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## UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

In re PLY GEM HOLDINGS INC., : Civil Action No. 14-CV-3577 (JPO) SECURITIES LITIGATION

CLASS ACTION

This Document Relates To:

ALL ACTIONS.

# CONSOLIDATED SECOND AMENDED COMPLAINT

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Lead Plaintiff The Strathclyde Pension Fund ("Strathclyde" or "Lead Plaintiff") makes the following allegations based upon the investigation undertaken by its counsel, which included a review of United States Securities and Exchange Commission ("SEC") filings made by Ply Gem Holdings, Inc. ("Ply Gem" or the "Company"), as well as securities analysts' reports and advisories, press releases, media reports and other public statements issued by or about the Company, and information provided to Lead Plaintiff's counsel by former Ply Gem employees and other individuals with direct knowledge of Ply Gem's business activities. Lead Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

### NATURE OF THE ACTION

1. This is a federal securities class action on behalf of all persons or entities who purchased the common shares of Ply Gem in and/or traceable to the Company's initial public offering of common stock on or about May 23, 2013 (the "IPO"), seeking to pursue remedies under Sections 11, 12(a)(2) and 15 of the Securities Act of 1933 (the "Securities Act").

2. Defendant Ply Gem is a manufacturer of exterior building products for the residential and commercial construction, do-it-yourself, and professional remodeling and renovation markets, whose products are primarily sold in the United States and Canada.

3. On May 22, 2013, the SEC declared effective Ply Gem's Form S-1 registration statement, as amended, which incorporated a prospectus (the "Registration Statement"), offering to sell 18,157,895 Ply Gem common shares (including 2,368,421 common shares pursuant to overallotment options issued to the Company's underwriters) to the public at a proposed price of \$20.00 per share.

4. On May 23, 2013, Ply Gem sold 18,157,895 shares of common stock to the public in the IPO at a price of \$21.00 per share and received net proceeds of approximately \$353.4 million

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therefrom. Following the IPO, Ply Gem common stock was listed and traded on the New York Stock Exchange ("NYSE") under the symbol "PGEM."

5. Before the IPO, Ply Gem had accumulated a large amount of debt. On March 30, 2013, its liabilities totaled \$1.249 billion, exceeding its total assets of \$906 million by \$343 million. Ply Gem's long-term debt at March 31, 2013 accounted for the lion's share of its total liabilities on that date, which consisted largely of 9.375% Senior Notes maturing on April 15, 2017 and 8.25% Senior Secured Notes maturing on February 15, 2018 (the "Senior Notes"). Thus, by the time of the IPO, Ply Gem needed to raise capital to address its debt situation.

6. The indenture governing the Senior Notes subjected Ply Gem to the informational reporting requirements of the Securities Exchange Act of 1934 (the "Exchange Act"). As a result, before the IPO, Ply Gem was a reporting company and filed annual, quarterly and current reports required of Exchange Act registrants with the SEC.

7. According to the Registration Statement, approximately \$190 million, or approximately 62%, of the estimated net proceeds raised in the IPO was to be used to pay down Ply Gem's then existing debt.

8. The Registration Statement for the IPO was negligently prepared and, as a result, contained untrue statements of material fact and omitted to disclose material information that was required to be disclosed pursuant to the regulations governing its preparation. Specifically, the Registration Statement failed to disclose known material trends, events and uncertainties that were reasonably likely to have a material adverse effect on Ply Gem's future operating results.

9. First, the Registration Statement failed to disclose that, by the time of the IPO, Ply Gem was experiencing ongoing operational inefficiencies and ramp-up costs with a new manufacturing facility, which was then having a material adverse effect on the Company's

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operations and financial results. In late 2012, Ply Gem and The Home Depot, Inc. ("Home Depot") entered into a supply agreement (the "HD Supply Agreement"), under which Ply Gem agreed to manufacture and supply windows to approximately 300 Home Depot stores in its Texas, Oklahoma, Louisiana and Arkansas markets. Although the windows to be manufactured for Home Depot under the HD Supply Agreement were to be produced at this new manufacturing facility, the Registration Statement failed to disclose the production problems and increased costs the Company was then experiencing, as detailed further herein.

10. Second, the HD Supply Agreement required that Ply Gem initially sell a large volume of lower-priced, lower-margin windows – first aluminum windows and then vinyl windows – to Home Depot. The sale of these windows to Home Depot was having a material adverse effect on the Company's 2013 second-quarter profit margins and operating results, since a high percentage of the Company's incremental sales during the quarter were heavily weighted with these low-margin products. The Registration Statement failed to disclose that Ply Gem was earning little, if any, profit on the initial deliveries of windows to Home Depot under the HD Supply Agreement, which, in turn, was having a material adverse effect on the Company's operating results.

11. Third, the HD Supply Agreement required Ply Gem to purchase a certain amount of Home Depot's existing window inventory. Before the IPO, Ply Gem either junked that inventory or sold it at greatly reduced prices, causing the Company to experience significant losses on the windows it acquired from Home Depot.

12. Lastly, at the time of the IPO (in May 2013), Ply Gem was experiencing declining sales of big ticket repair and remodeling items due to customers' high inventory levels. At that time, Defendants knew that Ply Gem's first quarter vinyl siding sales had experienced growth while, according to industry figures, the overall vinyl siding market had experienced declining sales. Thus,

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Defendants knew that Ply Gem's customers were over-inventoried with vinyl siding products and that, as a result, these customers had greatly reduced their purchases in April and May 2013, and would be reducing future purchases.

13. Throughout 2013, Ply Gem reported disappointing financial results as it continued to be negatively impacted by operational inefficiencies and the HD Supply Agreement.

14. At the time of the filing of the initial action in this consolidated case, Ply Gem stock traded at \$11.83 per share, a 44% decline from the IPO price.

### JURISDICTION AND VENUE

15. The claims asserted herein arise under and pursuant to Sections 11, 12(a)(2) and 15 of the Securities Act [15 U.S.C. §§77k, 77l(a)(2) and 77o].

16. This Court has jurisdiction over this action pursuant to Section 22 of the Securities Act [15 U.S.C. §77v] and 28 U.S.C. §1331.

17. Venue is properly laid in this District pursuant to Section 22 of the Securities Act and 28 U.S.C. §§1391(b) and (c). The acts and conduct complained of herein occurred in substantial part in this District, as the IPO was marketed in this District. In addition, certain of the Underwriter Defendants, defined below, maintain their executive offices in this District.

18. In connection with the acts and conduct alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including the mails and telephonic communications and the facilities of the NYSE, a national stock exchange located in this District.

### PARTIES

19. Lead Plaintiff, as set forth in its certification previously filed with this Court and incorporated by reference herein, purchased Ply Gem common shares in and traceable to the IPO and was damaged thereby.

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20. Defendant Ply Gem manufactures and sells residential and commercial building products primarily in the United States and Canada.

21. Defendant Gary E. Robinette ("Robinette") served as Ply Gem's President, Chief Executive Officer and a Director (as Vice Chairman of Ply Gem's Board of Directors) at the time of the IPO.

22. Defendant Shawn K. Poe ("Poe") served as Ply Gem's Vice President, Chief Financial Officer, Treasurer and Secretary at the time of the IPO.

23. Defendant Frederick J. Iseman ("Iseman") served as a Ply Gem Director (as Chairman of Ply Gem's Board of Directors) at the time of the IPO.

24. Defendants Robert A. Ferris ("Ferris"), Steven M. Lefkowitz ("Lefkowitz"), John D. Roach ("Roach"), Michael P. Haley ("Haley"), Timothy T. Hall ("Hall") and Jeffrey T. Barber ("Barber") each served as Directors of Ply Gem at the time of the IPO.

