

1 NANCY L. FINEMAN (Cal. SBN 124870)
 2 nfineman@cpmlegal.com
 3 MATTHEW K. EDLING (Cal. SBN 250940)
 4 medling@cpmlegal.com
 5 BRIAN M. SCHNARR (Cal. SBN 275587)
 6 bscnahr@cpmlegal.com
 7 JOYCE CHANG (Cal. SBN 300780)
 8 jchang@cpmlegal.com
 9 **COTCHETT, PITRE & McCARTHY, LLP**
 10 San Francisco Airport Office Center
 840 Malcolm Road, Suite 200
 Burlingame, CA 94010
 Telephone: (650) 697-6000
 Facsimile: (650) 697-0577

11 DON A. ERNST (#65726)
 12 CHRISTOPHER D. EDGINGTON (#169682)
 13 TAYLOR ERNST (#277901)
 14 **ERNST LAW GROUP**
 15 1020 Palm Street
 San Luis Obispo, CA 93401
 Telephone: (805) 541-0300
 16 Fax: (805) 541-5168

17 **UNITED STATES DISTRICT COURT**
 18
 19 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

20 LISA DEUTSCH and JAMIE
 21 DEUTSCH, individually and on behalf of
 22 all others similarly situated,
 23 Plaintiffs,
 24 v.
 25 LUMBER LIQUIDATORS HOLDINGS,
 26 INC., a Delaware Corporation; LUMBER
 27 LIQUIDATORS, INC., a Delaware
 Corporation,
 28 Defendants.

Case No. 2:15-cv-1978
CLASS ACTION
COMPLAINT FOR:
 1) VIOLATION OF THE
 MAGNUSON-MOSS
 WARRANTY
 ACT, 15 U.S.C. §§ 2301, *ET SEQ*;
 2) VIOLATION OF CALIFORNIA
 BUSINESS AND PROFESSIONS

CLASS ACTION COMPLAINT

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CODE § 17200, *ET SEQ.*

3) VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS
CODE § 17500, *ET SEQ.*

4) VIOLATION OF CALIFORNIA
CONSUMER LEGAL REMEDIES
ACT, CAL. CIV. CODE § 1750 *ET
SEQ.*

5) BREACH OF EXPRESS
WARRANTY, CAL. UNIFORM
COM. CODE § 2313

6) PUBLIC NUISANCE

7) DECLARATORY RELIEF

JURY TRIAL DEMANDED

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THIRD CAUSE OF ACTION
VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS
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1 International Agency for Research on Cancer as known human carcinogen, leading
2 to an increased risk of leukemia and brain cancer as compared with the general
3 population. Formaldehyde is also associated with countless other adverse medical
4 conditions, including asthma and rheumatoid arthritis. Exposure to formaldehyde
5 through these emissions can cause burning eyes, nose and throat irritation,
6 coughing, headaches, dizziness, joint pain, and nausea. In 1992, the Air Resources
7 Board deemed the substance as a toxic air contaminant (“TAC”).

8 5. California state laws require CARB to monitor and reduce human
9 exposure to formaldehyde. According to a 2007 CARB presentation, there is
10 sufficient evidence to conclude that formaldehyde is linked to increased risk of
11 nasopharyngeal cancers. In response, California’s Airborne Toxic Control
12 Measure to Reduce Formaldehyde Emissions from Composite Wood Products was
13 approved in 2008 and implemented in 2009. *See* Cal. Code Regs. Tit. 17 §§ 93120
14 – 93120.12 (“CARB Regulations”). Those standards were adopted in 2010 by the
15 U.S. federal government in the Formaldehyde Standards for Composite-Wood
16 Products Act, 15 U.S.C. § 2697.

17 6. For a period of at least two years, Lumber Liquidators has been fully
18 aware that its laminated wood flooring products manufactured at mills in China
19 were releasing highly toxic levels of formaldehyde after installation. Despite this
20 knowledge, however, Lumber Liquidators, continued to market and sell these
21 dangerous products to hundreds of thousands of consumers.

22 7. Lumber Liquidators widely advertised that its products, inclusive of
23 the laminated wood flooring manufactured in China, complied with the strict
24 formaldehyde standards set by the OSHA, CARB, the EU, and various other state
25 and federal regulatory agencies. However, these representations made in its
26 marketing materials were false. Lumber Liquidators’ products emit levels of
27 formaldehyde that are often multiple times the maximum permissible limits set by
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1 these regulatory agencies and have caused (and continue to cause) significant
2 health problems and monetary losses.

3 8. Lumber Liquidators' decision to use non-compliant laminate wood
4 flooring manufactured in China is based solely on its desire to maximize corporate
5 profit. The laminate wood used by Lumber Liquidators is approximately 10 to 15
6 percent cheaper than a CARB 2 compliant equivalent product.

7 9. Plaintiffs assert claims individually and on behalf of the other
8 members of the proposed Class for violations of the Magnuson-Moss Warranty
9 Act; breaches of express warranties; and violations of California's Consumer
10 Protection/Deceptive Practices acts arising from Lumber Liquidators' scheme to
11 import and sell the Chinese-made laminate wood flooring products.

12 10. Furthermore, Lumber Liquidators' was aware that it was marketing
13 and selling products to hundreds of thousands of customers in California that it
14 knew would adversely affect the public health of the community. As a result,
15 Lumber Liquidators has knowing created a public nuisance that it should be
16 required to abate.

17 II.

18 JURISDICTION AND VENUE

19 11. This Court has Jurisdiction over this action pursuant to 28 U.S.C.
20 Section § 1332 because there is complete diversity between the parties and the
21 amount in controversy exceeds \$5 million and the potential class members number
22 over one hundred.

