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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

LAURA SORIANO GIRON MAGAT, as an
individual and on behalf of all others
similarly situated,

Plaintiff,

vs.

HRB RESOURCES LLC, a Delaware
corporation; H&R BLOCK ENTERPRISES
LLC, a Missouri corporation; and DOES 1
through 100,

Defendants.

Case No.: 21CV388049

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, *et seq.*)**

UNLIMITED CIVIL CASE

1 Plaintiff Laura Soriano Giron Magat (“Plaintiff”), on behalf of herself, all other aggrieved
2 employees, and the State of California, hereby brings this Representative Action Complaint
3 (“Complaint”) against Defendants HRB Resources LLC, a Delaware corporation; H&R Block
4 Enterprises LLC, a Missouri corporation, and DOES 1 to 100, inclusive (collectively,
5 “Defendants”), and on information and belief allege as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of herself, all other aggrieved employees, and the State of
8 California, hereby brings this Complaint for recovery of civil penalties under the Private
9 Attorneys General Act, Labor Code § 2698, *et seq.* (“PAGA”), and Industrial Welfare
10 Commission Wage Order 4, (“Wage Order 4”). The monetary damages that Plaintiff seeks exceed
11 this Court’s jurisdictional minimum.

12 **VENUE**

13 2. Venue is proper in this judicial district pursuant to California Code of Civil
14 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
15 occurred in Santa Clara County. Defendants own, maintain offices, transact business, have an
16 agent or agents within Santa Clara County, and/or otherwise are found within Santa Clara County,
17 and Defendants are within the jurisdiction of this Court for purposes of service of process.

18 **PARTIES**

19 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
20 Plaintiff was, and currently is, a California resident. Within the statute of limitations periods
21 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-
22 exempt employee.

23 4. Plaintiff is informed and believes, and based thereon alleges, that within the statute
24 of limitations period applicable to each cause of action pled herein and continuing to the present,
25 Defendants did (and continue to do) business of providing tax preparation services, and, therefore,
26 were (and are) doing business in Santa Clara County and the State of California.

27 5. Plaintiff does not know the true names or capacities, whether individual, partner,
28 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said

1 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
2 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
3 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
4 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
5 and proximately caused Plaintiff and other aggrieved employees to be subject to the unlawful
6 employment practices, wrongs, injuries and damages complained of herein.

7 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
8 herein, Defendants were and are the employers of Plaintiff and other aggrieved employees.

9 7. At all times herein mentioned, each of said Defendants participated in the doing
10 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
11 Defendants, and each of them, were the agents, servants, and employees of each and every one of
12 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
13 were acting within the course and scope of said agency and employment. Defendants, and each
14 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
15 omissions complained of herein.

16 8. At all relevant times, Defendants, and each of them, were members of and engaged
17 in a joint venture, partnership, and common enterprise, and acted within the course and scope of
18 and in pursuance of said joint venture, partnership, and common enterprise. Further, all
19 Defendants were joint employers for all purposes of Plaintiff and other aggrieved employees.

20 **REPRESENTATIVE ACTION ALLEGATIONS**

21 9. Plaintiff was employed by Defendant as a seasonal non-exempt employee from
22 approximately January 2009 through approximately February 2021.

23 10. During her employment with Defendants, Plaintiff and other aggrieved employees
24 were not authorized and permitted legally compliant rest periods. Specifically, Defendants'
25 written rest period policy prohibits employees from leaving Defendants' premises during rest
26 periods, thereby failing to relinquish all control over employees during their rest periods in
27 violation of California law. In fact, Defendants' written policy requires employees to clock out
28 (and therefore not get paid) if they leave the premises "for personal reasons." Thus, if an employee

1 leaves the premises during a rest period, the employee is required to clock out and therefore will
2 not receive a paid rest period, which is required under California law. See Wage Order 4, § 12(A)
3 (“Authorized rest period time shall be counted as hours worked for which there shall be no
4 deduction from wages.”)

5 11. On those occasions when Plaintiff and other aggrieved employees were not
6 authorized and permitted to take all legally-compliant rest periods to which they were entitled,
7 Defendants failed to compensate them with the required rest period premium for each workday
8 in which they experienced a rest period violation as mandated by Labor Code § 226.7. Upon
9 information and belief, Defendants maintains no payroll code or other mechanism for the payment
10 of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant
11 rest period is not provided to their non-exempt employees.

12 12. Defendants’ meal period policies/practices have also failed to provide Plaintiff and
13 other aggrieved employees with all legally compliant meal periods because they have failed to
14 provide Plaintiff and other aggrieved employees with a timely, duty-free, and uninterrupted 30-
15 minute meal period commencing before the end of the fifth hour of work, and/or a second 30-
16 minute meal period for shifts of over 10.0 hours. Specifically, Plaintiff’s and other aggrieved
17 employees’ meal periods have frequently been “late” (i.e., starting after the completion of the
18 fifth hour of work), because Plaintiff’s work demands have frequently prevented them from taking
19 a meal period entirely or from taking a meal period until after the completion of the fifth hour of
20 work. Meal periods are also often “short” (less than 30 minutes) because Plaintiff and/or other
21 aggrieved employees were required to cut short their meal periods in order to perform work-
22 related tasks. Defendants has failed to compensate Plaintiff and other aggrieved employees with
23 the required meal period premium for each workday in which they experienced a meal period
24 violation as mandated by Labor Code § 226.7.

