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12 Attorneys for Defendants
SAFELITE FULFILLMENT, INC.
13 SAFELITE GROUP, INC.
14 SAFELITE GLASS CORP.

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 YADIR A. ONTIVEROS, as an individual,)
and on behalf of all others similarly situated,)

18 Plaintiffs,)

19 v.)

20 SAFELITE FULFILLMENT, INC.; a)
Delaware Corporation; SAFELITE GROUP,)
21 INC., a Delaware Corporation; SAFELITE)
22 GLASS CORP., a Delaware Corporation; and)
23 DOES 1 to 10,)

24 Defendants.
25
26
27
28

Case No. 2:15-cv-07118

**DEFENDANTS SAFELITE
FULFILLMENT, INC., SAFELITE
GROUP, INC., AND SAFELITE
GLASS CORP.'S ANSWER TO
PLAINTIFF'S FIRST AMENDED
CLASS, COLLECTIVE, AND
REPRESENTATIVE ACTION
COMPLAINT**

1 For their Answer to Plaintiff’s First Amended Class, Collective, and Representative
2 Action Complaint (“Amended Complaint”) filed by Yadir Ontiveros, on behalf of himself and
3 others similarly situated (“Plaintiff”), Defendants Safelite Fulfillment, Inc., Safelite Group, Inc.,
4 and Safelite Glass Corp. (collectively, “Safelite”), by and through their undersigned counsel,
5 hereby present the following admissions, denials, other averments, and defenses:
6

7 **JURISDICTION**

8 1. Safelite admits that Plaintiff purports to bring a class, collective, and
9 representative action under the Fair Labor Standards Act (“FLSA”) and California state law, but
10 denies that it has violated the FLSA or California law and denies that he has any basis for
11 bringing this action.
12

13 2. Safelite avers that Paragraph 2 of the Amended Complaint contains no factual
14 allegations to which a response is required. To the extent that a response is required, Safelite
15 does not contest that the Court has jurisdiction over the claims raised in the Amended Complaint,
16 but denies any and all remaining allegations contained in Paragraph 2 of the Amended
17 Complaint.
18

19 **VENUE**

20 3. Safelite admits that it does business in this judicial district and operates within the
21 Central District of California and that venue is proper in this Court, but denies that there is
22 otherwise any legal or factual basis for bringing this action.
23

24 **PARTIES**

25 4. In response to Paragraph 4 of the Amended Complaint, Safelite admits, upon
26 information and belief, that Plaintiff is over age 18 and was a California resident who lived
27 within the county of Los Angeles at all times relevant hereto. Safelite further admits that it
28

1 employed Plaintiff as an hourly, non-exempt employee within the four years immediately
2 preceding the filing of the Complaint in this action. Safelite denies each and every remaining
3 allegation contained in Paragraph 4 of the Amended Complaint.

4 5. Safelite admits the allegations in Paragraph 5 of the Amended Complaint.

5 6. Safelite admits the allegations in Paragraph 6 of the Amended Complaint.

6 7. In response to Paragraph 7 of the Amended Complaint, Safelite admits that it
7 employed Plaintiff and is licensed to do business in California and within the Central District of
8 California. Safelite denies each and every remaining allegation contained in Paragraph 7 of the
9 Amended Complaint.

10 8. Safelite is without knowledge or information sufficient to form a belief as to the
11 truth of the allegations regarding Plaintiff's knowledge of "DOES 1 to 10" contained in
12 Paragraph 8 of the Amended Complaint, and on that basis denies all said allegations. Safelite
13 denies each and every remaining allegation contained in Paragraph 8 of the Amended Complaint.

14 9. Safelite denies the allegations contained in Paragraph 9 of the Amended
15 Complaint.

16 10. Safelite denies the allegations contained in Paragraph 10 of the Amended
17 Complaint.

18 **GENERAL FACTUAL ALLEGATIONS**

19 11. In response to Paragraph 11 of the Amended Complaint, Safelite denies that the
20 change from warehouse employee to "Technician Trainee" was a promotion. Safelite admits the
21 remaining allegations in Paragraph 11 of the Amended Complaint.

