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**UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND**

LAWRENCE BAILEY AND WILLIAM  
ESTRADA, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

THOMPSON CREEK WINDOW  
COMPANY, a Maryland corporation, and  
Rick Wuest, an individual,

Defendants.

Case No.:

**CLASS ACTION COMPLAINT FOR:**

1. BREACH OF WARRANTY;
2. VIOLATION OF THE MARYLAND,  
CONSUMER PROTECTION ACT, Md.  
Code. Ann., Com. Law §§ 13-101, *et*  
*seq.*;
3. VIOLATION OF THE VIRGINIA  
CONSUMER PROTECTION ACT, Va.  
Code §§ 59.1-196, *et seq.*;
4. COMMON LAW FRAUDULENT  
MISREPRESENTATION; and
5. UNJUST ENRICHMENT

1 Plaintiffs Lawrence Bailey and William Estrada (“Plaintiffs”), by their undersigned  
2 counsel, bring this action on behalf of themselves and all others similarly situated against  
3 Thompson Creek Window Company (“Thompson Creek”) and Rick Wuest (collectively,  
4 “Defendants”). Plaintiffs make the following allegations based on the investigation of their  
5 counsel, personal knowledge, and upon information and belief:

6 **NATURE OF THE ACTION**

7  
8 1. This is a class action against Defendants Thompson Creek and its owner,  
9 President, and Chief Executive Officer Rick Wuest for misrepresenting the energy efficiency  
10 of TC 900/7900 and 7800 St. Claire series double-pane windows.

11 2. Thompson Creek windows in the TC 900/7900 and the 7800 St. Claire series  
12 sold between at least January 1, 2014 to December 31, 2018 (the “Class Period”) were  
13 prominently labeled as ENERGY STAR-certified even though they did not pass ENERGY  
14 STAR certification and did not meet the standards for ENERGY STAR certification (the  
15 “Misabeled Windows”). Statements made by Thompson Creek, its officers, and its employees  
16 during the Class Period that the Misabeled Windows met ENERGY STAR standards and were  
17 ENERGY STAR-certified (including Energy Star labels) are referred to herein as the “Energy  
18 Star Representations.”

19 3. ENERGY STAR-certified windows are required by the U.S. Department of  
20 Energy (“DOE”) to exceed the minimum requirements of U-Factor, Air Leakage, and Solar  
21 Heat Gain Coefficient (“SHGC”) based on climate zone. ENERGY STAR-certified windows  
22 can significantly shrink energy bills and carbon footprints. As a result, they command a  
23 substantial price premium.

24 4. Recognizing the ENERGY STAR label means energy efficiency and lower  
25 electricity bills, there is significant demand by consumers for products that bear the distinctive  
26 ENERGY STAR label. According to the DOE’s General Counsel, Scott Blake Harris, “[t]he  
27 ENERGY STAR mark ranks among the highest level of influence on product purchase among  
28

1 all consumer emblems, similar in ranking to the Good Housekeeping Seal.”

2 5. The ENERGY STAR label assures consumers that the product meets the  
3 ENERGY STAR’s high standards for energy efficiency. Defendants’ promotion and sale of  
4 the Mislabeled Windows with the ENERGY STAR label, when the windows were not  
5 qualified as ENERGY STAR-compliant, was false and misleading and deceived Plaintiffs and  
6 Class members. Plaintiffs and Class members paid more than they should have for the  
7 windows they purchased.

8 6. Plaintiffs seek relief in this action individually, and on behalf of similarly  
9 situated purchasers of the Mislabeled Windows, for breach of express warranty; violation of  
10 the Maryland Consumer Protection Act, Md. Code. Ann., Com. Law §§ 13-101, *et seq.*;  
11 violation of the Virginia Consumer Protection Act of 1977, Code of Virginia §§ 59.1-196, *et*  
12 *seq.*; common law fraudulent misrepresentation; and unjust enrichment.

13 **THE PARTIES**

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15 7. Plaintiff Lawrence Bailey is a citizen of the state of Maryland, residing in  
16 Waldorf, Maryland. Mr. Bailey purchased Mislabeled Windows during the Class Period for  
17 personal use in his home in reliance upon the Energy Star Representations. He learned of the  
18 wrongdoing identified herein no earlier than October 2020.

19 8. Plaintiff William Estrada is a citizen of the Commonwealth of Virginia,  
20 residing in Lovettsville, Virginia. Mr. Estrada purchased Mislabeled Windows during the  
21 Class Period for personal use in his home in reliance upon the Energy Star Representations.  
22 He learned of the wrongdoing identified herein no earlier than May 2020.

23 9. Defendant Thompson Creek is a Maryland Corporation with its principal place  
24 of business in Lanham, Maryland. It operates in Virginia as a registered foreign corporation.  
25 Thompson Creek maintains offices in Ashland, Virginia and Chesapeake, Virginia.<sup>1</sup>

26  
27 <sup>1</sup> *Drop Us a Line*, THOMPSON CREEK WINDOW COMPANY,  
28 <https://www.thompsoncreek.com/contact-us/> (last visited Mar. 22, 2021).

1           10.       Thompson Creek manufactures and installs windows, doors, roofs, sidings, and  
2 gutters. Thompson Creek advertises windows throughout the Mid-Atlantic region of the United  
3 States and sells tens of thousands of windows each year in that region.

4           11.       From 2007 through 2017, Thompson Creek manufactured its windows at its  
5 facility in Landover, Maryland. Thompson Creek claims to have produced about 54,000  
6 windows in its Landover, Maryland facility each year.<sup>2</sup> In 2017, Thompson Creek moved to a  
7 larger facility in Upper Marlboro, Maryland,<sup>3</sup> where it produced about 180,000 windows each  
8 year.<sup>4</sup> In 2016, Thompson Creek estimated that it served over 8,000 customers a year.<sup>5</sup>

9           12.       Thompson Creek sells an estimated ninety percent (90%) of its windows directly  
10 to the consumer via its website and in-person sales pitches, and installation is done by  
11 Thompson Creek employees.<sup>6</sup> Thompson Creek does not sell its windows through any big box  
12 or retail stores.

