

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT WHEELING

GENEVIEVE BALDWIN,
individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

CASE NO. 5:15-cv-61 (Stamp)

LUMBER LIQUIDATORS, INC.;
LUMBER LIQUIDATORS LEASING, LLC;
LUMBER LIQUIDATORS HOLDING, INC.;
LUMBER LIQUIDATORS SERVICES, LLC,

Electronically filed: May 14, 2015

Defendants.

CLASS ACTION COMPLAINT

COMES NOW the Plaintiff, Genevieve Baldwin, individually and on behalf of all others similarly situated, by counsel Troy N. Giatras of The Giatras Law Firm, PLLC for this action against the Defendants¹ Lumber Liquidators, Inc., Lumber Liquidators Leasing, LLC, Lumber Liquidators Holding, Inc., and Lumber Liquidators Services, LLC and states as follows for the grounds in the Complaint:

I. NATURE OF THE CASE

1. This is a consumer protection and false advertising class action. Lumber Liquidators supervises and controls the manufacturing, and packages, distributes, markets and sells a variety of Chinese-manufactured laminate wood flooring materials (the “Products” or “Chinese Flooring”) that it prominently advertises and warrants as fully compliant with standards promulgated in the Formaldehyde Standards for Composite-Wood Products Act, 15 U.S.C. § 2697.

¹ Hereafter collectively referred to as “Lumber Liquidators” or “Defendants.”

2. Defendants represent and advertise that their Chinese-manufactured laminate wood flooring materials sold throughout the United States complies with state and federal regulations.

3. Defendants' claims that the Products comply "with all applicable laws, codes and regulations" are false. As detailed herein, the Products emit formaldehyde gas at levels in excess of the legally permissible limits and the Defendants also fail to disclose the unlawful level of formaldehyde emission to consumers.

4. Chinese-made flooring products have come under scrutiny in recent years. According to the Hardwood Plywood and Veneer Association ("HPVA"), Chinese-made flooring sold in North America is known to have higher than expected levels of formaldehyde emissions.² The HPVA began testing the Chinese-made flooring and found that "the levels of formaldehyde were so high... some were two to three times over the line."³ Indeed, China is now the largest manufacturer of formaldehyde products and "more than 65% of the Chinese formaldehyde output is used to produce resins mainly found in wood products."⁴

5. In an attempt to allay safety concerns regarding its Chinese-made flooring products, Defendants uniformly claim that all of its hardwood and laminate flooring products are compliant state and federal laws.

6. Despite assurances that its flooring products are safe and legally compliant, several reports have shown that Lumber Liquidators' Chinese-made flooring products actually

² Gil Shochat, High Levels of formaldehyde found in Chinese-made floors sold in North America, GLOBAL NEWS (Oct. 3, 2014), available at <http://globalnews.ca/news/1594273/high-levels-of-formaldehyde-found-in-chinese-made-floors-sold-in-north-america/> (last visited March 5, 2015).

³ *Id.*

⁴ Xiaojung Tang et al., Formaldehyde in China: Production, consumption, exposure levels, and health effects, ENVIRONMENTAL INTERNATIONAL VOLUME 36, ISSUE 3 (April 2010), available at http://ac.els-cdn.com/S0160412009002402/1-s2.0-S0160412009002402-main.pdf?_tid=dd4df5ba-c1ea-11e4-9b60-00000aab0f6b&acdnat=1425417700_25414e62d2ab566a9dd77bde3169e4cc (last visited March 5, 2015).

contain levels of formaldehyde that exceed the legally permissible standards. On March 1, 2015, 60 Minutes news aired a story dispelling Lumber Liquidators' claims regarding its flooring products. The news story was prompted by an investigation that was conducted by two environmental advocacy groups. The environmental groups purchased more than 150 boxes of Lumber Liquidators' laminate flooring at stores around California and sent the boxes to three certified labs for a series of tests. The results showed that "every single sample of Chinese-made laminate flooring from Lumber Liquidators failed to meet California formaldehyde emissions standards. Many by a large margin."⁵

7. The results of that investigation prompted 60 Minutes news to conduct its own independent investigation into Lumber Liquidators' Chinese-made Flooring. The 60 Minutes news team went to stores in Virginia, Florida, Texas, and New York and purchased 31 boxes of Lumber Liquidators' Chinese-made flooring. 60 Minutes sent the sample for testing at two certified labs. "It turns out of the 31 samples of Chinese-made laminate flooring, only one was compliant with formaldehyde emissions standards. Some were more than 13x over the California limit."⁶ Both of the labs told 60 Minutes that they had never seen formaldehyde levels that high.

8. 60 Minutes then sent undercover investigators with hidden cameras to the city of Changzhou, China. The investigators posed as buyers and visited three different mills that manufacture laminates and flooring on behalf of Defendant. The results of the undercover investigation were alarming:

⁵ *Lumber Liquidators Linked to Health and Safety Violations*, 60 MINUTES (Mar. 1, 2015), available at <http://www.cbsnews.com/news/lumber-liquidators-linked-to-health-and-safetyviolations/> (last visited March 5, 2015).

⁶ *Id.*

Employees at the mills *openly admitted* that they used core boards with higher levels of formaldehyde to make Lumber Liquidators laminates, saving the company 10-15 percent on the price. At all three mills they also admitted falsely labeling the company's laminate flooring as CARB compliant.⁷

9. Lumber Liquidators' illegal behavior with respect to its manufacturing, marketing, and sale of Chinese Flooring has caused Plaintiff and the other Class members to suffer direct financial harm. Plaintiff's purchase is markedly less valuable because of its elevated level of formaldehyde. Plaintiff would have paid significantly less, if he purchased Chinese Flooring at all, had he known that the product contained elevated levels of the toxin formaldehyde.

