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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS, FLORIDA

SHANE M. ALLEN and NICOLE J.
ALLEN, on behalf of themselves and
all others similarly situated,

CASE NO.: _____

Plaintiffs,

CLASS ACTION COMPLAINT

v.

JURY TRIAL DEMANDED

KNAUF PLASTERBOARD TIANJIN
CO., LTD., THE KNAUF GROUP,
ROTHCHILT INTERNATIONAL
LIMITED and BANNER SUPPLY CO.

2: 09-cv-54 -FTM-99DNF

Defendants.
_____ /

Plaintiffs, SHANE M. ALLEN and NICOLE J. ALLEN, bring this action on their own behalf and on behalf of a Class of persons defined below against Defendants, KNAUF PLASTERBOARD TIANJIN CO., LTD., THE KNAUF GROUP, ROTHCHILT INTERNATIONAL LIMITED and BANNER SUPPLY CO. (collectively "Defendants"), and for their complaint allege, upon information and belief and based on the investigation to date of their counsel, as follows:

INTRODUCTION

1. Plaintiffs bring this class action on behalf of themselves and all other similarly situated owners of homes in the State of Florida that were built using drywall manufactured, processed, distributed, delivered, supplied, inspected and/or sold by Defendants, Knauf Plasterboard Tianjin Co., Ltd., The Knauf Group, Rothchilt International Limited and/or Banner Supply Co.

2. The drywall manufactured, processed, distributed, delivered, supplied, inspected and/or sold by Defendants to build the homes of Plaintiffs and the Plaintiff Class

Members is defective and emits levels of sulfur, methane and/or other volatile organic compounds that cause corrosion of air-conditioner and refrigerator coils, copper tubing, electrical wiring, computer wiring, and other household items, as well as create noxious, "rotten egg-like" odors. Defendants' drywall was inherently defective and not suitable for its intended use.

JURISDICTION AND VENUE

3. Plaintiffs hereby incorporate by reference each of the preceding allegations as though fully set forth herein.

4. This action is within the original jurisdiction of this Court by virtue of 28 U.S.C. §1332(d)(2) and the Class Action Fairness Act. Plaintiffs and Defendants are citizens of different states and the amount in controversy of this Class action exceeds five million dollars (\$5,000,000.00), exclusive of interest and costs.

5. Venue for this cause is proper in the Middle District of Florida, pursuant to and in accordance with 28 U.S.C. §1391.

THE PARTIES

6. Plaintiffs, SHANE ALLEN and NICOLE J. ALLEN, are residents of Lee County, Florida and own a home located at 3281 Midship Drive, North Fort Myers, Florida. Plaintiffs' home was built by Meritage Homes in September 2006 using Defendants' defective drywall.

7. Upon information and belief, Defendant, KNAUF PLASTERBOARD TIANJIN CO., LTD., is an international corporation organized under the laws of China with its principal place of business located at North Yinhe Bridge, East Jingjin Road, Beichen District, Tianjin, 300400 P.R.C.

8. Upon information and belief, Defendant, THE KNAUF GROUP, is an international corporation organized under the laws of Germany with its principal place of business located at Ridham Dock, Kemsley, Sittingbourne, Kent ME9 8SR, UK.

9. Upon information and belief, Defendant, ROTHCHILT INTERNATIONAL LIMITED, is an international corporation organized under the laws of China with its principal place of business located at N-510 Chia Hsin Bld., Annex 96 Chung Shan N. Rd. Sec. 2, Taipei, Taiwan R.O.C.

10. Upon information and belief, Defendant, BANNER SUPPLY CO., is a Florida corporation with its principal place of business located at 7195 N.W. 30th Street, Miami, Florida 33122.

11. Upon information and belief, Defendant, KNAUF PLASTERBOARD TIANJIN, CO. LTD., is a wholly owned subsidiary of Defendant, THE KNAUF GROUP.

GENERAL ALLEGATIONS

12. Defendants negligently manufactured, processed, distributed, delivered, supplied, inspected and/or sold defective drywall, which was unreasonably dangerous in its normal use in that the drywall caused corrosion to air-conditioning and refrigerator units, electrical wires and copper tubes, and caused allergic reactions, coughing, sinus and throat infection, eye irritation, breathing hazards, and other health concerns.

13. Defendants' drywall was made with waste material from scrubbers on coal-fired power plants, also called "fly ash." These materials can leak into the air and emit one of several sulfur compounds including sulfur dioxide and hydrogen sulfide.

