

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

JIM and LINDA HEILMAN,)
individually, ANDREW and)
JOANNA BAILEY, individually and)
on behalf of their minor child)
(JACK), and on behalf of all others)
similarly situated,)

CIVIL ACTION NO:
CV-15
JURY DEMAND

Plaintiffs,)

vs.)

LUMBER LIQUIDATORS, INC., a)
Delaware Corporation, LUMBER)
LIQUIDATORS LEASING, LLC, a)
Delaware Limited Liability)
Corporation, LUMBER)
LIQUIDATORS HOLDINGS, INC.,)
a Delaware Corporation, LUMBER)
LIQUIDATORS SERVICES, LLC, a)
Delaware Limited Liability)
Corporation,)

Defendants.)

CLASS ACTION COMPLAINT

Plaintiffs, Jim and Linda Heilman, individually, Andrew and Joanna Bailey,
individually and on behalf of their minor son, Jack Bailey, and on behalf of
themselves and all other similarly situated nationwide, hereby file this Class Action

Complaint against Defendants, Lumber Liquidators, Inc., a Delaware Corporation (“Lumber Liquidators”), Lumber Liquidators Leasing, LLC, a Delaware Corporation (“Lumber Liquidators Leasing”), Lumber Liquidators Holdings, Inc., a Delaware Corporation (“Lumber Liquidators Holdings”) and Lumber Liquidators Services, LLC, a Delaware Corporation (“Lumber Liquidators Services”)(collectively referred to as “Defendants”) for the purchase of Chinese wood veneer flooring containing toxic levels of formaldehyde, a known carcinogen. In support thereof, Plaintiffs state as follows:

PARTIES

1. Plaintiffs, Jim and Linda Heilman, are residents of Harvest, Alabama who, on July 23, 2013, purchased from Morning Starr Bamboo Flooring, a Lumber Liquidators store, in Huntsville, Alabama, flooring manufactured in China that contains toxic levels of formaldehyde, a known carcinogen (hereinafter referred to as the “Toxic Laminate Flooring”).

2. Plaintiff, Andrew Bailey, is a resident of Stockton, Alabama who, on February 17, 2012, purchased from a Lumber Liquidators store, 1541 E I 65, Mobile, Alabama 36606, approximately 1,000 square feet of Saint James African Mahogany laminate wood veneer flooring manufactured in China that contains toxic levels of formaldehyde, a known carcinogen (hereinafter referred to as the “Toxic Laminate

Flooring”).

3. Defendant, Lumber Liquidators, Inc. is a Delaware Corporation with its principal place of business at 3000 John Deere Road, Toano, Virginia 23168. Lumber Liquidators, Inc. is licensed and doing business in the State of Alabama.

4. 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.

5. Defendant, Lumber Liquidators Holdings, LLC is a D Delaware Corporation with its principal place of business at 3000 John Deere Road, Toano, Virginia 23168.

6. 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.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to Class Action Fairness Act, 28 U.S.C. §1332(d), because a member of Plaintiff class is a citizen of Alabama and Defendants are citizens of Delaware or Virginia, there are certainly 100 or more class members, and the aggregate amount in controversy will exceed \$5,000,000.

8. The Court has personal jurisdiction over Defendants because a substantial portion of the alleged wrongdoing occurred in Alabama. Defendants also have sufficient minimum contacts with Alabama and have otherwise intentionally availed themselves of the markets in Alabama through the promotion, marketing, and sale of products sufficient to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

9. Venue is proper in the Northern District of Alabama pursuant to 28 U.S.C. §1391(b)(2) and (3) because a substantial part of the events or omissions giving rise to the claims at issue in this Complaint arose in this District, a substantial part of the property that is the subject of this action is situated in this District, and Defendants are subject to the Court's personal jurisdiction with respect to this action.

FACTUAL ALLEGATIONS

10. Defendants have manufactured, labeled and sold, during the Class Period, the Toxic Laminate Flooring as being compliant with "CARB regulations in the State of California." CARB is an acronym for California Air Resources Board, an entity which has promulgated safety for the emission of formaldehyde for products sold in Alabama.

