

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
Parker, et al v. Cherne Contracting Corporation
Case No. 18-cv-01912-HSG**

NOTICE OF CLASS ACTION SETTLEMENT

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected whether you act or don't act.*

This class action settlement will affect your rights if you worked for Cherne Contracting Corporation in California at any time between December 18, 2016 and June 6, 2019, inclusive, and received a paper paycheck.

- Two former employees have sued Cherne Contracting Corporation (“Cherne”) alleging various violations of the California Labor Code. Cherne has denied all of the claims in the lawsuit.
- The Court has allowed one claim from the lawsuit to proceed as a class action on behalf of Cherne's hourly employees who worked in California at any time between December 18, 2016 and June 6, 2019, inclusive, and received one or more paper paychecks.
- The complaint also alleges that Plaintiff Parker is entitled to recover civil penalties for herself and other aggrieved employees under the California Private Attorneys General Act of 2004 (“PAGA”).
- The certified claim and the PAGA claims have been settled. The Court has preliminarily approved the Settlement.
- If you qualify as a Settlement Class Member, you could receive money from the Settlement of the Class claim.
- If you qualify as an Aggrieved Employee, you will receive money from the Settlement of the PAGA claim. (In this Settlement, **all** Settlement Class Members are also Aggrieved Employees.)
- Your legal rights are affected whether you act or don't act. Read this Notice carefully.

WHAT ARE YOUR OPTIONS?

DO NOTHING	If you do nothing, you will receive a Class Settlement payment. In exchange for this payment, you will give up any rights to sue for the same claim that is released as of this Settlement.
EXCLUDE YOURSELF	Give up all benefits, including money, from the Class Settlement. Retain all rights you may have against Cherne, as explained below. <u>NOTE:</u> Aggrieved Employees may not opt out of the PAGA portion of the Settlement.
OBJECT	Write to the Court about why you don't agree with the Settlement. The Court may or may not agree with your objection. If the Court approves the settlement, you will receive a Settlement payment.

HOW MUCH CAN I GET FROM THE CLASS ACTION SETTLEMENT?	Based on Cherne's records, your Individual Settlement Payment is estimated to be \$ _____. This is based on your total Qualified Paper Paychecks during the Class Period: _____.
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HOW MUCH CAN I GET FROM THE PAGA SETTLEMENT?	Based on Cherne's records, your Individual PAGA Payment is estimated to be \$_____. This is based on your total Qualified Pay Periods during the PAGA Period: _____.
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- Your rights and options – and the deadlines to exercise them – are explained in this Notice.
- The Court in charge of this case still has to decide whether to grant final approval of the Settlement. If the Court approves the Settlement and after any appeals are resolved, payments will be made to (a) Settlement Class Members who do not opt out of the Class Settlement; and (b) all Aggrieved Employees.

WHY AM I RECEIVING THIS NOTICE?

Cherne's records show that you worked for Cherne in California during some or all of the period from December 18, 2016 through June 6, 2019, inclusive, and received one or more paper paychecks.

You received this Notice because you have a right to know about a proposed settlement of a class action lawsuit and about your options before the Court decides whether to grant final approval of the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, a Settlement Administrator appointed by the Court will make the payments that the Settlement allows.

This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them and how to get them.

WHAT IS THIS LAWSUIT ABOUT?

Two former employees have sued Cherne alleging various violations of the California Labor Code. Cherne has denied all of the claims asserted in the lawsuit. The Court has allowed one claim from this lawsuit to proceed as a class action on behalf of all Cherne employees who worked in California at any time between December 18, 2016 and June 6, 2019, inclusive, and received one or more paper paychecks. The issue is whether Cherne violated Labor Code § 226(a)(8) by providing you and other Cherne employees during that time period with wage statements that were missing Cherne's full name and address. The complaint also alleges claims under the California Private Attorneys General Act of 2004 ("PAGA").

DO I HAVE AN ATTORNEY?

You do not need to hire your own attorney. You are already represented by Class Counsel (see below for their contact information). However, you may hire your own attorney at your own expense if you choose.

