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FIRM and AFFILIATE OFFICES

PHILLIP M. HUDSON III, P.A.
DIRECT DIAL: +1 305 960 2273
PERSONAL FAX: +1 305 397 2443
E-MAIL: PMHudson@duanemorris.com

www.duanemorris.com

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January 22, 2024

VIA FEDERAL EXPRESS & EMAIL: MO.MADANI@MYFLORIDALICENSE.COM

Mo Madani,
Technical Director
Building Codes & Standards Office
2601 Blair Stone Road
Tallahassee, FL 32399

Re: **E.S. Windows, LLC's Surreponse Concerning Complaint Regarding Florida Product Approval No. 22267 (ES-SGD2020) and Florida Product Approval Number 17897.5 (ES-8000T)¹**

Dear Mr. Madani,

The undersigned represents E.S. Windows, LLC (“**ES Windows**”) in connection with the above referenced complaint filed on November 8, 2023 (“**Complaint**”), by PGT Innovations, Incorporated (“**PGT**”), attacking the validity of Florida Product Approval Nos. 17897.5 and 22267 (together, the “**FPAs**”), and demanding the Florida Building Commission (“**FBC**”) investigate ES Windows’ products and immediately revoke the FPAs (among other frivolous requests). ES Windows timely responded on January 17, 2024, explaining why PGT’s Complaint was meritless. ES Windows supplemented its response on January 19, 2024, to advise the Florida Building Commission (“**FBC**”) that Miami-Dade County recently summarily denied a similar complaint by PGT. Also, the chairman of the Board of Directors for PGT Rodney Hershberger, the chairman of the committee reviewing the Complaint, must be removed from consideration of this matter, as should any other member of this committee with direct or indirect ties to PGT or Mr. Hershberger.

¹ ES Windows timely responded to the subject Complaint. This surreponse is being submitted beyond the January 19, 2024, response deadline because PGT’s January 17, 2024, unexpected reply was not received until *after* ES Windows submitted its timely supplemental response on January 19, 2024.

DUANE MORRIS LLP

201 SOUTH BISCAYNE BOULEVARD, SUITE 3400 MIAMI, FL 33131-4325
DM3\10263561.3

PHONE: +1 305 960 2200 FAX: +1 305 960 2201

PGT's actions constitute, *inter alia*, unfair business practices, and tortious interference, which claims ES Windows will deal with in another forum in the appropriate jurisdiction.

Remarkably, in the Reply, PGT doubles down with a last minute supplement to its Complaint with information (although invalid) that should have been provided in the first instance. PGT's unverified and clearly biased proffer is meaningless in light of verified independent third-party test reports and engineering certifications presented to and accepted by the FBC when the relevant FPS's were obtained. ES Windows has been and continues to be in full compliance with all rules and regulations governing the FPAs at issue. More remarkably, PGT does not and cannot point to *any* failed system, *any* customer complaint, or *any* other basis for their actions. There is absolutely *no basis* for PGT's Complaint—other than unlawful improper competition.

Despite Miami-Dade County's decision to summarily deny PGT's complaint in that jurisdiction (referenced in ES Windows' January 19, 2024, supplemental response), PGT has perpetuated its unlawful anticompetitive scheme by circulating its Complaint to third-parties, including those with whom ES Windows has business relationships. ES Windows is in possession of such correspondence. It is clear that PGT's, and by extension, Mr. Hershberger's, true intent is to improperly compete, tortuously interfere with, and undermine the reputation and good will of one of its largest competitors, the Tecnoglass Group (of which ES Windows is a subsidiary). There is no other legitimate motivation behind this attempt to drag the FBC into this fictitious dispute.

Unfortunately, Mr. Hershberger has put the FBC in this compromised position. ES Windows has done nothing more than comply with every law, rule and regulation at all times during its existence for the last 30 plus years. PGT's use of this body to wrongfully compete undermines the legitimacy of the FBC. Mr. Hershberger should immediately resign all of his positions with the FBC. If he does not resign, the FBC should remove him. His continued involvement threatens the legitimacy of the FBC which must be based entirely on facts and applicable rules, laws, and ordinances.

