

1 or is likely to have evidentiary support after a reasonable opportunity for further investigation and
2 discovery.

3 **JURISDICTION AND VENUE**

4 1. This Court has jurisdiction over this action pursuant to Cal. Civ. Proc. Code § 410.10.
5 The action is brought pursuant to Cal. Lab. Code §§ 2698 et seq. PLAINTIFFS bring this action on
6 their own behalf, and on behalf of all persons within the representative action defined.

7 2. Venue is proper in this Court pursuant to Cal. Civ. Proc. Code §§ 395 and 395.5
8 because the injuries to the persons complained of herein occurred in the County of Alameda and
9 DEFENDANT conducts business in this county currently and at all relevant times.

10 **DEFENDANTS**

11 3. PLAINTIFFS are informed and believe, and on that basis allege, that at all times
12 mentioned herein, DEFENDANT is licensed to do business and actually doing business in the state of
13 California. REPLANET is a limited liability company whose corporate headquarters are located at
14 800 North Haven, Suite 120, Ontario, CA 91764.

15 4. According to its website (<http://replanet.com/>), DEFENDANT is a recycling collection
16 network that uses the containers it collects to design, manufacture and distribute the world's most
17 sustainable aluminum and PET packaging, which end up being used in restaurants, the food service
18 industry, and local grocery stores.

19 5. PLAINTIFFS are informed and believe that DEFENDANT owns and operates business
20 establishments within the state of California for the purpose of providing recycling services to the
21 general public.

22 6. DEFENDANT is subject to Cal. Lab. Code §§ 2698 et seq. and the applicable wage
23 order(s) issued by the Industrial Welfare Commission because: (i) the company is situated in Ontario,
24 California; (ii) it operates stores in and throughout the state of California; and (iii) PLAINTIFFS
25 worked for DEFENDANT within the state of California.

26 **THE CONDUCT**

27 7. PLAINTIFFS Steve Medina and Jose Ulloa were employed by DEFENDANT as
28 recycling specialists in the state of California.

1 8. In their capacities as a recycling specialists, PLAINTIFFS were required to set up
2 equipment, assist customers, weigh materials and operate the cash register. PLAINTIFFS worked full
3 time shifts, from 8:30 a.m. until 4:30 p.m. As recycling specialists, PLAINTIFFS could not take any
4 breaks unless specifically relieved of duties by their supervisors.

5 9. While PLAINTIFFS received daily meal breaks, they were provided at different times
6 of the day and only when they were told to take a meal break by their supervisors. As a result,
7 PLAINTIFFS would often have to work over five consecutive hours before receiving a 30-minute meal
8 break.

9 10. On numerous occasions, PLAINTIFF Medina asked his supervisors about rest breaks
10 and was told, “We don’t get breaks here.” During his employment with DEFENDANT, PLAINTIFF
11 Medina never received rest periods nor did he receive compensation for these missed rest periods as
12 required under Cal. Lab. Code § 226.7(c). PLAINTIFF Medina was also not compensated with a meal
13 break premium when he took a meal period after his fifth hour of work.

14 11. PLAINTIFF Ulloa was also informed by his supervisors that employees did not receive
15 rest breaks. Like PLAINTIFF Medina, during his employment with DEFENDANT, PLAINTIFF Ulloa
16 never received rest periods nor did he receive compensation for these missed rest periods. PLAINTIFF
17 Ulloa was also not compensated with a meal break premium when he took a meal period after his fifth
18 hour of work.

19 12. REPLANET has had a consistent policy and/or practice of: (1) failing to provide
20 recycling specialists with adequate, off-duty meal periods of at least one half hour for every five hours
21 worked; (2) failing to provide recycling specialists with adequate, off-duty rest periods of at least ten
22 minutes for every four hours or major fraction thereof worked; (3) failing to provide accurate itemized
23 wage statements accounting for missed meal and rest periods; and (4) failing to pay all wages owed
24 upon termination.

25 13. PLAINTIFFS are informed and believe and thereon allege that REPLANET does not
26 provide recycling specialists with a 30 minutes, duty-free meal break within the first five work hours in
27 a work day. As a result of this violation, REPLANET is liable for civil penalties pursuant to Cal. Lab.
28 Code § 2698 et seq.