14. When combined with moisture in the air, these sulfur compounds create sulfuric acid. Sulfuric acid has been known to dissolve solder joints, corrode coils and copper tubing – creating leaks, blackening coils and causing air conditioners and refrigerators to fail.

Sulfuric acid has also been shown to corrode copper electrical wiring. Not only does it blacken and corrode coils, it can harm metals such as chrome, brass and silver.

15. Defendants' defective drywall can not only affect air conditioners and refrigerators, but can affect and require replacement of all sorts of household items, including but not limited to microwaves, lighting fixtures, faucets and silverware.

16. In addition, the defective drywall has a noxious odor, akin to the smell of rotten eggs.

17. Upon information and belief, over 10 million square feet of Defendants' defective drywall was used in the construction of Florida homes between 2004 and 2006.

18. Defendants' actions will require Plaintiffs and the Plaintiff Class Members to remedy all defective drywall, performing extensive remedial repairs to the homes, and then repair the damaged property made visible during the performance of these repairs.

19. As a result, the Plaintiffs and the Plaintiff Class Members have suffered, and continue to suffer damages as a result of Defendants' defective drywall and the corrosive effects of the sulfur compounds. These damages include, but are not limited to, the costs of inspection, the costs and expenses necessary to replace and remove the defective drywall, adjoining components, electrical wiring, interior finishes and personal property.

20. Defendants' actions also resulted in substantial diminution in the value of Plaintiffs' and the Plaintiff Class Members' homes.

CLASS ACTION ALLEGATIONS

21. Plaintiffs bring this Class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and a Class defined as follows:

All persons who own a home in the State of Florida which was built using Defendants' drywall.

Excluded from the Class are: (a) any Judge or Magistrate presiding over this action and Members of their families; (b) Defendants and any person, firm, trust, corporation, or other entity related to or affiliated with Defendants including, without limitation, persons who are officers, directors, employees, associates or partners of Defendants; (c) all persons who properly execute and file a timely request for exclusion from the Class.

22. *Numerosity.* The Class is composed of thousands of persons geographically dispersed throughout the State of Florida and the United States, the joinder of whom in one action is impractical. The Class is ascertainable and identifiable. Membership in the Class can be determined easily. Defendants can determine the identity of all Class members from their own records.

23. *Commonality.* Questions of law and fact common to the Class exist as to all Members of the Class and predominate over any questions affecting only individual Members of the Class. These common legal and factual issues include the following:

- a. Whether Defendants manufactured and sold a defective product;
- b. Whether Defendants' conduct in manufacturing and/or distributing their drywall fell below the duty of care owed by Defendants to Plaintiffs and Members of the Plaintiff Class;
- c. Whether Defendants concealed adverse information from Plaintiffs and the Plaintiff Class Members their drywall;
- d. Whether Plaintiffs and the Plaintiff Class Members are entitled to recover compensatory, exemplary, punitive, and/or other damages as a result of Defendants' negligent and unlawful conduct;
- e. What is the proper mechanism for assessing and awarding damages and administering relief to Class Members, including the relief to reduce the threat of future harm to Class Members;
- f. Whether Defendants failed to give adequate and timely warning of the dangers of their drywall;

- g. Whether Defendants negligently, recklessly, or intentionally concealed information about the safety of their drywall from the Plaintiffs and Plaintiff Class;
- h. Whether Defendants are strictly liable in tort for selling a defective product;
- i. Whether Defendants' conduct constitutes fraudulent concealment;
- j. Whether Defendants' conduct constitutes fraudulent misrepresentation;
- k. Whether Defendants' conduct constitutes negligent misrepresentation;
- l. Whether Defendants' conduct constitutes negligence;
- m. Whether Defendants are liable for intentional and/or negligent infliction of emotional distress;
- n. Whether Defendants breached express warranties;
- o. Whether Defendants breached implied warranties of merchantability;
- p. Whether Plaintiff Class Members have sustained irreparable harm and whether they are entitled to equitable relief including restitution and/or refund and, if so, the nature and extent of such damages;
- q. Whether the Plaintiff Class is entitled to compensatory damages and, if so, the nature and extent of such damages;
- r. Whether Defendants are liable for punitive damages and, if so, how much is necessary and appropriate to punish them for their conduct, deter others and fulfill the policies and purposes of punitive and/or exemplary damages;
- s. How any and all punitive and/or exemplary damages awarded to Plaintiff and the Plaintiff Class Members should be equitable allocated among the Plaintiff and the Plaintiff Class;
- t. Whether Defendants acted to defraud, misrepresent, and deceive the Plaintiff and/or the Plaintiff Class;
- u. Whether Defendants failed to adequately test their products;
- v. Whether Defendants failed to adequately reveal the results, if any, that were yielded by the testing of their product to the Plaintiffs, Plaintiff Class, and regulatory bodies;

w. Whether Defendants failed to adequately warn of the adverse effects of their drywall; and

x. Whether the safety defects in the Defendants' drywall constitute a design defect for purposes of strict products liability.

