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

**24CV429226**

DANIEL OLANO, on behalf of all other  
aggrieved employees,

Plaintiff,

vs.

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

Defendants.

Case No. \_\_\_\_\_

**REPRESENTATIVE ACTION  
COMPLAINT:**

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

**UNLIMITED CIVIL CASE**

1 Plaintiff Daniel Olano (“Plaintiff”) hereby brings this Representative Action Complaint  
2 against Defendants HRB Resources LLC, a Delaware corporation; H&R Block Enterprises LLC,  
3 a Missouri corporation; and DOES 1 to 100, inclusive (collectively “Defendants”), solely as a  
4 representative action under the Private Attorneys General Act (“PAGA”) on behalf of aggrieved  
5 employees and the State of California, and on information and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of all other aggrieved employees and the State of California,  
8 hereby brings this representative action for recovery of civil penalties under California Labor  
9 Code §§ 2698 *et seq.*

10 2. This Court has jurisdiction over Defendants because, upon information and belief,  
11 Defendants are citizens of California, Defendants have sufficient minimum contacts in California,  
12 or otherwise intentionally avail themselves to the California market so as to render the exercise  
13 of jurisdiction over them by the California courts consistent with the traditional notions of fair  
14 play and substantial justice.

15 **VENUE**

16 3. Venue as to each Defendant is proper in this judicial district pursuant to California  
17 Code of Civil Procedure §§ 395(a) and 395.5 in that liability arose in this county because at least  
18 some of the transactions that are the subject of this Complaint occurred therein and/or each  
19 Defendant is found, maintains offices, transacts business, or has an agent therein.

20 **PARTIES**

21 4. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,  
22 Plaintiff was, and currently is, a California resident. During the one year immediately preceding  
23 Plaintiff’s giving of the required notice under the PAGA, and within the statute of limitations  
24 periods applicable to the cause of action pled herein, Plaintiff was employed by Defendants as an  
25 hourly non-exempt employee.

26 5. Plaintiff is informed and believes, and based thereon alleges, that during the one  
27 year preceding Plaintiff’s giving of the required notice under the PAGA and continuing to the  
28 present, Defendants did (and do) business of providing tax preparation services, and employed

1 Plaintiff and other similarly-situated hourly non-exempt employees within the County of Santa  
2 Clara and, therefore, were (and are) doing business in the County of Santa Clara and the State of  
3 California.

4 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned  
5 herein, Defendants were licensed to do business in California and the County of Santa Clara, and  
6 were the employers of Plaintiff and the Aggrieved Employees (as defined in Paragraph 25).

7 7. Plaintiff does not know the true names or capacities, whether individual, partner,  
8 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said  
9 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to  
10 amend this Representative Action Complaint when such true names and capacities are discovered.  
11 Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious defendants,  
12 whether individual, partners, or corporate, were responsible in some manner for the acts and  
13 omissions alleged herein, and proximately caused Plaintiff and the Aggrieved Employees (as  
14 defined in Paragraph 25) to be subject to the unlawful employment practices, wrongs, injuries,  
15 and damages complained of herein.

16 8. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned  
17 herein, Defendants were and are the employers of Plaintiff and the Aggrieved Employees (as  
18 defined in Paragraph 25).

19 9. At all times herein mentioned, each of said Defendants participated in the doing  
20 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the  
21 Defendants, and each of them, were the agents, servants, and employees of each and every one of  
22 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned  
23 were acting within the course and scope of said agency and employment. Defendants, and each  
24 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or  
25 omissions complained of herein.

26 10. At all times mentioned herein, Defendants, and each of them, were members of  
27 and engaged in a joint venture, partnership, and common enterprise, and acting within the course  
28 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,

Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the Aggrieved Employees (as defined in Paragraph 25).

**REPRESENTATIVE ACTION ALLEGATIONS**

11. Defendants provide tax services to clients around the country, including in California. Plaintiff was employed by Defendants as a seasonal non-exempt employee in the position of “Tax Advisor” (or other similarly titled position) until approximately October 2023. Plaintiff does not bring this action to pursue an individual claim under the PAGA and, although Plaintiff is an aggrieved employee as alleged herein, the “Aggrieved Employees” that Plaintiff seeks to represent does not include Plaintiff.