25. Defendants Robinette, Poe, Iseman, Ferris, Lefkowitz, Roach, Haley, Hall and Barber are collectively referred to herein as the "Individual Defendants." Each of the Individual Defendants signed the Registration Statement.

26. Defendants J.P. Morgan Securities LLC ("J.P. Morgan"), Credit Suisse Securities (USA) LLC ("Credit Suisse") and Goldman, Sachs & Co. ("Goldman Sachs") acted as underwriters, joint book-running managers and representatives of the underwriters in connection with the IPO.

27. Defendants UBS Securities LLC ("UBS"), Deutsche Bank Securities Inc. ("Deutsche Bank"), Zelman Partners LLC ("Zelman"), BB&T Capital Markets, a division of BB&T Securities, LLC ("BB&T") and Stephens Inc. ("Stephens") acted as underwriters in connection with the IPO.

Defendants J.P. Morgan, Credit Suisse, Goldman Sachs, UBS, Deutsche Bank,
Zelman, BB&T and Stephens are collectively referred to herein as the "Underwriter Defendants."

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The Underwriter Defendants participated in the drafting and dissemination of the Registration Statement and collectively received discounts and commissions of approximately \$25.4 million in connection with the IPO.

29. The Underwriter Defendants failed to perform adequate due diligence in connection with their role as underwriters and were negligent in failing to ensure that the Registration Statement was prepared properly, accurately and free from misstatements or omissions of material fact. The Underwriter Defendants' failure to conduct an adequate due diligence investigation was a substantial factor leading to the harm complained of herein.

30. Defendant Ply Gem, the Individual Defendants and the Underwriter Defendants are collectively referred to herein as "Defendants."

### **CLASS ACTION ALLEGATIONS**

31. Lead Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of itself and all persons or entities who purchased the common shares of Ply Gem in and/or traceable to the IPO (the "Class") that were damaged thereby. Excluded from the Class are Defendants named herein, members of the immediate families of each of the Defendants, any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any Defendant, and the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party.

32. The members of the Class are so numerous that joinder of all members is impracticable. Ply Gem issued 18,157,895 of its common shares in the IPO. The precise number of members in the Class is unknown to Lead Plaintiff at this time but is believed to be in the thousands. In addition, the names and addresses of the Class members can be ascertained from the books and records of Ply Gem, its transfer agent or the underwriters of the IPO. Notice can be provided to such

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record owners by a combination of published notice and first-class mail, using techniques and a form of notice similar to those customarily used in class actions arising under the federal securities laws.

33. Lead Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Lead Plaintiff has retained competent counsel experienced in class action litigation under the federal securities laws to further ensure such protection and intends to prosecute this action vigorously.

34. Lead Plaintiff's claims are typical of the claims of the other members of the Class because Lead Plaintiff and all the Class members' damages arise from and were caused by the same materially false representations and/or omissions made by or chargeable to Defendants. Lead Plaintiff does not have any interests antagonistic to, or in conflict with, the Class.

35. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the Class members to seek redress for the wrongful conduct alleged. Lead Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

36. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by Defendants' acts as alleged herein;

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(b) whether the Registration Statement issued by Defendants to the investing public in connection with the IPO negligently omitted and/or misrepresented material facts about Ply Gem and its business; and

(c) the extent of the injury sustained by members of the Class and the proper measure of damages.

### SUBSTANTIVE ALLEGATIONS

### The Company and Its Business

37. Defendant Ply Gem manufactures residential and commercial building products for sale primarily in the United States and Canada. The Company utilizes a multi-channel distribution network that serves both the new construction and the home repair and remodeling markets via a broad customer base of specialty and wholesale distributors, retail home centers, lumberyards, builders and remodeling dealers.

38. Ply Gem conducts its operations through two business segments: the Siding, Fencing and Stone ("SF&S") segment; and the Windows and Doors ("W&D") segment. At the time of the IPO, the SF&S and W&D segments accounted for approximately 54% and 46% of the Company's sales, respectively.

39. The SF&S segment, which primarily focuses on the home repair and remodeling market, manufactures and sells a comprehensive line of vinyl and stone veneer products – including vinyl siding and skirting, vinyl and aluminum soffit, aluminum trim coil, various trim and moldings, rain removal systems, designer accents such as shakes, shingles, scallops, shutters, vents and mounts, vinyl fencing, vinyl and composite railing and stone veneer.

40. The W&D segment manufactures and sells a variety of vinyl, aluminum and wood windows and patio doors, and steel, wood and fiberglass entry doors. Although the W&D segment has historically targeted the new construction market (as opposed to the repair and remodeling

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market), by the time of the IPO Ply Gem had started expanding its presence in the home repair and remodel window sector by launching a new series of repair and remodel window products.

### The Registration Statement Omitted Material Information Required to Be Disclosed Therein

41. The Registration Statement was negligently prepared and, as a result, contained untrue statements of material fact and omitted to disclose material information that was required to be disclosed pursuant to the regulations governing its preparation. First, the Registration Statement negligently failed to identify and disclose known trends, events, demands, commitments and uncertainties that were then having and were reasonably likely to have a material effect on a Ply Gem's operating performance. Second, the Registration Statement negligently failed to advise investors about significant, then-existing matters that made the IPO speculative or risky.

42. Item 11 of Form S-1 required the Registration Statement to furnish the information called for under Item 303 of Regulation S-K [17 C.F.R. §229.303], *Management's Discussion and Analysis of Financial Condition and Results of Operations* ("MD&A"). As set forth in the December 29, 2003 interpretative release to Item 303 of Regulation S-K issued by the SEC (the "2003 Interpretive Release"), the purpose of MD&A is to provide investors with information necessary to an understanding of a company's results of operations, including the identification and disclosure of known trends, events, demands, commitments and uncertainties that are reasonably likely to have a material effect on a company's operating performance.

43. The instructions to Item 303(a) of Regulation S-K required that the Registration Statement provide disclosure about and "focus specifically" on material events and uncertainties that would cause Ply Gem's reported financial information not to be necessarily indicative of future operating results, including "matters that would have an impact on future operations and [matters

that] have not had an impact in the past" stating, in pertinent part, as follows:<sup>1</sup>

The discussion and analysis shall focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include descriptions and amounts of (A) matters that would have an impact on future operations and have not had an impact in the past, and (B) matters that have had an impact on reported operations and are not expected to have an impact upon future operations.

44. The 2003 Interpretive Release also provides that the Registration Statement was

required to provide disclosure about known demands, events or uncertainties, except for those that management determined: (i) were not reasonably likely to occur; or (ii) would not have a material effect on Ply Gem's operating results. The 2003 Interpretive Release states, in pertinent part, as follows:

As we have explained in prior guidance, disclosure of a trend, demand, commitment, event or uncertainty **is required unless** a company is able to conclude either that it is not reasonably likely that the trend, uncertainty or other event will occur or come to fruition, or that a material effect on the company's liquidity, capital resources or results of operations is not reasonably likely to occur.

45. **The HD Supply Agreement**: In late 2012, Ply Gem and Home Depot entered into the HD Supply Agreement, whereby Ply Gem agreed to manufacture and supply windows to approximately 300 Home Depot stores in its Texas, Oklahoma, Louisiana and Arkansas markets. The HD Supply Agreement was material to Ply Gem's 2013 operations, as it was expected to provide the Company with \$40-\$50 million of incremental business.

46. Three events associated with the HD Supply Agreement that occurred before the IPO caused Ply Gem's historical financial results reported in the Registration Statement to differ materially from the operating results it reported during the quarter immediately after the IPO, the

<sup>&</sup>lt;sup>1</sup> Unless otherwise noted, all emphasis herein is added.

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period ended June 29, 2013 ("Q2"): (i) Ply Gem was experiencing material operational inefficiencies and ramp-up costs at a new manufacturing facility that was slated to manufacture vinyl windows for Home Depot; (ii) the HD Supply Agreement required that Ply Gem initially sell a large volume of low-margin aluminum and vinyl windows to Home Depot; and (iii) the HD Supply Agreement obligated Ply Gem to buy back existing Home Depot window inventory.

