



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 plaintiffs 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, contained redhibitory defects, 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 cause premature wood rot and deterioration, resulting to damage to both the Windows themselves, as well as other property such as drywall, carpet, rugs, and the wooden frames.

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 Window's ability to "blend tastefully with your home's architecture and interior finishes" and "[w]hen it comes to great home design, windows and doors are such an important part—they are the only architectural elements that affect the beauty of your home on the inside and outside. That's why Architect Series® products are the choice of those who are passionate about architectural expression." As such, to the extent that Pella has replaced or repaired any windows, the replacements or repairs have failed to restore Plaintiffs' and Class members' home to aesthetic and functional levels for which Plaintiffs and

Class members paid and Pella promised to deliver.

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

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

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

11. In connection with advertising, marketing, and sale of windows designed, manufactured, marketed, advertised, and sold by Pella, Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated, asserting nationwide claims for damages and injunctive relief arising out of claims of strict liability, negligence, breach of express and implied warranties, negligent misrepresentation, fraud by omission, and for the Louisiana subclass, violation of the Louisiana Products Liability Act and claims for redhibition. Plaintiffs and Class members further seek declaratory relief on behalf of Plaintiffs and all Class members.

### **JURISDICTION AND VENUE**

12. 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.

13. 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 two named Plaintiffs reside in the Eastern District of Louisiana.

14. Joinder of Plaintiffs' claims are warranted pursuant to Rule 23 of the Federal Rules of Civil Procedure as their claims arise out of the same occurrences and numerous questions of law and fact common to all Plaintiffs will arise in this action.

### **PARTIES**

15. Plaintiffs are, and at all relevant times hereto, have been citizens and residents of New Orleans, Orleans Parish, Louisiana. Specifically, the Palacios own a home at 107 English Turn Drive, New Orleans, LA in which Pella Windows are installed. The Palacios purchased the Windows at the time their home was constructed in 2001.

16. Plaintiffs' homes contain Windows manufactured by Pella. Due to the defects described herein, the following has occurred (and continues to occur):

- a. The Windows have permitted moisture or water intrusion into the habitable living space of Plaintiffs' home and have continuously and repeatedly caused damage in and around the Windows and to other property including the walls and floors;

- b. The Windows have also permitted mold growth and mineral deposits that have affected the interior space;
- c. Due to the water intrusion and rot, Plaintiffs discovered the defects within the past year and are now required to replace many of their Windows as well as repair the other property damage, all at a significant cost.
- d. Pella has refused to reimburse the cost of the replacement of the original windows or to replace the ones currently in need of replacement.

17. 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 Louisiana and throughout the United States.

#### **COMMON FACTUAL ALLEGATIONS**

18. The products at issue in this case are the Pella Designer and Architecture series aluminum wood clad Windows. Pella began marketing the Architect Series line in 1990, and began marketing the Designer Series in 1992.

19. 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 Louisiana.

20. Pella sells its windows through third party sellers or through its directly-owned showrooms, including at least one showroom located in Baton Rouge, Louisiana.

21. 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.

22. Both series share the same or similar design function, cladding attachment and hardware manufacture, installation and defect.

### **THE DEFECT**

23. The Windows are defective in that water permeates the window unit through four common leakage paths: (a) the glazing pocket; (b) the aluminum cladding and wood; (c) the crank hardware and fasteners; and, (d) the frame to sash joint.

24. The Architect and Designer Series Windows are wet glazed with the exterior face of the glass sealed against wood or metal cladding.

25. The glazing pocket allows water to permeate with no means of egress because the seal has gaps and the sealant is inadequate. Compounding this failure is the fact that the aluminum cladding that runs over the top of the sash does not run much past the sealant bead, providing no protection of its own from water egress. The design does not allow water to weep to the exterior, resulting in it migrating into the interior of the home. Water also remains in contact with the wood member for prolonged periods of time. The water is absorbed into the wood and the wood rots.

