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GLOBAL COMMUNITY MONITOR, and
SUNSHINE PARK LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

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| GLOBAL COMMUNITY MONITOR, a non-profit California corporation, and SUNSHINE PARK LLC, a California limited liability company,<br><br>Plaintiffs,<br><br>v.<br><br>LUMBER LIQUIDATORS, INC., a Delaware corporation, and LUMBER LIQUIDATORS HOLDINGS, INC., a Delaware corporation,<br><br>Defendants. | Case No. _____<br><br>COMPLAINT<br><br>Safe Drinking Water And Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, *et seq.* (Proposition 65) |

Plaintiffs GLOBAL COMMUNITY MONITOR and SUNSHINE PARK LLC on behalf of themselves, their members, and in the interests of the general public, on information and belief, hereby allege:

## INTRODUCTION

1. This action seeks to remedy the continuing failure of Defendants Lumber Liquidators, Inc. and Lumber Liquidators Holdings, Inc., ("Lumber Liquidators" or "Defendants") to warn consumers in California that they are being exposed to formaldehyde, a substance known to the State of California to cause cancer. Such exposures have occurred, and continue to occur, through the

marketing, distribution, sale and use in California of certain laminate flooring products containing the cancer-causing chemical, formaldehyde, and sold by Lumber Liquidators (collectively the "PRODUCTS").

2. Defendants' failure to warn is even more egregious due to their false and misleading statements concerning formaldehyde emissions released from certain of the PRODUCTS.

3. In contrast to Lumber Liquidators' direct representations on its product labels, website, and warranties that its flooring products comply with strict formaldehyde standards, Plaintiffs' 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. Plaintiffs conducted over fifty tests using various test methods and two different laboratory locations. Test results showed average exposures at the time of testing exceeded 4,000 micrograms per day ("µg/day") – over 100 times above the 40 µg/day threshold established by California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code ("H&S Code") section 25249.5, et seq., ("Proposition 65"). Even accounting for a decrease in formaldehyde emissions over time, the daily exposures are still well above the Proposition 65 thresholds. According to Lumber Liquidators' public filings, the significant majority of its laminate flooring products is sourced in China.

4. Lumber Liquidators advertises, "At Lumber Liquidators, we negotiate directly with the mills and eliminate the middleman. And that means big savings on flooring for you." (www.lumberliquidators.com/ll/home). But, as described below in more detail, Lumber Liquidators' low prices are due in part to its business practice of selling inexpensive, largely Chinese-sourced products that violate California formaldehyde standards and Lumber Liquidators' failure to warn the public of the high formaldehyde levels in its products.

5. Formaldehyde gas (hereinafter, the "LISTED CHEMICAL" or "formaldehyde") is a substance known to the State of California 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.

6. 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.

7. 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.

8. 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. On information and belief, these costs are higher than the levels Chinese mills are accustomed to incurring in producing inexpensive laminate flooring of the type sold by Lumber Liquidators.

9. Given the significant presence of high formaldehyde emitting resins in the production of Chinese-made flooring and Lumber Liquidators' emphasis on cost savings, the Plaintiffs engaged a certified laboratory to test laminate flooring purchased from Lumber Liquidators. Forty boxes of the PRODUCTS were purchased and to date over fifty tests have been performed. Of the products tested, by far the highest formaldehyde levels were found in the PRODUCTS sold by Lumber Liquidators that were produced in China, where the significant majority of Lumber Liquidators' laminates originate. Without exception, the Lumber Liquidators products produced in China that Plaintiffs tested emitted formaldehyde at far higher rates than those manufactured in Europe or North America – on average, Chinese products emitted at 350% the rate of European/North American products.

10. As the handling and/or use of the PRODUCTS causes exposures to formaldehyde at levels requiring a clear and reasonable warning under Proposition 65, Lumber Liquidators' sale and continued selling of the PRODUCTS without the warnings required by Proposition 65 has caused and continues to cause individuals (and in particular children and the elderly who spend more of their day at home) to be involuntarily and unwittingly exposed to formaldehyde in violation of Proposition 65.

