

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
(STATESVILLE DIVISION)**

Case No. _____

TAMMY DUCKWORTH, and JAY DUCKWORTH, Individually and on behalf of all others similarly situated,)	
)	
)	
)	
Plaintiffs,)	
)	
v.)	CLASS ACTION COMPLAINT
)	
LUMBER LIQUIDATORS, INC., LUMBER LIQUIDATORS LEASING, LLC, LUMBER LIQUIDATORS HOLDING, INC., and LUMBER LIQUIDATORS SERVICES, LLC,)	
)	
)	
Defendants.)	

Plaintiffs, Tammy Duckworth and Jay Duckworth, individually and on behalf of all others similarly situated (the “Class”, as more fully defined below), allege against Defendant, Lumber Liquidators, Inc., Defendant, Lumber Liquidators Leasing, LLC, Defendant, Lumber Liquidators Holding, Inc., and Defendant, Lumber Liquidators Services, LLC (collectively “Lumber Liquidators”, the “Company”), the following facts and claims and aver as follows:

INTRODUCTION

1. This is a proposed class action brought by Plaintiffs on behalf of themselves and the below-defined Class against Lumber Liquidators to obtain damages and injunctive relief arising from and relating to their purchase and installation of Lumber Liquidators’ Chinese wood flooring material (“Chinese Flooring”).

2. This class action arises out of Lumber Liquidators’ scheme to import into the United States, and to falsely warrant, advertise, and sell Chinese Flooring that fails to

comply with relevant and applicable formaldehyde standards with respect to these products.

3. In particular, in contrast to its direct representations to the contrary, Lumber Liquidators manufactures, sells, and distributes Chinese Flooring which emits and off-gasses excessive levels of formaldehyde, which is categorized as a known human carcinogen by the United States National Toxicology Program and the International Agency for Research on Cancer.

4. Further, contrary to Lumber Liquidators' repeated, detailed representations that its flooring complies with strict formaldehyde standards on its product labels, website, and elsewhere, the toxic formaldehyde emissions from the Company's Chinese Flooring are multiple times the maximum permissible limits set by those standards at the time of purchase.

5. Lumber Liquidators' illegal behavior with respect to its manufacturing, marketing, and sale of Chinese Flooring has caused Plaintiffs and the other Class members to suffer direct financial harm. Plaintiffs' purchase is markedly less valuable because of its elevated level of formaldehyde. Plaintiffs would not have purchased the product or would have paid significantly less, if they purchased Chinese Flooring at all, had they known that the product contained elevated levels of the toxin formaldehyde.

6. Plaintiffs assert claims individually and on behalf of the other members of the proposed Class.

PARTIES

7. Plaintiffs Tammy Duckworth and Jay Duckworth are a married couple and citizens of North Carolina. Plaintiffs own a home in Hickory, Catawba County, North Carolina in which Lumber Liquidators' Chinese Flooring is installed. In October 2014, Plaintiffs purchased KM Sandy Hill Hickory Chinese Flooring from Lumber Liquidators and

installed it in their home. Plaintiffs relied on the representation of Lumber Liquidators, Lumber Liquidators' representatives, and the express warranties on the Chinese Flooring in selecting Lumber Liquidators' Chinese Flooring over all other brands of flooring.

8. Defendant, Lumber Liquidators, Inc. is a Delaware corporation with its principal place of business at 3000 John Deere Road, Toano, Virginia 23168. Lumber Liquidators, Inc. is licensed and doing business in the State of North Carolina.

9. 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.

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

11. 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

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

13. Venue is proper in this District under 28 U.S.C. § 1391 because Plaintiffs reside in this Judicial District and a substantial part of the events or omissions giving rise to

Plaintiffs' claim occurred in this Judicial District. In addition, Lumber Liquidators does business and/or transacts business in this Judicial District, and therefore, is subject to personal jurisdiction in this Judicial District and resides here for venue purposes.

FACTUAL ALLEGATIONS

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

15. Lumber Liquidators' Chinese Flooring is not what it purports to be. The Chinese Flooring contains a dangerous level of formaldehyde gas which exceeds the "CARB regulations in the State of California" and the standards promulgated in the Toxic Substances Contract Act, 15 U.S.C. § 2601 *et seq.* (Title VI – Formaldehyde Standards of Composite Wood Products) and is hazardous to human health.

