Exhibit A

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Additional Counsel on Next Page

United States District Court, Case No. 2:08-cv-6010

DANIEL A. GUTIERREZ, ET AL., **PLAINTIFFS,** **VS.** **SCHMID INSULATION CONTRACTORS, INC., ET AL.,** **DEFENDANTS.**	**JOINT STIPULATION OF SETTLEMENT AND RELEASE BETWEEN PLAINTIFFS DANIEL A. GUTIERREZ, ARTURO NAVARRETE, AND EMILIANO REYNA AND DEFENDANTS SCHMID INSULATION CONTRACTORS, INC., AMERICAN NATIONAL SERVICES, INC., WESTERN INSULATION, L.P., BUILDER SERVICES GROUP, INC., MASCO CONTRACTOR SERVICES LLC, AND MASCO SERVICES GROUP CORP.**

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JOINT STIPULATION AND RELEASE OF ALL CLAIMS

This Joint Stipulation of Settlement and Release of All Claims, including all Exhibits hereto (collectively, the "Agreement"), is entered into by and between Plaintiffs (as hereinafter defined) and the class of individuals that they seek to represent (as hereinafter defined), on the one hand, and Defendants (as hereinafter defined), on the other hand.

RECITALS

WHEREAS, Plaintiffs Daniel Gutierrez and Arturo Navarrete filed their initial Complaint in California State Court on October 13, 2006, as a proposed class action, in which they alleged, among other things, that Defendants denied pay for all hours worked to their installation personnel, including pay for overtime, meal breaks, time driving to and from company-assigned work sites, time spent setting up and performing administrative tasks, and time spent loading, maintaining, and unloading the company product and equipment. Plaintiffs also alleged that Defendants' installers were required not to record on their time records all time spent at work, were not provided adequate wage statements, and were subjected to unlawful deductions taken from their wages.

WHEREAS, the Complaint asserted claims under California Labor Code sections 202, 203, 221, 223, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 2802, as well as associated regulations and Industrial Welfare Commission Wage Orders, and the California Business and Professions Code section 17200 et seq., and sought recovery of, among other things, unpaid compensation, waiting time penalties, compensation for failure to provide correct itemized statements of total hours worked, injunctive relief, and attorneys' fees and costs.

WHEREAS, Plaintiffs filed a request to file a First Amended Complaint on October 10, 2007, which the Federal District Court of the Central District of California approved on November 1, 2007 following Defendants' removal of this case on September 7, 2007. The First Amended Complaint asserted the same California claims as the initial Complaint and added Emiliano Reyna as Plaintiff.

WHEREAS, Class Counsel (as hereinafter defined) has conducted extensive investigation of this case, reviewing tens of thousands of documents produced by Defendants, deposing several of Defendants' corporate representatives, reviewing data on potential class members, including time recorded as worked, rates of pay, and dates of hire and termination, and interviewing more than one hundred fifty putative class members regarding their job duties and underpaid hours, including unpaid overtime, meal break, and drive time hours.

WHEREAS, the Parties have vigorously litigated this case, filing and/or opposing, among other motions, a motion for class certification, multiple motions to compel discovery, notices of removal and motions to remand.

WHEREAS, Defendants deny and continue to deny all of the allegations made by Plaintiffs in the Litigation (as hereinafter defined) and have denied and continue to deny that they are liable or owe damages to anyone with respect to the alleged facts or causes of action asserted in the Litigation. Nonetheless, without admitting or conceding liability or damages, Defendants have agreed to settle the Litigation on the terms and conditions set forth in this Agreement, to avoid the burden, expense, and uncertainty of continuing the Litigation.

WHEREAS, the Parties participated in two mediation sessions of this matter on August 13, 2008 and October 10, 2008, presided over by David Rotman, of Gregorio, Haldeman, Piazza, Rotman, Frank & Feder and engaged in continuing discussions with the Mediator, David Rotman.

WHEREAS, Class Counsel has analyzed and evaluated the merits of the claims made against Defendants in the Litigation, and the impact of this Agreement on Plaintiffs and the Class (as hereinafter defined). Based upon their analysis and their evaluation of a number of factors, and recognizing the substantial risks of continued litigation, including the possibility that the Litigation, if not settled now, could result in no recovery whatsoever for the Class, or a recovery that is less favorable to the Class, or a recovery that might not occur for several years, Class Counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable and adequate and that this Agreement is in the best interests of the Class.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties hereto agree to a full and complete settlement of the Litigation on the following terms and conditions:

1. DEFINITIONS

The defined terms set forth herein will have the meanings ascribed to them below.

1.1 **Charity or Charities.** "Charity" or "Charities" will mean a non-profit organization or organizations to be jointly selected by the parties. Any non-profit organization selected by the Parties will be a properly qualified 501(c)(3) charitable organization in good standing, and not on any government watch list.

1.2 **Claims Administrator.** The claims administrator will be Settlement Services, Inc. ("SSI"), unless the Parties jointly choose a different claims administrator who will be given the names and addresses of Class Members.

1.3 **Class, Class Members, Settlement Class.** The terms "Class," "Class Members," or "Settlement Class" include all persons who are employed or have been employed by Defendants Western or Schmid, as hereinafter defined, as installers in the construction field to install building products between October 13, 2002, through September 30, 2008 ("the Settlement Class" or the "Class Members"). The Settlement Class, however, will not include any person who previously settled or released the claims covered by this Settlement, or any person who previously was paid or received awards through civil or administrative actions for the claims covered by this Settlement, or any person who chooses to opt out.

1.4 **Class Counsel.** "Class Counsel" will be Lewis, Feinberg, Lee, Renaker & Jackson, PC; Sullivan Taketa LLP; and the Mexican American Legal Defense and Educational Fund, as counsel for the Settlement Class for all purposes in this Action.

