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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

CARLOS ESCALERA, on behalf of the State
of California and Aggrieved Employees,

Plaintiff,

vs.

JON K. TAKATA CORP. d/b/a
RESTORATION MANAGEMENT CO.,

Defendant.

Case No. **24CV088674**

**COMPLAINT FOR PENALTIES PURSUANT
TO SECTIONS 2699(a) AND (f) OF THE
CALIFORNIA LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT**

DEMAND FOR JURY TRIAL

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
08/23/2024 at 04:57:43 PM
By: Milagros Cortez,
Deputy Clerk

1 Plaintiff Carlos Escalera (“Plaintiff”), on behalf of the State of California and Aggrieved
2 Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this enforcement action against Defendant Jon K. Takata Corporation
5 d/b/a Restoration Management Company (“RMC” or “Defendant”) on behalf of the State of California
6 to collect penalties as a result of Defendant’s violations of California labor law.

7 2. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly workers
8 employed by Defendant in California.¹

9 3. Plaintiff challenges Defendant’s policies and practices of: (1) failing to pay Aggrieved
10 Employees for all hours worked; (2) failing to pay Aggrieved Employees overtime wages; (3) failing
11 to authorize and permit Aggrieved Employees to take compliant meal and rest periods to which they
12 are entitled by law, and failing to pay premium compensation for noncompliant meal and rest periods;
13 (4) failing to reimburse Aggrieved Employees for expenses; (5) failing to provide Aggrieved
14 Employees true and accurate itemized wage statements; and (6) failing to pay Aggrieved Employees
15 all wages owed upon separation from employment.

16 4. Plaintiff, on behalf of the State of California, seeks to recover penalties and reasonable
17 attorneys’ fees and costs, pursuant to Sections 2699(a) and (f) of the California Labor Code Private
18 Attorneys General Act (“PAGA”).

19 **PARTIES**

20 5. Plaintiff and Aggrieved Employees are all current and former non-exempt, hourly
21 employees of Jon K. Takata Corp. d/b/a Restoration Management Co. in the State of California.

22 6. Plaintiff Carlos Escalera is an individual over the age of eighteen, and at all times
23 relevant to this Complaint was a resident of the State of California.

24 7. Plaintiff worked for Defendant as a Supervising Water Technician in Hayward and
25 Sacramento, California, from approximately July 2023 until March 25, 2024.

26 8. Plaintiff is informed, believes, and thereon alleges that Jon K. Takata Corp. d/b/a
27

28 ¹ Although Plaintiff is a former employee, the Aggrieved Employees include current and former employees. For ease of discussion, the allegations herein are made in the present tense.

1 Restoration Management Co. is a California corporation with its principal place of business located in
2 Livermore, California. RMC is registered to do business in the State of California and does business
3 in the State of California. RMC may be served with process by serving its registered agent, Dave
4 Glover, 3090 Independence Dr., Livermore, California 94551.

5 9. Upon information and belief, RMC provides restoration services. Defendant offers
6 HVAC cleaning, pressure washing, vital document recovery, and fire and smoke damage restoration
7 services.

8 10. Plaintiff is informed, believes, and thereon alleges that Defendant employs hundreds
9 of hourly, non-exempt workers in California. Plaintiff is informed, believes, and thereon alleges that,
10 in California, Defendant owns, operates, and/or manages locations in this county. Plaintiff is informed,
11 believes, and thereon alleges that Defendant employs Aggrieved Employees, among other hourly
12 employees, in this County and throughout California.

13 11. At all material times, Defendant does business under the laws of California, has places
14 of business in the State of California, including in this County, and employs Aggrieved Employees in
15 this County. Defendant is a “person” as defined in Cal. Lab. Code § 18 and Cal. Bus. & Prof. Code §
16 17201. Defendant is also an “employer” as that term is used in the California Labor Code and the IWC
17 Wage Orders.

18 12. Defendant employs Plaintiff and Aggrieved Employees because Defendant, directly or
19 indirectly, controls the employment terms, pay practices, timekeeping practices, and daily work of
20 Plaintiff and Aggrieved Employees.

21 **SUBJECT MATTER JURISDICTION AND VENUE**

22 13. Venue is proper in this County pursuant to Cal. Code Civ. Proc. §§ 393 and/or 395.5.
23 Defendant conducts business and employs Aggrieved Employees in this County, and therefore the
24 liability and the cause, or some part of the cause, arose in this County.

25 14. This Court has jurisdictions over Plaintiff’s claims for penalties pursuant to the PAGA.
26 The Court also has jurisdiction over Defendant because they are a corporation authorized to do
27 business in the State of California, and because Defendant does in fact does business and employs
28 workers in the State of California.

FACTUAL ALLEGATIONS

15. Upon information and belief, Jon K. Takata Corp. d/b/a Restoration Management Company is a full-service restoration company that offers cleaning and remediation services.

16. Plaintiff worked for Defendant as a Supervising Water Technician in Hayward and Sacramento, California, from approximately July 2023 until March 25, 2024. Although Plaintiff's shifts varied in length, Plaintiff usually worked approximately eight (8) hours or more per shift, for approximately five (5) or more shifts per week. Plaintiff's weekly hours varied, but on average, Plaintiff worked approximately 40 hours per week, or more.

17. Defendant pays Aggrieved Employees, including Plaintiff, on an hourly rate basis. Plaintiff was compensated at an hourly rate of \$36.

18. Plaintiff is informed, believes, and thereon alleges that Defendant employs and has employed hundreds of hourly, non-exempt workers in California.

19. Defendant denies Plaintiff and Aggrieved Employees proper compensation for all hours worked, including minimum wage and overtime wages. Plaintiff and Aggrieved Employees are regularly required by Defendant to perform work off-the-clock. For instance, Defendant requires Plaintiff and Aggrieved Employees to complete assignments on scheduled due dates. Due to these deadlines imposed by Defendant, Plaintiff and Aggrieved Employees routinely work off-the-clock to complete their assignments.

20. This time spent working while off-the-clock goes unrecorded and uncompensated even though it should be compensated at minimum wage and/or overtime rates. As a result of these policies and/or practices, Plaintiff and Aggrieved Employees are not paid for all hours worked and they do not receive straight time or overtime compensation for overtime hours in violation of Cal. Lab. Code section 1194 and Wage Order 16.

21. Plaintiff and Aggrieved Employees are not provided with a timely, uninterrupted, off-duty, and control-free 30-minute meal period before the fifth hour of work, or a second meal break before the tenth hour of work on days when they work shifts of ten (10) hours or more. Defendant's policies, practices, and procedures prevent Plaintiff and Aggrieved Employees from taking their required 30-minute meal period prior to their fifth hour of work. In particular, Plaintiff and Aggrieved

1 Employees routinely work throughout their scheduled shift without taking a 30-minute meal period.
2 Defendant deducts 30-minutes from Aggrieved Employees time worked to reflect a required 30-
3 minute meal period even when meal periods are not taken. In addition, Plaintiff and Aggrieved
4 Employees are not permitted to leave the premises during meal periods when traveling for work. As a
5 result, Aggrieved Employees are not provided with all meal periods they are entitled to under
6 California law, nor do they receive the proper premium payments for non-compliant meal breaks.

7 22. Additionally, Plaintiff and Aggrieved Employees are not provided with uninterrupted,
8 off-duty, and control-free ten-minute rest periods, by the end of the fourth hour of work, and again, by
9 the end of the eighth hour of work. As a result, Aggrieved Employees are not provided with all rest
10 periods they are entitled to under California law, nor do they receive the proper premium payments
11 for non-compliant rest breaks.

12 23. Defendant fails to indemnify Plaintiff and Aggrieved Employees for all necessary
13 expenditures or losses incurred by them in direct consequence of the discharge of his or her duties, or
14 of his or her obedience to the directions of Defendant. Plaintiff and Aggrieved Employees are required
15 to provide their personal tools in the performance of their work duties. Plaintiff and Aggrieved
16 Employees use these tools to complete job duties and share the use of their personal tools with other
17 Aggrieved Employees. However, Defendant does not reimburse Plaintiff and Aggrieved Employees
18 for such expenses.

19 24. Defendant fails to provide Plaintiffs and Aggrieved Employees with accurate itemized
20 wage statements as required under California law. The statements provided to Plaintiffs and Aggrieved
21 Employees do not contain accurate information required under California law, including the correct
22 amount of gross and net wages earned, including overtime compensations and premium pay for non-
23 complaint meal and rest periods, nor the correct total hours worked by Plaintiffs and Aggrieved
24 Employees.

25 25. Defendant does not provide Plaintiff and Aggrieved Employees who are former
26 workers of Defendant with full payment of all wages owed upon separation from employment.
27 Defendant has failed to provide Plaintiff and Aggrieved Employees with all earned wages, including
28 earned wages from off-the-clock work, and premium wages for missed or noncompliant meal and rest

1 periods, within the required time period. As a result, and pursuant to the California Labor Code,
2 Defendant is subject to waiting time penalties.

3 26. Plaintiff is informed, believes, and thereon alleges that Defendant's unlawful conduct
4 has been widespread, repeated, and consistent as to Aggrieved Employees and throughout Defendant's
5 operations in the State of California, regardless of location and assignment in California.

6 **FIRST CAUSE OF ACTION**

7 **Penalties Pursuant to Cal. Lab. Code § 2699(a)**

8 **(On Behalf of the State of California and Aggrieved Employees)**

9 27. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
10 herein.

11 28. Cal. Lab. Code § 2699(a) provides:

12 Notwithstanding any other provision of law, any provision of this code that provides
13 for a civil penalty to be assessed and collected by the Labor and Workforce
14 Development Agency or any of its departments, divisions, commissions, boards,
15 agencies, or employees, for a violation of this code, may, as an alternative, be recovered
16 through a civil action brought by an aggrieved employee on behalf of himself or herself
17 and to other current or former employees.

