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

In re:	)	Chapter 11	5.3 6.75 6.13
BUILDING MATERIALS HOLDING CORPORATION, et al.,	)	Case No. 09-12074 (KJC)	5 1
CONTONATION, EL al.,	)	Jointly Administered	7
Debtors.	) ) )	Hearing Date: Nov 2 19,	2009 F

### DECLARATION OF Gamaliel Moreno.

IN SUPPORT OF PROOF OF CLAIM AND IN RESPONSE
TO THE DEBTORS' FIRST OMNIBUS NON-SUBSTANTIVE OBJECTION

- I, <u>Gamaliel Moreno</u>, hereby declare under penalty of perjury and pursuant to 28 U.S.C. § 1746, as follows:
- 1. I am an adult resident of the State of

  Arizona , and I make this declaration based
  on my personal knowledge and in support of the Proof of Claim
  which I submitted in this matter.
- 2. In my proof of claim, I seek approximately \$\frac{27,450.00}{}\$ for unpaid overtime and other wages which one or more of the Debtors owes to me as a result of my employment.
- 3. I understand that the Debtors have objected to my claim on the ground that the claim did not have sufficient supporting documentation or facts. Declaration of Paul S. Street, ¶ 8 and Exhibit D. This Declaration provides additional facts to supplement my proof of claim.

- 4. From approximately Jan. 2005 to April 2008, I was employed by Select Build Arizona as form

  setter . I believe that my employer has records of the dates of my employment; attached to this statement is paycheck stubs , proving that I did work there.
- 5. During my employment, it was the common practice of my employer to pay its workers, including me, on a piece rate system for each job. Under this system, we were not paid overtime for such work, and in many cases not paid even straight time for all of our work. In addition, we were not paid for breaks required by law.
- 6. Based on the length of my employment, and my calculation that I worked an average of \_\_\_\_\_\_ 10 \_\_\_\_ hours of unpaid overtime each week, I have determined that \_\_\_\_\_ Select Build Arizona \_\_\_\_\_ owes me approximately \$ 27,450.00 \_\_ in overtime and other wages which were never paid.
- 7. I also worked with other employees who filed proofs of claim in this case for the same sort of unpaid wages, including:

  <u>Edgar Romo, Misael Carbajal, Jesus M. Romo</u>. To the best of my knowledge, the company's practice toward my wages and hours was also applied to these individuals.
- 8. I live in <u>Arizona</u>, and am unable to travel to Delaware to participate in the hearing on the Debtors' objection. I respectfully ask the Court to deny the Debtors'

objection at this point, and to permit my claim to be decided based on all the evidence, especially when the full records of my employment are in my employer's control.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 11, 2009

# Safe, accurate, Visit the IRS Web Site at www.irs.gov/efile. Employee Reference Copy Wage and Tax 2008 Conv C for employee's records.

Conv C for employee's records.

d Control number | Dept.

000453 74/566 | 702010

Согр.

orp. Employer use only T 1138

Employer's name, address, and ZIP code
SELECTBUILD ARIZONA LLC
720 PARK BL #200
BOISE ID 83712

e/f Employee's name, address, and ZIP code

#### Batch #01291

_							
GAMALIEL MORENO							
1655 W AJO WAY NO 380							
EMPLOYEE NO 50014							
T	UCS	ON AZ 85713					
		yer's FED ID number 20-5650036	526-89-1120				
1	Wage	a, tips, other comp.	2 Federal income tax withheld				
		7087.60	366.31				
3 Social security wages			4 Social security tax withheld				
_		7087.60					
5	Medic	are wages and tips 7087 . 60	6 Medicare tax withheld 102.77				
7	Socia	security tips	8 Allocated tips				
9	Adva	ice EIC payment	10 Dependent care benefits				
11	Nonqı	salified plans	12a See instructions for box 12				
14	Other		12b				
			12c   12d				
			13 Stat emp Het. plan 3rd party sick pay				
		Employer's state ID n 20 - 5650036	no. 16 State wages, tips, etc. 7087 . 60				
		income tax 69.55	18 Local wages, tips, etc.				
19	Local	income tax	20 Locality name				

## 2008 W-2 and EARNINGS SUMMARY



69.55

This blue Earnings Summary section is included with your W-2 to help describe portions in more detail. The reverse side includes general information that you may also find helpful.

