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JB COLLISION SERVICES, INC. dba  
J&M AUTOBODY dba EL DORADO COLLISION

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

vs.

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

Defendant.

JB COLLISION SERVICES, INC., dba  
J&M AUTOBODY, and d/b/a EL  
DORADO COLLISION,

Counter-Claimant,

vs.

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

Counter-Defendant.

Case No.: 13-CV-1946 LAB (WVG)  
*Consolidated with*  
13-CV-1947 LAB (WVG)

**COUNTER-CLAIMANTS'  
CONSOLIDATED SECOND  
AMENDED COUNTERCLAIM FOR  
DAMAGES and DEMAND FOR JURY**

1 **COUNTERCLAIM**

2 Pursuant to the Court's June 10, 2014, Counter-Claimants JB COLLISION  
3 SERVICES, INC. dba J&M AUTOBODY dba EL DORADO COLLISION ("JB  
4 Collision"), JJT, INC. dba JOHN'S COLLISION CENTER ("JJT"), and JOHN TYCZKI  
5 ("John Tyczki") (collectively referred to as "Counter-Claimants") hereby submit the  
6 present [Consolidated] Second Amended Counterclaim against Counter-Defendant THE  
7 SHERWIN-WILLIAMS COMPANY, f/k/a SHERWIN-WILLIAMS AUTOMOTIVE  
8 FINISHES CORP. ("Sherwin-Williams") pursuant to Federal Rule of Civil Procedure 13,  
9 as follows:

10 **I.**

11 **PARTIES**

12 1. JB Collision is a California corporation with its principal places of business  
13 in San Diego and Poway, California. JB Collision is engaged in the business of repairing  
14 and painting automobiles. JB Collision does business solely in California.

15 2. JJT is a California corporation with its principal place of business in Santee,  
16 California. JJT is engaged in the business of repairing and painting automobiles. JJT does  
17 business solely in California. JJT was formed, and opened the John's Collision Center in  
18 Santee, California, in or about March 2011.

19 3. John Tyczki is the owner and President of both JJT and JB Collision, and is,  
20 and was at all times mentioned, domiciled in and a citizen of the State of California. At  
21 all times mentioned herein, John Tyczki was involved in and acted on behalf of JJT and  
22 JB Collision during all interactions with Sherwin-Williams. John Tyczki is the sole  
23 shareholder and the President of both JJT and JB Collision. John Tyczki oversees all  
24 operations and dealings of JJT and JB Collision. John Tyczki negotiated and entered into  
25 both contracts at issue in this Matter with Sherwin-Williams on behalf of JJT and JB  
26 Collision. Also, John Tyczki oversaw the performance of both contracts, and throughout  
27 the contract terms, personally communicated with the same Sherwin-Williams employees

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1 regarding the performance of both contracts. John Tyczki had sole control in JJT's and  
2 JB Collision's course of dealings with Sherwin-Williams.

3 4. Sherwin-Williams is an Ohio corporation with its principal place of business  
4 in Ohio. Sherwin-Williams has offices and employees in California, and does business in  
5 California. Sherwin-Williams is engaged in the business of selling automotive paints,  
6 coatings, and related products.

## 7 II.

### 8 JURISDICTION AND VENUE

9 5. This Court has diversity jurisdiction and supplemental jurisdiction of these  
10 Counterclaims pursuant to 28 U.S.C. §§ 1332(a)(1), 1367(a). The amount of controversy  
11 in this case exceeds a sum of \$75,000.00. Further, the Parties are completely diverse;  
12 Sherwin-Williams is an Ohio corporation with a principal place of business in Ohio, and  
13 JB Collision and JJT are California corporations with principal places of business in  
14 California. These Counterclaims arise out of the same transactions and/or occurrences  
15 that are the subject of Sherwin-Williams's Complaints against JB Collision, JJT, and  
16 John Tyczki, and do not destroy the aforementioned diversity jurisdiction of this Court.

17 6. Venue of this action is proper in this Court pursuant to 28 U.S.C. § 1391(a),  
18 as set forth in Sherwin-Williams's Complaints.

## 19 III.

### 20 FACTUAL ALLEGATIONS

#### 21 A. JB Collision Agreement Terms

22 7. On or about September 10, 2008, JB Collision and Sherwin-Williams  
23 entered into a supply agreement ("JB Collision Agreement") under which JB Collision  
24 agreed to exclusively purchase automotive paint and related products from Sherwin-  
25 Williams until the net amount of JB Collision's purchases of products from Sherwin-  
26 Williams equaled One-Million, Three-Hundred Thousand Dollars (\$1,300,000.00) ("JB  
27 Collision Term").

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1           8. As part of the Agreement, Sherwin-Williams agreed to provide JB Collision  
2 with an advance payment in the amount of Two-Hundred Seventy-Five Thousand Dollars  
3 (\$275,000.00) ("JB Collision Advance"). A true and correct copy of said Agreement is  
4 attached hereto as Exhibit "1" and incorporated herein by reference. Additionally,  
5 Sherwin-Williams agreed to provide JB Collision with a discount of products purchased  
6 from Sherwin-Williams. However, the discount on individual purchases made under the  
7 JB Collision Agreement was less than the discount JB Collision would have obtained on  
8 individual purchase absent the JB Collision Agreement because said "discounts" were  
9 paid upfront to JB Collision as part of the aforementioned JB Collision Advance.

10           9. Under the JB Collision Agreement's terms, if JB Collision terminated the JB  
11 Collision Agreement before the completion of the JB Collision Term, Sherwin-Williams  
12 was entitled to a "Refund" limited to the value of the product of the value of the Advance  
13 times the quotient of the value of the JB Collision Term minus the Value of Net Sales  
14 from the effective date of the Agreement divided by the value of the Term (Refund =  
15 \$275,000.00 X (((\$1,300,000.00 – Net Sales) / 1,300,000.00))).

16           10. The JB Collision Agreement applied to "all automotive collision repair and  
17 refinish facilities owned and/or operated by [JB Collision]...including, without  
18 limitation, the facilities located at the following addresses: [¶] (i) J & M Autobody, 9126  
19 Dowdy Drive, San Diego, CA 92126; and [¶] (ii) El Dorado Collision, 12502 Poway  
20 Road, Poway, CA 92604."

21           **B. JJT Agreement Terms and Guaranty**

22           11. Following the formation of JJT and the opening of John's Collision Center  
23 in or about March 2011, on or about May 29, 2011, JJT and Sherwin-Williams entered  
24 into a (second) supply agreement ("JJT Agreement") under which JJT agreed to  
25 exclusively purchase automotive paint and related products from Sherwin-Williams until  
26 the net amount of JJT's purchases of products from Sherwin-Williams equaled Two-  
27 Hundred, Fifty Thousand Dollars (\$250,000.00) ("JJT Term"). A true and correct copy

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1 of said Agreement is attached hereto as Exhibit “2,” and is incorporated herein by  
2 reference.

3 12. As part of the JJT Agreement, Sherwin-Williams agreed to provide JJT with  
4 an advance payment in the amount of Forty Thousand Dollars (\$40,000.00) (“JJT  
5 Advance”). Additionally, Sherwin-Williams agreed to provide JJT with a discount of  
6 products purchased from Sherwin-Williams. However, the discount on individual  
7 purchases made under the JJT Agreement was less than the discount JJT would have  
8 obtained on individual purchase absent the JJT Agreement because the “discounts” were  
9 paid upfront to JJT as part of the aforementioned JJT Advance.

10 13. Under the Agreement’s terms, if JJT terminated the JJT Agreement before  
11 the completion of the JJT Term, Sherwin-Williams was entitled to liquidated damages in  
12 the amount of the JJT Advance.

13 14. On or about May 10, 2011, John Tyczki entered into a written guaranty of  
14 the JJT Agreement (“Guaranty”), which pre-dated the JJT Agreement and is therefore not  
15 enforceable. A true and correct copy of the Guaranty of the JJT Agreement is attached  
16 hereto as Exhibit “3,” and is incorporated herein by reference.

17 **C. Overview of Continued Business Interactions Between the Parties**

18 15. Because John Tyczki is the sole shareholder and the President of both JJT  
19 and JB Collision, and he managed and acted on behalf of both JJT and JB Collision  
20 during all interactions with Sherwin-Williams, he, on behalf of both entities, has had a  
21 continued business relationship with Sherwin Williams since approximately June 2008.  
22 Accordingly, John Tyczki has made business decisions on behalf of both entities based  
23 upon the totality of all representations and interactions with Sherwin-Williams from the  
24 beginning of the business relationship. Consequently, in John Tyczki’s, and therefore also  
25 JB Collision’s and JJT’s, reliance on Sherwin-Williams’s representation, no particular  
26 statement by Sherwin-Williams throughout the business relationship was considered in a  
27 vacuum.

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1           16. In the mid to late 2000's, the California Air Resources Board and different  
2 municipalities in California began adopting environmental regulations requiring  
3 automotive paint shops to use water-based (as opposed to solvent-based (also known as  
4 oil-based)) paint products. Prior to JB Collision entered into the JB Collision Agreement,  
5 Los Angeles adopted an ordinance requiring the use of water-based automotive paint  
6 products. It was anticipated that San Diego's ordinance would go into effect soon after. In  
7 anticipation of the new water-based paint requirement in San Diego, and because water-  
8 based paint systems were a relatively untested and undeveloped technology, John Tyczki  
9 wanted to "get ahead of the curve" and install a fully developed, properly-functioning  
10 water-based paint system in JB Collision's shops before the regulations required water-  
11 based paint in San Diego. John Tyczki wanted to ensure that his employees were fully  
12 trained in spraying water-based paint, that his shops were fully prepared, and the paint  
13 system was properly working before spraying water-based paint was mandated, so that  
14 the water-based paint restrictions did not affect the high quality of JB Collision's  
15 automotive paint services when the regulations were enacted.