11. Plaintiffs seek injunctive relief enjoining Defendants from the continued participation in the manufacturing and packaging process for the PRODUCTS and the distribution, marketing and/or sale of the PRODUCTS in California without provision of clear and reasonable warnings regarding the risks of cancer posed by exposure to the LISTED CHEMICAL through the use and/or handling of the PRODUCTS. Plaintiffs seek an injunctive order compelling Defendants to bring their business practices into compliance with Proposition 65 by providing a clear and reasonable warning to each individual who has been in the past and who in the future may be exposed to the LISTED CHEMICAL from the use of the PRODUCTS. Plaintiffs seek an injunction prohibiting Defendants from offering the PRODUCTS for sale in California without either reformulating the PRODUCTS such that no Proposition 65 warning is necessary or providing clear and reasonable warnings. Plaintiffs also seek an order compelling Defendants to identify and locate each individual person who in the past has purchased the PRODUCTS, and to provide to each such purchaser a clear and reasonable warning that the use of the PRODUCTS will cause exposures to the LISTED CHEMICAL. Plaintiffs further seek an order compelling Defendants to waive any applicable restocking fees which would otherwise be charged to an individual who seeks to return the PRODUCTS after receiving a clear and reasonable Proposition 65 warning.

12. In addition to injunctive relief, Plaintiffs seek an assessment of civil penalties in the amount of $2,500 per day, per violation to remedy Defendants' failure to provide clear and reasonable warnings regarding exposures to the LISTED CHEMICAL. On information and belief, the maximum penalty in the case is in excess of $50 billion.

## JURISDICTION AND VENUE

13. This Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to other trial courts." The statute under which this action is brought does not specify any other basis for jurisdiction.

14. This Court has jurisdiction over Defendants because Defendants are businesses having sufficient minimum contacts with California, or otherwise intentionally availing themselves of the

California market through the distribution and sale of the PRODUCTS in the State of California to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

15. Venue in this action is proper in the Alameda Superior Court because the Defendants have violated California law in the County of Alameda.

16. On April 11, 2014, Plaintiffs sent a 60-Day Notice of Violation of Proposition 65 ("Notice") to the requisite public enforcement agencies, and to Defendants. A true and correct copy of the Notice is attached hereto as Exhibit A and incorporated by reference. The Notice was issued pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and the statute's implementing regulations regarding the notice of the violations to be given to certain public enforcement agencies and to the violator. The Notice included, *inter alia*, the following information: the name, address, and telephone number of the noticing individual; the name of the alleged violator; the statute violated; the approximate time period during which violations occurred; and descriptions of the violations, including the chemicals involved, the routes of toxic exposure, and the specific product or type of product causing the violations, and was issued as follows:

a. Defendants were provided a copy of the Notice by Certified Mail.

b. Defendants were provided a copy of a document entitled "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary."

c. The California Attorney General and the requisite public prosecutors were provided a copy of the Notice via United States First Class certified mail pursuant to Health & Safety Code § 25249.7.

d. The California Attorney General was provided with a Certificate of Merit by the attorney for the noticing party, stating that there is a reasonable and meritorious case for this action, and attaching factual information sufficient to establish a basis for the certificate, including the identity of the persons consulted with and relied on by the certifier, and the facts, studies, or other data reviewed by those persons, pursuant to H&S Code §25249.7(h)(2).

17. On April 21, 2014, Plaintiffs re-sent the Notice to Defendants. A true and correct copy of the re-sent Notice is attached hereto as Exhibit B and incorporated by reference. The Notice was issued pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and the statute's implementing regulations regarding the notice of the violations.

18. At least 60-days have elapsed since Plaintiffs sent the Notice to Defendants. Additionally, the appropriate public enforcement agencies have failed to commence and diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against Defendants based on the allegations herein.

**PARTIES**

19. Plaintiff GLOBAL COMMUNITY MONITOR ("Plaintiff," or "GCM") is a non-profit corporation organized under California's Corporation Law. GCM, founded in 2001, trains and supports communities in the use of environmental monitoring tools to understand the impact of pollution and toxic chemical releases on their health and the environment. GCM is dedicated to, among other causes, reducing the use and misuse of hazardous and toxic substances, consumer protection, worker safety, and corporate responsibility.

