

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA**

CRAIG WEGNER, individually and on)
behalf of himself and on behalf of all)
others similarly situated,)

Plaintiff,)

v.)

PELLA CORPORATON,)

Defendant.)
_____)

CASE NO. 4:14-cv-00099

CLASS ACTION COMPLAINT

Demand for Jury Trial

CLASS ACTION COMPLAINT

Plaintiff, Craig Wegner (“Plaintiff” or “Wegner”), by and through his undersigned counsel, on behalf of himself and all other persons and entities similarly situated, alleges the following facts and claims upon knowledge as to matters relating to himself and upon information and belief as to all other matters and, by way of this Class Action Complaint, aver as follows:

INTRODUCTION AND SUMMARY OF ACTION

1. This is an action for damages caused by defective windows designed, manufactured, marketed, advertised, and sold by Pella Corporation. (“Pella” or “Defendant”).

2. Pella designed, manufactured, marketed, advertised, warranted, and sold its Pella Architect and Designer series windows (the “Windows”) to Plaintiff, Plaintiff’s builders, and the Classes and the Classes’ builders, as well as the general public throughout Iowa and the United States. In conjunction with each sale, Pella warranted, marketed and advertised that the

Windows were fit for the ordinary purpose for which such goods were used and were free from defects in materials and workmanship.

3. Through the actions and inactions complained of herein, Pella breached express warranties, breached implied warranties in contract and in tort, injured plaintiff by its general negligence, and committed fraud through uniform written misrepresentations and common omissions.

4. Pella knew or should have known that the Windows were defective in design, were not fit for their ordinary and intended use, and failed to perform in accordance with either the advertisements, marketing materials, or warranties disseminated by Pella, or the reasonable expectations of ordinary consumers.

5. At the time of sale, the Windows contained defects that permitted water to enter behind the Windows and resulted in premature wood rot and deterioration resulting to damage to both the Windows, the wooden frames and other property.

6. The defect described herein reduces the effectiveness and performance of the Windows and renders them unable to perform the ordinary purposes for which they are sold.

7. Pella's brochures stress the Windows' ability to permit "more decorative style choices" and Pella's between-the-glass window fashions "stay protected from dust and damage so they don't need constant cleaning."

8. As such, to the extent that Pella has replaced or repaired any windows, the replacements or repairs have failed to restore Plaintiff's and Class members' home to the

aesthetic and functional levels for which Plaintiff and Class members paid and Pella promised to deliver because the repaired Windows contain the same defects which were in the original Windows.

9. As a result of the defects in the Windows, Plaintiff and the Class Members have suffered damages, in that they have purchased or authorized the purchase of Windows that they would not otherwise have purchased had they known of the defects, and they have been forced to pay or will be forced to pay for installation of new replacement windows, and the Windows have caused damage to other property within their home that Plaintiff and Class Members must pay to repair and replace.

10. 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; or (3) otherwise repair the Windows that had already been purchased. Instead, Pella concealed this knowledge.

11. 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 across the State of Iowa and throughout the United States.

12. In connection with advertising, marketing and sale of windows designed, manufactured, marketed, advertised, and sold by Pella, Plaintiff brings this action on his own behalf and on behalf of all others similarly situated asserting claims for damages and injunctive relief.

JURISDICTION AND VENUE

13. This Court has jurisdiction over the subject matter of this action pursuant the Class Action Fairness Act, in that the amount in controversy exceeds \$5,000,000.00 (Five Million Dollars) exclusive of interests and costs, and (iii) there are 100 or more members of the proposed Plaintiff class.

14. Venue lies in this District, pursuant to 28 U.S.C. §1391, because Plaintiff resides in this Judicial District, and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this Judicial District. In addition, Pella does business and/or transacts business in this Judicial District, and therefore, is subject to personal jurisdiction in this Judicial District and resides here for venue purposes.

THE PARTIES

15. Plaintiff Craig Wegner is and was, at all relevant times hereto, a resident and citizen of the State of Iowa. Specifically, Plaintiff owns a home at 612 Winfield CI, Sergeant Bluff, IA 51054. Plaintiff purchased the Windows at the time of construction of his home.

