

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

David Trent, individually and on behalf of  
all others similarly situated

Plaintiff,

v.

Safelite Fulfillment, Inc.

Defendant

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Civil Action Number : \_\_\_\_\_

Jury Demanded

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff David Trent, individually and on behalf of all others similarly situated (“Plaintiff” and “Class Members” herein) brings this Fair Labor Standards Act (“FLSA”) suit against Safelite Fulfillment, Inc. (“Defendant”) and shows as follows:

**A. Nature of Suit.**

1. Defendant failed to pay Plaintiff in accordance with the FLSA. Specifically, despite Defendant’s actual or constructive knowledge that Plaintiff was working during his lunch periods, Plaintiff was not paid for such lunch periods, and as a result, Defendant failed to pay Plaintiff at time and one half his regular rate of pay for hours worked in a workweek in excess of 40.
2. Defendant has a company-wide practice/policy to make mandatory improper lunch break deductions from compensation in violation of the FLSA. Although employees regularly perform work for Defendant during their lunch period and are frequently not provided at least a 30 minute uninterrupted lunch break, Defendant nevertheless deducts one half hour per workday for a lunch break regardless of whether or not an employee actually gets that lunch break. This improper practice/policy results in employees, such as Plaintiff and the

putative Class Members, not being paid overtime compensation for all hours worked over 40 in a workweek.

**B. Parties.**

3. Plaintiff is an individual who was employed by Defendant within the meaning of the FLSA within the three year period preceding the filing of this Complaint. Plaintiff lives in the Northern District of Texas.
4. The “Class Members” are other installation and repair technicians who worked during their respective lunch periods but were not paid for the time spent working during their lunch periods, within the actionable time period.
5. Defendant is a foreign for-profit corporation whose office address is Tax Department, PO Box 182000, Columbus, Ohio. 43218. Defendant may be served by serving its registered agent, Corporation Service Company d/b/a CSC-lawyers Incorporating Service Company, 211 E. 7<sup>th</sup> Street, Suite 620, Austin, Texas 78701-3218.

**C. Jurisdiction and Venue.**

6. Venue of this action is proper in this district and division because the events giving rise to the cause of action alleged herein occurred in this division and judicial district. Venue exists in the judicial district pursuant to 28 U.S.C. § 1391.
7. Defendant carries on substantial business in the Northern District of Texas and has sufficient minimum contacts with this state to be subject to this Court’s jurisdiction.
8. This Court has jurisdiction over this case pursuant to the district court’s federal question jurisdiction as set forth in 28 U.S.C. § 1331. Specifically, this case is brought pursuant to the FLSA, 29 U.S.C. § 201 *et seq.*, as amended.

**D. Coverage.**

9. At all material times, Defendant has acted, directly or indirectly, in the interest of an employer with respect to Plaintiff.
10. At all times hereinafter mentioned, Defendant has been an employer within the meaning of the Section 3(d) of the FLSA, 29 U.S.C. § 203(d).
11. At all times hereinafter mentioned, Defendant has been an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).
12. At all times hereinafter mentioned, Defendant has been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1), in that said enterprise has had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person and in that said enterprise has had and has an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated).
13. At all times hereinafter mentioned, Plaintiff was an individual employee who was engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206 -207.

#### **E. Factual Allegations**

14. Defendant is a nationwide company with offices located throughout the United States.
15. Plaintiff worked for Defendant at one of its Dallas/Fort Worth locations as an auto glass repair technician specialist from approximately June 9, 2004 to October 12, 2012.
16. During the time period, Plaintiff's job responsibilities consisted of traveling to customer's locations and installing or repairing glass in automobiles, as directed by Defendant in or near the Dallas/Fort Worth area.

17. Plaintiff's primary job duties consisted of manual labor tasks in the form of repair, installation and other non-office, manual labor work. Plaintiff was also responsible for various other non-discretionary tasks. These other non-discretionary tasks Plaintiff performs are routine and do not require the exercise of independent judgment or discretion.
18. At all times during his employment, Plaintiff was treated as a non-exempt employee for purposes of the FLSA and was paid on an hourly basis.
19. Defendant had a company-wide practice/policy to require/permit Plaintiff and the putative Class Members to work "off-the-clock" whereby Plaintiff and the putative Class Members were not compensated in compliance with the FLSA for all hours worked over 40 in a workweek. Defendant routinely required/permitted employees to work during their lunch breaks, but nevertheless deducted pay for that time period in violation of the FLSA.
20. Defendant had actual or constructive knowledge that Plaintiff and the Class Members were working during their lunch periods. This notice came in part from the fact that the work load was so great that Plaintiff and the Class Members could not perform the required work unless they worked through the lunch period.
21. Additionally, Plaintiff and the Class Members informed their supervisors that they were working through lunch yet not being paid and the supervisors did nothing to stop the practice.
22. During the relevant time period of this lawsuit, Defendant employed and continues to employ hundreds of technician employees who are similarly situated to Plaintiff and to each other pursuant to the FLSA.
23. Defendant knowingly, willfully, or with reckless disregard carried out its illegal pattern or practice of failing to pay overtime compensation with respect to Plaintiff's lunch periods.

