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INDUSTRIES, INC. and PLY GEM PACIFIC
WINDOWS CORPORATION
15

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 FOR THE COUNTY OF SOLANO
18

19 MARIBEL BITAL, individually, and on
behalf of other members of the general public
20 similarly situated,

21 Plaintiff,

22 vs.

23 SIMONTON INDUSTRIES, INC., a
California corporation; PLY GEM PACIFIC
24 WINDOWS CORPORATION, a Delaware
corporation; and DOES 1 through 10,
25 inclusive,

26 Defendants.
27
28

Case No. FCS054728

**JOINT STIPULATION RE
SETTLEMENT OF CLASS ACTION**

Judge: Hon. E. Bradley Nelson
Dept.: 4

Assigned for All Purposes to:
Hon. E. Bradley Nelson, Dept. 4

Action Filed: April 30, 2020
Trial Date: None Set

1 IT IS HEREBY STIPULATED AND AGREED by and between Maribel Bital (as
2 Class Representative), on behalf of herself and all others similarly situated to her and as defined
3 below, on the one hand, and Simonton Industries, Inc. ("Defendant"), on the other hand, as set forth
4 below:

5 **I. THE CONDITIONAL NATURE OF THIS STIPULATION**

6 This Joint Stipulation re Settlement, including all associated exhibits or attachments,
7 ("Stipulation") is made for the sole purpose of attempting to consummate settlement of this action
8 on a class and representative basis. Defendant denies all of the claims as to liability, damages,
9 penalties, and restitution as well as the class representative allegations asserted in the Litigation.
10 This Stipulation and the settlement it evidences are made in compromise of disputed claims.
11 Because this is a class action, this settlement must receive preliminary and final approval from the
12 Court. Accordingly, Defendant enters into this Stipulation and associated settlement on a
13 conditional basis. In the event that the Court does not execute and file the Order Granting Final
14 Approval of Settlement, or in the event that the Court does not enter the Judgment, or the Judgment
15 does not become Final for any reason, this Stipulation shall be deemed null and void *ab initio*, it
16 shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose
17 whatsoever, and the negotiation, terms and entry of it shall remain subject to the provisions of
18 Federal Rule of Evidence 408 and California Evidence Code sections 1119 and 1152.

19 Defendant has agreed to resolve this Litigation via this Stipulation, but to the extent
20 this Stipulation is deemed void or does not take effect for any reason, Defendant does not waive,
21 but rather expressly reserves, all rights to challenge all such claims and allegations in the Litigation
22 upon all procedural and factual grounds, including without limitation the ability to challenge class
23 and/or representative treatment on any grounds or to assert any and all defenses or privileges. The
24 Class Representative and Class Counsel agree that Defendant retains and reserves these rights, and
25 they agree not to take a position to the contrary; specifically, the Class Representative and Class
26 Counsel waive, and agree not to argue or present, any argument that Defendant could not contest
27 class certification or representative status on the grounds that Defendant entered into this Stipulation
28 should this Litigation proceed. In particular, the Class Representative and Class Counsel waive, and

1 agree not to argue or present, any argument that Defendant would be estopped from contesting class
2 certification and/or representative status because it has entered this Stipulation. The Settling Parties
3 agree that in the event the Court does not approve this settlement or the Agreement is voided for
4 any reason, the Settling Parties will not make any substantive reference to this proposed settlement
5 when advocating their positions in the litigation of this matter.

6 **II. THE PARTIES TO THIS STIPULATION**

7 This Stipulation (with the associated exhibits) is made and entered into by and among
8 the following Settling Parties: (i) the Class Representative (on behalf of herself and each of the
9 Settlement Class Members), with the assistance and approval of Class Counsel; and (ii) Defendant,
10 with the assistance of its counsel of record in the Litigation. The Stipulation is intended by the
11 Settling Parties to result in the final resolution of the Litigation pursuant to the Judgment and to
12 fully, finally and forever resolve, discharge and settle the Released Claims upon and subject to the
13 terms and conditions herein.

14 **III. THE LITIGATION**

15 Class Representative Maribel Bitál filed an action against Defendants Simonton
16 Industries, Inc. and Ply Gem Pacific Windows Corporation¹ on June 6, 2018 in the California
17 Superior Court for the County of Solano. Class Representative is represented by Capstone Law
18 APC. On behalf of herself and others allegedly similarly situated to her, the Class Representative
19 has alleged in the Complaint, the following causes of action: (i) unpaid overtime and failure to pay
20 minimum wages; (ii) failure to provide meal periods; (iii) failure to provide rest periods; (iv) failure
21 to provide compliant wage statements and to maintain payroll records; (v) failure to timely pay
22 wages due at termination; (vi) failure to timely pay wages during employment; (vii) claims for civil
23 penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”) for the alleged
24 underlying violations as well as for (a) failure to provide minimum wages, (b) failure to pay for
25 required physical examinations and/or drug testing, (c) failure to reimburse for necessary business
26

27 ¹ Defendant Ply Gem Pacific Windows Corporation will be dismissed pursuant to Paragraph 2.4,
28 *infra*.

1 expenses, (d) failure to provide written notice of information material to employment, and (e) failure
2 to provide personal safety equipment; and (viii) unfair and unlawful business practices relating to
3 or arising out of the previous claims.

4 In advance of mediation, the parties exchanged information, including pertinent
5 policies, class contact information, and the wage and time records for the putative class members.
6 The Settling Parties and their counsel attended a mediation with respected mediator, David Rotman,
7 Esq. on July 13, 2021. At mediation, Class Representative and Defendant reached a class-wide
8 settlement agreement that resulted from arm's length negotiations. In sum, Class Representative
9 and her counsel had sufficient information to assess this Litigation.

10 The Settling Parties recognize and acknowledge that, at the time of the execution of
11 the settlement, there are unsettled questions of law which may have impact on the claims at issue in
12 the Litigation. The parties further recognize that they are reaching this settlement in light of the
13 risks created by all of these unresolved issues, and that all Settling Parties will take all reasonable
14 efforts to enforce this Agreement and obtain Court approval for this settlement regardless of how
15 any such issues of law are or may be decided after this settlement is executed.

16 **IV. DEFENDANT'S DENIAL OF WRONGDOING OR LIABILITY**

17 Defendant denies all of the claims and contentions alleged by the Class
18 Representative in the Litigation. Defendant contends that it has meritorious defenses to all of the
19 class claims. Nonetheless, Defendant has concluded that further conducting the Litigation would
20 be protracted, disruptive, and expensive, and that it is desirable that the Litigation be fully and finally
21 settled in the manner upon the terms and conditions set forth in this Stipulation. Defendant has also
22 taken into account the uncertainty and risks inherent in any litigation, especially in putative class
23 actions like this Litigation. Defendant has therefore determined that it is desirable and that the
24 Litigation be settled in the manner and upon the terms and conditions set forth in this Stipulation.
25 The Class Representative and Class Counsel agree that this Stipulation will not be deemed any
26 admission of liability or wrongdoing on the part of Defendant, and that it may not be used in any
27 proceeding to such an effect.

1 **V. CLAIMS OF THE CLASS REPRESENTATIVES AND BENEFITS OF**
2 **SETTLEMENT**

3 Class Representative believes that the claims asserted in the Litigation have merit
4 and that evidence developed to date supports the claims. Nonetheless, the Class Representative and
5 Class Counsel recognize and acknowledge the expense and length of the type of continued
6 proceedings necessary to prosecute the Litigation against Defendant through trial and through
7 appeals. The Class Representative and Class Counsel have also taken into account the uncertain
8 outcome and the risk of continued litigation, especially in putative class actions such as this
9 Litigation, as well as the difficulties and delays inherent in such litigation. The Class Representative
10 and Class Counsel believe that the settlement set forth in the Stipulation confers substantial benefits
11 upon the Settlement Class. Based upon their evaluation, the Class Representative and Class Counsel
12 have determined that the settlement set forth in the Stipulation is in the best interests of the
13 Settlement Class.

14 **VI. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

15 NOW, THEREFORE, IT IS HEREBY FURTHER STIPULATED AND AGREED
16 by and between the Class Representative (for herself and the Settlement Class Members) and
17 Defendant, with the assistance of their respective counsel of record, that, as among the Settling
18 Parties, including all Settlement Class Members, the Litigation and the Released Claims shall be
19 finally and fully compromised, settled and released, and the Litigation shall be resolved as to all
20 Settling Parties, upon and subject to the terms and conditions of the Stipulation and the Judgment.

21 1. Definitions.

22 As used in all parts of this Agreement, the following terms have the meanings
23 specified below:

24 1.1 “Administration Costs” means the fees and costs incurred by the
25 Settlement Administrator to administer this Settlement, which shall not exceed \$15,000. These costs
26 include reasonable fees and expenses related to administering the settlement, including, but not
27 limited to, printing, distributing, and tracking forms, calculating estimated amounts per Class
28 Member, tax reporting, distributing payments from the Gross Settlement Amount, providing

1 necessary reports and declarations, and other duties and responsibilities set forth herein to process
2 this settlement, as requested by the Settling Parties. All Administration Costs shall be paid from the
3 Gross Settlement Amount. If the Court awards less than the amount of Administration Costs
4 requested, any amount not awarded will become part of the Net Settlement Amount for distribution
5 to Settlement Class Members.

6 1.2 “Attorneys’ Fees” means the amount not to exceed one-third (1/3) of the
7 Gross Settlement Amount finally approved by the Court and awarded to Class Counsel. The
8 Attorneys’ Fees shall be paid from the Gross Settlement Amount and will not be opposed by
9 Defendant. If the Court awards less than the amount requested, any amount not awarded will become
10 part of the Net Settlement Amount for distribution to Settlement Class Members.

11 1.1 “Class” means all current and former California non-exempt hourly
12 manufacturing employees of Defendants who worked at any time during the Class Period.