WHAT IS THE CASE STATUS?

The Court decided that the Labor Code § 226(a)(8) wage statement claim can proceed on a class-wide basis. Following that decision, the parties agreed to a settlement after a mediation using a neutral third-party mediator. The certified class claim and the PAGA claims were settled because Class Counsel and the Class Representatives believe that the terms of the Settlement are fair and reasonable in light of the strength and weaknesses of the claims and other factors.

The Court has not ruled on the merits of Plaintiffs' claims. Cherne denies all of Plaintiffs' allegations, or that it violated any law, and contends that at all times it complied with federal, state and local laws, as

well as any applicable labor agreements. The settlement is not an admission by Cherne of any wrongdoing or an indication that any law was violated.

WHO IS IN THE CLASS?

You are part of the Class Settlement if you are a member of the “Class” (a “Class Member”). The “Class” is defined to include all current and former hourly employees who worked for Cherne in California and received one or more paper paychecks during the period between December 18, 2016 and June 6, 2019, inclusive, who do **not** submit a timely and valid request for exclusion.

All Class Members are also Aggrieved Employees, who are defined to include all current and former hourly employees who worked for Cherne in California at any time between December 18, 2016 and February 22, 2021, inclusive.

WHAT ARE THE TERMS OF THE SETTLEMENT?

In exchange for the release of certain claims against it and final judgment on the Action, Cherne will pay \$2,500,000 (the “Maximum Settlement Amount”), which includes all payments contemplated by the Settlement Agreement, including all payments to Settlement Class Members, incentive awards to the Plaintiffs and Class Representatives, general release payments to Plaintiffs, Class Counsel’s attorneys’ fees and costs, a payment to the California Labor and Workforce Development Agency (“LWDA”) as part of the settlement of the PAGA claim, all payments to Aggrieved Employees, and settlement administration costs. The “Net Settlement Amount” is the amount remaining after deduction of Class Counsel’s attorneys’ fees and costs, the incentive awards to the Plaintiffs and Class Representatives, the general release payments to the Plaintiffs, the PAGA Payment, and the settlement administration costs. The entire Net Settlement Amount will be distributed to Settlement Class Members (i.e., Class Members who do not opt out).

The \$500,000 PAGA Payment is required by law to be split 75% to the LWDA and 25% to the Aggrieved Employees. Therefore, \$375,000 will be distributed to the LWDA and \$125,000 will be distributed to Aggrieved Employees based on the formula described below.

Subject to Court approval, the Maximum Settlement Amount will be allocated at follows:

- Individual Settlement Payments: Settlement Class Members are eligible to receive money from the Net Settlement Amount as an Individual Settlement Payment, which is calculated as described below. The Net Settlement Amount is estimated to be approximately \$1,146,500. Your estimated Individual Settlement Payment is listed on the first page of this Notice.
- Class Representative Incentive Awards: Plaintiff Parker will request from the Court an award of \$5,000 in recognition of her efforts and risks in assisting with the prosecution of the Action. Plaintiff Gurule will request from the Court an award of \$2,500 in recognition of his efforts and risks in assisting with the prosecution of the Action. These amounts will be paid from the Maximum Settlement Amount, and any amount not awarded will revert to the Net Settlement Amount for distribution to Settlement Class Members.
- Plaintiffs’ General Release Payments: The Court did not certify all of the claims in the Action for class treatment. Plaintiffs Parker and Gurule also have individual claims that are not covered by

the class-wide settlement. Cherne has agreed to pay \$20,000 each to Plaintiffs Parker and Gurule from the Maximum Settlement Amount in exchange for settlement of all of their individual claims and a general release.