24. The FLSA requires employers to keep accurate time records of hours worked by nonexempt employees. 29 U.S.C. § 211 (c).
25. In addition to the pay violations of the FLSA identified above, Defendant also failed to keep proper time records as required by the FLSA.
26. Plaintiff has retained the Law Office of Chris R. Miltenberger, PLLC to represent him in this litigation and has agreed to pay a reasonable fee of its services.

#### **F. Collective Action Allegations.**

27. Other employees have been victimized by this pattern, practice, and policy which is in willful violation of the FLSA. Some of these employees have worked with Plaintiff and have reported that they were paid in the same manner as Plaintiff with no overtime pay for lunch breaks when in fact the employees worked during their lunch. Thus, from discussion with these employees, Plaintiff is aware that the illegal practices or policies of Defendant have been uniformly imposed on the Class Members.
28. The Class Members performed the same or similar job duties in that they all performed manual work of installing or repairing auto glass. Moreover, these employees regularly worked during their lunch period and were not paid for the time they spent working.
29. Accordingly, the employees victimized by Defendant's unlawful pattern and practices are similarly situated to Plaintiffs in terms of job duties and pay provisions.
30. Defendant's failure to pay compensation at the rates required by the FLSA for the Plaintiff's and the Class Members' lunch periods results from generally applicable policies or practices and do not depend on the personal circumstances of the Class Members. Thus, Plaintiff's experience is typical of the experience of the Class Members.

31. The specific job titles, precise job requirements or job locations of the various Class Members do not prevent collective treatment. All Class Members, regardless of their work location, precise job requirements or rates of pay, are entitled to compensation for hours worked during their lunch periods. Although the issue of damages may be individual in character, there is no detraction from the common nucleus of liability facts. The questions of law and fact are common to Plaintiffs and the Class Members. Accordingly, the class of similarly situated plaintiffs is properly defined as:

- a. **All auto glass repair or installation technicians who worked for Defendant within the last three years who were classified as non-exempt employees, who, as a result of working through their lunch periods, worked in excess of 40 hours in one or more workweeks and were not compensated at one and one-half times their regular rate of pay for all hours worked in excess of 40 hours in one or more workweeks.**

32. As a collective action, Plaintiff seeks this Court's appointment and/or designation as representative of a group of similarly situated individuals as defined herein.

**G. Cause of Action: Failure to Pay Wages in Accordance with the Fair Labor Standards Act.**

33. Each and every allegation contained in the foregoing paragraphs 1-32, inclusive, is re-alleged as if fully rewritten herein.

34. During the relevant period, Defendant has violated and is violating the provisions of Sections 6 and/or 7 of the FLSA, 29 U.S.C. §§ 206, 207, and 215(a)(2), by employing employees in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA as aforesaid, for workweeks longer than 40 hours without compensating such employees for their work in excess of forty hours per week at rates no less than one-and-a-half times the regular rates for which they were employed.

35. Defendant knowingly, willfully, or with reckless disregard carried out its illegal pattern or practice of failing to pay overtime compensation with respect to Plaintiff and the class members.
36. Defendant did not act in good faith or reliance upon any of the following in formulating its pay practices: (a) case law; (b) the FLSA, 29 U.S.C. § 201, et seq.; (c) Department of Labor Wage & Hour Opinion Letters; or (d) the Code of Federal Regulations.
37. Defendant's willfulness is exhibited by its awareness of the requirements of the FLSA but refusal to apply such requirements to Plaintiff and the Class Members with regard to their lunch periods.

#### **H. Jury Demand.**

38. Plaintiff demands a trial by jury herein.

#### **I. Relief Sought.**

39. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that he and all those who consent to be opt-in plaintiffs in this collective action recover from Defendant, the following:
  - a. An Order recognizing this proceeding as a collective action pursuant to Section 216(b) of the FLSA and appointing Plaintiff and his counsel to represent the Class Members;
  - b. An Order requiring Defendant to provide the names, addresses and telephone numbers of all potential Class Members;
  - c. An Order approving the form and content of a notice to be sent to all potential Class Members advising them of the pendency of this litigation and of their rights with respect thereto;

- d. Compensation for all hours worked at a rate not less than the applicable minimum wage;
- e. Overtime compensation for all unpaid hours worked in excess of forty hours in any workweek at the rate of one-and-one-half times their regular rates;
- f. All unpaid wages and overtime compensation;
- g. An award of liquidated and/or punitive damages as a result of the Defendant's willful failure to pay wages and overtime compensation pursuant to 29 U.S.C § 216;
- h. Reasonable attorney's fees, expert fees, costs, and expenses of this action as provided by the FLSA;
- i. Pre-judgment and post-judgment interest at the highest rates allowed by law; and
- j. Such other relief as to which Plaintiff and the opt-in plaintiffs may be entitled.

Dated this 30th day of January, 2013.

Respectfully submitted,



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Attorney for Plaintiff



**NOTICE OF CONSENT**

I, David Trent, consent to become a party plaintiff in a lawsuit seeking damages for unpaid wages under the Fair Labor Standards Act from my former employer Safelite Fulfillment, Inc. and its affiliates.

Date: 1/30/13

Signature: 

Printed Name: David Trent

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Consent to be Party Plaintiff

Exhibit A