

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

KENT EUBANK, JERRY DAVIS, RICKY
FALASCETTI, RITA CICINELLI,
ROBERT JOSEPHBERG, JEFFREY ACTON,
KENNETH HECHTMAN, LEO BATEMAN,
JAMES NEIMAN, AMY CHASIN and
EDWARD RUHNKE, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

PELLA CORPORATION, an Iowa
corporation, and PELLA WINDOWS AND
DOORS, INC., a Delaware corporation,

Defendants.

No.: 06 C 4481

Honorable James B. Zagel

**ANSWER AND DEFENSES TO
PLAINTIFFS' SEVENTH AMENDED
CLASS ACTION COMPLAINT**

**DEFENDANTS' ANSWER AND DEFENSES TO PLAINTIFFS' SEVENTH AMENDED
CLASS ACTION COMPLAINT**

NOW COME Defendants Pella Corporation (“Pella”) and Pella Windows and Doors, Inc. (“PWD”) (hereinafter collectively referred to as “Defendants”), by their undersigned attorneys, and for their Answer and Defenses to the claims of Plaintiffs Kent Eubank, Jerry Davis, Ricky Falaschetti, Rita Cicinelli, Robert Josephberg, Jeffrey Acton, Kenneth Hechtman, Leo Bateman, James Neiman, Amy Chasin, and Edward Ruhnke (hereinafter collectively referred to as “Plaintiffs”), individually and on behalf of all other similarly situated, set forth in their Seventh Amended Class Action Complaint, state as follows:

INTRODUCTION

1. Defendants deny the allegations in the first paragraph numbered “Paragraph 1.”

PARTIES

1. Defendants admit on information and belief the allegations in the second paragraph numbered as “Paragraph 1.”
2. Defendants admit on information and belief the allegations in Paragraph 2.
3. Defendants admit on information and belief the allegations in Paragraph 3.
4. Defendants admit on information and belief the allegations in Paragraph 4.
5. Defendants admit on information and belief the allegations in Paragraph 5.
6. Defendants admit on information and belief the allegations in Paragraph 6.
7. Defendants admit on information and belief the allegations in Paragraph 7.
8. Defendants admit on information and belief the allegations in Paragraph 8.
9. Defendants admit on information and belief the allegations in Paragraph 9.
10. Defendants admit on information and belief the allegations in Paragraph 10.
11. Defendants admit on information and belief the allegations in Paragraph 11.
12. Defendants admit the allegations in Paragraph 12.
13. Defendants admit only that Pella Windows and Doors, Inc. is a Delaware corporation. Defendants deny the remaining allegations in Paragraph 13.

JURISDICTION AND VENUE

14. Defendants admit only that the United States District Court for the Northern District of Illinois, Eastern Division has jurisdiction over the claims in Plaintiffs’ Seventh Amended Class Action Complaint. Defendants deny the remaining allegations in Paragraph 14.
15. Defendants admit only that venue is proper in the United States District Court for the Northern District of Illinois, Eastern Division for the case as currently pled by the present named plaintiffs. Defendants deny the remaining allegations in Paragraph 15.

OVERVIEW

16. Defendants deny the allegations in Paragraph 16.
17. Defendants deny the allegations in Paragraph 17.
18. Defendants deny the allegations in Paragraph 18.
19. Defendants deny the allegations in Paragraph 19.

**PELLA'S CONDUCT WITH RESPECT TO THE
ALLEGED WIDESPREAD LEAKAGE PROBLEM AT ISSUE**

20. Defendants deny the allegations in Paragraph 20.
21. Defendants deny the allegations in Paragraph 21.
22. Defendants deny the allegations in Paragraph 22.
23. Defendants deny the allegations in Paragraph 23.
24. Defendants deny the allegations in Paragraph 24.
25. Defendants deny the allegations in Paragraph 25, but also assert the applicability of Federal Rule of Evidence 407.
26. Defendants deny the allegations in Paragraph 26, but also assert the applicability of Federal Rule of Evidence 407.

NAMED PLAINTIFFS' ALLEGATIONS

27. Defendants lack knowledge or information sufficient to form a belief about the truth as to the allegations contained in Paragraph 27 and, as a result, neither admit nor deny the allegations in Paragraph 27 but demand strict proof thereof. In the alternative, Defendants deny the allegations in Paragraph 27.
28. Defendants deny the allegations in Paragraph 28.
29. Defendants deny the allegations in Paragraph 29.
30. Defendants deny the allegations in Paragraph 30.

