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6 Attorneys for Plaintiff The Sherwin-Williams Company,  
f/k/a Sherwin-Williams Automotive Finishes Corp.

7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10

11 **THE SHERWIN-WILLIAMS COMPANY,**  
f/k/a **SHERWIN-WILLIAMS**  
12 **AUTOMOTIVE FINISHES CORP.,**

13 Plaintiff,

14 v.

15 **JB COLLISION SERVICES, INC., d/b/a J**  
**& M AUTOBODY, and d/b/a/ EL**  
16 **DORADO COLLISION; and DOES**  
17 **1 through 10, inclusive,**

18 Defendants.

Case No.: '13CV1946 LAB WVG

Before the Honorable

Dept.:

**COMPLAINT**

**JURY DEMAND ENDORSED**  
**HEREON**

19 **COMPLAINT**

20 Plaintiff, The Sherwin-Williams Company, f/k/a Sherwin-Williams Automotive  
21 Finishes Corp., for its Complaint against Defendant JB Collision Services, Inc., d/b/a J &  
22 M Autobody, and d/b/a El Dorado Collision; and Does 1 through 10, inclusive, states as  
23 follows:

24 **PARTIES**

25 1. The Sherwin-Williams Company f/k/a Sherwin-Williams Automotive  
26 Finishes Corp. ("Sherwin-Williams") is an Ohio corporation with its principal place of  
27 business in Ohio. Sherwin-Williams is engaged in the business of, *inter alia*, selling  
28 automotive paints, coatings and related products.

1           2.     JB Collision Services, Inc., d/b/a J & M Autobody, and d/b/a El Dorado  
2 Collision (“JB Collision”) is a California corporation with two principal places of  
3 business: a location in San Diego, California and a location in Poway, California. JB  
4 Collision is engaged in the business of painting and repairing automobiles.

5           3.     Sherwin-Williams is unaware of the true names and capacities of Defendants  
6 sued herein as Does 1 through 10, inclusive, and therefore sues these Defendants by such  
7 fictitious names. Sherwin-Williams will amend this Complaint to allege their true names  
8 and capacities when ascertained. Sherwin-Williams is informed and believes, and  
9 thereon alleges, that each of the fictitiously named Defendants is indebted to Sherwin-  
10 Williams as hereinafter alleged, and that Sherwin-Williams’ right against such fictitiously  
11 named Defendants arises from such indebtedness.

#### **JURISDICTION AND VENUE**

12  
13           4.     This Court has diversity jurisdiction of this action under 28 U.S.C. §  
14 1332(a)(1), because the matter in controversy exceeds the sum of \$75,000, exclusive of  
15 interest and costs, and the parties are completely diverse — Plaintiff is an Ohio  
16 corporation with its principal place of business in Ohio, while Defendant is a California  
17 corporation with its principal place of business in California.

18           5.     Venue of this action in this Court is proper under 28 U.S.C. § 1391(a)(1).

#### **FACTUAL ALLEGATIONS**

19  
20           6.     On or about September 10, 2008, JB Collision entered into a supply  
21 agreement with The Sherwin-Williams Company, successor by merger to Sherwin-  
22 Williams Automotive Finishes Corp. (the “Supply Agreement”). Pursuant to the Supply  
23 Agreement, JB Collision agreed to use exclusively Sherwin-Williams automotive paint  
24 and coating products from September 10, 2008 (the “Effective Date”) until the date upon  
25 which net sales, as defined by the Supply Agreement, equal One Million Three Hundred  
26 Thousand and 00/100 (\$1,300,000) Dollars. (A copy of the Supply Agreement is not  
27 attached hereto as Defendant has a copy and the terms of which are confidential and  
28 proprietary).

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1 7. For and in consideration of the mutual covenants and promises stated in the  
2 Supply Agreement, Sherwin-Williams agreed, among other promises, to provide an  
3 advance payment to JB Collision in the amount of Two Hundred Seventy-Five Thousand  
4 and 00/100 (\$275,000) Dollars (the “Advance”).