47. **Manufacturing Problems**: In late 2012, Ply Gem began converting an existing warehouse on French Settlement Road in Dallas, Texas to the manufacturing plant (the "Dallas Plant") where it was to make vinyl windows for, among others, Home Depot. From the outset, the conversion of the pre-existing warehouse was dysfunctional, resulting in the Dallas Plant being behind schedule and millions of dollars over budget.

48. Nonetheless, under pressure to meet manufacturing deadlines, including those associated with the HD Supply Agreement, the Dallas Plant began operating prematurely, utilizing a new workforce of relatively inexperienced employees, commencing production without the necessary manufacturing equipment, and operating before securing requisite occupancy approvals from local authorities.

49. These and other operational inefficiencies at the Dallas Plant amplified the costs associated with the production of the vinyl windows manufactured for Home Depot and others. For example, without the necessary equipment to fabricate glass window panes, the Company was forced to buy window panes from another company, Cardinal Glass Industries, at a steep premium to Ply Gem's cost to fabricate.

50. In addition, the Dallas Plant produced a large volume of defective windows, including windows without National Fenestration Rating Council energy performance labeling, windows

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without Low E film, windows without grids, and other manufacturing defects, which also increased manufacturing costs.

51. Ply Gem's executive management *knew, before the IPO*, of the material, adverse operational issues at the Dallas Plant. In fact, the President of Ply Gem's W&D segment publicly chastised the Dallas Plant manager, saying words to the effect that if you make me lose this IPO, you'll never work again. In addition, Ply Gem fired the Vice President in charge of the Dallas Plant.

52. The inefficiencies associated with the conversion of the Dallas Plant and the ramping up of Ply Gem's processes to manufacture the vinyl windows to be sold to Home Depot and others materially inflated the costs incurred by the Company before the IPO and had a material adverse effect on Ply Gem's second quarter ("Q2") profit margins and operating results – the first reported financial results following the IPO.

53. On August 13, 2013, Ply Gem issued a press release announcing its financial results for the second quarter of 2013, the period ending June 29, 2013. The press release revealed that, for the quarter, Ply Gem's gross profit margin declined by 15% on a year-over-year basis, from 23.88% during the quarter ended June 30, 2012, to 20.17% during the quarter ended June 29, 2013. This decline in Ply Gem's gross margin caused the Company's reported gross profit to decrease by approximately \$13.6 million.

54. After Ply Gem announced its Q2 financial results, it held a conference call with analysts and investors (the "Q2 conference call") to discuss its Q2 operations. On the Q2 conference call, Defendants Poe and Robinette revealed that "abnormal" manufacturing issues associated with the production of vinyl windows and a high volume of low-margin aluminum windows accounted for approximately \$8 million of the \$13.6 million decline in gross profit, while the buyback of

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existing Home Depot window inventory accounted for \$2.2 million of the \$13.6 million gross profit decline.<sup>2</sup>

55. On the Q2 conference call, Defendant Robinette noted that Ply Gem's profitability during Q2 had been adversely impacted by "abnormal inefficiencies due to the ramp up costs" associated with the increase in the number of window units being manufactured, stating, in pertinent

part, as follows:

The expected recovery in the US housing market still represents a significant growth opportunity for Ply Gem, as demonstrated by our window units being up the first half of 2013 by nearly 50%. However, as we have mentioned in the past, that also brings near-term challenges primarily in the form of labor resource requirements to meet the increasing market demand, as well as a lower end mix of products in this early stage of the recovery. Both of these having an unusual effect on our profit performance because of the abnormal inefficiencies due to the ramp up costs to produce this substantial increase.

56. Also on the Q2 conference call, Defendant Poe explained that a greater than 15%

year-over-year, gross profit margin decline during Q2 was "largely due" to "labor inefficiency and

ramp up costs that were incurred in our US window business," and that "increased costs associated

with the consolidation and startup costs of our production facilities in Dallas, Texas" also adversely

affected Ply Gem's profitability during Q2, stating, in pertinent part, as follows:

Our gross profit margin for the second quarter of 2013 was 20.2% as compared to a gross profit margin of 23.9% [representing a more than 15% decline] in the same period in 2012. The reduction in gross profit percentage was largely due to the labor inefficiency and ramp up costs that were incurred in our US window business related to the significant increase in unit volumes in which we have experienced for the third consecutive quarter of volume increase in excess of 100% on certain product categories. We also incurred increased costs associated with the consolidation and startup costs of our production facilities in Dallas, Texas, as well as our enterprise lean initiative, which will lead to improved operating flexibility in the future.

 $<sup>^2</sup>$  The balance of the gross profit decline, totaling approximately \$3.4 million, is not at issue in this case.

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57. As detailed further herein, Ply Gem continued to report disappointing financial results during 2013 and cited to continuing manufacturing issues at the Dallas facility as one of the primary factors.

58. **Low-Margin Window Sales**: Pursuant to the HD Supply Agreement, Ply Gem initially sold to Home Depot a large volume of low-margin aluminum windows. After Home Depot purchased its initial order of low-margin, aluminum windows, the low-margin vinyl windows produced at the Dallas Plant were sold to Home Depot.

59. The sales of these low-margin windows to Home Depot had a material adverse effect on Ply Gem's Q2 operating results, as a high percentage of the Company's incremental sales during Q2 were heavily weighted with low-margin products.

60. During the Q2 conference call, Defendant Robinette noted that low-margin aluminum windows sold to Home Depot adversely impacted Ply Gem's Q2 operating results by wreaking "havoc" on the Company's product sales mix, stating, in pertinent part, as follows:

... the first part of the [Home Depot] rollout was the low end aluminum [windows], and I do mean low end, okay. So it really played havoc with our mix.

61. **Buyback of Home Depot Window Inventory**: The HD Supply Agreement obligated Ply Gem to "buy back" a certain amount of Home Depot's existing window inventory, which Home Depot had purchased from American Craftsman (an Andersen Corporation), another window manufacturer. During the months before the IPO, Ply Gem paid Carter Logistics to transport the windows to a Company warehouse on La Reunion Parkway in Dallas, Texas (the "La Reunion warehouse"). The volume of windows purchased by Ply Gem from Home Depot was such that Ply Gem's La Reunion warehouse received approximately five to six tractor trailer loads of windows per day, seven days per week.

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62. Ply Gem agreed to purchase window inventory from Home Depot so that it could obtain the shelf space previously occupied by the American Craftsman windows at Home Depot store locations.

63. By the time of the IPO, Ply Gem had sustained material undisclosed losses on the windows it purchased from Home Depot. After Ply Gem purchased the windows from Home Depot, they were discarded in garbage dumpsters or auctioned to inventory liquidators at very steep discounts to retail prices. The number of windows scrapped by Ply Gem was such that the Company had difficulty procuring dumpsters sufficient to accommodate the number of windows being discarded at the La Reunion warehouse. In addition to the cost of the windows, Ply Gem incurred material costs associated with transportation, warehousing and labor necessary to process the windows it purchased from Home Depot.

64. As a result of the foregoing, by the time of the IPO, Ply Gem had incurred material losses on the windows it agreed to buy from Home Depot pursuant to the HD Supply Agreement, as Defendant Robinette quantified during the Q2 conference call. Concerning the adverse Q2 impact of the Home Depot window buy back, he stated, in pertinent part, as follows:

... I guess the one thing I would add too to clarify on it is during the quarter, we did have a buyback, if you will, associated with that new customer win, which is really a one-time cost that does affect the margins on the quarter by about a full, a little over a full 100 basis points. So it represents about 20% to 25% of that margin compression in the Window and Door segment and that would not be an ongoing type thing.

