

NOTICE OF CLASS ACTION SETTLEMENT

**A STATE COURT AUTHORIZED THIS NOTICE.
THIS IS NOT A SOLICITATION FROM A LAWYER.**

**Important: You are not being sued. Your rights may be affected.
You may have the right to recover money from this Settlement. Please read this Notice carefully.
This Notice is designed to inform you about your rights and why you are receiving this Notice.**

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BASIC INFORMATION

1. What is a class action?

A class action is a lawsuit in which the claims and rights of many similarly-situated people (“Class Members”) are decided in a single court proceeding. One or more representative plaintiffs (“Class Representative”) file a lawsuit asserting claims on behalf of all the Class Members.

2. What is this class action about?

On October 13, 2021, a class action lawsuit (“Action”) was filed by the Plaintiff and Class Representative Alek Povarnitson in the Superior Court of California for the County of San Diego (Case Number: 37-2021-00043575-CU-OE-CTL). The Complaint in the Action was later amended to add Plaintiff and Class Representative Bradley Bright and additional claims. Plaintiffs’ operative First Amended Complaint in this Action alleges that Defendants Albireo Energy, LLC, Electronic Control Systems, LLC, and Phil Rogers (hereinafter collectively referred to as “Defendants”): (1) obtained consumer reports without proper disclosure in violation of the Fair Credit Reporting Act; (2) violated the California Investigative Consumer Reporting Agencies Act; (3) failed to pay state minimum/regular/prevaling wages in violation of the California Labor Code; (4) failed to pay state overtime and/or double-time compensation in violation of the California Labor Code; (5) failed to comply with meal and rest break requirements in violation of the California Labor Code; (6) failed to pay timely earned wages during employment and upon separation of employment in violation of the California Labor Code; (7) issued inaccurate wage and earning statements in violation of the California Labor Code; (8) failed to indemnify/reimburse business expenses in violation of the California Labor Code; (9) failed to maintain records; (10) violated the Private Attorneys General Act of 2004 (“PAGA”), California Labor Code §§ 2698 *et seq.*, thus entitling Class Members to statutory and civil penalties; and (11) violated the California Business and Professions Code §§ 17200 *et seq.*

Defendants deny all of Plaintiffs’ allegations. Defendants further deny they committed any unlawful acts. Defendants maintain they have complied with the law and, specifically, have paid employees properly. Nonetheless, without admitting any liability and in the interest of resolving this dispute, Defendants have agreed to the settlement.

3. Why am I receiving this notice?

A proposed Settlement Agreement (the “Settlement”) has been reached, which will benefit:

- all current or former persons Defendants employed in the State of California during the period of August 7, 2016 to December 31, 2022 (the “Labor Code Class”);
- all current or former persons Defendants employed in the State of California during the period starting December 7, 2019 to December 31, 2022 (the “PAGA Representative Action Class”); and
- all persons residing in the United States regarding whom Defendants ran a background check for employment purposes during the period of October 13, 2016 to December 31, 2022 (the “FCRA Class”).

You have received this Notice because Defendants' records indicate that Defendants employed you in the State of California during one the foregoing periods.

If Defendants' records also indicate that Defendants ran a background check on you for employment purposes during the period of October 13, 2016 to December 31, 2022, you will receive a separate notice. If you have questions about having received separate notices, you may contact the Settlement Administrator and/or Class Counsel as set forth in Section 22 below.

4. Why is there a settlement?

After good-faith negotiations before an independent neutral third-party mediator, the parties agreed to settle this Action pursuant to the terms and conditions of the parties' Settlement. The Settlement represents a compromise regarding highly disputed claims and took into consideration the risks and uncertainties of continued litigation. Based on their experience litigating similar cases, the parties believe further proceedings in this case, including a trial and probable appeals, would be very expensive and drawn out. No one can confidently predict how the various legal questions at issue, including the amount of damages, if any, would ultimately be resolved. Therefore, upon careful consideration of all the facts and circumstances of this case, Plaintiffs and Defendants, and their respective counsel, have concluded the Settlement is fair, reasonable, and adequate and is in the best interests of the Class Members.