13 1.2 “Class Counsel” or “Plaintiff’s Counsel” means Raul Perez, Robert
14 Drexler, and Jonathan Lee of Capstone Law PC.

15 1.3 “Class Member” means an individual who is a member of the Class, as
16 defined above.

17 1.4 “Class Notice” means a notice and associated forms entitled “Notice To
18 Class Members Re: Pendency of a Class Action and Notice of Hearing On Proposed Settlement” to
19 be approved by the Court, substantially in the form attached hereto as **Exhibit 1**. Prior to mailing,
20 the Notice may be re-formatted by the Settlement Administrator, and any such re-formatting shall
21 be subject to approval by Class Counsel and counsel for Defendant.

22 1.5 “Class Period” means the period from February 2, 2017 through the date
23 of preliminary approval of this Settlement.

24 1.6 “Class Representative” or “Plaintiff” means Maribel Bitel.

25 1.7 “Class Workweeks” means the total number of workweeks that all
26 Settlement Class Members collectively worked during the Class Period.

27 1.8 “Court” means the Superior Court for the State of California, County of
28 Solano.

1 1.9 “Defendant Releasees” mean Defendant Simonton Industries, Inc. and all
2 of its employees, agents, and affiliates, including without limitation parents and subsidiaries,
3 predecessors, successors, divisions, investors, joint ventures and assigns, any benefit plan
4 maintained by any of them and the trustees, fiduciaries, and administrators of any such plan, and
5 each and all of these entities’ past or present directors, officers, employees, agents, partners,
6 members, principals, agents, underwriters, insurers, co-insurers, re-insurers, shareholders, attorneys,
7 accountants or auditors, banks or investment banks, associates, and personal or legal representatives.

8 1.10 “Effective Date” means the date on which the Judgment becomes final
9 and can no longer be appealed or otherwise disturbed because one of the following has occurred: (i)
10 the final affirmance on an appeal of the Judgment; (ii) the final dismissal with prejudice of any
11 appeal from the Judgment; or (iii) if there are no objectors and no plaintiffs in intervention at the
12 time the Court grants final approval of the settlement and enters the Judgment, the date the Court
13 grants final approval and enters Judgment. Any proceeding or order, or any appeal or petition for a
14 writ pertaining solely to Class Counsel’s application for or award of attorneys’ fees shall not, by
15 itself, in any way delay or preclude the Judgment from becoming Final.

16 1.11 “Employer Payroll Taxes” means the payroll taxes and associated
17 payments customarily borne by the employer when making standard wage payments to employees,
18 *i.e.*, the employer share of the payroll taxes, including the employer FICA, FUTA, and SDI
19 contributions. Defendant shall pay its portion of payroll taxes as the Settlement Class Members’
20 current or former employer separate and apart from the Gross Settlement Amount.

21 1.12 “Enhancement Payment” means the amount the Court awards to Plaintiff,
22 which will not exceed \$10,000. This payment shall be paid from the Gross Settlement Amount and
23 will not be opposed by Defendant and is being offered in consideration for the Plaintiff’s actions in
24 conferring benefits upon the Class and State of California, the time and effort she put into pursuing
25 this litigation, and reasonable fears of being blacklisted for future employment. In exchange for her
26 Enhancement Payment, and as a condition to it, Plaintiff shall execute a complete and general release
27 of all known and unknown claims.

1 1.13 “Final Approval Hearing” means a hearing set by the Court for the
2 purpose of: (i) determining the fairness, adequacy and reasonableness of the Settlement pursuant to
3 class action procedures and requirements; and (ii) entering Judgment.

4 1.14 “Final Approval Order” shall mean an order to be entered by the Court,
5 granting final approval of this settlement, the form of which will be mutually agreed upon by the
6 Settling Parties.

7 1.15 “Gross Settlement Amount” shall mean the gross total amount that will
8 be paid by Defendant pursuant to this Settlement Agreement, only upon occurrence of the Effective
9 Date. It is agreed that the Gross Settlement Amount is \$900,000, and it is further agreed that pursuant
10 to the terms of this Settlement Agreement, Defendant will not under any circumstances pay more
11 than the Gross Settlement Amount. (For avoidance of doubt, this section does not invalidate
12 Paragraph 1.11, which requires Defendant to pay Employer Payroll Taxes as Settlement Class
13 Members’ current or former employer on the wage portions of Settlement Class Members’
14 Individual Settlement Payments separate and apart from the Gross Settlement Amount.) The Gross
15 Settlement Amount shall cover all expenses associated with the settlement, which shall be the
16 following, and only the following, items: (1) the Individual Settlement Payments to Settlement Class
17 Members; (2) Attorneys’ Fees to Class Counsel, in an amount not to exceed \$300,000.00;
18 (3) Litigation Expenses to Class Counsel, in an amount not to exceed \$30,000.00; (4) an
19 Enhancement Payment to the Class Representative, in an amount not to exceed \$10,000.00; (5)
20 administration fees and expenses to the Settlement Administrator in an amount not to exceed
21 \$15,000; and (6) the PAGA Settlement Amount to the LWDA and to Settlement Class Members for
22 resolution of claims under California Labor Code section 2698 *et seq.*, which shall be \$50,000.00
23 (75% or \$37,500.00 to the LWDA and 25% or \$12,500.00 to Settlement Class Members).

24 1.16 “Individual Settlement Payment” means the gross, total amount due to an
25 individual Settlement Class Member, which shall be determined by multiplying the quotient of the
26 Settlement Class Members’ Individual Workweeks divided by the Class Workweeks by the Net
27 Settlement Amount. The Individual Settlement Payments will be reduced by any required legal
28 deductions for each Settlement Class Member (e.g., withholding of taxes).

1 1.17 "Individual Workweeks" shall mean the total number of workweeks
2 during which each Settlement Class Member worked during the Class Period.

3 1.18 "Judgment" means the judgment to be rendered by the Court pursuant to
4 this Settlement Agreement.

5 1.19 "LWDA" means the California Labor and Workforce Development
6 Agency.

7 1.20 "Last Known Address" means the most recently recorded mailing address
8 for a Class Member as contained in the personnel records maintained by Defendant.

9 1.21 "Litigation" or "Lawsuit" shall mean the lawsuit brought by Plaintiff
10 entitled *Maribel Bital v. Simonton Industries, Inc., et al.*, Solano Superior Court, Case No.
11 FCS054728.

12 1.22 "Litigation Expenses" means the amount that the Court awards to Class
13 Counsel for payment of actual litigation costs, which shall not exceed \$30,000.00. The Litigation
14 Expenses will be paid from the Gross Settlement Amount and will not be opposed by Defendant.
15 The Litigation Expenses are subject to Court Approval. If the Court awards less than the amount
16 requested, any amount not awarded will become part of the Net Settlement Amount for distribution
17 to Settlement Class Members.

18 1.23 "Net Settlement Amount" or "NSA" shall mean the difference of the
19 Gross Settlement Amount minus the amounts awarded by the Court for Attorneys' Fees, Litigation
20 Expenses, the Enhancement Award to the Class Representative, the Administration Costs, and the
21 payment to the LWDA. If the Court does not approve and/or reduces the amounts of the requested
22 Attorneys' Fees, Litigation Expenses, Enhancement Award, or Administration Costs, then the
23 amount of any such reduction will become part of the NSA.

24 1.24 "Notice Mailing Deadline" means the deadline for the Settlement
25 Administrator to mail the Class Notices, which shall be within thirty (30) business days after entry
26 of the Preliminary Approval Order.

27
28

1 1.25 “Opt Out” or “Request for Exclusion” means the written and signed
2 requests by Class Members to be excluded from the Settlement Class, which are submitted in the
3 manner specified in the Class Notice, postmarked no later than the Response Deadline.

4 1.26 “PAGA” means the Private Attorneys General Act of 2004, California
5 Labor Code §§ 2698 *et seq.*, as amended.

6 1.27 “PAGA Settlement Amount” means the \$50,000.00 of the Gross
7 Settlement Amount allocated to satisfy the PAGA penalties claim as alleged in the operative First
8 Amended Complaint. Seventy-five percent (75%) of the PAGA Settlement Amount (\$37,500.00)
9 shall be paid to the LWDA and twenty-five percent (25%) of the PAGA Settlement Amount
10 (\$12,500.00) shall be part of the Net Settlement Amount distributed to Settlement Class Members.

11 1.28 “Preliminary Approval Order” shall mean an order to be executed and
12 filed by the Court preliminarily approving of this settlement.

13 1.29 “Released Claims” shall collectively mean all claims, including without
14 limitations “Unknown Claims” as defined in Paragraph 1.37 hereof, demands, rights, liabilities and
15 causes of action of every nature and description whatsoever including without limitation statutory,
16 constitutional, contractual or common law claims, whether known or unknown, against the
17 Defendant Releasees, or any of them based on the facts alleged in the operative First Amended
18 Complaint, that accrued during the Class Period for alleged or actual (i) unpaid overtime and failure
19 to pay minimum wages; (ii) failure to provide meal periods; (iii) failure to authorize and permit rest
20 periods; (iv) failure to provide compliant wage statements and to maintain payroll records;
21 (v) failure to timely pay wages due at termination; (vi) failure to timely pay wages during
22 employment; (vii) claims for civil penalties pursuant to PAGA for the alleged underlying violations
23 as well as for (a) failure to provide minimum wages, (b) failure to pay for required physical
24 examinations and/or drug testing, (c) failure to reimburse for necessary business expenses, (d)
25 failure to provide written notice of information material to employment, and (e) failure to provide
26 personal safety equipment; and (viii) unfair and unlawful business practices relating to or arising
27 out of the previous claims. Released Claims include (1) claims for damages, penalties or any other
28 remedies under any statute or regulation or other provision of law, based on the facts alleged in the

1 Complaint, including without limitation claims under California Labor Code sections 201, 202, 203,
2 204, 222.5, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198,
3 2802, 2810.5, 6401, and 6403, California Labor Code section 2698 *et seq.* based on the preceding
4 sections, California Business and Professions Code section 17200 *et seq.* based on the preceding
5 sections, the applicable California Industrial Welfare Commission Wage Order based on the facts
6 alleged in the Complaint; (2) claims, based on the facts alleged in the Complaint, for injunctive
7 relief, restitution, disgorgement, accounting, declaratory relief or other equitable relief; (3) any and
8 all claims, based on the facts alleged in the Complaint, for interest, costs, or attorney fees, including
9 without limitation claims under California Labor Code sections 218.5, 1194 & 2698 *et seq.* and
10 California Code of Civil Procedure section 1021.5; (4) and, to the extent not covered above, any and
11 all claims arising from the facts alleged in the Complaint in the Litigation.

