

1 UNITED STATES  
2 ENVIRONMENTAL PROTECTION AGENCY  
3 REGION IX  
4 75 HAWTHORNE STREET  
5 SAN FRANCISCO, CA 94105

\*\* FILED \*\*  
03MAY2017 - 10:10AM  
U.S.EPA - Region 09

6 )  
7 In the Matter of: ) Docket No. TSCA-09-2017-0004  
8 Simply Building, Inc., ) CONSENT AGREEMENT  
9 ) AND FINAL ORDER  
10 Respondent. ) PURSUANT TO 40 C.F.R.  
11 ) §§ 22.13 AND 22.18  
12 )  
13 )

14 I. CONSENT AGREEMENT

15 The United States Environmental Protection Agency, Region IX  
16 ("EPA") and Simply Building, Inc. ("Respondent") agree to settle this  
17 matter and consent to the entry of this Consent Agreement and Final  
18 Order ("CAFO"), which simultaneously initiates and concludes this  
19 matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

20 A. AUTHORITY AND PARTIES

21 1. This is a civil administrative penalty action initiated  
22 against Respondent pursuant to Section 16(a) of the Toxic Substances  
23 Control Act ("TSCA"), 15 U.S.C § 2615(a), for violation of Section 409  
24 15 U.S.C. § 2689, by failing to comply with Sections 402 and 406 of  
25 TSCA, 15 U.S.C. §§ 2682 and 2686, and their implementing federal  
26 regulations promulgated at 40 C.F.R. Part 745, Subpart E.

27 2. Complainant is the Director of the Enforcement Division, EPA  
28 Region IX, who has been duly delegated the authority to bring this  
action and to sign a consent agreement settling this action.

3. Respondent is a California corporation doing business at  
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1 1521 Bayshore Highway, Burlingame, California.

2 B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

3 4. Pursuant to Section 406(b) of TSCA, 15 U.S.C. § 2686(b), 40  
4 C.F.R. Part 745, Subpart E requires a person who performs for  
5 compensation a renovation of target housing and child-occupied  
6 facilities to provide a lead hazard information pamphlet to the owner  
7 and occupant before beginning the renovation.

8 5. Pursuant to Sections 402(a) and (c) of TSCA, 15 U.S.C. §§  
9 2682(a) and (c), 40 C.F.R. Part 745, Subpart E provides requirements  
10 for certification of individuals and firms engaged in lead-based paint  
11 activities and work practice standards for renovation, repair, and  
12 painting activities in target housing and child-occupied facilities.

13 6. "Target housing" means any housing constructed prior to 1978,  
14 except housing for the elderly or persons with disabilities (unless  
15 any child who is six years of age resides or is expected to reside in  
16 such housing) or any 0-bedroom dwelling. Section 401 of TSCA, 15  
17 U.S.C. § 2681.

18 7. "Person" means any natural or judicial person including any  
19 individual, corporation, partnership, or association; any Indian  
20 Tribe, State, or political subdivision thereof; any interstate body;  
21 and any department, agency, or instrumentality of the Federal  
22 Government. 40 C.F.R. § 745.83.

23 8. "Firm" means a company, partnership, corporation, sole  
24 proprietorship, or individual doing business, association, or other  
25 business entity; a Federal, State, Tribal, or local government agency;  
26 or a nonprofit organization. 40 C.F.R. § 745.83.

27 9. "Renovation" means the modification of any existing structure,  
28 or portion thereof, that results in the disturbance of painted

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1 surfaces, unless that activity is part of an abatement as defined by  
2 40 C.F.R. § 745.233. The term "renovation" includes (but is not  
3 limited to) the removal, modification or repair of painted surfaces  
4 or painted components (e.g., modification of painted doors, surface  
5 restoration, window repair, surface preparation activity (such as  
6 sanding, scraping, or other such activities that may generate paint  
7 dust); the removal of building components (e.g., walls, ceilings,  
8 plumbing windows); weatherization projects (e.g., cutting holes in  
9 painted surfaces to install blown-in insulation or to gain access to  
10 attics planning thresholds to install weatherstripping), and interim  
11 controls that disturb painted surfaces...The term "renovation" does  
12 not include minor repair and maintenance activities. 40 C.F.R. §  
13 745.83.