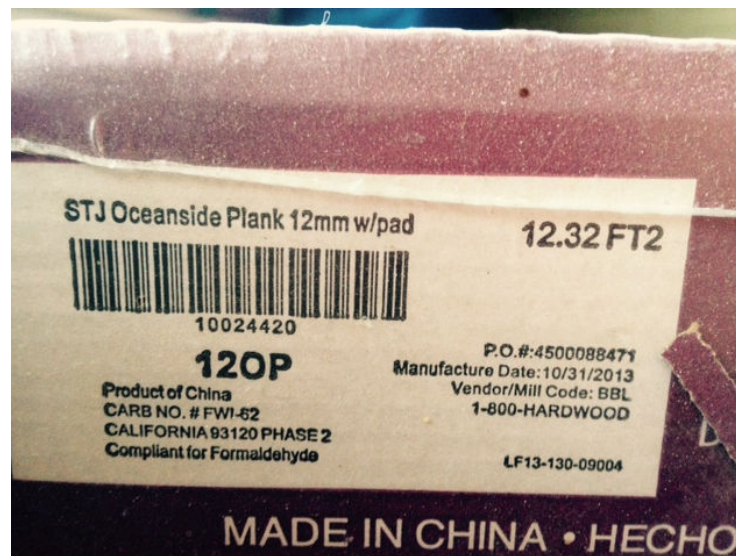
23 12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§
24 1331.

25 13. This Court also has subject matter jurisdiction over the state law
26 claims in this action pursuant to 28 USC § 1367(a) for matters arising out of the
27 same controversy under Article III of the U.S. Constitution.
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1 James Laminate flooring directly from Lumber Liquidators and installed it in his
2 home.

3 19. Plaintiff Jamie Deutsch is a resident of San Luis Obispo County,
4 California. On or around March 1, 2014, Plaintiff Duetsch purchased 12mm St.
5 James Laminate flooring directly from Lumber Liquidators and installed it in her
6 home.

7 20. The package provided by Lumber Liquidators to Plaintiffs came with
8 the following product information, including a representation that the product was
9 “Compliant for Formaldehyde” and met or exceeded CARB phase 2 standards:



20 **B. Defendants**

21 21. Lumber Liquidators Holdings, Inc. is a Delaware Corporation. Its
22 headquarters is located at 3000 John Deer Road, Toano, Virginia, 23168. As of the
23 end of 2014, it operates over 350 stores in 46 states.

24 22. Lumber Liquidators, Inc. is a Delaware Corporation and wholly-
25 owned subsidiary of Lumber Liquidator Holding, Inc. with its principal
26 headquarters in Toana, Virginia. The Company specializes in providing flooring
27 of all types including wood flooring, laminate flooring, cork flooring, bamboo
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1 floor products, vinyl plank flooring, flooring accessories and other hardwood
2 products.

3 23. Each of the above referenced Lumber Liquidator entities are referred
4 to together herein as “Defendant” or “Lumber Liquidators.”

5 **IV.**

6 **FACTUAL ALLEGATIONS**

7 **A. Background on Lumber Liquidators**

8 24. On the surface Lumber Liquidators appears to be a classic American
9 success story. The company was founded in 1994 by Tom Sullivan, who began
10 purchasing and selling extra wood out of the back of a trucking yard in Stoughton,
11 Massachusetts. By 1996, the company had focused its business on hardwood
12 flooring, and opened its first store in West Roxbury, Massachusetts. Within a
13 matter of months, Lumber Liquidator stores were opening in locations throughout
14 New England. The company moved its headquarters to Colonial Heights, Virginia
15 in 1999, and then again to its current location of Toana, Virginia in 2004. It has
16 since grown to become the largest specialty retailer of hardwood flooring in North
17 America.

18 25. Lumber Liquidators’ business model is built on its position as a
19 wholesaler, whereby it negotiates directly with lumber mills and eliminates the
20 middleman. This arrangement allows Lumber Liquidators to offer cheaper prices
21 than its retail competitors.

22 26. In 2012, Forbes magazine listed Lumber Liquidators as one of its Best
23 Small Companies. From 2011 to 2013, the company saw its stock price jump over
24 one hundred dollars, amounting to over 1200% in gains. In 2014, Lumber
25 Liquidators CEO and president, Robert M. Lynch, commented that his company’s
26 financial results set “record highs for net sales and operating margin in the fourth
27 quarter as we continued to gain share in a highly fragmented market.”
28

1 27. Presently, Lumber Liquidators employs over 1,700 employees.
2 Recording over a billion dollars in net sales revenue and achieving market cap of
3 approximately \$3 billion, Lumber Liquidators has shown increases in year over
4 year revenue over the past three years, posting up 29.1% earnings per share growth
5 rate over the past five years compared to 11.2% for the S&P 500 for the same
6 period. For the most recent fiscal year Lumber Liquidators reported an expected
7 net income of over \$77 million.

8 28. Lumber Liquidators maintains several major operation hubs, including
9 over 350 store locations nationwide. It sources its wood from an estimated 110
10 mills internationally and domestically. It has two major warehousing facilities in
11 the Hampton Roads area of Virginia and Pomona, California. Lumber Liquidators
12 operates thirty-seven (37) retail outlets in California, more than in any other state.

13 29. The portfolio of products sold by Lumber Liquidators mostly
14 composed of its own brands, including product lines such as Bellawood, Builder's
15 Pride, Virginia Mill Works, Schon, Morning Star Bamboo and Dream Home
16 brands. The product and quality of the products vary, and have significant ranges.
17 There is an estimated 100 million square feet of the company's cheaper laminate
18 wood flooring installed in American homes. Much of Lumber Liquidators'
19 products are made of cheaper laminate materials that are sourced from China.

