

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION**

LAURA GONZALEZ, individually and on behalf of all others similarly situated,

Plaintiff,

v.

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

Defendants.

Case No.

Demand for Jury Trial

CLASS ACTION COMPLAINT

Plaintiff Laura Gonzalez (“Plaintiff”), by and through her counsel, brings this Class Action Complaint against Defendant Lumber Liquidators Inc., Defendant Lumber Liquidators Leasing, LLC, Defendant Lumber Liquidators Holding, Inc., and Defendant Lumber Liquidators Services, LLC (collectively “Lumber Liquidators” or “Defendants”), and alleges, upon personal knowledge as to her own actions, and upon information and belief and the investigation of her counsel as to all other matters, as follows:

NATURE OF THE CASE

1. This is a defective product class action. Lumber Liquidators supervised and controlled the manufacturing, and packaged, distributed, marketed, and sold a

variety of Chinese-manufactured laminate wood flooring materials (the “Products” or “Chinese Flooring”) that it prominently advertised and warranted as fully compliant with California’s strict formaldehyde emission standards promulgated by the California Air Resources Board (“CARB”) and enumerated in California’s Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products (“CARB Regulations”). Cal. Code Regs. tit. 17, §§ 93120-93120.12. Those standards have been adopted as the national standard by the Formaldehyde Standards for Composite-Wood Products Act, 15 U.S.C. § 2697.

2. Defendants also represented and advertised that their Chinese Flooring sold throughout the United States, including in Texas, complied with the CARB Regulations.

3. Defendants’ claims that the Products complied with CARB’s standards for formaldehyde emissions and “with all applicable laws, codes and regulations” were false. As detailed herein, the Products emit formaldehyde gas at levels that exceed the strict limits set forth in the CARB standards. Defendants also failed to disclose the unlawful level of formaldehyde emission to consumers.

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

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

5. In an attempt to allay safety concerns regarding its Chinese Flooring, Defendants uniformly claimed that all of their hardwood and laminate flooring products were compliant with the California Air Resources Board’s (“CARB”) standards for safe formaldehyde emissions. On its website, Defendant stated: “commitment to quality and safety extends to everywhere we do business. We require that all of our suppliers comply with California’s advanced environmental requirements, even for products sold outside California.”⁴ As described herein, the packaging for all Lumber Liquidators’ Chinese Flooring claimed that it was compliant with California CARB formaldehyde standards.

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

² *Id.*

³ Xiaojung Tang et al., Formaldehyde in China: Production, consumption, exposure levels, and health effects, ENVIRONMENTAL INTERNATIONAL VOLUME 36, ISSUE 3 (April 2010), available at http://ac.els-cdn.com/S0160412009002402/1-s2.0-S0160412009002402-main.pdf?_tid=dd4df5ba-c1ea-11e4-9b60-00000aab0f6b&acdnat=1425417700_25414e62d2ab566a9dd77bde3169e4cc (last visited March 5, 2015).

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

6. Despite assurances that the Products were safe and complied with California formaldehyde regulations, several reports have shown that the Chinese Flooring actually contained levels of formaldehyde that exceeded the CARB standards. On March 1, 2015, 60 Minutes news aired a story that dispelled Lumber Liquidators' claims that the Products were compliant with California formaldehyde standards. The news story was prompted by an investigation conducted by two environmental advocacy groups. The environmental groups purchased more than 150 boxes of the Products at stores around California and sent the boxes to three certified labs for a series of tests. The results showed that "every single sample of Chinese-made laminate flooring from Lumber Liquidators failed to meet California formaldehyde emissions standards. Many by a large margin."⁵

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

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

⁶ *Id.*

8. In April 2015, 60 Minutes sent undercover investigators with hidden cameras to the city of Changzhou, China. The investigators posed as buyers and visited three different mills that manufactured laminates and flooring on behalf of Defendants.

The results of the undercover investigation were alarming:

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 falsely labeling the company's laminate flooring as "CARB" compliant.⁷

9. In the glare of the public backlash caused by the 60 Minutes episode's exposure of its unsafe Chinese Flooring, Lumber Liquidators admitted that the U.S. Department of Justice is seeking federal criminal charges against the company in connection with its wood products and that the government investigation has been going on for two years.⁸

10. In light of accusations that its Chinese Flooring emitted dangerous levels of formaldehyde and in the face of the government's criminal investigation and possible criminal charges by the DOJ, Lumber Liquidators suspended sales of its Chinese Flooring in May 2015.⁹ However, the New York Times indicated that the suspension is not necessarily permanent, but rather is intended to continue only until Lumber Liquidators'

⁷ *Id.* (emphasis added).

⁸ *Lumber Liquidators Says DoJ Seeking Criminal Charges, Shares Plunge*, Reuters (Apr. 29, 2015), available at <http://www.reuters.com/article/2015/04/29/lumberliquidators-results-idUSL4N0XQ3IN20150429> (last visited June 17, 2015).

⁹ *Lumber Liquidators Suspends Sales of Lamina Flooring From China*, NY Times (May 7, 2015), available at <http://www.nytimes.com/2015/05/08/business/lumber-liquidators-suspends-sales-of-laminate-flooring-from-china.html> (last visited June 17, 2015).

“review was complete.”

11. Lumber Liquidators’ illegal behavior with respect to its manufacturing, marketing, and sale of Chinese Flooring has caused Plaintiff and the other Class members to suffer direct financial harm. Plaintiff’s Chinese Flooring is markedly less valuable because of its elevated level of formaldehyde. Plaintiff would have paid significantly less, if she had purchased Chinese Flooring at all, had she known that the product contained elevated levels of the toxin formaldehyde. In addition, Plaintiff and other Class members are faced with the expense of removing the unsafe Chinese Flooring from their homes and replacing it with safe flooring.