I. The Arguments in PGT's Reply have no Merit

PGT's Reply makes three arguments in support of immediate revocation. These arguments not only lack merit; they also ignore the relevant rule that governs revocation of the FPAs. First, PGT regurgitates its original argument that ES Windows' products do not comport with the standards set forth by the manufacturer of the PVB interlayer. This argument is merely PGT's opinion, for which it has zero real supporting evidence. In fact, Jalal Farooq, the Florida Licensed engineer from Al-Farooq Corporation who was directly involved in drafting the PVB interlayer manufacturer's recommendations relied upon by PGT, wholeheartedly disagrees with PGT's

unsupported opinions.² A copy of the Farooq Affidavit is attached hereto as Exhibit “A.”³ Nor does (or can) PGT cite to a single real-world product failure to support its opinion. In fact, there is no history of complaints or failures for the products at issue even though there are thousands currently in use. The only new “support” that PGT offers is a 30-year-old, outdated article. The very fact that the original tests and engineering show the validity and integrity of this system is the beginning and end of the debate.

Next, PGT argues that ES Windows’ products do not comport with known industry standards. Once again, PGT offers nothing more than unsubstantiated opinion, which is wholly insufficient to overcome the verified test reports, calculations performed by independent Florida licensed engineers, and all other materials submitted with the original FPA applications.

Finally, PGT argues that the test performed by an independent third-party entity and witnessed by a Florida licensed professional engineer resulted in total failure. However, the Reply does not state that ES Windows’ products do not perform as represented; only that it “appear[s] to be” the case. In other words, PGT’s test results are unreliable at best and should be ignored. There are several reasons for this, each of which are briefly described below, and explained in more detail in the Farooq Affidavit:

- First, and most notably, one of PGT’s three tests used a glass composition and size (142” x 120”) to which the FPAs **are not applicable**. At best, this suggests that PGT did not understand the applicable FPA; at worst, it suggests that PGT is deliberately misleading this Committee. Under either circumstance, the test is inapplicable.
- Second, the test report is not signed and sealed by the testing laboratory. Instead, PGT offers the affidavit of A. Lynn Miller, who is indeed a Florida licensed engineer, but who is also a long-time PGT employee. Mr. Miller’s affidavit claims that the products tested were “assembled in accordance with E.S. Windows’ assembly instructions included with its Florida Product Approval 22267.” Given PGT’s fundamentally flawed testing protocol (as explained immediately above), Mr. Miller’s statement is demonstrably false.
- Third, PGT tested only ES Windows’ sliding glass door product. PGT did not test the window wall product at issue. As explained in ES Windows’ prior responses, these products are incomparable. As such, regardless of their validity, test results for one product are inapplicable relative to a different product.

² According to its website, AL-Farooq Corporation provides structural engineering solutions for all types of glazing-related projects and products and is the preeminent engineering firm for product approvals. See <https://afceng.com/about/>.

³ Attached as Exhibit “B,” is a copy of the affidavit of Yiping Wang, P.E., of MCY Engineering, Inc., who is the engineer of record for the SGD Product (which is the subject of FPA 22267).

- Finally, PGT's test results do not undermine or disprove ES Windows' original FPA application materials, namely independently verified test results and calculations. Put differently, PGT offers absolutely no evidence that ES Windows' FPA applications made any misrepresentations, or contained any errors or inaccuracies, whatsoever. *See also* Wang Affidavit (Exhibit B).

Based on the foregoing, PGT's "supporting documents" are meaningless and cannot logically or legally be used to attack or undermine the verified, certified third-party test and engineering reports submitted by ES Windows during the FPA application process.

II. PGT's Request for Immediate Revocation Fails Under the Applicable Rule

The foregoing arguments notwithstanding, PGT's request to revoke the FPAs is governed by Rule 61G20-3.013. Under this rule, there are seven specific and independent reasons why the FBC may revoke an FPA. None of these reasons are applicable here.

1. Rule 61G20-3.013(1)(a)(1): Failure to maintain certification, evaluation reports or testing in good standing with a Commission approved entity which conducted the testing or comparative or rational analysis, or combination thereof on which the product approval is based.

There is no allegation that ES Windows or any of its Tecnoglass Group affiliates or subsidiaries has failed to maintain a certification or otherwise violated Rule 61G20-3.013(1)(a)(1).

2. Rule 61G20-3.013(1)(a)(2): Suspension or revocation of the certification, evaluation report or testing report issued by a Commission approved entity on which the approval is based, for just cause.

There is no "just cause" for suspension or revocation of the certification, evaluation report or testing report issued by a Commission approved entity on which the approval is based. At this point, PGT's assertions are no more than trumped-up allegations and opinions from PGT that cite a single unspecified and undefined decades-old article, and that further rely upon unsworn representations by a PGT-chosen and directed testing laboratory and PGT's own inherently biased engineers. PGT's tests themselves are fundamentally flawed as well, as explained by Mr. Farooq in his Affidavit. Also, PGT has not identified a single failure or problem with the approved products at issue. Said otherwise, there is absolutely zero "just cause" on this record.