12. During his employment with Defendants, Plaintiff and other aggrieved employees were not authorized and permitted legally compliant rest periods. Specifically, Defendants’ written rest period policy prohibits employees from leaving Defendants’ premises during rest periods, thereby failing to relinquish all control over employees during their rest periods in violation of California law. In fact, Defendants’ written policy requires employees to clock out (and therefore not get paid) if they leave the premises “for personal reasons.” Thus, if an employee leaves the premises during a rest period, the employee is required to clock out and therefore will not receive a *paid* rest period, which is required under California law. *See* Wage Order 4, § 12(A) (“Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.”). Additionally, due to work demands as well as Defendants’ failure to schedule employee rest periods, Plaintiff and other aggrieved employees were often not able to take even a single ten-minute net rest period during the entirety of their shift. On those occasions when Mr. Olano and other aggrieved employees were not authorized and permitted to take all legally-compliant rest periods to which they were entitled, H&R Block failed to compensate them with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7. Upon information and belief, H&R Block maintains no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period is not provided to their non-exempt employees.

1           13. Defendants’ meal period policies/practices also failed to provide Plaintiff and  
2 other aggrieved employees with all legally compliant meal periods because they failed to provide  
3 Plaintiff and other aggrieved employees with a timely, duty-free, and uninterrupted 30-minute  
4 meal period commencing before the end of the fifth hour of work, and/or a second 30-minute  
5 meal period for shifts of over 10.0 hours. Specifically, Plaintiff’s meal periods were frequently  
6 “late” (i.e., starting after the completion of the fifth hour of work) or missed, because Plaintiff’s  
7 work demands frequently prevented him from taking a meal period entirely or from taking a meal  
8 period until after the completion of the fifth hour of work. Meal periods were also often “short”  
9 (less than 30 minutes) because Plaintiff and/or other aggrieved employees were required to cut  
10 short their meal periods in order to perform work-related tasks. Additionally, upon information  
11 and belief, when Plaintiff and other aggrieved employees were not able to take a 30-minute meal  
12 period, Defendants would automatically deduct 30 minutes from Plaintiff’s and other aggrieved  
13 employees’ time records for a meal period that they did not take. As a result of this practice,  
14 Defendants failed to compensate Plaintiff and other aggrieved employees for all hours worked.  
15 Defendants also failed to compensate Plaintiff and other aggrieved employees with the required  
16 meal period premium for each workday in which they experienced a meal period violation as  
17 mandated by Labor Code § 226.7.

18           14. Plaintiff and other aggrieved employees also received bonuses, including “STI  
19 Pay” (which on information and belief stands for Short-Term Incentive Pay), “IPP Payment,”  
20 cash awards, and other bonuses and incentive pay that must be included in the “regular rate” of  
21 pay (collectively, “Incentive Pay”). However, on information and belief, Defendants failed to  
22 properly incorporate Incentive Pay in Plaintiff’s and other aggrieved employees’ “regular rate”  
23 of pay when calculating overtime compensation, and thereby under-paid them overtime  
24 compensation.

25           15. In addition, when paying meal period premiums, Defendants failed to properly  
26 incorporate all Incentive Pay into employees’ “regular rate” of compensation, thereby under-  
27 paying Plaintiff’s and/or other aggrieved employees’ meal period premiums under Labor Code §  
28 226.7, which requires meal period premiums to be paid at an hour of pay at the employee’s

1 “regular rate of compensation.” *See Ferra v. Loews Hollywood Hotel, LLC*, --- P.3d ---, 2021  
2 WL 2965438 (Cal. Sup. Ct. July 15, 2021) (holding “regular rate of compensation” in Labor Code  
3 § 226.7 to be synonymous with “regular rate of pay” in Labor Code § 510, and therefore meal  
4 and rest period premiums must incorporate incentive pay just like overtime premiums).

5 16. Plaintiff further alleges that Defendants are liable for violations of Labor Code §  
6 245.5(e) and § 246(l), which requires “paid sick days” to be “calculated in the same manner as  
7 the regular rate of pay for the workweek in which the employee uses paid sick time, whether or  
8 not the employee actually works overtime in that workweek” or “by dividing the employee’s total  
9 wages, not including overtime premium pay, by the employee’s total hours worked in the full pay  
10 periods of the prior 90 days of employment.” However, Defendants failed to properly provide  
11 and/or properly compensate all wages owed to Plaintiff and other aggrieved employees because  
12 they had a uniform policy or practice of paying paid sick time at the employee’s base rate of pay  
13 without including earned incentive pay, including non-discretionary bonuses, premium pay,  
14 and/or other forms of pay that cannot be excluded from the regular rate of pay for the purposes of  
15 paid sick pay under Labor Code §§ 245.5(e) and 246(l). Plaintiff further alleges that Defendants  
16 in some instances failed to include the amount of available sick leave on the wage statement of  
17 Plaintiff and other aggrieved employees in violation Labor Code § 246(i).