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

CLASS ACTION ALLEGATIONS

17. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23 on behalf of himself and the following classes (collectively the "Classes") defined as follows:

DAMAGES CLASS:

All persons and entities that own a structure located within the State of Iowa in which Pella Windows are installed, who have

not had their windows replaced by Pella or been compensated for their losses in full by Pella.

DECLARATORY & INJUNCTIVE RELIEF CLASS:

All persons and entities that own a structure located within the United States in which Pella's Windows are installed.

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.

18. *Numerosity:* The Classes are composed of thousands of persons geographically dispersed throughout the state of Iowa, 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.

19. *Commonality:* Questions of law and 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 the reasonable expectations of ordinary consumers;
- 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 implied warranty of merchantability by failing to disclose the defect in the Windows and by continuing to sell the defective Windows even after it knew of the defect in the Windows;

g. Whether Plaintiff 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.

h. Whether Plaintiff and the Class members are entitled to replacement of their defective Windows with non-defective Windows;

i. Whether Plaintiff and the Class members are entitled to restitution and/or disgorgement.

j. Whether Pella falsely advertised and marketed its products to consumers;

k. Whether Plaintiff and the members of the Class reasonably relied upon Pella's false and misleading advertising;

l. Whether the Windows conform to the applicable Iowa building code and/or applicable industry standards;

m. Whether the Windows damage other property within Plaintiff and Class Members' homes;

n. Whether Plaintiff 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) 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; (iii) diminution of resale value of the structures containing the Windows resulting from the defect; and (iv) cost to repair and replace all Windows and resulting damage.

o. Whether Pella knew that its Windows were defective yet concealed this information from Class Members, Plaintiff, Plaintiff's Builders, and/or Class Members' Builders;

p. Whether Pella adequately tested the Windows to determine whether they conformed to the applicable building codes and industry standards;

q. Whether Plaintiff, Plaintiff's Builders, Class Members, and/or Class Members' builders reasonably relied on Pella's marketing and warranties that the Windows conformed to the applicable standards and the Building Code;

r. Whether Pella's Limited Warranty fails of its essential purpose;

s. Whether Pella's Limited Warranty adequately disclaimed its liability; and

t. Whether Pella's Limited Warranty is unconscionable.

20. *Typicality*: Plaintiff's 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 Plaintiff's and Class Members' purchasing homes with the defective Windows.

21. *Adequate Representation*: Plaintiff will fairly and adequately protect the interests of the members of the Class and has no interests antagonistic to those of the Class. Plaintiff has retained counsel experienced in the prosecution of complex class actions, including consumer

class actions involving product liability and product design defects.

22. *Predominance and Superiority:* This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and a Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable. Should individual Class Members be required to bring separate actions, this Court and Courts throughout Iowa 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.

COMMON FACTUAL ALLEGATIONS

23. 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 Iowa.

24. Pella sells its windows through third party sellers or through its directly-owned showrooms.

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

26. In addition, Pella represented and warranted that each Window conformed to the applicable Iowa 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”).

27. These representations, described herein, became part of the basis of the bargain when Plaintiff, Plaintiff’s Builders, Class Members, and/or Class Members’ builders purchased the Windows.

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

29. Further, Pella also provides an Owners’ Manual that states, *inter alia*

- a. “Proven resistance to water penetration.”
- b. “Pella’s most energy-efficient wood and windows and doors.”
- c. “More decorative style choices than any other brand.”
- d. “Years of smooth openings and closings.”

30. Plaintiff and Class Members relied on Pella’s published specifications and advertisements regarding the quality of the Windows.

31. 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.

32. The Windows suffer from a defect in the design of the sill extrusion and sill nailing fin attachment as well as a defect in the design of allowing a gap between the jamb gasket and the sill gasket. 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.

33. Because the Windows permit water intrusion, they violate the Iowa 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.

34. 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.

