

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

<u>In re:</u>) Chapter 11
)
BUILDING MATERIALS HOLDING., ¹) Case No. 09-12074 (KJC)
CORPORATION, et al.,) (Jointly Administered)
)
Debtors.) Obj Date: 9/11/09 @ 4:00 pm
) Hrg Date: 9/18/09 @ 1:00 pm

**MOTION AUTHORIZING CLASS PROOF OF CLAIM OR,
IN THE ALTERNATIVE, TO EXTEND TIME FOR INDIVIDUAL
CLASS MEMBERS TO FILE PROOFS OF CLAIM**

COMES NOW, Pedro Alverado on behalf of himself and the proposed class of individuals employed by, or formerly employed by Building Materials Holding Corporation, Selectbuild Construction, Inc., Selectbuild Southern California, Inc., H.N.R. Framing Systems, Inc., by and through the undersigned counsel and hereby moves as follows:

I. SUMMARY OF MOTION AND RELIEF REQUESTED

1. On the petition date, four of the debtors in this jointly administered case were named defendants (the "Defendants") in a pending class action lawsuit in the Superior Court for the State of California, County of Los Angeles, styled *Pedro Alvarado, an individual on behalf of himself and others similarly situated vs. Building Materials Holding Corporation; SelectBuild Construction, Inc.; SelectBuild Southern California, Inc.; and H.N.R. Framing Systems, Inc.*, Case Number BC391029 (the "California Class Action").

2. The Defendants did not schedule as creditors the individual members of the proposed class which has not yet been certified. Instead, they only listed the attorney for the

¹ The Debtors in these cases, together with the last four digits of the federal tax identification number of each Debtor, are as follows: Building Materials Holdings Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC

proposed class, James R. Hawkins. On August 31, 2009, Mr. Hawkins filed five separate proofs of claim – one against each bankruptcy case filed by the Defendants and one against SelectBuild Northern California.

3. This Motion seeks entry of an Order authorizing the filing of the “class claims” or, in the alternative, an Order requiring the specified Debtors to schedule the individual class members, extending the bar date for such members to file individual claims and requiring the Debtors to serve notice of the extended bar date on all members of the proposed class.

4. The statutory bases for relief requested herein are Sections 105, 501, 502 of Title 11 of the United States Code and Rules 3001, 3002, 3003, 7023 and 9014(c) of the Federal Rules of Bankruptcy Procedure.

II. JURISDICTION AND VENUE

5. The Court has jurisdiction to hear this Motion pursuant to 28 U.S.C. Sections 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. Section 157(b). Venue is proper pursuant to 28 U.S.C. Sections 1408 and 1409.

III. BACKGROUND

6. On May 16, 2008, Pedro Alvarado, on behalf of himself and others similarly situated filed the California Class Action. The case alleges causes of action including (a) failure to pay wages and overtime wages; (b) failure to provide rest periods and meal periods or compensation in lieu thereof; (c) failure to timely pay wages; (d) failure to indemnify necessary employee expenditures; (e) failure to provide accurate itemized employee wage

(0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

statements; and (f) violations of the unfair competition law. The proposed class is estimated to exceed 5,000 individuals.

7. On June 16, 2009, the Building Materials Holding Corporation and all of its subsidiaries (collectively "Debtors") filed voluntary petitions under Chapter 11 of Title 11 of the United States Code. The Debtors are one of the largest providers of residential building products and construction services in the United States. According to motions filed by the Debtors in these cases, the Debtors employed approximately 5,500 people on the petition date. During the twelve month period prior to March 31, 2009, the Debtors' revenue totaled \$1.1 billion.

8. On their Schedules F, Amended Schedules F and Statements of Financial Affairs, the Debtors/Defendants did not list the individual class members. Instead, they chose to only list the California Class Action in their Statements of Financial Affairs and included only the attorney representing the proposed class, James R. Hawkins, on their Schedules F. The address used for Mr. Hawkins was the address on the original complaint and not his current address.

9. On July 16, 2009, the Court entered an Order establishing August 31, 2009 as the bar date for filing proofs of claim. On July 23, 2009, the Debtors mail-served notice of the bar date on creditors, including Mr. Hawkins. Because the Debtors did not list Mr. Hawkins' current address, receipt of the notice was delayed.

10. On August 31, 2009, Mr. Hawkins filed five "class claims" – one in each case filed by each of the four named Defendants and one in the SelectBuild Northern California case. The Court is requested to authorize the filing of these class claims given that the Debtors chose to list only Mr. Hawkins. In the alternative, the Court is requested to enter an

Order requiring the Debtors to list all members of the proposed class on amended schedules, extend the bar date for such members to file individual proofs of claim and extend the bar date for at least 90 days after service of the amended schedules are completed.

11. If this Court ultimately grants relief from stay and if the California Class Action results in a judgment against any of the Debtors, the subject class claims will be amended to reflect the liquidated amounts of such claims.

IV. ARGUMENT

A. The Court Is Authorized To Permit Class Proofs of Claim

12. The filing of a "class claim" appears to be an unresolved question in the Third Circuit. Notwithstanding the foregoing, at least five Circuit Courts of Appeal have issued opinions approving of the filing of class claims. *See, In re Birting Fisheries, Inc.*, 92 F.3d 939 (9th Cir. 1996); *Reid v. White Motor Corp.*, 886 F.2d 1462 (6th Cir. 1989) *cert den.* 494 U.S. 1080, 110 S.Ct. 1809, 108 L.Ed.2d 939 (1990); *In re Charter Co.*, 876 F.2d 866 (11th Cir. 1989) *cert dismissed*, 496 U.S. 944, 110 S.Ct. 3232, 110 L.Ed.2d 678 (1990); *In the Matter of American Reserve Corp.*, 840 F.2d 487 (7th Cir. 1988); and *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423 (2nd Cir. 2007).

13. Rule 9014(c) of the Federal Rules of Bankruptcy Procedure vest the Court with authority to apply Rule 7023 of the Federal Rules of Bankruptcy Procedure in a contested matter. Rule 7023 incorporates Rule 23 of the Federal Rules of Civil Procedure which generally governs class actions. Pursuant to Rule 23, grounds exist to authorize the filing of a class claim.

14. In these cases, there are approximately 5,000 members of the proposed class of former construction employees of the specified Debtors that worked in California. Given

that size of the class and that many of the workers are not sophisticated businessmen, requiring all members to file individual claims is not practical. The Debtors apparently concur in that they did not list the individual members of the class on their Schedules F or Amended Schedules F.

15. The issues raised in the California Class Action involve common questions of law and facts. The Debtors' alleged defenses likewise are similar with regard to each alleged member's claims. Lastly, counsel for the proposed class on behalf of the class representative, Pedro Alvarado, will fairly and adequately protect the interests of the class.

16. Movant has timely filed five class claims on behalf of the proposed class. True and correct copies of the class claims collectively are attached as Exhibit "1." The complaint commencing the California Class Action is attached to each of the class claims.² Movant requests that the Court apply the appropriate class action rules to authorize the filing of these class claims pending resolution of the California Class Action. If successful, amended claims will be filed advising the Court of any liquidated amounts adjudicated in the underlying action.

17. This Motion does not seek to have this Court decide whether the action is suitable for treatment as a class action. Instead, Movant intends to seek relief from stay in order to proceed with the California Class Action. Any determination with regard to whether to certify the class will be made by the Superior Court for the State of California, County of Los Angeles.

² Only one copy of the Complaint is attached hereto to avoid duplication.

- B. In the Alternative, Good Cause Exists For The Court To Order Defendants to File Amended Schedules Listing All Individual Members of the Proposed Class and Extend the Bar Date To Provide Sufficient Time for Such Members To File Individual Claims

18. Known creditors must be provided with actual written notice of a debtor's bankruptcy filing. *Chemeteron Corp. v. Jones*, 72 F.3d 341 (3rd Cir. 1995). A known creditor is one whose identity is either known or reasonably ascertainable by the debtor. *Id* citing *Tulsa Prof'l Collection Serv., Inc. v. Pope*, 485 U.S. 478, 108 S.Ct. 1340, 99 L.Ed.2d 565 (1988).

19. In this case, the members of the proposed class of former California construction workers are known to the Debtors. Furthermore, contact information for all such employees is exclusively in the Defendants' possession. Notwithstanding the foregoing, the Debtors chose only to list class counsel on their Schedules F and Amended Schedules F. The Debtors should be judicially stopped from arguing that individual claims are required. Should the Court, however, determine that individual claims are more appropriate, the Debtors must be ordered to file amended schedules to provide actual written notice to all such former employees.

20. The Court clearly has authority to extend the bar date by enlarging the time for filing proofs of claim.

Enlargement: (1) In general, [e]xcept as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the originally prescribed or as extended by a previous order.

Rule 9006(b) of the Federal Rules of Bankruptcy Procedure.

21. Should the Court enlarge the bar date, Movant respectfully requests that the bar date be extended until the date that is 90 days after the date upon which the Defendants serve written notice on the proposed class of creditors.

