

Carolyn H. Cottrell (SBN 166977)
Esther L. Bylsma (SBN 264208)
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Telephone: (415) 421-7100
Facsimile: (415) 421-7105
ccottrell@schneiderwallace.com
ebylsma@schneiderwallace.com

*Attorneys for Plaintiffs, on behalf of the
State of California and Aggrieved Employees*

SUPERIOR STATE OF CALIFORNIA

COUNTY OF ORANGE

DREW DIXON, NICHOLAS PERRY,
CHRISTOPHER RICHARDSON, ALEX
TISKEVICH, THAER ANAIM, AND
PATRICIA DIXON, on behalf of the State
of California and Aggrieved Employees,

Plaintiffs,

vs.

INTERCONTINENTAL CAPITAL
GROUP, INC., a New York Corporation,

Defendant.

Case No. 30-2022-01279586-CU-OE-CXC

**FIRST AMENDED COMPLAINT FOR
PENALTIES PURSUANT TO SECTIONS
2699(a) and (f) OF THE CALIFORNIA LABOR
CODE PRIVATE ATTORNEYS GENERAL
ACT**

**Amended as of Right Pursuant to California
Labor Code §2699.3(a)(2)(C)**

DEMAND FOR JURY TRIAL

1 Plaintiffs Drew Dixon, Nicholas Perry (“Perry”), Christopher Richardson (“Richardson”),
2 Alex Tiskevich (“Tiskevich”), Thaer Anaim (“Anaim”), and Patricia Dixon (collectively
3 “Plaintiffs”), by their attorneys, allege upon information and belief, except for their own acts, which
4 are alleged on knowledge, as follows:

5 **INTRODUCTION**

6 1. Plaintiffs bring this California Labor Code Private Attorneys General Act (“PAGA”).
7 (“PAGA”) enforcement action on behalf of the State of California against Intercontinental Capital
8 Group, Inc. (“Defendant” or “ICG”).

9 2. ICG is a mortgage lender specializing in home financing for residential properties.
10 ICG, incorporated in New York, is registered to do and does business in the State of California.
11 ICG has at least three branches in California, and employs employees within California.

12 3. Plaintiffs are former loan officers for ICG and are “Aggrieved Employees” as defined
13 in the PAGA.

14 4. During the relevant period, ICG violated California’s Labor Code in the following
15 ways:

- 16 (a) ICG paid its employees less than minimum wage for hours worked;
- 17 (b) ICG failed to provide its employees earned wages when due, including at the correct
18 overtime and premium rates;
- 19 (c) ICG required its employees to work during meal and rest periods, and failed to
20 provide premium wages for its failure to provide lawful meal and rest periods;
- 21 (d) ICG failed to reimburse its employees for necessary work-related expenditures;
- 22 (e) ICG failed to provide accurate itemized wage statements to its employees; and
- 23 (f) ICG failed to provide its employees all wages due upon separation from employment.

24 5. Plaintiffs, pursuant to Sections 2699(a) and (f) of the PAGA, seek civil penalties for
25 these violations to be distributed to the State of California and all ICG employees in California
26 against whom one or more of these alleged violations was committed (“Aggrieved Employees”).

27 **PARTIES**

28 6. Plaintiffs are individuals over the age of eighteen, and at all times mentioned in this

1 Complaint were residents of the State of California.

2 7. Plaintiff Drew Dixon was formerly employed by Defendant as a mortgage loan
3 officer. Drew Dixon's employment with Defendant lasted from approximately December 2019 to
4 January 2022. Drew Dixon worked for Defendant in Irvine, California.

5 8. Plaintiff Perry was formerly employed by Defendant as a mortgage loan officer.
6 Perry's employment with Defendant lasted from approximately August 2019 to January 2022. Perry
7 worked for Defendant in Irvine, California.

8 9. Plaintiff Richardson was formerly employed by Defendant as a mortgage loan officer.
9 Richardson's employment with Defendant lasted from approximately October 2019 to April 2022.
10 Richardson worked for Defendant in Irvine, California.

11 10. Plaintiff Tiskevich was formerly employed by Defendant as a loan officer.
12 Tiskevich's employment with Defendant lasted from approximately April 2019 to February 2021.
13 Tiskevich worked for Defendant in Irvine, California.

