**IN THE UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF OHIO**
**EASTERN DIVISION**

| | | |
|---|---|---|
| PATRICK W. HEAPS, et al., | : | |
| | : | |
| Plaintiffs, | : | Case No. 2:10-CV-729 |
| | : | |
| vs. | : | JUDGE FROST |
| | : | |
| SAFELITE SOLUTIONS, LLC, et al., | : | MAGISTRATE JUDGE KING |
| | : | |
| Defendants. | : | |

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION AS A COLLECTIVE ACTION**

## I. INTRODUCTION

On August 13, 2010, Plaintiffs filed their Complaint alleging violations of the Fair Labor Standards Act and Ohio Minimum Wage Act against Safelite Solutions, LLC and Safelite Group, Inc. ("Safelite"). On October 13, 2010, Defendants filed their Answer. Just two days later, without having the benefit of any discovery into Safelite's actual operations, Plaintiffs filed their Motion for Conditional Certification. In doing so, they rely exclusively on the allegations in the Complaint to make their "modest factual showing" that they were subjected to a common policy that violated the FLSA. Plaintiffs' entire case is premised on the faulty assumption that Safelite's call center representatives ("CSR") are "paid in accordance with a time keeping system triggered by booting up on their computers." See Plf. Motion, p. 7; Complaint ¶¶ 11, 24, 26-27. Plaintiffs' premise is false.

Actually, Safelite's timekeeping system is not triggered by booting up the computers. Instead, Safelite requires its CSRs to first log into the timekeeping system through the telephone at their workstations. This begins their paid shift. After they've logged into the phone system,

CSRs boot up their computers. This means that the CSRs' log-in procedure and computer boot up process are wholly independent from each other. In light of this, there is not even a "modest *factual* basis" for Plaintiffs' allegations and so Plaintiffs' motion for conditional certification as an FLSA collective action should be denied.

## II. STATEMENT OF FACTS

### A. Safelite's call center operations.

Safelite is the leading provider of windshield and vehicle glass repair and replacement services in the United States. See Declaration of Brian O'Mara ¶ 2 ("O'Mara Decl. ¶ __.").[1] Safelite operates multiple call centers nationwide. Safelite operates a call center in Chandler, Arizona. Safelite also operates call centers in two Ohio locations, one at 2400 Farmers Drive, Columbus, Ohio (the "Farmers Drive Contact Center") and the other at 2231 Schrock Road, Columbus, Ohio (the "Schrock Road Contact Center"). O'Mara Decl. ¶ 3.

Safelite's call centers are divided into two separate and distinct operations: Referral and Sales Central. O'Mara Decl. ¶ 5. Sales Central call center operations receive incoming calls directly from consumers who are inquiring about Safelite's vehicle glass products and services. O'Mara Decl. ¶ 6. Referral call center operations receive calls referred to Safelite by insurance companies with whom Safelite contracts to provide claim processing and vehicle glass repair and replacement services. O'Mara Decl. ¶ 7.

Call center representatives ("CSRs") are assigned to either Sales Central or to Referral duties. CSRs do not work in Sales Central and Referral operations at the same time. O'Mara Decl. ¶ 8. Sales Central and Referral operations have separate managers, training managers, job coaches, and CSRs. Training programs are different for Sales Central and Referral operations, and Sales Central and Referral CSRs have separate compensation schemes. O'Mara Decl. ¶ 9.

[1] The Declaration of Brian O'Mara is attached hereto as Exhibit A.

Notably, all three Plaintiffs were or are employed by Safelite as a CSR in the Referral call center operation located at the Farmers Drive Contact Center. O'Mara Decl. ¶ 4. Plaintiffs have not worked in Sales Central call centers nor have they worked in any call center location other than the Farmers Drive Contact Center location. O'Mara Decl. ¶ 4.

**B. Safelite requires its CSRs to clock-in before performing any work-related task or duty.**

At the beginning of a CSR's shift, the CSR is required to "log in" by entering a unique ID number into the phone at the workstation. The telephone log-in functions as the time clock for payroll purposes. O'Mara Decl. ¶ 13. After logging into the phone, CSRs will then boot-up and log in to the computer terminal at their workstation. O'Mara Decl. ¶ 14. Safelite has no policy or practice of omitting time spent by the CSR booting up and logging in to the computer system from hours of work. O'Mara Decl. ¶ 15.

Safelite manages its CSRs to maximize the amount of time out of their work time that is devoted to taking calls or being ready to take a call. O'Mara Decl. ¶ 20. Nonetheless, Safelite understands that not all of a CSRs work time will be devoted to taking calls. O'Mara Decl. ¶ 21. For example, booting up the computer, reviewing work-related documents, and communications with job coaches are work-related tasks for which CSRs are paid. O'Mara Decl. ¶ 21. CSRs are paid for all time they are logged in through the phone system regardless of whether they are on a call or available to take a call. O'Mara Decl. ¶ 23.

**C. Safelite's telephone time-keeping system is separate and independent from the computer boot-up process.**

Contrary to the allegations in the Complaint, the computer system and its boot-up and log-in processes are entirely unrelated to the phone system which is used for tracking working time and generating payroll. O'Mara Decl. ¶ 15. CSRs are expected to log-in to the phone

system as the initial task of their work day. Hours of work are tracked exclusively by the phone system, not the computer system. O'Mara Decl. ¶ 15. CSRs are not required to boot-up their computer before logging in to the phone system. Nor are CSRs required to wait for the computer boot up/log-in process to be completed before logging in to the phone system. O'Mara Decl. ¶ 17.

CSRs are expected to log-in to the phone system before performing any work, and CSRs performing work before logging in to the phone system are subject to discipline. O'Mara Decl. ¶ 18. CSRs that mistakenly fail to log-in to the phone system or who encounter some technical difficulty completing the log-in process are expected to notify their job coach or supervisor so that Safelite's records can be adjusted to accurately reflect all time worked by the CSR. O'Mara Decl. ¶ 18.

## III. CONDITIONAL CERTIFICATION IS NOT APPROPRIATE.

### A. Standard for collective action.

Although the Fair Labor Standards Act provides for collective actions through an "opt in" procedure (29 U.S.C. §216(b)), a collective action should be permitted to proceed only where it facilitates a court's ability to resolve multiple claims *efficiently* in one proceeding. Hoffman-LaRoche, Inc. v. Sperling, 493 U.S. 165, 170 (1989); see also Severtson v. Phillips Beverage Co., 137 F.R.D. 264, 266 (D. Minn. 1991) (the "power [to authorize court-supervised notice to potential class members] is to be exercised … only in 'appropriate cases,' and remains within the discretion of the district court."). Section 216(b) provides that only "similarly situated" employees may utilize the opt in procedure. Id.

The Sixth Circuit has not yet adopted a definitive standard as a means of evaluating conditional class certification. But "[c]ourts are in general agreement that the certification of a

collective action under the FLSA should proceed in two stages." Smith v. Lowe's Home Ctrs., 236 F.R.D. 354, 357 (S.D. Ohio 2005). At the first or "notice" stage – which is the stage here – the plaintiffs' burden is "fairly lenient," and requires "a modest factual showing" that he is similarly situated to the other employees sought to be notified. Harrison v. McDonald's Corp., 411 F. Supp. 2d 862, 864, 865 (S.D. Ohio 2005) (citing Olivo v. GMAC Mortgage Corp., 374 F. Supp. 2d 545, 548 (E.D. Mich. 2004)).[2] "In this Court's view, conditional certification should not be granted unless the plaintiff presents some evidence to support her allegations that others are similarly situated." Id. Thus, "plaintiffs must submit evidence establishing at least a colorable basis for their claim that a class of 'similarly situated' plaintiffs exists." Severtson, 137 F.R.D. at 267. This evidence includes "factors such as whether potential plaintiffs were identified; whether affidavits of potential plaintiffs were submitted; whether evidence of a widespread discriminatory plan was submitted, and whether as a matter of sound class management, a manageable class exists." Olivo, 374 F. Supp. 2d at 548 (quoting H&R Block, Ltd. v. Housden, 186 F.R.D. 399, 400 (E.D. Tex. 1999) (internal quotation marks omitted).