20. GCM is a person within the meaning of H&S Code §25118 and brings this enforcement action in the public interest pursuant to H&S Code §25249.7(d).

21. Plaintiff SUNSHINE PARK LLC ("Plaintiff" or "SUNSHINE") is a California limited liability company with its office in California. SUNSHINE's purposes include, among other things, promoting awareness of exposures to toxic chemicals in certain products sold in California and, if possible, improving public health and safety by reducing the hazardous substances contained in such items.

22. SUNSHINE is a person within the meaning of H&S Code §25118 and brings this enforcement action in the public interest pursuant to H&S Code §25249.7(d).

23. Defendant LUMBER LIQUIDATORS, INC. ("LUMBER LIQUIDATORS") is a corporation organized under the State of Delaware's Corporation Law, with its principal executive

offices located at 3000 John Deere Road, Toano, Virginia, and is a person doing business within the meaning of H&S Code §25249.11.

24. LUMBER LIQUIDATORS directly or indirectly engages third party mills to manufacture and package the PRODUCTS and distributes, markets, and/or sells the PRODUCTS, in each case, for sale or use in California and in Alameda County.

25. Defendant LUMBER LIQUIDATORS HOLDINGS, INC., ("LLH") is a corporation organized under the State of Delaware's Corporation Law, with its principal executive offices located at 3000 John Deere Road, Toano, Virginia, and is a person doing business within the meaning of H&S Code §25249.11.

26. LLH directly or indirectly engages third party mills to manufacture and package the PRODUCTS and distributes, markets and/or sells the PRODUCTS, in each case, for sale or use in California and in Alameda County.

27. LUMBER LIQUIDATORS and LLH shall be jointly referred to as "Lumber Liquidators" or "Defendants."

28. Lumber Liquidators is one of the largest specialty retailers of hardwood flooring in the United States, with over 300 retail stores in 46 states, including 34 stores in California and three stores in Alameda County.

## STATUTORY BACKGROUND

**PROPOSITION 65**

29. The People of the State of California have declared in Proposition 65 their right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm." (Section 1(b) of Initiative Measure, Proposition 65).

30. To effect this goal, Proposition 65 requires that individuals be provided with a "clear and reasonable warning" before being exposed to substances listed by the State of California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent part:

> No person in the course of doing business shall knowingly and intentionally expose any

> individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual....

31. "'Knowingly' refers only to knowledge of the fact that a discharge of, release of, or exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No knowledge that the discharge, release or exposure is unlawful is required." (27 California Code of Regulations ("CCR") §25102(n)).

32. Proposition 65 provides that any person "violating or threatening to violate" the statute may be enjoined in a court of competent jurisdiction. (H&S Code §25249.7). The phrase "threatening to violate" is defined to mean creating "a condition in which there is a substantial likelihood that a violation will occur." (H&S Code §25249.11(e)). Violators are liable for civil penalties of up to $2,500 per day for each violation of the Act. (H&S Code §25249.7.)

## FACTUAL BACKGROUND

33. On January 1, 1988, the State of California officially listed Formaldehyde (gas) as a chemical known to cause cancer. Formaldehyde became subject to the warning requirement one year later and was therefore subject to the "clear and reasonable" warning requirements of Proposition 65 beginning on January 1, 1989. (27 CCR §25000, *et seq.;* H&S Code §25249.5, *et seq.*).

34. Due to the high toxicity of formaldehyde, the "safe harbor" no significant risk level for formaldehyde is 40 µg/day (micrograms per day). 27 CCR § 25705(c).

35. Defendants distribute, market, and/or sell in California certain flooring products containing formaldehyde, including, but not limited to, each of the following PRODUCTS:

a. 8 mm Bristol County Cherry Laminate Flooring;

b. 8 mm Dream Home Nirvana French Oak Laminate Flooring;

c. 12 mm Dream Home Kensington Manor Antique Bamboo Laminate Flooring;

d. 12 mm Dream Home St. James Oceanside Plank Bamboo Laminate Flooring;

e. 12 mm Dream Home Kensington Manor Warm Springs Chestnut Laminate Flooring;

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

g. 12 mm Dream Home Ispiri Chimney Tops Smoked Oak Laminate Flooring;

h. 12 mm Dream Home Kensington Manor Imperial Teak Laminate Flooring;

i. 12 mm Dream Home St. James Vintner's Reserve Laminate Flooring;

j. 12 mm Dream Home Kensington Manor Cape Doctor Laminate Flooring;

k. 12 mm Dream Home St. James Cumberland Mountain Oak.

