

Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Shalom “Christine” Choo (State Bar No. 339947)
christine@diversitylaw.com
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, California 90071
(213) 488-6555
(213) 488-6554 facsimile

William L. Marder (SBN 170131)
bill@polarislawgroup.com
POLARIS LAW GROUP
501 San Benito Street, Suite 200
Hollister, CA 95023
Telephone: (831) 531-4214
Facsimile: (831) 634-0333

Attorneys for Plaintiff, the Class, and the Aggrieved Employees

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

JOSE GALVEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

JOSEPH J. ALBANESE, INC., a
California corporation; and DOES 1
through 50, inclusive,

Defendants.

CASE NO. 22CV397197

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT:**

- (1) VIOLATION OF CAL. LABOR CODE §
226; AND
(2) VIOLATION OF LABOR CODE § 2698,
ET SEQ.**

DEMAND EXCEEDS \$25,000.00

1 Plaintiff Jose Galvez (“Plaintiff”) hereby submits this First Amended Class and
2 Representative Action Complaint against Defendant Joseph J. Albanese, Inc. (“Defendant” or
3 “Company”), and Does 1-50 (hereinafter collectively referred to as “Defendants”), individually,
4 on behalf of a class of all other similarly situated current and former employees, and all aggrieved
5 employees of Defendant for penalties and/or damages for failure to provide accurate and
6 complete wage statements as follows:

7 **INTRODUCTION**

8 1. This class action is within the Court’s jurisdiction under California Labor Code
9 section 226, 2698, *et seq.*, and the applicable Wage Orders of the Industrial and Welfare
10 Commission (the “IWC”).

11 2. This Complaint challenges systemic illegal employment practices resulting in
12 violations of the California Labor Code against Defendant’s employees.

13 3. Plaintiff is informed and believes and based thereon alleges that Defendants jointly
14 and severally have acted intentionally and with deliberate indifference and conscious disregard to
15 the rights of all employees by failing to provide accurate and complete wage statements to these
16 employees.

17 **JURISDICTION AND VENUE**

18 4. The Court has jurisdiction over the violation of California Labor Code section 226
19 and 2698, *et seq.*

20 5. Venue is proper in Santa Clara County because Plaintiff worked for Defendant in
21 the County of Santa Clara, California.

22 **PARTIES**

23 6. In or around April 2018, Plaintiff was hired by Defendant as a Cement Mason.
24 Plaintiff continues to be employed by Defendant. Throughout Plaintiff’s employment, he has
25 been an hourly, non-exempt employee.

26 7. Plaintiff is informed and believes and based thereon alleges that Defendant was
27 and is a corporation which operates as a construction company throughout the State of California,
28 including in Santa Clara County, where Plaintiff worked.

1 8. Plaintiff is informed and believes and based thereon alleges that at all times herein
2 mentioned Defendant and DOES 1 through 50 are and were business entities, individuals, and
3 partnerships, licensed to do business and actually doing business in the State of California.

4 9. As such, and based upon all the facts and circumstances incident to Defendants'
5 business in California, Defendants are subject to Labor Code section 226, 2698, *et seq.*, and the
6 applicable IWC Wage Orders.

7 10. Plaintiff does not know the true names or capacities, whether individual, partner or
8 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
9 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
10 complaint when the true names and capacities are known. Plaintiff is informed and believes and
11 based thereon alleges that each of said fictitious Defendants was responsible in some way for the
12 matters alleged herein and proximately caused Plaintiff and class members to be subject to the
13 illegal employment practices, wrongs and injuries complained of herein.

14 11. At all times herein mentioned, each of said Defendants participated in the doing of
15 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
16 Defendants, and each of them, were the agents, servants, and employees of each of the other
17 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
18 within the course and scope of said agency and employment.

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

26 13. At all times herein mentioned, Defendants, and each of them, were members of,
27 and engaged in, a joint venture, partnership, and common enterprise, and acting within the course
28 and scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

14. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

CLASS ACTION ALLEGATIONS

15. **Definition:** The named individual Plaintiff seeks class certification, pursuant to California Code of Civil Procedure section 382, of the following class:

a. All current and former employees of Defendant in the State of California who were paid “Above Scale” wages, including, but not limited to, Regular Time-Above Scale, Overtime-Above Scale, and Doubletime-Above Scale wages, at any time from April 22, 2021, through the present (the “Class” or “Class Members”).

16. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identity of the members of the Class is readily ascertainable by review of Defendant's records, including payroll records. Plaintiff is informed and believes and based thereon alleges that Defendant failed to provide accurate and complete wage statements in violation of Labor Code section 226.

17. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the class defined above. Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the class and individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a number of wage-and-hour class actions pending in California courts.

18. Defendant uniformly administered a corporate policy, practice of failing to provide accurate and complete wage statements in violation of Labor Code section 226.

19. **Common Question of Law and Fact:** There are predominant common questions

1 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
2 concerning Defendant failing to provide accurate and complete wage statements in violation of
3 Labor Code section 226.

4 20. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
5 Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical
6 manner as the Class Members. As with other non-exempt employees, Plaintiff received itemized
7 wage statements concurrent with the payment of wages. The wage statements provided to
8 Plaintiff and Class Members failed to list the accurate total hours worked whenever “Above
9 Scale” wages were paid, including, but not limited to, Regular Time-Above Scale, Overtime-
10 Above Scale, and Doubletime-Above Scale wages. Specifically, whenever “Above Scale” wages
11 were paid, the wage statements issued by Defendants did not identify the accurate total hours
12 worked in violation of Labor Code section 226. As such, Plaintiff is a member of the Class and
13 has suffered the alleged violations of California Labor Code section 226 and the applicable Wage
14 Orders.

15 21. The California Labor Code and upon which Plaintiff bases these claims is broadly
16 remedial in nature. These laws and labor standards serve an important public interest in
17 establishing minimum working conditions and standards in California. These laws and labor
18 standards protect the average working employee from exploitation by employers who may seek to
19 take advantage of superior economic and bargaining power in setting onerous terms and
20 conditions of employment.

21 22. The nature of this action and the format of laws available to Plaintiff and members
22 of the Class identified herein make the class action format a particularly efficient and appropriate
23 procedure to redress the wrongs alleged herein. If each employee were required to file an
24 individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage
25 since it would be able to exploit and overwhelm the limited resources of each individual plaintiff
26 with their vastly superior financial and legal resources. Requiring each Class member to pursue
27 an individual remedy would also discourage the assertion of lawful claims by employees who
28 would be disinclined to file an action against their former and/or current employer for real and

1 justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

2 23. The prosecution of separate actions by the individual class members, even if
3 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
4 to individual Class members against the Defendant and which would establish potentially
5 incompatible standards of conduct for the Defendant, and/or (b) adjudications with respect to
6 individual Class members which would, as a practical matter, be dispositive of the interest of the
7 other Class members not parties to the adjudications or which would substantially impair or
8 impede the ability of the Class members to protect their interests. Further, the claims of the
9 individual members of the Class are not sufficiently large to warrant vigorous individual
10 prosecution considering all of the concomitant costs and expenses.

11 24. Such a pattern, practice, and uniform administration of corporate policy regarding
12 illegal employee compensation described herein is unlawful and creates an entitlement to
13 recovery by the Plaintiff and the Class identified herein of a common fund, including interest
14 thereon, applicable penalties, reasonable attorneys' fees, and costs of suit according to the
15 mandate of California Labor Code section 226 and Code of Civil Procedure section 1021.5.

16 25. Proof of a common business practice or factual pattern, which the named Plaintiff
17 experienced and are representative of, will establish the right of each of the members of the Class
18 to recovery on the causes of action alleged herein.

19 **FIRST CAUSE OF ACTION**

20 **VIOLATION OF LABOR CODE § 226**

21 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

22 26. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
23 though fully set forth herein.

24 27. Defendant, as a matter of policy and practice, did not provide accurate wage
25 statements to Class Members, in violation of Labor Code section 226(a).

