

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

<p>CACERES DRYWALL CORPORATION, Individually and on Behalf of All Others Similarly Situated, <i>Plaintiff,</i></p> <p>vs.</p> <p>NATIONAL GYPSUM COMPANY a/k/a NEW NGC, INC.; GOLDEN EAGLE INDUSTRIES, INC. a/k/a SPANGLER COMPANIES, INC.; LAFARGE NORTH AMERICA INC., LAFARGE S.A. a/k/a LAFARGE WORLDWIDE; AMERICAN GYPSUM COMPANY LLC, GEORGIA-PACIFIC LLC; USG CORPORATION; L&amp;W SUPPLY CORPORATION; CERTAINTEED CORPORATION; SAINT-GOBAIN CORPORATION; SAINT-GOBAIN S.A. a/k/a COMPAGNIE DE SAINT-GOBAIN; TIN INC. d/b/a TEMPLE-INLAND INC.; PABCO BUILDING PRODUCTS, LLC, <i>Defendants.</i></p>	<p><b>CASE NO. 3:13-cv-31</b></p>
<p>JERRY R. BERKHOUS D/B/A BERKHOUS DRYWALL &amp; CONSTRUCTION, Individually and on Behalf of all Others Similarly Situated, <i>Plaintiff,</i></p> <p>vs.</p> <p>NATIONAL GYPSUM COMPANY a/k/a NEW NGC, INC.; GOLDEN EAGLE INDUSTRIES, INC. a/k/a SPANGLER COMPANIES, INC.; LAFARGE NORTH AMERICA INC., LAFARGE S.A. a/k/a LAFARGE WORLDWIDE; AMERICAN GYPSUM COMPANY LLC, GEORGIA-PACIFIC LLC; USG CORPORATION; L&amp;W SUPPLY CORPORATION; CERTAINTEED CORPORATION; SAINT-GOBAIN CORPORATION; SAINT-GOBAIN S.A.; TIN INC. d/b/a TEMPLE-</p>	<p><b>CASE NO. 3:13-cv-35</b></p>

<p>INLAND INC.; PABCO BUILDING PRODUCTS, LLC, <i>Defendants.</i></p>	
<p>ERIEZ CONSTRUCTION, INC., Individually and on Behalf of all Others Similarly Situated, <i>Plaintiff,</i></p> <p>vs.</p> <p>NEW NGC, INC.; USG CORPORATION; UNITED STATES GYPSUM COMPANY; L&amp;W SUPPLY CORPORATION; LAFARGE NORTH AMERICA INC.; CERTAINTEED CORP.; SAINT-GOBAIN CORPORATION; GEORGIA-PACIFIC LLC; AMERICAN GYPSUM COMPANY LLC; TIN INC. d/b/a TEMPLE-INLAND INC.; PABCO BUILDING PRODUCTS, LLC, <i>Defendants.</i></p>	<p><b>CASE NO. 3:13-cv-59</b></p>

**STIPULATION AND ORDER**

**WHEREAS**, currently pending before this Court are three civil actions alleging a conspiracy to restrain trade in domestic drywall in violation of the Sherman Antitrust Act (the “WDNC Related Actions”), as follows:

*Caceres Drywall Corp. v. National Gypsum Company, et al.*, C.A. 3:13-cv-00031.

*Berkhous v. National Gypsum Company, et al.*, C.A. 3:13-cv-00035.

*Eriez Construction, Inc. v. New NGC, Inc, et al.*, C.A. 3:13-cv-00059.

**WHEREAS**, other such Related Actions may subsequently be filed in this Court ;

**WHEREAS**, other related civil actions are pending or may be subsequently filed in any other federal or state court making similar allegations as do Stipulating Plaintiffs (“Other Related Actions”), including, but not limited to:

*Innovated Services LLC, Inc. v. USG Corp., et al.*, 1:13-cv-00502 (N.D. Ill.);

*Grant Lumber Pole Buildings, LLC v. USG Corp. et al.*, 1:13-cv-00697 (N.D. Ill.);

*Janicki Drywall, Inc. v. CertainTeed Corp., et al.*, 2:12-cv-07106 (E.D. Pa.);

*New Deal Lumber & Millwork Co., Inc. v. USG Corp., et al.*, 2:12-cv-07161 (E.D. Pa.);

*Sierra Drywall Systems, Inc. v. CertainTeed Corp., et al.*, 2:13-cv-00020 (E.D. Pa.);

*Grubb Lumber Company, Inc. v. USG Corp., et al.*, 2:13-cv-00249 (E.D. Pa.);

*Pitter v. CertainTeed Corp., et al.*, 2:13-cv-00384 (E.D. Pa.);

*Glaser v. CertainTeed Corp., et al.*, 2:13-cv-00559 (E.D. Pa.);

*Ivyland Builders, LLC v. USG Corporation, et al.*, 2:13-cv-00563 (E.D. Pa.);

*Agbodike v. CertainTeed Corp., et al.*, 2:13-cv-00607 (E.D. Pa.); and

*Oregon State Drywall, LLC v. CertainTeed Corp., et al.*, 2:13-cv-00620 (E.D. Pa.)

