

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CLEMENT GAZZILLO, STEVEN WU,
JAMES RENSLAND, and BARBARA MORRIS,
on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

PLY GEM INDUSTRIES, INC. d/b/a "PLY GEM"
and PLY GEM HOLDINGS, INC. d/b/a "PLY
GEM,"

Defendants.

Civil No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY

Plaintiffs, by and through their undersigned attorneys, as and for their class complaint against defendants, allege as follows:

INTRODUCTION

1. This putative class action seeks damages, injunctive and declaratory relief against Ply Gem Industries, Inc. and its parent company Ply Gem Holdings, Inc. (collectively "Ply Gem" or "defendants"), on behalf of a class of persons who owned homes and other structures on which Ply Gem vinyl siding products (collectively "Ply Gem vinyl siding") were installed.

2. Defendants manufactured and distributed defective vinyl siding under various brand names that degrades when exposed to normal environmental and building construction conditions.

3. For example, below are photographs of a portion of the degraded Ply Gem vinyl siding on plaintiff Clement Gazzillo's home:



Figure 1

4. Pictured below is a photograph of a portion of the degraded Ply Gem vinyl siding on the home of plaintiff Steven Wu:



Figure 2

5. Pictured below is a photograph of a portion of the degraded Ply Gem vinyl siding on the home of plaintiff James Rensland:



Figure 3

6. Defendants marketed, promoted and sold Ply Gem vinyl siding, including the Ply Gem lifetime warranty, when they knew or should have known that the siding was defective.

7. Defendants failed to adequately disclose to builders, homeowners and the public that the siding degrades under normal exposure conditions.

8. Ply Gem vinyl siding fails to conform to the public's reasonable expectation of the product's beauty, durability and longevity, and the company's promise of a "Premium guarantee of lasting quality and peace of mind."

PARTIES

9. Plaintiff Clement Gazzillo, at all times relevant, was and is a resident of the Town of Rotterdam, State of New York.

10. Plaintiff Steven Wu, at all times relevant, was and is a resident of the Village of Williamsville, State of New York.

11. Plaintiff James Rensland at all times relevant, was and is a resident of the City of Pittsburgh, Commonwealth of Pennsylvania.

12. Plaintiff Barbara Morris, at all times relevant, was and is a resident of the Town of Millville, State of Delaware.

13. Defendant Ply Gem Industries, Inc. is incorporated in the state of Delaware with a corporate headquarters located at 5020 Weston Parkway, Suite 400, Cary, North Carolina 27513.

14. Defendant Ply Gem Holdings, Inc. is incorporated in the state of Delaware with a corporate headquarters located at 5020 Weston Parkway, Suite 400, Cary, North Carolina 27513.

JURISDICTION AND VENUE

15. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) based on diversity of citizenship among the parties/class and the amount in controversy exceeds \$5,000,000 exclusive of interest and cost.

16. Venue is properly laid in this District pursuant to 28 U.S.C. §§ 1391 *et seq.* because defendants conduct substantial business in this District, have caused harm to Class Members in this District, one or more of the Plaintiffs reside in this District, and defendants are subject to this court's personal jurisdiction with respect to this action.

NATURE OF ACTION

17. Ply Gem manufactures and distributes building products and materials, including vinyl siding.

18. Ply Gem states that the company was started in 1943 and for over 70 years has been an industry leader in exterior building products, including siding, windows, doors, stone, trim, fence, rail, roofing gutters and accents. See <http://www.plygem.com/wps/portal/home/aboutus>.

19. Ply Gem's exterior siding products include vinyl, aluminum, steel, fiber cement, stone, brick, stucco and polymer over wood.

20. Ply Gem and its affiliates have more than 8,500 employees and more than 65 facility locations throughout the United States and Canada.

21. Ply Gem Industries, Inc. is a wholly owned subsidiary of Ply Gem Holdings, Inc.

22. In 1986, Ply Gem acquired vinyl siding manufacturer Variform, Inc.

23. In 2006, Ply Gem acquired vinyl siding manufacturer Mastic Home Exteriors, Inc.

24. In 2013, Ply Gem acquired vinyl siding manufacturer Mitten Inc.

25. Ply Gem vinyl siding product brands include Mastic, Variform, Mitten, Napco, Cellwood, Georgia Pacific and Durabuilt.

26. Ply Gem Holdings, Inc. reported annual revenue of approximately \$1.9 billion dollars in 2016.

27. Ply Gem Industries, Inc. and Ply Gem Holdings, Inc. share corporate headquarters in Cary, North Carolina.

28. Ply Gem is one of North America's largest building products companies.

29. Ply Gem manufactures and sells vinyl siding throughout the United States for installation on homes, townhomes, apartments, duplexes, commercial buildings and other structures.

