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16 **UNITED STATES DISTRICT COURT**  
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 HERVE LEVY, Individually, and on  
19 Behalf of All Others Similarly Situated,

20 Plaintiff,

21 v.

22 LUMBER LIQUIDATORS, INC., a  
Delaware Corporation; LUMBER  
23 LIQUIDATORS LEASING, LLC, a  
Delaware Limited Liability  
Corporation; LUMBER  
24 LIQUIDATORS HOLDINGS, INC., A  
Delaware Corporation; LUMBER  
25 LIQUIDATORS SERVICES, LLC, a  
Delaware Limited Liability  
26 Corporation; and DOES 1-10, Inclusive,

27 Defendants.  
28

Case No.

CLASS ACTION

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

# CLASS ACTION COMPLAINT

Plaintiff, HERVE LEVY, individually and on behalf of all others similarly situated (the “**Class**,” as defined below), brings this class action complaint against Defendants Lumber Liquidators, Inc., Lumber Liquidators Leasing, LLC, Lumber Liquidators Holdings, Inc., and Lumber Liquidators Services, LLC (collectively, “**Lumber Liquidators**” or “**Defendants**”) and alleges on personal knowledge, investigation of his counsel, and on information and belief as follows:

# INTRODUCTION

1. This is a proposed class action brought by Plaintiff on behalf of himself and the below-defined Class against Lumber Liquidators to obtain damages and injunctive relief arising from and relating to the purchase and use of Lumber Liquidators' laminate and engineered wood flooring, which is manufactured in China ("**Chinese Flooring**").

2. Lumber Liquidators is the largest retailer of hardwood flooring in the United States, with more than 360 stores in 46 states and annual revenues of more than one billion dollars. As part of its regular business operations, Lumber Liquidators sells laminate and engineered wood flooring. More than 100 million square feet of Lumber Liquidators laminate flooring is installed in homes in the United States each year. Although Lumber Liquidators is based in the United States, much of its laminate and engineered wood flooring is manufactured in China.

3. This class action arises out of Lumber Liquidators' scheme to import into the United States, and to deceptively warrant, advertise and sell Chinese Flooring to California consumers that fails to comply with relevant and applicable formaldehyde emission standards that apply to such products.

4. Despite its direct representations to the contrary, Lumber Liquidators manufactures, distributes and sells Chinese Flooring, which emits and off-gasses excessive levels of formaldehyde, a substance that is categorized as a known human carcinogen by the United States National Toxicology Program and the International

1 Agency for Research on Cancer.

2 5. Further, contrary to Lumber Liquidators' repeated, detailed and  
3 uniform representations that its flooring complies with strict formaldehyde emission  
4 standards on its product labels, website, and elsewhere, the toxic formaldehyde  
5 emitted from its Chinese Flooring at the time of purchase exceeds the maximum  
6 permissible limits set by the applicable standards many times over.

7 6. Lumber Liquidators' illegal, deceptive and unfair conduct with respect  
8 to its manufacturing, marketing, and selling of Chinese Flooring has caused Plaintiff  
9 and Class Members to suffer direct financial harm. Plaintiff's purchase is markedly  
10 less valuable because of its elevated level of formaldehyde. Plaintiff would not have  
11 purchased flooring from Lumber Liquidators, or would have paid significantly less  
12 for the flooring, had he known that the flooring contained elevated levels of the  
13 toxin formaldehyde.

## 14 **PARTIES**

15 7. Plaintiff, Herve Levy, is a citizen and resident of California. In August  
16 2014, he purchased 49 boxes of Defendants' Dream Home Kensington Manor  
17 Sandy Hills Hickory 12 mm laminate flooring from a Lumber Liquidators store in  
18 San Marcos, California. In December 2014, Plaintiff purchased an additional 9  
19 boxes of Dream Home Kensington Manor Sandy Hills Hickory 12 mm laminate  
20 flooring from a Lumber Liquidators store in Santa Ana, California. Plaintiff  
21 purchased this flooring for installation and use in his home in California.

22 8. Defendant, Lumber Liquidators, Inc., is a Delaware corporation with its  
23 principal place of business at 3000 John Deere Road, Toano, Virginia 23168.  
24 Lumber Liquidators, Inc. is licensed and doing business in the state of California.

25 9. Defendant, Lumber Liquidators Leasing, LLC, is a Delaware limited  
26 liability corporation with its principal place of business at 3000 John Deere Road,  
27 Toano, Virginia 23168.

28 10. Defendant, Lumber Liquidators Holdings, Inc., is a Delaware

1 corporation with its principal place of business at 3000 John Deere Road, Toano,  
2 Virginia 23168.