12 1.30 “Response Deadline” means the deadline for all Class Members to
13 respond to the Class Notice, which shall be forty-five (45) days after the Class Notice is mailed.

14 1.31 “Settlement Administrator” means CPT Group, Inc., the third-party
15 settlement administration firm.

16 1.32 “Settlement Agreement” or “Agreement” means this settlement
17 agreement entered into by the Settling Parties.

18 1.33 “Settlement Class” means the collective group of all Class Members who
19 do not request exclusion from the Settlement Class.

20 1.34 “Settlement Class Member” means a Class Member who has not
21 requested exclusion from the Settlement Class.

22 1.35 “Settling Parties” means Defendant and Class Representative on behalf
23 of herself and all Members of the Settlement Class.

24 1.36 “Simonton” or “Defendant” mean Simonton Industries, Inc., the
25 defendant in the Litigation.

26 1.37 “Unknown Claims” means any Released Claims which the Class
27 Representative or any Settlement Class Member does not know or suspect to exist in his or her favor
28 at the time of the entry of the Judgment, and which, if known by him or her might have affected his

1 or her settlement with and release of the Defendant Releasees or might have affected his or her
2 decision not to object to this settlement. With respect to any and all Released Claims, the Settling
3 Parties agree that, upon the Effective Date, the Class Representative shall expressly and each of the
4 Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have,
5 waived the provisions, rights and benefits of California Civil Code section 1542, which provides:

6
7 **A general release does not extend to claims that the creditor or releasing party**
8 **does not know or suspect to exist in his or her favor at the time of executing the**
9 **release and that, if known by him or her, would have materially affected his or**
10 **her settlement with the debtor or released party.**

11 The Class Representative and each Settlement Class Member may hereafter discover facts in
12 addition to or different from those which he or she now knows or believes to be true with respect to
13 the subject matter of the Released Claims, but the Class Representative and each Settlement Class
14 Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall
15 have, fully, finally, and forever settled and released any and all Released Claims, known or
16 unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or
17 hidden, which then exist, or heretofore have existed upon any theory of law or equity now existing
18 or coming into existence in the future. The Class Representative acknowledges, and the Settlement
19 Class Members shall be deemed by operation of the Judgment to have acknowledged, that the
20 foregoing waiver was separately bargained for and a key element of the settlement of which this
21 release is a part.

22 For the sake of clarity, the Settling Parties agree that Unknown Claims include only
23 those claims that meet the definition of Released Claims and do not include claims that do not meet
24 the definition of Released Claims. As such, for example, Unknown Claims do not include claims
25 for any relief for wrongful termination, unlawful harassment, Workers' Compensation, or other
26 claims that do not arise from the facts alleged in the Complaint.

27 1.38 "Updated Address" means a mailing address that was updated via a
28 Reasonable Address Verification Measure, or Secondary Address Verification Measure or via an
updated mailing address provided by the United States Postal Service or a Class Member.

1 2. **The Settlement.**

2 2.1 ***Taxes.***

3 2.1.1 Defendant, through the Settlement Administrator, and according to the
4 terms, conditions and procedures set forth in this Settlement Agreement, shall pay each Settlement
5 Class Member his or her Individual Settlement Payment. Each Settlement Class Member's gross
6 Individual Settlement Payment will be apportioned as follows: 25% as wages and 75% as non-
7 wages (including penalties and interest). The amounts paid as wages shall be subject to all tax
8 withholdings customarily made from an employee's wages and all other authorized and required
9 withholdings customarily made from an employee's wages and shall be reported on IRS Form W-
10 2 by the Settlement Administrator. The amounts paid as penalties and interest shall be subject to
11 all authorized and required withholdings customarily made from employees' wages other than tax
12 withholdings and shall be reported on IRS Form 1099 by the Settlement Administrator.

13 2.1.2 Other than the withholding and reporting requirements set forth herein,
14 each Settlement Class Member shall be responsible for the reporting and payment of any federal,
15 state and/or local income or other tax or any other withholdings, if any, on his or her Individual
16 Settlement Payment. Plaintiff shall be responsible for reporting any taxes or withholdings on any
17 payments made to Plaintiff pursuant to this Settlement Agreement. Likewise, Class Counsel shall
18 be responsible for reporting any taxes or withholdings on any payments made to Class Counsel
19 pursuant to this Settlement Agreement. Defendant makes no representations, and it is understood
20 and agreed that Defendant has made no representations, as to the taxability of any portions of the
21 Individual Settlement Payments to any Settlement Class Members, the payment of any costs or an
22 award of attorneys' fees, or any payments to the Class Representative. The Class Notice will advise
23 Class Members that they can seek their own tax advice prior to acting in response to that notice,
24 and the Class Representative and Class Counsel agree that Class Members will have an adequate
25 opportunity to seek tax advice prior to acting in response to the Class Notice.

26 2.2 ***No Effect on Employee Benefits.*** The Enhancement Payment and
27 Individual Settlement Payments paid to Plaintiff and Settlement Class Members shall not be
28 deemed to be pensionable earnings and shall not have any effect on the eligibility for, or

1 calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of
2 Plaintiff or the Settlement Class Members. Defendant will not, unless otherwise required by law,
3 make from the Individual Settlement Payments any additional deductions, withholdings or
4 payments, including without limitation, medical or other insurance payments or premiums,
5 employee 401(k) contributions or matching employer contributions, wage garnishments, or charity
6 withholdings.

7 2.3 **PAGA Notice.** The Class Representative agrees to take all reasonable
8 steps to comply with the notice requirements of California Labor Code section 2699(*l*). At the time
9 of filing the Preliminary Approval Motion, the Class Representative shall provide notice of the
10 settlement set forth in this Settlement Agreement to the LWDA through that agency's Internet portal
11 and shall provide concurrent proof to Defendant that she has done so. Following the Court's entry
12 of Judgment, the Class Representative shall submit the Judgment to the LWDA and shall provide
13 concurrent proof to Defendant that she has done so. The Settling Parties agree that the release of
14 PAGA claims contained herein is binding.

15 2.4 **Dismissal of Ply Gem Pacific Windows.** Prior to, or as part of, the filing
16 of a motion for preliminary approval of the settlement, Plaintiff will request dismissal of Defendant
17 Ply Gem Pacific Windows Corporation without prejudice. This settlement will have no preclusive
18 effect as to Ply Gem Pacific Windows Corporation.

19 2.5 **Preliminary Approval.**

20 2.5.1 Plaintiff, through her counsel of record, shall move for preliminary
21 approval of this settlement pursuant to California Rule of Court 3.760, *et seq.*, and file this
22 Settlement Agreement with the Court. Class Counsel will provide Defendant's Counsel with an
23 advance copy of the preliminary approval motion at least three business days prior to filing so that
24 Defendant's counsel may provide any comments prior to filing. Via this submission, Plaintiff shall
25 request that the Court conditionally certify the Class, preliminarily approve this Settlement, order
26 the Class Notice be disseminated pursuant to this Settlement Agreement, enter the Preliminary
27 Approval Order, and schedule the Final Approval Hearing.

1 2.5.2 If the Court enters the Preliminary Approval Order, then at the resulting
2 Final Approval Hearing, the Settling Parties, through their counsel of record, shall address any
3 written objections from Class Members or any concerns from Class Members who attend the Final
4 Approval Hearing as well as any concerns of the Court, and shall and hereby do, unless provided
5 otherwise in this Agreement, agree to final approval of this Settlement Agreement and entry of the
6 Judgment by the Court.

7 2.6 ***Notice to Class Members.***

8 2.6.1 After the Court enters its Preliminary Approval Order, every Class
9 Member will be provided with the Class Notice in accordance with the procedures set forth herein.

10 2.6.2 **Class Database.** Within fifteen (15) business days after entry of the
11 Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator an electronic
12 database (“Class Database”), which will list for each Class Member: (1) first and last name; (2)
13 Last Known Address; (3) social security number, if known; (4) whether the Class Member is a
14 current or former employee; (5) the total number of Individual Workweeks for each Class Member;
15 (6) the amount of each Class Member’s Individual Settlement Amount allocated to wages (25%)
16 and the amount allocated to non-wage recovery (75%); and (7) the amount of each Class Member’s
17 total Individual Settlement Amount. By approving this settlement, the Court will be deemed to
18 have authorized Defendant to provide the Settlement Administrator with the social security number
19 of the Class Members. If any or all of this information is unavailable to Defendant, Defendant will
20 so inform Plaintiff’s Counsel and the Parties will make their best efforts to reconstruct or otherwise
21 agree upon how to proceed with the unavailable information. The Settlement Administrator will
22 conduct a skip trace for the address of all Class Members who are former employees of Defendant.
23 The Database shall be based on Defendant’s payroll, personnel, and other business records. The
24 Settlement Administrator shall maintain the Database and all data contained within the Database
25 as private and confidential.

26 2.6.3 **Confirmation Prior to Notice Mailing.** The Settlement Administrator
27 shall inform Class Counsel that the total of the Individual Settlement Payments is, or is not, equal
28 to the maximum amount for payments to Settlement Class Members. For avoidance of doubt,

1 amounts of Individual Settlement Payments to Settlement Class Members will not be provided to
2 the Class Representative or Class Counsel, unless agreed upon by the Parties. The Settlement
3 Administrator shall also provide a formatted Class Notice, after entry of the Preliminary Approval
4 Order and before the mailing of the Class Notice, seeking the Parties' approval of the Class Notice
5 prior to mailing.

