

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

In re:	)	
	)	Chapter 11
BUILDING MATERIALS HOLDING	)	
CORPORATION, <u>et al.</u> ,	)	Case No. 09-12074 (KJC)
	)	
Debtors.	)	Jointly Administered
	)	
	)	Related Docket Nos. 517 and 570

**MOTION OF EDUARDO ACEVEDO, ET AL. FOR LEAVE TO FILE  
A SHORT REPLY TO THE OBJECTION FILED  
BY CREDITORS' COMMITTEE**

The Debtors filed a motion to approve the settlement of litigation with Eduardo Acevedo, *et al.*, and it is set for hearing September 18, 2009. The creditors' committee in these cases (the "Committee") filed an objection to that motion. Here, Mr. Acevedo seeks leave to file a very short reply to the Committee's objection, and asks the Court to consider that reply<sup>1</sup>. The reply is annexed hereto as Exhibit "B".

1. The Committee seeks to delay or deny approval of the Debtor's settlement with Acevedo apparently because it believes there is overlap between the Acevedo litigation (discussed in the Debtors' motion) and a different piece of litigation, referred to as the Alvarado litigation.

2. As the reply explains, the Plaintiffs in the Acevedo litigation are different from the Plaintiffs in the Alvarado litigation. The employers at issue in the Acevedo litigation are not the same as the employers at issue in the Alvarado litigation. These are two different suits, with entirely different facts, employers, and groups of employees, and Acevedo knows of no "overlap" that should concern the Court. At any rate, the Debtors

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<sup>1</sup> Acevedo, et al. did not originally seek or intend to file this reply and hoped the Debtors, who were in discussions with the committee, would get the matter resolved by consent as the week wound on. Unfortunately it does not appear those discussions resulted in resolution. Acevedo regrets that, given the foregoing, it was not able to submit its reply by 4:00 on September 15.

support settling the Acevedo suit, such support is well within the presumption of business judgment to which they are entitled, and the proposed settlement is in accord with Bankruptcy Rule 9019 and the case law thereon.

3. Reading the very short reply should cause no party any material burden or prejudice. It will assist the Court in understanding why and how this is a contested matter and in making its decision.

**WHEREFORE**, Acevedo, et al. respectfully request that the Court review and consider the reply annexed hereto as Exhibit “B”. A form of order granting this motion for leave is annexed hereto as Exhibit “A”.

Dated: September 16, 2009  
Wilmington, Delaware

Respectfully submitted,  
MARGOLIS EDELSTEIN

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Counsel to Eduardo Acevedo, *et al.*

## **EXHIBIT A**

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

In re:	)	
	)	Chapter 11
BUILDING MATERIALS HOLDING	)	
CORPORATION, <u>et al.</u> ,	)	Case No. 09-12074 (KJC)
	)	
Debtors.	)	Jointly Administered
	)	
	)	Related Docket Nos. 517, 570 & ____

**ORDER GRANTING EDUARDO ACEVEDO, ET AL. LEAVE TO FILE  
A SHORT REPLY TO THE OBJECTION FILED  
BY CREDITORS' COMMITTEE**

And now, upon consideration of the above-noted motion, the Court determines  
that the Motion is GRANTED.

Dated: September \_\_, 2009  
Wilmington, Delaware

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Hon. Kevin J. Carey - Chief Judge  
United States Bankruptcy Court - District of  
Delaware

## **EXHIBIT B**

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

In re:	)	
	)	Chapter 11
BUILDING MATERIALS HOLDING	)	
CORPORATION, <u>et al.</u> ,	)	Case No. 09-12074 (KJC)
	)	
Debtors.	)	Jointly Administered
	)	
	)	Related Docket Nos. 517 and 570

**EDUARDO ACEVEDO, ET AL.’S REPLY TO THE  
COMMITTEE’S OBJECTION TO THE DEBTORS’ SETTLEMENT MOTION**

The Debtors filed a motion to approve the settlement of litigation with Eduardo Acevedo, *et al.* (collectively “Acevedo”), and it is set for hearing September 18, 2009. The litigation in question is a California District Court class/collective action seeking damages for the Defendants’ employees pursuant to the federal Fair Labor Standards Act and applicable state wage and hour laws. The creditors’ committee in these bankruptcy cases (the “Committee”) filed an objection to the motion to approve the Acevedo settlement. Acevedo respectfully replies to that objection as follows:

1. The Committee seeks to delay or deny approval of the Debtor’s settlement with Acevedo apparently because it believes there is overlap between the potential classes or collective groups involved in the Acevedo litigation (discussed in the Debtors’ motion) and a different piece of litigation, referred to as the Alvarado litigation.<sup>2</sup>

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<sup>2</sup> The Acevedo litigation is pending in California federal court, while the Alvarado litigation is pending in a California state court. Neither case has been certified as a class or collective action and, importantly, the settlement contemplated in the Debtors’ motion does not involve certifying a class or collective action in the Acevedo litigation. Instead, a discreet group of claimants who would be class or collective action members in the Acevedo litigation, and who have already affirmatively opted in to the Acevedo litigation, have decided it is better to settle with the Debtors, on favorable terms, individually and now, rather than to continue pursuit of a class/collective action, and the Debtors agree.

2. A copy of the second amended complaint filed in the Acevedo litigation confirms the above and is attached hereto as Exhibit 1. Exhibit 2 hereto is a copy of the complaint filed in the Alvarado litigation.

3. The Acevedo litigation is distinct from the Alvarado litigation. This is apparent from a review of the respective complaints. As the Court will note, none of the fourteen (14) named Plaintiffs in the Acevedo litigation are named Plaintiffs in the Alvarado litigation. The Defendants in the Acevedo litigation are:

- \* Building Materials Holding Corporation (hereinafter, “BMHC”);
- \* SelectBuild Construction, Inc.;
- \* **C Construction, Inc.;**
- \* **SelectBuild Arizona, LLC; and**
- \* **SelectBuild Nevada, Inc.**

As the Court will note, the Defendants in the Alvarado litigation are:

- \* BMHC;
- \* SelectBuild Construction, Inc.;
- \* **SelectBuild Southern California, Inc.;**
- \* **H.N.R. Framing Systems, Inc.; and**
- \* **Does 1-50.**

4. Count I of the Acevedo complaint (see page 14-15) alleges that the Defendants there violated the federal FLSA. The Alvarado complaint makes no such claim.

5. Count IV of the Acevedo complaint raises claims under the Nevada Revised Statutes for employees working in Nevada. *See also Acevedo Complaint* pg. 5

par 25 (averring that six (6) of the fourteen named Acevedo plaintiffs [Acevedo, Duque, Hernandez, Rivas, Terres and Vasquez] were Nevada employees employed by SelectBuild Nevada, Inc.). The Alvarado complaint makes no such claims; it makes no claims pursuant to Nevada state law or on behalf of Nevada employees.

6. Count V of the Acevedo complaint raises claims under Arizona labor laws for employees working in Arizona. *See also Acevedo Complaint* pg. 4-5 par 24 (averring that five (5) of the fourteen Acevedo named plaintiffs [Gonzalez, Granados, Moreno, Paredes Jos. and Paredes Jor.] were Arizona employees employed by SelectBuild Arizona, LLC). The Alvarado complaint makes no such claims; it makes no claims pursuant to Arizona state law or on behalf of Arizona employees.