26 28. Plaintiff and Class Members were paid on an hourly basis. As such, the wage
27 statements provided to them should have reflected the accurate total hours worked whenever
28 "Above Scale" wages were paid, including, but not limited to, Regular Time-Above Scale,

1 Overtime-Above Scale, and Doubletime-Above Scale wages. However, the wage statements
2 provided to Plaintiff and the Class failed to accurately identify such information. More
3 specifically, whenever “Above Scale” wages were paid, the wage statements issued by
4 Defendants did not identify the accurate total hours worked.

5 29. Such a pattern, practice and uniform administration of corporate policy as
6 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class
7 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code section
8 226, including interest thereon, attorneys’ fees, and costs of suit according to the mandate of
9 California Labor Code section 226.

10 **SECOND CAUSE OF ACTION**

11 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

12 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

13 30. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
14 though fully set forth herein.

15 31. Plaintiff brings this cause of action as a proxy for the State of California and in this
16 capacity, seeks penalties on behalf of all Aggrieved Employees from April 21, 2021, through the
17 present, for Defendants’ violations of Labor Code §§ 226, 2698, *et seq.*, as identified above, for
18 failing to provide accurate itemized wage statements.

19 32. Specifically, whenever “Above Scale” wages were paid, including but not limited
20 to, Regular Time-Above Scale, Overtime-Above Scale, and Doubletime-Above Scale wages, the
21 wage statements issued by Defendant did not identify the accurate total hours worked in violation
22 of Labor Code section 226.

23 33. On or about April 21, 2022, Plaintiff sent written notice to the California Labor &
24 Workforce Development Agency (“LWDA”) of Defendants’ violation of Labor Code § 226,
25 pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”). Plaintiff
26 also sent written notice of said Labor Code violations to Defendant via certified mail pursuant to
27 Labor Code § 2699.3. As of the date of the filing of this Complaint, the LWDA has not provided
28 written notice regarding whether it intends to investigate the Labor Code violations set forth in

1 Plaintiff's written notice.

2 34. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all
3 applicable civil penalties for Defendants' violation of Labor Code §§ 226 and 2698 for the time
4 period described above, on behalf of himself and other Aggrieved Employees.

5 **PRAYER FOR RELIEF**

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

- 8 1. For an order certifying the proposed Class;
- 9 2. For an order appointing Plaintiff as the representative of the Class as described
10 herein;
- 11 3. For an order appointing counsel for Plaintiff as Class counsel;
- 12 4. Upon the First Cause of Action, for damages and/or penalties pursuant to statute as
13 set forth in California Labor Code section 226, and for costs and attorneys' fees;
- 14 5. Upon the Second Cause of Action, for civil penalties according to proof pursuant
15 to the PAGA, Labor Code §226.3, and for costs and attorneys' fees;
- 16 6. On all causes of action, for attorneys' fees and costs as provided by California
17 Labor Code section 226, 2699, and Code of Civil Procedure section 1021.5; and
- 18 7. For such other and further relief as the Court may deem just and proper.

19 DATED: June 6, 2022

DIVERSITY LAW GROUP, P.C.

21 By: 
22 Larry W. Lee
23 Shalom "Christine" Choo
24 Attorneys for Plaintiff, the Class, and the Aggrieved
25 Employees
26
27
28

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 June 6, 2022, I served the following document(s) described as: **FIRST AMENDED**
11 **CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this
12 action as follows:

13 Joseph J. Albanese Inc.
14 c/o Daniel Nagle
15 851 Martin Ave
16 Santa Clara, CA 95050
17 *Agent for Service of Process*

18 X BY MAIL: by placing _____ the original or X a true and correct copy
19 thereof enclosed, in (a) sealed envelope(s) addressed to the party(ies) listed above or on the
20 attached mailing list. I am readily familiar with the firm's practice for collection and processing
21 of correspondence and other materials for mailing with the United States Postal Service. On this
22 date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for
23 collection and mailing on this date at the address above following our office's ordinary business
24 practices. The envelope(s) will be deposited with the United States Postal Service on this date,
25 in the ordinary course of business.

26 I declare under penalty of perjury under the laws of the State of California that the above
27 is true and correct. Executed on June 6, 2022, at Los Angeles, California.

28

Erika Mejia