

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

| | | |
|--|---|--|
| In re |) | Chapter 11 |
| |) | |
| BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i> , ¹ |) | Case No. 09-12074 (KJC) |
| |) | |
| Debtors. |) | |
| <hr style="width: 40%; margin-left: 0;"/> | | |
| |) | (Jointly Administered) |
| MARSELLE HARRIS, VANCE |) | |
| GETTIS, JACARRE WILLIAMS, |) | |
| MAURICE HENDERSON, |) | |
| MARSHAE PETER AND KAMERON |) | |
| KOUNTZ |) | |
| |) | |
| Movants, |) | |
| v. |) | Objection Deadline: November 12, 2009 at 4:00 p.m. |
| |) | (requested) |
| SELECTBUILD NORTHERN |) | Hearing Date: November 19, 2009 at 11:00 a.m. |
| |) | (requested) |
| |) | |
| CALIFORNIA, BMC CONSTRUCTION, |) | |
| INC., BUILDING MATERIALS |) | |
| HOLDING CORPORATION, AND |) | |
| JOHN DOES 1-20 |) | |
| |) | |
| Respondents. |) | |

**MOTION OF MARSELLE HARRIS, VANCE GETTIS, JACARRE WILLIAMS,
MAURICE HENDERSON, MARSHAE PETER AND KAMERON
KOUNTZ FOR RELIEF FROM THE AUTOMATIC STAY**

Marshelle Harris, Vance Gettis, Jacarre Williams, Maurice Henderson, Marshae Peter and Kameron Kountz (collectively, the “Movants”), by and through their undersigned counsel, hereby move this Honorable Court, pursuant to Section 362(d) of Title 11 of the United States

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269); BMC West (0454), SelectBuild Construction, Inc. (1340); SelectBuild Northern California, Inc. (7579); Illinois Framing, Inc. (4451); C Construction, Inc. (8206); TWF Construction, Inc. (3334); H.N.R. Framing Systems, Inc. (4329); SelectBuild Southern California, Inc. (9378); SelectBuild Nevada, Inc. (8912); SelectBuild Arizona" LLC (0036); and SelectBuild Illinois, LLC (0792).

Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Federal Rule of Bankruptcy Procedure 4001, and Local Rule 4001-1 for an order lifting the automatic stay imposed by section 362(a) of the Bankruptcy Code for the purpose of (i) permitting liquidation of the Movant’s personal injury and related tort claims against the debtor-defendants SelectBuild Northern California, Inc. (erroneously listed on the Summons as KBI Norcal) (“Select”) and Building Materials Holding Corporation (“BMC Corp” and, together with Select, and Debtors Does 1-20 (the “Debtor-Defendants”²), asserted in the complaint (the “Complaint”) filed in the Superior Court of the State of California in and for the County of Contra Costa, the lawsuit styled Marshelle Harris, et al. v. BMC Construction, Inc., et al., Case No. C09-00148 (the “State Court Action”), and (ii) to proceed to collect any judgment in the first instance against any available insurance proceeds under any applicable policy (the “Motion”). In support of their Motion, the Movants respectfully state the following:

The Parties

1. On June 16, 2009 (the “Petition Date”), the above-captioned debtors (the “Debtors”) filed their voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On June 17, 2009, the Court entered an order jointly administering the Debtors’ cases for procedural purposes. (D.I. 52).

2. On information and belief, Dale Evan Loudermilk (“Mr. Loudermilk”) is an individual engaged in the delivery business, and residing in California, and was an employee of the Debtor-Defendants and Non-Debtor Defendants (as that term is defined below). Movants are asserting a theory of *Respondeat Superior*.

² BMC Construction, Inc. (“BMC Inc.”) is also listed as a defendant on the Movant’s complaint in the State Court Action. Discovery was stayed before the Movants could determine whether BMC Inc. was an alternative name for one of the petitioners in bankruptcy. To the extent that BMC Inc. is one of the Debtors, it should be included in the definition of Debtor-Defendants.

3. On information and belief, the Debtors continue to operate their businesses and remain in possession of their property under Sections 1107(a) and 1108 of the Bankruptcy Code.

4. The Movants are individuals residing in Contra Costa County, California. Jacarre Williams, Maurice Henderson, Marshae Williams and Kameron Kountz are the children of Marshelle Harris. Vance Gettis and Marshelle Harris were engaged at the time of the incident. As of the filing of the State Court Action, Jacarre Williams (17), Maurice Henderson (age 16), Marshae Peter (age 14) and Kameron Kountz (age 9) were minors acting through their Guardian Ad Litem. Marshelle Harris and Vance Gettis were adults.

5. Non-debtor defendants in the State Court Action include Mr. Loudermilk, KBI Construction, Inc., GELCO Corp LSR Building Materials, Does 1 to 20 and potentially KBI Norcal (the “Non-Debtor Defendants”).

Background³

6. Prior to the Petition Date, on December 10, 2008, Movants instituted the State Court Action against the Debtor-Defendants and the Non-Debtor Defendants. The State Court Action arises out of an incident that occurred on O’Hara Avenue at the Intersection of Carpenter Road in Oakley, County of Contra Costa, California on December 5, 2006. A tractor being driven by Mr. Loudermilk and pulling a load of roof tresses made a left hand turn in front of the Movants’ oncoming Mitsubishi, resulting in a collision. The Movants, who were each passengers of the Mitsubishi, suffered severe injuries as a result of the collision. Marshae Peter was the most severely injured of the Movants because she was riding behind the driver and the driver’s seat collapsed back into her. She suffered severe injuries including severe brain injury

³The following description of events is provided by way of general summary only. For further description of the incident, please see the Movants’ original Complaint and Mediation Brief, copies of which are attached hereto as Exhibit A.

that resulted in the loss of cognitive function, as well as blindness in one eye, left arm and leg paralysis, fractures of the cervical, liver, spleen and kidney laceration, broken jaw, and other injuries, and had to be airlifted to the hospital. She has since had at least four surgeries. Marshelle Harris sustained a neck fracture and other injuries. Jacarre Williams sustained a traumatic brain injury causing speech impediment and other injuries. Maurice Henderson sustained a concussion and other injuries. Kameron Kountz sustained a broken nose and other injuries. Vance Gettis sustained a concussion, spine injuries and other injuries. A more complete description of the factual background and the injuries sustained by claimant is available from the Movant's Mediation Brief.