- **Class Counsel Award:** Class Counsel will request that the Court approve up to 30% of the Maximum Settlement Amount (\$750,000 of \$2,500,000) as attorneys' fees for litigation and resolution of this Action and actual costs and expenses (estimated not to exceed \$40,000), as supported by declarations. This amount will be paid from the Maximum Settlement Amount, and any amount not awarded will revert to the Net Settlement Amount for distribution to Settlement Class Members.
- **Settlement Administration:** The cost of settlement administration shall not exceed \$16,000, which pays for tasks such as mailing and tracking this Notice, tracking Requests for Exclusion and Notices of Objection, mailing checks and tax forms, and reporting to the parties and the Court.
- **Uncashed Checks:** Any checks issued to Settlement Class Members shall remain valid and negotiable for 90 days from the date of their issuance. In the event any Individual Settlement Payment checks have not been cashed within 90 days, the Settlement Administrator shall tender one-half of the funds represented by any such uncashed checks to Build California, a 501.c.3 organization that seeks to develop a future workforce for the construction industry from often under-represented communities (<https://buildcalifornia.com/about/>) and the remaining one-half of the funds represented by any such uncashed checks to The Beavers Charitable Trust, which provides endowments and scholarships to universities feeding the construction industry (<https://www.thebeavers.org/charitable-trust/>). (All funds sent to The Beaver Charitable Trust must be directed to an education institution located in California.)

Any checks issued to Aggrieved Employees who are not Settlement Class Members shall remain valid and negotiable for 90 days from the date of their issuance. In the event an Individual PAGA Payment check has not been cashed within 90 days, the Settlement Administrator shall tender to the LWDA the funds represented by any such uncashed checks.

WHAT CAN I RECEIVE FROM THE SETTLEMENT?

If you do not opt out of the Class Settlement, you will automatically receive your share of the Net Settlement Amount after the Court approves the Settlement. Your estimated share, that is your estimated Individual Settlement Payment, is based on the number of Qualified Paper Paychecks that you received from Cherne during the Class Period. Your total number of Qualified Paper Paychecks and estimated Individual Settlement Payment is listed on the first page of this Notice.

HOW IS MY PORTION OF THE CLASS SETTLEMENT CALCULATED?

Your Individual Settlement Payment is your pro rata share of the Net Settlement Amount based on your total Qualified Paper Paychecks, which is the total number of paper paychecks that you received from Cherne for your work in California (based on Cherne's records) during the period December 18, 2016 through June 6, 2019, inclusive. Your total Qualified Paper Paychecks will be divided by the total Qualified Paper Paychecks for all Settlement Class Members, resulting in your Payment Ratio. The Payment Ratio will then be multiplied by the Net Settlement Amount to determine your Individual Settlement Payment.

Your Individual Settlement Payment may vary from the estimated payment listed on page one of this Notice if any Class Members opt out of the Settlement and depending upon the amounts that the Court approves for awards to Class Counsel, the Class Representatives, and the Settlement Administrator.

ONLY if you disagree with the number Qualified Paper Paychecks stated on page one, mail a letter to the Settlement Administrator explaining why you disagree. Be as specific as possible and include copies of any supporting documents, such as paystubs. The decision of the Settlement Administrator will be final. Disputes must be mailed to the address below and must be postmarked no later than October 18, 2021:

**Cherne Contracting Settlement
RG/2 Claims Administration LLC
P.O. Box 59479
Philadelphia, PA 19102-9479
Phone: 866-742-4955
Facsimile: 215-827-5551**

WHAT WILL I RECEIVE FROM THE PAGA SETTLEMENT?

All Class Members also qualify as Aggrieved Employees and thus will also will receive an Individual PAGA Payment. Your Individual PAGA Payment will be based on your pro rata share of the 25% of the PAGA Payment (\$125,000) based on your number of Qualified Pay Periods during the PAGA Period, which is December 18, 2016 through February 22, 2021, inclusive. Your total Qualified Pay Periods will be divided by the total Qualified Pay Periods for all Aggrieved Employees, resulting in your Payment Ratio. The Payment Ratio will then be multiplied by \$125,000 to determine your Individual PAGA Payment.

WHAT HAPPENS IF I DO NOTHING?

If you do nothing and the Court approves the Settlement, you will be issued your Individual Settlement Payment and Individual PAGA Payment without any further action needed from you.

