

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

2009 APR 27 PM 2:43

MICHAEL SWIDLER, and
JILL SWIDLER, on behalf of
themselves and all others similarly
situated,

CLERK, U.S. DISTRICT COURT
OCALA, FLORIDA

CLASS REPRESENTATION

CASE NO.:

Plaintiffs,

vs.

5:09-cv-181-OC-106KJ

GEORGIA-PACIFIC GYPSUM, L.L.C.
a Georgia Corporation, and
84 LUMBER COMPANY, L.P.,
a Pennsylvania Corporation, and JOHN DOE
DEFENDANTS 1-50,

JURY TRIAL DEMANDED
INJUNCTIVE RELIEF SOUGHT

Defendants.

_____ /

CLASS ACTION COMPLAINT

COME NOW, the Plaintiffs, MICHAEL and JILL SWIDLER, by and through their undersigned counsel and bring this action on their behalf and on behalf of a class of persons defined below against GEORGIA-PACIFIC GYPSUM, L.L.C. ("GEORGIA-PACIFIC"), and 84 LUMBER COMPANY, L.L.P. ("84 LUMBER") and Defendants, and allege the following upon information and belief except as to the allegations concerning Plaintiffs themselves:

INTRODUCTION

1. Until the filing of this action, the defective drywall causing damage to tens of thousands of homes within the Southeastern United States was thought to have been manufactured exclusively by Chinese companies. However, this consumer class action claims that the issues surrounding the dangerous chemicals used to create the synthetic gypsum used in modern day drywall have infiltrated American-based manufacturers as well.

2. Investigation conducted prior to the filing of this Complaint concluded that drywall manufactured by GEORGIA-PACIFIC is causing sulfur contamination and damages in much the same manner as the Chinese drywall that is the subject of separate litigation.

3. Plaintiffs bring this class action on behalf of themselves and all owners of homes in the State of Florida that were built using GEORGIA-PACIFIC drywall manufactured, processed, distributed, delivered, supplied, inspected, marketed and/or sold by Defendant GEORGIA-PACIFIC, and sold to the consuming public by Defendant 84 LUMBER, or other supply companies not yet identified.

4. The drywall manufactured, processed, distributed, delivered, supplied, inspected, marketed, 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 chemical compounds that cause excessive corrosion of HVAC coils and refrigerator units, certain electrical wiring and plumbing components, and other household items, as well as creates noxious odors. Defendants' defective synthetic-gypsum drywall further causes allergic reactions, coughing, sinus and throat infection, eye irritation, respiratory problems and other health concerns. Defendants' drywall is inherently defective and not suitable for its intended use.

JURISDICTION

5. This action is filed in this Federal Court pursuant to diversity jurisdiction under the Class Action Fairness Act of 2005, as codified at 28 U.S.C. § 1332(d)(2).

6. The amount in controversy exceeds five million dollars considering the length of the class period and the number of Plaintiffs and Class Members that have purchased the defective product within the state of Florida.

7. There is complete diversity between Plaintiffs and the Defendants in this matter as Plaintiffs and Plaintiff Class Members are citizens and residents of the state of Florida; Defendant GEORGIA-PACIFIC is a nationwide company headquartered in Atlanta, Georgia; and, Defendant 84 LUMBER is a national company headquartered in Eighty Four, Pennsylvania.

VENUE

8. Defendant GEORGIA-PACIFIC has and continues to conduct business throughout the state of Florida at all relevant times, including the Middle District of Florida.

9. Defendant 84 LUMBER has and continues to conduct business throughout the state of Florida at all relevant times, including the Middle District of Florida.

10. Actions giving rise to the named Plaintiffs' claims occurred in Lake County, Florida, which provides for federal jurisdiction in the Middle District of Florida, Ocala Division.

PARTIES

11. Plaintiffs, MICHAEL and JILL SWIDLER, are residents of Lake County, Florida and own a home located at 11101 Versailles Boulevard, Clermont, FL 34711-7346.

12. Defendant GEORGIA-PACIFIC GYPSUM, L.L.C. is a nationwide company doing business in the state of Florida. GEORGIA-PACIFIC's Corporate Headquarters is located at 133 Peachtree Street, N.E., Atlanta, GA 30303.