26. The Windows' aluminum cladding permits water to bypass metal cladding at joints, at operable arm mounting hardware and where the roto operator is fashioned into the wood, through the wet/dry zone. The design does not allow water to drain to the exterior, resulting in it migrating into the interior of the home. The design exposes the interior wood components, which are inadequately treated with wood preservative, to water penetration and contributes to cause an increase in the moisture content of the wood components beyond their capacity to resist wood rot and microbial colonization. Although the cladding varies between styles and series, the method of aluminum attachment to the frame and sash is effectively the same, resulting in water penetration through gaps at metal to metal, gaps at metal to wood and through the discontinuous jamb-to-sill joints.

27. The hardware and fasteners common in both the Architect and Designer casement Windows are areas of further leakage. The casement hardware allows water to bypass the crank hardware, leaking into the interior of the home. The water also penetrates the fasteners in the hardware, resulting in leakage through the wood frame and into the wall cavity as well as wood frame deterioration. The discontinuous jamb-to-sill joint exacerbate this aspect of the defect.

28. The frame-to-sash joints are also common to both the Architect and Designer Windows. The rubber gaskets installed between the sash and frame has inadequate compression and/or seal. This allows water to bypass the gasket, saturate wood members and cause wood deterioration.

29. 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. 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.

30. 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**

31. 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.

32. 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.

33. Pella knew (or but for its negligence or reckless indifference would have known) that it, or its distribution channels were going continue 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.



34. 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.

35. 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.

36. Furthermore, when questioned about wood rot, Pella would claim faulty installation, excessive moisture in the home, or would deny claims as "out of warranty" without disclosing the defect.

37. On information and belief, in an attempt to correct the defect, Pella made various, ineffectual changes in the Windows, including application of sealants, wood preservatives all of which failed to correct the defect or mitigate its consequences.

38. 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 the Windows that had already been purchased. Instead, Pella concealed this knowledge.

39. 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 Iowa and throughout the

United States.

40. 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**

41. In addition, Pella represented and warranted that each Window conformed to the applicable state building codes, applicable ASTM standards, applicable American Architectural Manufacturers Association (“AAMA”) standards, applicable National Fenestration Ratings Council (“NFRC”), and applicable Window & Door Manufacturers Association (“WDMA”).

42. The representations described herein became part of the basis of the bargain when Plaintiffs, Plaintiffs’ Builders, Class Members, or Class Members’ builders purchased the Windows.

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

44. For instance, Pella provides a Limited Warranty that states, “While Pella products are built to provide years of satisfaction, should you ever have any problems with your products, this warranty represents our commitment to address and fairly resolve them.”

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

- a. “[Pella] is recognized as a quality manufacturer of windows and doors.”
- b. “We believe that the best guarantee is the one you never have to use, and our priority has always been the enduring quality that is designed, tested and built

into every product we sell.”

- c. That the Windows have a “Proven resistance to water penetration.”
- d. Windows will provide “years of smooth openings and closings.”
- e. “You can count on Pella quality.”
- f. “Pella Windows and Doors are designed to provide outstanding energy efficiency.”
- g. “As one of the world’s leading window and door manufacturers, Pella has a reputation for designing and building some of the best windows and doors in the industry.”
- h. “We rigorously test our products for performance in state-of-the-art testing facilities.”
- i. “Pella is the only manufacturer that tests virtually every standard venting window for air infiltration. If it doesn’t pass, it doesn’t ship.”
- j. “We continually test our window and door products under the harshest conditions to ensure they’ll perform for years to come.”

46. The Windows, however, do not conform to these express representations and warranties, and, as alleged herein, Pella breached its express warranties and representations concerning these Windows.

47. The Windows are defective and fail to perform both at Plaintiffs’ residences and at Class members’ residences by permitting leakage that results in the formation of mineral deposits, algae, and microbial growth at the location of the leaks, and consequential damages such as wood rot to property other than the Windows including the adjoining finishes and walls of the residences.

48. 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.

49. Despite its statements to the contrary, Pella does not test the long-term performance of the Windows and does not adequately test or check the performance of the Window components. Or, if it does test the long-term performance of the Windows, Pella conceals this information from all purchasers and homeowners, including particularly Plaintiffs, Plaintiffs' builders, Class Members, and Class Members' builders.

50. Because the Windows permit water intrusion, they violate building code and industry standards, including the applicable Building Codes, AAMA standards, NFRC standards, WDMA standards, or ASTM standards.

