

**N THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JAMES D. FREEMAN	)	
	)	Civil Action No. 2:10-cv-01515
Plaintiff,	)	
	)	
vs.	)	Honorable Arthur J. Schwab
	)	
PGW AUTO GLASS, LLC, and	)	ELECTRONIC FILING
PITTSBURGH GLASS WORKS, LLC,	)	
	)	
Defendants.	)	
	)	

**PGW AUTO GLASS, LLC AND PITTSBURGH GLASS WORKS, LLC’S  
ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM**

NOW COME Defendants, PGW Auto Glass, LLC (“PGW Glass”), and Pittsburgh Glass Works, LLC (“PGW” and, collectively with PGW Glass, “Defendants”), by their attorneys, FREEBORN & PETERS LLP and COHEN & GRIGSBY, P.C., and as their answer and affirmative defenses to Plaintiff’s Complaint, state as follows:

**THE PARTIES**

1. Plaintiff James D. Freeman is an individual who is currently 62 years old and resides in Chapin, South Carolina.

**ANSWER:** On information and belief, Mr. Freeman is currently 62 years old. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 1 of the Complaint and, therefore, those allegations are denied.

2. Defendant PGW Auto Glass, LLC (“Auto Glass”) is a Pennsylvania limited liability company with its principal place of business and global headquarters located at 30 Isabella Street, Suite 500, Pittsburgh, Pennsylvania. Defendant Auto Glass employed Mr. Freeman and was the distribution arm of the Automotive Glass and Services Division of PPG Industries, Inc. prior to the establishment of Defendant Pittsburgh Glass Works, LLC.

**ANSWER:** Defendants admit that PGW Glass's principal place of business is located at 30 Isabella Street, Suite 500, Pittsburgh, Pennsylvania 15212. Defendants further admit that Mr. James D. Freeman was an employee of the predecessor of PGW Glass when that entity was controlled by PPG Industries, Inc. and known as PPG Auto Glass, LLC. Defendants deny that PGW Glass is a Pennsylvania limited liability company.

3. Defendant Pittsburgh Glass Works, LLC ("PGW") is a Pennsylvania limited liability company with its principal place of business and global headquarters located at 30 Isabella Street, Suite 500, Pittsburgh, Pennsylvania 15212. Before its creation in late 2008, the underlying business operations and assets of PGW were formally part of the Automotive Glass and Services Division of PPG Industries, Inc., which is also headquartered in Pittsburgh, Pennsylvania. PPG Industries, Inc. retains 40% D03hiped artestIn

Defendants admit only that PGW Glass has continuously, since its formation, been an “employer” within the meaning of 29 U.S.C. § 623 of the ADEA.

6. Once the discovery process in this matter is underway, the roles of other unknown conspirators and participants in the wrongdoing identified herein will likely be revealed, and plaintiff reserves the right to seek leave of court to further amend this Complaint to add new parties and/or new claims.

**ANSWER:** Defendants state that the allegations contained in paragraph 6 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and caselaw applying that rule by failing to provide a short and plain statement of Plaintiff’s claim or a plausible basis for relief. Subject to and notwithstanding the above, Defendants deny the allegations contained in paragraph 6.

**NATURE OF THIS ACTION AND CORE ALLEGATIONS**

7. This is an action brought by Mr. Freeman, who had 21 years of combined experience and dedicated service to Auto Glass and its predecessor companies, seeking redress for systemic practices engaged in by the PGW Automotive Glass Division resulting in discrimination against its older work force in conducting terminations and forced retirements over an extended period of time, which practices are continuing in nature:

- a. Adopting and employing methods for evaluating, ranking and selecting employees for termination in Reductions in Force (“RIFs”), which methods were highly subjective, unreliable, invalid, and served as mere pretext, resulting in termination of disproportionately high numbers of older workers who were never informed of the clandestine criteria used to select them for termination;
- b. Failing to exercise appropriate supervision or control over managers who select older workers for termination;
- c. Maintaining a corporate culture which fosters and encourages pervasive ageist stereotypes, implicit on age bias, and age-related animus, and which permits managers to practice age discrimination in evaluating older employees and in selecting employees for termination;
- d. Failing to establish policies to ensure compliance with the requirements of ADEA, and to guard against age discrimination, and implicit age bias, including, without limitation, policies

- e. Willfully failing to examine or evaluate, in advance of the completion of termination (or at any time thereafter), whether the terminations routinely result in the elimination of a disproportionately high number of older workers, or to otherwise employ safeguards or exercise oversight of the termination process to prevent or mitigate such discriminatory outcomes, in violation of ADEA, as well as Au

**ANSWER:** Defendants state that the allegations contained in paragraph 8 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and caselaw applying that rule by failing to provide a short and plain statement of Plaintiff's claim and a plausible basis for relief. Subject to and notwithstanding the above, Defendants deny the allegations contained in paragraph 8.

### **JURISDICTION**

9. This Court has jurisdiction over the federal question subject matter of this civil rights action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b), as made applicable by 29 U.S.C. § 626(b).

**ANSWER:** Admitted.

10. This Court has personal jurisdiction over Auto Glass and PGW because they have systematically and continuously engaged in substantial interstate commercial conduct and business activity within Pennsylvania at all relevant times, Auto Glass and PGW both maintain their principal place of business in Pennsylvania, and because the case arises in part out of PPG's unlawful conduct within this District.

**ANSWER:** Defendants admit that PGW Glass and PGW conduct business activity within the Commonwealth of Pennsylvania, that they maintain their principal places of business in Pennsylvania, and that personal jurisdiction is appropriate in this Court. Defendants deny the remaining allegations of paragraph 10.

11. Mr. Freeman has complied with all conditions precedent to filing a suit under ADEA.

**ANSWER:** Defendants state that the allegations contained in paragraph 11 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and the caselaw applying that rule because they fail to make a short and plain statement of the claim and provide a plausible basis for relief. Specifically, the allegations present a baseless conclusion without any reference to how Plaintiff purports to have "complied with all conditions precedent" to anything. Subject to and notwithstanding the above, Defendants deny the allegations of paragraph 11.

12. Mr. Freeman filed charges of employment discrimination based on age against PPG with the Equal Opportunity Employment Commission (“EEOC”).

**ANSWER:** Defendants admit that Mr. Freeman filed charges with the Equal Opportunity Employment Commission (“EEOC”).

13. More than 60 days have elapsed since Mr. Freeman filed charges with the EEOC.

**ANSWER:** On information and belief, Defendants admit the allegations contained in paragraph 13.

14. Mr. Freeman has received a Dismissal and Notice of Rights from the EEOC. A copy of this EEOC Notice is attached hereto as Exhibit A and is incorporated by reference as though fully set forth herein.