3 11. Defendant, Lumber Liquidators Services, LLC, is a Delaware limited  
4 liability corporation with its principal place of business at 3000 John Deere Road,  
5 Toano, Virginia 23168.

6 12. The Defendants sued by the fictitious names DOES 1 through 10 are  
7 persons or entities whose true names and identities are currently unknown to  
8 Plaintiff. Plaintiff will amend this Complaint to allege the true names and capacities  
9 of these fictitiously named Defendants when they are ascertained. Each of the  
10 fictitiously named Defendants is responsible for the conduct alleged in this  
11 Complaint. Through their conduct, the fictitiously named Defendants actually and  
12 proximately caused the damages of Plaintiff and the Class.

13 13. In this Complaint, Defendant Lumber Liquidators, Inc., Lumber  
14 Liquidators Leasing, LLC, Lumber Liquidators Holdings, Inc., Lumber Liquidators  
15 Services, LLC, and Does 1 through 10, inclusive, are sometimes referred to  
16 individually as “Defendant” or by name, and are sometimes referred to collectively  
17 as “Defendants,” or “Lumber Liquidators,” or “the Defendants.”

18 14. At all times mentioned herein, each Defendant was acting as the agent  
19 and/or employee of each of the remaining Defendants and was at all times acting  
20 within the purpose and scope of such agency and employment. In doing the acts  
21 alleged herein, each Defendant, and its officers, directors, members, owners,  
22 principals, or managing agents (where the defendant is a corporation, limited  
23 liability company, or other form of business entity) authorized and/or ratified the  
24 conduct of each other Defendant and/or of his/her/its employees.

#### 25 **JURISDICTION AND VENUE**

26 15. This Court has original jurisdiction pursuant to 28 U.S.C. §  
27 1332(d)(2) because the matter in controversy, exclusive of interest and costs,  
28 exceeds the sum value of \$5,000,000.00 and is a class action in which Members of

1 the Class are citizens of a state different from Defendants. Jurisdiction also exists  
2 pursuant to 15 U.S.C. § 2310(d)(1)(B)

3 16. Venue is proper in this District, pursuant to 28 U.S.C. §1391, because a  
4 substantial part of the events or omissions giving rise to Plaintiff's claims occurred  
5 in this Judicial District (i.e., Plaintiff's consideration of representations and  
6 warranties, and his purchase and use of Chinese Flooring, all took place within this  
7 District), Defendants conduct and transact business in this Judicial District, and  
8 Defendants have intentionally availed themselves of the laws and markets within  
9 this District through the marketing, distribution and sale of Chinese Flooring in this  
10 District. Therefore, Defendants are subject to personal jurisdiction in this District.

11 **FACTS COMMON TO ALL CLASS MEMBERS**

12 17. Lumber Liquidators was established in 1993 and has since become the  
13 largest retailer of hardwood flooring in the United States, with more than 360 stores  
14 in 46 states and annual revenues of more than one billion dollars. As part of its  
15 regular business operations, Lumber Liquidators sells laminate and engineered wood  
16 flooring directly to homeowners or contractors acting on the homeowners' behalf.  
17 More than 100 million square feet of Lumber Liquidators' laminate flooring is  
18 installed in homes in the United States each year.

19 18. Lumber Liquidators manufactures and purchases many of its laminate  
20 and engineered wood flooring materials in China. Lumber Liquidators has a  
21 representative office in Shanghai China and assumed direct control of its entire  
22 product sourcing in China, through its Chinese headquarters.

23 19. Lumber Liquidators represents that it "negotiates directly with the  
24 mills, eliminating the middleman and passing the savings on to the customers."  
25 Lumber Liquidators further represents itself as an "environmentally conscientious  
26 company [that] only purchases from suppliers who practice sustainable harvesting,  
27 which allows forests to heal and re-grow faster," and that "[a]t Lumber Liquidators,  
28 we believe hardwood flooring is a natural, healthy choice—for both you and the

1 environment.”

2       20. During the Class Period, Lumber Liquidators labeled and sold the toxic  
3 Chinese Flooring as being compliant with “CARB [California Air Resources Board]  
4 regulations in the State of California.” CARB is an entity which has promulgated  
5 safety standards for the emission of formaldehyde for products sold in California.  
6 Lumber Liquidators represents that it requires all of its “suppliers [to] comply with  
7 California’s advanced environmental requirements, even for products sold outside  
8 California.”