16. CARB is a department of the California Environmental Protection Agency. CARB's mission is to promote and protect public health, welfare, and ecological resources through effective reduction of air pollutants while recognizing and considering effects on the economy. CARB oversees all air pollution control efforts in California to attain and maintain health-based air quality standards. Additionally, CARB mandates are typically the model for national standards. For example, the Environmental Protection Agency and the Department of Transportation coordinated their most recent round of proposed rules with CARB. CARB has served as the model for the federal standard in formaldehyde emissions as well.

17. CARB promulgated the Airborne Toxic Control Measure to Reduce

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

18. The United States statute that governs permissible formaldehyde emissions, the Formaldehyde Standards for Composite Wood Products Act of 2010, 15 U.S.C. § 2697 (the "Formaldehyde Standards Act"), was signed into law on July 7, 2010. The Formaldehyde Standards Act adopted the standards established by CARB as a nationwide standard. The comment period for the two proposed regulations that will implement the Formaldehyde Standards Act recently concluded and the implementation of these standards is forthcoming.

19. Formaldehyde is classified as a volatile organic compound ("VOC"), which is a chemical that becomes a gas at room temperature. It is listed as a known human carcinogen by the National Toxicology Program and the International Agency for Research on Cancer.

20. According to the U.S. Occupational Safety & Health Administration ("OSHA"):

[t]he concentration of formaldehyde that is immediately dangerous to life and health is 100 ppm. Concentrations above 50 ppm can cause severe pulmonary reactions within minutes. These include pulmonary edema, pneumonia, and bronchial irritation which can result in death. Concentrations above 5 ppm readily cause lower airway irritation characterized by cough, chest tightness and wheezing.

Long term exposure has been linked to an increased risk of cancer of the nose

and accessory sinuses, nasopharyngeal and oropharyngeal cancer, and lung cancer in humans.¹

21. Formaldehyde has a pungent odor and irritates the respiratory tract. The most common symptoms of formaldehyde exposure are burning eyes, nose and throat irritation, coughing, headaches, dizziness, joint pain, and nausea. Due to the harmful effects of formaldehyde on human health, various laws have been enacted to reduce consumers' exposure to this toxin.

22. Formaldehyde is the sort of toxic substance to which people may be exposed without knowing they are at risk. Day after day, week after week, month after month, Plaintiffs live in their home, an enclosed place, where the flooring is emitting toxic cancer causing fumes.

23. Wood flooring can contain formaldehyde because formaldehyde is often used in the adhesives and resins used to make engineered wood floors. Formaldehyde can be released into the air (through a process called "off-gassing") from wood flooring materials.

24. According to the Consumer Product Safety Commission ("CPSC"), pressed-wood (i.e., hardwood plywood, particleboard, and medium-density fiberboard ("MDF")) and wood based products, especially those containing urea-formaldehyde (or "UF") resins, may be "a significant formaldehyde source."

25. Chinese-sourced wood products (including Lumber Liquidators' Chinese Flooring) are particularly associated with excess formaldehyde levels.

26. One study, entitled "Formaldehyde in China: Production, consumption, exposure levels, and health effects," *Environment International* 35 (2009) 1210-24, found

¹ https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=standards&p_id=10078.

that over the last 20 years, China's formaldehyde industry has experienced unprecedented growth, and now produces and consumes one-third of the world's formaldehyde. More than 65% of the Chinese formaldehyde output is used to produce resins which are mainly found in wood products. These are also the major source of indoor air pollution in China. The study documented numerous instances of hazardous occupational exposure to formaldehyde in Chinese wood workers.

27. Chinese regulations governing formaldehyde in wood products are virtually non-existent. As a result, wood sourced from China is not subject to the strict environmental regulations that would govern such wood products manufactured in the United States.

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

29. Because the Chinese Flooring emits excessive formaldehyde levels, it violates the North Carolina building code and industry standards, including the applicable Building Codes and CARB standards as well as Lumber Liquidators' express representations and warranties.

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

31. Thus, Lumber Liquidators deceptively manufactured, labeled, and sold the Chinese Flooring.

32. Moreover, during contact with Plaintiffs and Class members, Lumber Liquidators concealed its knowledge of repeated product defects in the Chinese Flooring in the Class members' structures.

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

34. Lumber Liquidators' marketing materials, including the Company's website, specifically represented to consumers that the Company's Chinese Flooring products comply with the formaldehyde emission regulations propounded by CARB and, indeed, comply with even stricter European Union ("EU") formaldehyde standards:

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 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 intend 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 [sic].