14 11. Plaintiff Anaim was formerly employed by Defendant as a mortgage loan officer.
15 Anaim's employment with Defendant lasted from approximately October 2020 to April 2022.
16 Anaim worked for Defendant in Irvine, California.

17 12. Plaintiff Patricia Dixon was formerly employed by Defendant as a mortgage loan
18 officer. Patricia Dixon's employment with Defendant lasted from approximately December 4, 2017
19 to June 23, 2021. Patricia Dixon worked for Defendant in Irvine, California.

20 13. Plaintiffs are informed, believe, and thereon allege that Defendant Intercontinental
21 Capital Group, Inc. is part of the mortgage lending industry. Defendant is a New York corporation
22 headquartered in Melville, New York. Defendant has office locations throughout the United States,
23 including in the State of California, and is licensed to provide mortgage loans in 46 states.
24 Defendant is registered to do business in California, does business in California, and employs and
25 employed employees in California, including Plaintiffs and Aggrieved Employees. Defendant may
26 be served with process by serving its registered agent, Corporation Service Company, 2710
27 Gateway Oaks Dr., Ste. 150N, Sacramento, California 95833.

28 14. Defendant employed and employs Plaintiffs and Aggrieved Employees because

1 Defendant, directly or indirectly, controlled and controls the employment terms, pay practices,
2 timekeeping practices, and daily work of Plaintiffs and Aggrieved Employees. Defendant was and
3 is an “employer[s]” as that term is used in the Cal. Lab. Code and IWC Wage Orders.

4 15. Plaintiffs are informed, believe, and thereon allege that each and every one of the acts
5 and omissions alleged herein were performed by, and/or attributable to, Defendant, and that said
6 acts and failures to act were within the course and scope of Defendant’s agency, employment and/or
7 direction and control.

8 16. At all relevant times, Defendant has done business under the laws of the California,
9 has had places of business in California, including in this judicial district, and has employed
10 Aggrieved Employees in this judicial district. At all relevant times, Defendant is a “person” as
11 defined in Cal. Lab. Code § 18 and Cal. Bus. & Prof. Code § 17201. Defendant is also an
12 “employer” within the meaning of the Labor Code and IWC Wage Orders.

13 **JURISDICTION AND VENUE**

14 17. Venue is proper in this County pursuant to Cal. Code Civ. Proc. §§ 393(a) and/or
15 395.5. Defendant conducts business and employs Aggrieved Employees in this County, and
16 therefore the liability and the cause of some part of the cause arose in this County.

17 18. This Court has jurisdiction over Plaintiffs’ claims for penalties pursuant to the PAGA.
18 The Court also has jurisdiction over Defendant because it is a company authorized to do business
19 in the State of California, and because Defendant does in fact do business and employ workers in
20 the State of California.

21 **FACTUAL ALLEGATIONS**

22 19. Plaintiffs are informed, believe, and thereon allege that Defendant is a direct lending
23 mortgage institution with employees spread across the United States, including in the State of
24 California. Defendant employs workers in California, including but not limited to mortgage loan
25 officers, loan processors, retail loan officers, producing branch managers, underwriters, loan officer
26 assistants, escrow specialists, and other employees with similar job duties.

27 20. Plaintiffs worked for Defendant as loan officers or mortgage loan officers in Irvine,
28 California. Plaintiffs’ primary duties included but were not limited to initiating the mortgage

1 process for potential clients and preparing, analyzing, and verifying mortgage loan applications.
2 Plaintiffs were classified as hourly, non-exempt employees and earned hourly rates between
3 approximately \$14 and \$20, as well as commission bonuses for closed and funded mortgage loans.
4 Although Plaintiffs' shifts varied in length, Plaintiffs usually worked eight (8) to twelve (12) hours
5 per shift, five shifts per week. Plaintiffs worked approximately forty (40) to sixty (60) hours per
6 week.

7 21. Defendant regularly fails to pay Plaintiffs and Aggrieved Employees earned wages
8 when due and fails to pay Plaintiffs and Aggrieved Employees at least minimum wage for hours
9 worked.¹ Defendant routinely fails to pay Plaintiffs and Aggrieved Employees earned
10 commissions. Defendant also routinely fails to pay Plaintiffs and Aggrieved Employees earned
11 wages for work performed outside of scheduled shifts.