65. **Declining Big Ticket Repair and Remodeling Sales**: At the time of the IPO, Ply Gem was experiencing declining sales of big ticket repair and remodeling items due to customers' high inventory levels. At that time, Defendants knew that Ply Gem's first quarter vinyl siding sales had experienced growth while, according to industry figures, the overall vinyl siding market had experienced declining sales. Thus, Defendants knew that Ply Gem's customers were over-

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inventoried with vinyl siding products, and that, as a result, these customers had greatly reduced their purchases in April and May 2013, and would be reducing future purchases.

66. During the Q2 conference call, Defendant Robinette noted that Ply Gem's Q2 financial results were negatively impacted by "sluggish" demand for the "big ticket repair and remodeling items." Defendant Robinette stated in pertinent part as follows:

Our second-quarter sales continue to benefit from the recovery of the new construction markets. However, demand for the big ticket repair and remodeling items remains sluggish and were further compressed by the unfavorable weather conditions in our trading areas that drove higher inventory levels within distribution channels, which then of course, resulted in a lower demand for our R&R products during April and May.

67. During the Q2 conference call, analysts sought additional information about channel

inventory. Defendants Robinette and Poe acknowledged that Ply Gem's biggest siding customers told them "March was their worst March in eight years," which, in turn, had a material adverse effect on the Company's SF&S operations during April and May of 2013. Defendants Robinette and Poe further acknowledged that they knew, based on their prior sales to these customers, that the customers were carrying significant amounts of inventory and would have to reduce purchases in the future. The following exchange took place:

**Defendant Poe**: As many of you are aware, our vinyl siding sales are weighted towards repair remodeling market, which as Gary mentioned, was impacted by sluggish demand during the second quarter due in part from our customers ending the first quarter with higher levels of inventory, thus reducing demand for our products in April and May.

\* \* \*

**Michael Rehaut, Analyst, J.P. Morgan**: Okay. One last one and I'll turn it over to others. You mentioned in the prepared remarks about the slower sales and demand because of inventory in the channel in April and May. Any change in those trends in June, if you did -- if you felt like the excess inventory in the channel perhaps it almost seemed like it was implying that it worked through April and May. What -- were there any difference in terms of your sales into the channel in June?

**Defendant Poe**: Yes, let me -- let us give you the, I guess the trajectory of the second-quarter build, Michael. I think that answers it a lot. First, and when we talked about that channel inventory, that specifically impacts our Siding, Fence and Stone business, because that's a made-to-inventory product. Windows and Doors, there's essentially no inventory there. So if you were looking at their sales, they were pretty consistent during the quarter, and consistently strong, I might add. In Siding, March was somewhat of a normal month, but that's where the weather impacted our customers. April, sales were down 25%. May, they were up in the mid-single digits. June, they were up upper teens. And so clearly, it was very clear. And our sales to some extent, while we outperformed the VSI, or the vinyl siding industry, they mirrored in terms of the pattern that the industry saw.

**Defendant Robinette**: So to add to that, Michael, our customers in that channel, which are big customers that are well documented, they told us that their March was their worst March in eight years. And it wasn't ours. So we knew that it--

Defendant Poe: It was coming.

**Defendant Robinette**: That it was going to hit and it hit in April. And maybe it wasn't our worst April in eight years, but it was our worst April in a while, so as Shawn said . . .

68. Thus, at the time of the IPO, Defendants knew that Ply Gem's customers were over-

inventoried and, as a result, had been scaling back purchases.

69. As detailed above, in violation of the disclosure obligations required by Item 303 of

Regulation S-K, the Registration Statement failed to disclose the following known material trends, events, demands, commitments and uncertainties that were then having, and were reasonably likely to continue having, a material adverse effect on Ply Gem's Q2 reported operating results, including its reported gross profit, operating loss, loss before income taxes, net loss and comprehensive loss, as well as its W&D segment's reported gross profit and operating loss:

(a) that Ply Gem and its W&D business segment were experiencing ongoing operational inefficiencies and ramp-up costs associated with vinyl windows, which at the time of the IPO were having a material adverse effect on the Company's operations and financial results;

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(b) that the HD Supply Agreement required that Ply Gem initially sell a large volume of lower-priced, lower-margin product to Home Depot, which caused the Company's profit margins to decline;

(c) that Ply Gem had agreed to buy back significant amounts of window inventory from Home Depot, and the Company had been incurring a substantial loss on such windows; and

(d) that high customer inventory at the end of the Company's first quarter had adversely affected the demand for and sales of big ticket repair and remodeling products in April 2013 and May 2013, which was then having a materially adverse effect on the Company's SF&S operations during Q2.

#### The Omitted Facts Were Material

70. As detailed above, the Registration Statement failed to disclose facts that were required to be stated therein. The omitted facts were highly material information to investors.

71. Generally Accepted Accounting Principles, as reflected in the SEC's Staff Accounting Bulletin No. 99 ("SAB No. 99"), provide that materiality in the context of financial information not only includes an assessment of the magnitude of the misstatement in percentage terms, but also requires an assessment of the factual context in which the user of financial statements would view the financial information (referred to in accounting and auditing literature as "quantitative" and "qualitative" factors).

72. Thus, SAB No. 99 notes, in pertinent part, that:

The FASB rejected a formulaic approach to discharging "the onerous duty of making materiality decisions" in favor of an approach that takes into account all the relevant considerations. In so doing, it made clear that -

[M]agnitude by itself, without regard to the nature of the item and the circumstances in which the judgment has to be made, will not generally be a sufficient basis for a materiality judgment. [Footnotes omitted.]

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73. Accordingly, SAB No. 99 provides "the staff believes that there are numerous circumstances in which [financial] misstatements below 5% could well be material. Qualitative factors may cause [financial] misstatements of quantitatively small amounts to be material."

74. During the Q&A session of the Q2 conference call, a securities analyst sought additional specificity about the reasons for the approximate \$13.6 million year-over-year decline in Ply Gem's gross profit during Q2. Defendant Poe explained that the combined effects of inefficiencies and ramp-up costs associated with the production of low-margin vinyl windows for Home Depot, and the sale of a high volume of low-margin aluminum windows to Home Depot, totaled \$8 million. The following exchange, in pertinent part, transpired:

Michael Rehaut - JPMorgan – Analyst:

First question I had was on the margins and would love to get color in terms of by segment. I guess we might have to wait for the Q to come out on that. But you mentioned several items that impacted profitability this quarter and I was hoping to get a better sense of how much each of these items was either on a dollar basis or a basis point perspective. You mentioned labor inefficiencies and ramp up costs, costs with the Dallas facility, the enterprise lean initiatives and also the aluminum siding, I believe it was, that went through that was an impact. So trying to get a sense for each of these dollar impact and when you might -- some of these I think still might continue for a quarter or two, others sounded more like limited perhaps to this quarter. So any additional granularity there would be very helpful.

## Defendant Poe:

Sure. Let me hit some of the highlights there, Michael. I'll start with our Siding, Fence and Stone segment, because that's pretty straightforward. As we said, it was tied really to aluminum costs and the relationship of the costs that flushed through costs of goods sold for the quarter relative to selling price. And that impact was approximately \$3 million on the quarter, which essentially accounts for, on a normalized basis, the reduction that you saw in that segment.

In the Window and Door segment, I'll touch on a few of the points that impacted that. Our enterprise lean initiative in the quarter impacted us by around three quarters, about \$700,000 on the quarter, and about \$0.5 million associated with the Dallas facility. So that was a component. The other piece was really the -- a combination and they go in together. The inefficiencies associated with ramp up costs, and that's really the volume increases we talked about and specifically on

our aluminum windows, where the volumes were up 100% and overall our windows being up call it 50% in the US. That drove, call it something in the \$8 million range of negative impact. And it's not just deficiencies, it impacts -- they're tied together in that there's a mix component of it, Michael, and if that increase in volume was skewed towards our lower earned value product, some of it was specific to a new customer that rolled out during the first half of the year, and the rollout -- their initial rollout was on their lower margin, the lower margin product, and then in the second half of the year we'll be rolling out the higher margin product. And that was Home Depot who we picked up coming into this year and that we're rolled out in the second half.

