

1 GAY CROSTHWAIT GRUNFELD – 121944  
LAURA BOYSEN-ARAGON – 248083  
2 JENNY S. YELIN – 273601  
ROSEN, BIEN & GALVAN, LLP  
3 315 Montgomery Street, Tenth Floor  
San Francisco, California 94104-1823  
4 Telephone: (415) 433-6830  
Facsimile: (415) 433-7104  
5 Email: ggrunfeld@rbg-law.com  
lboysen-aragon@rbg-law.com  
6 jyelin@rbg-law.com

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7 ELISA J. STEWART – 219557  
WENDY E. MUSELL – 203507  
8 STEWART & MUSELL, LLP  
351 California Street, Suite 700  
9 San Francisco, California 94104  
Telephone: (415) 593-0083  
10 Facsimile: (415) 520-0920  
Email: estewart@stewartandmusell.com  
11 wmusell@stewartandmusell.com

12 Attorneys for Plaintiffs

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF ALAMEDA

15 (UNLIMITED JURISDICTION) RE 12636635

16 JOSE RAMIREZ, LUIS GOMEZ,  
and MARCK MENA ORTEGA on  
17 behalf of themselves and all persons  
similarly situated,

18 Plaintiffs,

19 v.

20 GHILOTTI BROS., INC., a  
21 corporation; GHILOTTI BROTHERS  
CONSTRUCTION, INC., a  
22 corporation; GHILOTTI  
CONSTRUCTION COMPANY,  
23 INC., a corporation; MAGGIORA  
AND GHILOTTI, INC.; a  
24 corporation; and DOES 1 to 50,  
inclusive,

25 Defendants.

Case No.

**COMPLEX CASE; CLASS ACTION**

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF:**

- (1) Violations of Labor Code §§ 226.7 and 512,  
and Industrial Welfare Commission Order  
No. 16-2001
- (2) Violations of Labor Code §§ 1182.12, 1194,  
1197, 1198
- (3) Violations of Labor Code § 226(a)
- (4) Violations of the Fair Labor Standards Act,  
29 U.S.C. §§ 206 and 207, and 29 C.F.R.  
§§ 516 et seq.
- (5) Violations of Labor Code §§ 2698, et seq.
- (6) Violations of Business and Professions Code  
§§ 17200, et seq.

**JURY TRIAL DEMANDED**

BY FAX

1 Plaintiffs LUIS GOMEZ, JOSE RAMIREZ, and MARCK MENA ORTEGA  
2 (“Plaintiffs”), by and through their attorneys, ROSEN, BIEN & GALVAN, LLP and  
3 STEWART & MUSELL, LLP hereby complain against Defendants GHILOTTI BROS.,  
4 INC. (“Defendant GBI”), a corporation doing business in California; GHILOTTI  
5 BROTHERS CONSTRUCTION, INC. (“Defendant Ghilotti Brothers Construction”), a  
6 corporation doing business in California; GHILOTTI CONSTRUCTION COMPANY,  
7 INC. (“Defendant Ghilotti Construction”), a corporation doing business in California;  
8 MAGGIORA AND GHILOTTI, INC. (“Defendant Maggiora and Ghilotti”), a corporation  
9 doing business in California; and DOES 1 through 50, (Ghilotti Bros., Inc., Ghilotti  
10 Brothers Construction, Inc., Ghilotti Construction Company, Inc., Maggiora And Ghilotti,  
11 Inc., and DOES 1 to 50, hereinafter collectively referred to as “Defendants”) as follows:

12 **INTRODUCTION**

13 1. Plaintiffs, United States citizens of Mexican descent, work grueling days for  
14 Defendants, loading their trucks with heavy equipment, traveling to job sites throughout  
15 the San Francisco Bay Area, working hard at the construction job sites, and then returning  
16 the trucks and equipment to the loading area in clean and working condition. Yet  
17 Defendants, who publicly boast of beating their competitors’ lucrative construction bids,  
18 refuse to pay Plaintiffs for any of the hours that they work outside the official job site.  
19 Moreover, Defendants routinely deny lunch and rest breaks to these construction workers,  
20 reducing the safety of the job site. Defendants attempt to evade their obligations under  
21 California law by having Plaintiffs sign “safety sheets” in English. These “safety sheets”  
22 falsely assert that Defendants provided all required rest periods and paid all wages. If  
23 Plaintiffs complain of these harsh and unfair conditions, Defendants retaliate by denying  
24 them work shifts, a mechanism that has effectively silenced opposition until now.

25 **JURISDICTION AND VENUE**

26 2. This is a class action pursuant to California Code of Civil Procedure section  
27 382, and/or a representative action under California Business and Professions Code  
28 sections 17200 et seq., seeking damages for rest periods not provided, damages for meal

1 periods not provided, unpaid minimum wages, unpaid overtime wages, restitution of  
2 unpaid overtime and minimum wages and of meal and rest period wages, penalties for  
3 Labor Code violations and violations of applicable California Industrial Welfare  
4 Commission (“IWC”) Wage Orders, liquidated damages, interest, equitable relief, and  
5 reasonable attorney’s fees and costs, under California Labor Code sections 226(a), 226.7,  
6 512, 1182.12, 1194, 1194.2, 1197, 1198, and 2698 et seq.; California Business and  
7 Professions Code sections 17200 et seq.; the applicable IWC Wage Orders; California  
8 Civil Code sections 3287-3289; California Code of Civil Procedure section 1021.5; and the  
9 Fair Labor Standards Act, 29 U.S.C. sections 206, 207 and 216.

10       3. Defendants GBI, Ghilotti Brothers Construction, and Maggiora and Ghilotti  
11 are, and at all times herein mentioned were, corporations duly organized and existing  
12 under the laws of the State of California, and their principal places of business are in the  
13 County of Marin, State of California. Defendant Ghilotti Construction, is and at all times  
14 herein mentioned was, a corporation duly organized and existing under the laws of the  
15 State of California, and its principal place of business is in the County of Sonoma, State of  
16 California. Defendants GBI, Ghilotti Brothers Construction, Maggiora and Ghilotti, and  
17 Ghilotti Construction are corporations authorized to do business in, and are in fact doing  
18 business in California.

19       4. Venue is proper in this Court pursuant to California Code of Civil Procedure  
20 sections 395 and 395.5. This Court is the proper Court, and this action is properly filed in  
21 the County of Alameda because Defendants’ obligations and liabilities arise therein and  
22 because Plaintiffs performed work for Defendants in several counties in California,  
23 including Alameda County, and Defendants are qualified to do business, and regularly  
24 conduct business, in Alameda County.

25       5. Pursuant to the California Labor Code Private Attorneys General Act of  
26 2004, Labor Code sections 2698-2699.5 (“PAGA”), Plaintiffs have provided written notice  
27 by certified mail to the Labor & Workforce Development Agency (“LWDA”) and to  
28 Defendants of the legal claims and theories of this case, contemporaneous with the filing

1 of the initial complaint in this action. Thirty-three days have not yet passed since the  
2 postmark date of the written notice to the LWDA, and Plaintiffs have not received  
3 notification from the LWDA that it intends to investigate the alleged violations.  
4 Accordingly, Plaintiffs intend to exhaust administrative remedies as required by Labor  
5 Code section 2699.3 and will subsequently file an amended complaint and include claims  
6 for civil penalties pursuant to California Labor Code sections 2699(a) and (f), for failure to  
7 provide adequate rest periods, failure to compensate employees at or above state minimum  
8 wage for all hours worked, failure to furnish accurate wage statements. The penalties to be  
9 claimed pursuant to Labor Code section 2699(f) for violations of the California Labor  
10 Code, except those for which a civil penalty is specifically provided, including but not  
11 limited to Labor Code section 226.7 are as follows: (1) for any initial violation, one  
12 hundred dollars (\$100) for each Plaintiff or member of the General Class or State and  
13 FLSA Minimum Wage and FLSA Overtime Subclass for the initial pay period, and (2) two  
14 hundred dollars (\$200) for each Plaintiff or member of the General Class or State and  
15 FLSA Minimum Wage and FLSA Overtime Subclass per pay period for each subsequent  
16 violation. Pursuant to Labor Code section 2699(i), said civil penalties will be distributed  
17 as follows: 75 percent to the LWDA for enforcement of labor laws and education of  
18 employers and employees and 25 percent to the aggrieved employees.