Plaintiff asserts claims individually and on behalf of the other members of the proposed Class.

II. PARTIES

10. Plaintiff Genevieve Baldwin is a resident of Hancock County, West Virginia. Plaintiff owns a home in Weirton, West Virginia in which Lumber Liquidators' Chinese Flooring is installed.

11. Defendant Lumber Liquidators, Inc. is a corporation organized under the State of Delaware's Corporation Law with its principal place of business at 3000 John Deere Road, Toano, Virginia 23168. Defendant Lumber Liquidators, Inc. markets, advertises, distributes and sells the Products to consumers throughout West Virginia and the United States.

12. Defendant Lumber Liquidators Leasing, LLC, is a Delaware Limited Liability Corporation with its principal place of business at 3000 John Deere Road, Toano, Virginia 23168.

⁷ *Id.* (emphasis added).

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

14. Defendant Lumber Liquidators Services, LLC, is a Delaware Limited Liability Corporation with its principal place of business at 3000 John Deere Road, Toano, Virginia 23168.

III. JURISDICTION AND VENUE

15. The Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2), the Class Action Fairness Act, because the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest and costs and because more than two-thirds of the members of the class reside in states other than the state in which Defendants reside.

16. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) because Plaintiff is a resident of West Virginia and Defendants are Delaware Corporations that maintain their principal place of business in Virginia. The amount in controversy in this action exceeds the sum or value of \$75,000.

17. This Court has personal jurisdiction over Defendants because they conduct business in West Virginia and otherwise intentionally avail themselves of the markets in West Virginia to render the exercise of jurisdiction by this Court proper. Defendants have marketed, promoted, distributed, and sold the Products in West Virginia and throughout the United States.

18. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the alleged claims occurred in this District given that Lumber Liquidators markets, promotes, distributes and sells the Products in this District.

IV. FACTUAL ALLEGATIONS

Lumber Liquidators

19. Lumber Liquidators is one of the largest specialty retailers of hardwood flooring in the United States, with over 300 retail stores in 46 states. Lumber Liquidators sells primarily to homeowners directly or to contractors acting on behalf of homeowners. Consumers may also purchase the Company's products online, and any purchases made over the Internet are shipped to the Lumber Liquidators retail location of the customers choosing.

20. Lumber Liquidators prides itself on having one of the largest inventories of prefinished and unfinished hardwood floors in the industry. Lumber Liquidators carries solid and engineered hardwood, laminate flooring, bamboo flooring, cork flooring and resilient vinyl flooring, butcher blocks, molding, accessories, and tools.

21. Lumber Liquidators represents that it negotiates directly with the lumber mills, eliminating the middleman and passing the savings on to its customers. As detailed herein, one of the primary reasons Lumber Liquidators has grown so quickly and its profits have surged has been through the Company's misrepresentations about the formaldehyde levels of its products.

Formaldehyde in Wood Flooring

22. Formaldehyde is a colorless and strong smelling gas. According to the Occupational Safety and Health Administration ("OSHA"), formaldehyde is "commonly used a preservative in medical laboratories and mortuaries, formaldehyde is also found in many products such as chemicals particle board, household products, glues, permanent press fabrics, paper product coatings, fiberboard, and plywood." At high exposure levels, "formaldehyde is a sensitizing agent that can cause and immune system response upon initial exposure. It is also a

cancer hazard.”⁸ Formaldehyde exposure can be irritating to the eyes, nose, and throat and severe allergic reactions may occur in the skin, eyes, and respiratory tract.⁹

23. When wood flooring is manufactured, layers of wood particles are “pressed together and sealed with adhesives containing urea formaldehyde resin” (“UFR”). UFR is “highly water-soluble and therefore is the most problematic mixture for indoor air pollution.”

24. Pressed-wood products, like hardwood plywood and particleboard, are considered a major source of indoor formaldehyde emissions.

25. All of the Lumber Liquidators Chinese-made Flooring Products contain a UFR formaldehyde or other formaldehyde resin.

Regulations on Formaldehyde

26. The federal Formaldehyde Standards Act adopted the same standards established by the California Air Resource Board, or “CARB,” as a nationwide standard.

27. In January of 2009, CARB promulgated regulations called the Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products. *See* 17 California Code of Regulations (“CCR”) §§ 93120-93120.12 (the “CARB Regulations”). The CARB Regulations apply to various wood products, including wood flooring products. Phase 2 of the CARB regulations mandate that composite wood products sold in the State of California must emit no more than between 0.05 parts per million and 0.13 parts per million of formaldehyde depending on whether the product is classified as a type of hardwood plywood or medium density fiberboard.

⁸ https://www.osha.gov/OshDoc/data_General_Facts/formaldehyde-factsheet.pdf (last visited March 5, 2015).

⁹ *Id.*

28. On July 7, 2010, the federal Formaldehyde Standards for Composite Wood Products Act of 2010 was signed into law by President Obama. *See* 15 U.S.C. § 2697.

29. Significantly, the federal Formaldehyde Standards Act adopted the same standards established by CARB as a nationwide standard.¹⁰ The comment period for the Environmental Protection Agency's proposed rules governing this statute is now closed and implementing regulations are expected to be released sometime this year.

Lumber Liquidators' Chinese-Made Composite Wood Flooring

30. Lumber Liquidators has distributed, marketed, and sold various laminate flooring products that are manufactured in China (the "Chinese-Made Flooring Products").

31. Specifically, the Chinese-made Flooring Products include, but are not limited to:

- a. 8 mm Bristol County Cherry Laminate Flooring;
- b. 8 mm Dream Home Nirvana Royal Mahogany Laminate Flooring;
- c. 8 mm Dream Home Nirvana French Oak Laminate Flooring;
- d. 10 mm Dream Home Nirvana Ponta Negra Braz Cherry Laminate Flooring;
- e. 12 mm Dream Home Ispiri Poplar Forest Oak Laminate Flooring;
- f. 12 mm Dream Home Kensington Manor Antique Bamboo Laminate Flooring;
- g. 12 mm Dream Home St. James Oceanside Plank Laminate Flooring;
- h. 12 mm Dream Home Kensington Manor Warm Springs Chestnut Laminate Flooring;
- i. 15 mm Dream Home St. James Sky Lakes Pine Laminate Flooring;
- j. 12 mm Dream Home Kensington Manor Imperial Teak Laminate Flooring;
- k. 12 mm Dream Home St. James Vintner's Reserve Laminate Flooring;
- l. 12 mm Dream Home Kensington Manor Cape Doctor Laminate Flooring;
- m. 12 mm Dream Home St. James Golden-Acacia Laminate Flooring;
- n. 12 mm Dream Home Kensington Manor Sandy Hills Hickory Laminate Flooring;
- o. 12 mm Dream Home Kensington Manor Tanzanian Wenge Laminate Flooring;
- p. 12 mm Dream Home Ispiri America's Mission Olive Laminate Flooring;
- q. 12 mm Dream Home Kensington Manor Golden Teak Laminate Flooring;
- r. 12 mm Dream Home Kensington Manor Summer Retreat Teak Laminate Flooring;
- s. 12 mm Dream Home Kensington Manor Glacier Peak Poplar Laminate Flooring;
- t. 12 mm Dream Home St. James Brazilian Koa Laminate Flooring;
- u. 12 mm Dream Home St. James Blacksburg Barn Board Laminate Flooring;

¹⁰ <http://www2.epa.gov/formaldehyde/formaldehyde-emission-standards-composite-woodproducts#Formaldehyderegs> (last visited March 5, 2015).

- v. 12 mm Dream Home St. James Nantucket Beech Laminate Flooring;
- w. 12 mm Dream Home St. James Chimney Rock Charcoal Laminate Flooring;
- x. 12 mm Dream Home St. James African Mahogany Laminate Flooring;
- y. 12 mm Dream Home Kensington Manor Fumed African Ironwood Laminate Flooring.
- z. 12 mm Dream Home St. James Oceanside Plank Bamboo Laminate Flooring;
- aa. 12 mm Dream Home Kensington Manor Warm Springs Chestnut Laminate Flooring;
- bb. 15 mm Dream Home St. James Sky Lakes Pine Laminate Flooring;
- cc. 12 mm Dream Home Ispiri Chimney Tops Smoked Oak Laminate Flooring;
- dd. 12 mm Dream Home Kensington Manor Imperial Teak Laminate Flooring;
- ee. 12 mm Dream Home St. James Cumberland Mountain Oak.

32. The Lumber Liquidators Chinese-made Flooring Products claims in a uniform manner on the packaging that they are “California 93120 Phase 2 Compliant for Formaldehyde,” which indicates that the Chinese Flooring Products meet the CARB emission standards for formaldehyde.¹¹ This statement is false and misleading for the reasons described herein.

33. On the Lumber Liquidators website, Defendants also make false and misleading statement about their CARB compliance:

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.

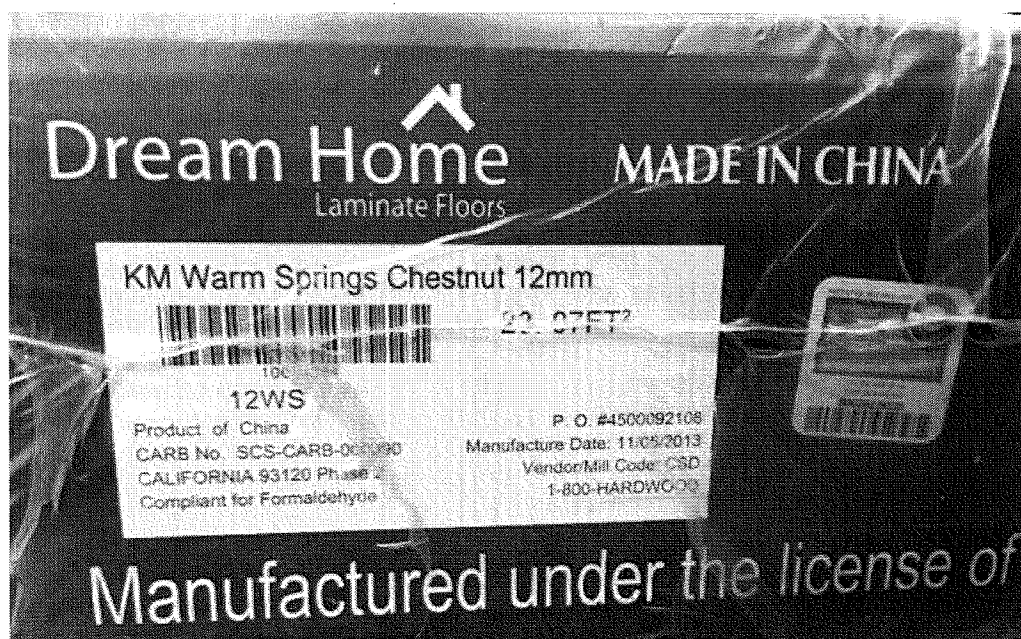
Does CARB only apply to California?

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

¹¹ http://www.arb.ca.gov/toxics/compwood/consumer_faq.pdf (explaining that “Manufactures typically will label their products as ‘California 93120 Compliant for Formaldehyde’ or ‘California Phase 2 Compliant’ if the products meet the stringent CARB regulations for formaldehyde.”) (last visited March 5, 2015).