18 29. Plaintiff seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for each failure by
19 Defendant, as alleged above, to pay all wages to Plaintiff and the Aggrieved Employees: (i) in
20 compliance with Cal. Lab. Code § 204, in the amounts established by Cal. Lab. Code § 210; (ii) in
21 compliance with Cal. Lab. Code §§ 1182.12 and 1197, in the amounts established by Cal. Lab. Code
22 § 1197.1; and (iii) in compliance with Cal. Lab. Code § 510, in the amounts established by Cal. Lab.
23 Code § 558.

24 30. Plaintiff seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for each failure by
25 Defendant, as alleged above, to provide meal and rest periods, or premium wages in lieu, to Plaintiff
26 and the Aggrieved Employees: (i) in compliance with Cal. Lab. Code §§ 226.7 and 512, in the amounts
27 established by Cal. Lab. Code § 558; (ii) or alternatively, in compliance with Cal. Lab. Code § 204, in
28 the amounts established by Cal. Lab. Code § 210.

31. Plaintiff seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for each failure by
Defendant, as alleged above, to provide accurate itemized wage statements, to Plaintiff and the

1 Aggrieved Employees in compliance with Cal. Lab. Code § 226, in the amounts established by Cal.
2 Lab. Code § 226.3.

3 32. Plaintiff seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for each failure by
4 Defendant, as alleged above, to provide final pay to Plaintiff and the Aggrieved Employees in
5 compliance with Cal. Lab. Code §§ 201 and 202, in the amounts established by Cal. Lab. Code § 256.

6 33. Pursuant to Cal. Lab. Code §§ 2699.3(a)(1) and (2), on June 18, 2024, Plaintiff provided
7 the Labor and Workforce Development Agency (“LWDA”) with notice of his intention to file this
8 claim. On June 18, 2024, Plaintiff mailed Defendant a copy of such notice via certified mail. At least
9 sixty-five calendar days have passed without response from the LWDA. Plaintiff satisfied the
10 administrative prerequisites to commence this civil action in compliance with Cal. Lab. Code §
11 2699.3(a).

12 34. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
13 Employees, and himself as set forth in Cal. Lab. Code § 2699.

14 35. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
15 the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys’ fees
16 and costs as set forth below.

17 36. Wherefore, Plaintiff requests relief as hereinafter provided.

18 **SECOND CAUSE OF ACTION**

19 **Penalties Pursuant to Cal. Lab. Code § 2699(f)**

20 **(On Behalf of the State of California and Aggrieved Employees)**

21 37. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
22 herein.

23 38. Cal. Lab. Code § 2699(f) provides:

24 For all provisions of this code except those for which a civil penalty is specifically
25 provided, there is established a civil penalty for a violation of these provisions, as
26 follows: . . . (2) If, at the time of the alleged violation, the person employs one or more
27 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee
28 per pay period for the initial violation and two hundred dollars (\$200) for each
aggrieved employee per pay period for each subsequent violation.

39. To the extent than any violation alleged herein does not carry penalties under Cal. Lab.

Code § 2699(a), Plaintiff seeks civil penalties pursuant to Cal. Lab. Code § 2699(f) for each pay period in which Plaintiff and an Aggrieved Employee was aggrieved, in the amounts established by Cal. Lab. Code § 2699(f).

40. Plaintiff seeks penalties pursuant to Cal. Lab. Code § 2699(f) for Plaintiff and Aggrieved Employees for violations of Cal. Lab. Code provisions including, but not limited to, Cal. Lab. Code §§ 201, 202, 226, 226.7, 512, 1198, 2802, and any other violation alleged herein which does not carry penalties under Cal. Lab. Code § 2699(a).

41. Pursuant to Cal. Lab. Code §§ 2699.3(a)(1) and (2), on June 18, 2024, Plaintiff provided the Labor and Workforce Development Agency (“LWDA”) with notice of his intention to file this claim. On June 18, 2024, Plaintiff mailed Defendant a copy of such notice via certified mail. At least sixty-five calendar days have passed without response from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with Cal. Lab. Code § 2699.3(a).

42. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and himself as set forth in Cal. Lab. Code § 2699(g)(1).

43. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys’ fees and costs as set forth below.

44. Wherefore, Plaintiff requests relief as hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For the Court to declare, adjudge, and decree that Defendant has violated the Cal. Lab. Code as alleged herein;
2. For an order awarding the State of California, Plaintiff, and Aggrieved Employees civil penalties provided under the PAGA;
3. For an award of reasonable attorneys’ fees as provided by the Cal. Lab. Code § 2699(g)(1); Cal. Code Civ. Proc. § 1021.5; and/or any other applicable law;
4. For all costs of suit; and

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5. For such other and further relief as this Court deems just and proper.

Respectfully Submitted,

Date: August 23, 2024



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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to a jury.

Respectfully Submitted,

Date: August 23, 2024



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