THOMAS P. PHELAN, individually and on behalf of all others similarly situated,  

Plaintiff,  

v.  

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

Defendants.  

Plaintiff, Thomas P. Phelan, brings this action on behalf of himself and all others similarly situated against Defendants, Lumber Liquidators, Inc., Lumber Liquidators Leasing, LLC, Lumber Liquidators Holding, Inc., and Lumber Liquidators Services, LLC (collectively "Lumber Liquidators"). Plaintiff alleges the following upon information and belief, except for those allegations that specifically pertain to him, which are based on Plaintiff's personal knowledge.  

NATURE OF THE CASE  

1. This is a proposed class action brought against Lumber Liquidators for damages and injunctive relief arising out of Lumber Liquidators' deceptive practice of falsely advertising, warranting and selling Chinese-made laminate wood flooring that contain levels of the toxin formaldehyde in excess of relevant and applicable formaldehyde standards.  

2. Formaldehyde is an odorless gas categorized as a known human carcinogen that has both cancer and noncancer-causing effects on human health. Materials containing formaldehyde can release formaldehyde gas or vapor into the air over time.
3. Formaldehyde is a common ingredient in the glue or resin used to make composite wood products like laminate wood flooring. Thus, laminate wood flooring is an indoor source of formaldehyde exposure.

4. In April 2007, the California Air Resources Board ("CARB") approved the Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products and implemented strict formaldehyde emission standards for composite wood products including laminate wood flooring.

5. Lumber Liquidators, the largest specialty retailer of hardwood flooring in North America, sells more than 100 million square feet of laminate wood flooring in the United States. Much of that flooring is sourced directly from mills in China that it supervises, manages, monitors and/or inspects.

6. Lumber Liquidators falsely represents that all of its Chinese-made laminate wood flooring is "CARB ... Phase 2 Compliant for Formaldehyde," which means that it meets the strict CARB standard. Lumber Liquidators' website even boasts that it "care[s] too much to sell anything but the SAFEST & HIGHEST QUALITY FLOORING."

7. Lumber Liquidators further expressly warrants for every purchase that its flooring is of "merchantable quality and suitable for the particular purposes intended," and that it has been "sourced, produced, sold, delivered, declared, packaged, labeled, manufactured, and/or rendered to Lumber Liquidators in compliance with all applicable laws, codes and regulations."

8. Contrary to Lumber Liquidators' representations and warranties, tests performed by certified independent labs reveal that Lumber Liquidators' Chinese-made laminate wood flooring contains formaldehyde at levels far in excess of the CARB limits. In particular, on March 1, 2015, CBS's 60 Minutes reported on its investigation into the formaldehyde levels in Lumber
Liquidators’ Chinese-made laminate wood flooring. Of the 31 samples of flooring tested by independent labs, only one was compliant with CARB formaldehyde emissions standards. “Some were more than 13 times over the California limit.”¹

9. Similar products manufactured in North America generally had much lower formaldehyde levels that complied with CARB standards. Similar products tested from Lumber Liquidators’ competitors also showed significantly lower formaldehyde levels that generally complied with the CARB standards.

10. Plaintiff purchased and installed a Lumber Liquidators’ Chinese-made laminate wood flooring product that was a type found to have formaldehyde levels in excess of the CARB limits, but nonetheless labeled as CARB compliant.

11. Lumber Liquidators’ illegal behavior with respect to its manufacturing, marketing, and sale of its Chinese-made laminate wood flooring has caused Plaintiff and the other Class members to suffer direct financial harm. Plaintiff’s purchase is markedly less valuable because of its elevated level of formaldehyde.

12. Plaintiff would have paid significantly less had he known that the product contained elevated levels of formaldehyde.

PARTIES

13. Plaintiff, Thomas P. Phelan, is a resident of Ocean Side, New York. In January 2015, Plaintiff purchased approximately 35 square feet of the 12 mm Dream Home St. James African Mahogany laminate flooring from the Lumber Liquidators in Freeport, New York. This flooring is a Chinese-manufactured product that contains excessive levels of formaldehyde. At the time of purchase, Lumber Liquidators falsely represented and warranted the flooring to be

compliant with strict formaldehyde emissions standards. Plaintiff would not have purchased the product but for Lumber Liquidators’ deceptive conduct.