24. *Typicality.* Plaintiffs' claims are typical of the claims of the Plaintiff Class as all such claims arise out of Defendants uniform course of wrongful conduct complained of herein.

25. *Adequacy of Representation.* Plaintiffs will fairly and adequately protect the interests of the Members of the Class and have no interests antagonistic to those of the Class. Plaintiffs have retained counsel experienced in the prosecution of complex Class actions and construction cases.

26. *Predominance and Superiority.* This Class action is appropriate for certification because questions of law and fact common to the Members of the Class predominate over questions affecting only individual Members, and a Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all Members of the Class is impracticable. Should individual Class members be required to bring separate actions, this Court and courts throughout the State of Florida would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single Court.

27. This action is also properly certified under the provisions of F.R.C.P. 23 because:

- a. the prosecution of separate actions by individual members of the Class would create a risk of inconsistency of varying adjudications with respect to individual Class Members, thus establishing incompatible standards of conduct for Defendants; and
- b. due to the nature of the relief sought, the prosecution of separate actions by the individual members of the Class would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other members of the Class not parties to such adjudications or would substantially impair or impede the ability of such members of the Class to protect their interests.

EQUITABLE TOLLING OF THE APPLICABLE STATUTES OF LIMITATIONS

28. The running of any statute of limitations has been tolled by reason of Defendants' fraudulent concealment. Defendants, through failing to disclose a known defect to Plaintiffs or the Plaintiff Class Members, and misrepresenting their product as safe for its intended use, actively concealed from Plaintiffs and the Plaintiff Class the true risks associated with their drywall.

29. As a result of Defendants' actions, Plaintiffs and the Plaintiff Class Members could not reasonable know or have learned through reasonable diligence of the manufacturing defect and that Plaintiffs and the Plaintiff Class Members had been exposed to the risks alleged herein and that those risks were a direct and proximate result of Defendants' acts and omissions.

30. Furthermore, Defendants are estopped from relying on any statute of limitations because of their fraudulent concealment of the defective nature of their drywall. Defendants were under a duty to disclose the true character, quality, and nature of their products because this was non-public information over which the Defendants had, and continue to have, exclusive control, and because Defendants knew that this information was not available to the Plaintiffs and the Plaintiff Class Members. In addition, the Defendants are estopped from relying on any statute of limitations because of their concealment of these

facts.

31. Plaintiffs and the Plaintiff Class Members had no knowledge that Defendants were engaged in the wrongdoing alleged herein. Because of the fraudulent acts of concealment of wrongdoing by the Defendants, Plaintiffs and the Plaintiff Class Members could not have reasonably discovered the wrongdoing at any time.

FIRST CAUSE OF ACTION AGAINST THE DEFENDANTS
NEGLIGENCE AND NEGLIGENCE *PER SE*

32. Plaintiffs, SHANE M. ALLEN and NICOLE J. ALLEN, individually and on behalf of all others similarly situated, repeat, reiterate and reallege each and every allegation of this Complaint in each of the foregoing paragraphs inclusive, with the same force and effect as if fully set forth herein.

33. Defendants had a duty to exercise reasonable care in manufacturing, processing, distributing, delivering, supplying, inspecting and/or selling drywall the Defendants placed into the stream of commerce, including a duty to assure that the product would perform as intended and would not cause did not cause damage as described herein.

34. Defendants breached their duty by failing to exercise ordinary care in the manufacturing, processing, distributing, delivering, supplying, inspecting and/or selling drywall into the stream of commerce in that Defendants knew or should have know that the product was defective, did not function as intended and/or created a high risk of unreasonable, dangerous side effects, including, but not limited to, corrosion to air-conditioning and refrigerator units, wires, tubes and pipes, and caused allergic reactions, sinus and throat infection, eye irritation, breathing hazards, and other health concerns.