12. Plaintiff asserts claims individually and on behalf of the other members of the proposed Class.

PARTIES

13. Plaintiff Laura Gonzalez is a resident of Hidalgo County, Texas. Plaintiff owns a home in Pharr City, Texas. In May 2014, Plaintiff purchased wood flooring from Lumber Liquidators, located at 622 S. 11th St. in McAllen, Texas, and installed it in her home. Plaintiff relied on the representations of Defendant Lumber Liquidators’ representatives and the express warranties on the Chinese Flooring in selecting Lumber Liquidators’ Chinese Flooring over all other brands of flooring.

14. Defendant Lumber Liquidators, Inc., is a corporation organized under the State of Delaware’s Corporation Law with its principal place of business in Toano, Virginia. Defendant Lumber Liquidators, Inc., markets, advertises, distributes, and sells the Products to consumers throughout Texas and the United States.

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 23168.

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 23168.

JURISDICTION AND VENUE

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

19. This Court has personal jurisdiction over Defendants because they conduct business in Texas and otherwise intentionally avail themselves of the markets in Texas so as to render the exercise of jurisdiction by this Court proper. Defendants have marketed, promoted, distributed, and sold the Products in Texas and throughout the United States.

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

FACTUAL ALLEGATIONS

A. Lumber Liquidators

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

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

23. 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" and "only purchases from suppliers who practice sustainable harvesting, which allows forests to heal and re-grow faster."

24. As detailed herein, one of the primary reasons Lumber Liquidators has grown so quickly and its profits have surged has been through its misrepresentations about the formaldehyde levels of its Products.

B. Formaldehyde in Wood Flooring

25. Formaldehyde is a colorless and strong smelling gas. According to the

Occupational Safety and Health Administration (“OSHA”), formaldehyde is “commonly used as a preservative in medical laboratories and mortuaries, and is also found in many products such as particle board, household products, glues, permanent press fabrics, paper product coatings, fiberboard, and plywood.” At high exposure levels, “formaldehyde is a sensitizing agent that can cause an immune system response upon initial exposure. It is also a cancer hazard.”¹⁰ Formaldehyde exposure can be irritating to the eyes, nose, and throat, and severe allergic reactions may occur in the skin, eyes, and respiratory tract.¹¹

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

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

28. All of the Lumber Liquidators Chinese Flooring contains UFR formaldehyde or other formaldehyde resin.

C. CARB Regulations Regarding Formaldehyde

29. The California Air Resource Board, or “CARB,” is a department of the California Environmental Protection Agency. CARB oversees all air pollution control

¹⁰ https://www.osha.gov/OshDoc/data_General_Facts/formaldehyde-factsheet.pdf (last visited March 5, 2015).

¹¹ *Id.*

efforts in California in order to maintain air quality standards.

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

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

32. Significantly, the federal Formaldehyde Standards Act adopted the same standards established by CARB as a nationwide standard.¹² The comment period for the Environmental Protection Agency’s proposed rules governing this statute is now closed, and implementing regulations are expected to be released sometime this year.

D. Lumber Liquidators’ Chinese Flooring

33. Lumber Liquidators has designed, distributed, marketed, and sold the Chinese Flooring—various laminate flooring products manufactured in China.

34. Specifically, the Chinese Flooring includes, but is not limited to:

- a. 8 mm Bristol County Cherry Laminate Flooring;

¹² <http://www2.epa.gov/formaldehyde/formaldehyde-emission-standards-composite-woodproducts#Formaldehyderegs> (last visited March 5, 2015).

- b. 8 mm Dream Home Nirvana Royal Mahogany Laminate Flooring;
- c. 8 mm Dream Home Nirvana French Oak Laminate Flooring;
- d. 12 mm Dream Home Ispiri Poplar Forest Oak Laminate Flooring;
- e. 12 mm Dream Home Kensington Manor Antique Bamboo Laminate Flooring;
- f. 12 mm Dream Home St. James Oceanside Plank Laminate Flooring;
- g. 12 mm Dream Home Kensington Manor Warm Springs Chestnut Laminate Flooring;
- h. 15 mm Dream Home St. James Sky Lakes Pine 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. 12 mm Dream Home Kensington Manor Cape Doctor Laminate Flooring;
- l. 12 mm Dream Home St. James Golden-Acacia Laminate Flooring;
- m. 12 mm Dream Home Kensington Manor Sandy Hills Hickory Laminate Flooring;
- n. 12 mm Dream Home Kensington Manor Tanzanian Wenge Laminate Flooring;
- o. 12 mm Dream Home Ispiri America's Mission Olive Laminate

Flooring;

p. 12 mm Dream Home Kensington Manor Golden Teak Laminate

Flooring;

q. 12 mm Dream Home Kensington Manor Summer Retreat Teak

Laminate Flooring;

r. 12 mm Dream Home Kensington Manor Glacier Peak Poplar

Laminate Flooring;

s. 12 mm Dream Home St. James Brazilian Koa Laminate Flooring;

t. 12 mm Dream Home St. James Blacksburg Barn Board Laminate

Flooring;

u. 12 mm Dream Home St. James Nantucket Beech Laminate

Flooring;

v. 12 mm Dream Home St. James African Mahogany Laminate

Flooring;

w. 12 mm Dream Home Kensington Manor Fumed African Ironwood

Laminate Flooring.

x. 12 mm Dream Home St. James Oceanside Plank Bamboo Laminate

Flooring;

y. 12 mm Dream Home Kensington Manor Warm Springs Chestnut

Laminate Flooring;

z. 15 mm Dream Home St. James Sky Lakes Pine Laminate Flooring;

aa. 12 mm Dream Home Ispiri Chimney Tops Smoked Oak Laminate

Flooring;

bb. 12 mm Dream Home Kensington Manor Imperial Teak Laminate

Flooring;

cc. 12 mm Dream Home St. James Cumberland Mountain Oak; and

dd. 12 mm Dream Home St. James Chimney Rock Charcoal Laminate

Flooring.