13           13.       Defendant Rick Wuest is the owner and CEO of Thompson Creek as well as  
14 other affiliated companies like St. Claire Window and Door Corporation (“St. Claire”).<sup>7</sup> St.  
15 Claire designs, manufactures, oversees, and installs windows on large building and renovation  
16 projects. During the Class Period, Rick Wuest directed and controlled Thompson Creek.  
17 During the Class Period, Rick Wuest (acting in his personal capacity and as an owner and  
18 executive of Thompson Creek), knew that the Mislabeled Windows did not have ENERGY  
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20 <sup>2</sup> *Go Green*, THOMPSON CREEK WINDOW COMPANY, <https://www.thompsoncreek.com/go-green/>  
(last visited Mar. 22, 2021)

21 <sup>3</sup> Trey Barrineau, *Maryland Gov. Larry Hogan Builds a Window at Thompson Creek*, DOOR AND  
22 WINDOW MARKET (Apr. 13, 2018), [https://www.dwmmag.com/maryland-gov-larry-hogan-builds-](https://www.dwmmag.com/maryland-gov-larry-hogan-builds-a-window-at-thompson-creek/)  
[a-window-at-thompson-creek/](https://www.dwmmag.com/maryland-gov-larry-hogan-builds-a-window-at-thompson-creek/).

23 <sup>4</sup> Daniel J. Sernovitz, *Thompson Creek Window is Making a Major Investment in Suburban*  
24 *Maryland*, WASHINGTON BUSINESS JOURNAL (Apr. 15, 2015),  
[https://www.bizjournals.com/washington/breaking\\_ground/2015/04/thompson-creek-window-is-](https://www.bizjournals.com/washington/breaking_ground/2015/04/thompson-creek-window-is-making-a-major-investment.html)  
[making-a-major-investment.html](https://www.bizjournals.com/washington/breaking_ground/2015/04/thompson-creek-window-is-making-a-major-investment.html).

25 <sup>5</sup> Thompson Creek Window Company, *Thompson Creek Window Company's Built Upon a Dream*  
*Donation*, YOUTUBE (Aug. 5, 2016), [https://www.youtube.com/watch?v=Yh2\\_EYY0290](https://www.youtube.com/watch?v=Yh2_EYY0290).

26 <sup>6</sup> *See About Thompson Creek*, THOMPSON CREEK WINDOW COMPANY,  
<https://www.thompsoncreek.com/about-us/> (last visited Mar. 22, 2021) (“We design, build, and  
27 install so you won’t pay the middleman markup”).

28 <sup>7</sup> About Us, St. Claire Window & Door, <http://stclaireexteriors.com/about-us> (last visited Mar. 22,  
2021).

1 STAR certification, and knew of and approved Thompson Creek’s promotion and labeling of the  
2 Misabeled Windows as ENERGY STAR products. Rick Wuest resides in Anne Arundel  
3 County, Maryland.

4 14. At all times relevant to the allegations in this matter, Defendants acted in concert,  
5 with the knowledge and approval of the other defendant and/or as the agent of the other  
6 defendant within the course and scope of the agency, regarding the acts and misrepresentations  
7 alleged.

8 **JURISDICTION AND VENUE**

9  
10 15. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)  
11 because there are more than 100 Class members and the aggregate amount in controversy exceeds  
12 \$5,000,000.00, exclusive of interest, fees, and costs, and at least one Class member is a citizen of  
13 a state different from at least one defendant.

14 16. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because  
15 Defendants do business throughout this district and a substantial part of the events giving rise to  
16 Plaintiffs’ claims took place within this district.

17 **FACTUAL ALLEGATIONS**

18 **A. Consumers Recognize, Look For, and Trust the ENERGY STAR Label**

19  
20 17. ENERGY STAR is the government-backed symbol for energy efficiency,  
21 providing simple, credible information for consumers and businesses to rely on to make  
22 purchasing decisions.

23 18. The ENERGY STAR program is a voluntary program consisting of partnerships  
24 through licensing agreements between the Department of Energy (“DOE”) and the Environmental  
25 Protection Agency (“EPA”), and industry participants that commit to manufacture products that  
26 meet the highest standards of energy efficiency.

1           19.       Before the DOE added windows to the ENERGY STAR program in 1998, most  
 2 new windows did not insulate well or block excess heat during the summer. ENERGY STAR  
 3 window performance requirements have resulted in better performance and greater comfort for  
 4 consumers. Since the program's inception, market share for ENERGY STAR-certified windows  
 5 has continued to climb. After tax incentives were put in place in the Energy Policy Act of 2005  
 6 and ENERGY STAR windows became eligible for federal incentives, ENERGY STAR windows'  
 7 nationwide market share increased appreciably.

8           20.       As demonstrated below, ENERGY STAR windows dominate the residential  
 9 window market.

10 *Table 1. ENERGY STAR Market Share by Year*




Product Category	2009	2010	2011	2012	2013	2014	2015	2016	2017
Residential Windows	76%	81%	79%	77%	80%	83%	84%	83%	84%
Hinged Entry Doors	70%	71%	73%	74%	76%	77%	79%	78%	80%
All Patio Doors								81%	82%
Skylights – All	70%	70%	68%	62%	60%	62%	65%	64%	68%

11 *Source: Ducker International*

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 22           21.       To promote the message of energy efficiency and savings, the EPA encouraged  
 23 consumers to look for the ENERGY STAR label. The EPA's campaign featured the  
 24 environmental benefits, but the focus was on the financial savings that consumers could realize  
 25 through superior energy efficiency. According to the EPA, the first consumer campaign had three  
 26 key messages:

- 1 • **ENERGY STAR saves you money and protects the environment.** Use of qualified  
2 products in your home can mean up to thirty percent (30%) savings.
- 3 • **The second price tag.** Products have two price tags: the purchase price plus the cost of  
4 electricity needed to use the product over its lifetime.
- 5 • **An easy choice.** Either the product is energy efficient because it displays the ENERGY  
6 STAR label, or it isn't.

7 22. The EPA set up labeling guidelines for ENERGY STAR-certified products and  
8 the use of its distinctive ENERGY STAR mark as a label. Specifically, the ENERGY STAR  
9 Brand Book<sup>8</sup> provides examples, guidelines, and recommendations by the EPA. The Brand Book  
10 emphasizes that “[t]he marks may never be associated with products, homes, or buildings that do  
11 not qualify as ENERGY STAR.”