30. Ply Gem markets its vinyl siding products to building professionals, contractors, consumers and the general public, including plaintiffs and the Class, as the “#1 Manufacturer of Vinyl Siding in North America”:



Figure 4

31. Ply Gem states that “For more than 70 years, professionals and homeowners alike have trusted Ply Gem as a leading building products manufacturer. ... When you choose materials for your home, you want them to last. Likewise, you expect the company that stands behind those products to be there when you need them. With Ply Gem, you can choose with confidence. Every product we manufacture meets strict quality standards and is backed by an industry leader with a longstanding record of integrity.” <http://www.plygem.com/wps/portal/home/brands/>.

32. Defendants advertise Ply Gem vinyl siding as beautifying, protective, durable, low maintenance and cost effective.

33. Defendants represented that Ply Gem “Vinyl siding’s durable design provides lasting beauty and comprehensive protection you can trust for the life of your home.”

<http://makeitmastic.com/mastic-performance>.

34. Defendants advertise that “we’ve spent decades perfecting the science behind our siding, so you can enjoy it for years to come – without giving it a second thought.”

<http://makeitmastic.com/mastic-performance>.

35. Defendants market Ply Gem vinyl siding products as providing the “lowest installed cost” and “lowest lifetime maintenance” than other exterior siding options such as brick, cedar, fiber cement and engineered wood. <http://makeitmastic.com/why-mastic>

36. Defendants market their vinyl siding products with “The Ply Gem Promise” which states that Ply Gem vinyl siding products are “backed by Ply Gem – a 70 year leader in pioneering performance home exteriors, with superior warranty for exactly the home you want for decades to come.”

37. Defendants advertise that Ply Gem vinyl siding products are backed by the “Strongest Warranties in the Business”:



Figure 5

38. Defendants warrant to property owners that Ply Gem vinyl siding is free from manufacturing defects and will maintain its structural integrity, including protection from peeling, flaking, blistering, corroding and excessive fading under normal exposure and weathering conditions.

39. Normal weathering is defined by Ply Gem's warranty as "the damaging effects of sunlight and extremes of weather and atmosphere."

40. Ply Gem's vinyl siding warranty provides property owners with a lifetime warranty that is transferable to subsequent owners.

41. Ply Gem's warranty provides subsequent owners with a prorated 50 year warranty measured from the date of first installation.

42. Defendants' vinyl siding warranty provides that "We will repair, replace or refund the purchase and installation price of the defective portion of our siding that blisters, checks, crazes, flakes, peels or weathers unevenly due to a defect in our manufacturing process."

43. Upon information and belief, Ply Gem has, and has had for many years, the technical capability to manufacture vinyl siding products that do not distort, warp, or blister due to expected environmental conditions such as solar radiation and reflections.

44. Ply Gem markets and sells certain "SolarDefense" products with an "added no fade, no distortion promise" that comes with "the strongest warranty against fading and heat distortion in the industry." SolarDefense products are guaranteed to experience "no heat distortion from climate or reflective light sources."

45. Building professionals, consumers and the general public reasonably understand defendants' representations to mean that Ply Gem vinyl siding will maintain its structural integrity and not degrade for the lifetime of the original property owner (or 50 years on a pro-rated basis for subsequent owners).

46. Attached as "Exhibit A" is plaintiff Clement Gazzillo's Ply Gem warranty.

47. In 2017, plaintiff Steven Wu contacted Ply Gem to request a copy of the warranty for his vinyl siding, which was installed on his home in 2010. Mr. Wu was advised by Ply Gem that the warranty for all of Ply Gem's vinyl siding was on the company's website. Ply Gem told Mr. Wu to visit the website and download the warranty. Attached as "Exhibit B" is the Ply Gem warranty that Steven Wu downloaded from the Ply Gem website.

48. Upon information and belief, the Ply Gem warranty documents attached as "Exhibit B" were published by Ply Gem subsequent to the installation of Mr. Wu's vinyl siding.

49. Attached as “Exhibit C” is plaintiff Barbara Morris’ Variform Vinyl Siding warranty.

50. Attached as “Exhibit D” is a letter received by plaintiff James Rensland informing him that Ply Gem no longer has a copy of the warranty applicable to his vinyl siding, which was purchased in the 2000 timeframe. Upon information and belief, the warranty received by Mr. Rensland on his vinyl siding was much more permissive, and did not even purport to exclude blistering, warping, deformation, or any other damage from usual or unusual external heat sources.

WARRANTY DENIALS

51. After some period of exposure to normal, expected environmental conditions and typical weather patterns, the Ply Gem vinyl siding on each of plaintiffs’ homes has lost its structural integrity and degraded, warped, melted, blistered, and/or deformed.

52. Plaintiffs’ vinyl siding is not beautifying, protective, durable, low maintenance or cost effective.

53. Plaintiffs each contacted Ply Gem to make a claim under their vinyl siding warranty.

54. On November 14, 2016, Ply Gem sent plaintiff Clement Gazzillo a letter denying his warranty claim on the grounds of “excessive external heat source” onto the siding.

55. A copy of Ply Gem’s warranty denial letter sent to plaintiff Clement Gazzillo is attached as “Exhibit E.”

56. On May 1, 2017, Ply Gem sent plaintiff Steven Wu a letter denying his warranty claim on the grounds of “solar deflection” from window reflection.

