

**IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI**

DARYL WHITE, JR.,	)	
Individually and on behalf of all	)	
others similarly situated in	)	
Missouri,	)	
	)	
Plaintiff	)	No. 16AC-CC00533
	)	
v.	)	The Hon. Jon E. Beetem
	)	
RUST-OLEUM CORPORATION,	)	
	)	
Defendant.	)	

**CLASS ACTION SETTLEMENT AGREEMENT**

This Class Action Settlement Agreement is entered into by and among Plaintiff Daryl White, Jr., individually and on behalf of the Settlement Class Members and Defendant Rust-Oleum Corporation ("Rust-Oleum") (collectively, the "Parties"). Capitalized terms used herein are defined in Section II of this Settlement or indicated in parentheses elsewhere in this Agreement. Subject to the Court's approval, the Parties hereby stipulate and agree that, in consideration for the promises and covenants set forth in the Settlement and upon the entry by the Court of a Final Approval Order and the occurrence of the Effective Date, the Action shall be settled and compromised upon the terms and conditions contained herein.

**I. RECITALS**

**1.1** This Settlement is the product of litigation, negotiation, and mediation that commenced almost one year ago with a demand letter sent to Rust-Oleum on June 14, 2016.

**1.2** After discussions between the parties, which included the sharing of information, and an initial mediation failed to resolve this matter, on December 13, 2016, Plaintiff Daryl White, Jr. filed this Action against Rust-Oleum on behalf of himself and a class of Persons who purchased certain Rust-Oleum Products during the Class Period. On February 14, 2017,

Plaintiff filed his First Amended Petition, and subsequently filed a Second Amended Petition. Plaintiff alleges in the Second Amended Petition that, among other things, the Product packaging was false and deceptive in that it led purchasers to believe that the Products provide twice the coverage of competing brands, but fails to provide such coverage. Plaintiff contends that Rust-Oleum's representations give rise to claims for breach of express and implied warranties and unjust enrichment, among others.

**1.3** Rust-Oleum, to avoid the costs, disruption, and distraction of further litigation, and without admitting the truth of any allegations made in the Action, or any liability with respect thereto, has concluded that it is desirable that the claims against it be settled and dismissed on the terms reflected in this Settlement.

**1.4** The undersigned Parties agree, subject to approval by the Court, that the Action between Plaintiff, on the one hand, and Defendant, on the other hand, shall be fully and finally compromised, settled, and released on the terms and conditions set forth in this Agreement.

**1.5** Plaintiff's counsel has analyzed and evaluated the merits of all Parties' contentions and this Settlement as it affects all Parties and the Settlement Class Members. Among the risks of continued litigation is the possibility that Plaintiff will be unable to prove liability, damages, or entitlement to injunctive relief at trial on a class wide or individual basis.

**1.6** Plaintiff and Plaintiff's counsel, after taking into account the foregoing, along with the risks and costs of further litigation, are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and equitable, and that a settlement of the Action and the prompt provision of effective relief to the Settlement Class are in the best interests of the Settlement Class Members.

**1.7** Defendant, while continuing to deny all allegations of wrongdoing and disclaiming any liability with respect to any and all claims, considers it desirable to resolve the Action on the terms stated herein, in order to avoid further expense, inconvenience, and interference with ongoing business operations and to dispose of burdensome litigation. Therefore, Defendant has determined that the settlement of this Action on the terms set forth herein is in its best interests.

**1.8** Defendant hereby consents, solely for the purposes of the settlement set forth herein, to the certification of the Settlement Class and appointment of Plaintiff's counsel as counsel for the Settlement Class and Plaintiff as a representative of the Settlement Class; provided, however, that if this Agreement fails to receive Court approval or otherwise fails to be executed, including but not limited to, the judgment not becoming final as provided in Section XV of this Agreement, then Defendant retains all rights it had immediately preceding the execution of this Agreement to object to the propriety of class certification in all other contexts and for all other purposes, and the Action will continue as if the Settlement Class had never been certified. The fact that Defendant conditionally consented herein to certification of the Settlement Class shall not be used against Defendant by any Party or non-party for any purpose in this Action or any other action, litigation, lawsuit, or proceeding of any kind whatsoever.

**1.9** This Agreement is contingent upon the issuance by the Court of both preliminary approval and final approval. Should the Court not issue preliminary approval and final approval, Defendant does not waive, and instead expressly reserves, all rights to defend this Action.

**1.10** This Agreement reflects a compromise between the Parties, and shall in no event be construed as or be deemed an admission or concession by any Party of the truth, or lack thereof, of any allegation or the validity, or lack thereof, of any purported claim or defense

asserted in any of the pleadings or filings in the Action, or of any fault on the part of Defendant, and all such allegations are expressly denied. Nothing in this Agreement shall constitute an admission of liability or be used as evidence of liability, by or against any Party hereto.

## **II. DEFINITIONS**

As used in this Settlement and the attached exhibits (which are an integral part of the Settlement and are incorporated in their entirety by reference), the following terms shall have the meanings set forth below, unless this Settlement specifically provides otherwise. Other capitalized terms in this Settlement but not defined in this section shall have the meanings ascribed to them elsewhere in this Agreement.

**2.1** “Action” means the class action lawsuit styled as *Daryl White, Jr. v. Rust-Oleum Corporation.*, Case No. 16AC-CC00533, Cole County Circuit Court, Missouri.

**2.2** “Administration Expenses” means reasonable fees and expenses incurred by the Settlement Administrator for all tasks the Settlement Administrator and any third parties perform in furtherance of the notice and administration of the Settlement and to secure performance as set forth in this Settlement, in an amount not to exceed six hundred twenty five thousand and No/100 Dollars (\$625,000).

**2.3** “Agreement” means this Class Action Settlement Agreement containing all terms, conditions, and exhibits which constitute the entire agreement between the Parties.

**2.4** “Application” means any application to be filed by Class Counsel in this Action by which they will seek an award of attorneys’ fees, Class Representative Service Awards, and/or reimbursement of costs they incurred prosecuting this Action.

**2.5** “Attorneys’ Fees and Expenses” means such funds as may be awarded by the Court based on the Settlement described herein to compensate Class Counsel as determined by the Court, as described more particularly in Section VII of this Settlement.

**2.6** “Benefit” means the cash payment available to a Claimant who files a Valid Claim under this Agreement. The specific Benefit paid is subject to review, validation, and adjustments by the Settlement Administrator based upon the terms and conditions of this Agreement.

**2.7** “Benefit Checks” are the form of payment issued for a Valid Claim as determined by the Settlement Administrator and in accordance with this Agreement.

**2.8** “Claim” means a request for relief pursuant to this Settlement submitted by the Settlement Class Member on a Claim Form filed with the Settlement Administrator in accordance with the terms of this Settlement.

**2.9** “Claim Form” means the proposed Claim Form in substantially the same form attached hereto as Exhibit A to be used by Settlement Class Members to make a Claim under the Settlement, which form is to be approved by the Court and to be posted online in accordance with Section VI of this Settlement.

**2.10** “Claim Period” means the period of time during which a Settlement Class Member must submit a Claim Form to be eligible to receive monetary Benefit as part of the Settlement, which shall end at the Claims Deadline.

**2.11** “Claimant” means a Settlement Class Member who files a Claim seeking a Benefit under this Agreement.

**2.12** “Claims Deadline” means the date by which a Claim Form must be postmarked and mailed to the Settlement Administrator, or electronically submitted by 11:59 p.m. Central

Time, to be considered timely, and shall be a date no later than 30 days after entry of the Final Approval Order or a date certain as may be reflected in the Court's Preliminary Approval Order. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Settlement Notice and the Claim Form.

**2.13** "Class Counsel" means David L. Steelman and Steven F. Gaunt of STEELMAN, GAUNT & HORSEFIELD and Scott A. Kamber of KAMBERLAW LLC and Naomi Spector of KAMBERLAW LLP.

**2.14** "Class Notice" means the Publication Notice, Media Plan, and Settlement Notice all in substantially the same form as set forth in Exhibit B attached hereto.

**2.15** "Class Period" means the period beginning on December 12, 2011 through, and including the date of entry of the Preliminary Approval Order.

**2.16** "Class Representatives" means each of Plaintiff Daryl White, Jr. and Enrique Ballesteros.

**2.17** "Class Representative Settlement Award" or "Class Representative Service Award" means any award sought by application to and approved by the Court that is payable to Class Representatives up to a maximum total amount of Five Thousand and No/100 Dollars (\$5,000) for each of the Class Representatives, and Ten Thousand and No/100 Dollars (\$10,000) in the aggregate, to compensate each of the Class Representatives for his effort in bringing the Action and achieving the benefits of this Settlement on behalf of the Settlement Class.

**2.18** "Court" means the Cole County Missouri Circuit Court.

**2.19** "Current Stock" means all cans of Product, as of the date when the Injunctive Relief takes effect, that have Labeling with representations that are the subject of this Action,

whether any such cans are filled or unfilled, and whether any such cans are within the possession of Rust-Oleum or any of its retailers.

**2.20** “Defendant” or “Rust-Oleum” means Rust-Oleum Corporation.

**2.21** “Effective Date” means the fifth business day after the last of the following dates:

a) all Parties and their counsel, Rust-Oleum Counsel and Class Counsel, have executed this Settlement; b) the Court has entered the Final Approval Order; and c) the date on which time to appeal or to seek permission to appeal from the Court’s approval of the Settlement Agreement has expired or, if appealed, approval of the Settlement Agreement has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review, or upon the denial of a writ of certiorari to review the order and final judgment from any court making the Final Approval Order a final, non-appealable judgment.

**2.22** “Fairness Hearing” and/or “Final Approval Hearing” means the final hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of the Settlement in accordance with applicable jurisprudence, to be held after notice has been provided to the Settlement Class in accordance with this Settlement, and where the Court will: (a) determine whether to grant final approval to the certification of the Settlement Class; (b) determine whether to designate Plaintiff as the representative of the Settlement Class; (c) determine whether to designate Class Counsel as counsel for the Settlement Class; (d) determine whether to grant final approval to the Settlement; (e) rule on Class Counsel’s Application for a fee award and reimbursement of costs; and (f) consider whether to enter the Final Approval Order.

**2.23** “Fee and Expense Award” means the attorneys’ fees, Class Representative Service Award, and reimbursement of costs, to be paid separate and apart from the payment of Valid Claims, awarded by the Court to Class Counsel for all the past, present, and future attorneys’ fees, costs (including court costs), expenses, and disbursements incurred by them and their experts, staff, and consultants in connection with the Action, up to a maximum of One Million Seven Hundred Forty Thousand and No/100 Dollars (\$1,740,000).

**2.24** “Final Approval Order” means an order, to be entered by the Court, providing, among other things, certification of the class, final approval of the Settlement and approval of the Agreement, dismissal of the Action with prejudice as to the Class Representatives’ and Settlement Class Members’ claims against Defendant, and entry of final judgment with respect thereto.

**2.25** “Household” means all Persons residing at the same physical address.

**2.26** “Labeling” means all written, printed, or graphic matter appearing upon the packaging of the Product, as well as all written, printed, or graphic matter used in the distribution or sale of the Product, including information found on Rust-Oleum’s or its customers’ or affiliates’ websites supplementing, describing, explaining, and/or promoting the Product.

**2.27** “Media Plan” means the notice plan, in substantially the same form attached hereto as part of Exhibit B, developed by the Settlement Administrator to notify the Settlement Class of the Settlement Notice and to command the Settlement Class Members’ attention to their rights under the Settlement.

**2.28** “Motion for Preliminary Approval of Settlement” means the motion, to be filed by Plaintiff, seeking entry by the Court of the Preliminary Approval Order, and includes all supporting papers.

**2.29** “Notice Date” means the date on which the Settlement Administrator disseminates the Settlement Notice consistent with the Preliminary Approval Order. The Notice Date shall be no later than thirty (30) days after the Court’s entry of the Preliminary Approval Order.

**2.30** “Objection” means an objection properly filed with the Court in conformance with the terms of the Preliminary Approval Order by a member of the Settlement Class, objecting to any aspect of the Settlement.

**2.31** “Objection Deadline” means sixty (60) days after the Notice Date.

**2.32** “Opt-Out” means a request by a member of the Settlement Class to be excluded from the Settlement Class by following the procedures set forth in the Preliminary Approval Order and the Class Notice.

