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13 Attorneys for Defendant

SAFELITE FULFILLMENT, INC.

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15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17
18 DEMETRIOT K. LEWIS, individually and
19 on behalf of others similarly situated,

20 Plaintiff,

21 vs.

22 SAFELITE FULFILLMENT INC.; and
23 DOES 1 through 10.

24 Defendants.

Case No. CV-11-5512-CRB

**JOINT CASE MANAGEMENT STATEMENT
& [PROPOSED] ORDER**

Date: March 23, 2012

Time: 8:30 A.M.

Dept.: Courtroom 6

1 Additional Counsel

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14 *Admitted Pro Hac Vice*

15 Attorneys for Defendant
16 SAFELITE FULFILLMENT, INC.

17 The parties to the above-entitled action jointly submit this JOINT CASE MANAGEMENT
18 STATEMENT & PROPOSED ORDER pursuant to the Standing Order for All Judges of the Northern
19 District of California dated July 1, 2011 and Civil Local Rule 16-9.

The Court has original jurisdiction over Plaintiff's claims under the Fair Labor Standards Act ("FLSA"), a law of the United States, pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b). The Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367. No issues remain to be served and there are no issues regarding personal jurisdiction or venue.

Facts

Plaintiff worked as a windshield repair technician for Defendant from approximately April 10, 2010 through December 30, 2010. As a windshield repair technician, Plaintiff would typically perform windshield repairs at the site of the customer whose car was being repaired. He worked throughout the

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1 Bay area but was based out of Defendant's warehouse in Newark, California, along with other
2 windshield replacement technicians.

3 Plaintiff contends that:

4 1) Plaintiff was not paid all minimum or overtime wages owed to him because Defendant
5 required Plaintiff to clock in for work at a specified time but regularly suffered or permitted Plaintiff to
6 work prior to the specified time for clocking in.

7 2) Plaintiff was not paid all overtime wages owed to him for the additional reason that
8 Defendant did not factor into Plaintiff's regular rate of pay the amount of incentive compensation
9 earned by Plaintiff.

10 3) Plaintiff was not provided the opportunity to take a duty free meal period of thirty
11 minutes and was not paid premium wages for missed meal periods.

12 4) As a result of the foregoing, Plaintiff was not provided with accurate wage statements or
13 paid all wages owed to him upon termination.

14 5) Plaintiff was required by Defendant to have a GPS unit to facilitate his driving to
15 customers, but Defendant did not provide Plaintiff with a GPS unit or reimburse Plaintiff for the
16 expense of purchasing a GPS unit Plaintiff had to incur so that he could comply with Defendant's
17 directions.

18 On behalf of himself and similarly situated windshield repair or replacement technicians ("On
19 Site Technicians"), Plaintiff asserts a nationwide collective action for unpaid overtime wages under the
20 FLSA and class action claims under state law for failure to pay minimum wages, failure to pay
21 overtime wages, failure to provide meal periods, failure to indemnify for business expenses, unfair
22 competition, failure to provide accurate wage statements, and failure to pay all wages owed upon
23 termination.

24 Defendant denies Plaintiff's allegations and denies that this case may be maintained as a
25 collective action under the FLSA or as a class action under Rule 23.

26 3. Legal Issues

27 The principal legal issues in this case are:
28

- 1) Whether Plaintiff and other On Site Technicians are “similarly situated” as required for maintaining a collective action under the FLSA.
- 2) Whether Defendant failed to pay Plaintiff and other On Site Technicians for all overtime wages owed to them in violation of the FLSA.
- 3) Whether Defendant failed to pay Plaintiff and other On Site Technicians for all minimum wages owed to them in violation of Labor Code Section 1197.
- 4) Whether Defendant failed to pay Plaintiff and other On Site Technicians for all overtime wages owed to them in violation of Labor Code Section 510.
- 5) Whether Defendant failed to provide Plaintiff and other On Site Technicians with meal periods in violation of Labor Code Section 512.
- 6) Whether Defendant failed to pay Plaintiff and other On Site Technicians with premium wages for missed meal periods in violation of Labor Code Section 226.
- 7) Whether Defendant failed to indemnify Plaintiff and other On Site Technicians for all their business expenses in violation of Labor Code Section 2802.
- 8) Whether Defendant engaged in unfair competition in violation of Business and Professions Code Section 17200.
- 9) Whether Defendant failed to provide Plaintiff and other On Site Technicians with accurate wage statements in violation of Labor Code Section 226.
- 10) Whether Defendant failed to pay Plaintiff and other On Site Technicians all wages owed to them upon termination in violation of Labor Code Sections 201 or 202.
- 11) Whether Defendant is liable for waiting time penalties under Labor Code Section 203.
- 12) Whether any of Plaintiff’s state law claims can be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure.