6 **2.6.4 Notice Mailing.** Within thirty (30) business days after entry of the
7 Preliminary Approval Order, the Settlement Administrator will mail the Class Notice to all
8 identified Class Members at their Last Known Addresses via first class mail through the United
9 States Postal Service, postage pre-paid.

10 **2.6.5 Notice Contents.** The Class Notice shall include instructions on how to
11 opt out of or object to the settlement. The mailing enclosing the Class Notice will not contain any
12 other materials, and no other materials will be sent to any Class Member unless by the Settlement
13 Administrator or Class Counsel in response to a submission or inquiry from a Class Member in
14 response to the Class Notice. The Class Notice and its envelope or covering shall be marked to
15 denote the return address of the Settlement Administrator stated on the Class Notice.

16 **2.6.6 Updated Addresses Prior to Class Notice Mailing.** Prior to mailing the
17 Class Notice to each Class Member, the Settlement Administrator shall conduct a search for
18 Updated Addresses for all Class Members using the National Change of Address Database,
19 maintained by the United States Postal Service to review the accuracy of the last mailing address
20 known by Defendant, and, if possible, update Class Members' mailing addresses. To the extent this
21 process yields an Updated Address, that Updated Address shall replace the Last Known Address
22 and be treated as the new Last Known Address for purposes of this Settlement Agreement and for
23 subsequent mailings in particular.

24 **2.6.7 Class Notice Sent via Mail.** The Class Notice shall be mailed to the Last
25 Known Addresses of the Class Members no later than the Notice Mailing Deadline.

26 **2.6.8 Undeliverable – Efforts to Find Updated Address.** In the event a Class
27 Notice is returned to the Settlement Administrator by the United States Postal Service as
28 undeliverable because the address of the recipient is no longer valid, *i.e.*, the envelope is marked

1 “Return to Sender,” the Settlement Administrator shall conduct a Secondary Address Verification
2 Measure within five (5) days to attempt to ascertain a current address of the particular Class
3 Member in question to locate an Updated Address. A “Secondary Address Verification Measure”
4 is an effort to ascertain the specific Class Member’s address through the use of a standard skip trace
5 procedure (such as Lexis/Nexis Accurint).

6 **2.6.9 Undeliverable – Updated Address Found.** If an address is ascertained
7 through the Settlement Administrator’s Secondary Address Verification Measure, the Settlement
8 Administrator will re-send that Class Notice within five (5) days of receiving the updated address.
9 If the Class Notice is not returned as undeliverable, the new address found as a result of the
10 Settlement Administrator’s efforts will be the Updated Address and shall be deemed as the new
11 Last Known Address for purposes of this Settlement Agreement and for subsequent mailings in
12 particular. In the event that a second address is ascertained by the Settlement Administrator, the
13 Class Notice will be deemed to have been delivered upon the second mailing of the Class Notice
14 to the Last Known Address.

15 **2.6.10 Undeliverable – Forwarding Address Provided.** In the event a Class
16 Notice is returned to the Settlement Administrator by the United States Postal Service with a
17 forwarding address for the recipient, the Settlement Administrator shall re-mail the Class Notice to
18 that address within five (5) days of receiving such information. If the Class Notice is not returned
19 as undeliverable, the forwarding address shall be deemed the Last Known Address for purposes of
20 this Settlement Agreement and for subsequent mailings in particular.

21 **2.6.11 Undeliverable – No Updated Address Found.** In the event a Class
22 Notice is returned to the Settlement Administrator by the United States Postal Service as
23 undeliverable because the address of the recipient is no longer valid, *i.e.*, the envelope is marked
24 “Return to Sender,” and the Settlement Administrator conducts a Secondary Address Verification
25 Measure that does not result in an Updated Address, then the Class Notice will be deemed delivered
26 to the Class Member.

27 **2.6.12 Undeliverable.** In the event that the Class Notice is returned by the United
28 States Postal Service as undeliverable because the address of the recipient is no longer valid, *i.e.*,

1 the envelope is marked "Return to Sender," and no Updated Address can be found for that Class
2 Member as a result of a Secondary Address Verification Measure, or any mailing to any Updated
3 Address is returned as undeliverable, the Class Notice will be deemed to have been delivered upon
4 the second mailing of the Class Notice to the Last Known Address.

5 **2.6.13 Weekly Status Reports.** The Settlement Administrator shall provide a
6 weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator
7 will inform Class Counsel and Defendant's Counsel of the number of Class Notices mailed, the
8 number of Class Notices returned as undeliverable and re-mailed, the number of Class Notices
9 deemed finally undeliverable via mail and mail resulting in a deemed opt-out, the number of opt-
10 outs and objections, and the number of open and resolved class member disputes (as discussed in
11 paragraph 2.7.10 below).

12 **2.7 Responses to the Class Notice and Motion for Final Approval.**

13 **2.7.1** Class Members have the option to participate in this Lawsuit at their own
14 expense by obtaining their own attorney(s). Class Members who choose this option will be
15 responsible for any attorneys' fees or costs incurred as a result of this election. The Class Notice
16 will advise Class Members of this option.

17 **2.7.2 Objections to Settlement.** Class Members may also object to the
18 Settlement Agreement by submitting written objections to the Settlement Administrator no later
19 than the Response Deadline. The Class Notice will advise Class Members of this option. The
20 Settlement Administrator shall provide any such objections to Class Counsel and Defendant's
21 counsel immediately upon receipt, and file the objection with the Court. If the Settlement
22 Administrator is unable to file the objection, it will notify counsel for the Settling Parties and
23 Defendant's counsel will file the objection with the Court.

24 **2.7.3 Format of Objection.** Any objections shall state: (a) the case name
25 (*Maribel Bitál v. Simonton Industries, Inc., et al.*) and case number (FCS054728); (b) the objecting
26 person's or his/her attorney's full name, address, and telephone number; (c) the words "Notice of
27 Objection" or "Formal Objection"; (d) describe, in clear and concise terms, the legal and factual
28 arguments supporting the objection; (e) list identifying witness(es) the objector may call to testify

1 at the Final Approval Hearing; (f) provide true and correct copies of any exhibit(s) the objector
2 intends to offer at the Final Approval Hearing; and (g) state whether the objection applies only to
3 the objector, to a specific subset of the Class, or to the entire Class. Any objection must comply
4 with the Federal Rules of Civil Procedure Rule 23(e)(5) and California Rule of Court 3.769 and
5 California Code of Civil Procedure section 902.

6 **2.7.4 Notice of Intent to Appear in Support of Objection.** Class Members
7 who timely submit valid objections to the settlement may (though are not required to) appear at the
8 Final Approval Hearing, either on their own behalf or through the objector's own counsel. The
9 Class Notice will request that the objector notify the Parties of the objector's intent to appear at the
10 Final Approval Hearing by mailing or filing a Notice of Intent to Appear with the Court by the
11 Response Deadline.

12 **2.7.5 Class Member Address Changes.** Class Members who, for future
13 reference and mailings from the Court or Settlement Administrator, if any, wish to change the name
14 or address listed on the envelope in which the Class Notice was first mailed to them, may do so by
15 contacting the Settlement Administrator at the toll-free telephone number or mailing address
16 provided in the Class Notice.

17 **2.7.6 Requests for Exclusion ("Opt Out").** Class Members may request
18 exclusion from or "opt out" of the Settlement Class. The Class Notice will provide that Class
19 Members who wish to exclude themselves from the Settlement must mail to the Settlement
20 Administrator a written request for exclusion by the Response Deadline.

21 **2.7.7 Format of Request for Exclusion.** The written request for exclusion
22 must: (a) state the Class Member's name, address, telephone number, and last four numbers of their
23 social security number or employee identification number; (b) state the Class Member's intention
24 to exclude themselves from or opt-out of the settlement (*e.g.*, "I want to exclude myself from this
25 settlement. I also understand that I retain all rights to sue the Defendant for the claims asserted in
26 this lawsuit."); (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member
27 or his or her lawful representative; and (e) be postmarked no later than the Response Deadline. If
28 a fully completed and properly executed Request for Exclusion is not received by the Settlement

1 Administrator from a Class Member postmarked on or before the Response Deadline, then that
2 Class Member will be deemed to have forever waived his or her right to opt out of the Settlement
3 Class and will become Settlement Class Members. Those portions of the Gross Settlement Amount
4 for Settlement Class Members attributable to Class Members who submit valid Requests for
5 Exclusion shall become part of the Net Settlement Amount, distributable to Settlement Class
6 Members.

7 **2.7.8 Effect of “Opt Out.”** Any Class Member who returns a timely, valid, and
8 executed request for exclusion will not participate in or be bound by the settlement and subsequent
9 judgment and will not receive an Individual Settlement Payment. The Class Member who elects to
10 opt out shall not be entitled to any benefit as a result of this Litigation, nor be allowed to object to
11 this settlement.

12 **2.7.9 Failure to “Opt Out.”** Class Members who do not opt out of the
13 Settlement Class, as described in this Settlement Agreement, shall be deemed Settlement Class
14 Members and shall be subject to the Judgment regardless of whether they ultimately negotiate their
15 settlement checks.

16 **2.7.10 Class Member Disputes.** The Class Notice shall contain, in the
17 appropriate space, the Class Member’s estimated Individual Settlement Payment. Class Members
18 are not required to submit any form in order to receive their Individual Settlement Payments as
19 Settlement Class Members. If a Class Member wishes to dispute this information and seek a larger
20 Individual Settlement Payment, the Class Member must submit to the Settlement Administrator, in
21 advance of the Response Deadline, a signed dispute explaining the reasons for such a dispute, and
22 any supporting documents. In the absence of such documentation, the Class Database will be
23 controlling. No dispute will be valid if postmarked after the Response Deadline. Counsel for the
24 Settling Parties shall meet and confer on all such disputes following the Response Deadline in an
25 effort to resolve them. If any disputes remain unresolved following this meet and confer effort, the
26 Settling Parties shall seek the guidance of the Settlement Administrator and resolve the matter on
27 the basis of this guidance. If no compromise is reached, the dispute can be presented to the Court
28 for resolution. In any such dispute, the Defendant’s records shall be entitled to presumptive weight.