7. The only possible overlap between the Acevedo litigation and the Alvarado litigation is with regard to employees working in California. However, the groups of California employees at issue in the two cases are entirely and completely distinct. There is no overlap.

8. A careful review of the operative complaints in the two cases demonstrates that, while BMHC and SelectBuild Construction, Inc. are named as parent company defendants, **the three named California plaintiffs in the Acevedo litigation were employed by C Construction, Inc., and brought class and collective action claims on behalf of construction employees who were employed by C Construction, while the plaintiff employees in Alvarado, all of whom are from California, were employed by H.N.R. Framing Systems, Inc.** There is no claim at all in the Alvarado case that any of the plaintiffs were employed by C Construction; nor do any of the plaintiffs in the Alvarado case bring claims against C Construction. See, e.g., Acevedo



*Complaint* pg. 4 ¶23 (averring that three (3) of the fourteen Acevedo named plaintiffs [Bernal, P. Castillo and J. Castillo], the only California named plaintiffs, were California employees employed by C Construction, Inc.); *Alvarado Complaint* pg. 3-4 ¶9, pg. 5 ¶14 (averring that BMHC, its subsidiary SelectBuild Construction, Inc., SelectBuild Southern California, Inc. and wholly-owned subsidiary H.N.R. Framing Systems, Inc. collectively “engaged in the operation of a Construction Services Company throughout California . . .”) (emphasis added);<sup>3</sup>

9. In summary, eleven (11) of the fourteen (14) named Acevedo plaintiffs have nothing to do with California or any of the claims that may be at issue in the Alvarado litigation. The three (3) Acevedo named plaintiffs from California were employed by a different employer than the employer at issue in the Alvarado litigation, and sought to bring a class and collective action only on behalf of employees of that employer. As such, there is no overlap – and no potential for overlap – between the groups of employees at issue in the two cases.

10. Finally, Acevedo notes that the Debtors support settling the Acevedo litigation and such support is well within the presumption of business judgment to which they are entitled. The proposed settlement is in accord with Bankruptcy Rule 9019 and the case law thereon in that it is reasonable and fair and is within the normal range for a settlement of this type.

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<sup>3</sup> The Alvarado complaint is not particularly clear in identifying the class to be represented or the defendant employers. However, it is clear that the Alvarado plaintiffs do *not allege* that they were employed by C Construction, and thus there is no basis on which they could be included in the group of California employees at issue in the Acevedo litigation. Acevedo and his lawyers had nothing to do with the Alvarado complaint, and Acevedo acknowledges that

**WHEREFORE**, Acevedo, *et al.* respectfully requests that the Debtors' motion be approved.

Dated: September 16, 2009  
Wilmington, Delaware

Respectfully submitted,  
MARGOLIS EDELSTEIN

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

EDUARDO ACEVEDO, LUIS JAVIER  
BERNAL, JUAN NUNEZ CASTILLO,  
PABLO NUNEZ CASTILLO, ALFONSO  
DUQUE, JORGE GONZALEZ, JOSE A.  
GRANADOS, ANGEL HERNANDEZ,  
GABRIEL MORENO, JOSE PAREDES,  
JUAN PAREDES, ALEJANDRO RIVAS,  
GUSTAVO TORRES, GILBERTO  
VASQUEZ, and all others similarly  
situated,

Plaintiffs,

v.

BUILDING MATERIALS HOLDING  
CORPORATION; SELECTBUILD  
CONSTRUCTION, INC.;  
C CONSTRUCTION, INC.;  
SELECTBUILD ARIZONA, LLC; and  
SELECTBUILD NEVADA, INC.,


Defendants.

SECOND AMENDED  
COMPLAINT [CLASS ACTION]

DEMAND FOR JURY TRIAL

CASE NO. CV 08-06227 SJO  
(Cwx)

Honorable S. James Otero

2009 APR 27 AM 10:29  
CLERK, U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES  
BY 

FILED

By fax

**SECOND AMENDED COMPLAINT**

Plaintiffs Eduardo Acevedo, Luis Javier Bernal, Juan Nunez Castillo, Pablo Nunez Castillo, Alfonso Duque, Jorge Gonzalez, Jose A. Granados, Angel Hernandez, Gabriel Moreno, Jose Paredes, Juan Paredes, Alejandro Rivas, Gustavo Torres, and Gilberto Vasquez ("Named Plaintiffs") allege, on behalf of themselves and classes of those similarly situated, as follows:

**Introduction**

1. This action is brought to recover unpaid wages earned by construction workers employed by the defendants in three states – California, Nevada, and Arizona. Named Plaintiffs bring this action under both the federal Fair Labor Standards Act of 1938, as amended ("FLSA"), 29 U.S.C. § 201, *et seq.*, and the law of the states in which they were employed.

**Jurisdiction and Venue**

2. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1331 and section 16(b) of the FLSA, 29 U.S.C. § 216(b). This Court also has original jurisdiction over this action, including the state law claims, under the Class Action Fairness Act, 28 U.S.C. §1332(d), because this is a class action in which: (1) there are 100 or more members in the Named Plaintiffs' proposed class; (2) at least some members of the proposed class have a different citizenship from Defendants; and (3) the claims of the proposed class members exceed \$5,000,000 in the aggregate. In addition, this Court has supplemental jurisdiction under 28 U.S.C. §1367 over plaintiffs' state wage and hour law claims, because those claims derive from a common nucleus of operative facts.

3. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202.

4. The Central District of California has personal jurisdiction over the defendants because many of the acts complained of occurred in this District and gave rise to claims alleged.

1           5.     Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because  
2 a substantial part of the work performed by the plaintiffs for which they seek to  
3 collect unpaid wages was performed within the cities of Rancho Cucamonga and  
4 Ontario, San Bernardino County, California, which are within the Eastern Division  
5 of this District, and one or more of the defendants maintains offices within the city of  
6 Rancho Cucamonga.

7	<u>Parties</u>
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6. Plaintiff Eduardo Acevedo is an adult resident of Las Vegas, Nevada, who was employed as a non-supervisory construction trade worker in residential construction in Nevada by one or more of the defendants.

7. Plaintiff Luis Javier Bernal is an adult resident of the city of Garden Grove, County of Orange, California, who was employed as a non-supervisory construction trade worker in residential construction in San Bernardino County, California by one or more of the defendants.

8. Plaintiff Juan Nunez Castillo is an adult resident of the city of Corona,  
County of Riverside, California, who was employed as a non-supervisory  
construction trade worker in residential construction in San Bernardino County,  
California by one or more of the defendants.

9. Plaintiff Pablo Nunez Castillo is an adult resident of the city of Corona, County of Riverside, California, who was employed as a non-supervisory construction trade worker in residential construction in San Bernardino County, California by one or more of the defendants.

10. Plaintiff Alfonso Duque is an adult resident of Las Vegas, Nevada, who was employed as a non-supervisory construction trade worker in residential construction in Nevada by one or more of the defendants.

11. Plaintiff Jorge A. Gonzalez is an adult resident of Tucson, Arizona, who was employed as a non-supervisory construction trade worker in residential construction in Arizona by one or more of the defendants.