35. In addition to the express representations and warranties regarding the quality of the Windows discussed herein, Pella also ships a Limited Warranty with its Windows. In relevant part, the Limited Warranty states, "If Pella is given notice of a defect in materials or workmanship occurring within ten (10) years from the date of sale by Pella or its authorized dealer, Pella shall, at its sole option: 1) repair or replace the defective part(s) or product(s) (with cost of labor included only within two [2] years of the date of sale by Pella or its authorized

dealer) or 2) refund the original purchase price.”

36. 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 knew that there is a defect in the Windows.

37. In addition, by providing Plaintiff and Class Members with defective Windows as part of its replacement, Pella’s Limited Warranty fails of its essential purpose and is unconscionable.

38. 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.

39. Moreover, during contact with the class members, Pella concealed its knowledge of repeated product defects in the Windows in the class members’ residences.

40. As Pella has known of the Window defects and has failed to timely honor its Limited Warranty, 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 as required by Iowa Law.

41. Despite knowing of the defects in the Windows, Pella has not notified all purchasers, builders, and/or homeowners with the Windows of the defect nor provided uniform

relief.

42. Plaintiff 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.

43. 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.

EQUITABLE ESTOPPEL/EQUITABLE TOLLING

44. 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.

45. Given Pella's failure to disclose this known but non-public information about the defective nature of the Windows – information over which it had exclusive control – and because Plaintiff and Class Members therefore could not reasonably have known that the Windows were defective, Pella is estopped from relying and should not be allowed to rely on any exception regarding any statutes of limitation that might otherwise be applicable to the claims asserted herein.

46. Further, on August 18, 2006, Dr. Leonard E. Saltzman filed a class action complaint in the Northern District of Illinois against Pella, alleging a defect similar to the one alleged here and mentioned that he was asserting claims against Pella for defects in the design and manufacture of Pella's ProLine, Architect and Designer Series Windows. *See Saltzman et. Al*

v. Pella Corp. et al., No. 06-C-4481 (Zagel, J. presiding). However, Dr. Saltzman only moved for class certification on Pella's ProLine series of Windows. After protracted litigation, the parties reached a class action settlement which only addressed the claims of owners of Pella's ProLine Window series. Pella, though, has been on notice of the defects in the Architect and Designer Windows series since at the latest August 18, 2006. So, equitable tolling and/or equitable estoppel precludes Pella from asserting that they were not aware of the defects in the Architect and Designer Series Windows.

47. 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, Plaintiff expressly pleads Equitable Tolling and/or Equitable Estoppel and his application thereto.

COUNT I
UNFAIR AND DECEPTIVE ACTS OR PRACTICES
IN VIOLATION OF IOWA CONSUMER FRAUD LAW § 714H

48. Plaintiff realleges and incorporates the preceding allegations as though fully set forth herein.

49. Iowa Code Ann. § 714H.3 makes unlawful any, "unfair practice, deception, fraud, false pretense, or false promise, or the misrepresentation, concealment, suppression, or omission of a material fact, with the intent that others rely...[on it]...in connection with the advertisement,

sale, or lease of consumer merchandise.”

50. By selling Windows throughout the State of Iowa and making representations regarding its product, the Defendant has affected commerce and trade within the State.

51. Pella engaged in unfair or deceptive acts or practices in violation of Iowa Code Ann. § 714H.3 when, in selling and advertising the Windows, Pella failed to give Plaintiff and members of the Classes adequate warnings and notices regarding the defect in the Windows despite the fact that Pella knew or should have known of this defect, with the intent that Plaintiff and the members of the Classes would rely upon Pella’s failure to disclose the defect when purchasing the Windows. Thus, Pella knew of the defective nature of the Windows and yet continued to sell and distribute them to members of the Classes and concealed its known defects from them. Pella’s acts and omissions possessed the tendency or capacity to mislead or created the likelihood of deception.

52. Pella also engaged in unfair or deceptive acts or practices in violation of Iowa Code Ann. § 714H.3 when it failed to ensure that all members of the Classes were provided with an express warranty as owners of structures clad with its defective Windows.