16           17. In or about June 2008, John Tyczki, on behalf of JB Collision, began  
17 speaking with Sherwin-Williams regarding a potential agreement regarding the  
18 installation of a water-based paint system in JB Collision's shops after he was  
19 approached by Jose Garcia (Sherwin-Williams). Three factors John Tyczki considered in  
20 entering into the JB Collision Agreement on behalf of JB Collision were Sherwin-  
21 Williams's willingness to provide the JB Collision Advance, Sherwin-Williams's Sales  
22 Representative's, Jose Garcia, specific representations regarding what was covered by the  
23 JB Collision Term (Term of the JB Collision Agreement), and Jose Garcia's express  
24 representations regarding the performance and quality of Sherwin-Williams water-based  
25 automotive paint products. John Tyczki told Jose Garcia that he would not enter into the  
26 JB Collision Agreement on behalf of JB Collision if all purchased products did not count  
27 toward the running of the JB Collision Term. Mr. Garcia specifically represented to John  
28 Tyczki that all products JB Collision purchased under the JB Collision Agreement, not

1 just paint, would count toward the running of the JB Collision Term, and he stated to  
2 John Tyczki that the calculation of the JB Collision Term was “everything you buy from  
3 us is included to count toward the \$1.3 million” (referring to Sherwin-Williams), or  
4 words to that effect. John Tyczki understood the JB Collision Agreement to so provide  
5 and intended that it do so, and he would not have entered into the JB Collision  
6 Agreement if it did not include the purchase of all products toward the \$1.3 million  
7 contract amount, and Mr. Garcia specifically was aware of this. Sherwin-Williams is now  
8 claiming that not all product purchases counted towards the \$1.3 million JB Collision  
9 Term, and that JB Collision is in breach of the Agreement. Should the JB Collision  
10 Agreement somehow be interpreted in this manner, then Mr. Garcia specifically and  
11 fraudulently misrepresented the terms of the JB Collision Agreement to induce John  
12 Tyczki to enter into said Agreement.

13 18. Additionally, during discussions between JB Collision and Sherwin-  
14 Williams in or about August and September 2008 regarding entering the JB Collision  
15 Agreement, Sherwin-Williams also made numerous specific representations regarding the  
16 quality of its paint products, upon which John Tyczki reasonably relied and which  
17 induced JB Collision to enter into the JB Collision Agreement. As stated below, in  
18 response to John Tyczki’s specific questions, Sherwin-Williams stated to JB Collision,  
19 through John Tyczki, that its water-based automotive paint products were tested, proven,  
20 and perfected products that had been in use in other shops, and were free of certain  
21 specific defects. Specifically, Sherwin-Williams, specifically through Jose Garcia, and  
22 also Kurt Hammond, stated to John Tyczki that its water-based paint products provided a  
23 perfect color match and did not have any defects that would cause problematic physical  
24 characteristics such as “dye back” (also sometimes referred to as “loss of gloss”),  
25 “sanding scratches,” “color fading,” color match problems, “solvent popping,” paint  
26 “shrinkage,” and “orange peel.” Dye back is a defect in the paint in which the paint loses  
27 its shine and looks dull and flat; hence the term loss of gloss. Sanding scratches are a  
28 defect where the marks from the body work performed prior to the application of the

1 paint are exposed through the paint; an observer can see the scratches from the sanding of  
2 the body work through the outer paint coat. Color fading, which is similar to dye back, is  
3 where the colors lose their brilliance, as if the color is being sucked out of the paint.  
4 Color match problems are where one batch, can, or mix of paint of a specific color, does  
5 not match others of the same color, or more specifically, upon repairing a vehicle, the  
6 fresh paint of the same type does not match the factory and/or existing paint on the  
7 vehicle. Solvent popping is where small, pinhole-like deformities appear on the outer  
8 layer (or clear coat) of the paint job. Shrinkage is where the primer sucks up the paint,  
9 causing a dry, matted finish, and also makes sanding scratches and other underlying  
10 impurities visible. Finally, orange peel is the development of a lumpy, yet still smooth,  
11 texture in the paint (rather than a flat surface) which causes the appearance of the paint to  
12 look like the outside of an orange peel.

13 19. Sherwin-Williams also stated to JB Collision that its new water-based  
14 automotive paint (as opposed to solvent-based paint), which was going to be legally  
15 required to be used in San Diego in the near future due to local environmental regulation,  
16 was of the same quality as the solvent-based paint. However, unlike the solvent-based  
17 paint, with which JB Collision never had any issues, Sherwin-Williams water-based paint  
18 had all of the defects stated above.

19 20. Specific representations and misrepresentations made by Sherwin-Williams  
20 to induce JB Collision to enter the JB Collision Agreement, and then subsequently to  
21 refrain from terminating the JB Collision Agreement, and for John Tyczki to enter into  
22 JJT Agreement on behalf of JJT, despite many instances of the above-mentioned  
23 problems, included, but are not limited to, the following interactions:

24 a. From August/September 2008 through 2012, Jose Garcia (Sherwin-  
25 Williams) made numerous and specific misrepresentations concerning the quality of  
26 Sherwin-Williams water-based products and service, first to induce JB Collision to enter  
27 into the JB Collision Agreement, and subsequently to avoid cancellation of the JB  
28 Collision Agreement, and then to induce John Tyczki to enter into the JJT Agreement.



1 Throughout that timeframe, John Tyczki, on behalf of JB Collision, had at least twenty  
2 (20) telephone conversations from his office with Mr. Garcia, and met with Mr. Garcia in  
3 a JB Collision shop on a number of other occasions. Specifically, in or about August  
4 2008 through early September 2008, over the telephone and at JB Collision's shops, in  
5 response to John Tyczki's specific questions concerning color match, dye back, and  
6 shrinkage, Mr. Garcia expressly stated to JB Collision, to John Tyczki, that Sherwin-  
7 Williams water-based automotive paint was already tested, proven, and perfected, was as  
8 good as Sherwin-Williams solvent-based paint products, and that that water-based  
9 products did not have color match problems, color fading, shrinkage, sanding scratches,  
10 solvent popping, and dye back. Mr. Garcia also stated that a vehicle could be painted  
11 "prime to shine in 50 minutes" in response to John Tyczki's specific questions regarding  
12 the use of the products and JB Collision's volume of work; however, this was also not  
13 true. Mr. Garcia made all of these specific misrepresentations to induce JB Collision to  
14 enter into the JB Collision Agreement. Contrary to Mr. Garcia's statements, Sherwin-  
15 Williams water-based paint was not perfected, and was poor quality paint, and it  
16 exhibited all of the defects stated above when purchased and used by Counter-Claimants,  
17 including dye back, color fading, shrinkage, sanding scratches, orange peel, and solvent  
18 popping. Further, JB Collision began using Spies Hecker/Dupont paint when it ceased its  
19 exclusive use of Sherwin-Williams paint in March 2013, and also during specific times  
20 when authorized by Sherwin-Williams to use Spies Hecker/Dupont paint to fix problems  
21 caused by Sherwin-Williams paint, and did not experience these problems. JB Collision  
22 is informed and believes Mr. Garcia knew about the problems with Sherwin-Williams's  
23 paint products when he made the statements, and that he purposely misrepresented the  
24 quality of Sherwin-Williams paint in order to induce JB Collision into entering into the  
25 Agreement, because the color match problem occurred during the first week of the JB  
26 Collision Agreement in September 2008, and Mr. Garcia then admitted that these  
27 problems with the Sherwin-Williams paint products existed prior to JB Collisions' use of  
28 the products during the first week of the Agreement.

1           b.     Also during initial discussions with Mr. Garcia in or about August  
2 2008, John Tyczki told Mr. Garcia that his intent was to comply with the imminent local  
3 regulations requiring use of water-based paints. John Tyczki further told Mr. Garcia that  
4 he wanted to use a perfected water-based paint system, and that he did not want JB  
5 Collision's shops to be an experimental or "guinea pig" shop for Sherwin-Williams to  
6 test new technology. Mr. Garcia stated John Tyczki that Sherwin-Williams's water-based  
7 paint had been perfected, and that JB Collision's shops would not be test shops.  
8 However, contrary to Mr. Garcia's representations, use of Sherwin-Williams's water-  
9 based paint did result in the aforementioned problems, including color match problems,  
10 color fading, sanding scratches, solvent popping, shrinkage, and dye back, beginning with  
11 color match problems immediately after JB Collision began using the water-based paint  
12 products, and Mr. Garcia, and Mr. Hammond and later Derrick King, repeatedly  
13 promised to fix these problems, but they were never fixed.

14           c.     After approximately only one week of using Sherwin-Williams's  
15 water-based paint products, John Tyczki complained to Mr. Garcia about the color match  
16 problems. John Tyczki told Mr. Garcia that he trusted Mr. Garcia and that he felt that Mr.  
17 Garcia had lied to him, and that JB Collision would not have entered into the JB Collision  
18 Agreement if Mr. Garcia had not represented that Sherwin-Williams's water-based paint  
19 system was tested, proven, and perfected. In response, Mr. Garcia admitted that Sherwin-  
20 Williams's water-based paint products did have problems, admitted that the problems  
21 were "company-wide" and not due to JB Collision's workmanship, and that, contrary to  
22 Mr. Garcia's prior representations that Sherwin-Williams's water-based products had  
23 been perfected, the problems existed before JB Collision and Sherwin-Williams entered  
24 into the JB Collision Agreement. Mr. Garcia stated that, to induce John Tyczki not to  
25 cancel the JB Collision Agreement, JB Collision allow Sherwin-Williams time to fix the  
26 admitted problems given that the water-based paint requirement was not yet in effect,  
27 even though it was John Tyczki's intention to enter into the JB Collision Agreement in  
28 order to preempt and "get ahead of the curve" of the imminent water-based paint

1 requirement in San Diego and begin using water-based paint immediately, that Mr.  
2 Garcia would, and did, provide JB Collision with solvent-based paint products in lieu of  
3 the defective water-based paint products. Therefore, within one week of entering into the  
4 JB Collision Agreement, Sherwin-Williams had JB Collision spraying its solvent-based  
5 paint products instead of the water-based paint products, because the Sherwin-Williams  
6 water-based paint products were defective.

