

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

STEVEN MINAFRI,	:	
	:	
Plaintiff,	:	Case No. 2:09-cv-167
	:	
	:	
M/I HOMES, INC., et al.,	:	JUDGE ALGENON L. MARBLEY
	:	Magistrate Judge King
	:	
	:	
Defendant.	:	

ORDER ON MOTION FOR TEMPORARY RESTRAINING ORDER

This case involves Plaintiff’s claim that Defendants manufactured, sold, and installed defective drywall that contains sulfur and other organic compounds that are injurious to human health. Plaintiff Steven Minafri (“Minafri”) has filed this action as a class action, however, the Court has not yet ruled on the issue of class certification. Now before the Court is Minafri’s Motion for a Temporary Restraining Order pursuant to Federal Rule of Civil Procedure 23(d). (Doc. no. 8.)

Minafri asks the Court to enjoin Defendant M/I Homes, Inc. from communicating with putative class members without obtaining prior approval from the Court or the agreement of Plaintiff’s counsel. Minafri’s Motion centers around an April 24, 2009 letter that M/I Homes sent to putative class members who owned houses built by M/I Homes.¹ The Letter offered to remove the drywall from putative class members houses in exchange for a limited release and assignment of certain claims against M/I Homes. Minafri contends that the Letter was misleading and improper, warranting injunctive relief under Rule 23(d).

¹ Minafri’s Motion also asked the Court to enjoin M/I Homes from sending the Letter in its present form, however, the Court learned during the hearing on the Motion that the Letter had already been sent on April 24, 2009.

A preliminary informal conference on Minafri's Motion was held by telephone on Monday, April 27, 2009, pursuant to S.D. Ohio Civ. R. 65.1(a). In attendance were counsel for Minafri and counsel for M/I Homes. Upon consideration of Minafri's briefs and exhibits and the arguments of the parties, and for the reasons set forth on the record during the April 27, 2009 hearing, the Court finds that there is no clear record demonstrating misleading information in the Letter or inherently coercive behavior on the part of Defendant M/I Homes. *See Gulf Oil Co. v. Bernard*, 452 U.S. 89, 101-02 (1981) (order limiting communications between parties and potential class members must be based on a clear record of particular abuses); *In re M.L. Stern Overtime Litig.*, 250 F.R.D. 492, 500 (S.D. Cal. 2008) (pre-certification communication of settlement offer to putative class members was not misleading or coercive and, thus, not improper). Accordingly, the Court **DENIES** Minafri's Motion for a Temporary Restraining Order.

The Court further orders that a preliminary injunction hearing shall be held on **Monday, May 18, 2009 at 9:30 a.m.** The briefing schedule for that hearing, to include only opening and reply briefs, will be as follows:

May 4, 2009, at 4:00 p.m.: opening briefs from both parties not to exceed 15 pages in length are due.

May 11, 2009, at 4:00 p.m.: reply briefs, not to exceed 5 pages in length are due.

IT IS SO ORDERED.

s/Algenon L. Marbley
ALGENON L. MARBLEY
United States District Court Judge

DATE: April 27, 2009