1           12. Plaintiff Jose A. Granados is an adult resident of Tucson, Arizona, who  
2 was employed as a non-supervisory construction trade worker in residential  
3 construction in Arizona by one or more of the defendants.

4           13. Plaintiff Angel Hernandez is an adult resident of Las Vegas, Nevada,  
5 who was employed as a non-supervisory construction trade worker in residential  
6 construction in Nevada by one or more of the defendants.

7           14. Plaintiff Gabriel Moreno is an adult resident of Phoenix, Arizona, who  
8 was employed as a non-supervisory construction trade worker in residential  
9 construction in Arizona by one or more of the defendants.

10           15. Plaintiff Jose Paredes is an adult resident of Phoenix, Arizona, who was  
11 employed as a non-supervisory construction trade worker in residential construction  
12 in Arizona by one or more of the defendants.

13           16. Plaintiff Juan Paredes is an adult resident of Phoenix, Arizona, who was  
14 employed as a non-supervisory construction trade worker in residential construction  
15 in Arizona by one or more of the defendants.

16           17. Plaintiff Alejandro Rivas is an adult resident of Henderson, Nevada, who  
17 was employed as a non-supervisory construction trade worker in residential  
18 construction in Nevada by one or more of the defendants.

19           18. Plaintiff Gustavo Torres is an adult resident of Las Vegas, Nevada, who  
20 was employed as a non-supervisory construction trade worker in residential  
21 construction in Nevada by one or more of the defendants.

22           19. Plaintiff Gilberto Vasquez is an adult resident of North Las Vegas,  
23 Nevada, who was employed as a non-supervisory construction trade worker in  
24 residential construction in Nevada by one or more of the defendants.

25           20. Named Plaintiffs consent to sue for violations of the FLSA, pursuant to  
26 29 U.S.C. §216(b). Consent to join forms for Named Plaintiffs were filed with the  
27 original complaint on September 22, 2008.

28           21. At all material times, Defendant Building Materials Holding

1 Corporation ("BMHC") has been, and is, a corporation incorporated under the laws  
2 of the State of Delaware and having its principal place of business in the State of  
3 California. At all material times, BMHC engaged in the business of residential  
4 construction in, among other states, California, Nevada, and Arizona and employed  
5 Named Plaintiffs, members of the FLSA Collective Action, and/or members of the  
6 proposed California, Nevada, and Arizona classes of non-supervisory construction  
7 workers.

8 22. At all material times, Defendant SelectBuild Construction, Inc.  
9 ("SelectBuild") has been, and is, a wholly owned subsidiary of BMHC and a  
10 corporation incorporated under the laws of the State of Delaware and having its  
11 principal place of business in the State of California. At all material times,  
12 SelectBuild engaged in the business of residential construction in, among other  
13 states, California, Nevada, and Arizona and employed Named Plaintiffs, members of  
14 the FLSA Collective Action, and/or members of the proposed California, Nevada,  
15 and Arizona classes of non-supervisory construction workers.

16 23. At all material times, Defendant C Construction, Inc. ("C Construction")  
17 has been, and is, a corporation incorporated under the laws of the State of Delaware  
18 and having its principal place of business in the State of California, insofar as it is  
19 engaged in the business of residential construction in, among other states, California,  
20 and has a majority of employees working in California. At all material times, C  
21 Construction employed Plaintiffs Luis Javier Bernal, Pablo Nunez Castillo, and Juan  
22 Nunez Castillo, members of the FLSA Collective Action, and/or members of the  
23 proposed California class of non-supervisory construction workers.

24 24. At all material times, Defendant SelectBuild Arizona, LLC  
25 ("SelectBuild Arizona") has been, and is, a limited liability corporation incorporated  
26 under the laws of the State of Delaware and having its principal place of business in  
27 the State of Arizona, insofar as it is engaged in the business of residential  
28 construction in, among other states, Arizona, and has a majority of employees



1 working in Arizona. At all material times, SelectBuild Arizona and/or Riggs  
2 Plumbing, LLC, an entity that merged with SelectBuild Arizona and for whose  
3 liabilities SelectBuild Arizona is responsible, employed Plaintiffs Jorge A. Gonzalez,  
4 Jose A. Granados, Gabriel Moreno, Jose Paredes, and Juan Paredes, members of the  
5 FLSA Collective Action, and/or members of the proposed Arizona class of non-  
6 supervisory construction workers.

7 25. At all material times, Defendant SelectBuild Nevada, Inc. ("SelectBuild  
8 Nevada") has been, and is, a corporation incorporated under the laws of the State of  
9 Delaware and having its principal place of business in the State of Nevada, insofar as  
10 it is engaged in the business of residential construction in, among other states,  
11 Nevada, and has a majority of employees working in Nevada. At all material times,  
12 SelectBuild Nevada employed Plaintiffs Eduardo Acevedo, Alfonso Duque, Angel  
13 Hernandez, Alejandro Rivas, Gustavo Terres, and Gilberto Vasquez, members of the  
14 FLSA Collective Action, and/or members of the proposed Nevada class of non-  
15 supervisory construction workers.

16 26. Plaintiffs are informed and believe, and on that basis allege, that at all  
17 relevant times each defendant was the agent and/or employee of the remaining  
18 defendants and was acting within the course and scope of such agency and/or  
19 employment. To the extent that the conduct and omissions alleged herein were  
20 perpetrated by one or more defendant, the remaining defendants initiated,  
21 recommended, authorized, confirmed and/or ratified said conduct and omissions.

22 Collective Action Allegations

23 27. Named Plaintiffs bring the First Claim for Relief for violation of the  
24 FLSA as a collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C.  
25 §216(b), on behalf of all persons who were, are, or will be employed by Defendants  
26 in non-supervisory construction trade job positions in California, Nevada, or  
27 Arizona, at any time during the period from September 22, 2005 to the present, who  
28 have not been compensated at one and one-half times the regular rate of pay for all



1 work performed in excess of forty (40) hours per work week (hereinafter "FLSA  
2 Collective Action Plaintiffs").

3 28. The First Claim for Relief for violations of the FLSA may be brought  
4 and maintained as an "opt-in" collective action pursuant to §16(b) of the FLSA, 29  
5 U.S.C. §216(b), since the claims of the Named Plaintiffs are similar to the claims of  
6 the FLSA Collective Action Plaintiffs.

7 29. Named Plaintiffs and the FLSA Collective Action Plaintiffs are  
8 similarly situated in that they were or are subject to defendants' common practice,  
9 policy, or plan of refusing to pay overtime in accordance with the FLSA and failing  
10 to pay employees for all time worked, including time worked in excess of forty (40)  
11 hours per work week, time spent traveling to and from job sites, and time during  
12 which construction work was delayed.

13 30. The names and addresses of the FLSA Collective Action Plaintiffs are  
14 available from Defendants, and notice should be provided to the FLSA Collective  
15 Action Members *via* first class mail to their last known addresses as soon as possible,  
16 informing them of their ability to opt-in to the FLSA claim in this action.