**ANSWER:** Admitted.

15. The complaint was filed within 90 days of receipt of the first Dismissal and Notice of Rights issued by the EEOC to a Plaintiff.

**ANSWER:** On information and belief, Defendants admit the allegations contained in paragraph 15.

### **VENUE**

16. Venue is proper in the Western District of Pennsylvania pursuant to 28 U.S.C. § 1391(b), as Auto Glass maintained its principal place of business in this District at all times relevant to this Complaint.

**ANSWER:** Admitted.

17. In addition, the unlawful employment policies and practices which are the subject of this action, were and are centrally implemented and/or controlled from Auto Glass’s principal place of business in this District.

**ANSWER:** Defendants state that the allegations contained in paragraph 17 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and the caselaw applying that rule because they fail to make a short and plain statement of a claim and/or provide a plausible basis for relief. Specifically, the allegations contained in paragraph 17 contain a legal conclusion

that does not comply with Rule 8 and is, therefore, denied. Subject to and notwithstanding the above, the allegations of paragraph 17 are admitted in part and denied in part. Defendants admit that PGW Glass's principal place of business is located in the District. Defendants deny the remaining allegations of paragraph 17.

18. Because Auto Glass was headquartered in Pittsburgh and issued policies from its headquarters as described above, this District is an appropriate forum for this action.

**ANSWER:** Defendants state that the allegations of paragraph 18 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and the caselaw applying that rule because they fail to make a short and plain statement of a claim and/or provide a plausible basis for relief. Specifically, the allegations contained in paragraph 18 contain a legal conclusion that does not comply with Rule 8 and is, therefore, denied. Subject to and notwithstanding the above, the allegations of paragraph 18 are admitted in part and denied in part. Defendants admit that PGW Glass was headquartered in Pittsburgh. Defendants deny the remaining allegations of paragraph 18.

### **FACTUAL BACKGROUND**

#### ***The Legacy of Age Discrimination at PPG Industries, Inc.***

19. Historically, PPG Industries, Inc., the parent company of Defendant Auto Glass and partial owner of Defendant PGW, had been a company that valued its employees and recognized that, because its businesses were those that depended on technical innovation, its success was tied very closely to the creativity, satisfaction and commitment of its employees.

**ANSWER:** Defendants state that the allegations contained in paragraph 19 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and caselaw applying that rule by failing to provide a short and plain statement of Plaintiff's claim or a plausible basis for relief. Specifically, the allegations of paragraph 19 relate to the purported historical conduct of PPG Industries, Inc. ("PPG") – a separate company. The historical conduct and/or attitudes of PPG

are not before this Court. Subject to and notwithstanding the above, PGW states that it lacks knowledge or information sufficient to form a belief about the allegations contained in paragraph 19 and, therefore, denies them.

20. However, more recently, the company has embarked upon an aggressive and short-sighted program of cost cutting, “belt-tightening” and “efficiency improvement,” which was driven by Senior Management’s obsession with short-term quarterly economic projections and goals.

**ANSWER:** Defendants state that the allegations contained in paragraph 20 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and caselaw applying that rule by failing to provide a short and plain statement of Plaintiff’s claim or a plausible basis for relief. Specifically, the allegations of paragraph 20 relate to the purported historical conduct of PPG – a separate company. The historical conduct and/or attitudes of PPG are not before this court. Subject to and notwithstanding the above, PGW states that it lacks knowledge or information sufficient to form a belief about the allegations contained in paragraph 20 and, therefore, denies them.

21. One of the primary methods of cost-cutting employed by PPG Industries was an aggressive program of Reductions in Force (“RIFs”).

**ANSWER:** Defendants state that the allegations contained in paragraph 21 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and caselaw applying that rule by failing to provide a short and plain statement of Plaintiff’s claim or a plausible basis for relief. Specifically, the allegations of paragraph 21 relate to the purported historical conduct of PPG – a separate company. The historical conduct and/or attitudes of PPG are not before this court. Subject to and notwithstanding the above, PGW states that it lacks knowledge or information sufficient to form a belief about the allegations contained in paragraph 21 and, therefore, denies them.

22. When PPG Industries would conduct RIFs, it would simply call an older employee into a conference room and inform him that his employment with PPG was ending immediately. Typically, no further explanation would be given, other than “corporate downsizing”, “reduction in force” or the elimination of the employee’s position.

**ANSWER:** Defendants state that the allegations contained in paragraph 22 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and caselaw applying that rule by failing to provide a short and plain statement of Plaintiff’s claim or a plausible basis for relief. Specifically, the allegations of paragraph 22 relate to the purported historical conduct of PPG – a separate company. The historical conduct and/or attitudes of PPG are not before this court. Subject to and notwithstanding the above, PGW states that it lacks knowledge or information sufficient to form a belief about the allegations contained in paragraph 22 and, therefore, denies them.

23. In many cases, as with the Plaintiff herein, the employees would specifically be told that their termination had nothing to do with the quality of their work or performance.

**ANSWER:** Defendants state that the allegations contained in paragraph 23 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and caselaw applying that rule by failing to provide a short and plain statement of Plaintiff’s claim or a plausible basis for relief. Specifically, the allegations of paragraph 23 relate to the purported historical conduct of PPG – a separate company. The historical conduct and/or attitudes of PPG are not before this court. Subject to and notwithstanding the above, PGW states that it lacks knowledge or information sufficient to form a belief about the allegations contained in paragraph 23 and, therefore, denies them. Further answering, Defendants deny that Mr. Freeman was “specifically . . . told that [his] termination had nothing to do with the quality of [his] work or performance.

24. In no cases, as with the Plaintiff herein, were the employees told the true reason for their termination – that they had in fact been selected for termination by the application of a secret and highly subjective ranking system which purported to rate their performance, discussed more fully below, which resulted in disproportionate numbers of older workers being terminated.

**ANSWER:** Defendants state that the allegations contained in paragraph 24 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and caselaw applying that rule by failing to provide a short and plain statement of Plaintiff's claim or a plausible basis for relief. Specifically, the allegations of paragraph 24 relate to the purported historical conduct of PPG – a separate company. The historical conduct and/or attitudes of PPG are not before this court. Subject to and notwithstanding the above, PGW states that it lacks knowledge or information sufficient to form a belief about the allegations contained in paragraph 21 and, therefore, denies them. Answering further, Defendants deny that Mr. Freeman was not told the “true reason” for his termination. Mr. Freeman was informed that the reason for his termination was that his position was being eliminated. Not only was Mr. Freeman's specific position eliminated, but in the period preceding and immediately following Mr. Freeman's termination all Directors of Operations were eliminated. In fact, all employees holding the position of Director of Operations were either terminated or demoted to another position within months.