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.²

35. On the product packaging of the Chinese Flooring products at issue in this case, Lumber Liquidators represents and warrants that its Chinese Flooring complies with CARB Phase 2 Formaldehyde standards:

² <http://www.lumberliquidators.com/ll/flooring/Flooring101>.



36. Upon information and belief, at the time Plaintiffs and Class members purchased their Chinese Flooring, Lumber Liquidators' Purchase Order Terms and Conditions, readily available on the Company's website, provided the following warranties:

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

furnished or supplied pursuant to this Purchase Order have been sourced, produced, sold, delivered, declared, packaged, labeled, manufactured, and/or rendered to Lumber Liquidators in compliance with all applicable laws, codes and regulations.

See <http://www.lumberliquidators.com/ll/customer-care/potc800201>.

37. This warranty applied to all Lumber Liquidators products including those purchased by the Plaintiffs and the Class Members herein.

38. Plaintiffs' invoice for the product they purchased, however, states that it offers a "30 year warranty" and the product they purchased "is subject to CARB regulations in the state of California."

39. The Plaintiffs Tammy Duckworth and Jay Duckworth are proud of their home in Hickory, Catawba County, North Carolina. They believed that the Lumber Liquidators' floor product was safe to be installed. Accordingly, in October 2014, Plaintiffs purchased KM Sandy Hill Hickory Chinese Flooring from Lumber Liquidators store in Hickory and it was installed in their home at 2905 Cliftwood Circle in Hickory. They believed that this product, also known as "Dream Home Kensington Manor," was safe for their home.

40. It was very important to the Duckworths that any products in their homes be safe because they would regularly have their 11-year-old nephew to come and stay over at their home. Because he has certain respiratory issues, since the Duckworths learned from the 60 Minutes Report about the problems with the product, they have avoided having their nephew over due to the health concerns. They are upset that they are not able to spend time with the nephew and babysit him as they used to.

41. The Duckworths have been in their home for over 20 years. They spend 90 percent of their awake time in the living room where they relax, spend time with relatives and friends, and watch television. Unfortunately, the Lumber Liquidators' floor product was

installed in that very room as well as in the hallway.

42. The Duckworths have a beloved pet dog that is an indoor dog. They are also now very concerned about the potential effects of the formaldehyde on their pet.

43. The Duckworths are not litigious people. Once they learned of the formaldehyde danger, they called Lumber Liquidators to afford the company an opportunity to remedy the danger it had caused to their home. However, Lumber Liquidators refused to take any action at all or to take their concerns seriously.

44. Mr. and Mrs. Duckworth view their home as their safe haven. Their safety has been violated by the defective product. They are concerned as to the danger to other North Carolina residents as well, and particularly families with small children or with family members with disabilities or fragile health.

45. The Lumber Liquidators' Chinese Flooring product is a laminate wood flooring made in China. On information and belief, the products were marketed as environmentally-friendly, with advertisements featuring children running and playing on the floors, and representations were made that the products were formaldehyde-compliant.

46. The core of the product consists of wood particles stuck together with a cheap glue that contains formaldehyde. Formaldehyde is in the glues used to bind wood particles together to make the core boards in laminate flooring. Over time, formaldehyde gas can seep out and into the air.

47. The health risks of formaldehyde are well-documented. The risk is especially serious for children who may spend time playing, crawling or sitting on the floor.

48. The dangers of the products were the subject of a March 2015 60 Minutes investigation. See <http://www.cbsnews.com/news/lumber-liquidators-linked-to-health-and->

[safety-violations/](#).

49. 60 Minutes reported how samples of laminate flooring were sent them to certified labs for a series of tests. The results were that “[w]hile laminate flooring from Home Depot and Lowes had acceptable levels of formaldehyde, as did Lumber Liquidators American-made laminates, every single sample of Chinese-made laminate flooring from Lumber Liquidators failed to meet California formaldehyde emissions standards. Many by a large margin.” *See id.*

50. The individuals who had the tests performed described that “[t]he average level in Lumber Liquidators products that we found was over six to seven times above the state standard for formaldehyde. And we found some that were close to 20 times above the level that's allowed to be sold.” *See id.*

51. 60 Minutes reported that it arranged to send more samples for testing at 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. Both labs told us they had never seen formaldehyde levels that high.” *See id.*

52. 60 Minutes also sent “investigators undercover to the city of Changzhou, the laminate flooring capital of the world. Posing as buyers, and using hidden cameras, the investigators visited three different mills that manufacture laminates for Lumber Liquidators.” *See id.* **“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.”** *Id.* (emphasis added).