**2.33** “Opt-Out Deadline” means sixty (60) days after the Notice Date.

**2.34** “Parties” (or “Party” individually) means Plaintiff and Defendant.

**2.35** “Person” means any natural person, corporation, partnership, business organization or association, or other type of legal entity.

**2.36** “Plaintiff” means Daryl White, Jr.

**2.37** “Preliminary Approval Order” means an order, in substantially the same form of the Proposed Preliminary Approval Order attached hereto as Exhibit D, to be entered by the Court granting, among other things, preliminary approval of the Settlement.

**2.38** “Product” and/or “Products” means Rust-Oleum’s 2X spray paints listed on Exhibit C attached hereto. Exhibit C may be amended by the Parties to include or exclude additional products to reflect a complete and accurate list of the 2X spray paints so long as the amended Exhibit C is filed with the Court and provided to the Claims’ Administrator sufficiently in advance of the Notice Date so as to in no way shorten the Objection Period.

**2.39** “Proof of Purchase” means a receipt, removed UPC code, or other documentation from a third-party commercial source reasonably establishing the fact and date of purchase of the Product during the Class Period in the United States.

**2.40** “Proposed Preliminary Approval Order” means the order attached hereto as Exhibit D.

**2.41** “Publication Notice” means the proposed short form notice, in substantially the same form attached as part of Exhibit B hereto as well as attached to the Proposed Preliminary Approval Order, to be approved by the Court and to be published in accordance with Section VI of this Settlement Agreement.

**2.42** “Releases” means all releases identified in Section XII of this Agreement.

**2.43** “Released Claims” are those claims defined in paragraph 12.2 of this Agreement.

**2.44** “Released Parties” means Rust-Oleum and its direct and indirect parent companies, predecessor entities, successor entities, related companies, direct and indirect subsidiaries, holding entities, past and present affiliates, franchisees, distributors, wholesalers, retailers, advertising and production agencies, licensors, and agents, including all current and former officers, directors, managers, members, partners, owners, employees, shareholders, consultants, attorneys, legal representatives, insurers, agents, assigns, or other equity interest holders of any of the foregoing, and their heirs, executors, administrators, and assigns. For the

avoidance of doubt, Released Parties shall include all retailers, distributors, sellers and resellers of Products.

**2.45** “Releasing Parties” means Plaintiff, the Class Representatives, all Settlement Class Members, Class Counsel, and any Person claiming by or through him/her/it, including any Person claiming to be his/her/its spouse, parent, child, heir, guardian, associate, co-owner, attorney, legal representative, agent, insurer, administrator, devisee, predecessor, successor, assignee, equity interest holders or representatives of any kind, shareholder, partner, director, employee or affiliate, and their heirs, executors, administrators, and assigns.

**2.46** “Settlement” means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Agreement and attached exhibits.

**2.47** “Settlement Administrator” means Heffler Claims Administration, the independent entity selected by the Parties to administer the Settlement and approved by the Court.

**2.48** “Settlement Class” means: all Persons who purchased Products in the United States during the Class Period. Excluded from the Settlement Class are: (a) all Persons who purchased or acquired the Product for resale; (b) Rust-Oleum and its employees, principals, affiliated entities, legal representatives, successors and assigns; (c) any Person who files a valid, timely Opt-Out request; (d) federal, state, and local governments (including all agencies and subdivisions thereof, but excluding employees thereof) and (e) the judge(s) to whom this Action is assigned and any members of their immediate families.

**2.49** “Settlement Class Members” means all Persons who are members of the Settlement Class and who do not exclude themselves from the Settlement Class in the manner and time prescribed by the Court in the Preliminary Approval Order.

**2.50** “Settlement Notice” means a long form notice substantially in the same form attached as part of Exhibit B hereto and attached to the Proposed Preliminary Approval Order, to be approved by the Court and to be disseminated in accordance with Section VI of this Agreement.

**2.51** “Settlement Website” means the website to be created for this Settlement that will include information about the Action, the Settlement, and relevant documents and electronic and printable forms relating to the Settlement, including the Claim Form which can be submitted online or printed and mailed, and which Settlement Class Members can visit to read or request additional information regarding the Settlement. The Settlement Website shall be [www.spraypaintsettlement.com](http://www.spraypaintsettlement.com).

**2.52** “Tier” means the category a Settlement Class Member elects and is qualified under which to receive payment of a Benefit from Rust-Oleum.

**2.53** “Unit” means a single can of Product.

**2.54** “Valid Claim” means a Claim Form submitted by a Settlement Class Member that is (a) submitted in accordance with the directions accompanying the Claim Form and the provisions of the Settlement; (b) on the initial submission, accurately, fully, and truthfully completed and executed, with all of the information requested in the Claim Form, by a Settlement Class Member; (c) signed physically or by e-signature by a Settlement Class Member personally, subject to the penalty of perjury; (d) returned via mail and post-marked by the Claims Deadline or, if submitted online, is received by 11:59 p.m., Central Time, on the Claims Deadline and (e) determined to be valid by the Settlement Administrator.

Capitalized terms in this Agreement not defined in Section II shall have the meanings ascribed to them elsewhere in this Agreement.

### **III. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

**3.1** This Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in this Agreement, nor any action taken hereunder, shall constitute or be construed as an admission of: (a) the validity of any claim or allegation by Plaintiff or of any defense asserted by Rust-Oleum in the Action; or (b) any wrongdoing, fault, violation of law, or liability on the part of any Party, Released Party, Settlement Class Member, or their respective counsel.

**3.2** For the purpose of implementing this Agreement, and for no other purpose, Defendant stipulates to the conditional certification of the nationwide Settlement Class in this Action as set forth in the Proposed Preliminary Approval Order. If for any reason this Agreement should fail to become effective, Defendant's agreement to certification of the Settlement Class provided for in this Section III, or to any other class or subclass, shall be null and void, and the Parties shall return to their respective positions in this Action before this Agreement was executed.

### **IV. REQUIRED EVENTS**

As soon as practicable after the execution of this Agreement, Plaintiff shall file in the Action this Agreement and a motion seeking entry of the Preliminary Approval Order, which order shall by its terms accomplish all the following:

**4.1** Preliminarily approve the Settlement and this Agreement as fair and reasonable to the Settlement Class;

**4.2** Conditionally certify the Settlement Class for the purpose of effecting the Settlement;

**4.3** Designate Plaintiff and Enrique Ballesteros as the Class Representatives of the Settlement Class;

**4.4** Designate Class Counsel as counsel for the Settlement Class;

**4.5** Approve the Settlement Administrator and instruct the Settlement Administrator to perform the following functions in accordance with the terms of this Agreement, the Preliminary Approval Order, and the Final Approval Order:

- a. Process Opt-Out requests in accordance with Section IX of this Agreement;
- b. Process Objections to the Settlement in accordance with Section IX of this Agreement;
- c. Process Claim Forms in accordance with Section VI of this Agreement;
- d. Before disseminating the Settlement Notice, establish the Settlement Website, which Settlement Class Members can visit to read and obtain additional information regarding the Settlement, including submission of Claim Forms; and
- e. Set up and operate a toll-free automated interactive voice response system through which Settlement Class Members can access Settlement information.

**4.6** Approve the form, contents, and method of notice to be given to the Settlement Class as set forth in Section VI of this Agreement, and direct Rust-Oleum to provide, and cause to be provided, such notice and to file with the Court a declaration of compliance with those notice requirements, as set forth in Section VI of this Agreement.

**V. SETTLEMENT CONSIDERATION AND PROCEDURES FOR PROVIDING BENEFITS TO SETTLEMENT CLASS MEMBERS**

**5.1 Injunctive Relief**

Within sixty (60) calendar days after entry of the Final Approval Order, Rust-Oleum shall implement changes to the Labeling of the Products to ensure that the marketing claims that are the subject of the Action shall no longer refer to competitors' products (the "Injunctive Relief"). Rust-Oleum shall be obligated to adhere to the Injunctive Relief for a period of two (2) years after entry of the Final Approval Order. Notwithstanding implementation of the Injunctive Relief, Rust-Oleum shall be allowed to liquidate the Current Stock.

**5.2 Benefit Available to Settlement Class Members**

Subject to the rights, terms, and conditions of this Agreement, Rust-Oleum will pay or cause to be paid Valid Claims based on which of the following three Tiers the Settlement Class Member elects and for which the Settlement Class Member qualifies:

- a) Tier 1. Settlement Class Members who elect to fill out the Claim Form section for Tier 1 and who do not have valid Proof of Purchase may recover up to a maximum of \$1 per Unit for up to three Units (\$3 per Household); or
- b) Tier 2. Settlement Class Members who elect to fill out the Claim Form for Tier 2 who are willing to provide additional information and who do not have valid Proof of Purchase may recover \$1.50 per Unit up to a maximum of four Units (\$6.00 per Household); or
- c) Tier 3. Settlement Class Members who fill out the Claim Form and who provide valid Proof of Purchase may recover the amount for which a valid

Proof of Purchase has been provided up to a maximum of \$20.00 per Household.

For the avoidance of doubt, a Settlement Class Member may file a single Claim electing either Tier 1, Tier 2 or Tier 3 and is eligible for one benefit per Household.

Notwithstanding anything to the contrary, any Claimant who submits a Valid Claim under Tier 2 and purchased the Products other than exclusively as a result of the Labeling, then the Benefit for that Claimant may be reduced to \$1 per Unit. By way of example, if the Claimant bought the Product for reasons other than the subject of the Action, such as due to coupon or discount offer, effectiveness, price, or quality, then he or she did not exclusively buy the Products as a result of advertising and marketing claims on the Labeling and may be subject to a Benefit adjustment by the Settlement Administrator. In performing this evaluation, the Settlement Administrator may rely only on the information provided by the Claimant on the Claim Form submitted.

### **5.3 No Unclaimed Property Rights**

Rust-Oleum guarantees to pay the Benefit as determined by the Settlement Administrator pursuant to the terms and conditions of this Agreement. Notwithstanding anything to the contrary, Rust-Oleum shall pay Valid Claims only. This Agreement does not create any vested property interest or unclaimed property rights for Settlement Class Members who do not file Valid Claims.

## **VI. PROCEDURES FOR PROVIDING BENEFIT TO SETTLEMENT CLASS MEMBERS**

**6.1** The Parties shall jointly ask the Court to approve Heffler Claims Administration as the Settlement Administrator. The Settlement Administrator shall, subject to the supervision of the Court, administer the relief provided by this Agreement by processing Claim Forms in a

rational, responsive, cost effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records will be made available to Class Counsel, Rust-Oleum's Counsel, the Parties, and their representatives promptly upon request.

**6.2** At the election of the Settlement Class Member, the Settlement Administrator shall accept Claim Forms submitted in paper via first class mail or online at the Settlement Website. Claim Forms mailed must be postmarked by the Claims Deadline, or submitted online must be filed no later than 11:59 p.m. Central Time of the Claims Deadline. Claim Forms postmarked or submitted online after that date will not be Valid Claims. The Settlement Administrator will track Claim Forms with unique security identifiers or control numbers issued to Persons who seek to file a Claim. For Claim Forms that are submitted online, the Settlement Class Member shall have the opportunity to upload a Proof of Purchase image files (e.g. jpg, tif, pdf), to preview and confirm information entered in the Claim Form prior to submitting the Claim, and to print a page immediately after the Claim Form has been submitted showing the information entered, the names of image file(s) uploaded, and the date and time the Claim Form was received.

**6.3** On the Claim Form, the Settlement Administrator shall validate that the Settlement Class Member provided and certified the truth and accuracy of the following information under the penalty of perjury, including by signing the Claim Form physically or by e-signature, or the Claim will not be considered a Valid Claim by the Settlement Administrator:

- a) The Settlement Class Member's name and mailing address;

- b) Complete all sections of the Claim Form completely, truthfully and accurately;
- c) The Settlement Class Member's email address (unless the Settlement Class Member requests a claim form by mail, in which case an email address is optional);
- d) The name of the Product purchased, the number of Units purchased during the Class Period, the approximate dates of purchase, reasons for purchase, and the store where purchased;
- e) That the claimed purchases were not made for purposes of resale; and
- f) A security code or control number provided by the Settlement Administrator.