51. The Windows also violate Pella's express representation and warranties.

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

53. Upon information and belief, Pella ships a Limited Warranty with its Windows. However, despite being assigned all manufacturers' warranties with the purchase of the home from the builder, the homeowners generally do not receive the Limited Warranty and are not on notice of its limitations. Further, Pella's attempt at disclaimers in its Limited Warranty are not conspicuous and are invalid.

54. 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*.

55. In addition, Plaintiffs and Class Members, through Plaintiffs' builders and through Class Members' builders, relied on Pella's published specifications and advertisements regarding the quality of the Windows.

56. 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.

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

58. 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.

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

60. 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.

61. The value of structures containing the Windows has diminished as a result of the defects.

62. 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 Louisiana subclass, within the applicable periods of liberative prescription or peremption.

**“DISCOVERY RULE”/DOCTRINE OF CONTRA NON VALENTM**

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

64. 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 Plaintiffs 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.

65. On behalf of the Louisiana Subclass, pursuant to the doctrine of *Contra non Valentem Agere Nulla Currit Praescriptio*, the period of liberative prescription for Plaintiffs’ claims “commences on the date the injured party discovered the facts upon which his cause of action is based.”<sup>1</sup> Accordingly, with respect to each and every cause of action or Count asserted herein on behalf of the Louisiana Subclass, Plaintiffs expressly plead the doctrine of *Contra non Valentem* and its application thereto.

**PLAINTIFFS’ EXPERIENCE**

66. Plaintiffs purchased Pella Windows at the time of construction of their home in 2001. Based on representations and warranties by Pella and otherwise, Plaintiffs understood that the Windows would have a reasonable service life, be free from defects that would impact that

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<sup>1</sup> *Eastin v. Entergy Corp.*, 865 So.2d 49, 55 (La. 2004).

service life and be warranted to ensure such a service life.

67. Unknown to the Palacios, the Windows they purchased were defective in that they allowed water penetration, which caused condensation, wood rot, leaks and other failures as described.

68. The characteristics of the Windows' defect were present in the Windows when they left the factory, and were part of the Window by design and manufacture.

69. Plaintiffs were not told nor did Pella disclose, that the Windows were defective

70. As a result of their defective condition, the Windows have allowed water to intrude into the Palacios' home resulting in damage to other property in their home, such as damage to the structure, wall cavity, adjoining finishes and drywall as well as damage to other personal property within their home.

71. Plaintiffs noticed that their Windows were leaking and causing damage and contacted Pella. Pella provided replacements for some of the Windows, but required Plaintiffs to install and finish the Windows at Plaintiffs' expense.

### **CLASS ACTION ALLEGATIONS**

72. Plaintiffs bring this action on behalf of themselves and on behalf of all others similarly situated as Class Members pursuant to Rule 23 of the Federal Rules of Civil Procedure.

73. Plaintiffs seek to represent a Nationwide Class and a Louisiana Sub-Class defined as follows:

### **DAMAGES CLASS:**

**All persons and entities that own a structure located within the State of Louisiana and the United States in which Pella Architect Series windows are installed who have not had their windows replaced by Pella or been compensated for their losses in full by Pella.**

**DECLARATORY RELIEF CLASS:**

**All persons and entities that own a structure located within the State of Louisiana and the United States in which Pella's Architect series 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 that 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.

74. The named Plaintiffs herein are Members of the Class they seek to represent.

75. The definition of the Class is tailored so as to include identifiable Class members who can be identified through Defendants' warranty records, sales records, or receipts from sales. The Class has no time limit because, as discussed herein, any applicable prescriptive period or statute of limitations has been tolled by Defendant's concealment of the defects in the products.

76. The Class is so numerous that joinder of all Members is impracticable. The Classes are composed of thousands of persons geographically dispersed throughout the state of Louisiana and the United States, the joinder of whom in one action is impractical. Moreover, upon information and belief, the Classes are ascertainable and identifiable from Pella's records or identifying marks on the Windows.

