



defective Windows constitute fraud, negligence, breach of implied warranty, breach of express warranty and unjust enrichment, and declaratory relief as appropriate.

### **OVERVIEW**

3. This case concerns Pella's failure to disclose, to purchasers of its Windows, the builders of the purchaser's structures, and owners of the Windows, that the Windows were defective in material and workmanship as a result of the design and manufacturing practices of Pella. As a result of the defect, there is a high probability those Windows will fail, and likely already have developed wood rot in the Window sashes. The wood rot will progress to the frames and adjoining structure unless repaired and replaced before the rot progresses to those components.

4. At the time of sale, the Windows contained defects that permitted water to enter behind the Windows and cause premature wood rot and deterioration, resulting in damage to both the Windows themselves, as well as other property such as components adjacent to the windows, including drywall, sheathing, and other framing materials.

5. The Windows' cladding permits water penetration to expose the interior wood components without adequate wood preservative, drainage or evaporation, as such the cladding causes and contributes to cause an increase in the moisture content of the wood components beyond their capacity to resist wood rot and microbial colonization.

6. Because the wood rot resulting from the defective design and manufacture does not become visible upon ordinary inspection until years after installation, it is not detectable in spite of its presence within the Windows.

7. Rather than acknowledge the existence of this defect, and its incipient

consequences, Pella unilaterally drafted a limited warranty, which is not calculated to provide any protection for this defect in material and workmanship, but to the contrary, is written so as to provide no meaningful remedy to consumers and owners of these Windows.

8. In spite of its knowledge regarding the defect in the Windows, Pella uses the limited warranty to profit from the premium price charged for defective windows.

9. At all relevant times, Pella had knowledge that the Windows were defective but took no action to: (1) inform purchasers or owners of the Windows of the defects; (2) recall the Windows; (3) otherwise repair the Windows that had already been purchased; or (4) replace the Windows or components with non-defective product.

10. At all relevant times, Pella knew, or should have known: (a) the Windows were defective; (b) the Windows would experience wood rot to the sash components of the Windows; (c) the Windows would need to be repaired and replaced well short of the reasonably expected useful life of the Windows; (c) the defect, if known, would have failed to meet the reasonable expectations of purchasers, and would not be sold at the premium price Pella charges for the Windows; and (d) that the limitation in its warranty, did and was calculated to shield liability for a known, material defect in the Windows.

11. Rather than provide warranty protection, Pella chose to conceal, suppress or omit knowledge of the defect, and the material facts related to the defect, all the while distributing, marketing and selling the Windows, which purported to be warranted to unsuspecting consumers, builders, and homeowners throughout the United States.

12. Pella presented the warranty to consumers as protection for defects in material and workmanship all the while knowing that it provided no warranty protection for the Window

defect as alleged herein, provided no meaningful, or at best only illusory, benefits when in fact it was calculated to not provide warranty benefits, and as such was deceptive and unconscionable.

13. Pella knew, or should have known, prior to sale to the Plaintiffs and the Class that, for the indefinite future, there was a substantial risk that its Windows would rot behind the aluminum cladding, Pella failed to disclose that risk, and presented the Windows as a high quality product free of defects which Pella knew was false.

14. Pella's conduct deprived consumers of the opportunity to negotiate additional warranty coverage, negotiate a lower price to reflect the risk posed by the defect, or simply avoid the risk altogether by purchasing a different manufacturer's windows. Thereafter, the undisclosed risk occurred – Plaintiffs' Windows (and thousands of others) have rotted– and Plaintiffs and the Class have been damaged in the amount it will cost, or they paid, to repair, install, and replace the Windows.

15. Consumers reasonably expected that their Windows would not rot or permit water intrusion into the interior of their home, and that their Windows would last for their reasonable useful life without rotting.

16. The reasonable expectation is that the Windows will last without rot to its interior components, as long as the exterior wall into which it is installed, 20-25 years per industry standards.

17. Consumers, like Plaintiffs and the proposed class, have a reasonable expectation:
- a. that a manufacturer such as Pella Corporation would make a disclosure to consumers if it determined there was a significant evidence of wood deterioration in their cladded windows;
  - b. that a manufacturer such as Pella Corporation would repair the latent defect – even if the defect did not exhibit itself until after the warranty period expired – because the potential causes of the defect are within the

control and responsibility of the manufacturer (not the consumer); and

- c. that had there been evidence of wood deterioration in their clad Windows, either because the wood preservative was inadequate protection for the reasonable life of the Windows; or that the cladding was contributing to increased moisture retention in the wood components of the Windows, that Pella would extend replacement repair and the costs associated therewith to owners of the Windows.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because (i) the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs, (ii) Defendant is a citizen of another State (complete diversity), and (iii) there are 100 or more members of the proposed Plaintiff classes.

2. Venue is properly set in this District pursuant to 28 U.S.C. § 1391(a). Defendant Pella does business or transacts business in this Judicial District, subjecting it to personal jurisdiction and venue in this Judicial District. The Plaintiff resides in the Northern District of Alabama.

3. Joinder of Plaintiff's claims are warranted pursuant to Rule 23 of the Federal Rules of Civil Procedure as her claims arise out of the same occurrences and numerous questions of law and fact common to all Class Members will arise in this action.

### **PARTIES**

4. Defendant, Pella Corporation, is an Iowa Corporation, organized and existing under the laws of the State of Iowa. At all relevant times, Pella Corporation transacted and conducted business in Alabama and throughout the United States.

5. Plaintiffs Tony and Belinda Gowins ("Plaintiffs" or "Gowins") are over the age of nineteen, and at all relevant times hereto, have owned property at 794 Killough Lane, Talladega

County, Talledega, Alabama.

6. In 2004-2005, the Gowins had their custom lake home constructed in Talladega. The home was completed in September of 2009.

7. When the Gowins were shopping for windows, they did so with the intention of buying only the best building products for their home, which they knew would be subjected to high winds and wind driven rain for that location.

8. When the Gowins sought information from a Pella distributor in Birmingham, Alabama, the representative assured the Gowins that the Pella Architect Series windows were the best quality windows, and would withstand lake conditions, including wind and blowing rain.

9. At all times relevant herein, the Pella distributor was an agent for Defendant Pella Corporation.

10. Plaintiffs relied on the representations of the Pella distributor, which induced them to purchase over 70 aluminum clad Architect Series Windows for their home.

11. Unbeknownst to Plaintiffs until April of 2016, her home(s) contained defective Windows manufactured by Pella.

12. The Windows are defective in that water permeates the window unit through common defects, including (a) insufficient wood preservative treatment; and (b) inadequate water management design.

13. Due to the defects, the following has occurred (and continues to occur):

- a. The Windows have permitted moisture or water intrusion into the interior of the home and also into the wall cavity, and have damaged adjacent building components including trim, drywall, and other components;
- b. The Windows themselves have begun to deteriorate and rot.

14. In April of 2016, Plaintiff Belinda Gowins was cleaning a triple ganged window and noticed severe wood rot. The rot was so severe that the hinge fell off of the window. She immediately inspected the two adjoining windows of the ganged unit, and did not see any similarly noticeable damage. Believing the rotten window to be an isolated problem because the adjoining windows did not appear to have damage, she chose not inspect any additional windows.

15. Within the following weeks, Plaintiff Belinda Gowins began to think and worry about the severe rot she discovered in the window of the ganged unit. Upon doing Internet research, she discovered that there were many other homeowners who had experienced the same thing on a widespread basis. As a result, she performed visual inspections of numerous other windows and discovered rot of various stages throughout the windows in her home.

16. In May of 2016, Plaintiffs contacted Pella and notified them of the problems with her windows and damage discovered. Pella did not replace or repair the windows in accordance with the warranty because it had been more than 10-years since purchase; instead, Pella gave Plaintiffs a quote on replacement windows and offered to waive the delivery fee.

17. Although Plaintiffs did not notice the damage until after the 10-year warranty had expired, the defects existed at the time the Windows left the factory and the resulting latent damage began to manifest prior to the expiration of the 10-year warranty. Thus, the windows failed long before the warranty expired; however, Pella does not honor their warranty if the homeowner does not discover the latent defects and damage until after expiration of the 10-years.

18. Plaintiffs had an expectation that the Windows would last longer than 10, 12, or

even 20 years, in large part based upon the representations made by the Pella representative.

19. In fact, until the rot had gotten so severe that the hinge fell off in April of 2016, Plaintiffs had no reason to believe their windows had failed or would anytime in the near future.

20. Even when Mrs. Gowins discovered the window rot in April of 2016, she still could not have fathomed that all of her windows shared a common defect resulting in damage to additional windows.

21. Additionally, at no time did Pella or its agents acknowledge the windows were the cause of the damage Plaintiffs was experiencing. Instead, Pella simply offered a quote for the Plaintiffs to pay even more money for their windows.

### **THE WINDOWS**

22. The products at issue in this case are both the Pella Architect and Designer Series aluminum wood clad, casement Windows.

23. Pella began marketing the Architect Series line in 1990, and began marketing the Designer Series in 1992.

24. Upon information and belief, Pella has sold, directly or indirectly (through dealers and other retail outlets), tens of thousands of Windows nationwide and in the State of Alabama.

25. Pella sells its windows through third-party sellers or through its wholly-owned showrooms and distributors.

26. At the time of sale, Pella warranted that each Window was fit for the ordinary purpose for which such goods were used and was free from defects in materials and workmanship.



27. Both Series share the same or similar design function, manufacture, installation, and defects.

28. The damage resulting from the defects is the same or similar throughout both Series.

### **THE DEFECT**

29. The Windows are defective in that water permeates the window unit through common defects: (a) insufficient wood preservative treatment; and (b) inadequate water management design.

30. The Architect and Designer Series Windows are wet glazed with the glass sealed against wood or metal cladding.

31. Insufficient wood preservative treatment chemicals allow for premature deterioration of the Windows' wood components prior to Pella's 10-year warranty, and prior to the industry standard of 20-25 year service life. The treatment is so insufficient, that moisture penetration from any source causes premature degradation.

32. Inadequate Water Management Design allows for the frame-to-sash joints, glazing pocket, and excessive gasket set compression to permit water to penetrate the wood members.

33. Pella failed to disclose to purchasers of its Windows, the builders of the purchaser's structures, and owners of the Windows, that the Windows were defective in material and workmanship as a result of the design and manufacturing practices of Pella. As a result of the defect there is a high probability those Windows will fail, and likely already have developed wood rot in the Window sashes. The wood rot will progress to the frames and adjoining

structure unless repaired and replaced before the rot progresses to those components. The defect is the product of Pella's design and manufacturing process: (a) the resulting wood rot is masked by the aluminum cladding of the Windows; (b) the wood rot is incipient and takes an extended period to advance to the stage in which it becomes visible upon ordinary inspection; and (c) because of its incipient nature and masking by the exterior cladding, the wood rot will likely not exhibit itself until it is so advanced as to become apparent upon ordinary inspection but not until after the Pella's limited warranty period has expired.

34. Because the wood rot resulting from the defective design and manufacture is concealed by the cladding and otherwise does not become visible upon ordinary inspection until after years after installation, it is not detectable in spite of its presence within the Windows.

**PELLA'S CONDUCT WITH RESPECT TO THE WIDESPREAD  
WOOD ROT PROBLEM AT ISSUE HERE**

35. Pella has been aware, or but for its negligence should have been aware, that its Windows were manufactured with wood components which needed to be protected from exposure to water penetrating behind the cladding of its Windows and that the failure to do so significantly increased the moisture retention of those interior wooden components under circumstances where they could not dry in sufficient time to prevent the initiation of progressive wood rot.

36. At all relevant times, Pella knew, or should have known, the Windows were (a) defective; (b) would experience wood rot to the sash components of the Windows; (c) would need to be repaired and replaced well short of the reasonably expected useful life of the Windows; (c) the defect, if known, would have failed to meet the reasonable expectations of purchases, and would not be sold at the premium price Pella charge for the Windows; and (d)

that the limitation in its warranty, did and was calculated to shield liability for a known, material defect in the Windows.

37. Pella knew (or but for its negligence or reckless indifference would have known) that it, or its distribution channels were going to continue to receive, and did receive reports of wood rot in the Windows. Pella also knew, or should have known, that even if diligently inspected, Window owners would not: (a) be capable of detecting wood rot until it was significantly advanced, likely years after the rot began; (b) be able to determine the cause of the problem as a defect in material and workmanship; and (c) would not be able to determine the steps to be taken to remediate the wood deterioration.

38. Pella knew (or but for its negligence, or reckless indifference would have known) that latent damages resulting from its Windows begin to manifest within the warranty period; however, still refuse to repair or replace under the warranty if the homeowner did not discover the defect and damage after expiration.