57. A copy of Ply Gem's warranty denial letter sent to plaintiff Steven Wu is attached as "Exhibit F."

58. On June 1, 2015, Ply Gem sent plaintiff James Rensland a letter denying his warranty claim on the grounds of "excessive external heat source" onto the siding.

59. A copy of Ply Gem's warranty denial letter sent to plaintiff James Rensland is attached as "Exhibit G."

60. On May 22, 2017, Ply Gem sent plaintiff Barbara Morris a letter denying her warranty claim on the grounds of "excessive external heat source" onto the siding.

61. A copy of Ply Gem's warranty denial letter sent to plaintiff Barbara Morris is attached as "Exhibit H."

62. The Ply Gem warranties provide warranty coverage against manufacturing defects, including but not limited to vinyl siding that "blisters." The warranties specifically contemplate that PlyGem vinyl siding will be subject to "exposure to sunlight and extremes of weather and atmosphere." See generally Exhibits "A" – "D."

63. The internally-inconsistent Ply Gem warranties also state elsewhere that the warranties do not apply to "warping or distortion due to exposure to excessive heat sources" or "exposure to unusual or excessive reflective heat sources" such as "window reflection." See, Exhibits "A" – "D."

64. Ply Gem's warranty denial is exemplified by Ply Gem's letter to plaintiff Clement Gazzillo (Exhibit E) stating that:

Your claim report, sample and photos have been received and reviewed by our Technical Department. It has been determined from this information that no product failure, due to manufacturing, is evident. The damages are consistent with that which is caused by an excessive external heat source onto the siding. This can be caused by a reflection from a nearby window or even a window from

the neighbor's home, roofing materials, pools, decks, blacktops, or concrete materials.

65. Upon information and belief, Ply Gem made no attempt to determine with any certainty the actual source of any heat that defendants allege to have caused the damage to plaintiffs' vinyl siding.

66. Ply Gem's denial that its vinyl siding is defective as a result of warping or distortion from sunlight reflecting off windows or other building materials fails the essential purpose of the warranty, i.e., that the siding is free from defects under normal exposure conditions.

67. As a result of defendants' warranty denials, plaintiffs have and will continue to suffer damages to repair, replace and remedy their defective Ply Gem vinyl siding.

68. The construction of windows adjacent to siding, windows that reflect light onto siding, and homes and other structures with windows adjacent to the building on which the siding is installed is a reasonable expectation of property owners, including plaintiffs, and a normal condition in building design and construction.

69. Sunlight exposure is a reasonable expectation of property owners, including plaintiffs, and a normal environmental condition.

70. It is a reasonable expectation of property owners, including plaintiffs, that Ply Gem vinyl siding is suitable for use on or near homes and other structures with windows.

71. Ply Gem's website (<http://www.plygem.com/wps/portal/home/brands/mastic>) advertises the use of its vinyl siding on homes with windows exposed to sunlight:

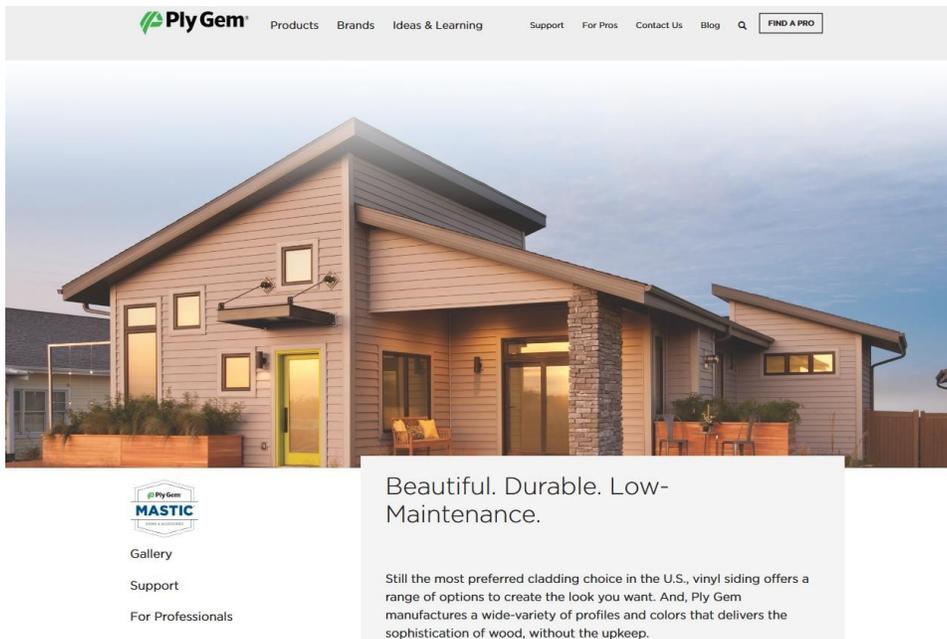


Figure 6

72. Ply Gem's product installation instructions fail to warn that Ply Gem vinyl siding should not be installed where sunlight may reflect off windows.