12 22. Defendant regularly requires Plaintiffs and Aggrieved Employees to perform work
13 outside of scheduled shifts. Defendant expects and requires Plaintiffs and Aggrieved Employees to
14 constantly be on call to service the needs of current or potential clients. At the same time,
15 Defendants refuse to record this time as worked, and refuse to compensate Plaintiffs and Aggrieved
16 Employees any wages at all for this work.

17 23. Plaintiffs and Aggrieved Employees work numerous uncompensated hours off-the-
18 clock every week processing loans and speaking with clients. For example, Plaintiffs estimate that
19 they spent at least 2-3 hours every day speaking on the phone with clients off the clock. Plaintiffs
20 also consistently work through their meal periods (as further discussed below). Plaintiffs and
21 Aggrieved Employees consistently work sixty hours per week. This time spent working off-the-
22 clock by Plaintiffs and Aggrieved Employees goes unrecorded and/or uncompensated, and
23 Plaintiffs and Aggrieved Employees do not receive earned wages for this work, including at the
24 correct overtime rates or at the base minimum wage rates.

25 24. For the overtime work that Defendant does record, Defendant fails to pay Plaintiffs
26 and Aggrieved Employees all earned overtime wages when due because Defendant incorrectly
27

28 ¹ Although Plaintiffs are former employees, the Aggrieved Employees include current and former employees. For ease of discussion, the allegations herein are made in the present tense.

1 calculates overtime wages using lower base hourly rates instead of regular rates, as required by
2 California law. Plaintiffs and Aggrieved Employees earn commission bonuses based on any closed
3 and funded client loans that they procure. Defendant does not factor in commission bonus pay when
4 calculating the regular rate for Plaintiffs' and Aggrieved Employees' overtime payments.

5 25. The relevant portion of the Loan Officer Compensation Addendum to Defendant's
6 Mortgage Loan Officer Employment Agreement clearly states "...if Employee exceeds 40 hours
7 (or 8 hours per day depending on state employment laws) in any week, s/he will receive an overtime
8 premium of 1.5 times the Regular Rate of pay for each hour worked in excess of 40 hours in the
9 week. The Regular Rate of pay is determined by dividing the total compensation applicable to the
10 pay period by the total hours worked." However, in contradiction to the language of Defendant's
11 own Employment Agreement, and in violation of California law, Defendant does not factor in the
12 "total compensation applicable to the pay period" when calculating Plaintiffs' and Aggrieved
13 Employees' regular rate because Defendant does not include the commission bonuses when
14 calculating said rate. This results in Defendant underpaying and withholding the overtime wages
15 earned by Plaintiffs and Aggrieved Employees.

16 26. Defendant regularly requires Plaintiffs and Aggrieved Employees to work during
17 meal and rest breaks. Defendant's policies, practices, and procedures require Plaintiffs and
18 Aggrieved Employees to constantly remain on-duty to procure loan applications from potential
19 clients. This causes Plaintiffs and Aggrieved Employees to incessantly work through their meal and
20 rest breaks, or cut their meal and rest breaks short, to speak to current or prospective clients.
21 Plaintiffs worked through meal breaks and did not take rest breaks during an overwhelming
22 majority of their shifts.

23 27. Further, with respect to meal breaks, Defendant adjusts Plaintiffs' and Aggrieved
24 Employees' timesheets to show that they took a timely 30-minute meal break even when such
25 breaks have been late or worked through entirely. As a result, Plaintiffs and Aggrieved Employees
26 are not provided: duty-free, uninterrupted, and timely thirty-minute meal periods during which they
27 should be completely relieved of any duty, by the end of the fifth hour of work, and/or no later than
28 the end of an employee's 10th hour of work; nor duty-free, uninterrupted, and timely ten minute

1 rest breaks.

2 28. Defendant regularly fails to provide Plaintiffs and Aggrieved Employees with
3 requisite wages for the work during meal periods, and Defendant regularly fails to provide premium
4 wages for missed meal and rest breaks as required under the law.

5 29. When Defendant does pay premium wages for missed meal breaks, Defendant
6 incorrectly uses employees' hourly rates instead of their regular rates, as required under the law.
7 As mentioned above, Defendant does not include commission bonuses when calculating the regular
8 rates of Plaintiffs and Aggrieved Employees. As a result, Defendant systematically underpays
9 Plaintiffs and Aggrieved Employees for their earned premium wages.