4. Motions

There are no motions pending.

Defendant intends to file a Motion to Stay and coordinate this matter with *Perez v. Safelite Group, Inc.*, Case No. CV 10-8653 in the United States District Court, Central District of California,

1 which Defendant contends is a related case. (See further discussion in paragraph 10 - Related Cases).

2 Plaintiff intends to file a motion for conditional certification under the FLSA. If conditional
3 certification is granted, Defendant intends to file a motion for decertification.

4 Plaintiff intends to file a motion for class certification. (See paragraph 9).

5 Defendant may file a motion for summary judgment.

6 5. Amendment of Pleadings

7 The parties do not presently anticipate any claims or defenses to be added or dismissed. If
8 Plaintiff's motion for conditional certification under the FLSA is granted, Plaintiff expects that many
9 On Site Technicians will consent to join as plaintiffs under the FLSA.

10 6. Evidence Preservation

11 The parties are aware of their obligations to preserve materials relevant to the claims and
12 defenses asserted in this case. To the extent that issues arise regarding the scope of materials to be
13 preserved, the parties will work together in good faith to resolve any disputes. The parties both believe
14 that, to date, retention and preservation plans for appropriate documents within the parties' possession,
15 custody, and control are in place.

16 7. Disclosures

17 The parties have agreed to make the initial disclosures required by Fed. R. 26(a)(1) on or
18 before April 5, 2012.

19 8. Discovery

20 Plaintiff's preliminary discovery will focus on class certification issues and, if Plaintiff's
21 motion for class certification is granted, Plaintiff will then pursue any remaining merits discovery that
22 did not overlap with class certification discovery.

23 Defendant maintains that discovery should not proceed until the Court has had an opportunity
24 to consider the manner in which this case will be coordinated with the *Perez* case. Should discovery
25 proceed, Defendant intends to take Plaintiff's deposition and propound written discovery concerning
26 the basis for Plaintiff's claims and proposed class certification.

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9. Class Actions

1) Plaintiff contends that his state law claims can be maintained as a class action pursuant to Rules 23(a) and 23(b)(3).

2) Plaintiff intends to seek certification of the following classes:

California On Site Technicians Class: All persons who, at any time since November 14, 2007, were employed by Defendant in California as a windshield repair or replacement technician who would travel to the site of a customer to repair or replace the windshield of a car.

Wage Statement Subclass: All persons who, at any time since November 14, 2010, were employed by Defendant in California as a windshield repair or replacement technician who would travel to the site of a customer to repair or replace the windshield of a car.

Final Wages Subclass: All persons employed by Defendant in California as a windshield repair or replacement technician who would travel to the site of a customer to repair or replace the windshield of a car whose employment terminated at any time since November 14, 2008.

3) Plaintiff contends that the requirements of Rule 23(a) are satisfied because:

- a) Numerosity: there are more than 100 class members.
- b) Commonality: there are common issues of fact and law because all On Site Technicians were subjected to the same compensation practices.
- c) Typicality: Plaintiff alleges to have suffered the same kinds of injuries and seeks the same kind of relief as other On Site Technicians.
- d) Adequacy: there are no conflicts between Plaintiff and any other On Site Technicians and Plaintiff is represented by counsel with substantial experience in wage and hour class action litigation.