36. To test Defendants' PRODUCTS for formaldehyde, Plaintiffs relied on analytical testing and results from a well-respected and accredited testing laboratory at two different locations ("the Laboratories").

37. The Laboratories conducted over fifty separate tests on the PRODUCTS using a variety of different methodologies, and different samples of the PRODUCTS. Test methods included methods developed by ASTM International, formerly known as the American Society for Testing and Materials (ASTM), a globally recognized leader in the development and delivery of international voluntary consensus standards, with different sample preparations and surfaces covered to understand exposures both during and after installation.

38. The results of testing undertaken by the Laboratories show that the PRODUCTS tested were in violation of the 40 µg/day "safe harbor" daily dose limit set forth in Proposition 65's regulations.

39. The testing results varied across samples and testing methods, but the results unambiguously showed that Lumber Liquidators' laminate flooring samples from China produced formaldehyde exposures that were at the time of testing far in excess of the 40 µg/day Proposition 65 level. Plaintiffs conducted over fifty tests. Test results showed average exposures at the time of testing exceeded 4,000 µg/day – over 100 times above the 40 µg/day Proposition 65 threshold. Of the PRODUCTS tested by the Laboratories, those manufactured in Europe or North America produced vastly lower formaldehyde emissions at the time of testing than the PRODUCTS manufactured in China (over 70% less). Even though the products manufactured in Europe and North America have significantly lower emissions, the associated exposures are still well above the 40 µg/day "safe harbor"

daily dose limit set forth in Proposition 65's regulations. Even accounting for the decrease in formaldehyde emissions over time, the daily exposures are still well above the Proposition 65 thresholds.

**LUMBER LIQUIDATORS KNOWINGLY EXPOSED THE PUBLIC TO FORMALDEHYDE**

40. At all times relevant to this action, Lumber Liquidators has knowingly exposed users and handlers of the PRODUCTS to formaldehyde without first giving a clear and reasonable warning to such individuals.

41. People are being unwittingly exposed to formaldehyde through inhalation on a daily basis, particularly since flooring products often cover much of the floor area of a home, where children, adults and the elderly spend most of their time every day for decades.

42. On June 20, 2013, the widely-read financial-industry website, *Seeking Alpha*, published a lengthy article documenting high formaldehyde levels in Chinese-made laminate flooring sold by Lumber Liquidators. The author of the article, Xuhua Zhou, retained a certified laboratory to test three samples of Chinese-made engineered wood flooring sold by Lumber Liquidators. Mr. Zhou's article states, "The tested product, Mayflower 5/16" x 5" Bund Birch Engineered, emits a staggering three and half times over the government mandated maximum emission level. The product is clearly not CARB [California Air Resources Board] compliant yet Lumber Liquidators tagged CARB compliance on the box." (http://seekingalpha.com/article/1513142-illegal-products-could-spell-big-trouble-at-lumber-liquidators).

43. Mr. Zhou presented his findings to the California Air Resources Board on or about June 19, 2013.

44. On or about November 26, 2013, a federal securities class action lawsuit was filed against Lumber Liquidators in the United States District Court in Virginia based on drops in the stock price following the *Seeking Alpha* article and its allegations concerning formaldehyde. (*Kiken v. Lumber Liquidators Holdings, Inc., et al.*, 4:2013-cv-00157 (E.D.Va)). This case is currently pending.

45. On or about December 3, 2013, a class action complaint was filed against Lumber Liquidators alleging claims related to illegal formaldehyde exposures. (*Williamson v. Lumber*

*Liquidators Holdings, Inc.*, 1:13-cv-01487-AJT-TCB (E.D.Va.)). Although the case was dismissed due to a technicality, there can be no question that Lumber Liquidators was made aware of the formaldehyde problem with its Chinese-made products.

