

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

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COURT OF COMMON PLEAS

CLERK OF COURT
DORCHESTER COUNTY

KRISTINA BOLLING-OWEN and
ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

Case No.:

2015-CP-18-

576

v.

COMPLAINT

LUMBER LIQUIDATORS, INC.,
a Delaware Corporation, and
LUMBER LIQUIDATORS HOLDINGS,
INC., a Delaware Corporation

(JURY TRIAL DEMANDED)

Defendants.

2015 APR -8 AM 10:53
CLERK OF COURT
DORCHESTER COUNTY

TO: THE ABOVE-NAMED DEFENDANTS AND ITS ATTORNEYS:

Plaintiff, Kristina Bolling-Owen, hereby allege as follows:

PARTIES

1. The Plaintiff, Kristina Bolling-Owen, is resident of Summerville, South Carolina and owns property located at 220 Challedon Drive, Summerville, South Carolina.
2. Lumber Liquidators, Inc. ("Lumber Liquidators") is a corporation, company, or other business entity which has been engaged in the business of transporting, designing, manufacturing, selling, and/or distributing flooring products.
3. Defendant, Lumber Liquidators, Inc., is a corporation organized under the laws of a state other than South Carolina with its principal place of business in a state other than South Carolina.
4. Defendant, Lumber Liquidators Holdings, Inc.'s, is a corporation organized under

the laws of a state other than South Carolina with its principal place of business in a state other than South Carolina.

5. Lumber Liquidators operates at least seven stores in the State of South Carolina including two in the greater Charleston area.

6. The injuries complained of below occurred in whole or in part in the State of South Carolina.

7. The Defendants used the ports of South Carolina or the roads and other means of transportation in the State of South Carolina to transport its products into the State of South Carolina where it sold, installed and/or distributed products to South Carolina residents or entities for use in South Carolina.

8. The Defendants are subject to the jurisdiction of this court in that the Defendant transacted business in this state, entered into agreements or contracts in this state or carried out contracts in this state, committed tortious acts in whole or in part in this state, sent agents or employees into this state for the purposes of selling, marketing, distributing, designing or supplying flooring products to residents of South Carolina for use in this state, and/or produced, manufactured, or distributed goods with the reasonable expectation that those goods would be used in this state and the goods were used in this state.

9. The Defendants are foreign corporations and are subject to jurisdiction in this state pursuant to, *inter alia*, S.C. Code Ann. § 36-2-803.

10. The Defendants have caused or will cause, and the plaintiffs have suffered or will suffer, damage and injury as a result of the acts or omissions of these Defendants.

CLASS ALLEGATIONS

11. This action seeks to remedy the continuing failure of Defendants Lumber Liquidators, Inc. and Lumber Liquidators Holdings, Inc., ("Lumber Liquidators") to warn consumers that they are being exposed to formaldehyde, a substance known to cause cancer. Such exposures have occurred, and continue to occur, through the marketing, distribution, sale and use in South Carolina of certain laminate flooring products containing the cancer-causing chemical, formaldehyde, and sold by Lumber Liquidators ("Product").

12. Lumber Liquidators manufactures these laminate flooring products at several plant locations in China.

13. Lumber Liquidators markets and labels its products as compliant with California Air Resources Board ("CARB") or California Emission Regulations under California law.

14. In contrast to Lumber Liquidators' direct representations on its product labels, website, and warranties that its flooring products comply with strict formaldehyde standards, extensive testing has shown that the toxic formaldehyde levels released from many of the Defendants' Chinese-made laminate flooring products at the time of testing are far above levels requiring cancer warnings under California law.

15. Lumber Liquidators sells inexpensive and largely Chinese-sourced products that violate government formaldehyde standards and Lumber Liquidators' failure to warn the public of the high formaldehyde levels in its products.

16. Formaldehyde gas ("formaldehyde") is a substance known to cause cancer. Exposure to formaldehyde is linked to increased risk of cancer of the nose, sinuses, nasopharyngeal and oropharyngeal cancer, and lung cancer. Formaldehyde also causes burning

eyes, nose and throat irritation, coughing, headaches, dizziness, joint pain and nausea.

17. Laminate wood flooring is generally composed of a base layer of pressed wood (frequently medium-density fiberboard (MDF)), which is a mixture of wood particles bonded together with glue or resin, a high-quality photographic image of wood, and a scratch-resistant coating.

18. Inexpensive laminate wood flooring, often produced in China, can be a significant source of formaldehyde gas since formaldehyde-based glues and resins (in particular urea-formaldehyde resin) are often used to hold the pressed wood particles together.

19. Plaintiffs understand that it is possible to manufacture pressed wood products with different mixtures of urea-formaldehyde resins and thus a range of formaldehyde emissions. Some pressed wood products have low, or no, added formaldehyde. However, such low-emission products may have longer curing times, lower manufacturing throughput, and higher production costs.

20. Defendants' failure to warn is even more egregious due to their false and misleading statements concerning formaldehyde emissions released from the Products.

21. Despite knowledge of non-compliant flooring product, Lumber Liquidators continues to market, sell, and distribute laminate flooring product in South Carolina.