19 **PARTIES**

20 6. Plaintiff Jose Ramirez is a natural person. Plaintiff Ramirez is a U.S. citizen  
21 of Mexican descent whose primary language is Spanish. Plaintiff Ramirez resides in  
22 Contra Costa County, California. Plaintiff Ramirez is and has been employed by  
23 Defendant GBI as a non-exempt laborer most recently from approximately 2006 through  
24 the filing of this complaint and continuing. At the time of filing this complaint, Plaintiff  
25 Ramirez's current hourly wage is \$29.37 per hour for day work and \$32.37 per hour for  
26 night work. Part of Plaintiff Ramirez's duties as a laborer for Defendant GBI include  
27 loading necessary construction equipment into GBI trucks at the GBI loading area located  
28 at 525 Jacoby Street, San Rafael, California (the "GBI Loading Area") and driving these

1 loaded trucks from the GBI Loading Area to the relevant job site. Another part of Plaintiff  
2 Ramirez's duties as a laborer for Defendant GBI includes loading necessary construction  
3 equipment into GBI trucks at the relevant job site and returning these loaded trucks and  
4 equipment to the GBI Loading Area, where Plaintiff Ramirez must unload the necessary  
5 construction equipment at the end of his shift.

6         7. Plaintiff Luis Gomez is a natural person. Plaintiff Gomez is a U.S. citizen of  
7 Mexican descent whose primary language is Spanish. Plaintiff Gomez resides in Contra  
8 Costa County, California. Plaintiff Gomez is and has been employed by Defendant GBI as  
9 a non-exempt laborer most recently from approximately 2008 through the filing of this  
10 complaint and continuing. At the time of filing this complaint, Plaintiff Gomez's current  
11 hourly wage is \$30.37 per hour for day work and \$33.37 per hour for night work. Part of  
12 Plaintiff Gomez's duties as a laborer for Defendant GBI include loading necessary  
13 construction equipment into GBI trucks at the GBI Loading Area and driving these loaded  
14 trucks from the GBI Loading Area to the relevant job site. Another part of Plaintiff  
15 Gomez's duties as a laborer for Defendant GBI includes loading necessary construction  
16 equipment into GBI trucks at the relevant job site and returning these loaded trucks and  
17 equipment to the GBI Loading Area, where Plaintiff Gomez must unload the necessary  
18 construction equipment at the end of his shift.

19         8. Plaintiff Marck Mena Ortega is a natural person. Plaintiff Ortega is a U.S.  
20 citizen of Mexican descent whose primary language is Spanish. Plaintiff Ortega resides in  
21 Contra Costa County, California. Plaintiff Ortega has been employed by Defendant GBI  
22 as a non-exempt laborer from April 2006 through the filing of this complaint and  
23 continuing. At the time of filing this complaint, Plaintiff Ortega's current hourly wage is  
24 \$29.62 per hour for day work and \$32.62 per hour for night work. Part of Plaintiff  
25 Ortega's duties as a laborer for Defendant GBI include loading necessary construction  
26 equipment into GBI trucks at the GBI Loading Area and driving these loaded trucks from  
27 the GBI Loading Area to the relevant job site. Another part of Plaintiff Ortega's duties as  
28 a laborer for Defendant GBI includes loading necessary construction equipment into GBI

1 trucks at the relevant job site and returning these loaded trucks and equipment to the GBI  
2 Loading Area, where Plaintiff Ortega must unload the necessary construction equipment at  
3 the end of his shift.

4 9. Defendant GBI is a California corporation authorized to do business in, and  
5 in fact doing business in, California. Defendant GBI is a resident of the state of California  
6 and the County of Marin.

7 10. Defendant Ghilotti Brothers Construction is a corporation authorized to do  
8 business in, and in fact doing business in California. Defendant Ghilotti Brothers  
9 Construction is a resident of the state of California and the County of Marin.

10 11. Defendant Ghilotti Construction is a corporation authorized to do business  
11 in, and in fact doing business in California. Defendant Ghilotti Construction is a resident  
12 of the state of California and the County of Sonoma.

13 12. Defendant Maggiora and Ghilotti is a corporation authorized to do business  
14 in, and in fact doing business in California. Defendant Maggiora and Ghilotti is a resident  
15 of the state of California and the County of Marin.

16 13. Plaintiffs do not know the true names and capacities of those Defendants  
17 sued herein as DOES 1 through 50, inclusive, and therefore sue those Defendants by such  
18 fictitious names.

19 14. Plaintiffs will amend this Complaint to allege the true names and capacities  
20 of the Defendants sued herein as DOES 1 through 50 whenever they are ascertained.

21 15. Plaintiffs are informed and believe, and on that basis allege, that each of the  
22 defendants sued herein as DOES 1 through 50, inclusive, is in some manner legally  
23 responsible for the wrongful acts and/or omissions alleged herein.

24 16. Plaintiffs are informed and believe, and on that basis allege, that each of the  
25 Defendants acted in concert with each and every other Defendant, intended to and did  
26 participate in the events, acts, practices and courses of conduct alleged herein, and  
27 proximately caused damage and injury thereby to Plaintiffs as alleged herein.

28 17. At all times herein mentioned, each of Defendants, including DOES 1

1 through 50, were agents, employees, supervisors, employers, alter egos, and/or joint  
2 venturers of these Defendants, and were acting both individually and in the course and  
3 scope of such relationship, and/or as integrated enterprises and/or joint employers, with  
4 knowledge and/or consent of the remaining Defendants.

### 5 **FACTUAL ALLEGATIONS**

6 18. Plaintiffs re-allege and incorporate by reference herein all allegations  
7 previously made in paragraphs 1 through 17, above.

8 19. Defendants are, and at times relevant to this Complaint were, “employers”  
9 under applicable California state law, relevant IWC Wage Orders and applicable federal  
10 law.

11 20. Plaintiffs and members of the General Class and Subclasses are and were at  
12 all times relevant to this Complaint “employees” of Defendants, as that term is defined  
13 under applicable California state law, relevant IWC Wage Orders, and applicable federal  
14 law.

15 21. At all times during the relevant period, Plaintiffs and members of the Class  
16 are and were non-exempt employees subject to the wage and hour requirements of IWC  
17 Wage Order 16-2001 (Cal. Code Regs., tit. 8, § 11160), which applies to onsite  
18 construction workers.

19 22. Plaintiffs are informed and believe, and on that basis allege, that Defendants  
20 are in the business of construction for customers in more than 11 counties in Northern  
21 California. Defendants’ projects have included the construction of utilities, roads, bridges,  
22 subdivisions, stadiums and athletic fields, airfield taxis and runways, railways, and  
23 marinas.

24 23. Plaintiffs are informed and believe, and on that basis allege, that Defendants  
25 employ more than 275 individuals and generate annual revenues well in excess of \$100  
26 million dollars per year.

27 24. Plaintiffs are informed and believe, and on that basis allege, that Defendants  
28 currently employ approximately 25 laborers who, like Plaintiffs, also are responsible for

1 loading necessary construction equipment into GBI trucks at the GBI Loading Area and  
2 driving these loaded trucks from the GBI Loading Area to the relevant job site, as well as  
3 loading necessary construction equipment into GBI trucks at the relevant job site and  
4 returning these loaded trucks and equipment to the GBI Loading Area, where these  
5 laborers must unload the necessary construction equipment at the end of their shift  
6 (“Loading and Transport Duties”).

7         25. Plaintiffs are informed and believe that most, if not all, laborers with  
8 Loading and Transport Duties are of Mexican or other Latin American descent whose  
9 primary language is Spanish.