***The Joint Venture Between PPG and Kohlberg to Form PGW***

25. Upon information and belief, at some point in 2006, PPG Industries, Inc. formed an intention to divest itself, in full or in part, of its automotive glass division, which included PPG Auto Glass, LLC, the distribution arm of the business.

**ANSWER:** Defendants state that the allegations contained in paragraph 25 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and caselaw applying that rule by failing to provide a short and plain statement of Plaintiff's claim or a plausible basis for relief. Specifically, the allegations of paragraph 25 relate to the purported historical conduct of PPG – a separate company. Subject to and notwithstanding the above, Defendants state that, upon information and belief, at some point in 2006, PPG began an effort to sell, among other parts of its business, the entity that is now PGW Glass. Defendants lack knowledge or information

sufficient to form a belief about the remaining allegations contained in paragraph 25 and, therefore, those allegations are denied.

26. At that time, PPG Industries instituted a “transfer freeze” in automotive glass, which meant that all the employees in that division were supposedly barred from applying for open positions in other business units at PPG. Employees in the automotive glass division were told that they were essentially human capital, an “asset of the automotive glass division and, as such, would be sold with them,” because whatever company acquired the division would need good personnel in place after the sale. PPG Industries further emphasized to its employees in automotive glass that it was marketing the division as a “world company” with an experienced research organization possessing fine-tuned skills and expertise.

**ANSWER:** Defendants state that the allegations contained in paragraph 26 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and caselaw applying that rule by failing to provide a short and plain statement of Plaintiff’s claim or a plausible basis for relief. Specifically, the allegations of paragraph 26 relate to the purported historical conduct of PPG – a separate company. Subject to and notwithstanding the above, Defendants state that, upon information and belief, PPG made an effort to maintain quality employees within the entity that later became PGW Glass. Defendants lack knowledge or information sufficient to form a belief regarding PPG’s other actions in this regard and, therefore, those allegations are denied.

27. During this time, PPG Industries also dispensed with the P&LP employee evaluative process, which was declared by Management to be “non-essential.” Employees were instructed to stay focused on working hard and making improvements in the business in order to make it marketable to prospective buyers.

**ANSWER:** Defendants state that the allegations contained in paragraph 27 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and caselaw applying that rule by failing to provide a short and plain statement of Plaintiff’s claim or a plausible basis for relief. Specifically, the allegations of paragraph 27 relate to the purported historical conduct of PPG – a separate company that is not a party to this litigation. Subject to and notwithstanding the above,

Defendants state that they lack knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 27 and, therefore, those allegations are denied.

28. In 2007, PPG Industries originally brokered a deal for the sale of the automotive glass division to a California-based firm, Platinum Equity. However, in the last days of December 2007, the sale was abruptly cancelled by the prospective purchaser, and litigation ensued between the two companies.

**ANSWER:** The allegations of paragraph 28 of the Complaint are admitted in part and denied in part. Defendants admit that PPG was pursuing the sale of the automotive glass division with Platinum Equity and that the sale was not closed. Defendants state that the allegations contained in paragraph 28 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and caselaw applying that rule by failing to provide a short and plain statement of Plaintiff's claim as they present alleged facts regarding a company that is not the subject of any claim in this matter and lack any relevance to any issue or claim against Defendants. Thus, these allegations fail to provide a plausible basis for relief. Subject to and notwithstanding the above, Defendants state that they lack knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in paragraph 28 and, therefore, those allegations are denied.

29. Thereafter, PPG leadership discontinued open discussions with its employees about the possible sale of the business unit, in part, because the failed deal with Platinum Equity had spawned litigation between the two organizations in which Platinum Equity alleged that fraudulent misrepresentations were made in connection with the failed sale.

**ANSWER:** The allegations of paragraph 29 of the Complaint are admitted in part and denied in part. Defendants admit that PPG was pursuing the sale of the automotive glass division with Platinum Equity and that the sale was not closed. Defendants state that the allegations contained in paragraph 29 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and caselaw applying that rule by failing to provide a short and plain statement

of Plaintiff's claim as they present alleged facts regarding a company that is not the subject of any claim in this matter and lack any relevance to any issue or claim against Defendants. Thus, these allegations fail to provide a plausible basis for relief. Subject to and notwithstanding the above, Defendants state that they lack knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in paragraph 29 and, therefore, those allegations are denied.

30. PPG Industries, however, clearly remained determined to negotiate some deal whereby it would divest itself of its automotive glass division.

**ANSWER:** Defendants state that the allegations contained in paragraph 30 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and caselaw applying that rule by failing to provide a short and plain statement of Plaintiff's claim as they present alleged facts regarding a company that is not the subject of any claim in this matter and lack any relevance to any issue or claim against Defendants. Subject to and notwithstanding the above, Defendants state that they lack knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in paragraph 30 and, therefore, those allegations are denied.

31. Sometime in 2008, PPG Industries began negotiations with Kohlberg, which culminated in a joint venture agreement between the two entities, pursuant to which it retained a 40% ownership interest in automotive glass and Kohlberg acquired the remaining 60% ownership interest. In November 2008, PPG and Kohlberg established a jointly owned successor entity – Pittsburgh Glass Works, LLC ("PGW"), which acquired the liabilities of the Automotive Glass Division of PPG Industries, Inc., including those of PPG Auto Glass, L.L.C.

**ANSWER:** Defendants admit in part and deny in part the allegations contained in paragraph 31. Defendants admit that at the beginning of October, 2008, PPG sold the assets of the automotive glass and services business to a new company and that PGW was formed on that same day. Defendants deny that PPG owns 40% of PGW or that Kohlberg owns 60% of PGW.

Defendants deny that PGW is “a jointly owned successor entity” to the PPG automotive glass business.

**Mr. Freeman’s Employment with PPG**

32. Mr. Freeman began working as Area Depot Manager for Apogee Enterprises in 1987, which was acquired by PPG in October of 2000. At that time, Mr. Freeman oversaw sales and operations of eight distribution branches for automotive windshields in South Carolina, North Carolina, Georgia and Tennessee.