14. Defendant Lumber Liquidators, Inc. is a Delaware corporation with its principal place of business at 3000 John Deere Road, Toano, Virginia 23168. Lumber Liquidators is licensed to and does business in the State of New York.

15. Defendant Lumber Liquidators Leasing, LLC, is a Delaware limited liability corporation with its principal place of business at 3000 John Deere Road, Toano, Virginia 23618.

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

17. Defendant Lumber Liquidators Services, LLC is a Delaware limited liability corporation with its principal place of business at 3000 John Deere Road, Toano, Virginia 23618.

18. Defendants Lumber Liquidators, Inc., Lumber Liquidators Leasing, LLC, Lumber Liquidators Holding, Inc., and Lumber Liquidators Services, LLC are collectively referenced in this Complaint as “Defendants” or “Lumber Liquidators.”

**JURISDICTION AND VENUE**

19. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2). The proposed class has more than 100 members, the class contains at least one member of diverse citizenship from Defendants, and the aggregate amount in controversy exceeds $5 million, exclusive of interest, fees, and costs.

20. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) because Plaintiff is a resident of New York and Defendants are Delaware Corporations that maintain their principal place of business in Virginia. The amount in controversy exceeds the sum or value of $75,000.
21. This Court has personal jurisdiction over Defendants because they regularly conduct business in New York. Defendants have marketed, promoted, distributed and sold Chinese-made laminate wood flooring in New York and throughout the United States.

22. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendants conduct business throughout this District and a substantial part of the events, omissions and acts giving rise to the claims alleged occurred in this District

FACTUAL ALLEGATIONS

23. Established in 1994, Lumber Liquidators claims to be the largest specialty retailer of hardwood flooring in North America with over $1 billion in annual net sales.

24. Lumber Liquidators sources its flooring directly from domestic and international mills in order to eliminate the middleman and offer its flooring products to its customers at a lower cost than its competitors.

25. With over 300 stores in 46 states (19 of which are in New York) Consumers can purchase flooring at any of Lumber Liquidators’ nationwide retail stores as well as online at www.lumberliquidators.com, or by calling 1-800-HARDWOOD.

26. Lumber Liquidators carries many types of flooring products, including solid and engineered hardwood, laminate flooring (the subject of this lawsuit), bamboo flooring, cork flooring and resilient vinyl flooring, butcher blocks, molding, accessories and tools.

27. Lumber Liquidators’ sells more than 100 million square feet of laminate flooring in the United States annually, which represents 19% of Lumber Liquidators’ net sales.

28. Laminate flooring is a multi-layer synthetic flooring product that emulates the look of real hardwood, but is more durable than hardwood and costs significantly less than hardwood. The inner core layer of laminate flooring generally is made from composite wood
materials (i.e., particle board or medium-density fiberboard), which is a mixture of sawdust or wood particles bonded together with glue or resin.

29. Formaldehyde is a common ingredient in the glue or resin used in the laminate flooring base layer. If used in low levels, the formaldehyde will quickly dissipate during installation. However, if used in high levels the formaldehyde is released as a gas that emanates from the flooring over time.

CARB Emission Standards

30. Formaldehyde is a colorless gas at room temperature and is classified as a volatile organic compound (“VOC”). It is listed as a known human carcinogen (cancer-causing substance) by the U.S. Department of Health and Human Services’ National Toxicology Program and the International Agency for Research on Cancer. Formaldehyde was also designated as a toxic air contaminant in California in 1992.

31. Exposure to formaldehyde can cause acute and chronic health effects, particularly in children, such as irritation of the throat, nose, eyes, and skin, fatigue, headache, and nausea, and can trigger symptoms in those with asthma and other upper respiratory ailments. Formaldehyde is also a known human carcinogen that has been linked to an increased risk of cancer of the nose and sinuses, nasopharyngeal and oropharyngeal cancer, lung cancer and leukemia.

32. Due to the harmful effects of formaldehyde exposure, the California Air Resources Board (“CARB”) implemented strict standards in 2009 for the amount of formaldehyde emissions allowable from composite wood products (like the laminate flooring involved in this action). See 17 Cal. Code Regs §§ 93120 - 93120.12.

