

IN RE:)	
)	Chapter 11
)	
BUILDING MATERIALS HOLDING)	Case No. 09-12074 (KJC)
CORPORATION, <i>et al.</i>,¹)	
)	
Debtors.)	Jointly Administered
)	
)	Ref. Docket No. 543
)	

Building Materials Holding Corporation and its affiliates, as debtors and debtors

PRELIMINARY STATEMENT

1 The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding 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.

Ephedra Prods. Liab. Litig., 329 B.R. 1, 10 (S.D.N.Y. 2005). Class proofs of claim are permitted at the discretion of the Court only in certain narrowly defined circumstances. Alvarado has not shown that any of those circumstances are present here, where the proposed class was never certified pre-petition and where the putative class members have already received actual or constructive notice of the bankruptcy case and Bar Date. As the District Court for the Southern District of New York has recently noted, in affirming the bankruptcy court's denial of a practically identical request to authorize a class proof of claim, these facts alone should "warrant[] denial of plaintiff[s] motion[]." *In re Bally Fitness of Greater N.Y., Inc.* ("*In re Bally II*"), 2009 U.S. Dist. LEXIS 69187, at *5 (S.D.N.Y. Aug. 7, 2009). Even beyond those shortcomings, however, Alvarado "does not seek to have this Court decide whether the action is suitable for treatment as a class action," but instead intends to ask for relief from the automatic stay to continue pursuing his class action claims in California state court. Mot. ¶ 17 (emphasis in original). Relief from the automatic stay is far from justified, and would substantially disrupt the orderly progress of these bankruptcy proceedings. But more fundamentally, because Alvarado does not even seek to have this Court exercise its discretionary power to "extend the application of Rule 23 to [his] proof of claim," *In re Bally Fitness of Greater N.Y., Inc.* ("*In re Bally I*"), 402 B.R. 616, 620 (Bankr. S.D.N.Y. 2009), he has failed to make the threshold showing necessary to authorize class proofs of claim. Alvarado cannot ask for class proofs of claim while simultaneously insisting that this Court "not" apply Rule 23 of the Federal Rules of Civil Procedure ("**Rule 23**") to those claims.

2. Even if Alvarado did seek to have this Court apply Rule 23 to his class proofs of claim—which he expressly does not, *see* Mot. ¶ 17—class treatment of his claims would still be inappropriate because they do not fulfill the requirements of Rule 23. Alvarado's

California state law wage and hour claims cannot satisfy either the superiority or the predominance requirements of Rule 23(b). As numerous courts have recognized, the "superiority of the class action vanishes when the 'other method available' is bankruptcy, which consolidates all claims in one forum and allows claimants to file proofs of claim without counsel and at virtually no cost." *In re Ephedra*, 329 B.R. at 9. And as courts both within and outside of the bankruptcy context have concluded, California wage and hour claims such as Alvarado's are inappropriate for class treatment because "each putative class member's right to recovery is dependant on facts specific to that individual," preventing common issues from predominating. *In re Bally I*, 402 B.R. at 622. In short, class treatment of Alvarado's claims is neither appropriate nor necessary to protect the rights of the various members of the putative class; their rights have been amply protected by the bankruptcy claims process itself.

3. In the alternative, Alvarado asks the Court to extend the Bar Date to allow the putative class members to file individual proofs of claim. First, Alvarado has no standing to seek thousands of bar date extensions on behalf of people that neither he nor his counsel represent as individual claimants. Second, even ignoring that jurisdictional bar, in requesting such extraordinary relief Alvarado appears to be laboring under the misunderstanding that those individuals received no notice of these bankruptcy proceedings or the Bar Date. To the contrary, the Debtors mailed English and Spanish language versions of the notice of these bankruptcy proceedings to the last known address of over 63,000 of its former employees, including the putative class members. The Debtors likewise mailed a Bar Date Notice, together with a Proof of Claim Form, to each of those employees. In addition, the Debtors published notice of the bankruptcy and Bar Date Notice in nine different English and Spanish newspapers, including the Wall Street Journal, the Los Angeles Times, and Impacto USA. The thousands of individuals for

whom Alvarado seeks an extension of the bar date, therefore, all received actual or constructive notice of their opportunity to participate in these bankruptcy proceedings. Alvarado has not met his burden to justify extending the Bar Date under these circumstances. Indeed, extending the Bar Date "for notified class members who failed to file individual claims in a timely manner will violate due process and prejudice the rights of timely filers." *In re Bally I*, 402 B.R. at 622.

GENERAL BACKGROUND

4. On June 16, 2009 (the "*Petition Date*"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "*Chapter 11 Cases*"). The Debtors continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases. On June 26, 2009, the Office of the United States Trustee (the "*U.S. Trustee*") appointed the official committee of unsecured creditors (the "*Creditors Committee*").

5. The Debtors are one of the largest providers of residential building products and construction services in the United States. The Debtors distribute building materials, manufacture building components (e.g., millwork, floor and roof trusses, and wall panels), and provide construction services to professional builders and contractors through a network of 31 distribution facilities, 43 manufacturing facilities, and five regional construction services facilities.

6. The Debtors operate under two brand names: BMC West® and SelectBuild®.

- ***BMC West.*** Under the BMC West brand, the Debtors market and sell building products, manufacture building components, and provide construction services to professional builders and contractors. Products include structural lumber and building

materials purchased from manufacturers, as well as manufactured building components such as millwork, trusses, and wall panels. Construction services include installation of various building products and framing. The Debtors currently offer these products and services in major metropolitan markets in Texas, Washington, Colorado, Idaho, Utah, Montana, North Carolina, California, and Oregon.

- **SelectBuild.** Under the SelectBuild brand, the Debtors offer integrated construction services to production homebuilders, as well as commercial and multi-family builders. Services include wood framing, concrete services, managing labor and construction schedules, and sourcing materials. The Debtors currently offer these services in major metropolitan markets in California, Arizona, Nevada and Illinois.

7. On the Petition Date, the Debtors filed their proposed chapter 11 plan (the "**Plan**") and accompanying disclosure statement (the "**Disclosure Statement**"). The Debtors filed amended versions of the Plan and Disclosure Statement on July 27, 2009. To implement this restructuring, the Debtors have obtained \$80 million in debtor-in-possession financing, which the Court approved on a final basis on July 1, 2009.

8. On July 16, 2009, the Court entered an Order Pursuant to Sections 501, 502, and 1111(a) of the Bankruptcy Code, Bankruptcy Rules 2002 and 3003(c)(3), and Local Rule 2002-1(e) Establishing Bar Dates for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof [Docket No. 248] (the "**Bar Date Order**") establishing August 31, 2009 as the bar date (the "**Bar Date**") in these Chapter 11 Cases.

THE ALVARADO ACTION

9. On May 16, 2008 Pedro Alvarado filed a putative class action on behalf of himself and other current and former California employees of the Debtors in the Superior Court of the State of California for the County of Los Angeles [Case No. BC391029] (the "**Alvarado**")

Action"), alleging that the Debtors² violated various California wage and hour laws. His Class Action Complaint (the "*CoAmplaint*") asserts state law claims for alleged failure to pay wages and overtime wages (including "off the clock" work), failure to provide rest and meal periods or compensation in lieu thereof, failure to timely pay wages, failure to indemnify necessary employee expenditures, failure to provide accurate itemized wage statements, and violations of California's unfair competition law. Mot., Exh. 1. According to Alvarado, there are "approximately 5,000 members of the proposed class." Mot. ¶ 14.

10. The Alvarado Action is currently stayed as a result of these bankruptcy proceedings. Despite the fact that the Alvarado Action had been pending for over a year prior to the Petition Date, Alvarado has never moved for class certification. No formal discovery has been completed in the Alvarado Action and no notification of the pending class action has ever been sent to the putative class members. Resolving the class action claims in the Alvarado Action would require an enormous commitment of time and resources, including: (1) undertaking the vast amount of discovery needed to litigate a class certification motion, including numerous depositions and voluminous written discovery required by both parties to the litigation, (2) conducting a hearing on class certification, which for California wage and hour class claims often takes on the complexity of a trial because of its pivotal significance to the future of the case, (3) if a class were ultimately certified, giving notice to all class members and providing the opportunity to "opt out" of the class action as required by Rule 23, (4) engaging in merits discovery, and (5) a complex and lengthy trial.

² Debtors Building Materials Holding Corporation, SelectBuild Construction, Inc., SelectBuild Southern California, Inc., and H.N.R. Framing Systems, Inc. are named as defendants in the Class Action Complaint.

11. On June 25, 2009 the Debtors mailed English and Spanish versions of the Debtors' Notice of Commencement of Chapter 11 Bankruptcy Cases and Meeting of Creditors (the "*Notice of Commencement*") to the last known address of 63,769 current and former employees, going back a period of four years, including the putative class members in the Alvarado Action for whom the Debtors had employment records. Aff. of Craig E. Johnson ¶ 2 (attached hereto as *Exhibit A*). On July 1, 2009 the Debtors mailed the Debtors' Notice of Hearing to Consider Approval of the Disclosure Statement for Joint Plan of Reorganization for the Debtors (the "*Disclosure Statement Hearing Notice*") to the same individuals. *Id.* ¶ 3. On July 23, 2009 the Debtors mailed their Notice of Entry of Bar Date Order Establishing Deadlines for Filing Proofs of Claim Against the Debtors (Including Claims Pursuant to Bankruptcy Code § 503(b)(9)) (the "*Bar Date Notice*") along with a Proof of Claim Form to the same individuals. *Id.* ¶ 4. The Bar Date Notice contained a note in Spanish at the top of the document instructing recipients how to obtain a Spanish version of the notice. *See id.*, Exh. 3.

12. Between June 26, 2009 and July 6, 2009, the Debtors published English versions of the Notice of Commencement in the Wall Street Journal, the Los Angeles Times, the Las Vegas Review-Journal, the Arizona Republic, the Sun Sentinel, and the Miami Herald, and published Spanish versions of the Notice of Commencement in Impacto USA (California), El Tiempo (Nevada), and Presna Hispana (Arizona). *See* Docket Nos. 146, 147, 148, 149, 153, 154, 167, 250, and 312. Between July 29, 2009 and August 1, 2009, the Debtors published English versions of the Bar Date Notice in the Wall Street Journal, the Los Angeles Times, the Las Vegas Review-Journal, the Arizona Republic, the Sun Sentinel, and the Miami Herald, and published Spanish versions of the Bar Date Notice in Impacto USA (California), El Tiempo

(Nevada), and Presna Hispana (Arizona). *See* Docket Nos. 366, 367, 368, 411, 498, 499, 500, 501, and 524.

13. On August 31, 2009, Alvarado filed the Motion seeking authorization of class proofs of claim or, in the alternative, seeking an extension of the Bar Date for thousands of individuals who otherwise would have been class members. With the Motion, Alvarado filed five proofs of claim—one for each of the named Debtor-defendants in the Alvarado Action, as well as one for SelectBuild Northern California, Inc. *See* Mot., Exh. 1. The Motion itself states that "[t]his Motion does not seek to have this Court decide whether the action is suitable for treatment as a class action." Mot. ¶ 17 (emphasis in original). "Instead," the Motion continues, "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." *Id.* Thus, while Alvarado's Motion asks the Court to allow his class proofs of claim, it also expressly requests that this Court "not" apply Rule 23 in considering those claims.

