

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____

JORDAN BURRUS and RICHARD MENNINE,
individually, and on Behalf of All Others Similarly
Situated,

Plaintiffs,

vs.

COMPLAINT – CLASS ACTION

L&W SUPPLY CORP., a Delaware Corporation, and
KNAUF PLASTERBOARD (TIANJIN) Co. Ltd., a
Chinese Corporation,

Defendants.
_____ /

CLASS ACTION COMPLAINT

COME NOW Plaintiffs, JORDAN BURRUS and RICHARD MENNINE, individually, and on behalf of all others similarly situated, by and through by and through their undersigned counsel, and sue KNAUF PLASTERBOARD (TIANJIN) Co. Ltd. (“Knauf”), a Chinese Corporation, and L&W SUPPLY CORP. (“L&W”), a Delaware Corporation, and state as follows:

GENERAL ALLEGATIONS

Parties, Jurisdiction and Venue

1. Plaintiffs, JORDAN BURRUS and RICHARD MENNINE, bring this lawsuit on behalf of themselves and all other persons similarly situated as themselves, for all individuals who purchased residential real estate from January 22, 2005 through the present date (the “class period”), containing plasterboard or drywall manufactured by Defendant, Knauf (“Chinese

drywall”), which drywall contains or emits noxious or harmful contents, specifically including sulphur and/or sulphur compounds.

2. Plaintiffs, JORDAN BURRUS and RICHARD MENNINE, at all times material hereto, have been citizens of the State of Florida, over the age of 18 and otherwise *sui juris*.

3. Defendant, L&W, at all times material hereto, was an entity organized under the laws of the State of Delaware, and maintained its principal place of business at 550 W. Adams Street, Chicago, IL 60661.

4. Defendant, Knauf, at all times material hereto, was an entity organized under the laws of China, and maintained its principal place of business at East Jingjin Rd., Beichen District, Tianjin, China 300400.

5. This Court has diversity jurisdiction over the subject matter of this Complaint pursuant to 28 U.S.C. § 1332. Plaintiffs are citizens of Florida. Defendant, Knauf is a Chinese corporation with its principle place of business in China, and Defendant, L&W, is a Delaware corporation with its principal place of business in Illinois; therefore, Defendants are citizens of China, Delaware and Illinois. The amount in controversy, without interest and costs, exceeds the sum or value specified by 28 U.S.C. § 1332(d)(2).

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(a) and 1391(c), because a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in this District, and a substantial part of the property that is the subject of the action is situated in this District.

7. Defendant, Knauf, designs, tests, manufactures, creates, distributes, wholesales, markets and/or sells plasterboard or drywall, the product at issue in the instant litigation. Defendant, Knauf, manufactured, created, distributed, wholesaled, marketed, exported and/or

sold the Chinese drywall containing and/or emitting high levels of sulphur or sulphur compounds during the class period.

8. Defendant, L&W, designs, tests, manufactures, oversees the manufacture of, imports, distributes wholesales, markets and/or sells plasterboard or drywall, the product at issue in the instant litigation. Defendant, L&W, acquired, purchased and imported into Florida, and distributed, wholesaled or sold in Florida, Chinese drywall containing and/or emitting sulphur or sulphur compounds during the class period.

9. On or about July 31, 2008, Plaintiffs purchased a townhome located at 5036 South East Mariner Garden Circle, Stuart, Florida 34997 (“Unit C-16”).

10. Unit C-16 contains Chinese drywall designed, tested, manufactured, created, distributed, wholesaled, marketed and/or sold by Defendant, Knauf, and designed, tested, manufactured, imported, distributed, wholesaled, marketed and/or sold by Defendant, L&W. Furthermore, the Chinese drywall in Unit C-16 contains and/or emits noxious and harmful contents, including sulphur and/or sulphur compounds.

Class Allegations

11. Plaintiffs bring this action on their own behalf, and as a class action on behalf of the Class defined herein, pursuant to, and properly maintainable under, Fed.R.Civ.P. 23(a) and Fed.R.Civ.P. 23(b)(1)-(3).

12. Plaintiffs are members of the putative Class because they own a home containing Chinese drywall manufactured by Defendant, Knauf, and imported, distributed and sold by Defendant, L&W, which drywall contains and/or emits high levels of sulphur and/or sulphur compounds.

13. Plaintiffs do not know the exact number of members of the Class because such

information is in the exclusive control of Defendants; however, based on the reported sales of sheets of drywall manufactured by Defendant, Knauf, Plaintiffs believe that the putative class numbers in the tens of thousands and is sufficiently numerous that joinder of all Class members is impracticable.