1.5 **Class Period.** The class period will be from October 13, 2002, through September 30, 2008 ("Class Period").

1.6 **Defendants.** "Defendants," as referenced herein and as released in the Settlement, are Western Insulation, LP ("Western"); Schmid Insulation Contractors, Inc. ("Schmid");

American National Services, Inc. ("ANS"); Masco Contractor Services LLC ("MCS"); Masco Services Group Corp. ("MSG"); and Builder Services Group, Inc. ("BSG"), and all successors and assigns, present and former parent companies, subsidiaries, divisions, concepts, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, or any individual or entity which could be jointly liable with Defendants, or any of them (hereinafter, "Defendants"), and their counsel of record.

1.7 **Fairness Hearing.** "Fairness Hearing" will mean the hearing on the joint Motion for Judgment and Final Approval.

1.8 **Litigation**. "Litigation" means Gutierrez, et al. v. Schmid Insulation Contractors, Inc., et al., Case No. CV 2:08-6010 DSF JCx, in the United States District Court, Central District of California.

1.9 **Maximum Settlement Amount.** The "Maximum Settlement Amount" is the amount that Defendants agree to pay to settle this Litigation, which is eight million five hundred thousand dollars ($8,500,000.00). The Maximum Settlement Amount will include payments to be made to the Class Members, attorneys' fees, costs, enhancement awards, any payments reserved for the California Labor & Workforce Development Agency ("LWDA") under the California Private Attorney General Act, California Labor Code section 2699 *et seq.* ("PAGA"), and claims administration expenses. Defendants' liability in this Litigation will not exceed the Maximum Settlement Amount, unless, as described in Section 2.2 below, the remaining funds from uncashed payments are insufficient to cover the employer's share of payroll taxes.

1.10 **Net Settlement Amount.** "Net Settlement Amount" refers to the Maximum Settlement Amount minus all attorneys' fees, costs, enhancement awards, any payments made to the LWDA under PAGA, and claims administration expenses.

1.11 **Order Granting Preliminary Approval.** "Order Granting Preliminary Approval" will mean the Order entered by the Court preliminarily approving, *inter alia*, the terms and conditions of this Agreement, the manner and timing of providing notice to the Class, and the time period for opt-outs and objections.

1.12 **Parties.** "Parties" will mean and refer to Plaintiffs, the Class, and Defendants.

1.13 **Payment Date.** The trigger date for payments to Class Members, attorneys fees, and enhancement awards will be the date of Entry of Final Judgment and Final Approval by the Court, unless an objection or appeal is filed, in which case the "Payment Date" becomes the date when the appeal period runs or when the decision becomes final.

1.14 **Plaintiffs.** "Plaintiffs," as referenced herein, are Daniel Gutierrez, Arturo Navarrete, and Emiliano Reyna.

1.15 **Schmid.** For the time period from October 13, 2002, through December 31, 2007 ("Class Period") "Schmid" shall mean and refer to Schmid Insulation Contractors, Inc., and for the time period from January 1, 2008 until September 30, 2008, "Schmid" shall mean and refer to Masco Contractor Services of California, Inc.

1.16 **Western.** Western shall mean Western Insulation, L.P.

2. SETTLEMENT TERMS

2.1 Employer's Share of Payroll Taxes. Any remaining funds from expired uncashed settlement checks, after the distribution plan described below in Section 7, will be used to reduce the employer's share of payroll taxes (FICA, FUTA, SUI, SDI and Employment Training Tax) associated with this Settlement. If funds remaining from the Maximum Settlement Amount after payment to the Settlement Class, attorneys' fees, costs, enhancement awards, and payments made to the LWDA are insufficient to pay the employer's share of payroll taxes, the employer agrees to pay the balance due.

2.2 Cy Pres. Any remaining funds from uncashed checks after payment of the employer's share of payroll taxes will be donated to the Charity or Charities.

2.3 Class Certification. Solely for the purpose of settling this Litigation, and only to the extent this settlement is approved by the Court, the parties stipulate and agree that the requisites for establishing class certification with respect to the Settlement Class have been met. More specifically, the Parties agree that:

a) The Settlement Class is ascertainable and so numerous as to make it impracticable to join Class Members.
b) There are common questions of law and fact with respect to the claims asserted in the Complaint and First Amended Complaint.
c) Plaintiffs claims are typical of the claims of the members of the Settlement Class.
d) Plaintiffs and Class Counsel will fairly and adequately protect the interests of the Settlement Class.
e) The prosecution of separate actions by individual members of the Settlement Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct.
f) Questions of law and fact common to the members of the Settlement Class predominate over any questions affecting any individual member in such Class, and a class action is superior to other available means for the fair and efficient adjudication of the controversy.

2.4 Individual Settlement Awards.

2.4.1 The individual settlement awards payable to eligible Class Members will be allocated as follows: 1/3 will be allocated to alleged unpaid wages; 1/3 will be allocated to alleged unpaid interest; and 1/3 will be allocated to alleged unpaid civil and statutory remedial penalties (as recognized by California law).

2.4.2 Individual Settlement Awards will be determined by calculating an individual's percentage of the overall class earnings, as follows:

a) Identify each Class Member's total earnings already paid by Schmid or Western for any time worked from October 13, 2002 through September 30, 2008, to calculate the Individual Class Member Numerator;
b) Add all Class Members' Individual Class Member Numerators to obtain the Total Class Member Denominator;
c) Divide the Class Member's Individual Class Member Numerator by the Total Class Member Denominator to determine the Resulting Decimal;

d) Multiply the Resulting Decimal by the total amount available for distribution from the Net Settlement Payment to determine the Individual Settlement Award.