11. Defendants' laminate wood flooring is not what it purports to be. The laminated floor wood contains a dangerous level of formaldehyde gas which exceeds

the “CARB regulations in the State of California” and the standards promulgated in the Toxic Substances Control Act, 15 U.C.S. 2601 *et seq.* (Title VI - Formaldehyde Standards of Composite Wood Products) and is hazardous to human health.

12. Formaldehyde gas can cause cancer, asthma, chronic respiratory irritation, visionary problems, fatigue, nausea and other ailments including skin and breathing problems. The risk of these health problems is significantly greater for children.

13. Formaldehyde is the sort of toxic substance to which people may be exposed without knowing they are at risk. Day after day, week after week, month after month, Plaintiffs live in their home/office, an enclosed place, where the flooring is emitting toxic cancer causing fumes.

14. As such, the Toxic Wood Flooring Defendants sold Plaintiffs and other customers poses great health risks.

15. Defendants’ marketing materials for the Toxic Laminate Flooring contain false and misleading information relating to compliance with Alabama standards and designed to increase sales of the products at issue.

16. Defendants deceptively manufactured, labeled, and sold the Toxic Laminate Flooring. The Toxic Laminate Flooring, having no monetary value, is worthless.

17. Plaintiffs and the Class have been damaged by Defendants' dangerous and deceptive Toxic Laminate Flooring. Plaintiff and the Class are entitled to a return of the full purchase price paid for Toxic Laminate Flooring and other damages to be proven at trial.

CLASS ACTION ALLEGATIONS

18. Plaintiffs bring this action as a class action pursuant to the Federal Rule of Civil Procedure 23 on behalf of the following class:

All persons who purchased from Defendants laminated wood flooring in the United States that contains formaldehyde emissions that exceed the CARB California emissions standards, in the last three years, or depending upon discovery, an earlier date (the "Class").

Collectively, all these persons will be referred to as "Plaintiffs" or "Plaintiff Class."

19. Excluded from the Plaintiff Class are:

- A. Defendants and any entities in which Defendants has a controlling interest.
- B. Any entities in which Defendants' officers, directors, or employees are employed and any of the legal representatives, heirs, successors or assigns of Defendants;
- C. The Judge to whom this case is assigned and any member of the Judge's immediate family.
- D. All persons or entities that properly execute and timely file a request for exclusion from the Class.

20. Plaintiffs reserve the right to modify the Class definitions after discovery and at any time up to and including trial.

21. The action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of the Federal Rules of Civil Procedure 23(a)(1-4) and (b)(1).

22. The Class is so numerous that the individual joinder of all its members, in this or any action, is impracticable. The exact number or identification of the Class members is presently unknown to Plaintiffs, but it is believed that Class members number at least in the thousands. The identity of Class members is ascertainable. Class members' number may be informed by the pendency of this Class action by a combination of direct mail and public notice, or other means.

23. Common question of fact and law exist as to all members of the Class, which predominate over questions affecting only individual members of the Class. These include, but are not limited to, the following:

- a. Whether Defendants engaged in unlawful, unfair or deceptive business practices by failing to properly label its products it sold to consumers;
- b. Whether the products at issue were mislabeled as a matter of law and violated California CARB emissions standards and Formaldehyde Standards of Composite Wood Products in the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*
- c. Whether Defendants made unlawful and misleading toxicity representations and warranties with respect to its products sold to consumers;

- d. Whether Defendants violated the Alabama Deceptive Trade Practices Act (Code of Alabama §8-19-5);
- e. Whether Defendants breached its implied warranty of merchantability;
- f. Whether Defendants breached its expressed warranty;
- g. Whether Defendants were negligent in its labeling and advertising of the Toxic Laminate Flooring;
- h. Whether Defendants unlawfully sold the Toxic Laminate Flooring in violation of the laws of Alabama;
- i. Whether Defendants' unlawful, unfair and deceptive practices harmed Plaintiff and the Class;
- j. Whether Plaintiff and the Class have been damaged by the unlawful actions of the Defendants and the amount of damages to the Class;
- k. Whether Defendants were unjustly enriched by its deceptive practices;
- l. Whether punitive damages should be awarded; and
- m. Whether Defendants should be enjoined from continuing the conduct complained of herein.