Plaintiff contends that the requirements of Rule 23(b)(3) are satisfied because the common issues pertaining to Defendant's liability in this case predominate over any individual issues and one

1 class action lawsuit would be superior to a multitude of individual lawsuits against Defendant all
2 involving the same issues regarding Defendant's compensation practices.

3 4) Plaintiff intends to file a motion for class certification following completion of class
4 certification related discovery.

5 Defendant denies that class certification is appropriate for any of Plaintiff's claims under Rule
6 23 or that a collective action is appropriate under the FLSA.

7 10. Related Cases

8 Defendant contends that the instant action is related to *Perez v. Safelite Group, Inc.*, Case No.
9 CV 10-8653 in the United States District Court, Central District of California. On February 1, 2012,
10 Defendant filed a Notice of Pendency of Other Actions identifying *Perez* as a related matter. *Perez*
11 was initially filed in the Superior Court of California, County of Los Angeles, and was removed to the
12 United States District Court for the Central District of California on November 12, 2010.

13 The Plaintiff in *Perez* filed a class action suit under California law against Safelite Group, Inc.
14 alleging: (i) failure to pay wages and overtime; (ii) failure to provide meal breaks; (iii) failure to
15 provide rest breaks; (iv) failure to reimburse business expenses; and (v) failure to provide accurate
16 wage statements. Plaintiff *Perez* sought certification of a class defined as, "All persons who are
17 employed or have been employed, and who have worked as an Associates [sic] for Safelite in the State
18 of California since four (4) years prior to the filing of this action."

19 On April 22, 2011, Plaintiff *Perez's* Motion for Class Certification was denied on the grounds
20 that Plaintiff *Perez* had failed to establish that class certification was appropriate under Rule 23(b)(2) or
21 (b)(3). See April 22, 2011 Order at p. 5 (Dock. No. 34). Plaintiff *Perez's* individual claims have been
22 dismissed with prejudice and *Perez's* counsel has informed Safelite's counsel that *Perez* intends to
23 appeal the denial of class certification.

24 Defendant contends that *Perez* involves related parties and, at least potentially, a material part of
25 the subject matter of the present action. Safelite Fulfillment, Inc., the Defendant in the present action,
26 is a wholly-owned subsidiary of Safelite Group, Inc., the defendant in *Perez*. Defendant contends that
27 the class pled in *Perez* includes class members which Plaintiff *Lewis* seeks to represent in the present
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1 action. Defendant further contends there is substantial overlap in the claims asserted in this matter with
2 the claims asserted in *Perez*. Defendant contends that, like Plaintiff Lewis, Plaintiff Perez sought class
3 certification of claims under California law for (i) failure to pay all wages and overtime wages; (ii)
4 failure to provide meal periods; (iii) failure to reimburse business expenses; (iii) failure to provide
5 accurate wage statements; (iv) waiting time penalties; and (v) unfair competition.

6 Defendant contends that, depending upon the outcome of the appeal in *Perez* (the first filed
7 case), coordination of these matters might be necessary to avoid conflicts, conserve resources, and
8 promote an efficient determination of the actions. Defendant intends to file a Motion to Stay to
9 address the manner in which this case can be coordinated with the *Perez* class.
10

Plaintiff contends that neither the district court nor the appellate court has held that the class certification in *Perez* is binding on Plaintiff.

On February 3, 2012,
Actions or Proceedings
asserted in *Perez* (such as his
Perez, and that the denial of

Plaintiff seeks to recover
half times the regular rate of
On Site Technicians Class, Plaintiff seeks to
which Plaintiff and other
liquidated damages equal to

On Site Technicians Class, Plaintiff seeks to
and one half times the regular
On Site Technicians Class, Plaintiff seeks to

11 have any bearing on the litigation of Plaintiff's claims against Defendant.
12 Plaintiff filed an Opposition to Defendant's Notice of Pendency of Other
13 [Docket No. 8]. Plaintiff contends that he asserts claims that were not as
14 FLSA claims) and/or are materially different from the claims asserted in
15 class certification in *Perez* is not binding on Plaintiff.

16 11. Relief

17 1) for himself and similarly situated On Site Technicians, Plaintiff
18 damages for unpaid overtime wages calculated at the rate of one and one
19 pay for every hour of overtime worked.