**ANSWER:** The allegations of paragraph 32 of the Complaint are admitted in part and denied in part. On information and belief, it is admitted that Mr. Freeman was an employee of PPG and that he oversaw operation of branches in the Southeast United States. The exact date of his hire and exact duties for predecessor companies, however, are subject to further investigation. Defendants state that the allegations contained in paragraph 32 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and caselaw applying that rule by failing to provide a short and plain statement of Plaintiff’s claim or a plausible basis for relief. Specifically, PGW did not exist at the time of the facts alleged in this paragraph. Thus, these facts are completely irrelevant to any claims against PGW. Subject to and notwithstanding the above, Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 32 of the Complaint.

33. When PPG acquired the company, Mr. Freeman served on the transition team to merge the companies, and was initially given responsibility over five branches in South Carolina and Georgia as Area Manager, and was ultimately given responsibility for fifteen branches in total as Director of Operations.

**ANSWER:** The allegations of paragraph 33 of the Complaint are admitted in part and denied in part. On information and belief, it is admitted that Mr. Freeman was an employee of PPG and that he oversaw operation of branches in the Southeast United States. His exact duties for predecessor companies, however, are subject to further investigation. Defendants state that

the allegations contained in paragraph 33 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and caselaw applying that rule by failing to provide a short and plain statement of Plaintiff's claim or a plausible basis for relief. Specifically, PGW did not exist at the time of the facts alleged in this paragraph. Thus, these facts are completely irrelevant to any claims against PGW. Subject to and notwithstanding the above, Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 33 of the Complaint.

34. From 2000 to 2003, as Market Manager for Auto Glass, Mr. Freeman managed \$10 million in sales and a \$6 million operational budget in territory of South Carolina and part of Georgia in four branches with a thirty person staff.

**ANSWER:** Defendants state that the allegations contained in paragraph 34 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and caselaw applying that rule by failing to provide a short and plain statement of Plaintiff's claim or a plausible basis for relief. Specifically, the allegation of paragraph 34 state compound purported facts out of context that have no relevance to any claim against Defendants. Historical responsibilities and performance are irrelevant to any issue in this matter because, in part, standards change over time so that, regardless of past reviews, present performance, skills and ability may dictate a completely different outcome. Moreover, PGW did not exist at the time of the facts alleged in this paragraph. Thus, defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 34 of the Complaint.

35. As Director of Operations from 2003 to 2008, Mr. Freeman managed fifteen distribution branches in South Carolina, North Carolina, Virginia, Tennessee and Georgia. In that role he maintained an \$18 million budget and had supervisory responsibility over ninety employees and fifteen direct reports.

**ANSWER:** Defendants state that the allegations contained in paragraph 35 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and caselaw applying that rule by

failing to provide a short and plain statement of Plaintiff's claim or a plausible basis for relief. Specifically, the allegation of paragraph 35 state compound purported facts out of context that have no relevance to any claim against Defendants. Historical responsibilities and performance are irrelevant to any issue in this matter because, in part, standards change over time so that, regardless of past reviews, present performance, skills and ability may dictate a completely different outcome. Moreover, PGW did not exist at the time of the facts alleged in this paragraph. Thus, defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 35 of the Complaint.

36. Throughout his more than two decade career with Auto Glass, Mr. Freeman was a dedicated and hard-working employee. He received consistently positive performance reviews, commendations and awards, commensurate increases to his salary, bonuses (known at Auto Glass as "Personal Performance Grants") and promotions.

**ANSWER:** Defendants state that the allegations contained in paragraph 36 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and caselaw applying that rule by failing to provide a short and plain statement of Plaintiff's claim or a plausible basis for relief. Specifically, the allegation of paragraph 36 state compound purported facts out of context that have no relevance to any claim against Defendants. Historical responsibilities and performance are irrelevant to any issue in this matter because, in part, standards change over time so that, regardless of past reviews, present performance, skills and ability may dictate a completely different outcome. Moreover, PGW did not exist at the time of the facts alleged in this paragraph. Thus, defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 36 of the Complaint.

37. In the last decade or so of Mr. Freeman's employment with Auto Glass, the employee evaluation process was referred to as the Performance & Learning Plan ("P&LP"). Prior to the implementation of the P&LP process, which relies on highly subjective criteria which are not easy to quantify, Auto Glass had employed a numeric system involving more objective criteria, known as "Accountability."

**ANSWER:** Defendants state that the allegations contained in paragraph 37 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and caselaw applying that rule by failing to provide a short and plain statement of Plaintiff's claim or a plausible basis for relief. Specifically, the allegation of paragraph 37 state compound purported facts out of context that have no relevance to any claim against Defendants. Historical responsibilities and performance are irrelevant to any issue in this matter because, in part, standards change over time so that, regardless of past reviews, present performance, skills and ability may dictate a completely different outcome. Moreover, PGW did not exist at the time of the facts alleged in this paragraph. Thus, defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 37 of the Complaint.

38. A review of Mr. Freeman's P&LP and Accountability dating back to 2000 confirms that he was an excellent performer. His past Accountability evaluations consistently reflected that Mr. Freeman as "Meets" or "Meets +" expectations of "Exceeds Requirements." His P&LP forms were equally impressive.

**ANSWER:** Defendants state that the allegations contained in paragraph 38 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and caselaw applying that rule by failing to provide a short and plain statement of Plaintiff's claim or a plausible basis for relief. Specifically, the allegations of paragraph 38 state compound purported facts out of context that have no relevance to any claim against Defendants. Historical responsibilities and performance are irrelevant to any issue in this matter because, in part, standards change over time so that, regardless of past reviews, present performance, skills and ability may dictate a completely different outcome. Moreover, PGW did not exist at the time of the facts alleged in this paragraph. Thus, defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 38 of the Complaint.

39. In fact, Mr. Freeman never received a low performance rating or bad review during his entire tenure at Auto Glass and its predecessor company – from 1983 to 2008 – before he was abruptly terminated at the age of 60.

**ANSWER:** Defendants state that the allegations contained in paragraph 39 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and caselaw applying that rule by failing to provide a short and plain statement of Plaintiff’s claim or a plausible basis for relief. Specifically, the allegation of paragraph 39 state compound purported facts out of context that have no relevance to any claim against Defendants. Historical responsibilities and performance are irrelevant to any issue in this matter because, in part, standards change over time so that, regardless of past reviews, present performance, skills and ability may dictate a completely different outcome. Additionally, the purported lack of a low performance rating or bad review may be meaningless in light of relatively better performance reviews and ratings for an employee’s peers. Moreover, PGW did not exist at the time of the facts alleged in this paragraph. Thus, defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 39 of the Complaint.

40. Despite his contributions to PPG over a career spanning more than 20 years, Mr. Freeman was terminated as Director of Operations by Auto Glass without notice or warning on July 19, 2008 at the age of 60, and was told by his supervisor, Robert Taylor that “his position was being eliminated.”