73. Plaintiffs were surprised when defendants disclaimed coverage under their warranties.

74. Defendants' denial of their duty of care for the defective Ply Gem vinyl siding is analogous to a car manufacturer disclaiming its duty of care for a vehicle's paint finish that melts and distorts from sunlight reflecting off vehicle windows.

**DEFENDANTS' DECEPTIVE AND UNFAIR CONDUCT
AND BREACH OF WARRANTIES**

75. Defendants advertised, warranted and sold Ply Gem vinyl siding products that defendants knew or reasonably should have known were inherently defective and failed to perform as represented and warranted by defendants.

76. Upon information and belief, thousands of property owners, including plaintiffs, have experienced degradation of their Ply Gem vinyl siding under normal construction and environmental exposure conditions as described herein.

77. Upon information and belief, defendants have denied numerous warranty claims alleging a manufacturing or design defect in the vinyl siding on the basis of reflective sunlight from windows causing melting or distortion.

78. Despite said claims and knowledge, defendants have failed to notify their customers about the defects; have refused to fully repair damage caused by said defects; have concealed the true nature of the defects inherent in the siding; and continue to market Ply Gem vinyl siding without adequate warnings or disclosures.

79. At all times relevant, defendants had a duty to disclose to plaintiffs and the Class that Ply Gem vinyl siding was inherently defective as designed and manufactured and would foreseeably degrade under normal construction and environmental conditions as detailed herein.

80. Defendants' marketing of Ply Gem vinyl siding as suitable for use in homes with windows exposed to sunlight is deceptive.

81. Defendants' denial of plaintiffs' warranty claims constitute breach of implied and express warranties.

82. Defendants' denial of plaintiffs' warranty claims on the basis of reflective window sunlight distortion is unconscionable and fails the essential purpose of the warranty.

83. Defendants' denial of plaintiffs' warranty claims has deprived plaintiffs of a substantial bargained benefit and unjustly enriched defendants.

CLASS ALLEGATIONS

84. The Class claims derive from a single course of conduct by defendants Ply Gem. Defendants' design, manufacture, marketing and sale of Ply Gem vinyl siding products was pursuant to uniform practices directed at the Class. Defendants did not discriminate in the degree of care or candor, disclosure or omission, or other conduct among the individual Class members. The object facts are that Ply Gem siding, as presently designed and manufactured, is not suitable for its foreseeable uses, i.e., when installed on home with windows, as advertised by defendants.

85. Plaintiffs seek to bring this case as a nationwide class action on behalf of themselves and all others similarly situated pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3).

The prosed Class is defined as follows:

All persons and entities who own, or have owned, homes or other structures with Ply Gem vinyl siding products.

86. Alternatively, or in addition to the nationwide Class claims, plaintiffs bring these claims under Fed. R. Civ. P. 23 on behalf of themselves and on behalf of Subclasses of persons and entities residing in each of the states in which plaintiffs reside and each of the states where the laws are similar to each of the states in which Plaintiffs reside.

87. Excluded from the Class are defendants, any entity in which defendants have a controlling interest, and defendants' legal representatives, assigns and successors.

88. Although the exact number of class members is unknown at this time, the members of the class are sufficiently numerous such that joinder of all members is impracticable.

89. The members of the putative class are mutually and commonly aggrieved and the relief sought is common to the entire class and, if granted, would commonly benefit the entire class.

90. There are common questions of law and fact in the action that relate to and affect the rights of each member of the class, namely, questions as to whether defendants breached their duty of care to all of the members of the class.

91. Common questions of fact and law predominate over any questions affecting only individual members of the class, including but not limited to the following:

- a. Whether Ply Gem vinyl siding products (“Siding”) are defective;
- b. Whether the Siding degrades and fails before the expiration of its advertised, marketed and warranted life;
- c. Whether defendants knew or should have known of the defective nature of the Siding;
- d. Whether defendants properly advised property owners about the likelihood of its Siding’s premature failure;
- e. Whether defendants owed a duty to plaintiffs and the Class to exercise reasonable and ordinary care in the formulation, testing, design, manufacture, warranting and marketing of the Siding;
- f. Whether defendants breached a duty to plaintiffs and the Class by designing, manufacturing, advertising and selling defective Siding and by failing promptly to remove the Siding from the marketplace or take other appropriate remedial action;
- g. Whether the Siding will continue to degrade in performance over time;

- h. Whether the Siding fails to perform in accordance with the reasonable expectations of ordinary consumers;
- i. Whether the Siding fails to perform as advertised, marketed and warranted;
- j. Whether defendants breached express warranties to plaintiffs and the Class by advertising, marketing and selling the defective Siding;
- k. Whether defendants breached implied warranties to plaintiffs and the Class by advertising, marketing and selling Siding that was not of a merchantable quality, nor fit for the ordinary purpose for which it was sold;
- l. Whether defendants' representations regarding the suitability and exemplary nature of its Siding, and its omissions and concealment of facts to the contrary regarding the Siding defects constitute violation of deceptive and unfair trade practices;
- m. Whether defendants have been unjustly enriched;
- n. Whether plaintiffs should be entitled to indemnity and restitution;
- o. Whether plaintiffs and the Class are entitled to compensatory damages to repair, replace and remedy the defective Siding;
- p. Whether injunctive relief should be granted compelling defendants to notify all Class members about their defective Siding.

