

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30<sup>th</sup> JUDICIAL CIRCUIT  
INGHAM COUNTY

IN THE MATTER OF:

No. 05 32 CZ  
Hon. James R. Giddings

**Lakeview Windows of Battle Creek, Inc.**  
**Lakeview Windows of Grand Rapids, Inc.**  
**Lakeview Windows, Inc., Lakeview Windows**  
**of Battle Creek and Richard Earl Johns**  
Respondents.

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**ASSURANCE OF DISCONTINUANCE**

MICHAEL A. COX  
Attorney General

Nancy A. Piggush (P28801)  
Assistant Attorney General  
Consumer Protection Division  
P.O. Box 30213  
Lansing, MI 48909  
(517) 335-0855

Dated: May 13, 2005

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30<sup>th</sup> JUDICIAL CIRCUIT  
INGHAM COUNTY

In The Matter Of:

No. 05 32 CZ  
Hon. James R. Giddings

**LAKEVIEW WINDOWS OF BATTLE CREEK, INC.  
LAKEVIEW WINDOWS OF GRAND RAPIDS, INC.  
LAKEVIEW WINDOWS, INC., LAKEVIEW WINDOWS  
OF BATTLE CREEK, RICHARD EARL JOHNS  
JAMES W. BUREN,**

AG File No. 200216776

Respondents.

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**ASSURANCE OF DISCONTINUANCE**

The Complainant is Michael A. Cox, Attorney General of the State of Michigan, on behalf of the People of the State of Michigan. The Respondents named in the Notice of Intended Action issued on September 19, 2002 (NIA) were Lakeview Windows of Battle Creek, Inc., Lakeview Windows of Grand Rapids, Inc. Lakeview Windows, Inc., Lakeview Windows of Battle Creek, and Richard Earl Johns. Pursuant to Section I of this Assurance of Discontinuance (Assurance), James W. Buren is added as a Respondent. Lakeview Windows of Battle Creek, Inc., Lakeview Windows of Grand Rapids, Inc., Lakeview Windows of Battle Creek and Richard Earl Johns are removed as Respondents.

This Assurance of Discontinuance ("Assurance") concerns the resolution of alleged violations of the Michigan Consumer Protection Act (the "MCPA"), MCL 445.901 et seq. Respondents agree not to contest: (a) the authority of the Department of Attorney General to execute this Assurance; or, (b) any terms or conditions set forth herein.

The entry of this Assurance by Respondents is neither an admission of liability with respect to any issue dealt with in this Assurance nor is it an admission or denial of any factual allegations or legal conclusions stated or implied in this Assurance.

The Parties agree that the terms and conditions of the Assurance are fair, reasonable and consistent with the public interest and the doctrines of applicable law.

## I. BACKGROUND

1.1 On September 19, 2002, the Michigan Department of Attorney General, Consumer Protection Division issued a Notice of Intended Action (NIA) pursuant to MCL 445.905 (2) alleging violations of the MCPA. A copy of the NIA is attached as Exhibit 1 and is made a part of this Assurance.

1.2 Respondent, James W. Buren and each of the Respondents named in the NIA represent and affirm that each has ceased and terminated solicitations, operations, and sales of services and products of Lakeview Windows, Inc.

1.3 James W. Buren, individually, and as a principal officer and shareholder of Respondent, Lakeview Windows, Inc. (Lakeview) represents and affirms at all relevant times that:

(a) He was the only principal of Lakeview who was solely responsible for formulating, directing, controlling, and overseeing the acts and practices of Lakeview.

(b) Any and all acts and participation, by Lakeview Windows of Battle Creek, Inc., Lakeview Windows of Grand Rapids, Inc., Lakeview Windows of Battle Creek, (an assumed name entity), or Richard Earl Johns were pursuant to the direction and control of James W. Buren.

(c) James W. Buren shall be added as a respondent to this Assurance.

1.4 Affidavits in support of the foregoing representations made in Paragraph 1.3 are attached and incorporated herein by reference; Exhibit-2, Affidavit of James W. Buren; Exhibit-3, Affidavit of Mark Buren; and Exhibit-4, Affidavit of Richard Earl Johns.

