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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

NATTHAN XIONG, as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiff,

vs.

BMO BANK NATIONAL ASSOCIATION, an
Illinois corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. STK-CV-UDE-2024-9262

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

- (1) Untimely Payment of Wages
(Lab. Code §§ 204, 210, 218);**
- (2) Inaccurate Itemized Wage Statements
(Lab. Code § 226(a)) ; and**
- (3) Violations of the California Labor Code
(Lab. Code §§ 2698 et seq.)**

DEMAND OVER \$25,000.00

1 On behalf of himself and other similarly situated current and former employees of Defendants,
2 and as a proxy for the State of California, Plaintiff, Natthan Xiong, submits this First Amended Class
3 and Representative Action Complaint (the “Complaint”) against Defendant, BMO Bank National
4 Association, and Does 1 through 50 (collectively, “Defendants”).

5 INTRODUCTION

6 1. This class and representative action challenges systemic employment practices resulting
7 in violations of the California Labor Code against individuals who worked for Defendants. Plaintiff is
8 informed and believes that Defendants have jointly and severally acted intentionally and with deliberate
9 indifference and conscious disregard to the rights of employees by failing to timely pay earned wages
10 and failing to provide complete and accurate itemized wage statements. The Complaint seeks damages,
11 penalties, and other relief pursuant to, among other provisions, Labor Code sections 204, 210, 218,
12 226(a), 226.3, and 2698 et seq.¹

13 2. Defendants routinely fail to timely pay earned wages to Plaintiff and other non-exempt
14 employees. Specifically, Defendants pay Plaintiff and other non-exempt employees once per week.
15 When Defendants pay Plaintiff and other non-exempt employees, Defendants pay for a fixed number of
16 hours, without regard to the actual number of hours that the employees work during that pay period.
17 Whenever Plaintiff and other non-exempt employees work more than the fixed number of hours paid for
18 that pay period, Plaintiff and other non-exempt employees are not timely paid their wages for the hours
19 exceeding the fixed number of hours until a subsequent pay period. For example, for hours worked
20 during the pay period of September 3, 2023, through September 9, 2023, Plaintiff was not paid all of his
21 wages for hours worked during that pay period until September 22, 2023. Defendants thus violate
22 Section 204 and owe applicable penalties to Plaintiff and other employees.

23 3. Defendants also routinely fail to provide complete and accurate itemized wage
24 statements. Specifically, Defendants furnish wage statements to Plaintiff and other non-exempt
25 employees that do not accurately show the pay period start date, the pay period end date, the
26 corresponding number of hours worked at each applicable hourly rate, the total hours worked, the gross
27 wages earned, or the net wages earned. Instead, Defendants furnish Plaintiff and other non-exempt
28

¹ Except as otherwise noted, all “Section” references are to the Labor Code.

1 employees with wage statements that show pay period start and end dates that do not correspond to the
2 dates actually being paid. For example, Defendants provided to Plaintiff a wage statement that shows a
3 “Pay Period Begin” date of September 17, 2023, and a “Pay Period End” date of September 30, 2023;
4 none of the wages shown as being paid on the wage statement are for work from September 17, 2023,
5 through September 30, 2023. Even if the timing of Defendants’ payments of wages to Plaintiff and
6 other non-exempt employees was lawful, Defendants furnish Plaintiff and other non-exempt employees
7 with wage statements that do not show the actual number of hours worked at each applicable hourly
8 rate. The wage statements thus also inaccurately show the total hours worked, gross wages earned, and
9 net wages earned. For example, for hours worked during the pay period of September 10, 2023, through
10 September 16, 2023, Plaintiff did not work 25.0 hours. Nonetheless, Defendants provided Plaintiff with
11 wage statements that show that Plaintiff earned his regular hourly rate for 25.0 hours. Defendants thus
12 violate Section 226(a) and owe applicable penalties to Plaintiff and other employees.

13 4. Plaintiff is informed and believes that Defendants have engaged in, among other things, a
14 system of willful violations of the Labor Code by creating and maintaining policies, practices, and
15 customs that knowingly deny its employees the above stated rights and benefits.

16 JURISDICTION AND VENUE

17 5. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of
18 Defendants’ violations of Sections 204 and 226(a).