1. The following information reflects your final 2008 pay stub plus any adjustments submitted by your employer.

Gross Pay

**Gross Pay** 

Reported W-2 Wages

7087.60

Social Security Tax Withheld Box 4 of W-2 439.43 AZ

AZ. State Income Tax

Box 17 of W-2

SUI/SDI Box 14 of W-2

Fed. Income Tax Withheld Box 2 of W-2 366.31 Medicare Tax

Withheld Box 6 of W-2 102.77

2. Your Gross Pay was adjusted as follows to produce your W-2 Statement.

Medicare Wages AZ. State Wages, **Social Security** Wages, Tips, other Compensation Box 1 of W-2 Wages Box 3 of W-2 Tips, Etc. Box 16 of W-2 Box 5 of W-2 7,087.60 7,087.60 7,087.60 7,087.60 7,087.60 7,087.60 7,087.60 7,087.60

3. Employee W-4 Profile. To change your Employee W-4 Profile Information, file a new W-4 with your payroll dept.

GAMALIEL MORENO 1655 W AJO WAY NO 380 EMPLOYEE NO 50014 TUCSON AZ 85713 Social Security Number: 526-89-1120

Taxable Marital Status: SINGLE

Exemptions/Allowances:

FEDERAL: 3

STATE:

Tax is 19 % of Federal

© 2008 ADP, INC

Statement

Wages, tips, other comp. 7087.6	2 Federal income tax withheld 366.31	1 Wages, tips, other com 7087.	
Social security wages 7087.6	4 Social security tax withheld 439.43	3 Social security wages 7087.	.60 4 Social security tax withheld 439 , 43
Medicare wages and tips 7087.60	6 Medicare tax withheld 102,77	5 Medicare wages and tig 7087	ps 6 Medicare tax withheld .60 102.77
Control number Dept.	Corp. Employer use only	d Control number Dep	
000453 74/566 7020	10 T 1138	333333	2010 T 1138
SELECTBUILE 720 PARK BI BOISE ID 837	ARIZONA LLC #200	c Employer's name, addr SELECTBUII 720 PARK I BOISE ID 8	LD ARIZONA LLC BL #200
Employer's FED ID numbe 20-5650036	r a Employee's SSA number 526 - 89 - 1120	b Employer's FED ID nur 20-5650036	526-89-1120
Social security tips	8 Allocated tips	7 Social security tips	8 Allocated tips
Advance EIC payment	10 Dependent care benefits	9 Advance EIC payment	10 Dependent care benefits
11 Nonqualified plans	12a See instructions for box 12	11 Nonqualified plans	12a
14 Other	12b	14 Other	126
•	12c	111	120
	12d i	1#1	12d
	13 Stat emp. Ret. plan 3rd party sick pay	1	13 Stat emp. Ret. plan 3rd party sick p
		e/f Employee's name, add	Irese and 7IP code
e/f Employee's name, addres	s and ZIP code	C/I CIIIPIDYCO & Hame, was	HESS SIN MI TOUS
GAMALIEL MOREN 1655 W AJO WAY EMPLOYEE NO 50	IO NO 380 014	GAMALIEL MORE 1655 W AJO WA EMPLOYEE NO 9 TUCSON AZ 857	ENO NY NO 380 50014
e/I Employee's name, addres GAMALIEL MOREN 1655 W AJO WAY EMPLOYEE NO 50 TUCSON AZ 85713 15 State Employer's state ID AZ 20-5650036	IO NO 380 014	GAMALIEL MORE 1655 W AJO WA EMPLOYEE NO S TUCSON AZ 857 15 State Employer's state AZ 20-5650036	ENO NY NO 380 50014 13 a ID no. 16 State wages, tips, etc. 7087 . 60
GAMALIEL MOREN 1655 W AJO WAY EMPLOYEE NO 50 TUCSON AZ 85713 15 State Employer's state ID	NO 380 014 no. 16 State wages, tips, etc. 7087.60	GAMALIEL MORE 1655 W AJO WA EMPLOYEE NO 9 TUCSON AZ 857 15 State Employer's state AZ 20-5650036	ENO NY NO 380 50014 13

Statement
Copy 2 to be filed with contloyer's State Incom

opy z— to be riled	With Employee's State,	41-0852411
ity, or Local Income	Tax Return.	OMB No. 1545-0008
Employee's soc. sec. no.	1 Wages, tips, other comp. 28812.25	2 Federal income tax withheld 2029.88
26-89-1120 Employer ID number (EIN)	3 Social security wages 28812.25	4 Social security tax withheld 1786.36
0-5650036	5 Medicare wages and tips 28812.25	6 Medicare tax withheld 417.78
Employer's name, address, a	and ZIP code	·

ь 7777 N 70th Avenue Glendale AZ 85303 d Control number e Employee's name, address, and ZIP code GAMALIEL MORENO 1655 W. AJO WAY #380 Employee #50014 TUCSON AZ 85713 7 Social security tips 8 Allocated tips 10 Dependent care benefits 11 Nonqualified plans 13 Statutory employee Retirement plan Third-party sick pay 28812.25 20-5650036 15 State Employer's state ID number 16 State wages, tips, etc.