## **II. JURISDICTION AND VENUE**

The Ingham County Circuit Court has jurisdiction over the subject matter of this action pursuant to MCL 445.905(1). The Court also has personal jurisdiction over each of Respondents for the enforcement of this Assurance. Respondents waive all objections and defenses regarding jurisdiction and venue.

## **III. PARTIES BOUND**

3.1 This Assurance shall apply to and be binding upon Respondents, Lakeview Windows, Inc. and James W. Buren, whether acting with or through officers, employees, representatives, agents successors, or through any other corporation, other business entity (including but not limited to Lakeview Windows of Battle Creek, Inc., and Lakeview Windows of Grand Rapids, Inc.) any individual ( including but not limited to Mark Buren or Richard Earl Johns) or any successors or assigns. James W. Buren, individually, and Lakeview Windows, Inc. are responsible for compliance with the terms of the Assurance, and shall ensure that all employees, sales agents and representatives acting on behalf of them are in compliance with the terms and conditions of this Assurance. James W. Buren and Lakeview Windows, Inc. shall not enter into any contract or agreement that is inconsistent with this Assurance.

3.2 The signatories to this Assurance certify that they are authorized to execute and legally bind the parties they represent.

3.3 James W. Buren and Lakeview Windows, Inc. and their successors shall notify the Department within 15 days of the occurrence of any significant change in the corporate structure such as dissolution, assignment, or sale, the formation of any successor corporation, the creation or dissolution of subsidiaries, involvement in bankruptcy, receivership or similar proceedings, or any other change which may affect any compliance obligations arising.

#### IV. DEFINITIONS

4.1 "Assurance" or "assurance" means this Assurance of Discontinuance and any appendix or attachment hereto.

4.2 "Complainant" means Michael A. Cox, Attorney General of the State of Michigan, on behalf of the People of the State of Michigan. Complainant is also sometimes referred to as the "Attorney General," the "Department," or the "Department of Attorney General."

4.3 "Day" means Sunday through Saturday of any given week.

4.4 "Parties" means the Complainant and Respondents.

4.5 "Respondents" means James W. Buren and Lakeview Windows, Inc. unless the context indicates otherwise. Lakeview Windows, Inc. is sometimes also referred to as "Lakeview."

4.6 "Clear and conspicuous," or other forms of the words such as "clear" or "clearly and conspicuously" means a statement or representation (by any medium of communication) is readily understandable, free from ambiguity, contradiction, and confusion, and presented in such size, color contrast, location audibility and visibility duration, compared to other matter with which it is presented or to which it is related so that it will be noticed and understood and will

not be ambiguous or contradictory. If such statement or representation modifies, explains, or clarifies other information with which it is presented or to which it is related, the statement, in order to be "clear and conspicuous," must also be present in close proximity to the information it modifies and the statement may not be obscured.

4.7 "Person" means a natural person, corporation, trust, partnership, incorporated or unincorporated association or other legal entity.

4.8 "Agreement," or other forms of the word including but not limited to "contract," "pre-printed form agreement" or "form" means any oral or written agreement made by any Respondent to perform or provide goods or services to any consumer.

4.9 "Prompt delivery," or other forms of the words including but not limited to, "delivery," "immediate delivery," "fast delivery and installation," or "installation" means delivery and installation of the goods or service sold to the consumer, within 14 days of any consumer's execution of any agreement (of sale of a service or product) with any Respondent.

4.10 "NIA" means the Notice of Intended Action issued on September 19, 2002 against Lakeview Windows of Battle Creek, Inc., Lakeview Windows of Grand Rapids, Inc., Lakeview Windows, Inc., Lakeview Windows of Battle Creek (an assumed name entity) and Richard Earl Johns.

## V. STATEMENT OF PURPOSE

In entering into the Assurance, the mutual objective of Complainant and Respondents, James W Buren and Lakeview Windows, Inc. is to resolve, without further litigation, the alleged violations of the MCPA, the demand for payment of civil penalties, and the reimbursement of

costs and expenses incurred by the Departments in investigating this matter and enforcing the MCPA.