14. Plaintiffs and the members of the putative class all purchased real property containing Chinese drywall during the class period, have been harmed in the same manner and now seek redress.

15. There are questions of law and fact common to the Class, including:

- a) Whether Defendants had a duty to Plaintiffs and the other members of the putative Class to manufacture and sell its Chinese drywall without high levels of sulphur or sulphur compounds;
- b) Whether Defendants breached their duty to Plaintiffs and the other members of the putative Class by failing to employ measures to ensure its Chinese drywall did not contain high levels of sulphur or sulphur compounds;
- c) Whether Defendants' breach caused Plaintiffs and the other members of the putative Class to suffer damages;
- d) Whether Plaintiffs and the other members of the putative Class have suffered damages as a result of Defendants' conduct;
- e) Whether Defendants were in the business of, and gained profits from, manufacturing, selling, distributing, marketing or disposing of Chinese drywall through the stream of commerce;
- f) Whether Defendants' Chinese drywall was unreasonably defective and

dangerous;

- g) Whether Defendants' conduct was intentional or so negligent it was likely to cause injury to Plaintiffs and the members of the putative class;
- h) Whether Defendants knew or should have known consumers of its products, in the exercise of due care, would be unable to determine whether its products contained and/or emitted sulphur or sulphur compounds; and,
- i) Whether Plaintiffs and members of the putative Class suffered damages, as a result of exposure to Defendants' product.

16. Plaintiffs' claims are typical of the Class members because Plaintiffs' claims arise from the same common course of conduct giving rise to the claims of the members of the Class and the relief sought is common to the Class.

17. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have no interests that are antagonistic to other members of the Class and have retained counsel competent and experienced in the prosecution of both product defect and class action litigation to represent them and the putative Class.

18. The prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendant.

19. The questions of law and fact common to the members of the putative Class predominate over any questions affecting only individual members.

20. A class action is superior to other available methods for the fair and efficient adjudication of the controversy since individual joinder of all damaged putative Class members

is impracticable. Prosecution as a class action will eliminate the possibility of repetitious litigation. The damages suffered by individual members of the putative Class are similar, and the expense and burden of individual prosecution of the claims asserted in this litigation would make it difficult for individual claimants to pursue individual claims. Absent the availability of class action procedures, it would not be feasible for putative Class members to redress the wrongs done to them. Even if the Class members could afford individual litigation, the court system could not so afford the burden. The class action device presents fewer case management difficulties, and will provide the benefits of unitary adjudication, economy of scale and comprehensive supervision by a single court, without the duplication of effort and expense that numerous individual actions would create.

21. The named Plaintiffs bring this class action and seek certification on behalf of themselves and classes listed below:

ALL PERSONS (EXCLUDING OFFICERS, DIRECTORS AND EMPLOYEES OF DEFENDANTS) WHO PURCHASED RESIDENTIAL REAL PROPERTY BUILT WITH DRYWALL MANUFACTURED OR SOLD BY DEFENDANTS THAT CONTAINS OR EMITS SULPHUR AND/OR SULPHUR COMPOUNDS DURING THE CLASS PERIOD.

22. Plaintiffs have retained the undersigned law firm and agreed to pay it a reasonable fee for its services.

Allegations Common to All Counts

23. Defendant, Knauf, designed, manufactured, created, distributed, wholesaled, marketed, exported and/or sold the Chinese drywall during the class period to Plaintiffs and the putative class.

24. Defendant, L&W, designed, supervised the manufacture, directed the manufacture, oversaw the manufacture, manufactured, ordered, purchased, imported, marketed,

distributed, wholesaled and/or sold the Chinese drywall during the class period to Plaintiffs and the putative class.

25. Defendants marketed, wholesaled, distributed and/or sold Chinese drywall, during the class period, while having intentionally designed the Chinese drywall to contain unacceptable levels of sulphur and/or sulphur compounds, with knowledge that the Chinese drywall contained and/or emitted unacceptable levels of sulphur and/or sulphur compounds, or having grossly failed to audit, oversee, inspect, check or test the Chinese drywall.

26. If Defendants knew the Chinese drywall contained and/or emitted unacceptable levels sulphur and/or sulphur compounds, Defendants failed to warn of its problems.