10         26. Plaintiffs and other members of the Class are required to call or log onto  
11 Defendants’ dispatch system each night in order to receive instructions for the next day’s  
12 duties. Defendants’ dispatch informs Plaintiffs of the time that they are required to arrive  
13 at the job site, but does not disclose what time Plaintiffs must actually arrive to the GBI  
14 Loading Area to perform the off-the-clock duties of loading the necessary equipment onto  
15 work trucks and subsequently transporting materials and equipment to each job site.  
16 Plaintiffs are informed when their shift ends while on the job site by the job foreman. This  
17 end time does not include the off-the-clock Loading and Transport Duties of loading the  
18 equipment onto work trucks that must be returned to the GBI Loading Area as well as the  
19 time it takes to transport the work truck from the job site to the GBI Loading Area and  
20 subsequently unload the equipment at the GBI Loading Area.

21         27. Defendants’ policy, pattern and practice is to require Plaintiffs to arrive at  
22 the GBI Loading Area located at 525 Jacoby Street, San Rafael, California approximately  
23 one (1) hour prior to the time that Defendants’ dispatch system states is the start time for a  
24 job. Plaintiffs are sometimes required to arrive one and one-half (1-1/2) to three (3) hours  
25 early.

26         28. Upon arriving at the GBI Loading Area, Defendants require Plaintiffs with  
27 Loading and Transport Duties to load trucks owned and operated by Defendants with the  
28 necessary supplies and equipment to be delivered to the job site. Defendants then require



1 Plaintiffs to drive Defendants' trucks to the job site. This work typically takes between  
2 one (1) and three (3) hours. At the end of the shift, Defendants require Plaintiffs to load  
3 Defendants' trucks with the necessary supplies and equipment and drive Defendants'  
4 trucks back to the GBI Loading Area, where Defendants require Plaintiffs and other class  
5 members with Loading and Transport Duties to unload Defendants' equipment and  
6 supplies and, if necessary, wash Defendants' trucks and equipment.

7         29. Defendants do not compensate Plaintiffs and other class members with  
8 Loading and Transport Duties for all hours worked. Defendants' policy, pattern and  
9 practice is to refuse to pay Plaintiffs and other class members with Loading and Transport  
10 Duties for the time they spend loading and unloading Defendants' trucks with necessary  
11 equipment and supplies and transporting Defendants' trucks and necessary equipment and  
12 supplies to and from the job sites prior to the shift, as defined by the dispatch system, and  
13 after they leave the job site. Defendants also refuse to pay Plaintiffs and other class  
14 members with Loading and Transport Duties for the time they spend at the GBI Loading  
15 Area.

16         30. Plaintiffs and members of the class are forced to work without breaks in the  
17 hot sun, moving heavy equipment while wearing safety gear. On more than one occasion,  
18 Plaintiffs have witnessed employees of Defendants suffer from heat stroke or heat  
19 exhaustion as a result of these conditions.

20         31. During the relevant period, Plaintiffs and other class members regularly  
21 worked in excess of four (4) hours a day without being afforded a rest period of at least ten  
22 (10) minutes during which they were relieved of all duty. Defendants generally do not  
23 provide Plaintiffs and other members of the class with the opportunity to take rest breaks  
24 during their work shifts. When rest periods are provided, Defendants' policy, pattern and  
25 practice is to encourage and/or coerce Plaintiffs and other class members to forego these  
26 rest periods. Plaintiffs and other class members do not fall within any exemption to the  
27 rest break requirement of California state law and applicable IWC Wage Orders.

28         32. Defendants do not pay Plaintiffs and other class members one additional

1 hour of pay at the regular rate of compensation for each workday that the rest period is not  
2 provided to them.

3 33. Prior to December 31, 2010, Plaintiffs and other class members regularly  
4 worked in excess of five (5) hours a day without being afforded a meal period of at least  
5 thirty (30) minutes, and in excess of ten (10) hours a day without being afforded a second  
6 meal period of not less than thirty (30) minutes during which they were relieved of all  
7 duty. Defendants' policy, pattern and practice is to prohibit Plaintiffs and other class  
8 members from taking meal periods of at least 30 minutes during their work shifts. When  
9 meal periods are provided, Defendants encourage and/or coerce Plaintiffs and other class  
10 members to forego these meal periods. Prior to December 31, 2010, Plaintiffs and other  
11 class members did not fall within any exemption to the meal break requirement of  
12 California state law and applicable IWC Wage Orders.

13 34. Defendants did not pay Plaintiffs and other class members one additional  
14 hour of pay at the regular rate of compensation for each workday that the meal period was  
15 not provided to them.

16 35. Defendants provide Plaintiffs and other class members with false pay records  
17 that do not reflect the hours Plaintiffs and other class members actually worked. These  
18 false pay records only reflect payment for the hours spent on the job site and do not  
19 compensate Plaintiffs and other class members with Loading and Transport Duties for their  
20 Loading and Transport Duties.

21 36. Defendants provide Plaintiffs and other class members with false pay records  
22 because Defendants' pay records do not reflect compensation for missed meal or rest  
23 periods.

24 37. Defendants have a policy, pattern and practice of penalizing Plaintiffs for  
25 complaining about aspects of their work, including Defendants' failure to provide required  
26 rest or meal periods. This retaliation typically includes assigning Plaintiffs and other class  
27 members to fewer shifts or failing to assign Plaintiffs and other class members to work any  
28 shifts in the days and weeks following a complaint.

1 38. Defendants require Plaintiffs and other class members to sign a misleading  
2 form prior to receiving their weekly pay check. This form, called a "Safety Sheet," falsely  
3 states that Plaintiffs have received all required meal and rest breaks for the week. This  
4 form is only written in English.

5 **CLASS ACTION ALLEGATIONS**

6 39. Plaintiffs re-allege and incorporate by reference herein all allegations  
7 previously made in paragraphs 1 through 38, above.

8 40. Plaintiffs bring this action on behalf of themselves and all others similarly  
9 situated. Plaintiffs seek class certification pursuant to California Code of Civil Procedure  
10 section 382 and/or certification of a representative action pursuant to California Business  
11 and Professions Code sections 17200 et seq. Such a representative action is necessary to  
12 prevent and remedy the unlawful and unfair practices described herein.

13 41. Plaintiffs bring the claims articulated herein on behalf of the following  
14 proposed classes, the members of which have all been damaged by Defendants' above-  
15 described conduct:

16 General Class: All present and former non-exempt employees of Defendants  
17 who have worked at a construction site as a laborer at any time from four  
18 years prior to the filing of this action, until the resolution of this action.

19 Meal Period Subclass: All present and former non-exempt employees of  
20 Defendants who have worked at a construction site as a laborer at any time  
21 from four years prior to the filing of this action through December 31, 2010.

22 State and FLSA Minimum Wage and FLSA Overtime Subclass: All present  
23 and former non-exempt employees of Defendants who have worked at a  
24 construction site as a laborer at any time from four years prior to the filing of  
25 this action, until the resolution of this action, and whose work included the  
26 loading and unloading of Defendants' trucks and the transport of necessary  
27 construction equipment to and from jobsites prior to the start of their shifts  
28 and following the conclusion of their shifts.

1           42. Pursuant to the requirements of California Code of Civil Procedure section  
2 382, there is a well-defined community of interest in the questions of law and fact involved  
3 affecting the Plaintiffs and class members, and the proposed class and subclasses are easily  
4 ascertainable.

5           43. Numerosity: The potential members of the General Class as defined are  
6 sufficiently numerous that joinder of all members of the General Class is impractical and  
7 unfeasible. While the precise membership of the proposed General Class is undetermined  
8 at this time, Plaintiffs are informed and believe that the proposed General Class is  
9 comprised of at least 100 members and the identity of such members should be easily  
10 ascertainable through inspection of Defendants' employment records.

11           44. Commonality: Common questions of law and fact exist as to all General  
12 Class and Subclass Members that predominate over any questions affecting individual  
13 members, including, but not limited to, the following:

14           a. Whether and to what extent Defendants violated IWC Wage Order  
15 No. 16-2001 and Labor Code section 226.7 by failing to afford Plaintiffs and members of  
16 the General Class proper rest periods and by encouraging and/or coercing Plaintiffs and  
17 other members of the General Class to forego taking their rest periods.