35. The Lumber Liquidators' Chinese Flooring stated, in a uniform manner on its packaging, that it was "California 93120 Phase 2 Compliant for Formaldehyde," which indicated that the Chinese Flooring Products met the CARB emission standards for formaldehyde.¹³ This statement was false and misleading for the reasons described herein.

36. On the Lumber Liquidators' website, Defendants also made false and misleading statement about its CARB compliance:

Is Lumber Liquidators Compliant with the California law?

Laminate and engineered flooring products sold by Lumber Liquidators are purchased from mills whose production method has been certified by a Third Party Certifier approved by the State of California to meet the CARB standards. The scope of the certification by the Third Party Certifier includes the confirmation that the manufacturer has implemented the quality systems, process controls, and testing procedures outlined by CARB and that their products conform to the specified regulation limits. The Third Party Certifier also

¹³ http://www.arb.ca.gov/toxics/compwood/consumer_faq.pdf (explaining that "Manufactures typically will label their products as 'California 93120 Compliant for Formaldehyde' or 'California Phase 2 Compliant' if the products meet the stringent CARB regulations for formaldehyde.") (last visited March 5, 2015).

provides ongoing oversight to validate the manufacturers' compliance and manufacturers must be periodically re-certified.

Does CARB only apply to California?

Though it currently applies only to products sold in California, Lumber Liquidators made a decision to require all of our vendors to comply with the California Air Resources Board regulations regardless of whether we intended to sell the products in California or any other state/country.¹⁴

37. In addition, product packaging for the Products stated: "CARB ...Phase 2 Compliant for Formaldehyde." On information and belief, this statement was presented on the packaging of all of Lumber Liquidators' Products even though the Chinese Flooring inside the packages did not comply with CARB standards.



38. According to CARB, "The label seen on panels and finished goods indicates that the product meets the California Air Resources Board's (CARB) stringent

¹⁴ See http://www.lumberliquidators.com/ll/flooring/ca-air-resources-board-regulations?Wt.ad=GLOBAL_FOOTER_CaliRegCARB (last visited March, 5, 2015).

emission standards for formaldehyde emissions from composite wood products, including HWPW, PB, and MDF. The CWP Regulation took effect in 2009, and manufacturers and fabricators of finished goods that use any of these materials are required to use composite wood that meets the formaldehyde emission limits in the CWP Regulation. They are also required to label their products as complying, either on the products themselves or on the packaging for the finished goods. Manufacturers typically will label their products as “California 93120 Compliant for Formaldehyde” or “California Phase 2 Compliant,” although other variations may also be used. California’s CWP Regulation is one of the most stringent regulations in effect to limit formaldehyde emissions from composite wood products.”

39. Lumber Liquidators’ purchase orders came with a warranty from the manufacturers/packagers stating that the PRODUCTS comply “with all applicable laws, codes and regulations,” and “bear all warnings, labels, and markings required by applicable laws and regulations.”¹⁵

40. Lumber Liquidators’ website also guaranteed the “highest quality” flooring, and stated (emphasis in the original):

1) INSPECTION - We inspect your flooring at every stage: before it’s finished, during production, and as it’s shipped. Our Quality Assurance team operates on three continents, seven countries, and in mills around the world. In fact, on a typical day, a production inspector will walk 12 miles up and down the finishing line to ensure you get only the best.

¹⁵ See www.lumberliquidators.com//ll/customer-care/potc800201 (last visited March 5, 2015).

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

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

41. Instead of warning consumers about formaldehyde emissions from its Chinese Flooring, Lumber Liquidators' website stated that it had Third Party Certifiers approve its flooring products to meet CARB standards:

Regulations and Lumber Liquidators' Compliance

The California Air Reform Bill (CARB) requires that products containing Hardwood Plywood Veneer Core (HWP-VC), Hardwood Plywood Composite Core (HWP-CC), Particleboard and MDF be tested for emissions and products not meeting the strict standards for emissions may not be sold in California . . .

All laminates 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 formaldehyde emission limits. The Third Party Certifier also provides

¹⁶ See <http://web.archive.org/web/20130731042457/http://www.lumberliquidators.com/ll/flooring/Quality> (emphasis added) (last visited March 5, 2015).

ongoing oversight to validate the manufacturers' compliance and manufacturers must be periodically re-certified.

Though it currently applies only to products sold in California, Lumber Liquidators made a decision to require all of our suppliers to comply with CARB regardless of whether we intended to sell the products in California or any other state/country. In addition, our suppliers manufacture their products in accordance with the European standard which has stricter guidelines than the California.

In addition to the CARB requirements, Lumber Liquidators regularly selects one or more 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 compliance.¹⁷

42. Lumber Liquidators materially misrepresented the safety of its Chinese Flooring by advertising it as compliant with the CARB standard when, in fact, it was not.

43. Lumber Liquidators made the material omission of failing to tell consumers that they were buying laminate wood flooring products with unlawfully high levels of formaldehyde.

44. However, Lumber Liquidators did not comply with CARB regulations when selling and distributing the Chinese Flooring. Several independent tests, conducted by certified laboratories, revealed that the Chinese Flooring emitted formaldehyde levels well beyond what is allowable by CARB regulations. These test results have shown that average formaldehyde exposures during testing exceeded the 0.05 to 0.11 parts per million as allowed under CARB regulations set forth in 17 CCR §§ 93120-93120.12, *et*

¹⁷ See Formaldehyde-What is it? Regulations and Lumber Liquidators' Compliance, available at http://server.iad.liveperson.net/hc/s-13045352/cmd/kbresource/kb-752012092953572339/view_question!PAGE?sf=101133&documentid=415037&action=view (last visited March 5, 2015).

