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

BRIAN MILINSKY, as an individual and 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, inclusive,

Defendants.

Case No. 24CV446639

**REPRESENTATIVE ACTION
COMPLAINT:**

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

UNLIMITED CIVIL CASE

1 Plaintiff Brian Milinsky ("Plaintiff"), on behalf of himself and all other aggrieved
2 employees, hereby brings this Representative Action Complaint against Defendants HRB
3 Resources LLC, a Delaware corporation; H&R Block Enterprises LLC, a Missouri corporation;
4 and DOES 1 to 100, inclusive (collectively "Defendants"), and on information and belief alleges
5 as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all other aggrieved employees, hereby brings
8 this representative action for recovery of civil penalties under California Labor Code §§ 2698 *et*
9 *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
12 California, or otherwise intentionally avail themselves to the California market so as to render
13 the exercise of jurisdiction over them by the California courts consistent with the traditional
14 notions of fair 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, as at least some of the acts and omissions
18 complained of herein occurred in the County of Santa Clara. Further, at all times relevant herein
19 Defendants maintained offices, transacted business, or had agents within the County of Santa
20 Clara.

21 **PARTIES**

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

27 5. Plaintiff is informed and believes, and based thereon alleges, that during the one
28 year preceding Plaintiff's giving of the required notice under the PAGA and continuing to the

1 present, Defendants did (and do) business by providing tax preparation services in the United
2 States, Canada, and Australia, with approximately 12,000 retail tax offices worldwide, and
3 employed Plaintiff and other similarly-situated non-exempt employees within the County of Santa
4 Clara and, therefore, were (and are) doing business in the County of Santa Clara and the State of
5 California.

6 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
7 herein, Defendants were licensed to do business in California and the County of Santa Clara, and
8 were the employers of Plaintiff and the Aggrieved Employees (as defined in Paragraph 11).

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

18 8. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
19 herein, Defendants were and are the employers of Plaintiff and the Aggrieved Employees (as
20 defined in Paragraph 11).

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

28 10. At all times mentioned herein, Defendants, and each of them, were members of

1 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
2 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
3 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the
4 Aggrieved Employees (as defined in Paragraph 11).

5 **REPRESENTATIVE ACTION ALLEGATIONS**

6 11. Plaintiff has worked for Defendants as a seasonal Tax Preparer since 2000 at their
7 locations in Los Angeles County. The “aggrieved employees” whom Plaintiff seeks to represent
8 are all current and former non-exempt employees of Defendants who performed work for
9 Defendants in the State of California during the one year immediately preceding the date of
10 Plaintiff’s letter to the LWDA through the present.

11 12. During his employment with Defendants, Plaintiff and other aggrieved
12 employees were paid pursuant to commission/piece-rate pay plans, whereby they were paid a
13 commission and/or a piece-rate based on completed tax returns and/or other tax return add-ons.
14 Under this commission/piece-rate pay plan, Plaintiff and other aggrieved employees were
15 required to record their hours worked by clocking in and clocking out at the beginning and end
16 of their workday but were only paid an hourly wage if their commissions and/or piece-rate wages
17 did not exceed their hourly wages for the tax season. Because Defendants’ pay system is simply
18 a subterfuge for a commission and/or piece-rate compensation system, on those occasions when
19 Plaintiff and other aggrieved employees were paid a piece rate or commission (i.e., when their
20 commissions or piece rate earnings exceeded their hourly wage floor), Plaintiff and other
21 aggrieved employees were not provided with a paid rest period for every 4-hour period worked,
22 or major fraction thereof, because Defendants’ commission and/or piece-rate compensation plan
23 failed to separately compensate Plaintiff and other aggrieved employees for required rest periods.
24 *See Vaquero v. Stoneledge Furniture LLC*, 9 Cal.App.5th 98 (2017); *Bluford v. Safeway Inc.*,
25 216 Cal.App.4th 864 (2013) (“There is no dispute that Safeway’s activity-based compensation
26 system did not separately compensate drivers for their rest periods.”); Labor Code § 226.2(a)(1)
27 (requiring employers to pay piece rate employees separately for rest periods).

28 13. Defendants also unlawfully deducted the value of discounts or “coupons” from

1 Plaintiff's and other aggrieved employees' wages resulting in a failure to pay Plaintiff and other
2 aggrieved employees for all hours in violation of California Labor Code, including Labor Code
3 sections 221-223. *See Hudgins v. Nieman Marcus Group, Inc.*, (1995) 34 Cal.App.4th 1109,
4 1118 ("As interpreted by the Industrial Welfare Commission (IWC) and the California courts,
5 section 221 has long been held to prohibit deductions from an employee's wages for cash
6 shortages"); *see also* Wage Order 4, § 8 (prohibiting deductions from employee wages for, *inter*
7 *alia* "cash shortage").

8 14. Additionally, while working for Defendants, Plaintiff and other aggrieved
9 employees were not authorized and permitted to take legally compliant rest periods. Specifically,
10 Defendants' written rest period policy prohibits employees from leaving Defendants' premises
11 during rest periods, thereby failing to relinquish all control over employees during their rest
12 periods in violation of California law. In fact, Defendants' written policy requires employees to
13 clock out (and therefore not get paid) if they leave the premises "for personal reasons." Thus, if
14 Plaintiff or other aggrieved employees wanted to leave the premises during a rest period, they
15 were required to clock out and therefore not receive a paid rest period, which is required under
16 California law. *See* Wage Order 4, § 12(A) ("Authorized rest period time shall be counted as
17 hours worked for which there shall be no deduction from wages.") Defendants further failed to
18 permit and authorize Plaintiff and other aggrieved employees to take a legally required rest
19 period every four hours, or major fraction thereof, due to Defendants' policy and practice of
20 requiring employees to prioritize customers over taking their rest periods.

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

28 16. Defendants' meal period policies/practices have also failed to provide Plaintiff

1 and other aggrieved employees with all legally compliant meal periods because they have failed
2 to provide Plaintiff and other aggrieved employees with a timely, duty-free, and uninterrupted
3 30-minute meal period commencing before the end of the fifth hour of work, and/or a second
4 30-minute meal period for shifts of over 10.0 hours. Specifically, Plaintiff's and other aggrieved
5 employees' meal periods have frequently been "late" (i.e., starting after the completion of the
6 fifth hour of work), because Plaintiff's and other aggrieved employees' work demands have
7 frequently prevented them from taking a meal period entirely or from taking a meal period until
8 after the completion of the fifth hour of work. Meal periods were also often "short" (less than
9 30 minutes) because Plaintiff and other aggrieved employees were required to cut short their
10 meal periods in order to perform work-related tasks, including meet with customers/clients.
11 Defendants failed to compensate Plaintiff and other aggrieved employees with the required meal
12 period premium for each workday in which they experienced a meal period violation as
13 mandated by Labor Code § 226.7.

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

21 18. In addition, on those select occasions when Defendants did pay Plaintiff and other
22 aggrieved employees a meal period premium, Defendants failed to properly incorporate all
23 Incentive Pay into Plaintiff's and other aggrieved employees' "regular rate" of compensation,
24 thereby under-paying Plaintiff's and other aggrieved employees' meal period premiums under
25 Labor Code § 226.7, which requires meal period premiums to be paid at an hour of pay at the
26 employee's "regular rate of compensation." *See Ferra v. Loews Hollywood Hotel, LLC*, 11
27 Cal.5th 858, 785-86 (2021) (holding "regular rate of compensation" in Labor Code § 226.7 to be
28 synonymous with "regular rate of pay" in Labor Code § 510, and therefore meal and rest period

1 premiums must incorporate incentive pay just like overtime premiums).

