

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

S. STEELE

Plaintiff

- and -

**LUMBER LIQUIDATORS (CANADA), INC., LUMBER LIQUIDATORS HOLDINGS,
INC., LUMBER LIQUIDATORS, INC., LUMBER LIQUIDATORS LEASING, LLC,
AND LUMBER LIQUIDATORS SERVICES, LLC**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: April 1, 2015

Issued by

(S) Signature

Local Registrar

Address of
court office:

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TO: Lumber Liquidators (Canada), Inc.

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AND TO: Lumber Liquidators Holdings, Inc.

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AND TO: Lumber Liquidators, Inc.

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AND TO: Lumber Liquidators Leasing, LLC

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AND TO: Lumber Liquidators Services, LLC

3000 John Deere Road
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DEFINED TERMS

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) “**Composite Laminate Flooring Products**”, “**Laminate Flooring Products**”, or “**Flooring Products**” means the Chinese-produced laminate flooring that the **Defendants** supervise, control, and inspect the manufacturing of, and then test, package, label, distribute, market, promote, advertise, sell, install and warrant throughout Canada;
- (b) “**CARB**” means the California Air Resources Board and “**CARB Standards**” means the California Air Resources Board’s formaldehyde emissions standards;
- (c) “**Design Defect**” means the serious and pervasive design and manufacturing defects that render the **Laminate Flooring Products** unmerchantable and unsuitable for use, namely the high emission of formaldehyde levels known to pose serious health risks;
- (d) “**Class**” or “**Class Members**” means all persons, entities or organizations resident in Canada who purchased one or more **Laminate Flooring Products** from **Lumber Liquidators** or who own homes in Canada in which these **Laminate Flooring Products** were installed;
- (e) “*Class Proceedings Act*” means the *Class Proceedings Act*, SA 2003 c C-16.5, as amended;

- (f) “*Sale of Goods Act*” means the *Sale of Goods Act*, RSA 2000, c. S-2, as amended, including ss. 16;
- (g) “*Consumer Protection Act*” means the *Consumer Protection Act, 2002*, SO 2002, c. 30, Sched. A, as amended, including ss. 8, 11, 14 & 15;
- (h) “**Consumer Protection Legislation**” means:
- (i) *Business Practices and Consumer Protection Act*, SBC 2004, c.2, as amended, including ss. 4, 5 & 8-10;
 - (ii) *The Business Practices Act*, CCSM, c. B120, as amended, including ss. 2 & 23;
 - (iii) *Consumer Protection and Business Practices Act*, SNL 2009, c. C-31.1, as amended, including ss. 7, 8, 9 & 10, and *Trade Practices Act*, RSNL 1990, c. T-7, as amended, including ss. 5, 6 & 14;
 - (iv) *Fair Trading Act*, RSA 2000, c. F-2, as amended, including ss. 6, 7 & 13;
 - (v) *Consumer Protection Act*, RSQ c. P-40.1, as amended, including ss. 219 & 272;
 - (vi) *Consumer Product Warranty and Liability Act*, SNB 1978, c. C-18.1, including ss. 4, 10, 12, 15-18, 23 & 27;
 - (vii) *Consumer Protection Act*, RSNS 1989, c. 92, including ss. 26 & 28A;
 - (viii) *Business Practices Act*, RSPEI 1988, c. B-7, as amended, including ss. 2-4;
and
 - (ix) *The Consumer Protection Act*, SS 1996, c. C-30.1, as amended, including ss. 5-8, 14, 16, 48 & 65;

- (x) “**Competition Act**” means the *Competition Act*, RSC 1985, c. C-34, as amended, including ss. 36 & 52;
- (i) “**Consumer Packaging and Labelling Act**” means the *Consumer Packaging and Labelling Act*, R.S.C. 1985, c. C-38, as amended, including ss. 7, 9 & 20;
- (j) “**Canada Consumer Product Safety Act**” means the *Canada Consumer Product Safety Act* (S.C. 2010, c. 21), as amended, including ss. 6, 7, 8, 9, 10 & 41;
- (k) “**Canadian Environmental Protection Act, 1999**” or “**CEPA**” means the *Canadian Environmental Protection Act, 1999* S.C. 1999, c. 33, as amended;
- (l) “**Defendants**” or “**Lumber Liquidators**” means Lumber Liquidators (Canada), Inc., Lumber Liquidators Holdings, Inc., Lumber Liquidators, Inc., Lumber Liquidators Leasing, LLC, and Lumber Liquidators Services, LLC;
- (m) “**Plaintiff**” means S. Steele; and
- (n) “**Representation(s)**” means the **Defendants’** false, misleading or deceptive representations that their **Flooring Products** (a) have performance characteristics, benefits and/or qualities which they do not have, (b) are of a particular standard, quality or grade which they are not; and (c) their use of exaggeration, innuendo and ambiguity as to a material fact or failing to state a material fact regarding the **Design Defect** as such use or failure deceives or tends to deceive.

THE CLAIM

2. The proposed Representative Plaintiff, S. Steele, claims on her own behalf and on behalf of the members of the Class of persons as defined in paragraph 6 below (the “Class”) as against Lumber Liquidators (Canada), Inc., Lumber Liquidators Holdings, Inc., Lumber Liquidators, Inc., Lumber Liquidators Leasing, LLC, and Lumber Liquidators Services, LLC (the “Defendants”):
 - (a) An order pursuant to the *Class Proceedings Act* certifying this action as a class proceeding and appointing the Plaintiff as Representative Plaintiff for the Class Members;
 - (b) A declaration that the Defendants breached their implied warranty of fitness for a particular purpose;
 - (c) A declaration that the Defendants breached their implied warranty of merchantability;
 - (d) A declaration that the Defendants breached their duty to warn the Plaintiff and Class Members of the defective nature of the Flooring Products;
 - (e) A declaration that the Defendants were negligent in the supervision, control, and inspection of the manufacturing of the Flooring Products as well as the testing, packaging, labelling, distribution, marketing, promotion, advertising, sale, installation, and warranty of the Flooring Products;

- (f) A declaration that the Defendants made representations that were false, misleading, deceptive, and unconscionable, amounting to unfair practices in violation of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation as well as the *Competition Act*;
- (g) A declaration that the present Statement of Claim is considered as notice given by the Plaintiff on her own behalf and on behalf of “person similarly situated” and is sufficient to give notice to the Defendants on behalf of all Class Members;
- (h) In the alternative, a declaration, if necessary, that it is in the interests of justice to waive the notice requirement under Part III and s. 101 of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation;
- (i) A declaration that the Defendants violated the *Consumer Packaging and Labelling Act* in applying, selling, importing and/or advertising “false or misleading representations” onto the Flooring Products and in selling, importing or advertising the Flooring Products such that consumers might reasonably be misled with respect to the quality of the product;
- (j) A declaration that the Defendants violated the *Canada Consumer Product Safety Act* in manufacturing, importing, advertising or selling Flooring Products that are a danger to human health or safety and in packaging or labelling the Flooring Products in a false, misleading or deceptive manner and that can reasonably be expected to create an erroneous impression regarding the fact that it is not a

danger to human health or safety and with regards to its certification as CARB Compliant;

- (k) General damages in an amount to be determined in the aggregate for the Class Members for, *inter alia*, pain, suffering, stress, trouble and inconvenience;
- (l) Special damages in an amount that this Honourable Court deems appropriate to compensate Class Members for, *inter alia*, the purchase price of the Flooring Products [or the overpayment for thereof], the amount paid to have the Flooring Products installed, the out-of-pocket expenses for repairs and replacements, and the diminished value of their Flooring Products;
- (m) Punitive, aggravated, and exemplary damages in the aggregate in an amount to be determined as this Honourable Court deems appropriate;
- (n) A declaration that the Defendants are jointly and severally liable for any and all damages awarded;
- (o) An order that Class Members are entitled to a refund of the purchase price of their Flooring Products, including, but not limited to sales taxes, based *inter alia* on revocation of acceptance and rescission or, in the alternative, the diminished value of the Flooring Products;
- (p) In the alternative, an order for an accounting of revenues received by the Defendants resulting from the sale of the Flooring Products;

- (q) A declaration that any funds received by the Defendants through the sale of their Flooring Products are held in trust for the benefit of the Plaintiff and Class Members;
- (r) Restitution and/or a refund of all monies paid to or received by the Defendants from the sale of their Flooring Products to members of the Class on the basis of unjust enrichment;
- (s) In addition, or in the alternative, restitution and/or a refund of all monies paid to or received by the Defendants from the sale of their Flooring Products to members of the Class on the basis of *quantum meruit*;
- (t) An order compelling the creation of a plan of distribution pursuant to ss. 23, 24, 25 and 26 of the *Class Proceedings Act*;
- (u) A permanent injunction restraining the Defendants from continuing any actions taken in contravention of the Consumer Protection Legislation, the *Sale of Goods Act*, the *Consumer Protection Act*, the *Competition Act* and the *Consumer Packaging and Labelling Act*;
- (v) Pre-judgment and post-judgment interest on the foregoing sums in the amount of 2% per month, compounded monthly, or alternatively, pursuant to ss. 128 and 129 of the *Courts of Justice Act*;
- (w) Costs of notice and administration of the plan of distribution of recovery in this action plus applicable taxes pursuant to s. 26 (9) of the *Class Proceedings Act*;

- (x) Costs of this action on a substantial indemnity basis including any and all applicable taxes payable thereon; and
- (y) Such further and other relief as counsel may advise and/or this Honourable Court may deem just and appropriate in the circumstances.