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

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

46. Another set of tests on Lumber Liquidators' Chinese Flooring was conducted by the environmental advocacy groups Global Community Monitor and Sunshine Park, LLC. The two companies have filed suit in the California Superior Court for the County of Alameda against Lumber Liquidators for its alleged violation of the California Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as “Proposition 65” (“The Global Community Monitor Lawsuit.”) The complaint states that the groups conducted over fifty tests using various test methods and two different laboratory locations. Test results showed average exposures [of formaldehyde] at the time

¹⁸ Xuhua Zhou, *Illegal Products Could Spell Big Trouble at Lumber Liquidators*, SEEKING ALPHA, (Jun. 20, 2013) <http://seekingalpha.com/article/1513142-illegal-products-couldspell-big-trouble-at-lumber-liquidators> (last visited March 5, 2015).

of testing exceeded 4,000 micrograms per day (“ug/day), over 100 times above the 40 ug/day threshold established by [California’s Proposition 65].

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

48. The most recent investigation into Lumber Liquidators flooring was conducted by 60 Minutes. 60 Minutes purchased 31 boxes of Chinese Flooring from Lumber Liquidators stores in five different states and sent samples to two certified labs for testing. Out of the 31 samples, only one was compliant with CARB formaldehyde emissions standards, and some samples were more than 13x over the California limit.

49. Moreover, manufacturers in China admitted on camera to 60 Minutes News that the Chinese Flooring sold by Lumber Liquidators was not compliant with CARB regulations. A transcript from the 60 Minutes news report reads as follows:

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

Employees at the mills openly admitted that they use 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 falsely labeling the company’s laminate flooring as CARB 2, meaning it meets California formaldehyde emissions standards, and the

new U.S. federal law.

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

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

Investigator: For Lumber Liquidators?

Manager: Yeah.

Investigator: How long have you been selling this?

Manager: From last year.

Investigator: Is this CARB 2?

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

Investigator: Can I get CARB 2?

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

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

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

Employee: Not CARB 2.¹⁹

50. After the 60 Minutes episode revealed that Lumber Liquidators' Chinese Flooring was not compliant with California formaldehyde standards, Lumber Liquidators admitted in April of 2015 that the U.S. Department of Justice was seeking federal criminal charges against them under the Lacey Act (which bans illegally sourced wood products)

¹⁹ *Lumber Liquidators Linked to Health and Safety Violations*, 60 MINUTES (Mar. 1, 2015), available at <http://www.cbsnews.com/news/lumber-liquidators-linked-to-health-and-safetyviolations/> (last visited March 5, 2015).

for their Chinese Flooring. In fact, Lumber Liquidators admitted that the government had started investigating them two years earlier, in 2013.

51. In light of the 60 Minutes exposure of Lumber Liquidators' unsafe Chinese Flooring, along with the facts that the government was investigating it and it was facing the possibility of criminal charges by the U.S. Department of Justice, Lumber Liquidators suspended sales of Chinese Flooring in May 2015. However, the suspension is not necessarily permanent and may only last until Lumber Liquidators completes its "review."

52. Lumber Liquidators has offered its customers indoor air testing kits. Indoor air quality kits can, if properly designed and if conducted using proper protocols, measure overall concentrations of chemicals, but they generally cannot determine the source of the chemicals or, unless testing is repeated over time, the change in concentrations as a function of time or other variables such as a home's temperature, humidity, square footage and the like. See "A Challenge to Lumber Liquidators' Tests," *New York Times*, April 17, 2015 (<http://nyti.ms/1OpzHd2>) (last visited June 26, 2015). In addition, it has been alleged that the lab selected to undertake the testing is certified to test for microorganisms, not for chemicals. Lumber Liquidators has asserted that 97% of the tests have indicated formaldehyde levels acceptable under the World Health Organization standard of 8ppm maximum, but that claim appears to be misleading at best in view of the foregoing information. "Lumber Liquidators Pulls Chinese-Made Laminate Flooring Amid Safety Concerns," *Wall St. Journal*, May 7, 2015.

53. Plaintiff and the Class members would not have purchased Lumber Liquidators' Chinese Flooring if they had known that it was not compliant with CARB

and that it emits unlawful and unsafe levels of formaldehyde.

E. Plaintiff's Reliance and Damages

54. During the relevant time period, Plaintiff purchased 12 mm Dream Home St. James Chimney Rock Charcoal Laminate from Lumber Liquidators at a Lumber Liquidators store located in McAllen, Texas. On information and belief, this flooring was produced at a laminate mill in China and, thus, constitutes Chinese Flooring.

55. At the time that Plaintiff purchased this laminate wood flooring, Lumber Liquidators falsely represented that the Products were compliant with CARB formaldehyde emission standards. At the time of the purchase, Lumber Liquidators also failed to inform Plaintiff that the Chinese Flooring she purchased actually exceeded the CARB formaldehyde emission-limit and that formaldehyde is a chemical known to the State of California to cause cancer. Plaintiff relied on Lumber Liquidators' misrepresentations/omissions regarding compliance with CARB formaldehyde emission standards when deciding to purchase the Chinese Flooring and, as a result, she paid Lumber Liquidators for products she would not have otherwise purchased.

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

57. Plaintiff paid for CARB compliant products, but instead received Products that were not CARB compliant. Products that are not CARB compliant are worth less than products that are compliant. By purchasing the Products in reliance on false representations and on express warranties, Plaintiff has suffered injury in fact and lost money as a result of Lumber Liquidators' conduct alleged here.

CLASS ACTION ALLEGATIONS

58. Plaintiff seeks relief in her individual capacity and as a class representative of all others who are similarly situated. Pursuant to Fed. R. Civ. P. 23(a) and (b)(3), Plaintiff seeks certification of the following Nationwide and Texas Classes.