46. Numerous Lumber Liquidators customers have posted internet complaints concerning formaldehyde emissions.

47. Sandra of Vienna, Virginia posted on the Consumer Affairs website on May 30, 2013:

> Recently, I had bamboo flooring from Lumber Liquidators installed… I noted the odor as the installation took place and found it quite peculiar… Within the next 48 hours I realized it was not a temporary odor. I have burning nostrils; my face feels like it is stinging, and I'm having a dull headache. Yet, when I leave the house, the above symptoms disappear… I believe the bamboo wood has a high level of formaldehyde. (www.Consumeraffairs.com/homeowners/lumber_liquidators.html)

48. Bethany of New York city wrote on the Consumer Affairs website on July 27, 2013:

> Formaldehyde in bamboo flooring - There is a class action lawsuit against this company. I noticed my eyes burning whenever I was in the room where the flooring had been placed. Just today I started looking into it, wondering if I was allergic to bamboo! Lumber Liquidators has been informed on the high level of toxins and responded by having a massive sale. Their stock has plummeted. They need to issue a recall but in the meantime no one will talk to me. (http://www.consumeraffairs.com/homeowners/lumber_liquidators.html?page=3)

49. Smith Miller posted on April 3, 2010:

> We purchased Morning Star Bamboo from Lumber Liquidators and installed it in a bedroom... We noticed a strange, acrid odor right after installation. We weren't using the room much, though, so it wasn't a problem. We just left the window open for a few days, thinking that would take care of it. Well, a couple months later we moved in and the fumes were AWFUL – I mean, make your eyes tear and your nose burn awful. For the past month we have been venting the room with a fan to the outside, but it doesn't seem to be doing much good. We've been sleeping in this room and if we can't ventilate it for at least ten hours first (and we often can't now that the weather is getting so cold) then I wake up with a burning nose and a headache and my husband's eyes swell up. This product supposedly meets "more stringent" European emission standards, but it is definitely causing a health issue for us – perhaps not for folks who don't have allergies or sensitivities or whatever, but for us it is a big problem. LL will not take what's left back. (http://www.plumbingforums.com/forum/f4/sick-bamboo-floor-fumes-problem-415/)

50. Based on these lawsuits, articles and blog posts, there can be no question that at all times relevant to this action, Defendants have knowingly and intentionally exposed the users and/or handlers of the PRODUCTS to the LISTED CHEMICAL without first giving a clear and reasonable

warning to such individuals.

51. The PRODUCTS have been sold by Defendants for use in California since at least April 11, 2011.

52. The PRODUCTS continue to be distributed and sold in California without the requisite warning information.

53. As a proximate result of acts by Defendants, as a person in the course of doing business within the meaning of Health & Safety Code §25249.11, individuals throughout the State of California, including in the County of Alameda, have been exposed to the LISTED CHEMICAL without a clear and reasonable warning. The individuals subject to the illegal exposures include normal and foreseeable users of the PRODUCTS, as well as all other persons exposed to the PRODUCTS.

**LUMBER LIQUIDATORS HAS NOT PROVIDED PROPOSITION 65 WARNINGS FOR ANY OF THE PRODUCTS**

54. At all times relevant to this action, Lumber Liquidators has failed to provide individuals in the State of California with a "clear and reasonable warning" before exposing those individuals to cancer-causing formaldehyde.

55. At all times relevant to this action, Lumber Liquidators has failed to place a clear and reasonable Proposition 65 warning on its PRODUCTS.

56. At all times relevant to this action, Lumber Liquidators sales representatives have failed to warn consumers that its PRODUCTS contain cancer-causing formaldehyde.

57. At all times relevant to this action, Lumber Liquidators has failed to place a clear and reasonable Proposition 65 warning in its marketing materials.

58. At all times relevant to this action, Lumber Liquidators has failed to place a clear and reasonable Proposition 65 warning in its stores or store shelves.

59. At all times relevant to this action, Lumber Liquidators has failed to place a clear and reasonable Proposition 65 warning on its website.

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**RATHER THAN WARN THE PUBLIC, LUMBER LIQUIDATORS ENGAGED IN A CAMPAIGN OF FALSE OR MISLEADING STATEMENTS CONCERNING FORMALDEHYDE**

60. Despite being informed of the presence of high levels of formaldehyde in its PRODUCTS, Lumber Liquidators engaged in a campaign to mislead the public with misleading information concerning the safety of its products.