THE PARTIES

The Representative Plaintiff

3. The Plaintiff, S. Steele, is an individual residing in the city of La Salle, in the province of Ontario.

4. On or about October 13, 2012, the Plaintiff purchased a batch of 2003 Dream Home St James Vintner's reserve 12 mm flooring from Lumber Liquidators at 1925 Provincial Road in Windsor, Ontario for a total cost of \$1,532.30 including taxes.

5. On or about December 2, 2014, the Plaintiff purchased a second batch of the same Flooring Product and it had to be shipped to the same Lumber Liquidators location from the location in Cambridge, Ontario for a total cost of \$213.80 including taxes and including the shipping cost of \$100.00 plus taxes.

The Class

6. The Plaintiff seeks to represent the following class of which she is a member (the “Proposed Class”):

All persons, entities or organizations resident in Canada who purchased one or more Laminate Flooring Products from Lumber Liquidators or who own homes in Canada in which these Laminate Flooring Products were installed.

The Defendants

7. The Defendant, Lumber Liquidators (Canada), Inc. (hereinafter “Lumber Liquidators Canada”), is a Canadian corporation with its principal place of business in Toronto, Ontario. It is a wholly-owned subsidiary of Defendant Lumber Liquidators, Inc., that does business throughout Canada, including within the province of Ontario.

8. The Defendant, Lumber Liquidators Holdings, Inc. (hereinafter “Lumber Liquidators Holdings”), is an American corporation with its principal place of business in Toano, Virginia. It is the parent company of all other Defendants.

9. The Defendant, Lumber Liquidators, Inc. (hereinafter “Lumber Liquidators USA”), is an American corporation with its principal place of business in Toano, Virginia. It is the parent company of Defendant Lumber Liquidators Canada. It is the registrant of the trade-mark (Word) LUMBER LIQUIDATORS (TMA651323) which was filed on August 30, 2004.

10. The Defendant, Lumber Liquidators Leasing, LLC (hereinafter “Lumber Liquidators Leasing”), is an American corporation with its principal place of business in Toano, Virginia.

11. The Defendant, Lumber Liquidators Services, LLC (hereinafter “Lumber Liquidators Services”), is an American corporation with its principal place of business in Toano, Virginia.

12. The Defendants supervise, control, and inspect the manufacturing of, and then test, package, label, distribute, market, promote, advertise, sell, install, and warrant the Flooring Products to be free of defects in material and workmanship.

13. The Defendants are resident in Ontario for the purpose of s. 2 of the *Consumer Protection Act*.

14. As set out hereinafter, the Defendants are jointly and severally liable for the acts and omissions of each other.

THE NATURE OF THE CLAIM

15. These class proceedings concern the numerous quality, design, and manufacturing defects with the Defendants’ Flooring Products that render them unmerchantable and unsuitable for use, which are also contrary to Defendants’ express representations to this effect.

16. The Defendants failed to disclose and/or actively concealed, despite longstanding knowledge, the fact that their Flooring Products emitted toxic levels of formaldehyde¹ that pose serious health risks (hereinafter the “Design Defect”).

17. Further, the Defendants specifically and falsely tout their Flooring Products as being compliant with the California Air Resources Board (“CARB”) formaldehyde emissions

¹ Formaldehyde is also known by its systematic name methanol and formula CH₂O.

standards (“CARB Standards”) and as “meet[ing] the highest quality and environmental standards”.

18. Contrary to the Defendants’ representations, independent testing revealed that their Flooring Products contain six (6) to seven (7) times in excess of CARB’s Standards and some samples were close to twenty (20) times in excess thereof.

19. These conditions present a serious safety hazard due to the toxic nature of formaldehyde and its gradual adverse effect on health.

20. As a result of the Defendants’ unfair and deceptive practices, Lumber Liquidators has sold Flooring Products to consumers that are unsafe and should not be distributed and sold – and certainly not sold with the representation that the products meet the strict formaldehyde standards Lumber Liquidators claims that they meet.

21. The Plaintiff, on behalf of the Class Members, seeks an award of damages against Lumber Liquidators for its intentional, willful, and/or negligent failure to disclose and/or active concealment of the inherently defective and dangerous condition posed by the Flooring Products.

I. Formaldehyde and Regulations

22. At room temperature, formaldehyde is a colourless, flammable, strong-smelling chemical that is generally used as an ingredient in cheap glue or adhesive to bind wood in the making of laminate and engineered wood flooring products.

23. If used in low levels, the formaldehyde will quickly dissipate during installation. However, if used in higher levels, the formaldehyde is released as a gas that emanates from the flooring over time.

24. Formaldehyde has been declared “toxic” under the *Canadian Environmental Protection Act*² and it appears on the Priority Substances List (“PSL”)³.

25. Long-term exposure to formaldehyde is linked to increased risk of cancer of the nose and sinuses, nasopharyngeal and oropharyngeal cancer, lung cancer, and leukemia. Formaldehyde also causes burning eyes, nose and throat irritation, coughing, headaches, dizziness, joint pain, and nausea. It has also been linked to the exacerbation of asthma in formaldehyde-sensitive individuals and poses a particularly acute risk to children.

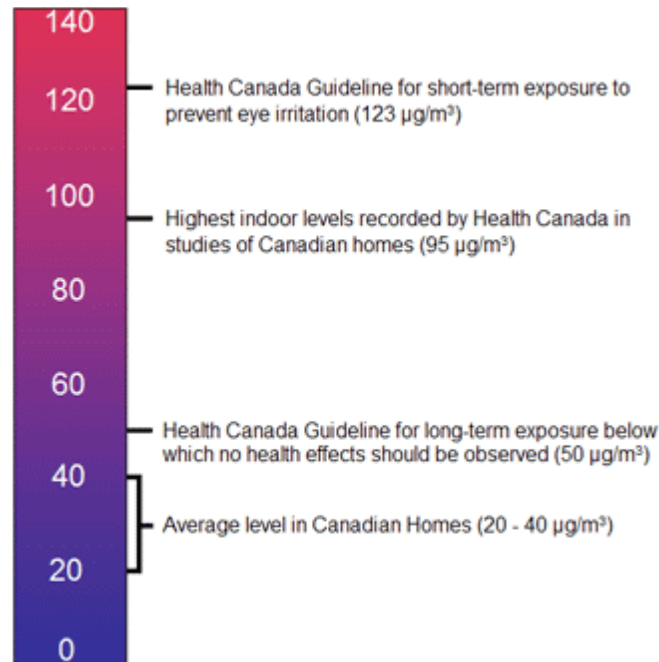
26. In Canada, formaldehyde is regulated by Health Canada. Since 1986, only a voluntary agreement exists between the Canadian government and the industry to limit formaldehyde in wood products and that limit is based on levels set almost thirty (30) years ago.

27. As part of an ongoing study on the quality of indoor air, Health Canada measured formaldehyde in a large number of homes in different cities across Canada including, Charlottetown, Ottawa, Quebec City, and Regina. All houses had at least some formaldehyde inside and on average formaldehyde levels measured over a day in Canadian homes were 20-40 $\mu\text{g}/\text{m}^3$ (16-32.5 ppb⁴). Daily levels as high as 95 $\mu\text{g}/\text{m}^3$ (77 ppb), however, were recorded.

² See s. 64 of the *Canadian Environmental Protection Act, 1999*.

³ The Priority Substances List identifies substances, including chemicals, groups of chemicals, effluents and wastes that may be harmful to the environment or constitute a danger to human health.

⁴ ppb means parts per billion.



28. Health Canada's *Residential Indoor Air Quality Guideline* for formaldehyde recommends maximum exposure limits of the following:

- Short-term exposure: 123 µg/m³ (100 ppb) based on a 1-hour average to protect against irritation of the eyes, nose or throat.
- Long-term exposure: 50 µg/m³ (or 40 ppb) based on a minimum eight (8) hour average, to protect against respiratory symptoms in children with asthma.

29. The United States *Formaldehyde Standards for Composite Wood Products Act* (Title VI of the Toxic Substances Control Act) contains the following standards:

“(b) REQUIREMENT.—

“(1) IN GENERAL.—Except as provided in an applicable sell-through regulation promulgated pursuant to subsection (d), effective beginning on the date that is 180 days after the date of promulgation of those regulations, the emission standards described in paragraph (2), shall apply to hardwood plywood, medium-density

fiberboard, and particleboard sold, supplied, offered for sale, or manufactured in the United States.

(2) EMISSION STANDARDS.—The emission standards referred to in paragraph (1), based on test method ASTM E–1333–96 (2002), are as follows:

“(A) For hardwood plywood with a veneer core, 0.05 parts per million of formaldehyde.

“(B) For hardwood plywood with a composite core—

“(i) 0.08 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2012; and “(ii) 0.05 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2012.

“(C) For medium-density fiberboard—

“(i) 0.21 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2011; and

“(ii) 0.11 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2011.

“(D) For thin medium-density fiberboard—

“(i) 0.21 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2012; and

“(ii) 0.13 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2012.

“(E) For particleboard—

“(i) 0.18 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2011; and

“(ii) 0.09 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2011.”

30. In 2007, CARB adopted regulations designed to reduce public exposure to formaldehyde.

The regulations established two (2) phases of emissions standards that composite laminate flooring products must meet: an initial Phase 1 limiting formaldehyde emissions to 0.21 ppm⁵ becoming effective on January 1, 2009, and on January 1, 2011 a Phase 2 limit of no more than

⁵ ppm means parts per million.

