

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

JAMES O. ALSTON, :  
 :  
 Plaintiff, : Civil Action No. 2:09-cv-00149  
 Counterclaimee, :  
 :  
 v. :  
 :  
 HAWTHORNE PAINT CO., INC., :  
 :  
 Defendant, :  
 Counterclaimant. :

CONSENT DECREE

This matter is before the Court for entry of judgment by consent of the parties to effectuate a compromise and settlement of all claims which have been or could have been made by Plaintiff-Counterclaimee, James O. Alston ("Alston"), against Defendant-Counterclaimant, Hawthorne Paint Co., Inc. ("Hawthorne Paint"), or by Hawthorne Paint against Alston, in the above-captioned case.

1. Alston commenced this action in the United States District Court for the District of New Jersey, alleging that Hawthorne Paint violated the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 et seq. ("USERRA"), by taking into consideration Alston's military service obligations when it discharged him from his supervisory

position on January 19, 2007, and by discharging him within one year of the date of his reemployment without cause.

2. In its answer and counter-claim, Hawthorne Paint alleged against Alston the torts of conversion, breach of duty of loyalty, and interference with contractual relationships.

3. Hawthorne Paint denies that it has violated USERRA. Alston denies committing the torts alleged in Hawthorne Paint's answer and counter-claim. Nevertheless, as a result of settlement discussions, Alston and Hawthorne Paint (collectively, the "Parties") have resolved their dispute and have agreed that this action should be resolved by entry of this Consent Decree ("Decree"). It is the intent of the Parties that this Decree be a final and binding settlement in full disposition of any and all claims which have been or could have been asserted in the complaint or the answer and counter-claim filed in this action. By Alston's signature to both this Decree and the "Release of All Claims" attached hereto as Appendix A, Alston accepts the terms of this Decree. By Hawthorne Paint's signature, by and through its authorized representative, to both this Decree and the "Release of All Claims" attached hereto as Appendix B, Hawthorne Paint accepts the terms of this Decree. Appendix A and Appendix B are fully incorporated in this Decree.

STIPULATIONS

4. The Parties acknowledge the jurisdiction of the United States District Court for the District of New Jersey over the subject matter of this action and of the Parties to this action for the purpose of entering and, if necessary, enforcing this Decree.

5. Venue is proper in this district for purposes of entering this Decree and any proceedings related to this Decree.

FINDINGS

6. Having examined the provisions of this Decree, the Court finds the following:

- a. The Court has jurisdiction over the subject matter of this action and the Parties to this action.
- b. The terms and provisions of this Decree are lawful, fair, reasonable and just. The rights of the Parties are adequately protected by this Decree.
- c. This Decree conforms with the Federal Rules of Civil Procedure and USERRA, and is not in derogation of the rights and privileges of any person. The entry of the Decree is in the best interest of the Parties.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED  
AS FOLLOWS:

NON-ADMISSION

7. This Decree is being entered with the consent of the Parties, and shall not constitute an adjudication or finding on the merits of the action or be construed as an admission by Hawthorne Paint of any violations of USERRA, or as an admission by Alston of having committed against Hawthorne Paint the torts alleged in Hawthorne Paint's answer and counter-claim.

NON-RETALIATION

8. Hawthorne Paint shall not take any action against any person, including but not limited to Alston, that constitutes retaliation for, or interference with, the exercise of such person's rights under USERRA, or because such person gave testimony, provided assistance or participated in any manner in any investigation or proceeding in connection with this action.