7. At the time of the incident and immediately prior thereto, Mr. Loudermilk was within the course and scope of employment of Select and/or the other Debtor-Defendants or was an agent for Select and/or the other Debtor-Defendants and was furthering their business interests.

8. The Complaint in the State Court Action sounds in one count of Motor Vehicle negligence.

9. By this Motion, the Movants seek relief from the automatic stay so that they may pursue the State Court Action to judgment or other resolution and to satisfy any judgment or other resolution they may obtain against the Debtor-Defendants from the proceeds of any applicable insurance policies in the first instance.

Basis for the Relief Requested

10. The Bankruptcy Code provides:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or

conditioning such stay ... for cause....

11 U.S.C. § 362(d). The term “cause” is not defined in the Code, but rather, must be determined on a case-by-case basis. In the Matter of Rexene Products Co., 141 B.R. 574, 576 (Bankr. D. Del. 1992) (citations, internal quotations omitted).

11. Rexene involved a class action lawsuit concerning contributions to an employee stock bonus plan. Id., at 575. The suit was filed against the debtors, the plan trustee, and the plan itself. Id. The matter was scheduled for trial in federal court in Texas when the debtors filed their Chapter 11 petitions. Id. The class representatives moved to lift the automatic stay, arguing that discovery was virtually complete and that the case would be ready for trial six weeks hence (after the class notice was sent and returned and three depositions were taken, which remaining discovery could be foregone, if necessary). Id. They also argued that, in the event their motion was denied, the class representatives would have to litigate twice: once against the debtor in Delaware pursuant to the bankruptcy court’s claims estimation process and a second time against the trustee and the plan in Texas. Id. In response, the debtors emphasized the additional burden that any class action award would impose on their already overworked in-house legal team and personnel department. Id. In addition, they argued that a motion had already been filed to transfer the entire case to the bankruptcy court, which, if granted, would not only promote judicial economy but also ease the debtors’ burden by permitting them to proceed in their preferred venue. Id.

12. The Court granted the requested relief and ordered the stay lifted. Id., at 578. Judge Balick reasoned that no great prejudice would befall the debtors as discovery was nearly complete, any added burden on the debtors’ in-house legal team was merely speculative, and the longer the trial was delayed the more burdensome it would be for both sides to prepare once

again. Id., at 577. The Court noted that one primary reason for lifting the stay is to promote judicial economy. Id. Judge Balick reasoned further that the equities favored lifting the stay because the movants' burden and expense of transporting their lawsuit to Delaware outweighed any hardship to the debtors, especially in light of the fact that the movants' claim would have to be liquidated at some point. Id. Finally, the Court examined the movants' probability of success on the merits and concluded that the required "slight showing" was easily met where the defendants' motion for summary judgment had already been denied. Id., at 578.

13. As the Court expressed in a subsequent case, the three factors considered when balancing the competing interests of debtor and movant are (1) the prejudice that would be suffered should the stay be lifted, (2) the balance of hardships facing the parties, and (3) the probable success on the merits if the stay is lifted. In re Continental Airlines, 152 B.R. 420, 424 (D. Del. 1993).

14. Here, the facts weigh in Movants' favor on each of these three prongs. First, the Debtors would not suffer prejudice should the stay be lifted because the Movants' claims will have to be liquidated at some point before Movants could receive any distribution in this bankruptcy proceeding. As the Court is well aware, Moveants' claims against the Debtors must be liquidated in a forum outside of the Bankruptcy Court. "The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending." 28 U.S.C. § 157(b)(5); Hays and Co. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 885 F.2d 1149, 1157 n.13, 1159 (3d Cir. 1989).

15. Moreover, according to information provided by personal injury defense counsel, insurance was in place during the relevant time period and available to cover Movants' claims. The relevant policy was issued by ACE American Insurance Company.

16. To the extent that the Debtor-Defendants' liability to the Movants is covered by insurance policies, any recovery by the Movants will not affect the Debtors estates. In re Louisiana World Exposition, Inc., 832 B.R. 1391 (5th Cir. 1987) (debtor has no property interest in its insurance coverage); Matter of Edgeworth, 993 F.2d 51 (5th Cir. 1993) (same). To the extent that the Movants' claim is not covered by the Debtors' insurance, Movants seek to liquidate, as opposed to collect, their claims via the State Court Action. In re Tricare Rehabilitation Systems, Inc., 181 B.R. 569, 578 (Bankr. N.D. Ala. 1994) (lifting the stay to liquidate, as opposed to collect); In re Metzner, 167 B.R. 414, 416 (E.D. La. 1994) (same).

17. Further, the State Court Action was already underway in California when the automatic stay halted proceedings. The Debtor-Defendants had retained counsel in California, Christopher J. Benjamin, Esq., of Clapp, Moroney, Bellagamba, Vunich, Beeman & Scheley. Further, a judge, who has familiarity with the facts of the case, had presided over discovery and mediation before the automatic stay was implemented. Further, at least one deposition has been conducted by the defendants and the defendants have conducted an extensive medical examination Marshae Peter, the most seriously injured of the Movants.

18. Second, the Movants will face substantial hardship if the stay is not lifted. The Movants are residents of California. The conduct that is the subject of the complaint occurred in California and is governed by California law. The relevant documents, witnesses, and physical artifacts are located in California. If the Movants are forced to litigate their claims in Delaware,

they would incur the increased expense of bringing their attorneys, witnesses, and physical evidence to Delaware.

19. Moreover, if the Movants are not permitted to liquidate their claims in the non-bankruptcy forum of their choice, the litigation in Delaware will be before the United States District Court. 28 U.S.C. § 157(b)(5). The Movants' witnesses, who live more than 100 miles from this district, could not be compelled by subpoena to testify at any trial in Delaware.⁴ The District Court would be applying California law, with which it is not as familiar as one would expect a state or federal court located in California to be. In re The Conference of African Union First Colored Methodist Protestant Church, 184 B.R. 207, 218 (Bankr. D. Del. 1995) (“[T]he existence of a more appropriate forum than the bankruptcy court is “cause” for relief under Code § 362(d)(1).”); see In the Matter of Baker, 75 B.R. 120, 121 (Bankr. D. Del. 1987) (granting relief from stay to permit Family Court to determine issues with which it had expertise).

