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January 24, 2024

Via Email:

ATTN: MO MADANI
Florida Building Commission
Product Oversight Committee
2601 Blair Stone Road
Tallahassee, Florida 32399
Mo.madani@myfloridalicense.com

**Re: ES-SGD2020, FLORIDA PRODUCT APPROVAL NO. 22267 COMPLAINT
ES-8000T, FLORIDA PRODUCT APPROVAL NO. 17897.5 COMPLAINT**

Dear Product Oversight Committee,

As you are aware, this firm represents PGT Innovations, Incorporated (“PGTI”). Accordingly, please direct any and all correspondence regarding this matter to the undersigned herein. Further, this correspondence is intended to serve as a formal written reply to the response by E.S. Windows dated January 23, 2024 concerning PGTI’s Complaint directed to the Florida Department of Business & Professional Regulation in regards to both the Florida Product Approval No. 22267, ES-SGD2020 (the “SGD Product”) and Florida Product Approval No. 17897.5, ES-8000T Jumbo (the “Commercial Window Wall Product”) (collectively the “Subject Products”).

E.S Windows’ January 23, 2024 response is riddled with inaccuracies and baseless accusations against not only PGTI but also committee member, Rodney Hershberger. Such veiled threats and unfounded allegations are uncalled for, unprofessional, and constitute per se defamation. At no point in time as it relates to this matter, **or any other**, has PGTI lowered itself to the level of E.S. Windows and engaged in retaliatory defamatory tactics such as its “competition,” E.S. Windows. Rather, PGTI has and continues to rely upon the substantial, competent, and scientifically-sound evidence presented before the committee. In fact, no matter how hard E.S. Windows attempts to confuse the issues, lest we forget, there is but a singular question presented before this committee: Is there substantial material evidence presented before the committee to trigger the commission’s obligation to initiate an investigation? FBC 61G20-3.014(1)(a) (“The Commission **shall** initiate an investigation of product non-compliance on the basis of a written complaint including substantial material evidence.”) (emphasis added). Importantly, upon a showing of substantial material evidence the commission **must** initiate an investigation. *See id.* Simply put, there can be no question PGTI has provided more than sufficient material evidence that the E.S. Windows’

Subject Products do not and cannot perform as qualified under the Florida Product Approvals and as represented by E.S. Windows. Accordingly, the Commission is obligated to initiate an investigation into the Subject Products' non-compliance—despite E.S. Windows' objections to the contrary.

Moreover, any concerns regarding a potential conflict of interest by the position of Mr. Hershberger on the committee are remedied by his recusal in the consideration of the subject complaints, and is thus not only completely irrelevant to the present matter but also serves solely as a disparaging attack against the core values of PGTI and its members. Moreover, any reference to a separate and distinct claim before Miami-Dade County is inappropriate as the same deals with a completely different product and standard of review than the one presented before the committee. The complaint before the committee is founded on rational scientific principles and demonstrates an incredibly real life-safety threat to the consumers of the State of Florida. It is of the utmost importance the committee disregards any attempts to diminish the evidence provided therein and focuses solely on the facts presented. Thus, we will address each of E.S. Windows' points in turn.

i. **PGTI's Complaint is supported by substantial competent evidence meeting the standard presented by the Florida Building Code and obligating the Commission to initiate an investigation into the Subject Products' non-compliance.**

E.S. Windows first purports to allege that because the Subject Products have experienced no field failures, as of yet, the same is direct evidence of their performance capabilities. Such assertions, however, are meritless and do not constitute reliable evidence. The Subject Products are primarily sold in Southeast and Southwest Florida. Notably, since its introduction to the market, these regions have not experienced a design level wind event, including windborne debris, that would generate the expected field failures. In fact, even Hurricane Ian reported maximum wind speeds well below the design wind speeds for that region. Moreover, Hurricane Ian resulted not in windborne debris but rather in storm surge damage, which is immaterial to our claim and the Subject Products. Accordingly, the mere fact such products have not experienced a field failure does not prove anything due to the simple fact the Subject Products have not yet faced pressure systems to which they are intended to be designed to withstand. Accordingly, the true test is not the field—but rather, product testing designed to measure the capacities of such products and the subsequent results when experiencing such levels. Because the Subject Products have not encountered the requisite environmental circumstances in the field one must look to the product testing to see how the Subject Products would perform under such circumstances. The third-party testing of the SGD Product, provided to the committee, is illustrative of the catastrophic failures that would occur had the product experienced a wind event to the levels E.S. Windows' represents it can and should withstand. Thus, one can quickly dispel this argument from E.S. Windows.