22 12. Safelite denies the allegations contained in Paragraph 12 of the Amended
23 Complaint.

1 13. Safelite denies the allegations contained in Paragraph 13 of the Amended
2 Complaint.

3 14. Safelite denies the allegations contained in Paragraph 14 of the Amended
4 Complaint.

5 15. In response to Paragraph 15 of the Amended Complaint, Safelite admits that
6 Plaintiff received, at times, incentive compensation. Safelite denies each and every remaining
7 allegation contained in Paragraph 15 of the Amended Complaint.
8

9 16. Safelite denies the allegations contained in Paragraph 16 of the Amended
10 Complaint.

11 17. Safelite denies the allegations contained in Paragraph 17 of the Amended
12 Complaint.

13 18. Safelite denies the allegations contained in Paragraph 18 of the Amended
14 Complaint.
15

16 **CLASS AND COLLECTIVE ALLEGATIONS**

17 19. In response to Paragraph 19 of the Amended Complaint, Safelite admits that
18 Plaintiff purports to bring a class action pursuant to Rule 23 of the Federal Rules of Civil
19 Procedure and an action pursuant to the FLSA, and that Plaintiff purports to define the class and
20 sub-classes as set forth in Paragraph 19 of the Amended Complaint. Safelite denies, however,
21 that Plaintiff has any appropriate basis for doing so.
22

23 20. Safelite denies the allegations contained in Paragraph 20 of the Amended
24 Complaint.

25 21. Safelite denies the allegations contained in Paragraph 21 of the Amended
26 Complaint.
27

1 22. Safelite denies the allegations contained in Paragraph 22 of the Amended
2 Complaint.

3 23. Safelite denies the allegations contained in Paragraph 23 of the Amended
4 Complaint.

5 24. Safelite denies the allegations contained in Paragraph 24 of the Amended
6 Complaint.

7 25. Safelite denies the allegations contained in Paragraph 25 of the Amended
8 Complaint.

9 26. Safelite denies the allegations contained in Paragraph 26 of the Amended
10 Complaint.
11

12
13 **FIRST CLAIM**
14 **FAILURE TO PAY OVERTIME WAGES**
15 **(AGAINST ALL DEFENDANTS)**

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

19 28. In response to Paragraph 28 of the Amended Complaint, Safelite admits that
20 Plaintiff purports to bring an action under the California Labor Code, but denies that he has any
21 basis for doing so. Safelite denies each and every remaining allegation contained in Paragraph
22 28 of the Amended Complaint.

23 29. Safelite avers that Paragraph 29 of the Amended Complaint contains no factual
24 allegations to which a response is required and that the provisions of the California Labor Code
25 and IWC Wage Order speak for themselves. To the extent that a response is required, Safelite
26 avers that it has at all times fully complied with its obligations under the California Labor Code
27

1 and IWC Wage Order.

2 30. Safelite denies the allegations contained in Paragraph 30 of the Amended
3 Complaint.

4 31. Safelite denies the allegations contained in Paragraph 31 of the Amended
5 Complaint.

6 32. Safelite denies the allegations contained in Paragraph 32 of the Amended
7 Complaint.

8 33. Safelite denies the allegations contained in Paragraph 33 of the Amended
9 Complaint.
10

11 **SECOND CLAIM**
12 **FLSA VIOLATIONS**
13 **(AGAINST ALL DEFENDANTS)**

14 34. In response to Paragraph 34 of the Amended Complaint, Safelite incorporates the
15 admissions, denials, and other averments contained in Paragraphs 1 through 33 of this Answer as
16 if fully set forth herein.

17 35. In response to Paragraph 35 of the Amended Complaint, Safelite admits that
18 Plaintiff purports to bring an action under the FLSA, but denies that he has any basis for doing
19 so. Safelite denies each and every remaining allegation contained in Paragraph 35 of the
20 Amended Complaint.
21

22 36. In response to Paragraph 36 of the Amended Complaint, Safelite admits that, at
23 times, Plaintiff and other employees worked in excess of 40 hours per workweek, were paid
24 overtime compensation accordingly, and received incentive compensation that was properly
25 included within the regular rate of pay. Safelite denies the remaining allegations contained in
26 Paragraph 36 of the Amended Complaint.
27

1 37. Safelite denies the allegations contained in Paragraph 37 of the Amended
2 Complaint.