20. In addition, failure to lift the stay will be prejudicial to the Movants, who will be forced to litigate the matter twice -- once against the Debtor-Defendants in Delaware, and again against the other Defendants in California -- which could lead to conflicting judgments and would be wasteful of judicial resources.

21. By contrast, the Debtors will not suffer any meaningful hardship if the State Court Action is allowed to proceed. A primary purpose of the automatic stay is to give debtors a breathing spell in which to focus on their reorganization without the distraction of having to defend litigation at the same time. The State Court Action, however, is a garden variety tort

⁴ Fed.R.Civ.P. 45(b)(2) and (c)(3)(A)(ii), made applicable in cases under the Bankruptcy Code by Fed.R.Bankr.P. 9016. The Committee Note to Rule 9016 states: “Although Rule 7004(d) authorizes nationwide service of process, Rule 45 F.R.Civ.P. limits the subpoena power to the judicial district and places outside the district which are within 100 miles of the place of the trial or hearing.”

claim, which does not present complicated factual or legal issues, and that will not substantially distract the Debtor-Defendants from the reorganization process. In fact, the Debtor-Defendants have already retained counsel in the State Court Action, Christopher J. Beeman, Esq. of Clapp, Moroney, Bellagamba, Vucinich, Beeman & Scheley, who is familiar with the case and, presumably, not involved with the reorganization process.

22. Third, the final prong of the analysis is satisfied by “even a slight probability of success on the merits ... in an appropriate case.” In re Continental Airlines, 152 B.R. at 425. This prong also weighs in the Movants’ favor because they allege that their physical injuries and other damages were caused by the Defendants’ negligence. “Only strong defenses to state court proceedings can prevent a bankruptcy court from granting relief from the stay in cases where ... the decision-making process should be relegated to bodies other than [the bankruptcy] court.” In re Fonseca v. Philadelphia Housing Authority, 110 B.R. 191, 196 (Bankr. E.D. Pa. 1990). No strong defenses would appear to exist here. At the very least, there can be no question that the Complaint presents triable factual issues. In re Fernstrom Storage and Van Co., 938 F.2d 731, 736 (7th Cir. 1991) (the court lifted the automatic stay where underlying action was not frivolous).

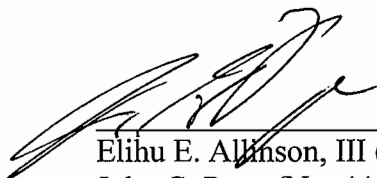
23. On these facts, cause exists to lift the stay. Cf. In re Drexel Burnham Lambert Group, Inc., 113 B.R. 830, 838 n.8 (Bankr. S.D.N.Y. 1990) (“cause” utilized to permit litigation in another forum to liquidate personal injury claim); In the Matter of Rexene Products, Inc., 141 B.R. at 576 (legislative history indicates “cause” may be established by single factor including to permit action to proceed in another tribunal).

Conclusion

WHEREFORE, the Movants respectfully request the entry of an Order, substantially similar to the proposed form of order attached hereto as Exhibit B, modifying the automatic stay imposed by Section 362(a) of the Bankruptcy Code to allow them (i) to prosecute the State Court Action to judgment or other resolution, (ii) to liquidate their claim against the Debtor-Defendants, and (iii) to seek satisfaction of any judgment or other resolution obtained against the Debtor-Defendants in the first instance from the proceeds of any insurance coverage available to the Debtor-Defendants that may be applicable to the Movants' claims.

Dated: November 4, 2009
Wilmington, Delaware

SULLIVAN • HAZELTINE • ALLINSON LLC



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and

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Tel: (925) 602-2727
Fax: (925) 676-999

*Attorneys for Marshelle Harris, Vance Gettis,
Jacarre Williams, Maurice Henderson, Marsha
Peter and Kameron Kountz*

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

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| In re |) | Chapter 11 |
| |) | |
| BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i> , ¹ |) | Case No. 09-12074 (KJC) |
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| Debtors. |) | |
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| |) | (Jointly Administered) |
| MARSELLE HARRIS, VANCE |) | |
| GETTIS, JACARRE WILLIAMS, |) | |
| MAURICE HENDERSON, |) | |
| MARSHAE PETER AND KAMERON |) | |
| KOUNTZ |) | |
| |) | |
| Movants, |) | |
| v. |) | Objection Deadline: November 12, 2009 at 4:00 p.m. |
| |) | (requested) |
| |) | Hearing Date: November 19, 2009 at 11:00 a.m. |
| SELECTBUILD NORTHERN |) | (requested) |
| CALIFORNIA, BMC CONSTRUCTION, |) | |
| INC., BUILDING MATERIALS |) | |
| HOLDING CORPORATION, AND |) | |
| JOHN DOES 1-20 |) | |
| |) | |
| Respondents. |) | |

NOTICE OF MOTION

PLEASE TAKE NOTICE THAT on November 4, 2009, Marshelle Harris, Vance Gettis, Jacarre Williams, Maurice Henderson, Marshae Peter and Kameron Kountz have filed their attached ***Motion of Marshelle Harris, Vance Gettis, Jacarre Williams, Maurice Henderson, Marshae Peter and Kameron Kountz for Relief from the Automatic Stay*** (the "Motion") with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269); BMC West (0454), SelectBuild Construction, Inc. (1340); SelectBuild Northern California, Inc. (7579); Illinois Framing, Inc. (4451); C Construction, Inc. (8206); TWF Construction, Inc. (3334); H.N.R. Framing Systems, Inc. (4329); SelectBuild Southern California, Inc. (9378); SelectBuild Nevada, Inc. (8912); SelectBuild Arizona" LLC (0036); and SelectBuild Illinois, LLC (0792).