31. Defendants lack knowledge or information sufficient to form a belief about the truth as to the allegations contained in Paragraph 31 and, as a result, neither admit nor deny the allegations in Paragraph 31 but demand strict proof thereof. In the alternative, Defendants deny the allegations in Paragraph 31.

32. Defendants deny the allegations in Paragraph 32.

33. Defendants deny the allegations in Paragraph 33.

34. Defendants lack knowledge or information sufficient to form a belief about the truth as to the allegations contained in Paragraph 34 and, as a result, neither admit nor deny the allegations in Paragraph 34 but demand strict proof thereof. In the alternative, Defendants deny the allegations in Paragraph 34.

35. Defendants deny any characterizations of their promotional materials, as they speak for themselves. Defendants lack knowledge or information sufficient to form a belief about the truth as to the remaining allegations contained in Paragraph 35 and, as a result, neither admit nor deny the allegations in Paragraph 35 but demand strict proof thereof. In the alternative, Defendants deny the allegations in Paragraph 35. Defendants deny the remaining allegations in Paragraph 35.

36. Defendants deny the allegations in Paragraph 36.

37. Defendants deny the allegations in Paragraph 37.

38. Defendants deny the allegations in Paragraph 38.

39. Defendants deny the allegations in Paragraph 39.

40. Defendants deny the allegations in Paragraph 40.

41. Defendants deny the allegations in Paragraph 41.

42. Defendants deny the allegations in Paragraph 42.

43. Defendants lack knowledge or information sufficient to form a belief about the truth as to the allegations contained in Paragraph 43 and, as a result, neither admit nor deny the allegations in Paragraph 43 but demand strict proof thereof. In the alternative, Defendants deny the allegations in Paragraph 43.

44. Defendants deny the allegations in Paragraph 44.

45. Defendants deny the allegations in Paragraph 45.

46. Defendants admit that someone contacted Pella Windows & Doors, Inc. in 2007 regarding certain ProLine windows in the Falaschetti home. Defendants deny Plaintiffs' characterizations thereof. Defendants deny the remaining allegations in Paragraph 46.

47. Defendants deny the allegations in Paragraph 47.

48. Defendants admit that Falaschetti was provided some replacement product consistent with the warranty. Defendants deny Plaintiffs' characterization therefore. Defendants lack knowledge or information sufficient to form a belief about the truth as to the allegations contained in Paragraph 48 regarding the contractor and, as a result, neither admit nor deny those allegations in Paragraph 48 but demand strict proof thereof. In the alternative, Defendants deny those allegations in Paragraph 48.

49. Defendants deny the allegations in Paragraph 49.

50. Defendants deny the allegations in Paragraph 50

51. Defendants deny the allegations in Paragraph 51.

52. Defendants lack knowledge or information sufficient to form a belief about the truth as to the allegations contained in Paragraph 52 and, as a result, neither admit nor deny the allegations in Paragraph 52 but demand strict proof thereof. In the alternative, Defendants deny the allegations in Paragraph 52.

53. Defendants deny the allegations in Paragraph 53.

54. Defendants deny the allegations in Paragraph 54.

55. Defendants admit on information and belief that a sash was shipped to Cicinelli.

Defendants deny the remaining allegations in Paragraph 55.

56. Defendants deny the allegations in Paragraph 56.

57. Defendants deny the allegations in Paragraph 57.

58. Defendants lack knowledge or information sufficient to form a belief about the truth as to the allegations contained in paragraph 58 related to Cicinelli's financial situation and, as a result, neither admit nor deny those allegations but demand strict proof thereof. Defendants deny the remaining allegations in Paragraph 58.

59. Defendants deny the allegations in Paragraph 59.

60. Defendants deny the allegations in Paragraph 60.

61. Defendants deny the allegations in Paragraph 61.

62. Defendants deny the allegations in Paragraph 62.

63. Defendants deny the allegations in Paragraph 63.

64. Defendants admit that in 2011 Josephberg had one window replaced. Defendants deny the remaining allegations in Paragraph 64.

65. Defendants lack knowledge or information sufficient to form a belief about the truth as to the allegations contained in Paragraph 65 and, as a result, neither admit nor deny the allegations in Paragraph 65 but demand strict proof thereof. In the alternative, Defendants deny the allegations in Paragraph 65.