2.4.3 As for Class Members who worked for Western or Schmid during the Class Period, any settlement award that is deemed income will be designated back wages for drive time only. It is the intent of this Settlement that the settlement awards provided for in this Agreement are the sole payments to be made by Defendants to the Class Members, and that the settlement is not intended to trigger any new or additional compensation or benefits as a result of having received the settlement payments.

2.5 **Attorneys Fees and Costs.** Class Counsel will petition the Court for attorneys' fees not to exceed twenty-five percent (25%) of the Maximum Settlement Amount, including any interest pursuant to Section 7.1, estimated to be two million one hundred twenty five thousand dollars ($2,125,000.00), plus up to a maximum of two hundred twenty five thousand dollars ($225,000.00) for reasonable costs, subject to approval by the Court. Defendants agree not to object to Class Counsel's fee and cost application up to the specified amounts. The Parties agree that the apportionment of attorneys' fees and costs among Class Counsel is an independent and separate agreement among Class Counsel. The payments to Class Counsel will be made within twenty (20) days of the Payment Date.

2.6 **Enhancement Awards.** The Parties agree to the designation of Plaintiffs as Class Representatives. The Class Representatives will receive enhancement awards at no additional cost to Defendant, subject to approval by the Court, and subject to the Class Representatives' prior execution of separate general releases of all claims under California Code of Civil Procedure section 1542 and no re-employment with Defendant, up to the following amounts: Daniel Gutierrez: ten thousand dollars ($10,000.00); Arturo Navarrete: ten thousand dollars ($10,000.00); and Emiliano Reyna: ten thousand dollars ($10,000.00). The enhancement awards are in addition to the Class Representatives' individual settlement awards. The enhancement awards are to be part of, and to be deducted from, the Maximum Settlement Amount. IRS Forms 1099 will issue for the enhancement awards. The Enhancement Awards will be made to Plaintiffs within twenty (20) days of the Payment Date.

2.7 **PAGA Claims.** The operative First Amended Complaint includes claims enforceable only under PAGA, California Labor Code Section 2699 et. seq. The operative First Amended Complaint is hereby amended to include a claim under PAGA, which is denied by Defendants. However, Plaintiffs will not be required to file a second Amended Complaint. Plaintiffs agree to provide notice as set forth in Section 3.1 of this Agreement.

2.8 **PAGA Payment.** The claims administrator will pay one hundred thousand dollars ($100,000) out of the Maximum Settlement Amount to cover any penalties that may be due under PAGA ("PAGA Payment"). The PAGA Payment will be distributed as required by law and at the same time the settlement funds are distributed to the Class Members.

3. APPROVAL AND NOTICE

3.1 **Notice to LWDA of PAGA Claims.** Plaintiffs agree to provide notice of the PAGA Claims to the LWDA as set forth in California Labor Code section 2699.3(a)(1). A copy of the application for preliminary approval will accompany the notice sent to the LWDA.

3.2 Preliminary Approval. This Joint Stipulation is attached as Exhibit A to the Proposed Preliminary Approval Order, and is to be filed by October 17, 2008. The Preliminary Approval hearing will occur on or before November 17, 2008, or, if the Court is unable to proceed with the hearing that day, on the first available date thereafter convenient to the Court.

3.2 Class Members' Names and Addresses. The Parties agree that, at the time the Parties file their preliminary approval motion, Defendants will provide to the Claims Administrator the Class Members' identifying information and dates worked during the Class Period.

3.3 Provision of Information to Class Counsel. At the time the Parties file their preliminary approval motion, Class Counsel will not be provided a list of the names and addresses of Class Members, but will be given sufficient information to determine if the membership of the class is consistent with data provided to Class Counsel in mediation and settlement discussions, including but not necessarily limited to the numbers of workweeks worked by all Class Members.

3.3.1 Disputed Data. If Class Counsel asserts in good faith that the class data information about Class Members provided to the Claims Administrator is inconsistent in a not insignificant way with the class data that Class Counsel was provided in mediation, the Parties will agree upon a calculation method for calculating Full Time Equivalents ("FTEs") and work weeks. For purposes of the data comparison, Class Counsel represents that its 2008 extrapolations assumed that the numbers of work weeks and FTEs for both Schmid and Western were the same as 2007 numbers. If they cannot reach agreement regarding data, they will meet with mediator David Rotman within a reasonable period of time to reach agreement regarding the method for calculating FTEs or work weeks and in that same mediation attempt to reach agreement prior to any rescission. The Parties will share the costs of the Mediator's review. After the Parties have agreed upon a method to calculate FTEs and work weeks, to the extent that the data indicates more than a 4% increase in the number of FTEs or work weeks, Plaintiffs will have the right to rescind this Agreement. Any delay caused by this review may cause time limits in this Agreement to be adjusted accordingly.

3.4 Notice. Within fifteen (15) business days of the Court's preliminary approval of the Settlement, the Claims Administrator will mail the bilingual Spanish-English notice, attached as Exhibit 1 hereto, to the Class Members, or, where international distribution is required, through a reliable means to be determined by the Claims Administrator in consultation with Class Counsel and Defendants' Counsel. The Notice will include a statement that Defendants will pay out the same amount regardless of how many Class Members cash their checks, and that there will be no retaliation for participation.

3.5 Remailing. The Claims Administrator will notify Class Counsel and Defendants' Counsel of any mail sent to Class Members that is returned as undeliverable, and will take all reasonable steps to obtain the correct address to attempt remailing. The Claims Administrator will perform a NCOA check and will skip-trace return mail, as well as use address information that Class Counsel may provide, in order to attempt remailing within fifteen (15) days after receipt of returned mail.