#### 17 California Class Action Allegations

18 31. Named Plaintiffs Luis Javier Bernal, Juan Nunez Castillo, and  
19 Pablo Nunez Castillo ("California Named Plaintiffs") also bring the Second and  
20 Third Claims for Relief for violation of California's wage and hour laws as a class  
21 action, pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3), on behalf of themselves  
22 and all persons who were, are or will be employed by Defendants BMHC,  
23 SelectBuild and C Construction ("California Defendants") within the State of  
24 California in non-supervisory construction trade job positions between September  
25 22, 2004 and the present (hereinafter "California Class").

26 32. The California Class is so numerous that joinder of all members is  
27 impracticable. Plaintiffs are informed and believe, and on that basis allege, that  
28 approximately more than 100 persons have been employed by California Defendants

1 in non-supervisory construction trade job positions within the State of California  
2 during the class period, and that given turnover, the California Class is more  
3 numerous than that. Although the exact number and identities of class members are  
4 unknown to Plaintiffs at this time, this information is readily ascertainable from  
5 defendants through discovery of its payroll and personnel records.

6 33. Common questions of law and fact predominate over any questions  
7 affecting individual class members. Questions of law and fact common to members  
8 of the California Class as a whole include, but are not limited to, the following:

- 9 – whether California Defendants' practice of not paying California Class  
10 Members for all time worked violates California Labor Code §223;
- 11 – whether California Defendants' practice of not paying California Class  
12 Members overtime wages for hours worked in excess of 8 hours per day  
13 or 40 hours per week violates California Labor Code §510;
- 14 – whether California Defendants' practice of failing to pay all wages due  
15 upon an employee's termination violates California Labor Code §203;
- 16 – whether California Defendants' practice of failing to reflect all hours  
17 worked on the paycheck stubs of California Class Members violates  
18 California Labor Code §226; and
- 19 – whether California Defendants' practice of not compensating California  
20 Class Members for rest periods required by law violates California  
21 Labor Code §226.7 and Wage Order 16 of the California Industrial  
22 Welfare Commission ("Wage Order").

23 34. California Named Plaintiffs will fairly and adequately represent and  
24 protect the interests of the California Class. California Named Plaintiffs have  
25 retained counsel competent and experienced in complex class actions, the FLSA, and  
26 state labor and employment litigation.

27 35. The claims of California Named Plaintiffs are typical of the claims of  
28 the California Class. California Named Plaintiffs, like other members of the

1 California Class, were subjected to defendants' policies and practices of refusing to  
2 compensate employees in non-supervisory construction trade jobs for all time  
3 worked and for overtime hours worked, failing to pay employees in non-supervisory  
4 construction trade jobs all wages due upon termination of employment, failing to  
5 reflect all hours worked on the paycheck stubs of employees in non-supervisory  
6 construction trade jobs, and failing to compensate employees in non-supervisory  
7 construction trade jobs for missed rest periods.

8 36. Class certification of the Second and Third Claims for Relief is  
9 appropriate pursuant to Fed. R. Civ. P. 23(b)(2) because California Defendants have  
10 acted or refused to act on grounds generally applicable to the California Class,  
11 making appropriate declaratory and injunctive relief with respect to California  
12 Named Plaintiffs and the California Class as a whole. California Named Plaintiffs  
13 and the California Class are entitled to injunctive relief to end Defendants' practice  
14 of failing properly to compensate its non-supervisory construction workers for work  
15 performed for the benefit of defendants.

16 37. Class Certification of the Second and Third Claims for Relief is also  
17 appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common  
18 to the California Class predominate over any questions affecting only individual  
19 members of the California Class, and because a class action is superior to other  
20 available methods for the fair and efficient adjudication of this litigation.  
21 Defendants' common policies and practices unlawfully resulted in a failure to pay  
22 California Class members their earned wages, including overtime wages. The  
23 damages suffered by individual California Class members are small compared to the  
24 expense and burden of individual prosecution of this litigation. In addition, class  
25 certification is superior because it will obviate the need for unduly duplicative  
26 litigation that might result in inconsistent judgments about defendants' practices.

27 Nevada Class Action Allegations

28 38. Named Plaintiffs Eduardo Acevedo, Alfonso Duque, Angel Hernandez,

1 Alejandro Rivas, Gustavo Torres, and Gilberto Vasquez ("Nevada Named  
2 Plaintiffs") also bring the Fourth Claim for Relief for violation of Nevada's wage and  
3 hour laws as a class action, pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3), on  
4 behalf of themselves and all persons who were, are or will be employed by  
5 Defendants BMHC, SelectBuild, and SelectBuild Nevada ("Nevada Defendants")  
6 within the State of Nevada in non-supervisory construction trade job positions  
7 between September 22, 2004 and the present (hereinafter "Nevada Class").

8 39. The Nevada Class is so numerous that joinder of all members is  
9 impracticable. Plaintiffs are informed and believe, and on that basis allege, that more  
10 than 100 persons have been employed by the Nevada Defendants in non-supervisory  
11 construction trade job positions within the State of Nevada during the class period,  
12 and that given turnover, the Nevada Class is more numerous than that. Although the  
13 exact number and identities of class members are unknown to Plaintiffs at this time,  
14 this information is readily ascertainable from defendants through discovery of its  
15 payroll and personnel records.

16 40. Common questions of law and fact predominate over any questions  
17 affecting individual class members. Questions of law and fact common to members  
18 of the Nevada Class as a whole include, but are not limited to, the following:

- 19 – whether Nevada Defendants' practice of not paying Nevada Class  
20 Members for all hours worked violates Nevada Revised Statutes  
21 §§608.016 and 608.100;
- 22 – whether Nevada Defendants' practice of not paying Nevada Class  
23 Members overtime wages for hours worked in excess of 40 hours per  
24 week and in excess of 8 hours per day violates Nevada Revised Statutes  
25 §608.018;
- 26 – whether Nevada Defendants' practice of not paying Nevada Class  
27 Members who resign or quit their full wages within seven days, or on  
28 the next regularly scheduled pay day, whichever is earlier, violates

1 Nevada Revised Statutes §608.030;

- 2 – whether Nevada Defendants' practice of not paying Nevada Class  
3 Members who are discharged their full wages immediately upon  
4 discharge violates Nevada Revised Statutes §608.020; and  
5 – whether Nevada Defendants' practice of not providing Nevada Class  
6 Members with a 10-minute rest break for each four hours worked, or  
7 major fraction thereof, violates Nevada Revised Statutes §608.019.

8 41. Nevada Named Plaintiffs will fairly and adequately represent and  
9 protect the interests of the Nevada Class. Nevada Named Plaintiffs have retained  
10 counsel competent and experienced in complex class actions, the FLSA, and state  
11 labor and employment litigation.

12 42. The claims of Nevada Named Plaintiffs are typical of claims of the  
13 Nevada Class. Nevada Named Plaintiffs, like other members of the Nevada Class,  
14 were subjected to defendants' policies and practices of refusing to compensate  
15 employees in non-supervisory construction trade jobs for all regular and overtime  
16 hours worked, failing to pay employees in non-supervisory construction trade jobs  
17 full wages upon termination of employment in accordance with Nevada Revised  
18 Statutes §§608.020 and 608.030, and failing to provide employees in non-  
19 supervisory construction trade jobs with rest breaks as required by Nevada Revised  
20 Statutes §608.019.