2 19. Additionally, Plaintiff further alleges that Defendants are liable for its failure to
3 pay its employees all reporting time pay. Specifically, on occasions when Defendants'
4 employees reported for work but the clients canceled their appointments, Defendants did not
5 compensate Plaintiff and other aggrieved employees for half of the employee's scheduled day's
6 work or at least two hours at the employee's regular rate of pay, in violation of Section 5 of the
7 applicable Wage Order. Cal. Code Regs., title 8, section 11050, subd. 5 ("Each workday an
8 employee is required to report for work and does report, but is not put to work or is furnished
9 less than half said employee's usual or scheduled day's work, the employee shall be paid for half
10 the usual or scheduled day's work, but in no even less than two (2) hours nor more than four (4)
11 hours, at the employee's regular rate of pay...") Defendants also required its employees on
12 occasion to report to work for a second shift but did not compensate its employees for at least 2
13 hours at the employees' regular rate of pay. Further, Defendants required its employees to report
14 to work for meetings, including an end-of-the-season meeting, but only paid its employees for
15 one hour of pay, regardless of the actual length of the meeting. Plaintiff alleges that this is not
16 only a violation of the reporting time pay requirements but also a failure to pay for all hours
17 worked.

18 20. As a result of the above violations, Defendants have failed to timely pay all final
19 wages and issued inaccurate wage statements to Plaintiff and other aggrieved employees. In
20 addition, the wage statements issued to Plaintiff and other aggrieved employees did not always
21 include rates of pay and/or hours worked as required under Labor Code § 226(a)(9). For
22 example, Defendants have paid Plaintiff amounts listed on wage statements as "Prior Pd" "Block
23 Star" without providing a corresponding hourly rate or number of hours worked for those
24 amounts. Additionally, Defendants issued facially non-compliant wage statements to Plaintiff
25 and other aggrieved employees by failing to list the number of piece-rate units earned and any
26 applicable piece rate, in violation of Labor Code § 226(a)(3); failing to list the total hours of
27 compensable rest and recovery periods and the corresponding rate of compensation and gross
28 wages for those periods, in violation of Labor Code § 226.2(a)(2)(A); and failing to state the

1 total hours of non-productive time along with the corresponding rate of compensation and gross
2 wages for non-productive time worked in violation of Labor Code § 226.2(a)(2)(B).

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

6 **FIRST CAUSE OF ACTION**

7 **PRIVATE ATTORNEYS GENERAL ACT**

8 **(AGAINST ALL DEFENDANTS)**

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

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

26 a. Failing to pay Plaintiff and other aggrieved employees all earned overtime
27 compensation in violation of Labor Code §§ 226.2, 204, 510, 1194, and 1198;

28 b. Failing to pay minimum wages for all hours worked to Plaintiff and other

aggrieved employees in violation of Labor Code §§ 226.2, 1182.12, 1194, 1194.2, and 1197;

c. Failing to provide all legally required meal periods, or to pay premium pay in lieu thereof, to Plaintiff and other aggrieved employees at the regular rate of pay in violation of Labor Code §§ 226.7, 512, 558, and 1198;

d. Failing to authorize and permit all legally required rest periods, and/or failing to separately compensate Plaintiff and other aggrieved employees for required rest periods at the correct rate of pay, in violation of Labor Code §§ 226.2, 226.7, 516, 558, 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 due to Plaintiff and other aggrieved employees in violation of Labor Code §§ 201, 202, and 203;

g. Unlawfully deducting earned wages from the wages paid to Plaintiff and other aggrieved employees in violation of Labor Code §§ 221, 222, and 223;

h. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and

i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174.

24. On or about June 25, 2024, Plaintiff notified Defendants HRB Resources LLC and Defendants 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 violations of the California Labor Code identified in Paragraph 23 (a)-(i). Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

25. Plaintiff was compelled to retain the services of counsel to file this court action to

1 protect his interests and the interests of other aggrieved employees, and to assess and collect the
2 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
3 he is entitled to receive under California Labor Code § 2699.

4 **PRAYER**

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

7 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved
8 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
9 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure
10 to pay each employee and \$200 for each subsequent violation or willful or intentional violation
11 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
12 unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation
13 pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation
14 and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per
15 pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation
16 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial
17 violation and \$200 for each subsequent violation per employee per pay period for those violations
18 of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code
19 violations identified in Paragraph 23 (a)-(i);

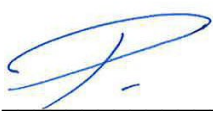
20 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
21 2699(g) and Code of Civil Procedure § 1021.5; and

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

23
24 Dated: September 4, 2024

Respectfully submitted,
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25
26 By:



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