To ensure receipt of your Settlement Payments, you must notify the Settlement Administrator of any change in your name, mailing address and/or telephone number. **It is your responsibility to keep the Settlement Administrator informed of your updated information, and your Individual Settlement Payment will be mailed to the last known address that the Settlement Administrator has on file for you.**

WHEN AND WHERE IS THE FINAL APPROVAL HEARING?

The Court will hold the Final Approval Hearing on December 2, 2021 at 2:00 pm in Courtroom 2, 4th Floor, of the United States District Court for the Northern District of California, 1301 Clay Street, Oakland, California 94612, to decide whether to approve the Settlement. If the Court approves the Settlement, your Settlement Payments will be mailed to you within approximately 30 days from the date of the final approval order, unless there are objections or appeals. It is always uncertain when these issues can be resolved, and resolving them can take time.

Please be advised that the date of the final approval hearing may change without further notice to the class. Class Members are therefore advised to check the Court's website

(<https://www.cand.uscourts.gov/judges/gilliam-haywood-s-hsg/>) or contact Class Counsel or the Settlement Administrator to confirm that the date and location has not been changed.

WHAT CLAIMS AM I GIVING UP IF I REMAIN PART OF THE CLASS ACTION SETTLEMENT?

Unless you exclude yourself, you will remain a Settlement Class Member, and you will be bound by the terms of the Settlement, including the release of claims described below. That means you will be unable to sue, or to continue to sue, or be part of any other lawsuit about the Released Claims. It also means that all of the Court's orders in this Action related to the Released Claims will apply to you and legally bind you.

Released Claims

The term "Released Claims" means the claims in the operative Third Amended Complaint under California Labor Code § 226 based on the alleged failure to provide compliant wage statements, together with interest, fees, and costs related to that failure. The Release Period for the Released Claims shall be the same as the Class Period, i.e., from December 18, 2016 through June 6, 2019, inclusive. To avoid and prevent doubt, the Released Claims do not include a release of any other claims, including claims by Plaintiffs or Class Members that may exist in connection with any of the claims that were not certified by the Court in the November 20, 2020 Order Denying in Part and Granting in Part Motion for Class Certification (Dkt. 81).

The Release will extend to Defendant Cherne Contracting Corporation and all of Defendant's parent companies, subsidiaries, divisions, concepts, related or affiliated companies, and its or their shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity that could be liable for any of the Released Claims (collectively, the "Released Parties").

WHAT CLAIMS ARE RELEASED BY THE SETTLEMENT OF PAGA CLAIMS?

If this Settlement is approved, then Plaintiff Parker, individually and as representative acting as a proxy or agent of the LWDA, a State of California Executive Branch Agency, in this Action, agrees to release the Released Parties of and from any and all claims for civil penalties, attorneys' fees, and litigations costs under the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*, as alleged in the operative Third Amended Complaint (Dkt. 82) for the PAGA Period, i.e., the "PAGA Released Claims."

WHAT SHOULD I DO IF I DO NOT WANT TO BE PART OF THE CLASS ACTION SETTLEMENT?

If you do not wish to participate in the Class Action Settlement, you may exclude yourself (generally called "opting out") by submitting a written Request for Exclusion to the Settlement Administrator. Your request to opt-out must (1) must contain your name, address, and the last four digits of your Social Security number or Employee ID number; (2) must be signed by you; (3) must be postmarked by October 18, 2021 and mailed to the Settlement Administrator at the specified address; and (4) must contain a typewritten or handwritten notice stating in substance: "I wish to opt out of the settlement of the class action lawsuit entitled *Parker and Gurule v. Cherne Contracting Corp.*"

You must personally sign the Request for Exclusion and may not have someone sign for you, nor may you submit a Request for Exclusion on behalf of a group or anyone else. Your Request for Exclusion must be signed and mailed via United States first class mail postmarked no later than October 18, 2021 to:

**Cherne Contracting Settlement
RG/2 Claims Administration LLC
P.O. Box 59479
Philadelphia, PA 19102-9479
Phone: 866-742-4955
Facsimile: 215-827-5551**

If you submit a timely Request for Exclusion, then upon its receipt you shall not be a member of the Settlement Class, you shall be barred from participating in any portion of the Class Action Settlement, you may not object to the Settlement and, except as provided below, you shall receive no benefits, including an Individual Settlement Payment, from the Settlement.