21 43. Class certification of the Fourth Claim for Relief is appropriate pursuant  
22 to Fed. R. Civ. P. 23(b)(2) because Defendants have acted or refused to act on  
23 grounds generally applicable to the Nevada Class, making appropriate declaratory  
24 and injunctive relief with respect to Nevada Named Plaintiffs and the Nevada Class  
25 as a whole. Nevada Named Plaintiffs and the Nevada Class are entitled to injunctive  
26 relief to end Defendants' practice of failing properly to compensate its  
27 non-supervisory construction workers for work performed for the benefit of  
28 defendants.



44. Class Certification of the Fourth Claim for Relief is also appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the Nevada Class predominate over any questions affecting only individual members of the Nevada Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendants' common policies and practices unlawfully resulted in a failure to pay Nevada Class members their earned wages, including overtime wages. The damages suffered by individual Nevada Class members are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about defendants' practices.

## Arizona Class Action Allegations

45. Named Plaintiffs Jorge A. Gonzalez, Jose A. Granados, Gabriel Moreno, Jose Paredes, and Juan Paredes ("Arizona Named Plaintiffs") also bring the Fifth Claim for Relief for violation of Arizona's wage and hour laws as a class action, pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3), on behalf of themselves and all persons who were, are or will be employed by Defendants BMHC, SelectBuild, and SelectBuild Arizona ("Arizona Defendants") within the State of Arizona in non-supervisory construction trade job positions between September 22, 2007 and the present (hereinafter "Arizona Class").

21 46. The Arizona Class is so numerous that joinder of all members is  
22 impracticable. Plaintiffs are informed and believe, and on that basis allege, that more  
23 than 100 persons have been employed by the Arizona Defendants in non-supervisory  
24 construction trade job positions within the State of Arizona during the class period,  
25 and that given turnover, the Arizona Class is more numerous than that. Although the  
26 exact number and identities of class members are unknown to Plaintiffs at this time,  
27 this information is readily ascertainable from defendants through discovery of its  
28 payroll and personnel records.

1           47. Common questions of law and fact predominate over any questions  
2 affecting individual class members. Questions of law and fact common to members  
3 of the Arizona Class as a whole include, but are not limited to, the following:

- 4           — whether Arizona Defendants' practice of not paying Arizona Class  
5           Members for all hours worked, including overtime hours, violates  
6           Arizona Revised Statutes §23-355; and
- 7           — whether Arizona Defendants' practice of not paying Arizona Class  
8           Members who quit their full wages no later than the next regular payday  
9           for the pay period in which the termination occurred, and not paying  
10          Arizona Class Members who are discharged their full wages within  
11          three working days, or by the end of the next regular pay period,  
12          whichever is sooner, violates Arizona Revised Statutes §23-353.

13          48. Arizona Named Plaintiffs will fairly and adequately represent and  
14 protect the interests of the Arizona Class. Arizona Named Plaintiffs have retained  
15 counsel competent and experienced in complex class actions, the FLSA, and state  
16 labor and employment litigation.

17          49. The claims of Arizona Named Plaintiffs are typical of claims of the  
18 Arizona Class. Arizona Named Plaintiffs, like other members of the Arizona Class,  
19 were subjected to Arizona Defendants' policies and practices of refusing to  
20 compensate employees in non-supervisory construction trade jobs for regular and  
21 overtime hours worked.

22          50. Class certification of the Fifth Claim for Relief is appropriate pursuant  
23 to Fed. R. Civ. P. 23(b)(2) because Arizona Defendants have acted or refused to act  
24 on grounds generally applicable to the Arizona Class, making appropriate declaratory  
25 and injunctive relief with respect to Arizona Named Plaintiffs and the Arizona Class  
26 as a whole. Arizona Named Plaintiffs and the Arizona Class are entitled to  
27 injunctive relief to end Arizona Defendants' practice of failing properly to  
28 compensate its non-supervisory construction workers for work performed for the

1 benefit of defendants.

2 51. Class Certification of the Fifth Claim for Relief is also appropriate  
3 under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the  
4 Arizona Class predominate over any questions affecting only individual members of  
5 the Arizona Class, and because a class action is superior to other available methods  
6 for the fair and efficient adjudication of this litigation. Defendants' common policies  
7 and practices unlawfully resulted in a failure to pay Arizona Class members their  
8 earned wages, including overtime wages. The damages suffered by individual  
9 Arizona Class members are small compared to the expense and burden of individual  
10 prosecution of this litigation. In addition, class certification is superior because it  
11 will obviate the need for unduly duplicative litigation that might result in  
12 inconsistent judgments about defendants' practices.

13 Factual Allegations Common to All Claims

14 52. Defendants BMHC, SelectBuild, C Construction, SelectBuild Arizona,  
15 and SelectBuild Nevada, are engaged in the residential construction business, and  
16 employ or employed Named Plaintiffs, FLSA Collective Action Plaintiffs, and  
17 putative class members of the California, Arizona, and Nevada Classes, in non-  
18 supervisory construction trade jobs.

19 53. Since at least September 22, 2004, defendants have failed to  
20 compensate Named Plaintiffs, FLSA Collective Action Plaintiffs, and putative class  
21 members of the California, Arizona, and Nevada Classes, for all time worked and  
22 activities completed for their employer, including, but not limited to, travel time  
23 between job sites, administrative time, time during which work is delayed, and time  
24 spent performing preliminary and postliminary activities.

25 54. Defendants employed and presently employ Named Plaintiffs, FLSA  
26 Collective Action Plaintiffs and putative class members of the California, Arizona,  
27 and Nevada Classes for work weeks in excess of 40 hours and/or in excess of eight  
28 hours per day without paying their wages at the required overtime rate for those



1 excess hours.

2 55. Defendants consistently encouraged and/or instructed Named Plaintiffs,  
3 FLSA Collective Action Plaintiffs and putative class members of the California,  
4 Arizona, and Nevada Classes to under-report the number of hours they work, and  
5 Defendants consistently demanded that employees sign and/or submit their time  
6 sheets regardless of any dispute that the time sheets do not accurately reflect the  
7 actual time spent working on a particular day.

8 56. In California and Nevada, Defendants, as part of their illegal  
9 compensation policies and practices, failed to provide required rest periods to  
10 members of the California and Nevada Classes, and did not compensate class  
11 members for those missed rest breaks.

12 57. Defendants' unlawful conduct has been widespread, repeated, and  
13 consistent. Defendants' supervisors and managers knew or should have known that  
14 defendants' employees, including Named Plaintiffs, FLSA Collective Action  
15 Plaintiffs and putative class members of the California, Arizona, and Nevada  
16 Classes, perform and/or performed work for defendants for which defendants do  
17 and/or did not pay them.

18 58. Defendants knew or should have known that their supervisory and  
19 management personnel permit or require Named Plaintiffs, FLSA Collective Action  
20 Plaintiffs and putative class members of the California, Arizona, and Nevada Classes  
21 to perform work that is for the Defendants' benefit without compensating the  
22 employees for such work.

23 59. Defendants failed and refused to pay all wages to the Named Plaintiffs,  
24 FLSA Collective Action Plaintiffs and putative class members of the California,  
25 Arizona, and Nevada Classes within the time specified by law.