3. Rule 61G20-3.013(1)(a)(3): Failure to maintain quality assurance programs for the manufacture of the approved products as required by this document.

There has been no allegation of a failure to comply with Rule 61G20-3.013(1)(a)(3) or maintain appropriate quality assurance programs.

4. Rule 61G20-3.013(1)(a)(4): Failure to correct manufacturing deficiencies required to bring the product within specifications of the originally approved product or alternatively to demonstrate in a manner consistent with this document, that the product's performance complies with the standards established by the Code.

There has been no allegation that there are manufacturing deficiencies that need to be corrected in any fashion. To the extent the Complaint could be deemed to be a Complaint under Rule 61G20-3.013(1)(a)(4), once again the unsworn testimony, unreliable and fundamentally flawed “test results,” and unsupported representations of a competitor have no meaning and cannot be used to set aside product approvals that have been issued consistent with Florida law.

5. Rule 61G20-3.013(1)(a)(5): Advertising and sales of the product for uses not consistent with conditions or limitations of its approval.

Regardless of any allegation by PGT, the products at issue are advertised only for use consistent with applicable product approvals (both FPAs and NOAs). The only “evidence” that PGT has to the contrary are the unverified and fundamentally flawed test results and sworn statements by biased, long-time PGT employees. As explained above, such “evidence” is inherently unreliable and cannot support revocation on this record.

6. Rule 61G20-3.013(1)(a)(6): Determination that the product was approved based on misrepresentations in the application for approval.

It appears that the Complaint is designed to fit within Rule 61G20-3.013(1)(a)(6). PGT's allegations on this issue are in effect two-fold. One allegation takes the form of unverified test results and unsworn testimony by biased engineers, which are being used to attack certified approvals by independent engineers and laboratories specifically approved by the State of Florida. These flawed and inherently untested, unverified, and erroneous “opinions” are simply not able to sustain an attack on the FPAs specifically approved by the FBC with proper and valid support. Also, and very much to the point, all representations made in the original approval process were made by certified and FBC approved third-party testing labs and licensed engineers. Is their integrity also being called into question?

Additionally, the Complaint prattles on about the impropriety of the use of interlayers because the interlayer manufacturer's guidelines suggest the interlayer should not be utilized in this situation. As previously demonstrated, that argument is without merit. The testing of an entire system is what is required by the state and what occurred. In this case, while the interlayer manufacturer may have concerns about the interlayer standing alone, certified engineers and certified testing laboratories approved by this very Committee and the FBC have certified that the systems in fact perform appropriately if not well above the requirements set forth by applicable law and regulation. Said otherwise, PGT's argument regarding the interlayers used is a red herring. It is meaningless and has no merit. *See also* Farooq Affidavit.

7. Rule 61G20-3.013(1)(a)(7): Failure of the manufacturer to cooperate with a Commission ordered investigation.

The seventh and final basis for revocation or modification is a failure of the manufacturer to cooperate with the FBC in a commission-ordered investigation.

To date, there has been no suggestion, nor can there be, that ES Windows and the Tecnoglass Group have failed to cooperate with the FBC in any fashion. ES Windows and the Tecnoglass Group will always cooperate with the FBC.

III. Conclusion

In sum, and fatally contrary to PGT's allegations, ES Windows has consistently adhered to all applicable rules and regulations governing the FPA application process. Verified third-party testing and engineering have confirmed ES Windows' products' compliance. There is neither evidence, nor history of complaints or failures justifying FPA revocation or modification. PGT's clearly improper motivations, as evidenced by its recent attempts to use its Complaint to harm ES Windows' reputation in the community, clearly evidence the sole purpose of the Complaint, improper and unlawful competition. ES Windows and its affiliates in the Tecnoglass Group have the utmost faith in this administration, the FBC, and this Committee, and believe that the Complaint should be summarily denied just as Miami-Dade County has summarily denied PGT's recent, nearly identical complaint in that jurisdiction. While we believe that the arguments presented in this surresponse are complete and sufficient, and that PGT's Complaint and Reply are entirely without merit, it is worth noting that there are a variety of features within the FPAs that are not being disputed (*e.g.*, the use of Sentryglass interlayer in the Window Wall Product, the use of wet glazing in the SGD Product, etc.). Therefore, revocation of the FPAs is not appropriate.