59. The Nationwide Damages Class is initially defined as follows:

All persons residing in the United States who, during the applicable statute of limitations period through the date notice is disseminated to the Class, purchased any of Lumber Liquidators' Chinese-made composite wood flooring products.

60. The Texas Damages Class is initially defined as follows:

All persons residing in the State of Texas who, during the applicable statute of limitations period through the date notice is disseminated to the Class, purchased any of Lumber Liquidators' Chinese-made composite wood flooring products.

61. Excluded from each of the above Classes are Defendants, including any entities in which they have a controlling interest, or which is a parent or subsidiary, or which is controlled by Defendants, as well as the officers, directors, affiliates, legal representatives, predecessors, successors, and assigns of Defendants. Also excluded are all judges and court personnel who handle this case and any members of their immediate families, as well as any persons who purchased the Products for the purpose of resale.

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

63. Numerosity. Fed. R. Civ. P. 23(a)(1). Each Class is so numerous that

joinder of all members is unfeasible and not practicable. While the precise number of Class members has not been determined at this time, Plaintiff is informed and believes that many hundreds of thousands, if not millions, of consumers have purchased the Products.

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

- a. Whether Lumber Liquidators claimed and warranted to the Classes that the Products complied with CARB regulations;
- b. Whether the Products sold to the Classes exceeded the CARB limit;
- c. Whether Lumber Liquidators' claims and warranties that its Products complied with the CARB limit were false;
- d. Whether Lumber Liquidators failed to disclose material information regarding the emission of unlawful levels of formaldehyde from the Products and/or its lack of CARB compliance to the members of the Classes when under a duty to do so;
- e. Whether Lumber Liquidators' representations that the Products complied with the CARB limit were material, as judged by an objective standard;
- f. Whether Lumber Liquidators breached express and implied warranties;
- g. Whether Lumber Liquidators was unjustly enriched;
- h. The nature of the relief, including equitable relief, to which Plaintiff and the

members of the Classes are entitled.

65. Typicality. Fed. R. Civ. P. 23(a)(3). Plaintiff's claims are typical of the claims of the Classes. Plaintiff and all members of the Classes were exposed to uniform unlawful practices and sustained injury arising out of and caused by Lumber Liquidators' unlawful conduct, and Plaintiff and all members of the Classes seek relief under the same legal theories.

66. Adequacy of Representation. Fed. R. Civ. P. 23(a)(4). Plaintiff will fairly and adequately represent and protect the interests of the members of the Classes. Plaintiff has no interest that conflicts with the interests of the other members of the Classes. Plaintiff's counsel are competent and experienced in litigating class actions.

67. Superiority of Class Action. Fed. R. Civ. P. 23(b)(3). A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all the members of the Classes is impracticable. Furthermore, the adjudication of this controversy through a class action will avoid the possibility of inconsistent and potentially conflicting adjudication of the asserted claims. There will be no difficulty in the management of this action as a class action.

FIRST CAUSE OF ACTION

**(Asserted Against Lumber Liquidators on Behalf of Plaintiff and the Class)
Breach of Express Warranty, Tex. Bus. & Com. Code § 2.313**

68. Plaintiff incorporates all preceding and subsequent factual allegations as if fully set forth herein.

69. Plaintiff brings this claim on behalf of herself and the Class.

70. Lumber Liquidators is a “seller” and “merchant” as to the Chinese Flooring within the meaning of Tex. Bus. & Com. Code §§ 2.103 & 2.104. Lumber Liquidators designed, had manufactured and sold the Chinese Flooring, which constitutes “goods” within the meaning of Tex. Bus. & Com. Code § 2.105. Plaintiff and all Class members constitute “buyers” within the meaning of Tex. Bus. & Com. Code § 2.103.

71. Lumber Liquidators warranted in writing that its flooring was free of defects when it sold those products to Plaintiff and the other Class members as described in this Complaint. Defendants further warranted in writing on its packaging and elsewhere that its flooring products complied with CARB formaldehyde standards and all applicable laws and regulations.

72. Lumber Liquidators’ written warranties became part of the basis of the bargain. The representations regarding the Chinese Flooring described in detail above constituted affirmations of fact and promises relating to the flooring that became part of the basis for the bargain for the purchase of the flooring and created an express warranty that the flooring would conform to those affirmations of fact and promises. Likewise, the representations as described above in detail also constituted descriptions of the Chinese Flooring that became part of the basis of the bargain for the purchase of the flooring and created an express warranty that the flooring would conform to those descriptions.

73. Lumber Liquidators breached their express warranties by:

- a. Manufacturing, selling and/or distributing flooring that exceeds the CARB 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 written warranty by refusing to properly repair or replace the defective flooring.

74. Lumber Liquidators was on notice regarding the excessively high levels of formaldehyde in its Chinese Flooring from the complaints and requests for refund it received from Class members, Internet message boards and from published product reviews.

75. Any purported limitations on the written warranties or on implied warranties contained in the written warranties offered by Lumber Liquidators are not conspicuous, are both procedurally and substantively unconscionable, and are otherwise unenforceable.

76. As a direct and proximate result of Lumber Liquidators' misconduct, Plaintiff and the other Class members have suffered damages and continue to suffer damages, including: (1) direct economic damages at the point of sale in the amount of the difference in value between the value of the Chinese Flooring as warranted (the full purchase price) and the value of the flooring as delivered (\$0), and (2) consequential economic damages at the point of repair in the form of the cost of repair and/or the cost of tearing out Lumber Liquidators' Chinese Flooring and installing non-defective replacement flooring.

