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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  
JEFFREY GURULE, SR. 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, Jeffrey Gurule, 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  
8 August 31, 2016 through January 1, 2017 at the Tesoro refinery in Martinez, California. I also  
9 worked for Cherne from approximately March 21, 2017 through October 31, 2017 at the  
10 Chevron refinery in Richmond, California.

11 3. I believed it was wrong for Cherne to not pay employees for their time spent riding  
12 on busses into the refinery locations. I have worked at numerous refineries and knew that this  
13 was unfair. I also believe it was wrong for Cherne to fail to provide employees with proper wage  
14 statements.

15 4. I learned of this case after it started. I wanted to join the case in order to represent  
16 my fellow employees. I first spoke with my attorney Robert Spencer, Esq. We discussed the  
17 existing case and I spent over an hour describing to him my experience with Cherne. I also had a  
18 separate conversation with him for about one hour to discuss the process of litigation and a class  
19 action, as well as my responsibilities as a class representative. We also discussed that the case  
20 has been brought as a “PAGA” representative action under the Labor Code Private Attorneys’  
21 General Act of 2004, Labor Code §§ 2698, *et seq.* Mr. Spencer explained what PAGA is as well  
22 as the penalties available. After this conversation I decided that I wanted to join this case as a  
23 potential additional class representative and named plaintiff. I spent an additional time reviewing  
24 my representation agreement with Mr. Spencer on the telephone.

25 5. I was deposed as part of my case against Cherne on December 2, 2019 which took  
26 the entire day including travel to and from the deposition. I was required to produce documents  
27 at my deposition, I spent approximately eight hours over three days searching for documents,  
28 which includes time I previously spent requesting documents from my union regarding my work

1 experience with Cherne. I also spent about a number of hours meeting with Mr. Spencer to  
2 prepare for my deposition. I spent half a day reviewing my deposition transcript when it was  
3 ready.

4 6. I was heavily involved in the class certification process. I spent multiple hours on  
5 the telephone with my attorney Mr. Spencer discussing the process of class certification,  
6 including that certain class members submitted declarations and would be deposed. I also  
7 submitted a declaration in support of the motion for class certification, I worked on this  
8 declaration for over an hour with Mr. Spencer and then spent additional time reviewing it after it  
9 was drafted to make sure it was accurate.

10 7. Mr. Spencer and I also discussed the Court's ruling on class certification. We  
11 discussed what this meant for the case, including that the Court did not certify the unpaid  
12 minimum wage claim as well as that the case would proceed on the wage statement claims going  
13 forward.

14 8. Cherne filed a motion for summary judgment in March 2020. I discussed this with  
15 Mr. Spencer, including what it meant for the case.

16 9. On November 23, 2020 my attorneys filed the third amended complaint adding me  
17 as a Plaintiff in this action. I discussed this complaint with Mr. Spencer and spent approximately  
18 30 minutes reviewed it prior to my attorneys filing it.

19 10. When this case settled, the parties drafted and agreed to a memorandum of  
20 understanding ("MOU"). I spent a little over half an hour talking to my attorney Mr. Spencer  
21 regarding the MOU. When the formal settlement was ready, I spent another half hour speaking  
22 with him regarding the settlement, whether it was fair, and the plan of distribution. I also spent  
23 an hour reviewing the settlement agreement before I signed it.

24 11. Throughout this litigation, I have had regular telephone conversations with Mr.  
25 Spencer regarding this case, we speak at least once a month. I also email him often.

26 12. When I agreed to act as a named Plaintiff/Class Representative, I understood that I  
27 might be responsible for some of the costs incurred by Defendant if the lawsuit was  
28

1 unsuccessful. In addition to this, I worried about my reputation in the community if people were  
 2 to find out I had sued somebody.

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

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

9 15. I believe that the settlement reached in this case is fair and, in light of the risks  
 10 involved, will justly compensate the employees who were and are affected by the violations that  
 11 were the subject of the action. I believe that my proposed incentive award that I have requested  
 12 is fair in light of all the work I did in this case against Cherne.

13 16. I also believe that my proposed individual settlement amount is fair because I am  
 14 providing Cherne with a general release of my claims, including my individual claims in this  
 15 action. While the Court did not certify my minimum wage claims or the Labor Code §§ 201-  
 16 203 claims, I can still pursue these claims individually.

