

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Sean M. Blakely (SBN 264384)
sblakely@haineslawgroup.com
Alexandra R. McIntosh (SBN 320904)
amcintosh@haineslawgroup.com
Alicia Flores (SBN 345622)
aflores@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

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

MARTY FLEMING, on behalf of all other
aggrieved employees,

Plaintiff,

vs.

HRB RESOURCES LLC, a Delaware limited
liability company; H&R BLOCK
ENTERPRISES LLC, a Missouri limited
liability company; HRB GREEN
RESOURCES LLC, a Delaware limited
liability company; and DOES 1 through 100,
inclusive,

Defendants.

Case No. **24CV441197**

**REPRESENTATIVE ACTION
COMPLAINT:**

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

UNLIMITED CIVIL CASE

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

7 **JURISDICTION**

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

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

16 **VENUE**

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

22 **PARTIES**

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

28 5. Plaintiff is informed and believes, and based thereon alleges, that within the statute

1 of limitations period applicable to each cause of action pled herein and continuing to the present,
2 Defendants did (and continue to do) business of providing tax preparation services, and, therefore,
3 were (and are) doing business in Santa Clara County and the State of California.

4 6. Plaintiff does not know the true names or capacities, whether individual, partner,
5 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
6 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
7 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
8 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
9 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
10 and proximately caused Plaintiff and other aggrieved employees to be subject to the unlawful
11 employment practices, wrongs, injuries and damages complained of herein.

12 7. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
13 herein, Defendants were and are the employers of Plaintiff and the Aggrieved Employees (as
14 defined in Paragraph 26).

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

22 9. At all times mentioned herein, Defendants, and each of them, were members of
23 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
24 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
25 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the
26 Aggrieved Employees (as defined in Paragraph 26).

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11. During her 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 Plaintiff and other aggrieved employees were not authorized and permitted to take all legally-compliant rest periods to which they were entitled, Defendants 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, Defendants maintain 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.

12. Defendants' meal period policies/practices also failed to provide Plaintiff and/or

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

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

24 14. In addition, when paying meal period premiums, Defendants failed to properly
25 incorporate all Incentive Pay into employees’ “regular rate” of compensation, thereby under-
26 paying Plaintiff’s and/or other aggrieved employees’ meal period premiums under Labor Code §
27 226.7, which requires meal period premiums to be paid at an hour of pay at the employee’s
28 “regular rate of compensation.” *See Ferra v. Loews Hollywood Hotel, LLC*, --- P.3d ---, 2021

1 WL 2965438 (Cal. Sup. Ct. July 15, 2021) (holding “regular rate of compensation” in Labor Code
2 § 226.7 to be synonymous with “regular rate of pay” in Labor Code § 510, and therefore meal
3 and rest period premiums must incorporate incentive pay just like overtime premiums).

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

17 16. Plaintiff further alleges that Defendant paid some aggrieved employees pursuant
18 to commission/piece-rate pay plans, whereby they were paid a commission and/or a piece-rate
19 based on completed tax returns and/or other tax return add-ons. Under this commission/piece-rate
20 pay plan, aggrieved employees were required to record their hours worked by clocking in and
21 clocking out at the beginning and end of their workday, but were only paid an hourly wage if their
22 commissions and/or piece-rate wages did not exceed their hourly wages for the tax season.
23 Because Defendants’ pay system is simply a subterfuge for a commission and/or piece-rate
24 compensation system, on those occasions when aggrieved employees were paid a piece rate or
25 commission (i.e., when their commissions or piece rate earnings exceeded their hourly wage
26 floor), aggrieved employees paid pursuant to Defendants’ commission/piece-rate pay plans were
27 not provided with a paid rest period for every 4-hour period worked, or major fraction thereof,
28 because Defendants’ commission and/or piece-rate compensation plan failed to separately

1 compensate Plaintiff and other aggrieved employees for required rest periods. *See Vaquero v.*
2 *Stoneledge Furniture LLC*, 9 Cal.App.5th 98 (2017); *Bluford v. Safeway Inc.*, 216 Cal.App.4th
3 864 (2013) (“There is no dispute that Safeway’s activity-based compensation system did not
4 separately compensate drivers for their rest periods.”); Labor Code § 226.2(a)(1) (requiring
5 employers to pay piece rate employees separate for rest periods and other nonproductive time).

6 17. As a result of Defendants’ failure to provide all legally required rest periods and
7 its unlawful rest period policy, Defendants failed to compensate their employees with the required
8 rest period premium for each workday in which Plaintiff and other aggrieved employees
9 experienced a rest period violation, and failed to compensate Plaintiff and other aggrieved
10 employees for all minimum and overtime wages that should have been earned during paid rest
11 periods.

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

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

23 20. Additionally, Plaintiff further alleges that Defendants are liable for its failure to
24 pay aggrieved employees all reporting time pay. Specifically, on occasions when aggrieved
25 employees reported for work and client’s canceled and/or the server crashed, Defendants did not
26 compensate aggrieved employees for half of their scheduled days work or at least two hours at
27 their regular rate of pay, in violation of Section 5 of the applicable Wage Order. Cal. Code Regs.,
28 title 8, section 11050, subd. 5 (“Each workday an employee is required to report for work and

1 does report, but is not put to work or is furnished less than half said employee's usual or scheduled
2 day's work, the employee shall be paid for half the usual or scheduled day's work, but in no even
3 less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay..."")
4 Defendants also required aggrieved employees to report to work a second time without paying
5 the requisite reporting time pay. Additionally, Defendants required its aggrieved employees,
6 including Plaintiff, to report to work for meetings, including an end of the season meeting, but
7 only paid aggrieved employees for one hour of pay, regardless of the actual length of the meeting.
8 Plaintiff alleges that this is not only a violation of the reporting time pay requirements but also a
9 failure to pay for all hours worked.