**WHEREAS**, Plaintiffs in the WDNC Related Actions (“Stipulating Plaintiffs”) have moved for consolidation of the WDNC Related Actions in this Court;

**WHEREAS**, Stipulating Plaintiffs intend to file a Consolidated Amended Complaint after consolidation of the WDNC Related Actions;

**WHEREAS**, Stipulating Defendants include the undersigned and other Defendants such as shall join in this stipulation in accordance with Paragraph Five, below.

**WHEREAS**, Stipulating Plaintiffs and Stipulating Defendants, by and through their undersigned counsel, stipulate to the following Order:

1. Defendants will not be required to answer or otherwise plead in response to the complaints filed or any consolidated or amended complaints filed in the future in the WDNC Related Actions until 30 days after a consolidated amended complaint is filed in a transferee court. Plaintiffs will file their opposition to a motion to dismiss, if filed, within 30 days thereafter. In the event that the Motion for Consolidation and Transfer under 28 U.S.C. § 1407 is denied, the parties will confer within seven (7) days of the JPML’s order regarding the due date for responsive pleadings in the WDNC Related Actions. No discovery shall be served in the WDNC Related Actions while this stipulation is in effect.

2. Stipulating Plaintiffs and Stipulating Defendants further stipulate and agree that service of the individual complaints filed in the WDNC Related Actions upon their counsel shall constitute valid and sufficient process and service of process under the Federal Rules of Civil Procedure, the U.S. Constitution, and any other applicable statute, rule, regulation, or anything else having the force and effect of law.

3. Except as to the sufficiency of process or service of process, Stipulating Plaintiffs and Stipulating Defendants further stipulate and agree that the entry into this

stipulation by the Stipulating Defendants shall not constitute a waiver of any jurisdictional defenses that may be available under Rule 12 of the Federal Rules of Civil Procedure, a waiver of any affirmative defenses under Rule 8 of the Federal Rules of Civil Procedure, or a waiver of any other statutory or common law defenses that may be available to the Stipulating Defendants in the WDNC Related Actions and the Other Related Actions. The Stipulating Defendants expressly reserve their rights to raise any such defenses in response to any operative or amended complaint that may be filed relating to this action.

4. Defendants agree that they will seek a substantially similar stipulation in any related action and, if they are unable to reach agreement, will file a motion to stay any related action before filing a responsive pleading in those related actions;

5. Further, and notwithstanding any other provision set forth herein, Stipulating Plaintiffs and Stipulating Defendants hereby stipulate and agree if any Stipulating Defendant answers, moves, or otherwise pleads in response to any complaint filed in any Other Related Action before the date required by this stipulation, such Stipulating Defendant shall file an answer, motion, or other responsive pleading in all WDNC Related Actions on the same day as such answer, motion, or other responsive pleading is filed in any such Other Related Action.

6. Defendants agree that they will engage in a conference pursuant to Fed. R. Civ. P. 26(f) with Plaintiffs within 14 days of appointment of lead counsel for the Plaintiffs in the transferee court.

7. Stipulating Plaintiffs and Stipulating Defendants further stipulate and agree that this extension is available, without further stipulation, to all named defendants who notify Stipulating Plaintiff in writing of their intention to join this Stipulation.

8. Plaintiffs agree to dismiss without prejudice Golden Eagle Industries, Inc. A/K/A Spangler Companies, Inc., Lafarge S.A. A/K/A Lafarge Worldwide, Saint-Gobain S.A. A/K/A Compagnie De Saint-Gobain within 10 days of entering into this Stipulation.

9. Defendants agree to notify the Court by February 12, 2013, stating that Defendants do not object to Plaintiffs Motion to Consolidate.

**STIPULATED AND AGREED TO THIS 12TH DAY OF FEBRUARY, 2013.**

By: /s/ Larry McDevitt  
Larry McDevitt  
David Wilkerson, NC #35742  
The Van Winkle Law Firm  
11 North Market Street  
Asheville, NC 28801  
Telephone: 828-258-2991  
Fax: 828-255-0255  
Email: lmcdevitt@ivwlawfirm.com  
Email: dwilkerson@vwlawfirm.com

**Counsel for Stipulating Plaintiffs Caceres Drywall Corp. (3:12-cv-31); Jerry R. Berkous Drywall d/b/a Berkous Drywall (3:12-cv-35); and Eriez Construction, Inc. (3:12-cv-59), and the Proposed Class**

Jay W. Eisenhofer  
Linda P. Nussbaum  
Peter A. Barile III  
**GRANT & EISENHOFER P.A.**  
485 Lexington Avenue  
New York, NY 10017  
Tel: 646-722-8500  
Fax: 646-722-8501