California Air Resources Board regulations regardless of whether we intended to sell the products in California or any other state/country.¹²

34. In addition, the product packaging for the Products states: “CARB ...Phase 2 Compliant for Formaldehyde.” On information and belief, this statement is presented on all of Lumber Liquidators’ Products regardless of whether the flooring inside the package complied with CARB Regulations.



35. According to CARB, “The label seen on panels and finished goods indicates that the product meets the California Air Resources Board’s (CARB) stringent emission standards for formaldehyde emissions from composite wood products, including HWPW, PB, and MDF.”

36. Lumber Liquidators’ purchase orders come with a warranty from the manufacturers/packagers stating that the Products comply “with all applicable laws, codes and

¹² See http://www.lumberliquidators.com/ll/flooring/ca-air-resources-board-regulations?Wt.ad=GLOBAL_FOOTER_CaliRegCARB (last visited March, 5, 2015).

regulations,” and “bear all warnings, labels, and markings required by applicable laws and regulations.”¹³ These representations also are false.

37. Lumber Liquidators’ website also 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.¹⁴

38. Instead of warning consumers about formaldehyde emissions from its laminate wood flooring products, Lumber Liquidators’ website states that it has Third Party Certifiers approve its flooring products to meet CARB standards:

All laminates and engineered flooring products sold by Lumber Liquidators are purchased from mills whose production method has been certified by a Third Party Certifier approved by the State of California to meet the CARB standards. The scope of the certification by the Third Party Certifier includes the confirmation that the manufacturer has implemented the quality systems, process controls, and testing procedures outlined by CARB and that their products conform to the specified formaldehyde emission limits. The Third Party Certifier

¹³ See www.lumberliquidators.com/ll/customer-care/potc800201 (last visited March 5, 2015).

¹⁴ See <http://web.archive.org/web/20130731042457/http://www.lumberliquidators.com/ll/flooring/Quality> (emphasis added) (last visited March 5, 2015).

also provides ongoing oversight to validate the manufacturers' compliance and manufacturers must be periodically re-certified.¹⁵

39. Lumber Liquidators materially misrepresents the safety of its laminate wood flooring products by advertising its flooring products as compliant with the CARB limit when in fact they are not.

40. Lumber Liquidators makes the material omission of failing to tell consumers that they are buying laminate wood flooring products with unlawfully high levels of formaldehyde.

41. However, Lumber Liquidators does not comply with CARB regulations when selling and distributing the Chinese-made Flooring Products. Several independent tests conducted by certified laboratories reveal that the Chinese Flooring Products emit formaldehyde levels well beyond what is allowable by CARB regulations. These test results have shown that average formaldehyde exposures during testing exceeded the 0.05 to 0.11 parts per million as allowed under CARB regulations set forth in 17 CCR §§ 93120-93120.12, *et seq.*

42. Lumber Liquidators' Chinese-made flooring was first called into question in June of 2013 when a blogger named Xuhua Zhou reported on the website Seeking Alpha the results of his independent investigation. Zhou sent samples of Lumber Liquidators' Flooring to be tested by independent laboratories and posted the results online. As Zhou explained:

I recently conducted independent lab testing –engaging Berkeley Analytical, an IAS accredited testing laboratory – on a sample of Lumber Liquidators house brand flooring (“Mayflower” brand), and the results that came back weren't pretty: Over 3.5x the maximum legal level for formaldehyde. Fully understanding the importance of this finding, we submitted samples from the same package to a second laboratory, this one the “gold standard” lab for the National Wood Flooring Association, NTW. The second lab confirms the product is in violation of the legal limit for formaldehyde.¹⁶

¹⁵ See Formaldehyde-What is it? Regulations and Lumber Liquidators' Compliance, available at http://server.iad.liveperson.net/hc/s13045352/cmd/kbresource/kb752012092953572339/view_question!PAGE?sf=101133&documentid=415037&action=view (last visited March 5, 2015).

¹⁶ Xuhua Zhou, Illegal Products Could Spell Big Trouble at Lumber Liquidators, SEEKING

43. Another set of tests on Lumber Liquidators' Chinese-made flooring were conducted by the environmental advocacy groups Global Community Monitor and Sunshine Park, LLC. The two companies have filed suit in the California Superior Court for the County of Alameda against Lumber Liquidators for its alleged violation of the California Safe Drinking Water and Toxic Enforcement Act of 1986 commonly known as "Proposition 65" ("The Global Community Monitor Lawsuit.") The complaint states that the groups conducted over fifty tests using various test methods and two different laboratory locations. Test results showed average exposures of formaldehyde at the time of testing exceeded 4,000 micrograms per day ("ug/day) over 100 times above the 40 ug/day threshold established by California's Proposition 65.

44. In accordance with California Health and Safety Code Section 25249.6, an attorney representing Global Community Monitor submitted a Certificate of Merit certifying that he consulted with persons who have the relevant and appropriate experience before filing suit. His consultants determined that there is a "reasonable and meritorious case for the private action" against Lumber Liquidators based on its sales of Chinese-made Flooring Products. The Global Community Monitor Lawsuit seeks injunctive relief and civil penalties as allowed by Proposition 65.

45. The most recent investigation into Lumber Liquidators flooring was conducted by 60 Minutes News. 60 Minutes purchased 31 boxes of Chinese-made Flooring Products from Lumber Liquidators stores in five different states and sent samples to two certified labs for testing. Out of the 31 samples, only one was found to be compliant with CARB formaldehyde emissions standards. Some were even more than 13x over the California limit.

ALPHA, (Jun. 20, 2013) <http://seekingalpha.com/article/1513142-illegal-products-couldspell-big-trouble-at-lumber-liquidators> (last visited March 5, 2015).

46. Moreover, manufacturers in China admitted on camera to 60 Minutes News that the Chinese-made Flooring Products sold by Lumber Liquidators are not complaint with CARB regulations. A transcript from the 60 Minutes news report reads as follows:

Posing as buyers, and using hidden cameras, the investigators visited three different mills that manufacture laminates for Lumber Liquidators.

Employees at the mills openly admitted that they use core boards with higher levels of formaldehyde to make Lumber Liquidators laminates, saving the company 10-15 percent on the price. At all three mills they also admitted falsely labeling the company's laminate flooring as CARB 2, meaning it meets California formaldehyde emissions standards, and the new U.S. federal law. At this factory, the general manager told investigators Lumber Liquidators is one of their biggest customers.

Manager: This is a best-seller for Lumber Liquidators.

Investigator: For Lumber Liquidators?

Manager: Yeah.

Investigator: How long have you been selling this?

Manager: From last year.

Investigator: Is this CARB 2?

Manager: No, no, no . . . I have to be honest with you. It's not CARB 2.

Investigator: Can I get CARB 2?

Manager: Yes, you can. It's just the price issue. We can make CARB 2 but it would be very expensive.

And that's the same thing the undercover team was told at all three mills they visited.

Investigator: All this stuff here, Lumber Liquidators... All their labeling is CARB 2 right? But it's not CARB 2?

Employee: Not CARB 2.¹⁷

47. Plaintiff and other Class members would not have purchased the Chinese Flooring Products if they had known that the products were not compliant with CARB and that the Products emit unlawful levels of formaldehyde.

¹⁷ *Lumber Liquidators Linked to Health and Safety Violations*, 60 MINUTES (Mar. 1, 2015), available at <http://www.cbsnews.com/news/lumber-liquidators-linked-to-health-and-safety-violations/> (last visited March 27, 2015).

Plaintiff's Reliance and Damages

48. During the relevant time period, Genevieve Baldwin purchased Warm Springs Chestnut Flooring from Lumber Liquidators at a Lumber Liquidators store located in West Virginia. On information and belief, the flooring was produced at a laminate mill in China.

49. At the time that Plaintiff purchased this laminate wood flooring, Lumber Liquidators falsely represented that the product was compliant with CARB formaldehyde emission standards and was defect free. At the time of the purchase, Lumber Liquidators also failed to inform Plaintiff that the laminate wood flooring product he purchased actually exceeded the CARB formaldehyde emission-limit and that formaldehyde is a chemical known to cause cancer.

50. Plaintiff relied on Lumber Liquidators' misrepresentations/omissions regarding compliance with CARB formaldehyde emission standards when deciding to purchase the laminate wood flooring products and, as a result, paid Lumber Liquidators for a product he would not have otherwise purchased.

51. If Lumber Liquidators' laminate wood flooring becomes CARB compliant, Plaintiff would likely purchase it in the future.

52. Plaintiff paid for CARB compliant products, but received products that were not CARB compliant. By purchasing Products in reliance on advertising that is false, Plaintiff has suffered injury in fact and lost money as a result of the unfair business practices alleged here.

Tolling Of The Statute Of Limitations, Fraudulent Concealment, Equitable Tolling And Continuing Violations

53. Plaintiff did not discover, and could not have discovered, through the exercise of reasonable diligence, the existence of the claims sued upon herein until immediately prior to commencing this civil action.

54. Any applicable statutes of limitation have been tolled by Defendants' affirmative acts of fraudulent concealment and continuing misrepresentations, as the facts alleged above reveal.

55. Because of the self-concealing nature of Defendants' actions and its affirmative acts of concealment, Plaintiff asserts the tolling of any applicable statutes of limitations affecting the claims raised herein, on her behalf and on behalf of all other Class members.

56. Defendant continues to engage in the deceptive practice, and consequently, unwary consumers are injured on a daily basis by Defendants' unlawful conduct. Therefore, Plaintiffs and the Classes submit that each instance that Defendant engaged in the conduct complained of herein and each instance that a member of any Class purchased the Product constitutes part of a continuing violation and operates to toll the statutes of limitation in this action.

57. Defendant is estopped from relying on any statute of limitations defense because of their unfair or deceptive conduct.

58. Defendants' conduct was and is, by its nature, self-concealing. Still, Defendant, through a series of affirmative acts or omissions, suppressed the dissemination of truthful information regarding their illegal conduct, and actively has foreclosed Plaintiff and the Classes from learning of their illegal, unfair, and/or deceptive acts. These affirmative acts included concealing that the Products are not CARB compliant.

59. By reason of the foregoing, the claims of Plaintiff and the Classes are timely under any applicable statute of limitations, pursuant to the discovery rule, the equitable tolling doctrine, and fraudulent concealment.

V. CLASS ACTION ALLEGATIONS

60. Plaintiff seeks relief in his individual capacity and as a class representative of all others who are similarly situated. Pursuant to Fed. R. Civ. P. 23(a) and (b)(2) and/or (b)(3), Plaintiff seeks certification of the following Nationwide and West Virginia Classes.

61. The Nationwide Damages Class is initially defined as follows:

All persons residing in the United States who, during the applicable statute of limitations period through the date notice is disseminated to the Class, purchased from Lumber Liquidators one or more laminate wood flooring products that were for their personal use rather than for resale or distribution, that were manufactured in China, and that were advertised as being CARB compliant.

62. The Nationwide Injunctive Relief Only Class is initially defined as follows:

All persons residing in the United States who, during the applicable statute of limitations period through the date notice is disseminated to the Class, purchased from Lumber Liquidators one or more laminate wood flooring products that were for their personal use rather than for resale or distribution, that were manufactured in China, and that were advertised as being CARB compliant.

63. The West Virginia Class is initially defined as follows:

All persons residing in the State of West Virginia who, during the applicable statute of limitations period through the date notice is disseminated to the Class, purchased from Lumber Liquidators one or more laminate wood flooring products that were for their personal use rather than for resale or distribution, that were manufactured in China, and that were advertised as being CARB compliant.

64. Excluded from each of the above Classes are Defendant, including any entity in which Lumber Liquidators has a controlling interest, is a parent or subsidiary, or which is controlled by Defendant, as well as the officers, directors, affiliates, legal representatives, predecessors, successors, and assigns of Defendant. Also excluded are the judges and court personnel in this case and any members of their immediate families, as well as any person who purchased the Product for the purpose of resale.

65. Plaintiff reserves the right to amend or modify the Class definitions with greater specificity or division into subclasses after having had an opportunity to conduct discovery.

66. Numerosity. Fed. R. Civ. P. 23(a)(1). Each Class is so numerous that joinder of all members is unfeasible and not practicable. While the precise number of Class members has not been determined at this time, Plaintiff is informed and believes that many thousands or millions of consumers have purchased the Products.

67. Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3). There are questions of law and fact common to each Class, which predominate over any questions affecting only individual Class members. These common questions of law and fact include, without limitation:

- a. Whether Lumber Liquidators' laminate wood flooring products sold exceed the legal limits;
- b. Whether Lumber Liquidators' claim that its laminate wood flooring products-comply with the CARB limit is false;
- c. Whether Lumber Liquidators uniformly conveyed to the classes that the Products complied with CARB regulations;

d. Whether Lumber Liquidators failed to disclose material information regarding the emission of unlawful levels of formaldehyde from its laminate wood flooring products;

e. Whether Lumber Liquidators' representations that its laminate wood flooring products comply with the CARB limit are material, as judged by an objective standard;

f. Whether Lumber Liquidators violated the West Virginia Consumer Credit and Protection Act.

g. Whether Lumber Liquidators violated W. Va. Code § 46A-6-102(7)(M) in omitting material facts in a consumer transaction;

h. Whether Lumber Liquidators breached express and implied warranties;

i. Whether Lumber Liquidators breached an express and implied warranties;

j. Whether Lumber Liquidators was unjustly enriched;

k. The nature of the relief, including equitable relief, to which Plaintiff and the Class members are entitled.

68. Typicality. Fed. R. Civ. P. 23(a)(3). Plaintiff's claims are typical of the claims of the Class. Plaintiff and all Class members were exposed to uniform practices and sustained injury arising out of and caused by Lumber Liquidators' unlawful conduct.

69. Adequacy of Representation. Fed. R. Civ. P. 23(a)(4). Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff's Counsel is competent and experienced in litigating class actions.

70. Superiority of Class Action. Fed. R. Civ. P. 23(b)(3). A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of

all the members of the Class is impracticable. Furthermore, the adjudication of this controversy through a class action will avoid the possibility of inconsistent and potentially conflicting adjudication of the asserted claims. There will be no difficulty in the management of this action as a class action.

71. Injunctive and Declaratory Relief. Fed. R. Civ. P. 23(b)(2). Lumber Liquidators' misrepresentations are uniform as to all members of the Class. Lumber Liquidators has acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief or declaratory relief is appropriate with respect to the Class as a whole.

FIRST CAUSE OF ACTION
Breach of Express Warranty
(On Behalf of Plaintiff And All Classes)

72. Plaintiff incorporates all preceding factual allegations as if fully set forth herein.

73. Lumber Liquidators warranted that its flooring was free of defects when it sold those products to Plaintiff and other Class members as described in this Complaint. Lumber Liquidators further represented that its flooring products complied with CARB and EU formaldehyde standards and all applicable laws and regulations. Plaintiff and other Class members reasonably relied upon Lumber Liquidators' representations and/or omissions.

74. Lumber Liquidators' warranties became part of the basis of the bargain.

75. Lumber Liquidators breached its warranties by:

- a. Manufacturing, selling and/or distributing flooring that exceeds the CARB and EU formaldehyde standards;
- b. Manufacturing, importing, selling and/or distributing flooring that fails to comply with all applicable laws and regulations; and

- c. Refusing to honor the express warranty by refusing to properly repair or replace the defective flooring.

76. All conditions precedent to seeking liability under this claim for breach of express warranty has been performed by Plaintiff and other Class members who paid for the Products at issue.

77. Any attempt by Defendants to disclaim its express warranties is both procedurally and substantively unconscionable, did not conform to the law and was not conspicuous as required by law.

78. Lumber Liquidators was on notice regarding the excessively high levels of formaldehyde in its flooring because of the numerous blog postings, consumer complaints and lawsuits asserted against Defendant, as well as the March 1, 2015 60 Minutes report.

79. Thus, Lumber Liquidators has had actual and/or constructive notice that its' express warranty were and are false, and to date has taken no action to remedy its breaches of express warranty.

80. Defendants' breaches of warranty have caused Plaintiff and Class members to suffer injuries, paying for falsely labeled products, and entering into transactions they would not have entered into for the consideration that Plaintiff and Class members paid. As a direct and proximate result of Defendants' breaches of warranty, Plaintiff and Class members have suffered damages and continue to suffer damages, including economic damages in terms of the difference between the value of the Products as promised and the value of the Products as delivered.

81. As a result of the breach of these warranties, Plaintiff and Class members are entitled to legal and equitable relief including damages, costs, attorneys' fees, rescission, and/or

other relief as deemed appropriate, for an amount to compensate them for not receiving the benefit of their bargain.

**SECOND CAUSE OF ACTION
Breach of Implied Warranties
(On Behalf of Plaintiff And All Classes)**

82. Plaintiff incorporates all preceding factual allegations as if fully set forth herein.

83. At all times relevant hereto, there was a duty imposed by law which requires that a manufacturer or seller's product be reasonably fit for the purposes for which such products are used and that the product be acceptable in trade for the product description.

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

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

86. Any attempt by Defendants to disclaim its express warranties is both procedurally and substantively unconscionable, did not conform to the law and was not conspicuous as required by law.

