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1 NANCY J. MARVEL
 Regional Counsel
 2
 3 CAROL BUSSEY
 Assistant Regional Counsel
 U. S. Environmental Protection Agency
 4 Region IX
 75 Hawthorne Street
 5 San Francisco, CA 94105
 (415)972-3950
 6

7 UNITED STATES
 ENVIRONMENTAL PROTECTION AGENCY
 8 REGION IX
 75 HAWTHORNE STREET
 9 SAN FRANCISCO, CA 94105

10 In the Matter of:)
 11) Docket No. TSCA-09-2007-0010
 12 Fine Custom Painting, Inc.,)
) CONSENT AGREEMENT
 13 Respondent.) AND FINAL ORDER
)

14 I. CONSENT AGREEMENT

15 Complainant, the Director of the Communities and Ecosystems
 16 Division, United States Environmental Protection Agency, Region
 17 IX ("EPA"), and Respondent, Fine Custom Painting, Inc.
 18 ("Respondent") agree to settle this matter initiated against
 19 Respondent under Section 16(a) of the Toxic Substances Control
 20 Act ("TSCA"), as amended, 15 U.S.C. §§ 2601 et seq., and consent
 21 to the entry of this Consent Agreement and Final Order ("CAFO").
 22

23 A. AUTHORITY

24 1. EPA initiated this civil administrative proceeding for
 25 the assessment of a civil penalty under Section 16(a) of TSCA by
 26 issuing a Complaint and Notice of Opportunity for Hearing
 27 ("Complaint") against Respondent on September 28, 2007, in
 28 accordance with the Consolidated Rules of Practice Governing the

1 Administrative Assessment of Civil Penalties and the
2 Revocation/Termination or Suspension of Permits at 40 C.F.R. Part
3 22.

4 2. The Complaint alleges that Respondent violated Section
5 409 of TSCA by failing to comply with the provisions of 40 C.F.R.
6 Part 745, Subpart E and specifically 40 C.F.R. §§745.85(b)(1) and
7 (2).

8 3. EPA and Respondent have agreed to resolve this civil
9 administrative proceeding by executing this CAFO.

10 B. RESPONDENT'S ADMISSIONS

11 4. In accordance with 40 C.F.R. § 22.18(b)(2) and for the
12 purpose of this proceeding, Respondent (i) admits that EPA has
13 jurisdiction over the subject matter of the Complaint and over
14 Respondent; (ii) neither admits nor denies the specific factual
15 allegations contained in the Complaint; (iii) consents to any and
16 all conditions specified in this Consent Agreement and Final
17 Order ("CAFO") and to the assessment of the civil administrative
18 penalty under Section I.C of this CAFO; (iv) waives any right to
19 contest the allegations contained in the Complaint; and
20 (v) waives the right to appeal the proposed final order contained
21 in this CAFO.

22 C. CIVIL ADMINISTRATIVE PENALTY

23 5. Respondent agrees to the assessment of a penalty in the
24 amount of TEN THOUSAND DOLLARS(\$10,000) plus interest, paid over
25 a twenty-four (24)-month period in accordance with the schedule
26 attached as Attachment 1, as final settlement of the civil claims
27

1 against Respondent arising under TSCA as alleged in the
2 Complaint.

3 6. Respondent shall pay each installment of the assessed
4 penalty in accordance with the schedule attached as Attachment 1
5 of this CAFO. Payments shall be made by cashier's or certified
6 check payable to the "Treasurer, United States of America," and
7 shall be sent by certified mail, return receipt requested, to the
8 following address:

9 US Environmental Protection Agency
10 Fines and Penalties
11 Cincinnati Finance Center
12 P.O. Box 979078
13 St. Louis, MO 63197-9000

14 Each payment shall be accompanied by a transmittal letter
15 identifying the case name, the case docket number, and this CAFO.
16 Concurrent with delivery of each payment of the penalty,
17 Respondent shall send a copy of the check and transmittal letter
18 to the following addresses:

- 19 1) Regional Hearing Clerk (ORC-1)
20 Office of Regional Counsel
21 U.S. Environmental Protection Agency, Region 9
22 75 Hawthorne Street
23 San Francisco, California 94105
- 24 2) Manager, Toxics Office (CED-4)
25 Communities and Ecosystems Division
26 U.S. Environmental Protection Agency, Region 9
27 75 Hawthorne Street
28 San Francisco, California 94105

7. Payment of the above civil administrative penalty shall
not be used by Respondent or any other person as a tax deduction
from Respondent's federal, state, or local taxes.

8. If Respondent fails to pay the assessed civil
administrative penalty specified in Paragraph 5 in accordance

1 with the schedule attached as Attachment 1, then Respondent shall
2 pay to EPA a stipulated penalty of \$150 per day for each day that
3 payment of the penalty is late, in addition to the assessed
4 penalty. Stipulated penalties shall be paid upon written request
5 by EPA. In addition, failure to pay the civil administrative
6 penalty in accordance to Attachment 1 may lead to any or all of
7 the following actions:

8 a. The debt being referred to a credit reporting agency, a
9 collection agency, or to the Department of Justice for
10 filing of a collection action in the appropriate United
11 States District Court. 40 C.F.R. §§ 13.13, 13.14, and
12 13.33. In any such collection action, the validity, amount,
13 and appropriateness of the assessed penalty and of this CAFO
14 shall not be subject to review.

15 b. The debt being collected by administrative offset
16 (i.e., the withholding of money payable by the United States
17 to, or held by the United States for, a person to satisfy
18 the debt the person owes the Government), which includes,
19 but is not limited to, referral to the Internal Revenue
20 Service for offset against income tax refunds. 40 C.F.R.
21 Part 13, Subparts C and H.

22 c. EPA may (i) suspend or revoke Respondent's licenses or
23 other privileges; or (ii) suspend or disqualify Respondent
24 from doing business with EPA or engaging in programs EPA
25 sponsors or funds. 40 C.F.R. § 13.17.

26 d. In accordance with the Debt Collection Act of 1982 and
27 40 C.F.R. Part 13 interest, penalties charges, and
28

1 administrative costs will be assessed against the
2 outstanding amount that Respondent owes to EPA for
3 Respondent's failure to pay the civil administrative penalty
4 by the deadline specified in Paragraph 6. Interest will be
5 assessed at an annual rate that is equal to the rate of
6 current value of funds to the United States Treasury (i.e.,
7 the Treasury tax and loan account rate) as prescribed and
8 published by the Secretary of the Treasury in the Federal
9 Register and the Treasury Fiscal Requirements Manual
10 Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will
11 be assessed monthly at a rate of 6% per annum. 40 C.F.R.
12 § 13.11(c). Administrative costs for handling and
13 collecting Respondent's overdue debt will be based on either
14 actual or average cost incurred, and will include both
15 direct and indirect costs. 40 C.F.R. § 13.11(b). In
16 addition, if this matter is referred to another department
17 or agency (e.g., the Department of Justice, the Internal
18 Revenue Service), that department or agency may assess its
19 own administrative costs, in addition to EPA's
20 administrative costs, for handling and collecting
21 Respondent's overdue debt.

22 D. RETENTION OF RIGHTS

23 9. In accordance with 40 C.F.R. § 22.18(c), this CAFO only
24 resolves Respondent's liability for federal civil penalties for
25 the violations and facts specifically alleged in the Complaint.
26 Nothing in this CAFO is intended to or shall be construed to
27 resolve (i) any civil liability for violations of any provision

1 of any federal, state, or local law, statute, regulation, rule,
2 ordinance, or permit not specifically alleged in the Complaint;
3 or (ii) any criminal liability. EPA specifically reserves any
4 and all authorities, rights, and remedies available to it
5 (including, but not limited to, injunctive or other equitable
6 relief or criminal sanctions) to address any violation of this
7 CAFO or any violation not specifically alleged in the Complaint.