4. OPT-OUTS, CHALLENGES, AND OBJECTIONS TO SETTLEMENT

4.1 Challenges. At the time notice is provided, the Claims Administrator will provide to each Class Member his or her dates of employment during the Class Period. Defendants' employment data will be presumed to be correct, unless a particular Class Member proves otherwise to the Claims Administrator by credible evidence. Class Members who wish to challenge Defendants' data must submit a written, signed challenge along with supporting documents to the Claims Administrator, to an address provided in a notice that will be mailed with the distribution described in Section 7, within thirty (30) calendar days after the notice is mailed. If the Claims Administrator determines that any Class Member's employment information is incorrect, the Claims Administrator will calculate any additional payment to which the Class Member is entitled, and will make such payment by adding this additional sum to the Individual Class Member Numerator and the Total Class Denominator, and then recalculate the Resulting Decimal and Individual Settlement Awards for the entire class. The Claims Administrator's decision on any dispute brought under this Section will be final and non-appealable.

4.2 Opt-Outs. Class Members may opt out of the Settlement by mailing to the Claims Administrator a written statement expressing their desire to be excluded from the Settlement Class, including their name (and former names, if any), current address, telephone number and social security number and the dates of their employment with Defendants. Any such opt-out written statement must be postmarked not later than forty-five (45) days from the date of initial mailing of notice to the class. Opt-out requests that do not include all required information, or that are not submitted on a timely basis, will be deemed null, void, and ineffective. Persons who are eligible to and do submit valid and timely requests to opt out of the Settlement will not participate in the Settlement, nor will they be bound by the terms of the proposed Settlement, if it is approved, or the Final Judgment in this Action.

4.2.1 Maximum Opt-Outs. If the number of opt-outs by Class Members exceeds ten (10) percent, Defendants have the right to terminate the Settlement.

4.3 Objections. Any Class Member wishing to object to the Court's approval of this Settlement will file any such objections and memorandums of points and authorities in support thereof with the Court and will serve counsel for the Parties no later than forty-five (45) days from the mailing of the initial notice. Any Settlement Class Member who has submitted an opt-out may not submit any objections to the Settlement. Any Settlement Class Member who fails to file a timely written objection will be foreclosed from objecting to this Settlement, unless otherwise ordered by the Court.

4.5 Responses to Objections. Counsel for the Parties will file any response to any objections filed by objecting Settlement Class Members at least seven (7) calendar days before the final hearing.

5. JUDGMENT AND FINAL APPROVAL

5.1 Motion for Judgment and Fairness Hearing. On or before January 15, 2009, but in any event not later than twenty-four (24) days before the Fairness Hearing, Plaintiffs and Defendants will submit a joint Motion for Judgment and Final Approval. The Fairness Hearing will be held on or before February 23, 2009, or, if the Court is unavailable that day, the first available date thereafter convenient to the Court.

5.2 Declaration from Claims Administrator. Twenty-four (24) days before the Fairness Hearing date, the Claims Administrator shall provide to all Parties a declaration under penalty of perjury concerning the following:

a) confirmation that the Class Notice were mailed and, if applicable, re-mailed pursuant to the terms of this Stipulation;
b) the name of all members of the Settlement Class who requested exclusion from the Settlement.

The Claims Administrator will provide an updated declaration containing the same information five (5) days before the Final Fairness Hearing.

5.3 **Entry of Judgment.** At the Fairness Hearing, the Parties will request that the Court, among other things, (a) grant final certification of the Class, for purposes of settlement, (b) enter Judgment in accordance with this Agreement, (c) approve the settlement and Agreement as final, fair, reasonable, adequate, and binding on all Class Members who have not timely opted out pursuant to Section 4, and (d) dismiss the Litigation with prejudice, while (e) retaining jurisdiction to enforce the terms of this Agreement.

5.4 **Effect of Failure to Enter Judgment and Grant Final Approval.** In the event the Court fails to enter Judgment in accordance with this Agreement, or such Judgment does not become Final as defined herein, the case will proceed as follows: The Litigation will resume unless the Parties jointly agree to: (1) seek reconsideration or appellate review of the decision denying entry of Judgment, or (2) attempt to renegotiate the settlement and seek Court approval of the renegotiated settlement. In the event any reconsideration and/or appellate review is denied, or a mutually agreed settlement is not approved:

(a) The Court will provide notice to Class Members that the Agreement did not receive final approval and that, as a result, no payments will be made to Class Members. Such notice will be mailed by the Claims Administrator via First Class United States Mail, postage prepaid, to the addresses used by the Claims Administrator in mailing the Notice of Proposed Settlement of Class Action Lawsuit and Fairness Hearing.

(b) If the settlement is not approved, the Parties will share in equal parts all fees and expenses of the Claims Administrator.

6. RELEASES

6.1 **Release.** Upon final approval of this settlement, the claims to be released by the Class Members who do not opt out will include all claims under state, federal or local law arising from their employment with Defendants that were or otherwise could have been brought under the facts pleaded in the Complaint or First Amended Complaint in this Litigation against Schmid, ANS, Western, BSG, MCS, MSG, and their respective successors, current and former parents, subsidiaries, affiliated corporations and entities, and each of their respective officers, directors, agents, and employees (collectively, the "Released Parties"), for work performed at Schmid, or its successor, and Western between October 13, 2002 and September 30, 2008, including the following:

a) any claims regarding unpaid wages, interest, or penalties for off-the-clock work; unpaid overtime; meal and rest periods; unpaid wages; inaccurate payroll and/or time record-keeping; inaccurate, incomplete or incorrect pay instruments/stubs and/or wage statements; payment of wages; the collection of reimbursement for expenses; methods of payment; unfair competition; and all claims as alleged or could have been alleged under the facts pleaded in the Complaint or First Amended Complaint;

b) any claims for injunctive relief, restitution, fraudulent business practices or punitive damages alleged or could have been alleged under the facts pleaded in the Complaint or First Amended Complaint;

c) any claims under PAGA arising out of the wage, hour and payroll practices alleged or could have been alleged under the facts pleaded in the Complaint or First Amended Complaint;

d) any claims of fraud arising out of the wage, hour and payroll practices alleged or could have been alleged under the facts pleaded in the Complaint or First Amended Complaint; and

e) all other claims under the California Labor Code, California Wage Orders, or the Fair Labor Standards Act alleged or could have been alleged under the facts pleaded in the Complaint or First Amended Complaint.

6.2 **Named Plaintiffs.** At the time of the payment of the enhancement awards described in Section 2.7, Class representative Plaintiffs will release any and all claims related to their employment and/or their separation from employment with Defendants. Plaintiffs have read Section 1542 of the Civil Code of the State of California, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Plaintiffs understand that Section 1542 gives Plaintiffs the right not to release existing claims of which Plaintiffs are not now aware, unless Plaintiffs voluntarily choose to waive this right. Having been so apprised, Plaintiffs nevertheless voluntarily waive the rights described in Section 1542, and elect to assume all risks for claims that now exist in Plaintiffs' favor, known or unknown. Plaintiffs also agree to provide a waiver under California Civil Code Section 1542.

6.3 **Release of Fees and Costs for Settled Matters**. Class Counsel and Plaintiffs, on behalf of the Class and each individual Class Member, hereby irrevocably and unconditionally release, acquit, and forever discharge any claim that they may have against Defendants for attorneys' fees or costs associated with Class Counsel's representation of Plaintiffs and the Class. Class Counsel further understand and agree that any fee payments approved by the Court will be the full, final and complete payment of all attorneys' fees and costs associated with Class Counsel's representation of these individuals.

6.4 **No Assignment**. Class Counsel and Plaintiffs, on behalf of the Class and each individual Class Member, represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the Litigation, or any related action.

7. DISTRIBUTION PLAN

7.1 Defendants will pay the Maximum Settlement Amount in a lump sum to the Claims Administrator within fourteen (14) calendar days from notice of issuance of the Court's

Entry of Judgment and Grant of Final Approval. The Claims Administrator then will be responsible for making appropriate deductions, reporting obligations, and issuing the individual settlement awards. In the event of an appeal of the Order Granting Final Approval, the Claims Administrator will maintain the Maximum Settlement Amount in an interest bearing account until all appeals are exhausted or finally decided. In the event the appeal is denied, then the accrued interest will be paid to the Class and Class Counsel. In the event any appeal, or portion thereof, is granted, then the accrued interest will be paid to the Defendants and the Maximum Settlement Amount will be returned to Defendants.

7.2 Within thirty (30) days of the Payment Date, the Claims Administrator will distribute the individual settlement awards through First Class Mail, or, where international distribution is required, through a reliable means to be determined by the Claims Administrator in consultation with Class Counsel and Defendants' Counsel. The Claims Administrator will use reasonable efforts to make a second delivery attempt to Class Members where the initial distribution effort fails. Such efforts will include performing an additional NCOA check, using Social Security numbers to obtain better address information, using delivery information that Class Counsel may provide, and, for Class Members whose payment is greater than $100, attempting to call such Class Members. All efforts of the Claims Administrator to send checks to Class Members will cease no later than the checks' expiration dates as described in Section 7.4.

7.3 The Claims Administrator will issue the appropriate W-2 and/or Form 1099 for each such payment or appropriate portion of such payment. Any W-2 or 1099 forms issued to Class Members with respect to the settlement distribution will reflect recognition of the potentially reportable income addressed in such form only in the year in which any such award is actually received by the respective Class Members.

7.4 The expiration date on the settlement checks will be one hundred twenty (120) days from the date the settlement checks are issued. Uncashed settlement checks will not be reissued; provided, however, that Class Members who do not receive their settlement checks upon the initial mailing of checks because of address changes will be given a full 120 days from the date the check is mailed to the correct address to cash his or her check before said check expires.

7.5 The Parties will cooperate to distribute settlement checks to as many Class Members as possible. Defendants understand that Class Counsel and Plaintiffs will be reaching out to Class Members through meetings to encourage them to cash their checks.

8. PUBLIC STATEMENTS; CLASS MEMBER INQUIRIES

8.1 The Class Representatives, Defendants and their respective counsel will not make any public disclosure of the Settlement until after the filing of the Application for Preliminary Approval of the Settlement. The Parties agree that Defendants may make such disclosures that in Defendants' judgment is required in the ordinary course of business. Class Counsel will take all steps necessary to ensure the Class Representatives are aware of, and will encourage them to adhere to, the restriction against any public disclosure of the Settlement or this Confidential Memorandum of Understanding until after the Settlement is preliminarily approved by the Court.

8.2 Within five (5) calendar days of preliminary approval of the Settlement, the Parties will issue a joint press release regarding the resolution of the Litigation and the fact that the Litigation did not include allegations of discrimination.

8.3 No provision of this Joint Stipulation will prevent Class Counsel from providing legal advice to Class Members.

9. MISCELLANEOUS

9.1 **Cooperation Between the Parties; Further Acts.** The Parties will cooperate fully with each other and will use their best efforts to obtain the Court's approval of this Agreement and all of its terms. Each of the Parties, upon the request of any other party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.

9.2 **Entire Agreements.** This Agreement, the Memorandum of Understanding (signed October 10, 2008), and the Joint Stipulation (signed October 10, 2008) constitute the entire agreements between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties will be deemed merged into these Agreements. These Agreements will be construed to be consistent with each other.

9.3 **Binding Effect.** This Agreement will be binding upon the Parties and, with respect to Plaintiffs and the Class Members, their spouses, children, representatives, heirs, administrators, executors, beneficiaries, trustees, conservators, attorneys and assigns.