77. There are questions of law and fact common to the Class including:

- a. Whether the Windows are defective in design or construction;
- b. Whether Pella was negligent in its design or manufacture of the Windows;



- c. Whether the Windows have not performed or will not perform in accordance with the reasonable expectations of ordinary consumers;
- d. Whether Pella knew or should have known of the defect;
- e. Whether Pella concealed the defects from or failed to disclose to consumers, builders, Plaintiffs, distributors, and Class Members;
- f. Whether Pella breached the implied warranty against redhibitory defects in the sale, marketing, or design of the Windows;
- g. Whether the Windows conform to the applicable Louisiana building code or other applicable standards;
- h. Whether Plaintiffs and the Class members are entitled to compensatory damages, including: (i) compensation for all out-of-pocket monies expended by members of the Classes for replacement of Windows or installation costs; (ii) failure of consideration in connection with 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 (4) cost to repair and replace all Windows and resulting damage.
- i. Whether Plaintiffs and the Class members are entitled to replacement of their defective Windows with non-defective Windows;
- j. Whether Plaintiffs and the Class members are entitled to restitution or disgorgement;
- k. Whether Pella falsely advertised or marketed its products to consumers;
- l. Whether Pella knew that its Windows were defective yet concealed this

information from Class Members, Plaintiffs, Plaintiffs' Builders, or Class Members' Builders;

- m. Whether Plaintiffs, Plaintiffs' Builders, Class Members, or Class Members' builders reasonably relied on Pella's marketing and warranties that the Windows conformed to the applicable standards and the Building Code; and
- n. Whether Plaintiffs, Plaintiffs' Builders, Class Members, or Class Members' Builders reasonably relied upon Pella's false and misleading advertising.

78. These and other questions of law or fact are common to the Class and predominate over any questions affecting only individual Class Members.

79. The claims of the named Plaintiffs are typical of the claims of the respective Class they seek to represent in that the named Plaintiffs and all Members of the proposed Class have Windows in their homes that are failing or causing damage to their homes or at the risk of failing and permitting leaks.

80. Plaintiffs will fairly and adequately represent and protect the interests of the Members of the Class they seek to represent.

81. Plaintiffs have retained counsel competent and experienced in complex class actions to represent them and the Members of the proposed class. Accordingly, the interests of the Class will adequately be protected and advanced. In addition, there is no conflict of interest among Plaintiffs and the Members of the proposed Class.

82. 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 Louisiana and the United States 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.

83. A class action for injunctive and equitable declaratory relief pursuant to Rule 23(b)(2) is also appropriate. Defendants acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive and equitable relief with respect to the Class as a whole. Defendants' actions are generally applicable to the class as a whole, and Plaintiff, on behalf of the Class, seeks damages and injunctive relief described herein. Moreover, Defendant's systemic policy and practices make declaratory relief with respect to the Class as a whole appropriate.

### **NATIONAL CLASS CAUSES OF ACTION**

#### **CAUSE OF ACTION FOR STRICT LIABILITY**

84. Plaintiffs, individually and on behalf of all others similarly situated, adopt and incorporate by reference all allegations contained in the preceding paragraphs as though fully set forth herein.

85. Defendant Pella is in the business of designing, manufacturing, marketing, distributing, and selling windows and doors.

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

87. The Windows are defectively designed and manufactured in that they allow

water to intrude into the interior of the walls and residence, resulting in rot and mold growth and consequential damage to the structure into which the windows were installed.

88. The Windows reached the Plaintiffs and Class members without substantial change in the condition in which they were sold.

89. As a direct, foreseeable, and proximate result of the sale of the defective windows to the Plaintiffs and Class members, Plaintiffs and Class members have suffered significant physical property damage, contamination, deterioration, as well as the diminution in the value of the properties.

### **CAUSE OF ACTION FOR NEGLIGENCE**

90. Plaintiffs individually and on behalf of all others similarly situated, adopt and incorporate by reference all allegations contained in the preceding paragraphs as though fully set forth herein.

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

92. Pella had a duty to Plaintiffs and Class members to design and manufacture Windows that were free of latent defects that would cause the Windows to leak and cause damage.

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

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

95. Pella had a duty to Plaintiffs and Class members of the class to ensure that its products complied with industry standards.

96. Pella had a duty to Plaintiffs and Class members to forewarn purchasers,

installers and users regarding the known risks of product failures.

97. Pella failed in its duty to exercise ordinary and reasonable care in the design, manufacture, and testing of the Windows.