19 6. Venue is proper in the County of San Joaquin. Plaintiff worked for Defendants in
20 Stockton, California.

21 PARTIES

22 7. Since August of 2022, Plaintiff has worked as a banker for Defendants in Stockton,
23 California. Plaintiff is paid on an hourly basis as a non-exempt employee. Defendants pay Plaintiff once
24 per week. When Defendants pay Plaintiff, Defendants pay Plaintiff for a fixed number of hours, without
25 regard to the actual number of hours that he works during that pay period. Whenever Plaintiff works
26 more than the fixed number of hours paid for that pay period, Plaintiff is not timely paid his wages for
27 the hours exceeding the fixed number of hours until a subsequent pay period. Moreover, Defendants
28 furnish Plaintiff with wage statements that (i) show pay period start and end dates that do not

1 correspond to the dates actually being paid, (ii) do not show the actual number of hours worked at each
2 applicable hourly rate, and (iii) do not show the total hours worked, gross wages earned, or net wages
3 earned. Plaintiff thus is a victim of the policies, practices, and customs of Defendants complained of in
4 this action in ways that have deprived him of the rights guaranteed by the Labor Code.

5 8. Plaintiff is informed and believes that BMO Bank National Association was and is an
6 Illinois corporation. Plaintiff is informed and believes that at all times herein mentioned named
7 defendants and Does 1 through 50, were and are corporations, business entities, individuals, or
8 partnerships that are and were licensed to do business and actually doing business in the State of
9 California. Based upon all the facts and circumstances incident to Defendants' business, Defendants are
10 subject to Sections 204 and 226(a).

11 9. Plaintiff does not know the true names or capacities of the defendants sued herein as
12 Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are
13 sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when the true names
14 and capacities are known. Plaintiff is informed and believes that each of said fictitious defendants was
15 responsible in some way for the matters alleged herein and proximately caused the illegal employment
16 practices, wrongs, and injuries complained of herein.

17 10. At all times mentioned herein, each of said Defendants participated in the doing of the
18 acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of
19 the other Defendants, as well as the agents of all Defendants, and were acting within the course and
20 scope of said agency and employment.

21 11. Plaintiff is informed and believes that at all times material hereto, each of said
22 Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with,
23 each of the other Defendants and was acting within the course and scope of such agency, employment,
24 joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by
25 certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or
26 omissions of the acting Defendants.

27 12. Plaintiff is informed and believes that at all times material hereto each of the Defendants
28 (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the

1 alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in
2 pursuance of, a joint venture, partnership, or common enterprise.

3 CLASS ACTION ALLEGATIONS

4 13. **Definition:** Pursuant to Code of Civil Procedure section 382, Plaintiff seeks class
5 certification of the following class: all current and former non-exempt employees of Defendants in the
6 State of California since August 5, 2023 (the “Class”).

7 14. **Numerosity and Ascertainability:** The members of the Class are so numerous that
8 joinder of all members would be impractical, if not impossible. The identities of the members of the
9 Class are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is
10 informed and believes that Defendants violated Sections 204 and 226(a) against Plaintiff and the Class
11 by failing to timely pay earned wages and failing to provide complete and accurate itemized wage
12 statements.

13 15. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
14 represent fairly and adequately the interests of the Class defined above. Plaintiff’s attorneys are ready,
15 willing, and fully and adequately able to represent Plaintiff and the Class. Plaintiff’s attorneys have
16 prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-
17 and-hour class actions currently pending in California state and federal courts.

18 16. **Common Question of Law and Fact:** There are predominant common questions of law
19 and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is
20 informed and believes that Defendants uniformly administer a corporate policy and practice of routinely
21 failing to timely pay earned wages and failing to provide complete and accurate itemized wage
22 statements.

23 17. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class
24 in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the Class
25 suffered. As with other members of the Class, Plaintiff was paid on an hourly basis. Defendants pay
26 Plaintiff for a fixed number of hours, without regard to the actual number of hours that he works during
27 a pay period. Whenever Plaintiff works more than the fixed number of hours paid for a pay period,
28 Plaintiff is not timely paid his wages for the hours exceeding the fixed number of hours until a

subsequent pay period. Moreover, Defendants furnish Plaintiff with wage statements that (i) show pay period start and end dates that do not correspond to the dates actually being paid and (ii) do not show the actual number of hours worked at each applicable hourly rate. Plaintiff thus is a member of the Class and has suffered the alleged violations of the Labor Code.