ENERGY STAR® Certified in Highlighted Regions	
	
	<b>World's Best Window Co.</b> Millennium 2000+ Vinyl-Clad Wood Frame Double Glazing • Argon Fill • Low E Product Type: <b>Vertical Slider</b> (per NFRCC 100-97)
ENERGY PERFORMANCE RATINGS	
L-Factor (U.S./I-P)	Solar Heat Gain Coefficient
<b>0.27</b>	<b>0.30</b>
ADDITIONAL PERFORMANCE RATINGS	
Visible Transmittance	Air Leakage (U.S./I-P)
<b>0.51</b>	<b>≤0.3</b>
<small>Manufacturer stipulates that these ratings conform to applicable NRC procedures for determining whole product performance. NRC ratings are determined for a fixed set of environmental conditions and a specific product size. NRC does not recommend any product and does not warrant the suitability of any product for any specific use. Consult manufacturer's literature for other product performance information. www.nrc.org</small>	

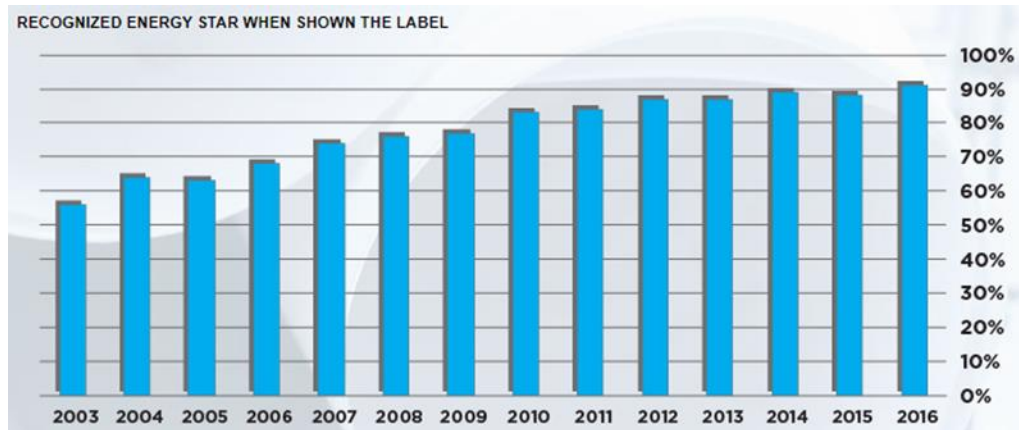
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27 <sup>8</sup> [https://www.energystar.gov/ia/partners/logos/downloads/BrandBook\\_Partnership.pdf](https://www.energystar.gov/ia/partners/logos/downloads/BrandBook_Partnership.pdf) (last  
28 visited Mar. 22, 2021).

1 23. Maura Beard, a former director of strategic communication at the EPA for the  
2 ENERGY STAR program, stated that:

3 The value of ENERGY STAR for consumers is the fact that it's binary – that  
4 yes/no part of Energy Star, I think is a really important ... attribute of the brand.  
5 [W]ith Energy Star, it's a yes/no, it has it or it doesn't, and when it has it, it means  
6 one thing ... and I think that has tremendous value for the mainstream  
7 marketplace.

8 24. The ENERGY STAR label is “extremely successful as an informational device.”  
9 Declaration of Catherine Zoi, Assistant Secretary, Office of Energy Efficiency and Renewable  
10 Energy, *LG Electronics U.S.A., Inc. v. DOE, et al.*, No. 09-2297-JDB (D.C. Dec. 23, 2009), Dkt.  
11 No. 10-7, at ¶ 19. It sends an unequivocal message to consumers: the labeled product is  
12 ENERGY STAR-certified – it meets the mandatory minimum efficiency standard required by the  
13 ENERGY STAR program.

14 25. In a 2016 consumer survey, the EPA found that ninety-one percent (91%) of US  
15 households report recognizing the ENERGY STAR label.<sup>9</sup>



16 26. The same survey found that about three-fourths of the U.S. households that  
17 recognized it and purchased an ENERGY STAR-labeled product, were influenced “very much”  
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24 <sup>9</sup> EPA Office of Air and Radiation, Climate Protection Partnerships Division. National Awareness  
25 of ENERGY STAR® for 2016: Analysis of 2016 CEE Household Survey. U.S. EPA, 2017,  
26 available at  
27 [https://www.energystar.gov/index.cfm?fuseaction=home.downloadFile&file=64B935F36705331DC23D594CCF31697B7B3B3E055EDDE8B838BE7755C7A1500EDE9BDBC90BBAB0D34273C3BB5181EE28E2EFD991C6F9F5041BA207C8FB6A911CC1043619861DDBA2FFA2BA5A977F77681D49A5DE1C473EB296136777A2E6D172922A8B7F8FACF5E372F0079F4EC8FF62&app\\_code=publications&env\\_name=prod](https://www.energystar.gov/index.cfm?fuseaction=home.downloadFile&file=64B935F36705331DC23D594CCF31697B7B3B3E055EDDE8B838BE7755C7A1500EDE9BDBC90BBAB0D34273C3BB5181EE28E2EFD991C6F9F5041BA207C8FB6A911CC1043619861DDBA2FFA2BA5A977F77681D49A5DE1C473EB296136777A2E6D172922A8B7F8FACF5E372F0079F4EC8FF62&app_code=publications&env_name=prod) (last visited Mar. 22, 2021).  
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1 or “somewhat” by the label in 2016; and that the overall customer satisfaction with ENERGY  
2 STAR labeled products remained high, 4.2, on a scale of 1 to 5, where 1 means “very  
3 dissatisfied” and 5 means “very satisfied”.

4 27. Because ENERGY STAR is widely recognized as the preeminent designation for  
5 energy efficient products, participation in the ENERGY STAR program has a significant impact  
6 on the marketability and pricing of windows.

7 **B. Requirements to Use the ENERGY STAR Label**

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9 28. To advertise its windows as ENERGY STAR products and to capitalize on the  
10 tremendous demand for ENERGY STAR products, Thompson Creek needed to participate in the  
11 National Fenestration Rating Council’s (“NFRC”) certification program. The NFRC is a non-  
12 profit organization that helps compare energy-efficient products. The NFRC is recognized as the  
13 only official rating counsel for residential windows, doors, and skylights.<sup>10</sup>

14 29. Window companies such as Thompson Creek must get an NFRC certification  
15 with certain scores in order to use the valuable ENERGY STAR label.