24. Plaintiffs' claims are typical of the claims of the members of each Class because Plaintiffs bought Defendants' Toxic Laminate Flooring during the Class Period. Plaintiffs are asserting the same rights, making the same claims, and seeking the same relief for themselves and for all other class members. Defendants' unlawful,

unfair, and/or fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff and each Class Member sustained similar injuries arising out of Defendants' conduct in violation of Alabama law.

25. The injuries of each member of each Class were caused directly by Defendants' wrongful conduct. The factual underpinning of Defendants' misconduct is common to all Class members of each class and represents a common thread of misconduct resulting in injury to all members of each Class. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of each member of the Class and are based on the same legal theories.

26. Plaintiffs are adequate representatives of the Plaintiff Class because Plaintiffs are a member of the Plaintiff Class and Plaintiffs' interests do not conflict with the interests of the members of the Class that Plaintiffs seek to represent. Plaintiffs are represented by experienced and able counsel who have litigated numerous class actions, and Plaintiffs' counsel intends to prosecute this action vigorously for the benefit of the entire Plaintiff Class. Plaintiffs and Plaintiffs' counsel can fairly and adequately protect the interests of the members of the Plaintiff Class.

27. The class action is the best available method for the efficient

adjudication of this litigation because individual litigation of the Plaintiff Class claims would be impractical and individual litigation would be unduly burdensome to the courts. Individual litigation has the potential to result in inconsistent or contradictory judgments. A class action in this case presents fewer management problems and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. As the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Class treatment of common questions of law and fact would also be superior to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the Court and the litigants, and will promote consistency and efficiency of adjudication.

CAUSES OF ACTION

FIRST CAUSE OF ACTION (Violation of Alabama's Deceptive Trade Practices Act) Ala. Stat. §8-19-5

28. Plaintiffs re-allege and incorporate herein by reference Paragraph 1-27 above.
29. Defendants' conduct constitutes unlawful deceptive and unconscionable

trade practices. Defendants' conduct was consumer-oriented and this conduct had broad impact on consumers at large. Defendants engaged in false, misleading, and unlawful advertising, marketing and labeling of Defendants' Toxic Laminate Flooring. Defendants' manufacture, distribution and sale of Defendants' Toxic Laminate Flooring were similarly unlawful.

30. Defendants unlawfully sold Defendants' Toxic Laminate Flooring in Alabama during the Class Period.

31. As fully alleged above, by advertising, marketing, distributing and selling mislabeled Toxic Laminate Flooring to Plaintiffs and other members of the Class who purchased Defendants' Toxic Laminate Flooring in Alabama, Defendants engaged in, and continue to engage in, unlawful deceptive and unconscionable trade practices.

32. Defendants' misleading marketing, advertising, packaging and labeling of Defendants' Toxic Laminae Flooring was likely to deceive reasonable consumers.

33. Plaintiffs and other members of the Class who purchased Defendants' Toxic Laminate Flooring in Alabama were deceived.

34. Defendants have engaged in unlawful deceptive and unconscionable trade practices.

35. Plaintiffs and other members of the Class who purchased Defendants'

toxic Laminate Flooring in Alabama were injured by Defendants' unlawful deceptive and unconscionable trade practices.

36. Defendants sold to Plaintiffs and the members of the Class who purchased Defendants' Toxic Laminate Flooring in Alabama, a product that had no economic value. Defendants' violation of Ala. Stat. §8-19-5 remains ongoing.

37. As a direct and proximate cause of Defendants' violation of Ala. Stat. §8-19-5, Plaintiffs and the members of the Class who purchased Defendants' Toxic Laminate Flooring in Alabama were injured when they paid for these illegal and worthless products. Plaintiffs and the members of the Class who purchased Defendants' Toxic Laminate Flooring in Alabama have been damaged in an amount to be determined at trial.

38. As a result of Defendants' unlawful deceptive and unconscionable trade practices, Plaintiffs and the members of the Class who purchased Defendants' Toxic Laminate Flooring in Alabama, pursuant to Ala. Stat. §8-19-5, are entitled to damages and such other others and judgments which may be necessary to disgorge Defendants' ill-gotten gains and to restore to Plaintiffs and the members of the Class who purchased Defendants' Toxic Laminate Flooring in Alabama any money paid for Defendants' Toxic Laminate Flooring.