**6.4** The Settlement Administrator shall be responsible for, among other things, providing notice as set forth in the Media Plan, processing Claim Forms, and administering the Settlement Website, Opt-Out process, and Settlement claims process described herein (including receiving and maintaining on behalf of the Court and the Parties any Settlement Class Member correspondence regarding requests for Opt-Out from the Settlement Class). The Settlement Administrator will use adequate and customary procedures and standards to prevent the payment of fraudulent claims and to pay only Valid Claims. The Settlement Administrator and Parties shall have the right to audit claims, and the Settlement Administrator may request additional information from Claimants including by cross examination. The Settlement Administrator will approve Valid Claims and issue payment based upon the terms and conditions of the Agreement or may reject Claims which are invalid or evidence waste, fraud, or abuse. The determination of validity of Claims shall occur within sixty (60) days of the end of the Claim Period. The

Settlement Administrator shall approve or deny all Claims, and its decision shall be final, binding, and non-appealable by either Party or by Settlement Class Members. Neither Plaintiff nor Defendant, nor their counsel, shall have any liability whatsoever for any act or omission of the Settlement Administrator.

**6.5** The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall promptly provide Class Counsel and Rust-Oleum's Counsel with information concerning notice, administration, and implementation of the Agreement. Should the Court request or should it be reasonably advisable to do so, the Parties, in conjunction with the Settlement Administrator, shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator. Without limiting the foregoing, the Settlement Administrator shall:

- a) promptly forward upon request to Rust-Oleum's Counsel and Class Counsel, copies of all documents and other materials relating to the administration of the Settlement;
- b) receive requests from Settlement Class Members to Opt-Out from the Settlement Class and promptly provide to Class Counsel and Rust-Oleum's Counsel a copy thereof upon receipt. If the Settlement Administrator receives any Opt-Out requests from Settlement Class Members after the Opt-Out Deadline, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Rust-Oleum's Counsel;
- c) provide reports and summaries, as requested, to Class Counsel and Rust-Oleum's Counsel, including without limitation, reports regarding the

number of Claim Forms received and the identity of the Settlement Class Members;

- d) employ reasonable procedures to screen Claim Forms for waste, fraud, and abuse and shall reject a Claim Form, or any part of a Claim for a payment reflected therein, where the Settlement Administrator determines that there is evidence of waste, fraud, or abuse. The Settlement Administrator will review each Claim Form based upon the initial submission by Settlement Class Member and ensure that each is complete, properly substantiated and, based on the substantiation, determine the appropriate Benefit to be paid, if any, in accordance with the terms of this Agreement. The Settlement Administrator is empowered to pay legitimate and Valid Claims only.
- e) prepare a declaration attesting to compliance with the Class Notice requirements set forth below and identifying all Opt-Outs and/or objectors. Such declaration shall be provided to Rust-Oleum's Counsel and Class Counsel for filing with the Court no later than seven (7) days prior to the Final Approval Hearing.
- f) issue checks for payment of Valid Claims ("Benefit Checks"). Rust-Oleum is obligated to pay Valid Claims only. All Benefit Checks issued pursuant to the Settlement shall bear in the legend that they expire if not negotiated within sixty (60) days of their date of issue. To the extent that a Benefit Check issued to a Settlement Class Member is not cashed within sixty (60) days after the date of issue, the check will be void.

**VII. CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF COSTS, AND SERVICE AWARD**

**7.1** Class Counsel will submit to the Court an Application seeking a Fee and Expense Award of not more than \$1,740,000. The Fee and Expense Award shall be paid separate and apart from the Settlement, and shall not take away from or otherwise reduce the monetary relief available to the Settlement Class. Court approval of the Fee and Expense Award will not be a condition of the Settlement. If the Court denies, in whole or part, Class Counsel's Application for a Fee and Expense Award, the remainder of the terms of this Agreement shall remain in effect. In addition, no interest will accrue on such amounts at any time. Neither Class Counsel nor Plaintiff will request nor will they accept any award inconsistent with these terms.

**7.2** Class Counsel shall also submit to the Court an Application seeking the Class Representative Service Award. If approved by the Court, this award shall be payable to Class Representatives up to a maximum total amount of Five Thousand and No/100 Dollars (\$5,000) for each of the Class Representatives, and Ten Thousand and No/100 Dollars (\$10,000) in the aggregate, to compensate each of the Class Representatives for his effort in bringing the Action and achieving the benefits of this Settlement on behalf of the Settlement Class.

**7.3** Rust-Oleum agrees that it will not object to the amount of Class Counsel's Application for a Fee and Expense Award up to the amounts set forth in the preceding paragraph. The Fee and Expense Award, as awarded by the Court, shall be payable within forty (40) days after entry of the Final Approval Order, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Class Counsel providing a promissory note as security for the recovery of all fees and expenses paid thereto in the event that the final judgment or Attorneys' Fees and Expenses award is reversed or reduced. Rust-Oleum shall make the payment of the

Fee and Expense Award to Class Counsel by depositing through a wire exchange into an account to be identified by Class Counsel, the sum so awarded and approved by the Court. Class Counsel shall provide to Rust-Oleum, prior to the Final Approval Order, all wiring and account information necessary to enable Rust-Oleum to make the payment required by this section. Rust-Oleum agrees that it will pay the amounts approved by the Court within the time required by this section.

**7.4** Class Counsel shall provide Rust-Oleum with all necessary accounting and tax information, including W-9 forms, with reasonable advance notice, and in no instance later than the Effective Date, to allow Rust-Oleum to make the Fee and Expense Award payment as set forth above.

**VIII. NOTICE AND DISSEMINATION TO THE SETTLEMENT CLASS, AND CLAIMS DEADLINES.**

Subject to Court approval, the Parties agree that Rust-Oleum shall cause notice of the proposed Settlement to be provided to the Settlement Class by the following methods:

**8.1 Settlement Notice**

The Parties agree that the Settlement Notice shall otherwise be in the manner and form agreed upon by the Parties and approved by the Court. Collectively, the Settlement Notice shall in general terms set forth and sufficiently inform the Settlement Class Members of: (1) a short, plain statement of the background of the Action, the Class certification, and the essential terms of the Settlement; (2) appropriate means for obtaining additional information regarding the Settlement and the Action; (3) appropriate information concerning the procedure for objecting or opting-out from the Settlement, if they should wish to do so; and (4) that any relief to Settlement Class Members is contingent on the Court's final approval of the Settlement. The Parties will request the Court to approve the Settlement Notice in the Preliminary Approval Order.

## **8.2 Publication Notice**

Similarly, the Settlement Administrator will cause the Publication Notice to be published in accordance with the Media Plan attached as part of Exhibit B. The Parties agree that the Publication Notice provides to the Settlement Class and Settlement Class Members information sufficient to inform them of: the essential terms of the Settlement; appropriate means for obtaining additional information regarding the Settlement and the Action; and, appropriate information about the procedure for objecting or opting-out from the Settlement, if they should wish to do so. Because the Media Plan is determined to be the best notice practicable under the circumstances and satisfies due process, the Parties will request the Court to approve the Media Plan in the Preliminary Approval Order.

## **8.3 Settlement Website**

The Settlement Administrator will establish a Settlement Website that will contain the complaint in the Action, the Motion for Preliminary Approval, the Preliminary Approval Order, the Settlement Agreement, Settlement Notice, Publication Notice, and Claim Forms. The Settlement Website will also identify key deadlines (e.g., the Claims Deadline, the Opt-Out Deadline, Objection Deadline, the date of Final Approval Hearing), and direct Settlement Class Members on how to submit Claim Forms and include a "Frequently Asked Questions" section.

## **8.4 Toll-Free Telephone Support Line**

The Settlement Administrator will establish a toll-free telephone support line that will provide Settlement Class Members with general information about the Action and will respond to frequently asked questions about the Action and claim procedure available exclusively through an interactive voice response (IVR).

#### **8.5 Methods for Dissemination of Notice**

As soon as practicable, but no later than thirty (30) days after the Court's entry of the Preliminary Approval Order, the Settlement Administrator shall disseminate the Settlement Notice consistent with the Preliminary Approval Order by setting up the Settlement Website on the Internet and posting both the Settlement Notice and Publication Notice.

Within thirty (30) days after the entry of the Preliminary Approval Order, Rust-Oleum shall publish, cause to be published, or ensure that the Settlement Administrator has caused to be published, the Publication Notice pursuant to the Media Plan.

#### **8.6 Declaration of Compliance**

The Settlement Administrator shall prepare a declaration attesting to compliance with the Settlement Notice requirements set forth above and a statement of the number of Persons the Media Plan reached. Such declaration shall be provided to Defendant's Counsel and Class Counsel and filed with the Court no later than seven (7) days prior to the Final Approval Hearing.

#### **8.7 Report on Requests for Exclusion and Objections**

Not later than seven (7) days before the Final Approval Hearing, the Settlement Administrator shall prepare and deliver to Class Counsel, who shall file with the Court, and Defendant's counsel, a report stating the total number of Persons who have submitted timely and valid Opt-Out requests from the Settlement Class and Objections to the Settlement, and the names of such Persons.

### **IX. OBJECTIONS AND REQUESTS FOR EXCLUSION**

#### **9.1 Objections**

Any Settlement Class Member who intends to object to the Settlement must do so no

later than sixty (60) days after the Notice Date (the "Objection Deadline"). In order to object, the Settlement Class Member must file with the Clerk of the Court, and provide a copy to the Settlement Administrator, Class Counsel, and Defendant's counsel, a document that includes:

- a) The case name and number, *White v. Rust-Oleum Corp.*, Case No. 16AC-CC00533 (Cole Circuit Court, MO.)
- b) The name, address, telephone number, and, if available, the email address of the Person objecting;
- c) The name and address of the lawyer(s), if any, who is representing the Person objecting in making the Objection or who may be entitled to compensation in connection with the Objection;
- d) A detailed statement of Objection(s), including the grounds for those Objection(s);
- e) Copies of any papers, briefs, or other documents upon which the Objection is based;
- f) A statement of whether the Person objecting intends to appear at the Final Approval Hearing, either with or without counsel;
- g) The identity of all counsel (if any) who will appear on behalf of the Person objecting at the Final Approval Hearing and all Persons (if any) who will be called to testify in support of the Objection;
- h) A statement of his/her membership in the Settlement Class, including all information required by the Claim Form;
- i) The signature of the Person objecting, in addition to the signature of any attorney representing the Person objecting in connection with the

Objection; and

- j) A detailed list of any other objection by the Settlement Class Member, or his/her counsel, to any class actions submitted in any court, whether state or otherwise, in the United States in the previous five (5) years. If the Settlement Class Member or his/her counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the Objection to this Settlement. This information is requested in order to assist the Court in determining whether the Objection is made by a professional objector seeking financial consideration for their efforts. Failing to provide this information will not effect the validity of the Objection, but may result in the Court presuming that the Objection is made by a professional objector.

## **9.2 Compliance with Objection Requirements**

Any Settlement Class Member who fails to file and serve timely a written Objection containing all of the information listed in the items (a) through (j) of the previous paragraph, including notice of his/her intent to appear at the Final Approval Hearing, shall not be permitted to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by any means, including but not limited to an appeal.

Any Settlement Class Member who submits a timely written Objection shall consent to deposition by Class Counsel prior to the Final Approval Hearing.

The Parties shall promptly inform the Court of any consideration sought by an objector and the circumstances of such a request.

### 9.3 Requests for Exclusion

Any Settlement Class Member may Opt-Out or request to be excluded from the Settlement Class. A Settlement Class Member who wishes to Opt-Out of the Settlement Class must do so no later than sixty (60) calendar days after the Notice Date (the "Opt-Out Deadline"). In order to Opt-Out, a Settlement Class Member must mail to the Settlement Administrator a request to Opt-Out that is postmarked no later than the Opt-Out Deadline. The Opt-Out request must contain the requestor's name, address, the words "I wish to be excluded from the *White v. Rust-Oleum* Class Action," and signature.

Opt-Out Requests that are postmarked after the Opt-Out Deadline will be considered invalid and of no effect, and the Person who untimely submits an Opt-Out Request will remain a Settlement Class Member and will be bound by any Orders entered by the Court, including the Final Approval Order. Except for those Persons who have properly and timely submitted Opt-Out Requests, all Settlement Class Members will be bound by this Agreement and the Final Approval Order, including the Releases contained herein, regardless of whether they file a Claim or receive any monetary relief.

Any Person who timely and properly submits an Opt-Out request shall not (a) be bound by any orders or the Final Approval Order nor by the Releases contained herein; (b) be entitled to any relief under the Settlement; (c) gain any rights by virtue of this Agreement; or (d) be entitled to object to any aspect of this Agreement.