10 30. Defendant fails to provide Plaintiffs and Aggrieved Employees reimbursement for all
11 necessary expenditures or losses incurred by Plaintiffs and Aggrieved Employees in direct
12 consequence of the discharge of their duties, or as a result of their obedience to the directions of
13 Defendant. Defendant requires Plaintiffs and Aggrieved Employees to use their personal cell
14 phones to maintain work-related communications with clients, potential clients, co-workers, and
15 supervisors. Defendant does not reimburse Plaintiffs and Aggrieved Employees for any expenses
16 related to their personal cell phones. Further, at the onset of the Covid-19 pandemic in March 2020,
17 Plaintiffs and Aggrieved Employees began working full-time from home. Defendant requires
18 Plaintiffs and Aggrieved Employees to utilize their own home internet for work-related functions
19 yet does not reimburse Plaintiffs and Aggrieved Employees for any expenses related to their home
20 internet use.

21 31. Defendant fails provide accurate itemized wage statements as required by California
22 law to Plaintiffs and Aggrieved Employees. The wage statements Defendant provides are not
23 accurate because they do not reflect the correct amount of gross and net wages earned, nor the
24 correct total hours worked by the employee.

25 32. Defendant failed to provide Plaintiffs and Aggrieved Employees who are former
26 employees all wages due upon separation from employment. Plaintiffs and Aggrieved Employees
27 who are former employees did not receive all wages following separation from employment,
28 including payment for time spent working off the clock and during meal periods, as well as premium

1 wages for noncompliant meal and rest breaks.

2 33. Plaintiffs are informed and believe, and based thereon allege, that Defendant is well
3 aware that its policies and practices deprive Plaintiffs and the Aggrieved Employees of substantial
4 pay for all time worked, including overtime compensation and minimum wages, and that its workers
5 do not receive legally compliant meal and rest periods. Thus, Defendant's denial of wages,
6 compliant meal and rest periods, and premium payments is and/or was deliberate and willful.

7 34. Plaintiffs are informed and believe, and based thereon allege, that Defendant knows
8 or should know that it has a duty to compensate Plaintiff and the other Aggrieved Employees
9 pursuant to California law, and that Defendant has the financial ability to pay such compensation,
10 but willfully, knowingly, and intentionally fails to do so, and falsely represents to Plaintiffs and the
11 other Aggrieved Employees that they are properly denied wages, all in order to increase
12 Defendant's profits.

13 **FIRST CAUSE OF ACTION**

14 **California Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698-2699.5**

15 35. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
16 herein.

17 36. Under the California Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698-
18 2699.5, an aggrieved employee, on behalf of the State of California, may bring a representative
19 action as a private attorney general to recover penalties for an employer's violations of the
20 California Labor Code and IWC Wage Orders. These civil penalties are in addition to any other
21 relief available under the California Labor Code, and must be allocated 75% to California's Labor
22 and Workforce Development Agency ("LWDA") and 25% to the aggrieved employees, pursuant
23 to California Labor Code § 2699.

24 37. Plaintiffs allege that Defendant has violated the following provisions of the California
25 Labor Code and the following provisions of the IWC Wage Orders that are actionable through the
26 California Labor Code and PAGA, as previously alleged herein: Cal. Lab. Code §§ 201-03, 204,
27 210, 218.5, 226, 226.3, 226.7, 510, 512, 1197, 1197.1, 1198, 2802, and IWC Wage Order No. 4-
28 2001. Each of these violations entitles Plaintiffs, as private attorneys general, to recover the
applicable civil penalties.

1 38. California Labor Code § 2699(a), which is part of PAGA, provides in pertinent part:

2 Notwithstanding any other provision of law, any provision of this code that provides
3 for a civil penalty to be assessed and collected by the Labor and Workforce
4 Development Agency or any of its departments, divisions, commissions, boards,
5 agencies, or employees, for a violation of this code, may, as an alternative, be
6 recovered through a civil action brought by an aggrieved employee on behalf of
7 himself or herself and other current or former employees pursuant to the procedures
8 specified in Section 2699.3.