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

- 19 • I worked for Cherne from August 31, 2016 through January 1, 2017 at the  
 20 Tesoro refinery in Martinez, California, which equals approximately 18  
 21 workweeks. I also worked for Cherne from approximately March 21, 2017  
 22 through October 31, 2017 at the Chevron refinery in Richmond, California,  
 23 which equals approximately 32 workweeks. Therefore, I worked  
 24 approximately 50 workweeks during my employment with Cherne during  
 25 the statutory limitations period. Further, the statutory minimum wage was  
 26 \$10 during this time period.
- 27 • I worked approximately 45 minutes off-the-clock each shift, which equals  
 28 4.5 hours off-the-clock per each workweek.

- 50 (workweeks) x 4.5 (unpaid hours per workweek) x \$10 (applicable minimum wage) = \$2,250.
- Total Unpaid Wages plus Interest: \$3,150.<sup>1</sup>

18. 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, 2016, 60% of workers at a refinery must consist of “skilled journeymen” paid at least the prevailing wage.<sup>2</sup> As a skilled journeyman who already had 20 years of experience in the industry 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:

- The prevailing wage for a pipefitter in 2016 during the time period I worked in Contra Costa County was \$54.42.<sup>3</sup> The prevailing wage for a pipefitter in 2017 during the time I worked in Contra Costa was \$55.42.
- I worked for Cherne from August 31, 2016 through January 1, 2017 at the Tesoro refinery in Martinez, California, which equals approximately 18 workweeks. Utilizing the prevailing wage for this time period, I would be owed: 18 (workweeks) x 4.5 (unpaid hours a week) x \$54.42 = \$4,408.02.
- I also worked for Cherne from approximately March 21, 2017 through October 31, 2017 at the Chevron refinery in Richmond, California, which equals approximately 32 workweeks. Utilizing the prevailing wage for this time period I would be owed: 32 (workweeks) x 4.5 (unpaid hours a week) x \$55.42 (prevailing wage) = \$7,980.48.

<sup>1</sup> The interest calculations can be performed using an online calculator.  
<https://www.calculatorsoup.com/calculators/financial/simple-interest-plus-principal-calculator.php>

<sup>2</sup> Cal. Health & Saf. Code § 25536.7(b)(10) and (b)(11).

<sup>3</sup> My attorney assisted me with finding all the prevailing wage rates utilized in this declaration, it is my understanding that they can be obtained from the website:  
[https://www.dir.ca.gov/oprl/statistics\\_research.html](https://www.dir.ca.gov/oprl/statistics_research.html).

- Utilizing the prevailing wage, in total I would be owed \$12,388.50 in unpaid wages for the time period I worked for Cherne. Including interest, I would be owed \$17,343.90.

19. **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,<sup>4</sup> which are calculated below:

- Calculated at minimum wage:  $12 \text{ (hours per day)}^5 \times 30 \text{ (days of penalties allowed)} \times \$10 \text{ (applicable minimum wage at the end of my employment)} = \$3,600.$
- Calculated at my final regular rate:  $12 \text{ (hours per day)} \times 30 \text{ (days of penalties allowed)} \times \$41.14 = \$14,810.40$
- Calculated at the applicable prevailing wage:  $12 \text{ (hours per day)} \times 30 \text{ (days of penalties allowed)} \times \$55.42 \text{ (applicable prevailing wage)} = \$19,951.20.$

20. **In Total:** Calculating the waiting time penalties at the minimum wage, in total I would be owed approximately \$6,750 for damages, penalties, and interest. Calculating the waiting time penalty at my final regular rate, in total I would be owed a total of \$17,960.40 for damages, penalties and interest. Utilizing the prevailing wage for my unpaid wages and waiting time penalties claims, in total I would be owed \$37,295.10 for damages, penalties and interest.

21. 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'

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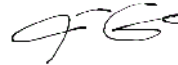
<sup>4</sup> Labor Code § 203(a) states: "If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty 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.

<sup>5</sup> I typically worked 12 hours a day. It is my understanding that I use the typical amount 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](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 22. Based on the value of my individual claims, I believe that my proposed general  
4 release payment is fair.

5 23. 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 9/13/2021 at Pittsburg, California.

8 

9 \_\_\_\_\_  
10 JEFFREY GURULE, SR.