61. Lumber Liquidators' website leads consumers to believe that the Company's flooring products comply with the CARB formaldehyde and other California standards. The website states (*emphasis in the original*):

> "**Is Lumber Liquidators Compliant with the California law?**
>
> **Laminate and engineered flooring products sold by Lumber Liquidators are purchased from mills whose production method has been certified by a Third Party Certifier approved by the State of California to meet the CARB standards.** The scope of the certification by the Third Party Certifier includes the confirmation that the manufacturer has implemented the quality systems, process controls, and testing procedures outlined by CARB and that their products conform to the specified regulation limits. The Third Party Certifier also provides ongoing oversight to validate the manufacturers' compliance and manufacturers must be periodically re-certified.
>
> **Does CARB only apply to California?**
>
> Though it currently applies only to products sold in California, **Lumber Liquidators made a decision to require all of our vendors to comply with the California Air Resources Board regulations regardless of whether we intended to sell the products in California or any other state/country.**
>
> **What extra steps does Lumber Liquidators take to ensure compliance?**
>
> In addition to the California Air Resources Board requirements, **Lumber Liquidators regularly selects one or more finished products from each of its suppliers and submits them for independent third-party lab testing.** This is done as a monitoring activity to validate ongoing quality control." (http://www.lumberliquidators.com/ll/flooring/ca-air-resources-board-regulations?Wt.ad=GLOBAL_FOOTER_CaliRegCARB).

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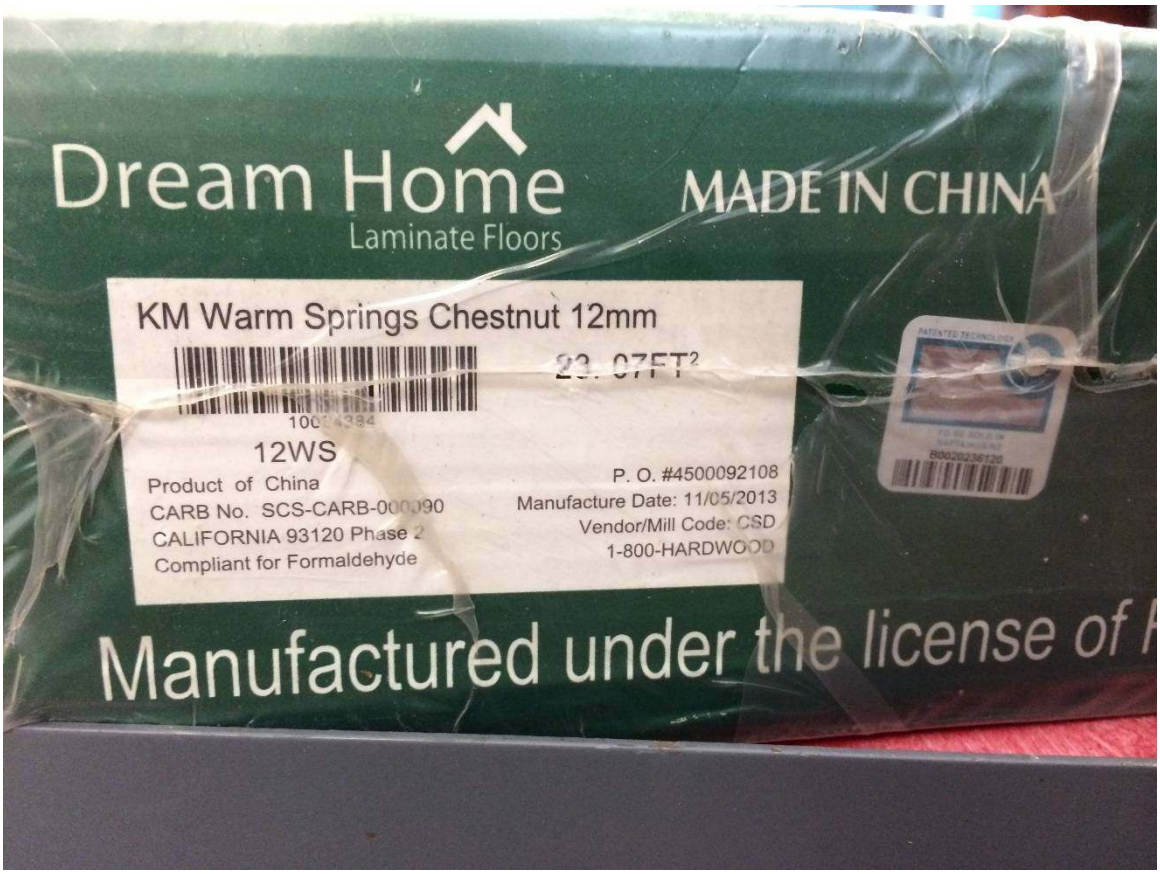
62. In addition, the product packaging for many of the PRODUCTS states: "CARB … Phase 2 Compliant for Formaldehyde."