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

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

100. Pella breached its duty to Plaintiffs and Class members to ensure that its products complied with industry standards.

101. Pella breached its duty to Plaintiffs and Class members to forewarn purchasers, installers, and users regarding the known risks of product failures.

102. Plaintiffs and Class members have been damaged as a direct and proximate result of Pella's negligence, carelessness, recklessness, willfulness, and wantonness.

#### **CAUSE OF ACTION FOR BREACH OF EXPRESS WARRANTY**

103. Plaintiffs, individually and on behalf of all others similarly situated, adopt and incorporate by reference all allegations contained in the preceding paragraphs as though fully set forth herein.

104. 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 by the plain language of the warranty.

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

106. Pella expressly represented that its warranties extended to the homeowners whose homes contain the Windows.

107. Pella also expressly represented that the Windows conform to all applicable building codes, AAMA standards, ASTM standards, WDMA standards, and NFRC standards.

108. Pella made each representation described herein to induce purchase of the Windows.

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

110. The defects described herein were present when the Windows left Pella's control.

111. Further, Plaintiffs filed warranty claims with Pella, but Pella has failed to respond adequately to Plaintiffs' warranty claims.

112. In addition, Pella failed to agree to provide full replacement Windows to Plaintiffs and Class Members; however, the replacement Windows are also inherently defective because they cause and continue to cause damage as described more fully herein.

113. Since Pella's Windows provided pursuant to Pella's warranty are also inherently defective and result in moisture intrusion and wood rot and to other property, Pella's representations and warranties fail of their essential purpose and are unconscionable.

114. In addition, the Windows do not conform to all applicable codes and standards as expressly warranted and represented by Pella.

115. As a result of Pella's breach of the express warranty and representations,

Plaintiffs and the Class members have suffered and continue to suffer actual and consequential damages in an amount that will be determined at trial.

### **CAUSE OF ACTION FOR BREACH OF IMPLIED WARRANTIES**

116. Plaintiffs, individually and on behalf of all others similarly situated, adopt and incorporate by reference all allegations contained in the preceding paragraphs as though fully set forth herein.

117. Pella designed and manufactured the Windows, and for a number of years, marketed, warranted, distributed, and sold the windows throughout the United States.

118. The Windows were not fit for the ordinary purposes for which the Windows were sold, are not merchantable, and fail to conform to industry standards.

119. The Windows were defective at the time they left Pella's control.

120. As Pella's express warranty and its warranty process has been breached and is unconscionable or fails of its essential purpose, any limitations on implied warranties contained in the express warranty should be deemed null and void.

121. As a result of Pella's breach of the implied warranties, Plaintiffs and the Class members have suffered and continue to suffer actual and consequential damages in an amount that will be determined at trial.

### **CAUSE OF ACTION FOR NEGLIGENT MISREPRESENTATION**

122. Plaintiffs, on behalf of themselves and on behalf of all others similarly situated, adopt and incorporate by reference all allegations contained in preceding paragraphs as though fully set forth herein.

123. Pella made misrepresentations and omissions of material facts, including:

- a. That the defective Windows were fit for their intended use;
- b. That the defective Windows were of merchantable quality; and
- c. That the Windows conformed to all applicable Building Code, ASTM standards, AAMA standards, NFRC standards, and WDMA standards;

124. These misrepresentations or omissions were false and misleading at the time they were made.

125. Pella negligently and carelessly made the foregoing misrepresentations without a basis and did not possess information on which to accurately base those representations.

126. Pella was aware that they did not possess information on which to accurately base the foregoing representations and concealed from Plaintiffs and Members of the Class that there was no reasonable basis for making said representations.

127. When Pella made the foregoing representations, they knew or should have known them to be false.

128. In reliance upon the foregoing misrepresentations by Pella, Plaintiffs, Plaintiffs' Builders, Class Members, or Class Members' builders were induced to and did purchase the Windows and permitted the Windows to be installed in their homes.

129. If Plaintiffs, Plaintiffs' builders, Class Members, or Class Members' builders had known of the true facts, they would not have taken such action. The reliance on Pella's misrepresentations and omissions was reasonable.

130. As a result of the foregoing negligent misrepresentations by Pella, Plaintiffs and Members of the Class suffered and will continue to suffer expense and economic loss as previously described, rendering Pella liable for said damages in an amount to be determined at trial.