39. The conduct described above constitutes unfair or deceptive trade

practices predominately and substantially affecting the conduct of trade or commerce throughout the United States in violation of the Alabama Deceptive Trade Practice Act, Ala. Stat. §8-19-5, and other similar state statutes prohibiting unfair and deceptive acts and practices (collectively "ADTPA").

40. The Defendants' deceptive trade practices are the proximate cause of the Plaintiffs and the members of the class having suffered damages in an amount to be proven at trial.

41. Defendants' conduct complained of herein renders it liable under the other states' ADTPAs for damages for the consequences of such conduct.

42. Defendants' action were willful, wanton, malicious, and in total disregard for the rights of the Plaintiffs and Class Members. Defendants knew or should have known, in light of the surrounding circumstances that their conduct in violation of states' Deceptive Trade Practices Acts would naturally and probably result in damages to Plaintiffs and Class Members. Defendants continued its wrongful conduct with malice or in reckless disregard of the consequences, from which malice may be inferred. Further, Defendants intentionally pursued its course of conduct for the purpose of causing Plaintiffs and Class Members damages. Punitive damages should be awarded to deter the actions of Defendants and others who might engage in similar action or conduct.

43. Plaintiffs and Class Members are entitled to any and all penalties and/or multipliers of damages as may be provided for in the states' ADTPAs.

44. Plaintiffs and Class Members are entitled to an injunction enjoining the Defendants from further deceptive and unfair trade practices in connection with the sale of the Mislabeled Products.

45. Plaintiffs and Class Members are entitled to an award of reasonable attorneys' fees, costs of this action, plus pre and post judgment interest may be allowed by law.

SECOND CAUSE OF ACTION
(Unjust Enrichment)

46. Plaintiffs re-allege and incorporate herein by reference Paragraphs 1-45 above.

47. As a result of Defendants' unlawful and deceptive actions described above, Defendants was enriched at the expense of Plaintiffs and the Class through the payment of the purchase price for the Toxic Laminate Flooring.

48. Under the circumstances, it would be against equity and good conscience to permit Defendants to retain the ill-gotten benefits that they received from the Plaintiffs and the Class, in light of the fact that the Toxic Laminate Flooring purchased by Plaintiffs and the Class were illegal products and were not what

Defendants represented them to be. Thus, it would be unjust and inequitable for Defendants to retain the benefit without restitution to the Plaintiffs and the Class for the monies paid to Defendants for the Toxic Laminate Flooring.

THIRD CAUSE OF ACTION
(Breach of Implied Warranty of Merchantability)

49. Plaintiffs re-allege and incorporate herein by reference Paragraphs 1-48 above.

50. Implied in the purchase of the Toxic Laminated Flooring by Plaintiffs and the Class is the warranty that the purchased products are legal and can be lawfully sold and possessed.

51. Defendants reasonably knew or should have known those Toxic Laminate Flooring were unlawful for sale pursuant to the Toxic Substance Control Act, 15 U.S.C. §2601, *et seq.*

52. When Defendants sold these products they impliedly warranted that the products were legal and could be lawfully possessed and/or sold and therefore, merchantable.

53. No reasonable consumer would knowingly purchase a product that is illegal to own or possess.

54. The purchased Toxic Laminate Flooring is unfit for the ordinary purpose

for which it was intended.

55. In fact, this Toxic Laminate Flooring is illegal, mislabeled, and economically worthless.

56. As a result, Plaintiffs and the Class were injured through their purchase of unsuitable, useless, illegal and unsellable products.

57. By reason of the foregoing, Plaintiffs and the Class were damaged in the amount they paid for Toxic Laminate Flooring.

FOURTH CAUSE OF ACTION
(Breach of Express Warranty)

58. Plaintiffs re-allege and incorporate herein by reference Paragraphs 1-57 above.

59. Defendants' representations of fact and/or promises on the labels relating to their Toxic Laminate Flooring created express written warranties that the product would conform to Defendants' representation of fact and/or promises.