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be made in writing, filed with the Bankruptcy Court, 824 Market Street, Wilmington, Delaware 19801 and served upon so as to actually be received by the undersigned counsel for the Movants on or before **November 12, 2009 at 4:00 p.m. ET (requested).**

Elihu E. Allinson, III
John G. Pope
SULLIVAN • HAZELTINE • ALLINSON LLC
4 East 8th Street, Suite 400
Wilmington, Delaware 19801
(302) 428-8191
(302) 428-8195 (fax)

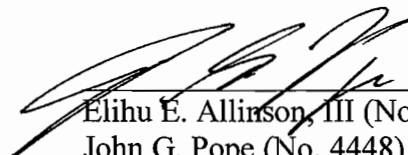
Craig Boeger, Esq.
Scranton Law Firm
2450 Stanwell Drive
Concord, CA 94520-4825
Tel: (925) 602-2727
Fax: (925) 676-999

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held before the Honorable Kevin J. Carey at the Bankruptcy Court, 5th Floor, Courtroom 5, on **November 19, 2009 at 11:00 a.m. ET (requested).**

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTION OR OTHER RESPONSE TO THE MOTION IS TIMELY FILED IN ACCORDANCE WITH THE PROCEDURES SET FORTH ABOVE, THE BANKRUPTCY COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT IN THE MOTION WITHOUT FURTHER NOTICE OR A HEARING.

Dated: November 4, 2009
Wilmington, Delaware

SULLIVAN • HAZELTINE • ALLINSON LLC



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and

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*Attorneys for Marshelle Harris, Vance Gettis, Jacarre
Williams, Maurice Henderson, Marshae Peter and
Kameron Kountz*

Exhibit A

**SUM. JNS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

BMC CONSTRUCTION, INC.; BUILDING MATERIALS HOLDING CORPORATION; KBI CONSTRUCTION, INC.; KBI NORCAL; GELCO CORP LSR BUILDING MATERIALS; DALE EVAN LOUDERMILK; AND DOES 1 TO 20, INCLUSIVE.
YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTA DEMANDANDO EL DEMANDANTE):

MARSHELLE HARRIS; VANCE GATTIS; JACARRE WILLIAMS, A MINOR; MAURICE HENDERSON, A MINOR; MARSHAE PETER, A MINOR; KAMERON KOUNTZ, A MINOR, BY AND THROUGH THEIR GUARDIAN AD LITEM, TRACY THOMAS

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

777 DEC 10 A 9 27

CLERK OF THE SUPERIOR COURT
COUNTY OF CALIFORNIA

D. Wagner, Deputy Clerk

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DIAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

CONTRA COSTA COUNTY SUPERIOR COURT
UNLIMITED JURISDICTION
725 COURT STREET

MARTINEZ, CA 94553

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

CRAIG M. BOEGER, ESQ.

2450 STANWELL DRIVE

(925) 602-2727

DATE:

(Fecha) 12 / 10 / 08

CLERK OF THE
SUPERIOR COURT

Clerk, by
(Secretario)

D. WAGNER, Deputy
(Adjunto)

CASE NUMBER
(Número del caso) 008 03028

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)
☐ CCP 416.20 (defunct corporation)
☐ CCP 416.40 (association or partnership)
☐ other (specify):

☐ CCP 416.60 (minor)
☐ CCP 416.70 (conservatee)
☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

| | |
|--|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State number, and address): CRAIG M. BOEGER, ESQ. 165862 SCRANTON LAW FIRM 2450 STANWELL DRIVE CONCORD, CA 94520 TELEPHONE NO.: (925) 602-2727 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiffs | FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold; margin: 10px 0;">FILED</div> <div style="margin: 5px 0;">2008 DEC -4 P 1:01</div> <div style="margin: 5px 0; font-size: 0.8em;">A. TALLE, CLERK OF SUPERIOR COURT COUNTY OF CONTRA COSTA, CALIF.</div> <div style="margin: 5px 0;">BY: <u>D. Wagner, Deputy Clerk</u></div> |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA STREET ADDRESS: 725 COURT STREET MAILING ADDRESS: P.O. BOX 911 CITY AND ZIP CODE: MARTINEZ, CA 94553 BRANCH NAME: UNLIMITED JURISDICTION | |
| PLAINTIFF: MARSHALL HARRIS, SEE ATTACHMENT 1a DEFENDANT: BMC CONSTRUCTION, INC., SEE ATTACHMENT 1a | |
| <input checked="" type="checkbox"/> DOES 1 TO 20, INCLUSIVE | |
| COMPLAINT-Personal Injury, Property Damage, Wrongful Death <input type="checkbox"/> AMENDED (Number): Type (check all that apply): <input checked="" type="checkbox"/> MOTOR VEHICLE <input type="checkbox"/> OTHER (specify): <input checked="" type="checkbox"/> Property Damage <input type="checkbox"/> Wrongful Death <input checked="" type="checkbox"/> Personal Injury <input type="checkbox"/> Other Damages (specify): | |
| Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited | CASE NUMBER: <div style="font-size: 1.5em; font-weight: bold; margin: 10px 0;">C08 03028</div> |

1. Plaintiff (name or names): MARSHALLE HARRIS; VANCE GATTIS; JACARRE WILLIAMS, A MINOR; MAURICE HENDERSON, A MINOR; MARSHAE PETER, A MINOR; AND KAMERON KOUNTZ, A MINOR, BY AND THROUGH THEIR GUARDIAN AD LITEM, TRACY THOMAS alleges causes of action against defendant (name or names): SEE ATTACHMENT 1a

2. This pleading, including attachments and exhibits, consists of the following number of pages: 7

3. Each plaintiff named above is a competent adult

a. ☒ except plaintiff (name): JACARRE WILLIAMS

(1) ☐ a corporation qualified to do business in California

(2) ☐ an unincorporated entity (describe):

(3) ☐ a public entity (describe):

(4) ☒ a minor ☐ an adult

(a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed

(b) ☒ other (specify): GUARDIAN AD LITEM APPOINTED CONCURRENTLY

(5) ☐ other (specify):

b. ☒ except plaintiff (name): MAURICE HENDERSON

(1) ☐ a corporation qualified to do business in California

(2) ☐ an unincorporated entity (describe):

(3) ☐ a public entity (describe):

(4) ☒ a minor ☐ an adult

(a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed

(b) ☒ other (specify): GUARDIAN AD LITEM APPOINTED CONCURRENTLY

(5) ☐ other (specify):

☒ Information about additional plaintiffs who are not competent adults is shown in Attachment 3.

SHORT TITLE:

HARRIS V. BMC CONSTRUCTION, INC., ET AL.

SE NUMBER:

4. ☐ Plaintiff (name):

is doing business under the fictitious name (specify):

and has complied with the fictitious business name laws.

5. Each defendant named above is a natural person

a. ☒ except defendant (name):

BMC CONSTRUCTION, INC.