We appreciate the Committee's time and attention to this matter and, specifically, its consideration of this surresponse, which was prepared as soon as practicable upon our receipt on January 19, 2024, of PGT's Reply. We remain available to address any questions or concerns you may have. Otherwise, we look forward to the upcoming hearing on February 5, 2024.

Very truly yours,

/s/ Phillip M. Hudson

Phillip M. Hudson III, P.A.

PMH

Exhibit A

Affidavit of Jalal Farooq, P.E.

STATE OF FLORIDA
MIAMI-DADE COUNTY

BEFORE ME, the undersigned authority, personally appeared JALAL FAROOQ, who after being duly sworn, deposes and says:


1. I am over the age of eighteen (18) years and am competent to execute this Affidavit.
2. I have personal knowledge of the matters set forth in this affidavit.
3. I am currently employed as a principal engineer at Al-Farooq Corp. and am a certified Professional Engineer in the State of Florida.
4. I am a certified expert of hurricane resistant windows, doors, and curtain walls by the American National Standards Institute (ANSI). As far as I am aware, I am one of only two people in the world with this credential.
5. I am a certified expert of hurricane resistant windows, doors, and curtain walls by the International Organization for Standardization (ISO). As far as I am aware, I am one of only two people in the United States with this credential.
6. As an estimate, I have certified over 500 different impact-resistant windows, doors, and curtain walls for a variety of customers through both Florida Building Commission (FBC) and through Miami-Dade County's NOA product approval systems.
7. I am the engineer of record for the 8000T Jumbo Window Wall but not for the 2020-SGD.
8. I have reviewed the PGTI November 8, 2023 complaint regarding the ES Windows 2020-SGD and 8000T Jumbo Window Wall as well as the January 17, 2024 reply letter and have the following comments:
 - a. The assertion by PGTI that the Kuraray marketing materials are anything more than just marketing materials is false. The purpose of these materials is more-so to provide a 'beginners guide' into the world of hurricane glazing and give somewhat conservative guidelines as to 'sure bets' of what will work. I have first-hand knowledge of this as I was the engineer hired by Kuraray to help them develop much of the marketing materials cited in their complaint. At the end of the day, the final certification any manufacturer receives is essentially about what they are able to successfully pass during testing and can be verified with calculation.
 - b. The complaint and reply letter provide no actual evidence that ES Windows has broken any rule or has not followed any applicable rule, law, ordinance etc. As the engineer of record for the 8000T, I have reviewed all the relevant

documentation including calculations and test reports. All applicable codes, rules, standards, laws, etc. have been followed in the certification of this product. The ES Windows tests were conducted by an approved independent 3rd party laboratory, witnessed by various independent third parties, and signed and sealed by an independent 3rd party engineer. Calculations were also conducted by an independent third-party engineer (myself, in the case of 8000T Jumbo Window Wall).

- c. There was no testing of the 8000T conducted by PGTI. Their arguments focus mainly on the 2020-SGD, and then the 8000T is inexplicably grouped together with the 2020-SGD. The 2020-SGD can be wet or dry glazed, laminated or insulated laminated. The 8000T Jumbo Window Wall is always wet glazed and is always insulated-laminated.
- d. While any non-sanctioned third-party testing of an approved product is already irrelevant, the testing of the 2020-SGD that PGTI has conducted is inherently flawed for several reasons:
 - i. To my knowledge, ES Windows was not afforded the opportunity to witness such testing.
 - ii. The report provided is not Signed and Sealed by a professional engineer.
 - iii. Remarkably and most importantly, one of the three tests conducted by PGTI presented to the Florida Building Commission as evidence in their complaint is for something that is not currently approved within the 2020-SGD. The tests performed by PGTI at 142” W x 120” H in a two-panel configuration is not and has never been an option claimed to be approved within the 2020-SGD as an option with PVB (either dry or wet glazed).
 - I. From this, there are only two possible options. In my opinion, at best, this displays incompetence by PGTI in conducting the tests supporting their complaint. Otherwise, this represents an effort to intentionally provide manipulated evidence to the Florida Building Commission in support of their complaint.
 - II. Further, this shows that there are verifiably false statements of material facts in the affidavit provided by A. Lynn Miller, P.E. Notably item #14 from his affidavit is not true based on the testing of the 142” W x 120” H SGD with a PVB interlayer.
 - III. Since PGTI has conducted a test that is entirely not applicable to the 2020-SGD product to support their complaint, there is uncertainty as to the quality of the installation or if the doors tested by PGTI had other material defects.