1 14. PLAINTIFFS are also informed and believe, and based thereon allege, that REPLANET
2 has no policy or practice of providing recycling specialists with a 10-minute, duty-free rest break for
3 every four hours or major fraction thereof worked during a workday. As a result of these violations,
4 REPLANET is liable for civil penalties pursuant to Cal. Lab. Code § 2698 et seq.

5 15. Because DEFENDANT failed to compensate PLAINTIFFS for late and missed meal
6 and rest periods and/or to itemize such compensation on PLAINTIFFS' wage statements,
7 PLAINTIFFS were unable to determine whether they had been paid for all hours worked.

8 16. Finally, both PLAINTIFF Medina and PLAINTIFF Ulloa have terminated their
9 employment with REPLANET. To date however, REPLANET has not paid the wages owed to them as
10 required under California law.

11 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

12 17. California Labor Code § 2698 et seq., also known as the Private Attorney General Act
13 of 2004 ("PAGA"), expressly provides that any provision of the California Labor Code allowing for a
14 civil penalty to be assessed and collected by the Labor and Workforce Development Agency
15 ("LWDA"), or any of its departments, divisions, commissions, boards agencies or employees, for a
16 violation of the Labor Code, may be recovered through a civil action brought by an aggrieved
17 employee on behalf of himself or herself, and other current or former employees. These penalties are in
18 addition to any other relief available under the Labor Code, and pursuant to § 2699(i), must be
19 allocated 75 percent to the LWDA and 25 percent to the aggrieved employees.

20 18. Cal. Labor Code § 2699(f) provides in pertinent part:

21 For all provisions of this code except those for which a civil penalty is
22 specifically provided, there is established civil penalty for a violation of these
23 provisions as follows:

24 ...

25 (2) If, at the time of the alleged violation, the person employs one or more
26 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
27 employee per pay period for the initial violation and two hundred dollars
28 (\$200) for each aggrieved employee per pay period for each subsequent
violation.

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1 19. On January 8, 2016, PLAINTIFF Medina gave written notice by certified mail of
2 REPLANET's violations of various provisions of the California Labor Code as alleged in this
3 Complaint to the LWDA and REPLANET.

4 20. The LWDA did not provide notice of its intention to investigate REPLANET's alleged
5 violations within 33 calendar days of the January 8, 2016 postmark date of the notice sent by
6 PLAINTIFF Medina. *See* Cal. Lab. Code § 2699.3(a)(2)(A). On February 10, 2016, PLAINTIFF
7 Medina filed a First Amended Complaint in this Court.

8 21. On May 5, 2016, PLAINTIFF Jose Ulloa also gave written notice by certified mail of
9 REPLANET's violations of various provisions of the California Labor Code as alleged in this
10 Complaint to the LWDA and REPLANET.

11 22. The LWDA did not provide notice of its intention to investigate REPLANET's alleged
12 violations within 33 calendar days of the May 5, 2016 postmark date of the notice sent by PLAINTIFF
13 Ulloa. *See* Cal. Lab. Code § 2699.3(a)(2)(A).

14 **CAUSES OF ACTION**

15 **FIRST CAUSE OF ACTION**

16 **PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

17 **[Cal. Lab. Code § 2698 et seq.]**

18 **(By PLAINTIFFS in their Representative Capacity against DEFENDANT)**

19 23. PLAINTIFFS re-allege and incorporate by this reference, as though fully set forth
20 herein, the proceeding paragraphs of this Complaint.

21 24. PLAINTIFFS are "aggrieved employees" under PAGA, as they were employed by
22 REPLANET during the applicable statutory period and suffered one or more of the Labor Code
23 violations set forth herein. Accordingly, PLAINTIFFS seek to recover on behalf of themselves and all
24 other current and former aggrieved employees of REPLANET, the civil penalties provided by PAGA,
25 plus reasonable attorneys' fees and costs.

26 25. PLAINTIFFS seek to recover the PAGA civil penalties through a representative action
27 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th
28 969. Therefore, class certification of the PAGA claims is not required.