## **VI. IMPLEMENTATION OF COMPLIANCE MEASURES**

6.1 The Respondents, their sales representatives, other representatives, employees, and any other person acting for any Respondent shall immediately comply with all applicable provisions of the MCPA including but not limited to immediate cessation of any oral or written representations by any method, act or practice that falsely represents:

- a. That goods or services ordered by a consumer will be promptly delivered.
- b. That goods or services have superior workmanship, approval, status, characteristics, benefits or sponsorship.
- c. That Respondents will provide consumers goods or services of a certain grade, a certain standard, with certain characteristics, with a certain approval, of certain quantity, or of certain ingredients.
- d. That any Respondent is duly licensed and/or meets all State licensing requirements.

6.2 If any Respondent fails to comply with the requirements of Paragraph 6.1 (a), the Respondents shall immediately return to the consumer, any deposit, down payment or other payment made by the consumer and cancel any agreement unless the consumer and the Respondents agree, in writing, to a different period of time for delivery of the goods or services.

6.3. Respondents shall not falsely represent that the consumer will receive Respondents' or any supplier's, manufacturer's, wholesaler's, or distributor's guaranty or warranty for a good or service. Further, Respondents shall not make nor provide any agreement or

representation of any guaranty or warranty unless the agreement or the representation and Respondents' conduct comply with the terms of this Assurance and all applicable federal and state laws and regulations including but not limited to, the Magnuson Moss Warranty Act, 15 USC Section 1301 et. seq., the MCPA and the Michigan Uniform Commercial Code, MCL 445.1101 et seq.

6.4 Respondents shall not use any pre-printed form agreement that fails to comply with the MCPA and, if applicable, the Michigan Home Improvement Finance Act, MCL 445.1101.

6.5 In any representation made by any means of communication, Respondents shall not make any false, ambiguous, or confusing representation regarding the name or business location of any Respondent or regarding the name(s) of any corporate Respondent's shareholder(s), director(s), officer(s), manager(s), or employee(s).

6.6 In any agreement made with any person, Respondents shall clearly and conspicuously set forth the full name(s), the complete street address(es), and the telephone number(s) of each of the Respondents that entered into the agreement with the consumer or other person and is responsible for performing or providing the goods or services promised to the consumer or other person.

6.7 Respondent, James W. Buren, agrees to mediate and/or make good faith adjustments of and provide good faith written response to the complaint of any person or consumer forwarded by the Department to any Respondent after the effective date of this Assurance, within thirty days of receipt (or such later date as the parties may agree in writing).

6.8 In the event any consumer whose complaint Respondents represented (to the Department) as settled, complains to the Department or complains to any Respondent that

Respondents did not settle and satisfy the consumer's claim, the matter shall be resolved by means of the Dispute Resolution procedure set forth at Section XI.

6.9 Respondents shall fully comply with the MCPA, the Home Improvement Finance Act and all other federal and Michigan laws and regulations that may be applicable for any consumer transaction in which Respondents engage.

## **VII. PAYMENT OF CIVIL PENALTY**

7.1 Respondent, James W. Buren shall pay to the State of Michigan the sum of \$15,000.00 as a civil penalty, provided however that said payment shall be suspended, conditioned on Respondents full compliance with the terms of this Assurance.

7.2 Payment shall be made by check payable to the "State of Michigan" and remitted to Katharyn Barron , Assistant-In-Charge, Consumer Protection Division, P.O. Box 30213, Lansing, MI 48909. The check shall reference "Lakeview Windows, No. 200216776."

7.3 In the event of non compliance with any provision of this Assurance, all civil penalties will immediately cease being suspended and will be immediately due and payable.

7.4 Unless a temporary restraining order is sought, the Attorney General shall make reasonable efforts to provide written notice in the event the Department believes Respondents or any related or affiliated entity or successor, to be in noncompliance with the provisions of this Assurance, setting forth the basis for such belief. Notwithstanding the foregoing, such notice shall not be deemed to be a jurisdiction prerequisite to institution of an enforcement action.

7.5 The civil penalty provided by this section shall be exclusive of claims for reimbursement of any attorney fees and other costs, which the Department may incur in enforcing this Assurance in the event of any Respondent's noncompliance.

## **VIII. REIMBURSEMENT OF COSTS AND EXPENSES**

8.1 Concurrent with the execution and delivery of this Assurance, Respondent, James W. Buren shall pay the sum of \$2,500.00 to the State of Michigan to reimburse the state for its legal, investigative and administrative expenses relating to historical compliance efforts directed at Respondents.