33. The regulation established two phases of emissions standards: an initial Phase I, and later, a more stringent Phase 2 (referred to as “CARB Phase 2”) that requires all finished
goods, such as flooring, destined for sale or use in California to be made using complying composite wood products.

a. The Phase 1 Emission Standard for MDF in effect from January 1, 2009 to December 31, 2010, limited formaldehyde emissions to 0.21 parts per million ("ppm"); the Phase 1 Emission Standard for Thin MDF in effect from January 1, 2009 to December 31, 2011, limited formaldehyde emissions to 0.21 ppm. 17 CCR § 93120.2(a).

b. The Phase 2 Emission Standard for MDF in effect as of January 1, 2011 limits formaldehyde emissions to 0.11 ppm; the Phase 2 Emission Standard for Thin MDF in effect as of January 1, 2012 limits formaldehyde emissions to 0.13 ppm. 17 CCR § 93120.2(a).

34. The CARB formaldehyde emission standards for both MDF and thin MDF will be referred to as the “CARB Limit”. The CARB Limit is the strictest standard for formaldehyde in the United States.

35. Although there currently are no national standards in place for formaldehyde in finished goods made with composite wood products, such as flooring, the EPA anticipates finalizing rules by the end of 2015 that will set limits on formaldehyde emissions similar to the CARB Limit.

36. Although the CARB regulations apply only to products sold in California, Lumber Liquidators requires all of its suppliers to comply with CARB standards regardless of what state or country the product is being sold in.

Lumber Liquidator's Chinese-Made Laminate Wood Flooring Products

37. By 2014, fifty-two percent of Lumber Liquidators’ laminate wood flooring was sourced directly from mills located in China ("Chinese-Made Flooring"). These Chinese-Made Flooring products, include the following:

8 mm Bristol County Cherry Laminate Flooring
8 mm Dream Home Nirvana French Oak Laminate Flooring
8 mm Dream Home Nirvana Royal Mahogany Laminate Flooring
12 mm Dream Home Ispiri Americas Mission Olive Laminate Flooring
12 mm Dream Home Ispiri Chimney Tops Smoked Oak Laminate Flooring
12 mm Dream Home Ispiri Poplar Forest Oak Laminate Flooring
12 mm Dream Home Kensington Manor Antique Bamboo Laminate Flooring
12 mm Dream Home Kensington Manor Cape Doctor Laminate Flooring
12 mm Dream Home Kensington Manor Fumed African Ironwood Laminate Flooring
12 mm Dream Home Kensington Manor Glacier Peak Poplar Laminate Flooring
12 mm Dream Home Kensington Manor Golden Teak Laminate Flooring
12 mm Dream Home Kensington Manor Handscraped Imperial Teak Laminate Flooring (SKU 10029601)
12 mm Dream Home Kensington Manor Handscraped Imperial Teak Laminate Flooring (SKU 10023958)
12 mm Dream Home Kensington Manor Handscraped Summer Retreat Teak Laminate Flooring
12 mm Dream Home Kensington Manor Sandy Hills Hickory Laminate Flooring
12 mm Dream Home Kensington Manor Tanzanian Wenge Laminate Flooring
12 mm Dream Home Kensington Manor Warm Springs Chestnut Laminate Flooring
12 mm Dream Home St. James African Mahogany Laminate Flooring
12 mm Dream Home St. James Blacksburg Barn Board Laminate Flooring
12 mm Dream Home St. James Brazilian Koa Laminate Flooring
12 mm Dream Home St. James Chimney Rock Charcoal Laminate Flooring
12 mm Dream Home St. James Cumberland Mountain Oak Laminate Flooring
12 mm Dream Home St. James Golden Acacia Laminate Flooring
12 mm Dream Home St. James Nantucket Beech Laminate Flooring
12 mm Dream Home St. James Oceanside Plank Bamboo Laminate Flooring
12 mm Dream Home St. James Vintner’s Reserve Laminate Flooring
15 mm Dream Home St. James Sky Lakes Pine Laminate Flooring

38. The Chinese-Made Flooring contains formaldehyde and emit formaldehyde gas at levels that exceed, and sometimes grossly exceed, the CARB Limit.

39. Lumber Liquidators supervises, controls, monitors and/or inspects the manufacturing and packaging of its Chinese-Made Flooring that it then distributes, markets, and/or sells in California and elsewhere in the United States, including New York.