REMEDIAL RELIEF

9. Hawthorne Paint shall, within ten (10) calendar days from the date of entry of this Decree, pay Alston by certified check a total of \$10,000, less the employee withholdings and contributions required by law (the "Separation Payment"). Hawthorne Paint shall pay all monies withheld from the Separation Payment to the appropriate governmental agencies, and shall issue to Alston the appropriate Internal Revenue Service tax forms on or before the date they are required by law to be issued. Hawthorne Paint also shall separately pay the

appropriate employer's contribution to the Social Security fund and any other employer-side taxes due on the Separation Payment, i.e., the employer's contribution shall not be deducted from the \$10,000. Hawthorne Paint shall mail the certified check to Alston at the following address:

James O. Alston  
310 10th Avenue  
Paterson, NJ 07524

10. Alston acknowledges and agrees that the Separation Payment, and the "Release of All Claims" attached hereto as Appendix B, is adequate consideration for all the terms of this Decree, including but not limited to the "Release of All Claims" attached hereto as Appendix A. Alston further acknowledges and agrees that upon receipt of the Separation Payment, he will have received all funds and/or money due to him from Hawthorne Paint under any and all circumstances, and that the Separation Payment would not have been provided to him but for his execution of this Decree. The parties agree and understand that Alston was part of a Small Employee Pension Plan ("SARSEP") which had been established for Alston as the result of his former employment with Hawthorne Paint; that there are no outstanding obligations for employer contributions, or any other action(s), by Hawthorne Paint with respect to Alston and SARSEP; and that Alston has not lost, nor will lose, any monies which he maintains in SARSEP, as

the result of this Decree or his signing of the "Release of All Claims."

11. Within ten (10) calendar days from the date of entry of this Decree, Hawthorne Paint shall remove from its personnel records maintained by Hawthorne Paint or its agent any and all documents referencing Alston's January 19, 2007 involuntary termination. Hawthorne Paint shall place such documents in a sealed envelope marked "Confidential - Do Not Use Except Upon Consultation with an Attorney and in Accordance with the Consent Decree in Alston v. Hawthorne Paint," and shall store such envelope in a separate place from the remainder of Alston's personnel file. Hawthorne Paint may maintain in Alston's personnel file a record that certain documents have been removed from Alston's personnel file and are maintained in a separate place, but such record shall not otherwise identify the substance and nature of the documents so removed, nor the reason for their removal (i.e., because they referenced Alston's January 19, 2007 involuntary termination). Alston's personnel file shall otherwise only reflect a separation from employment date of January 19, 2007.

12. In the event that Hawthorne Paint is contacted by, or otherwise communicates with, any future or prospective employer of Alston regarding Alston, or Alston's employment with Hawthorne Paint, Hawthorne Paint shall limit such contact or communication

to confirming Alston's dates of employment and salary history with Hawthorne Paint. In any such contact or communication, Hawthorne Paint shall not reference or in any way refer to Mr. Alston's USERRA lawsuit, Hawthorne Paint's counterclaims, or the allegations underlying the counterclaims in such contacts or communications, and shall provide only the neutral employment reference described in this paragraph (paragraph 12). Hawthorne Paint shall instruct its employees and any future or prospective employer of Alston that all such inquiries, contacts, or communications regarding Alston should be directed to Bea Acker, Hawthorne Paint's Office Manager, at (973) 423-2335, or her successor. For the purposes of this paragraph, references to the conduct and obligations of "Hawthorne Paint" shall be solely defined as the actions or inactions of the officers of Hawthorne Paint, Murray Greene (or his successor) -- who presently is the sole and only officer of Hawthorne Paint -- or Bea Acker (or her successor).

13. The Parties agree that neither Party, nor anyone at the direction of either Party, will disparage the other. The meaning and definition of the term "disparage" shall be the meaning of that term as defined by relevant New Jersey laws and judicial precedent interpreting those laws. Hawthorne Paint acknowledges and agrees that nothing in this Decree constitutes a waiver of Alston's right to pursue a cause of action under New

Jersey law against Hawthorne Paint based on conduct by Hawthorne Paint (including only its officers and Bea Acker) that occurs after the signing of this Decree, and Alston acknowledges and agrees that nothing in this Decree constitutes a waiver of Hawthorne Paint's right to pursue a cause of action against Alston under New Jersey law based on conduct by Alston that occurs after the signing of this Decree. For the purposes of this paragraph, references to the conduct and obligations of "Hawthorne Paint" or "Party" as they refer to Hawthorne Paint, shall be solely defined as the actions or inactions the officers of Hawthorne Paint, Murray Greene (or his successor) -- who presently is the sole and only officer of Hawthorne Paint -- or Bea Acker (or her successor).