Plaintiffs bear the burden of establishing that they and the class they wish to represent are similarly situated. See Grayson v. K Mart Corp., 79 F.3d 1086, 1096 (11th Cir. 1996). While "modest," this burden is real and "is not a mere formality." Boyd v. Jupiter Aluminum Corp., 2006 U.S. Dist. LEXIS 35654, at *9 (N.D. Ind. May 31, 2006). Rather, this standard is important to the certification process for several reasons. First, if the plaintiff has not made such a showing, "[i]t would be a waste of the Court's and the litigants' time and resources to notify a large and diverse class only to later determine that the matter should not proceed as a collective action because the class members are not similarly situated." Freeman v. Wal-Mart Stores, Inc.,

[2] At the second stage, the defendant may file a motion for decertification in which it challenges the earlier conditional determination that employees are sufficiently similarly situated. Harrison, 411 F. Supp. 2d at 865.

256 F. Supp. 2d 941, 945 (W.D. Ark. 2003). Second, a plaintiff's discovery demands upon conditional certification may impose "a tremendous financial burden to the employer." Woods v. New York Life Ins. Co., 686 F.2d 578, 581 (7th Cir. 1982). And third, "[t]he courts, as well as practicing attorneys, have a responsibility to avoid the 'stirring up' of litigation through unwanted solicitation." Severtson, 137 F.R.D. at 266-67; see also Prizmic v. Armour, Inc., 2006 U.S. Dist. LEXIS 42627, at *7 (E.D.N.Y. June 12, 2006) (finding that a plaintiff must "provide actual evidence of a factual nexus between his situation and those that he claims are similarly situated rather than mere conclusory allegations. Absent such a showing, an employer may be 'unduly burdened by a frivolous fishing expedition conducted by plaintiff at the employer's expense.'") (internal citations omitted).

Here, Plaintiffs are unable to meet even their "modest" factual burden of demonstrating that they are similarly situated to the proposed class. Consequently, conditional certification should be denied.

**B. Plaintiffs have no evidence of a common policy that violates the FLSA.**

Courts have consistently required plaintiffs to show "that they and potential plaintiffs together were victims of a common policy or plan that violated the law" before certifying a collective action. See, e.g., Olivo, 374 F. Supp. 2d at 548; Clarke v. Convergys Customer Mgmt. Group, Inc., 370 F. Supp. 2d 601, 605 (S.D. Tex. 2005) (holding that notice is only appropriate when there is "some factual nexus which binds the named plaintiffs and potential class members together as victims of a particular alleged [policy or practice]"); Moss v. Crawford & Co., 201 F.R.D. 398, 409-10 (W.D. Pa. 2000) (requiring the plaintiffs to produce "substantial evidence" of a "single decision, policy or plan"). Whether the employees were impacted by a "single decision, policy, or plan" has been described as a "particularly relevant factor" for certification

purposes. Jordan v. IBP, Inc., 542 F. Supp. 2d 790, 813 (M.D. Tenn. 2008). Plaintiffs have failed to show a common, unlawful policy or plan by Safelite.