53. Defendant’s actions, as set forth herein, were acts related to the advertisement and sale of consumer merchandise and constitute unfair and deceptive trade practices in violation of Iowa Code Ann. § 714H.3.

54. As a direct and proximate result of these unfair, deceptive and unconscionable commercial practices, Plaintiff and the members of the Classes have been damaged, in that their Windows have rotted and led to water leakage and damage to the Windows and, upon information and belief, other building components of Plaintiff’s and members of the Classes’ homes and other structures, including, but not limited to, components installed after initial

construction, and Plaintiff and members of the Classes are entitled pursuant to Iowa Code Ann. § 714.H5 to recover actual damages, treble damages and attorney's fees.

55. Plaintiff's cause of action under Iowa Code Ann. § 714H.1 *et. seq.* accrued on or after July 1, 2009, since Plaintiff did not discover damage to his Windows until 2012 and was, therefore, unaware of the Defendant's fraudulent, unfair, or deceptive acts and concealments, or his damages proximately arising therefrom, until, at the earliest, 2012.

56. On March 13, 2014, prior to filing Plaintiff's original Complaint initiating this proposed class action, counsel for Plaintiff obtained written approval compliant with Iowa Code Ann. § 714.H7 from the Iowa Attorney General's Office, Consumer Protection Division, authorizing Plaintiff to file a class action cause of action pursuant to the Private Right of Action for Consumer Frauds Act. A true and accurate copy of this written approval letter is attached hereto and incorporated fully herein as **Exhibit 1**, hereto.

COUNT II **NEGLIGENCE**

57. Plaintiff realleges and incorporates the preceding allegations as though fully set forth herein.

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

59. Pella had a duty to Plaintiff 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 Plaintiff's home such as the wall cavity and the structure of the home.

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

61. Pella had a duty to Plaintiff and to class members to ensure that the window

components were suitable, either by testing or by verifying third-party test results.

62. Pella had a duty to Plaintiff and to members of the class to ensure that the Windows complied with industry standards and all applicable building codes throughout Iowa.

63. 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.

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

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

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

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

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

69. 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.

70. Plaintiff has been damaged because the defective Windows have damaged adjoining finishes and walls, and damaged other personal property within the home.

71. Plaintiff 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.

72. As Pella's conduct was grossly negligent, reckless, willful, wanton, intentional, fraudulent, or the like, Plaintiff class is entitled to an award of punitive damages against Pella.

COUNT III
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

73. Plaintiff realleges and incorporates the preceding allegations as though fully set forth herein.

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

75. Plaintiff 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 Plaintiff and the Class Members.

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

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

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

79. As a result of Pella's breach of the implied warranty of merchantability, Plaintiff and the Class Members have suffered and continue to suffer actual and consequential damages.

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

80. Plaintiff realleges and incorporates the preceding allegations as though fully set forth herein.

81. Pella entered into contracts with retailers, suppliers and/or contractors to sell its Windows that were to be installed at Plaintiff's and the Class members' properties.

82. Plaintiff 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 Plaintiff and the Class members.

83. 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 Plaintiff's and the Class members' properties.

84. Plaintiff 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 Plaintiff's and the Class members' properties.

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

86. Pella warranted that its Windows were fit for the particular purpose of being installed at Plaintiff's, the Class members' properties.

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

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

89. As a result of Pella's breach of the implied warranty of fitness for a particular purpose, Plaintiff and the Class members have suffered and continue to suffer actual and consequential damages.

COUNT V
BREACH OF EXPRESS WARRANTY

90. Plaintiff realleges and incorporates the preceding allegations as though fully set forth herein.

91. After putting their 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.

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

93. Plaintiff and Class Members were intended third party beneficiaries of the contracts between Pella and their respective Builders.

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

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

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

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

98. 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.

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

100. In addition, these representations became part of the basis of the bargain when Plaintiff 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.

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

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

102. 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.

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

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

105. As Plaintiff and homeowners have defective windows in their homes, which have not been and would not be sufficiently repaired or replaced by Pella, they have not received the value of what the window purchaser bargained for at the time the windows were sold or at the time they were transferred through the sale of the home.