18. The Labor Code is broadly remedial in nature. Its laws serve an important public interest in establishing minimum working conditions and requirements in California. These labor standards protect employees from onerous terms and conditions of employment or exploitation by employers who have superior economic and bargaining power.

19. The nature of this action and the format of laws available to Plaintiff and members of the Class make the class action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Requiring each member of the Class to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former or current employer for real and justifiable fear of retaliation and permanent damage to their careers at their current or subsequent employment.

20. The prosecution of separate actions by individual members of the Class, even if possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual members of the Class that would establish potentially incompatible standards of conduct for Defendants, or (b) adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of, or substantially impair or impede the ability to protect, the interests of other members of the Class not parties to the adjudications. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering the concomitant costs and expenses.

21. Defendants' pattern, practice, and uniform administration of corporate policy in violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the rights of Plaintiff and the Class under Sections 204 and 226, the applicable IWC Wage Order, and Code

of Civil Procedure section 1021.5 to recover applicable penalties, reasonable attorneys' fees, and costs of suit.

FIRST CAUSE OF ACTION

Untimely Payment of Wages (Lab. Code §§ 204, 210, 218)

(By Plaintiff and the Class Against All Defendants)

22. The preceding paragraphs are re-alleged and incorporated by this reference.

23. Section 204 provides that wages are generally due and payable no later than seven days after the end of a pay period or at least twice during each calendar month, on days designated in advance as the regular paydays. Section 210 provides that every person who fails to pay wages in accordance with Section 204 shall be subject to a penalty. Section 210 was amended on January 1, 2020, to permit an employee to recover penalties.

24. As a matter of policy and practice, Defendants routinely pay Plaintiff and the Class once per week. When Defendants pay Plaintiff and the Class, Defendants pay for a fixed number of hours, without regard to the actual number of hours that employees work during that pay period. Whenever Plaintiff and the Class work more than the fixed number of hours paid for that pay period, Plaintiff and the Class are not timely paid their wages for the hours exceeding the fixed number of hours. Instead, Plaintiff and the Class are not paid the balance of their wages until a subsequent pay period or more than seven days following the close of the pay period. For example, for hours worked during the pay period of September 3, 2023, through September 9, 2023, Plaintiff was not paid all of his wages for hours worked during that pay period until September 22, 2023.

25. As the Division of Labor Standards Enforcement Policies and Interpretations Manual confirms, this is unlawful:

Section 204 permits payment of wages earned for labor "in excess of the normal work period" to be delayed until no later than the payday for the next pay period. Only the payment of overtime premium wages may be delayed to the payday in the following pay period; the straight time wages must still be paid within the time set forth in the applicable Labor Code section in the pay period in which they were earned; or, in the case of employees who are paid on a weekly, biweekly, or semi-monthly basis, not more than 7 (seven) calendar days following the close of the payroll period.

DLSE Policies and Interpretations Manual § 5.2.1. Defendants thus violate Section 204 and owe applicable penalties to Plaintiff and the Class.

26. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Class to recover applicable penalties, attorneys' fees, and costs of suit.

SECOND CAUSE OF ACTION

Inaccurate Itemized Wage Statements (Lab. Code § 226(a))

(By Plaintiff and the Class Against All Defendants)

27. The preceding paragraphs are re-alleged and incorporated by this reference.

28. Section 226(a) requires an employer to furnish to its employees itemized wage statements that show accurate information, including without limitation, the pay period start date, the pay period end date, the corresponding number of hours worked at each applicable hourly rate, the total hours worked, the gross wages earned, and the net wages earned.

29. As a matter of policy and practice, Defendants routinely furnish wage statements to Plaintiff and the Class that do not accurately show the pay period start date, the pay period end date, the corresponding number of hours worked at each applicable hourly rate, the total hours worked, the gross wages earned, or the net wages earned. Instead, Defendants furnish Plaintiff and the Class with wage statements that show pay period start and end dates that do not correspond to the dates actually being paid. For example, Defendants provided to Plaintiff a wage statement that shows a "Pay Period Begin" date of September 17, 2023, and a "Pay Period End" date of September 30, 2023; none of the wages shown as being paid on the wage statement are for work from September 17, 2023, through September 30, 2023.