22. Lumber Liquidators is aware that there are hundreds of homes in South Carolina, including the Plaintiff's home, which have installed this flooring product sold from its seven locations within the state.

23. Lumber Liquidators distributed flooring products made in China throughout South Carolina.

24. Lumber Liquidators has the ability to locate all the homes and consumers who purchased the flooring products made at the Chinese manufacturing plants for Lumber Liquidators.

25. Lumber Liquidators has not made any attempt to notify consumers concerning replacement of the defective flooring product despite knowledge of the defect and the foreseeability of damages from the flooring product.

26. The Class consists of all consumers in South Carolina who have purchased and/or used Lumber Liquidators flooring manufactured in China. The Class is so numerous that the individual joinder of all its members, in this or any action, is impracticable. The exact number or identification of the Class members is presently unknown to Plaintiff, but it is believed that Class members number at least in the thousands.

27. The Plaintiffs will fairly and adequately protect the interest of the Class. The interests of the Plaintiffs are coincident with and not antagonistic to those of other Class Members and the Plaintiffs are represented by experienced and able counsel who have previously litigated class actions.

28. Plaintiffs' claims are typical of the Class Members' claims and are derived from a common nucleus of operative facts in that Lumber Liquidators' negligent and improper conduct has impinged upon the rights of the Plaintiffs and caused damage to the Plaintiffs and to the Class Members.

29. Treatment of the claims as separate actions creates the risk of inconsistent and varying adjudications and contradicts the need for a uniform standard of conduct in commerce of this kind.

30. Lumber Liquidators has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final relief with respect to the Class as a whole.

31. Questions of law or fact common to the Members of the Class predominate over any questions affecting only individual Members and class action is superior to other available methods for the fair and efficient adjudication of the controversy.

32. Treatment of these claims as a single class action is superior to alternative methods. Certification of a class permits all Class Members to be treated in the same or similar manner; class treatment will allow Class Members to present their claims efficiently and share the costs of litigation, experts, and discovery in one action rather than in individual actions where these costs may exceed the value of the claim and act as an unnatural deterrent to recovery.

33. The amount in controversy for the entire proposed Class does not exceed Five Million Dollars.

SUBSTANTIVE ALLEGATIONS

34. Kristina Bolling-Owen purchased Lumber Liquidators' flooring product to be placed in a residence she owns located at 220 Challedon Drive, Summerville, South Carolina.

35. The Defendants are in the business of manufacturing flooring products to be placed in residences.

36. Lumber Liquidators warrants its products to be compliant with California CARB and air emission regulations, including emission levels on formaldehyde

37. The Plaintiff purchased the product in August 2012.

38. The product was then installed in Plaintiff's residence around September 2012.

39. After installation of the product, the resident at Plaintiffs home started to

experience health issues.

40. The Plaintiff has contacted Lumber Liquidators and informed them of the problems. Lumber Liquidators stated that someone would be in contact with the Plaintiff, however that has not occurred.

41. During the call in which the Plaintiff put the Defendant on notice of the problem, the Defendants have acknowledged the product installed at the Plaintiff's property is part of the group of products known to contain unacceptable levels of formaldehyde.

42. Lumber Liquidators has concealed known problems with its laminate flooring products from its customers, including the Plaintiffs.

43. The Plaintiffs are in the exact same position as others who have purchased Lumber Liquidators flooring products.

FOR A FIRST CAUSE OF ACTION
NEGLIGENCE

44. Plaintiffs repeat and reiterate every allegation in this Complaint as if specifically restated herein.

45. The Defendants are in the business of manufacturing flooring products.

46. The Defendants, in carrying out their duties as a flooring product designer and manufacturer, have been negligent in the following ways:

- a. In failing to properly label and advertise their flooring products;
- b. In failing to disclose the material composition of their flooring products;
- c. In failing to adequately test the product to assure it meets specifications;
- d. In continuing to sell the product despite knowledge of problems and defects; and,

- e. In failing to recall the product after knowledge of the flooring product problems.

47. As a result of the Defendants' negligence, Plaintiff, as well as all others similarly situated, have suffered damages in that they paid full price for a flooring product which is defective. Additionally, the faulty flooring product has caused actual and consequential damages and requires replacement. Plaintiffs seek recovery, actual and punitive, for that injury.

FOR A SECOND CAUSE OF ACTION
NEGLIGENT MISREPRESENTATION

48. Plaintiffs repeat and reiterate every allegation in this Complaint as if specifically restated herein.

49. Lumber Liquidators publishes, through print and other means, information about its product. In these publications, among other things, Lumber Liquidators promoted its product as complying with CARB regulations.

50. The Defendants are aware that the material is misleading and/or false, including that its product does not comply with CARB and California emission regulations.

51. In making their decision of which flooring product to place in their residence, the Plaintiffs relied upon the statements of Lumber Liquidators concerning the attributes of Lumber Liquidators flooring products.

52. As a result of their reliance upon statements by Lumber Liquidators, the Plaintiffs have been injured and seek recovery, actual and punitive, for that injury.

FOR A THIRD CAUSE OF ACTION
BREACH OF WARRANTY

53. Plaintiffs repeat and reiterate every allegation in this Complaint as if specifically

restated herein.