106. Pella breached the express warranty by selling its Windows that were defective and not reasonably fit for their ordinary and intended purpose. Further, the Windows did not conform to the express representations contained within the Windows.

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

108. In addition, Pella has breached its express written warranties by not providing Plaintiff with Windows which are free from defects and/or by discouraging warranty claims.

109. Pella's written warranty is also unconscionable and fails of its essential purpose because, by merely providing a replacement Window, the replacement Window is also inherently defective.

110. Plaintiff, who did not directly purchase the Windows, did not negotiate or bargain for the terms of the express warranty provisions and any purported limitations contained therein. Upon information and belief, the distributors, contractors, and other customers of Pella did not and 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.

111. 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, Plaintiff and Class Members on whose residence the Windows were installed.

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

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

114. As a direct and proximate result of Pella's breach of the express warranty on the Windows, the Plaintiff and Class Members have suffered actual and consequential damages.

COUNT VI
FRAUDULENT MISREPRESENTATION

115. Plaintiff realleges and incorporates the preceding allegations as though fully set forth herein.

116. Pella falsely and fraudulently represented to Plaintiff, 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.

117. Those representations made by Pella were, in fact, false.

118. 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.

119. These representations were made by Pella with the intent of defrauding and deceiving the Plaintiff, the Class members and/or the consuming public, all of which evinced reckless, willful, indifference to the safety and welfare of the Plaintiff and the Class members.

120. At the time the aforesaid representations were made by Pella, Plaintiff and the Class members were unaware of the falsity of said representations and reasonably believed them to be true.

121. In reliance upon said representations, the Plaintiff's and Class members' properties were built using Pella's Windows that were installed and used on Plaintiff's and the Class members' properties thereby sustaining damage and injury and/or being at an increased risk of sustaining damage and injury in the future.

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

123. 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.

124. Pella brought its Windows to the market and acted fraudulently, wantonly, and maliciously to the detriment of the Plaintiff and the Class members.

125. By reason of the foregoing, Plaintiff and the Class members suffered, and continue to suffer, financial damage and injury.

COUNT VII
FRAUDULENT CONCEALMENT

126. Plaintiff realleges and incorporates the preceding allegations as though fully set forth herein.

127. 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.

128. Pella fraudulently concealed from and/or intentionally failed to disclose to Plaintiffs and the Class that the Windows are defective.

129. 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.

130. Pella had the capacity to, and did, deceive Plaintiff and Class members into believing that they were purchasing Windows free from defects.

131. Pella undertook active and ongoing steps to conceal the defect. Plaintiff is 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.

132. The facts concealed and/or not disclosed by Pella to Plaintiff 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.

133. Pella intentionally concealed and/or failed to disclose material factors for the

purpose of inducing Plaintiffs and the Class to act thereon.

134. Plaintiff and the Class justifiably acted or relied upon the concealed and/or nondisclosed facts to their detriment, as evidenced by their purchase of the Windows.

135. Plaintiff and Class members suffered a loss of money in an amount to be proven at trial as a result of Pella's fraudulent concealment 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 due to they would be free from defects; and (c) the Windows did not perform as promised. Plaintiff also would have initiated this suit earlier had the defect been disclosed to him.

136. By reason of the foregoing, Plaintiff and the Class members suffered, and continue to suffer, financial damage and injury.

COUNT VIII **UNJUST ENRICHMENT**

137. Plaintiff realleges and incorporates the preceding allegations as though fully set forth herein.

138. "The unjust enrichment claim can be made from common classwide proof." *Westways World Travel, Inc. v. AMR Corp.*, 218 F.R.D. 223, 239 (C.D. Cal. 2003) (certifying a nationwide class where Plaintiffs alleged defendants were unjustly enriched through a common scheme.). "Although there are numerous permutations of the elements of the unjust enrichment cause of action in the various states, there are few real differences. In all states, the focus of an unjust enrichment claim is whether the defendant was unjustly enriched. At the core of each state's law are two fundamental elements - the defendant received a benefit from the Plaintiffs and it would be inequitable for the defendant to retain that benefit without compensating the

Plaintiffs. The focus of the inquiry is the same in each state." *In re Mercedes-Benz Tele Aid Contract Litig.*, 257 F.R.D. 46, 58 (D.N.J. Apr. 24, 2009), *quoting Powers v. Lycoming Engines*, 245 F.R.D. 226, 231 (E.D. Pa. 21 2007).

