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11 SAFELITE FULFILLMENT, INC.; SAFELITE  
GROUP, INC.; AND SAFELITE GLASS CORP.  
12

13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**  
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16 YADIR A. ONTIVEROS, as an  
individual, and on behalf of all others  
17 similarly situated,

18 Plaintiffs,

19 vs.

20 SAFELITE FULFILLMENT, INC.; a  
Delaware Corporation; SAFELITE  
GROUP, INC., a Delaware Corporation;  
21 SAFELITE GLASS CORP., a Delaware  
Corporation; and DOES 1 through 10,  
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23 Defendants.  
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) Case No. 2:15-cv-07118-DMG-RAO  
)  
) **DEFENDANTS SAFELITE**  
) **FULFILLMENT, INC., SAFELITE**  
) **GROUP, INC. AND SAFELITE**  
) **GLASS CORP.'S ANSWER TO**  
) **COMPLAINT**

ANSWER TO COMPLAINT

1 For their Answer to the Complaint filed by Yadir Ontiveros, on behalf of  
2 himself and others similarly situated (“Plaintiff”), Defendants Safelite Fulfillment,  
3 Inc., Safelite Group, Inc., and Safelite Glass Corp. (collectively, “Safelite”), by and  
4 through their undersigned counsel, hereby present the following admissions, denials,  
5 other averments, and defenses:

6 **JURISDICTION**

7 1. Safelite admits that Plaintiff purports to bring a class, collective, and  
8 representative action under the Fair Labor Standards Act (“FLSA”) and California  
9 state law, but denies that it has violated the FLSA or California law and denies that  
10 he has any basis for bringing this action.

11 2. Safelite avers that Paragraph 2 of the Complaint contains no factual  
12 allegations to which a response is required. To the extent that a response is required,  
13 Safelite does not contest that the Court has jurisdiction over the claims raised in the  
14 Complaint, but denies any and all remaining allegations contained in Paragraph 2 of  
15 the Complaint.

16 **VENUE**

17 3. Safelite admits that it does business in this judicial district and operates  
18 within the Central District of California and that venue is proper in this Court, but  
19 denies that there is otherwise any legal or factual basis for bringing this action.

20 **PARTIES**

21 4. In response to Paragraph 4 of the Complaint, Safelite admits, upon  
22 information and belief, that Plaintiff is over age 18 and was a California resident who  
23 lived within the county of Los Angeles at all times relevant hereto. Safelite further  
24 admits that it employed Plaintiff as an hourly, non-exempt employee within the four  
25 years immediately preceding the filing of the Complaint in this action. Safelite  
26 denies each and every remaining allegation contained in Paragraph 4 of the  
27 Complaint.

28 5. Safelite admits the allegations in Paragraph 5 of the Complaint.



1 Complaint.

2 17. Safelite denies the allegations contained in Paragraph 17 of the

3 Complaint.

4 18. Safelite denies the allegations contained in Paragraph 18 of the

5 Complaint.

6 **CLASS AND COLLECTIVE ALLEGATIONS**

7 19. In response to Paragraph 19 of the Complaint, Safelite admits that  
8 Plaintiff purports to bring a class action pursuant to Rule 23 of the Federal Rules of  
9 Civil Procedure and an action pursuant to the FLSA, and that Plaintiff purports to  
10 define the class and sub-classes as set forth in Paragraph 19 of the Complaint.

11 Safelite denies, however, that Plaintiff has any appropriate basis for doing so.

12 20. Safelite denies the allegations contained in Paragraph 20 of the

13 Complaint.

14 21. Safelite denies the allegations contained in Paragraph 21 of the

15 Complaint.

16 22. Safelite denies the allegations contained in Paragraph 22 of the

17 Complaint.

18 23. Safelite denies the allegations contained in Paragraph 23 of the

19 Complaint.

20 24. Safelite denies the allegations contained in Paragraph 24 of the

21 Complaint.

22 25. Safelite denies the allegations contained in Paragraph 25 of the

23 Complaint.

24 26. Safelite denies the allegations contained in Paragraph 26 of the

25 Complaint.

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**FIRST CLAIM**  
**FAILURE TO PAY OVERTIME WAGES**  
**(AGAINST ALL DEFENDANTS)**

27. In response to Paragraph 27 of the Complaint, Safelite incorporates the admissions, denials, and other averments contained in Paragraphs 1 through 26 of this Answer as if fully set forth herein.