ARGUMENT

A. Alvarado Should Not Be Permitted to File Class Proofs of Claim.

14. "[B]ankruptcy significantly changes the balance of factors to be considered in determining whether to allow a class action" and renders class-based claims "less desirable in bankruptcy than in ordinary civil litigation." *In re Bally I*, 402 B.R. at 620-21 (quoting *In re Ephedra*, 329 B.R. at 5). By their very nature, bankruptcies perform many of the functions of a class action: providing notice to potential claimants, consolidating claims in a single forum, and allowing for the efficient litigation of common issues. *Id.* at 621. Unlike class

actions, however, bankruptcies allow claimants to file proofs of claim without counsel, at virtually no cost, and are arguably more efficient than class actions. *Id.*

15. Moreover, class actions can interfere with the uniform application of bankruptcy bar dates by preserving the claims of class members who failed to assert claims within the time limits applicable to similarly situated creditors. This impact effectively dilutes the value of claims asserted by timely filers and implicates due process concerns. *See In re Sacred Heart Hosp. of Norristown*, 177 B.R. 16, 23 (Bankr. E.D. Pa. 1995) (“an action which expands the bar date for notified creditors may . . . violate due process”). Further, the additional “layers of procedure and factual complexity that accompany class-based claims” siphon estate resources and potentially interfere with the orderly progression of the reorganization. *In re Bally I*, 402 B.R. at 621. “[A] bankruptcy case can proceed no faster than its slowest matter . . . and a class action may ‘gum up the works’ because until complete, the bankruptcy court cannot determine the entitlement of other creditors.” *Id.* (quoting *In re Woodward & Lothrop Holdings, Inc.*, 205 B.R. 365, 376 (Bankr. S.D.N.Y. 1997)).

16. For these and other reasons, courts have repeatedly emphasized that the class proof of claim device should be used “most sparingly.” *In re Sacred Heart*, 177 B.R. at 22. *See also In re Musicland Holding Corp.*, 362 B.R. 644, 651 (Bankr. S.D.N.Y. 2007) (same); *In re FirstPlus Fin., Inc.*, 248 B.R. 60, 73 (Bankr. N.D. Tex. 2000) (“In the bankruptcy context, class actions should be rare.”). “There is no absolute right to file a class proof of claim.” *In re Bally I*, 402 B.R. at 619. Rather, a movant must seek to have the bankruptcy court exercise its

discretion to allow a class proof of claim by applying Rule 23 to the proof of claim.³ Bankruptcy courts will exercise their discretion to permit class claims only where the movant has met its burden of demonstrating that that such treatment is appropriate. *See In re United Cos. Fin. Corp.*, 277 B.R. 596, 601 (Bankr. D. Del. 2002) ("The burden of proof is on the claimant to establish each element.").

17. "In determining whether to exercise [their] discretionary power [to allow class proofs of claim], courts primarily look at: a) whether the class claimant moved to extend the application of Rule 23 to its proof of claim; b) whether 'the benefits derived from the use of the class claim device are consistent with the goals of bankruptcy'; and c) whether the claims which the proponent seeks to certify fulfill the requirements of Rule 23." *In re Bally I*, 402 B.R. at 620 (quoting *In re Musicland*, 362 B.R. at 651). In his Motion asking the Court to accept his class claims, Alvarado makes no attempt to meet his burden beyond making the bare assertion that "requiring all members to file individual claims is not practical." Mot. ¶ 14. Even if true—which it is not—that unsupported statement is wholly inadequate to meet Alvarado's burden. Indeed, as explained below, Alvarado's claims fail each and every factor that courts have considered when deciding whether to allow a class proof of claim.

(1) Authorizing the Filing of Alvarado's Class Proofs of Claim Would be Inconsistent with the Goals of Bankruptcy.

18. Courts have concluded that the filing of class proofs of claim is consistent with the Bankruptcy Code "in two principle situations: (i) where a class has been certified pre-petition by a non-bankruptcy court; and (ii) where there has been no actual or

³ The court has the discretion to apply Rule 23 to a class proof of claim by virtue of Rule 9014 of the Federal Rules of Bankruptcy Procedure (the "*Bankruptcy Rules*"), which allows the court to "direct that one or more of the other rules in Part VII shall apply." Bankruptcy Rule 7023 adopts Rule 23.

constructive notice to the class members of the bankruptcy case and Bar Date." *In re Bally I*, 402 B.R. at 620. *See also In re Musicland*, 362 B.R. at 654; *In re Jamesway Corp.*, 1997 Bankr. LEXIS 825, at *16 (Bankr. S.D.N.Y. June 11, 1997); *In re Sacred Heart*, 177 B.R. at 22. These two factors "are critical. For this reason, putative members of an uncertified class who received actual notice of the bar date but did not file timely claims are the least favored candidates for class action treatment." *In re Musicland*, 362 B.R. at 655 (emphasis added). In addition to these primary factors, courts also consider "whether class certification will adversely affect the administration of the case"—that is, whether permitting the class claims risks "undue delay." *Id.* at 654-55 (quoting *In re Ephedra*, 329 B.R. at 5).

19. Alvarado's class claims plainly fail all of these factors. The California state court has made no certification decision in the Alvarado Action; indeed, Alvarado never sought such relief prior to the imposition of the automatic stay in these bankruptcy proceedings. Accordingly, the putative class members could "not have a reasonable expectation that a class claim would be filed that would protect their rights, or that they did not have to comply with the bar date." *In re Musicland*, 362 B.R. at 656. *See also In re Jamesway Corp.*, 1997 Bankr. LEXIS 825, at *35-36 (Bankr. S.D.N.Y. June 11, 1997) ("No class was pre-certified such that purported class members who did not choose to file a proof of claim should or could have had any reasonable expectation that they need not comply with the Bar Date Order. As such, this is not a case justifying an exception to the enforcement of the Bar Date Order in accordance with its express and unequivocal terms.").

20. Moreover, as described above, the Debtors in this case mailed the Notice of Commencement and the Bar Date Notice, along with a Proof of Claim Form, to each identifiable putative member of the Alvarado class at their last known address. In addition, the

Debtors published Spanish and English versions of the Notice of Commencement and the Bar Date Notice in multiple newspapers. Thus, actual or constructive notice has been provided to all of the putative class members. As courts have recognized, where "the putative unnamed class members have clearly received actual or constructive notice of the bankruptcy case and the bar date, denial of the implementation of the class proof of claim device appears advisable." *In re Sacred Heart*, 177 B.R. at 22. *See also In re First Interregional Equity Corp.*, 227 B.R. 358, 371 (Bankr. D.N.J. 1998) (same).⁴

21. Although pre-petition certification and notice are the two "critical" factors courts consider in deciding whether to allow class treatment of bankruptcy claims, *In re Musicland*, 362 B.R. at 655, courts have identified the potential for delay or disruption of the bankruptcy proceedings as also "bear[ing] on the exercise of the discretion whether to apply Rule 23," *id.* at 652. Indeed, "a pervasive theme" in the "court's exercise of this discretion . . . is avoiding undue delay in the administration of the case." *In re Ephedra*, 329 B.R. at 5. Thus, "a court sitting in bankruptcy may decline to apply Rule 23 if doing so would . . . 'gum up the works' of distributing the estate." *Id.* (quoting *In re Woodward*, 205 B.R. at 376).

⁴ That some of the putative class members may not have received actual notice—because the mailing address that the Debtors had for those members was invalid or employment records could not be located—is "irrelevant" as a matter of law. "[T]he fact that these plaintiffs or other Proposed Class members may not have received [the] Package that was mailed to them or read published notice of the Bar Date is irrelevant as a matter of due process. When litigation threatens to deprive individuals of their property, 'notice reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections' satisfies due process requirements." *In re Jamesway*, 1997 Bankr. LEXIS 825, at *30 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). The proper inquiry is whether the Debtors "acted reasonably in selecting means likely to inform persons affected by the Bar Date and these chapter 11 proceedings, not whether each claimant actually received notice." *Id.* As in *Jameway*, "by complying with the terms of the Bar Date Order, mailing a Claim Package to every known creditor and publishing notice of the Bar Date," the Debtors' notices here "satisfy due process." *Id.* at *31. *See also In re Bally II*, 2009 U.S. Dist. LEXIS 69187, at *7-8 (the fact that a "smaller part of the putative class . . . received only notice by publication . . . was still legally adequate"; citing cases).

22. Allowing Alvarado to file class proofs of claim would initiate protracted litigation that threatens to delay or derail confirmation of the Debtors' Plan. In order for the Court to confirm the Plan, the Court must find it is feasible. *See* 11 U.S.C. § 1129(a)(11); *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 649 (2d Cir. 1988); *In re Frascella Enters.*, 360 B.R. 435, 453 (Bankr. E.D. Pa. 2007). Because the Debtors' Plan proposes to pay claims entitled to priority in full on the Effective Date of the Plan or, if such claims are disputed, within 30 days of the date on which such claims are allowed by the Court, the Debtors must demonstrate that they can make these payments in order to show feasibility. For the Debtors to demonstrate an ability to make these payments, they must know the extent of the priority claims. The class proofs of claim which Alvarado seeks to have the Court authorize indicate that an "unknown" portion of the claims is entitled to priority. If the class claims are authorized, this amount will still be unknown as of the date of the confirmation hearing and might not be readily ascertainable, forcing the Debtors either to delay the confirmation hearing or the Court to conduct an expensive and time consuming estimation hearing. Such a process would plainly "gum up the works" of making distributions. *In re Bally I*, 402 B.R. at 621.

23. Protracted litigation in the Alvarado Action would also divert the focus of the Debtors' management at this critical juncture in these Chapter 11 Cases while "siphoning the Debtors' resources." *In re Bally I*, 402 B.R. at 621. Such litigation would require substantial and expensive class certification discovery, followed by class briefing and a hotly contested certification hearing. If a class were certified, notice and an opportunity to "opt out" would have to be given to the class members, followed by merits discovery and a complex and lengthy trial. The extensive class proceedings could also disrupt timely distributions to other unsecured

creditors. Substantial delay, distraction, and depletion of the bankruptcy estate is not simply likely – it is practically a certainty if Alvarado is allowed to file his class proofs of claim.

24. Courts have consistently rejected class proofs of claim where, like here, no class was certified pre-petition, actual or constructive notice was provided to the putative class members, and treatment of the claims on a class basis threatens to disrupt and delay the bankruptcy proceedings. Just recently, the court in *In re Bally* was presented with a remarkably similar request to accept class proofs of claim on behalf of a putative class that, like here, brought California law claims alleging "unpaid wages, failure to provide meal and rest periods mandated by California law and failure to reimburse business expenses." *In re Bally I*, 402 B.R. at 618-19. Because no class was certified pre-petition, "[a]ctual or constructive notice ha[d] been given to [the] putative class members," and "class certification would adversely affect the administration of these cases," the court concluded that the movants "failed to demonstrate that the requested relief would . . . be consistent with the goals of bankruptcy" and denied the class proofs of claim. *Id.* at 620-21. On appeal, the District Court for the Southern District of New York affirmed the decision, noting that "the Bankruptcy Court did not remotely abuse its discretion." *In re Bally II*, 2009 U.S. Dist. LEXIS 69187, at *6. Other courts have reached the same conclusion as the *In re Bally* courts. *See, e.g., In re Musicland*, 362 B.R. at 656 (denying California wage and hour class proof of claim where class was not certified pre-petition, notice of the bar date was provided to putative class members, and "the class claim would seriously delay the administration of the case"); *In re Jamesway*, 1997 Bankr. LEXIS 825, at *35 (denying class proof of claim without considering the elements of Rule 23 where no class was certified pre-petition and most of the putative class members had received actual notice of the bar date); *In re Sacred Heart*, 177 B.R. at 23-24 (same).

(2) Alvarado Could Not Satisfy the Requirements of Rule 23 in Any Event.