18           b. Whether and to what extent, prior to December 31, 2010, Defendants  
19 violated Wage Order No. 16-2001 and Labor Code sections 226.7 and 512 by failing to  
20 provide proper meal periods and encouraging and/or coercing Plaintiffs and other members  
21 of the Meal Period Subclass to forego taking their meal periods.

22           c. Whether and to what extent Defendants violated Labor Code sections  
23 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198 by failing to pay Plaintiffs and other  
24 members of the State and FLSA Minimum Wage and FLSA Overtime Subclass at least  
25 California minimum wage for all hours worked by failing to pay Plaintiffs and other  
26 members of the State and FLSA Minimum Wage and FLSA Overtime Subclass for the  
27 time they spend loading and unloading Defendants' trucks with necessary equipment and  
28 supplies, transporting Defendants' trucks and necessary equipment and supplies to and

1 from the job sites, and cleaning the trucks and equipment after returning them to the GBI  
2 Loading Area.

3 d. Whether Defendants violated California Labor Code section 226(a) by  
4 failing to furnish required accurate payroll records of Plaintiffs and of members of the  
5 General Class, Meal Period Subclass and State and FLSA Minimum Wage and FLSA  
6 Overtime Subclass.

7 e. Whether and to what extent Defendants violated the Fair Labor  
8 Standards Act, 29 U.S.C. sections 206 and 207 by failing to pay Plaintiffs and other  
9 members of the State and FLSA Minimum Wage and FLSA Overtime Subclass at a rate no  
10 less than federal minimum wage for each hour worked or overtime compensation for work  
11 done in excess of forty (40) hours per week by failing to pay Plaintiffs and other members  
12 of the State and FLSA Minimum Wage and FLSA Overtime Subclass for the time they  
13 spend loading and unloading Defendants' trucks with necessary equipment and supplies,  
14 transporting Defendants' trucks and necessary equipment and supplies to and from the job  
15 sites, and cleaning the trucks and equipment after returning them to the GBI Loading Area.

16 f. Whether Defendants violated California Business and Professions  
17 Code sections 17200 et seq. by engaging in the conduct described hereinabove as to the  
18 General Class, the Meal Break Class and the State and FLSA Minimum Wage and FLSA  
19 Overtime Subclass by failing to afford proper rest periods; by failing to provide proper  
20 meal periods; by failing to furnish accurate pay records; by failing to pay overtime  
21 compensation; and by failing to pay minimum wage compensation for all hours worked.

22 g. Whether and to what extent Defendants are subject to injunctive relief  
23 necessary to prevent the wage and hour violations described herein.

24 h. Whether and to what extent Defendants must compensate Plaintiffs  
25 and members of the General Class, Meal Period Subclass and State and FLSA Minimum  
26 Wage and FLSA Overtime Subclass with restitution and damages to compensate for the  
27 violations alleged herein.

28 45. Typicality: The claims of the named Plaintiffs are typical of the claims of

1 the members of the General Class, Meal Period Subclass and State and FLSA Minimum  
2 Wage and FLSA Overtime Subclass. Plaintiffs and all other members of the General  
3 Class, Meal Period Subclass and State and FLSA Minimum Wage and FLSA Overtime  
4 Subclass sustained similar injuries and damages arising out of and caused by Defendants'  
5 common course of conduct in violation of law as alleged herein.

6 46. Adequacy of Representation: Plaintiffs are members of the General Class,  
7 Meal Period Subclass and State and FLSA Minimum Wage and FLSA Overtime Subclass  
8 and will fairly and adequately represent and protect the interests of the putative class  
9 members because they have no disabling conflict(s) of interest that would be antagonistic  
10 to those of the other class members. Plaintiffs have retained counsel who are competent  
11 and experienced in complex class action and wage and hour litigation.

12 47. Superiority of Class Action: There is no plain, speedy, or adequate remedy  
13 other than by maintenance of this class action because Plaintiffs and other members of the  
14 General Class, Meal Period Subclass and State and FLSA Minimum Wage and FLSA  
15 Overtime Subclass suffered similar treatment and harm as a result of systematic policies  
16 and practices, and because, absent a class action, Defendants' unlawful conduct will likely  
17 continue un-remedied and unabated given that the damages suffered by individual class  
18 members are small compared to the expense and burden of individual litigation. Class  
19 certification is also superior because it will obviate the need for unduly duplicative  
20 litigation which might result in inconsistent judgments about Defendants' practices.  
21 Consequently, there would be a failure of justice but for the maintenance of the present  
22 class action.

23 **FIRST CAUSE OF ACTION**  
24 **(Failure to Provide Rest Periods in Violation of Cal. Lab. Code §§ 226.7, 1198 and**  
25 **Industrial Welfare Commission Order No. 16-2001 — By General Class**  
26 **Against All Defendants)**

26 48. Plaintiffs re-allege and incorporate by reference herein all allegations  
27 previously made in paragraphs 1 through 47, above.

28 49. California Labor Code section 226.7(a) prohibits an employer from requiring

1 an employee to work during any rest period mandated by an applicable Industrial Wage  
2 Order. IWC Wage Order No. 16-2001 section 11(A) requires employers to permit  
3 employees to take a paid rest period of at least ten (10) minutes for every four (4) hours  
4 worked or major fraction thereof. Under both California Labor Code section 226.7(b) and  
5 IWC Wage Order No. 16-2001 section 11(D), if an employer fails to provide an employee  
6 a rest period as required, the employer must pay the employee one hour of pay at the  
7 employee's regular rate of compensation for each workday that a rest period is not  
8 provided as required.

9       50. California Labor Code section 1198 makes unlawful the employment of an  
10 employee under conditions the IWC prohibits. As discussed herein, Plaintiffs intend to  
11 amend their Complaint to allege that the exhaustion process they have commenced under  
12 PAGA has been completed. Following that amendment, under California Labor Code  
13 section 2699(f), Defendants will also be liable for civil penalties for failure to provide  
14 adequate rest periods as follows: (1) for any initial violation, one hundred dollars (\$100)  
15 for each Plaintiff or member of the General Class for the initial pay period, and (2) two  
16 hundred dollars (\$200) for each Plaintiff or member of the General Class for each  
17 subsequent violation. Pursuant to Labor Code section 2699(i), said civil penalties will be  
18 distributed as follows: 75 percent to the LWDA for enforcement of labor laws and  
19 education of employers and employees and 25 percent to the aggrieved employees.

20       51. Defendants have a policy or practice of failing to authorize and permit  
21 Plaintiffs and General Class members to take, on time or at all, the rest periods required by  
22 California Labor Code section 226.7 and IWC Wage Order No. 16-2001 section 11.

23       52. Defendants also have a policy and practice of failing to pay each of their  
24 employees who was not provided with a rest period as required an additional one hour of  
25 compensation at each employee's regular rate of pay.

26       53. As a direct and proximate result of Defendants' unlawful conduct as alleged  
27 herein, Plaintiffs and members of the General Class have sustained economic damages,  
28 including but not limited to, unpaid wages and lost interest, in an amount to be established

1 at trial, and are entitled to recover economic and statutory damages and other appropriate  
2 relief from Defendants' violations of the California Labor Code and IWC Wage Order No.  
3 16-2001.

4 WHEREFORE, Plaintiffs and the General Class request relief as described below.

5 **SECOND CAUSE OF ACTION**  
6 **(Failure to Provide Meal Breaks in Violation of Cal. Lab. Code §§ 226.7, 512, 1198**  
7 **and Industrial Welfare Commission Order 16-2001 – By Meal Period Subclass**  
8 **Against All Defendants)**

9 54. Plaintiffs re-allege and incorporate by reference herein all allegations  
10 previously made in paragraphs 1 through 53, above.