0.11 ppm of formaldehyde. These regulations require that any composite wood contained in flooring products be certified as having been manufactured using compliant wood products throughout their production.

31. The CARB Standards now provide for more than 0.05 ppm for hardwood and between 0.09 and 0.13 for particleboard and medium-density fibreboard.

32. The International Agency for Research on Cancer (“IARC”) has classified formaldehyde as a known human carcinogen, the United States Environmental Protection Agency has classified it as a probable human carcinogen and the United States Department of Health and Human Services has determined that formaldehyde is a “known human carcinogen based on human and animal inhalation studies”. At low levels, it dissipates shortly after installation and poses no serious health risks. At levels that exceed 0.1 ppm, however, formaldehyde exposure can cause burning sensations in the eyes, nose, and throat, coughing, wheezing, nausea and skin irritation. Extended formaldehyde exposure is linked to increased risk of certain types of cancers, such as nasal cancer and leukemia.

33. Formaldehyde is on the list of top twenty (20) causes of cancer that deserve more investigation along with lead, diesel exhaust and chloroform.

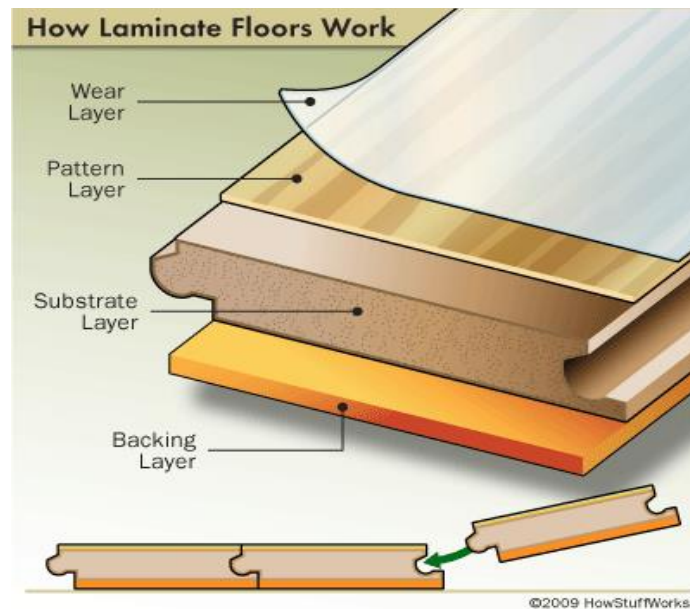
34. The Science Lab Material Data Safety Sheet for Formaldehyde classified formaldehyde as a suspected carcinogen for humans, with the ACGIH⁶ as a probable carcinogen for humans.

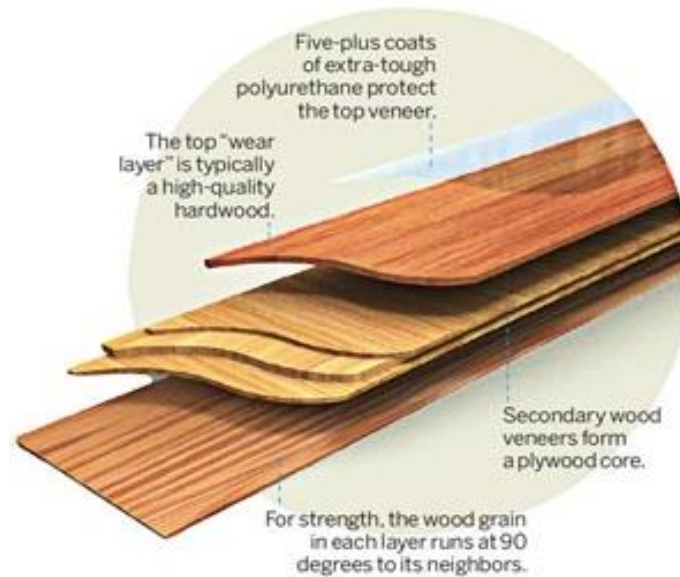
⁶ ACGIH is the American Conference of Governmental Industrial Hygienists.

35. In Canada, the presence of formaldehyde in the air poses a particularly large risk as Canadians spend close to ninety (90) percent of our time indoors, absorbing unpleasant substances. The bedroom is a particular problem because when we sleep, our immune systems are in relaxed mode and less likely to protect us against environmental toxins such as formaldehyde.

II. Lumber Liquidators' Laminate Flooring

36. Laminate flooring is a multi-layer synthetic flooring product that is fused together during the lamination process. Laminate flooring mimics real wood flooring with a photographic layer found under a clear protective top layer. Laminate flooring is a cheaper alternative to hardwood flooring and is easy to install and to maintain.





37. Lumber Liquidators supervises, controls, manufactures, and packages Laminate Flooring Products in several mills in China, which it then packages, labels, distributes, markets, promotes, advertises, sells, installs, and warrants in Canada. Lumber Liquidators' Chinese-produced Laminate Flooring contains and emits formaldehyde at levels that exceed CARB emissions standards for laminate flooring.

38. Each of the laminate products was manufactured using a common or standard design, formula, or process, which Lumber Liquidators controlled.

39. Lumber Liquidators knew that its Chinese-produced laminate emits formaldehyde at levels that exceed – and sometimes grossly exceed – the CARB regulations.

40. After the dangerous formaldehyde levels in Lumber Liquidators' products was featured on the news program "60 Minutes", Lumber Liquidators responded by posting a letter from its Chairman on its website stating:

Let me make one thing very clear – our laminate products, all of our products, are 100% safe.

...

We comply with applicable regulations regarding our products, including California standards for formaldehyde emissions for composite wood products – the most stringent rules in the country. We take our commitment to safety even further by employing compliance personnel around the world and utilizing the latest in cutting-edge technology to provide our customers with top quality and high value flooring.

41. Lumber Liquidators’ purchase orders come with a warranty stating that the customer’s purchased flooring products comply “with all applicable laws, codes and regulations,” and “bear all warnings, labels, and markings required by applicable laws and regulations.”

42. Instead of warning consumers about formaldehyde emissions from its Composite Laminate Flooring Products, Lumber Liquidators’ states on their website that it has Third Party Certifiers approve its Flooring Products to meet CARB standards.

Regulations and Lumber Liquidators’ Compliance

The California Air Reform Bill (CARB) requires that products containing Hardwood Plywood Veneer Core (HWP-VC), Hardwood Plywood Composite Core (HWP-CC), Particleboard and MDF be tested for emissions and products not meeting the strict standards for emissions may not be sold in California.

The Environmental Protection Agency has drafted national standards for formaldehyde emissions in composite wood products that are similar to those of California. Those standards have not yet been enacted.

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 also provides ongoing oversight to validate the manufacturers’ compliance and manufacturers must be

periodically recertified. Though it currently applies- only to products sold in California, Lumber Liquidators made a decision to require all of our suppliers to comply with CARB regardless of whether we intended to sell the products in California or any other state/country. In addition, our suppliers manufacture their products in accordance with the European standard which has stricter guidelines than the California. In -addition to the CARB requirements, Lumber Liquidators regularly selects one or more 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 compliance.

43. Lumber Liquidators materially misrepresents the safety of its Composite Laminate Flooring Products by advertising and representing that they are compliant with the CARB Standards when in fact they are not.

44. Lumber Liquidators materially omits any disclosure to consumers that they are buying Composite Laminate Flooring Products with unlawfully high levels of formaldehyde.

45. The Defendants continue to distribute and sell their Composite Laminate Flooring Products to customers in Ontario and throughout the country with the representation that they are CARB compliant, even though they are not.

46. At all times relevant to this action, Lumber Liquidators has knowingly misrepresented its composite laminate flooring products as CARB compliant and knowingly failed to disclose to consumers the high levels of formaldehyde emissions from its Composite Laminate Flooring Products.

III. Lumber Liquidators – Exposed

47. From October 2013 through November 2014, three (3) accredited laboratories tested the formaldehyde emissions of laminate wood flooring from several nationwide retail outlets, including Home Depot, Lowe's, and Lumber Liquidators. While flooring sold at Home Depot and Lowe's passed the testing without issue, most samples of the Chinese-made Laminate Flooring Products from Lumber Liquidators failed to meet CARB's formaldehyde emissions standards.

