filing of this lawsuit. Further, additional notice of Lumber Liquidators' breaches of its warranties would be futile. As previously alleged, Lumber Liquidators has been repeatedly put on notice by numerous and repeated failed independent test results indicating elevated levels of formaldehyde in violation of CARB limits and in breach of its warranties, by other lawsuits filed against it, by news investigations and reports, and by consumer complaints on its website.

62. As a direct and proximate result of Lumber Liquidators' breaches, Plaintiffs and the members of the Class have suffered monetary loss.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray that the Court enter judgment against Defendant and in favor of the Plaintiffs and the Class and award the following relief:

- A. Certification of the proposed class under Fed. R. Civ. P. 23;
- B. Appointment of Plaintiffs as Class Representatives;
- C. Appointment of the undersigned attorneys as Class Counsel;
- D. Finding that Defendant's conduct constitutes a breach of express warranty;
- E. Finding that Defendant's conduct constitutes a breach of implied warranty;
- F. An award of compensatory damages and attorneys' fees; and

G. Such other and further judiciary determinations and relief as may be appropriate  
in this proceeding.

PLAINTIFFS DEMAND TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Dated: March 12, 2015

Respectfully submitted,

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