8.2 Payment shall be remitted in the same manner as specified in subsection 7.2

## **IX. CONSUMER REDRESS**

9.1 Complaints already received - Except as otherwise provided in Paragraph 9.2 of this Section IX, Respondent, James W. Buren, shall resolve any pending and unresolved complaints filed with the Attorney General's Consumer Protection Division ("CPD") prior to the effective date of this Assurance within 15 days by refund of all amounts paid by the consumer or, if payment has not been made, contract cancellation, cessation of collection efforts, and actions required to remove any adverse credit reporting by any Respondent or any agent acting for a Respondent. Written confirmation of resolution shall be provided to the CPD within 30 days of the effective date of this Assurance, which shall include verification of the fact, date and amount of refund.

9.2 Independent complaints, court suits or administrative proceedings, arbitrations - This Assurance does not pre-empt, preclude, resolve or otherwise terminate or nullify any person's complaint made directly to any NIA named Respondent, to Respondent, James W. Buren or to any other person; any administrative proceeding against or involving Respondent, James W. Buren or any NIA named Respondent or other person; any lawsuit in any court of any

jurisdiction against or involving James W. Buren or any NIA named Respondent; or any arbitration, mediation or similar proceeding against or involving Respondent, James W. Buren, or any NIA named Respondent, or any other person.

9.3 Future complaints - After the effective date of this Assurance, Respondents, James W. Buren, Lakeview Windows, Inc. and their successors or assigns:

a. Shall promptly investigate and respond, in writing, to the substance of any complaints filed with the CPD and submitted to any Respondent. The Compliance Measures set forth in Section VI of this Assurance shall apply to complaints addressing conduct occurring after the effective date of this Assurance, and shall be resolved by refund of any amounts paid by the consumer and, at the consumer's option, cancellation of the contract unless Respondents establish by clear and convincing evidence that the consumer's complaint is invalid. This paragraph shall not be construed to preclude future enforcement actions by the Attorney General for violation of this Assurance or otherwise.

b. Resolution and response that is not completed within 30 days of notice shall be considered untimely for purposes of this section.

**X. OTHER SETTLEMENT OR LITIGATION WITH MORE FAVORABLE TERMS OR CONDITIONS**

This Assurance shall be amended to include any terms, provisions or other conditions more favorable to consumers that arise or arose from any agreement (or court order or decree) binding any Respondent.

## **XI. DISPUTE RESOLUTION**

11.1 The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Assurance and shall apply to all provisions of this Assurance. Any dispute that arises under this Assurance shall in the first instance be the subject of informal negotiations between the parties. The period of negotiations shall not exceed ten (10) days from the date of written notice by any party that a dispute has arisen, but it may be extended by agreement between the parties. The period for informal negotiations shall end when the Department provides a written statement setting forth its proposed resolution of the dispute to any Respondent.

11.2 If the parties fail to resolve a dispute by informal negotiations, then the dispute shall be resolved in accordance with the resolution proposed by the Complainant unless, within ten (10) days after receipt of the Complainant's proposed resolution, Respondents file a petition for resolution with the Ingham Circuit Court setting forth the matters in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to insure orderly implementation of this Assurance.

## **XII. COVENANT NOT TO SUE BY COMPLAINANT AND RESERVATION OF RIGHTS**

12.1 In consideration of the implementation of compliance measures, the payment of the civil penalty and the reimbursement of the costs and expenses that will be made by Respondents under the terms of this Assurance, and except as specifically provided in this Section, Complainant covenants not to sue or to take administrative action against Respondents for Covered Matters.

12.2 "Covered Matters" shall include any liability to the State of Michigan for the following:

a. Payment of all civil penalties for violations of the MCPA through February 1, 2005, and

b. Reimbursement of costs and expenses incurred by the Department of Attorney General through February 1, 2005.

12.3 The covenant not to sue set forth in this Section does not pertain to any matters other than those expressly specified in "Covered Matters" in paragraph 12.2. Complainant reserves and this Assurance are without prejudice to, all rights against Respondents with respect to all other matters including, but not limited to, the following:

- a. Any criminal liability;
- b. Liability arising from a violation by Respondents of a requirement of this Assurance;
- c. Liability for violations of the MCPA that occur after February 1, 2005.

### XIII. NOTICES

All notices, deliveries or other communications required or permitted hereunder shall be in writing and shall be deemed given when sent by facsimile transmission and confirmed by certified or registered mail (unless otherwise specified) addressed as follows:

- a. If to Complainant:

Assistant Attorney General In Charge  
Consumer Protection Division  
PO Box 30213  
Lansing MI 48909

- b. If to Respondents:

1332 — James W. Buren  
1265 East Columbia Avenue *Ray*  
Battle Creek, MI 49014

#### **XIV. GENERAL PROVISIONS**

14.1 This Assurance is accepted and final upon signing by an assistant attorney general.

14.2 No change or modification of this Assurance shall be valid unless in writing and signed by both parties.

14.3 Neither Respondents nor anyone acting on their behalves shall state or imply or cause to be stated or implied that the State of Michigan, the Attorney General, or any other governmental unit of the State of Michigan has approved, sanctioned, or authorized any practice, act, advertisement or conduct of the Respondents.

14.4 This document shall not be construed against the "drafter" because both parties participated in the drafting of this document.

14.5 Nothing in this Assurance shall limit the Attorney General's right to obtain information, documents or testimony from any Respondent pursuant to any state or federal law, regulation or rule.

14.6 Any failure by any party to insist upon the strict performance by the other party of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions of this Assurance, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Assurance and the imposition of any applicable penalties, including but not limited to contempt, civil penalties and/or the payment of reasonable and appropriate attorneys' fees to the State related thereto.

14.7 If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance and this Assurance shall be construed

and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

14.8 Respondents will not participate directly or indirectly in any activity to continue any enterprise, entity or corporation or form a separate entity or corporation which engages in acts prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

14.9 This Assurance sets forth the entire agreement between the parties, and there are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Assurance that are not fully expressed in this Assurance.

14.10 Nothing in this Assurance shall be construed as relieving Respondents of their obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Assurance be deemed to be permission to engage in any acts or practices prohibited by such law, regulation or rule.

14.11 This Assurance does not extinguish, limit, or otherwise affect any private cause of action that any consumer may have against any Respondent, whether arising under the MCPA or other law. Further, nothing in this Assurance may prevent any Respondent from raising any defense it may have in any private right of action, including a claim of set-off for any restitution received under this order by a particular consumer.

14.12 This Assurance may be executed in counterparts.

**XV. APPLICABLE LAW**

This Assurance shall be construed in accordance with and governed by the internal laws of the State of Michigan.

**XVI. EFFECTIVE DATE**

The effective date of this assurance is the date it is filed with the Ingham County Circuit Court.

**XVII. TERMINATION**

If all substantive terms of this Assurance are met by Respondents this Assurance shall terminate on June 30, 2007 except that the requirements of Sections VI, IX and XI shall survive. The parties shall be allowed to reopen this Assurance for purposes of addressing any matters arising under Sections VI, IX or XI and this Court shall have continuing jurisdiction for such purposes.

Lakeview Windows Inc.

Dated: 5-5-05  
(Print, legibly, the signer's name here)  
(Print signer's company or corporate position/title here) Its:

By:

James W. Buren  
JAMES W. BUREN  
PRESIDENT

James W. Buren

Dated: 5-5-05  
(Print, legibly, the signer's name here)  
(Print signer's company or corporate position/title here) Its:

By:

James W. Buren  
JAMES W. BUREN  
PRESIDENT

MICHAEL A. COX  
ATTORNEY GENERAL

Dated: 5-13-05

By: Nancy A. Piggush  
Nancy A. Piggush  
Assistant Attorney General  
Consumer Protection Division  
P.O. Box 30213  
Lansing, MI 48909  
517-335-0855; Fax 517-335-1935

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STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL

In The Matter of:

AG No. 200216776

**LAKEVIEW WINDOWS OF BATTLE CREEK, INC.  
LAKEVIEW WINDOWS OF GRAND RAPIDS, INC.  
LAKEVIEW WINDOWS, INC., LAKEVIEW WINDOWS OF BATTLE CREEK  
AND RICHARD EARL JOHNS**