In support of their Motion here, Plaintiffs prominently rely upon another call center case brought in the Middle District of Tennessee (see Plf. Motion, pp. 6-7). In Shabazz v. Asurion Ins. Serv., 2008 U.S. Dist. LEXIS 29696 (M.D. Tenn. Apr. 10, 2008), the plaintiffs claimed they were not paid for off-the-clock work (booting up their computers) before beginning their paid shift by punching into their phones (which, like at Safelite, served as the time clock):

> Specifically, Plaintiffs allege that they were instructed or required by their managers or supervisors to report to work fifteen to twenty minutes prior to their scheduled start times. During that period, employees were required to turn on and boot their computers, start various computer programs, and log on to various computer systems. Plaintiffs claim that these tasks were integral and indispensable to their principal work activities, but they were not paid for the tasks and instead only clocked in after they punched in an identification number on their phones.

Id. at **3-4. Based on these allegations, the court granted conditional certification.

However, the facts of Plaintiffs Heaps, Ruppert, and Pursley's employment (or that of their co-workers) at Safelite are plainly distinguishable from those of the Shabazz plaintiffs. Safelite does not require CSRs to boot up their computer before logging in to the phone system. O'Mara Decl. ¶ 17. All hours of work are tracked by the phone system. O'Mara Decl. ¶ 16. Safelite's policy and practice is to capture all of the CSRs' duties and tasks (including booting up the computers), and to compensate them for those duties and tasks after they have logged into their phones. O'Mara Decl. ¶¶ 21 and 23.

**C. Individualized inquiries render conditional certification inappropriate.**

The purpose of a collective action is the "efficient resolution in one proceeding of common issues of law and fact." Hoffman-LaRoche, 493 U.S. at 170. Therefore, a collective

action is not appropriate where certification would require the court to engage in burdensome individualized inquiries of each class member's eligibility for overtime under the FLSA. See, e.g., Diaz, 2005 WL 2654270, at *5 (denying conditional certification because the plaintiffs' overtime claims for time spent "off the clock" were too individualized for collective action treatment); Mike v. Safeco Ins. Co. of Am., 274 F. Supp. 2d 216, 220-21 (D. Conn. 2003) (denying collective action certification "because the proof in this case is specific to the individual…"); Sheffield v. Orius Corp., 211 F.R.D. 411, 413 (D. Or. 2002) (denying certification because each claim would require extensive consideration of individualized issues of liability, and stating that "[a]n action dominated by issues particular to individual plaintiffs can not be administered efficiently because individual issues predominate over collective concerns").

In light of Safelite's policy that CSRs log into their telephones before booting up their computers, the reason or reasons why Plaintiffs Heaps, Ruppert, and Pursley felt inclined to reverse this process on any particular occasion would require an individualized inquiry as to their rationale and motivation for doing so. This is inappropriate for a collective action. See Lawrence v. City of Philadelphia, 2004 U.S. Dist. LEXIS 8445, at *7 (E.D. Pa. Apr. 29, 2004) ("[E]ach of the Plaintiffs may potentially claim that on any given day he or she arrived early or departed outside of their regularly scheduled hours and were not compensated for such. The circumstances of those individual claims potentially vary too widely to conclude...the plaintiffs are similarly situated.").

**D. If the Court conditionally certifies a collective action, notice is only warranted for a two-year period.**

The FLSA provides for a two-year statute of limitations for overtime violations, unless the violations at issue are proven to be willful, in which case the statute of limitations extends to

three years. 29 U.S.C. § 255; McLaughlin v. Richland Shoe Co., 486 U.S. 128, 135 (1988). Plaintiffs' Motion seeks to certify a conditional class that extends back three years. But there is no evidence that Safelite willfully violated the FLSA. A violation is "willful" under the FLSA only if "the employer knew or showed reckless disregard as to whether its conduct was prohibited by the statute…" McLaughlin, 486 U.S. at 133. "This standard requires more than a showing of negligence on the employer's part. Even if an employer acts unreasonably, but not recklessly, in determining its legal obligation under the FLSA, its conduct does not satisfy the 'willfulness' standard." Schneider v. City of Springfield, 102 F. Supp. 2d 827, 836 (S.D. Ohio 1999). Plaintiffs have not alleged facts sufficient to demonstrate that Safelite knew it was violating the FLSA, or that it acted with reckless disregard of violating the FLSA. Accordingly, if this Court were to conditionally certify a collective action, it should be limited to two years.