40. Lumber Liquidators knew or should have known that its Chinese-Made Flooring contains formaldehyde and emits formaldehyde levels that exceed the CARB Limit.

**Lumber Liquidators Represents That Its Chinese-Made Flooring Is CARB Compliant**

41. Despite unlawful levels of formaldehyde in its Chinese-Made Flooring, Lumber Liquidators misrepresents to consumers on the product packaging, on Lumber Liquidators’ website, and in the express warranty Lumber Liquidators includes with every purchase order that its Chinese-Made Flooring is CARB Phase 2 compliant.

42. The packaging for each of the Chinese-Made Flooring products, like the one below, uniformly states, “CARB … CALIFORNIA 93120 Phase 2 Compliant for Formaldehyde,” which indicates that the products meet the CARB emissions standards for formaldehyde. This statement is false and misleading for the reasons described herein.
43. Lumber Liquidators' website further misleads consumers into believing that its products are CARB compliant when they are not:

**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)²

44. Lumber Liquidators further makes the following express warranty for every purchase order:

SELLER’S WARRANTIES: Seller expressly warrants that all goods covered by this Purchase Order will: ... (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: ... (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.³

45. Contrary to Lumber Liquidators’ representations and warranties, Lumber Liquidators does not comply with the CARB Limit when selling and distributing its Chinese-Made Flooring. Several independent tests conducted by certified laboratories reveal that the Chinese-Made Flooring emits formaldehyde at levels well beyond the CARB Limit.

Formaldehyde Levels in Lumber Liquidators’ Chinese-Made Flooring Far Exceeds The CARB Limit

46. The truth about Lumber Liquidators’ Chinese-Made Flooring began to emerge on June 20, 2013, when blogger Xuhua Zhou reported on the website, Seeking Alpha, the results of his independent investigation into the formaldehyde levels of Lumber Liquidators’ Mayflower 5/16” x 5” Bund Birch Engineered, a Chinese-Made Flooring product. Zhou sent samples of the

product to two accredited independent laboratories. The results from both laboratories showed that the flooring was three and a half times over the CARB Limit. Nonetheless, Zhou notes that Lumber Liquidators labeled the product as being CARB compliant.\(^4\)

47. On March 1, 2015, a television segment on CBS’s 60 Minutes revealed that Lumber Liquidators’ Chinese-Made Flooring contains amounts of formaldehyde that do not meet established health and safety standards. In 2014 and early 2015, investigators for 60 Minutes purchased 31 boxes of various Chinese-Made Flooring products from various Lumber Liquidators stores around the county and sent the samples for testing to two certified independent labs. Of the 31 samples, only one was compliant with the CARB Limit. “Some were more than 13 times over the California limit.”\(^5\)

48. High formaldehyde content resins and glues are less expensive and dry more quickly than low formaldehyde glues and resins. By using high formaldehyde content resins and glues rather than low formaldehyde content resins and glues, Lumber Liquidators’ Chinese manufacturers are able to produce laminate wood flooring more quickly and at higher volumes thereby reducing costs and generating greater profits for Lumber Liquidators.

49. Employees of Lumber Liquidators’ Chinese manufacturers admitted to undercover investigators for 60 Minutes that the Chinese-Made Flooring is not compliant with CARB regulations. 60 Minutes reported:

Employees at the mills 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.


50. Indeed, Lumber Liquidators’ stock price had gone from $13 a share in 2011 to $119 in 2013.

51. When presented with the undercover video footage of the Chinese mills’ admission to falsely labeling the laminate flooring, Lumber Liquidators’ founder and chairman, Tom Sullivan, agreed with 60 Minutes’ Anderson Cooper that falsely labeling Lumber Liquidators’ flooring as CARB compliant is unacceptable and considered “cheating.”