Each Person requesting to Opt-Out from the Settlement Class must personally sign his/her own individual Opt-Out request. No Person may Opt-Out of the Settlement Class by any other Person, and no Person shall be deemed Opted-Out of the Settlement Class through any purported "mass" or "class" Opt-Outs.

The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a final list of timely Opt-Out requests by the Settlement Administrator within five (5) business days after the Opt-Out Deadline.

In the event that a Person submits an Opt-Out and an Objection, or presents a submission that is otherwise unclear on its face, as determined by the Settlement Administrator, the submission shall be interpreted to be an Opt-Out.

**X. COSTS OF NOTICE AND ADMINISTRATION**

In addition to providing to Settlement Class Members the benefits described in Section V above, Rust-Oleum will pay actual fees and expenses up to but not to exceed \$625,000 for: (a) the costs of preparing and disseminating the notices provided for in Section VI above; and (b) the other Administration Expenses, including payments made for the services of the Settlement Administrator and third-party expenses. Notwithstanding anything to the contrary herein, Rust-Oleum shall not be responsible for any cost that may be incurred by, on behalf of, or at the direction of Plaintiff or Class Counsel in: (a) responding to inquiries about the Agreement, the Settlement, or the Action; (b) defending the Agreement or the Settlement against any challenge to either or both of them; or (c) defending against any challenge to the Preliminary Approval Order, Final Approval Order, or judgment entered pursuant to the Agreement.

**XI. PROCEDURES FOR SETTLEMENT APPROVAL**

**11.1 Preliminary Approval**

Within seven (7) days following the date of the execution of this Agreement by the Parties, the Plaintiff shall move the Court for entry of the Preliminary Approval Order, subject to changes agreed to by the Parties for accuracy, formatting, or clarity.

## **11.2 Final Approval**

No fewer than seven (7) days prior to the date set by the Court for the Fairness Hearing, the Plaintiff shall apply to the Court for entry of the Final Approval Order, subject to changes agreed to by the Parties for accuracy, formatting, or clarity.

At the Fairness Hearing, the Parties will jointly request the Court to enter the Final Approval Order, which: (a) grants final approval of the certification of the Settlement Class; (b) designates the Class Representatives; (c) designates Class Counsel conditionally approved in the Preliminary Approval Order; (d) grants final approval to the Settlement and establishes this Agreement as fair, reasonable, and adequate to the Settlement Class; (e) provides for the Releases of all Released Claims and enjoins Settlement Class Members from asserting, filing, maintaining, or prosecuting any of the Released Claims; (f) orders the entry of judgment for Defendant on all claims, causes of action, and counts alleged in the Action, and incorporates the Releases stated in this Agreement, with each of the Parties to bear its or his own costs and attorneys' fees, except as provided in Section VII above; (g) authorizes the payment by Rust-Oleum of Class Counsel's Fee and Expense Award in accordance with Section VII above and the terms of the Agreement; and (h) preserves the Court's continuing jurisdiction over the administration of the Settlement and enforcement of the Agreement.

## **XII. RELEASES**

**12.1** By executing this Agreement, the Parties acknowledge that, upon both the entry of the Final Approval Order by the Court, and the passing of the Effective Date, the Action shall be dismissed with prejudice, an order of dismissal with prejudice shall be entered, and all Released Claims shall thereby be conclusively settled, compromised, satisfied, and released as to the Released Parties. The Final Approval Order shall provide for and effect the full and final

release, by the Releasing Parties of all Released Claims, consistent with the terms of this Agreement. The relief provided for in this Agreement shall be the sole and exclusive remedy for any and all claims of Settlement Class Members against the Released Parties related to the Released Claims.

**12.2** The Releasing Parties hereby fully release and forever discharge the Released Parties from any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, asserted or unasserted, claims, demands, liabilities, rights, debts, obligations, liens, contracts, agreements, judgments, actions, suits, causes of action, contracts or agreements, extra contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, penalties, fees, attorneys' fees, and/or obligations of any nature whatsoever (including "Unknown Claims" as defined below), whether in law or in equity, accrued or unaccrued, existing now or arising in the future, whether direct, individual, representative, or class, of every nature and description whatsoever, based on any federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States, against the Released Parties, or any of them, relating in any way to any conduct prior to the date of the Settlement and that: a) is or are based on any act, omission, inadequacy, misstatement, representation, harm, matter, cause, or event; b) involves legal claims that have been asserted in the Action or could have been asserted in the Action; or c) involves legal claims about the Products or the advertising, marketing, promotion, labeling, purchase, sale, distribution, design, testing, manufacture, application, use, performance, warranting, packaging, or Labeling of the Products during the Class Period. The Parties acknowledge and agree that personal injury claims are not part of any of the facts alleged by

Class Representatives in this Action and that personal injury claims are not included within the Released Claims.

**12.3** Without limiting the foregoing, the release specifically extends to claims that the Releasing Parties do not know or suspect to exist in their favor at the time that the Settlement, and the release contained herein, becomes effective. This paragraph constitutes a waiver of, without limitation as to any other applicable law, section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

**12.4** The Releasing Parties understand and acknowledge the significance of these waivers of California Civil Code section 1542 and any other applicable federal or state statute, case law, rule, or regulation relating to limitations on releases. In connection with such waivers and relinquishment, the Releasing Parties acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts that they now know or believe to be true with respect to the subject matter of the Settlement, but that it is their intention to release fully, finally and forever all Released Claims with respect to the Released Parties, and in furtherance of such intention, the release of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

**12.5** Each of the Releasing Parties shall forever refrain from instituting, filing, maintaining, prosecuting, or continuing any suit, action, claim, or proceeding against any of the Released Parties in connection with any of the Released Claims (a "Precluded Action"). If any of the Releasing Parties does institute, file, maintain, prosecute, or continue any such Precluded

Action, Plaintiff and Class Counsel shall cooperate with the efforts of any of the Released Persons to obtain dismissal with prejudice. The Releases shall be a complete defense to, and will preclude, any Released Claim in any suit, action, claim, or proceeding.

**12.6** The Final Approval Order shall further provide for and effect the release of all known actions, causes of action, claims, administrative claims, demands, debts, damages, costs, attorney's fees, obligations, judgments, expenses, compensation, or liabilities, in law or in equity, contingent or absolute, that Rust-Oleum now has against Plaintiff, Class Representatives, or Class Counsel by reason of any act, omission, harm, matter, cause, or event whatsoever arising out of the initiation, prosecution, or settlement of the Action, except with respect to any breach of the terms of this Agreement by any of Plaintiff, Class Representatives, or Class Counsel.

**12.7** The Court shall retain jurisdiction over the Parties and the Agreement with respect to the future performance of the terms of the Agreement, and to assure that all payments and other actions required of any of the Parties by the Settlement are properly made or taken.

### **XIII. FINAL JUDGMENT AND SETTLEMENT APPROVAL**

This Agreement is subject to and conditioned upon the issuance by the Court of the Final Approval Order that finally certifies the Settlement Class for the purposes of this Settlement, grants final approval of the Agreement, and provides the relief specified herein, which relief shall be subject to the terms and conditions of the Agreement and the Parties' performance of their continuing rights and obligations hereunder. Court approval of Class Counsel's Fee and Expense Award will not be a condition of the Settlement. If the Court denies, in whole or part, Class Counsel's Application for a Fee and Expense Award, the remainder of the terms of this Agreement shall remain in effect.

#### **XIV. REPRESENTATIONS AND WARRANTIES**

Each Party represents and warrants to, and agrees with, the other Party as follows:

**14.1** Each Party has had the opportunity to receive, and has received, independent legal advice from his or its attorneys regarding the advisability of making the Settlement, the advisability of executing this Agreement, and the legal and income tax consequences of this Agreement, and fully understands and accepts the terms of this Agreement.

**14.2** Rust-Oleum represents and warrants that: (a) it has the requisite corporate power and authority to execute, deliver, and perform the Agreement and to consummate the transactions contemplated hereby; (b) the execution, delivery, and performance of the Agreement and the consummation by it of the actions contemplated herein have been duly authorized by necessary corporate action on the part of Rust-Oleum; and (c) the Agreement has been duly and validly executed and delivered by Rust-Oleum and constitutes its legal, valid, and binding obligation.

**14.3** Each Class Representative represents and warrants that he is entering into the Agreement on behalf of himself individually and as a proposed representative of the Settlement Class Members, of his own free will and without the receipt of any consideration other than what is provided in the Agreement or disclosed to, and authorized by, the Court. Each Class Representative represents and warrants that he has reviewed the terms of the Agreement in consultation with Class Counsel and believes them to be fair and reasonable, and covenants that he will not file an Opt-Out request from the Settlement Class or object to the Agreement.

**14.4** Plaintiff represents and warrants that no portion of any claim, right, demand, action, or cause of action against any of the Released Parties that Plaintiff has or may have arising out of the Action or pertaining to his purchase and/or use of the Product and/or the

design, manufacture, testing, marketing, labeling, packaging or sale of the Product otherwise referred to in this Agreement, and no portion of any recovery or settlement to which Plaintiff may be entitled, has been assigned, transferred, or conveyed by or for Plaintiff in any manner; and no Person other than Plaintiff has any legal or equitable interest in the claims, demands, actions, or causes of action referred to in this Agreement as those of Plaintiff himself.

**14.5** Neither Party relies or has relied on any statement, representation, omission, inducement, or promise of the other party (or any officer, agent, employee, representative, or attorney for any other party) in executing this Agreement, or entering the Settlement provided for herein, except as expressly stated in this Agreement or any other validly executed written agreement.

**XV. NO ADMISSIONS OF FAULT**

The Agreement and every Agreement and term contained in it is conditioned upon final approval of the Court and is made for settlement purposes only. Whether or not consummated, this Agreement shall not be construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission by Plaintiff, Rust-Oleum, any Settlement Class Member or Released Party, of the truth of any fact alleged or the validity of any claim or defense that has been, could have been, or in the future might be asserted in any litigation, or the deficiency of any claim or defense that has been, could have been, or in the future might be asserted in any litigation, or of any liability, fault, wrongdoing or otherwise of such Party.

## **XVI. MISCELLANEOUS PROVISIONS**

### **16.1 Conditional Nature of Settlement and Termination**

Defendant and Plaintiff shall each have the right to terminate the Settlement by providing written notice of their election to do so to the other within thirty (30) days of: (a) the Court's declining to enter the Preliminary Approval Order in substantially the form attached hereto; (b) the Court's refusal to approve this Agreement or any part of it; (c) the Court's declining to enter the Final Approval Order in substantially the form attached hereto; (d) the date upon which the Final Approval Order is modified or reversed in any material respect by the Court of Appeals or the Supreme Court; (e) in the event that the Court enters an order and final judgment in a form other than that provided above ("Alternative Judgment") and neither of the parties hereto elect to terminate this Settlement, the date that such Alternative Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court; (f) more than 1,000 members of the Settlement Class Opt-Out from the Settlement pursuant to Section IX above.

### **16.2 Evidentiary Preclusion**

The Parties agree that, to the fullest extent permitted by law, neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any Released Party or the appropriateness of class certification in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. In addition, any failure of the Court to approve the Settlement and/or any objections or interventions may not be used as evidence in the Action or any other proceeding for any purpose

whatsoever. However, the Released Parties may file the Agreement and/or the Final Approval Order in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

### **16.3 Effect of Non-approval**

In the event that this Agreement is not approved by the Court in substantially its present form, any Objection to the Settlement is sustained by the Court, or the Settlement does not become final for any reason, the terms and provisions of this Agreement shall have no further force and effect with respect to the Parties or the Settlement Class Members, and shall not be used in this Action or in any other action or proceeding for any purpose, and any order or judgment entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*. In such event, this Agreement and all negotiations, proceedings, documents prepared and statements made in connection with this Agreement shall be without prejudice to any Party or Settlement Class Member and shall not be admissible or offered into evidence in any action or proceeding, and shall not be deemed, asserted or construed to be an admission or confession by any Party or any other Person or entity of any fact, matter or proposition of law, and shall not be used or asserted in any other manner or for any purpose, and all Parties and Settlement Class Members shall stand in the same position as if this Agreement and Settlement had not been negotiated, made or submitted to the Court.