14 10. "Painted surface" means a component surface covered in  
15 whole or in part with paint or other surface coatings. 40 C.F.R. §  
16 745.83.

17 11. "Component or building component" means specific design or  
18 structural elements or fixtures of a building or residential dwelling  
19 that are distinguished from each other by form, function, and  
20 location. These include, but are not limited to interior components  
21 such as...windows and trim (including sashes, window heads, jambs,  
22 sills or stools and troughs) ...and exterior components such  
23 as...siding...windowsills or stools and troughs, casings, sashes  
24 and wells. 40 C.F.R. § 745.83.

25 12. "Renovator" means any individual who either performs or  
26 directs workers who perform renovations. A certified renovator is a  
27 renovator who has successfully completed a renovator course accredited  
28 by EPA or an EPA-authorized State or Tribal program. 40 C.F.R. §

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1 745.83.

2 13. Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and the Civil  
3 Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, which  
4 implements the Federal Civil Penalties Inflation Adjustment Act of  
5 1990, 28 U.S.C. § 2461, as amended, authorize civil penalties not to  
6 exceed \$37,500 per day for each violation of Section 409 of TSCA, 15  
7 U.S.C. § 2689, that occurred after December 6, 2013.

8 C. ALLEGATIONS

9 14. Respondent is a "person" as that term is defined at 40  
10 C.F.R. § 745.83.

11 15. At all times relevant to this CAFO, Respondent is a "firm"  
12 as that term is defined at 40 C.F.R. § 745.83.

13 16. On or about April 14, 2015, Respondent removed and replaced  
14 the exterior siding and windows at a residential property located at  
15 992 Portola Drive in San Francisco, California.

16 17. At all times relevant to this CAFO, the exterior siding and  
17 windows at 992 Portola Drive in San Francisco, California were  
18 "components or building components," as that term is defined at 40  
19 C.F.R. § 745.83.

20 18. On or about April 14, 2015, Respondent performed a  
21 "renovation," as that term is defined at 40 C.F.R. § 745.83 for  
22 compensation at the residential property located at 992 Portola Drive  
23 in San Francisco, California.

24 19. At all times relevant to this CAFO, the residential  
25 property located at 992 Portola Drive in San Francisco, California was  
26 "target housing," as that term is defined at 40 C.F.R. § 745.83.

27 20. Firms that perform renovations for compensation must apply  
28 to EPA for certification to perform renovations. 40 C.F.R. § 745.89

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1 (a).

2 21. On or after April 22, 2010, no firm may perform a  
3 renovation without certification from EPA under 40 C.F.R. § 745.89 in  
4 target housing, unless the renovation is performed in target housing  
5 that has been determined to be lead-free pursuant to 40 C.F.R. §  
6 745.82(a). 40 C.F.R. § 745.81(a)(2)(ii).

7 22. At all times relevant to this CAFO, Respondent did not have  
8 certification from EPA to perform the renovation for compensation at  
9 target housing located at 992 Portola Drive in San Francisco,  
10 California.

11 23. At all times relevant to this CAFO, the target housing  
12 located at 992 Portola Drive in San Francisco, California had not been  
13 determined to be lead-free pursuant to 40 C.F.R. § 745.82(a).

14 24. Respondent's performance of a renovation for compensation  
15 at target housing located at 992 Portola Drive in San Francisco,  
16 California without firm certification from EPA under 40 C.F.R. §  
17 745.89(a) constitutes a violation of 40 C.F.R. § 745.81(a)(2)(ii)  
18 and Section 409 of TSCA, 15 U.S.C. § 2689.