   **Anderson Cooper:** This concerns you?

   **Tom Sullivan:** Yeah, yeah, of course.

   **Anderson Cooper:** Is this acceptable to you?

   **Tom Sullivan:** If it’s true, no.

   **Anderson Cooper:** All three mills told us they falsely label your products as CARB 2 compliant – that’s cheating.

   **Tom Sullivan:** That would be if that’s true.

52. Lawmakers have begun acting against Lumber Liquidators’ unlawful conduct. For example, on March 4, 2015, U.S. Senator Bill Nelson sent a letter to the Consumer Product Safety Commission, the Center for Disease Control and Prevention, and the Federal Trade Commission calling for independent testing of Lumber Liquidators’ Chinese Made Flooring to see if it potentially poses a health risk to the public. A statement from the Senate Committee on Commerce, Science and Transportation said that Senator Nelson also wants to know if Lumber Liquidators made potentially false marketing claims about the flooring’s compliance with a California formaldehyde safety standard.

53. Lumber Liquidators continues to sell its Chinese-Made Flooring and continues to misrepresent that it is safe and CARB compliant when it knows that this is false.
54. Had Lumber Liquidators adequately and fairly represented its products, Plaintiff and other class members would not have purchased these products and/or would have paid less money for them.

CLASS ALLEGATIONS

The Nationwide Consumer Class

55. Plaintiff brings this action as a class action on behalf of himself and the Class (the "Class") consisting of:

All persons and entities residing in the United States who, at any time within the applicable statute of limitations (the "Class Period"), purchased from Lumber Liquidators one or more laminate wood flooring products that were for their personal use rather than for resale or distribution, that were manufactured in China, and that were advertised as CARB compliant.

The New York Class

56. Plaintiff alleges a New York class action claim on behalf of the following class:

All persons in the State of New York, who, at any time within the applicable statute of limitations (the "Class Period"), purchased from Lumber Liquidators one or more laminate wood flooring products that were for their personal use rather than for resale or distribution, that were manufactured in China, and that were advertised as CARB compliant.

57. The Nationwide Consumer Class and the New York Class and their members are sometimes referred to herein as the "Class" or "Classes."

58. The Class satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of Federal Rules of Civil Procedure 23(a) and (b)(3).

59. The members of the Class are so numerous that joinder of all members is impracticable. Although the precise number of Class Members is unknown to Plaintiff at this
time and can be determined only by appropriate discovery, it is reasonably estimated that the Class consists of at least thousands of members.

60. Plaintiff is a purchaser of the 12 mm Dream Home St. James African Mahogany laminate flooring and has been subjected to Lumber Liquidators’ deceptive and misleading course of conduct, which tricked, misled, and significantly confused consumers. Plaintiff is a member of the Class and his claims are typical of the claims of the members of the Class. The harm suffered by Plaintiff and all other Class members was and is caused by the same misconduct by Lumber Liquidators.

61. Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff does not have any interest antagonistic to, or in conflict with, the Class. Plaintiff has retained competent counsel, who are experienced in consumer and commercial class action litigation, to further ensure such protection and who intend to prosecute this action vigorously.

62. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the monetary damages suffered by individual Class members are relatively small, the expense and burden of individual litigation make it impossible for individual Class members to seek redress for the wrongful conduct asserted herein. If Class treatment of these claims were not available, Lumber Liquidators would likely continue their wrongful conduct, would unjustly retain improperly obtained revenues, and/or would otherwise escape liability for their wrongdoing as asserted herein.

63. Common questions of law and fact exist as to all members of the Class, which predominate over any questions that may affect individual Class members. Among the questions of law and fact common to the Class are the following:
a. Whether Lumber Liquidators' Chinese-Made Flooring exceeds the CARB Limit;

b. Whether Lumber Liquidators misrepresented that its Chinese-MadeFlooring was CARB compliant;

c. Whether Lumber Liquidators deceived and misled consumers with its marketing and labeling of its Chinese-Made Flooring;

d. Whether Lumber Liquidators' misleading advertising and packaging were material to reasonable consumers;

e. Whether Lumber Liquidators received a benefit from Plaintiff and Class members and whether it would be unjust for Lumber Liquidators to retain such benefits; and

f. The appropriate measure of damages or other relief to which Plaintiff and the Class members are entitled.

64. Information relating to Lumber Liquidators' Chinese-Made Flooring is available from Lumber Liquidators' books and records.

65. Plaintiff is not aware of any difficulty that will be encountered in the management of this litigation which would preclude its maintenance as a class action.