9       21. Contrary to these representations, Lumber Liquidators’ Chinese  
10 Flooring is not CARB compliant. Rather, the Chinese Flooring emits a dangerous  
11 level of formaldehyde gas, which exceeds the “CARB regulations in the State of  
12 California” (Cal. Code Regs., tit. 17, §§ 93120 - 93120.12) and the standards  
13 promulgated in the Toxic Substances Control Act, 15 U.S.C. 2601, *et. seq.* (Title VI  
14 – Formaldehyde Standards of Composite Wood Products).

15       22. Formaldehyde is hazardous to human health. Exposure to formaldehyde  
16 gas can cause cancer, asthma, chronic respiratory irritation and other ailments,  
17 including skin and breathing problems. The risk of these health problems is  
18 significantly greater for children. Because the Chinese Flooring that Lumber  
19 Liquidators sold to Plaintiff and Class Members emits formaldehyde in excess of  
20 allowable levels imposed by CARB and the Toxic Substances Control Act, the  
21 Chinese Flooring poses great health risks to consumers.

22       23. Lumber Liquidators knew or should have known that its Chinese  
23 Flooring emitted formaldehyde at dangerous levels exceeding the CARB standards  
24 and the Toxic Substances Control Act. Nonetheless, Lumber Liquidators’ marketing  
25 materials for the Chinese Flooring contained false and misleading information and  
26 warranties relating to compliance with these laws, which were designed to increase  
27 sales of the product at issue.

28       24. Despite knowing of the defects in the Chinese Flooring, Lumber

1 Liquidators has continued to sell the Chinese Flooring to consumers and has not  
2 notified affected purchasers and/or homeowners that the Chinese Flooring they  
3 purchased and installed is defective.

4 25. Plaintiff and Class Members have not received the value for which they  
5 bargained when the Chinese Flooring was purchased. There is a difference in value  
6 between the Chinese Flooring, as represented and warranted, and the Chinese  
7 Flooring containing the defect. Plaintiff and Class Members would not have  
8 purchased the Chinese Flooring or would have paid less for it had they known it  
9 emitted formaldehyde at dangerously unsafe levels in violation of CARB regulations  
10 and the Toxic Substances Control Act.

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

15 **PLAINTIFF'S FACTUAL ALLEGATIONS**

16 27. Plaintiff purchased 49 boxes of Defendants' Dream Home Kensington  
17 Manor Sandy Hills Hickory 12mm laminate flooring from a Lumber Liquidators  
18 store in San Marcos, California in or around August 2014. Plaintiff purchased an  
19 additional 9 boxes of the Defendants' Dream Home Kensington Manor Sandy Hills  
20 Hickory 12 mm laminate flooring from a Lumber Liquidators store in Santa Ana,  
21 California in December 2014. Plaintiff paid approximately \$4,000.00 for the  
22 flooring and accessories for installation and use. Upon information and belief, this  
23 flooring was manufactured at a laminate mill in China. Below is a true and correct  
24 photograph of the package labeling on one of the boxes.



28. Prior to purchasing the Chinese Flooring from Lumber Liquidators, Plaintiff was aware of the risks inhering in exposure to formaldehyde, along with its presence in building materials. As a result, prior to purchasing the Chinese Flooring from Lumber Liquidators, Plaintiff reviewed Lumber Liquidators website, which represented and warranted that the Chinese Flooring complied with CARB formaldehyde standards.

29. When Plaintiff purchased the Chinese Flooring from Lumber Liquidators, he specifically read the product label indicating that it was “California 93120 PHASE 2 Compliant for Formaldehyde.” Plaintiff relied on this representation and warranty by Defendants and the representations and warranties by Defendants on Lumber Liquidators’ website when purchasing the Chinese Flooring. Plaintiff chose to purchase the flooring because of its alleged compliance with CARB formaldehyde standards. Plaintiff would not have purchased the flooring had he known it did not comply with CARB formaldehyde standards, particularly considering his daughter’s asthma condition.

30. When Plaintiff purchased the Chinese Flooring, the Defendants’ representations and warranties on the product packaging and on Lumber Liquidators’ website regarding compliance with CARB formaldehyde standards were not true. Rather, the Chinese Flooring emitted formaldehyde gas at levels in



1 excess of CARB standards and other applicable laws and regulations.

2 31. Plaintiff would not have purchased the Chinese Flooring from Lumber  
3 Liquidators had he known about the defect in the flooring, including that it did not  
4 comply with CARB formaldehyde standards and other applicable laws and  
5 regulations.