13. GEORGIA-PACIFIC specializes in the manufacture of numerous building materials including synthetic-gypsum drywall.

14. Defendant 84 LUMBER is a nationwide company doing business in the state of Florida. 84 LUMBER's Corporate Headquarters is located at 1019 Route 519, Eighty Four, PA 15330-2813.

15. 84 LUMBER is a privately held building materials and service supplier for professional contractors and consumers throughout the United States including the state of Florida.

FACTS (GENERAL ALLEGATIONS)

A. History of Drywall

16. “Drywall” is the common term for rigid paper-faced gypsum boards or panels regularly used in the construction industry in the United States. Traditionally, the gypsum used to make drywall was mined from various locations throughout the country. However, recent advancements in technology have created a new form of gypsum known as “synthetic gypsum” which is a byproduct produced by coal burning power plants. On information and belief, it is the synthetic gypsum which is at the heart of the present drywall crisis. An understanding of the connection between sulfur-laden drywall and coal burning power plants is necessary to explain the present situation.

17. Fossil fuels such as coal and oil contain significant amounts of sulfur. When burned, about 95 percent or more of the sulfur is converted to sulfur dioxide that would be released into the environment. Sulfur dioxide is a harmful pollutant known to cause acid rain and significant health issues. Thus, the emissions from coal burning power plants must be “scrubbed” to remove the sulfur dioxide. Specifically, coal burning plants use technology commonly known as “flue gas desulfurization” to scrub or remove sulfur dioxide from the exhaust gasses produced by such facilities.

18. The flue gas desulfurization process typically uses a calcium or sodium based alkaline reagent. Flue gas is ducted to a spray tower where an aqueous slurry of sorbent is injected into the flue gas. A portion of the water in the slurry is evaporated and the waste gas

stream becomes saturated with water vapor. Sulfur dioxide dissolves into the slurry droplets where it is collected.

19. Air is then added to the slurry sorbent causing oxidation. This oxidization process chemically creates a byproduct known as synthetic gypsum (calcium sulfate). Once the remaining water is removed, the synthetic gypsum byproduct is sold for use in various products such as cement, plaster, and drywall.

20. Because synthetic gypsum is created through a desulfurization process by which sulfur is removed from power-plant flue gases, the amount of sulfur-based pollutant in synthetic gypsum is far higher than the levels found in naturally-occurring gypsum.

21. When synthetic gypsum is used to manufacture drywall, the end product contains excessive amounts of sulfur-based pollutants. When the exterior of Florida homes containing synthetic gypsum drywall become heated due to normal Florida temperatures, the air temperature inside the wall cavity between the outer shell of the home and the inner drywall becomes significantly elevated. These elevated temperatures combined with Florida's humidity cause sulfur dioxide gas to be released, once again, from the synthetic gypsum.

22. This sulfur dioxide gas causes significant oxidation of various metals that lie in close proximity to the drywall. Metal components in air conditioning coils, electric motors and other parts in dishwashers, microwaves, smoke detectors, computers and other household appliances oxidize and fail as a result of the sulfur gases found in homes containing synthetic gypsum drywall.

B. GEORGIA-PACIFIC's Role is Synthetic Gypsum Drywall

23. Defendant GEORGIA-PACIFIC uses synthetic gypsum generated through the flue gas desulfurization process in its gypsum drywall marketed under the trade name "ToughRock."

GEORGIA-PACIFIC's ToughRock contains excessive amounts of sulfur-based pollutants due to its high content of synthetic gypsum. When the ToughRock's temperature becomes elevated sulfur-based gases are released which cause damage to the metal components of products as described above.

24. Defendant GEORGIA-PACIFIC manufactured, processed, distributed, delivered, supplied, inspected, marketed and/or sold defective synthetic gypsum drywall, which was unreasonably dangerous in its normal use in that the drywall caused, and continues to cause, corrosion to HVAC coils and refrigerator units, certain electrical wiring and plumbing components, and caused allergic reactions, coughing, sinus and throat infections, eye irritations, respiratory problems and other health concerns.

25. GEORGIA-PACIFIC used waste material from coal burning power plants to create drywall used in American homes. The use of such waste materials causes the emission of one of several sulfur-based gasses including sulfur dioxide and hydrogen sulfide.

26. When combined with moisture in the air, these sulfur compounds create sulfuric acid, which has been known to dissolve solder joints, corrode coils and copper tubing –creating leaks, blackening coils and causing HVAC systems and refrigerators to repeatedly fail. Sulfuric acid has also been shown to corrode copper electrical wiring and plumbing components. Sulfuric acid can also harm metals such as chrome, brass and silver.