### **16.4 Effectiveness, Amendments, and Binding Nature**

This Agreement may be amended only in writing signed by the Parties. Except as otherwise stated above, each Party, including Plaintiff on behalf of himself and the Settlement

Class, expressly accepts and assumes the risk that, if facts or laws pertinent to matters covered by this Agreement are hereafter found to be other than as now believed or assumed by that party to be true or applicable, this Agreement shall nevertheless remain effective.

This Agreement is binding on, and shall inure to the benefit of, the Parties and their respective direct and indirect parent companies, predecessor entities, successor entities, related companies, direct and indirect subsidiaries, holding entities, past and present affiliates, franchisees, distributors, wholesalers, retailers, advertising and production agencies, licensors, and agents, including all current and former officers, directors, managers, members, partners, owners, employees, shareholders, consultants, attorneys, legal representatives, insurers, agents, assigns, or other equity interest holders of any of the foregoing, and their heirs, executors, administrators, and assigns. All Released Parties other than Defendant, which is a Party, are intended to be third-party beneficiaries of this Agreement.

#### **16.5 Public Statements**

None of the Parties will release any public statements regarding this Agreement or its terms, other than publication of the Class Notice. Notwithstanding the foregoing, the Parties may make such public disclosures about the Action or the Settlement that fairly and accurately describe the Settlement as any applicable law or regulation may require. Plaintiff, Class Counsel, and the Settlement Administrator shall not make any public statements nor disclose to anyone unless requested or authorized by the Court: the total number of claims made; the total number of Units claimed; or, the total payout of Claims in dollars or any other measure.

#### **16.6 Cooperation in Implementation**

Defendant, Plaintiff, and their respective counsel agree to prepare and execute any additional documents that may reasonably be necessary to effectuate the terms of this Agreement.

#### **16.7 Governing Law**

This Agreement shall be construed and governed in accordance with the laws of the State of Missouri, without regard to Missouri's conflict-of-laws principles.

#### **16.8 Stay Pending Court Approval**

Class Counsel and Rust-Oleum's Counsel agree to stay all proceedings, other than those proceedings necessary to carry out or enforce the terms and conditions of the Settlement, until the Effective Date of the Settlement has occurred. If, despite the Parties' best efforts, this Agreement should fail to become effective, the Parties will return to their prior positions in the Action, in accordance with Section III of this Agreement.

The Parties also agree to use their best efforts to seek the stay and dismissal of, and to oppose entry of any interim or final relief in favor of any Settlement Class Member in, any other proceedings against any of the Released Parties which challenges the Settlement or otherwise asserts or involves, directly or indirectly, a Released Claim.

#### **16.9 Signatures**

This Agreement may be executed in counterparts, and, when so executed, shall constitute a binding original. Each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures or signatures sent by email shall be deemed original signatures and shall be binding.

#### **16.10 Notices**

Whenever this Agreement requires or contemplates that one Party shall or may give notice to the other, notice shall be provided in writing by first class US Mail and email to:

If to Plaintiff or Class Counsel:

David Steelman  
STEELMAN, GAUNT & HORSEFIELD  
901 Pine, #110  
P.O. Box 1257  
Rolla, MO 65401-1257  
dstelman@steelmanandgaunt.com

If to Rust-Oleum or Rust-Oleum's counsel:

Charles W. Hatfield  
Jeremy A. Root  
STINSON LEONARD STREET, LLP  
230 West McCarty Street  
Jefferson City, MO 65101  
chuck.hatfield@stinson.com  
jeremy.root@stinson.com

and

Ina B. Scher  
Daniel A. Dingerson  
DAVIS & GILBERT LLP  
1740 Broadway  
New York, NY 10019  
ischer@dglaw.com  
ddingerson@dglaw.com

#### **16.11 Good Faith**

The Parties agree that they will act in good faith and will not engage in any conduct that will or may frustrate the purpose of this Agreement. The Parties further agree, subject to Court approval as needed, to reasonable extensions of time to carry out any of the provisions of the Agreement.

#### **16.12 Protective Orders**

All orders, settlement agreements and designations regarding the confidentiality of

documents and information ("Protective Orders") remain in effect, and all Parties and counsel remain bound to comply with the Protective Orders, including the provisions to certify the destruction of "Confidential" documents.

#### **16.13 Binding on Successors**

The Agreement shall be binding upon, and inure to the benefit of, the heirs, and Released Parties.

#### **16.14 Arms-Length Negotiations**

The determination of the terms and conditions contained herein and the drafting of the provisions of this Agreement has been by mutual understanding after negotiation, with consideration by, and participation of, the Parties hereto and their counsel. This Agreement shall not be construed against any Party on the basis that the Party was the drafter or participated in the drafting. Any statute or rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the implementation of this Agreement and the Parties agree that the drafting of this Agreement has been a mutual undertaking.

#### **16.15 Waiver**

The waiver by one Party of any provision or breach of the Agreement shall not be deemed a waiver of any other provision or breach of the Agreement.

#### **16.16 Exhibits**

All Exhibits to this Agreement are material and integral parts hereof, and are incorporated by reference as if fully rewritten herein.

#### **16.17 Taxes**

No opinion concerning the tax consequences of the Agreement to any Settlement Class Member is given or will be given by Rust-Oleum, Rust-Oleum's counsel, or Class Counsel; nor

is any Party or their counsel providing any representation or guarantee respecting the tax consequences of the Agreement as to any Settlement Class Member. Each Settlement Class Member is responsible for his/her tax reporting and other obligations respecting the Agreement, if any.

**16.18 Retain Jurisdiction**

The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the agreements embodied in this Agreement.

**16.19 No Attorneys' Fees**

Notwithstanding any of the provisions herein, if any party finds it necessary to institute legal proceedings to enforce another party's obligation under this Agreement, each party shall be responsible for its attorneys' fees and costs.

**16.20 Support From The Parties**

After a full investigation, discovery and arms-length negotiations, the Parties and their counsel agree that they: (a) have independently determined that this Settlement is in the best interest of the Settlement Class; (b) shall support motions for entry of the Preliminary Approval Order and Final Approval Order; and (c) will not encourage any Persons to Opt-Out or file Objections to the Settlement or this Agreement.


**16.21 Variance**

In the event of any variance between the terms of this Agreement and any of the Exhibits hereto, the terms of this Agreement shall control and supersede the Exhibit(s).

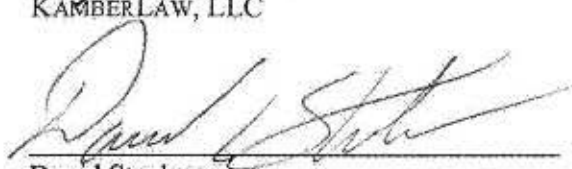
[Intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed  
by their duly authorized representatives.

Dated this 26 day of May, 2017.

  
\_\_\_\_\_  
Scott A. Kamber  
KAMBER LAW, LLC

\_\_\_\_\_  
Ina B. Scher  
DAVIS & GILBERT LLP


  
\_\_\_\_\_  
David Steelman  
STEELMAN, GAUNT & HORSEFIELD

\_\_\_\_\_  
Rust-Oleum Corporation

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

Title: \_\_\_\_\_

*On Behalf of Defendant, Rust-Oleum  
Corporation*

  
\_\_\_\_\_  
Daryl White, Jr.  
*On Behalf of Plaintiff and the Proposed  
Settlement Class*

## IMPORTANT LEGAL MATERIALS

*Daryl White, Jr. v. Rust-Oleum Corp.*,  
Case No. 16AC-CC00533,  
Cole County Circuit Court, Missouri

For use by purchasers of RUST-OLEUM Painter's Touch Ultra Cover 2X spray paint, RUST-OLEUM Painter's Touch 2X Ultra Cover spray paint, RUST-OLEUM PaintPlus Ultra Cover 2X spray paint, RUST-OLEUM American Accents Ultra Cover 2X spray paint, and RUST-OLEUM American Accents 2X Ultra Cover spray paint between December 12, 2011 and May 30, 2017

### CLAIM FORM

#### GENERAL INSTRUCTIONS

**Settlement Class Members who seek payment from the Settlement must complete and return this Claim Form.** Completed Claim Forms must be mailed to the Settlement Administrator at Heffler Claims Group, P.O. Box 58788, Philadelphia, PA 19102-8788 or can be submitted online via the Settlement Website, [www.spraypaintsettlement.com](http://www.spraypaintsettlement.com). **Claim Forms submitted via mail must be POSTMARKED BY OCTOBER 16, 2017. Claim Forms submitted online must be submitted NO LATER THAN 11:59 PM, CENTRAL TIME ON OCTOBER 16, 2017.**

Before you complete and submit this Claim Form by mail or online, you should read and be familiar with the Notice of Proposed Class Action Settlement (the "Notice") available at [www.spraypaintsettlement.com](http://www.spraypaintsettlement.com). Defined terms (with initial capitals) used in these General Instructions have the same meaning as set forth in the Settlement Agreement. By submitting this Claim Form, you acknowledge that you have read and understand the Notice, and you agree to the Release(s) included as a material term of the Settlement Agreement.

If you fail to submit a timely Claim Form, your Claim may be rejected and you may be precluded from any recovery from the Settlement fund. If you are a member of the Settlement Class and you do not timely and validly request to Opt-Out from the Settlement Class, you will be bound by any judgment entered by the Court approving the Settlement regardless of whether you submit a Claim Form. You can elect one Benefit per Household. To receive the most current information, receive updates, and to file your Claim please visit the Settlement Website at [www.spraypaintsettlement.com](http://www.spraypaintsettlement.com).

**Claimant Information**

Claimant Name: \_\_\_\_\_  
First Name MI Last Name

Street Address: \_\_\_\_\_

Street Address2: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Daytime Phone Number: ( \_\_\_\_\_ ) \_\_\_\_\_

Evening Phone Number: ( \_\_\_\_\_ ) \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Purchaser ID: \_\_\_\_\_

**Please complete only one of the Tier options below. Completing more than one Tier option below will invalidate your claim.**

### For use with Tier 1 Claims

Tier 1 Benefit is available for Settlement Class Members who purchased Products during the Class Period and do not have valid Proof of Purchase. You may receive up to a maximum of \$1.00 per can of spray paint, up to 3 cans, to a maximum of \$3.00 per Household, or less depending on a number of factors.

#### **Purchase Information**

1. Please identify the brand name of the Product(s) you purchased \_\_\_\_\_
2. How many cans of spray paint did you purchase? \_\_\_\_\_
3. Please identify the approximate date(s) of purchase(s) \_\_\_\_\_
4. Please identify at which store(s) you purchased the Product:

Costco:	YES	<input type="checkbox"/>
Home Depot:	YES	<input type="checkbox"/>
Lowes:	YES	<input type="checkbox"/>
True Value Hardware:	YES	<input type="checkbox"/>
Walmart:	YES	<input type="checkbox"/>
All of the above:	YES	<input type="checkbox"/>
None of the above:	YES	<input type="checkbox"/>
Other:		_____

## For use with Tier 2 Claims

Tier 2 Benefit is available for Settlement Class Members who purchased the Products during the Class Period and do not have valid Proof of Purchase but are willing to provide additional information. You may receive \$1.50 per can of spray paint, up to 4 cans, to a maximum of \$6.00 per Household, or less depending on a number of factors.

### **Purchase Information**

1. Please provide the following information:

Color	Can Size	Approximate Purchase Dates	Number of Cans Purchased
	OZ.		
	OZ.		
	OZ.		
	OZ.		
	OZ.		
	OZ.		

2. Please identify at which store(s) you purchased the Product:

Costco:	YES	<input type="checkbox"/>
Home Depot:	YES	<input type="checkbox"/>
Lowes:	YES	<input type="checkbox"/>
True Value Hardware:	YES	<input type="checkbox"/>
Walmart:	YES	<input type="checkbox"/>
All of the above:	YES	<input type="checkbox"/>
None of the above:	YES	<input type="checkbox"/>
Other:		<hr/>

3. Please identify the reason(s) you purchased the Product:

Advertising/Marketing Claims:	YES	<input type="checkbox"/>
Coupon/Discount Offer:	YES	<input type="checkbox"/>
Effectiveness:	YES	<input type="checkbox"/>
Price:	YES	<input type="checkbox"/>
Quality:	YES	<input type="checkbox"/>
All of the above:	YES	<input type="checkbox"/>
None of the above:	YES	<input type="checkbox"/>
Other:		<hr/>

### **For use with Tier 3 Claims**

Tier 3 Benefit is available for Settlement Class Members who purchased the Products during the Class Period and who elect to provide valid Proof of Purchase showing, at a minimum, the purchase of a Product, the purchase price, purchase date, and place of purchase. The actual Benefit will not exceed \$20 per Household and may vary depending upon a number of factors. Proof of Purchase must be attached and submitted with this Claim.