18 17. Defendants also maintained an unlawful travel time policy, in that they deducted  
19 time for purported meal periods when employees were traveling for work-related purposes (and  
20 therefore continuously subject to Defendants’ control), regardless of whether they actually took  
21 a meal period. This has resulted in unpaid wages, including unpaid minimum wages and overtime  
22 wages.

23 18. As a “Tax Advisor,” Plaintiff was paid pursuant to commission/piece-rate pay  
24 plans, whereby he was paid a commission and/or a piece-rate based on completed tax returns  
25 and/or other tax return add-ons. Under this commission/piece-rate pay plan, Plaintiff was required  
26 to record his hours worked by clocking in and clocking out at the beginning and end of his  
27 workday, but was only paid an hourly wage if his commissions and/or piece-rate wages did not  
28 exceed his hourly wages for the tax season. Because Defendants’ pay system is simply a

1 subterfuge for a commission and/or piece-rate compensation system, on those occasions when  
2 Plaintiff or other aggrieved employees were paid a piece rate or commission (i.e., when their  
3 commissions or piece rate earnings exceeded their hourly wage floor), Plaintiff and other  
4 aggrieved employees paid pursuant to Defendants' commission/piece-rate pay plans were not  
5 provided with a paid rest period for every 4-hour period worked, or major fraction thereof,  
6 because Defendants' commission and/or piece-rate compensation plan failed to separately  
7 compensate Plaintiff and other aggrieved employees for required rest periods. *See Vaquero v.*  
8 *Stoneledge Furniture LLC*, 9 Cal.App.5th 98 (2017); *Bluford v. Safeway Inc.*, 216 Cal.App.4th  
9 864 (2013) ("There is no dispute that Safeway's activity-based compensation system did not  
10 separately compensate drivers for their rest periods."); Labor Code § 226.2(a)(1) (requiring  
11 employers to pay piece rate employees separate for rest periods and other nonproductive time).

12 19. As a result of Defendants' failure to provide all legally required rest periods and  
13 its unlawful rest period policy, Defendants failed to compensate their employees with the required  
14 rest period premium for each workday in which Plaintiff and other aggrieved employees  
15 experienced a rest period violation, and failed to compensate Plaintiff and other aggrieved  
16 employees for all minimum and overtime wages that should have been earned during paid rest  
17 periods. Upon information and belief, during at least a portion of the relevant time period,  
18 Defendants maintained no payroll code for paying rest period premiums under Labor Code §  
19 226.7.

20 20. Further, as a result of Defendants' failure to pay all minimum and overtime wages,  
21 as well as all meal and rest period premium wages, Defendants maintained inaccurate payroll  
22 records and issued inaccurate wage statements to Plaintiff and other aggrieved employees.  
23 Additionally, Defendants issued facially non-compliant wage statements to Plaintiff and other  
24 aggrieved employees by failing to list the number of piece-rate units earned and any applicable  
25 piece rate, in violation of Labor Code § 226(a)(3); failing to list the total hours of compensable  
26 rest and recovery periods and the corresponding rate of compensation and gross wages for those  
27 periods, in violation of Labor Code § 226.2(a)(2)(A); and failing to state the total hours of non-  
28 productive time along with the corresponding rate of compensation and gross wages for non-

productive time worked in violation of Labor Code § 226.2(a)(2)(B).

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

22. Defendants also unlawfully deducted the value of discounts or “coupons” from Plaintiff’s and other aggrieved employees’ wages in violation of California Labor Code §§ 221-223. *See Hudgins v. Nieman Marcus Group, Inc.*, (1995) 34 Cal.App.4th 1109, 1118 (“As interpreted by the Industrial Welfare Commission (IWC) and the California courts, section 221 has long been held to prohibit deductions from an employee's wages for cash shortages”); *see also* Wage Order 4, § 8 (prohibiting deductions from employee wages for, *inter alia* “cash shortage”).