14. Within ten (10) calendar days of its compliance with the requirements contained in paragraphs nine (9) and eleven (11) of this Decree, Hawthorne Paint shall provide written confirmation of its compliance to the following counsel for Alston by facsimile or electronic mail to:

Chief  
Employment Litigation Section  
Civil Rights Division, PHB  
601 D Street, N.W., Fourth Floor  
Washington, D.C. 20004  
Facsimile: (202) 514-1005

Upon receipt of such written confirmation, Alston shall file a fully executed Stipulation of Dismissal with Prejudice, attached hereto as Appendix C.

**RETENTION OF JURISDICTION,  
DISPUTE RESOLUTION AND COMPLIANCE**

15. The entry of this Decree constitutes the entry of final judgment within the meaning of Rule 54 of the Federal Rules of Civil Procedure on all claims asserted in or that could have been asserted by Alston in this action, as well as all counter-claims asserted in or that could have been asserted by Hawthorne Paint in this action. The Court, however, shall retain jurisdiction over this action and shall have all available equitable powers, including injunctive relief, to enforce this Decree, for a one year period of time following the Court's order of dismissal pursuant to paragraph seventeen (17).

16. In the event of a dispute, the Parties shall give reasonable notice to each other before seeking resolution of the dispute by the Court. The Parties shall engage in good faith efforts to resolve any dispute regarding this Decree.

**EXPIRATION**

17. Upon the filing of the Stipulation of Dismissal as set forth in paragraph fourteen (14) above, the terms of this Decree shall be incorporated by reference into the Court's order of dismissal, and shall remain in full force and effect for one

year after the Court's order of dismissal, during which time the Court shall retain jurisdiction to enforce them. However, the terms of the Releases, incorporated and attached hereto as Appendices A and B, shall remain in effect after the dismissal with prejudice of this case, and after the expiration of the Decree terms and the Court's jurisdiction to enforce them.

MISCELLANEOUS

18. The Parties shall bear their own costs and expenses in this action, including attorneys' fees, and shall not seek from the other party any costs, expenses and/or attorneys' fees with respect to this action that occur prior to the entry of this Decree by the Court.

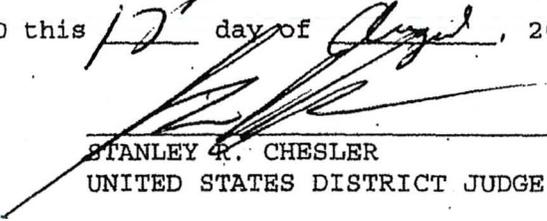
19. If any provision of this Decree is found to be unlawful, only the specific provision in question shall be affected and the other provisions shall remain in full force and effect.

20. The terms of this Decree are and shall be binding upon the heirs, successors, and assigns of Alston, and upon Hawthorne Paint, its successors, assigns, officers and directors.

21. This Decree, and the Appendices attached hereto, constitute the entire agreement and commitments of the Parties. Any modifications to this Decree must be mutually agreed upon and memorialized in writing signed by Alston and Hawthorne Paint.

23. The effective date of this Decree shall be the date upon which it is entered by the Court.

APPROVED and ORDERED this 17<sup>th</sup> day of August, 2009.

  
STANLEY R. CHESLER  
UNITED STATES DISTRICT JUDGE

Agreed and Consented to by and on behalf of Plaintiff:

  
\_\_\_\_\_  
JAMES O. ALSTON  
Plaintiff

  
\_\_\_\_\_  
JOHN M. GADZICHOWSKI  
(WI Bar No. 1014294)  
Chief

  
\_\_\_\_\_  
JODI B. DANIS  
(DC Bar No. 453493, NJ Bar No. 035671995)  
Deputy Chief  
DAVID N. REESE  
(AL Bar No. ASB-0887-167R)  
JOSEPH J. SPERBER IV  
(NY Bar No. 2662526)  
Trial Attorneys  
U.S. Department of Justice  
Civil Rights Division, PHB 4918  
Employment Litigation Section  
950 Pennsylvania Avenue, NW  
Washington, DC. 20530  
Telephone: (202) 514-3851  
Facsimile: (202) 353-8961  
Email: david.reese@usdoj.gov