(1) ☐ a business organization, form unknown(2) ☒ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):c. ☒ except defendant (name):

KBI CONSTRUCTION, INC.

(1) ☐ a business organization, form unknown(2) ☒ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):b. ☒ except defendant (name):

BUILDING MATERIALS HOLDING CORPORATION

(1) ☐ a business organization, form unknown(2) ☒ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):d. ☒ except defendant (name):

KBI NORCAL

(1) ☐ a business organization, form unknown(2) ☒ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):☒ Information about additional defendants who are not natural persons is contained in Attachment 5.

6. The true names of defendants sued as Does are unknown to plaintiff.

a. ☒ Doe defendants (specify Doe numbers): 1 TO 10 were the agents or employees of other named defendants and acted within the scope of that agency or employment.b. ☒ Doe defendants (specify Doe numbers): 11 TO 20 are persons whose capacities are unknown to plaintiff.7. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):

8. This court is the proper court because

a. ☐ at least one defendant now resides in its jurisdictional area.b. ☐ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.c. ☒ injury to person or damage to personal property occurred in its jurisdictional area.d. ☐ other (specify):9. ☐ Plaintiff is required to comply with a claims statute, anda. ☐ has complied with applicable claims statutes, orb. ☐ is excused from complying because (specify):

SHORT TITLE:

HARRIS V. BMC CONSTRUCTION, INC., ET AL.

CASE NUMBER:

10. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- a. ☒ Motor Vehicle
- b. ☐ General Negligence
- c. ☐ Intentional Tort
- d. ☐ Products Liability
- e. ☐ Premises Liability
- f. ☐ Other (specify):

11. Plaintiff has suffered

- a. ☒ wage loss
- b. ☒ loss of use of property
- c. ☒ hospital and medical expenses
- d. ☒ general damage
- e. ☒ property damage
- f. ☒ loss of earning capacity
- g. ☐ other damage (specify):

12. ☐ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. ☐ listed in Attachment 12.
- b. ☐ as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) ☒ compensatory damages
- (2) ☐ punitive damages

The amount of damages is (in cases for personal injury or wrongful death, you must check (1)):

- (1) ☒ according to proof
- (2) ☐ in the amount of: \$

15. ☒ The paragraphs of this complaint alleged on information and belief are as follows (specify paragraph numbers):

MV-1, MV-2

Date: DECEMBER 3, 2008

CRAIG M. BOEGER, ESQ.

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

SHORT TITLE:

HARRIS V. BMC CONSTRUCTION, INC., ET AL.

CASE NUMBER:

FIRST

(number)

CAUSE OF ACTION- Motor Vehicle

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

Plaintiff (name): MARSHELLE HARRIS; VANCE GATTIS; JACARRE WILLIAMS, A MINOR; MAURICE HENDERSON, A MINOR; MARSHAE

PETER, A MINOR; KAMERON KOUNTZ, A MINOR, BY AND THROUGH THEIR GAL, TRACY THOMAS

MV-1. Plaintiff alleges the acts of defendants were negligent; the acts were the legal (proximate) cause of injuries and damages to plaintiff; the acts occurred

on (date): 12/05/06

at (place): O'HARA AVENUE AT THE INTERSECTION OF CARPENTER ROAD, CITY OF OAKLEY, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA

MV-2. DEFENDANTS

a. ☒ The defendants who operated a motor vehicle are (names):

BMC CONSTRUCTION, INC., BUILDING MATERIALS HOLDING CORPORATION, KBI CONSTRUCTION, INC., KBI NORCAL, GELCO CORP LSR BUILDING MATERIALS, DALE EVAN LOUDERMILK

☒ Does 1 to 20b. ☒ The defendants who employed the persons who operated a motor vehicle in the course of their employment

are (names): BMC CONSTRUCTION, INC., BUILDING MATERIALS HOLDING CORPORATION, KBI CONSTRUCTION, INC., KBI NORCAL, GELCO CORP LSR BUILDING MATERIALS, DALE EVAN LOUDERMILK

☒ Does 1 to 20c. ☒ The defendants who owned the motor vehicle which was operated with their permission are (names):

BMC CONSTRUCTION, INC., BUILDING MATERIALS HOLDING CORPORATION, KBI CONSTRUCTION, INC., KBI NORCAL, GELCO CORP LSR BUILDING MATERIALS, DALE EVAN LOUDERMILK

☒ Does 1 to 20d. ☒ The defendants who entrusted the motor vehicle are (names):

BMC CONSTRUCTION, INC., BUILDING MATERIALS HOLDING CORPORATION, KBI CONSTRUCTION, INC., KBI NORCAL, GELCO CORP LSR BUILDING MATERIALS, DALE EVAN LOUDERMILK

☒ Does 1 to 20e. ☐ The defendants who were the agents and employees of the other defendants and acted within the scope of the agency were (names):

BMC CONSTRUCTION, INC., BUILDING MATERIALS HOLDING CORPORATION, KBI CONSTRUCTION, INC., KBI NORCAL, GELCO CORP LSR BUILDING MATERIALS, DALE EVAN LOUDERMILK

☒ Does 1 to 20f. ☐ The defendants who are liable to plaintiffs for other reasons and the reasons for the liability are☐ listed in Attachment MV-2f ☐ as follows:☐ Does to

Page 4

Page 1 of 1

CRAIG M. BOEGER [SBN 165862]
SCRANTON LAW FIRM
2450 Stanwell Drive, Suite B
Concord, California 94520-4927
Telephone: (925) 602-2727
Facsimile: (925) 676-9999

Attorneys for Plaintiffs
MARSHELLE HARRIS, VANCE GATTIS, JACARRE WILLIAMS,
MAURICE HENDERSON, MARSHAE PETER, and KAMERON KOUNTZ

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA
UNLIMITED CIVIL JURISDICTION

MARSHELLE HARRIS, et al.,

NO. C09-00148

Plaintiff,

PLAINTIFF'S MEDIATION BRIEF

vs.

DATE: AUGUST 4, 2004

BMC CONSTRUCTION, INC., et al.,

TIME: 10:00 A.M.

MEDIATOR: DANIEL J. KELLY

Defendants.

AND RELATED CROSS-ACTION.