9 39. California Labor Code § 2699(f), which is part of PAGA, provides in pertinent part:

10 For all provisions of this code except those for which a civil penalty is specifically
11 provided, there is established a civil penalty for a violation of these provisions, as
12 follows: ...(2) If, at the time of the alleged violation, the person employs one or more
13 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
14 employee per pay period for the initial violation and two hundred dollars (\$200) for
15 each aggrieved employee per pay period for each subsequent violation.

16 40. Plaintiffs are entitled to civil penalties, to be paid by Defendant and allocated as
17 PAGA requires, pursuant to California Labor Code § 2699(a) for Defendant's violations of the
18 California Labor Code and IWC Wage Orders for which violations a civil penalty is already
19 specifically provided by law. Furthermore, Plaintiffs are entitled to civil penalties, to be paid by
20 Defendant and allocated as PAGA requires, pursuant to California Labor Code § 2699(f) for
21 Defendant's violations of the California Labor Code and IWC Wage Orders for which violations a
22 civil penalty is not already specifically provided.

23 41. On April 18, 2022, Plaintiffs Drew Dixon and Nicholas Perry provided written notice
24 by certified mail to the LWDA of their intent to file this claim. At least sixty-five calendar days
25 have passed without notice from the LWDA. Plaintiffs satisfied the administrative prerequisites to
26 commence this civil action in compliance with § 2699.3(a).

27 42. On October 25, 2022, Plaintiffs Richardson, Tiskevich, Anaim, and Patricia Dixon
28 provided written notice by certified mail to the LWDA of their intent to be included in this action.
At least sixty-five calendar days have passed without notice from the LWDA. Plaintiffs satisfied
the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

 43. Under PAGA, Plaintiffs and the State of California are entitled to recover the
maximum civil penalties permitted by law for the violations of the California Labor Code and IWC
Wage Order No. 4-2001 that are alleged in this complaint. Wherefore, Plaintiffs request relief as

hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

- a. For the Court to declare, adjudge, and decree that Defendants violated the California Labor Code as alleged herein;
- b. For an order awarding the State of California and Aggrieved Employees civil penalties provided under the PAGA;
- c. For interest as provided by applicable law;
- d. For an award of reasonable attorneys' fees;
- e. For all costs of suit; and
- f. For such other and further relief as this Court deems just and proper.

Dated: January 9, 2023

Respectfully Submitted,



Carolyn H. Cottrell
Esther L. Bylsma
**SCHNEIDER WALLACE
COTTRELL KONECKY LLP**

*Attorneys for Plaintiff on behalf of the State of
California and Aggrieved Employees*

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on all claims and issues for which Plaintiffs are entitled to a jury.

Dated: January 9, 2023

Respectfully Submitted,



Carolyn H. Cottrell
Esther L. Bylsma
**SCHNEIDER WALLACE
COTTRELL KONECKY LLP**

*Attorneys for Plaintiffs on behalf of the State of
California and Aggrieved Employees*

1 **PROOF OF SERVICE**

2 I, Silvia G. Carter, declare the following:

3 I am over the age of eighteen years and not a party to the within entitled action. I am employed
4 at Schneider Wallace Cottrell Konecky LLP located at 2000 Powell Street, Suite 1400, Emeryville,
5 California 94608.

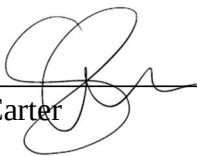
6 On January 9, 2023, I served the following document(s) described as: **FIRST AMENDED**
7 **COMPLAINT FOR PENALTIES PURSUANT TO SECTIONS 2699(a) and (f) OF THE**
8 **CALIFORNIA LABOR CODE PRIVATE ATTORNEYS GENERAL ACT** on the following
9 interested party(s):

10 V. Amanda Witts
11 Katharine Thomas Batista
12 **MITCHELL SANDLER**
13 1120 20th Street, NW, Suite 725
14 Washington, DC 20036
15 Info@mitschellsandler.com

16 *Attorneys for Defendants*

17 ☒ **BY ELECTRONIC SERVICE** by electronically mailing a true and correct copy in PDF
18 format through SWCKW's electronic mail system to the email address(s) set forth above from
19 my email at: sgcarter@schneiderwallace.com.

20 I declare under penalty of perjury under the laws of the State of California that the foregoing is
21 true and correct. Executed on January 9, 2023, at Los Angeles, California.

22 
23 _____
24 Silvia G. Carter