63. Lumber Liquidators' purchase orders come with a warranty from the manufacturers/packagers stating that the PRODUCTS comply "with all applicable laws, codes and regulations," and "bear all warnings, labels, and markings required by applicable laws and regulations." (www.lumberliquidators.com//ll/customer-care/potc800201)

64. Lumber Liquidators website guarantees the "highest quality" flooring, and states (*emphasis in the original)*:

> "1) **INSPECTION -** We inspect your flooring at every stage: before it's finished, during production, and as it's shipped. Our Quality Assurance team operates on three continents, seven countries, and in mills around the world. In fact, on a typical day, a production inspector will walk 12 miles up and down the finishing line **to ensure you get only the best.**"
>
> **2) COMPLIANCE -** We not only comply with laws- we exceed them. For example, California has the highest standards regarding laminate and engineered flooring. All of our mills that

> produce these products are certified by a Third Party approved by the State of California- and we apply these standards nationwide.
>
> **3) TESTING -** We are continually investing in, testing, evaluating and assuring the highest quality. Our Quality Assurance team includes certified Six Sigma professionals with Master's Degrees in Quality Management and various team members with degrees in Biology, Chemistry, Wood Science and Engineering. They work around the world to test your flooring at every stage. We also regularly send product out to an independent lab for additional testing to ensure quality." (www.lumberliquidators.com/ll/flooring/Quality)

65. Instead of warning the public about formaldehyde in its PRODUCTS, Lumber Liquidators has engaged in a campaign to minimize the risks of formaldehyde – directly undermining the purposes of Proposition 65. Lumber Liquidators' website states that formaldehyde, "exists naturally in the environment, our bodies, and in food and is important in the human metabolic process. It is a central building block in the synthesis of many other compounds." The website states further:

> **"Formaldehyde – What Is It?**
>
> Formaldehyde is a simple compound made of carbon, hydrogen and oxygen, and is a colorless, strong-smelling gas. It exists naturally in the environment, our bodies, and in food and is important in the human metabolic process. It is a central building block in the synthesis of many other compounds. Man-made formaldehyde is an important chemical used widely by industry to manufacture building materials and numerous household products. Thus, it may be present in substantial concentrations both indoors and outdoors.
>
> (http://server.iad.liveperson.net/hc/s-13045352/cmd/kbresource/kb-7043017384918728504/view_question!PAGETYPE?sf=101133&documentid=415037&action=view)

66. As a result of these public statements and particularly through its use of bold font, Plaintiffs believe that Lumber Liquidators, rather than providing the warning required by Proposition 65, instead intentionally tries to make consumers believe that the PRODUCTS they are purchasing are compliant with California's standards for formaldehyde emissions and downplay the toxicity of formaldehyde acknowledged by its inclusion on the Proposition 65 list of substances that cause cancer.

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**FIRST CAUSE OF ACTION**

**Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.***

**(By Plaintiffs Global Community Monitor and Sunshine Park Against all Defendants)**

67. Plaintiffs reallege and incorporate by reference all of the above paragraphs as if specifically set forth herein.

68. Each Defendant is a person in the course of doing business within the meaning of Health & Safety Code § 25249.11.

69. The use and/or handling of the PRODUCTS causes exposures to the LISTED CHEMICAL at levels requiring a "clear and reasonable warning" under California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, *et seq.* (also known as "Proposition 65").