THE SETTLEMENT BENEFITS—WHAT YOU GET AND YOUR RIGHTS

5. What are the terms of the settlement?

Under the Settlement, Defendants will pay \$485,000.00 ("Total Settlement Amount") to settle this Action. From that amount the following will be paid: (1) an Enhancement Award of \$5,000.00 each to Class Representatives Alek Povarnitson and Bradley Bright to compensate them for their services, as approved by the Court; (2) an Individual General Release Payment of \$10,000.00 each to Class Representatives Alek Povarnitson and Bradley Bright for individual general releases of all claims encompassed in the Action, and any claims arising out of or relating to their employment or termination of their employment with Defendants, as approved by the Court, and any other claims they may have had against Defendants; (3) attorneys' fees to Class Counsel to compensate them for their services up to an amount of \$161,667, as well as reasonable incurred litigation costs not to exceed \$30,000.00, as approved by the Court; (4) the Settlement Administrator's fees for administration of the settlement in the approximate amount of \$30,000.00, as approved by the Court; and (5) payment to the Labor and Workforce Development Agency ("LWDA") in connection with the settlement of the claims under the PAGA in the amount of \$11,250.00 (75% of \$15,000.00, the "PAGA Settlement Amount"). After the deduction of these amounts, if approved by the Court, the remainder of approximately \$231,207.00 ("Net Settlement Fund") will be distributed to the Class Members who do not exclude themselves from the Settlement. 20% of the Net Settlement Fund (approximately \$46,241) will be allocated to the estimated 450 FCRA Class Members. The remaining 80% of the Net Settlement Fund (approximately \$184,966) will be allocated to the estimated 288 Labor Code Class Members, minus \$3,750 (25% of the \$15,000.00 PAGA Settlement Amount), which will be specifically allocated to the estimated 135 PAGA Representative Action Class Members.

6. What are my rights in this settlement?

Plaintiffs, as the Class Representatives, and Class Counsel represent your interests as a Settlement Class Member. Unless you elect not to participate in the Settlement by timely submitting a written request for exclusion (as further explained below), you will be bound by the terms of the Settlement and any final judgment that may be

entered by the Court, and you will be deemed to have released the Released Claims as described in section 10 below. As a Class Member you are not responsible for the payment of attorneys' fees or reimbursement of litigation costs unless you retain your own counsel, in which event, you will be responsible for your own attorneys' fees and costs.

HOW YOU GET A PAYMENT

7. How can I get a payment?

To receive a payment from the Settlement no action is needed on your part. Under the terms of this Settlement, you will automatically receive a Settlement payment, unless you submit a Request for Exclusion form.

8. How will my settlement payment be calculated?

The Settlement Administrator will calculate each Labor Code Class Member's Individual Settlement Payment as follows. The Settlement Administrator will calculate the number of workweeks for each Labor Code Class Member during the period starting August 7, 2016 to December 31, 2022 based on information provided by Defendants. The Settlement Administrator will calculate the amount to be paid per workweek by dividing the amount of the Net Settlement Fund that is allocated to the Labor Code Class (*i.e.*, 80% of the Net Settlement fund minus \$3,750) by the total number of workweeks for all Labor Code Class Members during the period from August 7, 2016 to December 31, 2022. The Individual Settlement Payment to be paid to each Labor Code Class Member will be the amount to be paid per workweek multiplied by the number of workweeks for that Labor Code Class Member.

Additionally, the Settlement Administrator will calculate each PAGA Representative Action Class Member's Individual Settlement Payment as follows: The Settlement Administrator will calculate the number of workweeks for each PAGA Representative Action Class Member during the period from December 7, 2019 to December 31, 2022 based on information provided by Defendants. The Settlement Administrator will calculate the amount to be paid per workweek by dividing the amount of the Net Settlement Fund that is allocated to the PAGA Representative Action Class (*i.e.*, \$3,750) by the total number of workweeks for all PAGA Representative Action Class Members during the period from December 7, 2019 to December 31, 2022. The Individual Settlement Payment to be paid to each PAGA Representative Action Class Member will be the amount to be paid per workweek multiplied by the number of workweeks for that PAGA Representative Action Class Member.

Class members who are members of more than one class shall be allocated Individual Settlement Payments for their membership in each class of which they are a member.

According to records maintained by Defendants and the calculations by the Settlement Administrator you were employed for a total of [insert #] workweeks between August 7, 2016 to December 31, 2022, including a total of [insert #] workweeks. Based on this information, it is estimated that you will receive a gross payment of \$[insert].

This amount is subject to an upward or downward adjustment, depending upon the number of requests for exclusion submitted and upon the amount the Court approves for attorneys' fees and litigation costs, the Enhancement Awards and Individual General Release Payments, the PAGA payment to the LWDA, and the Settlement Administrator's fees. Defendants will pay out 100% of the Net Settlement Fund to participating Labor Code Class Members, PAGA Representative Action Class Members, and FCRA Class Members.

Defendants' records and the Settlement Administrator's calculations will be presumed to be accurate. If you believe the number of workweeks Defendants' records show you worked between the foregoing periods and as calculated by the Settlement Administrator is inaccurate, the dispute will be settled by the Settlement Administrator, whose decision will be final and non-appealable. If you have a dispute, you must send a written letter to the Settlement Administrator, and include your name, current address, phone number, and the last four digits of your Social Security number. The letter must be signed by you or a lawful representative. The letter must also reference the name of this action (i.e., *Povarnitson, et al. v. Albireo Energy LLC, et al.*), state the number of workweeks that you contend are correct, and attach any documentation in support of your challenge to Defendants' records and the Settlement Administrator's calculations. Your letter must be sent directly to the Settlement Administrator, at the address below, postmarked by no later than **??????, 2023**.