39. Thus, Pella knew (or but for its negligence, or reckless indifference would have known) that for the indefinite future: (a) the risk of wood rot was substantial; (b) Pella's customers were unaware of that substantial risk; (c) those customers had a reasonable expectation that Pella would disclose that risk and cure the latent defect, even if the defect did not exhibit itself until after the warranty period had expired; and (d) that it did not intend to honor warranty claims for the known defective Windows.

40. Despite such knowledge, or as a result of its negligence or reckless indifference, Pella did not disclose to the market or otherwise that: there was a substantial risk their Windows would manifest the defect late in, or after the warranty period; and, that Pella's warranty, as they

drafted it, would provide no warranty benefits for the known risk of their defective Windows.

41. Furthermore, when questioned about wood rot, Pella or its agent would claim excessive moisture in or outside of the home as the cause without disclosing the defect.

42. Pella would likewise fail to repair or replace windows if the defect or damage was discovered by the homeowner outside of the warranty period, despite manifesting during the 10-year warranty period.

43. At all relevant times, Pella had knowledge that the Windows were defective but took no action to: (1) inform owners of the Windows of the defects; (2) recall the Windows; or (3) otherwise repair or replace the Windows that had already been purchased. Instead, Pella concealed this knowledge.

44. At all relevant times, Pella knew its Windows were defective, but chose to conceal, suppress, or omit this material fact while distributing, marketing, and selling the Windows to unsuspecting consumers, builders, and homeowners in Alabama and throughout the United States.

45. Rather than provide warranty protection, Pella chose to conceal, suppress or omit knowledge of the defect, and the material facts related to the defect, all the while distributing, marketing and selling the Windows, which purported to be warranted to unsuspecting consumers, builders, and homeowners across the Class States.

### **WARRANTIES**

46. Pella represented and warranted that each Window conformed to the applicable building codes, applicable ASTM standards, applicable American Architectural Manufacturers Association (“AAMA”) standards and applicable National Fenestration Ratings Council

(“NFRC”), applicable Window & Door Manufacturers Association (“WDMA”).

47. Based upon the representations of Pella and its agents/representatives, Plaintiff and Class Members believed that the Windows would be sufficient to withstand the weather conditions where their homes are located.

48. These representations, described herein, became part of the basis of the bargain when Plaintiffs and Class Members, and/or their builders purchased the Windows, and/or assumed the warranty.

49. In addition, these representations became part of the basis of the bargain when Plaintiffs and/or Class Members purchased the homes with Pella’s express representations concerning the quality and performance of the Windows.

50. Plaintiffs and Class Members relied on Pella’s warranty, published specifications and/or advertisements regarding the quality and performance of the Windows.

51. Such representations induced Plaintiffs and Class Members to purchase Pella windows.

52. However, the Windows do not conform to these express representations and warranties, and, as alleged herein, Pella breached its express warranties and representations concerning these Windows.

53. The Windows suffer from various design deficiencies as described above. Due to these design defects, water is permitted to be trapped between the aluminum and the operable wood frame causing damage to the Windows and other property within the home as well as permit leaks.

54. Because the Windows permit water intrusion, they violate the building code and industry standards, including the applicable Building Codes, AAMA standards, NFRC standards, WDMA standards, and/or ASTM standards as well as Pella's express representations and warranties.

55. Despite warranting that the Windows are compliant with the pertinent ASTM standards, the Windows fail ASTM E1105 Water Testing standards.

56. The Windows also do not comply with ASTM E2136, which states that the **minimum** anticipated service life for a window is 20 to 25 years. Pella Windows fail ASTM E2136, as they have an anticipated service life of 5 to 15 years.

57. The Windows are not suitable as an exterior building product, and fail to withstand the weather conditions of the locations in which the Windows are sold.

58. The defects and deficiencies are due to fundamental design, engineering, and manufacturing errors well within Pella's area of expertise. Indeed, Pella touts its almost 90 year history of designing and manufacturing Windows and doors on its website and promotional materials.

59. In addition to the express representations and warranties regarding the quality and performance of the Windows discussed herein, Pella also ships a Limited Warranty with its Windows. Pella's Limited Warranty provides for repair or replacement of defective parts or product within ten (10) years from the date of sale, and cost of labor for the first two (2) years.

60. Rather than acknowledge the existence of this defect, and its incipient consequences, Pella unilaterally drafted this limited warranty, which is not calculated to provide any protection for this defect in material and workmanship, but to the contrary, is written so as to

provide no meaningful remedy to consumers and owners of these Windows.

61. In spite of its knowledge regarding the defect in the Windows Pella uses the limited warranty to profit from the premium price charged for defective Windows.

62. Pella presented the warranty to consumers as protection for defects in material and workmanship all the while knowing that it provided no warranty protection for the Window defect as alleged herein, provided no meaningful, or at best only illusory, benefits when in fact it was calculated to not provide warranty benefits, and as such was deceptive and unconscionable.

63. Pella failed or refused to repair or replace under the warranty if the homeowner did not discover damage or defects until after expiration of the warranty, even when the damage began during the 10-year warranty period.

64. Pella's conduct thereby deprived consumers of the opportunity to negotiate additional warranty coverage, negotiate a lower price to reflect the risk posed by the defect, or simply avoid the risk altogether by purchasing a different manufacturer's Windows. Thereafter, the undisclosed risk occurred – Plaintiffs' Windows (and thousands of others) have rotted– and Plaintiffs and the Class have been damaged in the amount it will cost, or they paid, to repair, install, and replace the Windows.

65. However, Pella's shipping of the Windows with prior knowledge of the defects, or with negligent or reckless disregard of the presence of defects, constituted a breach of its express warranty, makes the limitations of the Limited Warranty unconscionable in all respects, and therefore is void *ab initio*. Further, by limiting its cost to fully repair and replace the Windows for only the first two years after sale, the Limited Warranty is unconscionable because Pella knows that there is a defect in the Windows.

66. The Limited Warranty is not a negotiated contract and is so one-sided that no reasonable person would ever knowingly agree to its terms if properly disclosed.

67. Moreover, during contact with Plaintiffs and the Class Members, Pella concealed its knowledge of repeated product defects in the Windows in the Class Members' structures.

68. As Pella has known of the Window defects and has failed to timely honor its express and implied warranties, the Limited Warranty has failed of its essential purpose, and the limitations therein are null and void. Further, the limitations contained in the Limited Warranty are not conspicuous.