66. The prosecution of separate actions by individual Class members would run the risk of inconsistent or varying adjudications, which might establish incompatible standards of conduct for Lumber Liquidators. Prosecution as a class action will eliminate the possibility of repetitious litigation.
67. Lumber Liquidators has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

**FIRST CAUSE OF ACTION**
**ON BEHALF OF THE NATIONWIDE CLASS**

68. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

69. The Chinese-Made Flooring purchased and installed separate from the initial construction of the structure are “consumer products” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

70. Plaintiff is a “consumer” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3). He is a consumer because he is a person entitled under applicable state law to enforce against the warrantor the obligations of its express and implied warranties.

71. Lumber Liquidators is a “supplier” and “warrantor” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

72. Lumber Liquidators’ express warranties and written affirmations of fact that its Chinese-Made Flooring was in compliance with CARB formaldehyde standards and all other applicable laws and regulations constitutes a written warranty within the meaning of 15 U.S.C. § 2301(6).

73. Lumber Liquidators breached these express warranties by manufacturing, distributing and selling laminate flooring products that exceed the CARB formaldehyde standards and other applicable laws and regulations, and refusing to honor the express warranties by refusing to properly repair or replace the defective flooring.
74. Lumber Liquidators’ breach of its express warranties deprived Plaintiff and the other Class members of the benefits of their bargains.

75. Any attempt by Lumber Liquidators to disclaim its express warranties is both procedurally and substantively unconscionable, did not conform to the law and was not conspicuous as required by law.

76. The amount in controversy of Plaintiff’s individual claim meets or exceeds the sum of $25. The amount in controversy of this action exceeds the sum of $50,000, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit.

77. Lumber Liquidators has been notified of its breach of written warranties and has failed to adequately cure those breaches.

78. As a direct and proximate cause of Lumber Liquidators’ breach of its written warranties, Plaintiff and the other Class members sustained damages in an amount to be determined at trial. Lumber Liquidators’ conduct damaged Plaintiff and the other Class members, who are entitled to recover damages, consequential damages, specific performance, diminution in value, costs, attorneys’ fees, rescission, and/or other relief as appropriate.

SECOND CLAIM FOR RELIEF
ON BEHALF OF THE NATIONWIDE CLASS
(Breach of Express Warranty)

79. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

80. Lumber Liquidators warranted that its Chinese-Made Flooring is free of defects when it sold the flooring to Plaintiff and other Class members. Lumber Liquidators further represented that its flooring complied with CARB formaldehyde standards and all applicable laws and regulations. Plaintiff and other Class members reasonably relied upon Lumber Liquidators’ representations and/or omissions.
81. Lumber Liquidators' warranties became part of the basis of the bargain.

82. Lumber Liquidators breached its warranties by:
   a. Manufacturing, selling and/or distributing flooring that exceeds the CARB Limit;
   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.

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

84. Any attempt by Lumber Liquidators to disclaim its express warranties is both procedurally and substantively unconscionable, did not conform to the law and was not conspicuous as required by law.

85. Plaintiff, on behalf of himself and the other Class members, provided Lumber Liquidators with timely notice of its breach of warranty. Lumber Liquidators was also on notice regarding the excessively high levels of formaldehyde in its flooring from the numerous blog postings, consumer complaints and lawsuits asserted against it, as well as the March 1, 2015 60 Minutes report.

86. Lumber Liquidators has had actual and/or constructive notice that its express warranty was and is false and to date has taken no action to remedy its breaches of express warranty.

87. As a direct and proximate result of Lumber Liquidators' breach of warranties, Plaintiff and Class members have suffered damages and continue to suffer damages, including
economic damages in terms of the difference between the value of the flooring as promised and the value of the flooring as delivered.

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

THIRD CLAIM FOR RELIEF
ON BEHALF OF THE NATIONWIDE CLASS
(Breach of Implied Warranty of Merchantability)

89. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

90. At all times relevant hereto, there was a duty imposed by law which requires that a manufacturer or seller’s product be reasonably fit for the purposes for which such products are used and that the product be acceptable in trade for the product description.

91. Lumber Liquidators breached its duty by selling its Chinese-Made Flooring to Plaintiff and the other members of the Class that was not merchantable.

92. Lumber Liquidators was notified that its Chinese-Made Flooring was not merchantable within a reasonable time after the defect manifested itself to Plaintiff and the members of the Class.