If you submit a timely Request for Exclusion, you may then pursue, at your own expense, any claims you may have against Cherne. If you do not submit a complete and timely written Request for Exclusion, you will be included in the Settlement Class, and be bound by the terms of the Settlement (including the Released Claims described above), whether or not you objected to the Settlement.

NOTE: Aggrieved Employees in a PAGA action may not opt-out of a PAGA settlement. Thus, in a settlement involving both class and PAGA claims, employees may only opt-out from participating in the class portion of the settlement. If you submit a timely Request for Exclusion, you will still receive an Individual PAGA Payment representing your portion of the PAGA Payment.

WHAT SHOULD I DO IF I WANT TO OBJECT TO THE SETTLEMENT?

Any Class Member who has not asked to be excluded from this Settlement may object to the Settlement. You can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no Settlement Payments will be sent out and the Action will continue. Please also keep in mind that objecting is not the same as requesting to be excluded. Submitting an objection will **not** exclude you from the Settlement Class. **If your objection is overruled, you will still be bound by the Settlement.**

If you wish to object to the Settlement, you may submit your written Notice of Objection to the Court at the address below in person or by mail stating the basis or reason(s) for your objection to the Settlement. You may object to any of the terms in the Settlement Agreement. A written Notice of Objection must be signed by you and include: (1) the case name and number (*Parker v. Cherne Contracting Corporation*, Case No. 18-cv-01912-HSG); (2) your name; (3) your address; (4) the last four digits of your Social Security number or Employee ID number; (4) the basis for your objection and any supporting documents; and (5) if you intend to appear at the final approval hearing. Class Members who fail to make objections in the manner specified above may be deemed to have waived any objections and be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement. The failure to submit a written objection does not waive a Settlement Class Member's right to appear and orally object at the final approval hearing.

The written Notice of Objection must be filed in person or mailed via United States first class mail postmarked no later than October 18, 2021 to:

**United States District Court
Class Action Clerk
1301 Clay Street, Suite 400S
Oakland, California 94612**

If you have submitted a written objection, you may, but are not required to, appear at the Final Approval Hearing set for December 2, 2021 at 2:00 pm in Courtroom 2, 4th Floor, of the United States District Court for the Northern District of California, 1301 Clay Street, Oakland, California 94612 and discuss your objections with the Court and the parties. The Final Approval Hearing may be continued to another date without further notice.

You have the right to retain your own attorney, at your own expense, to submit a Notice of Objection or appear on your behalf at the Final Approval Hearing.

You cannot both object and opt-out. If you submit both a Request for Exclusion and a Notice of Objection, the Notice of Objection will be invalid, while the Request for Exclusion will be valid.

HOW DO I GET ADDITIONAL INFORMATION?

This Notice only summarizes the proposed Settlement and its terms. For more information: contact Class Counsel at the below address, phone number or email addresses; access relevant case documents including the Settlement Agreement and the motions for final approval and attorneys' fees and costs at the Settlement Administrator's website www.rg2claims.com/cherne.html; access the Court docket by visiting the office of the Clerk of Court at any of the locations listed at <https://cand.uscourts.gov/about/locations/> between 9:00 a.m. and 4:00 p.m.; or access the Court docket for a fee at the Court's PACER website, <https://ecf.cand.uscourts.gov/>.

If you have further questions regarding this case or Settlement, you may contact Class Counsel, whose contact information is provided below:

Eric A. Grover
egrover@kellergrover.com
Robert W. Spencer
rspencer@kellergrover.com
KELLER GROVER LLP
1965 Market Street
San Francisco, California 94103
Telephone: (415) 543-1305
Facsimile: (415) 543-7861

In addition to contacting Class Counsel, you may contact the Settlement Administrator at **866-742-4955** or visit the Settlement Administrator's website at www.rg2claims.com/cherne.html.

**PLEASE DO NOT WRITE OR TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE
ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**