**E. Plaintiffs' proposed notice is defective.**

Plaintiffs' Motion included a proposed notice to potential opt-in plaintiffs which they ask the Court to approve. Plf. Motion at Exhibit A. Notices sent to class members must "be scrupulous to respect judicial neutrality... [and] … take care to avoid even the appearance of judicial endorsement of the merits of the action." Hoffmann-LaRoche, 493 U.S. at 174. Plaintiffs' notice is defective because it contains defects and omissions that unfairly prejudice Safelite and otherwise deprive the proposed class members of basic information necessary to inform their decision as to whether or not to opt-in to the litigation. If the Court conditionally certifies a collective action, it should not simply "rubber stamp" Plaintiffs' notice. Some of the more prominent deficiencies of Plaintiffs' proposed notice which must be remedied are outlined below. Safelite respectfully requests leave to address other deficiencies with the Court before approval of any such notice.

***1. The notice should clearly explain the pending action and explain the potential consequences of opting-in.***

The proposed notice refers to purported collective actions under both the FLSA and the Ohio Minimum Wage Act. But Plaintiffs' Motion only seeks certification of a collective action under the FLSA. Indeed, the Complaint seeks to certify a Rule 23 class action – not a collective action – under Ohio law. Opt-in collective actions and opt-out class actions are fundamentally different. Consequently, references to the Ohio Minimum Wage Act in the proposed notice are misleading, confusing, and inappropriate and should not be included in any notice sent to potential opt-in plaintiffs.

In addition, any notice to potential opt-in plaintiffs should include a full description of the potential consequences of their participation in the litigation so as to ensure that any decision to opt-in to the class is based on a full and fair informed consent. In particular, notice of the collective action should include a statement that the opt-in plaintiffs may be required to participate in written discovery and that they may be required to appear for deposition and/or trial in the Southern District of Ohio. See Reab v. Elec. Arts, Inc., 214 F.R.D. 623, 630 (D. Colo. 2002) (approving notice advising potential opt-in plaintiffs that if they opt-in, they may be asked to appear for deposition in Denver, respond to written discovery, and appear at trial in Denver); Schwed v. Gen. Elec. Co., 159 F.R.D. 373, 379 (N.D.N.Y. 1995) (approving notice stating, "While the suit is proceeding, you may be required to provide information, sit for depositions, and testify in court."). Notice should further advise potential opt-in plaintiffs that they may be held liable for the payment of Safelite's costs associated with this lawsuit if Safelite prevails. See Robbins-Pagel v. Wm. F. Puckett, Inc., 2006 U.S. Dist. LEXIS 85253, at **8-9 (M.D. Fla. Nov. 22, 2006) (holding that the plaintiff's proposed notice was inadequate because it

failed to inform plaintiff that, if they did opt-in and were unsuccessful on the merits of their claim, they may be responsible for the defendants' costs).

***2. The proposed notice improperly indicates that potential opt-in plaintiffs must be represented by Plaintiffs' counsel.***