70. Defendants have failed to provide the health hazard warnings required by Proposition 65.

71. The California Office of Environmental Health Hazard Assessment ("OEHHA") has established "safe harbor" levels below which warnings are generally not required. (http://www.oehha.ca.gov/prop65/pdf/safeharbor081513.pdf). The safe harbor level for formaldehyde is 40 µg/day.

72. Defendants knowingly and intentionally exposed individuals to the PRODUCTS which contain formaldehyde without first providing a clear and reasonable warning.

73. By committing the acts alleged in this Complaint, Defendants at all times relevant to this action, and continuing through the present, have violated H&S Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing individuals who use or handle the PRODUCTS set forth in the Notice to the LISTED CHEMICAL, without first providing a clear and reasonable warning to such individuals pursuant to H&S Code §§ 25249.6 and 25249.11(f).

74. By the above-described acts, Defendants have violated H&S Code § 25249.6 and are therefore subject to an injunction ordering Defendants to stop violating Proposition 65, to provide warnings to all present and future customers, and to provide warnings to Defendants' past customers

who purchased or used the PRODUCTS without receiving a clear and reasonable warning.

75. An action for injunctive relief under Proposition 65 is specifically authorized by Health & Safety Code §25249.7(a).

76. Continuing commission by Defendants of the acts alleged above will irreparably harm the citizens of the State of California, for which harm they have no plain, speedy, or adequate remedy at law. In the absence of injunctive relief, Defendants will continue to create a substantial risk of irreparable injury by continuing to cause consumers to be involuntarily and unwittingly exposed to the LISTED CHEMICAL through the use and/or handling of the PRODUCTS.

## SECOND CAUSE OF ACTION

**Civil Penalties for Violations of Health and Safety Code § 25249.5, *et seq.***

**(By Plaintiffs Global Community Monitor and Sunshine Park Against all Defendants)**

77. Plaintiffs reallege and incorporate by reference all of the above paragraphs, as if specifically set forth herein.

78. By committing the acts alleged in this Complaint, Defendants at all times relevant to this action, and continuing through the present, have violated H&S Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing individuals who use or handle the PRODUCTS set forth in the Notice to the LISTED CHEMICAL, without first providing a clear and reasonable warning to such individuals pursuant to H&S Code §§ 25249.6 and 25249.11(f).

79. By the above-described acts, Defendants are liable, pursuant to H&S Code §25249.7(b), for a civil penalty of up to $2,500 per day per violation for each unlawful exposure to the LISTED CHEMICAL from the PRODUCTS, which Plaintiffs are informed and believe is a maximum penalty in excess of $50 billion.

## PRAYER FOR RELIEF

Wherefore, Plaintiffs accordingly pray for the following relief:

A. a preliminary and permanent injunction, pursuant to H&S Code §25249.7(b), enjoining Defendants, their agents, employees, assigns and all persons acting in concert or participating with Defendants, from offering the PRODUCTS for sale in California without either reformulating the

PRODUCTS such that no Proposition 65 warning is necessary or providing a clear and reasonable warning, within the meaning of Proposition 65, that the users and/or handlers of the PRODUCTS are exposed to the LISTED CHEMICAL;

B. an injunctive order, pursuant to H&S Code §25249.7(b), compelling Defendants to identify and locate each individual who has purchased the PRODUCTS since April 11, 2011, and to provide a warning to such person that the use of the PRODUCTS will expose the user to chemicals known to cause cancer;

C. an injunctive order compelling Defendants to waive any applicable restocking fees which would otherwise be charged to an individual who seeks to return the PRODUCTS after receiving a clear and reasonable Proposition 65 warning;

D. an assessment of civil penalties pursuant to Health & Safety Code §25249.7(b), against Defendants in the amount of $2,500 per day for each violation of Proposition 65;

E. an award to Plaintiffs of their reasonable attorney's fees and costs of suit pursuant to California Code of Civil Procedure §1021.5 or any other applicable provision(s) of law, as Plaintiffs shall specify in further application to the Court; and,

F. any and all such other and further relief as may be just and proper.

DATED: July 23, 2014

LOZEAU DRURY LLP

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