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Assigned for All Purposes
Judge Peter Wilson

CX-102

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

SUPERIOR STATE OF CALIFORNIA

COUNTY OF ORANGE

DREW DIXON AND NICHOLAS PERRY,
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

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

DEMAND FOR JURY TRIAL

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

4 **INTRODUCTION**

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

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

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

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

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

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

26 **PARTIES**

27 6. Plaintiffs are individuals over the age of eighteen, and at all times mentioned in this
28 Complaint were residents of the State of California.

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

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

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

15 10. Defendant employed and employs Plaintiffs and Aggrieved Employees because
16 Defendant, directly or indirectly, controlled and controls the employment terms, pay practices,
17 timekeeping practices, and daily work of Plaintiffs and Aggrieved Employees. Defendant was and
18 is an “employer[s]” as that term is used in the Cal. Lab. Code and IWC Wage Orders.

19 11. Plaintiffs are informed, believe, and thereon allege that each and every one of the acts
20 and omissions alleged herein were performed by, and/or attributable to, Defendant, and that said
21 acts and failures to act were within the course and scope of Defendant’s agency, employment and/or
22 direction and control.

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

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1 18. Defendant regularly requires Plaintiffs and Aggrieved Employees to perform work
2 outside of scheduled shifts. Defendant expects and requires Plaintiffs and Aggrieved Employees to
3 constantly be on call to service the needs of current or potential clients. At the same time,
4 Defendants refuse to record this time as worked, and refuse to compensate Plaintiffs and Aggrieved
5 Employees any wages at all for this work.

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

14 20. For the overtime work that Defendant does record, Defendant fails to pay Plaintiffs
15 and Aggrieved Employees all earned overtime wages when due because Defendant incorrectly
16 calculates overtime wages using lower base hourly rates instead of regular rates, as required by
17 California law. Plaintiffs and Aggrieved Employees earn commission bonuses based on any closed
18 and funded client loans that they procure. Defendant does not factor in commission bonus pay when
19 calculating the regular rate for Plaintiffs' and Aggrieved Employees' overtime payments.

20 21. The relevant portion of the Loan Officer Compensation Addendum to Defendant's
21 Mortgage Loan Officer Employment Agreement clearly states "...if Employee exceeds 40 hours
22 (or 8 hours per day depending on state employment laws) in any week, s/he will receive an overtime
23 premium of 1.5 times the Regular Rate of pay for each hour worked in excess of 40 hours in the
24 week. The Regular Rate of pay is determined by dividing the total compensation applicable to the
25 pay period by the total hours worked." However, in contradiction to the language of Defendant's
26 own Employment Agreement, and in violation of California law, Defendant does not factor in the
27 "total compensation applicable to the pay period" when calculating Plaintiffs' and Aggrieved
28 Employees' regular rate because Defendant does not include the commission bonuses when

1 calculating said rate. This results in Defendant underpaying and withholding the overtime wages
2 earned by Plaintiffs and Aggrieved Employees.

3 22. Defendant regularly requires Plaintiffs and Aggrieved Employees to work during
4 meal and rest breaks. Defendant's policies, practices, and procedures require Plaintiffs and
5 Aggrieved Employees to constantly remain on-duty to procure loan applications from potential
6 clients. This causes Plaintiffs and Aggrieved Employees to incessantly work through their meal and
7 rest breaks, or cut their meal and rest breaks short, to speak to current or prospective clients.
8 Plaintiffs worked through meal breaks and did not take rest breaks during an overwhelming
9 majority of their shifts.

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

17 24. Defendant regularly fails to provide Plaintiffs and Aggrieved Employees with
18 requisite wages for the work during meal periods, and Defendant regularly fails to provide premium
19 wages for missed meal and rest breaks as required under the law.

20 25. When Defendant does pay premium wages for missed meal breaks, Defendant
21 incorrectly uses employees' hourly rates instead of their regular rates, as required under the law.
22 As mentioned above, Defendant does not include commission bonuses when calculating the regular
23 rates of Plaintiffs and Aggrieved Employees. As a result, Defendant systematically underpays
24 Plaintiffs and Aggrieved Employees for their earned premium wages.