7           d. Shortly thereafter, also in September 2008, Kurt Hammond (Sherwin-  
8 Williams), along with Jose Garcia, met with John Tyczki at the Brigantine Restaurant in  
9 Poway, California, and initially repeated the same misrepresentations concerning color  
10 match of the water-based products, but then, after being confronted by John Tyczki and  
11 hearing Mr. Garcia's admission concerning the color match problems, Mr. Hammond  
12 admitted to the prior misrepresentations and promised that the problems with the  
13 Sherwin-Williams water-based paint products would be corrected, in order to induce JB  
14 Collision to agree to allow Sherwin-Williams time to correct the problems, but which  
15 were never corrected, and to refrain from terminating the JB Collision Agreement. JB  
16 Collision believes both Mr. Hammond and Mr. Garcia knew these representations were  
17 false at the time they made them, given the fact that Mr. Garcia had admitted that the  
18 problems existed even while he was making representations to the contrary to induce  
19 John Tyczki to enter into the JB Collision Agreement, and Mr. Hammond admitted that  
20 Sherwin-Williams needed time to fix the color match problem which existed before the  
21 parties entered into the JB Collision Agreement.

22           e. After Mr. Garcia switched out the water-based paint products for the  
23 solvent-based paint products, JB Collision was forced to use the Sherwin-Williams  
24 solvent-based paint products for approximately six (6) months until Sherwin-Williams  
25 informed John Tyczki that the problems with the water-based paint products had been  
26 solved. However, within a few months after resuming use of the water-based paint  
27 products, JB Collision continued to have problems with the still-defective water-based  
28 paint products, which lasted until the Agreement terminated. The defective products

1 caused color fading, sanding scratches to show through the paint, solvent popping,  
2 shrinkage, and dye back. No vehicle could or ever was painted “prime to shine in 50  
3 minutes.” John Tyczki continued using Sherwin-Williams products under the JB  
4 Collision Agreement (and later JJT Agreement) in order to complete the Term of the JB  
5 Collision Agreement, in reliance upon Sherwin-Williams’s repeated but false  
6 representations that it would resolve the admitted problems with the water-based paint  
7 products.

8           f.       Within the first week of the JB Collision Agreement in September  
9 2008, Mr. Lowry (Sherwin-Williams) met with and admitted to John Tyczki that there  
10 were serious and numerous problems concerning the poor quality of the Sherwin-  
11 Williams water-based products, including dye back, color fading, shrinkage, and solvent  
12 popping, and that these were misrepresentations made to John Tyczki to induce him to  
13 enter into the JB Collision Agreement. Contrary to what John Tyczki had been told by all  
14 Sherwin-Williams representatives, Sherwin-Williams water-based paint products had not  
15 been adequately tested, proven, or perfected, and were not ready for use in high quality  
16 shops like JB Collision. Mr. Lowry also admitted that those problems could not be  
17 corrected because there were problems with the paint formula. Mr. Lowry further  
18 admitted to John Tyczki that he had informed Sherwin-Williams management, including  
19 Jose Garcia and possibly Kurt Hammond, that Sherwin-Williams should not have  
20 induced John Tyczki to enter into the JB Collision Agreement because Sherwin-  
21 Williams’s water-based paint products were not ready, were not perfected, and were not  
22 up to John Tyczki’s standards because JB Collision’s shops perform high quality  
23 services, which were not compatible with the poor quality of the Sherwin-Williams  
24 water-based paint products.

25           g.       Subsequent to the re-installment and use of Sherwin-Williams water-  
26 based paint products after the six (6) month period of using Sherwin-Williams solvent-  
27 based products, John Tyczki continued to complain about dye back, loss of gloss,  
28 shrinkage, sanding scratches, color fading, and solvent popping, to Sherwin-Williams

1 representatives at various times, including specifically Jose Garcia, Derrick King, and  
2 Hilary Castro (all of Sherwin-Williams), who admitted there were problems with their  
3 product and repeatedly made promises that Sherwin-Williams would correct the defects  
4 with the water-based paint products. After San Diego enacted a water-based requirement  
5 in approximately June, 2010, JB Collision could no longer use Sherwin-Williams  
6 solvent-based products in lieu of the water-based products and could not use a  
7 competitor's water-based products or else be in breach of the JB Collision Agreement  
8 with Sherwin-Williams, so JB Collision was forced to continue relying on Sherwin-  
9 Williams's representations that the problems with its water-based paint products were  
10 corrected and/or being corrected, although JB Collision continued to experience the same  
11 problems, including dye back, color fading, shrinkage, loss of gloss, sanding scratches,  
12 and solvent popping. Mr. Garcia, throughout the course of the relationship, would  
13 provide John Tyczki with "goodwill adjustments" which were paint products free-of-  
14 charge for the re-painting of vehicles necessitated by the poor quality of and the said  
15 problems caused by the Sherwin-Williams paint products, but John Tyczki had to absorb  
16 the labor costs of repainting the vehicles.

17           h. In or about March 2011 to May 2011, John Tyczki informed Jose  
18 Garcia that he was forming JJT and opening the John's Collision Center in Santee,  
19 California. Mr. Garcia stated that Sherwin-Williams considered John's Collision Center  
20 to be included under the JB Collision Agreement so JJT was also required to exclusively  
21 use Sherwin-Williams paint products. Mr. Garcia promised that Sherwin-Williams was  
22 close to having the defects in their paint products resolved and thereby induced John  
23 Tyczki to enter into the JJT Agreement. Mr. Garcia continued to promise John Tyczki  
24 that Sherwin-Williams was working on a solution to fix the problems with its water-  
25 based paint system. Counter-Claimants believe that Jose Garcia knew that Sherwin-  
26 Williams was not putting forth the effort, or did not have the ability, to correct the  
27 problems with Sherwin-Williams's water-based products, and was merely making these

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1 statements to induce Counter-Claimants to enter into the JJT Agreement and continue the  
2 exclusive relationship with Sherwin-Williams.

3 i. During 2012, David Sowell (Sherwin-Williams) and Jose Garcia met  
4 with John Tyczki at his office at John's Collision Center, and Mr. Sowell made additional  
5 misrepresentations that Sherwin-Williams was fixing the poor quality of the Sherwin-  
6 Williams products, including the dye back, color fading, shrinkage, and solvent popping  
7 problems. Mr. Sowell stated that "I will take care of all of these issues" and that Sherwin-  
8 Williams would specifically correct the defects in reference to the problems with dye  
9 back, loss of gloss, color fading, the appearance of sanding scratches, shrinkage, and  
10 solvent popping. However, John Tyczki never heard from Mr. Sowell again. Contrary to  
11 Mr. Sowell's and Mr. Garcia's representations, the defects in Sherwin-Williams paint  
12 products were not corrected.

13 j. In or about October 2012, Derrick King (Sherwin-Williams) told John  
14 Tyczki that "I am going to fix your problems," that Sherwin-Williams would correct the  
15 paint products defects, and admitted that there were and had been continuing defects in  
16 the Sherwin-Williams products which was causing dye back, loss of gloss, color fading,  
17 appearance of sanding scratches, solvent popping, and shrinkage. John Tyczki discussed  
18 with Mr. King that the \$1.3 million purchase number would be hit in about six months,  
19 showed Mr. King the numbers, and Mr. King promised that these problems would be  
20 fixed in those six months; however, they were not.

21 k. As referenced above, from September 2008 through February 2013,  
22 John Tyczki, on behalf of JB Collision and JJT, made numerous and repeated complaints  
23 concerning all of the aforementioned problems to Jose Garcia, David Cardenas, Kurt  
24 Hammond, Derrick King, Hilary Castro, Jack Lowry, and David Sowell (all Sherwin-  
25 Williams), as well as currently unidentified Sherwin-Williams technicians, all of whom  
26 responded with misrepresentations similar to those described above with the intent to  
27 induce Counter-Claimants to enter into the JB Collision Agreement and JJT Agreement,  
28 and/or to induce Counter-Claimants to refrain from terminating the Agreements. JB

Collision believes that each of these representations were made with concurrent knowledge of their falsity, and with the intent to induce Counter-Claimants to refrain from terminating the Agreements.

1. On February 6, 2013, after continued and repeated complaints from John Tyczki concerning these problems with the Sherwin-Williams products, specifically dye back, loss of gloss, color fading, appearance of sanding scratches, solvent popping, and shrinkage, Hilary Castro (Sherwin Williams) proposed a 30/60/90 day plan to purportedly correct the repeated problems about which the prior misrepresentations regarding the quality of Sherwin-Williams paint and corrections regarding the problems were made, which plan, in and of itself, is an admission as to the existence of the defective products. However, it appears that Ms. Castro did not implement the plan.

21. On or about February 28, 2013, Sherwin-Williams sent JB Collision and JJT letters (separately) stating that Sherwin-Williams was “informed and believed” that JB Collision and JJT had discontinued exclusive use of Sherwin-Williams products. However, JB Collision did not discontinue exclusive use of until March 2013, after JB Collision was certain it had satisfied the \$1.3 million purchase/sales requirement. Further, JJT did not terminate the JJT Agreement until April 8, 2013, as John Tyczki sent Sherwin-Williams a letter dated April 5, 2013 which enclosed a check for \$40,000.00 to refund the JJT Advance pursuant to the JJT Agreement, and stating that JJT was terminating the JJT Agreement as of April 8, 2013. Counter-Claimants terminated the Agreements as a result of the numerous customer complaints and necessary re-repairs and re-paintings of customer vehicles due to the low quality of Sherwin-Williams’s products, and failure of Sherwin-Williams to effectively correct the quality issues.

22. Counter-Claimants believe that the time each of the above representations were made, Sherwin-Williams’s intended to induce and, in fact, did induce Counter-Claimants to enter into the Agreements and to not terminate the Agreements, Sherwin-Williams knew that its representations were false, and Counter-Claimants detrimentally relied upon those misrepresentations in conducting themselves in entering into and

1 performing under the Agreements. In truth, the quality of the Sherwin-Williams products  
2 was substandard, and continued to be substandard and generally poor, which resulted in  
3 defects in paint jobs including dye back, sanding scratches, color fading, color match  
4 problems, solvent popping, paint shrinkage, and orange peel, which has resulted and  
5 continues to result in customers returning vehicles to correct the paint defects.

6 23. Also throughout the Terms of the Agreements, John Tyczki, on behalf of  
7 both JB Collision and JJT, made numerous complaints to Sherwin-Williams regarding the  
8 quality of Sherwin-Williams's products, and the difficulty JB Collision and JJT were  
9 having due to the complications caused by Sherwin-Williams's products' poor quality.  
10 Sherwin-Williams failed to cure the defects in product quality. Significantly, since the  
11 termination of the Agreements, Sherwin-Williams has authorized John Tyczki to re-  
12 repair customer vehicles using a competitor's products.