11 55. California Labor Code section 226.7(a) prohibits an employer from requiring  
12 an employee to work during any meal period mandated by an applicable IWC Wage Order.  
13 IWC Wage Order No. 16-2001 section 10(A) and, until December 31, 2010, California  
14 Labor Code section 512(a) prohibited employers from employing a worker for more than  
15 five (5) hours without a meal period of at least thirty (30) minutes. IWC Wage Order No.  
16 16-2001 section 10(B) and, until December 31, 2010, Labor Code section 512(a) also  
17 prohibited employers from employing a worker for more than ten hours without a second  
18 meal period of at least 30 minutes. Under California Labor Code section 226.7(b) and  
19 IWC Wage Order No. 16-2001 section 10(F), if an employer fails to provide an employee  
20 a meal period as required, the employer must pay the employee one hour of pay at the  
21 employee's regular rate of compensation for each workday that the meal period is not  
22 provided as required.

23 56. California Labor Code section 1198 makes unlawful the employment of an  
24 employee under conditions the IWC prohibits.

25 57. Through December 31, 2010, Defendants had a policy or practice of failing  
26 to authorize and permit Plaintiffs and members of the Meal Period Subclass to take the  
27 meal periods required by California Labor Code sections 226.7, 512 and IWC Wage Order  
28 No. 16-2001 section 10.

58. Through December 31, 2010, Defendants also had a policy and practice of



1 failing to pay each of their employees who was not provided with a meal period as  
2 required, an additional one hour of compensation at each employee's regular rate of pay.

3 59. As a direct and proximate result of Defendants' unlawful conduct as alleged  
4 herein, Plaintiffs and members of the Meal Period Subclass have sustained economic  
5 damages, including but not limited to unpaid wages and lost interest, in an amount to be  
6 established at trial, and are entitled to recover economic and statutory damages, as well as  
7 interest, costs and reasonable attorney's fees and costs pursuant to statute and other  
8 appropriate relief from Defendants' violations of the California Labor Code and IWC  
9 Wage Order No. 16-2001.

10 WHEREFORE, Plaintiffs and the Meal Period Subclass request relief as described  
11 below.

12 **THIRD CAUSE OF ACTION**  
13 **(Failure to Pay State Minimum Wage Cal. Lab. Code §§ 1182.12, 1194, 1194.2, 1197,**  
14 **1197.1, 1198 and Industrial Welfare Commission Order 16-2001 — By State and**  
15 **FLSA Minimum Wage and FLSA Overtime Subclass Against All Defendants)**

16 60. Plaintiffs re-allege and incorporate by reference herein all allegations  
17 previously made in paragraphs 1 through 59, above.

18 61. California Labor Code sections 1182.12 and 1197, and IWC Wage Order No.  
19 16-2001 section 4, require Defendants to pay Plaintiffs and all class and subclass members  
20 at or above the state minimum wage of \$8.00 per hour for every hour Defendants suffer or  
21 permit those employees to work.

22 62. California Labor Code section 1198 makes unlawful the employment of an  
23 employee under conditions the IWC prohibits. California Labor Code sections 1194(a)  
24 and 1194.2(a) provide that an employer that has failed to pay its employees the legal  
25 minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as  
26 well as liquidated damages in an amount equal to the wages unpaid and interest thereon.  
27 Under California Labor Code section 1197.1, Defendants are also liable for civil penalties,  
28 for failure to pay minimum wage as follows: (1) for any initial violation, one hundred  
dollars (\$100) for each Plaintiff or member of the State and FLSA Minimum Wage and

1 FLSA Overtime Subclass for each pay period for which he or she was not paid minimum  
2 wage, and (2) for each subsequent violation, two hundred fifty dollars (\$250) for each  
3 Plaintiff or member of the State and FLSA Minimum Wage and FLSA Overtime Subclass  
4 for each pay period for which he or she was not paid minimum wage. Defendants have a  
5 policy or practice of failing to pay Plaintiffs and members of the State and FLSA  
6 Minimum Wage and FLSA Overtime Subclass at or above the California minimum wage  
7 for many hours worked by Plaintiffs and subclass members, including mandatory time  
8 spent loading and unloading trucks with necessary equipment and supplies and necessary  
9 travel in Defendants' vehicles to and from the GBI Loading Area and the jobsite that is  
10 performed by subclass members for which subclass members were not compensated.

11 63. As a direct and proximate result of Defendants' unlawful conduct as alleged  
12 herein, Plaintiffs and members of the State and FLSA Minimum Wage and FLSA  
13 Overtime Subclass have sustained economic damages, including but not limited to unpaid  
14 minimum wages and lost interest, in an amount to be established at trial, and are entitled to  
15 recover economic and statutory damages, penalties, pre-judgment interest and other  
16 appropriate relief from Defendants' violations of the California Labor Code and IWC  
17 Wage Order No. 16-2001, including reasonable attorney's fees and costs.

18 64. In committing the foregoing acts, Defendants were guilty of oppression,  
19 fraud or malice, and, in addition to the actual damages caused thereby, Plaintiffs and the  
20 subclass are entitled to recover damages for the sake of example by way of punishing  
21 Defendants.

22 WHEREFORE, Plaintiffs and the State and FLSA Minimum Wage and FLSA  
23 Overtime Subclass request relief as described below.

24 **FOURTH CAUSE OF ACTION**  
25 **(Failure to Furnish Accurate Wage Statements in Violation of Cal. Lab. Code**  
26 **§ 226 — By State and FLSA Minimum Wage and FLSA Overtime Subclass**  
27 **Against All Defendants)**

28 65. Plaintiffs re-allege and incorporate by reference herein all allegations  
previously made in paragraphs 1 through 64, above.

1           66. California Labor Code section 226(a) requires employers to accurately report  
2 total hours worked by Plaintiffs and members of the State and FLSA Minimum Wage and  
3 FLSA Overtime Subclass. Defendants have knowingly and intentionally failed to comply  
4 with Labor Code section 226(a) on each and every wage statement provided to Plaintiffs  
5 and members of the State and FLSA Minimum Wage and FLSA Overtime Subclass for  
6 hours worked performing Loading and Transport Duties. Pursuant to Defendants' policy  
7 or practice, Defendants have willfully failed and continue to willfully fail to accurately  
8 report total hours worked on wage statements in violation of California Labor Code section  
9 226(a).

10           67. Plaintiffs and members of the State and FLSA Minimum Wage and FLSA  
11 Overtime Subclass have suffered and will continue to suffer actual economic harm  
12 resulting from these violations, as they have been, and will continue to be, precluded from  
13 accurately monitoring the wages to which they are entitled, have been required to retain  
14 counsel and other experts and consultants to evaluate and calculate unpaid wages, and have  
15 suffered delays in receiving the wages and interest that are due and owed to them.  
16 Defendants' ongoing violations of this mandatory recordkeeping law has caused, and will  
17 continue to cause, irreparable harm to Plaintiffs and class members, among other reasons  
18 because as long as Defendants fail to maintain the required records, Plaintiffs and members  
19 of the State and FLSA Minimum Wage and FLSA Overtime Subclass will be unable to  
20 determine or demonstrate the precise number of hours actually worked, or the wages and  
21 penalties owed to them for the long hours that Defendants have required them to work.

22           68. By willfully failing to maintain the accurate and complete records required  
23 by California Labor Code section 226(a), Defendants are also liable for civil penalties  
24 pursuant to California Labor Code sections 226(e) and 226.3. Pursuant to 226(e), (1) for  
25 any initial violation, fifty dollars (\$50) for each Plaintiff or member of the State and FLSA  
26 Minimum Wage and FLSA Overtime Subclass for each pay period, and (2) for each  
27 subsequent violation, one hundred dollars (\$100) for each Plaintiff or member of the State  
28 and FLSA Minimum Wage and FLSA Overtime Subclass for each pay period, not

1 exceeding an aggregate penalty of four thousand dollars (\$4,000), and also pursuant to this  
2 section, Plaintiffs are entitled to an award of costs and reasonable attorney's fees. Pursuant  
3 to section 226.3, (1) two hundred fifty dollars (\$250) per employee per violation in an  
4 initial citation and (2) one thousand dollars (\$1,000) per employee for each violation in a  
5 subsequent citation, for which the employer fails to keep the records required by section  
6 226(a).