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

**THIRD CAUSE OF ACTION
Violation of the Magnuson-Moss Warranty Act
(On Behalf of Plaintiff And All Classes)**

88. Plaintiff incorporates all preceding factual allegations as if fully set forth herein.

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

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

91. Lumber Liquidators flooring purchased separate from the initial construction of the structure constitutes a “consumer product” within the meaning of 15 U.S.C. § 2301(1).

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

93. Lumber Liquidators breached their warranties by:

a. Manufacturing, selling and/or distributing flooring that exceeds the CARB formaldehyde standards;

b. Manufacturing, importing, selling and/or distributing flooring that fails to comply with all applicable laws and regulations; and

c. Refusing to honor the express warranty by refusing to properly repair or replace the defective flooring.

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

95. Any attempt by Defendants to disclaim its express warranties is both procedurally and substantively unconscionable, did not conform to the law and was not conspicuous as required by law.

96. As a direct and proximate result of Lumber Liquidators’ breaches of its written warranties, Plaintiff and the other Class members sustained damages in an amount to be determined at trial. Lumber Liquidators’ conduct damaged Plaintiff and the other Class

members, who are entitled to recover damages, consequential damages, specific performance, diminution in value, costs, attorneys' fees, rescission, and/or other relief as appropriate.

FOURTH CAUSE OF ACTION
Negligence
(On Behalf of Plaintiff And All Classes)

97. Plaintiff incorporates all preceding factual allegations as if fully set forth herein.

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

99. Lumber Liquidators breached its legal duty and was negligent in its design and/or manufacturer of its Chinese Flooring described herein. Lumber Liquidators' design and/or manufacture of the Chinese Flooring is inherently defective, in that the flooring emits unsafe levels of formaldehyde, causing damage to Plaintiff's and the Class Members' person and residences/structures as well as other property throughout the residences/structures.

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

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

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

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

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

105. Plaintiff disclaimed any purported Limited Warranties.

106. As a direct, proximate, reasonably probable and foreseeable consequence of Lumber Liquidators' negligent acts and/or omissions in connection with its design, manufacture and distribution of its Chinese Flooring, Plaintiff and the Class Members have suffered and will continue to suffer loss and damage.

**FIFTH CAUSE OF ACTION
Fraudulent Misrepresentation
(On Behalf of Plaintiff And All Classes)**

107. Plaintiff incorporates all preceding factual allegations as if fully set forth herein.

108. Lumber Liquidators falsely and fraudulently represented to Plaintiff and other Class members that Lumber Liquidators' products would be free from defects and fit for their customary and normal use. Lumber Liquidators also falsely and fraudulently represented to Plaintiff and other Class members that Lumber Liquidators' products complied with CARB and EU formaldehyde standards and all applicable laws and regulations. Plaintiff and other Class members reasonably relied upon Lumber Liquidators' representations.

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

110. Lumber Liquidators made these representations with the intent of defrauding and deceiving the Plaintiff, the Class members and/or the consuming public, all of which evinced reckless, willful, indifference to the safety and welfare of the Plaintiff and the Class members.

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

112. In reliance upon said representations, the Plaintiff's and Class members' properties were built using Lumber Liquidators' Chinese Flooring, which were installed and used on Plaintiff's and the Class members' properties thereby sustaining damage and injury and/or being at an increased risk of sustaining damage and injury in the future.

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

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

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

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

**SIXTH CAUSE OF ACTION
Negligent Misrepresentation
(On Behalf of Plaintiff And All Classes)**

117. Plaintiff incorporates all preceding factual allegations as if fully set forth herein.

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

119. Those representations were false.

120. When Lumber Liquidators made the representations, it knew they were untrue or it had a reckless disregard for whether they were true, or it should have known they were untrue.

121. Lumber Liquidators knew that Plaintiff and other Class members were relying on the representations.

122. In reliance upon the representations, Plaintiff and other Class Members purchased the Chinese Flooring and installed it in Plaintiff's and Class members' homes.

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

124. As a direct and proximate result of the foregoing, Plaintiff and the Class Members suffered, and continue to suffer, financial damage and injury, and are entitled to all damages, including punitive damage, in addition to costs, interest and fees, including attorneys' fees, as allowed by law.

**SEVENTH CAUSE OF ACTION
Fraudulent Omission/Concealment
(On Behalf of Plaintiff And All Classes)**

125. Plaintiff incorporates all preceding factual allegations as if fully set forth herein.

126. Lumber Liquidators knew or should have known that the Chinese Flooring was defective in design, were not fit for their ordinary and intended use, and performed in accordance with neither the advertisements, marketing materials and warranties disseminated by Lumber Liquidators nor the reasonable expectations of ordinary consumers.

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

128. Lumber Liquidators had exclusive knowledge of the defective nature of the Chinese Flooring at the time of sale. The defect is latent and not something that Plaintiff or Class members, in the exercise of reasonable diligence, could have discovered independently prior to purchase, because it is not feasible.

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

130. Lumber Liquidators undertook active and ongoing steps to conceal the defect. Plaintiff is aware of nothing in Lumber Liquidators' advertising, publicity or marketing materials that disclosed the truth about the defect, despite Lumber Liquidators' awareness of the problem.

131. The facts concealed and/or not disclosed by Lumber Liquidators to Plaintiff and the Class members are material facts in that a reasonable person would have considered them important in deciding whether to purchase (or to pay the same price for) the flooring from their builders.

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

133. Plaintiff and the Class justifiably acted or relied upon the concealed and/or nondisclosed facts to their detriment, as evidenced by their purchase of the Chinese Flooring.