20 2) for himself and members of the California On Site Technicians Class,
21 recover damages for unpaid minimum wages for every hour of work for which
22 members of the California On Site Technicians Class were not paid, and for
23 the amount of unpaid minimum wages.

24 3) for himself and members of the California On Site Technicians Class,
25 recover damages for unpaid overtime wages calculated at the rate of one and
26 rate of pay for every hour of overtime worked.

27 4) for himself and members of the California On Site Technicians Class,
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1 recover damages for missed meal periods calculated at the rate of one hour of pay (calculated at the
2 regular rate of pay) for every missed meal period.

3 5) for himself and members of the California On Site Technicians Class, Plaintiff seeks to
4 recover damages for the expense of purchasing GPS units.

5 6) for himself and members of the Wage Statement Subclass, Plaintiff seeks to recover civil
6 penalties calculated at the rate of fifty dollars for the initial pay period in which a violation of Labor
7 Code Section 226 occurred and one hundred dollars for each violation of Labor Code Section 226 in
8 every subsequent pay period, not to exceed an aggregate civil penalty of four thousand dollars per
9 employee.

10 7) for himself and members of the Final Wages Subclass, Plaintiff seeks to recover penalty
11 wages calculated at the rate of one day of wages for every day from the day their earned and unpaid
12 wages were due upon termination until paid, up to a maximum of 30 days.

13 8) for himself, On Site Technicians and members of the California On Site Technicians
14 Class, Plaintiff seeks to recover pre-judgment interests, costs and attorney's fees.

15 Defendant denies that Plaintiff is entitled to the relief requested or to any relief whatsoever.

16 12. Settlement and ADR

17 The parties believe that private mediation may be appropriate after sufficient discovery.

18 13. Consent to Magistrate Judge For All Purposes

19 The parties do not unanimously consent to proceed before the Magistrate Judge.

20 14. Other References

21 None

22 15. Narrowing of Issues

23 No options for narrowing of the issues have been identified at this time.

24 16. Expedited Trial Procedure

25 This case is not appropriate for expedited trial procedures.

26 17. Scheduling

27 Given Defendant's intention to file a Motion to Stay, any case schedule must be set with the
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1 understanding that the case schedule may need to be adjusted accordingly. However, the parties have
2 discussed the following proposed dates.

3 Disclosure of Primary Experts – October 1, 2012

4 Disclosure of Rebuttal Experts – December 3, 2012

5 Hearing for Motion to Certify Class and dispositive motions - January 31, 2013

6 Discovery Cut-off – March 31, 2013

7 18. Trial

8 The parties request that a trial date not be set until after the Court rules on Plaintiff’s motion for
9 class certification and any dispositive motions. The parties cannot estimate the length of trial of this
10 matter at this time.

11 19. Disclosure of Non-party Interested Entities or Persons

12 Defendant Safelite Fulfillment, Inc. is a wholly owned subsidiary of Safelite Group, Inc.
13 Safelite Group, Inc.’s parent company is Belron SA. D’leteren is a publicly traded company in
14 Belgium and owns a majority interest in Belron SA.

15 20. Other

16 To the extent that any proprietary, confidential, or trade secret information must be
17 disclosed during discovery, the parties agree that a protective order may be needed to maintain
18 the confidentiality of such documents or information.

19 Dated: March 16, 2012

KARASIK LAW FIRM
DYCHTER LAW OFFICES, APC

21 By /s/ Gregory N. Karasik
22 Gregory N. Karasik
23 Attorneys for Plaintiff
24 DEMETRIOT K. LEWIS

25 Dated: March 16, 2012

CAROTHERS, DiSANTE & FREUDENBERGER LLP

26 By: /s/ Kent J. Sprinkle
27 Kent J. Sprinkle
28 Attorneys for Defendant
SAFELITE FULFILLMENT, INC.

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CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions.

[In addition, the Court makes the further orders stated below:]

IT IS SO ORDERED.

Dated:

Hon. Charles R. Breyer
United States District Judge
Northern District of California