8 10. This CAFO does not exempt, relieve, modify, or affect
9 in any way Respondent's duty to comply with all applicable
10 federal, state, and local laws, regulations, rules, ordinances,
11 and permits.

12 E. ATTORNEYS' FEES AND COSTS

13 11. Each party shall bear its own attorneys' fees, costs,
14 and disbursements incurred in this proceeding.

15 F. EFFECTIVE DATE

16 12. In accordance with 40 C.F.R. §§ 22.18(b)(3) and
17 22.31(b), this CAFO shall be effective on the date that the final
18 order contained in this CAFO, having been approved and issued by
19 either the Regional Judicial Officer or Regional Administrator,
20 is filed.

21 G. BINDING EFFECT

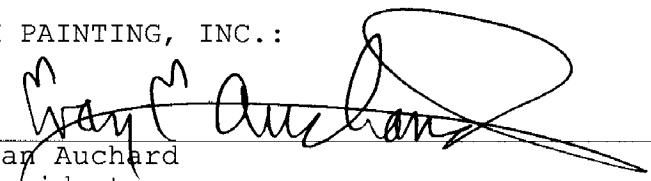
22 13. The undersigned representative of Complainant and the
23 undersigned representative of Respondent each certifies that he
24 or she is fully authorized to enter into the terms and conditions
25 of this CAFO and to bind the party he or she represents to this
26 CAFO.

27 14. The provisions of this CAFO shall apply to and be

1 binding upon Respondent and its officers, directors, employees,
2 agents, trustees, servants, authorized representatives,
3 successors, and assigns.


4 FOR RESPONDENT, FINE CUSTOM PAINTING, INC.:

5
6 1/2/09
DATE


Evan Auchard
President
FINE CUSTOM PAINTING, INC.

9 FOR COMPLAINANT, EPA REGION IX:

10
11 3/26/09
DATE


Enrique Manzanilla
Director
Communities and Ecosystems Division
U.S. Environmental Protection Agency,
Region IX


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II. FINAL ORDER

____ Complainant and Respondent, having entered into the foregoing Consent Agreement,

IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2007-0010) be entered, and that Respondent shall pay a civil administrative penalty in the amount of TEN THOUSAND DOLLARS (\$10,000) plus interest in accordance with the schedule set forth in Attachment 1 and comply with the terms and conditions set forth in the Consent Agreement.

03/26/09
DATE


STEVEN L. JAWGIEL
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

I certify that the original and one copy of the fully executed Consent Agreement and Final Order Pursuant to 40 C.F.R Sections 22.13 and 22.18 (Docket No. TSCA-09-2007-0010) against Fine Custom Painting, Inc., was filed this day with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the same was sent to Respondent at the following address:

Mr. Evan Auchard
President
Fine Custom Painting
129 Ross Valley Drive
San Rafael, CA 94901

Certified Mail No. 7007 0710 0003 6240 2285

Danielle Carr
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX

Date

**ATTACHMENT 1 - INSTALLMENT PAYMENT SCHEDULE
DOCKET NO. TSCA-09-2007-0010**

Payment 1 to be paid within 30 days of the effective date of CAFO- \$416.67 (no interest).