13 24. On information and belief, through interactions with various other local  
14 members of the automotive repair and painting industry, Counter-Claimants understand  
15 that Sherwin-Williams has received numerous similar complaints regarding the quality of  
16 its paint and related products from other local members of the automotive repair and  
17 painting industry, and therefore had further knowledge of the defects in its automotive  
18 paint and related products, as alleged herein, even as they were making  
19 misrepresentations to John Tyczki.

20 25. As a result of the poor quality and defects of Sherwin-Williams paint and  
21 related products, throughout the Terms of the JB Collision and JJT Agreements and  
22 continuing through the present, JB Collision and JJT have received, and continue to  
23 receive, numerous customer complaints and have had to, and continue to have to, re-paint  
24 and/or re-repair many customer vehicles to honor the lifetime guarantee warranty of their  
25 work. The poor quality of Sherwin-Williams automotive and related products was not  
26 corrected and the continued use of these products resulted in customer complaints,  
27 customer returns, the need for "re-do's," the performance of warranty work, and  
28 additional damage to Counter-Claimants' goodwill.



1           26. Despite the fact that JB Collision satisfied the purchase/sales obligation and  
2 JTT refunded the full JTT Advance amount pursuant to the JTT Agreement, and Counter-  
3 Claimants made repeated complaints concerning the poor quality of the Sherwin-  
4 Williams products, and that Sherwin-Williams made repeated misrepresentations  
5 regarding the quality of its products and corrective measures, Sherwin-Williams has filed  
6 a suit seeking monies ignoring Counter-Claimants' substantial performance and  
7 satisfaction of the terms of the JB Collision Agreement and JTT Agreement.

8           27. As a result of Sherwin-Williams's material breach of the JB Collision and  
9 JTT Agreements due to the provision of poor quality products, Counter-Claimants have  
10 suffered significant injury. Counter-Claimants have spent, and will continue to spend,  
11 numerous labor hours and supplies correcting defects caused by Sherwin-Williams  
12 products. Over the course of the last five (5) years, Counter-Claimants combined have  
13 painted and/or repaired approximately two-hundred (200) vehicles per month using  
14 Sherwin-Williams paint and related products. Due to Sherwin-Williams's poor quality  
15 and defective products, Counter-Claimants have incurred and will incur labor and  
16 expenses for re-painting and/or re-repairing customer vehicles including, but not limited  
17 to, the cost of customers' car rental, and such tasks as de-trimming, stripping, primer, re-  
18 painting, correcting damage to existing body work, and detailing the customer vehicles  
19 previously repaired or painted with Sherwin-Williams paint and related products. The  
20 average cost to re-paint and/or re-repair each vehicle painted and/or repaired with  
21 Sherwin-Williams products costs approximately \$2,000.00. Therefore, Counter-  
22 Claimants estimate that the combined total amount of their potential costs that will be  
23 incurred from re-painting and/or re-repairing customer vehicles that were serviced using  
24 Sherwin-Williams paint and related products is approximately \$20,000,000.00, without  
25 consideration for the value of lost goodwill and reputation. To date, Counter-Claimants  
26 have informed Sherwin-Williams of approximately \$50,000.00 of repair work performed  
27 on seventeen (17) vehicles in order to correct defects caused by Sherwin-Williams's paint  
28 products. Sherwin-Williams has refused to reimburse these costs based upon its failure to

1 respond. Counter-Claimants anticipate incurring substantial additional future costs for  
2 correcting paint jobs on more vehicles in the future.

3 28. Counter-Claimants also lost business and/or good will due to customers  
4 becoming dissatisfied with their work due to defects caused by Sherwin-Williams  
5 products. These economic damages are in an amount to be proven at trial.

6 29. Additionally, Counter-Claimants have suffered harm to their reputation  
7 amongst its customer base and within the local automotive painting and repair industry,  
8 which has led and will continue to lead to a further loss of business and good will, due to  
9 defects caused by Sherwin-Williams products.

10 **FIRST CAUSE OF ACTION**

11 **(Breach of Contract--JB Collision Agreement)**

12 30. Counter-Claimants incorporate by reference all allegations in Paragraphs 1  
13 through 29 of the Consolidated Second Amended Counterclaim as if fully set forth  
14 herein.

15 31. As set forth above, Sherwin-Williams owed contractual obligations to JB  
16 Collision pursuant to the JB Collision Agreement.

17 32. Sherwin-Williams materially breached the JB Collision Agreement by  
18 supplying JB Collision with substandard paint products, which caused defects in JB  
19 Collision's repairs and paintings of its customers' vehicles.

20 33. JB Collision informed Sherwin-Williams of the defects of Sherwin-  
21 Williams's paint products to give Sherwin-Williams an opportunity to cure said defects.  
22 Despite repeated notice, Sherwin-Williams continuously failed to adequately perform  
23 under the JB Collision Agreement by failing to correct the defects and continuing to  
24 provide JB Collision with poor quality products and services.

25 34. As a direct and proximate result of Sherwin-Williams's breach of the JB  
26 Collision Agreement, JB Collision has suffered actual and consequential damages  
27 including, without limitation, the costs of repeat repairs or paint jobs on JB Collision  
28 customer vehicles made necessary by the defective Sherwin-Williams products, the lost

profits caused by lost business due to loss of customers caused by Sherwin-Williams's defective products, the value of the damage to JB Collision's professional reputation in the community and amongst its customers, and the amount of attorneys' fees and costs incurred in defending against Sherwin-Williams's meritless claims against JB Collision, all in amounts to be proven at trial.

## **SECOND CAUSE OF ACTION**

### **(Breach of Contract--JJT Agreement)**

35. Counter-Claimants incorporate by reference all allegations in Paragraphs 1 through 34 of the Consolidated Second Amended Counterclaim as if fully set forth herein.

36. As set forth above, Sherwin-Williams owed contractual obligations to JJT pursuant to the JJT Agreement.

37. Sherwin-Williams materially breached the JJT Agreement by supplying JJT with substandard paint products, which caused defects in JJT's repairs and paintings of its customers' vehicles.

38. JJT informed Sherwin-Williams of the defects of Sherwin-Williams's paint products to give Sherwin-Williams an opportunity to cure said defects. Despite repeated notice, Sherwin-Williams continuously failed to adequately perform under the JJT Agreement by failing to correct the defects and continuing to provide JJT with poor quality products and services.

39. As a direct and proximate result of Sherwin-Williams's breach of the JJT, JJT has suffered actual and consequential damages including, without limitation, the costs of repeat repairs or paint jobs on JJT customer vehicles made necessary by the defective Sherwin-Williams products, the lost profits caused by lost business due to loss of customers caused by Sherwin-Williams's defective products, the value of the damage to JJT's professional reputation in the community and amongst its customers, and the amount of attorneys' fees and costs incurred in defending against Sherwin-Williams's meritless claims against JJT, all in amounts to be proven at trial.

1 **THIRD CAUSE OF ACTION**

2 **(Concealment/Fraud)**

3 40. Counter-Claimants incorporate by reference all allegations in Paragraphs 1  
4 through 39 of the Counterclaim as if fully set forth herein.

5 41. Sherwin-Williams contracted to sell JB Collision automotive paint and  
6 related products for use in JB Collision's paint and repair of automobiles pursuant to the  
7 JB Collision Agreement entered into on September 10, 2008. Similarly, Sherwin-  
8 Williams subsequently contracted Sherwin-Williams contracted to sell JJT automotive  
9 paint and related products for use in JJT's paint and repair of automobiles pursuant to the  
10 JJT Agreement entered into on May 24, 2011.

11 42. Sherwin-Williams knowingly and intentionally concealed information  
12 regarding the quality of its paint and related products during the negotiation and  
13 formation of the JB Collision Agreement, which induced JB Collision to enter into the JB  
14 Collision Agreement. Sherwin-Williams expressly told John Tyczki that its water-based  
15 automotive paint products were tested, proven, and perfected prior to the formation of the  
16 JB Collision Agreement; however, this was untrue, as admitted by Jose Garcia and Jack  
17 Lowry.

18 43. Subsequent to the formation of the JB Collision Agreement, Sherwin-  
19 Williams continuously, knowingly, and intentionally misled all Counter-Claimants about  
20 Sherwin-Williams's efforts to cure the admitted defects in its water-based automotive  
21 products in order to induce JB Collision to refrain from terminating the JB Collision  
22 Agreement.

23 44. Further, because John Tyczki was engaged in all interactions with Sherwin-  
24 Williams on behalf of both JB Collision and JJT, the continued representations by  
25 Sherwin-Williams regarding its efforts to correct the defects with its water-based paint  
26 products (in conjunction with Sherwin-Williams's threats to initiate a breach of contract  
27 action under the JB Collision Agreement) induced JJT, through John Tyczki, to enter  
28 into, and subsequently refrain from terminating, the JJT Agreement.

1           45. Sherwin-Williams intentionally failed to disclose the poor quality and  
2 defects of Sherwin-Williams's paint and related products to JB Collision, including  
3 defects in Sherwin-Williams paint products that cause dye back, sanding scratches, color  
4 fading, color match problems, solvent popping, paint shrinkage, and orange peel. JB  
5 Collision did not know of the low quality and defects in Sherwin-Williams's paint and  
6 related products at the time of formation of the JB Collision Agreement. Oppositely,  
7 Sherwin-Williams knew about the defects with its automotive paint and related products,  
8 and acted with intent to deceive JB Collision in order to induce JB Collision to enter into  
9 the Agreement, and subsequently refrain from terminating the Agreement. Sherwin-  
10 Williams also knowingly, intentionally, and falsely represented to JB Collision that its  
11 water-based automotive paint and related products were tested, proven and protected in  
12 order to induce JB Collision to enter into the JB Collision agreement, and later  
13 knowingly, intentionally and falsely represented that it could and would correct the  
14 problems with its automotive paint and related products, while knowing that such  
15 problems could not be corrected, in order to induce JB Collision to refrain from  
16 terminating the Agreement, and to induce JJT to enter into the JJT Agreement, and  
17 subsequently refrain from terminating the JJT Agreement.