28. In response to Paragraph 28 of the Complaint, Safelite admits that Plaintiff purports to bring an action under the California Labor Code, but denies that he has any basis for doing so. Safelite denies each and every remaining allegation contained in Paragraph 28 of the Complaint.

29. Safelite avers that Paragraph 29 of the Complaint contains no factual allegations to which a response is required and that the provisions of the California Labor Code and IWC Wage Order speak for themselves. To the extent that a response is required, Safelite avers that it has at all times fully complied with its obligations under the California Labor Code and IWC Wage Order.

30. Safelite denies the allegations contained in Paragraph 30 of the Complaint.

31. Safelite denies the allegations contained in Paragraph 31 of the Complaint.

32. Safelite denies the allegations contained in Paragraph 32 of the Complaint.

33. Safelite denies the allegations contained in Paragraph 33 of the Complaint.

**SECOND CLAIM**  
**FLSA VIOLATIONS**  
**(AGAINST ALL DEFENDANTS)**

34. In response to Paragraph 34 of the Complaint, Safelite incorporates the admissions, denials, and other averments contained in Paragraphs 1 through 33 of

1 this Answer as if fully set forth herein.

2 35. In response to Paragraph 35 of the Complaint, Safelite admits that  
3 Plaintiff purports to bring an action under the FLSA, but denies that he has any basis  
4 for doing so. Safelite denies each and every remaining allegation contained in  
5 Paragraph 28 of the Complaint.

6 36. In response to Paragraph 36 of the Complaint, Safelite admits that, at  
7 times, Plaintiff and other employees worked in excess of 40 hours per workweek,  
8 were paid overtime compensation accordingly, and received incentive compensation  
9 that was properly included within the regular rate of pay. Safelite denies the  
10 remaining allegations contained in Paragraph 36 of the Complaint.

11 37. Safelite denies the allegations contained in Paragraph 37 of the  
12 Complaint.

13 38. Safelite denies the allegations contained in Paragraph 38 of the  
14 Complaint.

15 39. Safelite denies the allegations contained in Paragraph 39 of the  
16 Complaint.

17 40. Safelite denies the allegations contained in Paragraph 40 of the  
18 Complaint.

19 41. Safelite denies the allegations contained in Paragraph 41 of the  
20 Complaint.

21 **THIRD CLAIM**

22 **MINIMUM WAGE VIOLATIONS**

23 **(AGAINST ALL DEFENDANTS)**

24 42. In response to Paragraph 42 of the Complaint, Safelite incorporates the  
25 admissions, denials, and other averments contained in Paragraphs 1 through 41 of  
26 this Answer as if fully set forth herein.

27 43. Safelite avers that Paragraph 43 of the Complaint contains no factual  
28 allegations to which a response is required and that the provisions of the California

1 Labor Code and IWC Wage Order speak for themselves. To the extent that a  
2 response is required, Safelite admits that it has at all times fully complied with its  
3 obligations under the California Labor Code and IWC Wage Order.

4 44. Safelite denies the allegations contained in Paragraph 44 of the  
5 Complaint.

6 45. Safelite denies the allegations contained in Paragraph 45 of the  
7 Complaint.

8 46. Safelite denies the allegations contained in Paragraph 46 of the  
9 Complaint.

10 **FOURTH CLAIM**

11 **MEAL PERIOD VIOLATIONS**

12 **(AGAINST ALL DEFENDANTS)**

13 47. In response to Paragraph 47 of the Complaint, Safelite incorporates the  
14 admissions, denials, and other averments contained in Paragraphs 1 through 46 of  
15 this Answer as if fully set forth herein.

16 48. Safelite denies the allegations contained in Paragraph 48 of the  
17 Complaint.

18 49. Safelite denies the allegations contained in Paragraph 49 of the  
19 Complaint.