**ANSWER:** Defendants state that the allegations contained in paragraph 40 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and caselaw applying that rule by failing to provide a short and plain statement of Plaintiff’s claim or a plausible basis for relief. Specifically, the allegations of paragraph 40 state compound purported facts out of context and that have no relevance to any claim against Defendants. Historical responsibilities and performance are irrelevant to any issue in this matter because, in part, standards change over time so that, regardless of past reviews, present performance, skills and ability may dictate a

completely different outcome. Moreover, PGW did not exist at the time of the facts alleged in this paragraph. Thus, Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 40 of the Complaint. Defendants admit that as a part of a company-wide effort to lower costs and maintain its competitive footing in the market, Defendants and their predecessors took steps to eliminate positions with duplicative management responsibilities. One of the positions targeted in that effort was the “Director of Operations” role that Mr. Freeman had. During the period from January 2007 until March 2009, Defendants and their predecessors eliminated the position of Director of Operations and consolidated those responsibilities with the Directors of Sales and then, eventually, the Director of Sales position was also eliminated.

41. At his termination session Mr. Freeman inquired of Taylor as to why he was being terminated and asked if his performance had been unsatisfactory in any way. Mr. Taylor assured him that was not the case, and that Mr. Freeman had always done an outstanding job for the company.

**ANSWER:** The allegations of paragraph 41 are admitted in part and denied in part. On information and belief, Defendants admit that Mr. Freeman inquired as to why he was being terminated. On information and belief, Defendants deny that Mr. Freeman was told that he “had always done an outstanding job for the company.” Defendants also deny the remaining allegations of paragraph 41.

42. Mr. Freeman then asked Taylor directly whether his termination had anything to do with his age, in light of the fact that two of the seven other Directors of Operations, John Greenleaf and Dan Wegman, had been terminated over the previous several months. Both were long-tenured employees who were 60 years old or close to it, and Freeman, Wegman and Greenleaf had in fact been the three oldest of the seven Directors of Operations at the times that they were terminated.

**ANSWER:** On information and belief, Defendants deny the allegations contained in paragraph 42. Answering further, Defendants state that one of the first Directors of Operations

to be let go as part of the company's effort to reduce costs and duplicative job responsibilities in the Director of Operations role was an employee who was approximately 36-years-old at the time of his termination.

43. Mr. Taylor responded only by saying, "You can figure it out." This, Mr. Freeman reasonably took to be candid acknowledgement by his supervisor that the decision to terminate him was based upon his age.

**ANSWER:** Defendants deny the allegation contained in paragraph 43. Answering further, upon information and belief, Mr. Freeman was told, after repeatedly asking the same question about whether age was an issue and being told that it was not, that he should direct his questions to Human Resources.

44. After Mr. Freeman was terminated, he learned that his position had not truly been eliminated, but that his job duties had been transferred to another employee, Van Clippard. Clippard was at least ten years younger and not as experienced in critical job functions as Mr. Freeman.

**ANSWER:** The allegations of paragraph 44 are admitted in part and denied in part. Defendants admit that, for a time after Mr. Freeman was terminated, his responsibilities were taken on by Van Clippard. Mr. Clippard held the position of Director of Sales for Mr. Freeman's territory. Mr. Clippard was himself terminated on March 31, 2009, only a few months after Mr. Freeman's termination. Defendants further state that the allegations of paragraph 44 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and caselaw applying that rule by failing to provide a short and plain statement of Plaintiff's claim or a plausible basis for relief. Specifically, the allegations of paragraph 44 state compound purported facts out of context that have no relevance to any claim against Defendants. For instance, Mr. Clippard's experience level and what "job functions" are "critical" are simply Plaintiff's characterizations and do nothing to state a basis for Mr. Freeman's claims. Subject to and notwithstanding the foregoing, Defendants deny the remaining allegations of paragraph 44.

**Auto Glass's Terminations Were Conducted in a Manner Giving Rise to an Inference of Age Discrimination**

45. Auto Glass uniformly concealed from Mr. Freeman – and presumably all other employees terminated prior to the establishment of PGW the basis by which they were selected for termination.

**ANSWER:** Defendants deny the allegations contained in paragraph 45. Answering further, Mr. Freeman admits in allegations including those in paragraph 40 above that he was, in fact, informed of the reason for his termination. Specifically, he admits that he was informed that his position was being eliminated. Not only was it true that Mr. Freeman's specific position was eliminated, but it was also true that the general position of Director of Operation was being eliminated. In fact, within a few months of his termination, all employees holding the position of Director of Operations were either terminated or demoted to another position.

46. At no time has Auto Glass articulated for its current or former employees (including Mr. Freeman) the selection criteria utilized in conducting job eliminations. Even as it attempted to extract waivers of ADEA claims, Auto Glass failed to apprise its terminated employees of the factors relied upon in selecting them for termination, in direct contravention of the OWBPA, 29 U.S.C. § 626(f)(4), and its supporting regulations. (In fact, given that Auto Glass has not been forthcoming about these factors or criteria, Mr. Freeman specifically reserves the right to amend his claims to address any further unlawfulness that might be revealed when the selection process is revealed more fully through the discovery process.)

**ANSWER:** The allegations of paragraph 44 violate the requirements of Rule 8 of the Federal Rules of Civil Procedure and caselaw applying that rule by failing to provide a short and plain statement of Plaintiff's claim or a plausible basis for relief. Specifically, the allegations of paragraph 46 state compound purported facts out of context that have no relevance to any claim against Defendants. Subject to and notwithstanding the above, the allegations of paragraph 46 are denied. Answering further, Mr. Freeman admits in allegations including those in paragraph 40 above that he was, in fact, informed of the reason for his termination. Specifically, he admits that he was informed that his position was being eliminated. Not only was it true that Mr.

Freeman's specific position was eliminated, but it was also true that the general position of Director of Operation was being eliminated. In fact, within a few months of his termination, all employees holding the position of Director of Operations were either terminated or demoted to another position.

47. To date, Mr. Freeman is at a loss to understand how and why he was selected for termination, particularly given his outstanding record of performance.

**ANSWER:** Defendants state that paragraph 47 violates Rule 8 of the Federal Rules of Civil Procedure and the caselaw applying that rule by failing to provide a short and concise statement of a claim and instead providing pure argument and hyperbole that does nothing to present a plausible basis for relief. Subject to and notwithstanding the above, Defendants lack knowledge or information sufficient to form a belief as to Mr. Freeman's understanding and, therefore, deny the allegations of paragraph 47. Answering further, Mr. Freeman admits in allegations including those in paragraph 40 above that he was, in fact, informed of the reason for his termination. Specifically, he admits that he was informed that his position was being eliminated. Not only was it true that Mr. Freeman's specific position was eliminated, but it was also true that the general position of Director of Operation was being eliminated. In fact, within a few months of his termination, all employees holding the position of Director of Operations were either terminated or demoted to another position.