19 25. On or after July 6, 2010, all renovations must be performed  
20 in accordance with the work practice standards in 40 C.F.R. § 745.85  
21 and the associated recordkeeping requirements in 40 C.F.R. §  
22 745.85(b)(1) and (b)(6) in target housing or child-occupied  
23 facilities, unless the renovation qualified for the exception  
24 identified in 40 C.F.R. § 745.82(a). 40 C.F.R. § 745.81(a)(4)(ii).

25 26. Firms must post signs clearly defining the work area and  
26 warning occupants and other persons not involved in renovation  
27 activities to remain outside the work area. To the extent  
28 practicable, signs must be in the primary language of the occupants.

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1 Signs must be posted before beginning the renovation and must remain  
2 in place and readable until the renovation and the post-renovation  
3 cleaning verification have been completed. 40 C.F.R. § 745.85(a)(1).

4 27. At all times relevant to this CAFO, Respondent did not post  
5 any signs in the work area at the renovation that Respondent performed  
6 at 992 Portola Drive, San Francisco, California.

7 28. Respondent's failure to post signs defining the work area  
8 and warning occupants and other persons not involved in renovation  
9 activities to remain outside the work area; post signs in the primary  
10 language of the occupants; and post signs before beginning the  
11 renovation and keeping them in place and readable until the renovation  
12 and the post-renovation cleaning verification was completed at the  
13 renovation that Respondent performed at 992 Portola Drive in San  
14 Francisco, California constitutes a violation of 40 C.F.R. §  
15 745.85(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.

16 29. Firms must ensure that doors within the work area that  
17 would be used while the job is being performed are covered with  
18 plastic sheeting or other impermeable material in a manner that allows  
19 workers to pass through while confining the dust and debris to the  
20 work area. 40 C.F.R. § 745.85(a)(2)(ii)(B).

21 30. At all times relevant to this CAFO, Respondent did not  
22 ensure that doors within the work area were covered with plastic  
23 sheeting or other impermeable material in a manner that allowed  
24 workers to pass through while confining the dust and debris to the  
25 work area during the renovation that Respondent performed at 992  
26 Portola Drive, San Francisco, California.

27 31. Respondent's failure to cover doors with plastic sheeting  
28 or other impermeable material in a manner that allowed workers to pass  
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1 through while confining the dust and debris to the work area during  
2 the renovation that Respondent performed at 992 Portola Drive in San  
3 Francisco, California constitutes a violation of 40 C.F.R. §  
4 745.85(a)(2)(ii)(B) and Section 409 of TSCA, 15 U.S.C. § 2689.

5 32. Firms must cover the ground with plastic sheeting or other  
6 disposable impermeable material extending 10 feet beyond the perimeter  
7 of surfaces undergoing renovation or a sufficient distance to collect  
8 falling paint debris, whichever was greater, unless the property line  
9 prevented 10 feet of such ground covering. 40 C.F.R. § 745.85(a)(2)  
10 (ii)(C).

11 33. At all times relevant to this CAFO, Respondent did not  
12 cover the ground with plastic sheeting or other disposable impermeable  
13 material extending 10 feet beyond the perimeter of surfaces undergoing  
14 renovation or a sufficient distance to collect falling paint debris  
15 and the property line did not prevent 10 feet of ground covering.

16 34. Respondent's failure to cover the ground with plastic  
17 sheeting or other disposable impermeable material extending 10 feet  
18 beyond the perimeter of surfaces undergoing renovation or a  
19 sufficient distance to collect falling paint debris at the renovation  
20 that Respondent performed at 992 Portola Drive in San Francisco,  
21 California constitutes a violation of 40 C.F.R. § 745.85(a)(2)(ii)(C)  
22 and Section 409 of TSCA, 15 U.S.C. § 2689.