WHEREFORE, for the reasons set forth above, Movant respectfully requests that the Court authorize the filing of class proofs of claim, or, in the alternative, enter an Order requiring the Debtors to schedule all individual class members, extending the bar date and requiring the Debtors to serve notice of the extended bar date on all members of the proposed class; and granting such other and further relief as deemed just and proper.

Dated: August 31, 2009

JAMES R. HAWKINS, APLC
James R. Hawkins (CA #192925)
(Pro Hac Vice Pending)
9880 Research Drive, Suite 200
Irvine, CA 92618
Telephone: (949) 387-7200
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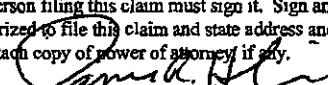
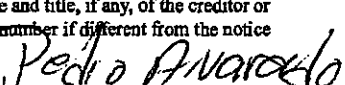
In Association With,
MARSHACK HAYS LLP
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Dated: August 31, 2009
Wilmington, DE

In Association With,
McCARTER & ENGLISH, LLP

By: /s/ Katharine L Mayer
Katharine L Mayer (DE #3758)
405 North King Street, 8th Floor
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EXHIBIT 1

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE				PROOF OF CLAIM
Name of Debtor (Check Only One): <input type="checkbox"/> Building Materials Holding Corporation <input type="checkbox"/> BMC West Corporation <input type="checkbox"/> SelectBuild Construction, Inc. <input checked="" type="checkbox"/> SelectBuild Northern California, Inc. <input type="checkbox"/> Illinois Framing, Inc. <input type="checkbox"/> C Construction, Inc.	Case No. 09-12074 09-12075 09-12076 09-12077 09-12078 09-12079	Name of Debtor <input type="checkbox"/> TWF Construction, Inc. <input type="checkbox"/> H.N.R. Framing Systems, Inc. <input type="checkbox"/> SelectBuild Southern California, Inc. <input type="checkbox"/> SelectBuild Nevada, Inc. <input type="checkbox"/> SelectBuild Arizona, LLC <input type="checkbox"/> SelectBuild Illinois, LLC	Case No. 09-12080 09-12081 09-12082 09-12083 09-12084 09-12085	Your Claim is Scheduled As Follows:
<small>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case, except for purposes of asserting an administrative expense under 11 U.S.C. § 503(b)(9) (see Item 6 below). All other requests for payment of an administrative expense should be filed pursuant to 11 U.S.C. § 503.</small>				
Name of Creditor Pedro Alvarado on behalf of himself and the Proposed Class of Former California Employees of Building Materials Holding Corporation Name and address where notices should be sent: James R. Hawkins, Esq. A Professional Law Corporation 9880 Research Drive, Suite 200 Irvine, California 92618 Telephone number: 949-387-7200 Email Address: 949-387-6676		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____		
Name and address where payment should be sent (if different from above): Telephone number: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the Debtor or trustee in this case.		
1. Amount of Claim as of Date Case Filed: \$ <u>Unknown - Los Angeles County Superior Court Litigation Pending</u> <small>If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. If your claim is asserted pursuant to 11 U.S.C. § 503(b)(9), complete item 6.</small> <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges. Copy of Lawsuit from Case No. BC 391029 attached.		5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim.		
2. Basis for Claim: <u>Violations of California Labor Laws</u> <small>(See instruction #2 on reverse side.)</small>		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$10,950) earned within 180 days before filing of the bankruptcy petition or cessation of the Debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(). [Note: Do not include Section 503(b)(9) Claims here.]		
3. Last four digits of any number by which creditor identifies Debtor: _____ 3a. Debtor may have scheduled account as: <u>James Hawkins, Esq.</u> <small>(See instruction #3a on reverse side.)</small>		Amount entitled to priority: \$ <u>Unknown</u>		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Equipment <input type="checkbox"/> Other Describe: Value of Property: \$ _____ Annual Interest Rate % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		FOR COURT USE ONLY		
6. Claim Pursuant to 11 U.S.C. § 503(b)(9): Indicate the amount of your claim arising from your provision of goods sold to a Debtor in the ordinary course of the Debtor's business in the 20 days before June 16, 2009: Attach documentation supporting such claim. \$ _____				
7. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.				
8. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction #8 and definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain in an attachment.				
Date: 8-31-09	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney if any. <div style="display: flex; justify-content: space-between;"> <div style="text-align: center;">  James R. Hawkins, Attorney for Proposed Class </div> <div style="text-align: center;">  Pedro Alvarado </div> </div>			

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.
Modified B10 (GCG) (12/08)

 **COPY**

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

MAY 16 2008

John A. Clarke, Executive Officer/Clerk

BY MARY GARCIA, Deputy

James R. Hawkins, Esq. SBN 192925
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Attorneys for Plaintiff, PEDRO ALVARADO, on behalf of
himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, STANLEY MOSK COURTHOUSE

PEDRO ALVARADO, an individual, on behalf
of himself and all others similarly situated

Case No. BC391029
ASSIGNED FOR ALL PURPOSES TO:

CLASS ACTION COMPLAINT

Plaintiffs,

vs.

BUILDING MATERIALS HOLDING
CORPORATION, a Delaware Corporation,
SELECTBUILD CONSTRUCTION, INC., a
Delaware Corporation, SELECTBUILD
SOUTHERN CALIFORNIA, INC., a Delaware
Corporation, H.N.R. FRAMING SYSTEMS,
INC., a California Corporation and DOES 1
through 50, inclusive,

Defendants.

- 1) Failure to Pay Wages and Overtime Wages
- 2) Failure to Provide Rest Periods and Meal Periods or Compensation in Lieu Thereof
- 3) Failure to Timely Pay Wages
- 4) Failure to Indemnify Necessary Employee Expenditures
- 5) Failure to Provide Accurate Itemized Employee Wage Statements
- 6) Violations of the Unfair Competition Law

JURY TRIAL DEMANDED

1 Plaintiff, PEDRO ALVARADO, on behalf of himself and all others similarly situated,
2 complain of Defendants, and each of them, and for causes of action alleges:

3 I.

4 INTRODUCTION

5 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, on
6 behalf of Plaintiff and all employees, including but not limited to construction employees not
7 classified as "Exempt" or primarily employed in executive, professional, or administrative
8 capacities ("Non-Exempt Employees") employed by, or formerly employed by BUILDING
9 MATERIALS HOLDING CORPORATION, SELECTBUILD CONSTRUCTION, INC.,
10 SELECTBUILD SOUTHERN CALIFORNIA, INC., H.N.R. FRAMING SYSTEMS, INC. and
11 any subsidiaries or affiliated companies (hereinafter "Defendants"), within the State of
12 California.

13 2. During the statutory liability period and continuing to the present ("liability
14 period"), Defendants consistently maintained and enforced against Defendant's Non-Exempt
15 Employees, among others, the following unlawful practices and policies, in violation of
16 California state wage and hour laws: a) failing to accurately pay all earned wages including
17 wages for overtime and for "off the clock" work, which includes but is not limited to, the
18 unloading and loading of equipment and/or tools b) failing to provide meal and rest periods, c)
19 failing to indemnify or reimburse non-exempt employees for tools and/or equipment required as
20 a condition of employment, d) failing to pay all wages earned upon separation from Defendants,
21 and e) failing to provide proper and accurate employee itemized wage statements.

22 3. During the statutory liability period and continuing to the present (rest and meal
23 period liability period), Defendants have had a consistent policy of failing to provide its Non-
24 Exempt Employees within the State of California, including Plaintiff, rest periods of at least (10)
25 minutes per four (4) hours worked or major fraction thereof and failing to pay such employees
26 one (1) hour of pay at the employees regular rate of compensation for each workday that the rest
27 period is not provided, as required by California state wage and hour laws.

1 4. During the statutory liability period and continuing to the present (rest and meal
2 period liability period), Defendants have had a consistent policy of requiring its Non-Exempt
3 Employees within the State of California, including Plaintiff, to work at least five (5) hours
4 without a meal period and failing to pay such employees one (1) hour of pay at the employees
5 regular rate of compensation for each workday that the meal period is not provided, as required
6 by California state wage and hour laws.

7 5. During the statutory liability period and continuing to the present, Defendants
8 failed to pay all wages earned including overtime by requiring its Non-Exempt employees to
9 work "off the clock."

10 6. During the statutory liability period and continuing to the present, Defendants
11 required its Non-Exempt employees to purchase tools and/or equipment as a condition of
12 employment without reimbursement.

13 7. Plaintiff on behalf of himself and all Class Members brings this action pursuant
14 to Labor Code sections 201, 202, 203, 221, 218.6, 226, 226.7, 510, 512, 558, 1194, 1194.5, 1199,
15 2802, IWC Wage Order 16 and other applicable Wage Orders, seeking unpaid wages, seeking
16 rest and meal period compensation, reimbursement for tools and equipment required as a
17 condition of employment, penalties, injunctive and other equitable relief, and reasonable
18 attorneys' fees and costs.

19 8. Pursuant to Business and Professions Code sections 17200-17208, Plaintiff, on
20 behalf of himself and all Class Members, also seeks injunctive relief and restitution of all
21 benefits Defendants enjoyed from their failure to pay all wages earned, rest and meal period
22 compensation, failure to pay all wages earned upon separation from Defendants, and
23 reimbursement for tools and equipment required as a condition of employment.