92. Plaintiffs' claims herein are typical of the claims of the class, in that the claims of all members of the class, including plaintiffs, depend on a showing of the acts and omissions of defendants giving rise to the right of plaintiffs to the relief sought. Plaintiffs, like all Class members, owned homes or other structures on which the defective Ply Gem vinyl siding was installed. As a result of the uniform defects inherent in the vinyl siding's formulation, the siding

failed and will continue to fail prematurely, causing plaintiffs and members of the Class to suffer damages in the form of unreimbursed costs associated with repairing or replacing the defective siding.

93. Plaintiffs will fairly and adequately protect the interests of the respective class members in that plaintiffs have such a plain, direct, and adequate interest in the outcome of the controversy to assure the adequacy of the presentation of the issues involved herein. Plaintiffs have no interest which is adverse to any interest of the class members.

94. Plaintiffs have retained competent counsel with substantial experience litigating complex building products defect cases and class claims in both state and federal court.

95. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Class, and have the financial resources to do so. Neither plaintiffs nor their counsel have interests adverse to the Class.

96. Class action treatment is superior to other available methods for the fair and efficient adjudication of the controversy.

97. Absent class certification, individual litigation of the claims would be unreasonably expensive in light of the probable recoverable damages, burdensome upon the court, and would waste resources otherwise available to compensate the class.

TOLLING OF THE STATUTE OF LIMITATIONS

98. Upon information and belief, defendants have known of the defects in Ply Gem vinyl siding since at least the early 2000s.

99. Defendants concealed and/or failed to notify plaintiffs, the Class and the general public of the full and complete nature of said defects.

100. Defendants were and are under a continuous duty to disclose to plaintiffs the true character, quality, and nature of the Ply Gem vinyl siding.

101. Defendants actively concealed the true character, quality and nature of Ply Gem vinyl siding and knowingly made misrepresentations about the quality, reliability, characteristics and performance of said siding, which behavior is ongoing.

102. Plaintiffs and the Class reasonably relied upon defendants' knowing and affirmative misrepresentations and/or active concealment of these facts.

103. Plaintiffs, despite the exercise of due diligence, could not have reasonably discovered that Ply Gem vinyl siding was inherently defective because said defects are latent and not detectable until manifestation.

104. Based on the foregoing, defendants are estopped from relying on any statutes of limitation in defense of this action.

**FIRST CAUSE OF ACTION –
BREACH OF EXPRESS WARRANTY**

105. Plaintiffs repeat and re-allege the paragraphs above as if fully set forth herein.

106. At all times relevant, defendants owed a duty for express warranties pursuant to New York Uniform Commercial Code § 2-313 and other similar state statutes including 13 Pa. C.S. § 2313; and 6. Del. C. § 2-313.

107. At all times relevant, defendants expressly represented to the public and plaintiffs that Ply Gem vinyl siding products were backed by "The Ply Gem Promise."

108. At all times relevant, defendants expressly represented to the public and plaintiffs that Ply Gem "Vinyl siding's durable design provides lasting beauty and comprehensive protection you can trust for the life of your home."

109. At all times relevant, defendants expressly represented to the public and plaintiffs that Ply Gem vinyl siding is beautifying, protective, durable, low maintenance and cost effective.

110. At all times relevant, defendants expressly represented that Ply Gem vinyl siding is free from manufacturing defects.

111. At all times relevant, defendants expressly represented that Ply Gem vinyl siding will not result in failure, defect or damage under normal exposure conditions.

112. At all times relevant, defendants expressly represented that Ply Gem vinyl siding will maintain its structural integrity, including protection from peeling, flaking, blistering, corroding and excessive fading under normal exposure and weathering conditions.

113. At all times relevant, defendants expressly represented that Ply Gem vinyl siding provides a 50-year lifetime warranty to an original individual homeowner and a 50-year prorated warranty to all other owners and/or subsequent owners.

114. At all times relevant, defendants provided a written warranty for their Ply Gem vinyl siding, including plaintiffs' written warranties attached hereto, which constitute express warranties.

115. Defendants' representations and warranties were directed at plaintiffs and the Class, and expressly made and written for the benefit of plaintiffs and the Class.

116. At all times relevant, the foregoing representations of defendants constituted the basis of the bargain between Ply Gem and plaintiffs who justifiably relied upon the same.

117. Certain aforementioned portions of the written warranties, including but not limited to the "external heat source" exclusions were unconscionable at the time they were entered into, and are void, voidable, or otherwise unenforceable.

118. Contrary to said express representations and written warranties, defendants' designed, manufactured, marketed and sold Ply Gem vinyl siding that was not fit for its intended use as a beautifying, protective, durable, low maintenance and cost effective building product.