20 **FIFTH CLAIM**

21 **REST PERIOD VIOLATIONS**

22 **(AGAINST ALL DEFENDANTS)**

23 50. In response to Paragraph 50 of the Complaint, Safelite incorporates the  
24 admissions, denials, and other averments contained in Paragraphs 1 through 49 of  
25 this Answer as if fully set forth herein.

26 51. Safelite avers that Paragraph 43 of the Complaint contains no factual  
27 allegations to which a response is required and that the provisions of the California  
28 Labor Code and IWC Wage Order speak for themselves. To the extent that a

1 response is required, Safelite admits that it has at all times fully complied with its  
2 obligations under the California Labor Code and IWC Wage Order..

3 52. Safelite denies the allegations contained in Paragraph 52 of the  
4 Complaint.

5 53. Safelite denies the allegations contained in Paragraph 53 of the  
6 Complaint.

7 **SIXTH CLAIM**

8 **WAGE STATEMENT PENALTIES**  
9 **(AGAINST ALL DEFENDANTS)**

10 54. In response to Paragraph 54 of the Complaint, Safelite incorporates the  
11 admissions, denials, and other averments contained in Paragraphs 1 through 53 of  
12 this Answer as if fully set forth herein.

13 55. Safelite denies the allegations contained in Paragraph 55 of the  
14 Complaint.

15 56. Safelite denies the allegations contained in Paragraph 56 of the  
16 Complaint.

17 57. Safelite denies the allegations contained in Paragraph 57 of the  
18 Complaint.

19 **SEVENTH CLAIM**

20 **UNLAWFUL DEDUCTIONS FROM EARNED WAGES**  
21 **(AGAINST ALL DEFENDANTS)**

22 58. In response to Paragraph 58 of the Complaint, Safelite incorporates the  
23 admissions, denials, and other averments contained in Paragraphs 1 through 57 of  
24 this Answer as if fully set forth herein.

25 59. In response to 59 of the Complaint, Safelite admits that Plaintiff  
26 purports to bring an action under Labor Code §221, states that the provisions of  
27 Labor Code §221 speak for itself, and denies that he has any basis for bringing an  
28 action under Labor Code §221.





1 Safelite further alleges and asserts the additional defenses set forth below. By  
2 pleading these additional defenses, Safelite does not assume the burden of proving  
3 any fact, issue, or element of a cause of action where such burden properly belongs  
4 to Plaintiff. Nothing stated herein shall be construed as a concession that any  
5 particular issue or subject matter is relevant to Plaintiff's allegations.

6 **FIRST DEFENSE**

7 71. The Complaint, and each purported cause of action alleged therein, fails  
8 to state facts sufficient to constitute a cause of action upon which relief may be  
9 granted against Safelite.

10 **SECOND DEFENSE**

11 72. The Complaint, and each purported cause of action alleged therein, is  
12 barred in whole or in part by the applicable statutes of limitations, including but  
13 not limited to, California Labor Code § 203, California Code of Civil Procedure  
14 §§ 337(1), 338(a), 339(1), 340(a), and 340(b), and California Business &  
15 Professions Code § 17208, and 29 U.S.C. § 255.

16 **THIRD DEFENSE**

17 73. The Complaint, and each purported cause of action alleged therein, is  
18 barred in whole or in part by the doctrine of laches.

19 **FOURTH DEFENSE**

20 74. The Complaint does not state facts sufficient to certify a class, this  
21 action is not properly brought as a class or collective action, and a class or  
22 collective action is not a superior method of adjudication.

23 **FIFTH DEFENSE**

24 75. Plaintiff is not a proper representative of the class he purports to  
25 represent and this action is not properly brought as a class or collective action.

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**SIXTH DEFENSE**

76. Plaintiff's cause of action claiming unfair business practices in violation of California Business & Professions Code § 17200 is barred because it fails to plead specific facts capable of stating a claim for unfair business practices.

**SEVENTH DEFENSE**

77. Some or all of the claims contained in Plaintiff's Complaint are barred because Plaintiff failed to exhaust his administrative remedies or prerequisites before filing suit.