26 First Claim for Relief

27 [Violation of FLSA – Against all Defendants]

28 60. Plaintiffs reallege and incorporate paragraphs 1 through 59 of this

1 Complaint as though fully set forth herein.

2 61. Defendants violated, and continue to violate, the provisions of §7(a) of  
3 the FLSA, 29 U.S.C. §207(a), by requiring Named Plaintiffs and the FLSA  
4 Collective Action Plaintiffs to work in excess of 40 hours in a week without paying  
5 them for those excess hours at a rate not less than one and one-half times the regular  
6 rate at which they are employed.

7 62. Named Plaintiffs and the FLSA Collection Action Plaintiffs have  
8 suffered, and continue to suffer, damages as a result of defendants' violation of the  
9 FLSA in a sum equivalent to their unpaid overtime compensation as required by the  
10 FLSA, which is a sum presently uncertain and increasing because of Defendants'  
11 continuing violation of the FLSA.

12 63. Pursuant to 29 U.S.C. §216(b), Named Plaintiffs and the FLSA  
13 Collection Action Plaintiffs are entitled to liquidated damages in a sum equivalent to  
14 the amount of their unpaid overtime compensation.

15 64. Named Plaintiffs and the FLSA Collection Action Plaintiffs are entitled  
16 to recovery of reasonable attorneys' fees and costs of this action pursuant to 29  
17 U.S.C. §216(b).

18 Second Claim for Relief

19 [Violation of California Labor Code – Against California Defendants]

20 65. Plaintiffs reallege and incorporate paragraphs 1 through 59 of this  
21 Complaint as though fully set forth herein.

22 66. California Defendants violated, and continue to violate, the provisions  
23 of:

24 (a) California Labor Code §§223, 510, 1194, and 1199, and Wage Order 16,  
25 by failing to pay all wages due, including overtime wages, to California  
26 Named Plaintiffs and California Class Members;

27 (b) California Labor Code §§226, 1174, 1174.5, and the Wage Order, by  
28 knowingly and intentionally failing to furnish California Named

1 Plaintiffs and California Class Members with timely, accurate, itemized  
2 statements showing the actual hours worked by each of them; and  
3 (c) California Labor Code §226.7 and the Wage Order, by failing to pay  
4 each California Named Plaintiff and California Class member who was  
5 not provided with a rest period as required by law an additional one  
6 hour of compensation at the employee's regular rate of pay.

7 67. California Named Plaintiffs and the California Class have suffered, and  
8 continue to suffer, damages as a result of California Defendants' violation of  
9 California Labor Code §§223 and 510, in a sum equivalent to their unpaid wages at  
10 their contracted rate for all hours worked, including overtime wages, as well as pre-  
11 and post-judgment interest and civil penalties, which is a sum presently uncertain  
12 and increasing because of California Defendants' continuing violations of the  
13 California Labor Code.

14 68. California Named Plaintiffs and members of the California Class who  
15 are entitled pursuant to Labor Code §1194 to recover from California Defendants all  
16 unpaid wages to which they are entitled, plus pre- and post-judgment interest  
17 thereon.

18 69. California Named Plaintiffs and members of the California Class who  
19 are no longer working for California Defendants are entitled to recover waiting time  
20 penalties pursuant to Labor Code §203.

21 70. California Named Plaintiffs and the California Class are entitled to and  
22 seek injunctive relief requiring California Defendants to comply with Labor Code  
23 §§226(a) and 1174(d), and further seek all actual and statutory damages available for  
24 these violations under Labor Code §§226(e), 226.3 and 1174.5.

25 71. California Named Plaintiffs and the California Class are entitled to and  
26 seek injunctive relief requiring California Defendants to comply with Labor Code  
27 §226.7 and the Wage Order, and further seek all actual and statutory damages,  
28 including civil penalties, available for this violation under Labor Code §226.7.

1           72.    Named California Plaintiffs and the California Class are entitled to  
2 recovery of reasonable attorneys' fees and costs of this action pursuant to California  
3 Labor Code §§218.5, 1194, and 1194.5.

4                                   Third Claim for Relief

5           [Violation of California Bus. & Prof. Code – Against California Defendants]

6           73.    Plaintiffs reallege and incorporate paragraphs 1 through 59 of this  
7 Complaint as though fully set forth herein.

8           74.    The conduct of California Defendants, as alleged herein, violates the  
9 California Unfair Competition Law ("UCL"), California Business and Professions  
10 Code §17200 *et seq.*

11          75.    Plaintiffs allege that the unfair and unlawful business practices  
12 complained of herein are and were the regular practice of California Defendants.

13          76.    Through California Defendants' failure to pay legally-required overtime  
14 wages, to provide itemized statements of hours worked with payment of wages, to  
15 pay wages when due, and other conduct alleged herein, California Defendants have  
16 violated numerous specific provisions of state and federal law and have engaged in,  
17 and continue to engage in, unlawful and unfair business practices in violation of the  
18 UCL, depriving California Named Plaintiffs and California Class Members of rights,  
19 benefits, and privileges guaranteed to all employees under law, and have caused  
20 California Named Plaintiffs and California Class Members to suffer injury in fact and  
21 to lose money and/or property.

22          77.    Plaintiffs are informed and believe, and based upon such information  
23 and belief allege, that by engaging in the unfair and unlawful business practices  
24 complained of herein, California Defendants were able to lower their labor costs and  
25 thereby obtain a competitive advantage over law-abiding employers with which they  
26 compete.

27          78.    The harm to California Named Plaintiffs and California Class Members  
28 in being wrongfully denied lawfully earned wages outweighs the utility, if any, of

1 California Defendants' policies and practices and, therefore, California Defendants'  
2 actions described herein constitute an unfair business practice or act within the  
3 meaning of the UCL.

4 79. California Business and Professions Code §17203 provides that the  
5 Court may restore to an aggrieved party any money or property acquired by means of  
6 unlawful or unfair business practices. Under the circumstances alleged herein, it  
7 would be inequitable and result in a miscarriage of justice for California Defendants  
8 to continue to retain the property of California Named Plaintiffs and California Class  
9 Members, entitling California Named Plaintiffs and California Class Members to  
10 restitution of the unfair benefits obtained and disgorgement of California  
11 Defendants' ill-gotten gains. California Named Plaintiffs seek restitution of all  
12 unpaid wages owing to them and to members of the California Class, according to  
13 proof, as well as all other available equitable relief.

14 80. Injunctive relief pursuant to California Business and Professions Code  
15 §17203 is necessary to prevent California Defendants from continuing to engage in  
16 unfair business practices as alleged in this Complaint. California Defendants and/or  
17 persons acting in concert with California Defendants have done, are doing, and will  
18 continue to do or cause to be done, the illegal acts alleged in this Complaint, unless  
19 restrained and enjoined by this Court. Unless the relief prayed for below is granted,  
20 a multiplicity of actions will result. California Named Plaintiffs have no plain,  
21 speedy, or adequate remedy at law, for reasons which include but are not limited to  
22 the following: (a) it is difficult to measure the amount of monetary damages that  
23 would compensate California Named Plaintiffs for California Defendants' wrongful  
24 acts; and (b) in any event, pecuniary compensation alone will not afford adequate  
25 and complete relief. The continuing violation of law by California Defendants will  
26 cause great and irreparable damage to California Named Plaintiffs and others  
27 similarly situated unless California Defendants are immediately restrained from  
28 committing further illegal acts.