5 8. In consideration for JB Collision’s agreement to exclusively purchase all of  
6 its requirements for automotive paints, coatings, and related products for the term  
7 enumerated above, Sherwin-Williams agreed to, and paid to JB Collision, the Advance  
8 and to provide products at a discount. Further, the parties contemplated that Sherwin-  
9 Williams would profit from the contract.

10 9. From September 2008 until January 2013, JB Collision purchased  
11 automotive paint, coatings and related products pursuant to the Supply Agreement and  
12 never objected to the quality or delivery of the products, or otherwise complained of any  
13 performance by Sherwin-Williams.

14 10. In January 2013, JB Collision discontinued purchasing all of its  
15 requirements for automotive paints, coatings, and related products exclusively from  
16 Sherwin-Williams.

17 11. JB Collision breached the parties’ Supply Agreement by discontinuing all of  
18 its requirements for automotive paints, coatings, and related products exclusively from  
19 Sherwin-Williams, and by letter dated February 28, 2013, Sherwin-Williams notified JB  
20 Collision of its breach of contract.

21 12. JB Collision’s breach of the Supply Agreement will continue to cause  
22 considerable financial harm to Sherwin-Williams in excess of the jurisdictional amount.

23 **COUNT ONE**

24 (Breach of Contract)

25 (JB Collision)

26 13. Sherwin-Williams incorporates by reference as if fully set forth herein the  
27 allegations contained in Paragraphs 1 through 12 of the Complaint.

28 14. As set forth above, JB Collision owed contractual obligations to Sherwin-

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1 Williams pursuant to the Supply Agreement.

2 15. JB Collision materially breached the Supply Agreement by, *inter alia*,  
3 installing a competitive paint brand in its facilities and by failing to purchase its  
4 requirements for automotive paints, coatings, and related products exclusively from  
5 Sherwin-Williams for the specified term.

6 16. Sherwin-Williams fully performed under the Supply Agreement, and all  
7 conditions precedent have been satisfied.

8 17. As a direct and proximate result of JB Collision's breach of the Supply  
9 Agreement, Sherwin-Williams has suffered damages including, without limitation,  
10 outstanding invoices, the cost of training provided to JB Collision and its employees, the  
11 cost of toner consignments and mixing equipment provided to JB Collision, and the lost  
12 profits Sherwin-Williams was set to earn during the term of the Supply Agreement in an  
13 amount to be proved at trial.

14 **WHEREFORE**, Sherwin-Williams respectfully requests that the Court grant  
15 judgment in its favor and against Defendant in an amount to be proved at trial plus  
16 interest at the legal rate, attorney fees, costs of suit, and all other relief as the Court deems  
17 just and proper.

18 **JURY DEMAND**

19 Plaintiff demands trial by jury on all issues so triable.

20  
21 Respectfully submitted,

22 Dated: August 20, 2013

**LANAK & HANNA P.C.**

23  
24 By: s/ CHRISTOPHER M. CULLEN

25 Attorneys for Plaintiff, The Sherwin-Williams  
26 Company f/k/a Sherwin-Williams Automotive  
27 Finishes Corp.

**CHRISTOPHER M. CULLEN**

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CIVIL COVER SHEET

13CV1946 LAB WVG

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

THE SHERWIN-WILLIAMS COMPANY, f/k/a SHERWIN-WILLIAMS AUTOMOTIVE FINISHES CORP.

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) See Attachment

DEFENDANTS

JB COLLISION SERVICES, INC., d/b/a J & M AUTOBODY, and d/b/a/ EL DORADO COLLISION; and DOES 1 through 10, inclusive

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. Section 1332(a)(1)
Brief description of cause: Breach of Contract

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 1,300,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: X Yes O No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 08/20/2013 SIGNATURE OF ATTORNEY OF RECORD s/Christopher M. Cullen

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**Attachment I. (c)**

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