20 30. According to a recently filed 10-K, one of Lumber Liquidators' risk
21 factors is its "ability to obtain products from abroad and the operations of many of
22 our international suppliers are subject to risks that are beyond our control and that
23 could harm our operations." The company explains that its dependence on these
24 international suppliers are contingent on them agreeing "to operate in compliance
25 with applicable laws and regulations, including those relating to environmental and
26 labor practices, we do not control our suppliers. Accordingly, despite our
27 continued investment in quality control, we cannot guarantee that they comply
28 with such laws and regulations or operate in a legal, ethical and responsible

1 manner.” However, and unbeknownst to Lumber Liquidators’ consumers, the UF
2 resin used in the Chinese factory process has created health risks and exposure to
3 heightened levels of formaldehyde.

4 **B. The Chemical Characteristics of Formaldehyde and its Use in Wood**
5 **Flooring**

6 31. The substance known as formaldehyde is a gas at room temperature
7 and is characterized by sharp, pungent odors. Formaldehyde is formed when an
8 acidified compound is oxidized with methanol in a chemical reaction.
9 Formaldehyde belongs to a group of aldehydes used in wide-ranging industrial
10 applications and is produced worldwide.

11 32. Formaldehyde is categorized as a known human carcinogen by the
12 United States National Toxicology Program and the International Agency for
13 Research on Cancer, and can lead to an increased risk of cancer and other physical
14 ailments including respiratory and epidermal health problems. In fact
15 formaldehyde is toxic to all animals regardless of the form.

16 33. According to the U.S. Occupational Safety & Health Administration
17 (“OSHA”):

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

23 Long term exposure has been linked to an increased risk of cancer of
24 the nose and accessory sinuses, nasopharyngeal and oropharyngeal
cancer, and lung cancer in humans.

25 34. Formaldehyde is a naturally-occurring organic compound with the
26 formula CH₂O or HCHO. Its organic structure lends itself to be highly reactive
27 and therefore can exist in a variety of different forms as a building block for other
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1 substances. One such application of formaldehyde is in its use as a polymer,
2 synthetic plastics, for adhesive applications to plywood and carpeting.

3 35. Some reports, including one conducted by the National Institute for
4 Occupational Safety and Health in 2004 on over 11,000 textile workers, showed an
5 association between duration of exposure to formaldehyde and increased risk of
6 leukemia.

7 36. When wood products are manufactured, layers of wood fibers or
8 particles are pressed together and sealed with a UF resin. UF resin is considered to
9 be highly water-soluble. Pressed wood products, such as hardwood, plywood, and
10 particle board, are considered to be major sources of indoor formaldehyde
11 emissions.

12 37. The CARB Regulations requires two-phase testing to ensure that the
13 wood products containing formaldehyde do not exceed its strict emission
14 standards. Known as CARB Phase 2, the law requires companies that make
15 flooring to label their flooring products as having been made with certified
16 compliant composite wood products. Gaseous formaldehyde is normally present in
17 air, indoor or outdoor, at less than 0.03 parts of formaldehyde per million parts of
18 air as reported by the U.S. Consumer Product Safety Commission in 1997.

19 **C. Lumber Liquidators' Importation, Marketing and Sale of Toxic**
20 **Laminated Wood Flooring**

21 38. According to tests conducted by independent laboratories, including
22 test that were recently highlighted by CBS on its news program "60 Minutes,"
23 Lumber Liquidators' laminate wood flooring dangerously exceeded the allowable
24 limits of CARB's Composite Wood Products Regulation rules.

25 39. The CBS report found that samples of Lumber Liquidators Chinese-
26 made laminate flooring products had anywhere from six to twenty times the legal
27 limit of allowable formaldehyde. These results were the byproduct of testing
28

1 performed at CBS' direction by two independent certified laboratories: HPVA and
2 Benchmark International.

3 40. The laboratories performed two tests: First the labs tested the
4 products for CARB 2 compliance. CARB's emissions standards regulate the
5 formaldehyde emissions from composite wood products used in finished goods
6 such as laminate flooring. The underlying medium density fiberboard, or "core" of
7 the product must pass CARB's emissions standards in order for the product to be
8 sold legally in California. CARB publishes its official methodology for analyzing
9 formaldehyde emissions in finished goods - or "SOP" (Standard Operating
10 Procedure for testing finished goods) on its website. Prior to performing the first
11 set of tests, CBS' 60 Minutes confirmed with CARB officials that this
12 "deconstructive test" is an approved method for test finished goods for CARB
13 formaldehyde emissions compliance. The labs then tested Lumber Liquidators'
14 Chinese-made laminated wood floor products, using the method that CARB
15 developed and uses. Thirty of the thirty-one (31) samples tested contained levels
16 of formaldehyde emissions that exceed the limits set by CARB. It is illegal to sell
17 laminates in California which exceed the formaldehyde emissions limits set by
18 CARB. The labs found that the highest-emitting Lumber Liquidators product
19 tested released 13 times more formaldehyde than the CARB Phase 2 limits.

20 41. The second test conducted by the certified labs was the California
21 Department of Public Health 01350 test, which measures the concentration of
22 formaldehyde emissions coming off the laminates into the air of a typical home.
23 The highest-emitting Lumber Liquidators sample that the labs tested emitted a
24 concentration of formaldehyde into the air of a typical home that the U.S.
25 Environmental Protection Agency has cited as "polluted indoor conditions."

26 42. The materials chosen for CBS' test included Lumber Liquidators'
27 Chinese-made laminate floor samples that were purchased from stores located in
28 California, Virginia, Florida, Texas, Illinois and New York. CBS also applied the

1 same CARB testing to flooring products offered by Lowes, HomeDepot, and even
2 several non-Chinese-made laminate wood flooring products sold by Lumber
3 Liquidators. Every single sample of Chinese-made wood laminate flooring from
4 Lumber Liquidators exhibited illegally high levels of formaldehyde. While in
5 contrast, the samples from Lowes, HomeDepot, and the non-Chinese-made
6 flooring products from Lumber Liquidators passed the CARB test.

7 43. These increased levels of formaldehyde were written off by Lumber
8 Liquidators' CEO Tom Sullivan as a campaign started by over-zealous hedge fund
9 managers that use improper testing methods. However, independent reports and
10 many other samples have shown dangerously high levels of formaldehyde from the
11 products at issue.