77. Plaintiff and the other 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.

SECOND CAUSE OF ACTION

(Asserted Against Lumber Liquidators on Behalf of Plaintiff and the Class) Breach of the Implied Warranty of Merchantability, Tex. Bus. & Com. Code § 2.314

78. Plaintiff incorporates all preceding and subsequent factual allegations as if fully set forth herein.

79. Plaintiff brings this claim on behalf of herself and the Class.

80. Lumber Liquidators is a “seller” and “merchant” as to the Chinese Flooring within the meaning of Tex. Bus. & Com. Code §§ 2.103 & 2.104. Lumber Liquidators designed, had manufactured and sold the Chinese Flooring, which constitutes “goods” within the meaning of Tex. Bus. & Com. Code § 2.105. Plaintiff and all Class members constitute “buyers” within the meaning of Tex. Bus. & Com. Code § 2.103.

81. Consequently, pursuant to Tex. Bus. & Com. Code § 2.314(b)(1), (3), (5) & (6), Lumber Liquidators impliedly warranted that the Chinese Flooring was merchantable, including that it: (a) was fit for its ordinary purpose as flooring that does not pose an unreasonable health risk and complies with all applicable laws and regulations, (b) could pass without objection in the trade under its contract description, (c) was adequately contained, packaged and labeled as the agreements required, and (d) conformed to the promises and affirmations of fact set forth on its containers and labels.

82. Lumber Liquidators initially breached the implied warranty of merchantability as to Plaintiff and the other Class members because the Chinese Flooring was not fit for the ordinary purposes for which it is used—flooring that is not

unreasonably dangerous and complies with all laws and regulations. Specifically, the Chinese Flooring was unreasonably dangerous to homeowners because it contained excessive amounts of formaldehyde, and it did not comply with the applicable CARP regulations.

83. Lumber Liquidators further breached its implied warranty of merchantability to Plaintiffs and the other Class members because the Chinese laminate flooring would not pass without objection in the trade under its contract description as flooring complying with CARB and all applicable statutes and regulations, as it contained excessive amounts of formaldehyde.

84. Lumber Liquidators further breached its implied warranty of merchantability as to Plaintiff and the other Class members because the Chinese Flooring was not adequately contained, packaged and labeled. The packaging and labeling contained misrepresentations about the formaldehyde content and failed to warn about the dangers of the formaldehyde content.

85. Lumber Liquidators finally breached its implied warranty of merchantability to Plaintiff and the other Class members because the Chinese Flooring did not conform to the promises and affirmations of facts set forth on its container and label, as described above. Specifically, the Chinese Flooring did not meet CARB and all applicable statutes and regulations, as set forth on its container and label.

86. Any attempts by Lumber Liquidators to disclaim the implied warranty of merchantability did not conform to the law and were not conspicuous as required by law, and were both procedurally and substantively unconscionable, rendering them

unenforceable.

87. As a result of the non-merchantability of Lumber Liquidators' flooring described herein, Plaintiff and the other Class members have suffered damages and continue to suffer damages, including: (1) direct economic damages at the point of sale in the amount of the difference in value between the value of the Chinese Flooring as warranted (the full purchase price) and the value of the flooring as delivered (\$0), and (2) consequential economic damages at the point of repair in the form of the cost of repair and/or the cost of tearing out Lumber Liquidators' Chinese Flooring and installing non-defective replacement flooring.

THIRD CAUSE OF ACTION

**(Asserted Against Lumber Liquidators on Behalf of Plaintiff and the Class)
Violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et. seq.
("MMWA")**

88. Plaintiffs incorporate all preceding and subsequent factual allegations as if fully set forth herein.

89. Plaintiff brings this claim on behalf of herself and the Class.

90. The Chinese Flooring is a consumer product as defined in 15 U.S.C. § 2301(1).

91. Lumber Liquidators is a supplier and a warrantor as defined in 15 U.S.C. § 2301(4) & (5).

92. The warranty that came with the Products constitutes a "written warranty" under 15 U.S.C. § 2301(6)(A) and/or (B).

93. Plaintiff and the other Class members are "consumers" as defined in 15

U.S.C. § 2301(3). They are consumers because: (a) they are buyers of a consumer product; (b) they are persons entitled under applicable state law to enforce against the warrantor the obligations of its implied warranty; and (c) they are entitled to enforce a written warranty.

94. Pursuant to 15 U.S.C. § 2310(e), the Plaintiffs and the other Class members are entitled to bring this class action and are not required to give Lumber Liquidators notice and opportunity to cure until such time as the Court determines the representative capacity of the Plaintiff pursuant to Rule 23 of the Federal Rules of Civil Procedure.

95. Lumber Liquidators is liable to the Plaintiff and the other Class members pursuant to 15 U.S.C. § 2310(d)(1), because it breached its written warranty. Specifically, it refused to honor the written warranty by refusing to properly repair or replace the defective Chinese Flooring, as set forth above.

96. In connection with its sales of the Chinese Flooring, Lumber Liquidators gave an implied warranty as defined in 15 U.S.C. § 2301(7); namely, the implied warranty of merchantability. As a part of the implied warranty of merchantability, Lumber Liquidators warranted that the Chinese Flooring: (a) was fit for its ordinary purpose as safe flooring that complies with all applicable laws and regulations, (b) would pass without objection the trade under its contract description as flooring meeting CARB and all applicable statutes and regulations, (c) was adequately contained, packaged and labeled as the agreements required, and (d) conformed to the promises and affirmations of fact regarding CARB and regulatory compliance as set forth on its container and label. Lumber Liquidators is liable to the Plaintiffs and the Class pursuant to 15 U.S.C. §

2310(d)(1), because it breached the implied warranty of merchantability, as set forth above.

97. Pursuant to 15 U.S.C. § 2310(d)(1), Plaintiff and the other Class members are entitled to recover the following damages proximately caused by Lumber Liquidators' breaches of its written warranty and the implied warranty of merchantability: (1) direct economic damages at the point of sale in the amount of the difference in value between the value of the Chinese Flooring as warranted (the full purchase price) and the value of the flooring as delivered (\$0), and (2) consequential economic damages at the point of repair in the form of the cost of repair and/or the cost of tearing out Lumber Liquidators' Chinese Flooring and installing non-defective replacement flooring.