3 38. Safelite denies the allegations contained in Paragraph 38 of the Amended
4 Complaint.

5 39. Safelite denies the allegations contained in Paragraph 39 of the Amended
6 Complaint.

7 40. Safelite denies the allegations contained in Paragraph 40 of the Amended
8 Complaint.

9 41. Safelite denies the allegations contained in Paragraph 41 of the Amended
10 Complaint.
11

12
13 **THIRD CLAIM**
14 **MINIMUM WAGE VIOLATIONS**
15 **(AGAINST ALL DEFENDANTS)**

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

19 43. Safelite avers that Paragraph 43 of the Amended Complaint contains no factual
20 allegations to which a response is required and that the provisions of the California Labor Code
21 and IWC Wage Order speak for themselves. To the extent that a response is required, Safelite
22 admits that it has at all times fully complied with its obligations under the California Labor Code
23 and IWC Wage Order.

24 44. Safelite denies the allegations contained in Paragraph 44 of the Amended
25 Complaint.
26

27 45. Safelite denies the allegations contained in Paragraph 45 of the Amended Complaint.
28

1 53. Safelite denies the allegations contained in Paragraph 53 of the Amended
2 Complaint.

3 **SIXTH CLAIM**
4 **WAGE STATEMENT PENALTIES**
5 **(AGAINST ALL DEFENDANTS)**

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

9 55. Safelite denies the allegations contained in Paragraph 55 of the Amended
10 Complaint.

11 56. Safelite denies the allegations contained in Paragraph 56 of the Amended
12 Complaint.

13 57. Safelite denies the allegations contained in Paragraph 57 of the Amended
14 Complaint.

15 **SEVENTH CLAIM**
16 **UNLAWFUL DEDUCTIONS FROM EARNED WAGES**
17 **(AGAINST ALL DEFENDANTS)**

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

21 59. In response to 59 of the Amended Complaint, Safelite admits that Plaintiff
22 purports to bring an action under Labor Code §221, states that the provisions of Labor Code
23 §221 speak for itself, and denies that he has any basis for bringing an action under Labor Code
24 §221.
25
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1 60. Safelite denies the allegations contained in Paragraph 60 of the Amended
2 Complaint.

3 61. Safelite denies the allegations contained in Paragraph 61 of the Amended
4 Complaint.

5
6 **EIGHTH CLAIM**
7 **UNFAIR COMPETITION**
8 **(AGAINST ALL DEFENDANTS)**

9 62. In response to Paragraph 62 of the Amended Complaint, Safelite incorporates the
10 admissions, denials, and other averments contained in Paragraphs 1 through 61 of this Answer as
11 if fully set forth herein.

12 63. Safelite denies the allegations contained in Paragraph 63 of the Amended
13 Complaint.

14 64. Safelite denies the allegations contained in Paragraph 64 of the Amended
15 Complaint.

16 65. Safelite denies the allegations contained in Paragraph 65 of the Amended
17 Complaint.

18 66. Safelite denies the allegations contained in Paragraph 66 of the Amended
19 Complaint.

20 67. Safelite denies the allegations contained in Paragraph 67 of the Amended
21 Complaint.

22
23 **NINTH CLAIM**
24 **PRIVATE ATTORNEYS GENERAL ACT**
25 **(AGAINST ALL DEFENDANTS)**

26 68. In response to Paragraph 68 of the Amended Complaint, Safelite incorporates the
27 admissions, denials, and other averments contained in Paragraphs 1 through 67 of this Answer as
28

1 if fully set forth herein.

2 69. Defendant denies the allegations contained in Paragraph 69 of the Amended
3 Complaint.