53. A Chinese factory manager admitted as follows:

“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.”

See id.

54. The 60 Minutes report was not the first time Defendants had been put on notice of the dangers. Months earlier, and prior to when Plaintiffs bought their flooring, on June 20, 2013, an online article raised similar issues. See <http://seekingalpha.com/article/1513142-illegal-products-could-spell-big-trouble-at-lumber-liquidators>. That article among other things described:

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. (This product was purchased retail from a Southern California retail store.) 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, NTA. This second lab confirms the product is in violation of the legal limit for formaldehyde....

To investigate, some products were purchased from a retail store in Los Angeles and were sent for lab testing for CARB compliance. Due to the prohibitive costs and efforts in carrying out the testing, only a limited number of samples were

collected. The testing specifically focused on the Company's brand name Bellawood and the Company's imported product from China. While the Bellawood product came back compliant with the relevant regulations, the imported product from China tested emitting 0.17 ppm, three and half times the government mandated maximum emission level. The test was carried out by Berkeley Analytical, an IAS accredited lab. The same test performed by another independent accredited lab, NTA, also shows noncompliance....

The results show some of Lumber Liquidators' products significantly exceed the government mandated limits and the Company does not have proper internal quality control process to ensure the safety of its products. The tested product, Mayflower 5/16" x 5" Bund Birch Engineered, emits a staggering three and half times over the government mandated maximum emission level. The product is clearly not CARB compliant yet Lumber Liquidators tagged CARB compliance on the box....

55. On information and belief, at the time of the purchases by some or all Class Members, Lumber Liquidators' website purported to guarantee the "highest quality" flooring, and stated: "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." *See* http://videos.lumberliquidators.com/ll/flooring/quality?WT.ad=GLOBAL_FOOTER_Quality.

56. On information and belief, at the time of the purchases by some or all Class Members, Lumber Liquidators' website also stated: "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." *See id.*

57. On information and belief, at the time of the purchases by some or all Class Members, Lumber Liquidators' website also stated: "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.” *Id.*

58. The Lumber Liquidators website includes numerous other deceptive representations that its products are safe and meet any applicable standards:

“Lumber Liquidators’ products are safe and meet the highest quality and environmental standards.... We require that all of our suppliers comply with California’s advanced environmental requirements, even for products sold outside California....”

See <http://www.lumberliquidators.com/sustainability/health-and-safety/>.

59. During the pertinent times, Lumber Liquidators made misstatements and material omissions of fact by holding-out its products as safe and compliant and by failing to tell consumers that they are buying laminate wood flooring products with unlawfully high levels of formaldehyde.

60. Several independent tests conducted by certified laboratories have reflected that the Lumber Liquidators Chinese Flooring Products emitted formaldehyde levels well beyond what is allowable by CARB and other standards and regulations.

61. Plaintiffs and Class Members would not have purchased the Lumber Liquidators Chinese Flooring Products if they had known that the products were not compliant with applicable standards and regulations and that the Products emit unlawful levels of formaldehyde.

62. Despite knowing of the defects in the Chinese Flooring, Lumber Liquidators has not notified all purchasers, builders, and/or homeowners with the Chinese Flooring of the defect nor provided uniform relief.

63. Plaintiffs and Class Members have not received the value for which they or their builder bargained when the Chinese Flooring was purchased. There is a difference in value between the Chinese Flooring as warranted and the Chinese Flooring containing the defect.

64. Plaintiffs and the Class have been damaged by Lumber Liquidators' dangerous and deceptive Chinese Flooring. Plaintiff and the Class are entitled to a return of the full purchase price paid for the Chinese Flooring and other damages to be proven at trial.

CLASS ACTION ALLEGATIONS

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

All persons and entities in North Carolina who purchased and installed wood flooring from Lumber Liquidators Holdings, Inc., either directly or through an agent, that was sourced, processed, or manufactured in China.

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

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

67. *Commonality*: Questions of law and fact common to the Class exist as to all

members of the Class and predominate over any questions affecting only individual members of the Class. These common legal and factual issues include, but are not limited to the following:

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

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

69. *Adequate Representation*: Plaintiffs will fully and adequately assert and protect the interests of the other Class members. In addition, Plaintiffs have retained class counsel

who are experienced and qualified in prosecuting class action cases similar to this one. Neither Plaintiffs nor their attorneys have any interests contrary to or conflicting with other Class members' interests.