16 30. To get the NFRC certification, windows (such as the Mislabeled Windows) that  
17 contain gas filling other than air need to first receive an Insulated Glass Certification (“IGC”).  
18 The IGC “will establish proof of gas content to an average minimum initial 90% insulating gas  
19 fill content and an average minimum of 80% insulating gas fill content following completion of  
20 respective IG durability testing”<sup>11</sup>

21 31. The NFRC does not perform the tests but uses independent inspection agencies  
22 that work with testing labs to conduct rigorous testing. Once the manufacturer’s windows have  
23 been tested by the lab, the results are sent to the inspection agency, which issues a Certification  
24 Authorization Report to the NFRC. The NFRC then returns a counter-signed license agreement

25 <sup>10</sup> *Third-Party Certification, ENERGY STAR,*  
26 [https://www.energystar.gov/partner\\_resources/products\\_partner\\_resources/third\\_party\\_cert](https://www.energystar.gov/partner_resources/products_partner_resources/third_party_cert) (last  
visited Mar. 22, 2021).

27 <sup>11</sup> Nat’l Fenestration Rating Council, Inc., NFRC 706-2016: Requirements for Participating  
28 Insulating Glass Certification Programs (2016); Nat’l Fenestration Rating Council, Inc., NFRC  
706-2014: Requirements for Participating Insulating Glass Certification Programs (2014).

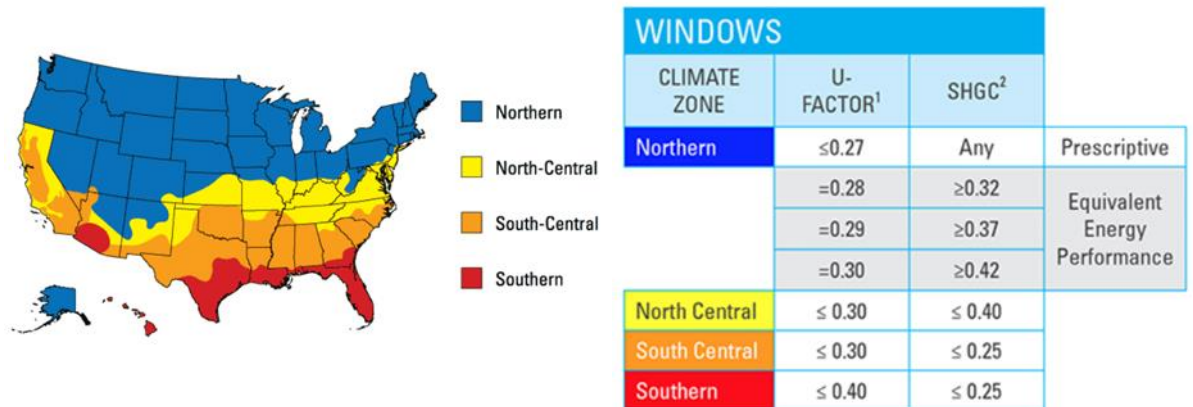
1 and the manufacturer energy-efficiency ratings will be officially certified by the NFRC.  
 2 Thompson Creek used Keystone Certifications, Inc. as its inspection agency and National  
 3 Certified Testing Laboratories (the “Testing Lab”) in York, Pennsylvania to test its windows.

4 32. NFRC certification by itself is not sufficient to use the ENERGY STAR mark.  
 5 ENERGY STAR-certification requires a minimum Air Leakage rating for windows of less than  
 6 0.3 cfm/ft<sup>2</sup> as well as certain U-factor and SHGC ratings (explained below), which vary by  
 7 region.<sup>12</sup>

8 33. U-Factor measures the rate of heat transfer and indicates how well the window  
 9 insulates. U-factor values generally range from 0.25 to 1.25 and are measured in Btu/h·ft<sup>2</sup>·°F.  
 10 The lower the U-factor, the better the window insulates.

11 34. SHGC measures the fraction of solar energy transmitted and tells you how well  
 12 the product blocks heat caused by sunlight. SHGC is measured on a scale of 0 to 1; values  
 13 typically range from 0.25 to 0.80. The lower the SHGC, the less solar heat the window transmits.

14 35. Currently, windows in the Washington, D.C. metropolitan area must have a U-  
 15 Factor at or below 0.30 and a SHGC factor at or below 0.40 in order to be ENERGY STAR-  
 16 certified.



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 27 <sup>12</sup>What makes it ENERGY STAR?, ENERGY STAR,  
 28 [https://www.energystar.gov/products/building\\_products/residential\\_windows\\_doors\\_and\\_skylights/key\\_product\\_criteria](https://www.energystar.gov/products/building_products/residential_windows_doors_and_skylights/key_product_criteria) (last visited Mar. 22, 2021).

1           **C. Thompson Creek’s Loss of Its ENERGY STAR Qualification**

2           36. In July of 2010, the NFRC implemented new, stringent testing requirements.<sup>13</sup>  
3 The new requirements had window manufacturers submit all their windows for testing that took a  
4 minimum of 21-26 weeks.<sup>14</sup>

5           37. Due to the high number of window manufacturers that were unable to pass the  
6 lab testing, the NFRC issued extensions for compliance.

7           38. Thompson Creek sent its windows to the Testing Lab in York, Pennsylvania  
8 and/or other similar companies for testing.

9           39. Thompson Creek uses small devices referred to as “spacers” in assembling its  
10 windows. Spacers are small pieces of plastic or metal that separate and support the two or three  
11 panes of glass in a multi-glazed window. They hold the panes in place and create an air space  
12 filled with noble gasses such as argon or krypton in gas filled windows. Spacers are a vital part  
13 of every energy efficient window unit as they are the key to the structural integrity of the window  
14 and promote the thermal and moisture seal of the window.

15           40. The most important characteristic of the spacer is its impact on the thermal  
16 performance of the window. An effective spacer will absorb stress caused by thermal expansion  
17 and contraction, block moisture and water vapor that can fog the glass, create a tight seal that  
18 prevents leakage of gas fills, and increase the temperature of the edges of the glass, reducing  
19 condensation thus increasing overall energy efficiency of the window.

20           41. Until at least 2018, Thompson Creek used two different types of spacers, both  
21 produced by Quanex Building Products, for its energy-efficient windows. For the 7800 series,  
22 Thompson Creek used what were called “Duraseal” spacers. For the 7900 series, Thompson  
23 Creek used “Duralite” spacers.

24           42. Quanex not only supplied Thompson Creek’s spacers, it also periodically  
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26 <sup>13</sup> See NFRC 706, available at <http://search.nfrc.org/search/searchDefault.aspx> (last visited Mar.  
27 22, 2021).

28 <sup>14</sup>[https://cdn.ymaws.com/www.nfrccommunity.org/resource/resmgr/pcp\\_bulletins/faqforigcertification\\_000.pdf](https://cdn.ymaws.com/www.nfrccommunity.org/resource/resmgr/pcp_bulletins/faqforigcertification_000.pdf) (last visited Mar. 22, 2021).