81. California Named Plaintiffs herein take upon themselves enforcement of these laws and lawful claims. There is a financial burden incurred in pursuing this action. Therefore, California Named Plaintiffs, on behalf of themselves and the California Class Members, seek recovery of attorneys' fees and costs of this action to be paid by Defendants, as provided by the UCL and California Labor Code §§218, 218.5, and 1194, and California Code of Civil Procedure §1021.5.

#### Fourth Claim for Relief

[Violation of Nevada Law – Against Nevada Defendants]

82. Plaintiffs reallege and incorporate paragraphs 1 through 59 of this Complaint as though fully set forth herein.

83. Nevada Defendants violated, and continue to violate, the provisions of:

- (a) Nevada Revised Statutes §608.016, by failing to pay all wages due to Nevada Named Plaintiffs and the Nevada Class;
- (b) Nevada Revised Statutes §608.018, by failing to pay all overtime due to Nevada Named Plaintiffs and the Nevada Class;
- (c) Nevada Revised Statutes §608.100, by paying Nevada Named Plaintiffs and the Nevada Class wages lower than those they were obligated to pay;
- (d) Nevada Revised Statutes §§608.020 and 608.030, by failing timely to pay wages due to Nevada Named Plaintiffs and members of the Nevada Class who resigned, quit, or were discharged; and
- (e) Nevada Revised Statutes §608.019, by failing to provide rest breaks to Nevada Named Plaintiffs and the Nevada Class as required by law.

84. Named Nevada Plaintiffs and the Nevada Class have suffered, and continue to suffer, damages as a result of Nevada Defendants' violation of Nevada Revised Statutes §§608.016, 608.018, and 608.100, in a sum equivalent to their unpaid wages at their contracted rate for all hours worked, including compensation at time and a half their regular hourly rate for overtime hours worked, which is a sum

1 presently uncertain and increasing because of Nevada Defendants' continuing  
2 violation of Nevada Revised Statutes.

3 85. Named Nevada Plaintiffs and members of the Nevada Class who  
4 resigned, quit, or were discharged, are entitled to penalties under Nevada Revised  
5 Statutes §§608.020, 608.030, for Nevada Defendants' failure timely to pay all wages  
6 due.

7 86. Named Nevada Plaintiffs and members of the Nevada Class are entitled  
8 to recovery of reasonable attorneys' fees and costs of this action pursuant to Nevada  
9 Revised Statutes §608.140.

10 Fifth Claim for Relief

11 [Violation of Arizona Law – Against Arizona Defendants]

12 87. Plaintiffs reallege and incorporate paragraphs 1 through 59 of this  
13 Complaint as though fully set forth herein.

14 88. Arizona Defendants violated, and continue to violate, the provisions of  
15 Arizona Revised Statutes §23-355, by failing to pay all wages due to Named Arizona  
16 Plaintiffs and the Arizona Class, and the provisions of Arizona Revised Statutes  
17 §23-353, by failing timely to pay wages due to Arizona Named Plaintiffs and  
18 members of the Arizona Class who quit or were discharged.

19 89. Named Arizona Plaintiffs and the Arizona Class have suffered, and  
20 continue to suffer, damages as a result of Arizona Defendants' violation of Arizona  
21 Revised Statutes §23-355 in a sum equivalent to their unpaid wages for all hours  
22 worked, including compensation at time and a half their regular hourly rate for  
23 overtime hours worked, which is a sum presently uncertain and increasing because of  
24 Arizona Defendants' continuing violation of Arizona Revised Statutes §23-355.

25 90. Pursuant to Arizona Revised Statutes §23-355, Named Arizona  
26 Plaintiffs and the Arizona Class are entitled to treble the amount of their unpaid  
27 wages, including unpaid overtime wages.

28 91. Named Arizona Plaintiffs and the Arizona Class are entitled to recovery

1 of reasonable attorneys' fees and costs of this action pursuant to Arizona Revised  
2 Statutes §12-341.01.

3 PRAYER FOR RELIEF

4 Wherefore, Named Plaintiffs on behalf of themselves and all FLSA Collective  
5 Action Plaintiffs, pray for relief as follows:

6 1. Designation of this action as a collective action on behalf of the FLSA  
7 Collective Action Plaintiffs (asserting FLSA claims) and prompt issuance of notice  
8 pursuant to 29 U.S.C. §216(b) to all similarly situated members of the FLSA Opt-In  
9 Collective Action, apprising them of the pendency of this action, and permitting  
10 them to assert timely FLSA claims in this action by filing individual Consent to Sue  
11 forms pursuant to 29 U.S.C. §216(b), and tolling the statute of limitations on the  
12 claims of all members of the FLSA Opt-In Collective Action from the date the  
13 original complaint in this matter was filed until the Collective Action members are  
14 provided with reasonable notice of the pendency of this action and a fair opportunity  
15 to exercise their right to opt in as plaintiffs;

16 2. Designation of Eduardo Acevedo, Luis Javier Bernal, Juan Nunez  
17 Castillo, Pablo Nunez Castillo, Alfonso Duque, Jorge Gonzalez, Jose A. Granados,  
18 Angel Hernandez, Gabriel Moreno, Jose Paredes, Juan Paredes, Alejandro Rivas,  
19 Gustavo Torres, and Gilberto Vasquez as representatives of the FLSA Collection  
20 Action Plaintiffs;

21 3. A declaratory judgment that the practices complained of herein are  
22 unlawful under the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.*;

23 4. An award of damages, including unpaid overtime compensation and an  
24 additional equal amount as liquidated damages, to be paid by defendants;

25 5. Costs of action incurred herein, including reasonable attorneys' fees  
26 under, *inter alia*, 29 U.S.C. §216(b), litigation expenses and court costs;

27 6. Pre-judgment and post-judgment interest, as provided by law; and

28 7. Such other and further legal and equitable relief as this Court deems



1 necessary, just, and proper.

2  
3 WHEREFORE, California Named Plaintiffs on behalf of themselves and all  
4 members of the California Class, additionally pray for relief as follows:

5 8. Certification of the claims in the Second and Third Claims for Relief as  
6 a class action on behalf of the proposed California Class;

7 9. Designation of Plaintiffs Luis Javier Bernal, Juan Nunez Castillo, and  
8 Pablo Nunez Castillo as Representatives of the California Class;

9 10. Designation of Plaintiffs' counsel as Counsel for the California Class;

10 11. A declaratory judgment that the practices complained of herein are  
11 unlawful under California state law;

12 12. Appropriate equitable and injunctive relief to remedy California  
13 Defendants' violations of California law, including but not limited to an order  
14 enjoining California Defendants from continuing their unlawful practices;

15 13. An award of damages, statutory penalties, and restitution to be paid by  
16 California Defendants according to proof;

17 14. Pre-judgment and post-judgment interest, as provided by law;

18 15. Attorneys' fees and costs of suit pursuant to California Labor Code  
19 §§218.5 and 1194, California Code of Civil Procedure §1021.5, and other applicable  
20 California state laws;

21 16. Such other legal and equitable relief as this Court may deem necessary,  
22 just and proper.