27. Alternatively, Defendants failed to test incoming materials and finished products; failed to maintain a certification program for its manufacturers or suppliers; failed to require evidence from its manufactures or suppliers that they had safety standards and quality control procedures in place and operating effectively; failed to maintain mandatory control procedures for its contract manufacturers; failed to require certified independent lab test results of the drywall from its manufacturers or suppliers before the drywall was released for sale; failed to conduct random inspections and audits of their manufacturers or suppliers; failed to require manufacturers and suppliers to attend mandatory vendor compliance seminars; and/or failed to require signed agreements regarding safety, component composition, inspection and control from its manufacturers and suppliers.

28. During the class period, Plaintiffs and the members of the putative Class purchased homes in Florida that contain Defendants' drywall, which drywall contains or emits unacceptable levels of sulphur and/or sulphur compounds.

29. During the class period, Plaintiffs and the members of the putative Class were intended consumers of Defendants' Chinese drywall at the time of its purchase.

30. During the class period, Plaintiffs and the members of the putative Class used Defendants' Chinese drywall in the manner for which it was intended, and in a manner which should have been anticipated or which was reasonably foreseeable.

31. During the class period, Plaintiffs and the members of the putative class have been exposed to significant health risks and monetary loss due to the Chinese drywall in their homes. But for Defendants' intentional or grossly negligent conduct, Plaintiffs and the members of the putative class would not have been so exposed.

32. Defendants knew or should have known that its Chinese drywall contained and/or emitted dangerous sulphur or sulphur content.

COUNT I- NEGLIGENCE (L&W)

33. Plaintiffs re-allege and reaver each and every allegation set forth in paragraphs 1 through 32, above.

34. This is a count for the negligence of Defendant, L&W.

35. Defendant, L&W, had a duty to design, develop, test, inspect, establish standards, manufacture, acquire, import, procure, market, assemble, distribute and sell drywall in such a manner as to ensure that it did not contain or emit dangerous, corrosive or noxious materials, such as sulphur and/or sulphur compounds.

36. Defendant, L&W, breached its duty in the design, development, testing, inspection, establishment of standards, manufacture, acquisition, importation, procurement, marketing, assembly, distribution and sale of its drywall in one or more of the following ways:

- a. By designing, developing, manufacturing, acquiring, procuring, marketing, assembling, distributing and maintaining drywall in such a negligent manner that it was likely to cause injury to its intended user, even while being used under intended or foreseeable conditions, through exposure to sulphur and/or sulphur compounds;
- b. By failing to reasonably regulate, oversee, manage, control, inspect or audit its manufacturers, suppliers and the suppliers to its manufacturers;
- c. By failing to reasonably test, inspect or check the Chinese drywall it acquired, imported or manufactured and sold;
- d. By failing to follow established industry standards;
- e. By failing to use reasonable care in choosing a mining or manufacturing site for its products that has appropriate inspections, controls, safeguards and oversight to insure that its products do not contain dangerous and undisclosed amounts of sulphur and/or sulphur compounds;
- f. By failing to take reasonable action to insure that its drywall did not contain unacceptable levels of sulphur and/or sulphur compounds;
- g. By failing to adequately warn ultimate users about the potential risks, harm, dangers and impacts associated with sulphur and/or sulphur compounds; and,
- h. By failing to timely recall its drywall once it discovered the drywall contained high levels of sulphur and/or sulphur compounds.

37. Defendant, L&W, knew or should have known, with the exercise of reasonable care, that the aforementioned costly, dangerous and hazardous conditions existed, and that injury or harm to others was a probable consequence of their negligent design, manufacture,

acquisition, procurement, testing, inspection, marketing, assembly, distribution and sale of drywall containing or emitting sulphur and/or sulphur compounds, which drywall was intended to be used in the construction of homes for the general public, including the homes of the Plaintiffs and the putative class.

38. As a direct and proximate result of the negligence of Defendant, L&W, Plaintiffs and the members of the putative class suffered damages, including degradation of certain items within their homes to which sulphur and/or sulphur compounds are corrosive, devaluation of their homes, and bodily injury, mental anguish and medical treatment. The losses are either permanent or continuing, and will continue in the future.

WHEREFORE, Plaintiffs and other members of the Class seek compensatory damages, costs, attorneys' fees, punitive damages and such other relief that the Court deems necessary or proper.

COUNT II- NEGLIGENCE (KNAUF)

39. Plaintiffs re-allege and reaver each and every allegation set forth in paragraphs 1 through 32, above.

40. This is a count for the negligence of Defendant, Knauf.

41. Defendant, Knauf, had a duty to design, develop, test, inspect, establish standards, manufacture, market, assemble, distribute and sell drywall in such a manner as to ensure that it did not contain or emit dangerous, corrosive or noxious materials, such as sulphur or sulphur compounds.