Plaintiffs' proposed notice fails to clearly inform the potential opt-in plaintiffs that they have a right of representation in this litigation by counsel of their own choosing. In fact, Plaintiffs' proposed notice implies that opt-in plaintiffs would be represented solely by Plaintiffs' current counsel: "The workers who bring a lawsuit are called plaintiffs..." (Plf. Notice at p. 2) and "Plaintiffs are represented by the attorneys listed below [Marshall and Morrow LLC and Barkan, Neff, Handleman & Meizlish]" (Plf. Notice at p. 3). This language misleads potential opt-in plaintiffs to believe they must be represented by Plaintiffs' counsel when that is not required by law. An "appropriate" element of a notice includes "the right to appear through one's own counsel." Douglas v. GE Energy Reuter Stokes, 2007 U.S. Dist. LEXIS 32449, at *17 (N.D. Ohio April 30, 2007). Notices approved by courts in other collective actions have confirmed that named plaintiffs are required to make this point clear to putative class members. See, e.g., Gjurovich v. Emmanuel's Marketplace, Inc., 282 F. Supp. 2d 101, 107 (S.D.N.Y. 2003) (revising plaintiff's proposed notice to state that opt-in plaintiffs may join the class with counsel of their own choosing); Heitman v. City oaɒpt-;6 393280 678.67 -0.59 re f Q

Tenn. July 30, 2008) ("If you choose to join this lawsuit, you may, but are not required to, retain [Plaintiff's attorney] to represent you.").

***3. The lack of information in the notice regarding Safelite's position is unfairly prejudicial.***

Plaintiffs' proposed notice does not include any statement that Safelite denies Plaintiffs' allegations of overtime violations. Fairness dictates that Safelite be permitted to describe its position in the litigation, including any particular defenses it believes it may have. Safelite should also be permitted to state that it believes it has complied with the FLSA in good faith. Indeed, because this may be the first communication potential opt-in plaintiffs receive about this lawsuit, it is particularly critical that the notice contain a full and balanced disclosure of both parties' position in the matter. See, e.g., Belcher v. Shoney's, Inc., 927 F. Supp. 249, 253 (M.D. Tenn. 1996) (authorizing notice that included statement of employer's affirmative defenses); Belt v. Emcare, Inc., 299 F. Supp. 2d 664, 671 (E.D. Tenn. 2003) (approving notice that described defendant's affirmative defenses).

***4. The proposed class and opt-in period are overbroad.***

Plaintiffs' requested opt-in period is unclear. Plaintiffs' notice proposes a 90-day opt-in period (Plf. Notice at p. 2), while their motion requests a 100-day opt-in period (Plf. Motion, p. 9). In any event, there is no basis for either a 90- or 100-day notice period. In Shabazz, the call center case Plaintiffs claim is "parallel" to this action (see Plf. Motion, p. 6), the court ordered a 45-day opt-in period. Shabazz, Case No. 3:07-0653, at p. 2 (M.D. Tenn. June 13, 2008) (attached as Exhibit B). Safelite submits that a 45-day opt-in period would be sufficient to send notices here.

Plaintiffs seek to represent all CSRs who work at Safelite's two call centers in Ohio and its call center in Arizona. This too is overbroad. Plaintiffs only worked for Safelite in its

Farmers Drive, Columbus, Ohio, call center. O'Mara Decl. ¶ 5. Again, the Shabazz case is instructive. There, the plaintiffs only worked in the defendant's Nashville facility but sought to send notices to both the Nashville facility and to defendant's Houston, Texas, facility. The Court denied this request because "[p]laintiffs have not worked at the Houston facility and have not presented a declaration from any employee who works or worked at the Houston call center." Shabazz, 2008 U.S. Dist. LEXIS 29696, at *14. See also Hens v. ClientLogic Operating Corp., 2006 U.S. Dist. LEXIS 69021, at *15 (W.D.N.Y. Sept. 26, 2006) (finding that named plaintiff's putative class of all current and former call center employees in all of defendant's domestic facilities was overly broad and certifying a class consisting of only those employees of the facilities where plaintiffs had made some showing that potential FLSA violations had occurred). For the same reasons, any notice the Court authorizes should be sent only to customer service representatives who worked at Safelite's Farmers Drive Contact Center in Columbus, Ohio.