So some of that will abate in the second half of the year. I would say in terms of the volume, the ramp up costs, as I think Gary and I have said many times, that on -- as long as volumes are going up 50% and you're dealing with a made-to-order product, that will continue to be a challenge. But once you essentially stabilize the labor force to that level of volume, than you turn -- the next period than you're making money on that incremental volume. So it will continue to be a challenge for the second half of the year, but ultimately then those sales will contribute to the bottom line as we look forward.

75. In its Form 10-Q for the quarter ended June 29, 2013 (the "Q2 Form 10-Q"), Ply

Gem's Statements of Operations and Comprehensive Loss for the quarter ended June 29, 2013 set

forth the following operating result captions, as provided in Regulation S-X [17 C.F.R. §210]: (i) gross profit, (ii) operating earnings, (iii) loss before benefit for income taxes, and (iv) comprehensive loss. As alleged above, Defendants have admitted that, during Q2 2013, the inefficiencies and costs associated with the production of low-margin vinyl windows and the sale of a high volume of low-margin aluminum windows totaled \$8 million. The following chart reveals the combined quantitative impact of these inefficiencies and costs on the operating result metrics reported on the Company's Q2 Form 10-Q, including the amount the Company would have reported for each caption absent those inefficiencies and costs ("As Adjusted"):

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(In thousands of \$)	As Reported	Ineffic & Costs w/ Low -Margin <u>Windows</u>	<u>As Adjusted</u>	<u>% Impact</u>
Gross Profit	\$74,260	\$8,000	\$82,260	9.73%
Operating Earnings	\$662	\$8,000	\$8,662	92.36%
Loss Before Income Taxes	\$51,608	\$8,000	\$43,608	18.35%
Net Loss	\$50,877	\$8,000	\$42,877	18.66%
Comprehensive Loss	\$53,092	\$8,000	\$45,092	17.74%

76. As noted above, during the Q2 conference call, Defendant Robinette approximated the Q2 effect of the Home Depot buyback as causing "a little over a full 100 basis points," or "20% to 25% of that margin compression," in the W&D segment. The Q2 Form 10-Q discloses that, during the quarter ended June 29, 2013, the W&D segment's gross margin declined from 15.7% to 11.2% on a year-over-year basis. Twenty-five percent of this margin compression totals 1.125%, or "a little over a full 100 basis points," as Defendant Robinette noted. Since W&D segment sales totaled \$169.0 million during Q2, the Home Depot buyback, according to Defendant Robinette, reduced Ply Gem's gross profit and operating income and increased its income before taxes and net loss by approximately \$1.90 million.

77. In its Q2 Form 10-Q, Ply Gem provided greater specificity about the financial impact of the Home Depot buyback, noting "an inventory buyback accommodation of approximately \$2.2 million related to a significant customer win." The quantitative impact of the Home Depot buyback on the Company's operating result metrics reported in the Q2 Form 10-Q is revealed in the following

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chart (with the "As Adjusted" column showing what the Company would have reported for each caption absent the impact of the undisclosed buyback):<sup>3</sup>

(In thousands of \$)	As Reported	HD Buyback	<u>As Adjusted</u>	<u>% Impact</u>
Gross Profit	\$74,260	\$2,200	\$76,460	2.88%
Operating Earnings	\$662	\$2,200	\$2,862	76.87%
Loss Before Income Taxes	\$51,608	\$2,200	\$49,408	4.45%
Net Loss	\$50,877	\$2,200	\$48,677	4.52%
Comprehensive Loss	\$53,092	\$2,200	\$50,892	4.32%

78. Moreover, pursuant to SAB No. 99, one of the considerations that may well render a quantitatively small misstatement of a financial statement item material is "[w]hether the misstatement concerns a segment or other portion of the registrant's business that has been identified as playing a significant role in the registrant's operations or profitability."

79. SAB No. 99 states, in pertinent part, as follows:

The materiality of a misstatement may turn on where it appears in the financial statements. For example, a misstatement may involve a segment of the registrant's operations. In that instance, in assessing materiality of a misstatement to the financial statements taken as a whole, registrants and their auditors should consider not only the size of the misstatement but also the significance of the segment information to the financial statements taken as a whole. "A misstatement of the revenue and operating profit of a relatively small segment that is represented by management to be important to the future profitability of the entity" is more likely to be material to investors than a misstatement in a segment that management has not identified as especially important. In assessing the materiality of misstatements in segment information - as with materiality generally -

situations may arise in practice where the auditor will conclude that a matter relating to segment information is qualitatively material even though, in his or her judgment, it is quantitatively immaterial to the financial statements taken as a whole.

<sup>&</sup>lt;sup>3</sup> Using Defendant Robinette's estimate of \$1.90 million, the percentage impact on Ply Gem's gross profit, operating earnings, loss before income taxes, net loss and comprehensive loss is 2.49%, 74.16%, 3.82%, 3.88% and 3.71%, respectively.

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80. The quantitative impact of the Home Depot buyback on the Company's operating result metrics for its W&D segment reported in the Q2 Form 10-Q is revealed in the following chart:<sup>4</sup>

(In thousands of \$)	As Reported	HD Buyback	<u>As Adjusted</u>	<u>% Impact</u>
Gross Profit	\$18,873	\$2,200	\$21,073	10.44%
Operating Loss	\$6,125	\$2,200	\$3,925	56.05%

81. At the time of the IPO, Ply Gem's W&D segment was important to the Company's future profitability, as demonstrated by its growth rate reported in the Registration Statement. During 2012, W&D segment revenue increased *18.63%* on a year-over-year basis, while the revenue of the Company's only other segment, the SF&S segment, increased only *2.93%* on a year-over-year basis. In addition, during the three months ended March 30, 2013, the period for which the most recent financial results were included in the Registration Statement, W&D segment revenue increased *23.84%* on a year-over-year basis, while 2012 SF&S segment *declined 3.55%* on a year-over-year basis.

82. Accordingly, at the time of the IPO, Ply Gem's W&D segment was critical to the Company's future profitability, as reflected in its rate of growth as compared to that of the SF&S segment. As the Registration Statement noted, "[i]n our Windows and Doors segment, where we have historically focused on new construction, we believe that our new window products for home repair and remodeling will be able to drive increased volumes through these manufacturing facilities and enhance operating margins."

<sup>&</sup>lt;sup>4</sup> Using Defendant Robinette's estimate of \$1.90 million, the percentage impact on the Company's operating result metrics for its W&D segment of gross profit and operating earnings 9.15% and 44.96%, respectively.

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83. With respect to the Company's operating result metrics for its W&D segment reported in the Q2 Form 10-Q, the quantitative impact of the inefficiencies and costs associated with the production of low-margin vinyl windows and the sale of a high volume of low-margin aluminum windows is revealed in the following chart:

(In thousands of \$)	<u>As Reported</u>	Ineffic & Costs w/ Low -Margin <u>Windows</u>	<u>As Adjusted</u>	<u>% Impact</u>
Gross Profit	\$18,873	\$8,000	\$26,873	29.77%
<b>Operating Loss (Profit)</b>	\$6,125	\$8,000	(\$1,875)	N/A

84. As noted in SAB No. 99, "[w]hether the misstatement changes a loss into income or vice versa" is among the considerations that may well render material a quantitatively small misstatement of a financial statement item.

