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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN

MARIE DEMARTINI, and on behalf of the
general public as private attorneys general,

Plaintiffs,

v.

SAFELITE FULFILLMENT, INC. dba
SAFELITE AUTO GLASS, an Ohio
Corporation; and DOES 1-10, inclusive,

Defendants.

Case No.
ASSIGNED FOR ALL PURPOSES TO:
JUDGE:
DEPT:

**[PROPOSED] PAGA
REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 et seq).**

COMES NOW Plaintiff MARIE DEMARTINI ("Plaintiff"), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, asserting claims against Defendant SAFELITE FULFILLMENT, INC. dba SAFELITE AUTO GLASS; and DOES 1-10, inclusive (hereinafter "Defendants" or "Safelite") as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 ("PAGA"), Cal. Lab. Code sections 2698 *et seq.* PAGA permits "aggrieved employees" to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer's violations of the California Labor Code.

2. Safelite operates auto glass repair facilities and mobile glass repairs throughout the State of California.

3. Through this action, Plaintiff is alleging that Defendants have engaged in a systematic pattern of wage and hour violations under the California Labor Code and Industrial Welfare Commission ("IWC") Wage Orders.

4. Plaintiff is informed and believes, and thereon alleges, that Defendants have increased their profits by violating state wage and hour laws by, among other things:

(a) Failing to pay all wages owed, including minimum wage and overtime;

(b) Failing to provide lawful meal periods or compensation in lieu thereof,

(c) Failing to authorize or permit lawful rest periods or provide compensation in lieu thereof;

(d) Willfully failing to provide accurate semi-monthly itemized wage statements; and

(e) Failing to pay all wages due upon separation of employment.

5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf

1 of herself and other aggrieved employees to recover, among other things, civil penalties, attorney's
2 fees and costs and expenses pursuant to Labor Code §§ 2698, *et seq.* for violations enumerated
3 under 2699.5 as follows: Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174,
4 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198.

5 **II. JURISDICTION AND VENUE**

6 3. The California Superior Court has jurisdiction over this action pursuant to
7 California Constitution Article VI, Section 10, which grants the Superior Court "original
8 jurisdiction in all cases except those given by statute to other trial courts." The statutes under which
9 this action is brought do not give jurisdiction to any other court.

10 4. This Court has jurisdiction over Defendants because, upon information and belief,
11 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
12 avails itself of the California market so as to render the exercise of jurisdiction over it by the
13 California Courts consistent with traditional notions of fair play and substantial justice.

14 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
15 Civil Procedure section 395. Defendants are doing business throughout California, including but
16 not limited to Marin County, and each Defendant is within the jurisdiction of this Court for service
17 of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and all other
18 aggrieved employees within the State of California. Defendants employ numerous aggrieved
19 employees in in the State of California.

20 6. On information and belief, Defendants have conducted business within the State of
21 California during the purported liability period and continue to conduct business throughout the
22 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
23 similarly situated non-exempt aggrieved employees within California.

24 7. The California Superior Court also has jurisdiction in this matter because on
25 information and belief there are no federal questions at issue, as the issues herein are based solely
26 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
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California Code of Civil Procedure, and the California Civil Code.

III. PARTIES

17. Plaintiff was at all times relevant to this action a resident of California. Plaintiff was employed by Defendants from approximately November, 2019 to March, 2020, as a non-exempt employee in the state of California.

18. Safelite operates auto glass repair services throughout the state of California. Plaintiff estimates there are in excess of 100 aggrieved employees who work or have worked for Defendants over the last year.

19. Other than identified herein, Plaintiff is unaware of the true names, capacities, relationships and extent of participation in the conduct alleged herein, of the defendants sued as DOES 1 through 10, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint when their true names and capabilities are ascertained.

20. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and aggrieved employees, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that each defendant acted in all respects pertinent to this action as the agent of the other defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants.

IV. GENERAL ALLEGATIONS

21. At all times set forth herein, Defendants employed Plaintiff and aggrieved employees, however titled, throughout the state of California.

22. Plaintiff is informed and believes that all aggrieved employees are citizens of the state of California.

23. Upon information and belief, Defendants continue to employ aggrieved employees,

1 however titled, in California and implement a uniform set of policies and practices, as they were
2 all engaged in the generic job duties of providing auto glass repair services at Defendants'
3 facilities.

4 24. Upon information and belief, during the relevant time frame, Defendants
5 compensated Plaintiff and aggrieved employees based upon an hourly rate.

6 25. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
7 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of
8 the requirements of California's wage and employment laws.

9 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and aggrieved employees were entitled to receive all meal periods
11 or payment of one additional hour of pay at Plaintiff's and aggrieved employees' regular rate of
12 pay when they did not receive one timely, uninterrupted meal period when working more than five
13 hours and a second timely, uninterrupted meal period when working more than ten hours.
14 Defendants failed to provide these lawful meal periods to Plaintiff and aggrieved employees.