98. In addition, pursuant to 15 U.S.C. § 2310(d)(2), Plaintiff and the other Class members are entitled to recover a sum equal to the aggregate amount of costs and expenses (including attorneys' fees based on actual time expended) determined by the Court to have been reasonably incurred by Plaintiff and the other Class members in connection with the commencement and prosecution of this action.

FOURTH CAUSE OF ACTION

(Asserted Against Lumber Liquidators on Behalf of Plaintiff and the Class) Violation of Texas Deceptive Trade Practices for Breach of Warranty ("DTPA")

99. Plaintiffs incorporate all preceding and subsequent factual allegations as if fully set forth herein.

100. Plaintiff brings this claim on behalf of herself and the Class.

101. Plaintiff and the other Class members are “consumers” as defined in Tex. Bus. & Com. Code § 17.45(4).

102. Chinese Flooring, itself, constituted “goods,” as that term is defined in Tex. Bus. & Com. Code § 17.45(1).

103. Lumber Liquidators violated DTPA § 17.50(a)(2), because Lumber Liquidators breached both express and implied warranties relating to Chinese Flooring, as describe in detail, supra.

104. Lumber Liquidators’ violations of DTPA § 17.50(a)(2) were the producing cause of actual economic damages to Plaintiff and the other Class members equal to: (1) direct economic damages at the point of sale in the amount of the difference in value between the value of the Chinese Flooring as warranted (the full purchase price) and the value of the flooring as delivered (\$0), and (2) consequential economic damages at the point of repair in the form of the cost of repair and/or the cost of tearing out Lumber Liquidators’ Chinese Flooring and installing non-defective replacement flooring. Plaintiff and the other Class members seek to recover these economic damages from Lumber Liquidators pursuant to DTPA § 17.50(b)(1).

105. Alternatively, Plaintiff and the other Class members seek disgorgement and/or restitution of the gross revenue derived by Lumber Liquidators from its sale of Chinese Flooring to them, along with any other equitable relief to which they are entitled, pursuant to DTPA § 17.50(b)(3). In addition to their actual economic damages, pursuant to DTPA § 17.50(d), Plaintiff and the other Class members are entitled to recover their reasonable and necessary attorneys’ fees and court costs.

106. Lumber Liquidators committed the conduct in question knowingly or intentionally, pursuant to DTPA § 17.50(b), as evidenced by the fact that despite knowledge of the excessively high levels of formaldehyde in its flooring from the complaints and requests for refund it received from Class members, Internet message boards and from published product reviews, Lumber Liquidators continued to market and sell the Chinese Flooring. Because Lumber Liquidators' breaches of its express and implied warranties relating to Chinese Flooring were made knowingly or intentionally, Plaintiff and the other Class members are entitled to recover additional damages of not more than three times the amount of their economic damages.

107. For those Class members who purchased Chinese Flooring from Lumber Liquidators more than two years before the filing of the Original Complaint in this action, the statute of limitations has not run on their DTPA causes of action pursuant to Tex. Bus. & Com. Code § 17.565 because they did not discover, and should not have discovered in the exercise of reasonable diligence, Lumber Liquidators' breaches of warranties until within two years prior to the filing of the Original Complaint in this action.

FIFTH CAUSE OF ACTION

(Asserted Against Lumber Liquidators on Behalf of Plaintiff and the Class)
Fraudulent Omission/Concealment

108. Plaintiff incorporates all preceding and subsequent factual allegations as if fully set forth herein.

109. Plaintiff brings this claim on behalf of herself and the Class.

110. Lumber Liquidators knew that the Chinese 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.

111. Lumber Liquidators fraudulently concealed from and/or intentionally failed to disclose to Plaintiff and the other Class members that the Chinese Flooring was defective.

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

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

114. Lumber Liquidators undertook active and ongoing steps to conceal the defect. Plaintiff is not aware of anything in Lumber Liquidators' advertising, publicity or marketing materials that had disclosed the truth about the defect, despite Lumber Liquidators' awareness of the problem.

115. The facts concealed and/or not disclosed by Lumber Liquidators to Plaintiff and the other 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 Flooring from Lumber Liquidators.

116. Lumber Liquidators intentionally concealed and/or failed to disclose

material facts for the purpose of inducing Plaintiff and the other Class members to act thereon.

117. Plaintiff and the other Class members justifiably acted or relied upon the concealed and/or non-disclosed facts to their detriment, as evidenced by their purchase of the Chinese Flooring.

118. Plaintiff and the other 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: (1) direct economic damages at the point of sale in the amount of the difference in value between the value of the Chinese Flooring as represented (the full purchase price) and the value of the flooring as delivered (\$0), and (2) consequential economic damages at the point of repair in the form of the cost of repair and/or the cost of tearing out Lumber Liquidators' Chinese Flooring and installing non-defective replacement flooring. To the extent any Class members filed this suit more than four years after they purchased Chinese Flooring, they would have initiated this suit within four years of their purchase had the defect not been actually concealed from them and/or had it been affirmatively disclosed to them.

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

SIXTH CAUSE OF ACTION

(Asserted Against Lumber Liquidators on Behalf of Plaintiff and the Class)
Negligence

120. Plaintiff incorporates all preceding and subsequent factual allegations as if

fully set forth herein.

121. Plaintiff brings this claim on behalf of herself and the Class.

122. Lumber Liquidators was under a legal duty to exercise reasonable care to design, manufacture, and distribute flooring that would conform to all industry standards and codes.