48. This absence of data regarding employee performance, which, if the selection process is to be considered legitimate at all, must have been present, would alone raise the inference that improper considerations, such as age, was at work.

**ANSWER:** The allegations of paragraph 48 are denied.

49. The "transfer freeze" that was purportedly imposed on all employees of the automotive glass division during the time leading up to the sale was not uniformly applied. A number of younger employees were spared because they were permitted to pursue other opportunities at Auto Glass, while the chance to transfer was specifically denied to the older, Mr. Freeman – and perhaps others who were also ultimately terminated by Auto Glass.

**ANSWER:** Defendants state that paragraph 49 violates Rule 8 of the Federal Rules of Civil Procedure and the caselaw applying that rule by failing to provide a short and concise statement of a claim and do nothing to present a plausible basis for relief. In fact, none of the allegations in paragraph 49 relate to any conduct of Defendants and, thus, those allegations are irrelevant to any claim here. Defendants deny that “the chance to transfer was specifically denied to the older” employees or to Mr. Freeman. Moreover, Defendants lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 49 regarding PPG’s conduct. Investigation on those issues will be a subject of discovery in this matter.

50. By contrast, a number of the older employees were told that they would be permitted to seek alternative employment elsewhere in Auto Glass.

**ANSWER:** Defendants state that paragraph 50 violates Rule 8 of the Federal Rules of Civil Procedure and the caselaw applying that rule by failing to provide a short and concise statement of a claim and do nothing to present a plausible basis for relief. In fact, none of the allegations in paragraph 50 relate to any conduct of Defendants and, thus, those allegations are irrelevant to any claim here. Defendants deny that “the chance to transfer was specifically denied to the older” employees or to Mr. Freeman. Moreover, Defendants lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of paragraph 49 regarding PPG’s conduct. Investigation of these allegations will be a subject of discovery in this matter.

51. In addition to concealing the method by which employees were selected for termination or retention, Auto Glass also provided the unsupported and fabricated explanation Mr. Freeman and others that their jobs had been “eliminated.” In most instances, this proffered explanation – the only one given by Auto Glass – is demonstrably false.

**ANSWER:** The allegations of paragraph 51 of the Complaint are denied. Answering further, Defendants state that Mr. Freeman was accurately informed of the reason for his termination which was that his position was being eliminated. Not only was it true that Mr. Freeman's specific position was eliminated, but it was also true that the general position of Director of Operations was being eliminated. In fact, within a few months of his termination, all employees holding the position of Director of Operations were either terminated or demoted to another position.

52. For example, with respect to the position last held by Mr. Freeman, Director of Operations – Auto Glass claimed that the job had been eliminated. In reality, a younger employee, assumed his duties after his termination.

**ANSWER:** Defendants state that paragraph 47 violates Rule 8 of the Federal Rules of Civil Procedure and the caselaw applying that rule by failing to provide a short and concise statement of a claim and do nothing to present a plausible basis for relief. Subject to and notwithstanding the above, Defendants deny the allegations of paragraph 52. Answering further, Defendants state that Mr. Freeman was accurately informed of the reason for his termination which was that his position was being eliminated. Not only was it true that Mr. Freeman's specific position was eliminated, but it was also true that the general position of Director of Operations was being eliminated. In fact, within a few months of his termination, all employees holding the position of Director of Operations were either terminated or demoted to another position.

***Auto Glass's Invalid and Unenforceable Waiver Agreements***

53. Mr. Freeman anticipates that Auto Glass will attempt to shield its unlawful conduct from this Court's scrutiny by arguing that Mr. Freeman has waived his ADEA claims by signing a Separation Agreement.

**ANSWER:** Defendants admit only that Mr. Freeman has waived his ADEA claims by signing a valid Separation Agreement. Defendants deny all remaining allegations contained in paragraph 53 of the Complaint.

54. However, the Separation Agreement failed to comply with the Older Workers Benefits Protection Act, ‘OWBPA’, 29 U.S.C. § 626(f)(4), in a number of critical respects.

**ANSWER:** Defendants deny the allegations contained in paragraph 54 of the Complaint.

55. Among the papers that were provided to Mr. Freeman in this termination session was a severance agreement, which Mr. Freeman was expected to sign in order to get his full severance. The agreement also came with a document entitled ‘Information Regarding Employment Termination Program,’ which stated that it was attaching a list of the job titles and ages of all those who were terminated in the RIF, and a similar list for all those who were retained. After more than 20 years with the organization, that comprised the sum total of the information provided to Mr. Freeman when he was terminated.

**ANSWER:** Defendants admit that Mr. Freeman was presented with and executed a severance agreement. Defendants further admit that Mr. Freeman was provided with information regarding the employment terminations program. Defendants state that the remaining allegations of paragraph 55 violate Rule 8 of the Federal Rules of Civil Procedure and the caselaw applying that rule by failing to provide a short and concise statement of a claim and instead providing compound allegations taken out of context and including mere argument and hyperbole instead of factual assertions. Subject to and notwithstanding the above, Defendants deny the remaining allegations of paragraph 55.

56. Principally, the Separation Agreement failed to, *inter alia*, provide Mr. Freeman with the ‘eligibility factors’ or selection criteria for termination, failed to advise him that he was waiving his right to challenge the enforceability of the agreement, and failed to supply him with accurate or complete decisional unit information for the group termination program conducted in the RIF, as required by 29 U.S.C. § 626(f)(1)(H). In fact, he was not even properly identified on the decisional unit matrix by age, as his age did not appear among those listed.

**ANSWER:** Defendants deny the allegations of paragraph 56 of the Complaint.

57. OWBPA and its accompanying regulations render such errors fatal to the enforcement of ADEA waivers.

**ANSWER:** Defendants state that paragraph 57 violates Rule 8 of the Federal Rules of Civil Procedure and the caselaw applying that rule by failing to provide a short and concise statement of a claim and instead providing pure legal argument. Subject to and notwithstanding the above, Defendants deny the allegations of paragraph 57 of the Complaint.

58. Thus, the waivers in the Separation Agreement are wholly invalid and entirely unenforceable as to the Mr. Freeman's ADEA claims.