27. Defendant, GEORGIA-PACIFIC's defective synthetic-gypsum drywall can detrimentally affect and ultimately require the replacement of a variety of household items, including but not limited to, dishwashers, microwaves, lighting fixtures, faucets and silverware. In addition, the defective drywall has a noxious odor.

28. Considering the size of GEORGIA-PACIFIC's operations, a significant amount, and most likely several million square feet of its defective drywall was used in the construction of Florida homes between 2004 and the date of this Complaint.

C. Facts Pertaining to Class Representatives Michael and Jill Swidler

29. Plaintiffs MICHAEL and JILL SWIDLER began construction of their home located at 11101 Versailles Boulevard, Clermont, Florida on or about March of 2006. Michael Swidler is a builder by trade and has been employed doing residential construction by Lennar Homes, Engle Homes and Deluca Homes for approximately 15 years.

30. Plaintiff, MICHAEL SWIDLER, acted as owner/builder in the construction of his family home.

31. In May of 2006, Plaintiff SWIDLER ordered 289 sheets of half-inch drywall from Defendant, 84 LUMBER's store located in Tavares, Florida.

32. On or about June 1, 2006, 84 LUMBER employees delivered 289 sheets of GEORGIA-PACIFIC "ToughRock" drywall to the building site in Clermont, Florida.

33. The 84 LUMBER delivery crew placed the drywall inside the dried-in structure per Plaintiff SWIDLER's instructions.

34. The GEORGIA-PACIFIC "ToughRock" drywall was installed and finished by Plaintiffs' drywall subcontractor in accordance with industry standards and GEORGIA-PACIFIC's installation guidelines.

35. At no time did the drywall at issue become wet or exposed to the elements.

36. Construction was completed and the Plaintiffs moved into their new home in October of 2006.

37. Plaintiffs have two young children who live in the home with them.

38. In early 2007, the plumbing fixtures and several silver picture frames in the Plaintiffs' home started to corrode.

39. On or about January 14, 2008, the coils in the Plaintiffs' upstairs HVAC unit developed a leak and failed despite being less than 2 years old. Plaintiffs paid to have the HVAC coils replaced.

40. On or about July 8, 2008, the coils in the Plaintiffs' upstairs HVAC unit developed another leak and failed again despite the coils being replaced six months prior. Again, Plaintiffs paid to have the HVAC coils replaced.

41. The coils in the Plaintiffs' garage HVAC unit failed on or about December 22, 2007 and had to be replaced. Currently, the coils in both HVAC units have again turned black and are oxidizing rapidly.

42. On or about April of 2008, the microwave in Plaintiffs' home failed due to the keypad failing to operate properly. A new keypad was ordered and installed to remedy the problem.

43. On or about August of 2008, the main bulb in Plaintiffs' television went out although the television was less than one year old.

44. On or about February of 2009, the dishwasher in Plaintiffs home failed due to the copper wiring surrounding the copper leads in the control unit of the device having completely deteriorated. The repairman informed the Plaintiffs that the "copper wiring inside the wire nuts was gone which caused the malfunction." It was subsequently replaced.

45. The smoke detectors in the Plaintiffs' home randomly go off without cause, and the home has a strong sulfur odor throughout.

46. All the copper ground wires attached to every light-switch and outlet in the home have turned black and are rapidly oxidizing. The extent of the damage to the remaining wire inside the walls of the home is yet to be determined.

47. On information and belief, significant damage has been done to other household items such as television and stereo components and computer components within the SWIDLER home. Pieces of Plaintiff, JILL SWIDLER's jewelry have also turned black and prematurely oxidized.

48. On or about April 8, 2009, Plaintiffs MICHAEL AND JILL SWIDLER and their two children moved out of their home as a result of exposure to and damages caused by Defendants' defective synthetic-gypsum drywall.

CLASS ACTION ALLEGATIONS

49. Plaintiffs brings 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 contains defective GEORGIA-PACIFIC "ToughRock" Drywall between 2004 and 2009.

A subclass exists which is defined as all persons in the State of Florida that purchased defective Georgia-Pacific "ToughRock" Drywall from any 84 Lumbar Company location during the class period.

50. *Numerosity:* The Class is composed of thousands of persons geographically dispersed throughout the State of Florida, 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.