12 44. Moreover, the CBS report revealed that 60 Minutes sent in undercover
13 reporters to three mills in China that supply Lumber Liquidators with its laminate
14 wood flooring. They recorded video of mill employees admitting to falsely
15 labeling the laminate as CARB Phase 2 or CARB 2 to save on production cost – up
16 to 10% savings on cost.

17 45. 60 Minutes' undercover investigators also reported that:

18
19 Employees at the mills openly admitted that they used core boards with
20 higher levels of formaldehyde to make Lumber Liquidators laminates,
21 saving the company 10-15 percent on the price. At all three mills they also
22 admitted [to] falsely labeling the company's laminate flooring as CARB
23 compliant.

24 46. Lumber Liquidators currently offers a number of laminate wood
25 flooring products that are manufactured out of Chinese mills. These products
26 include, but are not limited to:

- 27 a. 8 mm Bristol County Cherry Laminate Flooring
- 28 b. 8 mm Dream Home Nirvana French Oak Laminate Flooring

- 1 c. 8 mm Dream Home Nirvana Royal Mahogany Laminate Flooring
- 2 d. 12 mm Dream Home Ispiri Americas Mission Olive Laminate
- 3 Flooring
- 4 e. 12 mm Dream Home Ispiri Chimney Tops Smoked Oak Laminate
- 5 Flooring
- 6 f. 12 mm Dream Home Ispiri Poplar Forest Oak Laminate Flooring
- 7 g. 12 mm Dream Home Kensington Manor Antique Bamboo Laminate
- 8 Flooring
- 9 h. 12 mm Dream Home Kensington Manor Cape Doctor Laminate
- 10 Flooring
- 11 i. 12 mm Dream Home Kensington Manor Fumed African Ironwood
- 12 Laminate
- 13 Flooring
- 14 j. 12 mm Dream Home Kensington Manor Glacier Peak Poplar
- 15 Laminate
- 16 Flooring
- 17 k. 12 mm Dream Home Kensington Manor Golden Teak Laminate
- 18 Flooring
- 19 l. 12 mm Dream Home Kensington Manor Handscraped Imperial Teak
- 20 Laminate Flooring (SKU 10029601)
- 21 m. 12 mm Dream Home Kensington Manor Handscraped Imperial Teak
- 22 Laminate Flooring (SKU 10023958)
- 23 n. 12 mm Dream Home Kensington Manor Handscraped Summer
- 24 Retreat Teak Laminate Flooring
- 25 o. 12 mm Dream Home Kensington Manor Sandy Hills Hickory
- 26 Laminate Flooring
- 27 p. 12 mm Dream Home Kensington Manor Tanzanian Wenge Laminate
- 28 Flooring

- 1 q. 12 mm Dream Home Kensington Manor Warm Springs Chestnut
- 2 Laminate Flooring
- 3 r. 12 mm Dream Home St. James African Mahogany Laminate Flooring
- 4 s. 12 mm Dream Home St. James Blacksburg Barn Board Laminate
- 5 Flooring
- 6 t. 12 mm Dream Home St. James Brazilian Koa Laminate Flooring
- 7 u. 12 mm Dream Home St. James Chimney Rock Charcoal Laminate
- 8 Flooring
- 9 v. 12 mm Dream Home St. James Cumberland Mountain Oak Laminate
- 10 Flooring
- 11 w. 12 mm Dream Home St. James Golden Acacia Laminate Flooring
- 12 x. 12 mm Dream Home St. James Nantucket Beech Laminate Flooring
- 13 y. 12 mm Dream Home St. James Oceanside Plank Bamboo Laminate
- 14 Flooring
- 15 z. 12 mm Dream Home St. James Vintner's Reserve Laminate Flooring
- 16 aa. 15 mm Dream Home St. James Sky Lakes Pine Laminate Flooring

17 47. Similar to the Lumber Liquidators product purchased and used by
18 Plaintiffs, the products listed in Paragraph 45 above all state that they are
19 "California 93120 Phase 2 Complaint for Formaldehyde," indicating that they meet
20 and/or exceed CARB emission standards. However, reports and investigations
21 have revealed that these representations are false and misleading.

22 48. In response to these allegations, Lumber Liquidators has posted on its
23 website's Health and Safety section that "These attacks are driven by a small group
24 of short-selling investors who are working together for the sole purpose of making
25 money by lowering our stock price. They are using any means to try and scare our
26 customers with inaccurate allegations. Their motives and methods are wrong and
27 we will fight these false attacks on all fronts." Further in defense of the company's
28 Chinese mills, founder Tom Sullivan told CBS that they "have inspectors that

1 double-check them. The mills are licensed by California - the Chinese mills we
2 deal with in the laminates are licensed by California.”

3 49. According to the CBS report, one hedge fund manager pointed out
4 that the Lumber Liquidators margins began exhibiting suspicious profit behavior
5 for a company involved in a cut-throat commodity business: doubling of its profits
6 against the competitive landscape in merely two years.

7 50. This jump in profit margin was also scrutinized by a hedge fund
8 analyst in 2013. The author of a *Seeking Alpha* article engaged an independent lab,
9 Berkeley Analytical, an IAS accredited testing laboratory to sample of Lumber
10 Liquidators’ house brand, Mayflower, sold from a Southern California Lumber
11 Liquidator store. The laboratory results revealed that the sample was more than
12 three and a half times the allowable legal level for formaldehyde.

13 **V.**

14 **CLASS ACTION ALLEGATIONS**

15 51. Plaintiffs bring this action pursuant to Rules 23(a), 23(b)(2), and
16 23(b)(3) of the Federal Rules of Civil Procedure, individually and on behalf of a
17 class defined as:

18 All persons and entities that reside in the State of
19 California who purchased for personal use laminated
20 wood flooring from Lumber Liquidators, either directly
21 or through an agent, that was sourced, processed, or
22 manufactured in China (the “Class”).