25. This Court need not even reach the issue of whether Alvarado's class claims can survive scrutiny under Rule 23; it can—and should—deny those claims as inconsistent with the goals of bankruptcy for the reasons set forth above. *See In re Jamesway*, 1997 Bankr. LEXIS 825, at *36 ("We need not and do not consider whether the plaintiffs can satisfy Rule 23(a) and (b)(1) or (b)(3) herein."); *In re Sacred Heart*, 177 B.R. at 23-24 (denying class proof of claim without reaching Rule 23); *In re Musicland*, 362 B.R. at 654. For this Court to exercise its discretion to allow Alvarado's class claims, however, those claims would have to satisfy the requirements of Rule 23. *See In re Ephedra*, 329 B.R. at 4 ("In exercising [its] discretion, the bankruptcy court first decides under Rule 9014 whether or not to apply Rule 23 . . . [to] the purported class claim; if and only if the court decides to apply Rule 23, does it then determine whether the requirements of Rule 23 are satisfied."). Alvarado's claims cannot satisfy Rule 23 because they founder on its "superiority" and "predominance" requirements.

a. Class Treatment of Alvarado's Claims is Not Superior.

26. Among other things, Rule 23(b) requires as a prerequisite to certifying a class that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Courts have frequently recognized that the advantage of class treatment in consolidating the adjudication of common issues "disappears in the context of a bankruptcy." *In re Bally I*, 402 B.R. at 621-22. As the court in *In re Ephedra* explained, the "superiority of the class action vanishes when the 'other available method' is bankruptcy, which consolidates all claims in one forum and allows claimants to file proofs of claim without counsel and at virtually no cost." 329 B.R. at 9. Alvarado cannot show that class treatment of his claims would be superior.

27. In fact, class treatment of Alvarado's claims would be inferior to the bankruptcy process already made available to the putative class members. As courts have recognized:

Bankruptcy provides the same procedural advantages as a class action. In fact, it provides more advantages. Creditors, even corporate creditors, don't have to hire a lawyer, and can participate in the distribution for the price of a stamp. They need only fill out and return the proof of claim sent with the Bar Date Notice. Furthermore, claims are "deemed allowed" under § 502(a) in the absence of an objection, in which case discovery and fact-finding are avoided altogether.

In re Musicland, 362 Br. at 644 n.8 (citations omitted). See also *In re Bally I*, 402 B.R. at 622; *In re Ephedra*, 329 B.R. at 9. If Alvarado's claims were to proceed on a class basis, Alvarado's attorneys could seek payment of their fees from the Debtors' estates, necessarily diminishing the already limited distributions available to other creditors. The only real beneficiary in that case—especially in light of the fact that all class members were provided an opportunity to file individual claims—would be Alvarado's "arguably opportunistic counsel."⁵ *In re Sacred Heart*, 177 B.R. at 24. See also *In re Musicland*, 362 B.R. at 655 (noting the "irony of . . . paying class counsel, at the expense of the vigilant creditors who observed the bar date"); *In re Ephedra*, 329 B.R. at 10. Class claims would be inferior because "the *de facto* expansion of the Bar Date for notified class members who failed to file individual claims in a timely manner will violate due process and prejudice the rights of timely filers." *In re Bally I*, 402 B.R. at 622.

b. Common Questions Do Not Predominate Over Individualized Determinations.

28. Where individualized factual determinations will predominate over common questions of law or fact, courts—including courts in this jurisdiction—refuse to allow

⁵ Although Alvarado's counsel at the eleventh hour filed class proofs of claim, notably counsel did not file an individual proof of claim on behalf of his client, Alvarado.

class treatment of claims. *See, e.g., In re W. R. Grace & Co.*, 389 B.R. 373, 379 (Bankr. D. Del. 2008); *In re United Cos. Fin. Corp.*, 277 B.R. at 606-07 (Bankr. D. Del. 2002). "[I]n most situations when considering the applicability of a class action in a bankruptcy context, . . . 'the claims of the creditors will be sufficiently disparate so that the common question of law or fact will not predominate over the individual issues raised by the claimants.'" 6 Newberg on Class Actions § 20:4 (4th ed. 2002) (quoting 7A Wright, Miller & Kane, Federal Practice & Procedure Civil 2d § 1754). Alvarado's class claims are no exception to this general rule. Indeed, very recently the *Bally* court, presented with California wage and hour class claims that are practically indistinguishable from Alvarado's claims, deemed such claims unsuitable for class treatment because "the Court would have to engage in a series of highly disputed mini-trials for each class member to resolve the issues . . . making class treatment untenable and implausible." *In re Bally I*, 402 B.R. at 622.

29. Individual issues pervade Alvarado's claims. For example, his Complaint alleges that the Debtors' employees "were required to clock out and continue to work 'off the clock.'" Mot., Exh. 1 at ¶ 18. Numerous courts have found class treatment inappropriate for such claims since determining the reasons individuals may have worked off-the-clock would involve myriad individualized factual determinations that would dwarf any common questions of law or fact. *See, e.g., In re Bally I*, 402 B.R. at 622; *Diaz v. Elecs. Boutique of Am., Inc.*, 2005 U.S. Dist. LEXIS 30382, at *16 (W.D.N.Y. Oct. 13, 2005) (off-the-clock allegations "are too individualized to warrant collective action treatment"); *Lawrence v. City of Philadelphia*, 2004 U.S. Dist. LEXIS 8445, at *7-8 (E.D. Pa. Apr. 28, 2004) (for off-the-clock claims, "questions of fact will likely differ for each Plaintiff and will be unduly burdensome to both Defendant and to the Court in managing as a collective claim"); *Basco v. Wal-Mart Stores Inc.*, 216 F. Supp. 2d

592, 603 (E.D. La. 2002) (denying class certification because "the individual issues concerning the facts surrounding any plaintiffs' work performed off-the-clock and defendant's potential defenses predominate any common issues"); *Sheffield v. Orius Corp.*, 211 F.R.D. 411, 413 (D. Or. 2002).

30. Multiple courts in California have concluded that meal and rest period claims such as Alvarado's are equally unsuited to class adjudication, because "individualized inquiries concerning the circumstances of each class member's separate missed meal breaks would have to be conducted." *Kohler v. Hyatt Corp.*, 2008 U.S. Dist. LEXIS 63392, at *19 (C.D. Cal. July 23, 2008). *See also Kenny v. Supercuts, Inc.*, 252 F.R.D. 641, 646 (N.D. Cal. 2008); *Brown v. Fed. Express Corp.*, 249 F.R.D. 580, 585-87 (C.D. Cal. 2008); *Salazar v. Avis Budget Group, Inc.*, 251 F.R.D. 529, 531-33 (S.D. Cal. 2008); *In re Bally I*, 402 B.R. at 622.⁶

31. Individual factual determinations would likewise predominate in Alvarado's other claims. Each employee would need to individually demonstrate how much straight and overtime work was allegedly uncompensated. *See Bradley v. Networkers Int'l LLC*, 2009 Cal. App. Unpub. LEXIS 963, at *32-31 (Cal. App. 4th Dist. Feb. 5, 2009) ("to accurately determine the entitlement and amount of overtime pay . . . [would] requir[e] numerous mini-trials on the factual issues"). Individual inquiries would also be necessary to determine which, if any, employees "purchase[d] tools and equipment . . . without reimbursement." Mot., Exh. 1 at ¶ 25(d). Each of those employees would then be required to prove what tools and equipment were purchased, that they were purchased for work and not because of personal preference, that

⁶ The question whether California law meal and rest period claims are suitable for class treatment is currently pending before the California Supreme Court, which granted review of the California Court of Appeal's decision in *Brinker Restaurant Corp. v. Superior Court*, 165 Cal. App. 4th 25 (2008). In *Brinker*, the Court of Appeal held that California rest and meal break claims and off-the-clock claims are "not amenable to class treatment as individual issues predominate." *Id.* at 31.

the purchase was required by a supervisor pursuant to a company-wide policy or practice, and that reimbursement was sought but denied. The Court would also be required to determine how much of each employee's unpaid time was for "*de minimis* work," which need not be compensated. *Lindow v. United States*, 738 F.2d 1057, 1063 (9th Cir. 1984); *In re Bally I*, 402 B.R. at 622. Finally, claims for inaccurate wage statements under section 226 of the California Labor Code would also require individualized inquiry because such claims require an employee to actually "suffer injur[y]" as a result of the inaccuracy to recover damages. *Bibo v. Fed. Express, Inc.*, 2009 U.S. Dist. LEXIS 37597, at *12 (N.D. Cal. Apr. 21, 2009).

32. Two decisions issued within one week of each other in 2002 by Judge Walrath further support the conclusion that class proofs of claim are inappropriate here. *See In re United Cos. Fin. Corp.*, 277 B.R. 596 (Bankr. D. Del. 2002); *In re Kaiser Group Int'l*, 278 B.R. 58 (Bankr. D. Del. 2002). In *In re Kaiser*, Judge Walrath was asked to permit the filing of class proofs of claim and certify a securities fraud class action against the debtors. After concluding that bankruptcy class claims were not per se barred, Judge Walrath proceeded to analyze whether the requirements of Rule 23(a) and (b) were satisfied by the putative class action. 278 B.R. at 64-67. Finding that common issues would predominate because securities fraud claims are particularly "appropriate" for class resolution, the Judge allowed the class proofs of claim and certified the class. *Id.* at 67. Notably, unlike courts in more recent cases discussed above that have considered and rejected employment-related class proofs of claim, Judge Walrath never addressed the threshold question of whether allowing the class claims in *Kaiser* would be inconsistent with the goals of bankruptcy because of notice, lack of pre-petition certification, and the potential to delay and disrupt the bankruptcy proceedings. More importantly, Judge Walrath's finding of predominance was explicitly based on the unique

characteristics of the securities fraud claims in *Kaiser*. 278 B.R. at 67. Cf. *In re First Interregional*, 227 B.R. at 370 (concluding that in a "matter involving [a] massive fraudulent scheme," common issues predominated). Indeed, only one week earlier, Judge Walrath denied class claims in *In re United Companies*, where the putative class claims were based on alleged violations of the Equal Credit Opportunity Act. 277 B.R. at 607. Judge Walrath refused class treatment of the claims in *United Companies* specifically because "individualized inquiry renders class certification inappropriate." *Id.* at 606. In contrast to the securities fraud claims at issue in *Kaiser*, and like the consumer claims at issue in *United Companies*, numerous courts have concluded that Alvarado's wage and hour claims are especially unsuited to class treatment because "individual questions of fact predominate over common questions." *Id.* Likewise, courts that have more recently focused on the threshold question of whether claims like Alvarado's are consistent with the goals of bankruptcy have found they are not and refused to allow class claims on that alternative basis, often without ever reaching the Rule 23 inquiry. See Section A(1), *supra*.

(3) Relief from the Automatic Stay is Unwarranted.

33. Although Alvarado has not yet asked the Court to lift the stay in the Alvarado Action, his ultimate purpose in seeking class proofs of claim is no secret: "Movant intends to seek relief from stay in order to proceed with the California Class Action" in California state court. Mot. ¶ 17. The automatic stay established by section 362(a) of the Bankruptcy Code is a core provision of bankruptcy law that "promotes the reorganization process by providing the debtor with 'a breathing spell from its creditors.'" *In re Bally I*, 402 B.R. at 623 (alteration marks omitted). It allows the debtor to manage and, where appropriate, centralize all creditor actions against property of the estate, "so that reorganization can proceed efficiently, unimpeded by uncoordinated proceedings in other arenas." *In re Ionosphere Clubs*,

Inc., 922 F.2d 984, 989 (2d Cir. 1990). It is no surprise, therefore, that courts presented with requests like Alvarado's have repeatedly refused to lift the bankruptcy stay so as to continue class litigation in the original forum. *See, e.g., In re Bally I*, 402 B.R. at 622-24; *In re FirstPlus*, 248 B.R. at 65 (noting that court earlier denied motion seeking relief from the automatic stay to pursue class action in California federal district court).