1 inspected Thompson Creek's facilities to make sure the spacers were being maintained and used  
2 correctly. During these inspections Quanex identified problems in Thompson Creek's  
3 manufacturing process, such as:

- 4 • low-e coating not going to the edge of the glass, which can result in a breach of the  
5 insulated glass's seal;
- 6 • spacers not being handled and stored correctly;
- 7 • contaminants on the insulated glass's surface, which is likely a source of future  
8 failure;
- 9 • significant amount of contamination in the application area; and
- 10 • non-functioning heat lamps.

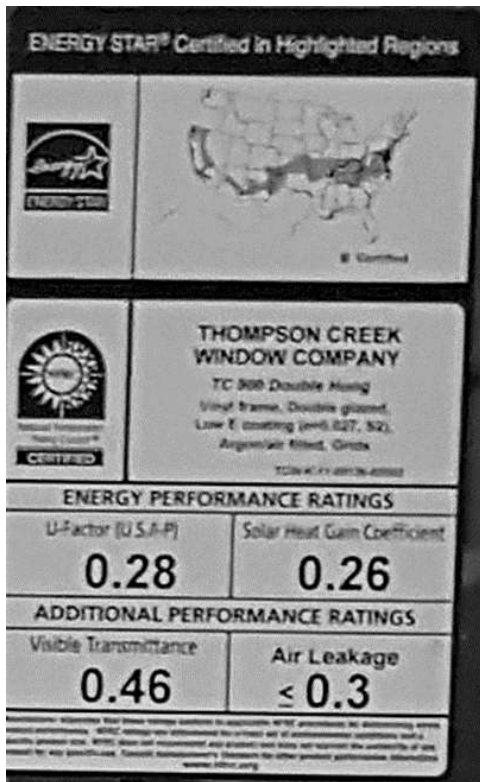
11 43. Thompson Creek's machinery was dated and the spacers were faulty. Although  
12 Thompson Creek was able to create double paned windows that could hold the insulating argon  
13 gas fill when the windows came off the production line, the windows failed when subjected to  
14 months of varied environmental conditions at the Testing Lab.

15 44. After its windows failed to meet the required standards at the Testing Lab,  
16 Thompson Creek sought to improve the quality of the windows submitted for testing. Thompson  
17 Creek used special glass for the windows that it would send for testing, filled the windows with  
18 the maximum argon gas possible, let the windows sit on the factory floor for 3 days, and even had  
19 an employee personally deliver the windows to make sure they were not damaged while being  
20 transported to the Testing Lab.

21 45. Thompson Creek resubmitted the windows approximately every 8 months for re-  
22 testing. Each time, they failed.

23 46. Despite failing to pass the NFRC testing, and due to the pressure to use the  
24 ENERGY STAR designation and logo to promote its product and preserve its premium pricing,  
25 Thompson Creek opted to mislabel its windows as being ENERGY STAR-certified.

26 47. Thompson Creek continued to use the ENERGY STAR logo on both its TC 900  
27 series and its 7800 St. Claire series windows:  
28



48. In or about 2018, Thompson Creek ceased using the Duralite spacers in its 7900 series windows and switched all of its windows to Duraseal.

49. Upon information and belief, from at least January 1, 2014 to December 31, 2018, the Mislabeled Windows did not meet ENERGY STAR-certification requirements.

50. From 2014 through at least 2018, Thompson Creek was engaged in a long-running, multi-media false advertising campaign in which Thompson Creek promoted the Mislabeled Windows as being ENERGY STAR-certified. For example, in 2015, Thompson Creek advertised “all” of its replacement windows exceed ENERGY STAR criteria and could lower household energy bills 7 to 15 percent.

51. The failure of the Mislabeled Windows to comply with ENERGY STAR standards is a latent defect. Reasonable consumers do not have the knowledge or equipment to assess whether their windows are ENERGY STAR-compliant, such that the hidden defect was undetectable by Plaintiffs and Class members. If this defect were known, the Mislabeled Windows would not have been saleable as described, as they would not measure up to the

1 description given to the purchaser.

2 **D. Thompson Creek Continued to Use the ENERGY STAR Label in the**  
3 **Marketing and Sale of the Mislabeled Windows**

4 52. Thompson Creek has consistently relied on the energy efficiency attribute of its  
5 windows to justify their substantially higher price to consumers. Thompson Creek advertised its  
6 windows as being “the most beautiful and efficient window in the Region.”

7 53. Throughout the Class Period, Thompson Creek consistently promoted its  
8 products, including the Mislabeled Windows, as being ENERGY STAR-certified. Thompson  
9 Creek identified the Mislabeled Windows as being ENERGY STAR-certified by prominently  
10 displaying the ENERGY STAR label in promotional materials, including print, internet, and other  
11 media; by making it a prominent talking point in its in-person sales pitches; and by attaching the  
12 ENERGY STAR label on the Mislabeled Windows themselves.

13 54. For example, in a radio advertisement in February of 2016, Thompson Creek  
14 claimed its windows were ENERGY STAR-certified, even though the NFRC did not have any  
15 Thompson Creek windows on its list of ENERGY STAR-certified products and even though  
16 Keystone Certifications, Inc. informed Thompson Creek that its Mislabeled Windows failed  
17 ENERGY STAR certification requirements.

18 55. On its website Thompson Creek has regularly claimed that its windows met or  
19 exceeded ENERGY STAR criteria.

20 56. During the Class Period, Thompson Creek’s website also claimed that all its  
21 windows met ENERGY STAR standards and had ENERGY STAR certifications. For example,  
22 the website stated in June and July 2015 and in January and February 2016, that its windows  
23 “exceed the 2015 ENERGY STAR® criteria.”

24 57. Thompson Creek’s website, as of December 14, 2014 not only stated that its  
25 windows exceeded ENERGY STAR requirements, but showed Thompson Creek as an ENERGY  
26 STAR program “partner,” displaying the ENERGY STAR partner logo among its awards and  
27 certifications.  
28

1           58.       These representations were false and or misleading. For example, as stated in an  
2 email authored by Michelle Scism, the coordinator of the verification program, on July 8, 2015:  
3 “Thompson Creek Window Company is not in compliance with ENERGY STAR requirements to  
4 label product. ... As such, they cannot label as ENERGY STAR or be considered ENERGY  
5 STAR certified.”