7 69. California Labor Code section 226(h) authorizes an employee to bring an  
8 action for injunctive relief to ensure compliance with Labor Code section 226 and the  
9 employee is entitled to an award of costs and reasonable attorney's fees. Plaintiffs and  
10 members of the subclass are entitled to injunctive relief under the governing legal  
11 standards, and are entitled to an order requiring Defendants to provide Plaintiffs and  
12 members of the subclass all of the information required by California Labor Code section  
13 226(a).

14 WHEREFORE, Plaintiffs and the State and FLSA Minimum Wage and FLSA  
15 Overtime Subclass request relief as described below.

16 **FIFTH CAUSE OF ACTION**  
17 **(Failure to Pay Federal Minimum Wage and Overtime Compensation and Failure to**  
18 **Maintain Required Records in Violation of 29 U.S.C. §§ 201 et seq., 206, 207, 215(a),**  
19 **216, By State and FLSA Minimum Wage and FLSA Overtime Subclass Against All**  
20 **Defendants)**

21 70. Plaintiffs re-allege and incorporate by reference herein all allegations  
22 previously made in paragraphs 1 through 69, above.

23 71. At all relevant times, Plaintiffs were "engaged in commerce" and/or  
24 "employed by an enterprise engaged in commerce" within the meaning of the FLSA. At  
25 all times relevant to this cause of action, Defendants have employed, and continue to  
26 employ, Plaintiffs and some or all of the State and FLSA Minimum Wage and FLSA  
27 Overtime Subclass as employees within the meaning of the FLSA, 29 U.S.C. § 203.

28 72. Each of the named Plaintiffs by the Complaint hereby consents to sue under  
the FLSA, 29 U.S.C. § 216(b). Consents to sue are attached hereto as Exhibit A and  
incorporated herein by reference. Further consents to sue will be submitted to the Court as

.1 they become available.

2           73. At all relevant times, Plaintiffs and other State and FLSA Minimum Wage  
3 and FLSA Overtime Subclass members have been similarly situated; have had  
4 substantially similar job requirements, job duties, and pay provisions; and have been  
5 subject to Defendants' common decisions, policies, programs, practices procedures,  
6 protocols, routines, and rules pursuant to which Defendants have willfully failed and  
7 refused to pay Plaintiffs and the other State and FLSA Minimum Wage and FLSA  
8 Overtime Subclass the amounts to which those workers are entitled under the FLSA.

9           74. The FLSA, 29 U.S.C. § 207(a), requires Defendants to compensate Plaintiffs  
10 and the State and FLSA Minimum Wage and FLSA Overtime Subclass members at 1-1/2  
11 times these workers' regular hourly rate for all work performed in excess of forty (40)  
12 hours per workweek.

13           75. At all relevant times, Defendants willfully, regularly, and repeatedly failed,  
14 and continue to fail to pay Plaintiffs and the State and FLSA Minimum Wage and FLSA  
15 Overtime Subclass at the required overtime rates, for hours worked in excess of 40 hours  
16 per workweek, for performing Loading and Transport Duties.

17           76. The FLSA, 29 U.S.C. § 206, requires Defendants to compensate Plaintiffs  
18 and the State and FLSA Minimum Wage and FLSA Overtime Subclass at a rate not less  
19 than the required federal minimum wage rate of at least \$7.25 per hour after July 24, 2009  
20 and not less than the required federal minimum wage rate of \$6.55 per hour prior to  
21 July 24, 2009.

22           77. At all relevant times, Defendants willfully, regularly, and repeatedly failed  
23 and continue to fail to pay Plaintiffs and the State and FLSA Minimum Wage and FLSA  
24 Overtime Subclass at a rate not less than the required minimum wage rate of \$7.25 per  
25 hour after July 24, 2009 and a rate not less than at the required minimum wage rate of  
26 \$6.55 per hour prior to July 24, 2009, for hours worked performing Loading and Transport  
27 Duties.

28           78. The FLSA imposes specific recordkeeping requirements on employers

1 including the obligation to keep accurate records of all hours worked by employees.  
2 Defendants have knowingly and willfully failed, and continue willfully to fail to record,  
3 report, and/or preserve accurate records of all hours worked by Plaintiffs and the State and  
4 FLSA Minimum Wage and FLSA Overtime Subclass. By failing to record, report, and/or  
5 preserve records of all hours worked by Plaintiffs and the State and FLSA Minimum Wage  
6 and FLSA Overtime Subclass, Defendants have violated and continue to violate, the  
7 FLSA, 29 U.S.C. § 201 et seq., including § 215(a), and 29 C.F.R. § 516 et seq.

8 79. Defendants' violations of the FLSA's minimum wage, overtime and  
9 recordkeeping provisions are, and were, willful within the meaning of 29 U.S.C. § 255.

10 80. As a direct and proximate result of Defendants' violations of the minimum  
11 wage and overtime provisions as alleged herein, Plaintiffs and the State and FLSA  
12 Minimum Wage and FLSA Overtime Subclass have sustained economic damages,  
13 including but not limited to unpaid wages and lost interest, in an amount to be established  
14 at trial, and are entitled to recover economic and statutory damages and penalties and other  
15 appropriate relief under the FLSA. Pursuant to 29 U.S.C. § 216(b), Plaintiffs also are  
16 entitled to recover reasonable attorney's fees, cost of suit, and liquidated damages in an  
17 amount equal to their unpaid minimum wage and overtime compensation.

18 WHEREFORE, Plaintiffs and the State and FLSA Minimum Wage and FLSA  
19 Overtime Subclass request relief as described below.

20 **SIXTH CAUSE OF ACTION**  
21 **(California Private Attorneys General Act, Cal. Lab. Code § 2698 et seq. — By**  
22 **General Class, Meal Period Subclass and State and FLSA Minimum Wage and FLSA**  
23 **Overtime Subclass Against All Defendants)**

24 81. Plaintiffs, on behalf of themselves and the General Class, Meal Period  
25 Subclass, State and FLSA Minimum Wage and FLSA Overtime Subclass, as well as the  
26 general public of the State of California, re-allege and incorporate by reference herein all  
27 allegations previously made in paragraphs 1 through 80, above.

28 82. Under the California Labor Code Private Attorneys General Act of 2004,  
Labor Code sections 2698-2699.5 ("PAGA"), any aggrieved employee may bring a

1 representative action as a private attorney general on behalf of the general public,  
2 including all other aggrieved employees, to recover civil penalties for their employers'  
3 violations of the California Labor Code and IWC Wage Orders. These civil penalties are  
4 in addition to any other relief available under the California Labor Code, and must be  
5 allocated 75% to the State of California's Labor and Workforce Development Agency and  
6 25% to the aggrieved workers, pursuant to California Labor Code section 2699.

7 83. As set forth above, Defendants have committed numerous violations for  
8 which the Labor Code entitles Plaintiffs, as private attorneys general, to recover the  
9 applicable statutory civil penalties on their own behalf, on behalf of all aggrieved  
10 employees, and on behalf of the general public, including violations of sections 226(a),  
11 226.7, 1194, 1197, 1197.1 and 1198 and violations of IWC Wage Order No. 16-2001.

12 84. California Labor Code section 2699(a), which is part of PAGA, provides in  
13 pertinent part:

14 Notwithstanding any other provision of law, any provision of this  
15 code that provides for a civil penalty to be assessed and collected by the  
16 Labor and Workforce Development Agency or any of its departments,  
17 divisions, commissions, boards, agencies, or employees, for a violation of  
18 this code, may, as an alternative, be recovered through a civil action brought  
19 by an aggrieved employee on behalf of himself or herself and other current  
20 or former employees pursuant to the procedures specified in Section 2699.3

21 85. California Labor Code section 2699(f), which is part of PAGA, provides in  
22 pertinent part:

23 For all provisions of this code except those for which a civil penalty is  
24 specifically provided, there is established a civil penalty for a violation of  
25 these provisions as follows:...