48. The average level of formaldehyde emissions in Lumber Liquidators' Chinese-made Laminate Flooring was six (6) to seven (7) times in excess of CARB's standards, and some samples were close to twenty (20) times in excess of the standards. The list of products that have been tested and found to exceed the CARB Standards for formaldehyde emissions is set forth hereinafter:

- a) 8 mm Bristol County Cherry Laminate Flooring;
- b) 8 mm Dream Home Nirvana French Oak Laminate Flooring;
- c) 8 mm Dream Home Nirvana Royal Mahogany Laminate Flooring;
- d) 12 mm Dream Home Ispiri Americas Mission Olive Laminate Flooring;
- e) 12 mm Dream Home Ispiri Chimney Tops Smoked Oak Laminate Flooring;
- f) 12 mm Dream Home Ispiri Poplar Forest Oak Laminate Flooring;
- g) 12 mm Dream Home Kensington Manor Antique Bamboo Laminate Flooring;
- h) 12 mm Dream Home Kensington Manor Cape Doctor Laminate Flooring;
- i) 12 mm Dream Home Kensington Manor Fumed African Ironwood Laminate Flooring;
- j) 12 mm Dream Home Kensington Manor Glacier Peak Poplar Laminate Flooring;
- k) 12 mm Dream Home Kensington Manor Golden Teak Laminate Flooring;
- l) 12 mm Dream Home Kensington Manor Handscraped Imperial Teak Laminate Flooring (SKU 10029601);

- m) 12 mm Dream Home Kensington Manor Handscraped Imperial Teak Laminate Flooring (SKU 10023958);
- n) 12 mm Dream Home Kensington Manor Handscraped Summer Retreat Teak Laminate Flooring;
- o) 12 mm Dream Home Kensington Manor Sandy Hills Hickory Laminate Flooring;
- p) 12 mm Dream Home Kensington Manor Tanzanian Wenge Laminate Flooring;
- q) 12 mm Dream Home Kensington Manor Warm Springs Chestnut Laminate Flooring;
- r) 12 mm Dream Home St. James African Mahogany Laminate Flooring;
- s) 12 mm Dream Home St. James Blacksburg Barn Board Laminate Flooring;
- t) 12 mm Dream Home St. James Brazilian Koa Laminate Flooring;
- u) 12 mm Dream Home St. James Chimney Rock Charcoal Laminate Flooring;
- v) 12 mm Dream Home St. James Cumberland Mountain Oak Laminate Flooring;
- w) 12 mm Dream Home St. James Golden Acacia Laminate Flooring;
- x) 12 mm Dream Home St. James Nantucket Beech Laminate Flooring;
- y) 12 mm Dream Home St. James Oceanside Plank Bamboo Laminate Flooring;
- z) 12 mm Dream Home St. James Vintner's Reserve Laminate Flooring;
and
- aa) 15 mm Dream Home St. James Sky Lakes Pine Laminate Flooring.

49. On March 1, 2015, the television news program "60 Minutes" aired an exposé on Lumber Liquidators; specifically about the fact that the Flooring Products were found to contain exceedingly high levels of formaldehyde, which were deliberately mislabelled as being CARB compliant.

50. In 2014 and early 2015, 60 Minutes conducted an independent investigation into Lumber Liquidators' Chinese-made Flooring Products. Investigators purchased 31 boxes of various Chinese-made flooring products from various Lumber Liquidators stores around the country and sent the sample for testing at two (2) certified labs. Of the 31 samples, only one (1) was

compliant with CARB formaldehyde emissions standards. “Some were more than 13 times over the California limit.”

51. 60 Minutes also sent undercover investigators to three different mills in China that manufacture laminates and composite flooring on behalf of Lumber Liquidators. 60 Minutes reported that:

Employees at the mills openly admitted that they use core boards with higher levels of formaldehyde to make Lumber Liquidators laminates, saving the company ten (10) to fifteen (15) percent on the price. At all three (3) mills, they also admitted to falsely labelling the Laminate Flooring as being CARB compliant.

52. In addition, it was admitted that the Laminate Flooring is not CARB compliant and that they could make it compliant, but that it would be expensive.

53. High formaldehyde content resins and glues are less expensive and dry more quickly than low formaldehyde glues and resins. By using high formaldehyde content resins and glues rather than low formaldehyde content resins and glues, Lumber Liquidators’ Chinese manufacturers are able to produce composite laminate flooring more quickly and at higher volumes thereby reducing costs and generating greater profits for Lumber Liquidators.

54. Lumber Liquidators has continually sold these products to Canadian customers at its retail stores in Ontario, through its retail website, and through its toll-free customer service telephone line.

55. Lumber Liquidators does not give consumers any warnings about the unlawful and unhealthful formaldehyde levels in its Composite Laminate Flooring Products. Instead, it represents on its website, warranties, and on its products that its Flooring Products comply with

strict formaldehyde standards. Lumber Liquidators has made false and misleading statements that its Flooring Products comply with CARB formaldehyde standards and the even more stringent European formaldehyde standards. Lumber Liquidators' website falsely states, "we not only comply with laws-we exceed them." "Highest Quality Flooring. GUARANTEED".

IV. Lumber Liquidators' Representations

56. The Defendants invokes the CARB Standards and represent to consumers on its website, on its product, and in various other materials that its Composite Laminate Flooring Products meet the CARB Standards for formaldehyde emissions and are therefore safe. The Defendants unequivocally state that though CARB only legally governs products sold in in California, Lumber Liquidators ensures that its Composite Laminate Flooring Products meet the CARB Standard no matter where they are sold.

57. Lumber Liquidators makes the following representations on its website:

Health and Safety

Lumber Liquidators' products are safe and meet the highest quality and environmental standards. That's why we sell these products, why we use them in our own homes and why we are a market leader. As consumers ourselves, we are committed to delivering safe and long-lasting products to our customers.

Our commitment begins with meeting the most stringent environmental and quality standards. These standards ensure that our products are safe, meet all government requirements, and are approved by government-approved third-party validators.

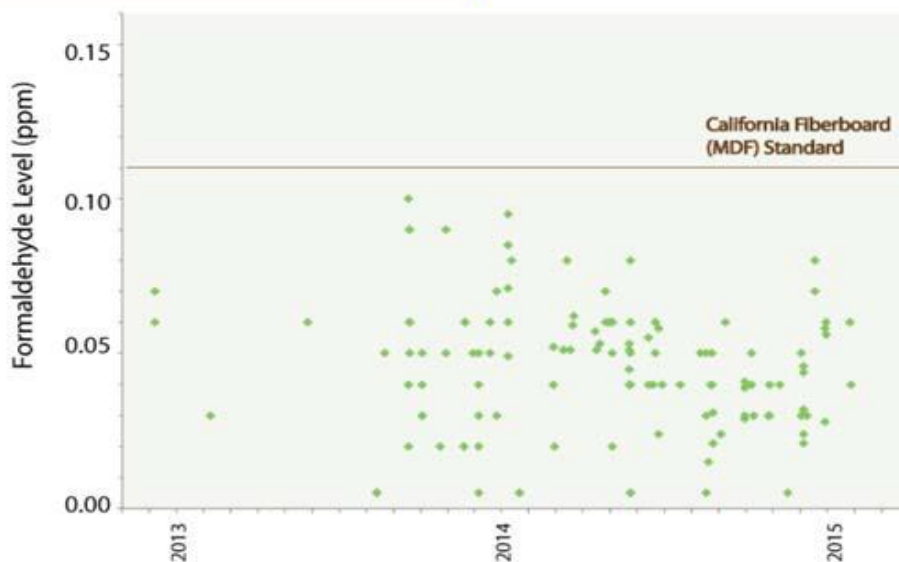
This commitment to quality and safety extends to everywhere we do business. We require that all of our suppliers comply with California's advanced environmental requirements, even for products sold outside California.

Does Lumber Liquidators comply with CARB regulations?

Yes. To comply with the CARB standards, applicable laminate and engineered flooring and accessories sold by Lumber Liquidators are purchased from manufacturers whose production methods have been certified by a Third Party Certifier approved by the State of California to meet the CARB standards; or from suppliers who source composite wood raw materials only from certified manufacturers. 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 composite wood products conform to the specified emission limits. The Third Party Certifier also provides ongoing oversight to validate the manufacturers' compliance and manufacturers must be periodically re-certified..

Our Emission Results

Fiberboard Core Testing



Source: Independent laboratory tests of fiberboard cores used to produce laminate flooring

Lumber Liquidators tests the formaldehyde emissions levels from fiberboard cores used in its products in accordance with approved California regulations. As the chart shows, the test results over the last three years fall well below the accepted California standard for fiberboard (MDF) cores.

...

What else is Lumber Liquidators doing to ensure health & safety?

Though CARB applies only to products sold in California, Lumber Liquidators requires all suppliers delivering products containing composite wood components to comply with CARB requirements regardless of whether we intend to sell the products in California or any other state or country. Although the U.S. Environmental Protection Agency has drafted national standards for composite wood products that

are similar to the CARB standard, those standards have not yet been enacted. Until that time, Lumber Liquidators believes that applying the rigorous California standard throughout North America is the right thing to do.

58. In response to the 60 Minutes episode and the independent testing described above, Lumber Liquidators enhanced their representations to include the following:

Recently some questions have been raised about our laminate products. Let me make one thing very clear – our laminate products, all of our products, are 100% safe.

59. In addition, Lumber Liquidators is now providing consumers with what they term an “Air Quality Test Kit” at no cost to “measure the total level of formaldehyde in the home”; however, this kit is of little practical use under the circumstances as it would only measure what has been seeped out as of yet and the very nature of the Design Defect is that the formaldehyde seeps out slowly over time. In other words, the Flooring Products’ formaldehyde problem is long-term and this kit is going to falsely reassure consumers that their Flooring Products are safe.

60. Despite its control in the manufacturing of the laminate, and its knowledge of the formaldehyde levels, Lumber Liquidators failed to warn consumers. In fact, Lumber Liquidators represents on its website, warranties, and products that their Laminate Flooring Products comply with CARB’s standards, as well as the more stringent European formaldehyde standards.

V. Lumber Liquidators’ Knowledge of the Formaldehyde Levels in its Flooring

61. In contrast to its express representations to consumers that the Composite Laminate Flooring Products it sells are sourced from mills whose production methods are CARB compliant, that the products conform to CARB’s specified formaldehyde emission limits, and

the measures Lumber Liquidators takes to ensure full compliance by its suppliers – all to increase its sales, in its Annual Reports, Lumber Liquidators acknowledge that they do not control its suppliers' compliance with the law:

“While our suppliers agree to operate in compliance with applicable laws and regulations . . . *we do not control our suppliers*. Accordingly, despite continued investment in quality control, we cannot guarantee that they comply with such laws and regulations . . . [which] could lead to litigation and recalls, which could damage our reputation and our brands, increase our costs, and otherwise hurt our business.”

62. Despite their stated concern that its suppliers might not comply with environmental regulations, the Defendants have failed to sufficiently exercise their quality control over those suppliers to ensure that they comply with CARB standards and the Defendants continue to sell to Canadian consumers and to consumers throughout the country, Composite Laminate Flooring Products that the Defendants obtain from those suppliers.

63. Lumber Liquidators claims compliance with CARB standards, but at the same time acknowledges that it cannot assure its suppliers' compliance with such regulations. Ultimately, Lumber Liquidators fails to exercise adequate quality assurance during the manufacturing process. Despite this, it continues to sell Chinese-produced Flooring Products while misrepresenting and omitting these material facts to consumers.

64. In addition, in its Annual Reports, Lumber Liquidators admits that “[i]ncreased hardwood costs could harm our results of operations”, which includes the costs to manufacture flooring products without harmful levels of formaldehyde.

65. On June 20, 2013, the news website Seeking Alpha published a lengthy article based on a letter to the California Air Resources Board. The letter and article documented high formaldehyde levels in Chinese-made composite laminate flooring sold by Lumber Liquidators, as shown by tests a certified laboratory conducted on three samples of Chinese-made composite laminate flooring sold by Lumber Liquidators. Enclosed with the letter were the actual test results showing that the tested product, Mayflower 5/16" x 5" Bund Birch Engineered, emits three and one-half times the maximum formaldehyde emission level. Nonetheless, the letter notes that Lumber Liquidators labeled the product as being CARB compliant.

66. On November 26, 2013, a United States federal securities class action lawsuit was filed against Lumber Liquidators based on the company's decline in stock price following the Seeking Alpha article and its allegations concerning the formaldehyde emissions from the Defendants' Composite Laminate Flooring Products. The case is currently pending. Lumber Liquidators was made aware during the pendency of this and other lawsuits of complaints and allegations that its Composite Laminate Flooring Products from China emit formaldehyde gas at levels that violate the CARB Standards.

67. Through this case, Lumber Liquidators acknowledged that some of their flooring emits formaldehyde gas in excess of the CARB emission standards.

68. Despite this knowledge, the Defendants failed to reformulate their Flooring Products so that they are CARB compliant and failed to disclose to consumers that these products emit high levels of formaldehyde. Instead, the Defendants have sold and continue to sell their Composite Laminate Flooring Products in Ontario and throughout the country that exceed the CARB limit while continually misrepresenting to consumers that those products are CARB compliant.

69. As a result of Lumber Liquidators' conduct and in light of the health risks posed by formaldehyde, the Plaintiff and the Class have been placed in an untenable position: either pay to remove their Flooring Products and have new flooring installed, or leave it installed in their homes or other structures and subject themselves to an increased risk of adverse health consequences, including cancer.

VI. Summative Remarks

70. Plaintiff and the Class Members that she seeks to represent suffered economic damages by purchasing the Flooring Products; they did not receive the benefit of the bargain, suffered out-of-pocket loss in replacing the Flooring Products (including labour in removal and re-installment and actual replacement flooring products), and suffered actual and/or increased risk of adverse health problems and are therefore entitled to damages.

71. The Defendants placed their Flooring Products into the stream of commerce in Canada with the intention and expectation that customers, such as the Plaintiff and Class Members, would purchase the Flooring Products based on their representations.

72. The Defendants knew or ought to have known that purchasers of their Flooring Products would not be reasonably able to protect their interests, that such purchasers would be unable to receive a substantial benefit from the Flooring Products and that customers would be relying on the Defendants' representations to their detriment.

73. The Plaintiff and members of the Class would not have purchased the Flooring Products or would not have paid the high price had they known that the Flooring Products were prone to

unavoidable and unhealthful formaldehyde exposure. When the Plaintiff and members of the Class purchased the Flooring Products, they relied on their reasonable expectation that they did not pose an unavoidable health risk. Indeed, the safety of the Flooring Products is all the more material given their installation inside the home, especially in the bedroom. Lumber Liquidators neither disclosed material facts to consumers at the time of purchase, nor anytime thereafter and continue at present to deny the Design Defect.

THE REPRESENTATIVE PLAINTIFF

74. On October 13, 2012, the Plaintiff purchased a batch of 2003 Dream Home St James Vintner's reserve 12 mm flooring from Lumber Liquidators at 1925 Provincial Road in Windsor, Ontario for a total cost of \$1,532.30 including taxes.

75. Over the next few weeks, the Plaintiff and her husband installed the Flooring Product into their residence using the installation kit which had been included in the purchase price and they expended approximately 65 hours on the task.

76. On or about January of 2013, both the Plaintiff and her husband began experiencing respiratory issues and irritation in the eyes, ears, nose and throat as well as severe sinus issues.

77. Soon thereafter, while the Plaintiff's husband was experiencing severe breathing difficulties, she took him to a nearby clinic where he was informed that his lung had collapsed and that he must get to the hospital immediately.

78. The Plaintiff drove her husband to the emergency ward of the hospital, Hôtel-Dieu Grace at 1030 Ouellette Avenue in Windsor, Ontario, where he was admitted and remained for four (4) days due to complications.

79. At the time of this medical incident, the Plaintiff's husband was 35 years old and the doctors said that the occurrence was atypical of his age and fitness level.

80. In addition, in or around October of 2014, the Plaintiff's hot water tank failed and leaked onto a substantial part of the Flooring Products, which was ruined therefrom.

81. The Plaintiff tore the damaged Flooring Product out the following day.

82. The Plaintiff's healthy dog became very ill and had to be euthanized shortly thereafter.

83. On or about December 2, 2014, the Plaintiff purchased a second batch of Flooring Product to replace the one which had been damaged, and it had to be shipped to the same Lumber Liquidators location from the location in Cambridge, Ontario for a total cost of \$213.80 including taxes and including the shipping cost of \$100.00 plus taxes.

84. The shipment of Flooring arrived approximately one (1) month later and the Plaintiff had it installed professionally for approximately \$150.00 taxes included.

85. In the beginning of March 2015, the Plaintiff's neighbour called to inform them of the 60 Minutes news program that had aired on television informing the public of the dangerous levels of formaldehyde in Lumber Liquidators' Chinese-made Laminate Flooring Products.

86. The Plaintiff subsequently searched online where she located a list of all of the Laminate Flooring Products that allegedly contained the dangerous levels of formaldehyde and she was distraught to discover that her Flooring Product was in fact on this list.

87. At no time was the Plaintiff made aware of the dangerous levels of formaldehyde contained in the Flooring Product and, to the contrary, she was under the impression that she was purchasing a Flooring Product that was CARB Compliant for formaldehyde as was indicated on the product packaging.

88. Had the Defendants properly described the Flooring Products, the Plaintiff would have not have purchased the Flooring Products.

89. In order to minimize the damage to their health, the Plaintiff and her husband have been keeping their blinds closed to avoid direct sunlight, they have been keeping the heat level inside their home lower, and they have been opening their windows when possible.

90. The Plaintiff considers that this problem poses a threat to her safety and security because formaldehyde is dangerous to human health in various ways.

91. The Plaintiff has recently discovered that the Flooring Products are plagued by a serious and pervasive Design Defect and that the Defendants have been engaging in widespread deception and misrepresentations with regard thereto and that several class actions have been instituted in the United States due to this same issue.

92. The Plaintiff has suffered damages as a result of purchasing the Flooring Products. In addition to the damages as outlined above she has also endured pain, suffering, damage and inconvenience.

CAUSES OF ACTION

A. Strict Liability

93. The Defendants are strictly liable to the Plaintiff and Class Members for the reasons that follow:

- (a) The Defendants supervised, controlled, and inspected the manufacturing of and then tested, packaged, labelled, distributed, marketed, promoted, advertised, sold, installed and warranted the Flooring Products;
- (b) The Flooring Products suffer from serious manufacturing and design defects rendering them unfit for their intended use, while other Flooring Products do perform their function properly;
- (c) The Flooring Products could have been made without the Design Defect but-for the Defendants' business decisions;
- (d) Class Members were entitled to expect that the Flooring Products were not plagued by serious and pervasive manufacturing and design defects;

- (e) Class Members had no opportunity or expertise to inspect the Flooring Products for formaldehyde;
- (f) The defects inherent in the design of the Flooring Products outweigh any possible benefits of their design and such defects were material contributing causes of the injuries and losses of Class Members; and
- (g) At the time of the injury and loss to Class Members, the Flooring Products were being used for the purpose and manner for which they were intended and Class Members were not aware of the Design Defect and could not, through the exercise of reasonable care and diligence, have discovered such defects.

B. Breach of Implied Warranty of Fitness for a Particular Purpose

94. The Plaintiff and the members of the Class relied on the Defendants' representations which induced the Plaintiff and Class Members to purchase the Flooring Products.

95. There are express or implied conditions that the Flooring Products would be safe having regard to the uses to which the Flooring Products would be put, uses that were clearly known to Lumber Liquidators.