25 13. Plaintiff and other aggrieved employees have also received bonuses, including
26 “STI Pay” (which on information and belief stands for Short-Term Incentive Pay), “IPP
27 Payment,” cash awards, and other bonuses and incentive pay that must be included in the “regular
28 rate” of pay (collectively, “Incentive Pay”). However, on information and belief, Defendants

1 have failed to properly incorporate Incentive Pay in Plaintiff's and other aggrieved employees'
2 "regular rate" of pay when calculating overtime compensation, and thereby under-paid them
3 overtime compensation.

4 14. In addition, when paying meal period premiums Defendants failed to properly
5 incorporate all Incentive Pay into employees' "regular rate" of compensation, thereby under-
6 paying Plaintiff's and/or other aggrieved employees' meal period premiums under Labor Code §
7 226.7, which requires meal period premiums to be paid at an hour of pay at the employee's
8 "regular rate of compensation." *See Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5th 858, 785-
9 86 (2021) (holding "regular rate of compensation" in Labor Code § 226.7 to be synonymous with
10 "regular rate of pay" in Labor Code § 510, and therefore meal and rest period premiums must
11 incorporate incentive pay just like overtime premiums).

12 15. Defendants have also maintained an unlawful travel time policy, in that it deducts
13 time for purported meal periods when employees are traveling for work-related purposes (and
14 therefore continuously subject to Defendants' control), regardless whether they actually take a
15 meal period. This has resulted in unpaid wages, including unpaid minimum wages and overtime.

16 16. As a result of the above violations, Defendants have issued inaccurate wage
17 statements to Plaintiff and other aggrieved employees. In addition, the wage statements issued to
18 Plaintiff and other aggrieved employees did not always include rates of pay and/or hours worked
19 as required under Labor Code § 226(a)(9). For example, Defendants have paid amounts listed on
20 wage statements as "Prior Pd" "Block Star" without providing a corresponding hourly rate or
21 number of hours worked for those amounts.

22 17. As a result of the above violations, Defendants have failed to timely pay all final
23 wages to Plaintiff and other aggrieved former employees. In addition, Plaintiff was not paid her
24 final wages on the date of her termination as required under Labor Code § 201. Specifically,
25 Plaintiff was informed that her employment was terminated on February 15, 2021, but she was
26 not paid her final wages until the next regular payday, February 26, 2021. Plaintiff was also paid
27 an hour of pay approximately two months after her termination, on April 19, 2021. Accordingly,
28 Plaintiff was not paid all wages due to her at the time of her termination of employment.

18. Pursuant to California Judicial Council Emergency Rule 9, statutes of limitations of more than 180 days were suspended for 178 days, from April 6, 2020 through October 1, 2020. As described below, Plaintiff submitted her PAGA notice on July 28, 2021. Accordingly, the relevant time period for the violations described herein is one year plus 178 days prior to the date of Plaintiff's PAGA notice.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

19. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though fully set forth herein.

20. Defendants have committed Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff is an “aggrieved employee” within the meaning of the PAGA and, acting on behalf of herself, other aggrieved employees, and the State of California, brings this representative action against Defendants to recover the civil penalties due to Plaintiff and other aggrieved employees against whom one or more of the violations has been committed, and the State of California according to proof, pursuant to Labor Code § 2699, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided pursuant to Labor Code § 2699(f), based on the following Labor Code violations:

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- a. Failing to authorize and permit all legally required rest periods, and failing to pay rest period premiums, to Plaintiff and other aggrieved employees in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- b. Failing to provide all legally required meal periods, and failing to pay meal period premium pay, to Plaintiff and other aggrieved employees in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- c. Failing to compensate Plaintiff and other aggrieved employees all overtime wages earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- d. Failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198;
- e. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- f. Failing to timely pay all final wages and compensation earned by Plaintiff and other aggrieved former employees at the time of separation of employment, in violation of Labor Code §§ 201-203; and
- g. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month, in violation of Labor Code § 204.

21. On July 28, 2021, Plaintiff notified Defendants via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under PAGA with respect to violations of the California Labor Code identified in Paragraph 20 (a)-(g) above. Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the PAGA with respect to these violations.

22. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to recover under California Labor Code § 2699(g).

1 **PRAYER**

2 WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf
3 this suit is brought against Defendants, jointly and severally, as follows:

4 23. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved
5 employees, and the State of California according to proof pursuant to Labor Code § 2699,
6 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
7 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant
8 to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
9 withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to
10 Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00
11 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
12 \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent
13 violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
14 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
15 those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to
16 Labor Code § 2699(f);

17 24. On all causes of action, for attorney's fees and costs as provided by Labor Code §
18 2699(g) and Code of Civil Procedure § 1021.5; and

19 25. For such other and further relief the Court may deem just and proper.

20 Respectfully submitted,

21
22 Dated: October 11, 2021

HAINES LAW GROUP, APC

23
24 By:



25 Paul K. Haines
26 Attorneys for Plaintiff
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