35. The negligence of the Defendants, their agents, servants, and/or employees, included, but was not limited to, the following acts and/or omissions:

a. manufacturing, processing, distributing, delivering, supplying,

inspecting and/or selling drywall without thoroughly testing it;

b. manufacturing, processing, distributing, delivering, supplying, inspecting and/or selling drywall without adequately testing it;

c. selling drywall without performing proper and sufficient tests to determine the dangers to its users;

d. negligently failing to adequately and correctly warn the Plaintiffs and Plaintiff Class Members and the public, of the dangers of Defendants' drywall;

e. negligently failing to recall or otherwise notify users at the earliest date that it became known that said product was, in fact, dangerous and defective;

f. negligently advertising and recommending the use of the aforesaid without sufficient knowledge as to its manufacturing defect and dangerous propensities;

g. negligently representing that Defendants' drywall was safe for its intended purpose when, in fact, its safety is questionable;

h. negligently manufacturing drywall in a manner which was dangerous to its users;

i. negligently processing drywall in a manner which was dangerous to its users;

j. negligently distributing drywall in a manner which was dangerous to its users;

k. negligently delivering drywall in a manner which was dangerous to its users;

l. concealing information concerning reports of adverse effects from the Plaintiff and Plaintiff Class Members while knowing that Defendants drywall were unsafe, dangerous and non-conforming with accepted industry standards; and

m. improperly concealing and/or misrepresenting information from the Plaintiff and Plaintiff Class Members and/or the public, concerning the severity of risks and dangers of Defendants' drywall and/or the manufacturing defect.

36. Defendants were negligent in the manufacturing, processing, distributing, delivering, supplying, inspecting and/or selling of Defendants' drywall in that they:

a. failed to use due care in manufacturing their drywall so as to avoid the aforementioned risks when the drywall was used for its intended purpose;

b. failing to conduct adequate testing to determine the safety of their

drywall; and

c. failing to warn Plaintiffs and Plaintiff Class Members, prior to actively encouraging the sale of their drywall either directly or indirectly, orally or in writing, about the defective nature of the product; and were otherwise negligent.

37. Upon information and belief, despite the fact that Defendants knew or should have known that their drywall caused unreasonably dangerous side effects due to its manufacturing defect, Defendants continued to manufacture, process, distribute, deliver, supply and/or sell drywall to the Plaintiffs, the Plaintiff Class Members and/or the consuming public.

38. Defendants knew or should have known that consumers such as Plaintiffs and the Plaintiff Class Members would foreseeably suffer damage and injury, both physical and economic, and/or be at an increased risk of suffering damage and injury as a result of Defendants' failure to exercise ordinary care, as well as Defendants' negligent manufacturing process, as set forth herein.

39. Defendants' actions and/or inactions, as set forth herein, by virtue of violating statutes, ordinances and/or rules and/or regulations, constitutes negligence per se.

40. Defendants knew or should have known that homeowners such as the Plaintiff would foreseeably suffer injury, and/or be at increased risk of suffering injury, including personal injuries and financial harm, as a result of Defendants' failure to exercise ordinary care, as well as Defendants' negligent manufacturing process, as set forth above.

41. Defendants' negligence was the proximate cause of Plaintiffs' and Plaintiff Class Members' damages, injuries, harm and economic loss which they suffered and will continue to suffer.

42. By reason of the foregoing, Plaintiffs and the Plaintiff Class Members experienced and/or are at risk of experiencing serious and dangerous side effects, as well as

have incurred financial damage and injury.

43. As a result of the foregoing acts and omissions, Plaintiffs and the Plaintiff Class Members require and/or will require extensive reconstruction and repairs, and will incur repair and replacement costs, repairs for appliances, medical expenses, incidental, and other related expenses. Plaintiffs and the Plaintiff Class Members are informed and believe, and further allege, that Plaintiffs and the Plaintiff Class Members will in the future be required to pay for additional repairs and/or replacement costs, and/or medical, care, attention, and services.

SECOND CAUSE OF ACTION AGAINST THE DEFENDANTS
STRICT LIABILITY

44. Plaintiffs, SHANE M. ALLEN and NICOLE J. ALLEN, individually and on behalf of all others similarly situated, repeat, reiterate and reallege each and every allegation of this Complaint in each of the foregoing paragraphs inclusive, with the same force and effect as if fully set forth herein.

45. At all times herein mentioned, Defendants manufactured, processed, distributed, delivered, supplied, inspected and/or sold drywall used in the construction of Plaintiffs' and the Plaintiff Class Members' homes.

46. Defendants' drywall was expected to, and did, reach the usual consumers, handlers, and persons coming into contact with said product without substantial change in the condition which it was manufactured, processed, distributed, delivered, supplied, inspected and/or sold by the Defendants.