6           59.       Despite not being compliant, Thompson Creek continued to use the ENERGY  
7 STAR designation and logo in its promotional materials and on its website. On October 15,  
8 2015, Scism wrote in an email to John Hill and Steven McDowell of Keystone Certifications,  
9 Inc., that: “Thompson Creek currently displays the NFRC logo (and the ENERGY STAR logo)  
10 under a section on their website with the heading ‘Certifications and Associations’ which I  
11 believe is misleading to the consumer.” And on February 25, 2016, Scism wrote in an email that  
12 Thompson Creek “still does not have any product lines currently selected for ENERGY STAR in  
13 our system.”

14           60.       This wasn’t the first time Thompson Creek stretched the facts surrounding the  
15 energy-efficiency of its products. In August of 2012, the Federal Trade Commission (“FTC”)  
16 issued a warning letter to the company pointing to Thompson Creek’s unsubstantiated claim that  
17 “If you have single-pane windows, upgrading to Thompson Creek’s energy-efficient double- or  
18 triple- pane windows with low-e coating will result in savings on your energy bills of up to 30%”  
19 as potentially misleading advertising. Although the FTC did not make a finding that Thompson  
20 Creek’s claims violated the law, the FTC asked Thompson Creek to reevaluate its marketing  
21 materials and advise the FTC of any changes.

22           61.       It is estimated that Thompson Creek spends 10% of its gross sales on advertising.  
23 Thompson Creek advertises on the radio, the internet, with fliers, and through door-to-door sales  
24 people.

25           62.       Once a homeowner has expressed interest in Thompson Creek’s windows, the  
26 company sends a sales person to deliver a lengthy and highly-scripted presentation. During the  
27  
28

1 presentation that often lasts hours, the sales people uniformly display the ENERGY STAR label  
2 and repeatedly tout the windows' energy efficiency.

3 63. The windows' energy efficiency was pitched to customers as justifying the  
4 substantially higher prices. For example, during the Class Period, customers would typically pay  
5 around \$1,200 for each TC 900 double hung window – about four times the window's actual cost.

6 **DEMAND-NOTICE UPON THOMPSON CREEK**

7 64. In 2020, Plaintiffs' counsel, on behalf of Plaintiffs and Class members, notified  
8 Thompson Creek of their discovery of the Mislabeled Windows' non-compliance with the  
9 warranties and representations regarding ENERGY STAR compliance. In response, Thompson  
10 Creek stated that its windows complied with applicable ENERGY STAR requirements.

11 65. Thereafter, Plaintiffs sought confirmatory discovery by serving a subpoena on the  
12 NFRC. Through its counsel, the NFRC produced several documents confirming that the  
13 Mislabeled Windows did not meet ENERGY STAR certification requirements during the Class  
14 Period, including the emails referenced above.

15 **CLASS DEFINITION AND ALLEGATIONS**

16 66. Plaintiffs bring this action on behalf of themselves and all other similarly situated  
17 consumers pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure and seek  
18 certification of the following alternative Classes:

19  
20 **Multi-State Class**

21 All purchasers who, during the Class Period, bought Mislabeled Windows  
22 in Maryland, Virginia, and/or the District of Columbia.

23 Excluded from this Class are Defendants and their officers, directors, and  
24 employees, and those who purchased the Mislabeled Windows for resale.

25 AND/OR



1                    **Maryland Class**

2                    All Maryland purchasers who, during the Class Period, bought  
3                    Mislabeled Windows.

4                    Excluded from this Class are Defendants and their officers,  
5                    directors, and employees, and those who purchased the Mislabeled  
6                    Windows for resale.

7                    AND /OR

8                    **Virginia Class**

9                    All Virginia purchasers who, during the Class Period, bought  
10                    Mislabeled Windows.

11                    Excluded from this Class are Defendants and their officers,  
12                    directors, and employees, and those who purchased the Mislabeled  
13                    Windows for resale.

14                    67.    **Numerosity.** The members of the Classes are so numerous that joinder of all  
15                    members is impracticable. Plaintiffs are informed and believe that the proposed Classes contain  
16                    thousands of purchasers of the Mislabeled Windows who have been damaged by Defendants’  
17                    conduct as alleged herein. The precise number of Class members is unknown to Plaintiffs.

18                    68.    **Existence and Predominance of Common Questions of Law and Fact.** This  
19                    action involves common questions of law and fact, which predominate over any questions  
20                    affecting individual Class members. These common legal and factual questions include, but  
21                    are not limited to, the following:

22                    (a)    Whether the Mislabeled Windows were in fact Energy Star certified during the  
23                    Class Period;

24                    (b)    whether Defendants’ Energy Star Representations were false or misleading, or had  
25                    the capacity, tendency, or effect of deceiving or misleading consumers;

26                    (c)    whether Defendants breached their express warranties;

27                    (d)    whether Defendants were unjustly enriched; and

28                    (e)    whether Plaintiffs and Class members are entitled to appropriate remedies,  
including damages and restitution.

                    69.    **Typicality.** Plaintiffs’ claims are typical of the claims of the members of the

1 Classes because, *inter alia*, all Class members were injured through the uniform misconduct  
2 described above and received Mislabeled Windows unfit for their intended energy-efficient  
3 purpose and were subject to Defendants' deceptive Energy Star Representations on each and  
4 every Mislabeled Window. Plaintiffs are also advancing the same claims and legal theories on  
5 behalf of themselves and all members of the Classes.

6 70. **Adequacy of Representation.** Plaintiffs will fairly and adequately protect the  
7 interests of Class members. Plaintiffs have retained counsel experienced in complex consumer  
8 class action litigation, and Plaintiffs intend to prosecute this action vigorously. Plaintiffs have no  
9 adverse or antagonistic interests to those of Class members.

10 71. **Superiority.** A class action is superior to all other available means for the fair and  
11 efficient adjudication of this controversy. The damages or other financial detriment suffered by  
12 individual Class members is relatively small compared to the burden and expense that would be  
13 entailed by individual litigation of their claims against Defendants. It would thus be virtually  
14 impossible for members of the Classes, on an individual basis, to obtain effective redress for the  
15 wrongs done to them. Furthermore, even if Class members could afford such individualized  
16 litigation, the court system could not. Individualized litigation would create the danger of  
17 inconsistent or contradictory judgments arising from the same set of facts. Individualized  
18 litigation would also increase the delay and expense to all parties and the court system from the  
19 issues raised by this action. By contrast, the class action device provides the benefits of  
20 adjudication of these issues in a single proceeding, economies of scale, and comprehensive  
21 supervision by a single court, and presents no unusual management difficulties under the  
22 circumstances here.