I. PARTIES & REPRESENTATION

Plaintiffs, MARSHELLE HARRIS, VANCE GATTIS, JACARRE WILLIAMS,
MAURICE HENDERSON, MARSHAE PETER and KAMERON KOUNTZ are represented by
Craig M. Boeger of the Scranton Law Firm, 2450 Stanwell Drive, Concord, CA 94520,
(925)602-2727. Defendants, SELECT BUILD NORTHERN CALIFORNIA erroneously sued
herein as KBI NORCAL is represented by Christopher J. Beeman, Esq. of Clapp, Moroney,
Bellagamba, Vucinich, Beeman & Scheley, 6130 Stoneridge Mall Road, Pleasanton, CA 94588,
(925) 734-0990.

II. FACTUAL BACKGROUND/LIABILITY

Mr. Loudermilk had been driving a 2003 Kenworth tractor north on Carpenter with a full

1 load of roof trusses on a flat bed trailer when he slowed to approximately 5 mph to turn left onto
2 Carpenter Road in Oakley, California. Mr. Loudermilk did not stop before beginning his left
3 turn. He told officers that he did see traffic moving south on O'Hara nearly 1000' away but stated
4 that based on sixteen years of experience as a truck driver he believed he had enough time to
5 safely make his turn. He began his turn at 5 mph., and had only traveled approximately 6-8' over
6 the line over a period of 1.7 seconds when the collision occurred. It should be noted that at
7 5mph., Mr. Loudermilk could have stopped his truck in only 2'. The roadway in front of him was
8 straight and level. The weather clear, bright and sunny. Ms. Harris's approaching bright red
9 Mitsubishi was visible the entire time and only 150' away when he began his turn. While Ms.
10 Harris was traveling 20mph over the survey speed, Mr. Loudermilk was still under an obligation
11 to see what was clearly in front of him and yield to oncoming traffic. Although Loudermilk was
12 under an obligation to be scanning the roadway in front of him, a witness to the collision, who
13 was driving a fork lift and nearly level with Loudermilk's cab noted that he had been looking
14 down as he began his turn. As the enclosed photos show the two vehicles met bumper to
15 bumper. See exhibit A.

16 Based on the facts, Loudermilk was under an affirmative duty to yield to all traffic so
17 close as to constitute an immediate hazard. While Loudermilk told officers he believed he had
18 time to safely complete the turn of a nearly 68' long truck across southbound lanes the fact is he
19 made it just over eight feet into southbound lanes before colliding almost bumper to bumper with
20 Ms. Harris's Mitsubishi. Furthermore, from his vantage point in his elevated drivers seat he
21 would have easily been able to see southbound traffic including traffic in both lanes of
22 southbound O'Hara at the Cypress intersection nearly ½ mile away. The bright red Mitsubishi
23 was only 150' away at the time he began his turn and was therefore clearly so close as to
24 constitute an immediate hazard.

25 III. INJURIES

26 Marshelle Harris suffered the following injuries:

- 27 1. Left humeral neck fracture;
- 28 2. Open Ulnar shaft fracture with radial head dislocation;

- 1 3. Large triceps tendon laceration;
- 2 4. Right patella tendon laceration and fracture of the patella;
- 3 5. Transverse process fracture of L1 through L5 on the left;
- 4 6. Splenic laceration;
- 5 7. Cerebral concussion with post-concussive disorder; and
- 6 8. Multiple, large, long, raised hypertrophic scars.

7 Please see Ms. Harris' emergency room medical records from John Muir Medical Center
8 attached hereto as exhibit B.

9 Jacarre Williams (DOB: 04/09/91) suffered the following personal injuries:

- 10 1. Traumatic brain injury with right frontal epidural hematoma and depressed skull
11 fracture and altered level of consciousness;
- 12 2. Cognitive and speech deficit superimposed on pre-existing special education
13 needs;
- 14 3. Multiple facial fractures with right orbital roof fracture.
- 15 4. Craniectomy.

16 Following the craniectomy procedure, Mr. Williams continued to be completely nonverbal
17 and somnolent. By the following day he had started to follow some commands. He made gradual
18 improvement. By December 10, 2006 he was able to answer questions posed by a nod of the head.
19 By June of 2007 he was much more alert, cooperative. Mr. Williams is left with mild speech
20 slurring and a very large scar running across his forehead.

21 Please see Mr. Williams' emergency room medical records from John Muir Medical
22 Center attached hereto as exhibit C.

23 Maurice Henderson (DOB: 10/5/92) suffered the following injuries:

- 24 1. Left renal fracture/laceration;
- 25 2. Splenic Fracture Grade 2;
- 26 3. Left upper pole Kidney fracture Grade 2;
- 27 4. Left scapular fracture;
- 28 5. Nasal fracture;

1 6. Large scalp laceration with multiple staple/stitches;
2 7. Concussion with loss of consciousness 10-15 minutes and amnesia;
3 Please see Mr. Henderson's emergency room medical records from Childrens Hospital
4 Oakland attached hereto as exhibit D.
5 Marshae Peter (DOB: 1/6/94) suffered the following personal injuries:
6 Marshae Peter was airlifted to John Muir Hospital and, initially was in stable condition.
7 Shortly after her arrival however her condition deteriorated and she became hypotensive. She
8 responded to resuscitation. Over the next several hours her initial diagnoses developed as
9 follows:
10 1. Poly trauma;
11 2. Hypovolemic shock;
12 3. Traumatic brain injury;
13 4. Left arm and leg paralysis;
14 5. Severe chest trauma including bilateral first rib fractures, bilateral pneumothoraces;
15 6. Abdominal trauma;
16 7. Liver laceration
17 8. Splenic laceration;
18 9. Kidney laceration, left;
19 10. Kidney laceration, right;
20 11. Open, complex and comminuted mandible fractures;
21 12. Complex and multiple facial fractures;
22 13. L2 burst fracture with cord compromise and spinal cord injury;
23 14. Severe laceration over the right eyelid and canthus.
24 Over the course of her stay, additional findings were as follows:
25 15. Pulmonary contusion
26 16. Rib fractures involving the left first rib and right first through tenth ribs, sparing
27 only the fourth and fifth;
28 17. T12-L1 Burst fractures;

- 1 18. Fracture along the right occipital bone to the temporal bone
- 2 19. Fracture of the right temporal bone extending into the middle ear cavity;
- 3 20. Bilateral orbital wall fractures;
- 4 21. Zygomatic arch fracture;
- 5 22. Several subarachnoid hemorrhages in the frontal and bilateral temporal regions;
- 6 23. Left front sinus fractures;
- 7 24. Bilateral nasal fractures;
- 8 25. Right distal forearm fracture;
- 9 26. Left side paresis;