9.4 **Arms' Length Transaction; Materiality of Terms.** The Parties have negotiated all the terms and conditions of this Agreement at arms' length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement.

9.5 **Captions.** The captions or headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and will have no effect upon the construction or interpretation of any part of this Agreement.

9.6 **Construction.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and will not be, construed against any party by virtue of draftsmanship.

9.7 **Severance of Terms.** If any provision of this Agreement is held by a court of competent jurisdiction to be void, voidable, unlawful or unenforceable, the remaining portions of this Agreement will remain in full force and effect.

9.8 **Governing Law.** This Agreement will in all respects be interpreted, enforced and governed by and under the laws of the State of California, without regard to choice of law principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such Federal law will govern.

9.9 **Continuing Jurisdiction.** The Court will retain jurisdiction over the interpretation and

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implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the settlement contemplated thereby. The Court will not have jurisdiction to modify the terms of the Agreement or to increase Defendants' payment obligations hereunder.

9.10 Waivers, etc. to Be in Writing. No waiver, modification or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, will be valid or binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth in such written waiver, modification or amendment, subject to any required Court approval. Any failure by any party to insist upon the strict performance by the other party of any of the provisions of this Agreement will not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such party, notwithstanding such failure, will have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

9.11 When Agreement Becomes Effective; Counterparts. This Agreement will become effective, upon its execution, except to the extent Court approval is required. The Parties may execute this Agreement in counterparts, and execution in counterparts will have the same force and effect as if Class Counsel, Plaintiffs and Defendants had signed the same instrument.

9.12 Facsimile Signatures. Any party may execute this Agreement by causing its counsel to sign on the designated signature block below and transmitting that signature page via facsimile to counsel for the other party. Any signature made and transmitted by facsimile for the purpose of executing this Agreement will be deemed an original signature for purposes of this Agreement and will be binding upon the party whose counsel transmits the signature page by facsimile. The parties agree to exchange original signatures within five (5) calendar days from the filing of the motion for preliminary approval.

9.14 Enforceability. This Agreement is signed by Plaintiffs, Class Counsel, and Defense Counsel, and is intended to have a binding effect to the maximum extent permitted under law, as provided in the Memorandum of Understanding.

Signed,

DATED: October __, 2008 Western Insulation LP
By: ____
Its: ____

DATED: October __, 2008 Schmid Insulation Contractors, Inc.
By: ____
Its: ____

DATED: October __, 2008

American National Services, Inc.
By: Jeff Kruse
Its: Vice President

DATED: October 21, 2008

Builder Services Group, Inc.
By: __________
Its: __________

DATED: October __, 2008

Masco Contractor Services, LLC
By: __________
Its: __________

DATED: October __, 2008

Masco Services Group Corp.
By: __________
Its: __________

DATED: October __, 2008 LITTLER MENDELSON, P.C.

By: __________
Nancy E. Pritikin

Hillary R. Ross

DATED: October 17, 2008 JACKSON LEWIS LLP

By: Mia Fa
Mia Farber

Chad D. Bernard

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American National Services, Inc.
By: ____________________
Its: ____________________

DATED: October __, 2008

Builder Services Group, Inc.
By: ____________________
Its: ____________________

DATED: October __, 2008

Masco Contractor Services, LLC
By: ____________________
Its: ____________________

DATED: October __, 2008

Masco Services Group Corp.
By: ____________________
Its: ____________________

DATED: October 17, 2008

LITTLER MENDELSON, P.C.

By: ____________________
Nancy E. Pritikin

Hillary R. Ross

DATED: October __, 2008

JACKSON LEWIS LLP

By: ____________________
Mia Farber

Chad D. Bernard

DATED: October 15, 2008

Class Counsel,
LEWIS, FEINBERG, RENAKER & JACKSON, P.C.

By: Todd F. Jackson

Todd F. Jackson
Catha Worthman
Vincent Cheng
Julia Campins

DATED: October 15, 2008

Class Counsel,
SULLIVAN TAKETA LLP

By: Donn S. Taketa

Mark F. Sullivan

Donn S. Taketa
Mark F. Sullivan
Joel R. Villasenor
George Galbraith

DATED: October 15, 2008

Class Counsel,
MALDEF

By: Todd for Gladys Limon

Cynthia Valenzuela
Nancy Ramirez
Gladys Limon

DATED: October 20, 2008

By: Daniel Gutierrez

Plaintiff

DATED: October 21, 2008

By: Arturo Navarrete
Arturo Navarrete

Plaintiff

DATED: October 22 2008

By: EMILIANO REYNA
Emiliano Reyna

Plaintiff

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Exhibit 1

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

DANIEL A. GUTIERREZ, et al.,

Plaintiffs,

vs.

SCHMID INSULATION CONTRACTORS, INC., et al.,

Defendants.

Case No. CV 08-6010 DSF (JCx)

PLEASE READ THIS NOTICE CAREFULLY

- This is not an advertisement but a notice ordered by the Court -

TO: PERSONS WHO HAVE WORKED OR CONTINUE TO WORK AS INSTALLERS IN CALIFORNIA FOR WESTERN INSULATION, LP ("WESTERN"), SCHMID INSULATION CONTRACTORS, INC., OR MASCO CONTRACTOR SERVICES OF CALIFORNIA, INC. ("SCHMID")

Based on information in Western and Schmid's records, YOU MAY BE A CLASS MEMBER WHO IS ENTITLED TO RECEIVE MONEY UNDER A PROPOSED CLASS ACTION SETTLEMENT. Read this notice carefully to protect your rights.

Plaintiffs and Defendants encourage all Class Members to participate in this Settlement. You will not be retaliated against in any way by claiming your share of this settlement. Defendants will pay the same amount of settlement funds no matter how many current and former employees participate.

WHAT IS THIS LAWSUIT ABOUT?