23 35. Firms performing renovations must retain documentation of  
24 compliance with the requirements of § 745.85, including documentation  
25 that a certified renovator was assigned to the project; that a  
26 certified renovator provided on-the-job training for workers used on  
27 the project; that a certified renovator performed or directed  
28 workers who performed all of the tasks described in § 745.85(a); and  
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1 that a certified renovator performed the post-renovation cleaning  
2 verification described in § 745.85(b). 40 C.F.R. § 745.86(b)(6).

3 36. Respondent did not retain documentation that a certified  
4 renovator was assigned to the project; that a certified renovator  
5 provided on-the-job training for workers used on the project; that a  
6 certified renovator performed or directed workers who performed all of  
7 the tasks described in § 745.85(a); and that a certified renovator  
8 performed the post-renovation cleaning verification described in §  
9 745.85(b) for the renovation that Respondent performed at 992 Portola  
10 Drive in San Francisco, California.

11 37. Respondent's failure to retain documentation that a  
12 certified renovator was assigned to the project; that a certified  
13 renovator provided on-the-job training for workers used on the  
14 project; that a certified renovator performed or directed workers  
15 who performed all of the tasks described in § 745.85(a); and that a  
16 certified renovator performed the post-renovation cleaning  
17 verification described in § 745.85(b) for the renovation that  
18 Respondent performed at 992 Portola Drive in San Francisco, California  
19 constitutes four (4) violations of 40 C.F.R. § 745.86(b)(6) and  
20 Section 409 of TSCA, 15 U.S.C. § 2689.

21 38. Firms performing renovations must ensure that a certified  
22 renovator is assigned to each renovation performed by the firm and  
23 discharges all the certified renovator responsibilities identified in  
24 § 745.90. 40 C.F.R. § 745.89(d)(2).

25 39. Respondent did not ensure that a certified renovator  
26 discharged all of the certified renovator responsibilities identified  
27 in § 745.90 for the renovation that Respondent performed at 992  
28 Portola Drive in San Francisco, California.

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1           40. Respondent's failure to ensure that a certified renovator  
2 discharged all of the certified renovator responsibilities identified  
3 in § 745.90 for the renovation that Respondent performed at 992  
4 Portola Drive in San Francisco, California constitutes a violation of  
5 40 C.F.R. § 745.89 (d) (2) and Section 409 of TSCA, 15 U.S.C. § 2689.

6                           D. RESPONDENT'S ADMISSIONS

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

17                           E. CIVIL ADMINISTRATIVE PENALTY

18           42. Respondent agrees to the assessment of a penalty in the  
19 amount of TWENTY-FOUR THOUSAND, ONE HUNDRED AND FIVE DOLLARS  
20 (\$24,105) as final settlement of the civil claims against Respondent  
21 arising under TSCA as alleged in Section I.C of this CAFO.

22           43. Respondent shall pay the assessed penalty no later than  
23 thirty (30) days after the effective date of this CAFO. The assessed  
24 penalty shall be paid by **certified or cashier's check**, payable to  
25 "Treasurer, United States of America," or paid by one of the other  
26 methods listed below and sent as follows:

1 Regular Mail:

2 U.S. Environmental Protection Agency  
3 Fines and Penalties  
4 Cincinnati Finance Center  
5 PO Box 979077  
6 St. Louis, MO 63197-9000

6 Wire Transfers:

7 Wire transfers must be sent directly to the Federal Reserve Bank in  
8 New York City with the following information:

9 Federal Reserve Bank of New York  
10 ABA = 021030004  
11 Account = 68010727  
12 SWIFT address = FRNYUS33  
13 33 Liberty Street  
14 New York, NY 10045  
15 Field Tag 4200 of the Fedwire message should read "D 68010727  
16 Environmental Protection Agency"

14 Overnight Mail:

15 U.S. Bank  
16 1005 Convention Plaza  
17 Mail Station SL-MO-C2GL  
18 ATTN Box 979077  
19 St. Louis, MO 63101

19 ACH (also known as REX or remittance express):

20 US Treasury REX/Cashlink ACH Receiver  
21 ABA = 051036706  
22 Account Number 310006, Environmental Protection Agency  
23 CTX Format Transaction Code 22 - checking  
24 Physical location of US Treasury Facility  
25 5700 Rivertech Court  
26 Riverdale, MD 20737  
27 Remittance Express (REX): 1-866-234-5681