66. Defendants deny the allegations in Paragraph 66.

67. Defendants lack knowledge or information sufficient to form a belief about the truth as to the allegations contained in Paragraph 67 and, as a result, neither admit nor deny the allegations in Paragraph 67 but demand strict proof thereof. In the alternative, Defendants deny the allegations in Paragraph 67.

68. Defendants deny the allegations in Paragraph 68.

69. Defendants deny the allegations in Paragraph 69.

70. Defendants deny the allegations in Paragraph 70.

71. Defendants lack knowledge or information sufficient to form a belief about the truth as to the allegations contained in Paragraph 71 and, as a result, neither admit nor deny the allegations in Paragraph 71 but demand strict proof thereof. In the alternative, Defendants deny the allegations in Paragraph 71.

72. Defendants deny the allegations in Paragraph 72.

73. Defendants deny the allegations in Paragraph 73.

74. Defendants deny the allegations in Paragraph 74.

75. Defendants deny the allegations in Paragraph 75.

76. Defendants lack knowledge or information sufficient to form a belief about the truth as to the allegations contained in Paragraph 76 and, as a result, neither admit nor deny the allegations in Paragraph 76 but demand strict proof thereof. In the alternative, Defendants deny the allegations in Paragraph 76.

77. Defendants deny the allegations in Paragraph 77.

78. Defendants deny the allegations in Paragraph 78.

79. Defendants lack knowledge or information sufficient to form a belief about the truth as to the allegations contained in Paragraph 79 related to Plaintiff's alleged remodeling and

any observations related thereto and, as a result, neither admit nor deny those allegations. Defendants deny the remaining allegations in Paragraph 79.

80. Defendants lack knowledge or information sufficient to form a belief about the truth as to the allegations contained in Paragraph 80 and, as a result, neither admit nor deny the allegations in Paragraph 80 but demand strict proof thereof. In the alternative, Defendants deny the allegations in Paragraph 80.

81. Defendants deny the allegations in Paragraph 81.

82. Defendants lack knowledge or information sufficient to form a belief about the truth as to the allegations contained in Paragraph 82 and, as a result, neither admit nor deny the allegations in Paragraph 82 but demand strict proof thereof. In the alternative, Defendants deny the allegations in Paragraph 82.

83. Defendants deny the allegations in Paragraph 83.

84. Defendants deny the allegations in Paragraph 84.

85. Defendants deny the allegations in Paragraph 85.

86. Defendants deny the allegations in Paragraph 86.

87. Defendants lack knowledge or information sufficient to form a belief about the truth as to the allegations contained in Paragraph 87 and, as a result, neither admit nor deny the allegations in Paragraph 87 but demand strict proof thereof. In the alternative, Defendants deny the allegations in Paragraph 87.

88. Defendants deny the allegations in Paragraph 88.

89. Defendants deny the allegations in Paragraph 89.

90. Defendants deny the allegations in Paragraph 90.

91. Defendants deny the allegations in Paragraph 91.

92. Defendants deny the allegations in Paragraph 92.

93. Defendants deny the allegations in Paragraph 93.

94. Defendants deny the allegations in Paragraph 94.

95. Defendants deny the allegations in Paragraph 95.

96. Defendants deny the allegations in Paragraph 96.

97. Defendants lack knowledge or information sufficient to form a belief about the truth as to the allegations contained in Paragraph 97 and, as a result, neither admit nor deny the allegations in Paragraph 97 but demand strict proof thereof. In the alternative, Defendants deny the allegations in Paragraph 97.

98. Defendants deny the allegations in Paragraph 98.

CLASS ACTION ALLEGATIONS

99. Defendants deny the allegations in Paragraph 99 and affirmatively allege the Seventh Amended Class Action Complaint fails to plead the class definition, sub-class definition, and other requirements for class action treatment with the requisite specificity and otherwise fails to meet the requirements of Federal Rule of Civil Procedure 23.