6 **CLASS ACTION ALLEGATIONS**

7 32. Plaintiff brings this case as a class action on behalf of himself and all  
8 others similarly situated for the purpose of asserting claims alleged in this complaint  
9 on a common basis.

10 33. Pursuant to Rules 23(a), (b)(3), (b)(2) and (c)(4) of the Federal Rules of  
11 Civil Procedure, Plaintiff brings this class action on behalf of himself and all others  
12 similarly situated. Specifically, Plaintiff seeks to represent a Class consisting of the  
13 following persons:

14  
15 **INJUNCTIVE RELIEF CLASS:**

16 All persons within California who purchased Defendants' laminate and  
17 engineered wood flooring products manufactured in China that were  
18 labeled "CARB Phase 2" compliant for personal use between March 12,  
19 2011, through the present ("Class").

20 **DAMAGES CLASS:**

21 All persons within California who purchased Defendants' laminate and  
22 engineered wood flooring products manufactured in China that were  
23 labeled "CARB Phase 2" compliant for personal use between March 12,  
24 2011, through the present ("Class").

25 Subject to additional information obtained through further investigation and  
26 discovery, the foregoing definitions of the Class may be expanded or narrowed by  
27 amendment or amended complaint. Specifically excluded from the proposed Class  
28 are Defendants, their officers, directors, agents, trustees, parents, children,  
corporations, trusts, representatives, employees, principals, servants, partners, joint  
venturers, or entities controlled by Defendants, and their heirs, successors, assigns,  
or other persons or entities related to or affiliated with Defendants and/or their

1 officers and/or directors, or any of them; the Judge assigned to this action, and any  
2 member of the Judge's immediate family.

3 **Numerosity**

4 34. The proposed Class is so numerous that individual joinder of all  
5 Members is impracticable.

6 35. Lumber Liquidators is the largest retailer of hardwood flooring in the  
7 United States, with more than 360 stores in 46 states, including numerous stores in  
8 California. In addition, Lumber Liquidators has annual revenues of more than one  
9 billion dollars, and more than 100 million square feet of Lumber Liquidators  
10 laminate flooring installed in homes in the United States each year. As a result, the  
11 proposed Class likely includes thousands, and possibly tens of thousands, of  
12 Members. While the precise number and identities of Class Members are unknown  
13 at this time, such information can be readily ascertained through Defendants'  
14 records and appropriate investigation and discovery. The disposition of the claims of  
15 the Class Members in a single action will provide substantial benefit to all parties  
16 and to the Court.

17 **Predominance of Common Questions of Law and Fact**

18 36. Common questions of law and fact exist as to all Members of the Class  
19 and predominate over any questions affecting only individual Class Members.  
20 These common legal and factual questions include, but are not limited to, the  
21 following:

- 22 a. Whether Lumber Liquidators Chinese Flooring emits excessive levels  
23 of formaldehyde;
- 24 b. Whether Lumber Liquidators knew or should have known that its  
25 Chinese Flooring did not conform to its labels or marketing  
26 descriptions;
- 27 c. Whether Lumber Liquidators omitted and concealed material facts  
28 from its communications and disclosures to Plaintiff and Class

Members regarding the formaldehyde emission levels of its Chinese Flooring products;

- d. Whether Lumber Liquidators violated state and federal consumer protection statutes, regulations, and other laws;
- e. Whether Lumber Liquidators breached its express warranties to Plaintiff and Class Members with respect to its Chinese Flooring products;
- f. Whether Lumber Liquidators has been unjustly enriched as a result of its conduct;
- g. Whether, as a result of Lumber Liquidators' conduct, Plaintiff and Class Members have suffered damages and, if so, the appropriate measure of damages to which they are entitled; and
- h. Whether, as a result of Lumber Liquidators' misconduct, Plaintiff and Class Members are entitled to equitable relief or other relief and, if so, the nature of such relief.

### **Typicality**

37. Plaintiff's claims are typical of the claims of the Class Members. Plaintiff and each Class Member have been injured by the same wrongful practices of Lumber Liquidators. Plaintiff's claims arise from the same practices and course of conduct that give rise to Class Members' claims and are based on the same legal theories.

### **Adequacy**

38. Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained counsel with substantial experience in handling complex class action litigation, including complex questions that arise in this type of consumer protection litigation. Further, Plaintiff and his counsel are committed to the vigorous prosecution of this action.