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1 On Line Payment:

2 This Payment option can be accessed from the information below:

3 www.pay.gov

4 Enter "sfol.1" in the search field

5 Open form and complete required fields

6 If clarification regarding a particular method of payment remittance  
7 is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

8 Concurrently, a copy of the check or notification that the payment has  
9 been made by one of the other methods listed above, including proof of  
10 the date payment was made, shall be sent with a transmittal letter  
11 indicating Respondent's name, the case title, and the docket number  
12 to:

13 a) Regional Hearing Clerk (ORC-1)  
14 Office of Regional Counsel  
15 U.S. Environmental Protection Agency, Region IX  
16 75 Hawthorne Street  
17 San Francisco, California 94105

18 b) Christopher Rollins  
19 Waste & Chemical Section (ENF-2-2)  
20 Enforcement Division  
21 U.S. Environmental Protection Agency, Region IX  
22 75 Hawthorne Street  
23 San Francisco, California 94105

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

27 45. If Respondent fails to pay the assessed civil  
28 administrative penalty specified in Paragraph 42 by the deadline  
specified in Paragraph 43, then Respondent shall pay to EPA a  
stipulated penalty of \$500 per day in addition to the assessed  
penalty. Stipulated penalties shall accrue until such time as the  
assessed penalty and all accrued stipulated penalties are paid and  
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1 shall become due and payable upon written request by EPA. In  
2 addition, failure to pay the civil administrative penalty by the  
3 deadline specified in Paragraph 43 may lead to any or all of the  
4 following actions:

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

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

17 c. EPA may (i) suspend or revoke Respondent's licenses or other  
18 privileges; or (ii) suspend or disqualify Respondent from doing  
19 business with EPA or engaging in program EPA sponsors or funds. 40  
20 C.F.R. § 13.17.

21 d. In accordance with the Debt Collection Act of 1982 and 40  
22 C.F.R. Part 13, interest, penalties charges, and administrative costs  
23 will be assessed against the outstanding amount that Respondent owes  
24 to EPA for Respondent's failure to pay the civil administrative  
25 penalty by the deadline specified in Paragraph 43. Interest will be  
26 assessed at an annual rate that is equal to the rate of current value  
27 of funds to the United States Treasury (i.e., the Treasury tax and  
28 loan account rate) as prescribed and published by the Secretary of the

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1 Treasury in the Federal Register and the Treasury Fiscal Requirements  
2 Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be  
3 assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c).  
4 Administrative costs for handling and collecting Respondent's overdue  
5 debt will be based on either actual or average cost incurred, and will  
6 include both direct and indirect costs. 40 C.F.R. § 13.11(b). In  
7 addition, if this matter is referred to another department or agency  
8 (e.g., the Department of Justice, the Internal Revenue Service), that  
9 department or agency may assess its own administrative costs, in  
10 addition to EPA's administrative costs, for handling and collecting  
11 Respondent's overdue debt.

12 F. RESPONDENT'S CERTIFICATION

13 46. In executing this CAFO, Respondent certifies that it is now  
14 In compliance with the federal regulations promulgated at 40 C.F.R.  
15 Part 745, Subpart E.

16 G. RETENTION OF RIGHTS

17 47. In accordance with 40 C.F.R. § 22.18(c), this CAFO only  
18 resolves Respondent's liability for federal civil penalties for the  
19 violations and facts specifically alleged in Section I.C of this CAFO.  
20 Nothing in this CAFO is intended to or shall be construed to resolve  
21 (i) any civil liability for violations of any provision of any  
22 federal, state, or local law, statute, regulation, rule, ordinance, or  
23 permit not specifically alleged in Section I.C of this CAFO; or (ii)  
24 any criminal liability. EPA specifically reserves any and all  
25 authorities, rights, and remedies available to it (including, but not  
26 limited to, injunctive or other equitable relief or criminal  
27 sanctions) to address any violation of this CAFO or any violation not  
28 specifically alleged in Section I.C of this CAFO.