24 II.

25 PARTIES

26 9. Venue as to each Defendant is proper in this judicial district pursuant to Code of
27 Civil Procedure section 395. On information and belief, Defendant BUILDING MATERIALS
28 HOLDING CORPORATION is a Delaware Corporation, authorized to do business in the State

1 of California and is doing business in the State of California. BUILDING MATERIALS
2 HOLDING CORPORATION is the parent company of SELECTBUILD CONSTRUCTION,
3 INC. during the liability period. Defendant SELECTBUILD CONSTRUCTION, INC. is a
4 Delaware Corporation, authorized to do business in the State of California, and is doing business
5 in State of California. SELECTBUILD CONSTRUCTION, INC. is a wholly owned subsidiary
6 of BUILDING MATERIALS HOLDING CORPORATION during the liability period.
7 Defendant SELECTBUILD SOUTHERN CALIFORNIA, INC. is a Delaware Corporation,
8 authorized to do business in the State of California, and is doing business in State of California.
9 SELECTBUILD SOUTHERN CALIFORNIA, INC. is a division of SELECTBUILD
10 CONSTRUCTION, INC. during the liability period. H.N.R. FRAMING SYSTEMS, INC. is a
11 California Corporation, authorized to do business in the State of California, and is doing business
12 in State of California. H.N.R. FRAMING SYSTEMS, INC. is a wholly owned subsidiary of
13 BUILDING MATERIALS HOLDING CORPORATION during the liability period. Each
14 Defendant is within the jurisdiction of this Court for service of process purposes. The unlawful
15 acts alleged herein have a direct effect on Plaintiff and those similarly situated within the State of
16 California and within Los Angeles County. Defendants employ(ed) Plaintiff and numerous
17 Class Members in Los Angeles County and throughout California.

18 **A. Plaintiff**

19 10. Plaintiff PEDRO ALVARADO is a resident of Anaheim, California. At all
20 relevant times herein, he has been employed by Defendants throughout California, including Los
21 Angeles County, during the statutory liability period. Plaintiff PEDRO ALVARADO has been
22 employed by Defendants since October, 2003 through the date of his separation from
23 employment in November, 2007.

24 11. As Defendants' employees, Plaintiff, and the Class he seeks to represent were
25 regularly required to:

- 26 (a) work without being permitted or authorized a minimum ten-minute rest period for
27 every four hours or major fraction thereof worked and not compensated one (1) hour
28 of pay at her regular rate of compensation for each workday that a rest period was not

provided, all in violation of California labor laws, regulations, and the Industrial Welfare Commission Wage Orders ("IWC");

(b) work in excess of five hours per day without being provided a meal period and not compensated one (1) hour of pay at the regular rate of compensation for each workday that a meal period was not provided, all in violation of California labor laws and the Industrial Welfare Commission Wage Orders ("IWC");

(c) work "off the clock" without payment of wages; and

(d) purchase tools and/or equipment required as a condition of employment without reimbursement.

12. On information and belief, Defendants willfully failed to pay all earned wages in a timely manner to its employees and members of the Plaintiff's Class; nor have Defendants returned to Plaintiff or members of the Class, upon or after separation from employment with Defendants, all compensation due including wages for "off the clock," failure to pay rest and meal period compensation, failure to reimburse employees for the purchase of tools and equipment required as a condition of employment.

B. Defendants

13. On information and belief, Defendants BUILDING MATERIALS HOLDING CORPORATION, SELECTBUILD CONSTRUCTION, INC., SELECTBUILD SOUTHERN CALIFORNIA, INC., H.N.R. FRAMING SYSTEMS, INC. engaged in the operation of a Construction Services Company throughout California, including Los Angeles County.

14. The true names and capacities of Defendants, whether individual, corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes, and based thereon alleges that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

15. Plaintiff is informed and believes, and based thereon alleges, that Defendants acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants

III.

FACTUAL BACKGROUND

16. At all times during the liability period, Defendants operate and have conducted business in Los Angeles County and elsewhere within California. Defendants engaged in the operation of a Construction Services Company throughout California, including Los Angeles County. At various locations, Defendants have, among other things, employed persons as non-exempt employees.

17. Upon information and belief, Defendant's Non-Exempt Employees work(ed) in non-exempt, non-managerial positions including, but not limited to, construction employees and similar and incidental positions related to the operation of a construction business.

18. Defendant's Non-Exempt Employees were not provided rest periods for work periods of four hours or major fractions thereof or meal periods for work days in excess of five (5) and or ten (10) hours and were not compensated a one hour wage in lieu thereof; were required to clock out and continue to work "off the clock," all often under the threat of termination and/or retaliation all in violation of Labor Code §§ 201, 202, 203, 221, 218.6, 226, 226.7, 510, 512, 558, 1194, 1194.5, 2802, IWC Wage Order 16 and other applicable Industrial Welfare Commission Wage Orders.

19. Plaintiff is informed and believes, and based thereon alleges, Defendants currently employ and have employed during the relevant liability period, hundreds of employees in the State of California in non-exempt positions, such as construction employees.

20. Defendant's Non-Exempt Employees spend the majority of their time doing non-exempt work.

1 21. Defendants Non-Exempt Employees are, and at all times pertinent hereto, have
2 been non-exempt employees within the meaning of the California Labor Code, and the
3 implementing rules and regulations of the IWC California Wage Orders.

4 22. During the liability period, Plaintiff and members of the Plaintiff's Class were
5 employed by Defendants as Non-Exempt Employees and were paid on an hourly basis.

6 23. Plaintiff and Class Members were regularly required to work in excess of five
7 (5) and/or ten (10) hours per day, all without being provided meal periods as mandated under the
8 California Labor Code and the implementing rules and regulations of the IWC California Wage
9 Orders. Plaintiff and members of the Plaintiff Class were not provided lawful meal and rest
10 periods and were not provided with one hours wages in lieu thereof in one or more of the
11 following manners:

- 12 (a) employees were required to work through their daily meal period(s), or work an
13 "on-duty meal period";
14 (b) employees were severely restricted in their ability to take a meal period;
15 (c) employees were forbidden to leave the workplace during a meal period;
16 (d) employees were required to work "off the clock" before clocking in and/or clock
17 out and continue to work "off the clock."

18 24. During the rest and meal period liability period, Plaintiff and the class members
19 were regularly required to work in excess of four hours without being provided a rest period.
20 Defendants neither permitted nor authorized Plaintiff and Class Members to take lawful meal
21 and rest periods. On information and belief, Plaintiff and Class Members did not waive rest
22 periods during the liability period. Defendants did not fully compensate its Non-Exempt
23 Employees for hourly wages during the liability period and did not compensate its Non-Exempt
24 Employees for defendants' failure to provide rest and meal periods during the liability period.

25 25. On information and belief, Defendants are and were well aware, and/or
26 received employee complaints that it is improper to commit the following unlawful acts:

- 27 (a) require employees to work four hours or major fraction thereof without being
28

1 provided a minimum ten-minute rest period and not compensate employees with one (1) hour of
2 pay at the employees' regular rate of compensation for each workday that a rest period was not
3 provided;

4 (b) require employees to work in excess of five hours per day without being provided a
5 meal period and not compensated with one (1) hour of pay at the regular rate of compensation
6 for each workday that a meal period was not provided;

7 (c) require employees to clock out then continue to work "off the clock."

8 (d) requiring employees to purchase tools and equipment required as a condition of their
9 employment without reimbursement; and

10 (e) failing to pay all earned wages, including wages earned upon separation.

11 26. On information and belief, Defendants were notified of the improprieties
12 alleged herein by their employees and intentionally refused to rectify their policy.

13 27. The violations stated above as they pertain to Non-Exempt Employees, occurred
14 during the liability periods and was willful and deliberate by Defendants.

15 28. On information and belief, Defendants willfully failed to pay the legal wages
16 earned and on time, failed to reimburse employees for tools and equipment required as a
17 condition of employment, failed to provide rest and meal periods during which Defendant's
18 former Non-Exempt employees were required to work, and willfully failed to pay one hour
19 wages in lieu of rest and meal periods, when each such employee quit or was discharged.

20 29. Defendants have made it difficult to account with precision for the unlawfully
21 withheld wages and deductions due Defendant's Non-Exempt employees, including Plaintiff,
22 during the Liability Period because they did not implement and preserve a lawful record-keeping
23 method to record all non-provided rest and meal periods owed to its employees as required for
24 non-exempt employees by 29 U.S.C. section 211(c); California Labor Code §§226, and section 7
25 of the California Wage Orders. Plaintiff and Class Members are therefore entitled to penalties
26 not to exceed \$4000 for each employee pursuant to Labor Code section 226(e).

30. Plaintiff and the Class he seeks to represent are covered, among others, by the California Labor Code and California Industrial Welfare Commission Occupational Wage Order 16.

IV.

CLASS ACTION ALLEGATIONS

31. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action pursuant to section 382 of the Code of Civil Procedure. Plaintiff seeks to represent a Class composed of and defined as follows:

All persons who are employed or have been employed by Defendants in the State of California who, within four (4) years of the filing of this Complaint, have worked as non-exempt employees that did not consist of over 50% administrative, executive, or professional duties and were not paid all lawful wages, including overtime premiums.