18           46. As a result of Sherwin-Williams's representations throughout the formation  
19 of the JB Collision, through the formation of the JJT Agreement, and during the entire  
20 performance of the JB Collision Agreement and JJT Agreement, Counter-Claimants were  
21 induced to, and reasonably did, rely on Sherwin-Williams's deceptive representations  
22 regarding the quality of Sherwin-Williams's automotive paint and related products, and  
23 its efforts to correct the defects therewith, in entering into the JB Collision Agreement  
24 and JJT Agreement, and to continue refraining from terminating either the JB Collision  
25 Agreement or JJT Agreement.

26           47. As a direct and proximate result of Sherwin-Williams's deceit and  
27 concealment, Counter-Claimants were induced to purchase, and continue purchasing,  
28 Sherwin-Williams's defective paint and related products in an amount exceeding \$1.3

1 million, and have suffered injury outside that envisioned by either the JB Collision  
2 Agreement or the JJT Agreement. In purchasing and using Sherwin-Williams's defective  
3 paint and related products, Counter-Claimants have suffered damages including, without  
4 limitation, the costs of repeat repairs or paint jobs on Counter-Claimants' customer  
5 vehicles made necessary by the defective Sherwin-Williams products, the lost profits  
6 caused by lost business due to loss of customers caused by Sherwin-Williams's defective  
7 products, the value of the damage to Counter-Claimants' professional community and  
8 amongst its customers, and the amount of attorneys' fees and costs incurred in defending  
9 against Sherwin-Williams's meritless claims against Counter-Claimants, all in amounts to  
10 be proven at trial.

11 48. Counter-Claimants are informed and believe and thereon allege that this  
12 conduct was caused and committed by Counter-Defendant with the intent to cause harm  
13 to Counter-Claimants, and/or to intentionally deceive and commit fraud upon Counter-  
14 Claimants, and/or with oppression and in reckless disregard of the rights of Counter-  
15 Claimants.

#### 16 **FOURTH CAUSE OF ACTION**

##### 17 **(Intentional Misrepresentation)**

18 49. Counter-Claimants incorporate by reference all allegations in Paragraphs 1  
19 through 48 of the Consolidated Second Amended Counterclaim as if fully set forth  
20 herein.

21 50. Sherwin-Williams intentionally and falsely represented the quality of its  
22 paint and related products, and subsequently its efforts and/or ability to cure defects  
23 therewith, which harmed Counter-Claimants financially and with regard to Counter-  
24 Claimants' reputation.

25 51. Sherwin-Williams contracted to sell JB Collision automotive paint and  
26 related products for use in JB Collision's paint and repair of automobiles pursuant to the  
27 JB Collision Agreement entered into on September 10, 2008. Similarly, Sherwin-  
28 Williams subsequently contracted Sherwin-Williams contracted to sell JJT automotive

1 paint and related products for use in JJT's paint and repair of automobiles pursuant to the  
2 JJT Agreement entered into on May 24, 2011.

3 52. Sherwin-Williams made representations regarding the quality of Sherwin-  
4 Williams's automotive paint and related products to Counter-Claimants, including that its  
5 water-based automotive paint and related products were tested, proven, and perfected at  
6 the time of the formation of the JB Collision Agreement in September 2008 and that it  
7 would not cause dye back, sanding scratches, color fading, color match problems, solvent  
8 popping, paint shrinkage, and orange peel, and subsequently regarding Sherwin-  
9 Williams's efforts and/or ability to cure the aforementioned defects with said products.  
10 Sherwin-Williams knew its representations regarding the quality of its automotive paint  
11 and related products, and its efforts and/or ability to cure the aforementioned defects with  
12 said products, were false at the time it made the representations, and/or Sherwin-Williams  
13 made the representations with a reckless regard for their truth.

14 53. At all times, Sherwin-Williams intended that Counter-Claimants rely on its  
15 misrepresentations.

16 54. Counter-Claimants were induced to, and reasonably did, rely on Sherwin-  
17 Williams's false representations regarding the quality of Sherwin-Williams's automotive  
18 paint and related products, and subsequently Sherwin-Williams's efforts and/or ability to  
19 cure defects in said products, to enter into the JB Collision Agreement and JJT  
20 Agreement, and subsequently to not terminate those Agreements.

21 55. As a direct and proximate result of Sherwin-Williams's false  
22 representations, Counter-Claimants were induced to purchase, and continue purchasing,  
23 Sherwin-Williams's defective automotive paint and related products in an amount in  
24 excess of \$1.3 million, and have suffered injury outside that envisioned by either the JB  
25 Collision Agreement or the JJT Agreement. In purchasing and using Sherwin-Williams's  
26 defective paint and related products, Counter-Claimants have suffered damages  
27 including, without limitation, the costs of repeat repairs or paint jobs on Counter-  
28 Claimants' customer vehicles made necessary by the defective Sherwin-Williams

1 products, the lost profits caused by lost business due to loss of customers caused by  
2 Sherwin-Williams's defective products, the value of the damage to Counter-Claimants'  
3 professional reputation in the community and amongst its customers, and the amount of  
4 attorneys' fees and costs incurred in defending against Sherwin-Williams's meritless  
5 claims against Counter-Claimants, all in amounts to be proven at trial.

6 56. Counter-Claimants are informed and believe and thereon allege that this  
7 conduct was caused and committed by Counter-Defendant with the intent to cause harm  
8 to Counter-Claimants, and/or to intentionally deceive and commit fraud upon Counter-  
9 Claimants, and/or with oppression and in reckless disregard of the rights of Counter-  
10 Claimants.

#### 11 **FIFTH CAUSE OF ACTION**

#### 12 **(Negligent Misrepresentation)**

13 57. Counter-Claimants incorporate by reference all allegations in Paragraphs 1  
14 through 56 of the Consolidated Second Amended Counterclaim as if fully set forth  
15 herein.

16 58. Sherwin-Williams negligently misrepresented the quality of its automotive  
17 paint and related products, and subsequently its efforts and/or ability to cure defects  
18 therewith, which harmed Counter-Claimants financially and with regard to Counter-  
19 Claimants' reputation.

20 59. Sherwin-Williams contracted to sell JB Collision automotive paint and  
21 related products for use in JB Collision's paint and repair of automobiles pursuant to the  
22 JB Collision Agreement entered into on September 10, 2008. Similarly, Sherwin-  
23 Williams subsequently contracted Sherwin-Williams contracted to sell JJT automotive  
24 paint and related products for use in JJT's paint and repair of automobiles pursuant to the  
25 JJT Agreement entered into on May 24, 2011.

26 60. Sherwin-Williams made representations regarding the quality of Sherwin-  
27 Williams's automotive paint and related products to Counter-Claimants, including that its  
28 water-based automotive paint and related products were tested, proven, and perfected at



1 the time of the formation of the JB Collision Agreement in September 2008 and that it  
2 would not cause dye back, sanding scratches, color fading, color match problems, solvent  
3 popping, paint shrinkage, and orange peel, and subsequently regarding Sherwin-  
4 Williams's efforts and/or ability to cure the aforementioned defects with said products.  
5 Sherwin-Williams had no reasonable basis for believing its representations regarding the  
6 quality of its automotive paint and related products, and its efforts and/or ability to cure  
7 said defects, were true at the time it made the representations.

8 61. At all times, Sherwin-Williams intended that Counter-Claimants rely on its  
9 misrepresentations.

10 62. Counter-Claimants were induced to, and reasonably did, rely on Sherwin-  
11 Williams's false representations regarding the quality of Sherwin-Williams's automotive  
12 paint and related products, and Sherwin-Williams's efforts and/or ability to correct  
13 defects in said products, to enter into the JB Collision Agreement and JJT Agreement,  
14 and subsequently to not terminate those Agreements.

15 63. As a direct and proximate result of Sherwin-Williams's false  
16 representations, Counter-Claimants purchased, and continued to purchase, Sherwin-  
17 Williams's defective paint and related products in an amount in excess of \$1.3 million,  
18 and have suffered injury outside that envisioned by either the JB Collision Agreement or  
19 the JJT Agreement. In purchasing and using Sherwin-Williams's defective paint and  
20 related products, Counter-Claimants have suffered damages, including, without  
21 limitation, the costs of repeat repair or paint jobs on Counter-Claimants' customer  
22 vehicles made necessary by the defective Sherwin-Williams products, the lost profits  
23 caused by lost business due to loss of customers caused by Sherwin-Williams's defective  
24 products, the value of the damage to Counter-Claimants' professional reputation in the  
25 community and amongst its customers, and the amount of attorneys' fees and costs  
26 incurred in defending against Sherwin-Williams's meritless claims against Counter-  
27 Claimants, all in amounts to be proven at trial.

28 ///

1 **SIXTH CAUSE OF ACTION**

2 **(Unjust Enrichment)**

3 64. Counter-Claimants incorporate by reference all allegations in Paragraphs 1  
4 through 63 of the Consolidated Second Amended Counterclaim as if fully set forth  
5 herein.

6 65. As part of the JB Collision Agreement and JJT Agreement, Counter-  
7 Claimants agreed to exclusively purchase, and paid for, Sherwin-Williams paint and  
8 related products. Counter-Claimants reasonably expected quality paint and related  
9 products, and the adequate and timely curing of defects therewith, in consideration for the  
10 terms of the Agreements.

11 66. Sherwin-Williams acknowledged, accepted, and derived benefits from the  
12 JB Collision Agreement and JJT Agreement and Counter-Claimants' performance under  
13 the Agreements.

14 67. Counter-Claimants did indeed purchase and use Sherwin-Williams  
15 automotive paint and related products, which were poor quality and defective in that they  
16 caused dye back, sanding scratches, color fading, color match problems, solvent popping,  
17 and paint shrinkage on customer vehicles. As a result, Counter-Claimants were harmed  
18 by Sherwin-Williams financially, professionally, and in their reputation, in an exact  
19 amount not yet known, received payments in excess of \$1.3 million from Counter-  
20 Claimants for products which were worth considerably less, and did not incur the labor  
21 costs for the repainting of vehicles which were damaged by the use of the Sherwin-  
22 Williams products because Sherwin-Williams would only provide a goodwill adjustment  
23 in the form of paint products.