Form W-2 Wage and Tax Statement

19 Local income tax

18 Local wages, tips, etc.

2007 Dept. of the Treasury -- IRS

20 Locality name

17 State income tax

9 Advance EIC payment

12a Code

12b Code

12c Code

12d Code

**FORM L4UP** 

385.71

Copy C-For EMPLOYEE'S RECORDS (See 41-0852411 Notice to Employee on the back of Copy B.) OMB No. 1545-0008 a Employee's soc. sec. no. 1 Wages, tips, other comp. 28812.25 2 Federal income tax withheld 2029.88 526-89-1120 3 Social security wages 28812.25 4 Social security tax withheld 1786.36 b Employer ID number (EIN) 6 Medicare tax withheld 417.78 5 Medicare wages and tips 28812.25 20-5650036 c Employer's name, address, and ZIP code SelectBuild Arizona, LLC 7777 N 70th Avenue Glendale AZ 85303 d Control number 1502 e Employee's name, address, and ZIP code Suff. GAMALIEL MORENO 1655 W. AJO WAY #380 Employee #50014 TUCSON AZ 85713 7 Social security tips 8 Allocated tips 9 Advance EIC payment 10 Dependent care benefits 11 Nonqualified plans 12a Code See inst. for box 12 13 Statutory employee 14 Other 12b Code Retirement plan 12c Code Third-party slck pay 12d Code 20-5650036 28812.25 385.71 17 State income tax 20 Locality name 15 State Employer's state ID number 16 State wages, tips, etc. 19 Local income tax 18 Local wages, tips, etc. 2007 Form W-2 Wage and Tax Statement Dept. of the Treasury - IRS

This information is being furnished to the IRS. If you are required to file a tax return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.

Copy C For EMPLOYEE'S RECORDS  (See Notice to Employee on back of Copy 8)  2006  OME							
(See Notice to Emp	2000	1545-0008					
a Control number	1 Wages,	tips, other comp.	2 Fe	deral income tax w	ithheld		
		27876.25			1896.71		
9	3 Social s	ecurity wages	4 50	cial security tax wi	thheld		
<b>b</b> Employer ID number (EIN)		27876.25					
	5 Medicai	5 Medicare wages and tips 6 Medicare tax withheld					
20-0897874 27876.25 40							
c Employer's name, address,	and ZIP c	ode					
TBA Materials,	LLC						
dba BBP Concret	e Tucs	on Company					
7777 N 70th Ave	nue						
Glendale AZ 8			_				
d Employee's social security	number						
526-89-1120							
e Employee's name, address	, and ZIP o	ode			Suff.		
GAMALIEL MORENO							
Employee #50014							
1655 W. AJO WAY							
TUCSON AZ 85713  7 Social security tips 8 Allocated tips 9 Advance EIC payment							
7 Social security tips	Advance EIC payr	nent					
10 Dependent care benefits 11 Nonqualified plans 12a Code See inst. f							
10 Dependent care benefits 11 Nonqualified plans 12a Code See inst. for box 1							
13 Statutory employee 14	Other		12	b Code			
120 OXIO							
Retirement plan			12	12c Code			
		•	-				
Third-party sick pay	12d Code						
			İ				
AZ 20-0897874		27876.25		3,	50.37		
15 State Employer's state I.	п.#						
18 Local wages, tips, etc.		16 State wages, tips, etc.  Local income tax	17 State income tax 20 Locality name				
to cook magos, ups, oto.	] "	FOOD INCOME (8X	2	Locality harne			
1							

Form W-2 Wage and Tax Statement 41-1628061 Dept. of the Treasury - IRS
This Information is being furnished to the IRS. If you are required to file a tax return, a negligence
penalty or other sanction may be imposed on you if this income is taxable and you fail to report it.