A. Class Definitions

100. Defendants deny the allegations in Paragraph 100.

101. Defendants deny the allegations in Paragraph 101.

B. Numerosity

102. Defendants deny the allegations in Paragraph 102.

C. Commonality

103. Defendants deny the allegations in Paragraph 103.

D. Typicality

104. Defendants deny the allegations in Paragraph 104.

E. Adequacy

105. Defendants deny the allegations in Paragraph 105.

F. The Prerequisites of Rule 23(b)(2) are Not Satisfied

106. Defendants deny the allegations in Paragraph 106.

107. Defendants deny the allegations in Paragraph 107.

108. Defendants deny the allegations in Paragraph 108.

109. Defendants deny the allegations in Paragraph 109.

G. The Prerequisites of Rule 23(b)(3) are Not Satisfied

110. Defendants deny the allegations in Paragraph 110.

PELLA'S FRAUDULENT CONCEALMENT

111. Defendants deny the allegations in Paragraph 111.

112. Defendants deny the allegations in Paragraph 112.

113. Defendants deny the allegations in Paragraph 113.

114. Defendants deny the allegations in Paragraph 114.

CAUSES OF ACTION

COUNT I

Violation of Illinois Consumer Fraud and Deceptive Business Practices Act and Substantially Similar Laws of California, Florida, Michigan, New Jersey, and New York

115. Defendants repeat and reallege their answers to Paragraphs 1 through 114 herein, inclusive, as their answer to Paragraph 115 as if more specifically stated paragraph by paragraph.

116. Paragraph 116 contains legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 116. Defendants deny the remaining allegations in Paragraph 116.

117. Defendants admit only that the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2 contains the following language:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with the intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the 'Uniform Deceptive Trade Practices Act', approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretation of the Federal Trade Commission and the federal courts relating to Section 5 (a) of the Federal Trade Commission Act.

Defendants deny any characterizations thereof or misquotations.

118. Defendants deny the allegations in Paragraph 118.

119. Defendants deny the allegations in Paragraph 119 as 815 ILCS 505/2 speaks for itself.

120. Defendants deny the allegations in Paragraph 120.

121. Defendants deny the allegations in Paragraph 121.

122. Defendants deny the allegations in Paragraph 122.

123. Defendants deny the allegations in Paragraph 123.

124. Defendants deny the allegations in Paragraph 124.

125. Defendants deny the allegations in Paragraph 125.

126. Defendants deny the allegations in Paragraph 126.

127. Defendants deny the allegations in Paragraph 127.

128. Defendants deny the allegations in Paragraph 128.

129. Defendants deny the allegations in Paragraph 129.

130. Defendants deny any characterizations of their promotional materials, installation materials, or product materials, as they speak for themselves. Defendants deny the remaining allegations in Paragraph 130.

131. Defendants deny any characterizations of their promotional materials, as they speak for themselves. Defendants deny the remaining allegations in Paragraph 131.

132. Defendants deny the allegations in Paragraph 132.

133. Defendants deny any characterizations of media materials or their contracts, as they speak for themselves. Defendants deny the remaining allegations in Paragraph 133.

134. Defendants deny any characterizations of their promotional materials, as they speak for themselves. Defendants deny the remaining allegations in Paragraph 134.

135. Defendants deny any characterizations of their promotional materials, installation materials, or product materials, as they speak for themselves. Defendants deny the remaining allegations in Paragraph 135.

136. Defendants deny any characterizations of their promotional materials, as they speak for themselves. Defendants deny the remaining allegations in Paragraph 136.

137. Defendants deny any characterizations of their promotional materials or of other media materials, as they speak for themselves. Defendants deny the remaining allegations in Paragraph 137.

138. Defendants deny the allegations in Paragraph 138.

139. Defendants deny the allegations in Paragraph 139.

140. Defendants deny the allegations in Paragraph 140.

141. Defendants deny the allegations in Paragraph 141.

WHEREFORE, Defendants Pella Corporation and Pella Windows and Doors, Inc., deny that Plaintiffs Kent Eubank, Jerry Davis, Ricky Falaschetti, Rita Cicinelli, Robert Josephberg, Jeffrey Acton, Kenneth Hechtman, Leo Bateman, James Neiman, Amy Chasin, and Edward Ruhnke, individually and on behalf of all others similarly situated, are entitled to a judgment against them in any amount whatsoever, and further pray that this Court dismiss Plaintiffs' Seventh Amended Class Action Complaint with prejudice and award Defendants their costs and all other relief deemed just and equitable.