4 70. In response to Paragraph 70 of the Amended Complaint, Safelite admits that
5 Plaintiff purports to bring an action under Labor Code §§ 2698 and 2699, states that the
6 provisions of Labor Code §§ 2698 and 2699 speak for themselves, and denies that Plaintiff has
7 any basis for bringing any action under those sections. Answering further, Defendant denies all
8 allegations contained in subparts (a) through (h) of Paragraph 70 of the Amended Complaint.
9

10 71. In response to Paragraph 71 of the Amended Complaint, Safelite admits that
11 Plaintiff notified Safelite of Plaintiff's intent to bring claim for civil penalties under Labor Code
12 § 2698 et seq. Safelite denies that Plaintiff is entitled to any such relief, and denies each and
13 every remaining allegation contained in Paragraph 71 of the Amended Complaint.
14

15 72. Safelite denies the allegations contained in Paragraph 72 of the Amended
16 Complaint

17 **PRAYER**

18
19 1. In response to the WHEREFORE Paragraph following Paragraph 72 of the
20 Amended Complaint, including subparts 1 through 15, Safelite denies that Plaintiff is entitled to
21 any of the relief requested.

22 2. Safelite admits that Plaintiff has demanded a jury trial in this matter, but denies
23 that these claims have any merit.

24 3. Safelite denies each and every remaining allegation in this Amended Complaint
25 not specifically admitted herein to be true.
26

1 Safelite further alleges and asserts the additional defenses set forth below. By pleading
2 these additional defenses, Safelite does not assume the burden of proving any fact, issue, or
3 element of a cause of action where such burden properly belongs to Plaintiff. Nothing stated
4 herein shall be construed as a concession that any particular issue or subject matter is relevant to
5 Plaintiff's allegations.
6

7 **FIRST DEFENSE**

8 4. The Amended Complaint, and each purported cause of action alleged therein, fails
9 to state facts sufficient to constitute a cause of action upon which relief may be granted against
10 Safelite.
11

12 **SECOND DEFENSE**

13 5. The Amended Complaint, and each purported cause of action alleged therein,
14 is barred in whole or in part by the applicable statutes of limitations, including but not
15 limited to, California Labor Code § 203, California Code of Civil Procedure §§ 337(1),
16 338(a), 339(1), 340(a), and 340(b), and California Business & Professions Code § 17208,
17 and 29 U.S.C. § 255.
18

19 **THIRD DEFENSE**

20 6. The Amended Complaint, and each purported cause of action alleged therein,
21 is barred in whole or in part by the doctrine of laches.
22

23 **FOURTH DEFENSE**

24 7. The Amended Complaint does not state facts sufficient to certify a class, this
25 action is not properly brought as a class or collective action, and a class or collective action is
26 not a superior method of adjudication.
27

1 **FIFTH DEFENSE**

2 8. Plaintiff is not a proper representative of the class he purports to represent and
3 this action is not properly brought as a class or collective action.

4 **SIXTH DEFENSE**

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

8 **SEVENTH DEFENSE**

9 10. Some or all of the claims contained in Plaintiff's Amended Complaint are
10 barred because Plaintiff failed to exhaust his administrative remedies or prerequisites before
11 filing suit.
12

13 **EIGHTH DEFENSE**

14 11. The Amended Complaint, in whole or in part, should be abated in the Court's
15 discretion, and Plaintiff should be forced to pursue his administrative remedies with the
16 California Division of Labor Standards Enforcement, which has primary jurisdiction over
17 Plaintiff's state law claims.
18

19 **NINTH DEFENSE**

20 12. Plaintiff is estopped by his own actions and conduct from asserting any cause
21 of action against Safelite.
22

23 **TENTH DEFENSE**

24 13. Plaintiff has engaged in conduct and activity sufficient to constitute a waiver
25 of any right to assert the claims upon which he now seeks relief.
26

1 **ELEVENTH DEFENSE**

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

4 **TWELFTH DEFENSE**

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

8 **THIRTEENTH DEFENSE**

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

11 **FOURTEENTH DEFENSE**

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

14 **FIFTEENTH DEFENSE**

15 18. Plaintiff's Amended Complaint, and each cause of action therein, is barred by
16 the doctrine of unclean hands.