23 72. Unless a Class is certified, Defendants will retain monies received as a result of  
24 their wrongful conduct that were taken from Plaintiffs and Class members.

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**COUNT I**  
**Breach of Express Warranty**  
**(Defendant Thompson Creek)**  
**(On Behalf of All Classes)**

73. Plaintiffs repeat the allegations in paragraphs 1-72 as if fully set forth herein.

74. Plaintiffs bring this Count I individually and on behalf of all Classes against Defendant Thompson Creek.

75. Defendant Thompson Creek, as the designer, manufacturer, marketer, distributor, and/or seller of the Mislabeled Windows, expressly warranted through the Energy Star Representations, including the use of the ENERGY STAR label, that the Mislabeled Windows were fit and would function properly for their intended purpose as energy-efficient windows within the specifications established by the ENERGY STAR program.

76. The Energy Star Representations were made directly to consumers and end purchasers of the Mislabeled Windows, constitute express warranties, and became part of the basis of the bargain between the parties and created a collective “express warranty” that the Mislabeled Windows were fit and would function properly for their intended purpose as energy-efficient windows within the specifications established by the ENERGY STAR program.

77. Defendant Thompson Creek breached the express warranty because the Mislabeled Windows are not fit and do not function for their intended purpose as they do not meet the energy-efficient specifications established by the ENERGY STAR program.

78. Defendant Thompson Creek’s conduct described in this Complaint constitutes a breach of express warranties under UCC § 2-313, as adopted in whole or in substance by statutes in all 50 states and the District of Columbia.

79. Plaintiffs and Class members were injured as a direct and proximate result of Defendant Thompson Creek’s breach of its express warranty, in an amount to be determined at trial plus any consequential damages resulting from their purchases, because: (a) the Mislabeled Windows did not perform as warranted; (b) Plaintiffs and Class members would not have purchased the Mislabeled Windows at all or on the same terms absent the Energy Star

1 Representations, including the confirming ENERGY STAR label on the Mislabeled Windows; (c)  
2 Plaintiffs and Class members paid a price premium due to the mislabeling of the Mislabeled  
3 Windows as ENERGY STAR-certified; and (d) Plaintiffs and Class members have paid and will  
4 continue to pay higher energy costs for as long as they continue to use the Mislabeled Windows.

5 80. While Plaintiffs and Class members were unaware of Defendant Thompson  
6 Creek’s breach of warranty, Defendant knew and was fully informed of the defects alleged  
7 herein.

8  
9 **COUNT II**  
10 **Violation of the Maryland Consumer Protection Act**  
11 **Md. Code Ann., Com. Law §§ 13-101, *et seq.***  
12 **(All Defendants)**  
13 **(On Behalf of the Multi-State or, Alternatively, the Maryland Class)**

14 81. Plaintiffs repeat the allegations in paragraphs 1-72 as if fully set forth herein.

15 82. Plaintiffs bring this Count II individually and on behalf of the Multi-State Class or,  
16 alternatively, the Maryland Class against Defendants.

17 83. As Defendants are located in, principally conduct business in, and produced,  
18 tested, and placed the ENERGY STAR label on the Mislabeled Windows offered for sale  
19 nationwide in Maryland, Maryland law applies.<sup>15</sup>

20 84. The Maryland Consumer Protection Act (“MCPA”) prohibits “unfair or deceptive  
21 trade practices,” and misrepresentations, which include, *inter alia*, making a “false ... or  
22 misleading oral or written statement, visual description, or other representation of any kind which  
23 has the capacity, tendency, or effect of deceiving or misleading consumers.” Md. Code Ann.,  
24 Com. Law § 13-301 (1).

25 85. Defendants engaged in unfair or deceptive trade practices and misrepresentations  
26 by, *inter alia*, making the false and misleading written and visual Energy Star Representations on

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27 <sup>15</sup> Alternatively, the consumer fraud laws of Virginia and D.C., where the Mislabeled Windows  
28 are primarily sold, are substantially similar to Maryland’s, such that the Court can manageably  
apply each law to the Multi-State Class. VA ST § 59.1-200 (prohibiting the use of deception,  
fraud, false pretense, false promise, or misrepresentation in connection with a consumer  
transaction); DC Official Code § 28-3904 (prohibiting the use of unfair or deceptive trade  
practices, including misrepresentations of material fact which have a tendency to mislead).

1 all of the Mislabeled Windows, including labeling them with the ENERGY STAR label even  
2 though they were not permitted to do so, which had the capacity, tendency, and effect of  
3 deceiving and misleading Plaintiffs and Class members.

4 86. Defendants' Energy Star Representations were material to a reasonable  
5 consumer's purchase decision. Plaintiffs relied upon Defendants' false and misleading Energy  
6 Star Representations and would not have purchased the Mislabeled Windows absent the Energy  
7 Star Representations, including the ENERGY STAR label on the Mislabeled Windows.

8 87. Plaintiffs and Class members have been injured as a direct and proximate cause of  
9 Defendants' false and misleading Energy Star Representations because: (a) the Mislabeled  
10 Windows did not perform as promised; (b) Plaintiffs and Class members would not have  
11 purchased the Mislabeled Windows at all or on the same terms absent the Energy Star  
12 Representations or if the true situation had been revealed to them; (c) Plaintiffs and Class  
13 members paid a price premium due to the misrepresentations regarding the Mislabeled Windows  
14 as ENERGY STAR-certified; and (d) Plaintiffs and Class members have paid and will continue to  
15 pay higher energy costs for as long as they continue to use the Mislabeled Windows.

16 **COUNT III**

17 **Violation of the Virginia Consumer Protection Act of 1977**

18 **Code of Virginia §§ 59.1-196, *et seq.***

19 **(All Defendants)**

20 **(Virginia Class)**

21 88. Plaintiff Estrada repeats the allegations in paragraphs 1-72 as if fully set forth  
22 herein.

23 89. Plaintiff Estrada brings this Count III individually and on behalf of the Virginia  
24 Class against Defendants.

25 90. The Virginia Consumer Protection Act of 1977 ("VCPA") prohibits the  
26 commission of "fraudulent acts or practices," including "[m]isrepresenting the source,  
27 sponsorship, approval, or certification of goods or services," "[m]isrepresenting that goods or  
28 services have certain quantities, characteristics, ingredients, uses, or benefits," and

1 “[m]isrepresenting that goods or services are of a particular standard, quality, grade, style, or  
2 model.” Code of Virginia, § 59.1-200 (A. 2., 5., 6.)