26 (2) If, at the time of the alleged violation, the person employs one or  
27 more employees, the civil penalty is one hundred dollars (\$100) for each  
28 aggrieved employee per pay period for the initial violation and two hundred  
dollars (\$200) for each aggrieved employee per pay period for each  
subsequent violation.

86. Pursuant to California Labor Code section 2699(a), Plaintiffs are entitled to  
civil penalties, to be paid by Defendants for Defendants' violations of the California Labor  
Code and IWC Wage Orders for which a civil penalty is already specifically provided by  
law; and pursuant to California Labor Code section 2699(f), Plaintiffs are entitled to civil

1 penalties, to be paid by Defendants and allocated as PAGA requires, for Defendants'  
2 violations of the California Labor Code and IWC Wage Orders for which violations a civil  
3 penalty is not already specifically provided.

4 87. On June 27, 2012, Plaintiffs provided notice by certified mail under  
5 California Labor Code section 2699.3, to Defendants and the California Labor and  
6 Workforce Development Agency of their intention to pursue a claim for relief under  
7 PAGA against Defendants on behalf of themselves and all aggrieved employees. To the  
8 extent necessary, Plaintiffs will amend their Complaint to allege that the exhaustion  
9 process they have commenced has been completed.

10 88. As a direct result of Defendants' conduct as described, Plaintiffs are entitled  
11 to recover from Defendants, on their own behalf and on behalf of others similarly situated,  
12 the maximum civil penalties permitted by the Private Attorneys General Act for all  
13 violations of Labor Code sections 226(a), 226.7, 1194, 1197, 1197.1 and 1198, as well as  
14 reasonable attorney's fees and costs.

15 WHEREFORE, Plaintiffs and the General Class request relief as described below.

16 **SEVENTH CAUSE OF ACTION**  
17 **(Unfair Business Practices in Violation of Cal. Bus. & Prof. Code § 17200 — By**  
18 **General Class, Meal Period Subclass and State and FLSA Minimum Wage and FLSA**  
19 **Overtime Subclass Against All Defendants)**

20 89. Plaintiffs re-allege and incorporate by reference herein all allegations  
21 previously made in Paragraphs 1 through 88, above.

22 90. California Business and Professions Code sections 17200, et seq., prohibit  
23 acts of unfair competition, which include, but are not limited to, any unlawful business  
24 practice or act.

25 91. The policies, acts and practices described herein were and are an unlawful  
26 business act or practice because Defendants' failure to pay overtime and minimum wages,  
27 failure to provide meal and rest periods, and failure to maintain and furnish accurate  
28 timekeeping records violate the California Labor Code, including, but not limited to,  
sections 226(a), 226.7, 512, 1182.12, 1194, 1194.2, 1197, and 1198 applicable Wage



1 Orders of the IWC, other provisions of California common and/or statutory law, and the  
2 Fair Labor Standards Act.

3 92. The policies, acts or practices described herein were, and are, an unfair  
4 business act or practice because any justifications for Defendants' unlawful and unfair  
5 conduct were, and are, vastly outweighed by the harm such conduct caused to Plaintiffs  
6 and all Class Members.

7 93. Plaintiffs are informed and believe, and based upon such information and  
8 belief allege, that by engaging in the unfair and unlawful business practices complained of  
9 hereinabove, Defendants were able to lower their labor costs and thereby to obtain a  
10 competitive advantage over law-abiding employers with which they compete, in violation  
11 of California Business and Professions Code section 17200 et. seq. and California Labor  
12 Code section 90.5(a), which sets forth the public policy of California to vigorously enforce  
13 minimum labor standards to ensure that employees are not required or permitted to work  
14 under substandard and unlawful conditions and to protect law-abiding employers and their  
15 employees from competitors that lower their costs by failing to comply with minimum  
16 labor standards.

17 94. As a direct and proximate result of Defendants' unfair and unlawful conduct  
18 as alleged herein, Plaintiffs and members of the General Class have sustained injury and  
19 damages, including unpaid wages and lost interest, in an amount to be established at trial.  
20 Plaintiffs and members of the General Class and both subclasses seek restitution of all  
21 unpaid wages owed to the class members, disgorgement of all profits that Defendants have  
22 enjoyed as a result of their unfair and unlawful business practices, penalties, and injunctive  
23 relief.

24 WHEREFORE, Plaintiffs and the General Class, the Meal Period Subclass and the  
25 State and FLSA Minimum Wage and FLSA Overtime Subclass request relief as described  
26 below.

27  
28

1 **EIGHTH CAUSE OF ACTION**  
2 **(Injunctive Relief – By General Class, Meal Period Subclass and State and FLSA**  
3 **Minimum Wage and FLSA Overtime Subclass Against All Defendants)**

4 95. Plaintiffs re-allege and incorporate by reference herein all allegations  
5 previously made in Paragraphs 1 through 94, above.

6 96. An actual controversy has arisen between Plaintiffs, the General Class, the  
7 Meal Period Subclass and the State and FLSA Minimum Wage and FLSA Overtime  
8 Subclass, on the one hand, and Defendants, on the other hand, as to their respective rights,  
9 remedies and obligations. Specifically, Plaintiffs contend and Defendants deny, that:

10 97. Defendants failed and continue to fail to pay minimum wage and overtime  
11 wages to Plaintiffs and State and FLSA Minimum Wage and FLSA Overtime Subclass  
12 members that were duly owed them for all time worked;

13 98. Defendants failed and continue to fail to provide Plaintiffs and General Class  
14 members lawful rest periods;

15 99. Defendants failed and continue to fail to provide Plaintiffs and members of  
16 the General Class, Meal Period Subclass, and State and FLSA Minimum Wage and FLSA  
17 Overtime Subclass accurate wage and hours statements showing all hours worked; and

18 100. Plaintiffs further allege that members of the General Class, the Meal Period  
19 Subclass, and the State and FLSA Minimum Wage and FLSA Overtime Subclass are  
20 entitled to recover earned wages, liquidated damages, and penalties as hereinabove alleged.

21 101. Accordingly, Plaintiffs seek an injunction against Defendants to prohibit  
22 Defendants from continuing their unlawful practices as hereinabove alleged.

23 WHEREFORE, Plaintiffs and the General Class, Meal Period Subclass, and State  
24 and FLSA Minimum Wage and FLSA Overtime Subclass request relief as described  
25 below.

26 **NINTH CAUSE OF ACTION**  
27 **(Declaratory Relief – By General Class, Meal Period Subclass and State and FLSA**  
28 **Minimum Wage and FLSA Overtime Subclass Against All Defendants)**

102. Plaintiffs re-allege and incorporate by reference herein all allegations  
previously made in Paragraphs 1 through 101, above.

1           103. An actual controversy has arisen between Plaintiffs, the General Class, the  
2 Meal Period Subclass, and the State and FLSA Minimum Wage and FLSA Overtime  
3 Subclass, on the one hand, and Defendants, on the other hand, as to their respective rights,  
4 remedies and obligations. Specifically, Plaintiffs contend and Defendants deny, that:

5           104. Defendants failed and continue to fail to pay minimum wage and overtime  
6 wages to Plaintiffs and State and FLSA Minimum Wage and FLSA Overtime Subclass  
7 members that were duly owed them for all time worked;

8           105. Defendants failed and continue to fail to provide Plaintiffs and General Class  
9 members lawful rest periods;

10           106. Defendants failed and continue to fail to provide Plaintiffs and Class  
11 Members accurate wage and hours statements showing all hours worked; and

12           107. Plaintiffs further allege that members of the General Class, the Meal Period  
13 Subclass, and the State and FLSA Minimum Wage and FLSA Overtime Subclass are  
14 entitled to recover earned wages, liquidated damages, and penalties as hereinabove alleged.

15           108. Plaintiffs have incurred and, during the pendency of this action, will incur  
16 expenses for attorney's fees, expenses, and costs herein. Such attorney's fees, expenses,  
17 and costs are necessary for the prosecution of this action and will result in a benefit to each  
18 of the members of the class.

19           109. Accordingly, Plaintiffs and class members seek a declaration as to the  
20 respective rights, remedies, and obligations of the parties.