69. Consumers reasonably expected that their Windows would not rot behind the cladding, and that their Windows would last for their reasonable useful life without rotting.

70. The reasonable expectation is that the Windows will last without rot to their interior components, as long as the exterior wall into which they are installed, conservatively 30 years.

71. Consumers, like Plaintiffs and the proposed Class, have a reasonable expectation:
- a. that a manufacturer such as Pella Corporation would make a disclosure to consumers if it determined there was a significant evidence of wood deterioration in their cladded Windows;
  - b. that a manufacturer such as Pella Corporation would repair the latent defect – even if the defect did not exhibit itself until after the warranty period expired – because the potential causes of the defect are within the control and responsibility of the manufacturer (not the consumer); and
  - c. that had there been evidence of wood deterioration in their clad Windows, either because the wood preservative was inadequate protection for the reasonable life of the Windows; or that the cladding was contributing to increased moisture retention in the wood components of the Windows, that Pella would extend replacement repair and the costs associated therewith to owners of the Windows.



72. Plaintiffs and Class Members have not received the value for which they or their builder bargained when the Windows were purchased. There is a difference in value between the Windows as warranted and the Windows containing the defect.

73. All conditions precedent for filing this Complaint have been satisfied. This Complaint has been filed prior to the expiration of any period of any statute of limitation or statute of repose, and for the Alabama subclass, within the applicable periods of liberative prescription or peremption.

### **CLASS ACTION ALLEGATIONS**

74. Plaintiffs bring this class action pursuant to Fed. R. Civ. P. 23. The requirements of Fed. R. Civ. P. 23(a), (b)(2), (b)(3) and (c)(4) are met with respect to the classes defined below:

### **INJUNCTIVE RELIEF CLASS**

All persons and entities who are current or former owners of a structure on which Pella Designer or Architect Windows are installed.

### **DAMAGES CLASS**

All persons and entities who are current or former owners of a structure located within Alabama which Pella Designer or Architect Windows are installed, whose windows have exhibited wood rot and who have paid to fix the affected window(s) or other property damaged by the alleged defect.

Excluded from the Classes are: (a) any Judge or Magistrate presiding over this action and members of their families; (b) Pella and any entity in which Pella has a controlling interest or which has a controlling interest in Pella and its legal representatives, assigns and successors of

Pella; and (c) all persons who properly execute and file a timely request for exclusion from the Classes.

75. *Numerosity*: The Classes are composed of thousands of persons geographically dispersed, the joinder of whom in one action is impractical. Moreover, upon information and belief, the Classes are ascertainable and identifiable from Pella records or identifying marks on the Windows.

76. *Commonality*: Questions of law and/or fact common to the Classes exist as to all members of the Classes and predominate over any questions affecting only individual members of the Classes. These common legal and factual issues include, but are not limited to the following:

- a. Whether the Windows are defective;
- b. Whether the Windows have not performed or will not perform in accordance with: (i) the reasonable expectations of ordinary consumers; (ii) industry expectations of a 20-25 year useful life;
- c. Whether Pella knew or should have known of the defect;
- d. Whether Pella concealed from consumers and/or failed to disclose to consumers the defect;
- e. Whether Pella breached the express warranty that the Windows were free of defects in material and workmanship when sold when in fact, Pella knew or should have known they were defective by allowing water to penetrate behind the cladding and expose the interior wood components to moisture for prolonged periods without draining, evaporation, or adequate preservative to prevent wood rot;
- f. Whether Pella breached the implied warranty of merchantability by designing, manufacturing and selling the Windows when those windows would not pass without objection in the trade; were not fit for the ordinary purpose of exterior windows; did not conform to the promises and affirmations of fact Pella made concerning the Windows;

- g. Whether Pella breached the implied warranty of fitness for particular purpose when Pella knew that the windows would be used for applications as exterior Windows exposed to water, snow and moisture; and that wood rot was incipient and would not be recognized by ordinary inspection until it had reached an advanced stage;
- h. Whether Pella's Limited Warranty contained limitations, exclusions and disclaimers such as to cause it to fail of its essential purpose;
- i. Whether Pella's warranty was drafted and implemented to exculpate Pella from liability for Windows it knew, or should have known were defective when designed, manufactured and sold;
- j. Whether Plaintiffs and the Class members are entitled to compensatory damages, including, among other things: (i) compensation for all out-of-pocket monies expended by members of the Classes for replacement of Windows and/or installation costs; (ii) the failure of consideration in connection with and/or difference in value arising out of the variance between the Windows as warranted and the Windows containing the defect; and (iii) the diminution of resale value of the structures containing the Windows resulting from the defect;
- k. Whether Plaintiffs and the Class members are entitled to replacement of their defective Windows with non-defective Windows;
- l. Whether Plaintiffs and the Class members are entitled to restitution and/or disgorgement;
- m. Whether Pella falsely advertised and marketed its products to consumers;
- n. Whether the Windows conform to the applicable Alabama building code and/or applicable industry standards;
- o. Whether the Windows damage other property within Plaintiffs' and Class Members' homes;
- p. Whether Pella concealed the defective nature of the Windows;
- q. Whether Pella's Limited Warranty is unconscionable;
- r. Whether Pella's Limited Warranty adequately disclaimed its liability; and
- s. Whether Pella's conduct as alleged is misleading, deceptive and/or unconscionable.

77. *Typicality*: Plaintiffs' claims are typical of the claims of the members of the Class, as all such claims arise out of: Pella's conduct in designing, manufacturing, marketing, advertising, warranting and selling the defective Windows; Pella's conduct in concealing the defect in the Windows; and Plaintiffs' and Class Members' purchasing structures with the defective Windows.

78. *Adequate 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 consumer class actions involving product liability and product design defects.

79. *Predominance and Superiority*: This class action is appropriate for certification because questions of law and/or 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 Alabama 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.

**EQUITABLE ESTOPPEL/EQUITABLE TOLLING**

80. Upon information and belief, Pella has known of the defects in the Windows for years and has concealed from owners of the Windows and/or failed to alert the owners of the defective nature of the Windows.

81. As manufacturer and designer of the Windows, Pella knew or should have known about the defects within the Windows. Pella also knew or should have known that its replacement Windows were equally defective. Despite this knowledge, Pella failed to disclose this fact and/or concealed this fact from homeowners. Therefore, Plaintiffs and Class Members could not reasonably have known that the Windows were defective.