51. *Commonality*: Questions of law and fact common to the Class exists 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 Defendant GEORGIA-PACIFIC manufactured and sold a defective product;
- b. Whether Defendant 84 LUMBER sold a defective product;
- c. Whether GEORGIA-PACIFIC's conduct in manufacturing and/or distributing their drywall fell below the duty of care owed to Plaintiffs and members of the Class;
- d. Whether 84 LUMBER's conduct in selling defective drywall fell below the duty of care owed to Plaintiffs and members of the Class;
- e. Whether Defendants concealed adverse information from Plaintiffs and the Class;
- f. Whether Plaintiffs and the Plaintiff Class Members are entitled to recover compensatory, exemplary, punitive, and/or other damages as a result of Defendants' conduct;
- g. Whether Defendants breached express warranties;
- h. Whether Defendants breached implied warranties of merchantability;
- i. Whether the Plaintiff Class is entitled to compensatory damages and, if so, the nature and extent of such damages; and
- j. Whether Defendants failed to adequately warn of the adverse effects of their drywall.

52. *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.

53. *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, including product and construction cases.

54. *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.

55. 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.

56. Defendants' actions will require Plaintiffs and the Plaintiff Class Members to evacuate their homes, remove all defective drywall from the homes, perform extensive remedial repairs to the homes, and then repair the damaged property made visible during the performance of these repairs.

57. Plaintiffs and the Plaintiff Class Members will also be required to repair or replace corroded or damaged household items such as dishwashers, microwaves, lighting fixtures, plumbing fixtures, electronics, jewelry and silverware.

58. As a result, 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 found therein. These damages include, but are not limited to, the costs of inspection, the costs and expenses necessary to remove and replace the defective drywall, adjoining components, electrical wiring, interior finishes and personal property.

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

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

61. Defendants breached their duty by failing to exercise ordinary care in the inspecting, marketing and/or selling drywall Defendants placed into the stream of commerce in that it knew or should have known 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 HVAC coils and refrigerator units, wires, tubes and pipes, and caused allergic reactions, coughing, sinus and throat infections, eye irritations, respiratory problems and other health concerns.

62. Defendants knew or should have known that consumers such as Plaintiffs and the Plaintiff Class Members would suffer damage as a result of Defendants' failure to exercise

ordinary care.

63. 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, 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.

COUNT I
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

64. Plaintiffs, MICHAEL AND JILL SWIDLER, individually and on behalf of all others similarly situated, repeat, reiterate and re-allege paragraphs 1 through 63 of this Complaint, with the same force and effect as if fully set forth herein.

65. This is an action against Defendant 84 LUMBER for breach of the implied warranty of merchantability under the common law and/or Florida Statute §672.314.

66. This is an action against Defendant GEORGIA-PACIFIC for breach of the implied warranty of merchantability under the common law and/or Florida Statute §672.314.

67. GEORGIA-PACIFIC is the manufacturer, supplier, and distributor of its drywall products throughout the United States.

68. 84 LUMBER is a merchant of gypsum drywall at its various locations throughout the United States, including the GEORGIA-PACIFIC “ToughRock” drywall which is the subject of this action.

69. The defective drywall used in the construction of Plaintiffs’ and the Plaintiff Class Members’ homes was sent from GEORGIA-PACIFIC to 84 LUMBER who delivered the product to Plaintiffs and the Plaintiff Class for use in various construction projects.

70. Homebuilders and/or their agents or employees entered into contracts with either one Defendant or both Defendants to purchase synthetic-gypsum drywall that was intended to be installed in the homes of the Plaintiffs and the Plaintiff Class.

71. Plaintiffs and the Plaintiff Class Members are intended third-party beneficiaries of contracts between Defendants and Homebuilders because it was the clear and manifest intent of Defendants that the contracts were to primarily and directly benefit Plaintiffs and the Plaintiff Class Members who would ultimately own the homes being constructed.

72. Pursuant to Florida Statute 672.314 and/or common law, Defendants warranted that the synthetic-gypsum drywall was merchantable and reasonably fit for the ordinary purpose for which drywall is normally used.

73. Defendants breached the implied warranty of merchantability by selling certain synthetic-gypsum drywall that was defective and not reasonably fit for the ordinary purpose for which drywall is used.