23 52. Plaintiffs do not assert claims in this action for personal injuries
24 caused by formaldehyde exposure through the Chinese Flooring in question here.
25 Rather, Plaintiffs, individually and on behalf of the other Class members, seek
26 solely economic and injunctive relief as a result of their purchase of Lumber
27 Liquidators’ Chinese-made Laminate Flooring products.

28 53. The members of the Class are so numerous that joinder of all
members would be impracticable. The proposed Class likely includes tens of

1 thousands of members dispersed across California. The precise number of Class
2 members can be ascertained through discovery, which will include records of
3 Lumber Liquidators' sales, its warranty service, and other records and documents.

4 54. There are common questions of law and fact that predominate over
5 any questions affecting only individual Class members. These common legal and
6 factual questions, include, but are not limited to:

- 7 a. Whether Lumber Liquidators properly and adequately monitored their
8 Chinese manufacturing plants to ensure CARB compliance;
- 9 b. Whether Lumber Liquidators' laminate wood flooring products that
10 were manufactured in China and sold in California exceed the CARB
11 limit;
- 12 c. Whether Lumber Liquidators falsely labeled and advertised its
13 Chinese manufactured laminate wood flooring products as being
14 CARB compliant;
- 15 d. Whether any false representations regarding CARB compliance were
16 made knowingly and willfully;
- 17 e. Whether Lumber Liquidators concealed and omitted material facts
18 from its communications with and disclosure to all class members
19 regarding the levels of formaldehyde in its laminate wood flooring
20 products;
- 21 f. Whether Lumber Liquidators breached express warranties to class
22 members regarding its laminate wood flooring products pursuant to
23 California Commercial Code § 2313;
- 24 g. Whether Lumber Liquidators' misrepresentations or omissions
25 constitute unfair or deceptive practices under the California Unfair
26 Competition Law ("UCL");

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- 1 h. Whether Lumber Liquidators' representations that its Chinese
- 2 manufactured laminate wood flooring products are CARB compliant
- 3 violate the California False Advertising Law ("FAL");
- 4 i. Whether Lumber Liquidators' conduct entitles class members to
- 5 injunctive relief under the Consumer Legal Remedies Act ("CLRA");
- 6 ii. Whether Lumber Liquidators has created a public nuisance;
- 7 j. Whether the above practices caused Class members to suffer injury;
- 8 and
- 9 k. The proper measure of damages and the appropriate injunctive relief.

10 55. Plaintiffs' claims are typical of the claims of the other Class members.

11 Plaintiffs and each of the other Class members were exposed to the same uniform

12 misconduct and have been injured by the same wrongful practices of Lumber

13 Liquidators.

14 56. Plaintiffs' claims arise from the same practices and course of conduct

15 that give rise to the other Class members' claims and are based on the same legal

16 theories. Plaintiffs will fully and adequately assert and protect the interests of the

17 other Class members. In addition, Plaintiffs have retained class counsel who are

18 experienced and qualified in prosecuting class action cases similar to this one.

19 Neither Plaintiffs nor their attorneys have any interests contrary to or conflicting

20 with other Class members' interests.

21 57. A class action is the superior method for the fair and efficient

22 adjudication of Plaintiffs and the Class' claims against Lumber Liquidators since

23 joinder of all of the members of the Class is impractical. Also, the adjudication of

24 the controversy through a class action will avoid the possibility of inconsistent and

25 potentially conflicting results. Given the similarity of the facts and claims at issue,

26 there will be no difficulty in the management of this action as a class action.

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VI.

STATUTE OF LIMITATIONS

A. Fraudulent Concealment Tolling

58. Upon information and belief, Lumber Liquidators has known that its models of laminate flooring do not meet California’s CARB emission standards for formaldehyde since at least January 1, 2009, if not earlier, and has concealed from and failed to notify Plaintiffs, Class Members, and the public of the true formaldehyde emission levels from its laminate flooring. Any applicable statutes of limitation have been tolled by Lumber Liquidators’ knowing, active, ongoing concealment and denial of the facts as alleged herein. Plaintiffs and the California Class have been kept ignorant by Lumber Liquidators of vital information essential to the pursuit of these claims, without any fault or lack of diligence on their part. Plaintiffs and members of the California Class could not reasonably have discovered that Lumber Liquidator’s laminate flooring uniformly fails to comply with California’s CARB emission standards for formaldehyde.

B. Estoppel

59. Lumber Liquidators was and is under a continuous duty to disclose to Plaintiffs and the Class the true character, quality, and nature of its laminate flooring. Lumber Liquidators knowingly and affirmatively misrepresented and actively concealed the true character, quality, and said laminate flooring. Plaintiff reasonably relied upon Lumber Liquidators’ knowing and affirmative misrepresentations and/or active concealment. Based on the foregoing, Lumber Liquidators is estopped from relying on any statutes of limitation in defense of this action.

C. Discovery Rule

60. The causes of action alleged herein did not accrue until Plaintiffs and Class Members discovered their laminate flooring from Lumber Liquidators failed

1 to comply with California’s CARB standards for formaldehyde emissions.
2 However, Plaintiffs and Class Members had no realistic ability to discern the
3 Lumber Liquidators laminate flooring they purchased was defective until—at the
4 earliest—independent testing verified that such flooring does not comply with
5 CARB standards for formaldehyde. Not only did Lumber Liquidators fail to notify
6 Plaintiffs or Class Members about its laminate flooring non-compliance with the
7 CARB limit, Lumber Liquidators denied and continues to deny that its laminate
8 flooring fails to comply with the CARB limit. Thus Plaintiffs and Class Members
9 were not reasonably able to discover the laminate flooring’s non-compliance until
10 after they had purchased the laminate flooring, despite their exercise of due
11 diligence, and their causes of action did not accrue until they discovered that their
12 laminate flooring emitted formaldehyde at levels greater than the CARB limit.