1 2.7.11 **Settlement Administrator’s Report.** No later than five (5) business days
2 after the Response Deadline, the Settlement Administrator will provide Counsel for the Settling
3 Parties with a complete and accurate accounting of the number of Class Notices mailed to Class
4 Members, the number of Class Notices returned as undeliverable and re-mailed, the number of
5 Class Notices deemed finally undeliverable via mail and mail resulting in a deemed opt-out, the
6 number of valid and invalid opt-outs, the number of objections, and the number of open and
7 resolved class member disputes.

8 2.7.12 **Settlement Administrator’s Declaration.** No later than fourteen (14)
9 calendar days after the Response Deadline or at the request of the Parties, whichever comes first,
10 the Settlement Administrator will provide the Parties with a declaration of due diligence setting
11 forth its compliance with its obligations under this Agreement. The declaration from the Settlement
12 Administrator will be filed with the Court by Class Counsel at the time the final approval motion
13 is filed. Before the Final Approval Hearing, the Settlement Administrator will supplement its
14 declaration of due diligence if any material changes occur from the date of the filing of its prior
15 declaration.

16 2.7.13 **No Solicitation of Objections or Requests for Exclusion.** Neither the
17 Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any
18 Class Member to object to the settlement, request exclusion from the settlement, or appeal from
19 the Judgment.

20 2.8 ***Final Approval, Judgment, and Appeals.***

21 2.8.1 **Final Approval.** Class Counsel will file unopposed motions and
22 memorandums in support thereof for Final Approval of the settlement and the following payments
23 in accord with the terms of the Settlement Agreement: (a) Attorneys’ Fees, (b) Litigation Expenses,
24 (c) Administrative Costs, (d) Enhancement Payment, and (e) the PAGA Settlement Amount. Class
25 Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment)
26 releasing and barring any Released Claims of the Settlement Class Members. The Settling Parties
27 shall take all reasonable efforts to secure entry of the Order of Final Approval and Judgment. The
28

1 Class Representative shall submit the Judgment in this matter to the LWDA within ten (10) days
2 after receipt of the Judgment.

3 **2.8.2 Denial or Appeal of Final Approval.** If the Court does not grant Final
4 Approval of this settlement, or if the Court's Final Approval of the settlement is reversed or
5 materially modified on appellate review, then this Settlement Agreement shall be void *ab initio*,
6 and Defendant shall have no obligation to make any payments under the Settlement Agreement,
7 except that Defendant agrees to be solely responsible for paying any fees owing to the Settlement
8 Administrator as a result of this Agreement. An award by the Court of a lesser amount than sought
9 by Plaintiff and Class Counsel for the Enhancement Award, Attorneys' Fees, or Litigation
10 Expenses will not constitute a material modification to the settlement within the meaning of this
11 paragraph.

12 **2.8.3 Proposed Order and Judgment.** Upon Final Approval of the settlement,
13 the Settling Parties shall present to the Court an agreed upon proposed Final Approval Order,
14 approving of the settlement and entering Judgment in accordance therewith. After entry of
15 Judgment, the Court shall have continuing jurisdiction over the Litigation for purposes of:
16 (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters; and (3)
17 addressing such post-Judgment matters as may be appropriate under Court rules and applicable
18 law.

19 **2.8.4 Waiver of Right to Appeal.** Provided that the Judgment is consistent with
20 the terms and conditions of this Settlement Agreement, the Parties and their respective counsel
21 waive any and all rights to appeal from the Judgment, including but not limited to, all rights to any
22 post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside
23 judgment, and any extraordinary writ, and the Judgment will become non-appealable at the time it
24 is entered. The waiver of appeal does not include any waiver of Plaintiff's and or Class Counsel's
25 right to appeal a reduction of the amounts requested for the Enhancement Award, Attorneys' Fees,
26 or Litigation Expenses, or oppose any appeal, appellate proceeding, or post-judgment proceeding.
27 For avoidance of doubt, this provision does not restrict any party's right to oppose any appeal filed
28

1 by any Class Members, in the event that a Class Member timely objected to the settlement and
2 ultimately appeals the Judgment.

3 **2.8.5 Vacating, Reversing, or Modifying Judgment on Appeal.** If, on appeal,
4 the reviewing court vacates, reverses, or modifies the Judgment such that there is a material
5 modification of the settlement, and that court's decision is not completely reversed and the
6 Judgment is not fully affirmed on review by a higher court, then this Settlement Agreement will
7 become null and void and the Settling Parties will have no further obligations under it. A material
8 modification would include, but not necessarily be limited to, any alteration of the Gross Settlement
9 Amount, an alteration in the calculation of the Net Settlement Amount, and any change to the
10 calculation of the Individual Settlement Payments.

11 **2.9 Funding and Disbursement of Settlement.**

12 **2.9.1 Funding the Settlement.** Defendant shall wire to the Settlement
13 Administrator the Gross Settlement Amount within fifteen (15) business days of the Effective Date.

14 **2.9.2 Disbursement of Settlement.** Within thirty (30) business days after the
15 Effective Date, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be
16 paid to Settlement Class Members; (2) the Attorneys' Fees and Litigation Expenses, as approved
17 by the Court, to Class Counsel; (3) the Enhancement Payment, as approved by the Court, to the
18 Class Representative; (4) the Administration Costs, as approved by the Court, to the Settlement
19 Administrator; and (5) the PAGA Settlement Amount, as approved by the Court, to the LWDA and
20 Settlement Class Members. Following disbursement, the Settlement Administrator shall provide
21 counsel for the Settling Parties with a written confirmation of the disbursement mailing.

22 **2.9.3 Class Member Checks.** The Settlement Administrator shall issue to each
23 Settlement Class Member one check payable to the Settlement Class Member from the qualified
24 settlement account (administered by the Settlement Administrator but funded by Defendant) for
25 the Individual Settlement Payment, less applicable taxes and withholdings. The Settlement
26 Administrator shall mail this check to each Settlement Class Member at his or her Last Known
27 Address, or Updated Address if obtained.

1 **2.9.4 Uncashed Checks and Reminder Postcard.** Checks issued to Settlement
2 Class Members pursuant to this Agreement shall remain negotiable for a period of one hundred
3 eighty (180) days from the date of mailing. If any checks are not redeemed or deposited within
4 ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard
5 indicating that unless the check is redeemed or deposited before the expiration date, it will expire
6 and become non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks
7 remain uncashed or not deposited by the expiration of the one hundred eighty (180) day period
8 during which settlement checks are negotiable, the Settlement Administrator shall tender the check
9 to the California Rural Legal Assistance. Settlement Class Members who fail to negotiate their
10 settlement checks in a timely fashion shall remain subject to the terms of the Judgment.

11 **2.9.5 Post-Distribution Accounting and Settlement Administrator's Final**
12 **Report.** Within ten (10) business days after the disbursement of all funds, the Settlement
13 Administrator will serve on counsel for the Settling Parties a declaration providing a final report
14 on the disbursements of all funds. This declaration will include an easy to read chart, which will
15 provide the following information: (1) the total Gross Settlement Amount; (2) the total number of
16 Settlement Class Members; (3) the total number of Class Members to whom the Class Notice was
17 sent and not returned as undeliverable; (4) the number and percentage of opt-outs from the
18 settlement; (5) the number and percentage of objections; (6) the average and median recovery per
19 Settlement Class Member; (7) the administrative costs; (8) the Attorneys' Fees and Litigation
20 Expenses; (9) the Attorneys' Fees in terms of percentage of the Gross Settlement Amount. Within
21 twenty-one (21) calendar days after the Gross Settlement Amount has been distributed, the Parties
22 shall file this Post-Distribution Accounting with the Court. The Settlement Administrator will
23 provide any supplemental declaration required by the Court.

24 **2.10 Releases.**

25 **2.10.1 Settlement Class Members.** Upon the Effective Date, each of the
26 Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have,
27 fully, finally, and forever released, relinquished and discharged the Defendant Releasees from the
28 Released Claims.

1 2.10.2 **Plaintiff/Class Representative Only.** In addition, upon the Effective
2 Date, the Class Representative agrees to and shall be deemed to have, and by operation of the
3 Judgment shall have, fully, finally, and forever released, relinquished and discharged the Defendant
4 Releasees from the Released Claims and the Unknown Claims. The Class Representative agrees
5 that California Labor Code section 2804 does not hinder or limit the preclusive effect of the
6 Judgment on the Released Claims.

7 2.11 ***Costs, Attorneys' Fees and Enhancement Award.***

8 2.11.1 **Attorneys' Fees and Litigation Expenses.** Class Counsel shall be
9 entitled, subject to the approval of the Court and the occurrence of the Effective Date, to recover
10 their reasonable litigation costs, associated expenses and attorney fees pursuant to California law.
11 These costs, fees, and expenses shall be paid out of the Gross Settlement Amount. Subject to Court
12 approval and the occurrence of the Effective Date, Class Counsel may apply for a total attorney fee
13 award not to exceed, \$300,000.00 (which is one-third of the Gross Settlement Amount) for all
14 attorneys' fees and actual litigation expenses not to exceed \$30,000.00. The Settlement
15 Administrator will report the payment of Attorneys' Fees and Litigation Expenses to Class Counsel
16 on IRS Form 1099.