74. The drywall that was manufactured and supplied by GEORGIA-PACIFIC and sold by 84 LUMBER was installed in Plaintiffs' home and the homes of the Plaintiff Class Members and is defective because it causes damage to various metal components and creates various health issues as described above.

75. As a result of Defendants' breach of the implied warranty of merchantability, Plaintiffs and the Plaintiff Class Members have suffered and continue to suffer damages.

76. 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, 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.

COUNT II
BREACH OF IMPLIED WARRANTY
OF FITNESS FOR A PARTICULAR PURPOSE

77. Plaintiffs, MICHAEL AND JILL SWIDLER, individually and on behalf of all others similarly situated, repeat, reiterate and re-allege paragraphs 1 through 63 of this Complaint, with the same force and effect as if fully set forth herein.

78. This is an action against Defendant GEORGIA PACIFIC for breach of the implied warranty of fitness for a particular purpose under the common law and/or Florida Statute §672.314.

79. This is an action against Defendant 84 LUMBER for breach of the implied warranty of fitness for a particular purpose under the common law and/or Florida Statute §672.314.

80. GEORGIA-PACIFIC is a manufacturer and supplier of synthetic-gypsum drywall.

81. 84 LUMBER is a supplier of synthetic-gypsum drywall.

82. Upon information and belief, the defective drywall used in the construction of Plaintiffs' and the Plaintiff Class Members' homes was sent from the GEORGIA-PACIFIC to 84 LUMBER.

83. Upon information and belief, GEORGIA-PACIFIC also sent defective drywall that was used in the construction of Class Members' homes through other supply companies and retail outlets. Plaintiffs will amend this complaint when and if such other Defendants are

identified.

84. Homebuilders and/or their agents or employees entered into contracts with one or both Defendants to purchase gypsum drywall that was installed in Plaintiffs Class Members' homes.

85. Plaintiffs and the Plaintiff Class Members are intended third-party beneficiaries of those contracts because it was the clear and manifest intent of Defendants that the contracts were to primarily and directly benefit Plaintiffs and the Plaintiff Class Members.

86. At the time Defendants entered into the contracts with the homebuilders, Defendants had reason to know that the gypsum drywall was being purchased for the particular purpose of being installed in residential homes like those owned by Plaintiffs and the Plaintiff Class Members, and that homebuilders were relying on Defendants' skill and judgment to furnish gypsum drywall that was suitable for this particular purpose.

87. Plaintiffs and the Plaintiff Class Members used the gypsum drywall provided by Defendants without being informed by Defendants that such drywall was unsuitable for the particular purpose of being installed in residential homes owned by Plaintiffs and the Plaintiff Class Members.

88. Pursuant to Florida Statute 672.315 and/or common law, Defendants warranted that the gypsum drywall was fit for the particular purpose of being installed in residential homes.

89. Defendants breached the implied warranty of fitness for a particular purpose by selling certain synthetic-gypsum drywall that was defective and not fit for the particular purpose of being installed in residential homes.

90. The drywall manufactured, supplied, and sold by Defendants and installed in Plaintiffs' home and the homes of the Plaintiff Class Members is defective because it causes

damage as described more fully herein.

91. As a result of Defendants' breach of the implied warranty of merchantability, Plaintiffs and the Plaintiff Class Members have suffered and continue to suffer damages.

92. 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, 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.

COUNT III
BREACH OF EXPRESS WARRANTY
(Against GEORGIA-PACIFIC Only)

93. Plaintiffs, MICHAEL AND JILL SWIDLER, individually and on behalf of all others similarly situated, repeat, reiterate and re-allege paragraphs 1 through 63 of this Complaint, with the same force and effect as if fully set forth herein.

94. GEORGIA-PACIFIC expressly warranted that its synthetic-gypsum drywall was safe and appropriate for use in a variety of residential building applications, including but not limited to interior walls, and ceilings.

95. Because of the excessive amount of Sulfur-based pollutants involved, Defendant GEORGIA-PACIFIC's synthetic-gypsum drywall did not conform to these express representations because GEORGIA-PACIFIC's synthetic-gypsum drywall is defective and unsafe, and is associated with numerous side effects resulting from excessive amounts of sulfur-based pollutants.

96. 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 and/or other harm.

97. Plaintiff Class Members relied on the express warranties made by GEORGIA-PACIFIC because they used the product in the construction of residential dwellings.

98. GEORGIA-PACIFIC breached the aforesaid express warranties, as the drywall at issue was defective for its intended use.