134. Plaintiff and Class members suffered a loss of money in an amount to be proven at trial as a result of Defendants' fraudulent concealment and nondisclosure because: (a) they would not have purchased the Chinese Flooring on the same terms if the true facts concerning the defective flooring had been known; (b) they paid a price premium due to fact that the

flooring would be free from defects; and (c) the flooring did not perform as promised. Plaintiff also would have initiated this suit earlier had the defect been disclosed to him.

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

EIGHTH CAUSE OF ACTION
Violations of the West Virginia Consumer Credit and Protection Act
W. Va. Code § 46A-1-101, *et seq.*
(On Behalf of Plaintiff and the West Virginia Class)

136. Plaintiff incorporates all preceding factual allegations as if fully set forth herein.

137. This cause of action is brought pursuant to the West Virginia Consumer Credit and Protection Act,¹⁸ W. Va. Code § 46A-1-101, *et seq.* because Defendants' actions and conduct described herein constitute transactions that have resulted in the sale or lease of goods or services to consumers.

138. Plaintiff and each member of the West Virginia Class are consumers as defined by W. Va. Code § 46A-6-102(2).

139. The Defendants' conduct is replete with violations of the WVCCPA and its Unfair and Deceptive Acts or Practices provisions. More specifically, the Defendants violated the WVCCPA in at least the following respects:

- a. in violation of W. Va. Code § 46A-6-102(7)(C) because the Defendant represented that the Products have characteristics, ingredients, and benefits which they do not have;
- b. in violation of W. Va. Code § 46A-6-102(7)(G) because Defendant represented that the Products are of a particular standard, quality or when they are of another;
- c. in violation of W. Va. Code § 46A-6-102(7)(I) because Defendant has advertised the Products (as being CARB compliant and defect free) with intent not to sell them as advertised; and

¹⁸ Hereafter "WVCCPA."

- d. in violation of W. Va. Code § 46A-6-102(7)(B) and W. Va. Code § 46A-6-102(7)(L) because Defendant misrepresented approval of its goods effectively creating a likelihood of confusion.

140. Defendants knew, or should have known, that its representations and advertisements were false and misleading.

141. Defendants' conduct is malicious, fraudulent, and wanton in that Defendant intentionally and knowingly provided misleading information to the public.

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

143. As a direct and proximate result of the foregoing, Plaintiff and the Class Members suffered, and continue to suffer, financial damage and injury, and are entitled to all damages, including punitive damage, in addition to costs, interest and fees, including attorneys' fees, as allowed by law.

NINTH CAUSE OF ACTION
Violation of the West Virginia Code § 46A-6-102(7)(M)
(On Behalf of Plaintiff and the West Virginia Class)

144. Plaintiff incorporates all preceding factual allegations as if fully set forth herein.

145. Defendants engaged in unlawful, unfair, deceptive, and/or fraudulent conduct as defined by the WVCCPA.

146. At all times relevant, there was in full force and effect a statute commonly known as the West Virginia Consumer Credit and Protection Act which provides that unfair methods of competition and unfair or deceptive acts or practices means and includes, but is not limited to:

(M) the act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that other rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any good

or services, **whether or not any person has in fact been misled, deceived or damaged thereby;**

W. Va. Code § 46A-6-102(7)(M)(emphasis added).

147. Defendants' acts as stated herein amount to fraudulent, deceptive, or misleading conduct under W. Va. Code § 46A-6-102(7)(M) and, importantly, no reliance is required for the West Virginia subclass as the employment of deception, misrepresentation, concealment, or omission constitutes a violation of the WVCCPA "...whether or not any person has in fact been misled, deceived, or damaged thereby."

148. As a direct and proximate result of these violations, Defendants caused the Plaintiffs to suffer damages.

149. Under the provisions of the aforesaid West Virginia laws, Plaintiffs are entitled to recover actual damages, statutory damages adjusted for inflation, statutory penalties adjusted for inflation, restitution, disgorgement, and attorney's fees and costs from Defendants for the aforesaid violations.

150. Plaintiff, on behalf of herself and the classes defined herein, seeks: (a) injunctive relief in the form of an order requiring Defendants to cease the acts of unfair competition alleged herein and to correct its advertising, promotion, and marketing campaigns; (b) full restitution of all monies paid by Plaintiff and all Class members because of Defendants' deceptive practices including, but not limited to, disgorgement of all profits derived from the sale of the Products; (c) interest at the highest rate allowable by law; and (d) the payment of Plaintiff's attorneys' fees and costs.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the other members of the Classes proposed in this Complaint, respectfully requests that the Court enter judgment in their favor and against Defendants, jointly and severally, as follows:

- A. Declaring that this action is a proper class action, certifying the Class as requested herein, designating Plaintiff as Class Representative and appointing the undersigned counsel as Class Counsel;
- B. Ordering Defendants to pay actual damages (and no less than the statutory minimum damages) and equitable monetary relief to Plaintiff and the other members of the Class and Subclasses;
- C. Ordering Defendants to pay punitive damages, as allowable by law, to Plaintiff and the other members of these Classes;
- D. Ordering Defendants to pay statutory damages, as allowable by the statutes asserted herein, to Plaintiff and the other members of these Classes;
- E. Awarding injunctive relief as permitted by law or equity, including enjoining Defendants from continuing the unlawful practices as set forth herein, and ordering Defendants to engage in a corrective advertising campaign;
- F. Ordering Defendants to pay attorneys' fees and litigation costs to Plaintiff and the other members of the Classes;
- G. Ordering Defendants to pay both pre- and post-judgment interest on any amounts awarded; and
- H. Ordering such other and further relief as may be just and proper.

WHEREFORE, Plaintiffs demand judgment against the Defendants for all damages set forth above as well as all further relief as the Court deemed appropriate.

PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Dated: May 14th, 2015

GENEVIEVE BALDWIN,
Individually and on behalf of
all others similarly situated,

By Counsel



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