119. Contrary to said express representations and written warranties, Ply Gem vinyl siding prematurely degrades, fails and is defective.

120. Contrary to said express representations and written warranties, defendants have refused to stand behind their product and guarantee the satisfaction of plaintiffs.

121. Contrary to said express representations and written warranties, defendants have denied plaintiffs' warranty claims.

122. At all times relevant, plaintiffs acted with due diligence and notified defendants of their warranty claims within a reasonable time upon discovery of the defects alleged herein, which defects defendants knew, or should have known about, and with their superior knowledge failed to disclose or warn plaintiffs.

123. Defendants' denials, disclaimers and limitations of the aforementioned express warranties were unconscionable in that, among other things:

- a. A disparity of bargaining power existed between the parties—commercially sophisticated Ply Gem on the one hand, and the relatively unsophisticated lay-homeowner plaintiffs on the other hand;
- b. The express warranties were offered on a “take it or leave it” basis;
- c. Ply Gem had material information about the latent defect(s) in its vinyl siding products that caused them to blister, deform, and otherwise degrade under normal environmental and exposure conditions that it did not share with its customers, including plaintiffs;

- d. Plaintiffs were surprised to learn, upon submission of their warranty claims, that the type of significant product failure that they had experienced would not be covered under by defendants' express warranties;
- e. Defendants representations, warranties and limitations were complex, convoluted, internally inconsistent, and misleading;
- f. Plaintiffs lacked meaningful choice in purchasing other vinyl siding products. The vinyl siding industry, of which Ply Gem is one of the largest and arguably most well-known members, has intentionally devised the distribution network for their products to have such a structure providing consumers with little knowledge or choice about the products that are purchased and sold, or about the shortcomings of the products and warranties offered.

124. Defendants' denials, disclaimers and limitations of the aforementioned express warranties cause those warranties to fail of their essential purposes in that, among other things:

- a. Ply Gem was unwilling to repair or replace plaintiffs' faulty vinyl siding;
- b. Ply Gem was unable to repair or replace plaintiffs' faulty vinyl siding because replacement with the same, similarly-deficient siding product would only lead to further, future blistering, deformation, and damage.
- c. Plaintiffs' foreseeable, consequential and incidental damages relating to repair and replacement of damaged siding surpass the cost of the defective product itself, and/or the remedy available under the warranty.

125. As a result of the foregoing, defendants breached said express warranties to plaintiffs.

126. As a direct and proximate result of said breach of express warranties, plaintiffs have and will continue to suffer damages to repair, replace and remedy their defective Ply Gem vinyl siding in an amount to be determined at trial.

127. Plaintiffs' damages include the costs of materials and labor to repair, replace and remedy their defective Ply Gem vinyl siding together with incidental, consequential and other damages, including but not limited to the diminution in value and collateral damage to plaintiffs' homes proximately caused by said defective siding.

**SECOND CAUSE OF ACTION –
BREACH OF IMPLIED WARRANTIES**

128. Plaintiffs repeat and re-allege the paragraphs above as if fully set forth herein.

129. At all times relevant, defendants owed a duty for implied warranties of merchantability and fitness for a particular purpose pursuant to New York Uniform Commercial Code §§ 2-314, 2-315 and other similar state statutes including Pennsylvania Code §§ 2314, 2315; and 6. Del. C. §§ 2-314, 2-315.

130. At all times relevant, defendants knew, or had reason to know, that property owners desired Ply Gem vinyl siding for the purpose of installing said building product on the exterior of homes and other structures.

131. At all times relevant, defendants knew or had reason to know that property owners desired Ply Gem vinyl siding as a beautifying, durable, low maintenance and cost effective building product for the exterior of homes and other structures.

132. At all times relevant, defendants impliedly warranted to the public and plaintiffs that Ply Gem vinyl siding was a beautifying, durable, low maintenance and cost effective building product for use on the exterior of homes and other structures.

133. At all times relevant, defendants impliedly warranted to the public and plaintiffs that Ply Gem vinyl siding was of merchantable quality and fit for its intended purposes.

134. Defendants' representations were directed at plaintiffs and the Class, and made for the benefit of plaintiffs and the Class.

135. At all times relevant, plaintiffs justifiably relied upon defendants' skill and judgment that Ply Gem vinyl siding was of merchantable quality and satisfactory for its intended purposes.

136. At all times relevant, defendants knew or should have known that property owners, including plaintiffs, would rely upon defendants' skill and judgment that Ply Gem vinyl siding was of merchantable quality and satisfactory for its intended purposes.

137. In fact, defendants advertise Ply Gem vinyl siding as the "#1 Manufacturer of Vinyl Siding in North America."

138. That defendants' Ply Gem vinyl siding was and is unfit for its intended purposes, not of merchantable quality, defective, degrades prematurely and fails to perform as impliedly warranted.

