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

In re:	)	Chapter 11		2
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BUILDING MATERIALS HOLDING	)	Case No. 09-12074	(KJC)	-
CORPORATION, et al.,	)	To be the last Dalman date to		2
	)	) Jointly Administered		
Debtors.	)	Hearing Date: Nov	. 19, 20	009
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## DECLARATION OF OCTAVIAND SOTO.

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

- I,  $\frac{\partial c\tau Aviano}{\partial c\tau Aviano}$  Sorv, 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

  Nevaor , 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  $\frac{39,420}{}$  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,  $\P$  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 Scient Buico Navana 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  $\frac{D}{D}$  hours of unpaid overtime each week, I have determined that  $\frac{SELEGF EVILO}{NEVMDA}$  owes me approximately \$  $\frac{39}{420}$  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 <u>NEVADA</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'

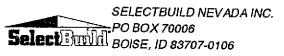
objection at this point, and to permit my claim to be decided based on all the evidence, especially when the full records of my employment are in my employer's control.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November  $\underline{\hspace{1cm}}$ , 2009.

Octaviano Sole

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020-0007



Period Beginning:

Other Benefits and

10/22/2009

Period Ending:

10/28/2009

this period

460.00

Pay Date:

11/06/2009

OCTAVIANO SOTO-FLORES 3812 SURFRIDER LN LAS VEGAS NV 89110

**Earnings Statement** 

Taxable Marital Status: Married Exemptions/Atlowances:

Federal:

NV:

No State Income Tax

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
<u>Deductions</u>	Statutory			
	Social Security	/ Tax	-28.52	1,227.17

Information 401K Elig Wages

Medicare Tax -6.67 287.00 Federal Income Tax 197.03

Net Pay \$424.81

Your federal taxable wages this period are \$460.00

total to date

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