93. Any attempt by Lumber Liquidators to disclaim its express warranties is both procedurally and substantively unconscionable, did not conform to the law and was not conspicuous as required by law.

94. As a result of the non-merchantability of Lumber Liquidators’ Chinese-Made Flooring, Plaintiff and other members of the Class sustained a loss or damages.
FOURTH CLAIM FOR RELIEF
ON BEHALF OF THE NATIONWIDE CLASS
(Fraudulent Misrepresentation)

95. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

96. Lumber Liquidators falsely and fraudulently represented to Plaintiff and other Class members that Lumber Liquidators’ Chinese-Made Flooring would be free from defects and fit for its customary and normal use. Lumber Liquidators also falsely and fraudulently represented to Plaintiff and other Class members that its Chinese-Made Flooring complied with the CARB Limit and all applicable laws and regulations. Plaintiff and other Class members reasonably relied upon Lumber Liquidators’ representations.

97. Upon information and belief, Lumber Liquidators knew its representations to be false when made and it willfully, wantonly, and recklessly disregarded whether there representations were true.

98. These representations were made by Lumber Liquidators with the intent of defrauding and deceiving the Plaintiff, the Class members and/or the consuming public, all of which evinced reckless, willful, indifference to the safety and welfare of the Plaintiff and the Class members.

99. At the time the aforesaid representations were made by Lumber Liquidators, Plaintiff and the Class members were unaware of the falsity of said representations and reasonably believed them to be true.

100. In reliance upon said representations, Plaintiff and Class members installed and used Lumber Liquidators’ Chinese-Made Flooring in their properties, thereby sustaining damage and injury and/or being at an increased risk of sustaining damage and injury in the future.
101. Lumber Liquidators knew and was aware, or should have been aware, that
Lumber Liquidators’ Chinese-Made Flooring was defective and not fit for its customary and
normal use.

102. Lumber Liquidators knew, or should have known, that Lumber Liquidators’
Chinese-Made Flooring had a potential to, could, and would cause severe damage and injury to
property owners.

103. Lumber Liquidators brought its Chinese-Made Flooring to the market and acted
fraudulently, wantonly, and maliciously to the detriment of the Plaintiff and the Class members.

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

FIFTH CLAIM FOR RELIEF
ON BEHALF OF THE NATIONWIDE CLASS
(Negligent Misrepresentation)

105. Plaintiff hereby incorporates by reference the allegations contained in the
preceding paragraphs of this Complaint.

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

107. Those representations were false.

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

109. Lumber Liquidators knew that Plaintiff and other Class members were relying on
the representations.

110. In reliance upon the representations, Plaintiff and other Class Members purchased
the Chinese-Made Flooring and installed it in Plaintiff’s and Class members’ homes.
111. As a direct and proximate result of Lumber Liquidators’ negligent misrepresentations, Plaintiff and Class members have been damaged as set forth in this Complaint.

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

SIXTH CLAIM FOR RELIEF
ON BEHALF OF THE NATIONALWIDE CLASS
(Fraudulent Omission/Concealment)

113. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

114. Lumber Liquidators knew or should have known that the Chinese-Made Flooring was defective in design, was not fit for its ordinary and intended use, and performed in accordance with neither the advertisements, marketing materials and warranties disseminated by Lumber Liquidators nor the reasonable expectations of ordinary consumers.

115. Lumber Liquidators fraudulently concealed from and/or intentionally failed to disclose to Plaintiff and the Class that the Chinese-Made Flooring is defective.

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

117. Lumber Liquidators had the capacity to, and did, deceive Plaintiff and Class members into believing that they were purchasing Chinese-Made Flooring free from defects.

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

120. The facts concealed and/or not disclosed by Lumber Liquidators to Plaintiff and the Class members are material facts in that a reasonable person would have considered them important in deciding whether to purchase (or to pay the same price for) the Chinese-Made Flooring.

121. Lumber Liquidators intentionally concealed and/or failed to disclose material facts for the purpose of inducing Plaintiff and the Class to act thereon.

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

123. Plaintiff and Class members suffered a loss of money in an amount to be proven at trial as a result of Lumber Liquidators’ fraudulent concealment and nondisclosure because: (a) they would not have purchased the Chinese-Made Flooring on the same terms if the true facts concerning the defective flooring had been known; (b) they paid a price premium due to fact that the flooring would be free from defects; and (c) the flooring did not perform as promised.