139. Defendants' denials, disclaimers and limitations of the aforementioned implied warranties were unconscionable in that, among other things:

- a. A disparity of bargaining power existed between the parties—commercially sophisticated Ply Gem on the one hand, and the relatively unsophisticated lay-homeowner plaintiffs on the other hand;
- b. The disclaimers and limitations of implied warranties were offered on a "take it or leave it" basis;

- c. Ply Gem had material information about the latent defect(s) in its vinyl siding products that caused them to blister, deform, and otherwise degrade under normal environmental and exposure conditions that it did not share with its customers, including plaintiffs;
- d. Plaintiffs were surprised to learn, upon submission of their warranty claims, that the type of significant product failure that they had experienced would not be covered by defendants' implied warranties;
- e. Defendants' representations, warranties and limitations were complex, convoluted, internally inconsistent, and misleading;
- f. Plaintiffs lacked meaningful choice in purchasing other vinyl siding products. The vinyl siding industry, of which Ply Gem is one of the largest and arguably most well-known members, has intentionally devised the distribution network for their products to have such a structure providing consumers with little knowledge or choice about the products that are purchased and sold, or about the shortcomings of the products and warranties offered.

140. Defendants' denials, disclaimers and limitations of the aforementioned implied warranties cause those warranties to fail of their essential purposes in that, among other things:

- a. Ply Gem was unwilling to repair or replace plaintiffs' faulty vinyl siding;
- b. Ply Gem was unable to repair or replace plaintiffs' faulty vinyl siding because replacement with the same, similarly-deficient siding product would only lead to further, future blistering, deformation, and damage;
- c. As a result of the foregoing, defendants breached their implied warranties to plaintiffs.

141. As a direct and proximate result of said breach of implied warranties, plaintiffs have and will continue to suffer damages to repair, replace and remedy their defective Ply Gem vinyl siding in an amount to be determined at trial.

142. Plaintiffs' damages include the costs of materials and labor to repair, replace and remedy their defective Ply Gem vinyl siding together with incidental, consequential and other damages, including but not limited to the diminution in value and collateral damage to plaintiffs' homes proximately caused by said defective siding.

**THIRD CAUSE OF ACTION -
BREACH OF THE IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING**

143. Plaintiffs repeat and re-allege the paragraphs above as if fully set forth herein.

144. At all times relevant, defendants had a duty to act in good faith and fairness with plaintiffs.

145. The acts and omissions of defendants described above constitute a breach of the implied covenant of good faith and fair dealing.

146. As a direct and proximate result of said breach, plaintiffs have and will continue to suffer damages to repair, replace and remedy their defective Ply Gem vinyl siding in an amount to be determined at trial.

147. Plaintiffs' damages include the costs of materials and labor to repair, replace and remedy their defective Ply Gem vinyl siding together with incidental, consequential and other damages, including but not limited to the diminution in value and collateral damage to plaintiffs' homes proximately caused by said defective siding.

**FOURTH CAUSE OF ACTION –
DECEPTIVE AND UNFAIR TRADE PRACTICES**

148. Plaintiffs repeat and re-allege the paragraphs above as if fully set forth herein.

149. At all times relevant, defendants had a duty not to engage in unfair, misleading, false, or deceptive trade practices under New York General Business Law § 349 and other state statutes including 73 P.S. § 201-3; and 6 Del. C. § 2513.

150. Plaintiffs are consumers who were sold Ply Gem vinyl siding products and were subjected to defendants' unfair, misleading, false and deceptive business practices as alleged herein.

151. Defendants' deceptive and misleading conduct included, but was not limited to the following:

- a. Deceptive, false, and misleading marketing that Ply Gem vinyl siding is of particular standard, quality or grade;
- b. Deceptive, false, and misleading advertisement of the "The Ply Gem Promise";
- c. Deceptive, false, and misleading advertisements that Ply Gem vinyl siding is beautifying, protective, durable, low maintenance and cost effective;
- d. Deceptive, false, and misleading representations that that Ply Gem vinyl siding will not result in failure, defect or damage under normal exposure conditions;
- e. Deceptive, false, and misleading representations that Ply Gem vinyl siding will maintain its structural integrity, including protection from peeling, flaking, blistering, corroding and excessive fading under normal exposure and weathering conditions;
- f. Failing to adequately disclose and concealing material facts that Ply Gem vinyl siding degrades and fails prematurely;
- g. Failing to adequately disclose or warn of normal environmental and building construction conditions in which Ply Gem siding degrades and fails;
- h. Failing to adequately disclose and concealing complaints by property owners about material defects in Ply Gem vinyl siding.

152. The acts and omissions of defendants described above constitutes deceptive business acts or practices.

153. Defendants conduct has injured the public interest and continues to pose a threat to the public.

154. Plaintiffs reasonably relied on defendants' deceptive, false and misleading representations and omissions to their detriment.

155. By reason of the foregoing, plaintiffs have and will continue to suffer damages to repair, replace and remedy their defective Ply Gem vinyl siding in an amount to be determined at trial.