34. In analyzing whether to lift the bankruptcy stay to permit a case to proceed in another forum, courts in this jurisdiction have applied both a three-prong balancing test borrowed from the Seventh Circuit's decision in *In re Fernstrom Storage & Van Co.*, 938 F.2d 731, 735 (7th Cir. 1991),⁷ as well as a twelve-part inquiry first outlined by the Second Circuit in *In re Sonmax Indus., Inc.*, 907 F.2d 1280, 1287 (2d Cir. 1990).⁸ *See In re SCO Group, Inc.*, 395 B.R. 852, 857 (Bankr. D. Del. 2007) (applying both tests). *See also In re DBSI, Inc.*, 407 B.R. 159, 167 (Bankr. D. Del. 2009) (applying *In re Sonmax*). Even a limited review of the relevant *Sonmax* factors makes clear that the circumstances here do not warrant lifting the stay in the Alvarado Action.⁹

⁷ The three-prong *Fernstrom* test is: "1. Whether any great prejudice to either the bankrupt estate or the debtor will result from continuation of the civil suit; 2. Whether the hardship to the non-bankrupt party by maintenance of the stay considerably outweighs the hardship to the debtor; and 3. The probability of the creditor prevailing on the merits." *In re SCO Group, Inc.*, 395 B.R. 852, 857 (Bankr. D. Del. 2007).

⁸ The twelve *Sonmax* factors are: "1) whether relief would result in a partial or complete resolution of the issues; 2) lack of any connection with or interference with the bankruptcy case; 3) whether the other proceeding involves the debtor as a fiduciary; 4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; 5) whether the debtor's insurer has assumed full responsibility for defending it; 6) whether the action primarily involves third parties; 7) whether litigation in another forum would prejudice the interests of other creditors; 8) whether the judgment claim arising from the other action is subject to equitable subordination; 9) whether the moving party's success in the other proceeding would result in a judicial lien avoidable by the debtor; 10) the interests of judicial economy and the expeditious and economical resolution of litigation; 11) whether the parties are ready for trial in the other proceeding; and 12) impact of the stay on the parties and the balance of the harms." *In re SCO Group*, 395 B.R. at 857 (quoting *In re Sonmax*, 907 F.2d at 1287).

⁹ Because the *Sonmax* factors are more comprehensive and incorporate at least the first two factors of the three-part *Fernstrom* test outlined in *In re SCO Group*, the discussion herein focuses on the *Sonmax* factors.

[Footnote continued on next page]

35. The first *Sonnax* factor considers whether lifting the stay will result in partial or complete resolution of the issues. Lifting the stay in the Alvarado Action would not itself resolve any of Alvarado's class claims, but would instead force the Debtors to divert scarce resources and energy to a long and arduous legal action that will include multiple phases of extensive discovery, briefing, an exhaustive class certification hearing, additional class-wide notice, and a lengthy trial before the class claims are resolved. As recognized by the *Bally* court, "this *Sonnax* factor weighs heavily against lifting the automatic stay." *In re Bally I*, 402 B.R. at 623.

36. The second and seventh *Sonnax* factors likewise strongly advise against lifting the stay. These factors consider (i) the lack of any connection with or interference with the bankruptcy case, and (ii) whether the litigation in another forum would prejudice the interests of other creditors. Lifting the stay in the Alvarado Action would thrust upon the Debtors' management an immediate and pressing distraction from the important bankruptcy and reorganization matters now before them, simultaneously interfering with the orderly progress of this bankruptcy reorganization and prejudicing the interests of those creditors who timely filed proofs of claim. Given the complexity and size of Alvarado's class claims, they will inevitably drain estate resources to the detriment of these proceedings and other creditors. Moreover, Alvarado's attorneys would likely seek payment of their fees from the Debtors' estates, further diminishing the already limited distributions available to other creditors. Lifting the stay will

[Footnote continued from previous page]

As for the third factor in the *Fernstrom* test—the "probability of the creditor prevailing on the merits," *In re SCO Group*, 395 B.R. at 857—as explained in Section A(2) *supra*, the probability of class claims prevailing is low because Alvarado cannot satisfy the requirements of Rule 23. In any event, this third factor loses any significance here because, even assuming *arguendo* that some putative class members actually have meritorious wage and hour claims against the Debtors, they have already been provided an opportunity to submit those claims through the proof of claim process.

also "interfere with the uniform application of bankruptcy bar dates by preserving the claims of class members who failed to timely file their claims." *In re Bally I*, 402 B.R. at 623.

37. The fifth and sixth *Sonnax* factors consider: (i) whether the debtor's insurer has assumed full responsibility for defending the action; and (ii) whether the action primarily involves third parties. The Alvarado Action does not involve any third parties; all of the named defendants are Debtors in this bankruptcy. Nor has an insurer assumed responsibility in the Alvarado Action. These factors too weigh heavily against lifting the stay.

38. So also do the tenth and eleventh *Sonnax* factors militate in favor of leaving the stay in place. These factors consider (i) the interests of judicial economy and the expeditious and economical resolution of the litigation; and (ii) whether the case is ready for trial. As already noted, the Alvarado Action is far from ready for trial, and could be years from trial. "[T]he parties have not even started conducting the extensive discovery necessary to make a determination on the class certification issue and are therefore not ready for trial." *In re Bally I*, 402 B.R. at 624. Meanwhile, given that class action discovery has not even started in the Alvarado Action, only a small fraction of the resources has been expended to date by the California state court—or by the parties for that matter—when compared to the total outlay that would be required to bring the case through trial. Moreover, individual proofs of claim are more efficient and economical than the class proceedings sought by Alvarado, because individual claimants may "file proofs of claim without counsel and at virtually no cost," and often "case discovery and fact-finding are avoided altogether" using the bankruptcy claim process. *In re Ephedra*, 329 B.R. at 9.

39. Finally, the twelfth *Sonnax* factor considers the impact of the stay on the parties and the balance of the harms. As the *Bally* court observed:

During the pendency of these chapter 11 cases, the Debtors' estates' limited resources are better spent stabilizing their operations and cash flows, rather than litigating a class action suit. Forcing the Debtors to litigate at this point would distract and hinder the Debtors from their reorganization efforts and would take away the "breathing space" necessary to allow them to restructure and preserve the value of their assets for the benefit of their creditors. Also damaging is the threat of other lift stay motions that will be filed by other putative class action litigants if the Lift Stay Motion is granted, leading to an unnecessary drain on the Debtors' resources and an untimely distraction from the reorganization process. In addition, the . . . Plaintiffs have not demonstrated that they will suffer any great hardship if the Lift Stay Motion is denied. Whether awarded such claims sooner rather than later, they are no more prejudiced than any other potential creditor This *Sonnax* factor therefore weighs heavily in favor of denying the lift stay.

In re Bally I, 402 B.R. at 624.

40. In short, the relevant *Sonnax* factors¹⁰ all lead to the same conclusion—that the stay in the Alvarado Action should remain in place. Because Alvarado cannot meet his burden in justifying relief from the automatic stay, his class proofs of claim, which are predicated on the stay being lifted, are all the more inappropriate.

B. The Court Should Not Extend the Bar Date Because the Individuals Have Already Received Actual or Constructive Notice of the Bar Date.

41. If the Court denies Alvarado's class proofs of claim, Alvarado asks the Court in the alternative to extend the Bar Date for each of the Debtors' "former California construction workers" so that they may file "individual claims." Mot. ¶ 19. Nowhere, however, does Alvarado explain how he has standing to seek individual bar date extensions on behalf of thousands of former employees that Alvarado's counsel does not represent as individuals apart from the putative class. Even assuming that Alvarado and his counsel may represent a putative class seeking to assert class proofs of claim, the class representative—Alvarado—"is an agent only if the class is certified." *In re Am. Reserve Corp.*, 840 F.2d 487, 493 (7th Cir. 1988). "If

¹⁰ As courts have recognized, not all of the *Sonnax* factors are relevant in a given case. See *In re Mazzeo*, 167 F.3d 139, 143 (2d Cir. 1999). Only the relevant *Sonnax* factors have been addressed.

the bankruptcy judge denies the request to certify a class . . . the putative agent never obtains 'authorized agent' status." *Id.* Neither Alvarado nor his counsel are "agents" of the thousands of former employees on whose behalf they seek individual Bar Date extensions, and Alvarado therefore lacks standing to request that relief.

42. Even assuming *arguendo* there was no jurisdictional bar, Alvarado would need to demonstrate "excusable neglect" on behalf of each of the thousands of former employees to warrant extension of the bar date. *See* Fed. R. Bankr. P. 9006(b)(1). In determining whether "excusable neglect" exists, the Third Circuit has instructed courts to consider four factors: (1) the danger of prejudice to the debtor; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith. *In re Am. Classic Voyages Co.*, 405 F.3d 127, 133 (3d Cir. 2005). Although Alvarado "has the burden of proving 'excusable neglect,'" *In re Jamesway*, 1997 Bankr. LEXIS 825, at *35, nowhere in his Motion does he even attempt to meet that burden. *See* Mot. ¶¶ 18-21. Alvarado's failure to even try to show "excusable neglect" on behalf of the former employees is an independently sufficient reason to deny extension.

43. Even if Alvarado had attempted to show "excusable neglect," he could not. Allowing thousands of late claims to be filed would both prejudice the Debtors and these bankruptcy proceedings for many of the same reasons that allowing Alvarado's class proofs of claim would. Such claims would disrupt and delay the bankruptcy proceedings, jeopardize the success of the Debtors' reorganization plan, dilute the value of claims asserted by timely filers, and open the floodgates by inviting other individual former employees to seek to assert similar claims. *See In re Seivers*, 378 B.R. 473, 479-80 (Bankr. W.D. Pa. 2007).

44. Perhaps most importantly, because the former employees received actual or constructive notice of the bankruptcy and Bar Date,¹¹ there is no justifiable "reason for the[ir] delay" in filing claims. *In re Am. Classic Voyages Co.*, 405 F.3d at 133. As the Third Circuit has explained, delays that are "entirely avoidable and within [the movant's] control" are disfavored. *Id.* at 134. Numerous courts have strongly condemned attempts to extend the bar date for creditors who received actual or constructive notice, both because of the unfairness towards other creditors who timely filed and due process concerns. As one court has explained,

Tinkering with an established bar date may raise due process claims of parties who have timely filed claims by originally-established bar dates, since it gives late filers a second bite at an apple which is likely to be less than fully satisfying, and thus effect unfair diminution of the timely filer's share of a distribution. . . . [I]t is manifestly clear that it would be unwarranted, unfair, and possibly violate the due process rights of other creditors of the Debtor to effectively extend the bar date to benefit . . . the members of the putative class who failed to exercise vigilance . . . [while] penalizing vigilant employees to the benefit of those who ignored their known rights

In re Sacred Heart, 177 B.R. at 23-24. *See also In re Bally I*, 402 B.R. at 622 ("[E]xpansion of the Bar Date for notified class members who failed to file individual claims in a timely manner will violate due process and prejudice the rights of timely filers."); *In re Musicland*, 362 B.R. at 655 (noting "the irony of effectively extending the bar date for the benefit of those who sat on their rights . . . at the expense of the vigilant creditors who observed the bar date"; "unfair to permit 'a second bite at the apple for those creditors who received notice of the bankruptcy filing and of the Claims Bar Date, and who chose not to file'"); *In re FirstPlus*, 248 B.R. at 73 ("[A]

¹¹ Alvarado makes much of the fact that the Debtors did not schedule individual claims for each putative class member. *See* Mot. ¶¶ 2, 8, 19. Understandably, the Debtors did not schedule individual claims for employees that did not notify the Debtors of alleged claims. In any event, Alvarado's fixation on scheduling is puzzling given that all of the putative class members received actual or constructive notice of the Bar Date.

creditor who has received actual notice of the claims bar date, and who does not file a proof of claim, is barred and has no claim."); *In re Jamesway*, 1997 Bankr. LEXIS 825, at *34 ("The bar date is akin to a statute of limitations, and must be strictly observed.").