82. Since Pella knew of the defects within the Windows and because Plaintiffs and Class Members could not reasonably have known that the Windows were defective, Pella is estopped from asserting any statutes of limitation or statutes of repose that might otherwise be applicable to the claims asserted herein.

83. Pella's post-sale concealment and ongoing active misrepresentation as to the defective nature of the Windows estops Pella from relying on statutes of limitations or statutes of repose as a defense. Plaintiffs contacted Pella to pursue her remedies under its Warranty. Instead of acknowledging the defects in its Windows, Pella refused to honor its obligation under the Warranty by informing Plaintiffs that its Windows were not defective.

84. Pursuant to the doctrine of Equitable Tolling and/or Equitable Estoppel, the period for bringing claims shall not be barred due to the statute of limitations or statute of repose. The interest of justice requires equitable tolling in this case. In applying this doctrine the relevant factors include "the claimants diligence, the claimants knowledge of the relevant facts,

the claimants reliance on authoritative statements made by the administrative agency, and whether these statements misled the claimant.” Accordingly, with respect to each and every cause of action and/or Count asserted herein, Plaintiffs expressly plead Equitable Tolling and/or Equitable Estoppel and their application thereto.

**COUNT I**  
**NEGLIGENCE**

85. Plaintiffs individually and on behalf of all others similarly situated, adopt and incorporate by reference all foregoing allegations as though fully set forth herein.

86. At all times material hereto, Pella designed and manufactured the Windows.

87. Pella had a duty to Plaintiffs and to members of the class to design and manufacture Windows that were free of latent defects that would cause the Windows to leak and cause damage to Plaintiffs’ home such as the wall cavity and the structure of the home.

88. Pella had a duty to Plaintiffs and to members of the class to test the Windows to ensure adequate performance of the windows for a reasonable period of use.

89. Pella had a duty to Plaintiffs and to class members to ensure that the Window components were suitable, either by testing or by verifying third-party test results.

90. Pella had a duty to Plaintiffs and to members of the class to ensure that the Windows complied with industry standards and all applicable building codes throughout Alabama.

91. Pella had a duty to Plaintiff and members of the Class to forewarn purchasers, installers, and users regarding the known risk of product failures.

92. Pella failed to exercise ordinary and reasonable care in the design and manufacture of the Windows and in determining whether the Windows that it sold, and

continued to sell, contained a latent defect that would result in the failure of the Windows to perform as reasonably expected.

93. Pella failed to exercise ordinary and reasonable care in the design and manufacture of the Windows and breached the foregoing duties.

94. Pella breached its duty to the Plaintiffs and class members to test the Windows to ensure adequate performance of the Windows for a reasonable period of use.

95. Pella breached its duty to Plaintiffs and to class members to ensure that the window components were suitable, either by testing or by verifying third-party test results.

96. Pella breached its duty to Plaintiffs and to members of the class to ensure that the Windows complied with industry standards and the applicable building codes.

97. Pella breached its duty to Plaintiffs and to members of the class to forewarn purchasers, installers, and users regarding the known risk of product failures.

98. The negligence of Pella, its agents, servants, and/or employees, include the foregoing, as well as the following acts and/or omissions:

- a. designing, manufacturing, processing, distributing, delivering, supplying, inspecting, marketing and/or selling Windows without adequately and thoroughly testing them to all applicable standards and building codes;
- b. designing, manufacturing, processing, distributing, delivering, supplying, inspecting, marketing and/or selling Windows without adequately testing long term performance;
- c. negligently failing to ensure that the Windows conformed to all applicable standards and building codes; and
- d. concealing information concerning the defects inherent in the Windows from Plaintiffs and the Class members, while knowing that Pella's Windows were defective and non-conforming with accepted industry standards and building codes.

99. Plaintiffs and the Class Members have been damaged because the defective Windows do not perform the ordinary purpose of sealing Plaintiffs' home against the elements.

100. Plaintiffs and Class Members have also been damaged as a direct and proximate result of the negligence, carelessness, recklessness, willfulness, and wantonness of Pella as aforesaid, including, but not limited to, damage to the product, other property and mental anguish and emotional distress.

101. As Pella's conduct was grossly negligent, reckless, willful, wanton, intentional, fraudulent, or the like, Plaintiffs' class and the class are entitled to an award of punitive damages against Pella.

**COUNT II**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

102. Plaintiffs on behalf of themselves and all others similarly situated, adopt and incorporate by reference all foregoing allegations as though fully set forth herein.

103. Pella entered into contracts with retailers, suppliers and/or contractors to sell its Windows that were to be installed at Plaintiffs 'and the Class Members' properties.

104. Plaintiffs and the Class Members are intended third-party beneficiaries of those contracts because it was the clear and manifest intent of Pella at the time the contract was created, that the contracts were to primarily and directly benefit homeowners, including Plaintiffs and the Class Members; and that the homeowners, including Plaintiffs and Class Members were the intended beneficiary of the contract for the Windows.

105. Pella warranted that its Windows were merchantable and reasonably fit for its ordinary purpose, and would not cause damage as set forth herein.



106. Pella breached the implied warranty of merchantability by selling its Windows that were defective and not reasonably fit for its ordinary purpose.

107. Pella's Windows are defective because they cause and continue to cause damage as described more fully herein.

108. As a result of Pella's breach of the implied warranty of merchantability, Plaintiffs and the Class Members have suffered and continue to suffer actual and consequential damages, including but not limited to emotional distress and mental anguish.

**COUNT III**  
**BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE**

109. Plaintiffs on behalf of themselves and all others similarly situated, adopt and incorporate by reference all foregoing allegations as though fully set forth herein.

110. Pella entered into contracts with retailers, suppliers and/or contractors to sell its Windows that were to be installed at Plaintiffs' and the Class Members' properties.

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

112. At the time Pella entered into contracts with retailers, suppliers and/or contractors, Pella knew and had reason to know that its Windows were being purchased for the particular purpose of being installed at Plaintiffs' and the Class Members' properties.

113. Plaintiffs and the Class Members, directly or indirectly, relied on Pella's representations and warranties that its Windows were suitable for the particular purpose of being installed at Plaintiffs' and the Class Members' properties.

114. Plaintiffs and Class Members, directly or indirectly, relied on Pella's representations that the Windows conformed to all applicable building codes and industry standards.

115. Pella warranted that its Windows were fit for the particular purpose of being installed at Plaintiffs', the Class Members' properties.