15 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and aggrieved employees were entitled to receive all rest breaks
17 or payment of one additional hour of pay at Plaintiff and class members' regular rate of pay when
18 a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and
19 aggrieved employees did not receive all rest breaks or payment of one additional hour of pay at
20 Plaintiff and aggrieved employees' regular rate of pay when a rest break was missed.

21 28. Despite the above-mentioned meal period and rest break violations, Defendants did
22 not compensate Plaintiff, and on information and belief, did not compensate aggrieved employees
23 one additional hour of pay at their regular rate as required by California law, including Labor Code
24 section 226.7 and the applicable IWC wage order, for each day on which lawful meal periods and
25 rest breaks were not authorized and permitted. As a result, Plaintiff and aggrieved employees were
26 not paid all wages owed (including overtime wages). Plaintiff is informed and believes, and
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1 thereon alleges, that Defendants knew or should have known that Plaintiff and aggrieved
2 employees were entitled to receive all wages owed yet failed to do so.

3 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and aggrieved employees were entitled to timely payment of
5 wages during their employment. In violation of the California Labor Code, Plaintiff and aggrieved
6 employees did not receive payment of all wages including, but not limited to, compensation for
7 meal period violations and rest break violations, within permissible time periods.

8 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and aggrieved employees were entitled to timely payment of
10 wages upon separation of employment. In violation of the California Labor Code, Plaintiff and
11 aggrieved employees did not receive timely payment of all wages including, but not limited to,
12 unpaid wages for meal period and rest break violations upon separation of their employment with
13 Defendants.

14 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and aggrieved employees were entitled to receive complete and
16 accurate wage statements in accordance with California law. In violation of the California Labor
17 Code, Plaintiff and aggrieved employees were not furnished with complete and accurate wage
18 statements showing their accurate gross and net wages, among other things.

19 32. In addition to the violations above, and on information and belief, Defendants knew
20 they had a duty to compensate Plaintiff and aggrieved employees for the allegations asserted
21 herein, and that Defendants had the financial ability to pay such compensation, but willfully,
22 knowingly, recklessly, and/or intentionally failed to do so.

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24 **V. REPRESENTATIVE CLAIMS**

25 **THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 et seq.**

26 33. Plaintiff incorporates by reference and re-alleges each and every allegation
27 contained above, as though fully set forth herein.
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1 34. On May 27, 2020, Plaintiff complied with notice requirements pursuant to Labor
2 Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**,
3 indicating that the LWDA and Defendants were put on notice of the claims alleged here and that
4 the notice requirement has been satisfied. Sixty-five days have passed and the LWDA has not
5 indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a
6 representative capacity. Plaintiff also sent a copy of this complaint to the LWDA.

7 35. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a).
8 Plaintiff brings this cause of action on behalf of all current and former California employees that
9 worked for Defendants in the state of California.

10 36. Pursuant to Labor Code section 2699(a) Plaintiff seeks to recover civil penalties
11 and unpaid wages for which Defendants are liable due to numerous Labor Code violations as set
12 forth in this complaint, including without limitation Labor Code sections §§ 201-204, 210, 226,
13 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*,
14 applicable IWC Wage Orders and California Code of Regulations, Title 8, section 11000 *et. seq.*

15 37. Defendants' conduct violates numerous Labor Code sections including, but not
16 limited to, the following:

- 17 a. Violation of Labor Code §§ 510, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198
18 for unpaid wages as herein alleged;
- 19 b. Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
20 Plaintiff and other aggrieved employees and failure to pay premium wages for
21 missed meal periods as herein alleged;
- 22 c. Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and
23 other aggrieved employees and failure to pay premium wages for missed rest
24 periods as herein alleged; and
- 25 d. Violation of Labor Code §§ 201-203 for failure to timely pay all earned wages owed
26 to Plaintiff and other aggrieved employees upon separation of employment as
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herein alleged;

- e. Violation of Labor Code § 226 for failure to provide accurate itemized wage statements to Plaintiff and other aggrieved employees as herein alleged.

38. Labor Code §§ 2698, *et seq.* imposes upon Defendants, a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay period in which Defendants violated the Labor Code.

39. Further, Labor Code § 558(a) provides “any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provisions regulating hours and days of work in any order of the IWC shall be subject to a civil penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.” Labor Code § 558(c) provides “the civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

40. Defendants’ conduct, as alleged herein, has been and continues to be unfair, unlawful and harmful to Plaintiff and the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

41. Further, Plaintiff and aggrieved employees are entitled to recover penalties and attorneys’ fees and costs under Labor Code section 2698, *et seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

1. For penalties according to proof, pursuant to Labor Code §§ 2698 *et seq.*;
2. For reasonable attorneys’ fees and costs to the extent permitted by law, including

1 pursuant to Code of Civil Procedure § 1021.5 and Labor Code §§ 2698, *et seq.*; and

2 3. For such other and further relief as the Court deems proper.

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4 Dated: May 27, 2020

JAMES R. HAWKINS, APLC

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7 James R. Hawkins, Esq.
8 Samantha A. Smith, Esq.
9 Attorneys for Plaintiff and the general public
10 as private attorneys general
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