CONCLUSION

45. The Alvarado Action does not merit allowing class proofs of claim, where no class was certified pre-petition, all of the putative class members received actual or constructive notice of these bankruptcy proceedings and the Bar Date, and Alvarado does not even seek to have this Court apply Rule 23 to his proofs of claim in any event. Proceeding with the Alvarado Action on a class basis would not be superior to adjudicating the individual claims in these bankruptcy proceedings, but would instead cause considerable and unjustified delay in their orderly resolution. Moreover, the California wage and hour claims that Alvarado seeks to adjudicate on a class-wide basis are rife with issues that would need to be decided on an individualized basis, thereby defeating predominance. Finally, Alvarado has no standing to seek extension of the Bar Date for thousands of other former employees, and in any event has not even attempted to meet, much less met, his demanding burden to show why this Court should extend the Bar Date for class members who have already received actual or constructive notice.

46. For the reasons set forth above, the Debtors submit that the Motion should be denied. The Debtors therefore respectfully request that the Court enter an order denying the Motion in its entirety, and disallowing the proofs of claim that were filed on behalf of the putative class.

NOTICE

47. No trustee or examiner has been appointed in these Chapter 11 Cases. The Debtors have provided notice of this Objection to: (a) the U.S. Trustee; (b) counsel to Wells Fargo Bank, as agent under the Debtors' Prepetition Credit Agreement and DIP Facility (as

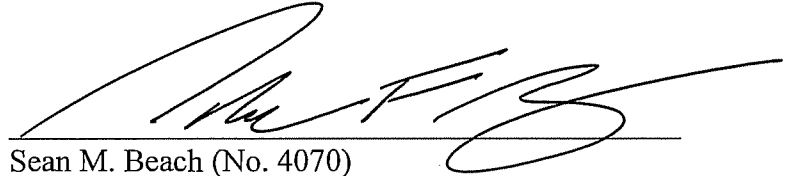
defined in the Plan); (c) counsel to the Creditors' Committee; (d) counsel to Pedro Alvarado; and (e) any persons who have filed a request for notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002. Due to the nature of the relief requested the Debtors respectfully submit that no further notice of this Objection is required.

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WHEREFORE, the Debtors respectfully request that the Court deny the Motion in its entirety, disallow the proofs of claim that were filed on behalf of the putative class, and grant such other and further relief as the Court may deem just and proper.

Dated: Wilmington, Delaware
September 11, 2009

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ATTORNEYS FOR DEBTORS AND DEBTORS IN
POSSESSION

EXHIBIT A
Affidavit of Craig E. Johnson

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

IN RE:

**BUILDING MATERIALS HOLDING
CORPORATION, et al.,¹**

Debtors.

Chapter 11

Case No. 09-12074 (KJC)

Jointly Administered

AFFIDAVIT OF SERVICE

I, Craig E. Johnson, being duly sworn according to law, depose and state as follows:

1. I am a Director, Business Reorganization of The Garden City Group, Inc., (“*GCG*”) the claims and noticing agent in the above-captioned chapter 11 cases.
2. On June 25, 2009, I caused English and Spanish versions of the Debtors’ Notice of Commencement of Chapter 11 Bankruptcy Cases and Meeting of Creditors (the “*Notice of Commencement*”) to be mailed by first class U.S. mail to the 63,769 individuals (the “*Notice Parties*”) listed on the spreadsheet provided to me by the Debtors containing (according to the Debtors’ representation) the names and last known addresses of each of the non-supervisory construction workers that were employed by the Debtors in California, Nevada, Arizona, and Florida in the four-year period immediately preceding the June 16, 2009 filing date in these cases. A true and correct copy of the Notice of Commencement that was mailed to these individuals is attached hereto as *Exhibit 1*.

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding 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.

3. On July 1, 2009, I caused the Debtors' Notice of Hearing to Consider Approval of the Disclosure Statement for Joint Plan of Reorganization for the Debtors (the "**Disclosure Statement Hearing Notice**") to be mailed by first class U.S. mail to the Notice Parties. A true and correct copy of the Disclosure Statement Hearing Notice that was mailed to these individuals is attached hereto as **Exhibit 2**.

4. On July 23, 2009, I caused the Debtors' Notice of Entry of Bar Date Order Establishing Deadlines for Filing Proofs of Claim Against the Debtors (Including Claims Pursuant to Bankruptcy Code § 503(b)(9)) (the "**Bar Date Notice**") along with a Proof of Claim Form to be mailed by first class U.S. mail to the Notice Parties. A true and correct copy of the Bar Date Notice and a sample Proof of Claim Form are attached hereto as **Exhibit 3** and **Exhibit 4** respectively.

5. The foregoing is true and correct to the best of my knowledge, information, and belief.

/s/ Craig E. Johnson
Craig E. Johnson

SWORN AND SUBSCRIBED before me this 10th day of September, 2009.

/s/ Karen E. Petriano
Karen E. Petriano
Notary Public, State of New York
No. 01 RE4853193
Qualified in Suffolk County
Commission Expires March 02, 2010

EXHIBIT 1

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

IN RE:

**BUILDING MATERIALS HOLDING
CORPORATION, *et al.*,**

Debtors.

) **Chapter 11**

) **Case No. 09-12074 (KJC)**

) **Jointly Administered**

**NOTICE OF COMMENCEMENT OF CHAPTER 11 BANKRUPTCY
CASES AND MEETING OF CREDITORS**

On **June 16, 2009**, Building Materials Holding Corporation, and its wholly owned subsidiaries, the debtors and debtors in possession in the above-captioned cases (the “*Debtors*”), each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “*Bankruptcy Code*”). The Debtors, their addresses, case numbers and last four digits of their federal tax identification numbers are as follows:

DEBTORS (Other names, if any, used by the Debtors in the last 6 years)	ADDRESS	CASE NO.	EID No.
Building Materials Holding Corporation	720 Park Blvd. Suite 200 Boise, ID 83712	09-12074	4269
BMC West Corporation	720 Park Blvd. Suite 200 Boise, ID 83712	09-12075	0454
SelectBuild Construction Inc. (f/k/a BMC Construction, Inc.)	720 Park Blvd. Suite 200 Boise, ID 83712	09-12076	1340
SelectBuild Northern California, Inc.	720 Park Blvd. Suite 200 Boise, ID 83712	09-12077	7579
Illinois Framing, Inc.	720 Park Blvd. Suite 200 Boise, ID 83712	09-12078	4451
C Construction, Inc.	720 Park Blvd. Suite 200 Boise, ID 83712	09-12079	8206
TWF Construction, Inc.	720 Park Blvd. Suite 200 Boise, ID 83712	09-12080	3334
H.N.R. Framing Systems, Inc.	720 Park Blvd. Suite 200 Boise, ID 83712	09-12081	4329
SelectBuild Southern California, Inc. (f/k/a KBI Stucco, Inc.; SelectBuild, L.P., KBI Windows, Inc., SelectBuild Florida LLC, SelectBuild Distribution, Inc., SelectBuild Mid-Atlantic, LLC, SelectBuild Trim, LLC, SelectBuild Mechanical, LLC, A-1 Building Components, LLC)	720 Park Blvd. Suite 200 Boise, ID 83712	09-12082	9378

DEBTORS (Other names, if any, used by the Debtors in the last 6 years)	ADDRESS	CASE NO.	EID No.
SelectBuild Nevada, Inc.	720 Park Blvd. Suite 200 Boise, ID 83712	09-12083	8912
SelectBuild Arizona, LLC	720 Park Blvd. Suite 200 Boise, ID 83712	09-12084	0036
SelectBuild Illinois, LLC (f/k/a RCI Construction, LLC)	720 Park Blvd. Suite 200 Boise, ID 83712	09-12085	0792

DATE, TIME AND LOCATION OF MEETING OF CREDITORS. **JULY 17, 2009 AT 10:00 A.M. (PREVAILING EASTERN TIME)**, J. CALEB BOGGS FEDERAL BUILDING, 844 NORTH KING STREET, ROOM 5209, WILMINGTON, DELAWARE 19801.

MEETING OF CREDITORS. The Debtors' representative, as specified in Rule 9001(5) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), is required to appear at the meeting of creditors on the date and at the place set forth above for the purpose of being examined under oath. Attendance by creditors at the meeting is welcomed, but not required. At the meeting, creditors may examine the Debtors and transact such other business as may properly come before the meeting. The meeting may be continued or adjourned from time-to-time by notice at the meeting, without further written notice to the creditors.

COMMENCEMENT OF CASES. A petition under chapter 11 of the Bankruptcy Code has been filed in the United States Bankruptcy Court for the District of Delaware (the "**Court**") by each of the Debtors, and orders for relief have been entered. Pursuant to that certain order entered by the Court, dated June 17, 2009 [Docket No. 52], the chapter 11 cases filed by each of the Debtors will be jointly administered under the following caption: In re Building Materials Holding Corporation *et al.*, Case No. 09-12074 (KJC). You will not receive notice of all documents filed in these cases. All documents filed with the Court, including lists of the Debtors' property and debts, are available for inspection at the Office of the Clerk of the Court (the "**Clerk's Office**"). In addition, such documents may be available at www.deb.uscourts.gov. A PACER password is needed to access these documents and can be obtained from the PACER Service Center at www.pacer.psc.uscourts.gov. In addition, such documents are available through the website of The Garden City Group, Inc., the claims agent in these cases, at www.bmhcrestructuring.com. Information regarding the cases is also available by phone at 1-866-364-4266.

DEADLINE TO FILE A PROOF OF CLAIM. Notice of this deadline will be sent by and through a separate notice.

NAME, ADDRESS AND TELEPHONE NUMBER OF TRUSTEE. None appointed to date.

COUNSEL FOR THE DEBTORS.

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The Brandywine Building
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Telephone: (302) 571-6731

PURPOSE OF CHAPTER 11 FILING. Chapter 11 of the Bankruptcy Code enables debtors to reorganize pursuant to a plan. A plan is not effective unless approved by the Court at a confirmation hearing. Creditors will be given notice concerning any

plan, or in the event these cases are dismissed or converted to another chapter of the Bankruptcy Code. The Debtors will remain in possession of their property and will continue to operate their businesses unless a trustee is appointed.

CREDITORS MAY NOT TAKE CERTAIN ACTIONS. A creditor is anyone to whom any of the Debtors owe money or property. Under the Bankruptcy Code, the Debtors are granted certain protections against creditors. Common examples of prohibited actions by creditors are contacting the Debtors to demand repayment, taking action against the Debtors to collect money owed to creditors or to take property of the Debtors, and starting or continuing foreclosure actions or repossessions. If unauthorized actions are taken by a creditor against the Debtors, the Court may penalize that creditor. A creditor who is considering taking action against the Debtors or the property of the Debtors should review section 362 of the Bankruptcy Code and may wish to seek legal advice. *The staff of the Clerk's Office is not permitted to give legal advice.*

CLAIMS. Schedules of creditors will be filed pursuant to Bankruptcy Rule 1007. Any creditor holding a scheduled claim, which is not listed as disputed, contingent, or unliquidated as to amount, may, but is not required to, file a proof of claim in these cases. Creditors whose claims are not scheduled or whose claims are listed as disputed, contingent, or unliquidated as to amount and who desire to participate in these cases or share in any distribution must file a proof of claim. A creditor who desires to rely on the schedules of creditors has the responsibility for determining that its claim is listed accurately. *Separate notice of the deadlines to file proofs of claim and proofs of claim forms will be provided to the Debtors' known creditors.* Proofs of claim forms also are available in the clerk's office of any United States Bankruptcy Court and from the Court's website at www.deb.uscourts.gov.