17 2.11.2 Class Counsel and the Class Representative will not seek to recover any
18 other fees, costs or expenses incurred in this Litigation. The Class Representative and Class
19 Counsel agree that they shall be responsible for seeking and justifying their fees and cost awards
20 to the Court, and they agree to submit the necessary materials to justify the requested award along
21 with the motion for final approval of the Settlement. Defendant will not oppose an award that is
22 consistent with this paragraph. Upon request, Class Counsel shall provide the Settlement
23 Administrator with a Form W-9(s) for reporting purposes and written allocation instructions, if any,
24 regarding the payee(s). Other than any reporting of this fee payment as required by this Settlement
25 Agreement or law, which Defendant shall make, Class Counsel and the Class Representative shall
26 be responsible for the reporting and payment of any federal, state and/or local income or other form
27 of tax on any payment made pursuant to this paragraph. The payment awarded and made pursuant
28 to this paragraph shall constitute full satisfaction of any claim for fees or costs or any other

1 expenses, and the Class Representative and Class Counsel, on behalf of themselves and all
2 Settlement Class Members, agree that they shall neither seek nor be entitled to any additional
3 attorney fees or costs under any theory nor shall they seek an award in excess of the amount
4 specified herein.

5 2.11.3 **Enhancement Payment.** In addition to her Settlement Payment as a
6 Settlement Class Member, and subject to the Court's approval and occurrence of the Effective Date,
7 the Class Representative will receive an Enhancement Payment, subject to the Court's approval, in
8 an amount not to exceed \$10,000.00. This Enhancement Payment will be paid out of the Gross
9 Settlement Amount. The Class Representative and Class Counsel agree that they shall be
10 responsible for seeking and justifying this Enhancement Payment to the Court, and they agree to
11 submit the necessary materials to justify the requested Enhancement Payment along with the
12 motion for final approval of the Settlement. Defendant will not oppose an award that is consistent
13 with this paragraph.

14 2.11.4 The Enhancement Payment shall be compensation and consideration for
15 the Class Representative's efforts as the class representative in the Litigation and benefits conferred
16 upon the Class and State of California. Defendant shall report to the Internal Revenue Service the
17 payment as non-wage income to the Class Representative in the year of payment. This reporting
18 shall be done via a Form 1099, and the Class Representative agrees to take full responsibility for
19 the payment of any outstanding taxes due.

20 2.11.5 Unless otherwise expressly provided, Defendant shall have no
21 responsibility for, and no liability whatsoever with respect to, the allocation among the Class
22 Representative, Class Counsel and/or any other Person who may assert some claim thereto, of any
23 award or payment issued or made in the Litigation or pursuant to this Settlement Agreement.

24 2.12 ***Settlement Administration Costs.***

25 2.12.1 The Administration Costs reasonably incurred by the Settlement
26 Administrator as a result of procedures and processes expressly required by this Settlement
27 Agreement shall be paid out of the Gross Settlement Amount, in an amount not to exceed \$15,000.
28 The Class Representative and Class Counsel shall have no responsibility for such fees or expenses.

1 2.12.2 The actions of the Settlement Administrator shall be governed by the
2 terms of this Settlement Agreement. Defendant and Class Counsel may provide relevant
3 information needed by the Settlement Administrator pursuant to this Agreement and engage in
4 related communications with the Settlement Administrator. Defendant and Class Counsel may
5 provide logistical instructions to the Settlement Administrator with regard to actions required by
6 this Settlement Agreement and engage in related communications with the Settlement
7 Administrator.

8 2.12.3 The Settlement Administrator must communicate to counsel for the
9 Settling Parties any action that may cause delay in completing any of its duties, including but not
10 limited to, disseminating the Class Notice, providing a declaration of due diligence, and disbursing
11 the payments required under this Settlement Agreement. The Settlement Administrator must also
12 communicate to counsel for the Settling Parties, the nature of any Class Member disputes and their
13 resolution or lack thereof.

14 2.12.4 In the event that any of the Settling Parties take the position that the
15 Settlement Administrator has not acted in accordance with the terms of the Settlement Agreement,
16 that party's counsel shall meet and confer with counsel for the other Settling Party prior to raising
17 any such issue with the Court.

18 2.13 ***PAGA Settlement Amount.***

19 2.13.1 As part of this settlement, and subject to Court approval, the Settling
20 Parties allocate \$50,000.00 of the Gross Settlement Amount to satisfy PAGA penalties as alleged
21 in the operative First Amended Complaint. Seventy-five percent (75% or \$37,500.00) of the PAGA
22 Settlement Amount shall be paid to the LWDA and twenty-five percent (25% or \$12,500.00) of
23 the PAGA Settlement Amount shall be part of the NSA distributed to Settlement Class Members.

24 2.14 ***Termination of Settlement.***

25 2.14.1 In the event that any material provision of the settlement set forth in this
26 Agreement shall not be approved in its entirety by the Court, or in the event that the Effective Date
27 does not occur, any of the Settling Parties shall have the option to void the settlement, and in such
28 case, no payments shall be made by Defendant to anyone in accordance with the terms of this

1 Agreement (except that Defendant agrees to be solely responsible for paying any costs charged by
2 the Settlement Administrator as a result of its efforts pursuant to this Settlement Agreement up to
3 the date of termination), and this Settlement Agreement shall be deemed null and void with no
4 effect on the Lawsuit whatsoever.

5 2.14.2 In the event that five (5) percent or more of the Class Members opt out of
6 the Settlement Class by submitting opt outs pursuant to this Settlement Agreement, Defendant shall
7 have the option to terminate and void this settlement and this Agreement. If Defendant cancels the
8 settlement pursuant to this section, then Defendant will be responsible for all costs charged by the
9 Settlement Administrator up to the date of cancellation.

10 2.15 ***Miscellaneous Provisions.***

11 2.15.1 The Settlement Administrator shall act in accordance with the Settlement
12 Agreement and the settlement contained therein or further orders of the Court.

13 2.15.2 The only Class Members entitled to any payment under this Agreement
14 and the associated Judgment are Settlement Class Members, and they shall be entitled to their
15 respective Individual Settlement Payments only.

16 2.15.3 This Agreement shall not require payment by Defendant to any third
17 parties, other than as specifically set forth in this Agreement. Any finding to the contrary will be
18 grounds for Defendant to void the settlement.

19 2.15.4 In the event that any material provision of the Settlement Agreement is
20 not substantially approved by the Court or the settlement set forth in this Agreement is terminated,
21 canceled, declared void or fails to become effective in accordance with its terms, or if the Judgment
22 does not become Final, or to the extent cancellation is otherwise provided for in this Agreement,
23 the Settling Parties shall resume the Litigation at that time as if no Settlement Agreement had been
24 entered. In such event, the terms and provisions of the Settlement Agreement shall have no further
25 force and effect with respect to the Settling Parties and shall not be used in this Litigation or in any
26 other proceeding for any purpose, and any Judgment or order entered by the Court in accordance
27 with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.
28 Notwithstanding any other provision of this Agreement, no order of the Court or modification or

1 reversal on appeal of any order of the Court concerning the amount of any Attorneys' Fees to be
2 paid to Class Counsel shall by itself constitute grounds for cancelation or termination of the
3 Settlement Agreement or grounds for limiting any other provision of the Judgment, provided that
4 Defendant shall never be required to pay in excess of the Gross Settlement Amount (with the
5 exception of Defendant's obligation to pay Employer Payroll Taxes as the Settlement Class
6 Members' current or former employer). It is agreed that no order of the Court, including any order
7 concerning Attorneys' Fees, may alter the Gross Settlement Amount.

8 2.15.5 Unless otherwise ordered by the Court, in the event the Settlement
9 Agreement shall be terminated, canceled, declared void or fails to become effective in accordance
10 with its terms, or if the Judgment is reversed on appeal, within twenty (20) business days after
11 written notification of such event, Defendant and Class Counsel shall notify each other of this event
12 in writing.

13 2.15.6 The Settling Parties: (a) acknowledge that it is their intent to consummate
14 this Agreement; (b) agree to cooperate to effectuate and implement all terms and conditions of the
15 Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of
16 the Settlement Agreement; and (c) agree to seek and to attempt to obtain Court approval of the
17 settlement.

18 2.15.7 The Settling Parties hereby agree that there is a good faith dispute as to
19 liability in this case. The Settlement Agreement compromises claims that were contested and the
20 subject of a good faith dispute, and it shall not be deemed an admission by any of the Settling
21 Parties as to the merits of any claim or defense. The Settling Parties agree that the amounts paid in
22 Settlement and the other terms of the settlement were negotiated at arm's length and in good faith
23 with sufficient information by the Settling Parties and reflect a settlement that was reached
24 voluntarily after consultation with competent legal counsel.

25 2.15.8 The Settling Parties agree that the Response Deadline shall not be
26 extended, and no untimely submissions or claims will be honored, unless the Parties agree to make
27 an exception. Notwithstanding the foregoing, a Class Member will be allowed to extend the
28

1 Response Deadline for him or herself if and only if he or she can make a showing of legal incapacity
2 during the Notice Period.

3 2.15.9 Neither the Settlement Agreement nor the settlement, nor any act
4 performed or document executed pursuant to, or in furtherance of, the Settlement Agreement or the
5 settlement: (a) is or may be deemed to be or may be used as an admission by Defendant Releasees
6 of the validity of any Released Claim; or (b) may be used as an admission of any fault or omission
7 by the Defendant Releasees, or any of them, in any civil, criminal or administrative proceeding in
8 any court, administrative agency or other tribunal. The Settling Parties agree that all alleged
9 liability is disputed in good faith.

10 2.15.10 All of the exhibits to the Settlement Agreement are material and integral
11 parts hereof and are fully incorporated herein by this reference.

12 2.15.11 The Settlement Agreement may be amended or modified only by a written
13 instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

14 2.15.12 The Settlement Agreement constitutes the entire agreement among the
15 Settling Parties hereto and no representations, warranties or inducements have been made to any
16 party concerning the Settlement Agreement or its exhibits other than the representations, warranties
17 and covenants contained and memorialized in such documents. This Agreement supersedes and
18 completely replaces any previous agreements, oral or written, among the Settling Parties. Except
19 as otherwise provided herein, each party shall bear its own costs.

