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10 UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 F. G. CROSTHWAITE, et al., as Trustees of
 the OPERATING ENGINEERS HEALTH
 13 AND WELFARE TRUST FUND, et al.,

Case No.: C10-5058 SBA

NOTICE OF VOLUNTARY DISMISSAL

14 Plaintiffs,

v.

15 GILBERT EXCAVATING, INC., a California
 16 Corporation,

17 Defendant.

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19 PLEASE TAKE NOTICE that pursuant to F.R.C.P., Rule 41(a)(1), Plaintiffs
 20 OPERATING ENGINEERS’ HEALTH AND WELFARE TRUST FUND, et al., voluntarily
 21 dismiss, without prejudice, their claim against Defendant GILBERT EXCAVATING, INC. a
 22 California Corporation. Notwithstanding numerous attempts, Defendant could not be located and
 23 has not been served with the Summons, Complaint, and related documents. Accordingly,
 24 Defendant has neither served an answer nor moved for summary judgment, and Plaintiffs have not
 25 previously filed or dismissed any similar action against Defendant.

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It is therefore requested that this action be dismissed without prejudice, and that the Court retain jurisdiction over this matter.

I declare under penalty of perjury that I am the attorney for the Plaintiffs in the above-entitled action, and that the foregoing is true of my own knowledge.

Executed this 23rd day of December, 2010, at San Francisco, California.

SALTZMAN & JOHNSON
LAW CORPORATION

By: /S/Muriel B. Kaplan
Muriel B. Kaplan
Attorneys for Plaintiffs

IT IS SO ORDERED.

This case is dismissed without prejudice. ~~and the Court shall retain jurisdiction over this matter.~~ SBA

Date: 1/10/11

Sandra B. Armstrong
UNITED STATES DISTRICT COURT JUDGE