**Superiority**

39. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy for at least the following reasons:

- a. The claims presented in this case predominate over any questions of law or fact affecting individual Class Members;
- b. Individual joinder of all Class Members is impracticable;
- c. Absent a Class, Plaintiff and Class Members will continue to suffer harm as a result of Defendants' unlawful conduct;
- d. Given the amount of individual Class Members' claims, few, if any, Class Members could afford to, or would, seek legal redress for the wrongs Defendants committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;
- e. Even if individual Class Members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed;
- f. Adjudications of individual Class Members' claims against Defendants would, as a practical matter, be dispositive of the interests of other Class Members who are not parties to the adjudication and may substantially impair or impede the ability of other Class Members to protect their interests; and
- g. This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiff and Class Members can seek redress for the harm caused by Defendants.

40. Defendants implemented uniform policies and practices relating to the Chinese Flooring, which resulted in uniform damage to Plaintiff and Class Members. As a result, Defendants have acted or refused to act on grounds generally

1 applicable to each Class Member, thereby making appropriate final injunctive relief  
2 or corresponding declaratory relief with respect to the Class as a whole.

3 41. Defendants' failure to comply with its legal obligations and warranties  
4 to consumers arises out of a common omission or failure to act, which has a uniform  
5 effect on Plaintiff and all Class Members. Plaintiff seeks preliminary and permanent  
6 injunctive relief and equitable relief on behalf of the entire Class, on grounds  
7 generally applicable to the entire Class, to require Defendants to discontinue their  
8 unlawful conduct.

9 42. Because Plaintiff seeks injunctive and corresponding equitable relief  
10 for the entire Class, the prosecution of separate actions by individual Class Members  
11 would create a risk of inconsistent or varying adjudications with respect to  
12 individual Class Members, which would establish incompatible standards of conduct  
13 for Defendants. Further, bringing individual claims would overburden the courts and  
14 would be an inefficient method of resolving the dispute at the center of this  
15 litigation.

16 **COUNT ONE**

17 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**

18 **(Cal. Bus. & Prof. Code § 17200 *et seq.*)**

19 43. Plaintiff restates and realleges paragraphs 1 through 42 as if fully set  
20 forth herein.

21 44. Plaintiff brings this claim on behalf of himself and the Class.

22 45. California Business and Professions Code section 17200 *et seq.*  
23 ("UCL") prohibits any "unlawful, unfair, or fraudulent business act or practices."

24 46. Defendants have engaged in unlawful, unfair, and fraudulent business  
25 acts and practices in violation of consumer rights under the UCL, as alleged herein.  
26 During the Class Period, Defendants misrepresented in their labeling of the Chinese  
27 Flooring to Plaintiff and Class members that the products were CARB compliant.  
28 These representations were false and misleading because the products were not

1 CARB compliant, and in fact, were emitting unsafe and illegal levels of  
2 formaldehyde.

3 47. Defendants have violated the fraudulent prong of California Business  
4 and Professions Code section 17200 *et seq.* because Defendants' misrepresentations  
5 and omissions regarding compliance with CARB standards of the Chinese Flooring  
6 were likely to deceive a reasonable consumer, and the information would be  
7 material to a reasonable consumer.

8 48. Defendants have violated the unfair prong of California Business and  
9 Professions Code section 17200 *et seq.* because Defendants' policies and practices  
10 as set forth above offend established public policy and because the harm  
11 Defendants' caused to consumers greatly outweighs any benefits associated with  
12 those practices. Defendants' conduct as alleged herein also impaired competition  
13 within the flooring industry. Defendants' conduct also prevented Plaintiff from  
14 making fully informed decisions about whether to purchase and/or use laminate or  
15 engineered wood flooring products from other manufacturers and distributors,  
16 purchase and/or use a less expensive product, or purchase and/or use the products at  
17 all.

18 49. Defendants have violated the unlawful prong of California Business  
19 and Professions Code section 17200 *et seq.* because Defendants' policies and  
20 practices described above violate California laws, including but not limited to: (1)  
21 California's False Advertising Law; (2) California's Consumers Legal Remedies  
22 Act; (3) Title 17 of the California Code of Regulations, Sections §§ 93000 and  
23 93001; (3) California's Health and Safety Code section 39655; (4) California's  
24 Commercial Code section 2313; and the Magnuson-Moss Warranty Act (15 U.S.C.  
25 § 2301 *et seq.*) as alleged herein. Plaintiff reserves the right to allege other violations  
26 of law, which constitute other unlawful business acts or practices. Such conduct is  
27 ongoing and continues to this date.

28 50. Plaintiff has standing under the UCL because he suffered injury in fact,

1 including losing money or property, as a result of Defendants' unfair, unlawful  
2 and/or deceptive practices.