**ANSWER:** Defendants deny the allegations of paragraph 58 of the Complaint.

**Continuing Discriminatory Patterns and Practices at PGW**

59. Following the formation of PGW, which absorbed the business operations of PPG Auto Glass LLC, and which is 40% owned by PPG Industries, Inc., discriminatory practices continued. In fact, an ADEA collective action initiated by seven workers on behalf of a class of older workers terminated in a RIF by PGW was filed and is presently being litigated in this District, *Karlo v. Pittsburgh Glass Works, LLC*, Civil Action No. 2:10-cv-01283.

**ANSWER:** Defendants admit only that a lawsuit has been filed in this District, docketed as *Karlo v. Pittsburgh Glass Works, LLC*, Civil Action no. 2:10-cv-01283. Defendants deny all remaining allegations of paragraph 59 of the Complaint. Answering further, Defendants state that paragraph 59 violates Rule 8 of the Federal Rules of Civil Procedure and the caselaw applying that rule by failing to provide a short and concise statement of a claim. The allegations of paragraph 59 are nothing more than irrelevant conjecture based on unproven allegations in another suit. Those allegations have no bearing on any issue before the Court here.

**COUNT I**

**Disparate Treatment Under the  
Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq**

60. Mr. Freeman hereby repeats and incorporates by reference the allegations of Paragraphs 1 through 59 above as if fully set forth herein.

**ANSWER:** Defendants' answers to paragraphs 1 through 59 of the Complaint are incorporated herein by reference as if fully set forth.

61. Because Mr. Freeman was 60 years-old at the time of his termination, Mr. Freeman is a protected individual under the ADEA.

**ANSWER:** Defendants admit that the ADEA potentially protects individuals, including those aged 60 year-old.

62. Mr. Freeman was well-qualified for his position with Auto Glass and had a demonstrated and well-established record of success with the company prior to termination.

**ANSWER:** The allegations of paragraph 62 are admitted in part and denied in part. Defendants admit that Mr. Freeman was qualified for his position. Defendants deny the remaining allegations contained in paragraph 62.

63. Mr. Freeman suffered an adverse employment action when his employment was terminated by Auto Glass, while other, substantially younger employees were treated more favorably either because they were retained by Auto Glass, were permitted to transfer to other positions at Auto Glass or within the Auto Glass organization in order to continue in employment, or were hired to replace the older workers who were terminated.

**ANSWER:** Defendants deny the allegations contained in paragraph 63 of the Complaint.

64. Mr. Freeman's termination occurred under circumstances giving rise to an inference that Auto Glass terminated him because of his age, in violation of the ADEA, 29 U.S.C. § 621, *et seq.*

**ANSWER:** Defendants deny the allegations contained in paragraph 64 of the Complaint.

65. To date, Auto Glass has not offered any valid explanation for its decision to terminate Mr. Freeman, other than to state that his position had been eliminated. However, the job duties being performed by Mr. Freeman were critical to the ongoing operations of Auto Glass. Therefore, while his job title may have been "eliminated," his job functions certainly were not, and were taken on by a younger employee. Thus, the stated explanation for the termination of Mr. Freeman was merely a pretext designed to disguise Auto Glass's true motive – the elimination of older workers.

**ANSWER:** Defendants deny the allegations contained in paragraph 65 of the Complaint. Answering further, Defendants state that Mr. Freeman was accurately informed of the reason for his termination which was that his position was being eliminated. Not only was it true that Mr. Freeman's specific position was eliminated, but it was also true that the general position of Director of Operations was being eliminated. In fact, within a few months of his termination, all employees holding the position of Director of Operations were either terminated or demoted to another position.

66. As a consequence of the unlawful policies, patterns and practices, and unlawful conduct of Auto Glass as described herein, Mr. Freeman has suffered damages in the form of lost compensation and seeks front-pay and back pay, attorneys' fees and costs, declaratory and injunctive relief, lost pension benefits, liquidated damages, and such other relief as the Court may deem appropriate.

**ANSWER:** Defendants deny the allegations contained in paragraph 66 of the Complaint.

### **AFFIRMATIVE DEFENSES**

#### **FIRST DEFENSE**

Based in significant part on the reasons and facts set forth in the Counterclaim below, Plaintiff's claims are barred in whole or in part by the doctrines of waiver and/or release, at least in part, because Plaintiff signed an agreement that released Defendants from any claims of the sort brought here, affirmatively agreed not to bring any lawsuit against Defendants stating the claims contained in Plaintiff's Complaint, and received a severance payment and benefits package in exchange for those releases and promises.

#### **SECOND DEFENSE**

Based in significant part on the reasons and facts set forth in the Counterclaim below, Plaintiff's claims are barred in whole or in part by the doctrines of equitable estoppel and/or

laches because the Plaintiff has released his right to bring the suit alleged in Plaintiff's Complaint, failed to revoke his release agreement and agreement not to sue, and accepted a severance payment and benefits before bringing his claims.

THIRD DEFENSE

Based in significant part on the reasons and facts set forth in the Counterclaim below, Plaintiff's claims are barred in whole or in part by the doctrine of ratification.

FOURTH DEFENSE

Plaintiff's claims are barred in whole or in part because Defendants' actions were based on reasonable factors other than Plaintiff's age including, but not limited to, Plaintiff's performance relative to his peers, an evaluation of Plaintiff's skill set, and geographical factors relating to Plaintiff's region of responsibility.

FIFTH DEFENSE

Plaintiff's claims are barred in whole or in part by failure to fulfill and exhaust applicable jurisdictional and administrative prerequisites.

SIXTH DEFENSE

Plaintiff's claims are barred in whole or in part by his failure to mitigate damages.

SEVENTH DEFENSE

Plaintiff's claims are barred because Defendants' actions were taken in good faith with reasonable grounds to believe such conduct comported with the ADEA.

EIGHTH DEFENSE

Based in significant part on the reasons and facts set forth in the Counterclaim below, Defendant's claims are limited by application of restitution, setoff, and/or recoupment in at least

the amount of any payments made from Defendants to Plaintiff as part of any severance transaction, agreement or other transaction.