23  
24 WHEREFORE, Nevada Named Plaintiffs on behalf of themselves and all  
25 members of the Nevada Class, additionally pray for relief as follows:

26 17. Certification of the claims in the Fourth Claim for Relief as a class  
27 action on behalf of the proposed Nevada Class;

28 18. Designation of Plaintiffs Eduardo Acevedo, Alfonso Duque, Angel

1 Hernandez, Alejandro Rivas, Gustavo Torres, and Gilberto Vasquez as  
2 Representatives of the Nevada Class;

3 19. Designation of Plaintiffs' counsel as Counsel for the Nevada Class;

4 20. A declaratory judgment that the practices complained of herein are  
5 unlawful under Nevada state law;

6 21. Appropriate equitable and injunctive relief to remedy Nevada  
7 Defendants' violations of Nevada law, including but not limited to an order enjoining  
8 Nevada Defendants from continuing their unlawful practices;

9 22. An award of damages and statutory penalties to be paid by Nevada  
10 Defendants according to proof;

11 23. Pre-judgment and post-judgment interest, as provided by law;

12 24. Attorneys' fees and costs of suit pursuant to Nevada Revised Statutes  
13 §608.140, and other applicable Nevada state laws;

14 25. Such other legal and equitable relief as this Court may deem necessary,  
15 just and proper.

16  
17 WHEREFORE, Arizona Named Plaintiffs on behalf of themselves and all  
18 members of the Arizona Class, additionally pray for relief as follows:

19 26. Certification of the claims in the Fifth Claim for Relief as a class action  
20 on behalf of the proposed Arizona Class;

21 27. Designation of Plaintiffs Jorge A. Gonzalez, Jose A. Granados, Gabriel  
22 Moreno, Jose Paredes, and Juan Paredes as Representatives of the Arizona Class;

23 28. Designation of Plaintiffs' counsel as Counsel for the Arizona Class;

24 29. A declaratory judgment that the practices complained of herein are  
25 unlawful under Arizona state law;

26 30. Appropriate equitable and injunctive relief to remedy Arizona  
27 Defendants' violations of Arizona law, including but not limited to an order  
28 enjoining Arizona Defendants from continuing their unlawful practices;

1 31. An award of damages, including treble the amount of the Arizona Class'  
2 unpaid wages, to be paid by Arizona Defendants according to proof;

3 32. Pre-judgment and post-judgment interest, as provided by law;

4 33. Attorneys' fees and costs of suit pursuant to Arizona Revised Statutes  
5 §12-341.01, and other applicable Arizona state laws;

6 34. Such other legal and equitable relief as this Court may deem necessary,  
7 just and proper.

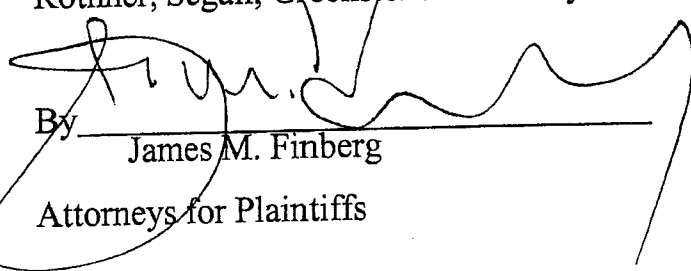
8 JURY TRIAL DEMAND

9 Plaintiffs hereby demand a jury trial on all issues so triable.

10  
11 DATED: April 24, 2009

JAMES M. FINBERG  
EVE H. CERVANTEZ  
BARBARA J. CHISHOLM  
Altshuler Berzon LLP

13 GLENN ROTHNER  
14 JONATHAN COHEN  
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17 By   
18 James M. Finberg

19 Attorneys for Plaintiffs  
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Los Angeles Superior Court

MAY 16 2008

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

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

BC391029

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

Case No.  
ASSIGNED FOR ALL PURPOSES TO:

**CLASS ACTION COMPLAINT**

Plaintiffs,

vs.

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

Defendants.

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

**JURY TRIAL DEMANDED**

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

3 I.

4 INTRODUCTION

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

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

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

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

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

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

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

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

## 24                               II.

### 25                               PARTIES

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

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

18 **A. Plaintiff**

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

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

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

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

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

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

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

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

**B. Defendants**

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

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



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

### III.

## FACTUAL BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### IV.

## **CLASS ACTION ALLEGATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28           **A. Numerosity**

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

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

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

7 **B. Commonality**

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

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

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

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

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

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

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

23       **C. Typicality**

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

1       **D. Adequacy of Representation**

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

5       **E. Superiority of Class Action**

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

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

15                               **V.**

16                               **CAUSES OF ACTION**

17                               **First Cause of Action**

18                               *Failure to Pay Wages and Overtime/Premiums*

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

20                               **(Against All Defendants)**

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

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

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



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

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

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

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

15                                   **Second Cause of Action**

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

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

18                                   (Against All Defendants)

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

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

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

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

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

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

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

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

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

20 **Third Cause of Action**

21 *Failure to Timely Pay Wages Due At Termination*

22 (Lab. Code, §§ 201, 202, 203)

23 (Against All Defendants)

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

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

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

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

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

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

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

18 65. WHEREFORE, Plaintiff and the Class he seeks to represent, request relief as  
19 described herein and below.  
20  
21

#### 22 **Fourth Cause of Action**

##### 23 *Failure to Indemnify Necessary Expenditures*

24 (Lab. Code §§226, 1174, 1175)

25 (Against All Defendants)

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

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

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

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

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

10 **Fifth Cause of Action**

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

12 *Wage Statement Provisions*

13 (Lab. Code §§226, 1174, 1175)

14 (Against All Defendants)

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

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

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

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

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

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

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

9 **Sixth Cause of Action**

10 *Violation of Unfair Competition Law*

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

12 (Against All Defendants)

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

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

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

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

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

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

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

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

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

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

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

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

## VI.

## PRAYER

**WHEREFORE, Plaintiff prays for judgment as follows:**

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

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

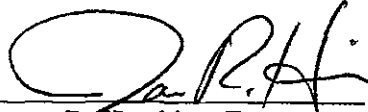
2 12. For such other and further relief as the Court deems just and proper.

3 **DEMAND FOR JURY TRIAL**

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

5  
6 Dated: May 14, 2008

HAWKINS & SOFONIO

7  
8 

James R. Hawkins, Esq.

William S. Caldwell, Esq.

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



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

In re:	)	
	)	Chapter 11
BUILDING MATERIALS HOLDING	)	
CORPORATION, <u>et al.</u> ,	)	Case No. 09-12074 (KJC)
	)	
Debtors.	)	Jointly Administered

**CERTIFICATE OF SERVICE**

I, James E. Huggett, Esquire, hereby certify that on the 16<sup>th</sup> day of September, 2009, I caused a true and correct copy of the *Motion of Eduardo Acevedo, et al. for Leave to File a Short Reply to the Objection filed by Creditors' Committee* to be served upon the attached service list via electronic mail.

MARGOLIS EDELSTEIN

/s/James E. Huggett  
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