

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

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| <hr/>                                | ) |                              |
| <b>In the Matter of</b>              | ) |                              |
|                                      | ) |                              |
| <b>THE SHERWIN-WILLIAMS COMPANY,</b> | ) |                              |
| <b>a corporation,</b>                | ) |                              |
|                                      | ) |                              |
| <b>and</b>                           | ) | <b>FTC File No. 161-0116</b> |
|                                      | ) |                              |
| <b>THE VALSPAR CORPORATION,</b>      | ) |                              |
| <b>a corporation.</b>                | ) |                              |
|                                      | ) |                              |
| <hr/>                                | ) |                              |

**AGREEMENT CONTAINING CONSENT ORDER**

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Proposed Respondent The Sherwin-Williams Company (“SW”) of the voting securities of Proposed Respondent The Valspar Corporation (“Valspar”), collectively “Proposed Respondents,” and it now appearing that Proposed Respondents are willing to enter into this Agreement Containing Consent Order (“Consent Agreement”) to divest certain assets and providing for other relief:

**IT IS HEREBY AGREED** by and between Proposed Respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent The Sherwin-Williams Company, is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Ohio with its executive offices and principal place of business located at 101 Prospect Avenue NW, Cleveland, Ohio 44115.
2. Proposed Respondent The Valspar Corporation, is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware with its executive offices and principal place of business located at 1101 South 3<sup>rd</sup> Street, Minneapolis, Minnesota 55415.
3. Proposed Respondents admit all the jurisdictional facts set forth in the draft of the Complaint here attached.
4. Proposed Respondents waive:

- a. any further procedural steps;
  - b. the requirement that the Commission's Decision and Order, which is attached hereto and made a part hereof, contain a statement of findings of fact and conclusions of law;
  - c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Decision and Order entered pursuant to this Consent Agreement; and
  - d. any claim under the Equal Access to Justice Act.
5. This Consent Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft of the Complaint here attached, or that the facts as alleged in the draft Complaint, other than jurisdictional facts, are true.
  6. Proposed Respondents shall submit an initial compliance report, pursuant to Section 2.33 of the Commission's Rules, 16 C.F.R. § 2.33, no later than ten (10) days after the date on which Proposed Respondents execute this Consent Agreement and every thirty (30) days thereafter until the Decision and Order becomes final. Each compliance report shall set forth in precise detail the manner in which Proposed Respondents have complied or have prepared to comply, are complying, and will comply with the Consent Agreement and the Decision and Order. Proposed Respondents shall provide sufficient information and documentation to enable the Commission to determine independently whether Proposed Respondents are in compliance with the Consent Agreement and the Decision and Order.
  7. Each report submitted pursuant to Paragraph 6 above shall be verified by a notarized signature or sworn statement of an officer or employee of Proposed Respondents specifically authorized to perform this function, or self-verified in a manner set forth in 28 U.S.C. § 1746. Section 2.41(a) of the Commission's Rules, 16 C.F.R. § 2.41, requires that an original and two copies of all compliance reports be filed with the Commission. Proposed Respondents shall file an original report and one copy with the Secretary of the Commission, and shall send at least one copy directly to the Bureau of Competition's Compliance Division in electronic format. In addition, Proposed Respondents shall provide a copy of each report to the Monitor appointed pursuant to the Decision and Order.
  8. This Consent Agreement, and any compliance reports filed pursuant to this Consent Agreement, shall not become part of the public record of the proceeding unless and until the Consent Agreement is accepted by the Commission. If this Consent Agreement is accepted by the Commission, it, together with the draft of the Complaint contemplated thereby, will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Agreement and so notify Proposed Respondents, in which event the Commission will take such action as it may consider appropriate, or

issue and serve its Complaint (in such form as the circumstances may require) and its Decision and Order, in disposition of the proceeding.

9. This Consent Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, 16 C.F.R. § 2.34, the Commission may, without further notice to Proposed Respondents: (1) issue and serve its Complaint corresponding in form and substance with the draft of the Complaint here attached and the following Decision and Order in disposition of the proceeding, and (2) make information public with respect thereto.
10. When final and effective, the Decision and Order will have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time as provided by statute for other orders. The Decision and Order shall become final and effective upon service. Delivery of the Complaint and the Decision and Order to Proposed Respondents by any means provided in § 4.4(a) of the Commission's Rules, 16 C.F.R. § 4.4(a), including, but not limited to, delivery to an office within the United States of counsel for Proposed Respondents identified on this Consent Agreement, shall constitute service. Proposed Respondents waive any rights they may have to any other manner of service. Proposed Respondents also waive any right they may otherwise have to service of any Appendices attached or incorporated by reference into the Decision and Order, if Proposed Respondents are already in possession of copies of such Appendices, and agrees that they are bound to comply with and will comply with the Decision and Order to the same extent as if they had been served with copies of such Appendices.
11. The Complaint may be used in construing the terms of the Decision and Order, and no agreement, understanding, representation, or interpretation not contained in the Decision and Order or the Consent Agreement may be used to vary or to contradict the terms of the Decision and Order.
12. By signing this Consent Agreement, Proposed Respondents represent and warrant that they can fulfill all the terms of and accomplish the full relief contemplated by the attached Decision and Order (including effectuating all required divestitures, assignments, and transfers) and that all parents, subsidiaries, affiliates, and successors necessary to effectuate the full relief contemplated by this Consent Agreement and the attached Decision and Order are parties to, or within the control of parties to, this Consent Agreement and the attached Decision and Order.
13. Proposed Respondents agree that they shall interpret the Remedial Agreement, as that term is used in the Decision and Order, in a manner that is fully consistent with all of the relevant provisions and remedial purposes of the Decision and Order.
14. Proposed Respondents have read the draft of the Complaint and the Decision and Order contemplated hereby. Proposed Respondents understand that once the Decision and Order has been issued, Proposed Respondents will be required to file one or more

compliance reports setting forth in detail the manner in which they have complied, are complying, and will comply with the Decision and Order.

15. Proposed Respondents agree to comply with the terms of the proposed Decision and Order from the date they sign this Consent Agreement. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Decision and Order after such Order becomes final and effective.

**THE SHERWIN-WILLIAMS  
COMPANY**

\_\_\_\_\_  
By: John G. Morikis  
Chairman of the Board, President and CEO  
The Sherwin-Williams Company

Dated: \_\_\_\_\_

\_\_\_\_\_  
Steven Newborn  
Weil Gotshal & Manges LLP  
Counsel for The Sherwin-Williams  
Company

**THE VALSPAR CORPORATION**

\_\_\_\_\_  
By: Gary E. Hendrickson  
Chairman of the Board and CEO  
The Valspar Corporation

Dated: \_\_\_\_\_

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Michael Byowitz  
Wachtell, Lipton, Rosen & Katz  
Counsel for The Valspar Corporation

**FEDERAL TRADE COMMISSION**

\_\_\_\_\_  
By: James Abell  
Attorney  
Bureau of Competition

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Dominick Vote  
Deputy Assistant Director  
Bureau of Competition

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Benjamin Gris  
Assistant Director  
Bureau of Competition

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Alan J. Devlin  
Acting Deputy Director  
Bureau of Competition

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Abbott B. Lipsky, Jr.  
Acting Director  
Bureau of Competition

Dated: \_\_\_\_\_