13
14 **VII.**

15 **CAUSES OF ACTION**

16 **FIRST CAUSE OF ACTION**

17 **VIOLATION OF THE MAGNUSON-MOSS WARRANTY**

18 **ACT, 15 U.S.C. §§ 2301, *ET SEQ.***

19 61. Plaintiffs re-allege and incorporate all paragraphs above as though
20 fully set forth herein.

21 62. Plaintiffs bring this claim on their own behalf and on behalf of each
22 member of the Class described above.

23 63. Plaintiffs and the other members of the class are “consumers” within
24 the meaning of the Magnusson-Moss Warranty Act, 15 U.S.C. § 2301(3).

25 64. Lumber Liquidators is a “supplier” and “warrantor” within the
26 meaning of 15 U.S.C. §§ 2301(4) – (5).

27 65. Lumber Liquidators flooring that was purchased separate from the
28 initial construction of the structure into which it was to be installed constitutes a
“consumer product” within the meaning of 15 U.S.C. § 2301(1).

1 in California that exceed the CARB limit for formaldehyde emissions from
2 composite wood products set forth in Title 17 of the California Code of
3 Regulations, § 93120 –93120.12 *et seq.*, specifically “Phase 2,” which mandates
4 the maximum levels of formaldehyde that laminate flooring products can emit.

5 74. Throughout the Class Period, Defendant engaged in unlawful business
6 acts and/or practices by selling and/or distributing laminate wood flooring products
7 in California that exceed the CARB limit for formaldehyde emissions from
8 composite wood products set forth in Title 17 of the California Code of
9 Regulations, § 93120 – 93120.12 *et seq.*, specifically “Phase 2,” which mandates
10 the maximum levels of formaldehyde that laminate flooring products can emit.

11 75. Defendant’s deceptive statements detailed above further violate
12 California Health and Safety Code §25249.6 (Proposition 65), which requires
13 products emitting formaldehyde at levels above 40 micrograms per day to contain
14 a health hazard warning.

15 76. Defendant further engaged in unlawful business acts and/or practices
16 by not informing consumers that Defendant’s Chinese-made laminate wood
17 flooring products sold in California emit formaldehyde at levels that exceed the
18 formaldehyde emission limit set forth in the CARB standards. These actions were
19 misleading and deceptive, and violated the False Advertising Law, California
20 Business & Professions Code §§ 17500, *et seq.* and the Consumer Legal Remedies
21 Act, California Civil Code §§ 1750, *et seq.*

22 77. Throughout the Class Period, Defendant engaged in unlawful business
23 acts and/or practices by making untrue, deceptive, or misleading environmental
24 marketing claims on the labels of its Chinese-made laminate wood flooring
25 products’ packaging and on promotional materials including pages of the Lumber
26 Liquidators’ website, in violation of California’s “Greenwashing” Statute, Cal.
27 Bus. & Prof. Code § 17580.5. Such claims include, but are not limited to:
28 overstating the environmental attributes of the laminate wood flooring products it

1 distributes in California, failing to substantiate that the laminate wood flooring
2 products it distributes in California have received third-party certification of
3 CARB compliance, and misrepresenting explicitly or through implication that the
4 laminate wood flooring Defendant distributes in California is non-toxic. *See* Cal.
5 Bus. & Prof. Code § 17580.5(a).

6 78. Throughout the Class Period, Defendant has engaged in unlawful
7 business acts and/or practices by expressly warranting on every package of
8 laminate wood flooring products it distributes and sells in California, as well as in
9 promotional materials and product invoices, that the products comply with CARB
10 formaldehyde standards and all other applicable laws and regulations when they do
11 not. This express warranty also appears on Defendant's website, and product
12 invoices and instruction materials. Defendant's breach of this express warranty
13 violates California state warranty law, California Commercial Code § 2313.

14 79. The acts, omissions, and practices alleged herein also constitute unfair
15 business acts and practices in that Defendant's conduct is immoral, unscrupulous,
16 and offends public policy by seeking to profit from Chinese-made laminate
17 flooring products that emit dangerous levels of formaldehyde in violation of
18 California law.

19 80. The acts, omissions, and practices alleged herein also constitute
20 fraudulent business acts and practices in that Defendant's representations regarding
21 its compliance with CARB emission standards, regarding its measures to ensure
22 CARB compliance by its Chinese manufacturers, and regarding the safety and
23 quality of its laminate flooring are false, misleading, and are likely to deceive
24 California customers.

25 81. Plaintiffs relied on Defendant's misrepresentations. As a direct result
26 of Defendant's unlawful, unfair, or fraudulent business acts and/or practices,
27 Plaintiffs and Class Members suffered injury in fact and lost money or property.

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1 82. Defendant profited from its sales of its falsely and deceptively
2 advertised products to unwary California customers.

3 83. Accordingly, Plaintiffs, on behalf of themselves and all others
4 similarly situated, seek restitution, injunctive relief against Defendant in the form
5 of an order prohibiting Defendant from engaging in the alleged misconduct
6 described herein, and other relief as specifically prayed for herein.

7 **THIRD CAUSE OF ACTION**
8 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §**
9 **17500, ET SEQ.**

10 84. Plaintiffs re-allege and incorporate all paragraphs above as though
11 fully set forth herein.

12 85. Throughout the Class Period, Defendant engaged in unlawful and/or
13 fraudulent conduct under California Business & Professions Code §§ 17500, *et*
14 *seq.* (“the False Advertising Law”), by engaging in the sale of Chinese-made
15 laminate wood flooring products, and publically disseminating various
16 advertisements that Defendant knew or reasonably should have known were untrue
17 and misleading. Defendant committed such violations of the False Advertising
18 Law with actual knowledge or knowledge fairly implied on the basis of objective
19 circumstances.