54. Lumber Liquidators expressly warrants their flooring products complied with CARB and California emission regulations.

55. The Plaintiffs, and other Class Members, have purchased flooring products which is warranted by Lumber Liquidators.

56. The product was installed on the Plaintiffs' residence in September 2012.

57. The flooring products, in contradiction to the warranty, contains toxic chemicals in excess of the levels claimed.

58. As a result of the Defendants' breach of express warranties, the Plaintiffs, and all others similarly situated, have been injured and seek recovery for that injury.

FOR A FOURTH CAUSE OF ACTION
BREACH OF IMPLIED WARRANTIES

59. Plaintiffs repeat and reiterate every allegation in this Complaint as if specifically restated herein.

60. The Defendants, as a seller of flooring products in South Carolina, are subject to the provisions of the Uniform Commercial Code as adopted by South Carolina and all other warranties implied in law.

61. The flooring products purchased by the Plaintiffs and Class Members are in breach of the implied warranties of merchantability, fitness for a particular purpose, and other warranties implied by the law.

62. As a result of these warranties being breached, the Plaintiffs, and all others similarly situated, have been injured and seek recovery for that injury.

FOR A FIFTH CAUSE OF ACTION
FRAUD

63. Plaintiffs repeat and reiterate every allegation in this Complaint as if specifically restated herein.

64. The Defendants are, and have been, aware of deficiencies with its flooring products.

65. Instead of curing the deficiencies or warning the public, Lumber Liquidators have continued to market its product in a way that is knowingly false.

66. In addition to Lumber Liquidators making knowingly false statements to customers and the public, Lumber Liquidators have taken steps to conceal any deficiencies from the public and customers.

67. The Plaintiffs have relied or acted upon the fraudulent actions of the Defendant to their detriment.

68. As a result of Lumber Liquidators' fraudulent scheme, the Plaintiffs have been injured and seek recovery, actual and punitive, for that injury.

FOR A SIXTH CAUSE OF ACTION
UNFAIR TRADE PRACTICES

69. Plaintiffs repeat and reiterate every allegation in this Complaint as if specifically restated herein.

70. South Carolina Code § 39-5-20 delineates as unlawful the engagement in unfair or deceptive business practices.

71. Lumber Liquidators' actions in marketing and distribution of product, as well as its product stewardship (or lack thereof), constitutes unfair or deceptive acts.

72. These actions are capable of repetition and have been repeated hundreds, if not thousands, of times.

73. The Plaintiffs, and all others similarly situated, have been injured by the Defendant's unfair and deceptive actions and seeks recovery, both actual and statutorily trebled, for this injury.

FOR A SEVENTH CAUSE OF ACTION:
UNJUST ENRICHMENT

74. Plaintiffs repeat and reiterate every allegation in this Complaint as if specifically restated herein.

75. Lumber Liquidators has marketed and distributed product with known deficiencies for several years.

76. Rather than informing consumers of the known problems, Lumber Liquidators has continued to mislead the public by holding its product out as a product compliant with CARB and California emission regulations.

77. Because of its improper conduct, Lumber Liquidators has been unjustly enriched.

78. As a result, the Plaintiffs, and all others similarly situated have been damaged.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand a jury trial and pray for judgment, joint and several, against the Defendant and that:

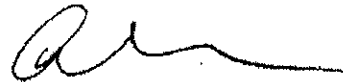
A. The Court certify a class for the causes of action of negligence, breach of warranty, breach of implied warranties, and unjust enrichment. This class will consist of all consumers in South Carolina who purchased and/or used Lumber Liquidators flooring products. The amount in controversy for the entire proposed

Class does not exceed the sum or value of Five Million Dollars (\$5,000,000), exclusive of interest and costs;

- B. Plaintiffs recover, both on behalf of themselves and all others similarly situated, the general and special compensatory damages determined to have been sustained by them;
- C. Plaintiffs recover punitive damages from the Defendants, Lumber Liquidators, in an amount to be determined;
- D. Plaintiffs recover treble damages and/or attorneys fees from the Defendant, Lumber Liquidators, in accordance with the Unfair Trade Practices Act in an amount to be determined;
- E. The Plaintiff's individual recovery, exclusive of interest and costs, is not to exceed \$74,999.00;
- F. Plaintiffs recover the costs of this suit, including any expert witness fees and reasonable attorneys' fees; and,
- G. The Court grants such other, further, or different relief as may be deemed just and proper.

Respectfully submitted,

SPEIGHTS & RUNYAN



C. Alan Runyan, Esq.
Gibson Solomons, Esq.
Andrew S. Platte, Esq.
2015 Boundary Street, Suite 239
Beaufort, South Carolina 29902
(803) 943-4444

and
McDOUGALL LAW FIRM, LLC
J. Olin McDougall, II, Esquire
115 Lady's Island Commons
Post Office Box 1336
Beaufort, South Carolina 29901
(843) 379-7000
(843) 379-7007 Facsimile
Lin@MLFLaw.co

ATTORNEYS FOR THE PLAINTIFF

Beaufort, South Carolina
This 25th day of March, 2015