32. Plaintiff also seeks to represent a Subclass composed of and defined as follows:

All persons who are employed or have been employed by Defendants in the State of California who, within four (4) years of the filing of this Complaint, have worked as non-exempt employees that did not consist of over 50% administrative, executive, or professional duties and have not been paid all wages for "off the clock" work.

33. Plaintiff also seeks to represent a Subclass composed of and defined as follows:

(a) All persons who are employed or have been employed by Defendants in the State of California who, for the last four years prior to filing the complaint who have worked as non-exempt employees that did not consist of over 50% administrative, executive, or professional duties and have not been provided a rest period for every four hours or major fraction thereof worked per day and were not provided compensation, and

(b) not provided a meal period for each day in which such non-exempt employees worked in excess of five hours and were not provided compensation of one hours pay for each day on which such rest period and/or meal period was not provided.

1 34. Plaintiff also seeks to represent a Subclass composed of and defined as
2 follows:

3 (a) All persons who are employed or have been employed by Defendants
4 in the State of California who, within four (4) years of the filing of this
5 Complaint, have worked as non exempt employees that did not consists of
6 over 50% administrative, executive, or professional duties and were not
7 reimbursed for tools and equipment required as a condition of employment.

8 35. Plaintiff also seeks to represent a Subclass composed of and defined as
9 follows:

10 (a) All persons who are employed or have been employed by Defendants
11 in the State of California who, during the statutory liability period, have worked
12 as non exempt employees that did not consists of over 50% administrative,
13 executive, or professional duties and were not paid all wages upon separation
14 from Defendants.

15 36. Plaintiff also seeks to represent a Subclass composed of and defined as
16 follows:

17 (a) All persons who are employed or have been employed by Defendants
18 in the State of California who, during the statutory liability period, have worked
19 as non exempt employees that did not consists of over 50% administrative,
20 executive, or professional duties and were not provided accurate itemized wage
21 statements.

22 37. Plaintiff reserves the right under Rule 1855(b), California Rules of Court, to
23 amend or modify the class description with greater specificity or further division into subclasses
24 or limitation to particular issues.

25 38. This action has been brought and may properly be maintained as a class action
26 under the provisions of section 382 of the Code of Civil Procedure because there is a well-
27 defined community of interest in the litigation and the proposed Class is easily ascertainable.

28 **A. Numerosity**

 39. The potential members of the Class as defined are so numerous that joinder of
all the members of the Class is impracticable. While the precise number of Class Members has
not been determined at this time, Plaintiff is informed and believes that Defendants currently
employ, and during the relevant time periods employed, as many as several hundred employees,
the vast majority of them within the State of California, in positions as Non-Exempt Employees

1 in Orange County and disbursed throughout Southern California during the liability period and
2 who are or have been affected by Defendants' unlawful practices as alleged herein.

3 40. Accounting for employee turnover during the relevant periods necessarily
4 increases this number substantially. Upon information and belief, Plaintiff alleges Defendants'
5 employment records would provide information as to the number and location of all Class
6 Members. Joinder of all members of the proposed Class is not practicable.

7 **B. Commonality**

8 41. There are questions of law and fact common to the Class predominating over
9 any questions affecting only individual Class Members. These common questions of law and fact
10 include, without limitation:

11 i. Whether defendants failed to provide overtime premiums pursuant to and among
12 other sections, Labor Code §§ 510, 1194, and the applicable IWC Wage Orders;

13 ii. Whether Defendants violated Labor Code § 2802, and applicable IWC Wage
14 Order(s) for failing to indemnify/reimburse employees against expenditures (e.g.,
15 requiring as a condition of employment that Class Members purchase tools and or
16 equipment required by Defendants) incurred by them in direct consequence of the
17 discharge of their duties;

18 iii. Whether Defendants violated Labor Code sections 226.7, 512, Wage Order 16 or
19 other applicable IWC Wage Orders by failing to provide daily rest periods to its Non-
20 Exempt Employees for every four hours or major fraction thereof worked and failing to
21 compensate said employees one hours wages in lieu of rest periods;

22 iv. Whether Defendants violated Labor Code sections 226.7, 512 and IWC Wage
23 Order 16 or other applicable IWC Wage Orders by failing to provide meal periods to its
24 Non-Exempt Employees on days they worked work periods in excess of five hours and
25 failing to compensate said employees one hours wages in lieu of meal periods;

26 v. Whether Defendants violated Labor Code sections 510 and IWC Wage Order 16
27 or other applicable IWC Wage Orders by requiring its Non-Exempt Employees to clock
28 out for a meal period then continue to work;

- 1 vi. Whether Defendants violated Labor Code sections 201, 202, 510 and IWC Wage
2 Order 16 or other applicable IWC Wage Orders by requiring its Non-Exempt Employees
3 to work off the clock;
- 4 vii. Whether Defendants violated sections 226 of the Labor Code and IWC Wage
5 Orders by failing to, among other violations, maintain accurate records of Class
6 Members' earned wages, work periods, meal periods and deductions.
- 7 viii. Whether Defendants violated sections 201-203 of the Labor Code by failing to
8 pay all earned wages and/or premium wages or return unlawfully deducted wages or
9 reimbursements due and owing at the time that any Class member's employment with
10 Defendants terminated;
- 11 ix. Whether Defendants violated section 17200 *et seq.* of the Business and
12 Professions Code by failing to pay all earned wages, failing to indemnify employees for
13 purchase and tools and/or equipment required as a condition of employment, failing to
14 pay all wages earned for off the clock work; failing to pay wages and compensation for
15 denied rest and meal periods; and failing to pay all wages due and owing at the time a
16 Class Member's employment with Defendants terminated;
- 17 x. Whether Defendants violated section 17200 *et. seq.* of the Business and
18 Professions Code and Labor Code sections 201, 202, 203, 218.6, 221, 226, 226.7, 510,
19 512, 558, 1194, 1194.5, 2802 and applicable IWC Wage Orders which violation
20 constitutes a violation of fundamental public policy;
- 21 xi. Whether Plaintiff and the Members of the Plaintiff Class are entitled to equitable
22 relief pursuant to Business and Professions Code section 17200, *et. seq.*

23 **C. Typicality**

24 42. The claims of the Plaintiff are typical of the claims of the Class. Plaintiff and all
25 members of the Class sustained injuries and damages arising out of and caused by Defendants'
26 common course of conduct in violation of California laws, regulations, and statutes as alleged
27 herein.

1 **D. Adequacy of Representation**

2 43. Plaintiff will fairly and adequately represent and protect the interests of the
3 members of the Class. Counsel who represents Plaintiff is competent and experienced in
4 litigating large employment class actions

5 **E. Superiority of Class Action**

6 44. A class action is superior to other available means for the fair and efficient
7 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
8 questions of law and fact common to the Class predominate over any questions affecting only
9 individual members of the Class. Each member of the Class has been damaged and is entitled to
10 recovery by reason of Defendants' unlawful policy and/or practice complained of herein.

11 45. Class action treatment will allow those similarly situated persons to litigate their
12 claims in the manner that is most efficient and economical for the parties and the judicial system.
13 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
14 action that would preclude its maintenance as a class action.

15 **V.**

16 **CAUSES OF ACTION**

17 **First Cause of Action**

18 *Failure to Pay Wages and Overtime/Premiums*

19 (Lab. Code §§510, 558, 1194 IWC Wage Order 16)

20 **(Against All Defendants)**

21 46. Plaintiff incorporates paragraphs 1 through 45 as though fully set forth herein.

22 47. On information and belief, by their policy of:

- 23 i. requiring employees to work more than eight hours in a workday and/or
24 more than 40 hours in a workweek without payment of overtime premiums
25 of both one and one half and or twice the employees regular rate and
26 without compensating time off;
- 27 ii. require employees to work for the first eight (8) hours on the seventh
28 consecutive workday without premium pay;

- 1 iii. fail to pay double the rate of pay for hours worked in excess of twelve (12)
2 in a workday and for hours worked in excess of eight (8) hours on the
3 seventh consecutive workday.
4 iv. requiring employees to clock out for a meal period and then continue to
5 work without payment of wages,
6 v. fail to pay wages for all off the clock work.

7 48. Defendants willfully violated the provisions of the Labor Code, among others,
8 §§ 510, 558, 218.6, 1194, 1194.5, 2802, and IWC Wage Order 16.

9 49. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks
10 to represent have been deprived of wages in amounts to be determined at trial, and are entitled to
11 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant
12 to Labor Code sections 1194.

13 50. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
14 described herein and below.

15 **Second Cause of Action**

16 *Failure to Provide Rest Periods and Meal Periods or Compensation in Lieu Thereof*

17 (Lab. Code, §§226.7, 512, IWC Wage Order 16)

18 (Against All Defendants)

19 51. Plaintiff incorporates paragraphs 1 through 50 as though fully set forth herein.

20 52. By their failure to provide rest periods for every four hours or major fraction
21 thereof worked per day by non-exempt employees, and failing to provide compensation for such
22 non-provided rest periods, as alleged above, Defendants willfully violated the provisions of
23 Labor Code section 226.7, 512 and IWC Wage Order 16.