Payment plus interest for all subsequent installments made after 30 days of the effective date of CAFO- \$429.28

All subsequent payments of \$429.28 will be applied to principal and interest according to the following table:

Pmt	Principal	Interest	Cum Prin	Cum Int	Prin Bal
2	405.32	23.96	405.32	23.96	9178.01
3	406.33	22.95	811.65	46.91	8771.68
4	407.35	21.93	1219.00	68.84	8364.33
5	408.37	20.91	1627.37	89.75	7955.96
6	409.39	19.89	2036.76	109.64	7546.57
7	410.41	18.87	2447.17	128.51	7136.16
8	411.44	17.84	2858.61	146.35	6724.72
9	412.47	16.81	3271.08	163.16	6312.25
10	413.50	15.78	3684.58	178.94	5898.75
11	414.53	14.75	4099.11	193.69	5484.22
12	415.57	13.71	4514.68	207.40	5068.65
13	416.61	12.67	4931.29	220.07	4652.04
14	417.65	11.63	5348.94	231.70	4234.39
15	418.69	10.59	5767.63	242.29	3815.70
16	419.74	9.54	6187.37	251.83	3395.96
17	420.79	8.49	6608.16	260.32	2975.17
18	421.84	7.44	7030.00	267.76	2553.33
19	422.90	6.38	7452.90	274.14	2130.43
20	423.95	5.33	7876.85	279.47	1706.48
21	425.01	4.27	8301.86	283.74	1281.47
22	426.08	3.20	8727.94	286.94	855.39
23	427.14	2.14	9155.08	289.08	428.25
24	*428.25	1.07	9583.33	290.15	0.00

*The final payment has been adjusted to account for payments having been rounded to the nearest cent.

- 1st installment \$416.67 => Due within 30 days of effective date of CAFO
- 2nd installment \$429.28 => Due within 30 days of deadline for 1st installment payment
- 3rd installment \$429.28 => Due within 30 days of deadline for 2nd installment payment
- 4th installment \$429.28 => Due within 30 days of deadline for 3rd installment payment
- 5th installment \$429.28 => Due within 30 days of deadline for 4th installment payment
- 6th installment \$429.28 => Due within 30 days of deadline for 5th installment payment
- 7th installment \$429.28 => Due within 30 days of deadline for 6th installment payment
- 8th installment \$429.28 => Due within 30 days of deadline for 7th installment payment
- 9th installment \$429.28 => Due within 30 days of deadline for 8th installment payment
- 10th installment \$429.28 => Due within 30 days of deadline for 9th installment payment

1 11th installment \$429.28 => Due within 30 days of deadline for 10th installment payment
2 12th installment \$429.28 => Due within 30 days of deadline for 11th installment payment
3 13th installment \$429.28 => Due within 30 days of deadline for 12rd installment payment
4 14th installment \$429.28 => Due within 30 days of deadline for 13th installment payment
5 15th installment \$429.28 => Due within 30 days of deadline for 14th installment payment
6 16th installment \$429.28 => Due within 30 days of deadline for 15th installment payment
7 17th installment \$429.28 => Due within 30 days of deadline for 16th installment payment
8 18th installment \$429.28 => Due within 30 days of deadline for 17th installment payment
9 19th installment \$429.28 => Due within 30 days of deadline for 18th installment payment
10 20th installment \$429.28 => Due within 30 days of deadline for 19th installment payment
11 21st installment \$429.28 => Due within 30 days of deadline for 20th installment payment

12 22nd installment \$429.28 => Due within 30 days of deadline for 21st installment payment
13 23rd installment \$429.28 => Due within 30 days of deadline for 22nd installment payment
14 24th installment \$429.28 => Due within 30 days of deadline for 23rd installment payment

15 Total Payment: \$10,290.15

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CERTIFICATE OF SERVICE

I certify that the original and one copy of the fully executed Consent Agreement and Final Order Pursuant to 40 C.F.R Sections 22.13 and 22.18 (Docket No. TSCA-09-2007-0010) against Fine Custom Painting, Inc., was filed this day with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of the same was sent to Respondent attorney at the following address:

David C. Macpherson
Attorney At Law
Law Offices of David C. Macpherson
145 Corte Madera Town Center Suite 656
Corte Madera, CA 94925-1215

Certified Mail No. 7007 0710 0003 6240 2278

Steven Ramsey

Danielle Carr
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX

Date *April 1, 2009*

EGV