**F. Even if conditional certification were granted, discovery should be limited to names and addresses of potential opt-in plaintiffs at the call center where Plaintiffs actually worked.**

First, because Plaintiffs only worked for Safelite in its Farmers Drive Contact Center location, any discovery should be limited to the names and addresses of customer service representatives who worked at that location. In Shabazz, the court limited notice and related discovery to the facility where the plaintiffs actually worked. Shabazz, 2008 U.S. Dist. LEXIS 29696, at *14.

Second, Plaintiffs' request for expedited discovery of putative class members' "names, best known addresses, e-mail address, and cellular and home telephone numbers" is overbroad. Motion, p. 9. In particular, Safelite should not be required to disclose exceptionally private personal information regarding its current and former employees' personal phone numbers and e-

mail addresses. First, under Ohio Rule of Professional Conduct Rule 7.3(a), lawyers are barred from soliciting legal business by telephone. Moreover, courts typically find discovery of putative class members' names and addresses to be sufficient to provide notice of a collective action. See Shabazz, 2008 U.S. Dist. LEXIS 29696, at *18 (ordering disclosure of employees' names and last-known addresses); Hoffmann-La Roche, Inc., 493 U.S. at 170 (same); Carter v. Indianapolis Power & Light Co., 2003 U.S. Dist. LEXIS 23398, at *13 (S.D. Ind. Dec. 23, 2003) (same); Laroque v. Domino's Pizza, LLC, 557 F. Supp. 2d 346, 357 (E.D.N.Y. 2008) (same).

The disclosure of Safelite's current and former employees' personal phone numbers and e-mail addresses would also constitute a significant invasion of those individuals' privacy rights. This is particularly true for those current and former employees of Safelite who have provided only their personal cellular telephone numbers to Safelite (as Safelite employees sometimes do). Notification of this litigation via U.S. mail – as authorized in the Shabazz call center case – will serve the same purpose of notifying potential opt-in plaintiffs of the existence of this action, without unduly intruding upon their personal lives. Therefore, provision of potential opt-in plaintiffs' telephone numbers and e-mail addresses to Plaintiffs' counsel should not be permitted.

## IV. CONCLUSION

Plaintiffs' Motion for Conditional Certification should be denied because it is based on the faulty assumption that Safelite's timekeeping system is connected to the boot-up process of its computers. It is not. The timekeeping system is triggered by logging in by telephone, after which the call center representative should boot-up the computer. Call Center Representatives are paid for the time the brief time their computer is booting-up because they have already logged in to the timekeeping system. In light of this, there is simply no evidence of a "policy or plan" that violates the FLSA so as to warrant conditional certification.

Respectfully submitted,

/s/Daniel J. Clark
Andrew C. Smith, Trial Attorney (0008136)
Michael C. Griffaton (0062027)
Daniel J. Clark (0075125)
VORYS, SATER, SEYMOUR and PEASE LLP
52 E. Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
Telephone: (614) 464-5434
Facsimile: (614) 719-4969
acsmith@vorys.com
mcgriffaton@vorys.com
djclark@vorys.com

Attorneys for Defendants
Safelite Solutions, LLC and Safelite Group, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 3rd day of December, 2010, a copy of the Defendants' Opposition to Plaintiffs' Motion for Conditional Certification as a Collective Action was served to the following via the Court's electronic filing system:

John S. Marshall, Esq.
Edward R. Forman, Esq.
Marshall and Morrow LLC
111 West Rich Street, Suite 430
Columbus, OH 43215-5296
jmarshall@marshallandmorrow.com
eforman@marshallandmorrow.com

Louis A. Jacobs, Esq.
66871 Rayo del Sol
Desert Hot Springs, CA 92240-1871
lajohio@aol.com

Robert DeRose, Esq.
Katherine A. Stone, Esq.
Barkan, Neff, Handleman, Meizlish LLP
360 South Grant Avenue
P.O. Box 1989
Columbus, OH 43216-1989
bderose@bnhmlaw.com
kstone@bnhmlaw.com

Attorneys for Plaintiffs

/s/Daniel J. Clark
Daniel J. Clark