24 53. Plaintiff and the Class Members he seeks to represent did not voluntarily or
25 willfully waive rest and/or meal periods and were regularly required to work through rest and
26 meal periods. Defendants created a working environment in which its non-exempt employees
27 were incapable of taking rest and/or meal periods due to labor to production ratios and/or were
28

1 intimidated or coerced into waiving their rest and meal periods. As such, Defendants non-exempt
2 employees did not voluntarily waive rest and meal periods.

3 54. On information and belief, during the meal and rest period liability period,
4 Defendants did not permit or authorize Plaintiff and Class Members to take rest and meal periods
5 or required employees to clock out and then continue to work "off the clock".

6 55. By their failure to provide meal periods for days on which non-exempt
7 employees work(ed) work periods in excess of five hours, and failing to provide compensation
8 for such non-provided meal periods, Defendants willfully violated the provisions of Labor Code
9 §226.7, 512 and IWC Wage Order 16.

10 56. By failing to record and maintain adequate and accurate time records according
11 to sections 226 and 1174 (d) of the Labor Code, Defendants have injured Plaintiff and Class
12 Members and made it difficult to calculate the unpaid rest and meal period compensation due
13 Plaintiff and members of the Plaintiff's Class.

14 57. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks
15 to represent have been deprived of wages in amounts to be determined at trial, and are entitled to
16 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under
17 Labor Code §§ 226.7, 218.6, 512, 1194, and IWC Wage Order 16.

18 58. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
19 described herein and below.

20 **Third Cause of Action**

21 *Failure to Timely Pay Wages Due At Termination*

22 (Lab. Code, §§ 201, 202, 203)

23 (Against All Defendants)

24 59. Plaintiff incorporates paragraphs 1 through 58 as though fully set forth herein.

25 60. Sections 201 and 202 of the California Labor Code require Defendants to pay
26 its employees all wages due within 72 hours of termination of employment. Section 203 of the
27 Labor Code provides that if an employer willfully fails to timely pay such wages the employer
28

1 must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in
2 full or an action is commenced. The penalty cannot exceed 30 days of wages.

3 61. Plaintiff and the Class he seeks to represent are entitled to compensation for all
4 forms of wages earned, including, but not limited to, reimbursement for "off the clock" worked
5 time, out-of-pocket expenses, and compensation for non-provided rest periods and meal periods,
6 but to date have not received such compensation therefore entitling them Labor Code section 203
7 penalties.

8 62. More than 30 days have passed since affected Class Members have left
9 Defendants' employ, and on information and belief, have not received payment pursuant to Labor
10 Code §203.

11 63. As a consequence of Defendants' willful conduct in not paying all earned
12 wages, Plaintiff and certain Class Members are entitled to 30 days' wages as a penalty under
13 Labor Code section 203 for failure to pay legal wages.

14 64. Plaintiff and certain Class Members are also entitled to an additional 30 days'
15 wages as a penalty under Labor Code section 203 for willful failure to pay all wages earned and
16 pay one hour's wage in lieu thereof for each denied rest and meal period, together with interest
17 thereon and attorneys' fees and costs.

18 65. WHEREFORE, Plaintiff and the Class he seeks to represent, request relief as
19 described herein and below.

20
21
22 **Fourth Cause of Action**

23 *Failure to Indemnify Necessary Expenditures*

24 (Lab. Code §§226, 1174, 1175)

25 (Against All Defendants)

26 66. Plaintiff incorporates paragraphs 1 through 65 as though fully set forth herein.

27 67. Section 2802 of the California Labor Code requires Defendants to indemnify its
28 employees for necessary expenditures incurred in direct consequence of the discharge of his or

1 her duties. Defendants have failed to comply with Labor Code section 2802 by not
2 indemnifying Plaintiff and members of the proposed class for the purchase of tools and
3 equipment necessary for the discharge of their duties.

4 68. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks
5 to represent have been deprived of un-reimbursed wages in amounts to be determined at trial,
6 and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees,
7 and costs, pursuant to Labor Code sections 1194, 2802.

8 69. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
9 described herein below.

10 **Fifth Cause of Action**

11 *Knowing and Intentional Failure to Comply With Itemized Employee*

12 *Wage Statement Provisions*

13 (Lab. Code §§226, 1174, 1175)

14 (Against All Defendants)

15 70. Plaintiff incorporates paragraphs 1 through 69 as though fully set forth herein.

16 71. Section 226(a) of the California Labor Code requires Defendants to itemize in
17 wage statements all deductions from payment of wages and to accurately report total hours
18 worked by Plaintiff and the members of the proposed class. Defendants have knowingly and
19 intentionally failed to comply with Labor Code section 226(a) on each and every wage statement
20 that should have been provided to Plaintiff and members of the proposed class.

21 72. Section 1174 of the California Labor Code requires Defendants to maintain and
22 preserve, in a centralized location, among other items, records showing the names and addresses
23 of all employees employed, payroll records showing the hours worked daily by and the wages
24 paid to its employees. On information and belief, Defendants have knowingly and intentionally
25 failed to comply with Labor Code section 1174. Defendants failure to comply with Labor Code
26 §1174 is unlawful pursuant to Labor Code §1175.

27 73. IWC Wage Order 16 requires Defendants to maintain time records showing,
28 among others, when the employee begins and ends each work period, meal periods, split shift

1 intervals and total daily hours worked in an itemized wage statements, and must show all
2 deductions and reimbursements from payment of wages, and accurately report total hours
3 worked by Plaintiff and the members of the proposed class. On information and belief,
4 Defendants have failed to record all or some of the items delineated in Wage Order 4 and 226.

5 74. Pursuant Labor Code §226, Plaintiff and Class Members are entitled up to a
6 maximum of \$4,000.00 each for record-keeping violations.

7 75. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
8 described herein below.

9 **Sixth Cause of Action**

10 *Violation of Unfair Competition Law*

11 (Bus. & Prof. Code, § 17200, et seq.)

12 (Against All Defendants)

13 76. Plaintiff incorporates paragraphs 1 through 75 as though fully set forth herein.

14 77. On information and belief, by their policy of:

- 15 i. requiring employees to work without being provided a minimum ten-minute
16 rest period for every four hours or major fraction thereof worked and not
17 being compensated one (1) hour of pay at his regular rate of compensation
18 for each workday that a rest period was not provided; and,
19 ii. requiring employees to work in excess of five hours per day without being
20 provided a meal period and not being compensated one (1) hour of pay at the
21 regular rate (or minimum wage) of compensation for each workday that a
22 meal period was not provided, all in violation of California labor laws,
23 regulations, and Industrial Welfare Commission Wage Orders;
24 iii. failing to pay overtime premiums pursuant to and among other sections,
25 Labor Code §§ 510, 1194, and the applicable IWC Wage Orders;
26 iv. failing to indemnify/reimburse employees against expenditures (e.g.,
27 requiring as a condition of employment that Class Members purchase tools
28

and or equipment required by Defendants) incurred by them in direct consequence of the discharge of their duties; and

v. requiring its Non-Exempt Employees to clock out for a meal period then continue to work without payment of wages;

78. Defendants engaged in unlawful activity prohibited by Business and Professions Code sections 17200 et seq.

79. The actions of Defendants as alleged within this Complaint, constitute false, fraudulent, unlawful, unfair, fraudulent and deceptive business practices, within the meaning of Business and Professions Code section 17200, et. seq.

80. Plaintiff is entitled to an injunction and other equitable relief against such unlawful practices in order to prevent future damage, for which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits.

81. As a result of their unlawful acts, Defendants have reaped and continue to reap unfair benefits and unlawful profits at the expense of Plaintiff, and the Class he seeks to represent. Defendants should be enjoined from this activity and restore to Plaintiff and the members of the Plaintiff Class the wrongfully withheld wages pursuant to Business and Professions Code section 17203. Plaintiff is informed and believes, and thereon alleges, that Defendants are unjustly enriched through their requiring employees to assume Defendants expenditures and losses and failure to pay legal wages, and/or other compensation for working through meal periods, and compensation for non provided rest periods to Plaintiff and members of the Class. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and members of the Plaintiff's Class are prejudiced by Defendants' unfair trade practices.

82. As a direct and proximate result of the unfair business practices of Defendants, and each of them, Plaintiff, individually and on behalf of all employees similarly situated, is entitled to equitable and injunctive relief, including full restitution of all wages which have been unlawfully withheld from Plaintiff and members of the Plaintiff's Class as a result of the business acts and practices described herein and enjoining Defendants to cease and desist from engaging in the practices described herein.

83. The unlawful conduct alleged herein is continuing, and there is no indication that Defendants will not continue such activity into the future. Plaintiff alleges that if Defendants are not enjoined from the conduct set forth in this Complaint, they will continue to require its Non-Exempt Employees to work during meal periods, will continue to fail to appropriate compensation as described herein, and will continue to fail to pay and to avoid paying appropriate taxes, insurance, and unemployment withholdings.

84. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described herein and below.

VI.