42. Defendant, Knauf, breached its duty in the design, development, testing, inspection, establishment of standards, manufacture, marketing, assembly, distribution and sale of its drywall in one or more of the following ways:

- a. By designing, developing, manufacturing, acquiring, procuring, marketing, assembling, distributing and maintaining drywall in such a negligent manner that it was likely to cause injury to its intended user, even while being used under intended or foreseeable conditions, through exposure to sulphur or sulphur compounds;
- b. By failing to reasonably regulate, oversee, manage, control, inspect or audit its mining locations, manufacturers, suppliers and the suppliers to its manufacturers;
- c. By failing to reasonably test, inspect or check its drywall;
- d. By failing to follow established industry standards;
- e. By failing to use reasonable care in choosing a mining or manufacturing site for its products that has appropriate inspections, controls, safeguards and oversight to insure that its products do not contain or emit dangerous and undisclosed amounts of sulphur or sulphur compounds;
- f. By failing to take reasonable action to insure that its drywall did not contain or emit unacceptable levels of sulphur or sulphur compounds;
- g. By failing to adequately warn ultimate users about the potential risks, harm, dangers and impacts associated with sulphur and sulphur compounds; and,
- h. By failing to timely recall its drywall once it discovered the drywall contained or emitted sulphur or sulphur compounds.

43. Defendant, Knauf, knew or should have known, with the exercise of reasonable care, that the aforementioned costly, dangerous and hazardous conditions existed, and that injury or harm to others was a probable consequence of their negligent design, manufacture, acquisition, procurement, testing, inspection, mining, marketing, assembly, distribution and sale

of drywall containing sulphur or sulphur compounds, which drywall was intended to be used in the construction of homes for the general public, including the homes of the Plaintiffs and the putative class.

44. As a direct and proximate result of the negligence of Defendant, Knauf, Plaintiffs and the members of the putative class suffered damages, including degradation of certain items within their homes to which sulphur and/or sulphur compounds are corrosive, devaluation of their homes, and bodily injury, mental anguish and medical treatment. The losses are either permanent or continuing, and will continue in the future.

WHEREFORE, Plaintiffs and other members of the Class seek compensatory damages, costs, attorneys' fees, punitive damages and such other relief that the Court deems necessary or proper.

COUNT III- STRICT LIABILITY (L&W)

45. Plaintiffs re-allege and reaver each and every allegation set forth in paragraphs 1 through 32, above.

46. This is a count for strict liability against Defendant, L&W.

47. At all times material to this cause of action Defendant, L&W, was in the business of, and gained profits from, manufacturing, procuring, acquiring, importing, wholesaling, selling, distributing, marketing or disposing of drywall through the stream of commerce.

48. Defendant, L&W, designed, developed, manufactured, acquired, imported, procured, inspected, assembled, tested, distributed, marketed, sold and placed in the stream of commerce the very drywall that is the subject of this cause of action.

49. At all times material to this cause of action the drywall was unreasonably defective and dangerous because Defendant, L&W:

- a. Designed, developed, manufactured, acquired, procured, imported, marketed, assembled, distributed and maintained the drywall in such an intentional or negligent manner that it was likely to cause injury to its intended user, even while being used under intended or foreseeable conditions, through exposure to sulphur or sulphur compounds;
- b. Failed to reasonably test, inspect or check the drywall it imported, acquired and sold;
- c. Failed to reasonably regulate, oversee, manage, control, inspect or audit its manufacturers, suppliers and the suppliers to its manufacturers;
- d. Failed to follow established industry standards;
- e. Failed to use reasonable care in choosing a mining or manufacturing site for its products that has appropriate inspections, controls, safeguards and oversight to insure that its products do not contain or emit undisclosed amounts of sulphur or sulphur compounds;
- f. Failed to adequately warn ultimate users such as, and including, Plaintiffs and the putative Class, regarding the potential risks and dangers associated with its product; and,
- g. Failed to timely recall its drywall once it discovered it contained or emitted sulphur or sulphur compounds.

50. Defendant, L&W, procured, acquired, designed, manufactured, imported, distributed, marketed, wholesaled or sold the drywall that is the subject of this litigation with unintended and unreasonably dangerous defects, which unintended and unreasonably dangerous

defects were present in the drywall when Defendant, L&W, placed the drywall into the stream of commerce.

51. The subject drywall did not undergo any material change or alteration from the time of sale through, up to and including, the time of use.

52. Defendant, L&W, knew that the drywall it placed into the stream of commerce would be used by purchasers without inspection for defects, including, but not limited to, the presence of unacceptable levels of sulphur or sulphur compounds. Furthermore, Defendant, L&W, knew or should have known consumers of its products in the exercise of due care would be unable to determine whether its products contained sulphur or sulphur compounds.