116. Pella breached the implied warranty of fitness for a particular purpose by selling its Windows that were defective and not reasonably fit for its ordinary purpose.

117. Pella's Windows are defective because they cause and continue to cause damage as described more fully herein.

118. As a result of Pella's breach of the implied warranty of fitness for a particular purpose, Plaintiffs and the Class Members have suffered and continue to suffer actual and consequential damages, including but not limited to emotional distress and mental anguish.

**COUNT IV**  
**BREACH OF EXPRESS WARRANTY**

119. Plaintiffs individually and on behalf of all others similarly situated, adopt and incorporate by reference all foregoing allegations as though fully set forth herein.

120. After putting its Windows into the stream of commerce, Pella expressly represented and warranted that the Windows were appropriate for their intended use and were free from defects and that they conformed to all applicable building codes and industry standards.

121. Pella entered into contracts with retailers, and with Plaintiffs' and Class Members' builders, suppliers and/or contractors to sell its Windows that were to be installed at Plaintiffs' and the Class members' properties.

122. Plaintiffs and Class Members were intended third party beneficiaries of the contracts between Pella and their respective builders or third parties.

123. Pella's express and written warranties, and representations are applicable to the Windows installed in Plaintiffs' home.

124. Pella expressly represented and warranted that the Windows were appropriate for its intended use and were free from defects.

125. Pella also expressly represented that the Windows conform to all applicable building codes and industry standards.

126. Pella has made other representations, as described above, through its website, brochures, marketing materials, and representatives that the Windows are free from defects.

127. The representations and warranties formed part of the basis of the bargain between Pella and the purchasers of the Windows, at the time of the sale.

128. These representations, described herein, became part of the basis of the bargain when Plaintiffs, Class Members and/or Class Members' builders purchased the Windows and/or purchased the homes containing the Windows.

129. In addition, these representations became part of the basis of the bargain when Plaintiffs and/or Class Members purchased the homes with Pella's express representations concerning the standards to which the Windows conformed, and all manufacturers warranties were assigned to Plaintiffs.

130. The limitations of damages contained in the express warranty provisions are harsh, oppressive and one-sided. The limitations related to the amount of damages, and the type

of remedies available to Plaintiffs and Class Members are unconscionable when Pella knows or should have known that there are defects in the design and manufacturing of the Windows.

131. However, despite Pella's assurances, as described in detail *supra*, the Windows contain the aforementioned defects and do not conform to all applicable building codes and industry standards and are not free from defects.

132. These aforementioned defects are present when the Windows leave Pella's control.

133. The damage manifests within the warranty period, but is so concealed that homeowners do not discover until the end of the warranty period or even after expiration.

134. Pella has been repeatedly put on notice of the defects in the Windows by various methods described above.

135. Pella breached the express warranty by selling its Windows that were defective and not reasonably fit for the ordinary and intended purpose and did not conform to Pella's express representations and/or warranties.

136. Contrary to Pella's representations and warranties, the Windows are not free from design and material defects for at least 10 years and do not have a useful life of at least 20-25 years.

137. The Windows did not conform to the express representations contained within the Windows.

138. Pella further denies warranty claims after 10-years even when the damage clearly began to form within the 10-year period.

139. By its conduct and defective products, Pella has breached its express warranty with Plaintiffs and members of the class.

140. In addition, Pella has breached its express written warranties by not providing Plaintiffs with Windows which are free from defects and/or by failing to honor warranty claims.

141. Pella's Limited Warranty fails of its essential purpose, as Pella was unwilling and unable to abide by its promised remedies. When Plaintiffs and Class Members provided notice of a defect in the Windows within ten years of the sale, Pella refused to repair or replace the defective Windows, or failed to do so within a reasonable time. The Limited Warranty is so hollow or ineffective as to be meaningless.

142. Pella's written warranty is also unconscionable and fails of its essential purpose because it is so replete with limitations, disclaimers and exceptions that it effectively prevents any warranty claim in spite of the Windows having a known defect when sold.

143. Plaintiffs could not negotiate or bargain for the terms of the express warranty provisions and any purported limitations contained therein. Instead, Pella stood in a position of domination and control over the terms.

144. Upon information and belief, Pella knew that the Windows had a history of failures, resulting in damage to other property, yet Pella failed and omitted to inform its distributors, its customers, Plaintiffs and Class Members on whose residence the Windows were installed.

145. Pella further breaches its warranties by failing or refusing to provide repair or replacement for windows with damage that manifested within the 10-year warranty period, but was not discovered until after expiration.

146. In light of the foregoing, Pella's limitations within its warranties are invalid and fail of their essential purpose and/or are unconscionable.

147. The foregoing breaches of express warranty at issue were substantial factors in causing damages to Plaintiffs and Class Members.

148. As a direct and proximate result of Pella's breach of the express warranty on the Windows, Plaintiffs and the Class Members have suffered and continue to suffer actual and consequential damages.

**COUNT V**  
**VIOLATION OF ALABAMA'S EXTENDED**  
**MANUFACTURERS LIABILITY DOCTRINE**

149. Plaintiffs, individually, and on behalf of all others similarly situated, adopt and incorporate by reference all foregoing allegations as though fully set forth herein.

150. Plaintiffs and putative class members are parties, persons or entities protected under Alabama's Extended Manufacturers Liability Doctrine (hereinafter referred to as "AEMLD").

151. The Defendant is responsible for its actions or inactions that caused damage to the Plaintiffs and the putative class they seek to represent.

152. The Defendant placed or caused to be placed, the Windows made the basis of this action into the stream of commerce.

153. The Defendant was negligent and/or willful and wanton in the manufacturing, designing, marketing or selection of materials and oversight of the production and sales and marketing process of the Pella Architectural Design Series windows.

154. The Windows reached the consumer, including the named Plaintiffs and putative class in substantially the same condition as manufactured, designed and sold by the Defendant and were not modified by the Plaintiff or putative class members.

155. The Windows were defective in that they were unreasonably dangerous when used for their intended purpose and caused, concealed or allowed damage to the structure and other components and personal property of the Plaintiffs and putative class.

156. The Plaintiffs and putative class suffered property damage and physical injury including emotional distress and mental anguish.

157. The damages and injury complained of by the Plaintiffs and putative class was the direct and proximate result of the Defendants' actions or inactions and violations of AEMLD as set out in this complaint.

**COUNT VI**  
**FRAUDULENT MISREPRESENTATION**

158. Plaintiffs individually and on behalf of all others similarly situated, adopt and incorporate by reference all foregoing allegations as though fully set forth herein.