20 86. Defendant’s advertisements, representations, and labeling as described
21 herein were designed to, and did, result in the purchase and use of the Chinese-
22 made laminate flooring products and Defendant profited from its sales of these
23 products to unwary consumers.

24 87. Plaintiffs reasonably relied on Defendant’s representations made in
25 violation of California Business and Professions Code §§ 17500, *et seq.*

26 88. As a direct result of Defendant’s violations, Plaintiffs suffered injury
27 in fact and lost money.

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1 89. Accordingly, Plaintiffs, on behalf of themselves and all others
2 similarly situated, seek restitution and injunctive relief against Defendant in the
3 form of an order prohibiting Defendant from engaging in the alleged misconduct
4 described herein, and other relief as specifically prayed for herein.

5 **FOURTH CAUSE OF ACTION**
6 **VIOLATION OF CALIFORNIA CONSUMER LEGAL REMEDIES ACT,**
7 **CAL. CIV. CODE § 1750 ET SEQ.**

8 90. Plaintiffs incorporate by reference all the above allegations as if fully
9 set forth herein.

10 91. Defendant is a “person” within the meaning of California Civil Code
11 §§ 1761(c) and 1770, and provides “goods” within the meaning of Civil Code §§
12 1761(a) and 1770. Defendant’s customers, including Plaintiffs and Class members,
13 are “consumers” within the meaning of Civil Code §§ 1761(d) and 1770. Each
14 purchase of Defendant’s Chinese-made laminate wood flooring products by
15 Plaintiffs and each Class member constitutes a “transaction” within the meaning of
16 Civil Code §§ 1761(e) and 1770.

17 92. Each class member purchased goods from Defendant that was
18 primarily for personal, family, or household purposes.

19 93. The Consumer Legal Remedies Act makes it unlawful for a company
20 to:

- 21 a. Misrepresent the certification of goods. Cal. Civ. Code §
- 22 1770(a)(2)(3);
- 23 b. Represent that goods have characteristics or approval which
- 24 they do not have. Cal. Civ. Code § 1770(a)(5);
- 25 c. Represent that goods are of a particular standard, quality, or
- 26 grade, if they are of another. Cal. Civ. Code § 1770(a)(7);
- 27 d. Advertise goods with intent not to sell them as advertised. Cal.
- 28 Civ. Code § 1770(a)(9).

1 e. Represent that the subject of a transaction has been supplied in
2 accordance with a previous representation when it has not. Cal.
3 Civ. Code § 1770(a)(16).

4 94. Throughout the Class Period, Defendant violated and continues to
5 violate the above mentioned provisions.

6 95. As a direct and proximate result of Defendant's violations, Plaintiffs
7 and Class Members have suffered and are continuing to suffer irreparable harm.

8 96. Defendant's wrongful business practices constituted, and constitute, a
9 continuing course of conduct in violation of the California Consumer Legal
10 Remedies Act because Defendant is still representing that the flooring products
11 have characteristics and qualifications which are false and misleading, and has
12 injured Plaintiffs and Class Members.

13 97. In accordance with Civil Code § 1780(a), Plaintiff and members of the
14 Class seek injunctive and equitable relief for Lumber Liquidators' violations of the
15 CLRA. In addition, after mailing appropriate notice and demand in accordance
16 with Civil Code § 1782(a) and (d), Plaintiffs will amend this Class Action
17 Complaint to include a request for damages. Plaintiffs and members of the Class
18 request that this Court enter such orders or judgments as may be necessary to
19 restore to any person in interest any money which may have been acquired by
20 means of such unfair business practices, and for such other relief, including
21 attorneys' fees and costs, as provided in Civil Code §1780 and the Prayer for
22 Relief.

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FIFTH CAUSE OF ACTION

BREACH OF EXPRESS WARRANTY, CAL. UNIFORM COM. CODE §

2313

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4 98. Plaintiffs re-allege and incorporate all paragraphs above as though
5 fully set forth herein.

6 99. Throughout the Class Period, Lumber Liquidators has expressly
7 warranted that its laminate wood flooring products comply with CARB
8 formaldehyde standards and all other applicable laws and regulations.

9 100. Defendant's express warranty that its laminate wood flooring products
10 comply with the CARB standards appears on every package of laminate wood
11 flooring Defendant sells or has sold in California, including those sold to Plaintiffs
12 and all Class Members. This express warranty also appears on Defendant's
13 website, and product invoices and instruction materials.

14 101. Lumber Liquidators' warranties became part of the basis of the
15 bargain in selling laminate wood flooring products to Plaintiffs and Class
16 Members.

17 102. Lumber Liquidators breached these express warranties by selling,
18 and/or distributing the laminate wood flooring products, which fail to comply with
19 the CARB standards.

20 103. Plaintiffs and members of the Class paid money for the laminate wood
21 flooring and paid to have the flooring installed in their homes, work, and other
22 spaces. However, Plaintiffs and the members of the Class did not obtain the full
23 value of the advertised products. If Plaintiffs and other members of the Class had
24 known the true nature of the flooring products, that they emitted unlawful levels of
25 a cancer-causing chemical, they would not have purchased the laminate wood
26 flooring products.

27 104. As a result of this breach, Plaintiffs and the members of the Class
28 suffered injury and deserve to be compensated for the damages they suffered.

1 105. Plaintiffs and the Class are therefore entitled to recover compensatory
2 damages, declaratory relief, and other relief as specifically prayed for herein.

3 **SIXTH CAUSE OF ACTION**

4 **PUBLIC NUISANCE**

5 106. Plaintiffs incorporate by reference the foregoing allegations as if set
6 fully herein.

7 107. Plaintiffs and all other similarly situated customers have a common
8 right to be free from the detrimental effects of formaldehyde in, on and around
9 their homes.

10 108. Lumber Liquidators, by reason of its failure to exercise due care in its
11 manufacturing, marketing, and sale of Chinese-made Laminate wood flooring, has
12 created a condition whereby unsafe levels of formaldehyde are now present in, on
13 and/or around tens of thousands of homes in California, including specifically the
14 home Plaintiffs reside in.