96. The Defendants were notified of the defects of the Flooring Products, but have failed to correct them to date.

97. As a direct and proximate result of Defendants' breach of the implied warranty of fitness for particular purpose, the Plaintiff and the Class Members have suffered financial loss and other damages.

C. Breach of Implied Warranty of Merchantability

98. At all times relevant hereto, applicable law imposed a duty requiring that the Flooring Products be safely fit for the ordinary purposes for which Flooring Products are used.

99. The Flooring Products were defective at the time they left the possession of Lumber Liquidators, as set forth above. Lumber Liquidators knew of this Design Defect at the time that these transactions occurred. Thus, the Flooring Products, when sold and installed and at all times thereafter, were not in merchantable condition or quality and are not fit for their ordinary intended purpose.

100. Lumber Liquidators had actual knowledge of, and received timely notice regarding the Design Defect at issue in this Statement of Claim and, notwithstanding such notice, failed and refused to offer an effective remedy.

101. The Defendants knew, or should have known, that their Flooring Products were inferior to the other Flooring Products, particularly so due to their knowledge of the Design Defect.

102. The Flooring Products are unfit, inherently unsafe for use, and the Defendants knew or should have known that they were mislabelled, that they would not pass without objection in the trade, that they were not fit for the ordinary purpose for which they were used and were unmerchantable.

103. No reasonable consumer would knowingly purchase a flooring product that is toxic, harmful, and unsafe to own or possess.

104. Consequently, the Defendants breached the implied warranty of merchantability, to wit: they failed to use safe Flooring Products.

105. Defendants were notified of the defects of the Flooring Products, but have failed to correct them.

106. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiff and Class Members have suffered financial loss and other damages, including the diminished value of their Flooring Products, the amount that they paid to have the Flooring Products installed and the amounts that they must now pay to have it removed or remedied.

D. Tort of Fraud by Concealment

107. The Defendants concealed and/or suppressed material facts concerning the content of formaldehyde in its Chinese-made Flooring Products.

108. The Defendants knew that the representations were false at the time that they were made.

109. The Flooring Products that were purchased by Class Members were, in fact, defective and unreliable as the Flooring Products were suffering from the Design Defect.

110. The Defendants had a duty to disclose the true content of formaldehyde in their Chinese-made Composite Laminate Flooring Products because it was known and/or accessible only to the Defendants, who had superior knowledge and access to the facts, and the Defendants knew it was not known to or reasonably discoverable by the Plaintiff and the Class. These omitted and concealed facts were material because they directly impact the safety of the Flooring Products. Whether composite flooring was manufactured with levels of formaldehyde that can pose significant health risks is certainly a material safety concern.

111. The Defendants actively concealed and/or suppressed these material facts, in whole or in part, to protect their profits and they did so at the expense of the Plaintiff and the Class.

112. Lumber Liquidators has still not made full and adequate disclosure and continues to defraud the Plaintiff and the Class and to conceal material information regarding the levels of formaldehyde that exist in its Chinese-made Composite Laminate Flooring Products.

113. The Plaintiff and Class Members were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. The Plaintiff's and Class Members' actions were reasonable and justified. The Defendants were in exclusive control of the material facts concerning the Flooring Products defects and such facts were not known to the public or to the Class Members.

114. In addition, Class Members relied on the Defendants' Representation in relation to the Flooring Products that they were purchasing and they purchased such Flooring Products. Said reliance was reasonable. The Plaintiff and the Class Members were without the ability to

determine the truth on their own and could only rely on the Defendants' statements and representations.

115. As a result of the concealment and/or suppression of facts, the Plaintiff and Class Members have sustained and will continue to sustain damages arising from the difference between the price that the Plaintiff and the Classes paid and the actual value that they received.

116. As a result of their reliance, the Plaintiff and Class Members have been injured in an amount to be proven at trial.

E. Tort of Civil Negligence

117. The Defendants had a positive legal duty to use reasonable care to perform their legal obligations to the Plaintiff and Class Members, including, but not limited to supervising, controlling, and inspecting the manufacturing of, and testing, packaging, labelling, distributing, marketing, promoting, advertising, selling, installing, and warranting safe and durable Flooring Products, free from the Design Defect.

118. The Defendants breached their duty of care to the Plaintiff and to the Class Members by negligently supervising, controlling, and inspecting the manufacturing of, and testing, packaging, labelling, distributing, marketing, promoting, advertising, selling, installing, and warranting the Flooring Products and by failing to ensure that they were of merchantable quality and fit for their intended purpose, free from the Design Defect. The aforesaid loss suffered by the Plaintiff and Class Members was caused by this negligence, particulars of which include, but are not limited to, the following:

- a) The Defendants failed to properly supervise, control, and inspect the Flooring Products such that, under normal usage, Class Members were exposed to unhealthful amount of formaldehyde emissions over time;
- b) The Defendants failed to adequately test the Flooring Products to ensure a proper design and to ensure proper and timely modifications to the Flooring Products to eliminate the foreseeable risks;
- c) The Defendants failed to properly market the Flooring Products such that Lumber Liquidators failed to reveal the content of formaldehyde in the Flooring Products and the associated serious health consequences;
- d) The Defendants failed to accurately, candidly, promptly and truthfully disclose the content of formaldehyde of the Flooring Products;
- e) The Defendants failed to conform with good manufacturing and distribution practices;
- f) The Defendants failed to disclose to and/or to warn Class Members that the Flooring Products were defective when knowledge of the defects became known to them;
- g) The Defendants failed to recall and to carry out the proper repairs or to replace said defective Flooring Products;

- h) The Defendants continued to sell the Flooring Products when they knew or ought to have known of the defective nature and other associated problems with said Flooring Products;
- i) The Defendants consciously accepted the risk of the Design Defect;
- j) The Defendants failed to identify, implement, and verify that proper manufacturing procedures were in place to address the formaldehyde content in the Flooring Products;
- k) The Defendants failed to modify their supervision, control, and inspection of the manufacturing of the Flooring Products and failed to test, package, label, distribute, market, promote, advertise, sell, install, and warrant the Flooring Products in a reasonable and timely manner;
- l) The Defendants failed to engage in adequate pre-market and production testing of the Flooring Products; and
- m) The Defendants continue to fail to fulfill their ongoing obligations.

119. By virtue of the acts and omissions described above, the Defendants were negligent and caused damage and posed a real and substantial risk to the health and safety of the Plaintiff and of the Class Members.

120. The loss, damages and injuries were foreseeable.

121. The Defendants' negligence proximately caused the loss, damage, injury and damages to the Plaintiff and to the Class Members.

122. By reason of the foregoing, the Plaintiff and each member of the Class are entitled to recover damages and other relief from Defendants.

F. Tort of Negligent Misrepresentation

123. The tort of negligent misrepresentation can be made out as:

- (a) There was a relationship of proximity in which failure to take reasonable care might foreseeably cause loss or harm to the Plaintiff and to the Class;
- (b) The Defendants made a Representation that was untrue, inaccurate and/or misleading;
- (c) The Defendants acted negligently in making the Representation;
- (d) The Representation were relied upon by the Plaintiff and by the Class reasonably;
and
- (e) The Plaintiff and the Class sustained damages as a result of their reliance.

124. The Defendants represented to the Plaintiff and the Class Members that the Flooring Products had acceptably low levels of formaldehyde emission and was CARB compliant when in fact it had unhealthful and dangerous levels thereof and was not CARB compliant – this Representation was untrue as set forth herein.

125. At the time that the Defendants made the misrepresentations herein alleged, they had no reasonable grounds for believing the Representation to be true, as there was ample evidence to the contrary set forth in detail above.

126. The Defendants made the Representation herein alleged with the intention of inducing Plaintiff and the Class Members to unknowingly purchase their Flooring Products.

127. The Plaintiff and the Class Members relied upon the Representation and, in reliance upon it, purchased the Flooring Products. Said reliance was reasonable.

128. Plaintiff and the Class Members were without the ability to determine the truth of these statements on their own and could only rely on the Defendants in this regard.

129. Had the Plaintiff and the Class Members known the true facts, they would either not have purchased Flooring Products or would not have paid such a high price.

130. By reason of the foregoing, Plaintiff and each member of the Class are entitled to recover damages and other relief from Defendants.

G. Breach of Implied Covenant of Good Faith and Fair Dealing

131. It is a well-established tenet of contract law that there is an implied covenant of good faith and fair dealing in every contract.

132. The Plaintiff and the Class Members entered into agreements to purchase the Flooring Products or were otherwise in contractual privity with Defendants.

133. The contracts and warranties were subject to the implied covenant that the Defendants would conduct business with the Plaintiff and the Class Members in good faith and would deal fairly with them.

134. The Defendants breached those implied covenants by selling to the Plaintiff and the Class Members Flooring Products with the Design Defect, when they knew, or should have known, that the contracts and/or warranties were unconscionable and by abusing their discretion in the performance of the contract or by intentionally subjecting the Plaintiff and the Class Members to a risk beyond that which they would have contemplated at the time of purchase as well as failing to provide for proper replacement parts and installation.

135. As a direct and proximate result of Defendants' breach of its implied covenants, the Plaintiff and the Class Members have been damaged in an amount to be determined at trial.

CAUSATION

136. The acts, omissions, wrongdoings, and breaches of legal duties and obligations of the Defendants are the direct and proximate cause of the Plaintiff's and Class Members' injuries.