20 2.15.13 Class Counsel, on behalf of the Class, are expressly authorized by the
21 Class Representative to take all appropriate action required or permitted to be taken by the Class
22 pursuant to the Settlement Agreement to effect its terms and also are expressly authorized to enter
23 into any modifications or amendments to the Settlement Agreement on behalf of the Class which
24 they deem appropriate.

25 2.15.14 The signatories hereto hereby represent that they are fully authorized to
26 enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

1 2.15.15 The Settlement Agreement may be executed in one or more counterparts.
2 All executed counterparts and each of them shall be deemed to be one and the same instrument. A
3 complete set of executed counterparts shall be filed with the Court.

4 2.15.16 The Settlement Agreement shall be binding upon, and inure to the benefit
5 of, the successors and assigns of the parties hereto, however, this Settlement Agreement is not
6 designed to and does not create any third party beneficiaries unless otherwise specifically provided
7 herein.

8 2.15.17 The Court shall retain jurisdiction with respect to implementation and
9 enforcement of the terms of the Settlement Agreement, and all parties hereto submit to the
10 jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in
11 the Agreement.

12 2.15.18 The Settlement Agreement and the exhibits hereto shall be considered to
13 have been negotiated, executed and delivered, and to have been wholly performed, in the State of
14 California, and the rights and obligations of the parties to the Settlement Agreement shall be
15 construed and enforced in accordance with, and governed by, the internal, substantive laws of the
16 State of California without giving effect to that State's choice of law principles.

17 2.15.19 The language of all parts of this Settlement Agreement shall in all cases
18 be construed as a whole, according to its fair meaning, and not strictly for or against either party.
19 No party shall be deemed the drafter of this Settlement Agreement. The parties acknowledge that
20 the terms of the Settlement Agreement are contractual and are the product of negotiations between
21 the parties and their counsel. Each party and that party's counsel cooperated in the drafting and
22 preparation of the Settlement Agreement. In any construction to be made of the Settlement
23 Agreement, the Agreement shall not be construed against any party and the canon of contract
24 interpretation set forth in California Civil Code section 1654 shall not be applied.

25 2.15.20 **No Publicity.** Prior to the submission of the Settlement Agreement to the
26 Court for preliminary approval, neither Class Representative nor Class Counsel shall communicate
27 any terms of this settlement to any third parties. Following the submission for preliminary approval
28 and thereafter, Class Representative and Class Counsel shall not publicize the settlement in this

1 action or the terms thereof via (a) press releases, (b) Internet postings, or (c) other mass or social
2 media efforts. This shall not prohibit Class Counsel from discussing this case or any aspect of this
3 settlement with any Class Representative, any Class Member (absent or otherwise) in this case, or
4 any court or opposing counsel; also, this shall not prohibit Class Counsel from in any way
5 disclosing their mere status as counsel in the case or making objective and truthful reference to the
6 case or its settlement and any attorneys' fee award in any future pleading in another litigation.

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8 [SIGNATURES ON NEXT PAGE]
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1 IN WITNESS WHEREOF, the parties hereto have caused the Settlement Agreement
2 to be executed, and this Settlement Agreement is AGREED TO.

3 DATED: 11-4-2021

Maribel Bital

MARIBEL BITAL

Plaintiff and Class Representative

6
7 DATED:

Authorized Agent for Simonton Industries, Inc.

Name:

Title:

10
11 APPROVED AS TO FORM:

12
13 DATED:

Capstone Law PC

ROBERT DREXLER

MOLLY DESARIO

JONATHAN LEE

Attorneys for Plaintiff Bital/Class Counsel

18
19 DATED:

Munger, Tolles & Olson LLP

MARTIN D. BERN

C. HUNTER HAYES

DAVID W. MORESHEAD

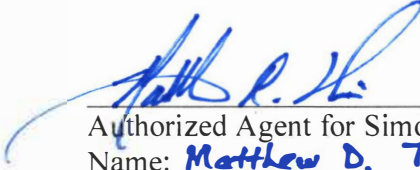
Attorney for Defendant Simonton Industries, Inc.

1 IN WITNESS WHEREOF, the parties hereto have caused the Settlement Agreement
2 to be executed, and this Settlement Agreement is AGREED TO.

3 DATED:

MARIBEL BITAL
Plaintiff and Class Representative

6
7 DATED: November 10, 2021


Authorized Agent for Simonton Industries, Inc.
Name: Matthew D. Thiem
Title: V.P. - legal

10
11 APPROVED AS TO FORM:

12
13 DATED: November 4, 2021


Capstone Law PC
ROBERT DREXLER
MOLLY DESARIO
JONATHAN LEE
Attorneys for Plaintiff Bital/Class Counsel

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19 DATED: November 10, 2021

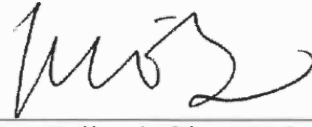

Munger, Tolles & Olson LLP
MARTIN D. BERN
C. HUNTER HAYES
DAVID W. MORESHEAD
Attorney for Defendant Simonton Industries, Inc.

Exhibit 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SOLANO
Maribel Bital v. Simonton Industries, Inc., et al.
Case No. FCS054728

**NOTICE TO CLASS MEMBERS RE: PENDENCY OF A CLASS ACTION
AND NOTICE OF HEARING ON PROPOSED SETTLEMENT**

**YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS ACTION SETTLEMENT.
PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU OF YOUR LEGAL RIGHTS.**

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected by whether you act or don't act.*

TO: All current and former non-exempt hourly manufacturing employees of Defendant Simonton Industries, Inc. in California from February 2, 2017, through [date of preliminary approval] ("Class Members").

The Superior Court of the State of California, County of Solano ("Court") has granted preliminary approval to a proposed settlement ("Settlement") of the above-captioned action ("Class Action"). Because your rights may be affected by this Settlement, it is important that you read this Notice to Class Members re: Pendency of a Class Action and Notice of Hearing on Proposed Settlement ("Notice") carefully. Most importantly, this Notice will advise you of how you can obtain your money under the Settlement or how you can decide to not take part in the Settlement and preserve your rights against Simonton Industries, Inc. ("Simonton").

The Settlement resolves this Class Action in which Plaintiff Maribel Bital alleges that Simonton violated California law by failing to pay Class Members all overtime and minimum wages due; failing to provide meal and rest periods; failing to provide compliant wage statements and to maintain payroll records; failing to timely pay wages due at termination and during employment; claims for civil penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA"); and claims for unfair and unlawful business practices.

The Court has not made any ruling that Simonton violated the law, and Simonton disputes all claims made in the Class Action. The purpose of this Notice is to inform you of the pending Settlement and your rights and options under the Settlement.

WHAT INFORMATION IS IN THIS NOTICE:

1. Why Have I Received This Notice?.....	Page 2
2. What Is This Case About?	Page 2
3. Am I a Class Member?	Page 2
4. Where Can I Get Additional Information About the Lawsuit and the Proposed Settlement?.....	Page 2
5. What Are My Options?.....	Page 3
6. How Do I Opt Out or Exclude Myself From This Settlement?	Page 4
7. How Do I Object to the Settlement?	Page 4
8. How Do I Change my Address?	Page 4
9. How Does This Settlement Affect My Rights?	Page 4
10. What are the Terms of the Settlement and How Much Can I Expect to Receive?.....	Page 6

1. Why Have I Received This Notice?

Simonton's records indicate that you may be a Class Member. The Settlement will resolve all Class Members' Released Claims, as described below, from February 2, 2017 through [date of preliminary approval] (the "Class Period"). This Notice is meant to provide you with basic information about the case and to advise you of your options to participate in the Settlement, exclude yourself from the Settlement, or object to the Settlement.

A Preliminary Approval Hearing was held on [date of final approval hearing], in the Superior Court for the State of California, County of Solano. The Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice. The Court will hold a Final Approval Hearing concerning the proposed settlement on [date of final approval hearing] at [time] in Department 4 before Judge E. Bradley Nelson, located at Hall of Justice, 600 Union Avenue, Fairfield, California 94533.

2. What Is This Case About?

The action entitled *Maribel Bital v. Simonton Industries, Inc., et al.*, Case No. FCS054728, was commenced by Ms. Bital on April 30, 2020, in the Solano County Superior Court.

This Settlement resolves claims that Simonton failed to pay Class Members all overtime and minimum wages due; failed to provide meal and rest periods; failed to provide compliant wage statements and to maintain payroll records; failed to timely pay wages due at termination and during employment; claims for civil penalties pursuant to the Private Attorneys General Act of 2004 ("PAGA"); and claims for unfair and unlawful business practices.

The Court has not determined whether any laws have been violated, nor has it decided in favor of Ms. Bital or Simonton; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial.

3. Am I A Class Member?

You are a Class Member if you worked for Simonton in California as an hourly manufacturing employee at any time between February 2, 2017, through [date of preliminary approval]. **Based upon Simonton's records, you are a Class Member and you may participate in this Settlement.**

4. Where Can I Get Additional Information About the Lawsuit and the Proposed Settlement?

This Notice does not contain all of the terms of the proposed Settlement or all of the details of these proceedings. There are multiple ways to get more information about this lawsuit and the proposed Settlement:

1. Settlement Administrator

Class Members who have questions about this Notice, the Settlement, or related issues can contact the Settlement Administrator:

[Settlement Administrator]

Re: Bital Class Action Settlement

[Settlement Administrator Address]

Telephone: [phone number]

2. Class Counsel

The Court has decided that Capstone Law APC is qualified to represent you and all other Class Members simultaneously. You may also direct any questions you have about this lawsuit or the proposed Settlement to Class Counsel:

CAPSTONE LAW APC
Robert Drexler
Molly DeSario
Jonathan Lee
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
Telephone: (888) 354-6080
Email: info@SimontonLawsuit.com

You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT PROCESS.