15 109. The widespread presence of Lumber Liquidators' Chinese-made
16 laminate wood flooring in homes throughout California, including within
17 Plaintiffs' home, is injurious to the health of the public so as to substantially and
18 unreasonable interfere with the comfortable enjoyment of life and/or property.

19 110. The widespread presence of Lumber Liquidators' Chinese-made
20 laminate wood flooring in homes throughout California causes significant harm
21 and its social utility is outweighed by the gravity of the harm inflicted.

22 111. The widespread presence of Lumber Liquidators' Chinese-made
23 laminate wood flooring in homes throughout California constitutes a nuisance
24 pursuant to California Civil Code section 3479.

25 112. The widespread presence of Lumber Liquidators' Chinese-made
26 laminate wood flooring in homes throughout California affects and/or interferes
27 with an entire community's and/or a considerable number of persons' right to
28 health, safety, peace, comfort, and convenience in the State of California, thereby

1 constituting a public nuisance pursuant to California Civil Code section 3480.
2 Moreover, Lumber Liquidators' conduct as described herein has adversely affected
3 Plaintiffs' private right to the free use and enjoyment of their property.

4 113. Defendant is liable in public nuisance in that it created and/or
5 contributed to the creation of and/or assisted in the creation of and/or were a
6 substantial contributing factor in the creation of the public nuisance described
7 herein through the conduct described in this cause of action and elsewhere
8 throughout the complaint, including, but not limited to:

- 9 a. The widespread promotion and marketing of Chinese-made laminate
10 wood flooring products for use in homes;
11 b. Failing to warn the public about the elevated levels of formaldehyde
12 that are released from Lumber Liquidators' Chinese-made laminate
13 wood flooring; and
14 c. Systematically selling, promoting, manufacturing, and/or distributing
15 Chinese-made laminate wood flooring in homes throughout California
16 despite knowing that its products contained elevated levels of
17 formaldehyde that would be released into the home environment
18 thereby exposing Plaintiffs and members of the Class to a highly toxic
19 chemical;

20 114. As a direct and proximate cause of Defendant's conduct, unsafe levels
21 of formaldehyde is present in, on and around large numbers of homes throughout
22 the State of California.

23 115. The widespread presence of Lumber Liquidators' Chinese-made
24 laminate wood flooring in homes throughout California releases or off-gasses
25 formaldehyde which contaminates and/or will contaminate these homes, including
26 the home of Plaintiffs.

27 116. As a direct and proximate result of Defendant's conduct, large
28 numbers of people throughout the State of California, including Plaintiffs, have

1 been exposed and/or are being exposed to elevated levels of formaldehyde released
2 from Lumber Liquidators' Chinese-made laminate wood flooring in homes
3 throughout California, thereby affecting their health, safety, and welfare.

4 117. Defendant's actions are a direct and legal cause of the public
5 nuisance.

6 118. Plaintiffs and the Class have an ascertainable right to have the public
7 nuisance created by Defendant abated from their homes and property so affected.

8 119. The abatement of the nuisance described herein is a remedy unique to
9 the public nuisance cause of action.

10 120. Plaintiffs and the Class pray for relief as set forth below.

11 **SEVENTH CAUSE OF ACTION**

12 **DECLARATORY RELIEF**

13 121. Plaintiffs incorporate by reference the foregoing allegations as if set
14 fully herein.

15 122. Plaintiffs, on behalf of themselves and all others similarly situated,
16 contend that Defendant's sale of laminate wood flooring products in California do
17 not comply with the CARB standards. On information and belief, Defendant
18 contends that its sale of laminate wood flooring products in California complies
19 with the CARB standards.

20 123. A judicial declaration is necessary and appropriate at this time in
21 order that each of the parties may know their respective rights and duties and act
22 accordingly.

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PRAYER FOR RELIEF

WHEREFORE Plaintiffs, on behalf of themselves and all others similarly situated, pray for relief and judgment against Defendants as follows:

A. Certification of this action as a class action and appointment of Plaintiffs as the Class representatives and the undersigned counsel as Class counsel;

B. An Order declaring that Defendants' conduct has violated Title 17 of the California Code Regulations, §§ 93120-93120.12;

C. An Order awarding Plaintiffs and National Class members injunctive relief, declaratory relief, statutory damages, and punitive damages against Defendants as provided in California Business and Professions Code, §§ 17202 and 17203, and California Civil Code § 1780;

D. An Order declaring the actions complained of herein to be in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code §17200, et seq.;

E. Restitution of all money and/or property that Plaintiffs and Class Members provided to Defendant for the purchase and installation of Defendant's laminate wood flooring products that were sold in violation of Title 17 of the California Code Regulations, §§ 93120-93120.12 and California Business and Professions Code § 17200 et seq.;

F. An Order awarding Plaintiffs and Class members restitution and disgorgement of Defendants' profits;

G. An order for the abatement of the public nuisance that presently exists in the homes of Plaintiffs and members of the Class due to the widespread presence of Lumber Liquidators' Chinese-made laminate wood flooring.

H. Pre and post-judgment interest;

I. Reasonable attorneys' fees and costs; and

J. For such other and further relief as this Court finds just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand a jury trial on all issues so triable.

DATED: March 17, 2015

COTCHETT, PITRE & McCARTHY, LLP

/s/ Matthew K. Edling

MATTHEW K. EDLING

MATTHEW K. EDLING (SBN 250940)

medling@cpmlegal.com

COTCHETT, PITRE & McCARTHY, LLP

840 Malcolm Road, Suite 200

Burlingame, CA 94010

Telephone: (650) 697-6000

Facsimile: (650) 697-0577

*Attorneys for Plaintiffs Lisa Deutsch and
Jamie Deutsch, individually and on behalf of
all others similarly situated*