60. The Defendants' description on the labeling of their Toxic Laminate Flooring that it complied with CARB and California emissions regulations became part of the basis of the bargain, creating express written warranties that the product purchased by Plaintiffs and the other Class Members would conform to Defendants' description and specifications. The Toxic Laminate Flooring purchased by Plaintiffs

did not so conform.

61. Defendants provided warranties that its Toxic Laminate Flooring were labeled in compliance with state law and were not mislabeled under state law. Defendants breached these express written warranties.

62. As a result of the foregoing, Plaintiffs and the Class Members have suffered damages, in that the value of the product they purchased was less than warranted by Defendants.

63. Defendants engaged in a scheme of offering the Toxic Laminate Flooring for sale to Plaintiffs and members of the Class by way of, inter alia, false and misleading product packaging and labeling.

64. Plaintiffs and the Class were intended beneficiaries of such representations and warranties.

65. Plaintiffs asserts this cause of action for violations of Alabama law pertaining to express warranties. Plaintiffs and the Class were injured as a result of Defendants' breach of their express warranties about the Toxic Laminate Flooring. Plaintiffs and the Class are entitled to damages arising from the breach of warranty.

FIFTH CAUSE OF ACTION
(Negligence)

66. Plaintiffs re-allege and incorporate herein by reference Paragraphs 1-65

above.

67. In making representations of fact to Plaintiffs and the other Class members about their Toxic Laminate Flooring, Defendants failed to lawfully label or advertise their Toxic Laminate Flooring and violated their duties to disclose the material facts alleged above. Among the direct and proximate causes of said failure to disclose were the negligence and carelessness of Defendants.

68. Plaintiffs and the other Class members, as a direct and proximate cause of Defendants' breaches of their duties, reasonably relied upon such representations to their detriment. By reason thereof, Plaintiffs and other Class members have suffered damages.

69. As described above, Defendants' actions violated Alabama and Federal law designed to protect Plaintiffs and the Class. Defendants' illegal actions constitute negligence per se. Moreover, misbranding provisions violated by Defendants are strict liability provisions.

70. As alleged above, Plaintiffs and the Class were injured by Defendants' unlawful actions and are entitled to recover an amount to be determined at trial due to the injuries and loss they suffered as a result of Defendants' negligence.

71. Specifically, Plaintiffs Heilman and his wife have suffered continuous bouts of respiratory problems, eye problems, sever fatigue and nausea and migraine

headaches. The Heilmans have repeatedly been forced to visit their local physicians for medical help.

72. Specifically, Plaintiffs Andrew and Joanna Bailey, including their minor son, Jack, have suffered severe respiratory problems, ear and eye infections and have been forced to repeatedly seek medical assistance.

JURY DEMAND

Plaintiffs hereby demand a jury trial on all claims in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other similarly situated persons, pray for judgment against Defendants as follows:

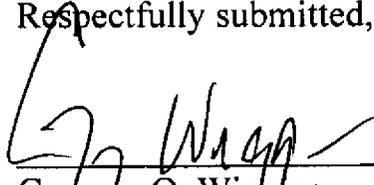
- A. An order certifying this action to be a proper class action pursuant to Federal Rule of Civil Procedure 23, establishing an appropriate Class and any Subclasses the Court deems appropriate, and finding that Plaintiffs are proper representatives of the Class;
- B. Actual and/or compensatory damages and/or the recovery of civil penalties as provided by Ala. Stat. §8-19-1 and/or an award equal to the amount by which the Defendants have been unjustly enriched;
- C. An Order awarding pre-judgment and post-judgment interest;
- D. The costs of this proceeding and attorneys' fees, as provided by Ala. Stat. §8-19-1;
- E. Punitive damages in an appropriate amount;
- F. An Order permanently enjoining Defendants from continuing their

unfair and/or deceptive conduct; and

- G. Any further compensatory, injunctive, equitable or declaratory relief including refunds as may be just and proper.

Dated: March 10, 2015

Respectfully submitted,



Gregory O. Wiggins

Dennis G. Pantazis

Daniel E. Arciniegas

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OF COUNSEL

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