**EIGHTH DEFENSE**

78. The Complaint, in whole or in part, should be abated in the Court's discretion, and Plaintiff should be forced to pursue his administrative remedies with the California Division of Labor Standards Enforcement, which has primary jurisdiction over Plaintiff's state law claims.

**NINTH DEFENSE**

79. Plaintiff is estopped by his own actions and conduct from asserting any cause of action against Safelite.

**TENTH DEFENSE**

80. Plaintiff has engaged in conduct and activity sufficient to constitute a waiver of any right to assert the claims upon which he now seeks relief.

**ELEVENTH DEFENSE**

81. Pursuant to the Business & Professions Code § 17200, Plaintiff is not entitled to an award of damages.

**TWELFTH DEFENSE**

82. Plaintiff's claims are barred in whole or in part because of Safelite's compliance with all applicable laws, statutes, and regulations, which constitutes a safe harbor to any claim under California Business & Professions Code Sections 17200, *et seq.*

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**THIRTEENTH DEFENSE**

83. Plaintiff is unable to state a cause of action against Safelite because Plaintiff consented to any and all actions allegedly taken by Safelite.

**FOURTEENTH DEFENSE**

84. Plaintiff's purported causes of action in the Complaint fail to state facts sufficient to entitle Plaintiff to an award of attorneys' fees in any amount.

**FIFTEENTH DEFENSE**

85. Plaintiff's Complaint, and each cause of action therein, is barred by the doctrine of unclean hands.

**SIXTEENTH DEFENSE**

86. Some or all of the purported causes of action in the Complaint are subject to setoff, offset, or recoupment.

**SEVENTEENTH DEFENSE**

87. An award of penalties in this action would be unreasonable and/or oppressive and would violate Safelite's due process and equal protection rights under the United States Constitution and the California Constitution.

**EIGHTEENTH DEFENSE**

88. Any violation of the California Labor Code was an act or omission made in good faith, and Safelite had reasonable grounds for believing that the act or omission was not a violation of the Labor Code.

**NINETEENTH DEFENSE**

89. Plaintiff's claims are barred in whole or in part by reason of Defendant's compliance with all applicable laws, statutes, and regulations.

**TWENTIETH DEFENSE**

90. Plaintiff's claims are barred because the alleged conduct of Defendant was at all times justified, fair, privileged, and undertaken in the good faith exercise of a valid business purpose.

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**TWENTY-FIRST DEFENSE**

91. Plaintiff's claims are barred to the extent that any award in this action would constitute unjust enrichment.

**TWENTY-SECOND DEFENSE**

92. Plaintiff's claims are barred in whole or part to the extent that Plaintiffs seek a multiple recovery for the same alleged wrong or wrongs.

**TWENTY-THIRD DEFENSE**

93. Plaintiff's claims are barred in whole or in part to the extent that Plaintiff failed to mitigate, minimize, or avoid the damages alleged in the Complaint.

**TWENTY-FOURTH DEFENSE**

94. Safelite authorized and permitted Plaintiff to take all rest breaks required by law, provided Plaintiff the opportunity to take all meal periods required by law, and breached no duty owed to Plaintiff with respect thereto.

**TWENTY-FIFTH DEFENSE**

95. This case is not appropriate for a collective or class action because Plaintiff is not similarly situated to other members of the purported class.

**TWENTY-SIXTH DEFENSE**

96. Safelite has acted in a good faith belief that they were complying with all provision of the FLSA.

**TWENTY-SEVENTH DEFENSE**

97. The Complaint is barred in whole or in part by 29 U.S.C. §259 because Safelite relied in good faith on, and acted in conformity with, written interpretations of the FLSA promulgated by the Secretary of Labor and on the stated administrative practices of the Department of Labor.

**TWENTY-EIGHTH DEFENSE**

98. Plaintiff's claims are barred, in whole or in part, because Plaintiff did not comply substantially with all the directions of Safelite concerning the service for

1 which Plaintiff was engaged pursuant to Cal. Labor Code § 2856.