DISCHARGE OF DEBTS. Confirmation of a chapter 11 case may result in a discharge of debts, which may include all or part of your debt. See 11 U.S.C. § 1141(d). A discharge means that you may never try to collect the debt from the Debtors, except as provided in the plan.

For the Court: /s/ David D. Bird
Clerk of the United States Bankruptcy
Court for the District of Delaware

Dated: June 22, 2009

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE
(EN EL TRIBUNAL DE QUIEBRAS DE LOS ESTADOS UNIDOS PARA EL DISTRITO DE DELAWARE)**

IN RE:)	Capítulo 11
BUILDING MATERIALS HOLDING CORPORATION, et al. (BUILDING MATERIALS HOLDING CORPORATION y otros))	Caso N° 09-12074 (KJC)
Deudores.)	Administración conjunta

**NOTIFICACIÓN DE INICIO DE CASOS DE QUIEBRA AMPARADOS EN EL CAPÍTULO 11
Y REUNIÓN DE ACREEDORES**

El 16 de junio de 2009, Building Materials Holding Corporation y sus compañías subsidiarias de propiedad total, los deudores y los deudores en posesión en los casos mencionados previamente (en adelante mencionados como los “*Deudores*”), presentaron individualmente una petición voluntaria de amparo en virtud del Capítulo 11 del Título 11 del United States Code, 11 U.S.C. §§ 101 *et seq.* (Código de los Estados Unidos), (en adelante, el “*Código de Quiebras*”). A continuación se enumeran los Deudores, sus domicilios, números de caso y los cuatro últimos dígitos de sus números de identificación de impuestos federales:

DEUDORES (Otros nombres, si los hubiera, utilizados por los Deudores durante los últimos 6 años)	DOMICILIO	N° DE CASO	N° DE EID
Building Materials Holding Corporation	720 Park Blvd. Suite 200 Boise, ID 83712	09-12074	4269
BMC West Corporation	720 Park Blvd. Suite 200 Boise, ID 83712	09-12075	0454
SelectBuild Construction Inc. (f/k/a BMC Construction, Inc.)	720 Park Blvd. Suite 200 Boise, ID 83712	09-12076	1340
SelectBuild Northern California, Inc.	720 Park Blvd. Suite 200 Boise, ID 83712	09-12077	7579
Illinois Framing, Inc.	720 Park Blvd. Suite 200 Boise, ID 83712	09-12078	4451
C Construction, Inc.	720 Park Blvd. Suite 200 Boise, ID 83712	09-12079	8206
TWF Construction, Inc.	720 Park Blvd. Suite 200 Boise, ID 83712	09-12080	3334
H.N.R. Framing Systems, Inc.	720 Park Blvd. Suite 200 Boise, ID 83712	09-12081	4329
SelectBuild Southern California, Inc. (f/k/a KBI Stucco, Inc.; SelectBuild, L.P., KBI Windows, Inc., SelectBuild Florida LLC, SelectBuild Distribution, Inc., SelectBuild Mid-Atlantic, LLC, SelectBuild Trim, LLC, SelectBuild Mechanical, LLC, A-1 Building Components, LLC)	720 Park Blvd. Suite 200 Boise, ID 83712	09-12082	9378

DEUDORES (Otros nombres, si los hubiera, utilizados por los Deudores durante los últimos 6 años)	DOMICILIO	Nº DE CASO	Nº DE EID
SelectBuild Nevada, Inc.	720 Park Blvd. Suite 200 Boise, ID 83712	09-12083	8912
SelectBuild Arizona, LLC	720 Park Blvd. Suite 200 Boise, ID 83712	09-12084	0036
SelectBuild Illinois, LLC (f/k/a RCI Construction, LLC)	720 Park Blvd. Suite 200 Boise, ID 83712	09-12085	0792

FECHA, HORA Y LUGAR DE LA REUNIÓN DE ACREEDORES. 17 DE JULIO DE 2009 A LAS 10:00 A.M. (PREVALECE LA HORA DEL ESTE DE LOS ESTADOS UNIDOS), J. CALEB BOGGS FEDERAL BUILDING, 844 NORTH KING STREET, ROOM 5209, WILMINGTON, DELAWARE 19801.

REUNIÓN DE ACREEDORES. Se requiere que el representante de los Deudores, según se especifica en la Reglamentación 9001(5) de las Federal Rules of Bankruptcy Procedure (Normas Federales Sobre Procedimientos de Quiebra) (en adelante mencionadas como las “*Normas de Quiebra*”), comparezca en la reunión de acreedores en la fecha y lugar especificados previamente, a los efectos de ser interrogado bajo juramento. Los acreedores pueden asistir a esta audiencia pero no están obligados a hacerlo. En la reunión, los acreedores pueden interrogar a los Deudores y negociar asuntos pertinentes que surjan durante dicha reunión. La reunión podría ser continuada o pospuesta de un tiempo para otro mediante notificación en la misma reunión, sin envío de notificación adicional a los acreedores.

INICIO DE CASOS. Cada uno de los Deudores ha presentado ante el United States Bankruptcy Court for the District of Delaware (Tribunal de Quiebras de los Estados Unidos para el Distrito de Delaware) (en adelante, el “*Tribunal*”) una petición en virtud del capítulo 11 del Código de Quiebras, y dichas peticiones de quiebra han sido aprobadas. Según una orden aprobada por el Tribunal con fecha 17 de junio de 2009 [Lista de casos Nº 52], los casos al amparo del capítulo 11 presentados por cada uno de los Deudores se administrarán en forma conjunta bajo la siguiente denominación: In re Building Materials Holding Corporation *et al.*, Case No. 09-12074 (KJC) (Building Materials Holding Corporation y otros, Caso Nº 09-12074 [KJC]). No recibirá notificación de todos los documentos presentados en estos casos. Todos los documentos presentados ante el Tribunal, incluso una lista de los bienes y deudas de los Deudores, se encuentran a disposición para su examen en la Office of the Clerk of the Court (Oficina de la Secretaría del Tribunal) (en adelante, la “*Oficina de la Secretaría*”). También es posible acceder a dicha documentación en el sitio web www.deb.uscourts.gov. Se requiere una contraseña PACER para acceder a los documentos; la misma se puede obtener en el PACER Service Center (Centro de Servicios PACER) en el sitio www.pacer.psc.uscourts.gov. Además, dichos documentos se pueden obtener en el sitio web de The Garden City Group, Inc., el agente de reclamaciones de los casos mencionados, en www.bmhcrestructuring.com. También se puede obtener información sobre estos casos por teléfono llamando al 1-866-364-4266.

FECHA LIMITE PARA PRESENTAR UNA PRUEBA DE RECLAMACIÓN. La fecha límite se enviará en una notificación por separado.

NOMBRE, DOMICILIO Y NÚMERO TELEFÓNICO DEL ADMINISTRADOR FIDUCIARIO. Hasta la fecha, no se ha designado un administrador fiduciario.

ABOGADOS DE LOS DEUDORES.

Michael A. Rosenthal, Esq.
Matthew K. Kelsey, Esq.
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, New York 10166-0193

Sean M. Beach, Esq.
Donald J. Bowman, Jr., Esq.
Robert F. Poppiti, Jr., Esq.
YOUNG CONAWAY STARGATT & TAYLOR, LLP
The Brandywine Building
1000 West Street, 17th Floor, P.O. Box 391
Wilmington, Delaware 19899-0391
Teléfono: (302) 571-6731

PROPÓSITO DEL AMPARO EN VIRTUD DEL CAPÍTULO 11. El Capítulo 11 del Código de Quiebras permite a los deudores reorganizar su actividad comercial de acuerdo con un plan. Dicho plan no tendrá vigencia si no es aprobado por el Tribunal en una audiencia de confirmación. Se notificará a los acreedores sobre cualquier plan o si los casos se desestimen o se convierten en otro capítulo del Código de Quiebras. Los Deudores seguirán en posesión de sus bienes y continuarán realizando su actividad comercial salvo que se designe un administrador fiduciario.

LOS ACREEDORES NO PUEDEN EFECTUAR CIERTAS ACCIONES. Un acreedor es cualquier persona a la que alguno de los Deudores deba dinero o bienes. El Código de quiebras garantiza a los Deudores ciertas protecciones contra los acreedores. Algunos ejemplos comunes de acciones que no pueden realizar los acreedores son ponerse en contacto con los Deudores para exigir pagos, tomar medidas contra los Deudores para cobrar montos adeudados a los acreedores o tomar bienes de los Deudores, e iniciar o continuar procedimientos de ejecuciones hipotecarias o de embargo. Si un acreedor ejecuta medidas no autorizadas contra los Deudores, el Tribunal puede sancionar a dicho acreedor. Se recomienda a los acreedores que estén considerando la posibilidad de tomar medidas contra los Deudores o bienes de los mismos que consulten la sección 362 del Código de Quiebras y soliciten asesoramiento legal. *El personal de la Oficina de la Secretaría no está autorizado a proporcionar asesoramiento legal.*

RECLAMACIONES. Se presentarán listas de acreedores en virtud de la Bankruptcy Rule 1007 (Reglamentación de quiebra 1007). Un acreedor que posea una reclamación incluida en las listas y la cantidad de tal reclamación no esté clasificada como contingente, disputada o no liquidada, puede presentar una prueba de reclamación en estos casos, pero no está obligado a hacerlo. Los acreedores cuyas reclamaciones no estén incluidas en las listas o estén incluidas en las listas y las cantidades de tales reclamaciones estén clasificadas como contingentes, disputadas o no liquidadas, y que deseen participar en estos casos o en una eventual distribución, están requeridos presentar una prueba de reclamación. Los acreedores que elijan basarse en las listas de acreedores tienen la responsabilidad de determinar si su reclamación está incluida en forma precisa. *Se proporcionará a los acreedores conocidos de los Deudores una notificación por separado sobre las fechas límites para presentar pruebas de reclamación, así como formularios de prueba de reclamación.* También es posible obtener formularios de prueba de reclamación en la Oficina del Actuario de cualquier Tribunal de Quiebras de los Estados Unidos y en el sitio web del tribunal www.deb.uscourts.gov.

DESCARGO DE DEUDAS. La confirmación de un caso amparado en el capítulo 11 puede producir como resultado un descargo de deudas, que puede incluir la totalidad o una parte de su deuda. *Consulte* las disposiciones de 11 U.S.C. § 1141(d) (Sección 1141(d) del Capítulo 11 del Código de los Estados Unidos). El descargo implica que usted no puede intentar cobrar la deuda a los Deudores salvo de la forma establecida en el plan.

En nombre del Tribunal: /s/ David D. Bird
Actuario del United States Bankruptcy Court
for the District of Delaware
(Tribunal de Quiebras de los Estados Unidos
para el Distrito de Delaware)

Fecha: 22 de junio de 2009

EXHIBIT 2

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

IN RE:)	
	)	Chapter 11
BUILDING MATERIALS HOLDING)	
CORPORATION, et al.,¹	)	Case No. 09-12074 (KJC)
)	
Debtors.	)	Jointly Administered
)	
	)	Ref. Docket No. 19

**NOTICE OF HEARING TO CONSIDER APPROVAL OF THE DISCLOSURE
STATEMENT FOR JOINT PLAN OF REORGANIZATION FOR THE DEBTORS**

PLEASE TAKE NOTICE THAT on June 16, 2009, the above-captioned debtors (collectively, the "*Debtors*") filed with the United States Bankruptcy Court for the District of Delaware (the "*Court*") (a) the *Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code* (as it may be amended or modified, the "*Plan*") and (b) the *Disclosure Statement With Respect to Joint Plan of Reorganization for the Debtors Under Chapter 11 of the Bankruptcy Code* (as it may be amended or modified, the "*Disclosure Statement*") pursuant to section 1125 of title 11 of the United States Code (the "*Bankruptcy Code*").