47. At those times, the Defendants' drywall was in an unsafe, defective, and inherently dangerous condition which was unreasonably dangerous to homes and, in particular, Plaintiff's home and the homes of the Plaintiff Class Members.

48. Defendants' drywall were so defective in design or formulation or

manufacture that when it left the hands of the manufacturer and/or suppliers, the foreseeable risks exceeded the benefits associated with the design, formulation or manufacture of Defendants' drywall.

49. At all times herein mentioned, Defendants' drywall was in a defective condition and unsafe, and Defendants knew, had reason to know, or should have known that said product was defective and unsafe, especially when used in the form and manner as provided by Defendants.

50. Defendants knew, or should have known, that at all times herein mentioned Defendants' drywall was/is inherently dangerous and unsafe.

51. At the time of use of Defendants' drywall by Plaintiffs, Plaintiffs and members of the Plaintiff Class utilized the drywall for the purposes and manner normally intended.

52. Defendants had a duty to create a product that was not unreasonably dangerous for its normal, intended use.

53. Defendants' drywall was manufactured, processed, distributed, delivered, supplied, inspected and/or sold in a defective condition by Defendants and was unreasonably dangerous to its intended users, including Plaintiffs and members of the Plaintiff Class.

54. Defendants manufactured, processed, distributed, delivered, supplied, inspected and/or sold a defective product which created an unreasonable risk to the Plaintiffs' home and the homes of the Plaintiff Class Members as well as to the health of Plaintiffs and members of the Plaintiff Class. Defendants are, therefore, strictly liable for the injuries sustained by Plaintiffs and the Plaintiff Class Members.

55. Neither the Plaintiffs nor the members of the Plaintiff Class, acting as a

reasonably prudent person, could discover that Defendants' drywall was defective as herein mentioned or perceive its danger.

56. By reason of the foregoing, the Defendants are strictly liable in tort to the Plaintiffs and members of the Plaintiff Class for the manufacturing, processing, distributing, delivering, supplying, inspecting and/or selling of a defective product, Defendants' drywall.

57. Defendants' defective design, manufacturing defect, and inadequate warnings of the dangers associated with Defendants' drywall were acts that amount to willful, wanton, and/or reckless conduct by Defendants.

58. Said defects in Defendants' drywall were a substantial factor in causing Plaintiffs' and Plaintiff Class Members' injuries and/or placing Plaintiffs and members of the Plaintiff Class at increased risk of damage and/or harm.

59. As a direct and proximate result of the defective condition of Defendants' drywall as manufactured and sold by Defendants, Plaintiffs and members of the Plaintiff Class suffered, and will continue to suffer, damages.

60. By reason of the foregoing, Plaintiffs and the Plaintiff Class Members experienced, and/or are at risk of experiencing, serious and dangerous side effects, as well as have incurred financial damage and injury.

61. As a result of the foregoing acts and omissions, Plaintiffs and the Plaintiff Class Members require and/or will require extensive reconstruction and repairs, and will incur repair and replacement costs, repairs for appliances, medical expenses, incidental, and other related expenses. Plaintiffs and the Plaintiff Class Members are informed and believe, and further allege, that Plaintiffs and the Plaintiff Class Members will in the future be required to pay for additional repairs and/or replacement costs, and/or medical, care, attention, and services.

THIRD CAUSE OF ACTION AGAINST DEFENDANTS
BREACH OF EXPRESS WARRANTY

62. Plaintiffs, SHANE M. ALLEN and NICOLE J. ALLEN, individually and on behalf of all others similarly situated, repeat, reiterate and reallege each and every allegation of this Complaint in each of the foregoing paragraphs inclusive, with the same force and effect as if fully set forth herein.

63. Defendants expressly warranted that Defendants' drywall was safe and well accepted by homebuilders.

64. Defendants' drywall did not conform to these express representations because Defendants' defective drywall is defective and unsafe, and is associated with numerous side effects. As a direct and proximate result of the breach of said warranties, Plaintiffs and the Plaintiff Class Members suffered, and/or will continue to suffer, and/or are at an increased risk to suffer, extensive damage, economic loss, personal injuries and/or other harm.

65. Plaintiffs and the Plaintiff Class Members did rely on the express warranties of the Defendants herein.

66. The Defendants herein breached the aforesaid express warranties, as Defendants' drywall was defective.

67. Defendants expressly represented to Plaintiffs and the Plaintiff Class Members that Defendants' drywall are safe, efficacious, and fit for use for the purposes intended, that the Defendants' drywall are of merchantable quality, that Defendants' drywall did not produce any dangerous side effects, and that Defendants' drywall were adequately tested and fit for its intended use.