10 21. Further, as a result of Defendants' failure to pay all minimum and overtime wages,
11 as well as all meal and rest period premium wages, Defendants maintained inaccurate payroll
12 records and issued inaccurate wage statements to Plaintiff and other aggrieved employees. In
13 addition, the wage statements issued to Plaintiff and other aggrieved employees did not always
14 include rates of pay and/or hours worked as required under Labor Code § 226(a)(9). For example,
15 Defendants paid amounts listed on wage statements as "Prior Pd" "Block Star" without providing
16 a corresponding hourly rate or number of hours worked for those amounts.

17 22. Defendants also issued facially non-compliant wage statements to aggrieved
18 employees by failing to list the number of piece-rate units earned and any applicable piece rate in
19 violation of Labor Code § 226(a)(3); failing to list the total hours of compensable rest and
20 recovery periods and the corresponding rate of compensation and gross wages for those periods,
21 in violation of Labor Code § 226.2(a)(2)(A).

22 23. As a result of the above violations, Defendants failed to timely pay all final wages
23 to Plaintiff and other aggrieved former employees. In addition, Plaintiff alleges that Defendants
24 systematically failed to timely pay her and other aggrieved employees their final wages on the
25 date of their termination as required under Labor Code § 201. Specifically, Plaintiff alleges that
26 although Defendants hires its employees to work for only a specified amount of time each season,
27 Defendants does not pay its employees their final wages on their last day of employment each
28 season. Instead, Defendants have a policy and practice of paying its employees their final wages

1 on the next scheduled pay period regardless of when their employment ends each season.

2 24. Based on the foregoing, Plaintiff seeks to represent other aggrieved employees, as
3 defined by Labor Code § 2699(c), who have been aggrieved by the Labor Code violations
4 discussed herein.

5 **FIRST CAUSE OF ACTION**

6 **PRIVATE ATTORNEYS GENERAL ACT**

7 **(AGAINST ALL DEFENDANTS)**

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

10 26. Defendants have committed several Labor Code violations against Plaintiff and
11 other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor
12 Code § 2698 et seq., acting on behalf of other aggrieved employees, brings this representative
13 action against Defendants to recover the civil penalties due to other aggrieved employees and the
14 State of California according to proof, including, but not limited to: (1) \$100.00 for each initial
15 violation for each failure to pay each employee and \$200.00 for each subsequent violation or
16 willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each
17 employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and
18 \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period;
19 (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor
20 Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation; and \$1,000.00
21 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or
22 (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per
23 pay period for those violations of the Labor Code for which no civil penalty is specifically
24 provided, based on the following Labor Code violations:

25 a. Failing to pay minimum wages for all hours worked to other aggrieved employees
26 in violation of Labor Code §§ 204, 226.2, 558, 1182.12, 1194, 1194.2, 1197, and
27 1198;

28 b. Failing to pay other aggrieved employees all earned overtime and double-time

1 compensation in violation of Labor Code §§ 204, 226.2, 510, 558, 1194, and 1198;

2 c. Failing to authorize and permit all legally required rest periods, or to pay premium

3 pay in lieu thereof, and/or failing to separately compensate other aggrieved

4 employees for required rest periods at the regular rate of pay, in violation of Labor

5 Code §§ 226.2, 226.7, 516, 558, and 1198;

6 d. Failing to provide all legally required meal periods, or to pay premium pay in lieu

7 thereof, to other aggrieved employees at the regular rate of pay in violation of

8 Labor Code §§ 226.7, 512, 558, and 1198;

9 e. Failing to pay other aggrieved employees sick pay and COVID-19 supplemental

10 paid sick leave at the employee's regular rate of pay in violation of Labor Code §§

11 245 *et seq.*, 246, 246.8, 1194, 1194.2, and 1197;

12 f. Taking unlawful deductions from aggrieved employees' wages and thereby failing

13 to pay other aggrieved employees all earned wages in violation of Labor Code §§

14 221, 222, and 223;

15 g. Failing to furnish other aggrieved employees with complete, accurate, itemized

16 wage statements in violation of Labor Code §§ 226 and 226.2;

17 h. Failing to timely pay all final wages due to other aggrieved employees in violation

18 of Labor Code §§ 201, 202, 203, and 227.3;

19 i. Failing to pay all reporting time pay to aggrieved employees in violation of Labor

20 Code § 1198;

21 j. Failing to pay other aggrieved employees all earned wages at least twice during

22 each calendar month in violation of Labor Code § 204; and

23 k. Failing to maintain accurate records on behalf of other aggrieved employees in

24 violation of Labor Code §§ 1174, 1198, and 1199.

25 27. On or about April 9, 2024, Plaintiff notified Defendants via certified mail, and the

26 California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants'

27 violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties

28 under California Labor Code § 2698 *et seq.* with respect to Defendants' violations of the

California Labor Code identified in Paragraph 26 (a)-(j). Now that sixty-five days have passed from Plaintiff notifying Defendants of these further violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

28. 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 she is entitled to receive under California Labor Code § 2699.

PRAYER

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 26 (a)-(j);

2. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 2699(g) and Code of Civil Procedure § 1021.5; and

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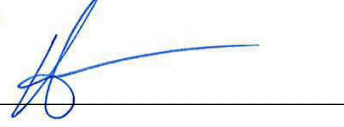
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1 3. For such other and further relief the Court may deem just and proper.

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3 Dated: June 14, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

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5 By:

Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff