

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION
2013 APR 26 PM 2:15

SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIGGS
CLERK

LISA MARIE WAUGH, on behalf of
herself and all others similarly situated,

Plaintiff,

vs.

H&R BLOCK, INC., AND HRB TAX
GROUP, INC. D/B/A H&R BLOCK,

Defendants.

) Case No. _____

) **CLASS ACTION**

) **JURY TRIAL DEMANDED**

) **1 : 13 -cv- 0705 TWP -DME**

CLASS ACTION COMPLAINT

Plaintiff, Lisa Marie Waugh, by counsel, on behalf of herself and all other persons similarly situated, and for her Class Action Complaint against Defendants H&R Block, Inc., HRB Tax Group, Inc. and HRB Technology, LLC (collectively "H&R Block"), alleges as follows:

NATURE OF THE ACTION

1. This is a nationwide class action on behalf of all persons in the United States against H&R Block who breached their contractual obligations, resulting in their erroneous and negligent preparation of approximately 600,000 tax returns, with the result that tax refunds were delayed up to six weeks beyond the time when they would have been paid.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1332(d) and the Class Action Fairness Act, in that (i) there is complete diversity because Plaintiff is a citizen of Indiana and Defendants are domiciled and incorporated in Missouri, (ii)

the amount in controversy exceeds \$5,000,000, exclusive of interests and costs, and (iii) there are 100 or more members of the proposed Class.

3. Defendants conduct substantial business in Indiana, including the sale, marketing and distribution of H&R Block tax services, and have sufficient contacts with Indiana or otherwise intentionally avail themselves of the laws and markets of Indiana, so as to sustain this Court's jurisdiction over Defendants.

4. Venue is proper in this district under 28 U.S.C. § 1391, *et seq.* because a substantial part of the events or omissions giving rise to this claim occurred in the state of Indiana and in this District, and Defendants are subject to personal jurisdiction in this District.

PARTIES

5. Plaintiff Lisa Marie Waugh ("Plaintiff") is a resident of the state of Indiana.

6. Defendant H&R Block, Inc. is a corporation organized and existing under the laws of the State of Missouri, with its headquarters in Kansas City, Missouri.

7. Defendant HRB Tax Group, Inc. is a corporation organized and existing under the laws of the State of Missouri with its headquarters in Kansas City, Missouri. Defendant HRB Tax Group, Inc. does business under the assumed name of "H&R Block."

8. Defendant HRB Technology, LLC is a limited liability company organized and existing under the laws of the State of Missouri with its headquarters in Kansas City, Missouri.

9. Defendants in their Client Service Agreement represent that "If we prepare your tax return(s), HRB Technology LLC ("HRBT"), an affiliate of HRB Tax Group Inc., will provide you technology services pursuant to this CSA" in order to facilitate e-filing and other tax preparation-related technology services (collectively "Facilitation Services") on your behalf."

COMMON FACTUAL ALLEGATIONS

10. Defendants are in the business of tax preparation services.
11. Plaintiffs and Class Members were the direct beneficiaries of the guarantee made by Defendants.
12. H&R Block Technology improperly filled out and transmitted IRS Form 8863 used to claim educational credits. Form 8863 is used to claim tax credits for qualified expenses paid to postsecondary education institutions. There are two education credits: The American Opportunity credit and the lifetime learning credit.
13. The IRS requires that Form 8863 be completely filled out. H&R Block left mandatory fields blank, resulting in widespread errors.
14. H&R Block failed to answer IRS form 8863 questions #22-26 with a “yes” or “no” response.
15. The error affected returns prepared by Defendants which included filing form 8863 before February 22, 2013.
16. The error affecting returns has delayed the tax returns of Plaintiff and Class Members beyond the 21-day turnaround represented by Defendants.
17. H&R Block has confirmed its negligence in the preparation of forms filed before February 22, citing a change in the way the IRS processes certain yes or no questions on the form. It used to be acceptable to leave a field blank to indicate “no,” but now preparers must enter an “N.”¹
18. The IRS has stated that Defendants’ tax-preparation software defect caused more than 600,000 returns prepared by Defendants to be filed incorrectly.

¹ <http://consumerist.com/2013/03/12/irs-hr-block-causing-refund-delays-after-bungling-600000-tax-returns/>.

19. The tax software defect is limited to H&R Block.

20. On March 22, 2013, Bill Cobb, President and CEO of H&R Block issued the

following statement regarding the faulty tax returns:

Let me set the record straight about the Form 8863 issue that has affected you, our valued clients: we made a mistake when the tax return was sent to the IRS. And you deserve an apology, an explanation, and to know what we're doing about it.

Here's what happened: this year's tax season started later than any in history (January 30th), followed by a further delay in form 8863 not being accepted until February 14. Not good for everyone. When the IRS began accepting the form, we immediately sent your returns, with the intention of getting you your refund as quickly as possible. In our zeal to move so quickly, we missed a step. Specifically there was a disconnect in the transmission of form 8863 from our delivery system to the IRS E-file system, and this caused the delay many of you are experiencing. We fixed the transmission issue right away, but couldn't undo it for those that had already been sent.

I want to make it clear that this was absolutely not the fault of your tax professional; your return was prepared accurately. This was an issue with the form transmission. This was our mistake — and I sincerely apologize. I want you to know that we hear the frustration of those impacted by this issue loud and clear, and we're working every avenue we can to get your refund to you as fast as possible.

We have been and remain in daily communication with the IRS, who are doing everything they can to speedily process all returns. We know that clients are beginning to see progress, funding dates are being communicated and refunds are definitely being funded. But we also recognize that in an already delayed season, it's still not as fast as we want, and we're not letting up until every client has his or her refund.

We are also committing to more frequent and regular updates with you as we have news to share, and we know we can do a better job here too. Finally, I know an apology won't put your tax refund in your hands right away, and many of you still have questions. But right now, our singular focus is to get you that refund, and we have all hands on deck to help make this right.²

21. All persons affected by this error suffered harm as a result, including, but not

limited to: a delay in receiving tax return refunds, with the consequential loss of time value of

² <http://blogs.hrblock.com/2013/03/22/a-message-from-ceo-bill-cobb-on-form-8863-delay/>.

money, and precluding their eligibility for student loan and grant programs that are contingent upon the timely submission of IRS Form 8863.

22. In reliance on the representation that Plaintiff Lisa Marie Waugh's tax return would be accurately prepared and filed, Plaintiff used H&R Block software.

23. Plaintiff Lisa Marie Waugh and Class members have opted-out of H&R Block's arbitration provisions.

24. Plaintiff returned required IRS Form 8863.

25. Plaintiff was entitled to a refund, which included the tax credit claimed on Form 8863.

26. Plaintiff's return was filed and transmitted on January 30, 2013.

27. Plaintiff paid for the tax preparation services of H&R Block and received incorrectly prepared tax returns as a result.

28. As a result of the errors and omissions set forth above, Plaintiff's tax return, like the tax returns of all class members, was improperly filed, transmitted, causing a delay in receiving her tax refund, and precluding eligibility for student loans and programs that are contingent upon the timely submission of a IRS Form 8863.

CLASS ACTION ALLEGATIONS

29. Plaintiff brings this class action pursuant to Federal Rule of Civil Procedure 23 on behalf of the following proposed Class:

All individuals in the United States who have opted-out of H&R Block arbitration, who had returns prepared for them by H&R Block Inc. or its subsidiaries and franchisees, for the year 2012, which included Form 8863, which was filed before February 22, 2013, and where H&R Block Inc. determined that the taxpayer was entitled to a refund.

30. The Class is composed of thousands of persons geographically dispersed throughout the State of Indiana and the United States, the joinder of whom in one action is impractical.

31. Questions of law and fact common to the Plaintiff and the Class that will materially advance the litigation include whether Defendants erroneously and negligently prepared Form 8863 included with 600,000 tax returns prepared by Defendants, with the result that tax refunds were delayed up to six weeks beyond the time when they would have been paid.