RALPH A. MARRA  
Acting United States Attorney

s/ Susan J. Steele

\_\_\_\_\_  
SUSAN J. STEELE  
Assistant United States Attorney  
970 Broad Street, 7th Floor  
Newark, NJ 07102  
Telephone: (973) 645-2700

Attorneys for Plaintiff James O. Alston

Agreed and Consented to on behalf of Defendant:



LEONARD Z. KAUFMANN

MARC W. GARBAR

(NJ Bar No. LK6920)

Cohn Lifland Pearlman Herrmann & Knopf LLP

Park 80 Plaza West-One

Saddle Brook, NJ 07663

Telephone: 201-845-9600

Facsimile: 201-845-9423

Email: mwg@njlawflnn.com

Attorneys for Defendant Hawthorne Paint Co., Inc.

APPENDIX A

RELEASE OF ALL CLAIMS

For and in consideration of the acceptance of the relief offered to me by Hawthorne Paint Co., Inc. ("Hawthorne Paint"), pursuant to the provisions of the Consent Decree ("Consent Decree") entered by the United States District Judge in James O. Alston v. Hawthorne Paint Co., Inc., including but not limited to the consideration of the Separation Payment specified in paragraph nine (9) of the Consent Decree, Hawthorne Paint's agreement to provide only neutral employment references to all future prospective employers as described in paragraph twelve (12) of the Consent Decree, and Hawthorne Paint's agreement to permanently separate as confidential the documents referencing my termination as specified in paragraph eleven (11) of the Consent Decree; and for and in consideration of Hawthorne Paint's release and discharge of the undersigned, and the undersigned's heirs, successors, and assigns, pursuant to the provisions of the Decree and the "Release of all Claims" attached thereto as Appendix B, I, **James O. Alston**, hereby release Hawthorne Paint, its current and former owners, partners, members, employees, affiliates, agents and attorneys, and all of their heirs, executors, administrators, receivers, successors and assigns (collectively, "Releasees") from any and all claims I have or could have, under federal or state law or regulation, against Hawthorne Paint or any Releasees, based on events occurring prior to the date of the signing of this release.

Without limiting the foregoing, I specifically release, relinquish, waive and forever give up any and all claims that I presently may have or ever had against the Released Parties under:

- (1) Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. and as amended by the Civil Rights Act of 1991, 42 U.S.C. § 2000e-2(k) et seq.;
- (2) the Equal Pay Act of 1963, 29 U.S.C. § 206 et seq.;
- (3) the New Jersey Equal Pay Act, N.J.S.A. 34:11-56.2;

- (4) the Civil Rights Acts of 1866 and 1871, 42 U.S.C. §1981, and 42 U.S.C. §1983 et seq.;
- (5) the Americans with Disabilities Act, 42 U.S.C. § 12010 et seq.;
- (6) the ADA Amendments Act of 2008, PL 110-325, 2008 § 3406;
- (7) the Family and Medical Leave Act, 29 U.S.C. §2601 et seq.;
- (8) the Rehabilitation Act of 1973, 29 U.S.C. §791 et seq.;
- (9) the Fair Labor Standards Act and Equal Pay Act, 29 U.S.C. §201 et seq.;
- (10) the Age Discrimination in Employment Act of 1967, 29 U.S.C. §621 et seq.; as amended by the Older Workers Benefit Protection Act;
- (11) the Employee Retirement Income Security Act of 1974, 29 U.S.C.A. § 1001 et seq.;
- (12) the Immigration Reform and Control Act of 1986, 8 U.S.C. 1255 et seq.;
- (13) the National Labor Relations Act, 29 U.S.C. 151 et seq. and Labor Management Relations Act, 29 U.S.C. § 185 et seq.;
- (14) the Worker Adjustment and Retraining Notification Act, 29 U.S.C.A. § 2101 et seq.;
- (15) the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.;
- (16) The Consumer Protection Act of 1968;
- (17) The Employee Polygraph Protection Act of 1988;
- (18) The Fair Credit Reporting Act;
- (19) the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 et seq. ("USERRA");