#### **Purchase Information**

1. Attach Proof of Purchase.

### Submission to Jurisdiction of the Court

By signing below, you are submitting to the jurisdiction of Cole County, Missouri.

### Certification under Penalty of Perjury

I hereby certify under penalty of perjury that:

1. I have read the Settlement Agreement and agree to its terms, including the Release(s);
2. The information provided in this Claim Form is accurate and complete to the best of my knowledge, information and belief;
3. The additional information provided to the Settlement Administrator to support my Claim is an original or a complete and true copy of the original document;
4. I am a member of the Settlement Class and did not request to Opt-Out from the Settlement Class;
5. I have not entered into a Settlement for any of the Claims set forth in this Claim Form;
6. I am neither (a) a Person who purchased or acquired the Product for resale; (b) an employee, principal, legal representative, successor, or and assign of Defendant or its affiliated entities; (c) a government entity; nor (d) a judge to whom this Action is assigned, or any member of the judge's immediate family;
7. I have not submitted any other Claim for the same purchases and have not authorized any other Person or entity to do so, and know of no other Person or entity having done so on my behalf;
8. No other Person in my Household has submitted a Claim under this Settlement;
9. I will timely provide any additional information requested by the Settlement Administrator to validate my Claim;
10. I understand that by submitting this Claim Form, I am deemed to have given a complete Release of all settled claims; and
11. I understand that Claims will be audited for veracity, accuracy and fraud. Illegible Claims Forms can be rejected. If a Claim Form is determined not to be a Valid Claim, it will be rejected.

Signature: \_\_\_\_\_ Dated: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**If you purchased RUST-OLEUM 2X spray paint Products, a class action Settlement may affect your rights.**

A proposed class action Settlement has been reached concerning Rust-Oleum marketing practices regarding certain Products. The case, *White v. Rust-Oleum Corp.*, Case No. 16AC-CC00533, is pending in Cole County Circuit Court, Missouri.

**What is this about?**

The lawsuit claims that certain Rust-Oleum 2X spray paint Products were improperly labeled as providing twice the coverage of competing brands. As part of the Settlement, Defendant Rust-Oleum Corp. has agreed to stop this marketing practice and provide payments for customers. Rust-Oleum denies any wrongdoing.

**Who is a Settlement Class Member?**

You may be an eligible Settlement Class Member if you purchased (in the U.S., for personal use and not for resale) between December 12, 2011 and May 30, 2017, any Rust-Oleum 2X spray paint Products, including: Painter's Touch Ultra Cover 2X spray paint, Painter's Touch 2X Ultra Cover spray paint, PaintPlus Ultra Cover 2X spray paint, American Accents Ultra Cover 2X spray paint, and American Accents 2X Ultra Cover spray paint. A complete list of Products is found on the website below.

**What are the Benefits?**

Settlement Class Members without Proof of Purchase may elect a Benefit of \$1.00 per Unit purchased, up to \$3.00 per Household for Tier 1 Claims; or \$1.50 per Unit, up to \$6.00 per Household for Tier 2 Claims, if willing to provide additional information. Proof of Purchase is required to obtain a refund of more than \$6.00 per Household. Payments may be less depending on a number of factors. There is also injunctive relief. Visit the website for details.

**What are my rights?**

You have the right to file a Claim, object, Opt-Out, or do nothing. To receive a payment, you must submit a Claim online or by mail. Your Claim must be submitted online or postmarked by October 16, 2017. Or, you may Opt-Out. You will not receive a payment, but you will keep your right to pursue a separate lawsuit against the Defendant about these claims. Your request to Opt-Out must be postmarked by August 28, 2017. Finally, you may file an Objection to the Settlement. You must submit an Objection in writing. Complete information and instructions are available on the Settlement Website. Your Objection must be received by August 28, 2017. If you do nothing, you will receive no payment and have no right to sue later for the claims released by the Settlement.



The Court will hold a Fairness Hearing in the Circuit Court of Cole County, Missouri, 301 E High Street, Jefferson City, MO 65101, in the courtroom of the Honorable Jon E. Bectem, Division One, on September 12, 2017, at 9:00 a.m., to decide whether to approve the Settlement and to award Attorneys' Fees and Expenses of \$1,740,000, and up to \$5,000 as a Class Representative Service Award to each of two Class Representatives. The Attorney Fee and Expense Award and the Class Representative Service Award are to be paid by the Defendant and do not reduce the recovery by the class in any way. All briefs and materials filed in support of the Settlement and the Application for Attorney Fee and Expense Award will be made available on the Settlement Website. You may attend this hearing, but you do not have to.




Payment will be made to the Settlement Class only if the Court approves the Settlement and all appeals are resolved. Please be patient. If the Settlement does not become effective, the Action will continue. You still have the right to make a Claim or file an Objection now and Opt-Out from the Action later if the Settlement does not become effective.


For more information, please visit [www.SprayPaintSettlement.com](http://www.SprayPaintSettlement.com), or contact the Settlement Administrator at (855) 486-7348 or by writing to Heffler Claims Group, P.O. Box 58788, Philadelphia, PA 19102-8788, or contact Class Counsel at STEELMAN, GAUNT & HORSEFIELD, 901 Pine Street, Suite 110, Rolla, MO 65401.

Target	Reach	Frequency
Rust-Oleum Users	71%	2.6x

Program Parameters
<i>Plan Includes Expert Opinion</i>
Geography: Nationwide
Notice Program Length: 30 Days with an addition 6-8 week lead time. Extended lead time is due to magazine production schedules
Estimated Word Count: 600 Words

Print				
Magazines	Circulation	Frequency	Unit Size	Insertions
 <b>NATIONAL GEOGRAPHIC</b>	3,147,721	Monthly	1/2 Page	1
 <b>Good Housekeeping</b>	4,300,000	Monthly	1/2 Page	1

Internet		
Site/Network	Media Description	Targeting
 <b>CONVERSANT</b>	Conversant is one of the largest digital advertising platforms in the U.S. They operate the 2nd largest Display Network & Mobile Network. They are a leader in data-driven and cross device targeting.	Targeting home renovators and DIYers. Retargeting to users who visit the settlement site
 <b>Google</b> Display Network	<b>Display &amp; Keyword Search</b> The Display network spans over two million websites that reach over 90% of people on the Internet. Search ads appear on the search result pages of keyword/phrase searches	Targeting keywords and topics including: Rust-Oleum, Home Improvement & Maintenance, DIY Painting Ideas, DIY Spray Paint, Art DIY, DIY Painting, among others
Social Media		
Media Description		
 <b>facebook</b>	Facebook is a free, global social networking website that helps people communicate with friends, family and coworkers.	People who shop at home improvement stores and Homeowners with additional targeting to people who have liked or expressed an interest in Rust-Oleum pages and DIY focused pages/groups

Outreach:	
Press Release	
 <b>PR Newswire</b> <small>Leading Business Media</small>	A press release of up to 700 words over PR Newswire's US1 Newswire

Attention purchasers of RUST-OLEUM Painter's Touch Ultra Cover 2X spray paint, RUST-OLEUM Painter's Touch 2X Ultra Cover spray paint, RUST-OLEUM PaintPlus Ultra Cover 2X spray paint, RUST-OLEUM American Accents Ultra Cover 2X spray paint, and RUST-OLEUM American Accents 2X Ultra Cover spray paint between December 12, 2011 and May 30, 2017

This notice may affect your rights. Please read it carefully.

*A court authorized this notice. This is not a solicitation from a lawyer.*

- The notice concerns a case called *Daryl White, Jr. v. Rust-Oleum Corp.*, Case No. 16AC-CC00533, pending in Cole County Circuit Court, Missouri. Defined terms (with initial capitals) used herein have the same meaning as set forth in the Settlement Agreement.
- This class action Settlement will resolve a lawsuit against Rust-Oleum Corporation ("Rust-Oleum" or "Defendant"). It affects all natural Persons who, between December 12, 2011 and May 30, 2017, purchased, in the United States, for personal use and not resale, any Rust-Oleum 2X spray paint Products, including but not limited to: Rust-Oleum Painter's Touch Ultra Cover 2X spray paint, Rust-Oleum Painter's Touch 2X Ultra Cover spray paint, Rust-Oleum PaintPlus Ultra Cover 2X spray paint, Rust-Oleum American Accents Ultra Cover 2X spray paint, and Rust-Oleum American Accents 2X Ultra Cover spray paint.
- The lawsuit contends that the Rust-Oleum 2X spray paint Products were improperly labeled as providing twice the coverage of competing brands. The lawsuit seeks a court order to preclude such marketing and to refund customers a portion of the purchase price.
- Rust-Oleum denies any wrongdoing. It contends that the Products were truthfully marketed and labeled.
- To settle the case, Settlement Class Members, who do not have Proof of Purchase, may elect a Benefit of \$1.00 per Unit purchased up to \$3 per Household for Tier 1 Claims or \$1.50 per Unit purchased up to \$6.00 per Household for Tier 2 Claims if willing to provide additional information. Proof of Purchase is required to obtain a refund of more than \$6.00 per Household. Settlement Class Members may receive less money depending on a number of factors.
- The lawyers who brought the lawsuit will ask the Court for \$1,740,000 to be paid by Rust-Oleum as Attorneys' Fees and Expenses for investigating the facts, litigating the case, and negotiating the Settlement. They will additionally ask for \$5,000 for the Plaintiff who brought this lawsuit as well as for an additional Class Representative for an aggregate of \$10,000.
- Your legal rights are affected whether you act, or don't act. Read this notice carefully.
- This notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at [www.spraypaintsettlement.com](http://www.spraypaintsettlement.com), contact the Settlement Administrator at Heffler Claims Group, P.O. Box 58788, Philadelphia, PA 19102-8788.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

YOUR RIGHTS AND OPTIONS IN THIS SETTLEMENT		DEADLINE
<b>SUBMIT A CLAIM FORM</b>	The only way to receive payment, i.e., refunds for your purchases.	October 16, 2017, by 11:59 p.m.
<b>OPT-OUT</b>	Get out of the lawsuit and the Settlement. This is the only option that allows you to ever bring or join another lawsuit against Rust-Oleum that raises the same legal claims released by this Settlement. You will receive no payment.	August 28, 2017
<b>OBJECT</b>	Write to the Court about why you don't like the Settlement, the amount of Attorneys' Fees, and Expenses or the payment to the Plaintiff.	August 28, 2017
<b>GO TO A HEARING</b>	Speak in Court about the Settlement. (If you object to any aspect of the Settlement, you <b>must</b> submit a written Objection by the Objection Deadline noted above.)	September 12, 2017, at 9:00 a.m.
<b>DO NOTHING</b>	You will receive no payment and be precluded from suing for the claims released by the Settlement.	

- These rights and options—and the deadlines to exercise them—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement. If there are appeals, payment will not be made until the appeals are resolved and the Settlement becomes effective. Please be patient.
- **Fairness Hearing**  
On September 12, 2017, at 9:00 a.m., the Court will hold a hearing to determine (1) whether the proposed Settlement is fair, reasonable, adequate, and should receive final approval; (2) whether the Application for Attorneys' Fees and Expenses brought by the Class Counsel should be granted; and (3) whether the Application for a Class Representative Service Award to the Plaintiff and other Class Representatives should be granted. The hearing will be held in the Circuit Court of Cole County, Missouri, 301 E High Street, Jefferson City, MO 65101. The hearing will be held in the courtroom of the Honorable Jon E. Beetem, which is Division One (I). This hearing date may change without further notice to you. Consult the Settlement Website at [www.spraypaintsettlement.com](http://www.spraypaintsettlement.com) for updated information on the hearing date and time.

#### **Important Dates**

- \_\_\_\_\_ Claim Form Deadline
- \_\_\_\_\_ Objection Deadline
- \_\_\_\_\_ Exclusion Deadline
- \_\_\_\_\_ Fairness Hearing

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### **How Do I Know If I Am Affected By The Settlement?**

This case involves Rust-Oleum 2X spray paint Products purchased in the United States between December 12, 2011 and May 30, 2017 that were labeled that they provide twice the coverage of competing brands.