PRAYER

WHEREFORE, Plaintiff prays for judgment as follows:

1. That the Court determine that this action may be maintained as a class action;
2. For compensatory damages in an amount according to proof with interest thereon;
3. For economic and/or special damages in an amount according to proof with interest thereon;
4. That Defendants be found to have engaged in unfair competition in violation of section 17200 of the California Business and Professions Code;
5. That Defendants be ordered and enjoined to make restitution to the Class due to their unfair competition pursuant to California Business and Professions Code sections 17203 and 17204;
6. That Defendants be enjoined from continuing the unlawful course of conduct, alleged herein;
7. That Defendants further be enjoined to cease and desist from unfair competition in violation of section 17200 of the California Business and Professions Code;
8. That Defendants be enjoined from further acts of restraint of trade or unfair competition;
9. For premium pay and penalties pursuant to Labor Code §§203 and 558;
10. For premium wages pursuant to Labor Code §226, 226.7;

1 11. For attorneys' fees, interests and costs of suit under Labor Code §1194; and

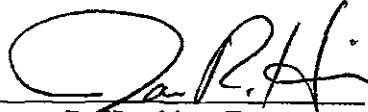
2 12. For such other and further relief as the Court deems just and proper.

3 **DEMAND FOR JURY TRIAL**

4 1. Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

5
6 Dated: May 14, 2008

HAWKINS & SOFONIO

7
8 

James R. Hawkins, Esq.

William S. Caldwell, Esq.

Attorneys for Plaintiff, PEDRO ALVARADO, on
behalf of himself and all others similarly situated



UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE				PROOF OF CLAIM
Name of Debtor (Check Only One): <input checked="" type="checkbox"/> Building Materials Holding Corporation <input type="checkbox"/> BMC West Corporation <input type="checkbox"/> SelectBuild Construction, Inc. <input type="checkbox"/> SelectBuild Northern California, Inc. <input type="checkbox"/> Illinois Framing, Inc. <input type="checkbox"/> C Construction, Inc.	Case No. 09-12074 09-12075 09-12076 09-12077 09-12078 09-12079	Name of Debtor <input type="checkbox"/> TWF Construction, Inc. <input type="checkbox"/> H.N.R. Framing Systems, Inc. <input type="checkbox"/> SelectBuild Southern California, Inc. <input type="checkbox"/> SelectBuild Nevada, Inc. <input type="checkbox"/> SelectBuild Arizona, LLC <input type="checkbox"/> SelectBuild Illinois, LLC	Case No. 09-12080 09-12081 09-12082 09-12083 09-12084 09-12085	Your Claim is Scheduled As Follows: BUILDING MATERIALS HOLDING CORPORATION Unsecured: Unknown Contingent / Unliquidated / Disputed
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case, except for purposes of asserting an administrative expense under 11 U.S.C. § 503(b)(9) (see Item 6 below). All other requests for payment of an administrative expense should be filed pursuant to 11 U.S.C. § 503.				If an amount is identified above, you have a claim scheduled by one of the Debtors as shown. Please review the Bar Date Notice to determine whether you must file a proof of claim to preserve your rights. The Bar Date Notice is available online at www.bmhcstructuring.com or upon request at the address on the back of this form. THIS SPACE IS FOR COURT USE ONLY
Name of Creditor Pedro Alvarado on behalf of himself and the Proposed Class of Former California Employees of Building Materials Holding Corporation		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: _____ <i>(If known)</i> Filed on: _____		
Name and address where notices should be sent: James R. Hawkins, Esq. A Professional Law Corporation 9880 Research Drive, Suite 200 Irvine, California 92618 Telephone number: 949-387-7200 Email Address: 949-387-6676		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the Debtor or trustee in this case.		
Name and address where payment should be sent (if different from above): Telephone number: _____				
1. Amount of Claim as of Date Case Filed: \$ Unknown - Los Angeles County Superior Court Litigation Pending If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. If your claim is asserted pursuant to 11 U.S.C. § 503(b)(9), complete item 6. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges. Copy of Lawsuit from Case No. BC 391029 attached.				5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$10,950) earned within 180 days before filing of the bankruptcy petition or cessation of the Debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(). [Note: Do not include Section 503(b)(9) Claims here.] Amount entitled to priority: \$ Unknown
2. Basis for Claim: Violations of California Labor Laws <i>(See instruction #2 on reverse side.)</i>				
3. Last four digits of any number by which creditor identifies Debtor: _____ 3a. Debtor may have scheduled account as: James Hawkins, Esq. <i>(See instruction #3a on reverse side.)</i>				
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Equipment <input type="checkbox"/> Other Describe: _____ Value of Property: \$ _____ Annual Interest Rate: % Amount of arrearage and other charges as of time case filed included in secured claim, _____ if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____				
6. Claim Pursuant to 11 U.S.C. § 503(b)(9): Indicate the amount of your claim arising from your provision of goods sold to a Debtor in the ordinary course of the Debtor's business in the 20 days before June 16, 2009: Attach documentation supporting such claim. \$ _____				
7. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.				
8. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. <i>(See instruction #8 and definition of "redacted" on reverse side.)</i> DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain in an attachment.				
Date: 8-31-09		Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. <i>James R. Hawkins</i> James R. Hawkins, Attorney for Proposed Class		FOR COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.
Modified B10 (GCG) (12/08)

Pedro Alvarado
Pedro Alvarado

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

PROOF OF CLAIM

Name of Debtor (Check Only One):	Case No.	Name of Debtor	Case No.
<input type="checkbox"/> Building Materials Holding Corporation	09-12074	<input type="checkbox"/> TWF Construction, Inc.	09-12080
<input type="checkbox"/> BMC West Corporation	09-12075	<input type="checkbox"/> H.N.R. Framing Systems, Inc.	09-12081
<input type="checkbox"/> SelectBuild Construction, Inc.	09-12076	<input type="checkbox"/> SelectBuild Southern California, Inc.	09-12082
<input type="checkbox"/> SelectBuild Northern California, Inc.	09-12077	<input type="checkbox"/> SelectBuild Nevada, Inc.	09-12083
<input type="checkbox"/> Illinois Framing, Inc.	09-12078	<input type="checkbox"/> SelectBuild Arizona, LLC	09-12084
<input type="checkbox"/> C Construction, Inc.	09-12079	<input type="checkbox"/> SelectBuild Illinois, LLC	09-12085

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case, except for purposes of asserting an administrative expense under 11 U.S.C. § 503(b)(9) (see Item 6 below). All other requests for payment of an administrative expense should be filed pursuant to 11 U.S.C. § 503.

Name of Creditor: Pedro Alvarado on behalf of himself and the Proposed Class of Former California Employees of Building Materials Holding Corporation

☐ Check this box to indicate that this claim amends a previously filed claim.

Name and address where notices should be sent:

James R. Hawkins, Esq.
A Professional Law Corporation
9880 Research Drive, Suite 200
Irvine, California 92618

Court Claim Number: _____
(If known)

Telephone number: 949-387-7200
Email Address: 949-387-6676

Filed on: _____

Name and address where payment should be sent (if different from above):

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the Debtor or trustee in this case.

Telephone number: _____

1. Amount of Claim as of Date Case Filed: \$ Unknown - Los Angeles County Superior Court Litigation Pending

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. If your claim is asserted pursuant to 11 U.S.C. § 503(b)(9), complete item 6.

☒ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges. Copy of Lawsuit from Case No. BC 391029 attached.

2. Basis for Claim: Violations of California Labor Laws
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies Debtor: _____

3a. Debtor may have scheduled account as: James Hawkins, Esq.
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Equipment ☐ Other
Describe: _____

Value of Property: \$ _____ Annual Interest Rate: % _____

Amount of arrearage and other charges as of time case filed included in secured claim, _____

If any: \$ _____ Basis for perfection: _____

Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____

6. Claim Pursuant to 11 U.S.C. § 503(b)(9):

Indicate the amount of your claim arising from your provision of goods sold to a Debtor in the ordinary course of the Debtor's business in the 20 days before June 16, 2009:
Attach documentation supporting such claim. \$ _____

7. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

8. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction #8 and definition of "redacted" on reverse side.)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain in an attachment.

Date: 8-31-09

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

James R. Hawkins, Attorney for Proposed Class

FOR COURT USE ONLY

Your Claim is Scheduled As Follows:

If an amount is identified above, you have a claim scheduled by one of the Debtors as shown. Please review the Bar Date Notice to determine whether you must file a proof of claim to preserve your rights. The Bar Date Notice is available online at www.bmhcrestructuring.com or upon request at the address on the back of this form.

THIS SPACE IS FOR COURT USE ONLY

5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

☒ Wages, salaries, or commissions (up to \$10,950) earned within 180 days before filing of the bankruptcy petition or cessation of the Debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4).

☐ Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).

☐ Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7).

☐ Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).

☐ Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(). [Note: Do not include Section 503(b)(9) Claims here.]