3 51. All of the wrongful conduct alleged herein occurred, and continues to  
4 occur, in the conduct of Defendants' business. Defendants' wrongful conduct is part  
5 of a pattern or generalized conduct that is still perpetuated and repeated in  
6 California.

7 52. Plaintiff requests this Court enter such orders or judgments to enjoin  
8 Defendants from continuing their unfair, unlawful, and/or deceptive practices and to  
9 restore to Plaintiff and members of the Class any money Defendants acquired by  
10 unfair competition, as provided in California Business and Professions Code section  
11 17203, and for such other relief set forth below.

12 **COUNT TWO**

13 **VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW**

14 **(Cal. Bus. & Prof. Code § 17500 et seq.)**

15 53. Plaintiff restates and realleges paragraphs 1 through 42 as if fully set  
16 forth herein.

17 54. Plaintiff brings this count against all Defendants on behalf of himself  
18 and the Class.

19 55. California Business and Professions Code section 17500 states: "It is  
20 unlawful for any ... corporation ... with intent directly or indirectly to dispose of real  
21 or personal property ... to induce the public to enter into any obligation relating  
22 thereto, to make or disseminate or cause to be made or disseminated ...from this  
23 state before the public in any state, in any newspaper or other publication, or any  
24 advertising device, ... or in any other manner or means whatever, including over the  
25 Internet, any statement ... which is untrue or misleading, and which is known, or  
26 which by the exercise of reasonable care should be known, to be untrue or  
27 misleading."

28 56. Defendants caused to be made or disseminated through California,

1 through product labeling and advertising, statements and omissions that were untrue  
2 or misleading with respect to compliance with health and safety standards, including  
3 the CARB regulations, and which were known, or which by exercising reasonable  
4 care should have been known, to Defendants to be untrue and misleading to Plaintiff  
5 and Class members.

6 57. Defendants have violated California Business and Professions Code  
7 section 17500 because the misrepresentations and omissions made by Defendants on  
8 product labeling of their Chinese Flooring for CARB compliance were material and  
9 likely to deceive a reasonable consumer.

10 58. Plaintiff has standing because, as set forth above, he suffered injury in  
11 fact, including losing money or property, as a result of Defendants' false  
12 advertising.

13 59. All of the wrongful conduct alleged herein occurred, and continues to  
14 occur, in the conduct of Defendants' business. Defendants' wrongful conduct is part  
15 of a pattern or generalized conduct that is still perpetuated and repeated, both in  
16 California and nationwide.

17 60. Plaintiff requests this Court enter such orders or judgments as may be  
18 necessary to enjoin Defendants from continuing their false advertising and to restore  
19 to Plaintiff and members of the Class any monies Defendants acquired by such acts,  
20 and for such other relief set forth below.

21 **COUNT THREE**

22 **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**

23 **(Cal. Civ. Code § 1750 et seq.)**

24 61. Plaintiff restates and realleges paragraphs 1 through 42 as if fully set  
25 forth herein.

26 62. Plaintiff brings this count against all Defendants on behalf of himself  
27 and the Class.

28 63. Defendants are "persons" under California Civil Code section 1761(c).



1           64. Plaintiff and Class members are “consumers,” as defined by California  
2 Civil Code section 1761(d), who purchased Defendants’ Chinese Flooring that was  
3 marketed, distributed and/or sold by Defendants in California, which is considered a  
4 “good” within the meaning of the Consumers Legal Remedies Act (“CLRA”),  
5 California Civil Code sections 1750 *et seq.*

6           65. Defendants engaged in both unfair and deceptive acts or practices that  
7 violated the CLRA as described in this Complaint.

8           66. Defendants engaged in deceptive business practices prohibited by the  
9 CLRA by: (1) representing their laminate and engineered wood flooring products  
10 have characteristics, uses, benefits, and qualities which they do not have; (2)  
11 representing these products are of a particular standard, quality, and grade when  
12 they are not; and (3) advertising these products through product labeling with the  
13 intent not to sell them as advertised.

14           67. Defendants violated the CLRA by misrepresenting material facts on the  
15 product labeling, as described above, when the representations were false and  
16 misleading.

17           68. A reasonable consumer would not have purchased or paid as much for  
18 the products had Defendants disclosed the products were emitting formaldehyde in  
19 excess of the limits set forth by the CARB standards on the product labeling because  
20 such information is material to a reasonable consumer.

