

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

**IN RE MI WINDOWS AND DOORS,  
INC., PRODUCTS LIABILITY  
LITIGATION**

2:12-mn-00001-DCN

MDL No. 2333

Hon. David C. Norton

**RESPONSE TO OBJECTION FILED  
BY SANDRA WINBERG**

Defendant MI Windows and Doors, Inc. (“MIWD”), through its undersigned attorneys, hereby submits the following response to the objection filed by Sandra Winberg (ECF No. 258).

**RELEVANT PROCEDURAL HISTORY**

On February 27, 2015, the Court entered an Order Preliminarily Approving Settlement, which granted preliminary approval to the nationwide class action settlement (the “Settlement”) in this action (the “Order”). (ECF No. 227). The Settlement applies to “MIWD Product,” which is defined to include “any and all MIWD windows that are glazed with Glazing Tape and were manufactured or sold between July 1, 2000 and March 31, 2010.” (ECF No. 215-1 at 10 ¶ 36). Pursuant to the Order, only Settlement class members that have not submitted a timely request for exclusion from the Settlement Class may submit objections to the proposed Settlement. (ECF No. 227 at 11).

On June 1, 2015, Sandra Winberg (“Winberg”) filed a letter objecting to the Settlement. (ECF No. 258). Winberg states that she purchased her windows in 1996 and, as such, her windows were not manufactured or sold between July 1, 2000 and March 31, 2010. (*See id.* at 1).

## ARGUMENT

### **The Court should disregard Winberg's objection because she is not a Class Member.**

Pursuant to Fed. R. Civ. P. 23(e), only class members have standing to object to a proposed class action settlement. Fed. R. Civ. P. 23(e) (providing that “[a]ny class member may object” to a class action settlement); *Gould v. Alleco, Inc.*, 883 F.2d 281, 284 (4th Cir. 1989) (“We hold, therefore, that non-class members have no standing to object, pursuant to a Rule 23(e) notice directed to class members, to a proposed class settlement.”); *Ass’n For Disabled Americans, Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 473 (S.D. Fla. 2002) (“Under Fed. R. Civ. P. 23(e), non-class members are not permitted to assert objections to a class action settlement.”).

Here, Winberg is not a member of the Settlement class as she admits that her windows were manufactured outside the applicable date range. (ECF No. 258). Thus, Winberg does not have standing to object to the Settlement and her objection should be disregarded. *See* Fed. R. Civ. P. 23(e); *Gould*, 883 F.2d at 284; *Ass’n For Disabled Americans, Inc.*, 211 F.R.D. at 473.

Additionally, even if the Court were to consider the substance of the objection, it should nevertheless be overruled because it fails to provide a valid basis to find that the Settlement is not fair, reasonable, and adequate. Winberg objects to the Settlement on the grounds that it does not apply to her windows. (*See* ECF No. 258 at 1). The fact that certain individuals are not members of a class is not a valid basis for an objection and, in fact, shows that the settlement is reasonable and fair. *See In re Oil Spill by Oil Rig “Deepwater Horizon” in Gulf of Mexico on April 20, 2010*, 910 F. Supp. 2d 891, 934 (E.D. La. 2012) (finding objections filed by non-members on the basis that they want to be included in the settlement class shows that the settlement is fair and reasonable). As such, the objection should be overruled.

**CONCLUSION**

For the foregoing reasons, MIWD respectfully requests that the Court overrule the objection filed by Winberg.

Dated: June 25, 2015.

Respectfully submitted,

K&L GATES LLP  
Attorneys for Defendant  
MI Windows and Doors, Inc.  
134 Meeting Street, Suite 200  
Charleston, South Carolina 29401  
Telephone: 843-579-5619  
Facsimile: 843-579-5601

By: /s/ Carol C. Lumpkin

CAROL C. LUMPKIN  
Lead Counsel  
Florida Bar No. 0797448  
[carol.lumpkin@klgates.com](mailto:carol.lumpkin@klgates.com)

RICHARD ASHBY FARRIER, JR.  
Liason Counsel  
South Carolina Bar No. 772  
[richard.farrierjr@klgates.com](mailto:richard.farrierjr@klgates.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on June \_\_, 2015, a copy of the foregoing answer was filed electronically, such that notice of this filing should be sent by operation of the Court's electronic filing system to all parties and counsel of record.

By: /s/ Carol C. Lumpkin  
CAROL C. LUMPKIN  
Lead Counsel  
Florida Bar No. 0797448  
Carol.lumpkin@klgates.com  
RICHARD ASHBY FARRIER, JR.  
Liason Counsel  
South Carolina Bar No. 772