124. Plaintiff also would have initiated this suit earlier had the defect been disclosed to him.

125. By reason of the foregoing, Plaintiff and the Class members suffered, and continue to suffer, financial damage and injury.
SEVENTH CLAIM FOR RELIEF
ON BEHALF OF THE NATIONWIDECLASS
(Unjust Enrichment)

126. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

127. As a result of Lumber Liquidators’ unlawful and deceptive actions described above, Lumber Liquidators was enriched at the expense of Plaintiff and the Class through the payment of the purchase price for the Chinese-Made Flooring.

128. Under the circumstances, it would be against equity and good conscience to permit Lumber Liquidators to retain the ill-gotten benefits that they received from Plaintiff and the Class, in light of the fact that the Chinese-Made Flooring purchased by Plaintiff and the Class were illegal products and were not what Lumber Liquidators represented them to be. Thus, it would be unjust and inequitable for Lumber Liquidators to retain the benefit without restitution to the Plaintiff and the Class for the monies paid to Lumber Liquidators for the Chinese-Made Flooring.

EIGHTH CLAIM FOR RELIEF
ON BEHALF OF THE NEW YORK CLASS
(Violation of N.Y. Gen. Bus. Law §§ 349 et seq.)

129. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

130. Plaintiff and Class Members are consumers and as owners of Lumber Liquidators’ products, they are the end users and intended beneficiaries of said products.

131. As a seller of flooring products to the consuming public and whose conduct affects similarly situated consumers and has a broad impact on consumers at large, Lumber Liquidators is engaged in consumer-oriented conduct within the intended ambit of Gen. Bus. Law § 349.
132. Lumber Liquidators’ actions and/or omissions as described herein violated Gen. Bus. Law § 349 et seq., which were enacted to protect the consuming public from those who engage in unconscionable, deceptive or unfair acts or practices in the conduct of any business, trade or commerce.

133. Specifically, Lumber Liquidators knowingly misrepresented and intentionally omitted material information affecting the value of its Chinese-Made Flooring.

134. Lumber Liquidators’ misrepresentations and concealment of material facts constitute unconscionable commercial practices, deception, fraud, false pretenses, misrepresentation, and/or the knowing concealment, suppression, or omission of material facts with the intent that others rely on such concealment, suppression, or omission in connection with the sale and use of Lumber Liquidators’ flooring in violation of Gen. Bus. Law § 349 et seq.

135. Lumber Liquidators violated Gen. Bus. Law § 349 et seq. knowingly and falsely representing that its Chinese-Made Laminate Wood Flooring Products were fit to be used for the purpose for which they were intended, when Lumber Liquidators knew they were defective, unreliable, and unsafe and by other acts alleged herein.

136. Lumber Liquidators’ deceptive and misleading actions and omissions as set forth herein have caused and continue to cause injury to Plaintiff and the Class members.

137. New York has enacted statutes to protect consumers from deceptive, fraudulent, and unconscionable trade and business practices such as those alleged in this Complaint.

138. As a direct and proximate result of Lumber Liquidators’ violations of Gen. Bus. Law § 349, Plaintiff and the Class members have suffered and continue to suffer damages. Plaintiff and the Class Members are entitled to compensatory damages, equitable and declaratory relief, punitive damages, costs and reasonable attorneys’ fees.
PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Class, requests the following relief:

A. An order that this action may be maintained as a Class Action under Rule 23 of the Federal Rules of Civil Procedure, that Plaintiff be appointed to represent the Class, and that Plaintiff's counsel be appointed as counsel for the Class;

B. A permanent injunction against Lumber Liquidators, restraining, preventing and enjoining Lumber Liquidators from engaging in the illegal practices alleged;

C. An order requiring Lumber Liquidators to disgorge the profits wrongfully obtained through the use of their illegal practices;

D. Actual damages;

E. Statutory damages;

F. Punitive damages;

G. An award of attorneys' fees;

H. An award of the costs of suit reasonably incurred by Plaintiff and his counsel;

I. An award of interest, including prejudgment interest, at the legal rate, and;

J. Such other and further relief as the Court deems necessary and appropriate.

Dated: March 26, 2015

Respectfully submitted,

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