For purposes of Settlement only, the Court has conditionally certified a Settlement Class. The Settlement is limited to Rust-Oleum 2X spray paint Products, including: Rust-Oleum Painter's Touch Ultra Cover 2X spray paint, Rust-Oleum Painter's Touch 2X Ultra Cover spray paint, Rust-Oleum PaintPlus Ultra Cover 2X spray paint, Rust-Oleum American Accents Ultra Cover 2X spray paint, and Rust-Oleum American Accents 2X Ultra Cover spray paint. Subject to certain exclusions, the Settlement Class includes all natural Persons who, between December 12, 2011 and May 30, 2017, purchased, in the United States, any Products for personal use, not resale.

If the Settlement does not become effective (for example, because it is not finally approved, or the approval is reversed on appeal), then this Action will continue.

### **What Is The Action About?**

An Action was brought against Rust-Oleum. The Action claims that Rust-Oleum improperly marketed its 2X spray paint Products as providing twice the coverage of competing brands. Plaintiff brought various claims challenging the alleged misrepresentations on behalf of himself and other consumers who bought the 2X spray paint Products.

Rust-Oleum denies that there is any factual or legal basis for Plaintiff's allegations or the claims in the Action. Rust-Oleum contends that its 2X spray paint Product Labeling is accurate, denies making any misrepresentations and, therefore, denies any liability. It also denies that Plaintiff or any other members of the Settlement Class have suffered injury or are entitled to monetary or other relief. Rust-Oleum also denies that this case can be certified as a class action, except for purposes of Settlement.

The Court has not determined whether Plaintiff or Defendant is correct.

### **What Does Plaintiff Seek To Recover In The Lawsuit?**

While Defendant denies that there is any legal entitlement to a refund or any other monetary relief, Plaintiff's complaint contends that by marketing the 2X spray paint Products as providing twice the coverage of competing brands, Defendant caused people to purchase the 2X spray paint Products who would not otherwise have done so. The complaint seeks to recover, on behalf of a class of all purchasers (other than re-sellers, retailers, or distributors), damages that are attributable to the alleged misrepresentations.

### **Why Is This Case Being Settled?**

This Action was filed in December 2016. Since the filing of the litigation, Class Counsel representing the Plaintiff has determined that there are significant risks of continuing the litigation. In particular, there may be substantial difficulties establishing that: (1) Defendant's marketing and advertising of the 2X spray paint Products were false or likely to deceive or confuse reasonable Persons; (2) the marketing representations were material to reasonable consumers; and/or (3) damages or restitution should be awarded or, if so, that any such award should be more than nominal. In particular, it may be difficult to establish that the volume of sales would have differed had the marketing and labeling been different.

The Parties have engaged in settlement discussions and, after taking into account the risks and costs of further litigation, Plaintiff and Class Counsel believe that the terms and conditions of the Settlement are fair, reasonable, adequate, and equitable, and that the Settlement is in the best interest of the Settlement Class Members.

### **What Is The Settlement?**

During the pendency of the Action and, in part as a result of it, Rust-Oleum made changes to the Labeling of its 2X spray paint Products. Rust-Oleum has agreed not to make certain marketing claims that are the subject of the Action.

In addition, as part of the Settlement, Rust-Oleum will provide a Benefit to Settlement Class Members and payments to Class Counsel and the Class Representatives, as described in the next sections.

#### **What Can I Get In The Settlement?**

Settlement Class Members may elect either Tier 1, Tier 2, or Tier 3 Benefit for Products purchased between December 12, 2011 and May 30, 2017, regardless of the price you paid, subject to further adjustments or reductions:

(a) Tier 1. Settlement Class Members who elect to fill out the Claim Form section for Tier 1 and who do not have valid Proof of Purchase may recover up to a maximum of \$1.00 per Unit for up to a maximum of three Units (\$3.00 per Household); or

(b) Tier 2. Settlement Class Members who elect fill out the Claim Form for Tier 2 who are willing to provide additional information and who do not have valid Proof of Purchase may recover \$1.50 per Unit up to a maximum of four Units (\$6.00 per Household); or

(c) Tier 3. Settlement Class Members who fill out the Claim Form and who provide valid Proof of Purchase may recover the amount for which a valid Proof of Purchase has been provided up to a maximum of \$20.00 per Household.

(d) Notwithstanding anything to the contrary, the Settlement Administrator may make further adjustments to the Benefit based upon responses on the Claim Form.

#### **How Do I Make A Claim?**

To make a Claim, you must fill out the Claim Form available on the Settlement Website, [www.spraypaintsettlement.com](http://www.spraypaintsettlement.com). You can submit the Claim Form online, or you can print it and

mail it to the Settlement Administrator at: Heffler Claims Group, P.O. Box 58788, Philadelphia, PA 19102-8788. Claim Forms submitted via mail must be *postmarked* by October 16, 2017. Claim Forms filed online must be submitted by 11:59 p.m. Central Time on October 16, 2017. Benefit payments will be made if the Court gives final approval to the proposed Settlement and after the final approval is no longer subject to appeal. Please be patient as this may take months, or even years in the event there is an appeal.

A Final Approval Hearing is scheduled for September 12, 2017, at 9:00 a.m. If the Court approves the Settlement and there are no appeals, the cash will be distributed approximately 60 days after the Claims Period is completed and Settlement is no longer subject to appeal or review. If the Court does not approve the Settlement, or if the Settlement is overturned on appeal, no Benefit payments will be made.

#### **What Do Plaintiff And His Lawyers Get?**

To date, Class Counsel has not been compensated for any of its work on this case. Class Counsel may apply to the Court to award it \$1,740,000 from Rust-Oleum to pay Attorneys' Fees and Expenses.

In addition, the Class Representatives in this case may apply to the Court for a Class Representative Service Award up to \$5,000 each, with a maximum of \$10,000 in the aggregate. This payment is designed to compensate the Class Representatives for the time, effort, and risks they undertook in pursuing this litigation and for executing a broader release of claims than other Settlement Class Members.

Plaintiff and Class Counsel will file a motion with the Court on or before September 6, 2017 in support of their Applications for Attorneys' Fees and Expenses and payment to the Class Representatives. A copy of that motion will be available on the Settlement Website. The Court will determine the amount of the Fee and Expense Award and the Class Representative Service Award.

### **What Claims Are Released By The Settlement?**

If you are a Class Member and you do not Opt-Out from the Settlement, you will be legally bound by all orders and judgment of the Court and to the Releases of the claims in a stipulation of Settlement. This means that in exchange for being a Settlement Class Member and being eligible for the cash Benefits of the Settlement, you will not be able to sue, continue to sue, or be part of any other lawsuit against Rust-Oleum and/or any of the Released Parties that involves the same legal claims as those resolved through this Settlement.

You will not be responsible for any out-of-pocket costs or attorneys' fees concerning this case if you stay in the class.

Staying in the class also means that you agree to the following Releases of claims, which describe exactly the legal claims that you give up:

1. Upon both the entry of the Final Approval Order by the Court, and the passing of the Effective Date, and except as to such rights or claims created by the Settlement, Class Representatives and each Settlement Class Member, on their own behalf and on behalf of any Person claiming by or through him/her/it, including any Person claiming to be his/her/its spouse, parent, child, heir, guardian, associate, co-owner, attorney, legal representative, agent, insurer, administrator, devisee, predecessor, successor, assignee, equity interest holders or representatives of any kind, shareholder, partner, director, employee or affiliate, and their heirs, executors, administrators, and assigns shall be deemed to have, and by operation of the judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties.
2. In connection with the Released Claims, the release specifically extends to claims that Class Representatives and Settlement Class Members do not know or expect to exist in their favor as of May 30, 2017 and each Class Representative and Settlement Class Member shall be deemed to have forever waived any and all provisions, rights, and Benefits conferred by § 1542 of the California Civil Code and any statute, rule, and legal

doctrine similar, comparable, or equivalent to California Civil Code § 1542, which provides as follows:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

3. The final judgment shall further provide for and effect the release of all known actions, causes of action, claims, administrative claims, demands, debts, damages, costs, attorney's fees, obligations, judgments, expenses, compensation, or liabilities, in law or in equity, contingent or absolute, that Rust-Oleum now has against Plaintiff, Class Representatives, or Class Counsel by reason of any act, omission, harm, matter, cause, or event whatsoever arising out of the initiation, prosecution, or Settlement of the Action, except with respect to any breach of the terms of the Agreement by any of Plaintiff, Class Representatives, or Class Counsel.
4. "Released Claims" means any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, asserted or unasserted, claims, demands, liabilities, rights, debts, obligations, liens, contracts, agreements, judgments, actions, suits, causes of action, contracts or agreements, extra contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, penalties, fees, attorneys' fees, and/or obligations of any nature whatsoever (including "Unknown Claims" as defined below), whether in law or in equity, accrued or unaccrued, existing now or arising in the future, whether direct, individual, representative, or class, of every nature and description whatsoever, based on any federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States, against the Released Parties, or any of them, relating in any way to any conduct prior to the date of the Settlement and that: a) is or are based on any act, omission, inadequacy, misstatement, representation, harm, matter, cause, or event; b) involves legal claims that have been asserted in the Action or could have been asserted in

the Action; or c) involves legal claims about the Products or the advertising, marketing, promotion, labeling, purchase, sale, distribution, design, testing, manufacture, application, use, performance, warranting, packaging, or Labeling of the Products during the Class Period. The Parties acknowledge and agree that personal injury claims are not part of any of the facts alleged by Class Representatives in this Action and that personal injury claims are not included within the Released Claims. Nothing herein is intended to release any claims that any governmental agency or governmental actor has against the Defendant.

5. "Released Parties" means Rust-Oleum and its direct and indirect parent companies, predecessor entities, successor entities, related companies, direct and indirect subsidiaries, holding entities, past and present affiliates, franchisees, distributors, wholesalers, retailers, advertising and production agencies, licensors, and agents, including all current and former officers, directors, managers, members, partners, owners, employees, shareholders, consultants, attorneys, legal representatives, insurers, agents, assigns, or other equity interest holders of any of the foregoing, and their heirs, executors, administrators, and assigns. For the avoidance of doubt, Released Parties shall include all retailers, distributors, sellers and resellers of Products.

#### **How Do I Exclude Myself From The Settlement?**

You can Opt-Out from the Settlement Class and Action if you wish to retain the right to sue Rust-Oleum separately for the Released Claims resolved by the Settlement. If you Opt-Out, you cannot file a Claim or file an Objection to the Settlement.

To Opt-Out, you must mail your request to Opt-Out from the Settlement to the Settlement Administrator at Heffler Claims Group, P.O. Box 58788, Philadelphia, PA 191020-8788. The Opt-Out request must contain your name, address, the words "I wish to be excluded from the *White v. Rust-Oleum* Class Action," and your signature. Opt-Out requests must be submitted via mail, *postmarked by August 28, 2017*.

### How Do I Object To The Settlement?

You can ask the Court to deny approval of the Settlement by timely submitting an Objection. You cannot ask the Court to order a larger Settlement; the Court can only approve or deny the Settlement. If the Court denies approval to the entire Settlement, no Settlement payments will be sent out, and the lawsuit will continue.

You can also ask the Court to disapprove the requested payments to the Class Representatives and Class Counsel. If those payments are disapproved, no additional money will be paid to the Settlement Class. Instead, the funds earmarked for Class Representatives and Class Counsel will be retained by Rust-Oleum.

You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. If you want to raise an Objection to the Settlement at the Final Approval Hearing, you must first submit that Objection in writing, by the Objection Deadline set forth above.

Any Objection must include the case name and number *White v. Rust-Oleum Corp.*, Case No. 16AC-CC00533 (Cole Circuit Court, MO.); your name, address, and telephone number; the name and address of the lawyer(s), if any, who are representing you in making the Objection or who may be entitled to compensation in connection with your Objection; documents or testimony sufficient to establish that you are a member of the Settlement Class; a detailed statement of your Objection(s), including the grounds for those Objection(s); a statement as to whether you are requesting the opportunity to appear and be heard at the Final Approval Hearing; the identity of all counsel (if any) who will appear on your behalf at the Final Approval Hearing and all Persons (if any) who will be called to testify in support of your Objection; copies of any papers, briefs, or other documents upon which your objection is based; a detailed list of any other Objections you or your counsel have submitted to any class action in any state or federal court in the United States in the previous five years (or affirmatively stating that no such prior objection has been made); and your signature as objector, in addition to the signature of your attorney, if an attorney is representing you with the Objection. Failure to include this

information and documentation may be grounds for overruling and rejecting your Objection.