PLEASE TAKE FURTHER NOTICE THAT a hearing (the "*Disclosure Statement Hearing*") will be held before the Honorable Kevin J. Carey, Chief United States Bankruptcy Judge, at the Court, 824 Market Street, 6th Floor, Wilmington, Delaware 19801 on **July 29, 2009 at 10:00 a.m. (prevailing Eastern Time)** to consider the entry of an order, among other things, finding that the Disclosure Statement contains "adequate information" within the meaning of section 1125 of the Bankruptcy Code, approving the Disclosure Statement and establishing procedures for the solicitation and tabulation of votes to accept or reject the Plan. The Disclosure Statement may be amended or modified at or prior to the Disclosure Statement Hearing, and the Disclosure Statement Hearing may be adjourned from time to time without further notice, except for the announcement of the adjourned date(s) at the Disclosure Statement Hearing or any continued hearing(s).

PLEASE TAKE FURTHER NOTICE THAT objections, if any, to the approval of the Disclosure Statement must be in writing and must: (a) state the name and address of the objector or entity proposing a modification to the Disclosure Statement and the amount of its claim or nature of its interest in the Debtors' chapter 11 cases; (b) specify the basis and nature of any objection and set forth the proposed modification to the Disclosure Statement, together with suggested language; (c) be filed with the Clerk's Office, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801 together with proof of service, **on or before 4:00 p.m. (prevailing Eastern Time) on July 22, 2009** (the "*Objection Deadline*"); and (d) be served, so as to be actually received on or before the Objection Deadline, upon (i) Gibson, Dunn & Crutcher LLP, 200 Park Ave, New York, New York 10166 (Attn: Michael A. Rosenthal and Matthew K. Kelsey) and Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17th Floor, P.O. Box 391, Wilmington, Delaware 19899-0391 (Attn: Sean M. Beach and Robert F. Poppiti, Jr.), counsel for the Debtors; (ii) Arent Fox LLP, 1050 Connecticut Ave, Washington, DC 20036-5339 (Attn: Christopher J. Giaimo and Katie A. Lane), counsel to the official committee of

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding 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.

unsecured creditors appointed in these chapter 11 cases; (iii) Paul, Hastings, Janofsky & Walker LLP, 55 Second Street, 24th Floor, San Francisco, CA 94105 (Attn: Kevin Fisher and Seth Mennillo) and Richards, Layton & Finger, One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Paul N. Heath), counsel for Wells Fargo Bank, N.A., as administrative agent under the Prepetition Credit Agreement and the DIP Facility (as defined in the Plan); and (iv) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox #35, Wilmington, Delaware 19801 (Attn: Joseph J. McMahon).

PLEASE TAKE FURTHER NOTICE THAT if any objection to the Disclosure Statement is not filed and served as prescribed herein, the objecting party may be barred from objecting to the adequacy of the Disclosure Statement and may not be heard at the Disclosure Statement Hearing.

PLEASE TAKE FURTHER NOTICE THAT copies of the Plan and Disclosure Statement may be obtained by parties in interest free of charge on The Garden City Group, Inc.'s dedicated webpage related to these cases (www.bmhcrestructuring.com). Copies of the Plan and Disclosure Statement are also available for inspection during regular business hours at the Clerk's Office, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801. In addition, copies of the Plan and Disclosure Statement may be viewed on the Internet at the Court's website (<http://www.deb.uscourts.gov>) by following the directions for accessing the ECF system on such website.

PLEASE TAKE FURTHER NOTICE THAT this notice is not a solicitation of votes to accept or reject the Plan. Votes on the Plan may not be solicited unless and until the proposed Disclosure Statement is approved by an order of the Court. Following approval of the Disclosure Statement by the Court, holders of claims against, or interests in, the Debtors will receive a copy of the Disclosure Statement, the Plan and various documents related thereto, unless otherwise ordered by the Court.

Para obtener una versión en español de esta notificación, por favor contactar a The Garden City Group en el telefono (866) 364-4266.

Dated: Wilmington, Delaware
June 30, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Sean M. Beach

Sean M. Beach (No. 4070)
Donald J. Bowman, Jr. (No. 4383)
Robert F. Poppiti, Jr. (No. 5052)
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, DE 19801
Telephone: 302.571.6731
Facsimile: 302.571.1253

----and----

GIBSON, DUNN & CRUTCHER LLP
Michael A. Rosenthal (admitted *pro hac vice*)
Matthew K. Kelsey (admitted *pro hac vice*)
200 Park Avenue, 47th Floor
New York, NY 10166-0193
Telephone: 212.351.4000
Facsimile: 212.351.4035

PROPOSED ATTORNEYS FOR DEBTORS AND
DEBTORS IN POSSESSION

EXHIBIT 3

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:)	Chapter 11
BUILDING MATERIALS HOLDING	)	Case No. 09-12074 (KJC)
CORPORATION, <i>et al.</i> , ¹	)	Jointly Administered
Debtors.	)	Ref. Docket No. 248
)	

Para obtener una versión en español de esta notificación, por favor contactar a The Garden City Group en el telefono (866) 364-4266.

**NOTICE OF ENTRY OF BAR DATE ORDER ESTABLISHING
DEADLINES FOR FILING PROOFS OF CLAIM AGAINST THE DEBTORS
(INCLUDING CLAIMS PURSUANT TO BANKRUPTCY CODE § 503(b)(9))**

PLEASE TAKE NOTICE THAT:

The United States Bankruptcy Court for the District of Delaware (the "*Bankruptcy Court*") has entered an order [Docket No. 248] (the "*Bar Date Order*") establishing deadlines to file proofs of claim for all claims (as defined below), **including** claims pursuant to section 503(b)(9) (a "*503(b)(9) Claim*") of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "*Bankruptcy Code*") against the above-captioned debtors and debtors-in-possession (collectively, the "*Debtors*") that arose prior to June 16, 2009 (the "*Petition Date*").

You should not file a proof of claim if you do not have a claim against the Debtors. The fact that you received this notice (the "*Notice*") does not necessarily mean that you have a claim or that either the Debtors or the Bankruptcy Court believe that you have a claim.

Pursuant to the terms of the Bar Date Order, and except as otherwise provided herein, each person or entity² (including, without limitation, each individual, partnership, joint venture, corporation, limited liability company, estate, trust, or governmental unit³) that holds or asserts a claim against any of the Debtors must file a proof of claim with original signature, substantially conforming to the proof of claim form enclosed herewith, so that it is actually received by The Garden City Group, Inc. ("*GCG*"), the approved Bankruptcy Court claims and noticing agent in these chapter 11 cases (the "*Chapter 11 Cases*"), on or before the applicable bar date set forth below. Proofs of claim sent by *first-class mail* must be sent to the following address:

The Garden City Group, Inc.
Attn: Building Materials Holding Corporation
P.O. Box 9393
Dublin, OH 43017-4293

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, and chapter 11 case number, are as follows: Building Materials Holding Corporation (4269) Case No. 09-12074, BMC West Corporation (0454) Case No. 09-12075, SelectBuild Construction, Inc. (1340) Case No. 09-12076, SelectBuild Northern California, Inc. (7579) Case No. 09-12077, Illinois Framing, Inc. (4451) Case No. 09-12078, C Construction, Inc. (8206) Case No. 09-12079, TWF Construction, Inc. (3334) Case No. 09-12080, H.N.R. Framing Systems, Inc. (4329) Case No. 09-12081, SelectBuild Southern California, Inc. (9378) Case No. 09-12082, SelectBuild Nevada, Inc. (8912) Case No. 09-12083, SelectBuild Arizona, LLC (0036) Case No. 09-12084, and SelectBuild Illinois, LLC (0792) Case No. 09-12085. The mailing address for the Debtors is 720 Park Boulevard, Suite 200, Boise, Idaho 83712.

² "Entity" has the meaning given to it in section 101(15) of the Bankruptcy Code.

³ "Governmental Unit" has the meaning given to it in section 101(27) of the Bankruptcy Code.

Proofs of claim sent by *messenger* or *overnight courier* must be sent to the following address:

The Garden City Group, Inc.
Attn: Building Materials Holding Corporation
5151 Blazer Parkway, Suite A
Dublin, OH 43017

To be properly filed, a proof of claim must be filed in the bankruptcy case of the specific Debtor against which the claimant holds or asserts a claim. For example, if a claimant holds or asserts a claim against SelectBuild Arizona, LLC, the proof of claim must be filed against SelectBuild Arizona, LLC in case number 09-12084. If a claimant wishes to assert a claim against more than one Debtor, separate proof of claim forms must be filed against each applicable Debtor. A complete list of Debtors with corresponding case numbers is set forth in footnote 1 of this Notice.

Proofs of claim will be deemed timely filed only if *actually received* by GCG on or before the bar date applicable to such claim. Further, GCG will not accept proofs of claim sent by facsimile, telecopy, e-mail, or other electronic submission, and such claims will not be deemed to be properly filed claims.

General Bar Date. Except as otherwise provided herein, each person or entity holding or asserting a claim (including a 503(b)(9) Claim) against one or more of the Debtors that arose prior to the Petition Date must file a proof of claim so that it is actually received by GCG on or before **August 31, 2009 at 5:00 p.m.** (prevailing Eastern Time) (the "**General Bar Date**").

Governmental Unit Bar Date. Each governmental unit holding or asserting a claim against one or more of the Debtors that arose prior to the Petition Date must file a proof of claim so that it is actually received by GCG on or before **December 16, 2009 at 5:00 p.m.** (prevailing Eastern Time) (the "**Governmental Bar Date**").

Amended Schedules Bar Date. If, on or after the date on which the Debtors serve this Notice, the Debtors amend or supplement their schedules of assets and liabilities, list of equity holders, and statements of financial affairs (collectively, the "**Schedules**") (i) to reduce the undisputed, noncontingent, and liquidated amount of a claim, (ii) to change the nature or characterization of a claim or the Debtor against whom the claim is scheduled, or (iii) to add a new claim to the Schedules, the affected claimant is required to file a proof of claim or amend any previously filed proof of claim in respect of the amended scheduled claim so that the proof of claim is actually received by GCG on or before the later of (x) the General Bar Date or (y) 30 days after the claimant is served with notice of the applicable amendment or supplement to the Schedules.

Rejection Bar Date. A proof of claim relating to a Debtor's rejection of an executory contract or unexpired lease pursuant to a Bankruptcy Court order entered prior to the applicable Debtor's plan of reorganization must be filed so that it is actually received by GCG on or before the later of (i) the General Bar Date or (ii) 30 days after the effective date of such Bankruptcy Court order.

For purposes of the Bar Date Order and this Notice, the term "claim" means (i) any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (ii) any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured as of the Petition Date.

For purposes of the Bar Date Order and this Notice, a "503(b)(9) Claim" is a claim for the value of any goods received by the Debtors within 20 days prior to the Petition Date in which the goods have been sold to the Debtors in the ordinary course of the Debtors' business.

The following persons and entities need **NOT** file a proof of claim:

- a. any person or entity that has already properly filed a proof of claim against the applicable Debtor(s) with either GCG or the Clerk of the Court for the Bankruptcy Court;
- b. any person or entity (i) whose claim is listed in the Debtors' Schedules or any amendments thereto, *and* (ii) whose claim is not described therein as "disputed," "contingent," or "unliquidated," *and* (iii) who does not dispute the amount or characterization of its claim (including that the claim is an

obligation of the specific Debtor against which the claim is listed in the Schedules) as set forth in the Schedules;⁴

- c. professionals retained by the Debtors or the Official Committee of Unsecured Creditors pursuant to orders of the Bankruptcy Court who assert administrative claims for fees and expenses subject to the Bankruptcy Court's approval pursuant to sections 330, 331, and 503(b) of the Bankruptcy Code;
- d. any person or entity that asserts an administrative expense claim against the Debtors pursuant to section 503(b) of the Bankruptcy Code; *provided, however*, that, any person or entity that has a 503(b)(9) Claim must file a proof of claim on or before the General Bar Date;
- e. any Debtor asserting a claim against another Debtor; and
- f. any person or entity whose claim against the Debtors has been allowed by an order of the Bankruptcy Court entered on or before the General Bar Date.