10 Initial medical condition summary:

11 As to the L1-L2 burst fracture there was retropulsion of fracture fragments into the central
12 canal, causing severe central canal stenosis. There was also an axially oriented fracture across the
13 spinous process and posterior elements of T12 extending into the right T12-L1 facet. While
14 awake initially, she lapsed into altered consciousness and displayed inconsistent movement of the
15 right side and no movement of the left side. Her initial Glasgow Coma Scale was only 8. On
16 12/6/06 a repeat head CT was performed revealing the development of diffuse heterogeneous low-
17 attenuation throughout the right cerebral hemisphere consistent with areas of edema versus
18 infarction in addition to a small amount of petechial hemorrhage in the right temporal lobe as well
19 as increased mass-effect.

20 On December 7, 2006 the complex mandible fracture was surgically repaired. Bilateral
21 chest tubes were placed to resolve bilateral pneumothorax as well as a femoral line and subclavian
22 line. A tracheostomy was placed. Please see exhibit E.

23 Given her age and critical injuries, she was transferred to Children's hospital on 12/8/06.
24 There, she was placed into the ICU from 12/8 to 12/18 with a working diagnoses of traumatic
25 brain injury, L2 burst fracture with 50% cord compression and flaccid paralysis on the left.

26 Upon arrival an initial examination by Dr. James Hansen he noted he was unable to elicit
27 DTR's of either lower extremity and that there was no anal tone on rectal exam. This suggested a
28 severe spinal cord injury. Additionally, she developed an irregular heart rhythm. A CT

1 angiography shows severe right sided edema and filling defect of the right internal jugular vein.

2 On 12/9/06 Ms. Peter underwent a bilateral posterior spine arthrodesis/discectomy as well

3 as an anterior interbody fusion from T11-L2 and a posterior spinal canal decompression.

4 On 12/14/06 further surgery was performed on the mandibular fractures. On 12/18/07 she

5 was noted to be writing to family but only following commands intermittently.

6 By January 22, 2007 she had dramatically improved and was noted to be awake, alert and

7 oriented. She was able to communicate with her hands and a language board as well as follow

8 commands.

9 On February 7, 2007 she developed severe commotio to her right eye as well as third nerve

10 palsy and central vein occlusion. Although her nerve palsy improved her vision did not. While

11 she saw 20/20 with her left eye, she could only count fingers in the temporal area. She had a large

12 relative afferent pupillary defect at 4+. And extropia of the right eye. She was advised on that

13 date that her chances of further improvement in her vision were not very high. Ms. Peter remains

14 legally blind in the left eye and has almost no use of the left hand/arm.

15 Marshae Peter was discharged on March 30, 2007 when she was 13 years old. She was

16 able to walk with the aid of a hemi-walker with primary mobility in a wheelchair. She continued

17 to demonstrate significant impairments in cognitive skill when compared to other children her age

18 averaging an age equivalent of 9 years old. Although she was clearly not an A student before the

19 collision, her average to low average grades placed her well above her functional level at

20 discharge from Children's hospital.

21 Ms. Peter's medical summary and current medical condition are outlined in a report dated

22 December 4, 2008 by Dr. Jacob Neufeld, MD attached as exhibit F, Marshae's treating

23 rehabilitation doctor at Children's hospital. Neuropsychological Consultation with Dr. Alan D.

24 Shonkoff, PhD dated June 27, 2008 attached as exhibit G. A Life Care Plan is Provided by Carol

25 Highland outlining the cost of future care and her opinion that Ms. Peter is for the most part

26 unemployable due to her multiple disabilities. Se report of Ms. Hyland attached as exhibit H.

27 Finally, there is a report by Dr. Joseph A. Mele, III, M.D. a plastic surgeon outlining the need for

28 extensive plastic surgery attached as exhibit I. Also, please note Ms. Peter's school records

1 attached as exhibit J.

2 Kameron Kountz (DOB: 3/22/99) suffered the following personal injuries:

- 3 1. Open reduction and internal fixation of comminuted zygoma fracture with
- 4 placement of large plate;
- 5 2. Nasal Fracture
- 6 3. Fracture coronoid left jaw;
- 7 4. Large facial scar over left eye.

8 Please see Mr. Kountz's emergency room records from Childrens Hospital Oakland
9 attached as exhibit K.

10 Vance Gattis suffered

- 11 1. Cerebral Concussion
- 12 2. Multiple Contusions/abrasions
- 13 3. Musculoskeletal injuries to cervical and lumbar spine

14 Please see Mr. Gattis' medical records from Sutter Delta Medical Center and Oakley
15 Chiropractic attached as exhibit L.

16 **IV. SPECIAL DAMAGES**

17 Copies of all plaintiffs' medical billings are attached hereto as Exhibit M.

18 Ms. Harris' medical expenses are as follows:

| | | |
|----|--|--------------|
| 19 | 1. Mercy Air Ambulance | \$10,456.43 |
| 20 | 2. John Muir Medical Center | \$206,628.98 |
| 21 | 3. John Muir Trauma Physicians | \$22,992.97 |
| 22 | 4. American Medical Response | \$1,617.73 |
| 23 | MS. HARRIS' TOTAL MEDICAL EXPENSES | \$241,696.11 |
| 24 | TOTAL PAID | \$53,991.59 |

25 Future Medical Expenses:

- 26 5. Joseph Mele, III Plastic Surgeon

27 Mr. Williams' medical expenses are as follows:

- 28 6. American Medical Response (12/5/06 and 12/10/06) ...