COUNT II

Declaratory Relief Pursuant to 28 U.S.C. § 2201

142. Defendants repeat and reallege their answers to Paragraphs 1 through 141 herein, inclusive, as their answer to Paragraph 142 as if more specifically stated paragraph by paragraph.

143. Because the application of Pella's warranty must be determined customer by customer, Defendants lack knowledge or information sufficient to form a belief about the truth as to the allegations contained in Paragraph 143 and, as a result, neither admit nor deny the allegations in Paragraph 143 but demand strict proof thereof. In the alternative, Defendants deny the allegations in Paragraph 143.

144. Defendants deny the allegations in Paragraph 144.

145. Defendants admit only that 28 U.S.C. § 2201 (a) provides that "[A]ny court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." Defendants deny the remaining allegations in Paragraph 145.

146. Defendants deny the allegations in Paragraph 146.

147. Defendants deny the allegations in Paragraph 147.

WHEREFORE, Defendants Pella Corporation and Pella Windows and Doors, Inc., deny that Plaintiffs Kent Eubank, Jerry Davis, Ricky Falaschetti, Rita Cicinelli, Robert Josephberg, Jeffrey Acton, Kenneth Hechtman, Leo Bateman, James Neiman, Amy Chasin, and Edward Ruhnke, individually and on behalf of all others similarly situated, are entitled to any declaration against them and/or judgment against them in any amount whatsoever, and further pray that this Court dismiss Plaintiffs' Seventh Amended Class Action Complaint with prejudice and award Defendants their costs and all other relief deemed just and equitable.

JURY DEMAND

Defendants pray for and are entitled to trial by jury on all issues.

ADDITIONAL DEFENSES

Without prejudice to their denials and any and all other statements made in their Answer, Defendants for and as their Defenses to Plaintiffs' Seventh Amended Class Action Complaint state as follows.

148. **FIRST DEFENSE:** Subsequent to purchasing the windows, Plaintiffs caused or allowed the condition of the windows to be modified or altered from the condition they were in at the time of purchase.

149. **SECOND DEFENSE:** Any injuries or damages, as alleged in Plaintiffs' Seventh Amended Class Action Complaint, proximately resulted, in whole or in part, from the change in the condition of the windows between the time of their purchase and the time of the occurrence alleged in Plaintiffs' Seventh Amended Class Action Complaint.

150. **THIRD DEFENSE:** Any injuries or damages, as alleged in Plaintiffs' Seventh Amended Class Action Complaint, proximately resulted, in whole or in part, because of Plaintiffs' own negligence and want of care in the use of the windows, or misuse, or due to the

acts or omissions of third parties for whom Defendants are not responsible and, accordingly, Plaintiffs are not entitled to any recovery against Defendants. In the alternative, if any damages are awarded against Defendants, said damages should be diminished in proportion to the amount of negligence, misconduct, and/or fault attributable to Plaintiffs.

151. **FOURTH DEFENSE:** If Pella or PWD is found to be liable to Plaintiffs (said liability being denied), Defendants are only severally liable for any damages, and are liable only for that proportion of recoverable economic and non-economic damages, if any, that the amount of their fault, if any, bears to the aggregate amount of fault of all other tortfeasors whose fault was a proximate cause of the Plaintiffs' injuries or economic loss, pursuant to 735 ILCS § 5/2-1117.

152. **FIFTH DEFENSE:** Plaintiffs' claims are barred by the applicable statutes of limitation and/or repose, or otherwise untimely.

153. **SIXTH DEFENSE:** Certain members of the class of persons that Plaintiffs seek to represent are barred by the principles of collateral estoppel and/or res judicata from asserting claims against Defendants of the nature that Plaintiffs allege in their Seventh Amended Class Action Complaint on such class members' behalf.

154. **SEVENTH DEFENSE:** Certain members of the class of persons that Plaintiffs seek to represent are barred by their prior release of all claims against Defendants of the nature that Plaintiffs allege in their Seventh Amended Class Action Complaint on such class members' behalf.

155. **EIGHTH DEFENSE:** Plaintiffs' claims are barred or should be reduced based upon their failure to mitigate their damages.

156. **NINTH DEFENSE:** To the extent Plaintiffs' Seventh Amended Class Action Complaint seeks recovery of damages for replacement of Pella windows, repair to the structures in which the windows were installed, and the deterioration of other property that allegedly resulted because of the defects in the windows as alleged in Plaintiffs' Seventh Amended Class Action Complaint, such damages constitute economic damages which are not recoverable in tort under the economic loss rule. Therefore, Plaintiffs' claim for such damages fails to state a cause of action for which relief may be granted.