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**NOTICE OF INTENDED ACTION AND  
OPPORTUNITY TO CEASE AND DESIST**

TO: Lakeview Windows, Inc.  
James W. Buren  
Registered Agent  
463 Dillingham Lane  
Kalamazoo, MI 49009

Lakeview Windows of Battle Creek, Inc.  
James W. Buren  
Registered Agent  
1255 East Columbia Avenue  
Battle Creek, MI 49014

Richard Earl Johns  
1170 Oakgrove Park  
Union City, MI 49094

Lakeview Windows of Grand Rapids, Inc.  
Mark Buren  
Registered Agent  
4035 Plainfield Avenue, NE  
Grand Rapids, MI 49525

JENNIFER M. GRANHOLM, Attorney General of the State of Michigan,  
pursuant to the provisions of the Michigan Consumer Protection Act, (MCPA) MCL  
445.901 *et seq.*, and the administrative rules, 1979 Administrative Code (as amended), R  
14.51 *et seq.*, gives ten (10) days' notice to LAKEVIEW WINDOWS OF BATTLE  
CREEK INC, LAKEVIEW WINDOWS OF GRAND RAPIDS INC, LAKEVIEW



WINDOWS INC, LAKEVIEW WINDOWS OF BATTLE CREEK AND, RICHARD EARL JOHNS<sup>1</sup> (hereafter collectively "**Respondents**"), as required by section 5(2) of the MCPA prior to the commencement of a legal action.

The Attorney General requests **Respondents** to cease and desist from engaging in certain unfair, unconscionable, or deceptive methods, acts, and practices in the conduct of trade or commerce.

The Attorney General alleges that **Respondents** engaged, are engaging, and are about to engage in the following unlawful, unfair, deceptive, and unconscionable methods, acts, or practices that the MCPA prohibits.

#### I. FACTS

A. **Respondents** have conducted and conduct a business or businesses in Michigan. **Respondents** offer or purport to offer to consumers to make home improvements and home repairs to consumers' homes.

B. **Respondents** falsely represented and falsely represent to one or more consumers with whom they contract, offer to contract or purport to contract, that goods ordered by consumers through **Respondents**, will be delivered promptly, will be complete orders, will be of high quality and fit for the purpose.

C. **Respondents** falsely represented and falsely represent to one or more consumers that **Respondents** will completely fulfill the terms of the contract.

D. **Respondents** falsely represented and falsely represent to one or more consumers that the workmanship to be performed respecting installations, repairs and other work will be of higher quality and will be good and sufficient workmanship.

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<sup>1</sup> The allegations made against Respondent, Richard Earl Johns, are made upon information and belief and relate to conduct engaged in after July 1, 2001.

E. Respecting one or more consumers, **Respondents** have failed and still fail to refund to consumers all the consumers' down payments and other monies due the consumers.

F. Upon information and belief, one or more of the **Respondents** falsely represented and falsely represents to one or more consumers, that Respondents met and meet all State licensing requirements.

G. Respecting one or more consumers, **Respondents** falsely represented and falsely represent that **Respondents** have the ability to provide to consumers building materials of a certain grade, or a certain standard, or with certain characteristics, or with certain approval, or of certain quantity, or of certain ingredients, or with certain certification.

H. **Respondents** falsely represented and falsely represent to one or more consumers that one or more consumers received or will receive warranties.

## II. VIOLATIONS OF THE CONSUMER PROTECTION ACT

The conduct described above violates section 3(1) of the Consumer Protection Act, which provides:

Sec. 3. (1) Unfair, unconscionable, or deceptive methods, acts or practices in the conduct of trade or commerce are unlawful and are defined as follows:

(a) Causing a probability of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.

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(c) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have.

\*\*\*

(e) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

\*\*\*

(g) Advertising or representing goods or services with intent not to dispose of those goods or services as advertised or represented.

\*\*\*

(m) Causing a probability of confusion or of misunderstanding with the respect to the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) Causing a probability of confusion or of misleading as to the legal rights, obligations, or remedies of a party to a transaction.

\*\*\*

(p) Disclaiming or limiting the implied warranty of merchantability and fitness for use, unless a disclaimer is clearly and conspicuously disclosed.