70. *Predominance and Superiority*: This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and a Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class Members be required to bring separate actions, this Court and Courts throughout North Carolina would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single Court.

71. Plaintiff brings this action pursuant to Rules 23(a), 23(b)(2), and 23(b)(3), individually and on behalf of all others similarly situated.

COUNT I **NEGLIGENCE**

72. Plaintiffs on behalf of themselves and all others similarly situated, adopt and incorporate by reference all foregoing allegations as though fully set forth herein.

73. Lumber Liquidators were under a legal duty to exercise reasonable care to design, manufacture and distribute Chinese Flooring that would conform to all industry standards and codes.

74. Lumber Liquidators breached its legal duty and was negligent in its design

and/or manufacturer 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 Plaintiffs' and the Class Members' person and residences/structures.

75. As a result of the defects described herein, Plaintiffs' and Class Members' homes contain unsafe and dangerous levels of formaldehyde gas.

76. As a result of Lumber Liquidators' practices, Plaintiffs' and the Class Members' residences contain defective and dangerous Chinese Flooring that require replacement as well as repair of damages incidental thereto.

77. Lumber Liquidators knew or, in the exercise of reasonable care, should have known that its Chinese Flooring was negligently designed and/or manufactured to allow for unsafe levels of formaldehyde emissions which will cause damage to Plaintiffs' and Class Members' persons, wellbeing, and property and would not perform as expected by Plaintiffs, Class Members, and/or a reasonable consumer.

78. Lumber Liquidators knew or, in the exercise of reasonable care, should have known that its Chinese Flooring was negligently designed and/or manufactured.

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

80. Pursuant to the North Carolina Product Liability Act, N.C.G.S. § 99B-1 *et seq.*, Plaintiffs are each a "Claimant" within the meaning of the statute. On information and belief, Defendants are each either a "Manufacturer" or "Seller" under the statute. *See* N.C.G.S. § 99B-1.

81. Pursuant to N.C.G.S. § 99B-4 and § 99B-5, Defendants failed to act with due care including but not limited to with regard to their warnings and instructions for the product. Defendants acted unreasonably in failing to provide proper warnings and instructions, and this failure to provide adequate warning or instruction was a proximate cause of the harm for which damages are sought, in that, among other things, the Plaintiffs would never have purchased the product had they been warned and informed of its unsafe nature.

82. At the time the product left the control of Defendants, the product created an unreasonably dangerous condition that Defendants knew, or in the exercise of ordinary care should have known, posed a substantial risk of harm to a reasonably foreseeable claimant.

83. Pursuant to N.C.G.S. § 99B-6, Defendants manufactured and/or sold a product with an inadequate design or formulation. Defendants acted unreasonably in designing or formulating the product, and this conduct was a proximate cause of the harm for which damages are sought, and at the time the product left the control of the Defendants, they had unreasonably failed to adopt a safer, practical, feasible, and otherwise reasonable alternative design or formulation that could then have been reasonably adopted and that would have prevented or substantially reduced the risk of harm without substantially impairing the usefulness, practicality, or desirability of the product. Specifically, they could and should have not sold flooring with formaldehyde in it at the levels noted herein.

84. At the time the product left the control of the Defendants, the design or formulation of the product was so unreasonable that a reasonable person, aware of the relevant facts, would not use a product of this design.

85. As a direct, proximate, reasonably probable and foreseeable consequence of Lumber Liquidators' negligent acts and/or omissions in connection with its design,

manufacture and distribution of its Chinese Flooring, Plaintiffs and the Class Members have suffered and will continue to suffer loss and damage.

COUNT II
BREACH OF EXPRESS WARRANTY

86. Plaintiffs, on behalf of themselves and all others similarly situated, adopt and incorporate by reference all foregoing allegations as though fully set forth herein.

87. Lumber Liquidators warranted that its flooring was free of defects when it sold those products to Plaintiffs and the members of the Class as described in this Complaint. Defendants further represented that its flooring products complied with CARB formaldehyde standards and all applicable laws and regulations. Plaintiffs and members of the Class reasonably relied upon these representations.

88. Lumber Liquidators' express representations and warranties became part of the basis of the bargain.

89. Lumber Liquidators breached their 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 express warranty by refusing to properly repair or replace the defective flooring.