24 68. It is inequitable for Sherwin-Williams to enjoy the benefit of the payments  
25 pursuant to the JB Collision Agreement and JJT Agreement, while Counter-Claimants did  
26 not derive the expected benefit, and have suffered, and will continue to suffer, actual  
27 harm from the Sherwin-Williams automotive paint and defective products.

28 ///

1       **WHEREFORE**, Counter-Claimants respectfully requests that the Court grant  
2 judgment in their favor against Sherwin-Williams as follows:

- 3       1. Actual and consequential damages for breach of contract, in an amount to be  
4       proved at trial;
- 5       2. Loss of business and/or good will and/or reputation with Counter-Claimants'  
6       customers, as a result of Counter-Claimants use of Sherwin-Williams  
7       products on customers' vehicles, in an amount to be proved at trial;
- 8       3. Actual costs of repairing customers' vehicles as a result of the use of  
9       Sherwin-Williams products on customers' vehicles, including but not limited  
10      to, honoring warranties on said vehicles, in an amount to be proved at trial;
- 11      4. Punitive damages, in an amount to be proved at trial;
- 12      5. Pre-judgment interest at the legal rate;
- 13      6. Attorneys' fees as may be applicable;
- 14      7. Costs of suit; and,
- 15      8. All other relief as the Court deems just and proper.

16                                   **JURY DEMAND**

17      Counter-Claimants demand trial by jury on all issues so triable.

18  
19      DATED: June 24, 2014

JACKSON LEWIS P.C.

20  
21                                   By: /s/Paul F. Sorrentino  
22                                   Paul F. Sorrentino, Esq.  
23                                   SorrentinoP@jacksonlewis.com  
24                                   John P. Nordlund, Esq.  
25                                   John.Nordlund@jacksonlewis.com  
26                                   Attorneys for COUNTER-CLAIMANT  
27                                   JB COLLISION SERVICES, INC. dba  
28                                   J&M AUTOBODY dba EL DORADO  
                                    COLLISION

4849-8526-3899, v. 2

**EXHIBIT 1**

**Pages 27-29**

**(JB Collision Agreement)**

**TO**

**COUNTER-CLAIMANTS' CONSOLIDATED**

**SECOND AMENDED COUNTERCLAIM FOR**

**DAMAGES and DEMAND FOR JURY**

## SUPPLY AGREEMENT

9811  
9821

**"Sherwin-Williams"**  
Sherwin-Williams Automotive  
Finishes Corp.  
4440 Warrensville Center Road  
Warrensville Heights, Ohio 44128  
Attn: Controller

**"Customer"**  
JB Collision Services, Inc.  
dba J & M Autobody & dba El Dorado Collision  
9126 Dowdy Drive  
Poway, CA 92126  
Attn: John Tyckhi

**"Effective Date":** September 10, 2008

1. **TERM OF AGREEMENT.** The term of this Supply Agreement ("Agreement") shall commence on the Effective Date and shall continue until the date upon which Net Sales (as hereinafter defined) is equal to One Million Three Hundred Thousand and 00/100 Dollars (\$1,300,000.00) (the "Term"). For the purposes of this Agreement, "Net Sales" shall mean the gross sales of SW Paint Products (as hereinafter defined) by Sherwin-Williams to Customer during the period commencing on the Effective Date of this Agreement and continuing thereafter, minus all credits, discounts, rebates, incentives, allowances, returns, freight, bad debt, sales taxes and/or similar taxes.
2. **SALE OF PRODUCTS.**
  - (A) During the Term, Customer shall use automotive paints and coatings manufactured and sold by Sherwin-Williams under the "Sherwin-Williams" label ("SW Paint Products").
  - (B) During the Term, Customer shall purchase from Sherwin-Williams all of Customer's requirements for all Products (defined below) used by Customer at all automotive collision repair and refinish facilities owned and/or operated by Customer, now or in the future, including, without limitation, the facilities located at the following addresses:
    - (i) J & M Autobody, 9126 Dowdy Drive, San Diego, CA 92126; and
    - (ii) El Dorado Collision, 12502 Poway Road, Poway, CA 92064;(individually referred to herein as a "Body Shop" and collectively referred to herein as the "Body Shops").
  - (C) "Products" shall mean all automotive paints, coatings and related products, including, without limitation, the following:
    - (i) primers (including, without limitation, solvent-based, water-based, single component, two component, urethane, epoxy and surface treatment);
    - (ii) top coats (including, without limitation, solvent-based, water-based, single stage, base coats, low VOC single stage and low VOC base coats);
    - (iii) hardeners;
    - (iv) solvents (including, without limitation, reducers, accelerators and retarders);
    - (v) abrasives, tapes, adhesives; and
    - (vi) all other associated products.
3. **PRICE FOR PRODUCTS.** The price for the SW Paint Products purchased by Customer shall be the prices specified on the Refinisher Price List of Sherwin-Williams in effect at the time of purchase. The price for those associated products listed on the 3M Yellow Price Sheet shall be the prices set forth under the single user full case column of such price sheet at the time of purchase, less thirty percent (30%). The price for all other Products shall be the prices in effect at the time of purchase. Customer shall be responsible for the payment of all applicable federal, state and local sales, use and similar taxes.
4. **PAYMENT.** The payment terms for all Products purchased by Customer pursuant to this Agreement shall be thirty (30) days from the date of Sherwin-Williams' statement. Customer shall remit all payments for Products in the form of cash or a check. Customer shall be entitled to a two percent (2%) discount on all invoices for which payment in full is received by Sherwin-Williams within fifteen (15) days following the date of the statement upon which such invoices first appear.
5. **ADVANCE.**
  - (A) Within thirty (30) days after the Effective Date, Sherwin-Williams shall provide an advance to Customer in the amount of Two Hundred Seventy-Five Thousand and 00/100 Dollars (\$275,000.00) ("Advance").
  - (B) Upon the occurrence of any of the following events ("Acceleration Event(s)"), Customer shall pay the amount of the Refund (as hereinafter defined) to Sherwin-Williams, without notice or demand:
    - (i) if Customer fails to pay any amount owing pursuant to this Agreement or breaches any other covenant or obligation under this Agreement;
    - (ii) if Customer terminates this Agreement for any reason prior to the expiration of its Term (provided, however, that nothing in this Agreement shall be construed as giving Customer the right to terminate this Agreement prior to the expiration of its Term);
    - (iii) if there is any affirmative act of insolvency by Customer, or any filing by or against Customer under any bankruptcy or insolvency law or statute or any law for the relief of, or relating to, debtors;
    - (iv) if any Body Shop ceases or substantially curtails operations;
    - (v) if Customer sells or otherwise disposes of all or a substantial portion of any Body Shop's business or assets;

- (vi) if there occurs a change in the ownership or control of more than ten percent (10%) of the business or assets of or ownership interests in Customer (whether in a single transaction or in a series of transactions); or
  - (vii) if Customer for any reason ceases purchasing (or purchasing its requirements for) Products from Sherwin-Williams, or is purchasing merely a *de minimis* amount of Products for the primary purpose of avoiding operation of this provision.
- (C) For the purposes of this Agreement, the amount of the Refund shall be calculated as follows.

$$\text{Refund} = \$275,000.00 \times \frac{[(\$1,300,000.00 - \text{the Net Sales during the period commencing on the Effective Date and ending on the date of the Acceleration Event})]}{\$1,300,000.00}$$

6. **REBATE.** Each month during the Term of this Agreement, Sherwin-Williams shall issue a rebate to Customer. ~~The amount of each monthly rebate shall be equal to Five Hundred and 00/100 Dollars (\$500.00).~~ Sherwin-Williams shall issue each monthly rebate within thirty (30) days following the end of the applicable month. ~~Each rebate shall be issued in the form of a check payable to Customer's account with Sherwin-Williams.~~ Each rebate shall be issued in the form of a

7. **REPRESENTATIONS AND WARRANTIES; COVENANTS.** Customer represents, warrants and/or covenants each of the following to Sherwin-Williams and acknowledges that Sherwin-Williams is relying on such representations, warranties and covenants.

- (A) Customer is a corporation, duly organized, validly existing and in good standing under the laws of the State of California. Customer has the corporate power and authority to:
  - (i) enter into this Agreement; and
  - (ii) execute, deliver and perform this Agreement and each other agreement and document delivered by Customer to Sherwin-Williams in connection herewith.
- (B) Neither the execution and delivery by Customer of this Agreement, nor the fulfillment of or compliance by Customer with the terms and provisions of this Agreement will, with the passage of time, the giving of notice, or otherwise:
  - (i) conflict with, result in the breach of, constitute a default under or result in violation of, the Articles of Incorporation or Bylaws of Customer; or
  - (ii) conflict with, result in a breach of, constitute a default under, or result in any violation of any agreement, contract, instrument, statute, law, rule or regulation to which Customer is a party or is otherwise subject or bound.
- (C) Customer shall comply with all applicable federal, state, local, and foreign laws, statutes, executive orders, licensing and/or permitting requirements, governmental orders, rules and regulations (collectively referred to herein as "Laws") relating in any way to this Agreement and/or the conduct of its business including, but not limited to, all Laws relating to the:
  - (i) labor, equipment, and facilities used in connection with the conduct of its business; and
  - (ii) protection of the public health and safety and of the environment.
- (D) There is no action, suit, investigation, or proceeding pending or, to the knowledge of Customer, threatened against or involving Customer, which could have a material effect on Customer's business, property, assets, financial condition, or ability to transact business. There is no state of facts or events that could reasonably be expected to form the basis for such a claim, litigation, investigation, or proceeding. No arbitration, award, judgment, order, decree or similar restriction is outstanding against Customer or any of its assets, businesses, or products.
- (E) Customer shall at all times maintain, protect, and preserve its property used or useful in the conduct of its business and will keep the same in good condition and repair (normal wear and tear excepted).
- (F) Customer shall promptly give notice to Sherwin-Williams of:
  - (i) the occurrence of any Acceleration Event;
  - (ii) any default or event of default under any contractual obligation of Customer which, if not cured or if adversely determined, as the case may be, could have a material effect on the business, operations, property or financial or other condition of Customer or the ability of Customer to continue to transact business;
  - (iii) any default of Customer under this Agreement;
  - (iv) any litigation, investigation or proceeding which may exist at any time between Customer and any governmental authority or third party which, if not cured or if adversely determined, as the case may be, could have a material effect on the business, operations, property or financial or other condition of Customer or on Customer's ability to transact business; and
  - (v) any material change in the business, operations, property, or financial or other condition of Customer.