Secondly, E.S. Windows makes a bold and blatant misrepresentation to the committee. E.S. Windows alleges one of PGTI's three tests "used a glass composition and size (142" x 120") to which the FPAs are not applicable." See E.S. Windows' January 23, 2024 Reply p. 3. In fact, E.S. Windows goes further to state, the "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)."

See id. at Exh. A p. 2 (emphasis added). Ms. Yiping Wang, the engineer of record for the SGD Product, attested that the 142” x 120” product “greatly exceeds the largest SGD Product size approved by FPA 22267.” *See id.* at Exh. B p. 1. Importantly, FPA 22267 is qualified on the basis of panel size. Accordingly, the 142” x 120” testing specimen contains a quantity of two (2) 72” x 120” panels. FPA 22267 certified this size up to and including Revision 9 with PVB interlayer but was later retracted and ceased being certified in Revision 10, which went into effect on August 15, 2023. Notwithstanding E.S. Windows’ representations to the contrary, E.S. Windows certified and sold this panel size under earlier revisions to FPA 22267. PGTI was able to order the same and an independent testing entity tested that product in and around October of 2023. **See Panel Orders attached hereto as Composite Exhibit A.** PGTI has since ordered the 72” x 120”, non-certified E.S. Windows’ panel size, and fulfilled payment on October 5, 2023. *See id.* The same is a clear violation of FPA 22267 wherein not only can the product not perform as represented, which was clearly known by E.S. Windows and demonstrated by the revocation of its certification, but it is also not certified and continues to be sold to consumers despite the same. Such behaviors on the part of E.S. Windows are strictly prohibited and any claims attempting to belie PGTI’s integrity concerning the product sold and tested are patently false and blaringly egregious.

Thirdly, the testing report not being signed and sealed by the testing laboratory is in no way a prerequisite to the bringing of the instant claim. A Florida Professional Engineer has attested to its authenticity, under oath, and the testing report denotes the testing entity on its face. Accordingly, should E.S. Windows have any genuine concern regarding its authenticity and the findings therein, it could easily dispel the same through the exercise of simple due diligence. Notwithstanding the same, the undersigned herein has contacted the testing entity to inquire regarding remedying this simple request and will provide the same to the committee upon receipt.

Fourthly, while it is true PGTI has not tested the Commercial Window Wall Product—as of yet—the product makes extremely similar claims regarding its product performance, which mere rational analysis can quickly establish as false. Such misrepresentations regarding its products’ performance is a clear pattern of behavior and requires immediate investigation into their actual capabilities. As initially relayed to the committee, the prior version of the very same Commercial Window Wall Product were well within industry recognized performance capabilities. But since such time, and without any justification or revision to the product itself, the same product is now alleged to perform outside the realm of known industry limits and nearly 90% above the interlayer manufacturer’s design guidance. Accordingly, PGTI strongly urges the committee to initiate an investigation into such representations given the exposed failures of E.S. Windows’ over-represented SGD Product. PGTI is confident, for the reasons mentioned in its initial complaint which PGTI will not reiterate herein, that independent third-party testing of the Commercial Window Wall Product will also result in product failure.

Finally, E.S. Windows has taken the approach of standing on its Florida Product Approvals alone and that the same are proof enough of the Subject Products’ performance capabilities. This is blatantly untrue and warps the function of advisory boards like the committee. The Florida Building Code contemplates the potential for flaws in the product approval system, which may allow for the existence of product performance misrepresentations by manufacturers. While one would hope a Florida manufacturer would not endanger the Florida public in such a way, the same

is not outside of the realm of possibilities and necessitated the creation of inherent checks and balances. In fact, the Florida Building Code has designed specific mechanisms for ensuring Florida manufacturers do not go unchecked and are not given unfettered reign in the representation of their product's performance capabilities. Such mechanisms are exactly what PGTI has sought to employ with the filing of its instant complaint against E.S. Windows. A mere Florida Product Approval is not enough. In the face of substantial competent evidence—which is the only question before this committee—an investigation ***must*** be initiated. PGTI has surely met this burden and for the sake of the Florida consumers urges immediate action by the committee in recommending the initiation of an investigation.

ii. **PGTI's request for revocation is supported by the record evidence but not at issue before the committee.**

E.S. Windows spends considerable time in its response attempting to demonstrate that PGTI has failed to meet the standard for immediate revocation of E.S. Windows' Florida Product Approvals. While the committee need not reach such a question at this juncture, as explained above, PGTI has certainly met this standard. Specifically, a product approval ***shall*** be revoked upon substantial competent evidence that the “product was approved based on misrepresentations in the application for approval.” FBC 61G20-3.013(1)(a). The allegations contained herein are not unsupported opinion evidence, as framed by E.S. Windows, but are supported by industry standards and independent third-party testing. Based on such scientific and technical evidence alone, PGTI has demonstrated E.S. Windows' claimed product performances of the Subject Products is plainly improbable, if not impossible. Accordingly, PGTI has provided the requisite substantial material evidence to illustrate the misrepresentations by E.S. Windows in achieving its product approvals.

E.S. Windows attempts to enflame the committee by taking what is a scientifically sound complaint and twisting it into a personal attack against the Florida Building Commission. But as explained above, such processes as employed by PGTI now are directly contemplated by the Commission and the Florida Building Code. PGTI is not attacking anyone. It is merely utilizing the ***exact*** mechanisms imposed by the Commission to ensure the continued efficacy of the product approval system and safety of the Florida public. To suggest otherwise is not only abhorrent but also resoundingly false.

For the sake of the public and the sake of all Florida manufacturers playing by the rules, we urge the committee to initiate an investigation into E.S. Windows' Subject Products and test their performance for themselves. We are confident the committee will come to the same conclusions as PGTI.

The undersigned herein and technical representatives from PGTI will be present at the February 5, 2024 hearing and look forward to discussing the allegations herein and explaining any questions the committee may have at that time. Should you have any questions regarding the foregoing or need anything in the interim, please feel free to contact this office. Thank you in advance for your prompt attention to this matter.

Very truly yours,

/s/ Daniel J. DeLeo

Daniel J. DeLeo, Esq.

DJD/rkp
Enclosures

PROPOSAL NUMBER

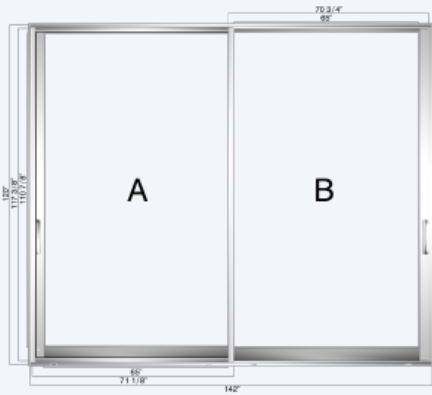
PROPOSAL NAME

EXTERNAL PURCHASE ORDER ID
0000

QUOTE ITEMS

LINE NUM	LINE NAME	ASSEMBLY SYSTEM	ASSEMBLY	UNIT PRICE	TOTAL QUANTITY	TOTAL PRICE
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1	001 PVB INSUL. MAX SIZE	ES-SGD2020 - SLIDING GLASS DOOR	XX		1	
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SIZE	142" X 120"	FBC CERTIFICATION		
AREA	118.33 FT ²	INTERNAL PSF	EXTERNAL PSF	
FINISH	AAMA 2604 BRONZE	85.10	80.00	
GLASS	3/16" CLEAR TMP SB70 + 3/8" AIR MA BLACK SPACER + 3/16" CLEAR HS + 0.09 PVB CLEAR + 1/4" CLEAR HS	CODE	FL 22267.1	
KEYED	NO	NFRC CERTIFICATION		
MUNTIN	NO	U FACTOR	SHGC	VT
SCREEN	NO	0.57	0.23	0.48
JAMB TYPE	ANCHORED			
SILL TYPE	STANDARD			
HANDLE TYPE	CREST			
GLAZING TYPE	STANDARD			
HANDLE COLOR	STANDARD			
HANDLE HEIGHT	STANDARD			
HEAD RECEPTOR	NO			
ANCHORING TYPE	STANDARD			
COLOR	CLEAR ANOD			
THRESHOLD				
PROTECTIVE FILM	BOTH			
SILL RISER TYPE	3 5/8 (12PSF)			
JAMB REINFORCEMENT	NO			
ONLY INTERIOR HANDLE	NO			
INTERLOCK REINFORCEMENT LEVEL	LEVEL 3			
PRE-GLAZED?	YES			

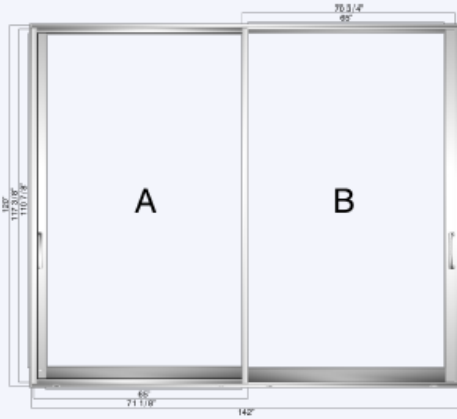
EXHIBIT
A

2 001 PVB MONO.
MAX SIZE (COPY)

ES-SGD2020 -
SLIDING GLASS
DOOR

XX

1



SIZE 142" X 120"
AREA 118.33 FT²
FINISH AAMA 2604 BRONZE
GLASS 1/4" CLEAR HS SB70 + 0.09
PVB CLEAR + 1/4" CLEAR HS
KEYED NO
MUNTIN NO
SCREEN NO
JAMB TYPE ANCHORED
SILL TYPE STANDARD
HANDLE TYPE CREST
GLAZING TYPE STANDARD
HANDLE COLOR STANDARD
HANDLE HEIGHT STANDARD
HEAD RECEPTOR NO
ANCHORING TYPE STANDARD
COLOR THRESHOLD CLEAR ANOD
PROTECTIVE FILM BOTH
SILL RISER TYPE 3 5/8 (12PSF)
JAMB REINFORCEMENT NO
ONLY INTERIOR HANDLE NO
INTERLOCK REINFORCEMENT LEVEL LEVEL 3
PRE-GLAZED? YES

FBC CERTIFICATION
INTERNAL PSF 94.40 EXTERNAL PSF 80.00
CODE FL 22267.1
NFRC CERTIFICATION
U FACTOR 1.01 SHGC 0.26 VT 0.47

OCTOBER 05, 2023

PROPOSAL NUMBER

PROPOSAL NAME

EXTERNAL PURCHASE ORDER ID
00000

QUOTE ITEMS

LINE NUM	LINE NAME	ASSEMBLY SYSTEM	ASSEMBLY	UNIT PRICE	TOTAL QUANTITY	TOTAL PRICE
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1	001	ES-SGD2020 - SLIDING GLASS DOOR	PXXX- XXXX (3) (OUT)		1	
						
		SIZE	426" X 120"	FBC CERTIFICATION		
		TOTAL WIDTH	584 9/16"	INTERNAL PSF	EXTERNAL PSF	
		OPENING WIDTH	426"	85.10	53.00	
		POCKET WIDTH	79 5/16"	CODE	FL 22267.1	
		POCKET COUNT	2	NFRC CERTIFICATION		
		AREA	357.71 FT ²	U FACTOR	SHGC	VT
		FINISH	AAMA 2604 BLACK	0.57	0.23	0.48
		GLASS	3/16" CLEAR TMP SB70 + 3/8" AIR MA BLACK SPACER + 3/16" CLEAR HS + 0.09 PVB CLEAR + 1/4" CLEAR HS			
		KEYED	NO			
		MUNTIN	NO			
		SCREEN	NO			
		OPENING	LEFT ACTIVE			
		JAMB TYPE	ANCHORED			
		SILL TYPE	STANDARD			
		HANDLE TYPE	CREST			
		GLAZING TYPE	WET GLAZED			
		HANDLE COLOR	STANDARD			
		HEAD RECEPTOR	NO			
		ANCHORING	STANDARD			
		TYPING	STANDARD			
		COLOR	CLEAR ANOD			
		THRESHOLD	CLEAR ANOD			
		PROTECTIVE	NONE			
		FILM	NONE			
		SILL RISER TYPE	2 9/16 (8PSF)			
		POCKET HOOK	3PCS HOOK			
		TYPE				
		ONLY INTERIOR	NO			
		HANDLE				
		INTERLOCK				
		REINFORCEMENT	LEVEL 3			
		LEVEL				
		PRE-GLAZED?	YES			