90. Plaintiffs, on behalf of themselves 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 complaints and requests for refund it received from Class members, Internet message boards and from published product reviews.

91. As a direct and proximate result of Lumber Liquidators' misconduct,

Plaintiffs and the other Class members have suffered damages and continue to suffer damages, including economic damages at the point of sale. Additionally, Plaintiffs and the other Class members have either incurred or will incur economic damages at the point of repair in the form of the cost of repair and/or the cost of purchasing non-defective flooring to replace the Lumber Liquidators' flooring.

92. Plaintiffs 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.

COUNT III **BREACH OF IMPLIED WARRANTIES**

93. Plaintiffs, on behalf of themselves and all others similarly situated, adopt and incorporate by reference all foregoing allegations as though fully set forth herein.

94. 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.

95. Defendants breached this duty by selling flooring to Plaintiffs and the other members of the Class that was not merchantable.

96. Defendants were notified that its product was not merchantable within a reasonable time after the defect manifested itself to Plaintiffs and the members of the Class.

97. As a result of the non-merchantability of Lumber Liquidators' flooring described herein, Plaintiffs and other members of the Class sustained a loss or damages.

COUNT IV
**VIOLATION OF NORTH CAROLINA UNFAIR
AND DECEPTIVE TRADE PRACTICES STATUTE**
N.C.G.S. § 75-1.1 *ET SEQ.*

98. Plaintiffs, on behalf of themselves and all others similarly situated, adopt and incorporate by reference all foregoing allegations as though fully set forth herein.

99. The conduct described above and throughout this Complaint took place within the State of North Carolina and constitutes unfair and deceptive trade practices in violation of North Carolina's Unfair and Deceptive Trade Practice, N.C.G.S. § 75-1.1 *et seq.* ("NC UDAP").

100. NC UDAP applies to the claims of Plaintiffs and all North Carolina Class members because the conduct which constitutes violations of the act by Lumber Liquidators occurred within the State of North Carolina.

101. Lumber Liquidators engaged in the concealment, suppression, or omission in violation of NC UDAP when, in selling and advertising the Chinese Flooring, Lumber Liquidators knew that there were defects in the Chinese Flooring which would result in dangerous levels of formaldehyde gas emissions.

102. Lumber Liquidators engaged in the concealment, suppression, or omission of the aforementioned material facts with the intent that others, such as Plaintiffs, Plaintiffs' contractors, Class Members, Class Member's Builders or contractors, and/or the general public would rely upon the concealment, suppression, or omission of such material facts and purchase Lumber Liquidators' Chinese Flooring containing said defect.

103. Plaintiffs, Plaintiffs' contractor, Class Members, and/or Class Member's builders or contractors would not have purchased the Chinese Flooring had they known or become informed of the material defects in the Chinese Flooring.

104. Lumber Liquidators' concealment, suppression, or omission of material facts as alleged herein constitute unfair, deceptive and fraudulent business practices within the meaning of NC UDAP.

105. Lumber Liquidators has acted unfairly and deceptively by misrepresenting the quality of the Chinese Flooring.

106. Lumber Liquidators either knew, or should have known, that the Chinese Flooring was defectively designed and/or manufactured and would emit unsafe levels of formaldehyde, which would result in severe damages to the Plaintiff's person and property.

107. Upon information and belief, Lumber Liquidators knew that, at the time Chinese Flooring left Lumber Liquidators' control, the Chinese Flooring contained the defect described herein resulting in dangerous levels of formaldehyde emissions. At the time of sale, the Chinese Flooring contained the defects. The defects permit unsafe levels of formaldehyde gas emission and rendered the flooring unable to perform the ordinary purposes for which it was used as well as cause the resulting damage described herein.

108. As a direct and proximate cause of the violation of NC UDAP, described above, Plaintiffs and members of the Class have been injured in that they have purchased the unsafe and dangerous Chinese Flooring based on nondisclosure of material facts alleged above. Had Plaintiffs and Class Members known the defective nature of the Chinese Flooring used on their structures, they would not have purchased Chinese Flooring or structures containing it, or would have paid a lower price for their flooring or structures.

109. Plaintiffs and Class Members reasonably relied upon Lumber Liquidators representations that the Chinese Flooring met all applicable codes and standards.

110. Lumber Liquidators used unfair methods of competition and unfair or

deceptive acts or practices in conducting their businesses. This conduct constitutes fraud within meaning of the NC UDAP. This unlawful conduct is continuing, with no indication that Lumber Liquidators will cease.