Each notice pursuant to this Section 7(F) shall be in accordance with Section 10 and shall be accompanied by a statement of Customer setting forth details of the occurrences referenced to therein and stating what action Customer proposes to take with respect thereto.

- (G) Customer shall keep proper books of record and account in conformity with generally accepted accounting principles and the requirements of all Laws shall be made of all dealings and transactions in relation to its business and activities. Customer shall furnish to Sherwin-Williams such information regarding the financial condition of Customer as Sherwin-Williams may reasonably request from time-to-time.
- (H) Customer agrees to indemnify, defend, and hold Sherwin-Williams and each of its affiliates (collectively, "Indemnified Parties") harmless from and against any claim, loss, damage, liability (whether strict or otherwise), fine penalty, assessment or expense (including reasonable attorneys fees)(collectively "Losses") incurred by any Indemnified Party resulting from or arising out of:
- (i) any inaccuracy in or breach of any representation or warranty by Customer in this Agreement; and
  - (ii) any breach or nonperformance of any covenant or obligation made or incurred by Customer in this Agreement.
- Anything to the contrary contained in this Agreement notwithstanding, the indemnification obligations set forth in this Section 7(H) shall continue indefinitely.
- (I) Customer shall maintain all information relating to this Agreement in strict confidence and shall not disclose the information contained in this Agreement to any person, corporation, firm or entity except as required by law or by generally accepted accounting principles.
- (J) Customer has received an offer to purchase products of like grade and quality to the Products from another supplier upon the terms and conditions set forth in this Agreement and acknowledges and agrees that Sherwin-Williams has offered the terms and conditions set forth in this Agreement in order to meet such competitive offer.

8. **WARRANTIES.** Customer will be entitled to participate in any product warranty program offered by Sherwin-Williams for which Customer qualifies. EXCEPT AS PROVIDED IN A WARRANTY PROGRAM REFERRED TO IN THE PRECEDING SENTENCE IN WHICH CUSTOMER IS PARTICIPATING, SHERWIN-WILLIAMS DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL SHERWIN-WILLIAMS BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

9. **NOTICES.** Any communication between Sherwin-Williams and Customer regarding the terms of this Agreement shall be in writing and shall be sent by reputable overnight courier or by certified mail, return receipt requested, to the appropriate party at the address set forth at the beginning of this Agreement. Either party may change the address for notice by sending a notice in the manner provided herein.

10. **MISCELLANEOUS.** The only manner in which this Agreement may be amended or modified is by a written document, signed by an authorized officer of Sherwin-Williams and signed on behalf of Customer, that specifically states it is an amendment or modification of this Agreement. No waiver of either party's rights under this Agreement shall be effective unless made in a writing signed by an authorized officer of Sherwin-Williams and signed on behalf of Customer. The waiver of a breach of any provision of this Agreement shall not constitute a waiver of a prior, concurrent or subsequent breach of the same provision or of any other provision. This Agreement shall be governed by the internal laws of the State of Ohio. In the event any provision of this Agreement is held to be illegal or otherwise unenforceable for any reason, such provision shall be severed from this Agreement, but the entire Agreement shall not fail on account thereof, and the balance of the Agreement shall remain in full force and effect. In no event shall the provisions in this Agreement relating to the repayment of the Refund be construed as liquidated damages or as an election or limitation of remedies. This Agreement constitutes the entire understanding and agreement between the parties hereto with reference to its subject matter. No statement or agreement, oral or written, made prior to this Agreement shall vary or modify the written terms hereof. The preprinted terms and conditions contained on any purchase order or other document submitted by Customer to Sherwin-Williams shall not apply to any purchase of Products.

**THIS AGREEMENT WILL NOT BE BINDING UPON SHERWIN-WILLIAMS UNTIL SIGNED BY THE PRESIDENT OR A VICE PRESIDENT OF SHERWIN-WILLIAMS AND BY CUSTOMER.**

SHERWIN-WILLIAMS AUTOMOTIVE FINISHES CORP.

By: \_\_\_\_\_

Title: V.P. - Controller

JB COLLISION SERVICES, INC.  
dba J & M AUTOBODY and  
EL DORADO COLLISION

By: \_\_\_\_\_

Title: President

**EXHIBIT 2**

**Pages 30-31**

**(JJT Agreement)**

**TO**

**COUNTER-CLAIMANTS' CONSOLIDATED**

**SECOND AMENDED COUNTERCLAIM FOR**

**DAMAGES and DEMAND FOR JURY**



## SUPPLY AGREEMENT

### "Sherwin-Williams"

The Sherwin-Williams Company  
dba Sherwin-Williams Automotive Finishes  
4440 Warrensville Center Road  
Warrensville Heights, Ohio 44128  
Attn: Controller

### "Customer"

JJT Inc.  
dba John's Collision Center  
10806 Prospect Avenue, Suite 5  
Santee, California 92071  
Attn: \_\_\_\_\_

"Effective Date": 5/29, 2011

1. **TERM OF AGREEMENT.** The term of this Supply Agreement ("**Agreement**") shall commence on the Effective Date and shall continue until the date upon which Net Sales (as hereinafter defined) is equal to Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) (the "**Term**"). For the purposes of this Agreement, "**Net Sales**" shall mean the gross sales of SW Paint Products (as hereinafter defined) by Sherwin-Williams to Customer during the Term of this Agreement, minus all credits, discounts, rebates, incentives, allowances, returns, freight, bad debt, sales taxes and/or similar taxes.

2. **SALE OF PRODUCTS.**

(A) During the Term, Customer shall purchase from Sherwin-Williams all of Customer's requirements for all Products (as hereinafter defined) used by Customer at all automotive collision repair and refinish facilities owned and/or operated by Customer, now or in the future, including, without limitation, the body shop located at the address for Customer set forth at the beginning of this Agreement (individually referred to herein as a "**Body Shop**" and collectively referred to herein as the "**Body Shops**"). The automotive paints and coatings purchased by Customer shall be automotive paints and coatings manufactured and sold by Sherwin-Williams under the "Sherwin-Williams" label ("**SW Paint Products**").

(B) "**Products**" shall mean all automotive paints, coatings and related products, including, without limitation, the following:

- (i) primers (including, without limitation, solvent-based, water-based, single component, two component, urethane, epoxy and surface treatment);
- (ii) top coats (including, without limitation, solvent-based, water-based, single stage, base coats, low VOC single stage and low VOC base coats);
- (iii) hardeners;
- (iv) solvents (including, without limitation, reducers, accelerators and retarders);
- (v) abrasives, tapes, adhesives; and
- (vi) all other associated products.

3. **PRICE FOR PRODUCTS.** The price for the SW Paint Products purchased by Customer shall be the prices specified on the Refinisher Price List of Sherwin-Williams in effect at the time of purchase, less fifteen percent (15%). The price for all other Products shall be the prices in effect at the time of purchase. Customer shall be responsible for the payment of all applicable federal, state and local sales, use and similar taxes.

4. **PAYMENT.** The payment terms for all Products purchased by Customer pursuant to this Agreement shall be twenty-five (25) days from the date of Sherwin-Williams' statement. Customer shall remit all payments for Products in the form of cash or a check. Customer shall be entitled to a two percent (2%) discount on all invoices for which payment in full is received by Sherwin-Williams within fifteen (15) days following the date of the statement upon which such invoices first appear.

5. **ADVANCE.**

(A) Within thirty (30) days after the Sherwin-Williams' Signing Date (as hereinafter set forth), Sherwin-Williams shall provide an advance to Customer in the amount of Forty Thousand and 00/100 Dollars (\$40,000.00) ("**Advance**").

(B) Upon the occurrence of any of the following events ("**Acceleration Event(s)**"), Customer shall pay the entire amount of the Advance to Sherwin-Williams, without notice or demand:

- (i) if Customer fails to pay any amount owed pursuant to this Agreement or breaches any other covenant or obligation under this Agreement;
- (ii) if Customer terminates this Agreement for any reason prior to the expiration of the Term (provided, however, that nothing in this Agreement shall be construed as giving Customer the right to terminate this Agreement prior to the expiration of the Term);
- (iii) if there is any affirmative act of insolvency by Customer, or any filing by or against Customer under any bankruptcy or insolvency law or statute or any law for the relief of, or relating to, debtors;
- (iv) if any Body Shop ceases or substantially curtails operations;
- (v) if Customer sells or otherwise disposes of all or a substantial portion of any Body Shop's business or assets;
- (vi) if there occurs a change in the ownership or control of more than ten percent (10%) of the business or assets of or ownership interests in Customer (whether in a single transaction or in a series of transactions); or

- (vii) if Customer for any reason ceases purchasing (or purchasing its requirements for) Products from Sherwin-Williams, or is purchasing merely a *de minimis* amount of Products for the primary purpose of avoiding operation of this provision.

6. **COMPETITIVE PRICING; NO CONFLICT; CONFIDENTIALITY.** Customer: (A) represents and warrants to Sherwin-Williams that the execution and performance of this Agreement by Customer does not and will not constitute a breach of any existing contract to which Customer is a party; (B) covenants that Customer shall maintain all information relating to this Agreement in strict confidence and shall not disclose the information contained in this Agreement to any person, corporation, firm or entity except as required by law or by generally accepted accounting principles; (C) represents and warrants to Sherwin-Williams that it has received an offer to purchase products of like grade and quality to the Products from another supplier upon the terms and conditions set forth in this Agreement; and (D) acknowledges and agrees that Sherwin-Williams has offered the terms and conditions set forth in this Agreement in order to meet such competitive offer.

7. **WARRANTIES.** Customer will be entitled to participate in any product warranty program offered by Sherwin-Williams for which Customer qualifies. **EXCEPT AS PROVIDED IN A WARRANTY PROGRAM REFERRED TO IN THE PRECEDING SENTENCE IN WHICH CUSTOMER IS PARTICIPATING, SHERWIN-WILLIAMS DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL SHERWIN-WILLIAMS BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES.**

8. **NOTICES.** Any communication between Sherwin-Williams and Customer regarding the terms of this Agreement shall be in writing and shall be sent by reputable overnight courier or by certified mail, return receipt requested, to the appropriate party at the address set forth at the beginning of this Agreement. Either party may change the address for notice by sending a notice in the manner provided herein.