32. Other questions of law and fact common to the Class that exist as to all members of the Class and predominate over any questions affecting only individual members of the Class include the following:

- a. Whether Defendants erroneously and negligently prepared Form 8863 included with 600,000 tax returns;
- b. Whether Defendants breached their contract with Plaintiff and the members of the class;
- c. Whether the failure to accurately, correctly and completely fill out Form 8863 constituted a breach of contract;
- d. Whether the failure to accurately, correctly and completely fill out Form 8863 was negligent; and
- e. The appropriate relief.

33. Plaintiff's claims are typical of the claims of the members of the Class, as all such claims arise out of Defendants' erroneous and negligent conduct with 600,000 tax returns, with the result that tax refunds were delayed up to six weeks beyond the time when they would have been paid. All of the claims are based on the same facts and legal theories.

34. Plaintiff will fairly and adequately protect the interests of the members of the Class and has no interests antagonistic to those of the Class. Plaintiff retained counsel experienced in the prosecution of class actions.

35. Predominance and Superiority: This class action is appropriate for certification because questions of law and fact common to the members of the Class predominate over questions affecting only individual members, as set forth above, and a Class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable.

COUNT I
NEGLIGENCE

36. Plaintiff incorporates each preceding paragraph of this Complaint as if fully set forth below.

37. Defendants owed Plaintiff and the members of the Class the duty to accurately and correctly prepare tax returns for Plaintiff and the members of the Class including Form 8863.

38. As a direct and proximate result of Defendants' negligence, Plaintiff and Class members are not receiving their tax refunds before the 21 day turnaround as represented by Defendants.

39. As a direct and proximate result of Defendants' negligence, Plaintiff and the Class have sustained damages, including the costs of suit, appropriate damages, and further relief that this Court deems proper.

COUNT II
BREACH OF CONTRACT

40. Plaintiff incorporates each preceding paragraph of this Complaint as if fully set forth below.

41. Defendants breached their contracts for the preparation of tax returns by making the error described in this Complaint.

42. Plaintiff and Class members contracted with Defendants for the preparation of tax returns, so that any refunds available would be paid within 21 days of the IRS' acceptance of the tax returns.

43. Plaintiff and Class members have been damaged similarly, if not identically, in that they have not received the value of the contract they bargained for (as provided in the Client Service Agreement) and have not received any interest on the delayed refund monies.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, requests a judgment against Defendants as follows:

1. For an order certifying the Class, pursuant to Rule 23, appointing Plaintiff as representative of the Class, and appointing her counsel as counsel for the Class;
2. For compensatory damages, and all other damages allowable under the law, sustained by Plaintiff and the Class;
3. For payment of costs of suit;
4. For both pre-judgment and post-judgment interest as provided by law;
5. For payment of reasonable attorneys' fees and reimbursement of expenses as provided by law; and
6. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims so triable.

Dated: 4/26/13

Respectfully submitted,



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CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

LISA MARIE WAUGH, on behalf of herself and all others similarly situated

(b) County of Residence of First Listed Plaintiff Hendrick
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Irwin B. Levin, Richard E. Shevitz, Lynn A. Toops; COHEN & MALAD, LLP; One Indiana Square, Ste. 1400; Indianapolis, IN 46204

DEFENDANTS

H&R BLOCK, INC., AND HRB TAX GROUP, INC. d/b/a H&R BLOCK

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

1 : 13 -cv- 0705 TWP -DML

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	PERSONAL INJURY	PERSONAL INJURY	FOREIGN NATIONALITY	PROPERTY RIGHTS	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multi-district Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d) and the Class Action Fairness Act

Brief description of cause:
Breach of contract and negligence for negligent preparation of tax returns causing tax refund delay

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 04/26/2013 SIGNATURE OF ATTORNEY OF RECORD:

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

U.S. DISTRICT COURT
 INDIANAPOLIS DIVISION
 2013 APR 26 PM 2:15
 SOUTHERN DISTRICT
 OF INDIANA
 LAURA A. BRUBAKER
 CLERK