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d/b/a Sherwin-Williams Automotive Finishes
7

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

11 THE SHERWIN-WILLIAMS COMPANY,
d/b/a SHERWIN-WILLIAMS
12 AUTOMOTIVE FINISHES,

13 Plaintiff,

14 v.

15 JJT, INC. d/b/a JOHN’S COLLISION
CENTER; JOHN TYCZKI, an individual;
16 and DOES 1 through 10, inclusive,

17 Defendants.
18

Case No.: '13CV1947 L RBB

Before the Honorable

Dept.:

COMPLAINT

**JURY DEMAND ENDORSED
HEREON**

19
20 **COMPLAINT**

21 Plaintiff, The Sherwin-Williams Company, d/b/a Sherwin-Williams Automotive
22 Finishes, for its Complaint against Defendants JJT, Inc. d/b/a John’s Collision Center;
23 John Tyczki; and Does 1 through 10, inclusive, states as follows:

24 **PARTIES**

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

1 2. JTT, Inc., d/b/a John’s Collision Center (“JTT”) is a California corporation
2 with its principal place of business in Santee, California. JTT is engaged in the business of
3 painting and repairing automobiles.

4 3. John Tyczki is the President of JTT and is and was at all times mentioned,
5 domiciled in and a citizen of the State of California.

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

13 **JURISDICTION AND VENUE**

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

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

21 **FACTUAL ALLEGATIONS**

22 7. On or about May 24, 2011, JTT entered into a supply agreement with
23 Sherwin-Williams (“Supply Agreement”). Pursuant to the Supply Agreement, JTT agreed
24 to purchase from Sherwin-Williams all of its requirements for all automotive paints,
25 coatings and related products from May 24, 2011 until the date upon which Net Sales of
26 Sherwin-Williams Paint Products, as defined in the Supply Agreement, equal Two
27 Hundred Fifty Thousand and 00/100 (\$250,000) Dollars. (A copy of the Supply
28 Agreement is not attached hereto as Defendants have a copy and the terms of which are

1 confidential and proprietary).

2 8. For and in consideration of the mutual covenants and promises stated in the
3 Supply Agreement, Sherwin-Williams agreed, among other promises, to provide an
4 advance payment to JJT in the amount of Forty Thousand and 00/100 (\$40,000) Dollars
5 (“Advance”).

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

11 10. On or about May 10, 2011, Defendant John Tyczki entered into a written
12 guaranty (the “Guaranty”), wherein he irrevocably and unconditionally guaranteed the
13 prompt and complete payment and performance by JJT of all its obligations to Sherwin-
14 Williams under the Supply Agreement. (The Guaranty is attached hereto at **Exhibit A**).

15 11. From approximately May 2011 until January 2013, JJT purchased
16 automotive paint, coatings and related products pursuant to the Supply Agreements and
17 never objected to the quality or delivery of the products, or otherwise complained of any
18 performance by Sherwin-Williams.

19 12. In January 2013, JJT discontinued purchasing all of its requirements for
20 automotive paints, coatings, and related products exclusively from Sherwin-Williams.

21 13. JJT breached the parties’ Supply Agreement by discontinuing all of its
22 requirements for automotive paints, coatings, and related products exclusively from
23 Sherwin-Williams, and by letter dated February 28, 2013, Sherwin-Williams notified JJT
24 of its breach of contract.

25 14. JJT’s failures and breaches described above constitute an Acceleration Event
26 as defined in the Supply Agreement which require, among other things, repayment of the
27 entire Advance by JJT to Sherwin-Williams.

28 15. In April 2013, Sherwin-Williams received a letter signed by Tyczki, which

1 stated, "Per supply agreement dated 5/24/2011 between JJT INC and Sherwin Williams
2 paragraph 5.B JJT INC is terminating this agreement on 4/8/2013 and is repaying the
3 entire amount of the advance of \$40,000."

4 16. Enclosed with the above letter was a check in the amount of Forty Thousand
5 and 00/100 (\$40,000) Dollars. The memo typed on the face of the check stated,
6 "termination of agreement."

7 17. Sherwin-Williams thereafter deposited the Advance repayment check. To
8 date, Sherwin-Williams has received no other payment from Defendants.

9 18. JJT's breach of the Supply Agreements will continue to cause considerable
10 financial harm to Sherwin-Williams in excess of the jurisdictional amount.

11 **COUNT ONE**

12 (Breach of Contract)

13 (JJT)

14 19. Sherwin-Williams incorporates by reference as if fully set forth herein the
15 allegations contained in Paragraphs 1 through 18 of the Complaint.

16 20. As set forth above, JJT owed contractual obligations to Sherwin-Williams
17 pursuant to the Supply Agreement.

18 21. JJT materially breached the Supply Agreement by, *inter alia*, failing to
19 purchase its requirements for automotive paints, coatings, and related products
20 exclusively from Sherwin-Williams for the specified term.

21 22. Sherwin-Williams fully performed under the Supply Agreement, and all
22 conditions precedent have been satisfied.

23 23. As a direct and proximate result of JJT's breach of the Supply Agreement,
24 Sherwin-Williams has suffered damages including, without limitation, outstanding
25 invoices, the cost of training provided to JJT and its employees, the cost of toner
26 consignments and mixing equipment provided to JJT, and the lost profits Sherwin-
27 Williams was set to earn during the term of the Supply Agreement in an amount to be
28 proved at trial.

COUNT TWO

(Breach of Contract)

(John Tyczki)

24. Sherwin-Williams incorporates by reference as if fully set forth herein the allegations contained in Paragraphs 1 through 23 of the Complaint.

25. As set forth above, the Guaranty is a valid and binding contract pursuant to which John Tyczki owes obligations to Sherwin-Williams.

26. John Tyczki materially breached the Guaranty by failing to pay Sherwin-Williams the amount due under the Supply Agreement and Guaranty.

27. Sherwin-Williams fully performed under the Supply Agreement and Guaranty, and all conditions precedent have been satisfied.

28. As a direct and proximate result of John Tyczki’s breach of the Guaranty, Sherwin-Williams has suffered damages in an amount to be proved at trial.

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

JURY DEMAND

Plaintiff demands trial by jury on all issues so triable.

Respectfully submitted,

Dated: August 20, 2013

LANAK & HANNA P.C.

By: s/ CHRISTOPHER M. CULLEN
Attorneys for Plaintiff, The Sherwin-Williams
Company d/b/a Sherwin-Williams Automotive
Finishes

CHRISTOPHER M. CULLEN

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Exhibit A

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 JJT 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: _____

5-10-11

CIVIL COVER SHEET

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, d/b/a SHERWIN-WILLIAMS AUTOMOTIVE FINISHES

(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

JJT, INC. d/b/a JOHN'S COLLISION CENTER; JOHN TYCZKI, an individual; 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)

'13CV1947 L RBB

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 \$ 250,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: X Yes [] 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)

Christopher M. Cullen, Esq. (SBN 211166)

Michael K. Murray, Esq. (SBN 265785)

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