159. Pella knew or should have known that its Windows were defective, and were not suitable for their intended use and otherwise not as warranted and represented by Pella.

160. Pella falsely and fraudulently represented to Plaintiffs, the Class Members, and/or the consuming public in general that Pella's Windows would be free from defects and fit for their customary and normal use.

161. Pella falsely represented to purchasers, consumer, and Window owners that the Windows were warranted against defects in material and workmanship when in fact the Limited

Warranty was so limited as to prevent and preclude any warranty protection against the known defect in the Windows.

162. When Pella made these representations, Pella also knew that it could not honor its obligations under the Limited Warranty, because its replacement Windows were equally defective.

163. When said representations were made by Pella, upon information and belief, they knew those representations to be false and they willfully, wantonly, and recklessly disregarded whether the representations were true, with the intention that the Plaintiffs rely on these representations.

164. These representations were made by Pella with the intent of defrauding and deceiving the Plaintiffs, the Class members and/or the consuming public, all of which evidenced reckless, willful, or were made innocently or by mistake with indifference to the safety and welfare of the Plaintiffs and the Class members or the truth or falsity of these representations.

165. At the time the aforesaid representations were made by Pella, Plaintiffs and the Class Members were unaware of the falsity of said representations and reasonably believed them to be true.

166. In reliance upon said representations, Pella's Windows were installed and used on the Plaintiffs' and the Class Members' properties, thereby causing Plaintiffs and the Class Members to sustain damage and injury to their property and/or to be at an increased risk of sustaining damage and injury in the future.

167. Pella knew and was aware, or should have been aware, that Pella's Windows were defective and not fit for customary and normal use.



168. Pella knew, or should have known, that Pella's Windows had a potential to, could, and would cause severe damage and injury to property owners.

169. Pella knew its Windows would allow water to penetrate the aluminum cladding, which caused condensation, wood rot, leaks and other failures as described herein.

170. Pella brought its Windows to the market and acted fraudulently, wantonly, and maliciously to the detriment of the Plaintiffs and the Class Members.

171. By reason of the foregoing, Plaintiffs and the Class Members suffered, and continue to suffer, financial damage and injury, including emotional distress and mental anguish.

**COUNT VII**  
**FRAUDULENT SUPPRESSION**

172. Plaintiffs individually and on behalf of all others similarly situated, adopt and incorporate by reference all foregoing allegations as though fully set forth herein.

173. Pella knew or should have known that the Windows were defective in design, were not fit for their ordinary and intended use, and performed in accordance with neither the advertisements, marketing materials and warranties disseminated by Pella nor the reasonable expectations of ordinary consumers.

174. Pella fraudulently concealed from and/or intentionally failed to disclose to Plaintiffs and the Class that the Windows are defective. Pella knew its Windows would allow water to penetrate the aluminum cladding, causing condensation, wood rot, leaks and other property damage, and failed to disclose those facts to Plaintiffs, members of the Class, builders, and/or distributors prior to their purchase of the Windows.

175. Pella had exclusive knowledge of the defective nature of the Windows at the time of sale. The defect is latent and not something that Plaintiffs or Class Members, in the exercise

of reasonable diligence, could have discovered independently prior to purchase, because it is not feasible.

176. Pella had a duty to disclose to Plaintiffs and members of the Class the latent defects in its Windows as the facts were material to Plaintiffs and the Class Members' transactions; because it made contrary representations and statements, including that the Windows were defect free; because Pella, as the party with knowledge of the defect, knew that Plaintiffs and Class Members were entering transactions under a mistake as to the fact of the defective design of the Windows; because the fact of the defective nature of the design was peculiarly and exclusively within Pella's knowledge and the mistaken parties, Plaintiffs and Class Members, could not reasonably be expected to discover it; and on account of the objective circumstances, Plaintiffs and Class Members reasonably expected disclosure of the fact of the defect.

177. Pella had the capacity to, and did, deceive Plaintiffs and Class Members into believing that they were purchasing Windows free from defects.

178. Pella undertook active and ongoing steps to conceal the defect. Plaintiffs are aware of nothing in Pella's advertising, publicity or marketing materials that disclosed the truth about the defect, despite Pella's awareness of the problem.

179. The facts concealed and/or not disclosed by Pella to Plaintiffs and the Class Members are material facts in that a reasonable person would have considered them important in deciding whether to purchase (or to pay the same price for) the Windows from their builders.

180. Pella intentionally concealed and/or failed to disclose material factors for the purpose of inducing Plaintiffs and the Class to act thereon.

181. Plaintiffs and the Class justifiably acted or relied upon the concealed and/or non-disclosed facts to their detriment, as evidenced by their purchase of the Windows.

182. Plaintiffs and Class Members suffered a loss of money in an amount to be proven at trial as a result of Pella's fraudulent omission and nondisclosure because: (a) they would not have purchased the Windows on the same terms if the true facts concerning the defective Windows had been known; (b) they paid a price premium for windows that would be free from defects; and (c) the Windows did not perform as promised. Plaintiffs also would have initiated this suit earlier had the defect been disclosed to them.

183. By reason of the foregoing, Plaintiffs and the Class Members suffered, and continue to suffer, financial damage and injury.

**COUNT VIII**  
**UNJUST ENRICHMENT**

184. Plaintiffs individually and on behalf of all others similarly situated, adopt and incorporate by reference all foregoing allegations as though fully set forth herein.

185. Plaintiffs plead this count in the alternative.

186. Plaintiffs and Class Members conferred a benefit on Defendant when they purchased the Windows.

187. Pella has been unjustly enriched in retaining the revenues derived from Class Members' purchases of the Windows, the retention of which under these circumstances is unjust and inequitable because Pella Windows were defective in design, were not fit for their ordinary and intended use, and performed in accordance with neither the advertisements, marketing materials and warranties disseminated by Pella nor the reasonable expectations of ordinary consumers and caused the Plaintiffs and Class Members to lose money as a result thereof.

188. Plaintiffs and Class Members suffered a loss of money as a result of Pella's unjust enrichment because: (a) they would not have purchased the Windows on the same terms if the true facts concerning the defective Windows had been known; (b) they paid a price premium due to the fact the Windows would be free from defects; and (c) the Windows did not perform as promised.

