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Attorneys for Plaintiffs and the Certified Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEATRICE PARKER and JEFFREY
GURULE, SR, on behalf of themselves, and
all others similarly situated, and all aggrieved
employees,

Plaintiff,

v.

CHERNE CONTRACTING
CORPORATION; and DOES 1 through 10,
inclusive,

Defendants.

Case No: 4:18-cv-01912-HSG

CLASS AND REPRESENTATIVE ACTION

**DECLARATION OF PLAINTIFF
BEATRICE PARKER IN SUPPORT OF
MOTION FOR APPROVAL OF
PLAINTIFFS' INCENTIVE AWARDS
AND GENERAL RELEASE PAYMENTS**

Date: December 2, 2021
Time: 2:00 p.m.
Ctrm: 2
Judge: Haywood S. Gilliam, Jr.

Complaint Filed: February 13, 2018
TAC filed: November 23, 2020

1 I, BEATRICE PARKER, declare as follows:

2 1. I am a named Plaintiff and Class Representative in the case against Cherne
3 Contracting Corporation. I submit this Declaration in support of my request for an incentive
4 award for my service as a Class Representative and to approve the settlement of my remaining
5 individual claims. I am a competent adult, I have personal knowledge of the facts set forth in
6 this declaration, and I could and would testify competently under oath if called as a witness.

7 2. I worked for Cherne Contracting Corporation (“Cherne”) from approximately June
8 30, 2015 through February 20, 2017.

9 3. I believed it was wrong for Cherne to not pay employees for their time spent riding
10 on busses into the refinery locations. The primary reason why I brought this lawsuit was that
11 several of my co-workers complained to me that they were not being paid for this time. I
12 believed this was wrong and I wanted to stick up for my fellow co-workers. I also believed it
13 was wrong for Cherne to fail to provide employees with proper wage statements.

14 4. My case against Cherne was filed on February 13, 2018. Prior to filing the
15 complaint, I first spoke with my attorney Robert Spencer, Esq., of Keller Grover LLP. I was
16 familiar with Keller Grover LLP from the results of other cases against refinery contractors. I
17 spent over an hour describing to him the facts of my case. I also had a separate conversation with
18 him for over an hour to discuss the process of class action litigation as well as my
19 responsibilities as a class representative. We also discussed that the case would be brought as a
20 “PAGA” representative action under the Labor Code Private Attorneys’ General Act of 2004,
21 Labor Code §§ 2698, *et seq.* Mr. Spencer explained what PAGA is as well as the penalties
22 available.

23 5. Prior to filing the original complaint, I spent over an hour with Mr. Spencer
24 working on the PAGA exhaustion letter that was sent to the State of California. I understand that
25 I was required to send this letter to the State of California in order to bring the PAGA causes of
26 action. I also spent approximately 30 minutes reviewing the PAGA letter to make sure it was
27 accurate.
28

1 6. When the original complaint was drafted, I spent an hour reviewing it before it was
2 filed to make sure it was accurate. I also spent approximately 30 minutes reviewing the first
3 amended complaint of action prior to it being filed. This first amended complaint added the
4 PAGA causes action.

5 7. On April 18, 2018, Defendant filed its motion to dismiss certain claims asserted in
6 my complaint, including overtime and meal period allegations. I discussed this with Mr. Spencer
7 and he kept me updated on the status of the motion. The Court issued its order on January 1,
8 2019 and Mr. Spencer and I spent 30 minutes discussing the order and that the case would not
9 continue to assert the overtime and meal period claims, as well as the derivative claims that
10 flowed from those causes of action. My attorneys drafted a second amended complaint that
11 removed the claims that could not be brought. I reviewed the second amended complaint before
12 it was filed.

13 8. My case had a mediation that took place on May 14, 2019 that was unsuccessful.
14 Prior to the mediation, I had numerous telephone calls with Mr. Spencer that lasted up to 30
15 minutes each time. We discussed the mediation and I responded to Mr. Spencer's questions and
16 provided him with additional information he needed. I monitored the mediation and discussed
17 with Mr. Spencer afterwards about the mediation being unsuccessful.