All the information listed above must be delivered to the Clerk of the Court by mail, express mail, or personal delivery such that the objection is *received* by the Clerk of the Court (not just postmarked or sent) on or before August 28, 2017. Additionally, a copy of the Objection must also be provided to the Settlement Administrator, Class Counsel, and Defendant's counsel.

If you object to the Settlement but still want to submit a Claim in the event the Court approves the Settlement, you must still submit a timely Claim according to the instructions described above.

By filing an Objection, you are consenting to the jurisdiction of the Court, and to produce documents and provide testimony prior to the Final Approval Hearing. You **must** also send a copy of your objection to both Class Counsel and Rust-Oleum's counsel at:

Counsel for Class:

David Steelman  
**Steelman, Gaunt & Horsefield**  
901 Pine Street, Suite 110  
Rolla, MO 65401

Counsel for Defendant:

Charles W. Hatfield  
**Stinson Leonard Street LLP**  
230 W. McCarty Street  
Jefferson City, MO 65101

And

Ina Scher  
Daniel A. Dingerson  
**Davis & Gilbert LLP**  
1740 Broadway  
New York, NY 10019

**When Will The Court Decide If The Settlement Is Approved?**

The Court will hold a hearing on September 12, 2017, at 9:00 a.m. to consider whether to approve the Settlement. The hearing will be held in the Circuit Court of Cole County, Missouri, 301 E High Street, Jefferson City, MO 65101 in the courtroom of the Honorable Jon E. Bectem,

Division One (1). The hearing is open to the public. This hearing date may change without further notice to you. Consult the Settlement Website at [www.spraypaintsettlement.com](http://www.spraypaintsettlement.com) for updated information on the hearing date and time.

#### **How Do I Get More Information?**

You can inspect many of the court documents connected with this case on the Settlement Website.

You can also obtain additional information by contacting Class Counsel at STEELMAN, GAUNT & HORSEFIELD, 901 Pine Street, Suite 110, Rolla, MO 65401 or KAMBERLAW, LLC, 142 W. 57th St., 11th floor, New York, NY 10019.

### **Exhibit C – List of Products**

All cans of spray paint (all colors and finishes) with the following Rust-Oleum brand names are included as “Products” in the Settlement:

1. Painter's Touch Ultra Cover 2X
2. American Accents Ultra Cover 2X
3. PaintPlus Ultra Cover 2X
4. Painter's Touch 2X Ultra Cover
5. American Accents 2X Ultra Cover

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

DARYL WHITE, JR.,	)	
Individually and on behalf of all	)	
others similarly situated,	)	
	)	
Plaintiff	)	No. 16AC-CC00533
	)	
v.	)	The Hon. Jon E. Beetem
	)	
RUST-OLEUM CORPORATION,	)	
	)	
Defendant.	)	

**ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT, APPROVING  
CLASS NOTICE, AND SCHEDULING FAIRNESS HEARING**

The Court has considered Plaintiff's Motion for Preliminary Approval of Class Settlement pursuant to Mo. R. Civ. P. 52.08. Upon review of the Motion and the Settlement Agreement and its attachments, and after consideration of the Parties' submissions and the arguments at the hearing on this matter, if any, for good cause shown, the Court preliminarily finds that the terms of the settlement are fair, adequate, and reasonable. The Court further finds that the notice provisions provided for by the Settlement Agreement are adequate and appropriate to inform members of the class of the terms of the settlement.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The Court does hereby preliminarily approve the Settlement Agreement<sup>1</sup> and the settlement set forth therein (the "Settlement"), subject to further consideration at the Final Approval Hearing described below.

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<sup>1</sup> The Court, for purposes of this Order, adopts the definitions of capitalized terms set forth in the Settlement Agreement.

2. A hearing (the “Final Approval Hearing”) shall be held before this Court on **September 12, 2017, at 9:00 a.m.** to determine whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, adequate, and reasonable to the Class and should be approved by the Court, and whether a Final Approval Order and Judgment should be entered herein.

3. Plaintiff Daryl White, Jr. is preliminarily appointed as representative of the Settlement Class (“Class Representative”), and the following attorneys for Plaintiff are preliminarily appointed as counsel for the Settlement Class (“Class Counsel”): David L. Steelman and Stephen F. Gaunt of STEELMAN, GAUNT & HORSEFIELD, Scott A. Kamber of KAMBERLAW LLC, and Naomi B. Spector of KAMBERLAW LLP. This Court is familiar with Class Counsel and has found them to be experienced, thoughtful, and effective advocates in class actions who adequately, faithfully, and zealously represent the classes they represent.

4. For purposes of determining whether the terms of the Settlement should be finally approved as fair, adequate, and reasonable, the following Settlement Class is conditionally certified for settlement purposes only:

All Persons who purchased Products in the United States during the Class Period. Excluded from the Settlement Class are: (a) all Persons who purchased or acquired the Product for resale; (b) Rust-Oleum and its employees, principals, affiliated entities, legal representatives, successors and assigns; (c) any Person who files a valid, timely Opt-Out request; (d) federal, state, and local governments (including all agencies and subdivisions thereof, but excluding employees thereof) and (e) the judge(s) to whom this Action is assigned and any members of their immediate families.

5. Should the Settlement not become final, Rust-Oleum may still oppose class certification and the fact that the Court ordered class certification as part of the Settlement, or that Rust-Oleum was willing to stipulate to class certification as part of the Settlement, shall have no bearing on, and shall not be admissible in connection with, the issue of whether a class should be

certified in this Action or in any other proceeding.

6. The Court designates Heffler Claims Administration ("Heffler") as the Settlement Administrator and instructs Heffler to perform the following functions, as set forth in the Settlement Agreement:

- a. Process requests for exclusion from the Settlement in accordance with Section IX of the Settlement Agreement;
- b. Process objections to the Settlement in accordance with Section IX of the Settlement Agreement;
- c. Process Claim Forms in accordance with Section V of the Settlement Agreement;
- d. Before disseminating the Settlement Notice, establish the Settlement Website, which Settlement Class Members can visit to read and obtain additional information regarding the Settlement, including submission of claims; and
- e. Set up and operate a toll-free automated interactive voice response system through which Settlement Class Members can access Settlement information.

7. The Court approves, as to form and content, the Settlement Notice, the Publication Notice, and the Media Plan attached as Exhibit B to the Settlement Agreement, and finds that the distribution of the Settlement Notice substantially in accordance with Paragraph VIII of the Settlement Agreement meets the requirements of Mo. R. Civ. P. 52.08(b)(3), 52.08(c)(2) and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

8. On or before June 28, 2017, the Settlement Administrator shall disseminate the Settlement Notice by setting up the Settlement Website on the Internet and posting both the Settlement Notice and Publication Notice. On or before June 28, 2017, Rust-Oleum shall publish, cause to be published, or ensure that the Settlement Administrator has published, the Publication Notice pursuant to the Media Plan. The Publication Notice shall also be posted on the Settlement

Website until the conclusion of the Claims Period, or such later date as may be agreed to by Class Counsel and Defendant's Counsel.

9. The Settlement Administrator shall prepare a declaration attesting to compliance with the Settlement Notice requirements and a statement of the number of Persons the Media Plan reached. Such declaration shall be provided to Defendant's Counsel and Class Counsel and filed with the Court on or before **September 6, 2017**.

10. The Court approves the Claim Form in form and content as Exhibit A to the Settlement Agreement.

11. As set forth in paragraph VI of the Settlement Agreement, claims shall be submitted on or before October 16, 2017. (the "Claims Deadline"). To be timely, all Claims must be submitted by the Claims Deadline in accordance with paragraph VI of the Settlement Agreement.

12. Any Settlement Class Member who intends to object to the Settlement must do so no later than **August 28, 2017** (the "Objection Deadline"). In order to object, the Settlement Class Member must file with the Court prior to the Objection Deadline, and provide a copy to Class Counsel and Defendant's Counsel, also prior to the Objection Deadline, a document that includes all of the following:

- a. The case name and number, *White v. Rust-Oleum Corp.*, Case No. 16AC-CC00533 (Cole Circuit Court, MO.);
- b. The name, address, telephone number, and, if available, the email address of the Person objecting;
- c. The name and address of the lawyer(s), if any, who is representing the Person objecting in making the Objection or who may be entitled to compensation in connection with the Objection;
- d. A detailed statement of Objection(s), including the grounds for those Objection(s);
- e. Copies of any papers, briefs, or other documents upon which the Objection is based;
- f. A statement of whether the Person objecting intends to appear at the Final

Approval Hearing, either with or without counsel;

- g. The identity of all counsel (if any) who will appear on behalf of the Person objecting at the Final Approval Hearing and all Persons (if any) who will be called to testify in support of the Objection;
- h. A statement of his/her membership in the Settlement Class, including all information required by the Claim Form;
- i. The signature of the Person objecting, in addition to the signature of any attorney representing the Person objecting in connection with the Objection; and
- j. A detailed list of any other objection by the Settlement Class Member, or his/her counsel, to any class actions submitted in any court, whether state or otherwise, in the United States in the previous five (5) years. If the Settlement Class Member or his/her counsel has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the Objection to this Settlement. This information is requested in order to assist the Court in determining whether the Objection is made by a professional objector seeking financial consideration for their efforts. Failing to provide this information will not effect the validity of the Objection, but may result in the Court presuming that the Objection is made by a professional objector.

13. Any Settlement Class Member who fails to file and serve timely: (a) a written objection containing all of the information listed in items (a) through (j) of the previous paragraph; and, (b) notice of his/her intent to appear at the Final Approval Hearing pursuant to this paragraph, shall not be permitted to object to the Settlement and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by any means, including but not limited to an appeal

14. Any Settlement Class Member may request to be excluded (or “opt out”) from the Settlement Class. A Settlement Class Member who wishes to opt out of the Settlement Class must do so no later than **August 28, 2017** (the “Opt-Out Deadline”). In order to opt out, a Settlement Class Member must complete and mail to the Settlement Administrator a “Request for Exclusion” that is postmarked no later than the Opt-Out Deadline. Requests for Exclusion that are postmarked after the Opt-Out Deadline will be considered invalid and of no effect, and the Person who

untimely submits a Request for Exclusion will remain a Settlement Class Member and will be bound by any Orders entered by the Court, including the Final Approval Order and the Releases contemplated thereby.

15. Except for those Persons who have properly and timely submitted Requests for Exclusion, all Settlement Class Members will be bound by the Settlement Agreement and the Final Approval Order, including the Releases, regardless of whether they file a Claim or receive any monetary relief. Any Person who timely and properly submits a Request for Exclusion shall not: (a) be bound by any orders or the Final Approval Order nor by the Releases contained therein; (b) be entitled to any relief under the Settlement Agreement; (c) gain any rights by virtue of the Settlement Agreement; or (d) be entitled to object to any aspect of the Settlement Agreement. Each Person requesting exclusion from the Settlement Class must personally sign his or her own individual Request for Exclusion. No Person may opt-out of the Settlement Class any other Person, or be opted-out by any other Person, and no Person shall be deemed opted-out of the Settlement Class through any purported "mass" or "class" opt-outs.

16. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a final list of any timely Requests for Exclusion received by the Settlement Administrator on or before **September 5, 2017**.

17. On or before **September 5, 2017**, the Settlement Administrator shall prepare and deliver to Class Counsel, who shall file with the Court, and Defendant's Counsel, a report stating the total number of Persons who have submitted timely and valid Requests for Exclusion from the Settlement Class and Objections to the Settlement, and the names of such Persons.

18. On or before **September 6, 2017**, Class Counsel shall submit papers in support of final approval of the certification of the Settlement Class, the designation of Plaintiff as the

representatives of the Settlement Class, the appointment of Class Counsel as counsel for the Settlement Class, and the Settlement; and Class Counsel's Application for attorneys' fees and expenses, and any response to any Objections.

19. Neither the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by the Class Representatives or Rust-Oleum of any fact or allegation, or of any liability, fault, or wrongdoing of any kind.

20. The Court reserves the right to adjourn or continue the date of the Final Approval Hearing without further notice to the members of the Class, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modification as may be agreed to by the Parties, if appropriate without further notice to the Class.

**IT IS SO ORDERED.**

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

\_\_\_\_\_  
JUDGE OF THE CIRCUIT COURT