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PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
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STATE OF WASHINGTON
PIERCE COUNTY OF SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

GREAT LAKES WINDOW, INC.,
corporation,

Defendant.

NO. 10 2 12769 6
CIVIL COMPLAINT 10 2 12769 6

Plaintiff State of Washington, by and through its attorneys Robert M. McKenna, Attorney General, and Jack G. Zurlini, Jr., Assistant Attorney General, brings this action against Defendant named herein and alleges as follows:

1. JURISDICTION

1.1. This complaint is filed and these proceedings are instituted under the provisions of chapter 19.86 RCW, the Unfair Business Practices—Consumer Protection Act.

1.2. The Attorney General is authorized to commence this action pursuant to RCW 19.86.080.

1.3. Jurisdiction over the Defendant is vested in this court pursuant to RCW 19.86.160 and RCW 19.86.140. Jurisdiction over the subject matter of this Complaint is

1 conferred by the above-referenced statutes. Defendant engaged in conduct violating chapter
2 19.86 RCW and such conduct impacted consumers and businesses in the state of Washington.

3 1.4. Venue is properly set in this court pursuant to RCW 19.86.140 in that the
4 violations alleged herein have been and are being committed in whole or in part in Pierce
5 County, State of Washington, and other counties in the state of Washington by Defendant.
6

7 2. DEFENDANT

8 2.1. Defendant Great Lakes Window, Inc., is an Ohio corporation. Its principal
9 place of business is located in Walbridge, Ohio. Defendant has done business in Washington
10 State and elsewhere by selling its window products to and sponsoring an energy savings
11 pledge program with Statewide, Inc., a window replacement company operating in
12 Washington State. Defendant Great Lakes Window is referred to as "Defendant," "Great
13 Lakes Window" and "GLW" throughout this Complaint.
14

15 3. NATURE OF TRADE OR COMMERCE

16 3.1. At all times relevant to this lawsuit, Defendant has been engaged in a for-
17 profit business that involves the marketing and sale of residential replacement windows to
18 retail window replacement companies located in Washington State and elsewhere.
19 Defendant is therefore engaged in trade or commerce within the state of Washington and in
20 competition with others engaged in similar business activities in Washington for purposes of
21 applying the Consumer Protection Act, chapter 19.86 RCW.
22

23 4. FACTS

24 4.1. Defendant GLW sells residential replacement windows to retail window
25 replacement companies nationwide, including companies located in Washington State. One
26 such retail company located in Washington State is Statewide, Inc., a Washington

1 corporation, that also does business under the name "Penguin Windows." Since at least 2004
2 and ending in or about November 2009, GLW sponsored an energy savings pledge program
3 by which Penguin Windows marketed its windows here in Washington and elsewhere.

4 4.2. The energy savings pledge program GLW sponsored and that Penguin Windows
5 used to market its products in Washington was called a "40% Energy Savings Pledge." The
6 Pledge promised consumers that if they installed new windows and doors in their homes, then
7 they would save at least 40% in energy costs the first year after installation or they would be
8 paid the difference. The Pledge was subject to a number of material conditions. The material
9 conditions included a requirement that homeowners purchase a complete installation of
10 Penguin Windows' top-line windows (manufactured by GLW) and doors for all windows and
11 patio doors above the basement level; that the Pledge was based on energy (fuel) consumption,
12 not cost; that the Pledge covered only the first year of energy usage after the windows were
13 installed; and that the maximum payment under the Pledge was \$500 in total. A true and
14 correct copy of a Pledge advertisement used in Washington to market Penguin Windows
15 manufactured by GLW is attached as Exhibit A.

16 4.3. But the Pledge's representation that each homeowner who decided to purchase
17 new windows and doors so as to qualify for the Pledge would achieve at least 40% savings on
18 their energy bills was false. On the contrary, the potential energy savings for such
19 homeowners varied greatly due to the many variables that affect home energy consumption,
20 such as the type of windows being replaced, size and location of the windows, how well
21 insulated the home was, the particular climate of the home's location, and the type and
22 condition of the home's heating and cooling systems. As a result, the actual energy savings
23 that homeowners who qualified for the Pledge typically obtained was in fact far less than the
24 40% savings the Pledge promised.

25 4.4. In addition, during the time GLW sponsored the Pledge with Penguin Windows
26 here in Washington State, GLW represented, directly or by implication, that it possessed and

1 | relied upon a reasonable basis that substantiated the representation that each homeowner who
2 | qualified for the Pledge by replacing his home's windows and doors would achieve at least
3 | 40% savings on their energy bills. But, in fact, GLW did not possess and rely upon any such
4 | reasonable basis that substantiated that representation.

5 |
6 | **5. CAUSES OF ACTION**
7 | **VIOLATION OF RCW 19.86.020**

8 | 5.1. Plaintiff realleges paragraphs 1.1 through 4.4 and incorporates them herein by
9 | this reference.

10 | 5.2. In the context of conducting its business, Defendant engaged in the conduct
11 | alleged herein. Such conduct constitutes unfair or deceptive acts or practices in trade or
12 | commerce that have the capacity to mislead a substantial number of consumers, and/or unfair
13 | methods of competition in violation of RCW 19.86.020.

14 |
15 | **6. PRAYER FOR RELIEF**

16 | WHEREFORE, Plaintiff State of Washington prays for relief as follows:

17 | 6.1. That the Court adjudge and decree that Defendant has engaged in the conduct
18 | complained of herein.