68. Defendants knew or should have known that the aforesaid representations and warranties are false, misleading and untrue in that Defendants' drywall are not fit for the

use intended and, in fact, produced severe and extensive damage to Plaintiffs' home and to the homes of the Plaintiff Class Members because Defendants' drywall was negligently manufactured.

69. Defendants expressly represented to Plaintiffs and the Plaintiff Class Members that Defendants' drywall are safe, efficacious, and fit for use for the purposes intended, that the Defendants' drywall are of merchantable quality, that Defendants' drywall did not produce any dangerous side effects, and that Defendants' drywall were adequately tested and fit for its intended use.

70. As a result of the foregoing acts and omissions, Plaintiffs and the Plaintiff Class Members require and/or will require extensive reconstruction and repairs, and will incur repair and replacement costs, repairs for appliances, medical expenses, incidental, and other related expenses. Plaintiffs and the Plaintiff Class Members are informed and believe, and further allege, that Plaintiffs and the Plaintiff Class Members will in the future be required to pay for additional repairs and/or replacement costs, and/or medical, care, attention, and services.

FOURTH CAUSE OF ACTION AGAINST DEFENDANTS
BREACH OF IMPLIED WARRANTY

71. Plaintiffs, SHANE M. ALLEN and NICOLE J. ALLEN, individually and on behalf of all others similarly situated, repeat, reiterate and reallege each and every allegation of this Complaint in each of the foregoing paragraphs inclusive, with the same force and effect as if fully set forth herein.

72. At all times herein, Defendants manufactured, processed, distributed, delivered, supplied, inspected and/or sold drywall.

73. At the times Defendants manufactured, processed, distributed, delivered, supplied, inspected and/or sold drywall for use in the construction of Plaintiffs' and the

Plaintiff Class Members' homes, Defendants knew of the use for which Defendants' drywall was intended and impliedly warranted the product to be of merchantable quality and fit for such use.

74. The Defendants impliedly represented and warranted to Plaintiffs and Plaintiff Class Members that Defendants drywall was safe and of merchantable quality and fit for the ordinary use for which said product was to be used.

75. Said representations and warranties aforementioned are false, misleading, and inaccurate in that Defendants' drywall are unsafe, unreasonably dangerous, improper, not merchantable quality, and defective and cause damage and injury to homeowners.

76. Plaintiffs and Plaintiff Class Members relied on said implied warranty of merchantability of fitness for a particular use and purpose.

77. Plaintiffs and Plaintiff Class Members reasonably relied upon the skill and judgment of Defendants as to whether Defendants' drywall is of merchantable quality and safe and fit for its intended use.

78. Defendants' drywall was placed into the stream of commerce by Defendants in a defective, unsafe, and inherently dangerous condition and the products and materials were expected to, and did, reach users, handlers, and persons coming into contact with said product without substantial change in the condition in which they were sold.

79. The Defendants herein breached the aforesaid implied warranties, as Defendants' drywall was not fit for its intended purposes and uses.

80. As a direct and proximate result of the breach of said warranties, Plaintiffs and the Plaintiff Class Members suffered, and/or will continue to suffer, and/or are at an increased risk to suffer, extensive damage, economic loss, personal injuries and/or other harm.

81. As a result of the foregoing acts and omissions, Plaintiffs and the Plaintiff Class Members require and/or will require extensive reconstruction and repairs, and will incur repair and replacement costs, repairs for appliances, medical expenses, incidental, and other related expenses. Plaintiffs and the Plaintiff Class Members are informed and believe, and further allege, that Plaintiffs and the Plaintiff Class Members will in the future be required to pay for additional repairs and/or replacement costs, and/or medical, care, attention, and services.

FIFTH CAUSE OF ACTION AGAINST DEFENDANTS
FRAUDULENT MISREPRESENTATION

82. Plaintiffs, SHANE M. ALLEN and NICOLE J. ALLEN, individually and on behalf of all others similarly situated, repeat, reiterate and reallege each and every allegation of this Complaint in each of the foregoing paragraphs inclusive, with the same force and effect as if fully set forth herein.

83. Defendants falsely and fraudulently represented to Plaintiffs, the Plaintiff Class Members and/or the consuming public in general that Defendants' drywall had been tested and was found to be safe and/or effective for use.

84. That representation made by Defendants was, in fact, false.

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

86. These representations were made by Defendants with the intent of defrauding and deceiving the Plaintiffs, the Plaintiff Class Members and/or the consuming public, all of which evinced reckless, willful, indifference to the health, safety and welfare of the Plaintiffs and Plaintiff Class Members herein.