85. Moreover, SAB No. 99 provides that the "volatility of the price of a registrant's securities in response to certain types of disclosures may provide guidance as to whether investors regard quantitatively small misstatements as material." When Ply Gem disclosed its Q2 results and the financial impact of the W&D segment-related material events and uncertainties discussed above to the market, the price of its common stock declined more than *19%*, eviscerating nearly a *quarter billion dollars* of its market capitalization. The following chart depicts the price of Ply Gem stock for the period May 23, 2013 through October 31, 2013:



86. Following the issuance of Ply Gem's Q2 financial results, securities analysts reduced

their earnings estimates for the Company. For example:

Stephens Inc. – August 16, 2013:

### **INVESTMENT CONCLUSION:**

PGEM announced a 2Q13 revenue beat despite the wet impact of wet weather, but **EPS missed our number and the Street due to lower margins in the Company's Window and Door business. The big focus on the conference call and the quarter was the lack of incremental margins in this segment, which are expected to abate to some degree in the 3Q, but will likely continue to be lower than normal until next year. [First emphasis in the original.]** 

\* \* \*

## **KEY POINTS:**

**Estimates.** We are updating **our estimates to account for the lower-than-expected quarterly results** and mgmt's comments regarding the Co's outlook, **especially with respect to margins in the Company's window segment and costs going forward**. We would expect to see some of the costs in the quarter abate, such as plant start-up costs, lower priced product mix to some degree, and aluminum impact on cogs vs selling price. However, we get the sense that these margins may realize only small seq. gains in the 3Q and 4Q as the Company navigates through the inefficiencies associated with ramping up the business to handle the significant growth in demand and continued costs associated with the Company's Enterprise Lean initiative. We do not expect to see a general return to normalized incremental margins until next calendar year, and even then need to be on the lookout for possible margin choppiness if aluminum or PVC material costs swing. Specifically, we are taking our estimates down because of the lower-thanexpected margins in the near term and the current drag on R&R demand. [First and second emphasis in the original.]

\* \* \*

Windows and Doors. Despite mgmt. stating that Windows and Doors segment sales were consistent month-to-month throughout the quarter coming in at \$168.9 mil. and up 42.2% yoy, this segment raised the biggest red flag in 2Q13. While 1H13 U.S. window sales improved by almost 50% yoy, gross profit margins were tremendously lower than we anticipated in 2Q13 at 11.2%. Stated reasons for the reduction in gross margin percentage were labor inefficiency and ramp-up costs associated with the large uptick of incurred volume, with aluminum window volumes specifically up 100%. A new customer to PGEM, Home Depot, initially rolled out low margin product introductions in 1H13 and is expected to continue with the rollout process in 2H13, adding in more higher margin, value added products which will help margins relative to 2Q. The Co.'s ability to drive these margins back up to attractive levels will be a key focus for investors looking forward. [First emphasis in the original.]

Credit Suisse – September 10, 2013:

## **Reducing Estimates as Headwinds Persist**

■ Trimming estimates on likely slower demand and persisting margin pressures: We are reducing our estimates for 3Q and 4Q to reflect sluggish demand continuing for siding and likely slowing and persisting margin pressures in windows. We are also reducing our 2014 estimates, driven by our expectation for a more modest recovery in new construction. [First and second emphasis in the original.]

\* \* \*

■ Taking a more conservative view on margins: Given the continued challenges in 2Q and our sense that the labor inefficiencies may persist in the near to medium term as volume recovers across PGEM's platform, we are lowering our margin ests. and now expect op. margins of 6.1% in 2013 (from 6.8%) and 9.1% in 2014 (from 9.7%). [First emphasis in the original.] ■ **Reducing EPS ests**.: We now expect 2013 EPS of \$0.02 (from \$0.21), 2014 EPS of \$1.03 (from \$1.30) and 2015 EPS of \$2.20 (from \$2.55). [First emphasis in the original.]

## The Risk Disclosures in the Registration Statement Were Materially Misleading

87. The risk disclosures included in the Registration Statement failed to advise investors

about significant, then-existing (as opposed to potential) factors that made the IPO speculative or

risky.

88. First, the Registration Statement inaccurately characterized as *potential* the risks

associated with the loss of, or a reduction in orders from, any significant customers, which "could"

cause a decrease in Ply Gem's net income. The Registration Statement stated, in pertinent part, as

follows:

Because we depend on a core group of significant customers, our sales, cash flows from operations and results of operations may decline if our key customers reduce the amount of products that they purchase from us. (Emphasis in the original.)

Our top ten customers accounted for approximately 45.9% of our net sales in the year ended December 31, 2012. Our largest customer for the fiscal year ended December 31, 2012, ABC Supply Co., Inc., distributes our products within its building products distribution business, and accounted for approximately 10.5% of our consolidated 2012 net sales. We expect a small number of customers to continue to account for a substantial portion of our net sales for the foreseeable future.

The loss of, or a significant adverse change in our relationships with our largest customer or any other major customer could cause a material decrease in our net sales. The loss of, or a reduction in orders from, any significant customers, losses arising from customers' disputes regarding shipments, fees, merchandise condition or related matters, or our inability to collect accounts receivable from any major retail customer <u>could cause</u> a decrease in our net income and our cash flows. In addition, revenue from customers that have accounted for significant revenue in past periods, individually or as a group, may not continue, or if continued, may not reach or exceed historical levels in any period.

89. The statements above were inaccurate statements of material fact because the

Registration Statement failed to disclose the significant then-existing, as opposed to potential, risks

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associated with the reduction of orders by Ply Gem's significant vinyl siding customers. As noted above, Defendants Poe and Robinette have acknowledged the existence of a previously undisclosed significant risk at the time of the IPO when they admitted Ply Gem's biggest siding customers told them March was their worst March in eight years, which, in turn, had a materially adverse effect on the Company's SF&S operations during April and May of 2013.

90. In addition, the risk factors noted in the Registration Statement inaccurately characterized as *potential* the risks associated with the effects of periodic labor ramp-up costs, which

"could" result in a decrease in Ply Gem's short-term earnings, stating, in pertinent part, as follows:

## Manufacturing or assembly realignments may result in a decrease in our shortterm earnings, until the expected cost reductions are achieved, due to the costs of implementation. (Emphasis in the original.)

We continually review our manufacturing and assembly operations and sourcing capabilities. Effects of periodic manufacturing realignment, cost savings programs, and labor ramp-up costs <u>could result</u> in a decrease in our short-term earnings until the expected cost reductions are achieved and/or production volumes stabilize. Such programs may include the consolidation and integration of facilities, functions, systems and procedures. Such actions may not be accomplished as quickly as anticipated and the expected cost reductions may not be achieved or sustained.

91. Further, the risk factors noted in the Registration Statement were materially

inaccurate because they characterized as *potential* the risks associated with training additional

workforce, which, "if" needed to handle increased volume and production, "could" increase Ply

Gem's cost structure and decrease its margins, stating, in pertinent part, as follows:

## Our ability to operate and our growth potential could be materially and adversely affected if we cannot employ, train and retain qualified personnel at a competitive cost. (Emphasis in the original).

Many of the products that we manufacture and assemble require manual processes in plant environments. We believe that our success depends upon our ability to employ, train and retain qualified personnel with the ability to design, manufacture and assemble these products. In addition, our ability to expand our operations depends in part on our ability to increase our skilled labor force as the housing market recovers in the United States and Western Canada. A significant increase in the wages paid by competing employers could result in a reduction of our qualified labor force, increases in the wage rates that we must pay, or both. In addition, our ability to quickly and effectively train additional workforce to handle the increased volume and production while minimizing labor inefficiencies and maintaining product quality will be a strategic initiative in a housing market recovery. If either of these events were to occur, our cost structure could increase, our margins could decrease, and any growth potential could be impaired.