- e. PGTI makes blanket statements about how the use of PVB interlayers with dry-glazed systems is essentially not possible (it is implied they are only talking about large-missile impact rated products). However, after an in-depth technical review by Miami-Dade County regarding this issue on another ES Windows product for which PGTI has complained about, this is not correct as per Miami-Dade County, as they have summarily dismissed the PGTI complaint submitted to them.
- f. There are additional material errors of fact within the PGTI complaint and reply letter.
 - i. The reply letter states that the 8000T Jumbo Window Wall is dry glazed. It is not. It is always wet glazed.
 - ii. There is an assertion that the PGTI testing of the 2020-SGD somehow translates into evidence of non-conformity of the 8000T. The complaint argues that this is because both use a PVB interlayer. This is not accurate because the glazing pocket for the 8000T is totally different than in the 2020-SGD. Further, the 8000T is always wet glazed as previously mentioned. Finally, the 8000T is in a reverse glazing orientation relative to the 2020-SGD. As per ASTM E1996-20 A1.10, reverse glazing orientations are not comparable.

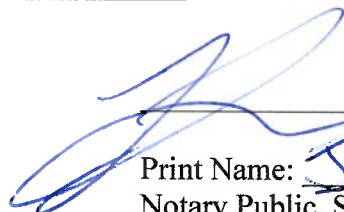
FURTHER AFFIANT SAYETH NOT.



 Jalal Farooq P.E.

STATE OF FLORIDA
 MIAMI-DADE COUNTY

The foregoing instrument was acknowledged before me by means of physical presence or _____ online notarization, this 22 day of January, 2024, by Jalal Farooq of Alfarooq Corp who is personally known to me or did produce his/her _____ Driver's License as identification or did produce _____ as identification.



 Print Name: Judy Euscattigue
 Notary Public, State of: Florida
 My Commission expires: April 6, 2026
 Comm. No.: HH 216892

[notary seal]



JUDY L. EUSCATTIGUE
 Commission # HH 216892
 Expires April 6, 2026

Exhibit B

AFFIDAVIT OF YIPING WANG, P.E.

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

BEFORE ME, the undersigned authority, personally appeared YIPING WANG, who after being duly sworn, deposes and says:

1. I am over the age of eighteen (18) years and am competent to execute this Affidavit.
2. I have personal knowledge of the matters set forth in this Affidavit.
3. I am currently the president of MCY Engineering, Inc., and am a licensed Professional Engineer in the State of Florida.
4. I am the engineer of record for E.S. Windows, LLC's ES-SGD2020 sliding glass door product ("SGD Product"), which is the subject of Florida Product Approval No. 22267 ("FPA 22267").
5. I have reviewed the PGT Innovations' ("PGT") November 8, 2023 complaint regarding the SGD Product and the 8000T Jumbo Window Wall Product, as well as PGT's January 17, 2024, reply letter and its corresponding exhibits and have the following comments:
 - a. The SGD Product underwent testing with ten (10) specimens using both dry and wet glazing methods, and all specimens met the testing requirements of the Florida Building Code, specifically section 1626.2 for each respective glass composition.
 - b. Calculations for all glass compositions were conducted in accordance with ASTM E1300 standards. Glass capacities corresponding with each composition meet the ASTM E1300 requirements and are listed in FPA 22267.
 - c. The article relied upon by PGT, "Postbreakage Behavior of Heat Strengthened Laminated Glass under Wind Effects," is 30 years old. Over the past three decades, more robust and advanced PVB interlayer products have been developed and are available. The PVB interlayer product mentioned in the article is known to be one of the weakest. Additionally, it is important to note that the glazing system tested in the article had suboptimal design.
 - d. One of the specimens tested by PGT (142" x 120" OX) greatly exceeds the largest SGD Product size approved by FPA 22267 (which is 120" x 120" OX).
6. The SGD Product, using both dry and wet glazing methods, complies with the requirements of the Florida Building Code.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Yiping Wang
Yiping Wang, P.E.

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me by means of physical presence or _____ online notarization, this 22nd day of January 2024, by Yiping Wang of MCY Engineering, Inc., who _____ is personally known to me or did produce Driver's license as identification.

[Signature]
NOTARY PUBLIC



JUDY L. EUSCATTIGUE
Commission # HH 216892
Expires April 6, 2026