3 91. Defendants violated the VCPA by, *inter alia*, making the false and misleading  
4 written and visual Energy Star Representations on all of the Mislabeled Windows, including  
5 labeling them with the ENERGY STAR label even though they were not permitted to do so,  
6 which had the capacity, tendency, and effect of deceiving and misleading Plaintiff Estrada and  
7 Virginia Class members.

8 92. Defendants’ Energy Star Representations were material to a reasonable  
9 consumer’s purchase decision. Plaintiff Estrada relied upon Defendants’ false and misleading  
10 Energy Star Representations and would not have purchased the Mislabeled Windows absent the  
11 Energy Star Representations, including the ENERGY STAR label on the Mislabeled Windows.

12 93. Plaintiff Estrada and Virginia Class members have been injured as a direct and  
13 proximate cause of Defendants’ false and misleading Energy Star Representations because: (a)  
14 the Mislabeled Windows did not perform as promised; (b) Plaintiff Estrada and Virginia Class  
15 members would not have purchased the Mislabeled Windows at all or on the same terms absent  
16 the Energy Star Representations or if the true situation had been revealed to them; (c) Plaintiff  
17 Estrada and Virginia Class members paid a price premium due to the misrepresentations  
18 regarding the Mislabeled Windows as ENERGY STAR-certified; and (d) Plaintiff Estrada and  
19 Virginia Class members have paid and will continue to pay higher energy costs for as long as they  
20 continue to use the Mislabeled Windows.

21  
22 **COUNT IV**  
23 **Fraudulent Misrepresentation**  
24 **(All Defendants)**  
25 **(All Classes)**

26 94. Plaintiffs repeat the allegations in paragraphs 1-72 as if fully set forth herein.

27 95. Plaintiffs bring this Count IV individually and on behalf of the Multi-State Class  
28 or, alternatively, the Virginia and Maryland Classes against Defendants.

1           96. Defendants made false and misleading written, oral, and visual Energy Star  
2 Representations of material fact to Plaintiffs and Class members on all of the Mislabeled  
3 Windows, including labeling them with the ENERGY STAR label even though they were not  
4 permitted to do so.

5           97. Defendants knew that the Energy Star Representations were false or, at a  
6 minimum, Defendants made the Energy Star Representations with reckless indifference as to their  
7 truth.

8           98. Defendant Rick Wuest, in his capacity as owner, CEO, and principal of Thompson  
9 Creek, knew the Energy Star Representations were false and that the Mislabeled Windows did not  
10 meet ENERGY STAR certification requirements during the Class Period, yet approved of the  
11 Energy Star Representations, including the use of the ENERGY STAR label on the Mislabeled  
12 Windows.

13           99. Defendants made the Energy Star Representations for the purpose of defrauding  
14 and deceiving Plaintiffs and Class members.

15           100. Plaintiffs and Class members relied on the Energy Star Representations and had  
16 the right to rely on them, as they did not and could not know that the Energy Star Representations  
17 were false.

18           101. Plaintiffs and Class members suffered compensable injury as a result of  
19 Defendants' Energy Star Representations because: (a) the Mislabeled Windows did not perform  
20 as promised; (b) Plaintiffs and Class members would not have purchased the Mislabeled  
21 Windows at all or on the same terms absent the Energy Star Representations, including the  
22 confirming ENERGY STAR label on the Mislabeled Windows; (c) Plaintiffs and Class members  
23 paid a price premium due to the mislabeling of the Mislabeled Windows as ENERGY STAR-  
24 certified; and (d) Plaintiffs and Class members have paid and will continue to pay higher energy  
25 costs for as long as they continue to use the Mislabeled Windows.

26           102. Defendants acted with conscious and deliberate wrongdoing, evil or wrongful  
27 motive, intent to injure, ill will, and fraud, such that punitive damages are appropriate.

28

**COUNT V**  
**Unjust Enrichment**  
**(All Defendants)**  
**(All Classes)**

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2  
3 103. Plaintiffs repeat the allegations in paragraphs 1-72 as if fully set forth herein. This  
4 count is brought as an alternative to Counts I-IV.

5 104. Plaintiffs bring this Count V as a claim individually and on behalf of all Classes  
6 against Defendants and seek restitution in the event money damages are deemed to be  
7 unavailable.

8 105. Plaintiffs and Class members conferred a benefit directly on Defendants by  
9 purchasing the Mislabeled Windows at a price artificially inflated by the Defendants' Energy Star  
10 Representations.

11 106. Defendants understood that they received the benefit of higher prices for the  
12 Mislabeled Windows due to the Energy Star Representations described herein. They have  
13 retained the benefits conferred on them by Plaintiffs and Class members. In obtaining and  
14 retaining money through the devices described herein, their revenues, profits, and sales-related  
15 compensation was artificially and unjustly inflated, constituting unjust enrichment to Defendants.  
16 Allowing Defendants to retain the benefits they received from sales of the Mislabeled Windows  
17 would be unjust and inequitable, causing injury to Plaintiffs and Class members because: (a)  
18 Plaintiffs and Class members would not have purchased the Mislabeled Windows at all or on the  
19 same terms absent the Energy Star Representations, including the confirming ENERGY STAR  
20 label on the Mislabeled Windows; (b) Plaintiffs and Class members paid a price premium due to  
21 the mislabeling of the Mislabeled Windows as ENERGY STAR-certified; and (c) Plaintiffs and  
22 Class members have paid and will continue to pay higher energy costs for as long as they  
23 continue to use the Mislabeled Windows.

24 107. Because Defendants' retention of the non-gratuitous benefit conferred on them  
25 without providing Plaintiffs and Class members its value is unjust and inequitable, Defendants  
26 must pay Plaintiffs and the Class members for their unjust enrichment, as ordered by the Court.  
27  
28



**PRAYER FOR RELIEF**

Wherefore, Plaintiffs pray for a judgment:

- A. Certifying the Class(es) as requested herein;
- B. Issuing an order declaring that Defendants actions violated the MCPA;
- C. Issuing an order declaring that Defendants actions violated the VCPA;
- D. Awarding Plaintiffs and Class members damages;
- E. Awarding appropriate restitution to Plaintiffs and Class members;
- F. Awarding Plaintiffs the costs of this action, including reasonable attorneys' fees and expenses pursuant to Md. Code Ann., Com. Law § 13-408 and Code of Virginia § 59.1-204(A, B); and
- G. Awarding such other and further relief as this Court may deem just and proper.

Dated: April 2nd, 2021



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