123. Lumber Liquidators breached its legal duty and was negligent in its design and/or manufacture of its Chinese Flooring described herein. Lumber Liquidators' design and/or manufacture of the Chinese Flooring is inherently defective, in that the flooring emits unsafe levels of formaldehyde, causing damage to Plaintiff's and the other Class members' persons and residences/structures, as well as other property throughout the residences/structures.

124. As a result of the defects described herein, Plaintiff and the other Class members' residences contain unsafe and dangerous levels of formaldehyde gas.

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

126. Lumber Liquidators knew or, in the exercise of reasonable care, should have known that its Chinese Flooring was negligently designed and/or manufactured so as to allow for unsafe levels of formaldehyde emissions which will cause damage to Plaintiff's and the other Class member's persons, well-being, and property and would not perform as expected by Plaintiff and the other Class members and/or a reasonable consumer.

127. Lumber Liquidators knew or, in the exercise of reasonable care, should have known that its Chinese Flooring was defective.

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

129. As a direct, proximate, reasonably probable, and foreseeable consequence of Lumber Liquidators' negligent acts and/or omissions in connection with its design, manufacturing, and distribution of its Chinese Flooring, Plaintiff and the other Class members have suffered and will continue to suffer losses and damages, including: (1) direct economic damages at the point of sale in the amount of the difference in value between the amounts paid for the Chinese Flooring (the full purchase prices) and the value of the flooring as delivered (\$0), and (2) consequential economic damages at the point of repair in the form of the cost of repair and/or the cost of tearing out Lumber Liquidators' Chinese Flooring and installing non-defective replacement flooring.

SEVENTH CAUSE OF ACTION

(Asserted Against Lumber Liquidators on Behalf of Plaintiff and All Classes) Strict Products Liability – Section 402A of the Restatement (Second) of Torts

130. Plaintiff incorporates all preceding and subsequent factual allegations as if fully set forth herein.

131. Plaintiff brings this claim on behalf of herself and the Class.

132. Lumber Liquidators designed, manufactured, and sold Chinese Flooring, with unsafe levels of formaldehyde emissions which had harmful effects as alleged,

supra. The presence of unsafe levels of formaldehyde and harmful effects in Chinese Flooring, at all times material hereto, constituted an unreasonably dangerous defect and/or condition.

133. Lumber Liquidators' Chinese Flooring was unreasonably dangerous because of defects in marketing, design, and manufacturing causing damages to Plaintiff's and the other Class members' persons and residences/structures, as well as other property throughout the residences/structures.

134. There was a defect in the marketing of Lumber Liquidators' Chinese Flooring which made it unreasonably dangerous because Lumber Liquidators failed to warn the Plaintiff and the other Class members, on its packaging or otherwise, of unsafe levels of formaldehyde emissions in their Chinese Flooring and of its potential harms.

135. Lumber Liquidators' design of the Chinese Flooring was inherently defective because of its unsafe levels of formaldehyde emissions, and the fact that such flooring could be designed with safe levels of formaldehyde emissions.

136. Lumber Liquidators' Chinese Flooring was defectively manufactured because it contained unsafe levels of formaldehyde which rendered it unreasonably dangerous beyond the expectations of ordinary consumers.

137. These unreasonably dangerous defects in the marketing, design and manufacture of Chinese Flooring existed at the time the Chinese Flooring left Lumber Liquidators' control.

138. As a result of the defects described herein, Plaintiff and the other Class members' residences contain unsafe and dangerous levels of formaldehyde gas, and their

residences contain defective and dangerous Chinese Flooring that requires replacement, as well as repair of damages to other property incidental thereto.

139. Lumber Liquidators possessed the knowledge to cure the defect in its Chinese Flooring, but it continued to sell, market, and advertise defective and unsafe Chinese Flooring.

140. The unreasonably dangerous defects and/or unsafe conditions of Chinese Flooring sold by Lumber Liquidators proximately caused injury to Plaintiff and the other Class members who have suffered, and will continue to suffer losses and damages, including: (1) direct economic damages at the point of sale in the amount of the difference between the amounts paid for the Chinese Flooring (the full purchase prices) and the value of the flooring as delivered (\$0), and (2) consequential economic damages at the point of repair in the form of the cost of repair and/or the cost of tearing out Lumber Liquidators' Chinese Flooring and installing non-defective replacement flooring.

141. Accordingly, Lumber Liquidators is strictly liable for these damages caused to Plaintiff and the other Class members by its unreasonably dangerous product.

EIGHTH CAUSE OF ACTION

(Asserted Against Lumber Liquidators on Behalf of Plaintiff and the Class) Money Had and Received

142. Plaintiff incorporates all preceding and subsequent factual allegations as if fully set forth herein.

143. Plaintiff brings this claim on behalf of herself and the Class.

144. Lumber Liquidators holds money, namely the purchase prices paid by

Plaintiff and the other Class members for its Chinese Flooring, which money in equity and good conscience belongs to Plaintiff and the other Class members.

145. Based upon money had and received, Plaintiff and the other Class members are entitled to recover the full purchase prices they paid for the Chinese Flooring.

REQUEST FOR RELIEF

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

A. Declaring that this action is a proper class action, certifying the Class as requested herein, designating Plaintiff as Class Representative and appointing the undersigned counsel as Class Counsel;

B. Ordering Defendants to pay actual damages and equitable monetary relief to Plaintiff and the other members of the Class and Subclasses;

C. Ordering Defendants to pay punitive damages, as allowable by law, to Plaintiff and the other members of these Classes;

D. Ordering Lumber Liquidators to pay statutory damages, as allowable by the statutes asserted herein, to Plaintiff and the other members of these Classes;

E. Ordering Defendants to pay attorneys' fees and litigation costs to Plaintiff and the other members of the Classes;

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

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

JURY DEMAND

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

Dated: July 29, 2015

Respectfully submitted,

/s/ Patricia Rigney _____

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