Amount entitled to priority:

\$ Unknown

→ Pedro Alvarado
Pedro Alvarado



UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE				PROOF OF CLAIM
Name of Debtor (Check Only One): <input type="checkbox"/> Building Materials Holding Corporation <input type="checkbox"/> BMC West Corporation <input checked="" type="checkbox"/> SelectBuild Construction, Inc. <input type="checkbox"/> SelectBuild Northern California, Inc. <input type="checkbox"/> Illinois Framing, Inc. <input type="checkbox"/> C Construction, Inc.	Case No. 09-12074 09-12075 09-12076 09-12077 09-12078 09-12079	Name of Debtor <input type="checkbox"/> TWF Construction, Inc. <input type="checkbox"/> H.N.R. Framing Systems, Inc. <input type="checkbox"/> SelectBuild Southern California, Inc. <input type="checkbox"/> SelectBuild Nevada, Inc. <input type="checkbox"/> SelectBuild Arizona, LLC <input type="checkbox"/> SelectBuild Illinois, LLC	Case No. 09-12080 09-12081 09-12082 09-12083 09-12084 09-12085	Your Claim Is Scheduled As Follows:
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case, except for purposes of asserting an administrative expense under 11 U.S.C. § 503(b)(9) (see Item 6 below). All other requests for payment of an administrative expense should be filed pursuant to 11 U.S.C. § 503.				
Name of Creditor Pedro Alvarado on behalf of himself and the Proposed Class of Former California Employees of Building Materials Holding Corporation Name and address where notices should be sent: James R. Hawkins, Esq. A Professional Law Corporation 9880 Research Drive, Suite 200 Irvine, California 92618 Telephone number: 949-387-7200 Email Address: 949-387-6676		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: _____ <i>(If known)</i> Filed on: _____		
Name and address where payment should be sent (if different from above): Telephone number: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the Debtor or trustee in this case.		
1. Amount of Claim as of Date Case Filed: \$ <u>Unknown - Los Angeles County Superior Court Litigation Pending</u> If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. If your claim is asserted pursuant to 11 U.S.C. § 503(b)(9), complete item 6. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges. Copy of Lawsuit from Case No. BC 391029 attached.		5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim.		
2. Basis for Claim: <u>Violations of California Labor Laws</u> (See instruction #2 on reverse side.)		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$10,950) earned within 180 days before filing of the bankruptcy petition or cessation of the Debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(). [Note: Do not include Section 503(b)(9) Claims here.]		
3. Last four digits of any number by which creditor identifies Debtor: _____ 3a. Debtor may have scheduled account as: <u>James Hawkins, Esq.</u> (See instruction #3a on reverse side.)		Amount entitled to priority: \$ <u>Unknown</u>		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Equipment <input type="checkbox"/> Other Describe: _____ Value of Property: \$ _____ Annual Interest Rate: ____ % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		FOR COURT USE ONLY		
6. Claim Pursuant to 11 U.S.C. § 503(b)(9): Indicate the amount of your claim arising from your provision of goods sold to a Debtor in the ordinary course of the Debtor's business in the 20 days before June 16, 2009: Attach documentation supporting such claim. \$ _____				
7. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.				
8. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction #8 and definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain in an attachment.				
Date: 8-31-09	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. <div style="text-align: center;"> James R. Hawkins, Attorney for Proposed Class </div>			

Pedro Alvarado



UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE				PROOF OF CLAIM
Name of Debtor (Check Only One): <input type="checkbox"/> Building Materials Holding Corporation <input type="checkbox"/> BMC West Corporation <input type="checkbox"/> SelectBuild Construction, Inc. <input type="checkbox"/> SelectBuild Northern California, Inc. <input type="checkbox"/> Illinois Framing, Inc. <input type="checkbox"/> C Construction, Inc.	Case No. 09-12074 09-12075 09-12076 09-12077 09-12078 09-12079	Name of Debtor <input type="checkbox"/> TWF Construction, Inc. <input type="checkbox"/> H.N.R. Framing Systems, Inc. <input checked="" type="checkbox"/> SelectBuild Southern California, Inc. <input type="checkbox"/> SelectBuild Nevada, Inc. <input type="checkbox"/> SelectBuild Arizona, LLC <input type="checkbox"/> SelectBuild Illinois, LLC	Case No. 09-12080 09-12081 09-12082 09-12083 09-12084 09-12085	Your Claim is Scheduled As Follows:
<small>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case, except for purposes of asserting an administrative expense under 11 U.S.C. § 503(b)(9) (see Item 5 below). All other requests for payment of an administrative expense should be filed pursuant to 11 U.S.C. § 503.</small>				
Name of Creditor Pedro Alvarado on behalf of himself and the Proposed Class of Former California Employees of Building Materials Holding Corporation Name and address where notices should be sent: James R. Hawkins, Esq. A Professional Law Corporation 9880 Research Drive, Suite 200 Irvine, California 92618 Telephone number: 949-387-7200 Email Address: 949-387-6676		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: _____ <i>(if known)</i> Filed on: _____		
Name and address where payment should be sent (if different from above): Telephone number: _____		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the Debtor or trustee in this case.		
1. Amount of Claim as of Date Case Filed: \$ Unknown - Los Angeles County Superior Court Litigation Pending <small>If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. If your claim is asserted pursuant to 11 U.S.C. § 503(b)(9), complete item 6.</small> <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges. Copy of Lawsuit from Case No. BC 391029 attached.				
2. Basis for Claim: Violations of California Labor Laws <small>(See instruction #2 on reverse side.)</small>				
3. Last four digits of any number by which creditor identifies Debtor: _____ 3a. Debtor may have scheduled account as: James Hawkins, Esq. <small>(See instruction #3a on reverse side.)</small>				
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Equipment <input type="checkbox"/> Other Describe: _____ Value of Property: \$ _____ Annual Interest Rate: ____% Amount of arrearage and other charges as of time case filed included in secured claim, _____ if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____				
6. Claim Pursuant to 11 U.S.C. § 503(b)(9): Indicate the amount of your claim arising from your provision of goods sold to a Debtor in the ordinary course of the Debtor's business in the 20 days before June 16, 2009: Attach documentation supporting such claim. \$ _____				
7. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.				
8. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. <i>(See instruction #8 and definition of "redacted" on reverse side.)</i> DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain in an attachment.				
Date: 8-31-09		Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. <div style="text-align: center;"> James R. Hawkins, Attorney for Proposed Class </div>		
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim. <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$10,950) earned within 180 days before filing of the bankruptcy petition or cessation of the Debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Up to \$2,425 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(). (Note: Do not include Section 503(b)(9) Claims here.) Amount entitled to priority: \$ Unknown				
FOR COURT USE ONLY				

Pedro Alvarado

DECLARATION OF PEDRO ALVARADO

I, PEDRO ALVARADO, declare as follows:

1. I am an individual and also am the designated representative of the proposed class of former construction employees of the Debtor for the case in which this claim is filed. The facts set forth herein are true based on my own personal knowledge, and if called upon to testify thereto, I could and would competently do so under oath.

2. With regard to this action, I can be contacted in care of the attorney representing the proposed class, James R. Hawkins, 9880 Research Drive, Suite 200, Irvine, CA 92618.


3. On May 16, 2008, on behalf of myself and others similarly situated, a class action lawsuit was filed in the Superior Court for the State of California, County of Los Angeles, styled *Pedro Alvarado, an individual on behalf of himself and others similarly situated vs. Building Materials Holding Corporation; SelectBuild Construction, Inc.; SelectBuild Southern California, Inc.; and H.N.R. Framing Systems, Inc.*, Case Number BC391029 (the "California Class Action").

4. The California Class Action alleges causes of action including (a) failure to pay wages and overtime wages; (b) failure to provide rest periods and meal periods or compensation in lieu thereof; (c) failure to timely pay wages; (d) failure to indemnify necessary employee expenditures; (e) failure to provide accurate itemized employee wage statements; and (f) violations of the unfair competition law. The proposed class is estimated to exceed 5,000 individuals.

5. If this Court grants relief from stay and if a judgment is obtained against the Defendants in the California Class Action, I will file amended proofs of claim in these bankruptcy cases.

6. I specifically authorize class counsel, James R. Hawkins, to file any document with the Bankruptcy Court that I could file on behalf of myself or as the representative of the class.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed on August 31, 2009, at IRVINE, California.


PEDRO ALVARADO

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

<u>In re:</u>)	Chapter 11
)	
BUILDING MATERIALS HOLDING, ¹)	Case No. 09-12074 (KJC)
CORPORATION, et al.,)	
)	(Jointly Administered)
Debtors.)	Objection Deadline: September 11, 2009 @ 4:00 pm
)	Hearing Date: September 18, 2009 @ 1:00 pm

**NOTICE OF MOTION AUTHORIZING CLASS PROOF OF CLAIM OR,
IN THE ALTERNATIVE, TO EXTEND TIME FOR INDIVIDUAL CLASS
MEMBERS TO FILE PROOFS OF CLAIM**

TO: All parties on the attached service list

PLEASE TAKE NOTICE that on August 31, 2009, Pedro Alverado on behalf of himself and the proposed class of individuals employed by, or formerly employed by Building Materials Holding Corporation, Selectbuild Construction, Inc., Selectbuild Southern California, Inc., H.N.R. Framing Systems, Inc. (the "Claimants") filed a *Motion Authorizing Class Proof of Claim or, in the Alternative, to Extend Time for Individual Class Members to File Proofs of Claim* (the "Motion") with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that any responses to the Motion must be in writing, in conformity with the Federal Rules of Bankruptcy Procedure and the Local Rules of the United States Bankruptcy Court for the District of Delaware, filed with the Bankruptcy Court, and served upon, so as to be received by, the undersigned counsel on or before **September 11, 2009 at 4:00 p.m.**

PLEASE TAKE FURTHER NOTICE THAT THE REQUESTED HEARING ON THE MOTION WILL BE HELD ON **SEPTEMBER 18, 2009 AT 1:00 P.M., PREVAILING EASTERN TIME**, BEFORE THE HONORABLE KEVIN J. CAREY, UNITED STATES BANKRUPTCY JUDGE, IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 5th FLOOR, COURTROOM #5, WILMINGTON, DELAWARE 19801.