9. **MISCELLANEOUS.** The only manner in which this Agreement may be amended or modified is by a written document, signed by an authorized officer of Sherwin-Williams and signed on behalf of Customer that specifically states it is an amendment or modification of this Agreement. No waiver of either party's rights under this Agreement shall be effective unless made in a writing signed by an authorized officer of Sherwin-Williams and signed on behalf of Customer. The waiver of a breach of any provision of this Agreement shall not constitute a waiver of a prior, concurrent or subsequent breach of the same provision or of any other provision. This Agreement shall be governed by the internal laws of the State of Ohio. In the event any provision of this Agreement is held to be illegal or otherwise unenforceable for any reason, such provision shall be severed from this Agreement, but the entire Agreement shall not fail on account thereof, and the balance of the Agreement shall remain in full force and effect. In no event shall the provisions in this Agreement relating to the repayment of the Advance be construed as liquidated damages or as an election or limitation of remedies. This Agreement constitutes the entire understanding and agreement between the parties hereto with reference to its subject matter. No statement or agreement, oral or written, made prior to this Agreement shall vary or modify the written terms hereof. The preprinted terms and conditions contained on any purchase order or other document submitted by Customer to Sherwin-Williams shall not apply to any purchase of Products.

**THIS AGREEMENT WILL NOT BE BINDING UPON SHERWIN-WILLIAMS UNTIL SIGNED BY THE PRESIDENT OR A VICE PRESIDENT OF THE AUTOMOTIVE DIVISION OF SHERWIN-WILLIAMS AND BY CUSTOMER.**

**THE SHERWIN-WILLIAMS COMPANY**  
dba Sherwin-Williams Automotive Finishes

By: [Signature]  
Name: Edmund C. Thompson  
Title: V.P. Controller

Sherwin-Williams' Signing Date: 5/24/11

**JJT INC.**  
dba John's Collision Center

By: [Signature]  
Name: John Tyczek  
Title: President

# **EXHIBIT 3**

**Page 32**

**(Guaranty)**

**TO  
COUNTER-CLAIMANTS' CONSOLIDATED  
SECOND AMENDED COUNTERCLAIM FOR  
DAMAGES and DEMAND FOR JURY**



## Guaranty

A. For and in consideration of the agreement of The Sherwin-Williams Company, dba Sherwin-Williams Automotive Finishes ("Sherwin-Williams") to extend credit to JTT Inc., dba John's Collision Center ("Customer"), the undersigned, John Tyczki ("Guarantor"), hereby absolutely, irrevocably and unconditionally guarantees the prompt and complete payment and performance by Customer of all of Customer's obligations to Sherwin-Williams under the Supply Agreement by and between Customer and Sherwin-Williams and/or under any other agreement or arrangement, now or hereafter owing (collectively referred to herein as the "Obligations"). Upon the failure by Customer to pay to Sherwin-Williams the full amount that is due and payable under any of the Obligations, Guarantor shall pay to Sherwin-Williams upon demand the full amount that is due and payable under all of the Obligations. This guaranty is a primary, absolute, irrevocable and unconditional obligation of Guarantor and is enforceable by Sherwin-Williams, its successors and assigns, before or after proceeding against Customer, any other guarantor and/or any collateral securing the Obligations, and regardless of any insolvency, receivership or bankruptcy of Customer or any other guarantor, or any discharge, reduction, extension or other modification of Customer's indebtedness and/or the Obligations.

B. The obligations of Guarantor under this Guaranty are in addition to and shall not prejudice or be prejudiced by any other agreement, instrument, surety or guaranty (including any other agreement, instrument, surety or guaranty signed by Guarantor) which Sherwin-Williams may now or hereafter hold relative to any of the Obligations. Without notice to Guarantor, Sherwin-Williams may: (i) obtain personal credit history and current debt information of Guarantor as required; (ii) release, compromise, or agree not to sue, in whole or in part, Customer or any other obligor, guarantor, endorser or surety upon any of the Obligations; (iii) waive, rescind, renew, extend, modify, increase, decrease, delete, terminate, amend, or accelerate in accordance with its terms, either in whole or in part, any of the Obligations, any of the terms thereof, or any agreement, covenant, condition, or obligation of or with Customer or any other obligor, guarantor, endorser or surety upon any of the Obligations; (iv) apply any payment received from Customer, Guarantor or any other obligor, guarantor, endorser or surety upon any of the Obligations to any of the Obligations which Sherwin-Williams may choose; (v) enter into any accord and satisfaction agreement as deemed advisable by Sherwin-Williams; and (vi) surrender, release or receive any property or other security of any kind or nature whatsoever held by it or any person or entity on its behalf or for its account securing any indebtedness of Customer or any Obligation, or substitute any collateral so held by Sherwin-Williams for other collateral of like kind, or of any kind, or adjust, compromise and receive less than the amount due upon any such collateral. Sherwin-Williams shall be under no duty to undertake to collect upon any collateral or any part thereof, and shall not be liable for any negligence or mistake in judgment in handling, disposing of, obtaining, or failing to collect upon, or perfecting or maintaining a security interest in, any such collateral. None of the actions described in this paragraph shall release Guarantor from any obligation or otherwise affect the obligations of Guarantor under this Guaranty.

C. Guarantor irrevocably waives and releases any claim or defense to this Guaranty based upon lack of consideration or any other defense provided by law, including, without limitation, defenses based upon any of the following: (i) notice of acceptance of this Guaranty by Sherwin-Williams and of the creation, extension or renewal of any Obligation to which it relates and of any default by Customer; (ii) notice of presentment, demand for payment, notice of dishonor or protest of any of Customer's obligations or the obligation of any person or entity held by Sherwin-Williams as collateral security for any Obligation; (iii) notice of the failure of any person or entity to pay to Sherwin-Williams any indebtedness held by Sherwin-Williams as collateral security for any Obligation; (iv) failure of Sherwin-Williams to obtain and perfect or maintain the perfection or priority of any security interest or lien on property to secure any Obligation; (v) the failure of Sherwin-Williams to have any other person or entity execute any guaranty relating to the extension of credit to Customer; (vi) any failure promptly to commence suit against any party or to give any notice to or make any claim or demand upon Guarantor or Customer; (vii) offsets and counterclaims which Guarantor may at any time have to any claim of Sherwin-Williams against Customer; and (viii) any defense to any of the Obligations which may be available to or could be asserted by Customer, except for payment. No act, failure to act, or omission of any kind on the part of Guarantor, Customer, Sherwin-Williams or any person or entity shall be a legal or equitable discharge or release of Guarantor hereunder unless agreed to hereafter in writing by Sherwin-Williams.

D. Guarantor's execution of this Guaranty was not based upon any facts or materials provided on behalf of Sherwin-Williams, and Guarantor was not induced to execute this Guaranty by any representation, statement or analysis made on behalf of Sherwin-Williams. Guarantor assumes sole responsibility for independently obtaining any information or reports deemed advisable by Guarantor with regard to Customer, and Guarantor agrees to rely solely on the information or reports so obtained in reaching any decision to execute this Guaranty.

  
JOHN TYCZKI

Date: 3-10-11

EXHIBIT 3  
PAGE 32

1 **UNITED STATES DISTRICT COURT, SOUTHERN DIST. OF CALIFORNIA**

2 **CASE NAME:** *Sherwin-Williams v. JB Collision*

3 **CASE NUMBER:** 13-CV-1946 LAB (WVG)

4 **Consolidated with**

5 **CASE NAME:** *Sherwin-Williams v. JJT, Inc.*

6 **CASE NUMBER:** 13CV1947 LAB (WVG)

7  
8 **PROOF OF SERVICE**

9 I am employed in the County of San Diego, State of California. I am over the age  
10 of 18 and not a party to the within action; my business address is 225 Broadway, Suite  
11 200, San Diego, California 92101

12 On June 24, 2014, I served following document(s) described as:

13 **COUNTER-CLAIMANTS' CONSOLIDATED SECOND AMENDED  
14 COUNTERCLAIM FOR DAMAGES and DEMAND FOR JURY**

15 on the parties in this action listed below in the manner designated below:

16 Christopher M. Cullen, Esq.  
17 Michael K. Murray, Esq.  
18 LANAK & HANNA  
19 625 The City Drive South, Suite 190  
20 Orange, CA 92868  
21 Tel: 714-550-0418  
22 Fax: 714-703-1610  
23 Email: [cmcullen@lanak-hanna.com](mailto:cmcullen@lanak-hanna.com)  
24 [mkmurray@lanak-hanna.com](mailto:mkmurray@lanak-hanna.com)

25 Attorneys for Plaintiffs

26 Jeffrey D. Wilson  
27 Michael M. Jacob  
28 Eddie Woodworth  
YOUNG BASILE HANLON &  
MacFARLANE  
3001 West Big Beaver Road, Suite 624  
Troy, MI 48084  
Tel: 248-649-3333  
Email: [Wilson@youngbasile.com](mailto:Wilson@youngbasile.com)  
[Jacob@youngbasile.com](mailto:Jacob@youngbasile.com)  
[woodworth@youngbasile.com](mailto:woodworth@youngbasile.com)

29 ☒ **BY NOTICE OF ELECTRONIC FILING.** The above-listed counsel have  
30 consented to electronic service and have been automatically served by the Notice of  
31 Electronic Filing, which is automatically generated by CM/ECF at the time said  
32 document was filed, and which constitutes service pursuant to FRCP 5(b)(2)(D).

33 ☐ **BY U.S. MAIL** by placing the document(s) listed above in a sealed envelope with  
34 postage thereon fully prepaid, in United States mail in the State of California at San  
35 Diego, addressed as set forth below.

1 ☒ **FEDERAL** I declare under penalty of perjury under the laws of the the United  
2 States that the foregoing is true and correct, and that I am employed in the office of a  
3 member of the bar of this Court at whose direction the service was made.

4 Executed on June 24, 2014, at San Diego, California.

5   
6 Vanessa M. Preciado