21           69. Because of its violations of the CLRA detailed above, Defendants have  
22 caused and continue to cause actual damage to Plaintiff and the Class, and, if not  
23 stopped, Defendants will continue to cause such harm. Had Plaintiff and absent  
24 Class members known of the issues with Defendants’ Chinese Flooring, they would  
25 not have purchased or used these products and/or paid as much for them. Indeed,  
26 Plaintiff relied on Defendants’ misrepresentations and would not have purchased or  
27 used Defendants’ Chinese Flooring had he known of these issues. As a direct and  
28 proximate result of Defendants’ CLRA violations, Plaintiff and Class Members have

1 suffered damages, including losing money or property, as a result of Defendants'  
2 unfair, unlawful and/or deceptive practices.

3 70. On March 16, 2015, Plaintiff's counsel sent a letter to Defendants by  
4 certified mail, return receipt requested, that contained notice of Defendants'  
5 violations of the CLRA and a demand for relief from Defendants. A true and correct  
6 copy of the letter, without enclosure, is attached to this Complaint as Exhibit A, and  
7 incorporated herein by reference. If Defendants fail to rectify or agree to rectify the  
8 problems associated with the actions detailed above and give notice to all affected  
9 consumers within 30 days of the date of written notice pursuant to California Civil  
10 Code section 1782, Plaintiff will amend this Complaint to add claims for actual,  
11 punitive, and statutory damages, as appropriate.

12 71. Plaintiff and Class Members also request this Court enter such orders or  
13 judgments as may be necessary to restore to any person any money acquired with  
14 such unfair business practices, and for such other relief, including attorneys' fees  
15 and costs, as provided in Civil Code section 1780 and the Prayer for Relief.

16 72. Plaintiff includes an affidavit with this Complaint that shows venue in  
17 this District is proper, to the extent such an affidavit is required by California Civil  
18 Code section 1780(d).

19 **COUNT FOUR**

20 **VIOLATION OF MAGNUSON-MOSS WARRANTY ACT**

21 **(15 U.S.C. § 2301 et seq.)**

22 73. Plaintiff restates and realleges paragraphs 1 through 42 as if fully set  
23 forth herein.

24 74. Plaintiff brings this count against all Defendants on behalf of himself  
25 and the Class defined herein.

26 75. Plaintiff and the Class Members are "consumers" within the meaning  
27 of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3). They are persons  
28 entitled under applicable state law to enforce against the warrantor the obligations of

1 its express and implied warranties. Each purchased and used Defendants' Chinese  
2 Flooring for personal use, not for resale or distribution.

3 76. Defendants are "supplier(s)" and "warrantor(s)" within the meaning of  
4 15 U.S.C. § 2301(4)-(5). Defendants market, distribute and sell their Chinese  
5 Flooring, which is manufactured by Defendants' suppliers in China, to California  
6 consumers for use in their homes.

7 77. Defendants' Chinese Flooring products constitute "flooring product(s)"  
8 within the meaning of 15 U.S.C. § 2301(1).

9 78. Defendants' express warranties regarding the compliance of  
10 Defendants' laminate and engineered wood flooring products, which are  
11 manufactured in China by Defendants' suppliers, and marketed, distributed and/or  
12 sold in California, with CARB's formaldehyde emission standards, constitute a  
13 written warranty within the meaning of 15 U.S.C. § 2301(6).

14 79. Defendants breached their warranties by marketing, distributing and/or  
15 selling Chinese Flooring that emits unsafe and illegal levels of formaldehyde in  
16 violation of CARB's standards or by affirmatively representing CARB Phase 2  
17 compliance without knowledge of the truth of such representation.

18 80. Defendants' breach of their warranties regarding the CARB compliance  
19 of their laminate and engineered wood flooring products to Plaintiff and Class  
20 Members deprived Plaintiff and Class Members of the benefit of their bargains.

21 81. The amount in controversy of Plaintiff's individual claims exceeds \$25,  
22 and the amount in controversy of Plaintiff's and Class Members' claims exceeds  
23 \$50,000, exclusive of interest and costs.

24 82. Defendants were notified of their breaches of written warranties and  
25 have failed to adequately cure those breaches.

26 83. As a direct and proximate result of Defendants' breaches of their  
27 written warranties to Plaintiff and Class Members, Plaintiff and Class Members  
28 sustained damages in amounts to be determined at the time of trial. In addition,

1 pursuant to 15 U.S.C. § 2310(d)(2), Plaintiff and Class Members are entitled to  
2 recover a sum equal to the aggregate amount of costs and expenses determined by  
3 the Court to have reasonably been incurred by Plaintiff and Class Members in  
4 connection with the commencement and prosecution of this action.

5 **COUNT FIVE**

6 **BREACH OF EXPRESS WARRANTIES**

7 84. Plaintiff restates and realleges paragraphs 1 through 42 as if fully set  
8 forth herein.