189. Because Pella's retention of the non-gratuitous benefit conferred on it by Plaintiffs and Class Members is unjust and inequitable, Pella must pay restitution to Plaintiffs and the Class Members for its unjust enrichment, as ordered by the Court.

190. Plaintiffs and the Class Members are entitled to restitution of, disgorgement of, and/or the imposition of a constructive trust upon, all profits, benefits, and other compensation obtained by the Defendant from its deceptive, misleading, and unlawful conduct.

**COUNT IX**  
**VIOLATION OF MAGNUSON-MOSS ACT**

191. Plaintiffs individually and on behalf of all others similarly situated, adopt and incorporate by reference all foregoing allegations as though fully set forth herein.

192. The Magnuson-Moss Consumer Products Liability Act, 15 U.S.C §2301, et seq. ("MMCPLA" or the "Act") provides a private right of action to purchasers of consumer products against retailers who, *inter alia*, fail to comply with the terms of a written warranty, express warranty and/or implied warranty. As demonstrated above, Pella has failed to comply with the terms of its warranties, written, express and implied, with regard to the Windows that it advertised, distributed, marketed and/or sold.

193. Plaintiffs and the members of the Class are "consumers" under the MMCPLA.

194. Pella has been given a reasonable opportunity by Plaintiffs and other Class Members to cure such failures to comply and has repeatedly failed to do so.

195. By virtue of the foregoing, Plaintiffs and other members of the Class are entitled to an award of damages and other appropriate relief, including attorneys' fees.

**COUNT X**  
**VIOLATION OF ALABAMA'S DECEPTIVE TRADE PRACTICES ACT**  
*(Ala.Code 1975 § 8-19-10)*

196. Plaintiffs individually and on behalf of all others similarly situated, adopt and incorporate by reference all foregoing allegations as though fully set forth herein.

197. The Alabama Deceptive Trade Practices Act, Ala. Code 1975§ 8-19-10 et seq. ("ADTPA"), provides a private right of action to purchasers of consumer products against anyone who commits one or more deceptive acts, which causes monetary damage to a consumer.

198. Pella made false and deceptive representations through its agents, website, advertisements, and warranties that (a) its Windows would last at least 10-years; (b) that the Windows complied with building codes and industry standards; and (c) that the Windows were suitable for the weather conditions where they were being installed.

199. These representations, including Pella's warranty, induced homeowners, including Plaintiffs, Class Members, contractors, and builders, to purchase the Defendant's Windows.

200. Pella has deceptively and fraudulently (a) caused confusion and misunderstanding as to the certification of the Windows and Pella's services; (b) represented the Windows and Pella's services have benefits and qualities that they do not have, including that they will last at least 10-years, that they comply with building codes and industry standards, and that they are

suitable for weather conditions where they are being installed; (c) represented that the Windows are new, but contain such defects that are unfit for the ordinary purpose for which they were purchased; (d) represented that the Windows are of a particular standard that they are not, including that they are high quality, compliant with building codes and industry standards, and suitable for the location in which they are installed; (e) knowingly failed to identify that the Windows are unfit for ordinary purposes for which they were purchased due to the defects present at the time the Windows left the factory; (f) knowingly made false and misleading statements to homeowners regarding the need for replacement or repair, including that damage was caused by things other than the windows themselves; (g) intentionally misrepresenting the warranty and a homeowners right to repair or replacement contained therein; and (h) engaging in other unconscionable, false, and misleading conduct to be determined through discovery.

201. Pella's conduct has caused homeowners, including Plaintiffs and Class Members, to incur monetary damages, including out-of-pocket expenses for repairs to the windows and adjoining building components.

202. By virtue of the foregoing, Plaintiffs and other members of the Class are entitled to an award of damages and other appropriate relief, including treble damages and attorneys' fees.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for a judgment against Defendant as follows:

- a. For an order certifying the Classes, pursuant to Fed. R. Civ. P. Rule 23, appointing Plaintiff as representative of the Classes, and appointing the law firms

- representing Plaintiff as counsel for the Classes;
- b. For compensatory damages sustained by Plaintiff and the Damages Class;
  - c. For all damages allowable under the ADTPA;
  - d. For payment of costs of suit herein incurred;
  - e. For both pre-judgment and post-judgment interest on any amounts;
  - f. For punitive damages;
  - g. For payment of reasonable attorneys' fees and expert fees as may be allowable under applicable law;
  - h. For such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

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

Dated: October 5, 2016

Respectfully submitted,

/s/ Eric D. Hoaglund  
McCallum, Hoaglund, Cook & Irby, LLP  
905 Montgomery Highway  
Suite 201  
Vestavia Hills, Alabama 35216  
Tel: (205)824-7767  
Fax: (205)824-7768  
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K. Edward Sexton, II  
Gentle, Turner, Sexton & Harbison, LLC  
501 Riverchase Parkway East  
Suite 100  
Hoover, Alabama 35244  
Tel: (205)716-3000  
Email: [esexton@gtandslaw.com](mailto:esexton@gtandslaw.com)

**PLEASE SERVE DEFENDANT VIA CERTIFIED MAIL/RETURN RECEIPT  
REQUESTED AS FOLLOWS:**

Pella Corporation  
c/o Corporation Service Company  
505 5th Avenue  
Suite 729  
Des Moines, Iowa 50309



JS 44 (Rev. 12/07)

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** ~~BY DIVORCED PERSONS ONLY~~  
 Tony & Belinda Gowins, on behalf of themselves and  
 on behalf of all others similarly situated,  
 (b) County of Residence of First Listed Plaintiff Shelby  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**DEFENDANTS** Pella Corporation,  
 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.

(c) Attorney's (Firm Name, Address, and Telephone Number)  
SEE ATTACHED

Attorneys (If Known) \_\_\_\_\_

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

1 U.S. Government Plaintiff       3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant       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)

<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>
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 checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input 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 checked="" type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <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	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Assault Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>LABOR</b> <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 <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<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
<b>REAL PROPERTY</b> <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 checked="" type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <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	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <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	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 BIA (1395(i)) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (40521) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(u)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**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

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 USC 1332(d)(2)

**VI. CAUSE OF ACTION**  
Brief description of cause:  
Defective windows sold by manufacturer defendant

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23    DEMAND \$ \_\_\_\_\_    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: October 5, 2016  
SIGNATURE OF ATTORNEY OF RECORD: 

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

JS 44 Reverse (Rev. 12/07)

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

Civil Cover Sheet Attachment

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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Pella Hit with Class Action Over 'Defective' Windows](#)

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