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

4                           H. ATTORNEYS' FEES AND COSTS

5           49. Each party shall bear its own attorneys' fees, costs, and  
6 disbursements incurred in this proceeding.

7                           I. EFFECTIVE DATE

8           50. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b),  
9 this CAFO shall be effective on the date that the final order  
10 contained in this CAFO, having been approved and issued by either the  
11 Regional Judicial Officer or Regional Administrator, is filed.

12                           J. BINDING EFFECT

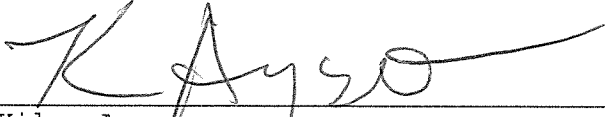
13           51. The undersigned representative of Complainant and the  
14 undersigned representative of Respondent each certifies that he or she  
15 is fully authorized to enter into the terms and conditions of this  
16 CAFO and to bind the party he or she represents to this CAFO.

17           52. The provisions of this CAFO shall apply to and be binding  
18 upon Respondent and its officers, directors, employees, agents,  
19 trustees, servants, authorized representatives, successors, and  
20 assigns.

1 FOR RESPONDENT, SIMPLY BUILDING, INC.

2  
3  
4 4/17/2017

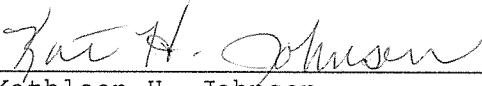
5 DATE

  
6 Kiley Ayoso  
7 President  
8 Simply Building, Inc.

9  
10 FOR COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION IX

11  
12 4/28/17

13 DATE

  
14 Kathleen H. Johnson  
15 Director  
16 Enforcement Division  
17 U.S. ENVIRONMENTAL PROTECTION AGENCY,  
18 REGION IX  
19  
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1 II. FINAL ORDER

2 Complainant and Respondent, having entered into the foregoing  
3 Consent Agreement,

4 IT IS HEREBY ORDERED that this CAFO (Docket No. TSCA-09-2017-  
5 ~~2004~~ be entered, and that Respondent shall pay a civil  
6 administrative penalty in the amount of TWENTY-FOUR THOUSAND, ONE  
7 HUNDRED AND FIVE DOLLARS (\$24,105) and comply with the terms  
8 and conditions set forth in the Consent Agreement. This Consent  
9 Agreement and Final Order shall become effective upon filing.

10  
11  
12 05/02/17

13 DATE

14   
15 STEVEN L. JAWGIEL  
16 Regional Judicial Officer  
17 U.S. Environmental Protection Agency,  
18 Region IX



CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of **Simply Building, Inc. (Docket #: TSCA-09-2017-0004)** was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

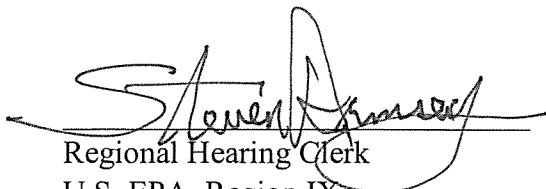
A copy was mailed via CERTIFIED MAIL to:

Mr. Kiley Ayoso, President  
Simply Building, Inc.  
97 Menlo Avenue  
Daly City, CA 4015

**CERTIFIED MAIL NUMBER:** 7016 1370 0000 2234 8466

And additional copy was hand-delivered to the following U.S. EPA case attorney:

Azure' De M. Wilkins, Esq.  
Office of Regional Counsel  
U.S. EPA, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

  
Regional Hearing Clerk  
U.S. EPA, Region IX

May 3, 2017  
Date