### **COUNTERCLAIM**

PGW and PGW Glass (“Counter-Plaintiffs”) assert as their counterclaim against Plaintiff Freeman as follows:

1. The Court has supplemental jurisdiction over this counterclaim under 28 U.S.C. § 1367(a).
2. Venue is proper for this counterclaim because it is ancillary to the claims brought by Plaintiff.
3. Before July 31, 2008, Plaintiff Freeman was an employee at PPG Auto Glass.
4. On July 31, 2008, Mr. Freeman’s employment relationship with PPG Auto Glass was properly terminated.
5. At the time Mr. Freeman’s employment relationship with PPG Auto Glass was terminated, he was provided a letter explaining the “Severance Plan” available to him and a document entitled “Separation Agreement and Release.” Pursuant to the “Separation Agreement and Release,” Mr. Freeman was offered a severance payment. (A true and correct copy of the “Separation Agreement and Release” is attached hereto and incorporated herein as Exhibit A).
6. Soon after his termination, Mr. Freeman knowingly and voluntarily executed the valid and enforceable “Separation Agreement and Release” that provided that he would receive severance benefits and payments to which he otherwise was not entitled in exchange for his release of any claims against PPG Auto Glass and any of its successors or assigns.
7. After signing his Release Agreement, Mr. Freeman did not revoke his acceptance of the terms of that agreement.

8. The Release Agreement states, in part at paragraph 6:

a. In consideration of the severance benefits described . . . Employee . . . releases the Company from all claims and demands of any kind, known or unknown, which he/she may have against the Company as of the date Employee signs this Agreement, and any claims relating to his/her employment as of his/her Separation date. This release includes a waiver (a giving up) of any legal rights or claims Employee may have or may have had based upon any federal, state or local statutes or ordinances, specifically including, but not limited to . . . the Age Discrimination in Employment Act . . . All such claims (including claims for related attorneys' fees and any litigation and court costs are forever barred by this Agreement.

9. Thus, Freeman released the claims he now asserts in this civil action.

10. The Release Agreement also contains material representations of fact, including but not limited to the fact that Mr. Freeman had "read and understands [the] Agreement, and signs it voluntarily of [his] own free will, without coercion or duress."

11. In October 2008, PGW Auto Glass was purchased from PPG and made a part of PGW. As part of PGW, PPG Auto Glass's name was changed to PGW Auto Glass. All of PPG Auto Glass's rights pursuant to the Severance Agreement are currently the rights of PGW Glass.

12. PPG Auto Glass and its successor PGW Glass justifiably relied on Mr. Freeman's promises, releases, and material representations of fact in providing a substantial severance payment and other benefits to Mr. Freeman in exchange for his execution, without revocation, of the Release Agreement.

13. In the "Separation Agreement," Mr. Freeman was informed of the "Severance Plan" being offered to him.

14. Specifically, the Release Agreement states that "[i]n exchange for certain severance benefits available under the PPG Auto Glass, LLC Severance Plan ("Severance Plan"), [Mr. Freeman] agrees to release the Company from any and all possible liability to Employee to the maximum extent permitted by law."

15. Under the Severance Plan, upon the termination of his employment, Mr. Freeman was eligible to receive, among other things, a lump-sum severance payment, in exchange for his execution (without revocation) of the Release Agreements.

16. Mr. Freeman was informed that, in the event he did not sign the Release Agreement, he would not receive as large of a severance payment or as extensive a set of benefits.

17. Mr. Freeman executed his Release Agreement and was provided a severance payment in the amount of \$41,687.88.

## **COUNT I**

### **Breach of Contract**

18. Counter-Plaintiffs repeat, reallege and incorporate all allegations contained in paragraphs 1 through 17 of this Counterclaim as if fully restated.

19. The Release Agreement, including the promises not to sue it contains, is a binding, valid and enforceable contract.

20. Pursuant to the terms of the "Severance Agreement," PGW and PGW Glass are entitled to the same rights and benefits that were promised to PPG Auto Glass.

21. All obligations, pursuant to the Release Agreement, were performed by PPG Auto Glass when it made all required payments and provided the benefits it agreed to provide to Mr. Freeman. After PPG Auto Glass became PGW Auto Glass, PGW Glass continued to maintain those benefits.

22. By filing his Complaint and pursuing this civil action, Mr. Freeman has breached his contractual obligations pursuant to the Severance Agreement.

23. Mr. Freeman is liable to Counter-Plaintiffs for compensatory damages equal to the consideration paid to him in exchange for the enforceable promises, releases and representations he made in the Release Agreement, which he has breached.

WHEREFORE, Defendants/Counter-Plaintiffs PGW and PGW Glass pray that this Court enter judgment in their favor and against Plaintiff/Counter-Defendant for compensatory damages in an amount to be determined at trial, plus prejudgment interest, costs, and such other and further relief as this Court deems just and appropriate under the circumstances.

## **COUNT II**

### **Unjust Enrichment/Restitution**

24. Counter-Plaintiffs repeat, re-allege and incorporate all allegations contained in paragraphs 1 through 17 of this Counterclaim as if fully restated.

25. PPG Auto Glass made a lump-sum payment to Mr. Freeman in the amount of \$41,687.88.

26. PPG Auto Glass, PGW and PGW Glass further provided to Mr. Freeman continuing medical, dental, basic life and basic accidental death and dismemberment insurance for at least a period of twelve months when he was not working as an employee of PPG Auto Glass or Counter-Plaintiffs.

27. All of these benefits were provided to Mr. Freeman in reliance on the expectation that he would refrain from instituting any lawsuit of the sort that has been initiated in this matter.

28. Counter-Plaintiffs justifiably relied on Mr. Freeman's promises, releases, and material representations of fact in providing a substantial severance payment and other benefits to him in exchange for his promises, release and material representations of fact.

29. Mr. Freeman obtained from PPG Auto Glass, PGW and PGW Glass the benefits described above despite the fact that he has refused to refrain from bringing this lawsuit against Counter-Plaintiffs and, thus, failed to honor the promises that PPG Auto Glass and Counter-Plaintiffs relied upon in providing payments and benefits to Mr. Freeman.

30. Because of this, it would be inequitable for Mr. Freeman to accept and retain the benefits described above without fulfilling his promise not to initiate this lawsuit.

31. Thus, Counter-Plaintiffs are entitled to have returned the amounts paid to Mr. Freeman or provided to him in the form of benefits.

WHEREFORE, Defendants/Counter-Plaintiffs PGW and PGW Glass pray that this Court enter judgment in their favor and against Plaintiff/Counter-Defendant for restitution in an amount to be determined by this court, plus prejudgment interest, costs and such other and further relief as this Court deems just and appropriate under the circumstances.

Respectfully submitted,

Pittsburgh Glass Works, LLC

By: /s/ David S. Becker

One of Its Attorneys

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*Counsel for Defendants  
PGW Auto Glass, LLC and  
Pittsburgh Glass Works, LLC*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing PGW Auto Glass, LLC and Pittsburgh Glass Works, LLC's Answer, Affirmative Defenses and Counterclaim has been served upon counsel of record by the Court's ECF system, this 13th day of January, 2011, addressed as follows:

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*/s/ David S. Becker* \_\_\_\_\_