18 9. On June 14, 2019, I served my initial disclosures in this action. I worked very hard
19 with my attorney on responding to these initial disclosures. I searched very hard to find the
20 names and contact information of possible witnesses in this case. I provided 108 names as well
21 as all of the contact information that I could locate. I also searched for and produced 577 pages
22 of documents. This was difficult as I work on a project basis and I was not home at the time. I
23 had to search a storage shed for these items. I spent over 20 hours over different days searching
24 for the names of potential witnesses, their contact information, as well as for documents related
25 to the case.

26 10. Defendant propounded discovery in August 2019, including 10 interrogatories and
27 27 requests for production of documents. I previously produced the documents I found that were
28 related to the case, but I did another search over a couple of days to make sure all the responsive

1 documents were produced. I spent approximately two hours working on the interrogatory
2 responses with Mr. Spencer. I also spent additional time reviewing my written responses to make
3 sure they were accurate and complete.

4 11. I was deposed on November 21, 2019. My deposition took the entire day.
5 Further, I had to spend an additional day traveling from my work to attend as well as prepare for
6 the deposition in San Francisco. I also spent significant time reviewing my deposition transcript
7 for accuracy.

8 12. Mr. Spencer and I also discussed that we would be adding a second plaintiff and
9 class representative to this case, Jeffrey Gurule, Sr. I knew Mr. Gurule through my prior work at
10 the refineries and approved him being added as an additional plaintiff.

11 13. I paid close attention to the class certification process in this case. I spent multiple
12 hours on the telephone with my attorney Mr. Spencer discussing the process of class
13 certification, including that certain class members submitted declarations and would be deposed.
14 I also submitted a declaration in support of the motion for class certification. I worked on this
15 declaration for over an hour with Mr. Spencer and then spent additional time reviewing it to
16 make sure it was accurate.

17 14. Mr. Spencer and I also discussed the Court's ruling on class certification. We
18 discussed what this meant for the case, including that the Court did not certify the unpaid
19 minimum wage claim as well as that the case would proceed on the wage statement claims going
20 forward.

21 15. Cherne filed a motion for summary judgment in March 2020. I discussed this with
22 Mr. Spencer, including what it meant for the case. I also submitted a declaration in opposition to
23 Defendant's motion. I worked on the declaration for nearly an hour and spoke with Mr. Spencer
24 prior to signing.

25 16. On November 23, 2020 my attorneys filed the third amended complaint adding
26 Plaintiff Gurule as a second Plaintiff. I discussed this complaint with Mr. Spencer and spent
27 review the third amended complaint before it was filed.
28

1 17. When this case settled, the parties prepared a memorandum of understanding
2 (“MOU”). I spent a little over 30 minutes talking to my attorney Mr. Spencer regarding the
3 MOU. When the formal settlement was ready, I spent another 30 minutes speaking with him
4 regarding the formal settlement, whether it was fair, and the plan of distribution. I also spent
5 two hours reviewing the settlement agreement before I signed it.

6 18. Throughout this litigation, I have had regular telephone conversations with Mr.
7 Spencer regarding this case. Many of these conversations lasted between 30 to 45 minutes. I
8 have always had a strong interest in this case and performed my duties as a Class Representative.

9 19. When I agreed to act as a named plaintiff/Class Representative, I understood that I
10 might be responsible for some of the costs incurred by Defendant if the lawsuit was
11 unsuccessful. In addition to this, I worried about my reputation in the community if people were
12 to find out I had sued somebody.

13 20. I also am concerned about the possible repercussions to my future job
14 opportunities because I have been a plaintiff in a class action wage and hour lawsuit against an
15 employer.

16 21. I understood from the beginning that I was pursuing this case not only for my own
17 benefit, but for the benefit of large numbers of past and present employees who either were not
18 aware of their rights or were too afraid of retaliation to complain.

19 22. I believe that the settlement reached in this case is fair and, in light of the risks
20 involved, will justly compensate the employees who were and are affected by the violations that
21 were the subject of the action. I believe that my proposed incentive award that I have requested
22 is fair in light of the fact that I devoted over three years of my life to the action against Cherne.

23 23. I also believe that my proposed individual settlement amount is fair because I am
24 providing Cherne with a general release of my claims, including my individual claims in this
25 action. While the Court did not certify my minimum wage claims or the Labor Code § 201-203
26 claims, I can still pursue these claims individually.