17 **SIXTEENTH DEFENSE**

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

20 **SEVENTEENTH DEFENSE**

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

1 **EIGHTEENTH DEFENSE**

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

5 **NINETEENTH DEFENSE**

6
7 22. Plaintiff's claims are barred in whole or in part by reason of Defendant's
8 compliance with all applicable laws, statutes, and regulations.

9 **TWENTIETH DEFENSE**

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

13 **TWENTY-FIRST DEFENSE**

14
15 24. Plaintiff's claims are barred to the extent that any award in this action would
16 constitute unjust enrichment.

17 **TWENTY-SECOND DEFENSE**

18
19 25. Plaintiff's claims are barred in whole or part to the extent that Plaintiffs seek a
20 multiple recovery for the same alleged wrong or wrongs.

21 **TWENTY-THIRD DEFENSE**

22 26. Plaintiff's claims are barred in whole or in part to the extent that Plaintiff
23 failed to mitigate, minimize, or avoid the damages alleged in the Amended Complaint.
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1 **TWENTY-FOURTH DEFENSE**

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

5 **TWENTY-FIFTH DEFENSE**

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

8 **TWENTY-SIXTH DEFENSE**

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

11 **TWENTY-SEVENTH DEFENSE**

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

16 **TWENTY-EIGHTH DEFENSE**

17 31. Plaintiff's claims are barred, in whole or in part, because Plaintiff did not comply
18 substantially with all the directions of Safelite concerning the service for which Plaintiff was
19 engaged pursuant to Cal. Labor Code § 2856.

20 **TWENTY-NINTH DEFENSE**

21 32. The Complaint, and each purported cause of action in the Amended Complaint,
22 is barred in whole or in part, by the doctrine of release, including but not limited to the release of
23 claims in the class action titled *Demetriot Lewis v. Safelite Fulfillment, Inc.*, Case No. CV-11-

1 5512-CRB (N.D. Cal.) (Order and Final Judgment Granting Final Approval of Class Action
2 Settlement filed December 13, 2013).

3 **THIRTIETH DEFENSE**

4 33. Plaintiff's claims are barred, in whole or in part, because if Plaintiff suffered or
5 sustained any damage, injury, or detriment as alleged in the Amended Complaint, such injury
6 was caused by Plaintiff's own conduct.
7

8 **THIRTY-FIRST DEFENSE**

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

15 **THIRTY-SECOND DEFENSE**

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

21 **THIRTY-THIRD DEFENSE**

22 36. Safelite is not liable for violation of unfair business practices pursuant to
23 California Business and Professions Code Section 17200 *et seq.* because its business practices
24 were not unfair, not deceptive, and not likely to mislead anyone.
25
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1 **THIRTY-FOURTH DEFENSE**

2 37. Plaintiff's claims are barred in whole or in part due to Plaintiff's failure to meet
3 the burden of demonstrating a nexus between Safelite's alleged acts, conduct, or statements
4 and any impact on the general public that Plaintiff purports to represent.
5

6 **THIRTY-FIFTH DEFENSE**

7 38. The relief requested by Plaintiff pursuant to California Business and Professions
8 Code Section 17200 *et seq.* should be denied because Plaintiff has an adequate remedy at law.
9

10 **THIRTY-SIXTH DEFENSE**

11 39. Plaintiff lacks standing to sue on behalf of the purported class of others
12 similarly situated with respect to the claimed injuries, or otherwise.
13

14 Safelite hereby gives notice that it intends to rely on such other and further affirmative
15 defenses as may become available during discovery in this action and reserves the right to
16 amend its Answer to assert any such defense.
17

18 **WHEREFORE**, Defendant Safelite Fulfillment, Inc. prays for judgment as follows:
19 (1) that Plaintiff's Amended Complaint be dismissed in its entirety; (2) that Plaintiff take
20 nothing by reason of the Amended Complaint; (3) that Safelite be awarded its costs of suit
21 and reasonable attorneys' fees to the extent provided by law; and (4) for such other and further
22 relief as the Court may deem just and proper.
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1 Dated: November 11, 2015

Respectfully submitted,

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/s/ Robert A. Harris

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Robert A. Harris, Ohio Reg. No. 0059549 (*pro hac vice*)

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