137. The Plaintiff pleads that by virtue of the acts, omissions and breaches of legal obligations as described above, they are entitled to legal and/or equitable relief against the Defendants, including damages, consequential damages, specific performance, rescission, attorneys' fees, costs of suit and other relief as appropriate in the circumstances.

DAMAGES

A. Compensatory Damages (Economic Losses)

138. By reason of the acts, omissions and breaches of legal obligations of the Defendants, the Plaintiff and Class Members have suffered injury, economic loss and damages, the particulars of which include:

- (a) The purchase price [or the overpayment thereof] of the Flooring Products,
- (b) The amounts paid to have the Flooring Products installed,
- (c) Out-of-pocket expenses for repairs and replacements, including future costs of repair and replacements,
- (d) The diminished value of their Flooring Products,
- (e) Pain and suffering, stress, trouble and inconvenience; and
- (f) Other damages as described herein.

B. Punitive, Exemplary and Aggravated Damages

139. The Defendants have taken a cavalier and arbitrary attitude to its legal and moral duties to the Class Members.

140. In addition, it should be noted since the Defendants are parts of a highly-revered, multi-billion dollar corporation, it is imperative to avoid any perception of evading the law without impunity. Should the Defendants only be required to disgorge monies which should not have been retained and/or withheld, such a finding would be tantamount to an encouragement to other businesses to deceive their customers as well. Punitive, aggravated and exemplary damages are necessary in the case at hand to be material in order to have a deterrent effect on other corporations.

141. At all material times, the conduct of the Defendants as set forth was malicious, deliberate and oppressive towards their customers and the Defendants conducted themselves in a wilful, wanton and reckless manner.

STATUTORY REMEDIES

142. The Defendants are in breach of the *Sale of Goods Act*, the *Consumer Protection Act*⁷, the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Canada Consumer Product Safety Act*, and/or other similar/equivalent legislation.

143. The Plaintiff pleads and relies upon trade legislation and common law, as it exists in this jurisdiction and upon Consumer Protection Legislation and the equivalent/similar legislation and common law in the other Canadian provinces and territories. The Class Members have

⁷ While the *Consumer Protection Act* applies only in Ontario, other Canadian provinces have similar consumer protection legislation including, but not limited to: the *Consumer Protection Act*, CQLR c P-40.1 at ss. 41, 215, 216, 218, 219, 220(a), 221(g), 228, 239, 253, 270 & 272; the *Fair Trading Act*, RSA 2000, c F-2 at ss. 5-7, 7.2, 7.3, 9 & 13; the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 at ss. 4-9, 171 & 172; *The Business Practices Act*, CCSM, c B120 at ss. 2-9 & 23; the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1 and the *Trade Practices Act*, RSNL 1990, c T-7 at ss. 5-7 & 14; the *Business Practices Act*, RSPEI 1988, c B-7 at ss. 2-4; the *Consumer Protection Act*, SS 1996, c C-30.1 at ss. 5-8, 14, 16 & 23-25; the *Consumer Product Warranty and Liability Act*, SNB 1978, c 18.1 at ss. 10-13, 15, 23 & 27; the *Consumer Protection Act*, RSNS 1989, c 92 at ss. 26-29.

suffered injury, economic loss and damages caused by or materially-contributed to by the Defendants' inappropriate and unfair business practices, which includes the Defendants being in breach of applicable consumer protection laws.

A. Breach of the *Sale of Goods Act*

144. At all times relevant to this Claim, the Plaintiff and Class Members were “buyer[s]” within the meaning of that term as defined in s.1 of the *Sale of Goods Act*.

145. At all times relevant to this action, the Defendants were “seller[s]” within the meaning of that term as defined in s.1 of the *Sale of Goods Act*.

146. There were implied conditions as to merchantable quality or fitness pursuant to s. 16 of the *Sale of Goods Act* as well as an implied condition with regards to defects as the Design Defect could not have been revealed upon examination.

147. The Defendants were aware that the customers purchased the Flooring Products based on their representations and based on their marketing and advertising and there is therefore an implied warranty or condition that the goods were as presented.

148. The Defendants committed a fault or wrongful act by breaching the implied condition as to quality or fitness for a particular purpose. By placing into the stream of commerce a product that was unfit for the purpose for which it was marketed and/or advertised, as per s. 16 of the *Sale of Goods Act*, the Defendants are liable. The Class is entitled to maintain an action for breach of warranty under ss. 52 & 53 of the *Sale of Goods Act*.

B. Breach of the *Consumer Protection Act*

149. At all times relevant to this action, many of the Class Members were “consumer[s]” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

150. At all times relevant to this action, the Defendants were “supplier[s]” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

151. The transactions by which many of the Class Members purchased the Flooring Products were “consumer transaction[s]” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

152. The Defendants have engaged in an unfair practice by making a Representation to the Class Members which was and is “false, misleading or deceptive” and/or “unconscionable” within the meaning of ss. 14, 15 and 17 of the *Consumer Protection Act* as follows:

- (a) Representing that the Flooring Products have performance characteristics, benefits and/or qualities, which they do not have;
- (b) Representing that the Flooring Products are of a particular standard or quality which they are not; and
- (c) Using exaggeration, innuendo and ambiguity as to a material fact or failing to state a material fact regarding the Design Defect as such use or failure deceives or tends to deceive.

153. The Representation was and is unconscionable because *inter alia* the Defendants know or ought to know that consumers are likely to rely, to their detriment, on Defendants' misleading statements as to reliability and durability of the Flooring Products.

154. The Representation was and is false, misleading, deceptive and/or unconscionable such that it constituted an unfair practice which induced the Plaintiff and the Class to purchase the Flooring Products containing Flooring Products as a result of which they are entitled to damages pursuant to the *Consumer Protection Act*.

155. The Plaintiff and the Class Members relied on the Representation.

156. The reliance upon the Representation by the Plaintiff and Class Members is established by his or her purchase of the Flooring Products. Had the Plaintiff and Class Members known that the Representation was false and misleading they would either not have purchased the Flooring Products, or would not have paid such a high price.

C. Breach of the *Competition Act*

157. At all times relevant to this action, the Defendants' supervision, control, and inspection of the manufacturing of the Flooring Products as well as the testing, packaging, labelling, distribution, marketing, promotion, advertising, sale, installation, and warranty business was a "business" and the Flooring Products were "product[s]" within the meaning of that term as defined in s.2 of the *Competition Act*.

158. The Defendants' acts are in breach of s. 52 of Part VI of the *Competition Act*, were and are unlawful and render the Defendants jointly and severally liable to pay damages and costs of investigation pursuant to s. 36 of the *Competition Act*.

159. The Defendants made the Representation to the public and in so doing breached s.52 of the *Competition Act* because the Representation:

- (a) Was made for the purpose of promoting, directly or indirectly, the use of a product or for the purpose of promoting, directly or indirectly, the business interests of the Defendants;
- (b) Was made knowingly or recklessly;
- (c) Was made to the public;
- (d) Was false and misleading in a material respect; and
- (e) Stated a level of Flooring Products performance and quality that was false and not based on adequate and proper testing.

160. The Plaintiff and Class Members relied upon the Representation by buying the Flooring Products and suffered damages and loss.

161. Pursuant to s. 36 of the *Competition Act*, the Defendants are liable to pay the damages which resulted from the breach of s. 52.

162. Pursuant to s. 36 of the *Competition Act*, the Plaintiff and Class Members are entitled to recover their full costs of investigation and substantial indemnity costs paid in accordance with the *Competition Act*.

163. The Plaintiff and Class Members are also entitled to recover as damages or costs, in accordance with the *Competition Act*, the costs of administering the plan to distribute the recovery in this action and the costs to determine the damages of each Class Member.

D. Breach of the *Consumer Packaging and Labelling Act*

164. At all times relevant to this action, the Defendants were “dealer[s]” within the meaning of that terms as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

165. At all times relevant to this action, the Flooring Products were “prepackaged product[s]” within the meaning of that terms as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

166. At all times relevant to this action, the Representation, including those relating to formaldehyde emissions that was made to the public on the Flooring Product Packaging, were “label[s]” within the meaning of that terms as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

167. At all times relevant to this action, the Representation that was made to the public on the Defendants’ website and otherwise, were “advertise[ments]” within the meaning of that terms as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

168. The Defendants packaged, labelled, marketed, promoted, advertised, and sold the Flooring Products with “false or misleading representations” under s. 7 of the *Consumer Packaging and Labelling Act* in that they used descriptions and/or illustrations of the type, quality, performance, and/or function that may reasonably be regarded as likely to deceive the Plaintiff and Class Members.

169. In addition, the Defendants sold and/or advertised the Flooring Products which were packaged and/or labelled in such a manner that the Plaintiff and Class Members might, and were, reasonably be misled with respect to the quality of the product.

170. As such, the Defendants breached ss. 7 and 9 of the *Consumer Packaging and Labelling Act* and are liable to pay damages as a result under s. 20.

E. Breach of the *Canada Consumer Product Safety Act*

171. At all times relevant to this action, the Defendants “sell” and “advertise” “article[s]” and “consumer product[s]” within the meaning of that terms as defined in s. 2 of the *Canada Consumer Product Safety Act*.

172. At all times relevant to this action, the Flooring Products were “article[s]” and “consumer product[s]” within the meaning of that terms as defined in s. 2 of the *Canada Consumer Product Safety Act*.