Michael D. Hausfeld  
James J. Pizzirusso  
Mindy B. Pava  
**HAUSFELD LLP**  
1700 K Street, NW, Suite 650  
Washington, DC 20006  
Tel: 202-540-7200  
Fax: 202-540-7201

Michael E. Criden  
Kevin B. Love  
**CRIDEN & LOVE, P.A.**  
7301 S.W. 57th Court, Suite 515  
South Miami, FL 33143  
Tel: 305-357-9000  
Fax: 305-357-9050

Brent W. Landau  
**HAUSFELD LLP**  
1604 Locust Street, 2nd Floor  
Philadelphia, PA 19103  
Tel: 215-985-3273  
Fax: 215-985-3271

***Counsel for Plaintiff Caceres Drywall Corp. (3:13-cv-31), and the Proposed Class***

Arthur N. Bailey  
**ARTHUR N. BAILEY & ASSOCIATES**  
111 W. 2nd Street, # 4500  
Jamestown, NY 14701  
Tel: 716-664-2967  
*Counsel for Plaintiff Jerry R. Berkous  
Drywall d/b/a Berkous Drywall (3:13-cv-  
35), and the Proposed Class*

Steven A. Asher  
Mindee J. Reuben  
Jeremy S. Spiegel  
**WEINSTEIN KITCHENOFF & ASHER  
LLC**  
1845 Walnut Street, Suite 1100  
Philadelphia, PA 19103  
Tel.: 215-545-7200

*Counsel for Eriez Construction, Inc. (3:13-  
cv-59), and the Proposed Class*

By: /s/ David L. Hanselman, Jr.

David L. Hanselman, Jr.  
McDermott Will & Emery LLP  
227 West Monroe Street  
Chicago, IL 60606  
Telephone: (312) 372-2000  
Facsimile: (312) 984-7700  
E-mail: [dhanselman@mwe.com](mailto:dhanselman@mwe.com)

Attorney for Defendant AMERICAN  
GYPSUM COMPANY LLC

By: /s/ Rebecca Weinstein Bacon  
Rebecca Weinstein Bacon  
Bartlit Beck Herman Pelanchar & Scott LLP  
54 West Hubbard Street  
Chicago, IL 60654  
Telephone: (312) 494-4400  
Facsimile: (312) 494-4440  
E-mail: [rweinstein.bacon@bartlit-beck.com](mailto:rweinstein.bacon@bartlit-beck.com)

Attorney for Defendants USG CORPORATION, UNITED STATES GYPSUM COMPANY,  
and L&W SUPPLY CORPORATION

By: /s/ George A. Nicoud III  
George A. Nicoud III  
Gibson, Dunn & Crutcher LLP  
555 Mission Street, Suite 3000  
San Francisco, CA 94105  
Telephone: (415) 393-8308  
Facsimile: (415) 374-8473  
E-mail: [tnicoud@gibsondunn.com](mailto:tnicoud@gibsondunn.com)

Attorney for Defendant GEORGIA-PACIFIC LLC

By: /s/ Mark W. Nelson  
Mark W. Nelson  
Cleary Gottlieb Steen & Hamilton LLP  
2000 Pennsylvania Avenue, NW  
Washington, DC 20006  
Telephone: (202) 974-1622  
Facsimile: (202) 974-1999  
E-mail: [mnelson@cgsh.com](mailto:mnelson@cgsh.com)

Attorney for Defendant LAFARGE NORTH AMERICA INC.

By: /s/ Bradley C. Weber  
Bradley C. Weber  
Locke Lord LLP  
2200 Ross Avenue, Suite 2200  
Dallas, TX 75201  
Telephone: (214) 740-8497  
Facsimile: (214) 756-8497  
E-mail: [bweber@lockelord.com](mailto:bweber@lockelord.com)

Attorney for Defendant PABCO BUILDING PRODUCTS, LLC

By: /s/ Everett J. Bowman  
Everett J. Bowman  
Robinson, Bradshaw & Hinson, P.A.  
101 North Tryon Street, Suite 1900  
Charlotte, NC 28246  
Telephone: (704) 377-8329  
Facsimile: (704) 373-3929  
E-mail: [ebowman@rbh.com](mailto:ebowman@rbh.com)

Attorney for Defendants NEW NGC, INC.



By: /s/ Robert A. Milne  
Robert A. Milne  
White & Case LLP  
1155 Avenue of the Americas  
New York, NY 10036  
Telephone: (212) 819-8924  
Facsimile: (212) 354-8113  
E-mail: [rmilne@whitecase.com](mailto:rmilne@whitecase.com)

Attorney for Defendant CERTAINTEED CORPORATION

By: /s/ James T. McKeown  
James T. McKeown  
Foley & Lardner LLP  
777 East Wisconsin Avenue  
Milwaukee, WI 53202  
Telephone: (414) 297-5530  
Facsimile: (414) 297-4900  
E-mail: [jmckeown@foley.com](mailto:jmckeown@foley.com)

Attorney for Defendant TIN INC.

**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen  
United States District Judge