21           WHEREFORE, Plaintiffs and the General Class, Meal Period Subclass, and State  
22 and FLSA Minimum Wage and FLSA Overtime Subclass request relief as described  
23 below.

24           **DEMAND FOR JURY TRIAL AND PRAYER FOR RELIEF**

25           WHEREFORE, Plaintiffs Jose Ramirez, Luis Gomez and Marck Mena Ortega, on  
26 behalf of themselves, the proposed General Class, the proposed Meal Period Subclass, the  
27 proposed State and FLSA Minimum Wage and FLSA Overtime Subclass, and all others  
28 similarly situated, pray for judgment and the following specific relief against Defendants

1 GBI, Ghilotti Brothers Construction, Maggiora and Ghilotti, Ghilotti Construction and  
2 DOES 1 through 50 as follows:

3 1. An order certifying that this action may be maintained as a class action  
4 pursuant to California Code of Civil Procedure section 382 and/or as a representative  
5 action under Business and Professions Code sections 17200 et seq.;

6 2. An order enjoining Defendants from unlawfully withholding payment from  
7 Plaintiffs and members of the State and FLSA Minimum Wage and FLSA Overtime  
8 Subclass for all hours worked, unlawfully failing to pay Plaintiffs and members of the  
9 State and FLSA Minimum Wage and FLSA Overtime Subclass at least minimum wage for  
10 all hours worked and federal overtime for all hours worked in excess of forty (40) hours in  
11 a workweek, unlawfully refusing to provide rest periods, and failing to maintain and  
12 furnish accurate pay records;

13 3. A finding that Defendants have violated the rest period provisions of  
14 applicable IWC Wage Orders and the Labor Code as to Plaintiffs and the General Class;

15 4. A finding that Defendants have violated the meal period provisions of  
16 applicable IWC Wage Orders and the Labor Code as to Plaintiffs and the Meal Period  
17 Subclass;

18 5. A finding that Defendants have violated the minimum wage provisions of the  
19 California Labor Code as to Plaintiffs and the State and FLSA Minimum Wage and FLSA  
20 Overtime Subclass;

21 6. A finding that Defendants have violated the wage statement requirements of  
22 Labor Code section 226(a) as to Plaintiffs and members of the State and FLSA Minimum  
23 Wage and FLSA Overtime Subclass;

24 7. A finding that Defendants have violated the minimum wage, overtime, and  
25 recordkeeping provisions of the Federal Labor Standards Act as to Plaintiffs and the State  
26 and FLSA Minimum Wage and FLSA Overtime Subclass;

27 8. A finding that Defendants have violated Business and Professions Code  
28 sections 17200 et seq. by failing to pay Plaintiffs and members of the General Class for

1 missed rest periods; members of the Meal Period Subclass for missed meal periods; and  
2 members of the State and FLSA Minimum Wage and FLSA Overtime Subclass for  
3 minimum wages as required by the Labor Code, and overtime wages as required by the  
4 Fair Labor Standards Act; and by failing to furnish accurate wage statements to members  
5 of the State and FLSA Minimum Wage and FLSA Overtime Subclass;

6 9. An order requiring Defendants to pay restitution to Plaintiffs and all  
7 members of the General Class due to Defendants' unlawful activities, pursuant to Business  
8 and Professions Code sections 17200 et seq., for the four (4) years preceding the filing of  
9 this Complaint to the date of such Order;

10 10. An award to Plaintiffs and all members of the State and FLSA Minimum  
11 Wage and Overtime Subclass of restitution and damages for the amount of unpaid  
12 minimum wages and federal overtime compensation, including interest thereon, subject to  
13 proof at trial;

14 11. An award to Plaintiffs and all members of the General Class and Meal Period  
15 Subclass of damages for the amount of unpaid rest period and meal period compensation,  
16 including interest thereon, subject to proof at trial;

17 12. Disgorgement of profits and all other appropriate equitable relief authorized  
18 by California Business and Professions Code section 17203;

19 13. For interest pursuant to applicable provisions of law, including but not  
20 limited to Labor Code sections 218.6 and 1194, and Business and Professions Code section  
21 17203;

22 14. Liquidated Damages and Penalties available under applicable law;

23 15. Exemplary and punitive damages according to proof;

24 16. An award to Plaintiffs and all Class Members of reasonable attorney's fees,  
25 litigation expenses, and costs pursuant to applicable provisions of law, including Labor  
26 Code sections 226, 1194, and 2699, Code of Civil Procedure section 1021.5, and 29 U.S.C.  
27 section 216(b); and

28 17. An award of such other and further equitable and legal relief as this Court

1 may deem appropriate.

2 **JURY TRIAL DEMAND**

3 Plaintiffs hereby request a jury trial.

4  
5 DATED: June 27, 2012


Respectfully submitted,

6 ROSEN, BIEN & GALVAN, LLP

7 By:   
8 Gay Crosthwait Grunfeld

9  
10 DATED: June 27, 2012

STEWART & MUSELL, LLP

11 By:   
12 Elisa J. Stewart

13 Attorneys for Plaintiffs, and the proposed classes  
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## **EXHIBIT A**

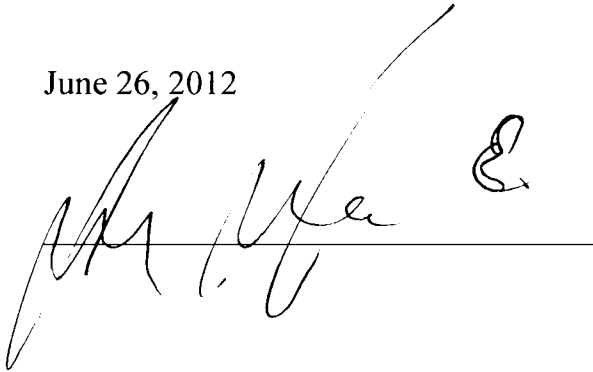
CONSENT OF INDIVIDUAL TO BECOME A PARTY PLAINTIFF IN ACTION FOR  
MINIMUM WAGE AND OVERTIME PREMIUMS UNDER SECTION 16(b) OF THE  
FAIR LABOR STANDARDS ACT

I am a current employee of Ghilotti Bros, Inc., Ghilotti Brothers Construction, Inc., Ghilotti Construction Company, Inc., and/or Maggiora and Ghilotti, Inc. (“Defendants”), and I hereby consent to sue these Defendants in *Ramirez v. Ghilotti Bros., Inc.* for unpaid minimum wages and overtime premium pay pursuant to §16(b) of the Fair Labor Standards Act, 29 U.S.C. §216(b). I am represented in this matter by Rosen, Bien & Galvan, LLP and Stewart & Musell, LLP.

Name: Jose Ramirez  
Address: C/O Rosen, Bien & Galvan, LLP  
315 Montgomery Street, Floor 10  
San Francisco, CA 94104  
Telephone Number: (415) 433-6830  
Email Address: ggrunfeld@rbg-law.com

Dated: June 26, 2012

Signature:

A handwritten signature in black ink, appearing to read "Jose Ramirez", is written over a horizontal line. The signature is stylized and includes a large flourish at the end.

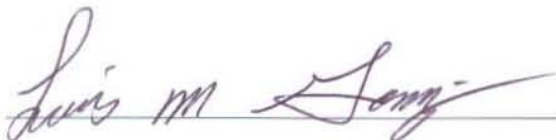


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Name: Luis Gomez  
Address: C/O Rosen, Bien & Galvan, LLP  
315 Montgomery Street, Floor 10  
San Francisco, CA 94104  
Telephone Number: (415) 433-6830  
Email Address: ggrunfeld@rbg-law.com

Dated: June 21, 2012

Signature: 

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Name: Marck Mena Ortega  
Address: C/O Rosen, Bien & Galvan, LLP  
315 Montgomery Street, Floor 10  
San Francisco, CA 94104  
Telephone Number: (415) 433-6830  
Email Address: ggrunfeld@rbg-law.com

Dated: June 26, 2012

Signature: 