25 26. Defendant fails to provide Plaintiffs and Aggrieved Employees reimbursement for all
26 necessary expenditures or losses incurred by Plaintiffs and Aggrieved Employees in direct
27 consequence of the discharge of their duties, or as a result of their obedience to the directions of
28 Defendant. Defendant requires Plaintiffs and Aggrieved Employees to use their personal cell

1 phones to maintain work-related communications with clients, potential clients, co-workers, and
2 supervisors. Defendant does not reimburse Plaintiffs and Aggrieved Employees for any expenses
3 related to their personal cell phones. Further, at the onset of the Covid-19 pandemic in March 2020,
4 Plaintiffs and Aggrieved Employees began working full-time from home. Defendant requires
5 Plaintiffs and Aggrieved Employees to utilize their own home internet for work-related functions
6 yet does not reimburse Plaintiffs and Aggrieved Employees for any expenses related to their home
7 internet use.

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

12 28. Defendant failed to provide Plaintiffs and Aggrieved Employees who are former
13 employees all wages due upon separation from employment. Plaintiffs and Aggrieved Employees
14 who are former employees did not receive all wages following separation from employment,
15 including payment for time spent working off the clock and during meal periods, as well as premium
16 wages for noncompliant meal and rest breaks.

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

22 30. Plaintiffs are informed and believe, and based thereon allege, that Defendant knows
23 or should know that it has a duty to compensate Plaintiff and the other Aggrieved Employees
24 pursuant to California law, and that Defendant has the financial ability to pay such compensation,
25 but willfully, knowingly, and intentionally fails to do so, and falsely represents to Plaintiffs and the
26 other Aggrieved Employees that they are properly denied wages, all in order to increase
27 Defendant's profits.

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1 **FIRST CAUSE OF ACTION**

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

3 31. Plaintiffs reallege and incorporate the foregoing paragraphs as though fully set forth
4 herein.

5 32. Under the California Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698-
6 2699.5, an aggrieved employee, on behalf of the State of California, may bring a representative
7 action as a private attorney general to recover penalties for an employer's violations of the
8 California Labor Code and IWC Wage Orders. These civil penalties are in addition to any other
9 relief available under the California Labor Code, and must be allocated 75% to California's Labor
10 and Workforce Development Agency ("LWDA") and 25% to the aggrieved employees, pursuant
11 to California Labor Code § 2699.

12 33. Plaintiffs allege that Defendant has violated the following provisions of the California
13 Labor Code and the following provisions of the IWC Wage Orders that are actionable through the
14 California Labor Code and PAGA, as previously alleged herein: Cal. Lab. Code §§ 201-03, 204,
15 210, 218.5, 226, 226.3, 226.7, 510, 512, 1197, 1197.1, 1198, 2802, and IWC Wage Order No. 4-
16 2001. Each of these violations entitles Plaintiffs, as private attorneys general, to recover the
17 applicable civil penalties.

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

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

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

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

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

37. On April 18, 2022, Plaintiffs provided written notice by certified mail to the LWDA of their intent to file this claim. 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).

38. 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;

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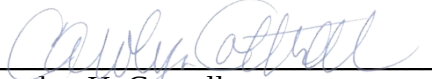
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- 1 e. For all costs of suit; and
2 f. For such other and further relief as this Court deems just and proper.

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4 Dated: September 9, 2022

Respectfully Submitted,

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6 Carolyn H. Cottrell
7 Esther L. Bylsma
8 **SCHNEIDER WALLACE**
9 **COTTRELL KONECKY LLP**

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

12 **DEMAND FOR JURY TRIAL**

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

15 Dated: September 9, 2022

Respectfully Submitted,

16 
17 Carolyn H. Cottrell
18 Esther L. Bylsma
19 **SCHNEIDER WALLACE**
20 **COTTRELL KONECKY LLP**

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