Plaintiffs Daniel Gutierrez and Arturo Navarrete filed a Complaint in California State Court on October 13, 2006, as a proposed class action in which they claimed that Defendants had not paid their installers for all hours worked, including pay for overtime, missed meal breaks, time driving to and from company-assigned work sites, time spent setting up and performing administrative tasks, and time spent loading, maintaining, and unloading company products and equipment.

Plaintiffs also claimed that Defendants' installers were required not to record all work hours on their time records, they were not provided adequate wage statements, and were subjected to unlawful deductions from their wages. Thereafter, Emiliano Reyna was added as a named Plaintiff.

Defendants deny all liability for such claims and have asserted a number of factual and legal defenses to Plaintiffs' claims. Plaintiffs and Defendants met with an experienced mediator and, through him, reached a settlement. The Court has made no ruling on the merits of Plaintiffs' claims or Defendants' defenses.

The United States District Court for the Central District of California has preliminarily approved this settlement. This notice informs you about the terms of the settlement and about your rights and options. The proposed settlement will resolve all of the claims that were made in this lawsuit. The Court has not made any decision that the Defendants violated any law.

The Attorneys for all of the Class Members ("Class Counsel") can be reached at 1-800-xxx-xxxx. They are:

Mark F. Sullivan, Donn S. Taketa, Joel Villaseñor, George Galbraith SULLIVAN TAKETA LLP 31351 Via Colinas, Suite 205 Westlake Village, California 91362	Todd F. Jackson, Vincent Cheng, Julia Campins, Catha Worthman LEWIS, FEINBERG, LEE, RENAKER & JACKSON, P.C. 1330 Broadway, Suite 1800 Oakland, California 94612	Nancy Ramirez, Gladys Limon, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND 634 S. Spring Street Los Angeles, California 90014

The Attorneys for Defendants are:

Mia Farber Chad D. Bernard JACKSON LEWIS LLP 725 S. Figueroa, Suite 2500 Los Angeles, CA 90017	Hillary R. Ross LITTLER MENDELSON, P.C. 2049 Century Park East, 5th Floor Los Angeles, California 90067	Nancy E. Pritikin LITTLER MENDELSON, P.C. 650 California Street, 20th Floor San Francisco, California 94108

ARE YOU A CLASS MEMBER FOR PURPOSES OF THE SETTLEMENT?

You are a Class Member if you worked as an installer of construction products in California between October 13, 2002, through September 30, 2008 (the "Class Period") as an employee of:

- Western Insulation, LP between October 13, 2002, and September 30, 2008
- Schmid Insulation Contractors, Inc. between October 13, 2002 and December 31, 2007, or
- Masco Contractor Services of California, Inc. between January 1, 2008 and September 30, 2008.

WHAT ARE MY OPTIONS?

The purpose of this Notice is to inform you of the proposed Settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are explained below.

- **DO NOTHING:** **If you do nothing, you stay in this lawsuit, and you will receive a settlement check if the Court approves the final settlement. You will have 120 days in which to cash your settlement check.** In exchange, you give up the right to sue on your own for the claims in this Class Action (as set forth in the Release section), even if you do not cash your settlement check. The amount that you will receive will be based on the amount that you earned while you worked for Schmid and Western during the Class Period. You will receive the percent of the settlement amount that is the same as the percent that your earnings are of all earnings of the Class Members.

- **ASK TO BE EXCLUDED:** **If you "opt out," you get out of this lawsuit. You will receive no settlement check if the settlement is finally approved.**

- **OBJECT:** **You may file a legal objection to the proposed Settlement. If you wish to object, you may not opt out of this case.**

The procedures for opting out and objecting are set forth below in the section entitled **"OPTING OUT AND OBJECTIONS TO THE SETTLEMENT."**.

WHAT ARE THE TERMS OF THE SETTLEMENT?

If this Settlement is given final approval by the Court, the Settlement will result in a payment by Defendants of $8,500,000.00 (including attorneys' fees and expenses, and costs of settlement administration). If the Court also approves the payments described below, the following expenses will be deducted from this amount before the settlement funds are paid to the Class Members:

- Settlement Administration Fees: If the Court approves the Settlement, the fees for mailing, processing claims and any objections, and providing information to the Class Members will be paid out of the settlement funds.

- Payments to the Class Representatives: If the Court approves such payment, the three Representative Plaintiffs will receive $10,000 each (for a total of $30,000). These payments are made because the Class Representatives provided many hours of service to the class by helping Class Counsel to formulate claims, by providing documents, and by providing declarations and depositions to support the case.

- Attorneys Fees: Class Counsel will apply to the Court for attorneys' fees in the amount of 25% of the total class recovery. This amount will be requested given the over two years of litigation and thousands of hours class counsel spent in pursuing this case on behalf of the Class Members, given the risks that Class Counsel took that no fees would be recovered, and given the result achieved for the Class Members. Class Counsel will also seek reimbursement in expenses they incurred out of pocket while pursuing this case of approximately $225,000.00.

Uncashed Checks: If any settlement money remains unpaid as a result of Class Members failing to cash their settlement checks, Defendants will use that money to pay for their employer payroll taxes related to the settlement payments to the Class Members. If the money remaining from uncashed settlement checks is not enough to pay the employer's share of payroll taxes, the employers will pay the balance due. Any remaining settlement funds after payment of the employers' share of payroll taxes will be donated to charity. The Parties will jointly agree upon the selection of a charity or charities.