27 24. **Unpaid Wages Owed:** I have calculated the amounts that I would be owed for my
28 surviving unpaid wage claim below:

- I worked for Cherne from approximately June 30, 2015 to February 20, 2017 during the statutory limitations period, which totals approximately 87 workweeks. I worked approximately 45 minutes off-the-clock each shift, which equals 4.5 hours off-the-clock per each workweek.
- 2015 – 26 (workweeks) x 4.5 (unpaid hours per workweek) x \$9.00 (applicable minimum wage) = \$1,053
- 2016 – 52 (workweeks) x 4.5 (unpaid hours per workweek) x \$10 (applicable minimum wage) = \$2,340
- 2017 – 7 workweeks x 4.5 (unpaid hours per workweek) x \$10 (applicable minimum wage) = \$315
 - Total Unpaid Wages: \$3,708.00.
 - Total Unpaid Wages plus Interest: \$5,191.00.

25. Cal. Health & Saf. Code § 25536.7 became effective January 1, 2014, which requires a certain amount of refinery workers be paid at least the prevailing wage. As of January 1, 2015, 45% of workers at a refinery must consist of “skilled journeymen” paid at least the prevailing wage.¹ As of January 1, 2016, 60% of workers at a refinery must consist of “skilled journeymen” paid at least the prevailing wage.² As a skilled journeyman who already had over a decade of experience prior to working for Cherne, I likely would be entitled to be paid at least the prevailing wage. Utilizing the prevailing wage as the required minimum wage, the amount of unpaid wages I would be owed is calculated below:

- 2015 – 26 (workweeks) x 4.5 (unpaid hours per workweek) x \$28.57 (applicable prevailing wage) = \$3,342.69.
- 2016 – 52 (workweeks) x 4.5 (unpaid hours per workweek) x \$28.57 (applicable prevailing wage) = \$6,675.38

¹ Cal. Health & Saf. Code § 25536.7(b)(10) and (b)(11).

² *Id.*

- 2017 – 7 workweeks x 4.5 (unpaid hours per workweek) x \$28.57 (applicable prevailing wage) = \$899
- Total Unpaid Wages: \$10,917.07. Total unpaid wages with interest: \$15,283.90.

26. **Labor Code § 203 Waiting Time Penalties:** Regardless of the minimum wage calculation used, I would be owed additional money for my Labor Code §§ 201-203 waiting time penalty claim,³ which is calculated as follows:

- Calculated at minimum wage: 12 (hours per day)⁴ x 30 (days of penalties allowed) x \$10 (applicable minimum wage at the end of my employment) = \$3,600.
- Calculated at my final regular rate: 12 (hours per day) x 30 (days of penalties allowed) x \$30.87 = \$11,113.20.
- Calculated utilizing the prevailing wage: 12 (hours per day) x 30 (days of penalties allowed) x \$28.57 = \$10,285.20.

27. **In Total:** Calculating the waiting time penalties at the minimum wage, I would be owed approximately \$8,791 for damages, penalties, and interest. Calculating the waiting time penalty at my final regular rate, I would be owed a total of \$16,304.20 for damages, penalties and interest. Calculating my wage and waiting time penalty claims at my prevailing wage rate, I would be owed \$25,569.10.

28. Additionally, Labor Code §§ 218.5 and 1194 and provide for an award of attorneys' fees and costs. If the case proceeded to trial on my individual claims, the attorneys'

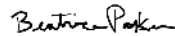
³ Labor Code § 203(a) states: "If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

⁴ I typically worked 12 hours a day. It is my understanding that I use the typical number of hours per day when calculating the Labor Code 203 penalties as that is how the California Department of Industrial relations calculates it on their website located at: https://www.dir.ca.gov/dlse/faq_waitingtimepenalty.htm

1 fees alone would greatly exceed the \$20,000 I am asking the Court to approve for the release of
2 my individual claims.

3 29. Based on the value of my individual claims, I believe that my proposed general
4 release payment is fair.

5 30. I declare under penalty of perjury under the laws of the State of California and the
6 United States that the foregoing is true and correct, and that this Declaration was executed on
7 this 9/15/2021 at San Francisco, California.

8 

9
10 BEATRICE PARKER