**CAUSE OF ACTION FOR FRAUD BY  
UNIFORM WRITTEN MISREPRESENTATION AND OMISSION**

131. Plaintiffs, on behalf of themselves and on behalf of all others similarly situated, adopt and incorporate by reference all allegations contained in preceding paragraphs as though fully set forth herein.

132. 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, warranties, installation instructions, or specifications disseminated by Pella, nor the reasonable expectations of Plaintiffs' builders and Class Members' builders. Pella also made intentional misrepresentations to Class Members who sought to have Defendant honor the warranty.

133. Pella's uniform written misrepresentations were made with the intent that the general public, including Plaintiffs and Class Members, would rely upon them. As the Windows were leaking and causing damage to homeowners' properties, Pella's misrepresentations were made with knowledge of the falsity of such statements, or in reckless disregard of the truth thereof. This knowledge of the number and type of defects that were occurring gave Pella an unjust advantage and caused a loss to Plaintiffs and Class Members.

134. Plaintiffs', Plaintiffs' Builders, Class Members, and Class Members Builders did not have knowledge of the falsity of these misrepresentations and could not have discovered that the Windows were defective by the exercise of reasonable diligence.

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

136. 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, Class members, Plaintiffs' Builders, or Class Members Builders, in the exercise of reasonable diligence, could have discovered independently prior to purchase, because it is not feasible. Indeed, Pella knew from its internal records of complaints and warrant claims that the Windows would gradually fail, but that the failures would not be visible for several years.

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

138. Pella undertook active and ongoing steps to conceal the defect from Plaintiffs, Plaintiffs' builders, Class Members, and Class Members' Builders. Plaintiffs are aware of nothing in Pella's advertising, publicity, or marketing materials that disclosed the truth about the defects and the large risk of failure, despite Pella's awareness of the problem.

139. These misrepresentations and omissions are particularly important as Pella, in its brochures and advertising materials, used words like "luxury" to describe the Windows and stressed the Windows' ability to "deliver comfort and enjoyment for a lifetime." These claims were directed to builders and homeowners seeking high quality construction and aesthetics. Pella's statements and claims induced Plaintiffs and Class members to pay premium prices for the Windows.

140. The facts concealed or not disclosed by Pella to Plaintiffs, Plaintiffs' Builders, Class members, and Class Members' Builders 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 containing the defects.

141. Pella intentionally concealed or failed to disclose these material facts on the poor quality and short life of the Windows for the purpose of inducing Plaintiffs, Plaintiffs' Builders, and the Class Members' builders (who were looking for high quality construction and aesthetics) to purchase the Windows.

142. Plaintiffs and the Class Members justifiably acted or indirectly relied upon the concealed or undisclosed facts to their detriment, as evidenced by Plaintiffs' Builders and Class Members' purchase of the Windows.

143. Plaintiffs 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 the representation that they would be free from defects; and (c) the Windows did not perform as promised.

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

### **LOUISIANA SUBCLASS CAUSES OF ACTION ALLEGATIONS**

#### **CAUSE OF ACTION FOR BREACH OF EXPRESS WARRANTY**

**(La. Rev. Stat. 9:2800.58)**

145. Plaintiffs, individually and on behalf of all others similarly situated, adopt and incorporate by reference all allegations contained in the preceding paragraphs as though fully set forth herein.

146. By its action and inactions described herein, Pella breached an express warranty under the Louisiana Products Liability Act ("LPLA"). La. R.S. 9:2800.58. Under LPLA, "a product is unreasonably dangerous when it does not conform to an express warranty

made at any time by the manufacturer about the product.”

147. At all times, Pella was a “manufacturer” of the Windows as it produced, fabricated, constructed, and designed the Windows.

148. 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 Plaintiffs and the Class members by the plain language of the warranty.

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

150. Pella expressly represented that its warranties extended to the homeowners whose homes contain the Windows.

151. Pella also expressly represented that the Windows conform to all applicable Louisiana building codes, AAMA standards, ASTM standards, WDMA standards, and NFRC standards.

152. Pella also made each representation described herein to induce purchase of the Windows.

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

154. Further, Plaintiffs and Class Members filed warranty claims with Pella, but Pella has failed to adequately respond to Plaintiffs’ warranty claims.