- (20) the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.;
- (21) the New Jersey Family Leave Act, N.J.S.A. 34:11B-1 et seq.;
- (22) the New Jersey Paid Family Leave Act;
- (23) the New Jersey Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et seq.;
- (24) the New Jersey Workers' Compensation Law, N.J.S.A. 34:15B-1 et seq., to the extent permitted by law;
- (25) the New Jersey Wage & Hour Law, N.J.S.A. 34:11-4.1 et seq.;
- (26) the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 et seq.; and
- (27) New Jersey Statutes Annotated "Voting Rights" Provision, New Jersey Statutes Annotated "Reemployment of Military Personnel" Provision, New Jersey Statutes Annotated "Polygraph" Provision, New Jersey Statutes Annotated "Jury Duty" Provision, New Jersey Statutes Annotated "Convictions" Provision, New Jersey Statutes Annotated "Lie Detector Tests" Provision, New Jersey Statutes Annotated "Medical Coverage Continuation" Provision, New Jersey Statutes Annotated "Garnishment" Provision, New Jersey Statutes Annotated "Tobacco Outside Workplace" Provision, New Jersey Statutes Annotated Workers' Compensation "Retaliation" Provision, and New Jersey Statutes Annotated "Genetic Information" Provision.

I state and acknowledge that I am not interested in working at Hawthorne Paint in the future; and, understanding and acknowledging that Hawthorne Paint is not interested in having me work at Hawthorne Paint in the future, I agree that I will not seek employment at Hawthorne Paint.

I understand that the relief to be provided to me under the Decree, and such release and discharge by Hawthorne Paint, does not constitute an admission by Hawthorne Paint of the validity of any claim raised by me or on my behalf, nor does it

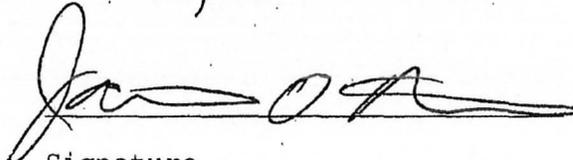
constitute a finding of any wrongdoing or liability under applicable federal law or regulation.

In accordance with paragraph seventeen (17) of the Consent Decree, the terms, provisions, consideration, releases and waivers contained in this Release do not expire, and will remain in effect even after this lawsuit is dismissed and the other terms of the Decree are dissolved. Similarly, in accordance with paragraph seventeen (17) of the Consent Decree, all of the terms of the Decree shall remain in full force and effect for one year following the Court's order of dismissal as set forth in paragraph fourteen (14) of the Consent Decree.

This release, the Decree submitted by the parties in this case, and Hawthorne Paint's release attached thereto as Appendix B, constitutes the entire agreement between Hawthorne Paint and me, without exception or exclusion.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF, AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Signed this 12 day of August, 2009

  
Signature

Subscribed and sworn to before me this

12<sup>th</sup> day of August, 2009

Michelle P. Foster

NOTARY PUBLIC

My Commission expires: March 13, 2010

APPENDIX B

RELEASE OF ALL CLAIMS

For and in consideration of James O. Alston's ("Alston's") release and discharge of Hawthorne Paint and its current and former owners, partners, members, employees, affiliates, agents and attorneys, and all of their heirs, executors, administrators, receivers, successors and assigns pursuant to the provisions of the Consent Decree ("Decree") entered by the United States District Judge in James O. Alston v. Hawthorne Paint Co., Inc. and the "Release of all Claims" attached thereto as Appendix A, the undersigned, on behalf of Hawthorne Paint Co., Inc. ("Hawthorne Paint"), and as its authorized representative, hereby releases Alston and Alston's heirs, successors, and assigns from any and all claims Hawthorne Paint has or could have, under federal or state law or regulation, against Alston based on events occurring prior to the date of the signing of this release.