2 **TWENTY-NINTH DEFENSE**

3 99. The Complaint, and each purported cause of action in the Complaint, is  
4 barred in whole or in part, by the doctrine of release, including but not limited to the  
5 release of claims in the class action titled *Demetriot Lewis v. Safelite Fulfillment,*  
6 *Inc.*, Case No. CV-11-5512-CRB (N.D. Cal.) (Order and Final Judgment Granting  
7 Final Approval of Class Action Settlement filed December 13, 2013).

8 **THIRTIETH DEFENSE**

9 100. Plaintiff's claims are barred, in whole or in part, because if Plaintiff  
10 suffered or sustained any damage, injury, or detriment as alleged in the Complaint,  
11 such injury was caused by Plaintiff's own conduct.

12 **THIRTY-FIRST DEFENSE**

13 101. Safelite's conduct is not the sole and proximate cause of the alleged  
14 damages and losses, if any. Any damages awarded to Plaintiff must be apportioned  
15 according to the respective fault and legal responsibility of all parties, persons, and  
16 entities or their agents, servants, and employees who contributed to and/or caused  
17 the alleged damages, if any, according to the proof presented at the time of trial.

18 **THIRTY-SECOND DEFENSE**

19 102. Safelite is not liable for unfair business practices under California  
20 Business and Professions Code Section 17200 *et seq.* because the benefits of  
21 Safelite's practices to Plaintiffs and members of the class outweigh whatever  
22 particular harm or impact the practices allegedly caused them.

23 **THIRTY-THIRD DEFENSE**

24 103. Safelite is not liable for violation of unfair business practices pursuant  
25 to California Business and Professions Code Section 17200 *et seq.* because its  
26 business practices were not unfair, not deceptive, and not likely to mislead anyone.

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**THIRTY-FOURTH DEFENSE**

104. Plaintiff's claims are barred in whole or in part due to Plaintiff's failure to meet the burden of demonstrating a nexus between Safelite's alleged acts, conduct, or statements and any impact on the general public that Plaintiff purports to represent.

**THIRTY-FIFTH DEFENSE**

105. The relief requested by Plaintiff pursuant to California Business and Professions Code Section 17200 *et seq.* should be denied because Plaintiff has an adequate remedy at law.

**THIRTY-SIXTH DEFENSE**

106. Plaintiff lacks standing to sue on behalf of the purposed class of others similarly situated with respect to the claimed injuries, or otherwise. Safelite hereby gives notice that it intends to rely on such other and further affirmative defenses as may become available during discovery in this action and reserves the right to amend its Answer to assert any such defense.

**WHEREFORE**, Safelite prays for judgment as follows: (1) that Plaintiff's Complaint be dismissed in its entirety; (2) that Plaintiff take nothing by reason of the Complaint; (3) that Safelite be awarded its costs of suit and reasonable attorneys' fees to the extent provided by law; and (4) for such other and further relief as the Court may deem just and proper.

Dated: October 7, 2015

CAROTHERS DISANTE & FREUDENBERGER  
LLP  
and  
VORYS, SATER, SEYMOUR AND PEASE LLP

/s/ Daphne P. Bishop  
Daphne P. Bishop  
Attorneys for Defendants  
SAFELITE FULFILLMENT, INC.; SAFELITE  
GROUP, INC.; AND SAFELITE GLASS CORP.

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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES.

I, the undersigned, declare that I am employed in the aforesaid County, State of California. I am over the age of 18 and not a party to the within action. My business address is 707 Wilshire Boulevard, Suite 5150, Los Angeles, California 90017. On October 7, 2015, I served upon the interested party(ies) in this action the following document described as:

**DEFENDANTS SAFELITE FULFILLMENT, INC., SAFELITE GROUP, INC. AND SAFELITE GLASS CORP.'S ANSWER TO COMPLAINT**

By placing a true copy thereof enclosed in sealed envelope(s) addressed as stated below: for processing by the following method:

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**(BY NEF)** The foregoing document will be served by the court via NEF and hyperlink to the document. On October 7, 2015, I checked the CM/ECF docket for this civil case and determined that the above listed person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated above.

I certify that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on October 7, 2015, at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

Kathleen Stephens  
\_\_\_\_\_  
(Type or print name)

/s/ Kathleen Stephens  
\_\_\_\_\_  
(Signature)