87. At the time the aforesaid representations were made by the Defendants and,

at the time the Plaintiffs and Plaintiff Class Members, Defendants' drywall, the Plaintiffs and Plaintiff Class Members were unaware of the falsity of said representations and reasonably believed them to be true.

88. In reliance upon said representations, the Plaintiffs' and Plaintiff Class Members' homes were built using Defendants' drywall thereby sustaining damage and injury and/or being at an increased risk of sustaining damage and injury in the future.

89. Said Defendants knew, and were aware, or should have been aware, that Defendants' drywall had not been sufficiently tested, was defectively manufactured and/or lacked adequate and/or sufficient warnings.

90. Defendants knew, or should have known, that Defendants' drywall had a potential to, could, and would cause severe damage and injury to homeowners.

91. Defendants brought Defendants' drywall to the market and acted fraudulently, wantonly, and maliciously to the detriment of the Plaintiffs and the Plaintiff Class Members.

92. By reason of the foregoing, Plaintiffs and the Plaintiff Class Members experienced, and/or are at risk of experiencing, financial damage and injury.

93. As a result of the foregoing acts and omissions, Plaintiffs and the Plaintiff Class Members require and/or will require extensive reconstruction and repairs, and will incur repair and replacement costs, repairs for appliances, medical expenses, incidental, and other related expenses. Plaintiffs and the Plaintiff Class Members are informed and believe, and further allege, that Plaintiffs and the Plaintiff Class Members will in the future be required to pay for additional repairs and/or replacement costs, and/or medical, care, attention, and services.

SIXTH CAUSE OF ACTION AGAINST DEFENDANTS
FRAUDULENT CONCEALMENT

94. Plaintiffs, SHANE M. ALLEN and NICOLE J. ALLEN, individually and on behalf of all others similarly situated, repeat, reiterate and reallege each and every allegation of this Complaint in each of the foregoing paragraphs inclusive, with the same force and effect as if fully set forth herein.

95. At all times material hereto, Defendants misrepresented the safety of Defendants' drywall.

96. Defendants knew, or were reckless in not knowing, that its representations were false.

97. Defendants fraudulently concealed, and/or intentionally omitted, the fact that Defendants' drywall caused corrosion to air-conditioning and refrigerator units, electrical wires and copper tubes, and caused allergic reactions, coughing, sinus and throat infection, eye irritation, breathing hazards, and other health concerns.

98. Defendants fraudulently concealed, and/or intentionally omitted, the fact that Defendants were aware of complaints regarding defects in Defendants' drywall and did nothing.

99. Defendants fraudulently concealed and/or intentionally omitted the fact that Defendants' drywall was negligently manufactured.

100. Defendants were under a duty to disclose to Plaintiffs and the Plaintiff Class Members, the aforementioned as it pertains to Defendants' drywall.

101. Defendants' concealment and omissions of material facts concerning, *inter alia*, the negligent manufacture of Defendants' drywall was made purposefully, willfully, wantonly, and/or recklessly to mislead Plaintiffs, the Plaintiff Class Members and/or the consuming public into reliance and continued use of Defendants' drywall.

102. Defendants' concealment and omissions of material facts concerning, *inter alia*, the negligent manufacture of Defendants' drywall was made purposefully, willfully, wantonly, and/or recklessly to mislead Plaintiffs, the Plaintiff Class Members and/or the consuming public into reliance and continued use of Defendants' drywall.

103. Defendants knew that Plaintiffs and the Plaintiff Class Members and/or the consuming public, had no way to determine the truth behind Defendants' concealment and omissions and that these included material omissions of facts surrounding Defendants' drywall as alleged herein.

104. Plaintiffs, the Plaintiff Class Members and/or the public, reasonably relied on facts revealed which negligently, fraudulently and/or purposefully did not include facts that were concealed and/or omitted by Defendants.

105. As a result of the foregoing acts and omissions, Plaintiffs and the Plaintiff Class Members require and/or will require extensive reconstruction and repairs, and will incur repair and replacement costs, repairs for appliances, medical expenses, incidental, and other related expenses. Plaintiffs and the Plaintiff Class Members are informed and believe, and further allege, that Plaintiffs and the Plaintiff Class Members will in the future be required to pay for additional repairs and/or replacement costs, and/or medical, care, attention, and services.

SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS
VIOLATION OF THE FLORIDA DECEPTIVE AND
UNFAIR TRADE PRACTICES ACT

106. Plaintiffs, SHANE M. ALLEN and NICOLE J. ALLEN, individually and on behalf of all others similarly situated, repeat, reiterate and reallege each and every allegation of this Complaint in each of the foregoing paragraphs inclusive, with the same force and effect as if fully set forth herein.

107. This action is brought to secure redress for the unlawful, deceptive and unfair trade practices, perpetrated by Defendants.

108. Plaintiffs and all Plaintiff Class Members are “consumers” and the subject transactions are “trade or commerce” as defined by Florida Statute §501.203(8).

109. Defendants' actions and/or omissions as described herein violate Florida Statutes, §501.201, *et. seq.*, which was enacted to protect the consuming public from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.

110. Specifically, Defendants misrepresented and omitted material information regarding Defendants' drywall by failing to disclose known risks.

111. Defendants' misrepresentations and concealment of material facts constitute unconscionable commercial practices, deception, fraud, false pretenses, misrepresentation, and/or the knowing concealment, suppression, or omission of materials facts with the intent that others rely on such concealment, suppression, or omission in connection with the sale and use of Defendants' drywall in violation of Florida Statutes, §501.201, *et. seq.*

112. Defendants violated Florida Statutes, §501.201, *et. seq.*, by knowingly and falsely representing that Defendants' drywall was fit to be used for the purpose for which they were intended, when Defendants knew it was deceptive, dangerous, ineffective, unsafe and by other acts alleged herein.

113. Defendants engaged in the deceptive acts and practices alleged herein in order to sell Defendants' drywall to the public, including Plaintiffs and the Plaintiff Class Members.

114. Said acts and practices on the part of Defendant were and are illegal and unlawful pursuant to Florida Statute §501.204.

115. As a direct and proximate result of Defendants' violations of Florida Statutes, §501.201, *et. seq.*, Plaintiffs and the Plaintiff Class Members have suffered damages. Plaintiff and the Plaintiff Class Members are entitled to compensatory damages, equitable and declaratory relief, punitive damages, costs and reasonable attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and Plaintiff Class Members demand judgment against the Defendants, jointly and severally, as follows:

- a. An Order certifying the Class, appointing Shane M. Allen and Nicole J. Allen as Class Representatives and appointing Parker Waichman Alonso LLP and Morgan & Morgan, P.A. as counsel to the Class;
- b. Equitable, injunctive, and declaratory relief;
- c. Damages in an amount to be determined at trial, but in an amount exceeding twenty-five thousand dollars;
- d. Pre-judgment and post-judgment interest at the maximum rate allowable at law;
- e. Treble, exemplary, and/or punitive damages in an amount to be determined at trial;
- f. The costs and disbursements incurred by Plaintiff and Plaintiff Class Members in connection with this action, including reasonable attorneys' fees;
- g. All statutory damages;
- h. Disgorgement of Defendants' profits from the sale of drywall;
- i. Reimbursement for all costs and expenses incurred in the repair of any purchase price paid, including, but not limited to, insurance co-payments, interest on these amounts from the date of purchase, attorneys' fees and costs, non-pecuniary damages, as well as any other legal or equitable relief to which Plaintiffs may be entitled;
- j. Such other and further relief under all applicable state and federal law and any other relief the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs, Shane M. Allen and Nicole J. Allen, individually and on behalf of the

Plaintiff Class Members, hereby demand a trial by jury as to all issues so triable.

DATED: January 29, 2009

By: 

Jordan L. Chaikin

Florida Bar Number 0878421

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Facsimile: (239) 433-6836

Email: sweinstein@forthepeople.com

Attorneys for Plaintiffs

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

SHANE M. ALLEN and NICOLE J. ALLEN, on behalf of themselves and all others similarly situated

(b) County of Residence of First Listed Plaintiff LEE
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Parker Waichman Alonso, LLP. - 27399 Riverview Center Blvd.,
Suite 106 - Bonita Springs, Florida 34134

DEFENDANTS

KNAUF PLASTERBOARD TIANJIN CO., LTD., THE KNAUF GROUP and ROTHCHILT INTERNATIONAL LIMITED and

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input checked="" type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(p)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN

- (Place an "X" in One Box Only)
- 1 Original Proceeding
 - 2 Removed from State Court
 - 3 Remanded from Appellate Court
 - 4 Reinstated or Reopened
 - 5 Transferred from another district (specify)
 - 6 Multidistrict Litigation
 - 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 1332, F.R.C.P. 23

Brief description of cause:
DEFECTIVE DRYWALL

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 5,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE 1/29/09 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____