92. Each of the statements in ¶¶90 and 91 above were inaccurate statements of material

fact because the Registration Statement failed to disclose the significant then-existing (as opposed to potential) risks associated with the labor inefficiencies and ramp-up costs associated with Ply Gem's window business. After the IPO, during the Q2 conference call to discuss the Company's operations, Defendants Robinette and Poe acknowledged the existence of these previously undisclosed significant risks at the time of the IPO when they explained that labor inefficiencies and ramp-up costs had a material adverse effect on Ply Gem's Q2 operating results, stating, in pertinent part, as follows:

Defendant Robinette:

However, as we have mentioned in the past, that also brings near-term challenges primarily in the form **of labor resource requirements to meet the increasing market demand**, as well as a lower end mix of products in this early stage of the recovery. Both of these **having an unusual effect on our profit performance because of the abnormal inefficiencies due to the ramp up costs to produce this substantial increase**.

## Defendant Poe:

Our gross profit margin for the second quarter of 2013 was 20.2% as compared to a gross profit margin of 23.9% in the same period in 2012. The reduction in gross profit percentage was largely due to the labor inefficiency and ramp up costs that were incurred in our US window business related to the significant increase in unit volumes in which we have experienced for the third consecutive quarter of volume increase in excess of 100% on certain product categories.

93. Then, in response to questions posed by analysts during the Q&A session of the Q2

conference call, Defendant Robinette admitted that "we can dictate or we can predict what our labor

ramp up is going to be," thereby admitting that Ply Gem and its senior management were aware of the undisclosed significant labor-related risks:

So, Michael, if you have a basis, and this may help you or it may not help you, but if your Window unit sales are up 10%, you normally throw overtime and a Saturday or Sunday at it. So you have some inefficiency. If it's up 20%, you have to put -- bring on shifts and of course the difficulty with that is getting, with the labor pool that's left in this market, you have a churn. And then if you're up 40% to 50%, you got a whole different ball game, which is a little bit of a tsunami coming at a plant. I think back to Shawn's point, we can dictate or we can predict what our labor ramp up is going to be. But the inefficiency really comes into the whole price mix of our -- in our financial statements.

94. In fact, while labor inefficiencies and ramp-up costs were then having a material

adverse on Ply Gem's Q2 operating results, the Registration Statement inaccurately highlighted Ply

Gem's operating platform as one that enabled the Company to "maximize our efficiencies and

minimize selling, general, and administrative expenses during the U.S. housing downturn," stating,

in pertinent part, as follows:

Highly Efficient, Low Cost Operating Platform. Since mid-2006, we have closed or consolidated eight plants, generating savings of over \$30 million annually, and significantly reduced our workforce. Since 2006, we also invested approximately \$98.3 million in capital expenditures, including new product introductions and upgrades to equipment, facilities and technology, to continue improving our vertically integrated manufacturing platform. For example, our multi-plant window manufacturing platform allows us to service our customers with minimal lead times across a broad geographic coverage area, providing us a competitive advantage with the ability to operate in just-in-time fashion. This capability provides a unique service proposition to our customers while allowing us to maintain minimal inventory levels in our window product offerings. In addition, as a result of our Poly vinyl Chloride (PVC) resin purchasing scale (we are one of the largest purchasers in North America based on industry estimates), we are able to secure favorable prices, terms and input availability through various cycles. Furthermore, since 2008, we have centralized numerous back office functions to our corporate office that previously resided in our business segments. This enabled us to maximize our efficiencies and minimize selling, general, and administrative expenses during the U.S. housing downturn.

Through our strong cost controls, vertically-integrated manufacturing platform, continued investment in technology, focus on safety and significant purchasing scale, we have improved efficiency in our manufacturing facilities while maintaining a low fixed cost structure of approximately 21% of our total cost structure, which

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provides significant operating leverage as the housing market recovers. Furthermore, our manufacturing facilities are among the safest in North America with four of them having received the highest federal, state and/or provincial safety award and rating. We believe that we have one of the most efficient and safest operating platforms in the exterior building products industry, helping to drive our profitability. (First emphasis in the original).

95. In addition to the foregoing, the "risk" disclosures in the Registration Statement were not meaningful and/or failed to advise investors in the IPO about the then-existing risks associated with the Company's limited understanding of, and visibility into, products demanded by home builders.

96. After the IPO, on the Q2 conference call to discuss the Company's operations,

Defendant Poe acknowledged the existence of a previously undisclosed significant risk when he explained that a lack of visibility into the builder market created cost inefficiencies, stating, in pertinent part, as follows:

Defendant Poe:

So I think we've got to get back to a process where we as a Company -- so a part of enterprise lean, we are redesigning our S&OP to have complete visibility into the builder, which is not our customer, so that we can see what's coming at us so that we can prepare and manufacture products that are standard in advance.

And I'll give you an example. In Dallas, we knew we were getting this Home Depot business. We knew what the product that was coming at us. We were delivering 8,000, 9,000 units a week with no ramp up issues because we knew it was a standard product. **So I think that's the other piece, a complete visibility into the builder**. I think that'll help the lumber yard chain as well, because it comes at them. These volumes came at them and they just pass it on to us. So those are the two things we're really working **that in the future will help us abate a tremendous amount of this inefficient costs that we have**.

# **Post-IPO Events**

97. Following the IPO and the release of its second quarter financial results, Ply Gem

continued to report disappointing financial results.

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98. On November 5, 2013, Ply Gem issued a press release announcing its financial results for the third quarter of 2013, the period ending September 30, 2013. Following the issuance of the press release, on November 6, 2013, Ply Gem held a conference call with analysts and investors to discuss the financial results and the Company's operations (the "3Q Conference Call").

99. During the 3Q Conference Call, Defendant Poe noted that "[o]ur third-quarter margins also reflect a 100-basis point decrease from product mix that relates to a shift towards lower margin aluminum windows as a result of the new Home Depot business and other customer wins." On that same call, when discussing the Company's margins, Defendant Robinette noted that "[t]he mix needs to improve, and some of the mix this year was not normal because the Home Depot mix was geared toward the lower product, and then as Shawn mentioned, a competitor went out, so we helped our customer with low-end aluminum windows as well. But the overall mix has to improve." Also during the 3Q Conference Call, Defendant Poe stated that the Company's third quarter results had been negatively impacted by continued inventory buybacks from Home Depot.

100. On November 6, 2013, Ply Gem filed a Form 10-Q for the quarter ended September 30, 2013 (the "Q3 Form 10-Q") with the SEC. The Q3 Form 10-Q states that the W&D segment's gross profit margin for the quarter declined by nearly 20% on a year-over-year basis, and explains that "[t]he decrease in gross profit was driven by labor inefficiencies and other ramp-up costs associated with a significant increase in unit sales for our U.S. new construction window products that require us to hire and train production employees approximately 90 days in advance of sales, which results in near-term ramp-up costs which have a negative impact on gross profit."

101. The Q3 Form 10-Q also revealed that Ply Gem's buyback of Home Depot window inventory reduced the W&D segment's gross profit for the nine months ended September 30, 2013 by \$4.5 million. Excluding the financial effect of the buyback of Home Depot window inventory,

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the W&D segment's reported gross profit of \$47.8 million for the nine months ended September 30, 2013 would have been \$52.3 million, or near 9.5% more than what the Company reported for that nine month period.

102. On May 19, 2014, the date the Initial Complaint in this action was filed with this Court, Ply Gem's common shares closed at \$11.83 per share, or approximately 44% less than the IPO price.

### COUNT I

## Violations of Section 11 of the Securities Act (Against All Defendants)

103. Lead Plaintiff repeats and re-alleges each and every allegation contained above.

104. This Count is brought pursuant to Section 11 of the Securities Act, 15 U.S.C. §77k, on behalf of the Class, against all Defendants. For purposes of this Count, Lead Plaintiff does not claim that Defendants engaged in intentional or reckless misconduct or that Defendants acted with fraudulent intent.