Any person or entity (including, without limitation, any individual, partnership, joint venture, corporation, limited liability company, estate, trust or governmental unit) holding an interest in the Debtors (an "Interest Holder"), which interest is based exclusively upon the ownership of common or preferred stock in the corporation or warrants or rights to purchase, sell or subscribe to such a security (any such security being referred to in this Notice as an "Interest"), need not file a proof of interest on or before the General Bar Date; provided, however, that Interest Holders who wish to assert claims against the Debtors that arise out of or relate to the ownership or purchase of an Interest, including claims arising out of or relating to the sale, issuance or distribution of such Interest, must file proofs of claim on or before the General Bar Date (or, in the case of a governmental unit, the Governmental Bar Date), unless another exception identified in the Bar Date Order applies.

Pursuant to Rule 3003(c)(2) of the Federal Rules of Bankruptcy Procedure, any person or entity (including, without limitation, any individual, partnership, joint venture, corporation, limited liability company, estate, trust or governmental unit) that is required to file a timely proof of claim in the form and manner specified by the Bar Date Order and this Notice and that fails to do so on or before the bar date applicable to such claim shall not be treated as a creditor of the Debtors for the purposes of voting upon, or receiving distributions under, any plan of reorganization in the Chapter 11 Cases in respect of that claim.

The Debtors reserve the right to (a) dispute, or to assert offsets or defenses against, any claim filed or any claim listed or reflected in the Schedules as to nature, amount, liability, classification, or otherwise; and (b) subsequently designate any claim as disputed, contingent, or unliquidated. Nothing contained in this Notice shall preclude the Debtors from objecting to any filed claim on any grounds.

Acts or omissions of the Debtors, if any, that occurred prior to the Petition Date, including acts or omissions related to any indemnity agreements, guarantees, or services provided to or rendered by the Debtors, may give rise to claims against the Debtors notwithstanding the fact that such claims (or any injuries on which they are based) may be contingent or may not have matured or become fixed or liquidated prior to the Petition Date. Therefore, any person or entity that holds or asserts a claim or a potential claim against the Debtors, no matter how remote or contingent, must file a proof of claim on or before the General Bar Date.

You may be listed as the holder of a claim against the Debtors in the Schedules. If you hold or assert a claim that is not listed in the Schedules or if you disagree with the amount or priority of your claim as listed in the Schedules, or your claim is listed in the Schedules as "contingent," "unliquidated," or "disputed," you must file a proof of claim. Copies of the Schedules and the Bar Date Order are available for inspection during regular business hours at the office of the Clerk of the Court for the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 Market Street, Wilmington, Delaware 19801. In addition, copies of the Debtors' Schedules and Bar Date Order may be obtained for a charge through Delaware Document Retrieval, 2 East 7th Street, 2nd Floor, Wilmington, Delaware 19801; or viewed and downloaded free of

⁴ If the administrative agent under the Debtors' Second Amended and Restated Credit Agreement, dated as of November 10, 2006 (the "*Prepetition Credit Agreement*") disputes the scheduled amount of claims thereunder, the administrative agent may file a proof of claim on behalf of all such lenders.

charge on GCG's dedicated website for the Chapter 11 Cases (www.bmhcrestructuring.com); or viewed and downloaded for a fee at the Bankruptcy Court's website (<http://www.deb.uscourts.gov/>) by following the directions for accessing the ECF system on such website. Information relating to the Debtors' restructuring, including all documents referenced in this Notice, can be viewed at www.bmhcrestructuring.com.

Questions concerning the contents of this Notice and requests for proofs of claim should be directed to GCG at 1-866-364-4266. Please note that GCG's staff is not permitted to give legal advice. You should consult your own attorney for assistance regarding any other inquiries, such as questions concerning the completion or filing of a proof of claim.

Dated: Wilmington, Delaware
July 23, 2009

BY ORDER OF THE HONORABLE KEVIN J. CAREY
CHIEF UNITED STATES BANKRUPTCY JUDGE

GIBSON, DUNN & CRUTCHER LLP
Michael A. Rosenthal (admitted *pro hac vice*)
Matthew K. Kelsey (admitted *pro hac vice*)
200 Park Ave, 47th Floor
New York, NY 10166-0193
Telephone: 212.351.4000
Facsimile: 212.351.4035

---- and ----

YOUNG CONAWAY STARGATT & TAYLOR, LLP
Sean M. Beach (No. 4070)
Donald J. Bowman, Jr. (No. 4383)
Robert F. Poppiti, Jr. (No. 5052)
The Brandywine Building
1000 West St., 17th Floor
Wilmington, DE 19801
Telephone: 302.571.6731
Facsimile: 302.571.1253

ATTORNEYS FOR DEBTORS AND DEBTORS IN POSSESSION

EXHIBIT 4



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 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
<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 (the person or other entity to whom the Debtor owes money or property):		<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 notices should be sent:		<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.		
Telephone number: Email Address:				
Name and address where payment should be sent (if different from above):		THIS SPACE IS FOR COURT USE ONLY		
Telephone number:				
1. Amount of Claim as of Date Case Filed: \$ _____ <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 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.				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 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: \$ _____
2. Basis for Claim: _____ <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: _____ <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. (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: _____ 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.				
FOR COURT USE ONLY				

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules. The attorneys for the Debtors and their court-appointed claims agent are not authorized and are not providing you with any legal advice.

PLEASE SEND YOUR ORIGINAL, COMPLETED PROOF OF CLAIM AS FOLLOWS: **IF BY MAIL:** THE GARDEN CITY GROUP, INC., ATTN: BUILDING MATERIALS HOLDING CORPORATION, P.O. BOX 9393, DUBLIN, OH 43017-4293. **IF BY HAND OR OVERNIGHT COURIER:** THE GARDEN CITY GROUP, INC., ATTN: BUILDING MATERIALS HOLDING CORPORATION, 5151 BLAZER PARKWAY, SUITE A, DUBLIN, OH 43017. ANY PROOF OF CLAIM SUBMITTED BY FACSIMILE OR E-MAIL WILL NOT BE ACCEPTED.

THE GENERAL BAR DATE IN THESE CHAPTER 11 CASES IS AUGUST 31, 2009 AT 5:00 P.M. (PREVAILING EASTERN TIME).

THE GOVERNMENTAL BAR DATE IN THESE CHAPTER 11 CASES IS DECEMBER 16, 2009 AT 5:00 P.M. (PREVAILING EASTERN TIME).

Court, Name of Debtor, and Case Number:

These chapter 11 cases were commenced in the United States Bankruptcy Court for the District of Delaware on June 16, 2009. You should select the Debtor against which you are asserting your claim.

A SEPARATE PROOF OF CLAIM FORM MUST BE FILED AGAINST EACH DEBTOR AGAINST WHICH THE CREDITOR HOLDS OR ASSERTS A CLAIM.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. Please provide us with a valid email address. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor as of June 16, 2009. Follow the instructions concerning whether to complete items 4, 5 and/or 6. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if the trustee or another party in interest files an objection to your claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the Debtor's account or other number used by the creditor to identify the Debtor.

3a. Debtor May Have Scheduled Account As:

Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the Debtor.

4. Secured Claim:

Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507(a):

If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

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

Indicate the amount of your claim arising from your provision of goods 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:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the Debtor credit for any payments received toward the debt.

8. Documents:

Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). If the claim is based on the delivery of health care goods or services, see instruction #2. Do not send original documents, as attachments may be destroyed after scanning.

Date and Signature:

The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor

A Debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor

A creditor is the person, corporation, or other entity owed a debt by the Debtor on the date of the bankruptcy filing.

Claim

A claim is the creditor's right to receive payment on a debt that was owed by the Debtor on the date of the bankruptcy filing. See 11 U.S.C. § 101(5). A claim may be secured or unsecured.

Proof of Claim

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the Debtor on the date of the bankruptcy filing. The creditor must file the form with The Garden City Group, Inc. as described in the instructions above and in the Bar Date Notice.

Secured Claim Under 11 U.S.C. § 506(a)

A secured claim is one backed by a lien on property of the Debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a Debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the Debtor money (has a right to setoff).

Section 503(b)(9) Claim

A Section 503(b)(9) claim is a claim for the value of any goods received by the Debtor within 20 days before the date of commencement of a bankruptcy case in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business.

Unsecured Claim

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. § 507(a)

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION

Acknowledgment of Filing of Claim

To receive acknowledgment of your filing from The Garden City Group, Inc., please provide a stamped self-addressed envelope and a copy of this proof of claim when you submit the original claim to The Garden City Group, Inc.

Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the Debtor. These entities do not represent the bankruptcy court or the Debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 et seq.), and any applicable orders of the bankruptcy court.

EXHIBIT B
Affidavit of Cynthia Shehan

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

IN RE:)	
	)	Chapter 11
BUILDING MATERIALS HOLDING)	
CORPORATION, <i>et al.</i>,¹	)	Case No. 09-12074 (KJC)
)	
Debtors.	)	Jointly Administered
)	
)	

AFFIDAVIT

I, Cynthia Shehan, being duly sworn according to law, depose and state as follows:

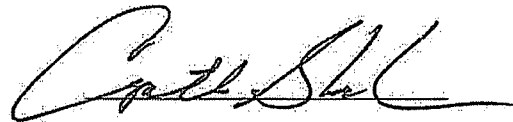
1. I am Director of HRIS and Payroll for Building Materials Holding Corporation (BMHC).
2. On or about May 14, 2009, I caused to be prepared a spreadsheet (the "*Employee List Spreadsheet*") which contains the names and last known addresses of each of the non-supervisory, hourly/nonexempt construction workers, who could be identified, that were employed by the Debtors in California, Nevada, Arizona, and Florida in the four-year period immediately preceding the May 14, 2009 preparation date.
3. To do so, data was needed from several legacy payroll systems along with the currently used ADP database. Obtaining the information from legacy payroll systems required the assistance of several technical IT personnel within the company. Once all of the legacy systems were identified, historical data was secured from as many systems as was

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding 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.

possible. Any person deemed to be an active, non-supervisory, hourly/nonexempt employee within any business unit in the aforementioned states during the relevant period and who had also received at least one pay check, was identified and confidential personal information was extracted. The legacy list was then compared against the current ADP database using the same qualifying parameters to identify any employees listed in the current database who were not present on the legacy list. The resulting names and personal information were then combined in to one list totaling over 63,000 employees.

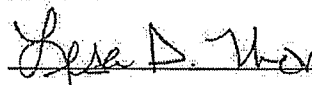
4. On or about May 14, 2009, I provided a copy of the Employee List Spreadsheet to The Garden City Group, Inc. ("GCG") by using BMHC's secured delivery solution. The successful receipt of delivery and total number of entries on the spreadsheet was then verbally verified by personnel at GCG.

5. The foregoing is true and correct to the best of my knowledge, information, and belief.

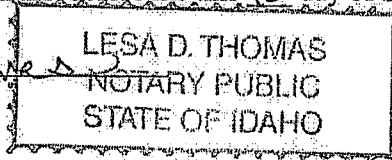


Cynthia Shehan

SWORN AND SUBSCRIBED before me this 10th day of September, 2009.



Notary Public



My Commission Expires: 11-11-11