30. Even if the timing of Defendants' payments of wages to Plaintiff and other non-exempt employees was lawful, Defendants furnish Plaintiff and the Class with wage statements that do not show the actual number of hours worked at each applicable hourly rate. The wage statements thus also inaccurately show the total hours worked, gross wages earned, and net wages earned. For example, for hours worked during the pay period of September 10, 2023, through September 16, 2023, Plaintiff did not work 25.0 hours. Nonetheless, Defendants provided Plaintiff with wage statements that show that Plaintiff earned his regular hourly rate for 25.0 hours. Defendants thus violate Section 226(a) and owe applicable penalties to Plaintiff and the Class.

31. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Class to recover applicable penalties, attorneys' fees, and costs of suit.

THIRD CAUSE OF ACTION

Violations of California Labor Code (Lab. Code §§ 2698 et seq.)

(By Plaintiff as a Proxy for the State Against All Defendants)

32. The preceding paragraphs are re-alleged and incorporated by this reference.

33. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698 et seq. (“PAGA”), Plaintiff brings this cause of action as a proxy for the State of California. In this capacity, Plaintiff would seek penalties for Defendants’ violations of Sections 204 and 226(a) committed since August 5, 2023, against all aggrieved employees. As stated herein, Defendants fail to timely pay earned wages and fail to provide complete and accurate itemized wage statements. Under Section 2699(c), Plaintiff is an “aggrieved employee,” as one or more of the alleged violations was committed against Plaintiff as an employee of Defendants.

34. On or about August 5, 2024, Plaintiff sent written notice to the Labor & Workforce Development Agency (“LWDA”) of specific facts and theories for Defendants’ above violations. Plaintiff simultaneously sent written notice to Defendants via certified mail. As of the date of the filing of this Complaint, the LWDA has neither responded nor indicated that it intends to investigate the allegations in the written notice.

35. As such, pursuant to Section 2699(a), (f), and (g), Plaintiff seeks recovery of all applicable penalties pursuant to Section 2699(a), (f), and (g) for Defendants' violations against all aggrieved employees for the period described above.

PRAYER FOR RELIEF

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as the representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Class Counsel;
4. Upon the First Cause of Action for penalties and attorneys' fees and costs;

- 1 5. Upon the Second Cause of Action for penalties and attorneys’ fees and costs;
- 2 6. Upon the Third Cause of Action for penalties pursuant to Section 2699(a), (f), and (g),
- 3 and for attorneys’ fees and costs;
- 4 7. Upon each cause of action for attorneys’ fees and costs as provided by the Labor Code
- 5 and Code of Civil Procedure section 1021.5; and
- 6 8. For such other and further relief that the Court may deem just and proper.

7 DATED: October 23, 2024

DIVERSITY LAW GROUP, P.C.

8 By: 
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Larry W. Lee

Simon L. Yang

Attorneys for Plaintiff

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1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5]ss.
6 COUNTY OF LOS ANGELES]

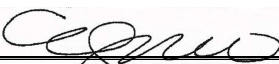
7 I am employed in the County of Los Angeles, State of California. I am over the age of 18
8 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250,
9 Los Angeles, California 90071.

10 On October 23, 2024, I served the following document(s) described as: **FIRST**
11 **AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested
12 parties in this action as follows:

13 Andrew R. Livingston
14 alivingston@orrick.com
15 Alexandra Stathopoulos
16 astathopoulos@orrick.com
17 J.P. Schreiber
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22 The Orrick Building
23 405 Howard Street
24 San Francisco, CA 94105-2669
25 *Attorneys for Defendant*
26 *BMO Bank National Association*

27 X BY ELECTRONIC MAIL: by personally sending a true and correct copy of
28 the above-described document(s) to the party(ies) listed above or on the attached mailing list
from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s)
indicated above or on the attached mailing list. I certify that said electronic transmission was
completed and that all pages were received by the party(ies) identified herein or on the attached
mailing list.

I declare under penalty of perjury under the laws of the State of California that the above
is true and correct. Executed on October 23, 2024, at Los Angeles, California.



Erika Mejia