105. The Registration Statement was inaccurate and contained untrue statements of material fact, omitted to state other facts necessary to make the statements made therein not inaccurate, and omitted to state material facts required to be stated therein.

106. Ply Gem was the registrant for the IPO. As the issuer of its common stock, Ply Gem is strictly liable to Lead Plaintiff and the Class for the materially inaccurate statements in the Registration Statement and the failure of the Registration Statement to be complete and disclose the material information required pursuant to the regulations governing its preparation.

107. The Individual Defendants signed the Registration Statement either personally or through an attorney-in-fact and caused its issuance. Each of the Individual Defendants had a duty to make a reasonable and diligent investigation of the truthfulness and accuracy of the statements

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contained in the Registration Statement. The Individual Defendants had a duty to ensure that such statements were true and accurate, and that there were no omissions of material facts that would make the statements in the Registration Statement inaccurate. By virtue of the Individual Defendants' failure to exercise reasonable care, the Registration Statement contained inaccurate misrepresentations and/or omissions of material fact. As such, the Individual Defendants are strictly liable to Lead Plaintiff and the Class.

108. The Underwriter Defendants failed to perform adequate due diligence in connection with their role as underwriters and were negligent in failing to ensure that the Registration Statement for the IPO was prepared properly and accurately. The Underwriter Defendants' failure to conduct an adequate due diligence investigation was a substantial factor leading to the harm complained of herein. As such, the Individual Defendants are strictly liable to Lead Plaintiff and the Class.

109. The Defendants named herein were responsible for the contents and dissemination of the Registration Statement. None of the Defendants named herein made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement were true and without omissions of any material facts and were not inaccurate. By reasons of the conduct herein alleged, each Defendant violated and/or controlled a person who violated Section 11 of the Securities Act.

110. At the time of their purchases of Ply Gem common shares, Lead Plaintiff and the other members of the Class were without knowledge of the facts associated with the wrongful conduct alleged herein. As a result of Defendants' violations, the value of Ply Gem common shares declined substantially and therefore Lead Plaintiff and the Class have sustained damages.

### **COUNT II**

### Violation of Section 12(a)(2) of the Securities Act (Against All Defendants)

111. Lead Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

112. This Count is brought pursuant to Section 12(a)(2) of the Securities Act, 15 U.S.C. §771, on behalf of Lead Plaintiff and the Class, against all Defendants. For purposes of this Count, Lead Plaintiff affirmatively states that it does not claim that Defendants committed intentional or reckless misconduct or that Defendants acted with scienter or fraudulent intent.

113. Defendants were sellers and offerors and/or solicitors of purchasers of the securities offered pursuant to the Registration Statement and Prospectus. Defendants issued, caused to be issued and/or signed the Registration Statement in connection with the IPO. The Registration Statement contained a Prospectus that was used to induce investors, such as Lead Plaintiff and the other members of the Class, to purchase the stock offered by Ply Gem.

114. The Underwriter Defendants participated in the preparation and dissemination of the defective and inaccurate Prospectus for their own financial benefit. But for their participation in the IPO, including their solicitation as set forth herein, the IPO could not and would not have been accomplished. Specifically, the Underwriter Defendants:

(a) made the decision to conduct the IPO and do it at the price set forth in the Prospectus. The Underwriter Defendants drafted, revised and/or approved the Prospectus and participated in its being declared effective by the SEC. The Prospectus was calculated to create interest in Ply Gem common stock and was widely distributed by or on behalf of the Underwriter Defendants for that purpose; and

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(b) conceived and planned the IPO and orchestrated all activities necessary to effect the sale of this stock to the investing public, by issuing stock, promoting the stock and supervising their distribution and ultimate sale to the investing public.

115. As set forth above, the Registration Statement and Prospectus contained untrue statements of material fact, omitted to state other facts necessary to make the statements made therein not misleading, and omitted to state material facts required to be stated therein. Defendants' actions of solicitation included preparing the defective and inaccurate Prospectus and participating in efforts to market the IPO to investors.

116. Defendants owed to the purchasers of Ply Gem stock, including Lead Plaintiff and the other Class members, the duty to make a reasonable and diligent investigation of the statements contained in the Registration Statement and Prospectus and to ensure that such statements were accurate and that they did not contain any misstatement or omission of material fact. Defendants, in the exercise of reasonable care, should have known that the Registration Statement and Prospectus contained misstatements and omissions of material fact.

117. Lead Plaintiff and the other members of the Class purchased or otherwise acquired Ply Gem common stock pursuant to the Registration Statement and Prospectus, and neither Lead Plaintiff nor the other Class members knew, or in the exercise of reasonable diligence could have known, of the untruths, inaccuracies and omissions contained in the Registration Statement and Prospectus.

118. By reason of the conduct alleged herein, Defendants violated Section 12(a)(2) of the Securities Act. Accordingly, Lead Plaintiff, individually and on behalf of the Class, hereby offers to tender to Defendants those shares of stock that Lead Plaintiff and the other Class members continue

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to own, in return for the consideration paid for those shares together with interest thereon. Class members who have sold their shares are entitled to rescissory damages.

### **COUNT III**

## Violation of Section 15 of the Securities Act (Against the Individual Defendants)

119. Lead Plaintiff repeats and re-alleges each and every allegation contained above.

120. This Count is asserted by Lead Plaintiff against all the Individual Defendants for violations of Section 15 of the Securities Act. For purposes of this Count, Lead Plaintiff does not claim that the Individual Defendants engaged in intentional or reckless misconduct or that the Individual Defendants acted with fraudulent intent.

121. The Individual Defendants acted as controlling persons of Ply Gem within the meaning of Section 15 of the Securities Act. By reason of their ownership interest, senior management positions and/or directorships at the Company, the Individual Defendants individually, and acting pursuant to a common plan, had the power to influence and exercised the same to cause Ply Gem to engage in the conduct complained of herein and were therefore control persons of Ply Gem. By reason of such conduct, the Individual Defendants are liable pursuant to Section 15 of the Securities Act.

122. Each of the Individual Defendants was a culpable participant in the violation of Section 11 of the Securities Act alleged in Count I above, based on their having signed the Registration Statement and/or having otherwise participated in the process that allowed the IPO to be successfully completed.

### **PRAYER FOR RELIEF**

WHEREFORE, Lead Plaintiff, on behalf of itself and the Class, prays for judgment as follows:

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A. Declaring this action to be a class action properly maintained pursuant to Rule 23(a)

and (b)(3) of the Federal Rules of Civil Procedure, certifying Lead Plaintiff as class representative and Lead Counsel as Class Counsel;

B. With respect to Count II, ordering that the IPO be rescinded;

C. Awarding Lead Plaintiff and other members of the Class damages, together with interest thereon;

D. Awarding Lead Plaintiff and other members of the Class their costs and expenses of this litigation, including reasonable attorneys' fees, accountants' fees, experts' fees and other costs and disbursements; and

E. Awarding Lead Plaintiff and other members of the Class such other and further relief as may be just and proper under the circumstances.

## JURY TRIAL DEMANDED

Lead Plaintiff hereby demands a trial by jury.

DATED: November 6, 2015

ROBBINS GELLER RUDMAN & DOWD LLP SAMUEL H. RUDMAN DAVID A. ROSENFELD MARK T. MILLKEY

> /s/ Samuel H. Rudman SAMUEL H. RUDMAN

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Lead Counsel

## CERTIFICATE OF SERVICE

I, Samuel H. Rudman, hereby certify that on November 6, 2015, I authorized a true and correct copy of the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such public filing to all counsel registered to receive such notice.

/s/ Samuel H. Rudman SAMUEL H. RUDMAN