111. As a direct and proximate result of Lumber Liquidators' unfair and deceptive acts and practices, Plaintiffs and the other members of the Class will suffer damages, which include, without limitation, costs to inspect, repair or replace their flooring and other property, and/or, damages related to injury to their health and wellbeing in an amount to be determined at trial.

112. As a result of the acts of consumer fraud described above, Plaintiff and the Class have suffered ascertainable loss in the form of actual damages that include the purchase price of the products for which Lumber Liquidators is liable to the Plaintiffs and the Class for treble their ascertainable losses, plus attorneys' fees and costs, along with equitable relief prayed for herein in this Complaint.

COUNT V
FRAUDULENT MISREPRESENTATION

113. Plaintiffs, on behalf of themselves and all others similarly situated, adopt and incorporate by reference all foregoing allegations as though fully set forth herein.

114. Lumber Liquidators falsely and fraudulently represented to Plaintiffs, the Class members, and/or the consuming public in general that Lumber Liquidators' products would be free from defects and fit for their customary and normal use.

115. Lumber Liquidators falsely represented to purchasers and consumers that the Chinese Flooring was warranted against defects in material and workmanship when in fact the Limit Warranty was so limited as to prevent and preclude any warranty protection against the known defect in the Chinese Flooring.

116. When said representations were made by Lumber Liquidators, upon information and belief, they knew those representations to be false and they willfully, wantonly, and recklessly disregarded whether the representations were true.

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

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

119. In reliance upon said representations, the Plaintiffs' and Class members' installed Lumber Liquidators' Chinese Flooring on their properties thereby sustaining damage and injury and/or being at an increased risk of sustaining damage and injury in the future.

120. Lumber Liquidators knew and was aware, or should have been aware, that Lumber Liquidators' Chinese Flooring was defective and not fit for their customary and normal use.

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

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

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

COUNT VI
NEGLIGENT MISREPRESENTATION

124. Plaintiffs, on behalf of themselves and all others similarly situated, adopt and incorporate by reference all foregoing allegations as though fully set forth herein.

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

126. Those representations were false.

127. 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.

128. Lumber Liquidators knew that Plaintiffs, Class members, and their agents or predecessors, were relying on the representations.

129. In reliance upon the representations, Plaintiffs and Class Members purchased the Chinese Flooring and installed it on the Plaintiffs' and Class members' homes.

130. As a direct and proximate result of Lumber Liquidators negligent misrepresentations, Plaintiffs and Class members have been damaged as set forth in this Complaint.

131. As a direct and proximate result of the foregoing, Plaintiffs 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.

COUNT VII
FRAUDULENT OMISSION/CONCEALMENT

132. Plaintiffs, on behalf of themselves and all others similarly situated, adopt and incorporate by reference all foregoing allegations as though fully set forth herein.

133. Lumber Liquidators knew or should have known that the Chinese Flooring was defective in design, were not fit for their 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.

134. Lumber Liquidators fraudulently concealed from and/or intentionally failed to disclose to Plaintiffs and the Class that the Chinese Flooring is defective.

135. 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 Plaintiffs or Class members, in the exercise of reasonable diligence, could have discovered independently prior to purchase, because it is not feasible.

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

137. Lumber Liquidators undertook active and ongoing steps to conceal the defect. Plaintiffs are 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.

138. The facts concealed and/or not disclosed by Lumber Liquidators to Plaintiffs 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 flooring from their builders.

139. Lumber Liquidators intentionally concealed and/or failed to disclose material factors for the purpose of inducing Plaintiffs and the Class to act thereon.

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

141. 100. Plaintiffs and Class members suffered a loss of money in an amount to be proven at trial as a result of Lumber Liquidator's fraudulent concealment and nondisclosure because: (a) they would not have purchased the Chinese 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. Plaintiffs also would have initiated this suit earlier had the defect been disclosed to them.

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

COUNT VIII

UNJUST ENRICHMENT

143. Plaintiffs on behalf of himself and all others similarly situated, adopt and incorporate by reference all foregoing allegations as though fully set forth herein.

144. Plaintiffs and Class members conferred a benefit on Defendants when they purchased the Chinese Flooring.

145. Lumber Liquidators has been unjustly enriched in retaining the revenues derived from Class members' purchases of the Chinese Flooring, the retention of which under these circumstances is unjust and inequitable because Lumber Liquidators' Chinese Flooring is defective in design, were not fit for their 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 and caused the Plaintiffs and Class members to lose money as a result thereof.