173. At all times relevant to this action, the Representation, including those relating to formaldehyde emissions that was made to the public on the Flooring Product Packaging and on

the Defendants' websites, were "advertisement[s]" within the meaning of that terms as defined in s. 2 of the *Canada Consumer Product Safety Act*.

174. The Defendants knowingly manufactured, imported, advertised and/or sold the Flooring Products which are a danger to human health or safety under s. 7 (a) and s. 8 (a) of the *Canada Consumer Product Safety Act*.

175. The Defendants also packaged and/or labelled the Flooring Products in a false, misleading or deceptive manner that can reasonably be expected to create an erroneous impression regarding the fact that it is not a danger to human health or safety and with regards to its certification as CARB Compliant under s. 9 of the *Canada Consumer Product Safety Act*.

176. As such, the Defendants breached ss. 6, 7, 8, 9 and 10 of the *Canada Consumer Product Safety Act* and are liable to pay damages as a result under s. 41.

WAIVER OF TORT, UNJUST ENRICHMENT AND CONSTRUCTIVE TRUST

177. The Plaintiff pleads and relies on the doctrine of waiver of tort and states that the Defendants' conduct, including the alleged breaches of any of the *Sale of Goods Act*, the *Consumer Protection Act*, the *Competition Act*, the *Consumer Packaging and Labelling Act*, or the *Canada Consumer Product Safety Act* constitutes wrongful conduct which can be waived in favour of an election to receive restitutionary or other equitable remedies.

178. The Plaintiff reserves the right to elect at the Trial of the Common Issues to waive the legal wrong and to have damages assessed in an amount equal to the gross revenues earned by the Defendants or the net income received by the Defendants or a percent of the sale of the

Flooring Products as a result of the Defendants' unfair practices and false representations which resulted in revenues and profit for the Defendants.

179. Further, the Defendants have been unjustly enriched as a result of the revenues generated from the sale of the Engines and as such, *inter alia*, that:

(a) The Defendants have obtained an enrichment through:

- i. Revenues and profits from the sale of the Flooring Products;
- ii. The saving of costs of recalling the Flooring Products; and
- iii. The saving of costs of replacing the Flooring Products with properly designed and manufactured flooring products.

(b) The Plaintiff and other Class Members have suffered a corresponding deprivation; and

(c) The benefit obtained by the Defendants and the corresponding detriment experienced by the Plaintiff and Class Members has occurred without juristic reason. Since the monies that were received by the Defendants resulted from the Defendants' wrongful acts, there is and can be no juridical reason justifying the Defendants' retaining any portion of such money paid.

180. Further, or in the alternative, the Defendants are constituted as constructive trustees in favour of the Class Members for all of the monies received because, among other reasons:

- (a) The Defendants were unjustly enriched by receipt of the monies paid for the Flooring Products;
- (b) The Class Members suffered a corresponding deprivation by purchasing the Flooring Products;
- (c) The monies were acquired in such circumstances that the Defendants may not in good conscience retain them;
- (d) Equity, justice and good conscience require the imposition of a constructive trust;
- (e) The integrity of the market would be undermined if the court did not impose a constructive trust; and
- (f) There are no factors that would render the imposition of a constructive trust unjust.

181. Further, or in the alternative, the Plaintiff claim an accounting and disgorgement of the benefits which accrued to the Defendants.

COMMON ISSUES

182. Common questions of law and fact exist for the Class Members and predominate over any questions affecting individual members of the Class. The common questions of law and fact include:

- (a) Are the Flooring Products defective, non-merchantable, and/or do they emit high levels of formaldehyde in excess of CARB compliancy?
- (b) Did the Defendants negligently perform their duties to properly supervise, control, and inspect the manufacturing of, and then test, package, label, distribute, market, promote, advertise, sell, install and warrant the Flooring Products?
- (c) Are the Defendants strictly liable for the damages suffered by Class Members?
- (d) Did the Defendants impliedly warrant the Flooring Products for fitness for a particular purpose?
- (e) Did the Defendants impliedly warrant the Flooring Products for merchantability?
- (f) Did the Defendants breach their express and/or implied warranties?
- (g) Did the Defendants commit the tort of fraud by concealment when they concealed and/or suppressed material facts concerning the formaldehyde emissions of the Flooring Products?
- (h) Did the Defendants misrepresent or fail to adequately disclose to customers the true defective nature of the Flooring Products?
- (i) Do the Defendants owe the Class members as duty to use reasonable care?
- (j) Did the Defendants act negligently in failing to use reasonable care to perform its legal obligations?

- (k) Did the Defendants intend or foresee that the Plaintiff or other Class Members would purchase the Flooring Products based on their representations?
- (l) Did the Defendants' negligence proximately cause loss or injury and damages?
- (m) Did the Defendants breach their implied covenant of good faith and fair dealing?
- (n) Did the Defendants engage in unfair, false, misleading, and/or deceptive acts or practices in their supervision, control, and manufacturing of, as well as testing, packaging, labelling, distribution, marketing, promotion, advertising, sale, installation, and warranty of the Flooring Products?
- (o) Are the Defendants responsible for all related costs (including, but not limited to, payment of the purchase price [or the overpayment for thereof], the installation cost of the Flooring Products, the out-of-pocket expenses for repairs and replacements for the Flooring Products, including future costs of repair, the diminished value of the Flooring Products and pain and suffering, stress, trouble and inconvenience to Class Members as a result of the problems associated with the Flooring Products?
- (p) Did the Defendants' acts or practices breach the *Sale of Goods Act*, the *Consumer Protection Act*, the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Canada Consumer Product Safety Act*, and/or other similar/equivalent legislation?
- (q) Were the Defendants unjustly enriched?

- (r) Have Class Members been damaged by the Defendants' conduct and, if so, what is the proper measure of such damages?
- (s) Should an injunctive remedy be ordered to prohibit the Defendants from continuing to perpetrate their unfair practices?
- (t) Are the Defendants responsible to pay punitive, aggravated, and/or exemplary damages to Class Members and in what amount?

EFFICACY OF CLASS PROCEEDINGS

183. The members of the proposed Class potentially number in the thousands. Because of this, joinder into one action is impractical and unmanageable. Conversely, continuing with the Class Members' claim by way of a class proceeding is both practical and manageable.

184. Given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Defendants. Even if the Class Members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of the Defendants would increase delay and expense to all parties and to the court system.

185. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory and inconsistent judgments on questions of fact and law that are similar or related to all members of the class.

186. In these circumstances, a class action is the only appropriate procedure for all of the members of the class to effectively pursue their respective rights and have access to justice.

187. The Plaintiff has the capacity and interest to fairly and fully protect and represent the interests of the proposed Class and has given the mandate to her counsel to obtain all relevant information with respect to the present action and intends to keep informed of all developments. In addition, class counsel is qualified to prosecute complex class actions.

LEGISLATION

188. The Plaintiff pleads and relies on the *Class Proceedings Act*, the *Sale of Goods Act*, the *Consumer Protection Act*, the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Canada Consumer Product Safety Act*, and other Consumer Protection Legislation.

JURISDICTION AND FORUM

Real and Substantial Connection with Ontario

189. There is a real and substantial connection between the subject matter of this action and the province of Ontario because:

- (a) Defendant Lumber Liquidators (Canada), Inc. has its head office in Ontario;
 - (b) The Defendants engage in business with residents of Ontario;
 - (c) The Defendants derive substantial revenue from carrying on business in Ontario;
- and

(d) The damages of Class Members were sustained in Ontario.

190. The Plaintiff proposes that this action be tried in the City of Ottawa, in the Province of Ontario as a proceeding under the *Class Proceedings Act*.

THE DEFENDANTS' JOINT AND SEVERAL LIABILITY

191. The Plaintiff pleads that by virtue of the acts and omissions described above, the Defendants are liable in damages to herself and to the Class Members and that each Defendant is responsible for the acts and omissions of the other Defendants for the following reasons:

- (a) Each was the agent of the other;
- (b) Each companies' business was operated so that it was inextricably interwoven with the business of the other as set out above;
- (c) Each company entered into a common advertising and business plan to supervise, control, and inspect the manufacturing of, and then test, package, label, distribute, market, promote, advertise, sell, install and warrant the Flooring Products;
- (d) Each owed a duty of care to the other and to each Class Member by virtue of the common business plan to supervise, control, and inspect the manufacturing of, and then test, package, label, distribute, market, promote, advertise, sell, install and warrant the Flooring Products; and

- (e) The Defendants intended that their businesses be run as one global business organization.

SERVICE OUTSIDE ONTARIO

192. The originating process herein may be served outside Ontario, without court order, pursuant to subparagraphs (a), (c), (g), (h) and (p) of Rule 17.02 of the *Rules of Civil Procedure*. Specifically, the originating process herein may be served without court order outside Ontario, in that the claim is:

- (a) In respect of personal property situated in Ontario (rule 17.02(a));
- (b) For the interpretation and enforcement of a contract or other instrument in respect of personal property in Ontario (rule 17.02 (c));
- (c) In respect of a tort committed in Ontario (rule 17.02(g));
- (d) In respect of damages sustained in Ontario arising from a tort or breach of contract wherever committed (rule 17.02(h));
- (e) The claim is authorized by statute, the *Sale of Goods Act*, the *Competition Act* and the *Consumer Protection Act* (rule 17.02(n)); and
- (f) Against a person carrying on business in Ontario (rule 17. 02(p)).

Date: April 1, 2015

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Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED IN OTTAWA
Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

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