156. Plaintiffs' damages include the costs of materials and labor to repair, replace and remedy their defective Ply Gem vinyl siding together with incidental, consequential and other damages, including but not limited to the diminution in value and collateral damage to plaintiffs' homes proximately caused by said defective siding.

157. Plaintiffs have provided Defendants with all required pre-suit notice and demand required by the relevant statutes.

**FIFTH CAUSE OF ACTION –
FALSE ADVERTISING**

158. Plaintiffs incorporate by reference all of the paragraphs alleged above.

159. At all times relevant, defendants had a duty not to engage in false advertising under New York General Business Law § 350 and other similar state statutes.

160. The above described conduct of defendants constitutes false advertising, in violation of Section 350 of the New York Business Law and other similar state statutes.

161. By reason of the foregoing, plaintiffs have and will continue to suffer damages to repair, replace and remedy their defective Ply Gem vinyl siding in an amount to be determined at trial.

162. Plaintiffs' damages include the costs of materials and labor to repair, replace and remedy their defective Ply Gem vinyl siding together with incidental, consequential and other damages, including but not limited to the diminution in value and collateral damage to plaintiffs' homes proximately caused by said defective siding.

**SIXTH CAUSE OF ACTION –
UNJUST ENRICHMENT**

163. Plaintiffs repeat and re-allege the paragraphs above as if fully set forth herein.

164. Defendants have received substantial direct benefits from the marketing and sale of Ply Gem vinyl siding to property owners, including plaintiffs.

165. Defendants have accepted and enjoyed said benefits, including revenue and profit from the sale of Ply Gem vinyl siding products, which in fairness and good conscience should not be retained.

166. For the reasons stated heretofore, Ply Gem vinyl siding is defective, degrades prematurely and fails to perform.

167. Defendants knew or should have known that Ply Gem vinyl siding products were defective, and that property owners would incur expense to repair, replace and remedy the same.

168. Defendants' have denied any duty to reimburse, repair, replace or remedy their defective products, thereby enriching themselves at the expense of plaintiffs.

169. As a result of the foregoing, the conduct of defendants constitutes unjust enrichment.

170. As a direct and proximate result of said breach, plaintiffs have and will continue to suffer damages to repair, replace and remedy their defective Ply Gem vinyl siding in an amount to be determined at trial.

171. Plaintiffs' damages include the costs of materials and labor to repair, replace and remedy their defective Ply Gem vinyl siding together with incidental, consequential and other damages, including but not limited to the diminution in value and collateral damage to plaintiffs' homes proximately caused by said defective siding.

**SEVENTH CAUSE OF ACTION –
EQUITABLE INDEMNITY/RESTITUTION**

172. Plaintiffs repeat and re-allege the paragraphs above as if fully set forth herein.

173. Defendants are liable to plaintiffs for all damages, expenses and costs incurred by plaintiffs as the direct and proximate result of their defective Ply Gem vinyl siding.

174. Plaintiffs' damages include the costs of materials and labor to repair, replace and remedy their defective Ply Gem vinyl siding together with incidental, consequential and other damages, including but not limited to the diminution in value and collateral damage to plaintiffs' homes proximately caused by said defective siding.

175. Wherefore, plaintiffs seek indemnification and restitution from defendants.

**EIGHTH CAUSE OF ACTION –
DECLARATORY AND INJUNCTIVE RELIEF**

176. Plaintiffs repeat and re-allege the paragraphs above as if fully set forth herein.

177. Plaintiffs seek declaratory relief adjudicating the legal rights and obligations of the parties, together with injunctive relief:

- a. Enjoining defendants from further deceptive advertising, marketing, distribution and sales practices with respect to Ply Gem vinyl siding products;
- b. Compelling defendants to fully disclose to property owners the defective nature of Ply Gem vinyl siding;

- c. Compelling defendants to re-audit and reassess all prior warranty claims on Ply Gem vinyl siding, including claims previously denied in whole or in part on warranty grounds; and
- d. Compelling defendants to establish an inspection program and protocol to be communicated to property owners requiring that defendants inspect, upon request, homes and structures to determine whether Ply Gem vinyl siding is prematurely degrading and failing.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand relief against defendants as follows:

1. Certification of this action as a class action;
2. Declaratory relief adjudicating the legal rights and obligations of the parties;
3. Injunctive relief compelling defendants to notify all Class members of the problems with Ply Gem vinyl siding;
4. Injunctive relief enjoining defendants from further deceptive advertising, marketing, distribution and sales practices with respect to Ply Gem vinyl siding products;
5. Compensatory, statutory, and punitive damages; disgorgement of profits; restitution; and pre-judgment and post-judgment interest, in an amount to be determined upon trial;
6. Attorneys' fees, disbursements and costs; and
7. Such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiffs demand a jury trial on all issues so triable.

Dated: September 26, 2017

Respectfully,

s/

Donald W. Boyajian (Bar Roll # 101196)
James R. Peluso (Bar Roll # 105634)
DREYER BOYAJIAN LLP
75 Columbia Street
Albany, NY 12210
Telephone: (518) 463-7784

Attorneys for Plaintiffs