(q) Representing or implying that the subject of a consumer transaction will be provided promptly, or at a specified time, or within reasonable time, if the merchant knows or has reason to know it will not be so provided.

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(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.

\*\*\*

(u) Failing, in a consumer transaction that is rescinded, or canceled, or otherwise terminated in accordance with the terms of an agreement, advertisement, representation, or provision of law, to promptly restore to the person or persons entitled to it a deposit, down payment, or other payment, or in the case of property traded in but not available, the greater of the agreed value or the fair market value of the property, or to cancel within a specified time or an otherwise reasonable time an acquired security interest.

(v) Taking or arranging for the consumer to sign an acknowledgement, certificated, or other writing affirming acceptance, delivery, compliance with a requirement of law, or other performance, if the merchant knows or has reason to know that the statement is not true.

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(y) Gross discrepancies between the oral representations of the seller and the written agreement covering the same transaction or failure of the other party to the transaction to provide the promised benefits.

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(bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is.

(cc) Failing to reveal fact that are material to the transaction in light or representations of fact made in a positive manner.

### III. ATTORNEY GENERAL'S AUTHORITY

The Attorney General proceeds under section 5 of the Consumer Protection Act, which provides in part:

(1) When the attorney general has probable cause to believe that a person has engaged, is engaging, or is about to engage in a method, act, or practice which is unlawful pursuant to section 3, and upon notice given in accordance with this section, the attorney general may bring an action in accordance with principles of equity to restrain the defendant by temporary or permanent injunction from engaging in the method, act, or practice. The action may be brought in the circuit court of the county where the defendant is established or conducts business or, if the defendant is not established in this state, in the circuit court of Ingham county. The court may award cost to the prevailing party. For persistent and knowing violation of section 3 the court may assess the defendant a civil penalty of not more than \$25,000.

(2) Unless waived by the court on good cause shown not less than 10 days before the commencement of an action under this section the attorney general shall notify the person of his intended action and give the person an opportunity to cease and desist from the alleged unlawful method, act, or practice or to confer with the attorney general in person, by counsel, or by other representative as to the proposed action before the proposed filing date. The notice may be given the person by mail, postage prepaid, to his usual place of business or, if the person does not have a usual place of business, to his last know address, or, with respect to a corporation, only to a resident agent who is designated to receive service of process or to an officer of the corporation.

### IV. RESPONDENT'S OPPORTUNITY TO COMPY WITH MICHGAN LAW

A. Within ten days after receiving this notice, **Respondents** have the opportunity to cease and desist the conduct described above and to inform the Attorney General of Respondent's decisions. **Respondents** have the opportunity to confer with the Attorney General or her representative, and the Attorney General will not commence an

action against **Respondents** during this period. The Attorney General will consider Respondent's decision in determining whether to take further legal action.

B. The Attorney General may accept a formal assurance, in accordance with section 6 of the Consumer Protection Act, that **Respondents** will stop violating this act. The assurance may provide for payment of the costs of investigation, restitution to aggrieved persons, and other relief.

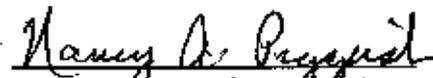
#### V. CONSEQUENCES OF RESPONDENT'S VIOLATIONS

A. If no assurance of discontinuance is accepted, then the Attorney General will file a lawsuit against **Respondents** in circuit court after expiration of the applicable time periods.

B. A lawsuit under the Consumer Protection Act may result in an injunction, civil penalties of up to \$25,000.00 for each violation as provided in section 5 of the act 6 (see paragraph III above).

C. If any **Respondent** decides to exercise its opportunity to confer with the Attorney General or his representative before a lawsuit is filed, **Respondent** must contact the undersigned Assistant Attorney General within ten days after the **Respondent** receives this notice to avoid the filing of a lawsuit under the Consumer Protection Act.

JENNIFER M. GRANHOLM  
ATTORNEY GENERAL

  
Nancy A. Piggush (P28801)  
Assistant Attorney General  
Consumer Protection Division  
P.O. Box 30213  
Lansing, MI 48909  
Phone: (517) 335-0855

Dated: September 19, 2002



Windows of Battle Creek, in relation to Lakeview Windows, Inc. were pursuant to the direction and control of James W. Buren, and not as principals.