146. Plaintiffs and Class members suffered a loss of money as a result of Lumber Liquidators' unjust enrichment because: (a) they would not have purchased the Chinese Flooring on the same terms if the true facts concerning the unsafe Chinese Flooring had been known; (b) they paid a price premium due to the fact the Chinese Flooring would be free from defects; and (c) the Chinese Flooring did not perform as promised.

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

148. Plaintiffs and the Class Members are entitled to restitution of, disgorgement of, and/or the imposition of the constructive trust upon, all profits, benefits, and other compensation obtained by the Defendants from their deceptive, misleading, and unlawful conduct.

COUNT IX
VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT

149. Plaintiffs, on behalf of themselves and all others similarly situated, adopt and incorporate by reference all foregoing allegations as though fully set forth herein.

150. Plaintiffs and the other Class members are "consumers" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

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

152. Lumber Liquidators flooring purchased separate from the initial construction

of the structure constitutes a “consumer product” within the meaning of 15 U.S.C. § 2301(1).

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

154. Lumber Liquidators breached their warranties by manufacturing, selling and/or distributing flooring that exceeds the CARB formaldehyde standards; by manufacturing, importing, selling and/or distributing flooring that fails to comply with all applicable laws and regulations; and by refusing to honor the express warranty by refusing to properly repair or replace the defective flooring.

155. Lumber Liquidators’ breach of its express warranties deprived Plaintiffs and the other Class members of the benefits of their bargains.

156. As a direct and proximate result of Lumber Liquidators’ breaches of its written warranties, Plaintiffs 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.

COUNT X
DECLARATORY RELIEF 28 U.S.C. § 2201

157. Plaintiffs, on behalf of themselves and all others similarly situated, adopt and incorporate by reference all foregoing allegations as though fully set forth herein.

158. Lumber Liquidators has acted or refused to act on grounds that apply generally to the Declaratory Relief Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole within the meaning of Fed. R. Civ. P.

23(b)(2). Plaintiffs seek a ruling that:

a. the Chinese Flooring has a defect which results in unsafe levels of formaldehyde emissions. The Court finds that this defect is material and requires disclosure for all of this flooring;

b. the Chinese Flooring has a defect that allows for unsafe levels of formaldehyde emissions. The Court declares that all persons who own structures containing Chinese Flooring are to be provided the best practicable notice of the defect, which cost shall be borne by Lumber Liquidators; and/or

c. Lumber Liquidators must establish an inspection program and protocol, under Court supervision, to be communicated to class members, which will require Lumber Liquidators to inspect, upon request, a class member's structure to determine formaldehyde emissions levels are safe. Any disputes over coverage shall be adjudicated by a Special Master appointed by the Court.

COUNT XI **PUNITIVE DAMAGES**

159. Plaintiffs, on behalf of themselves and all others similarly situated, adopt and incorporate by reference all foregoing allegations as though fully set forth herein.

160. Defendant is additionally or in the alternative liable for punitive damages in accordance with N.C. Gen. Stat. § 1D-1 *et seq.* The conduct of Defendants, as set forth in above, was willful, wanton, malicious, and in reckless disregard for the rights of the Plaintiffs.

161. Pursuant to N.C. Gen. Stat. § 1D-15(a), Defendant is properly liable for punitive damages in that Defendant is liable for compensatory damages and has committed one or more aggravating factors justifying an award of punitive damages, including without limitation, acts of egregious, reckless, willful and wanton conduct.

162. As a direct and proximate result of its acts and omissions herein, Defendant is liable for punitive damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all other similarly situated,

pray for a judgment against Defendants as follows:

- a. For an order certifying the Class, pursuant to Fed. R. Civ. P. 23, appointing Plaintiffs as representatives of the Class, and appointing the law firm representing Plaintiffs as Class Counsel;
- b. For compensatory damages sustained by Plaintiffs and the Class;
- c. For equitable and/or injunctive relief for the Class;
- d. For payment of costs of suit herein incurred, and pre-judgment and post-judgment interest on any amounts awarded;
- e. For treble or punitive damages;
- f. For payment of reasonable attorneys' fees and expert fees as may be allowable under applicable law; and
- g. for such further relief as the Court may deem just and proper.

JURY DEMAND

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

This the 31st day of March, 2015.

Respectfully submitted,

s/Mona Lisa Wallace
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