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ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

01/12/2021

Clerk of the Court

BY: KALENE APOLONIO
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

CGC-21-588898

WILLIE AUSTIN, JR., on behalf of the State
of California, as a private attorney general,

Plaintiff,

vs.

SAFELITE FULFILLMENT, INC., a
Corporation ; and DOES 1 through 50,
inclusive,

Defendants.

Case No. _____

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 2802,
California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B).

1 Plaintiff Willie Austin, Jr. (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant SAFELITE FULFILLMENT,
8 INC.(“DEFENDANT”) seeking only to recover PAGA civil penalties for himself, and on behalf
9 of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF
10 does **not seek to recover anything other than penalties as permitted by California Labor**
11 **Code § 2699.** To the extent that statutory violations are mentioned for wage violations,
12 PLAINTIFF does not seek underlying general and/or special damages for those violations, but
13 simply the civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 **THE PARTIES**

23 4. Defendant Safelite Fulfillment, Inc. (“DEFENDANT”) is a corporation that at all
24 relevant times mentioned herein conducted and continues to conduct substantial business in the
25 state of California.

26 5. DEFENDANT is an American provider of vehicle glass repair, replacement, and
27 calibration services and insurance claims management company.
28

1 6. PLAINTIFF has been employed by DEFENDANT in California since April of
2 2016 and has been at all times classified by DEFENDANT as a non-exempt employee, paid on
3 an hourly basis, and entitled to the legally required meal and rest periods and payment of
4 minimum and overtime wages due for all time worked.

5 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, brings this Representative Action on behalf of the State of California with respect to
8 himself and all individuals who are or previously were employed by DEFENDANT in
9 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
10 the time period of September 24, 2019 until a date as determined by the Court (the "PAGA
11 PERIOD").

12 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
13 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
14 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
15 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,
16 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
17 Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the
18 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
19 the meaning of Labor Code § 2699, *et seq.*

20 9. The true names and capacities, whether individual, corporate, subsidiary,
21 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
22 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
23 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
24 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
25 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
26 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
27 responsible in some manner for one or more of the events and happenings that proximately
28 caused the injuries and damages hereinafter alleged.

10. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

11. During the PAGA PERIOD, DEFENDANT did not have in place an immutable timekeeping system to accurately record and pay PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual time these employees worked each day. DEFENDANT engaged in the unilateral modification of PLAINTIFF's and AGGRIEVED EMPLOYEES' time records to avoid paying meal break penalties and proper wages to these employees. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and the AGGRIEVED EMPLOYEES to work without paying them for all the time they are under DEFENDANT's control. Specifically, DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF is from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. Additionally, PLAINTIFF and the AGGRIEVED EMPLOYEES clock out of DEFENDANT's timekeeping system, in order to perform additional work for DEFENDANT as required to meet DEFENDANT's job requirements. DEFENDANT's policy and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's business records.

1 12. State and federal law provides that employees must be paid overtime at one-and-
2 one-half times their “regular rate of pay.” PLAINTIFF and other AGGRIEVED EMPLOYEES
3 are compensated at an hourly rate plus incentive pay that is tied to specific elements of an
4 employee’s performance.

5 13. The second component of PLAINTIFF’s and other AGGRIEVED EMPLOYEES’
6 compensation is DEFENDANT’s non-discretionary incentive program that paid PLAINTIFF
7 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
8 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
9 hourly basis with incentive compensation when the employees met the various performance
10 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
11 overtime to PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANT failed to
12 include the incentive compensation as part of the employees’ “regular rate of pay” for purposes
13 of calculating overtime pay. Management and supervisors described the incentive program to
14 potential and new employees as part of the compensation package. As a matter of law, the
15 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
16 be included in the “regular rate of pay.” The failure to do so has resulted in a underpayment of
17 overtime compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES by
18 DEFENDANT.

19 14. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
20 EMPLOYEES are from time to time unable to take thirty (30) minute off duty meal breaks and
21 are not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
22 EMPLOYEES are required from time to time to perform work as ordered by DEFENDANT for
23 more than five (5) hours during some shifts without receiving a meal break. Further,
24 DEFENDANT from time to time fails to provide PLAINTIFF and AGGRIEVED
25 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
26 are required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other
27 AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation
28 and in accordance with DEFENDANT’s corporate policy and practice.