99. GEORGIA-PACIFIC expressly represented to Plaintiffs and the Plaintiff Class Members to their homebuilders that its drywall was safe, efficacious, and fit for use for the purposes intended, that the its drywall was of merchantable quality, that its drywall did not produce any dangerous side effects, and that its drywall was adequately tested and fit for its intended use.

100. GEORGIA-PACIFIC knew or should have known that the aforesaid representations and warranties were false, misleading and untrue because its drywall was 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 of the materials used to manufacture its drywall.

101. 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, 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.

COUNT IV
VIOLATION OF THE FLORIDA DECEPTIVE AND
UNFAIR TRADE PRACTICES ACT
Defendants 84 LUMBER and GEORGIA PACIFIC

102. Plaintiffs, MICHAEL AND JILL SWIDLER, individually and on behalf of all others similarly situated, repeat, reiterate and re-allege paragraphs 1 through 63 of this Complaint, with the same force and effect as if fully set forth herein.

103. This action seeks to secure redress for the unlawful, deceptive and unfair trade practices, perpetrated by Defendants GEORGIA-PACIFIC AND 84 LUMBER against Florida consumers.

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

105. 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.

106. Specifically, GEORGIA-PACIFIC misrepresented and omitted material information regarding its drywall product by failing to disclose known risks and by selling the product as being fit for use in residential construction projects.

107. GEORGIA-PACIFIC's 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.*

108. GEORGIA-PACIFIC 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 or should have known that it was dangerous, ineffective, unsafe and by other acts alleged herein.

109. GEORGIA-PACIFIC engaged in the deceptive acts and practices alleged herein in order to sell its drywall to the public, including Plaintiffs and the Plaintiff Class Members, and/or their representatives.

110. Said acts and practices on the part of GEORGIA PACIFIC were and are illegal and unlawful pursuant to Florida Statute §501.204.

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

COUNT V
VIOLATION OF THE MAGNUSON-MOSS
WARRANTY IMPROVEMENT ACT

112. Plaintiffs, MICHAEL AND JILL SWIDLER, individually and on behalf of all others similarly situated, repeat, reiterate and re-allege paragraphs 1 through 63 of this Complaint, with the same force and effect as if fully set forth herein.

113. Plaintiffs and the Class are "consumers" as defined by 15 U.S.C. § 2301(3).

114. Each Defendant is a "supplier," "warrantor," and "service contractor" as defined by 15 U.S.C. §§ 2301(4), 2301(5), and 2301(8).

115. The Drywall is a "consumer product" as defined by 15 U.S.C. § 2301 (1).

116. The Magnuson-Moss Warranty Improvement Act ("MMWA") requires Defendants to be bound by all warranties implied by state law.

117. Section 15 U.S.C. § 2310(d)(1) of the MMWA provides that a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this title, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief in any court of competent jurisdiction in any State.

118. As a direct and proximate result of Defendants' breach of warranty, Plaintiffs and the Class are entitled to the remedies prayed for below.

PRAYER FOR RELIEF

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

An Order certifying the Class, appointing MICHAEL AND JILL SWIDLER as Class Representatives and appointing Varnell & Warwick, P.A. as counsel to the Class;

- a. Equitable, injunctive, and declaratory relief;
- b. Damages in an amount to be determined at trial, but in an amount exceeding 75 thousand dollars in Pre-judgment and post-judgment interest at the maximum rate allowable at law;
- c. Treble, exemplary, and/or punitive damages in an amount to be determined at trial;
- d. The costs and disbursements incurred by Plaintiffs and Plaintiff Class Members in connection with this action, including reasonable attorneys' fees;
- e. All statutory damages;
- f. Disgorgement of Defendants' profits from the sale of drywall;
- g. 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;

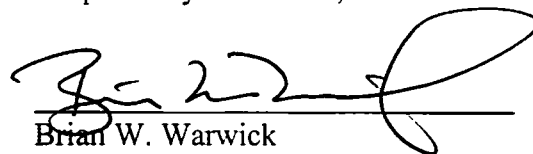
h. Such other and further relief under all applicable state and federal law and any other relief the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs, MICHAEL AND JILL SWIDLER, individually and on behalf of the Plaintiff Class Members, hereby demand a trial by jury as to all issues so triable.

Dated: April 24, 2009.

Respectfully Submitted,



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