City, or Local Incom		OMB No. 1545-000		
a Control number	1 Wages, tips, other comp.	2 Fed	leral income tax	withheld
	27876.25			1896.71
9	3 Social security wages		cial security tax v	withheld
<b>b</b> Employer ID number (EIN)				1728.33
	5 Medicare wages and tips	6 Me	dicare tax withhe	eld
20-0897874	27876.25	J.,		404.21
c Employer's name, address,	and ZIP code			
TBA Materials,	LLC			
•	e Tucson Company			
7777 N 70th Ave	* -			
,	<del></del>			
<u>Glendale AZ 8</u> d Employee's social security	35303			
	nonde			
<u>526 - 89 - 1120</u> e Employee's name, address	and 7IP code			Suff
e Employee e name, accioce	, and an oodo			
GAMALIEL MORENO	>			
Employee #50014	1			
	3			
1655 W. AJO WAY				
1655 W. AJO WAY	? #380			
	? #380	9,	Advence EIC pa	yment
1655 W. AJO WAY	? #380 .3	9,	Advence EIC pay	yment
1655 W. AJO WAY	? #380 .3		Advence EIC pay	yment
1655 W. AJO WAY TUCSON AZ 8571 7 Social security tips	7 #380 .3 8 Allocated tips			yment
1655 W. AJO WAY TUCSON AZ 8571 7 Social security tips 10 Dependent care benefits	7 #380 .3 8 Allocated tips	128		yment
1655 W. AJO WAY TUCSON AZ 8571 7 Social security tips 10 Dependent care benefits 13 Statutory employee 14	8 Allocated tips 11 Nonqualified plans	12a	a Code  Code	yment
1655 W. AJO WAY TUCSON AZ 8571 7 Social security tips 10 Dependent care benefits	8 Allocated tips 11 Nonqualified plans	12a	a Code	yment
1655 W. AJO WAY TUCSON AZ 8571 7 Social security tips 10 Dependent care benefits 13 Statutory employee 14 Retirement plan	8 Allocated tips 11 Nonqualified plans	128 128	a Code Code Code	yment
1655 W. AJO WAY TUCSON AZ 8571 7 Social security tips 10 Dependent care benefits 13 Statutory employee 14	8 Allocated tips 11 Nonqualified plans	128 128	a Code	yment
1655 W. AJO WAY TUCSON AZ 8571 7 Social security tips 10 Dependent care benefits 13 Statutory employee Retirement plan Third-party sick pay	8 Allocated tips 11 Nonqualified plans	128 128	a Code Code Code	yment
1655 W. AJO WAY TUCSON AZ 8571 7 Social security tips 10 Dependent care benefits 13 Statutory employee Retirement plan Third-party sick pay  AZ 20-0897874	8 Allocated tips 11 Nonqualified plans 1 Other	12t 12t 12c	a Code Code Code	60.37
1655 W. AJO WAY TUCSON AZ 8571 7 Social security tips 10 Dependent care benefits 13 Statutory employee Retirement plan Third-party sick pay  AZ 20-0897874 15 State Employer's state I.	7 #380 .3  8 Allocated tips  11 Nonqualified plans  Other  27876.25  D.# 16 State wages, tips, etc.	12t 12t 12c	a Code Code Code Code Gode	60.37
1655 W. AJO WAY TUCSON AZ 8571 7 Social security tips 10 Dependent care benefits 13 Statutory employee Retirement plan Third-party sick pay  AZ 20-0897874	8 Allocated tips 11 Nonqualified plans 1 Other	12t 12t 12c	a Code Code Code	60.37

Form W-2 Wage and Tax Statement

41-1628061

Dept. of the Treasury - IRS

FORM L4UP

a Control number	OMB No. 15	45-0008	Safe, a FAST!	use Use	<b>E</b> ~fil	Ð	Visit the IRS at www.irs.g	
b Employer identification number (EIN)			1 Wa	ages, tips, other c	ompensation	2	Federal income t	tax withheld
90-0062297				170	34.50	ı		988.93
c Employer's name, address, and ZIP code			<b>3</b> So	cial security wa	ges	4	Social security to	ax withheld
BBP CONCRETE CO TUCSON	•			170	34.50	<u> </u>	1	056.12
7777 N. 70TH AVENUE			5 Me	edicare wages a	ind tips	6	Medicare tax wit	thheid
GLENDALE, AZ 85303				170	34.50			246.99
			7 So	cial security tip	S	8	Allocated tips	
					.00			.00
d Employee's social security number			9 Ad	lvance EIC payr	nent	10	Dependent care	
526-89-1120					.00			.00
e Employee's name, address, and ZIP code			<b>1</b> 1 No	onqualified plans	;	12a	See instructions	for box 12
GAMALIEL MOR	.ENO				.00	e e	İ	
		:	13 Statuto employ	ory Retirement yee plan	Third-party sick pay	12b	1	
1200 E. BILBY RD.			44 011			d e		
UNIT# 24			14 Oth	ner		12c	1	
TUCSON AZ 85706						d e	<u> </u>	
						12d	1	
						**************************************		
15 State Employer's state ID number	16 State wages, tips, etc.	17 State incom	n tay	18 Local wages	tinn ata	10 Lo	//////////////////////////////////////	20 Locality name
1	• • • •			To Local Wages	s, ups, etc.	19 500	Jai IIICOHIE LAX	20 Localty name
AZ 1 007-640245-P	17034.50	187	. ZU					

Form W-2 Wage and Tax Statement

2005

Department of the Treasury-Internal Revenue Service

Copy B—To Be Filed With Employee's FEDERAL Tax Return. This information is being furnished to the Internal Revenue Service.

FORM LW2B