155. In addition, Pella failed to provide full replacement Windows to Plaintiffs

and Class Members; however, the replacement Windows are also inherently defective because they also cause and continue to cause damage as described more fully herein.

156. Since Pella's Windows provided pursuant to Pella's warranty are also inherently defective and result in moisture intrusion and wood rot and to other property, Pella's representation and warranties fail of their essential purpose and are unconscionable.

157. In addition, the Windows do not conform to all applicable Louisiana Building codes and standards as expressly warranted and represented by Pella.

158. As a result of Pella's breach of the express warranty and representations, Plaintiffs and the Class members suffered and continue to suffer actual and consequential damages in an amount that will be determined at trial.

159. As a result of its breach of express warranty, Pella is strictly liable to Plaintiffs and Class member for the damages its windows have caused and continue to cause.

**CAUSE OF ACTION FOR DESIGN  
DEFECT (La. Rev. Stat. 9:2800.56)**

160. Plaintiffs, individually and on behalf of all others similarly situated, adopt and incorporate by reference all allegations contained in the preceding paragraphs as though fully set forth herein.

161. At all relevant times, Pella was the sole manufacturer and designer of the Windows.

162. The windows designed and manufactured by Pella contained a design defect that cause the Windows to leak around their perimeters. This leakage gradually penetrated the surrounding structure, including the window sills below, causing widespread damage to the surrounding wood of the structure, as well as the neighboring

drywall and the insulation within the walls.

163. This design defects existed at the time the Windows left the control of Pella.

164. Alternative design or designs existed capable of preventing leaks and resulting damage in Plaintiffs' and Class members' homes. Given the nature of the design defect and that it was easily correctable (most windows do not leak), the risk and likelihood of damage outweighed the burden of Pella adopting the alternative design.

165. The defects in the Windows' design (and the feasible alternative design(s)) were known to Pella at the time of manufacture and sale. In fact, Pella, through its website, advertising, and product brochures touts its almost 90 year history of designing and manufacturing Windows.

166. As a result of the design defects present in the Windows, Plaintiffs and Class Members have suffered and continue to suffer actual and consequential damages.

**CAUSE OF ACTION FOR CONSTRUCTION OR COMPOSITION DEFECT  
(La. Rev. Stat. 9:2800.55)**

167. Plaintiffs, individually and on behalf of all others similarly situated, adopt and incorporate by reference all allegations contained in the preceding paragraphs as though fully set forth herein.

168. In addition to being the designer and manufacturer of the Windows, Pella also distributed the Windows to third party sellers as well as showrooms that Pella itself owned.

169. As a result of this vertical integration of design, manufacture, distribution, and even sales, Pella maintained control over the Windows until the Windows were ready for purchase by Plaintiffs and Class Members.

170. In the alternative, at the time the Windows left Pella's control, the

Windows deviated in a material way from the manufacturer's specifications or performance standards for the Windows or otherwise identical products manufactured by Pella as the Windows in Plaintiffs' and Class Members' homes began leaking within only a few years of installation. Had the Windows been properly constructed, they would not have leaked, and no damage to Plaintiffs' and Class Members' property would have occurred.

171. As a result of the construction or composition defects present in the Windows, Plaintiffs and Class Members have suffered and continue to suffer actual and consequential damages.

172. Pella is strictly liable to Plaintiffs and Class Members for any defects in design or composition.

**CAUSE OF ACTION FOR REDHIBITION**  
**(La. Civ. Code art. 2520, *et seq.*)**

173. Plaintiffs, on behalf of themselves and on behalf of all others similarly situated, adopt and incorporate by reference all allegations contained in preceding paragraphs as though fully set forth herein.

174. Plaintiffs, Class Members, Plaintiffs' builders, and Class Members' builders are "buyers", and Pella is the "manufacturer" of the Windows, under Louisiana Civil Code article 2520, *et seq.*

175. Under Louisiana law, the manufacturer warrants the buyer against redhibitory defects in things sold. La. Civ. Code art. 2520.