DISMISSAL OF CASE AND RELEASE OF CLAIMS

In exchange for the payments set forth above, this Litigation will be dismissed with prejudice, meaning that this case can never be re-filed in court. Also, the Class Members will fully release and discharge the Defendants from any claims under state, federal or local law arising from their employment with Defendants that were or otherwise could have been brought under the facts alleged in the Complaint or First Amended Complaint in this Litigation against Schmid, ANS, Western, BSG, MCS, MSG, and their respective successors, current and former parents, subsidiaries, affiliated corporations and entities, and each of their respective officers, directors, agents, and employees (collectively, the "Released Parties"), for work performed at Schmid and Western between October 13, 2002 and September 30, 2008, including the following:

f) any claims regarding unpaid wages, interest, or penalties for off-the-clock work; unpaid overtime; meal and rest periods; unpaid wages; inaccurate payroll and/or time record-keeping; inaccurate, incomplete or incorrect pay instruments/stubs and/or wage statements; payment of wages; the collection of reimbursement for expenses; methods of payment; unfair competition; and all claims as alleged or could have been alleged under the facts pleaded in the Complaint or First Amended Complaint;

g) any claims for injunctive relief, restitution, fraudulent business practices or punitive damages alleged or could have been alleged under the facts pleaded in the Complaint or First Amended Complaint;

h) any claims under PAGA arising out of the wage, hour and payroll practices alleged or could have been alleged under the facts pleaded in the Complaint or First Amended Complaint;

i) any claims of fraud arising out of the wage, hour and payroll practices alleged or could have been alleged under the facts pleaded in the Complaint or First Amended Complaint; and

j) all other claims under the California Labor Code, California Wage Orders, or the Fair Labor Standards Act alleged or could have been alleged under the facts pleaded in the Complaint or First Amended Complaint.

OPTING OUT AND OBJECTIONS TO THE SETTLEMENT

If you do not want to be a member of the settlement class or participate in the settlement, you must opt out of the Settlement by [DATE]. If you do not Opt Out, you will be bound by the terms of this Settlement. You may opt out of the Settlement by mailing a written statement to the Claims Administrator at the address below expressing your desire to be excluded from the Settlement Class, including your name (and former names, if any), current address, telephone number and social security number and the dates of your employment with Western and/or Schmid. This request must be **signed** by you. Requests to opt out that do not include all required information, or that are not submitted on time, will be deemed null, void, and ineffective. You must postmark any such opt-out written statement by [DATE]. The Address of the Claims Administrator is:

Settlement Services, Inc.
[Address]

If you are eligible, and you submit a request by [DATE] to opt out of the Settlement that complies with the above requirements, you will no longer be a member of the Settlement Class, you will be prohibited from participating in this Settlement, and you will receive no benefit from this Settlement. By opting out of the Settlement Class, you will retain whatever rights or claims you may have, if any, against Defendants, and you will be free to pursue them on an individual basis at your own cost, if you choose to do so.

If you are a member of the Settlement Class who does not opt out of the Settlement, you may object to the Settlement, personally or through an attorney, by filing your written objection with the Court and faxing or mailing a copy of your objection to Class Counsel and Defense Counsel at the above addresses. All objections must be signed and contain your address, telephone number and a reference to the case. All objections must be filed with the Court, served on Class Counsel and Defense Counsel, and faxed or postmarked on or before [DATE], which is 45 days from the Final Fairness Hearing, set for [DATE]. Your written objection should clearly explain why you object to the Settlement and must state whether you (or someone on your behalf) intend to appear at the Final Fairness Hearing. If you timely submit a written objection, you may appear, personally or through an attorney, at your own expense, at the Final Fairness Hearing to present your objection directly to the Court. If you object to the Settlement and if the Court approves the Settlement as set forth in the Stipulation of Settlement, you will be bound by the terms of the Settlement in the same way as a Class Member who does not object.

You are not required to submit a comment or objection. If you do nothing, your share of the settlement will be calculated as explained above.

EMPLOYMENT INFORMATION

Schmid and/or Western's employment records indicate that you were employed Schmid and/or Western on the following dates, and that you received the following total compensation during your employment there;

Employer	Dates of Employment	Total Compensation
INSERT	INSERT	INSERT
Employer	Dates of Employment	Total Compensation
INSERT	INSERT	INSERT

If you believe that these dates of employment or the total amount of compensation listed above are incorrect, you must submit a written, signed challenge, along with evidence of your dates of employment and/or total compensation, to the Settlement Administrator by [DATE – 30 days after mailing of Notice]. The decision regarding your dates of employment and/or total compensation will be made by the Settlement Administrator. If the Settlement Administrator concludes that your dates of employment and/or total compensation are incorrect, it will adjust your share of the settlement funds accordingly.

HEARING REGARDING THE SETTLEMENT

On [DATE], at p.m., the Honorable Dale S. Fischer for the United States District Court, Central District of California, will hold a hearing at Room 840, 255 East Temple Street Los Angeles, CA 90012, to determine whether the proposed Settlement and Plan of Allocation are fair, reasonable, and adequate and should be approved. The Court will also consider Class Counsel's application for fees and costs. The time and date of this hearing may be continued or adjourned, so please contact Class Counsel prior to the date of the hearing if you plan to attend.

Any Class Member (or the attorney for any Class Member) may appear at the hearing for any reason, however, no Class Member is required to attend..

EXAMINATION OF PLEADINGS AND PAPERS / ADDITIONAL INFORMATION

This Notice does not contain all of the terms of the proposed Settlement or all of the details of these proceedings. For more detailed information, you may refer to the underlying documents and papers on file with the Court. This file may be inspected during the hours of each Court business day at 255 East Temple Street Los Angeles, CA 90012.

For assistance, please contact the Claims Administrator, Settlement Services, Inc. at xxx.xxx.xxxx .

PLEASE <u>DO NOT</u> CALL OR WRITE THE COURT ABOUT THIS NOTICE.

Dated:_______________________, 2008 ________________________________

THE HONORABLE DALE S. FISCHER
UNITED STATES DISTRICT JUDGE