53. Defendant, L&W, placed its drywall into the stream of commerce without sufficient and proper inspections for defects, including, but not limited to, inspections for sulphur or sulphur compounds. This drywall was defective because it was manufactured with unacceptable levels of sulphur or sulphur compounds. As a result the content or emission of sulphur or sulphur compounds, Plaintiffs and the putative Class, and the homes of Plaintiffs and the putative Class, were exposed to sulphur or sulphur compounds.

54. As a direct and proximate result of their exposure to sulphur or sulphur compounds, Plaintiffs and the members of the putative Class suffered damages, including degradation of certain items within their homes to which sulphur is corrosive, devaluation of their homes, and bodily injury, mental anguish and medical treatment. The losses are either permanent or continuing, and will continue in the future.

WHEREFORE, Plaintiffs and other members of the Class seek compensatory damages, costs, attorneys' fees, punitive damages and such other relief that the Court deems necessary or proper.

COUNT IV- STRICT LIABILITY (KNAUF)

55. Plaintiffs re-allege and reaver each and every allegation set forth in paragraphs 1 through 32, above.

56. This is a count for strict liability against Defendant, Knauf.

57. At all times material to this cause of action Defendant, Knauf, was in the business of, and gained profits from, designing, manufacturing, mining materials for, exporting, wholesaling, selling, distributing, marketing or disposing of drywall through the stream of commerce.

58. Defendant, Knauf, designed, manufactured, mined the materials for, exported, assembled, tested, distributed, marketed, sold and placed in the stream of commerce the very drywall that is the subject of this cause of action.

59. At all times material to this cause of action the drywall was unreasonably defective and dangerous because Defendant, Knauf:

- a. Designed, developed, manufactured, mined the materials for, procured, exported, marketed, assembled, distributed and maintained the drywall in such an intentional or negligent manner that it was likely to cause injury to its intended user, even while being used under intended or foreseeable conditions, through exposure to sulphur or sulphur compounds;
- b. Failed to reasonably test, inspect or check the drywall it manufactured, exported, distributed and sold;
- c. Failed to reasonably regulate, oversee, manage, control, inspect or audit its manufacturing, mining, processes and suppliers;
- d. Failed to follow established industry standards;

- e. Failed to use reasonable care in choosing a mining or manufacturing site for its products that has appropriate inspections, controls, safeguards and oversight to insure that its products do not contain or emit undisclosed amounts of sulphur or sulphur compounds;
- f. Failed to adequately warn ultimate users such as, and including, Plaintiffs and the putative Class, regarding the potential risks and dangers associated with its product; and,
- g. Failed to timely recall its drywall once it discovered it contained or emitted unacceptable levels of sulphur or sulphur compounds.

60. Defendant, Knauf, manufactured, mined the materials for, designed, manufactured, exported, distributed, marketed, wholesaled or sold the drywall that is the subject of this litigation with unintended and unreasonably dangerous defects, which unintended and unreasonably dangerous defects were present in the drywall when Defendant, Knauf, placed the drywall into the stream of commerce.

61. The subject drywall did not undergo any material change or alteration from the time of sale through, up to and including, the time of use.

62. Defendant, Knauf, knew that the drywall it placed into the stream of commerce would be used by purchasers without inspection for defects, including, but not limited to, the presence of sulphur or sulphur compounds. Furthermore, Defendant, Knauf, knew or should have known consumers of its products in the exercise of due care would be unable to determine whether its products contained sulphur or sulphur compounds.

63. Defendant, Knauf, placed its drywall into the stream of commerce without sufficient and proper inspections for defects, including, but not limited to, inspections for sulphur

or sulphur compounds. This drywall was defective because it was manufactured with sulphur or sulphur compounds. As a result the content or emission of sulphur or sulphur compounds, Plaintiffs and the putative Class, and the homes of Plaintiffs and the putative Class, were exposed to sulphur or sulphur compounds.

64. As a direct and proximate result of their exposure to sulphur or sulphur compounds, Plaintiffs and the members of the putative Class suffered damages, including degradation of certain items within their homes to which sulphur is corrosive, devaluation of their homes, and bodily injury, mental anguish and medical treatment. The losses are either permanent or continuing, and will continue in the future.

WHEREFORE, Plaintiffs and other members of the Class seek compensatory damages, costs, attorneys' fees, punitive damages and such other relief that the Court deems necessary or proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues so triable.

Respectfully submitted,

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