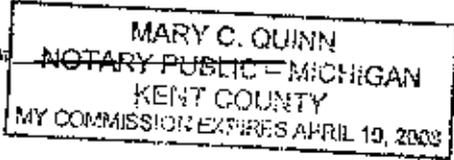
I declare under penalty of perjury that the foregoing statements are true, correct, made of my own personal knowledge and I can competently testify to them.

  
James W. Buren

Signed and sworn to before me in Kent County, Michigan on 4-6-2005  
(month & day) (year)

  
(signature)

Notary Public, MARY C. QUINN (printed name)  
Kent County (acting in Kent County), Michigan

My commission expires \_\_\_\_\_  
or  
Notary Public Stamp: 

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30<sup>th</sup> JUDICIAL CIRCUIT  
INGHAM COUNTY

In The Matter Of

No. 05 32 CZ  
Hon. James R. Giddings

LAKEVIEW WINDOWS OF BATTLE CREEK, INC.  
LAKEVIEW WINDOWS OF GRAND RAPIDS, INC.  
LAKEVIEW WINDOWS, INC., LAKEVIEW WINDOWS  
OF BATTLE CREEK AND RICHARD EARL JOHNS

AG File No. 200216776

Respondents.

AFFIDAVIT OF MARK BUREN

State of Michigan            )  
  ) SS  
County of KENT            )

Mark Buren, being duly sworn, deposes and says:

1. I am a resident of Michigan. I reside in KENT County, Michigan.
2. Lakeview Windows, Inc. has permanently discontinued business operations as of on or about MARCH 2002.
3. Affiant has ceased any and all conduct in furtherance of the advertising, operation of, and sales of goods or services for Lakeview Windows, Inc.
4. Any acts by Affiant in relation to Lakeview Windows, Inc. were pursuant to the direction and control of James W. Buren.
5. Affiant is a shareholder and officer of Lakeview Windows of Grand Rapids, Inc. Lakeview Windows, Inc. had no relation to Lakeview Windows of Grand Rapids, Inc.



6. I declare under penalty of perjury that the foregoing statements are true, correct, made of my own personal knowledge and I can competently testify to them.

Mark Buren  
Mark Buren

Signed and sworn to before me in Kent County, Michigan on 4-6-2005  
(month & day) (year)

Mary C. Quinn  
(signature)

Notary Public, MARY C QUINN (printed name);  
Kent County (acting in Kent County), Michigan.

My commission expires:

MARY C. QUINN  
NOTARY PUBLIC - MICHIGAN  
KENT COUNTY  
MY COMMISSION EXPIRES APRIL 10, 2009

or

Notary Public Stamp \_\_\_\_\_



Windows, Inc. had no relation to Lakeview Windows of Battle Creek, nor Lakeview Windows of Battle Creek, Inc.

6. I declare under penalty of perjury that the foregoing statements are true, correct, made of my own personal knowledge; and I can competently testify to them.

*Richard Earl Johns*  
Richard Earl Johns

Signed and sworn to before me in Calhoun County, Michigan on 4-6, 2005  
(month & day) (year)

*Betty J. Ryder*  
(signature)

Notary Public, Betty J. Ryder (printed name)

Calhoun County (acting in Calhoun County), Michigan

My commission expires: 9-24-2007

or  
Notary Public Stamp **BETTY J. RYDER**  
Notary Public, Calhoun County, MI  
My Commission Expires Sept. 24, 2007

Windows, Inc. had no relation to Lakeview Windows of Battle Creek, nor Lakeview Windows of Battle Creek, Inc.

6. I declare under penalty of perjury that the foregoing statements are true, correct, made of my own personal knowledge and I can competently testify to them.

*Richard Earl Johns*  
Richard Earl Johns

Signed and sworn to before me in Calhoun County, Michigan on 4-6 2005  
(month & day) (year)

*Betty J. Ryder*  
(signature)

Notary Public, Betty J. Ryder (printed name)

Calhoun County (acting in Calhoun County), Michigan

My commission expires: 9-24-2007

or **BETTY J. RYDER**  
Notary Public, Calhoun County, MI  
My Commission Expires Sept. 24, 2007

Notary Public Stamp \_\_\_\_\_