

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
BUILDING MATERIALS HOLDING) Case No. 09-12074 (KJC)
CORPORATION, et al.,)
) Jointly Administered
)
Debtors.) Hearing Date: Nov. 19, 2009
_____)

DECLARATION OF

OCTAVIANO SOTO

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

I, OCTAVIANO SOTO, 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
NEVADA, 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
\$ 39,420 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 04-03-06 to 11-12-09, I was employed by Select Build Nevada as Stucco. I believe that my employer has records of the dates of my employment; attached to this statement is **a paystub**, 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 NEVADA owes me approximately \$ 39,420 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:

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 NEVADA, 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.

Octaviano Soto

CO. FILE DEPT. CLOCK NUMBER
554 000089 702010 894 0000254534 1
00000172

020-0007

SELECTBUILD NEVADA INC.

PO BOX 70006

BOISE, ID 83707-0106



Earnings Statement



Period Beginning: 10/22/2009
Period Ending: 10/28/2009
Pay Date: 11/06/2009

Taxable Marital Status: Married
Exemptions/Allowances:
Federal: 5
NV: No State Income Tax

OCTAVIANO SOTO-FLORES
3812 SURFRIDER LN
LAS VEGAS NV 89110

Social Security Number: XXX-XX-8762

Earnings	rate	hours	this period	year to date
Piecework		40.00	460.00	19,793.00
Gross Pay			\$460.00	19,793.00

Other Benefits and Information	this period	total to date
401K Elig Wages	460.00	

Deductions	Statutory	
Social Security Tax	-28.52	1,227.17
Medicare Tax	-6.67	287.00
Federal Income Tax		197.03
Net Pay		\$424.81

Your federal taxable wages this period are \$460.00

©1998, 2006, ADP, Inc. All Rights Reserved.

TEAR HERE

© 2000 ADP, Inc.