5. *What Are My Options?*

The purpose of this Notice is to inform you of the proposed Settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

Important Note: *Simonton will not retaliate against you for participating or not participating in this Settlement.*

- **DO NOTHING:** If you do nothing and the Court grants final approval of the Settlement, you will become part of this lawsuit and may receive a payment from the Settlement. You will be bound to the release of the Released Claims as defined in the Settlement Agreement and the Final Judgment. You will also give up your right to pursue the Released Claims as defined below.
- **OPT OUT:** If you do not want to participate as a Class Member, you may “opt out,” which will remove you from the Class and this Action. If the Court grants final approval of the Settlement, you will not receive a payment and you will not give up the right to sue Defendant and the Released Parties for the Released Claims as defined below. Do not opt out if you wish to receive benefits pursuant to this Settlement.
- **OBJECT:** You may file a legal objection to the proposed Settlement. If you would like to object, you may not opt out of this case.

The procedures for opting out and objecting are set forth below in the following sections.

6. *How Do I Opt Out Or Exclude Myself From This Settlement?*

If you do not want to take part in the Settlement, you must mail a written Request for Exclusion to the Settlement Administrator. The written request for exclusion must: (a) state your name, address, telephone number, and last four numbers of your social security number or employee identification number; (b) state your intention to exclude yourself from or opt out of the Settlement (e.g., “I want to exclude myself from this settlement. I also understand that I retain all rights to sue Simonton for the claims asserted in the lawsuit.”); (c) be addressed to the Settlement Administrator at [address]; (d) be signed by you or your lawful representative; and (e) be postmarked no later than [the Response Deadline].

The Judgment entered, following approval of the Settlement by the Court, will bind all Class Members who do not request exclusion from the Settlement.

7. *How Do I Object To The Settlement?*

If you are a Class Member who does not opt out of the Settlement, you may object to the Settlement, personally or through an attorney, by submitting your objection in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than [the Response Deadline]. The objection must state: (a) your full name, address, and telephone number; (b) the words “Notice of Objection” or “Formal Objection;” (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing. The objection will not be valid if it objects only to the appropriateness of the Class Action or its merits.

Class Members who object may appear at the Final Approval Hearing, either in person or through the objector’s own counsel. If the Court rejects the objection, the Class Member will receive a payment if appropriate under the Settlement and will be bound by the terms of the Settlement.

8. *How Do I Change My Address?*

If you wish to change your address or make any corrections to your name or address, please contact the Settlement Administrator at [phone number] or [address].

9. *How Does This Settlement Affect My Rights? What are the Released Claims?*

If the proposed settlement is approved by the Court, a Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court’s Judgment and will release Simonton and the Defendant Releasees¹ from the Released Claims. The Released Claims are as follows:

¹ “Defendant Releasees” mean Defendant Simonton Industries, Inc. and all of its employees, agents, and affiliates, including without limitation parents and subsidiaries, predecessors, successors, divisions, investors, joint ventures and assigns, any benefit plan maintained by any of them and the trustees, fiduciaries, and administrators of any such plan, and each and all of these entities’ past or present directors, officers, employees, agents, partners, members, principals, agents, underwriters, insurers, co-insurers, re-insurers, shareholders, attorneys, accountants or auditors, banks or investment banks, associates, and personal or legal representatives.

Released Claims: Class Members who do not opt out of the settlement will release all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever including without limitation statutory, constitutional, contractual or common law claims, whether known or unknown, against the Defendant Releasees, or any of them, based on the facts alleged in the operative First Amended Complaint, that accrued during the Class Period for alleged or actual (i) unpaid overtime and failure to pay minimum wages; (ii) failure to provide meal periods; (iii) failure to authorize and permit rest periods; (iv) failure to provide compliant wage statements and to maintain payroll records; (v) failure to timely pay wages due at termination; (vi) failure to timely pay wages during employment; (vii) claims for civil penalties pursuant to PAGA for the alleged underlying violations as well as for (a) failure to provide minimum wages, (b) failure to pay for required physical examinations and/or drug testing, (c) failure to reimburse for necessary business expenses, (d) failure to provide written notice of information material to employment, and (e) failure to provide personal safety equipment; and (viii) unfair and unlawful business practices relating to or arising out of the previous claims. Released Claims include (1) claims for damages, penalties or any other remedies under any statute or regulation or other provision of law, based on the facts alleged in the Complaint, including without limitation claims under California Labor Code sections 201, 202, 203, 204, 222.5, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403, California Labor Code section 2698 *et seq.* based on the preceding sections, California Business and Professions Code section 17200 *et seq.*, based on the preceding sections, the applicable California Industrial Welfare Commission Wage Order based on the facts alleged in the First Amended Complaint; (2) claims, based on the facts alleged in the Complaint, for injunctive relief, restitution, disgorgement, accounting, declaratory relief or other equitable relief; (3) any and all claims, based on the facts alleged in the Complaint, for interest, costs, or attorney fees, including without limitation claims under California Labor Code sections 218.5, 1194 & 2698 *et seq.* and California Code of Civil Procedure section 1021.5; (4) and, to the extent not covered above, any and all claims arising from the facts alleged in the Complaint in the Litigation.

The Released Claims include any Unknown Claims which Ms. Bital or any Settlement Class Member² does not know or suspect to exist in his or her favor at the time of the entry of the Judgment, and which, if known by him or her might have affected his or her settlement with and release of the Defendant Releasees or might have affected his or her decision not to object to this Settlement. With respect to any and all Released Claims, the parties stipulate and agree that, upon the Effective Date (i.e., the date on which the judgment in this matter becomes final), Ms. Bital shall expressly and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, waived the provisions, rights and benefits of California Civil Code section 1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Ms. Bital and each Settlement Class Member may hereafter discover facts in addition to or different from those which he or she now knows or believes to be true with respect to the subject matter of the Released Claims, but Ms. Bital and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which then exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future. Ms. Bital acknowledges, and the Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

² Settlement Class Members are Class Members who have not requested exclusion from the Settlement.

For the sake of clarity, the parties agree that the “Unknown Claims” include only those claims that meet the definition of Released Claims and do not include claims that do not meet the definition of Released Claims. As such, for example, “Unknown Claims” do not include claims for any relief for wrongful termination, unlawful harassment, Workers’ Compensation, or other claims that do not arise from the facts alleged in the Complaint.

10. What are the Terms of the Settlement and How Much Can I Expect to Receive?

Under this Agreement, Defendant will pay \$900,000 (the “Gross Settlement Amount”).

The “Net Settlement Amount” or “NSA” means the portion of the Gross Settlement Amount available for distribution to Class Members after the deduction of (1) payment to Ms. Bital in an amount up to \$10,000 for prosecution of the Class Action and the risks undertaken; (2) the Settlement Administration Costs to the Settlement Administrator in an amount not to exceed \$[to be determined]; (3) payment to Class Counsel in an amount not to exceed \$300,000 (one-third of the Gross Settlement Amount) for attorneys’ fees and an amount not to exceed \$30,000 for litigation expenses; and (4) payment to the California Labor and Workforce Development Agency for its share of PAGA penalties in an amount of \$37,500 (75% of \$50,000 allotted to settle PAGA penalties). All of these payments are subject to court approval. Simonton’s portion of payroll taxes will be paid by Simonton separate and apart from the Gross Settlement Amount.

A. How Is My Settlement Payment Calculated?

After deducting the above-referenced amounts, the remaining NSA will be proportionately distributed amongst all Settlement Class Members. Each Settlement Class Member’s Individual Settlement Payment (i.e., the gross, total amount due to an individual Settlement Class Member) will be determined by multiplying the quotient of the Settlement Class Members’ Individual Workweeks (i.e., the total number of workweeks during which each Settlement Class Member worked during the Class Period) divided by the Class Workweeks (i.e., the total number of workweeks that all Settlement Class Members collectively worked during the Class Period) by the Net Settlement Amount. Therefore, the value of each Settlement Class Member’s Individual Settlement Payment ties directly to the number of weeks that the Settlement Class Member worked for Simonton in California.

Although your exact payment cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your approximate payment is as follows: \$[redacted], minus taxes. This is based on the class data which shows you were employed by Simonton in an eligible position for [redacted] weeks during the Class Period.

B. What Do I Do If The Number Of Weeks I Worked Is Wrong?

If you disagree with the number of weeks you worked in an eligible position during the Class Period as stated in this Notice, you must notify the Settlement Administrator at [address] and provide a statement of the number of total weeks you worked while employed with Simonton in an eligible position during the Class Period, supported by written documentation. You must postmark this information by [Response Deadline] and it must be received by the Settlement Administrator within three business days of the deadline.

The Settlement Administrator will investigate the challenge, request information from Simonton as necessary and make the final determination of whether any additional amount is owed to you. Simonton’s records regarding the number of weeks you worked in an eligible position will be presumed to be correct and your challenge will be denied if you do not provide written proof of the number of weeks you worked.

C. How Will My Settlement Payment Be Taxed?

Your settlement payment will be apportioned as 25% wages and 75% as non-wages (penalties and interest). The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported on IRS W-2 forms. Each Settlement Class Member is solely responsible for determining the tax consequences of payments made pursuant to this Settlement and for paying taxes, if any, which are determined to be owed by such Settlement Class Member on such payments (including penalties and interest related thereto) by any taxing authority, whether state, local, or federal. The amounts paid as penalties and interest shall be subject to all authorized and required withholdings (other than the tax withholdings customarily made from employees' wages) and shall be reported on IRS 1099 forms.

Simonton's payroll tax obligations will be paid separately by Simonton.

D. What Will Happen To My Settlement Payment If I Do Not Cash My Check?

It is strongly recommended that upon receipt of your payment, you immediately cash it or cash it before the 180-day void date shown on each check. If any checks remain uncashed or not deposited by the expiration of the 180-day void date, the Settlement Administrator will tender the check to California Rural Legal Assistance.