9 85. Plaintiff brings this count against all Defendants on behalf of himself  
10 and the Class defined herein.

11 86. The Uniform Commercial Code § 2-313 provides that an affirmation of  
12 fact or promise made by the seller to the buyer that relates to the good and becomes  
13 part of the basis of the bargain creates an express warranty that the goods shall  
14 conform to the promise. California has adopted the provisions of the Uniform  
15 Commercial Code governing the express warranty of merchantability Cal. Com.  
16 Code § 2313.

17 87. Defendants' representations on their product labels, website and other  
18 marketing materials relating to the compliance of Defendants' laminate and  
19 engineered wood flooring products with CARB standards for formaldehyde  
20 emissions created express written warranties that the products would conform to  
21 their representations.

22 88. Defendants' representations regarding such compliance with safety  
23 standards became part of the basis of the bargain, creating express written  
24 warranties that the Defendants' laminate and engineered wood flooring products  
25 purchased and used by Plaintiff and Class Members would conform to Defendants'  
26 descriptions. However, Defendants' Chinese Flooring did not conform to these  
27 express representations because Defendants' Chinese Flooring, as described above,  
28 was not compliant with CARB's formaldehyde emission standards.

89. At the time Defendants marketed, distributed and/or sold the Chinese Flooring to California consumers, Defendants knew the purpose for which the flooring was intended and expressly warranted that their products were safe and fit for use. Plaintiff and Class Members relied on Defendants' representations and their knowledge and judgment to market, distribute, and/or sell products that were safe and fit for use.

90. Defendants breached their express warranties in connection with the marketing, distribution and/or sale of Defendants' Chinese Flooring to Plaintiff and Class Members.

91. As a direct and proximate result of these actions, Plaintiff and Class Members have suffered damages because the value of the products purchased were less than the value warranted by Defendants.

**COUNT SIX**

## NEGLIGENT MISREPRESENTATION

92. Plaintiff restates and realleges paragraphs 1 through 42 as if fully set forth herein.

93. Plaintiff brings this count against all Defendants on behalf of himself and the Class defined herein.

94. Defendants made representations to Plaintiff and Class Members concerning Defendants' compliance with California regulations governing the emission levels of formaldehyde from their laminate and engineered wood flooring products that were not true.

95. Defendants had no reasonable grounds for believing these representations were true when they made them, yet they intended that Plaintiff and Class Members rely on these representations.

96. Plaintiff and Class Members reasonably relied on Defendants' representations, and were harmed as a result.

97. These activities by Defendants, as afore-described in this Complaint,

1 legally caused actual damages to Plaintiff and Class Members. As a result of such  
2 injuries, Plaintiff and Class Members have suffered economic damages according to  
3 proof at trial.

4 98. Based on the foregoing, Plaintiff and Class Members suffered  
5 economic damages as a result of Defendants' conduct. Plaintiff and Class Members  
6 are entitled to, and do herein pray for, their damages, according to proof at trial.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, on behalf of himself and all others similarly  
9 situated, prays for a judgment against Defendants as follows:

- 10 a. For an order certifying the Classes, pursuant to Fed. R. Civ. P. Rule 23,  
11 appointing Plaintiff as Representative of the Classes, and appointing the  
12 law firms representing Plaintiff as Class Counsel;
- 13 b. For actual, general, special, incidental, statutory, punitive, consequential,  
14 and compensatory damages sustained by Plaintiff and the Damage Class  
15 to which they are entitled in amounts to be determined at trial (as to all  
16 claims except the CLRA);
- 17 c. For equitable and/or injunctive relief for the Injunctive Relief Class;
- 18 d. For payment of costs of suit herein incurred;
- 19 e. For both pre-judgment and post-judgment interest on any amounts  
20 awarded;
- 21 f. For payment of reasonable attorneys' fees and expert fees as may be  
22 allowable under applicable law;
- 23 g. For an incentive award to the class representative;
- 24 h. For such other and further relief as the Court may deem just and proper.
- 25  
26  
27  
28

1 DATED: March 16, 2015

Respectfully submitted,  
BOUCHER LLP

3 By: /s/ Raymond P. Boucher

4 Raymond P. Boucher  
5 Shehnaz M. Bhujwala

6 MORGAN & MORGAN  
7 COMPLEX LITIGATION GROUP

8 John A. Yanchunis\*  
9 Rachel Soffin\*  
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14 [\*Pro Hac Vice Application Pending]

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DATED: March 16, 2015

By: /s/ Raymond P. Boucher  
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