19 | 6.2. That the Court adjudge and decree that the conduct complained of in paragraphs
20 | 1.1 through 5.2 constitutes unfair or deceptive acts or practices and unfair methods of
21 | competition in violation of the Consumer Protection Act, Chapter 19.86 RCW.

22 | 6.3. That the Court assess civil penalties pursuant to RCW 19.86.140 of up to \$2,000
23 | per violation against Defendant for each and every violation of RCW 19.86.020 caused by the
24 | conduct complained of herein.

25 | 6.4. That the Court issue a permanent injunction pursuant to RCW 19.86.080
26 | enjoining and restraining Defendant, and its owners, officers, directors, employees, servants,

1 transferees, successors, assigns and all other persons acting or claiming to act for, on behalf of,
2 or in active concert or participation with Defendant, from continuing or engaging in the
3 unlawful conduct complained of herein.

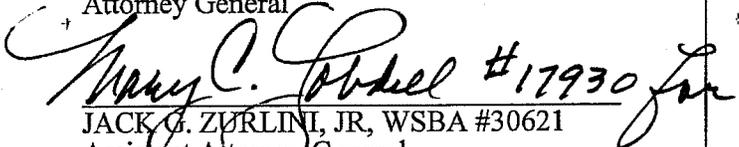
4 6.5. That the Court make such orders pursuant to RCW 19.86.080 as it deems
5 appropriate against Defendant to provide for restitution to consumers of money or property
6 acquired by Defendant as a result of the unlawful conduct complained of herein.

7 6.6. That the Court make such orders pursuant to RCW 19.86.080 to provide that
8 Plaintiff State of Washington have and recover from Defendant the costs of this action,
9 including reasonable attorneys' fees.

10 6.7. That the Court make such other orders that it deems just and proper.

11 DATED this 2nd day of September, 2010.

12 ROBERT M. MCKENNA
13 Attorney General

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15 JACK G. ZURLINI, JR, WSBA #30621
16 Assistant Attorney General
17 Attorneys for Plaintiff State of Washington
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40% Energy Savings Pledge

Penguin Windows is proud to introduce a 40% Energy Savings Pledge. We are so confident in the quality and performance of our Maxxus 10 glass package that we pledge a savings of at least 40% of energy consumption for heating and cooling costs for the resident at the address shown hereon during the 12 month period beginning with the first full month after the effective date of this pledge.

This pledge becomes effective only if the homeowner, located at the address shown hereon, has purchased a complete installation of Maxxus 10 insulated glass replacement windows and patio doors, and is effective strictly on the dates shown below on this certificate. If energy savings are less than 40% of the previous 12 months' energy consumption, the homeowner is to notify Penguin Windows according to instruction on the back of this Pledge.

If energy savings are less than 40% of the previous 12 months' energy consumption, the homeowner will be reimbursed the difference between actual savings and 40% of energy cost for the previous 12 months up to \$500.

Effective: _____ (Date Installed) To: _____ (One Year Later)
Issued to: _____ (Homeowner) Street Address: _____
City: _____ State: _____ Zip: _____ Phone: _____
Number of Windows in Home: _____ Number of Patio Doors in Home: _____
Number of Windows Installed: _____ Number of Patio Doors Installed: _____
Order #: _____ Dealer: _____ Penguin Windows _____
Authorized Penguin Window Dealer Signature: _____ Homeowner Signature: _____

**THE PLEDGE IS BASED ON ENERGY (FUEL) CONSUMPTION,
NOT COST. IT IS SUBJECT TO THE FOLLOWING PROVISIONS:**

- 1) Only complete installations of Penguin replacement windows and patio doors with Maxxus 10 glass system are covered by this pledge.
- 2) The following products (while requiring a Maxxus glass system, may have manufacturer size limitations) do not require R-10: Patio doors and Garden windows, oversized windows (bay, bow, picture window).
- 3) A complete, full-house installation of Maxxus 10 includes all windows and patio doors in the dwelling, except basement, attic and porch.
- 4) This pledge covers single family detached residences only.
- 5) Maximum payment under this Pledge shall be \$500 and is valid only for the time period indicated on the reverse side. Reimbursements if any can only be issued to a homeowner that has resided at the specified address for a full 12 month period, before and after the completed installation date.
- 6) Heating and cooling systems must be properly maintained by the homeowner.
- 7) This pledge is based on comparable degree days. In the event of abnormal weather conditions, appropriate allowances will be made in adjusting a claim.
- 8) Claims must be submitted in writing with supporting evidence within 30 days after expiration of this pledge to Penguin Windows and also a copy to the dealer where purchased.
- 9) Claim adjustments, if any, will be issued from Penguin Windows within 90 days after all facts have been verified and found to be accurate.
- 10) Reimbursement at fuel rates prevailing at time of window purchase. Comparison will be based on units of energy consumed rather than actual dollars to compensate for inflationary increases from year to year. *If the residence is heated by electricity (rather than gas) the month of December is excluded from the comparison.
- 11) Homes moved from one utility service to another shall make this claim null and void.
- 12) Apparent changes such as room additions i.e., sunrooms, heated garages, etc. to the said residence during the 12 month period of the claim shall make such claims invalid.
- 13) Complete utility bills/usage for the 24 months in question or a similar form from the authorized utility company (summary must display installed address on official power company form) must be submitted to claim a refund.
- 14) Claims must be submitted in writing along with proof of purchase; Energy Savings Pledge certificate (original or a copy), utility bills and addressed to:

Energy Savings Claims - Penguin Windows
12303 Cyrus Way
Mukilteo, WA 98275