¹ The Debtors in these cases, together with the last four digits of the federal tax identification number of each Debtor, are as follows: Building Materials Holdings Corporation (4269), BMC West Corporation (0454), SelectBuild Construction, Inc. (1340), SelectBuild Northern California, Inc. (7579), Illinois Framing, Inc. (4451), C Construction, Inc. (8206), TWF Construction, Inc. (3334), H.N.R. Framing Systems, Inc. (4329), SelectBuild Southern California, Inc. (9378), SelectBuild Nevada, Inc. (8912), SelectBuild Arizona, LLC (0036), and SelectBuild Illinois, LLC (0792). The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: August 31, 2009
Wilmington, DE

McCARTER & ENGLISH, LLP

By: /s/ Katharine L Mayer
Katharine L Mayer (DE #3758)
405 North King Street, 8th Floor
Wilmington, DE 19801
Telephone: (302) 984-6300
Facsimile: (302) 984-6399
kmayer@mccarter.com

-and-

James R. Hawkins (CA #192925)
(Pro Hac Vice Pending)
JAMES R. HAWKINS, APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676
james@jameshawkinsaplc.com

-and-

D. Edward Hays (CA #162507)
(Pro Hac Vice Pending)
MARSHACK HAYS LLP
5410 Trabuco Rd, Suite 130
Irvine, CA 92620
Telephone: (949) 333-7777
Facsimile: (949) 333-7778
ehays@marshackhays.com

Counsel for Pedro Alverado on behalf of himself and the proposed class of individuals employed by, or formerly employed by Building Materials Holding Corporation, Selectbuild Construction, Inc., Selectbuild Southern California, Inc., H.N.R. Framing Systems, Inc.

CERTIFICATE OF SERVICE

I, Katharine L. Mayer, hereby certify that on the 31st day of August, 2009, I caused a true and correct copy of the foregoing *Notice and Motion Authorizing Class Proof of Claim or, in the Alternative, to Extend Time for Individual Class Members to File Proofs of Claim* to be served upon the attached service list by U.S. Mail, postage pre-paid, or in the manner so indicated.

/s/ Katharine L. Mayer
Katharine L. Mayer (#3758)

2002 SERVICE LIST
BUILDING MATERIALS HOLDING CORPORATION
8/31/2009

David G. Aelvoet, Esq.
Linebarger Goggan Blair & Sampson LLP
Travis Building, 711 Navarro, Suite 300
San Antonio, TX 78205
(Counsel to Bexar County)
First Class Mail

Christopher M. Alston, Esq.
Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101
(Counsel to JELD-WEN, inc.)
First Class Mail

Brian W. Bisignani, Esq.
Post & Schell, P.C.
17 North 2nd Street, 12th Floor
Harrisburg, PA 17101-1601
(Counsel to Aon Consulting)
First Class Mail

Robert McL. Boote, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
(Counsel to Westchester Fire Insurance
Company and ACE USA)
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David Boyle
Airgas, Inc.
259 Radnor-Chester Road, Suite 100
P.O. Box 6675
Radnor, PA 19087-8675
First Class Mail

Andrew Cardonick, Esq.
Greenberg Traurig, LLP
77 West Wacker Drive, Suite 3100
Chicago, IL 60601
(Counsel to Grace Bay Holdings, II, LLC)
First Class Mail

Scott T. Citek, Esq.
Lamm & Smith, P.C.
3730 Kirby Drive, Suite 650
Houston, TX 77098
(Counsel to Bay Oil Company)
First Class Mail

Scott D. Cousins, Esq.
Dennis A. Melero, Esq.
Greenberg Traurig, LLP
1007 North Orange Street, Suite 1200
Wilmington, DE 19801
(Counsel to Grace Bay Holdings, II, LLC)
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Raniero D. D'Aversa, Jr., Esq.
Laura D. Metzger, Esq.
Weston T. Eguchi, Esq.
Orrick, Herrington & Sutcliffe LLP
666 Fifth Avenue
New York, NY 10103-0001
(Counsel to Rabobank International)
First Class Mail

Tobey M. Daluz, Esq.
Joshua E. Zugerman, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
919 North Market Street, 12th Floor
Wilmington, DE 19801
(Counsel to Westchester Fire Insurance
Company and ACE USA)
Hand Delivery

2002 SERVICE LIST
BUILDING MATERIALS HOLDING CORPORATION
8/31/2009

Robert J. Dehney, Esq.
Erin R. Fay, Esq.
Morris Nichols Arsht & Tunnell LLP
1201 North Market Street, 18th Floor
P.O. Box 1347
Wilmington, DE 19899-1347
(Counsel to D.R. Horton, Inc.)
Hand Delivery

John P. Dillman, Esq.
Linebarger Goggan Blair & Sampson LLP
P.O. Box 3064
Houston, TX 77253-3064
(Counsel to Cypress-Fairbanks ISD, Fort Bend
County, and Harris County)
First Class Mail

Mark W. Eckard, Esq.
Reed Smith LLP
1201 North Market Street, Suite 1500
Wilmington, DE 19801
(Counsel to CIT Technology Financing
Services, Inc.)
Hand Delivery

Kevin B. Fisher, Esq.
Seth Mennillo, Esq.
Paul, Hastings, Janofsky & Walker LLP
55 Second Street, 24th Floor
San Francisco, CA 94105
(Counsel to Wells Fargo Bank, N.A.)
First Class Mail

John M. Flynn, Esq.
Carruthers & Roth, P.A.
235 North Edgeworth Street
P.O. Box 540
Greensboro, NC 27401
(Counsel to Arrowood Indemnity Company)
First Class Mail

Christopher J. Giaimo, Jr., Esq.
Katie A. Lane, Esq.
Arent Fox LLP
1050 Connecticut Avenue, NW
Washington, DC 20036-5339
(Counsel to the Official Committee of
Unsecured Creditors)
First Class Mail

Paul N. Heath, Esq.
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801
(Counsel to Wells Fargo Bank, N.A.)
Hand Delivery

Melody C. Hogston
Royal Mouldings Limited
P.O. Box 610
Marion, VA 24354
First Class Mail

2002 SERVICE LIST
BUILDING MATERIALS HOLDING CORPORATION
8/31/2009

Eric H. Holder, Jr., Esq.
U. S. Attorney General
Department of Justice - Commercial Litigation
Branch
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001
First Class Mail

IKON Financial Services
Attn: Bankruptcy Administration
1738 Bass Road
P.O. Box 13708
Macon, GA 31208-3708
First Class Mail

Internal Revenue Service
Attn: Insolvency Section
11601 Roosevelt Blvd., Mail Drop N781
P.O. Box 21126
Philadelphia, PA 19114
First Class Mail

Thomas W. Isaac, Esq.
Dietrich, Glasrud, Mallek & Aune
5250 North Palm Avenue, Suite 402
Fresno, CA 93704
(Counsel to Wilson Homes, Inc.)
First Class Mail

Neal Jacobson, Esq.
Senior Trial Counsel
Securities and Exchange Commission
3 World Financial Center, Suite 400
New York, NY 10281
First Class Mail

Michael J. Joyce, Esq.
Cross & Simon, LLC
913 North Market Street, 11th Floor
Wilmington, DE 19801
(Counsel to Arrowood Indemnity Company)
Hand Delivery

Thomas L. Kent, Esq.
Paul, Hastings, Janofsky & Walker LLP
75 East 55th Street, 1st Floor
New York, NY 10022
(Counsel to Wells Fargo Bank)
First Class Mail

Louisiana-Pacific Corporation
Attn: Bruce J. Iddings
P.O. Box 4000-98
Hayden Lake, ID 83835-4000
(Top 50)
First Class Mail

Cliff W. Marcek, Esq.
Cliff W. Marcek, P.C.
700 South Third Street
Las Vegas, NV 89101
(Counsel to Edward and Gladys Weisgerber)
First Class Mail

Dan McAllister
San Diego County Treasurer-Tax Collector,
Bankruptcy Desk
1600 Pacific Highway, Room 162
San Diego, CA 92101
First Class Mail

2002 SERVICE LIST
BUILDING MATERIALS HOLDING CORPORATION
8/31/2009

Frank F. McGinn, Esq.
Bartlett Hackett Feinberg, P.C.
155 Federal Street, 9th Floor
Boston, MA 02110
(Counsel to Iron Mountain Information
Management, Inc.)
First Class Mail

Joseph J. McMahon, Jr., Esq.
Office of the United States Trustee
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