139. Plaintiff and Class members conferred a benefit on Defendants when they purchased the Windows.

140. 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 Plaintiff and Class members to lose money as a result thereof.

141. Plaintiff 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.

142. Because Pella's retention of the non-gratuitous benefit conferred on them by Plaintiffs and Class members is unjust and inequitable, Pella must pay restitution to Plaintiffs and the Class members for their unjust enrichment, as ordered by the Court.

143. Plaintiff 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 Defendants from their deceptive, misleading, and unlawful conduct.

COUNT IX
VIOLATION OF MAGNUSON-MOSS ACT

144. Plaintiff realleges and incorporates the preceding allegations as though fully set forth herein.

145. The Magnuson-Moss Consumer Products Liability Act, 15 U.S.C §2301, et seq. (“MMCPWA” 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.

146. Plaintiff and the members of the Class are “consumers” under the MMCPWA.

147. Pella has been given a reasonable opportunity by Plaintiff and other Class members to cure such failures to comply and has repeatedly failed to do so.

148. By virtue of the foregoing, Pella and other members of the Class are entitled to an award of damages and other appropriate relief, including attorneys’ fees.

COUNT IX
DECLARATORY RELIEF

149. Plaintiff realleges and incorporates the preceding allegations as though fully set forth herein.

150. Defendants have acted or refused to act on grounds that apply generally to the Declaratory Relief Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole within the meaning of Fed. R. Civ. P. 23(b)(2). Plaintiff seeks a ruling that:

a. the Windows have a defect which results in a premature failure of the seal;

- b. certain provisions of Pella's warranty are void as unconscionable;
- c. Pella must notify owners of the defect;
- d. the 10-year limitation on the warranty is removed;
- e. the limitation of the warranty to only the first purchaser is removed;
- f. Pella will reassess all prior warranty claims and pay the full cost of repairs and damages; and
- g. Pella will pay the cost of inspection to determine whether any Class Member's windows need replacement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays for a judgment against Defendants 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 equitable and/or injunctive relief for the Declaratory Relief Class;
- d. For payment of costs of suit herein incurred;
- e. For both pre-judgment and post-judgment interest on any amounts awarded;
- f. For punitive damages;
- g. For payment of reasonable attorneys' fees and expert fees as may be allowable under applicable law; and
- h. For such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff individually and on behalf of the Plaintiff Class Members, hereby demands a trial by jury as to all issues so triable.

Respectfully submitted,

Dated: _____ March 17 _____, 2014

/s/ Ben Arato

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Department of Justice

March 13, 2014

Ben Arato
Law Offices of Rob Tully, P.C.
2501 Westown Parkway, Suite 1201
West Des Moines, Iowa, 50266

Re: *Craig Wegner, et al., v. Pella Corporation*

Dear Mr. Arato:

I am writing in response to your e-mail of February 10, 2014, with which you enclosed a draft Class Action Complaint to be filed in the above matter in the United States District Court for the Northern District of Iowa. The draft alleges, among other claims, violations of Iowa Code chapter 714H, the *Private Right of Action for Consumer Frauds Act*.

Pursuant to chapter 714H, you requested the approval of this office prior to filing the claim, as Iowa Code section 714H.7 requires the approval of the Attorney General prior to filing.

Please be advised that the Attorney General hereby approves the filing of the Class Action Complaint. In addition, please be aware of the requirement to file a copy of the Class Action Complaint with this office once it has been filed with the court, pursuant to Iowa Code section 714H.6.

Sincerely,

A handwritten signature in black ink, appearing to read "William L. Brauch".

William L. Brauch
Special Assistant Attorney General
Director-Consumer Protection Division

EXHIBIT 1