| | | | |
|----|-----|---|----------------|
| 1 | 7. | John Muir Medical Center | \$123,551.00 |
| 2 | 8. | John Muir Trauma Physicians | \$16,474.40 |
| 3 | | MR. WILLIAMS' TOTAL MEDICAL EXPENSES | \$143,386.96 |
| 4 | | TOTAL PAID | \$2,220.00 |
| 5 | | Future Medical Expenses: | |
| 6 | 9. | Joseph Mele, III Plastic Surgeon | \$7,043.00 |
| 7 | | <u>Mr. Henderson's</u> medical expenses are as follows: | |
| 8 | 10. | Reach Air | \$11,651.83 |
| 9 | 11. | Children's Hospital | \$36,266.98 |
| 10 | | MR. HENDERSON'S TOTAL MEDICAL EXPENSES | \$47,918.81 |
| 11 | | TOTAL PAID | \$14,030.09 |
| 12 | | <u>Ms. Peter's</u> medical expenses are as follows: | |
| 13 | 12. | Calstar Air Ambulance | \$20,942.27 |
| 14 | | (Calstar's records indicate patient is "Jane Doe" and billed to Marshelle | |
| 15 | | Harris) | |
| 16 | 13. | John Muir Medical Center | \$159,559.29 |
| 17 | 14. | John Muir Trauma Physicians | \$31,644.56 |
| 18 | 15. | Children's Hospital | \$746,782.67 |
| 19 | 16. | American Medical Response | \$825.00 |
| 20 | | MS. PETER'S TOTAL MEDICAL EXPENSES TO DATE . | \$959,753.79 |
| 21 | | TOTAL PAID | \$294,683.63 |
| 22 | | Future Medical Expenses | \$2,207,930.00 |
| 23 | 17. | Joseph Mele, III Plastic Surgeon | \$3,566.00 |
| 24 | | Future Loss of Earnings | \$750,000.00 |
| 25 | | <u>Mr. Kountz's</u> medical expenses are as follows: | |
| 26 | 18. | Reach Air | \$14,124.06 |
| 27 | 19. | Children's Hospital | \$99,440.00 |
| 28 | | MR. KOUNTZ'S TOTAL MEDICAL EXPENSES | \$113,564.06 |

1 TOTAL PAID \$14,775.55
2 Future Medical Expenses:
3 20. Joseph Mele, III Plastic Surgeon \$2,759.00
4 Mr. Gattis' medical expenses are as follows:
5 21. American Medical Response \$1,263.00
6 22. Sutter Delta Medical Center \$12,664.16
7 23. Oakley Chiropractic \$604.45
8 MR. GATTIS' TOTAL MEDICAL EXPENSES \$14,531.61

9 **V. SETTLEMENT VALUE**

10 Plaintiffs' demands are as follows:
11 Marshelle Harris \$750,000.00
12 Jacarre Williams \$1,000,000.00
13 Maurice Henderson \$650,000.00
14 Marshae Peter \$11,550,000.00
15 Kameron Kountz \$550,000.00
16 Vance Gattis \$35,000.00

17 Respectfully submitted.

18 DATED: July 28, 2009

SCRANTON LAW FIRM

19

20

By: _____
CRAIG M. BOEGER, ESQ.
Attorneys for Plaintiff

21

22

23

24

25

26

27

28

Exhibit B

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

| | | |
|--|---|---------------------------|
| In re |) | Chapter 11 |
| |) | |
| BUILDING MATERIALS HOLDING CORPORATION, <i>et al.</i> , ¹ |) | Case No. 09-12074 (KJC) |
| |) | |
| Debtors. |) | |
| |) | |
| |) | (Jointly Administered) |
| MARSHELLE HARRIS, VANCE |) | |
| GETTIS, JACARRE WILLIAMS, |) | |
| MAURICE HENDERSON, |) | |
| MARSHAE PETER AND KAMERON |) | |
| KOUNTZ |) | |
| |) | |
| Movants, |) | |
| v. |) | |
| |) | |
| |) | |
| SELECTBUILD NORTHERN |) | |
| CALIFORNIA, BMC CONSTRUCTION, |) | Related Docket Item _____ |
| INC., BUILDING MATERIALS |) | |
| HOLDING CORPORATION, AND |) | |
| JOHN DOES 1-20 |) | |
| |) | |
| Respondents. |) | |

[PROPOSED] ORDER GRANTING THE MOTION OF MARSHELLE HARRIS, VANCE GETTIS, JACARRE WILLIAMS, MAURICE HENDERSON, MARSHAE PETER AND KAMERON KOUNTZ FOR RELIEF FROM THE AUTOMATIC STAY

AND NOW, this ____ day of _____, 2009, this matter coming before the Court on the Motion to Lift Stay pursuant to 11 U.S.C. § 362 (the “Motion”) filed by Marshelle Harris, Vance Gettis, Jacarre Williams, Maurice Henderson, Marshae Peter and Kameron Kountz (collectively, the “Movants”); the Court having reviewed the Motion, the above-captioned

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are as follows: Building Materials Holding Corporation (4269); BMC West (0454), SelectBuild Construction, Inc. (1340); SelectBuild Northern California, Inc. (7579); Illinois Framing, Inc. (4451); C Construction, Inc. (8206); TWF Construction, Inc. (3334); H.N.R. Framing Systems, Inc. (4329); SelectBuild Southern California, Inc. (9378); SelectBuild Nevada, Inc. (8912); SelectBuild Arizona" LLC (0036); and SelectBuild Illinois, LLC (0792).

Debtors' response to the Motion, and all related pleadings; and having heard the statements of counsel with respect thereto at a hearing held before the Court on _____, 2009 (the "Hearing"); the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish sufficient cause for relief granted herein; and for the reasons stated by the Court on the record at that Hearing,

IT IS HEREBY ORDERED as follows:

1. The Motion is Granted as set forth herein.
2. The automatic stay imposed by 11 U.S.C. § 362(a) shall be, and hereby is, modified to the extent necessary to permit Movants to (i) proceed to trial in the State Court Action², (ii) liquidate their claims in the State Court Action against the Debtor-Defendants, and (iii) satisfy any judgment or other resolution obtained against the Debtor-Defendants in the first instance from the proceeds of any applicable insurance coverage available to the Debtors.

Kevin J. Carey, Chief Judge
United States Bankruptcy Court

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

CERTIFICATE OF SERVICE

I, Elihu E. Allinson, III, do hereby certify I am not less than 18 years of age and that on this 4th day of November, 2009, I caused a copy of the foregoing *Notice of Motion* to be served upon the parties listed below in the manner indicated:

Facsimile

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Hand Delivery

Paul N. Heath
Richards, Layton & Finger, P.A.
One Rodney Square
920 N. King Street
Wilmington, DE 19801

Under penalty of perjury, I declare that the foregoing is true and correct.

November 4, 2009

Date

/s/ E.E. Allinson III

Elihu E. Allinson, III