1 15. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
2 are also required from time to time to work in excess of four (4) hours without being provided
3 ten (10) minute rest periods. Further, these employees are denied their first rest periods of at
4 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
5 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
6 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
7 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
8 PLAINTIFF and other AGGRIEVED EMPLOYEES are also not provided with one hour wages
9 in lieu thereof. Additionally, the applicable California Wage Order requires employers to
10 provide employees with off-duty rest periods, which the California Supreme Court defined as
11 time during which an employee is relieved from all work related duties and free from employer
12 control. In so doing, the Court held that the requirement under California law that employers
13 authorize and permit all employees to take rest period means that employers must relieve
14 employees of all duties and relinquish control over how employees spend their time which
15 includes control over the locations where employees may take their rest period. Employers
16 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
17 five minutes back. Here, DEFENDANT's policy restricts PLAINTIFF and other AGGRIEVED
18 EMPLOYEES from unconstrained walks and is unlawful based on DEFENDANT's rule which
19 states PLAINTIFF and other AGGRIEVED EMPLOYEES cannot leave the work premises
20 during their rest period.

21 16. During the PAGA PERIOD, DEFENDANT fails to accurately record and pay
22 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
23 employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
24 is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked,
25 meaning the time during which an employee was subject to the control of an employer,
26 including all the time the employee was permitted or suffered to permit this work.
27 DEFENDANT requires these employees to work off the clock without paying them for all the
28 time they are under DEFENDANT's control. As such, DEFENDANT knew or should have

1 known that PLAINTIFF and the other AGGRIEVED EMPLOYEES are under compensated for
2 all time worked. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeit time
3 worked by working without their time being accurately recorded and without compensation at
4 the applicable minimum wage and overtime wage rates. To the extent that the time worked off
5 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum
6 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and
7 1197.1.

8 17. From time to time, DEFENDANT also fails to provide PLAINTIFF and the other
9 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
10 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
11 provides that every employer shall furnish each of his or her employees with an accurate
12 itemized wage statement in writing showing, among other things, gross wages earned and all
13 applicable hourly rates in effect during the pay period and the corresponding amount of time
14 worked at each hourly rate. Specifically, DEFENDANT violated Section 226 by failing to
15 identify the correct rates of pay and number of hours worked, including for the "QCI Payout,"
16 "QCI Overtime," "Special Pay," and "Discretionary" items of pay, which are wage payments.
17 Aside, from the violations listed above in this paragraph, DEFENDANT fails to issue to
18 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
19 Code 226 *et seq.* As a result, DEFENDANT from time to time provides PLAINTIFF and the
20 other AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

21 18. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
22 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
23 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
24 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
25 2802, employers are required to indemnify employees for all expenses incurred in the course
26 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
27 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
28 in direct consequence of the discharge of his or her duties, or of his or her obedience to the

1 directions of the employer, even though unlawful, unless the employee, at the time of obeying
2 the directions, believed them to be unlawful."

3 19. In the course of their employment PLAINTIFF and other AGGRIEVED
4 EMPLOYEES as a business expense, are required by DEFENDANT to use their own personal
5 cellular phones as a result of and in furtherance of their job duties as employees for
6 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
7 with the use of their personal cellular phones for DEFENDANT's benefit. As a result, in the
8 course of their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED
9 EMPLOYEES incurred unreimbursed business expenses which included, but were not limited
10 to costs related to the use of their personal cellular phones, on behalf of and for the benefit of
11 DEFENDANT.

12 20. All of the conduct and violations alleged herein occurred during the PAGA
13 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
14 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
15 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
16 AJDAR 12157 (Certified for Publication 12/19/18).

17 **JURISDICTION AND VENUE**

18 21. This Court has jurisdiction over this Action pursuant to California Code of Civil
19 Procedure, Section 410.10.

20 22. Venue is proper in this Court pursuant to California Code of Civil Procedure,
21 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
22 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
23 in this County and/or conducts substantial business in this County, and (ii) committed the
24 wrongful conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED
25 EMPLOYEES.

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1 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
2 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

3 27. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
5 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
6 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed
7 to pay minimum wages, and (e) failed to reimburse for required business expenses, all in
8 violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et*
9 *seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
10 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
11 applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a result of such
12 conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the Labor
13 Code Private Attorney General Act of 2004 as the representative of the State of California for
14 the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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16 **PRAYER FOR RELIEF**

17 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
18 severally, as follows:

19 1. On behalf of the State of California and with respect to all AGGRIEVED
20 EMPLOYEES:

21 A) Recovery of civil penalties as prescribed by the Labor Code Private
22 Attorneys General Act of 2004; and,

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27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1 B) An award of attorneys' fees and cost of suit, as allowable under the
2 law, including, but not limited to, pursuant to Labor Code §2699.

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4 Dated: January 12, 2021 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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7 By: /s/ Norman Blumenthal
8 Norman B. Blumenthal
9 Attorneys for Plaintiff
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