23. As a result of the above violations, Defendants failed to timely pay all final wages to Plaintiff and other aggrieved former employees. In addition, Plaintiff alleges that Defendants systematically failed to timely pay him and other aggrieved employees their final wages on the date of their termination as required under Labor Code § 201. Specifically, Plaintiff alleges that although Defendants hires its employees to work for only a specified amount of time each season, Defendants does not pay its employees their final wages on their last day of employment each season. Instead, Defendants has a policy and practice of paying its employees their final wages on the next scheduled pay period regardless of when their employment ends each season.

24. Upon information and belief, Plaintiff further alleges that Defendants failed to pay him and other aggrieved employees all vacation wages owed at the time of termination, due to Defendants’ policy and practice of classifying vacation wages as “sick pay” in order to avoid paying Plaintiff and other aggrieved employees their vacation wages at the time of termination in violation of Labor Code section 227.3.

25. Based on the foregoing, Plaintiff seeks to represent other aggrieved employees, as defined by Labor Code § 2699(c), who have been aggrieved by the Labor Code violations

discussed herein. On July 28, 2021, Laura Giron Magat (“Ms. Magat”) notified the LWDA via its website and Defendants via certified mail of the specific provisions of the Labor Code Defendants allegedly violated. Accordingly, pursuant to the relation back doctrine and the Court of Appeal’s ruling in *Hutchenson v. Superior Court of Alameda County*, 74 Cal. App. 5th 932 (2022), the relevant time period for the violations described herein is one year plus 178 days prior to the date of Ms. Magat’s original correspondence. Thus, the “aggrieved employees” whom Mr. Olano seeks to represent include all non-exempt employees who worked for Defendants in California at any time from January 25, 2020 through the present.

**FIRST CAUSE OF ACTION**

**PRIVATE ATTORNEYS GENERAL ACT**

**(AGAINST ALL DEFENDANTS)**

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

27. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to other aggrieved employees and the State of California according to proof, 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; 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, based on the following Labor Code violations:

- a. Failing to pay minimum wages for all hours worked to other aggrieved employees in violation of Labor Code §§ 204, 226.2, 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- b. Failing to pay other aggrieved employees all earned overtime and double-time compensation in violation of Labor Code §§ 204, 226.2, 510, 558, 1194, and 1198;
- c. Failing to authorize and permit all legally required rest periods, or to pay premium pay in lieu thereof, and/or failing to separately compensate other aggrieved employees for required rest periods at the regular rate of pay, in violation of Labor Code §§ 226.2, 226.7, 516, 558, and 1198;
- d. Failing to provide all legally required meal periods, or to pay premium pay in lieu thereof, to other aggrieved employees at the regular rate of pay in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- e. Failing to pay other aggrieved employees sick pay and COVID-19 supplemental paid sick leave at the employee's regular rate of pay in violation of Labor Code §§ 245 *et seq.*, 246, 246.8, 1194, 1194.2, and 1197;
- f. Taking unlawful deductions from aggrieved employees' wages and thereby failing to pay other aggrieved employees all earned wages in violation of Labor Code §§ 221, 222, and 223;
- g. Failing to furnish other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code §§ 226 and 226.2;
- h. Failing to timely pay all final wages due to other aggrieved employees, including vested vacation wages, in violation of Labor Code §§ 201, 202, 203, and 227.3;
- i. Failing to pay other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and
- j. Failing to maintain accurate records on behalf of other aggrieved employees in violation of Labor Code §§ 1174, 1198, and 1199.

28. On or about October 17, 2023 and November 8, 2023, Plaintiff notified Defendants HRB Resources LLC and H&R Block Enterprises LLC 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 California Labor Code § 2698 *et seq.* with respect to Defendants’ violations of the California Labor Code identified in Paragraph 27 (a)-(j). Now that sixty-five days have passed from Plaintiff notifying Defendants of these further violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

29. Plaintiff was compelled to retain the services of counsel to file this court action to protect 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 receive under California Labor Code § 2699.

## PRAAYER

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

1. Upon the First Cause of Action, for civil penalties due to other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 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 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 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations identified in Paragraph 27 (a)-(j);

2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §

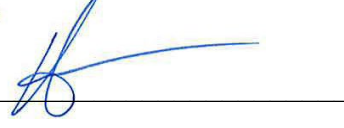
1 2699(g) and Code of Civil Procedure § 1021.5; and

2 3. For such other and further relief the Court may deem just and proper.

3  
4 Dated: January 16, 2024

Respectfully submitted,  
HAINES LAW GROUP, APC

5  
6 By:



Paul K. Haines  
Sean M. Blakely  
Attorneys for Plaintiff