157. **TENTH DEFENSE:** Certain Plaintiffs' and putative class members' claims are barred by the exclusive remedy provisions of particular statutes and/or case law in their respective jurisdictions.

158. **ELEVENTH DEFENSE:** The Seventh Amended Class Action Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

159. **TWELFTH DEFENSE:** Plaintiffs' and the putative class members' claims are barred because Plaintiffs' and the putative class members' injuries or damages were proximately caused by misuse, modification, and abuse of Pella windows by Plaintiff, putative class members, or third parties in a manner neither intended nor foreseen by Defendants or were proximately caused by Plaintiffs', putative class members', and third parties' failure to heed warnings or to follow instructions.

160. **THIRTEENTH DEFENSE:** Plaintiffs' and the putative class members' claims are barred, in whole or in part, because Defendants did not owe a duty to Plaintiffs or the putative class members or breach any duty owed to Plaintiffs or putative class members.

161. **FOURTEENTH DEFENSE:** Plaintiffs and the putative class members may not recover from Defendants because their claims are premised on unreliable, unproven, and unsupported engineering, technical, or scientific theories.

162. **FIFTEENTH DEFENSE:** Plaintiffs have failed to join parties in whose absence complete relief cannot be afforded.

163. **SIXTEENTH DEFENSE:** In the event any settlement is or has been made by any alleged joint tortfeasor, Defendants demand the full credit to which they are entitled under law.

164. **SEVENTEENTH DEFENSE:** Plaintiffs' and the putative class members' claims against Defendants are barred, in whole or in part, because the product at issue conformed to the state of the art for the design, manufacture, and warning of such, or similar products at the time it was manufactured.

165. **EIGHTEENTH DEFENSE:** Plaintiffs' and the putative class members' claims against Defendants are barred, in whole or in part, for failure to provide the required notice, which may be a necessary condition precedent.

166. **NINETEENTH DEFENSE:** While denying at all times that Plaintiffs or the putative class members are entitled to any damages, in the event Plaintiffs or the putative class members are entitled to any damages, Defendants are entitled to a credit for the time Plaintiffs and the putative class benefited from their use of the products.

167. **TWENTIETH DEFENSE:** Plaintiffs' and the putative class member's damages, if any, may have been caused, in whole or in part, by an intervening and/or superseding cause or causes sufficient to break the causal nexus to any alleged act or omission of Defendants.

168. **TWENTY-FIRST DEFENSE:** To the extent not incorporated above, Defendants raise all affirmative defenses available under the law of any state whose substantive law controls this action.

169. **TWENTY-SECOND DEFENSE:** Defendants reserve the right to amend their Answers and Defenses and to raise any and all defenses that may become apparent in the course of this action as it obtains further information about the claims alleged in Plaintiffs' Seventh Amended Class Action Complaint.

Wherefore, Defendants Pella Corporation and Pella Windows and Doors, Inc. deny that Plaintiffs Kent Eubank, Jerry Davis, Ricky Falaschetti, Rita Cicinelli, Robert Josephberg, Jeffrey Acton, Kenneth Hechtman, Leo Bateman, James Neiman, Amy Chasin, and Edward Ruhnke, individually and on behalf of all others similarly situated, are entitled to a judgment against them in any amount whatsoever, and further pray that this Court dismiss Plaintiffs' Seventh Amended Class Action Complaint with prejudice and award Defendants their costs and all other relief deemed just and equitable. In the alternative, and to the extent any damages are awarded to Plaintiffs, said amount of damages should be limited to the proportion of fault Defendants bear to the aggregate amount of fault of all other tortfeasors whose fault was a proximate cause of Plaintiffs' injury or economic loss.

Respectfully submitted,

Dated: May 24, 2016

FAEGRE BAKER DANIELS LLP

s/ John A. Roberts

John A. Roberts, Atty ID No. 6220432
311 S. Wacker Drive, Suite 4300
Chicago, IL 60606
Phone: (312) 212-6500

FAEGRE BAKER DANIELS LLP

s/ John P. Mandler

John P. Mandler
Shane A. Anderson
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
Phone: (612) 766-7000

ATTORNEYS FOR DEFENDANTS