176. Under Louisiana Civil Code article 2520, a defect is redhibitory: (1) When the defect "renders things useless, or its use so inconvenient" that it has to be presumed that the buyer would not have bought the thing had he known of the defect; or (2) when, "without rendering the thing totally useless," the defect diminishes the product's usefulness

or its value such that it must be presumed that the buyer would still have bought it, but for a lesser price.

177. Had Plaintiffs, Plaintiffs' builders, Class Members, or Class Members' builders known that the Windows contained the defects permitting water leaks and wood rot, they would not have purchased the Windows or installed them into the homes. The defects described herein render the Windows useless. Thus, the defects in the Windows, as described herein, meet the definition of a redhibitory defect.

178. In the alternative, had the Plaintiffs, Plaintiffs' builders, Class Members, and/or Class Members' Builders known that the Windows contained the defects permitting water leaks and wood rot, they would have purchased them at a lesser price commensurate with what, if any, usefulness or value remains in the product. Thus the defects in the Windows, as described herein, meet the definition of a redhibitory defect.

179. At the time of sale of the Windows, Pella had actual or constructive notice of the defects in the Windows that permitted the leaks and wood rot because numerous complaints had been made to Pella, and, upon information and belief, the Windows failed Pella's own internal testing and conformance standards.

180. As "manufacturer" of the Windows, Pella is deemed to have knowledge of any redhibitory defect in any product it sells. La. C.C.P. Art. 2545.

181. A defendant with knowledge of a redhibitory defect is "liable to the buyer for the return of the price with interest from the time it was paid, for the reimbursement of the reasonable expenses occasioned by the sale and those incurred for the preservation of the thing, and also for damages and reasonable attorney fees." La. Civ.Code art. 2545.

182. Plaintiffs and class members are entitled to injunctive relief, compensatory



damages, equitable and declaratory relief, costs, and reasonable attorneys' fees.

**DECLARATORY RELIEF (NATIONAL CLASS AND LOUISIANA SUBCLASS)**

183. Plaintiffs, individually and on behalf of all others similarly situated, adopt and incorporate by reference all allegations contained in the preceding paragraphs as though fully set forth herein.

184. There is an actual controversy between Pella and the Class Members concerning the defective design or manufacture of Pella's Windows. Pella has 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).

185. Pursuant to 28 U.S.C. § 2201, this Court may "declare the rights and legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought."

186. Accordingly, Plaintiffs seek a declaration that:

- a. the Windows have defects that permit water intrusion into the interior of structures on which the Windows are attached, resulting in substantial damage;
- b. certain provisions of Pella's warranty are void as unconscionable because it does not provide warranty or replacement services for all of its Windows that are defective;
- c. certain provisions of Pella's warranty are void as unconscionable because the Windows do not conform to the representations or warranties as represented in the Windows themselves;

- d. Pella must notify owners of the defects;
- e. Pella must pay the cost of inspection to determine whether any Class Member's windows need replacement.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of all others similarly situated, pray for a Judgment against Pella as follows:

- a) For an order certifying the Classes, pursuant to Fed. R. Civ. P. Rule 23, appointing Plaintiffs as representative of the Classes, and appointing the law firms representing Plaintiffs as counsel for the Classes;
- b) For compensatory damages sustained by Plaintiffs and the Damages Class;
- c) For equitable and 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 payment of reasonable attorneys' fees and expert fees as may be allowable under applicable law; and
- g) For such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

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

Dated: August 18, 2014

Respectfully submitted,

/s/ Andrew A. Lemmon  
ANDREW A. LEMMON (#18302)  
IRMA L. NETTING (#29362)  
LEMMON LAW FIRM, L.L.C.  
P.O. BOX 904  
HAHNVILLE, LOUISIANA 70057  
(985) 783-6789  
(985) 783-1333 (facsimile)  
[andrew@lemmonlawfirm.com](mailto:andrew@lemmonlawfirm.com)  
[irma@lemmonlawfirm.com](mailto:irma@lemmonlawfirm.com)

VAL PATRICK EXNICIOS (#19563)  
LISKA, EXNICIOS & NUNGESSER  
Attorneys-At-Law  
1515 Poydras Street  
14th Floor, Ste. 1400  
New Orleans, LA. 70112  
(504) 410-9611  
(504) 410-9937 (facsimile)

*Counsel for Plaintiffs*