1 26. PLAINTIFFS seek civil penalties pursuant to PAGA for violations of the following
2 Labor Code violations:

- 3 a. Failure to provide meal and rest periods in violation of Wage Order No. 5 and
4 15 and Cal. Lab. Code §§ 226.7, 512, and 558;
- 5 b. Failure to provide accurate itemized wage statements in violation of Cal. Lab.
6 Code § 226(a); and
- 7 c. Failure to provide prompt payment of wages upon termination and resignation in
8 violation of Cal. Lab. Code §§ 201, 202, and 203.

9 27. With respect to violations of Cal. Lab. Code § 512, Cal. Lab. Code § 558(a) imposes a
10 civil penalty of \$50 for initial violations for each underpaid employee for each pay period for which
11 the employee was underpaid, in addition to an amount sufficient to recover underpaid wages, and \$100
12 for subsequent violations for each underpaid employee for each pay period for which the employee
13 was underpaid, in addition to an amount sufficient to recover underpaid wages. As such, PLAINTIFFS
14 seeks civil penalties in the amount of unpaid wages owed to aggrieved employees pursuant to Cal. Lab.
15 Code § 558(a)(3).

16 28. In addition, Cal. Lab. Code § 226.7(c) provides, “If an employer fails to provide an
17 employee a meal or rest or recovery period in accordance with a state law, . . . the employer shall pay
18 the employee one additional hour of pay at the employee’s regular rate of compensation for each
19 workday that the meal or rest or recovery period is not provided.”

20 29. For violations of Cal. Lab. Code § 226(a), Cal. Lab. Code § 226(e)(1) provides that:

21 An employee suffering injury as a result of a knowing and intentional
22 failure by an employer to comply with subdivision (a) is entitled to
23 recover the greater of all actual damages or fifty dollars (\$50) for the
24 initial pay period in which a violation occurs and one hundred dollars
 (\$100) per employee for each violation in a subsequent pay period, not
 to exceed an aggregate penalty of four thousand dollars (\$4,000), and is
 entitled to an award of costs and reasonable attorney’s fees.

25 30. Cal. Lab. Code §226(e)(2)(B) further provides, in part, that:

26 An employee is deemed to suffer injury for purposes of this subdivision
27 if the employer fails to provide accurate and complete information as
28 required by any one or more of items (1) to (9), inclusive, of subdivision
 (a) and the employee cannot promptly and easily determine from the
 wage statement alone one or more of the following:

1 (i) The amount of the gross wages or net wages paid to the employee
2 during the pay period or any of the other information required to be
3 provided on the itemized wage statement pursuant to items (2) to (4),
inclusive, (6), and (9) of subdivision (a).

4 31. PLAINTIFFS allege that because the wage statements REPLANET provided them
5 failed to include one additional hour of pay for each non-compliant meal and rest period, they were
6 unable to promptly and easily determine whether they were paid for all hours worked.

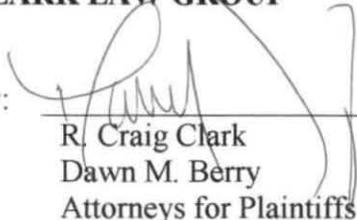
7 **PRAYER**

8 WHEREFORE, PLAINTIFFS, individually and on behalf of all other aggrieved employees,
9 pray for judgment against DEFENDANT as follows:

- 10 A. An award of civil penalties pursuant to PAGA;
11 B. An award of reasonable attorneys' fees and costs pursuant to Cal. Lab. Code § 2699(g)
12 and/or other applicable law;
13 C. Pre-judgment and post-judgment interest provided by law; and
14 D. Such other and further relief that the Court may deem just and proper.

15
16 Dated: July 18, 2016

CLARK LAW GROUP

17
18 By: 

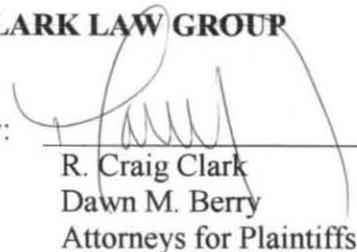
R. Craig Clark
Dawn M. Berry
Attorneys for Plaintiffs

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21 **DEMAND FOR JURY TRIAL**

22 PLAINTIFFS demand jury trial on issues triable to a jury.

23
24 Dated: July 18, 2016

CLARK LAW GROUP

25
26 By: 

R. Craig Clark
Dawn M. Berry
Attorneys for Plaintiffs