I understand that such release by Alston does not constitute an admission by Alston of the validity of any claim raised by Hawthorne Paint, nor does it constitute a finding of any wrongdoing or liability under applicable federal or state law or regulation.

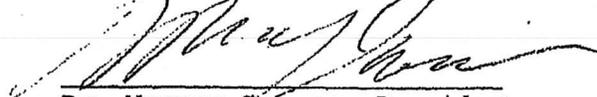
In accordance with paragraph seventeen (17) of the Consent Decree, the terms, provisions, consideration, releases and waivers contained in this Release do not expire, and will remain in effect even after this lawsuit is dismissed and the other terms of the Decree are dissolved. Similarly, in accordance with paragraph seventeen (17) of the Consent Decree, all of the terms of the Decree shall remain in full force and effect for one year following the Court's order of dismissal as set forth in paragraph fourteen (14) of the Consent Decree.

This release, the Decree submitted by the parties in this case, and Mr. Alston's release attached thereto as Appendix A, constitutes the entire agreement between Alston and Hawthorne Paint, without exception or exclusion.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF,  
AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Signed this 7 day of AUGUST, 2009.

Hawthorne Paint Co., Inc.

  
By: Murray Greene, President

Subscribed and sworn to before me this  
7th day of August, 2009

  
Notary Public

My Commission expires: \_\_\_\_\_

**SUE LINDWALL**  
**NOTARY PUBLIC OF NEW JERSEY**  
**MY COMMISSION EXPIRES SEPT. 25, 2013**

APPENDIX C

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

JAMES O. ALSTON,	:	
	:	
Plaintiff,	:	Civil Action No. 2:09-cv-00149
Counterclaimant,	:	
	:	
v.	:	STIPULATED ORDER OF DISMISSAL
	:	
HAWTHORNE PAINT CO., INC.,	:	
	:	
Defendant,	:	
Counterclaimant.	:	

STIPULATED ORDER OF DISMISSAL

Plaintiff James O. Alston and Defendant Hawthorne Paint Co., Inc. ("the Parties"), hereby stipulate that they have resolved all of the claims raised in the above-captioned lawsuit through a Consent Decree ("Consent Decree"), and the Releases attached thereto as Appendices A and B, executed by and between the Parties, and entered by this Court on the \_\_\_\_ day of \_\_\_\_\_, 2009. Accordingly, the Parties stipulate, and this Court so orders, that the terms of the Consent Decree be incorporated herein, that this Court retains jurisdiction over the terms of the Consent Decree, and that the terms of the Consent Decree remain in full force and effect as between the parties, for a year following the entry of this Order, until the \_\_\_\_ day of \_\_\_\_\_, 2010. This action is hereby dismissed with prejudice.

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
STANLEY R. CHESLER  
UNITED STATES DISTRICT JUDGE

Stipulated to by and on behalf of Plaintiff:

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JAMES O. ALSTON  
Plaintiff

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JOHN M. GADZICHOWSKI  
(WI Bar No. 1014294)  
Chief

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JODI B. DANIS  
(DC Bar No. 453493, NJ Bar No. 035671995)  
Deputy Chief  
DAVID N. REESE  
(AL Bar. No. ASB-0887-167R)  
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950 Pennsylvania Avenue, NW  
Washington, DC. 20530  
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Email: david.reese@usdoj.gov

RALPH A. MARRA  
Acting United States Attorney

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SUSAN J. STEELE  
Assistant United States Attorney  
970 Broad Street, 7th Floor  
Newark, NJ 07102  
Telephone: (973) 645-2700

Attorneys for Plaintiff James O. Alston

Stipulated to on behalf of Defendant:

LEONARD Z. KAUFMANN

MARC W. GARBAR

(NJ Bar No. \_\_\_\_\_)

Cohn Lifland Pearlman Herrmann & Knopf LLP

Park 80 Plaza West-One

Saddle Brook, NJ 07663

Telephone: 201-845-9600

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Attorneys for Defendant Hawthorne Paint Co., Inc.