Povarnitson, et al. v. Albireo Energy, LLC, et al.

Settlement Administration

PO Box????

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Phone: ?????

AlbireoConsumerReportLaborCodeSettlement@gmail.com

Please Note: Individual Settlement Payments will be reported to the IRS and state tax authorities as follows:

For Labor Code Class Member Individual Settlement Payments: 50% of each Individual Settlement Payment shall be considered wages and therefore payroll taxes and appropriate withholdings will be deducted from this portion of the Individual Settlement Payments. 50% of each Individual Settlement Payment shall be considered liquidated damages and/or penalties, from which no payroll taxes or other withholding shall be deducted.

For PAGA Representative Action Class Member Individual Settlement Payments: 100% of each Individual Settlement Payment shall be considered liquidated damages and/or penalties, from which no payroll taxes or other withholding shall be deducted.

You will receive appropriate tax forms pertaining to your Individual Settlement Payment(s). Your check will be issued by the Settlement Administrator. No representations are being made regarding the tax implications of the Individual Settlement Payments. If you have questions regarding those implications, you can and should consult a tax expert.

9. When would I get my payment?

The Court has scheduled a Final Approval Hearing on **????????, 2023 at ??? a.m.** PST, before the Honorable Katherine Bacal at the Superior Court for the State of California for the County of San Diego, in Department 69 located at 330 West Broadway, San Diego, California 92101, at which time the Court will determine: (1) whether the proposed Settlement should be approved as fair, reasonable and adequate to the Class Members; (2) whether the application for attorneys' fees and litigation costs of Class Counsel should be approved; (3) whether the Enhancement Awards and Individual General Release Payments should be approved; (4) whether the PAGA payment to the LWDA should be approved; and (5) whether payment to the Settlement Administrator should be approved. If the Court approves the Settlement, an Order Granting Final Approval will be entered. It is not required or necessary that you attend the Final Approval Hearing.

Once the Order Granting Final Approval is signed by the Court, the Settlement Administrator shall pay the Individual Settlement Payments to all Class Members who did not timely and validly submit an Exclusion Form

within 10 days of the Effective Date of the Final Approval of the Settlement, i.e., 60 days from the date the Court signs the Final Approval Order unless an appeal is filed.

Individual Settlement Payments shall remain valid and negotiable for 90 days from the date of their issuance. Individual Settlement Payments will automatically be cancelled if not cashed by the Class Member within that time, and the affected Class Member shall remain a member of the Settlement Class and be bound by all the terms of the Settlement and the Court's Judgment. The monies from the cancelled checks shall be paid to a mutually-agreed *cy pres* recipient to be determined by the parties and approved by the Court.

10. What claims am I releasing if I remain in the Class?

Each Labor Code Class Member and PAGA Representative Action Class Member (other than those who file a Request for Exclusion form) releases and discharges the "Releasees" from these Class Members' "Released Claims" as follows.

"Releasees" means (1) Defendants Albireo Energy, LLC, Electronic Control Systems, LLC, and Phil Rogers; and (2) the past, present, and future shareholders, directors, and officers.

"Released Claims" means any and all claims, debts, liabilities, demands, obligations, guarantees, penalties, costs, expenses, attorneys' fees, damages, actions, or causes of action contingent or accrued for any and all wage and hour and related claims that were alleged or that could have been alleged in the operative First Amended Complaint filed in the Action, including but not limited to any and all claims for unpaid wages, failure to pay minimum wages, failure to pay overtime wages, failure to permit or compensate meal periods, failure to permit or compensate rest periods, failure to timely pay wages due upon separation, claims of late/untimely payment of wages, claims for violations of California Labor Code §§ 201-203, claims for inaccurate or incomplete wage statements, claims for unreimbursed business expenses, claims for record-keeping violations, claims for unpaid prevailing wages, claims for unfair business practices and derivative claims under the California Unfair Competition Law, Business and Professions Code §§ 17200, *et seq.*, related claims under the PAGA, including claims for restitution and other equitable relief, liquidated damages, punitive damages, or penalties, and any other benefit claimed, including but not limited to those under the California Labor Code, the applicable California Wage Orders, and the California Unfair Competition Law, Business and Professions Code §§ 17200, *et seq.*, arising at any time during and up through the period from August 7, 2016 to December 31, 2022.

EXCLUDING YOURSELF FROM THE SETTLEMENT

You are automatically a Class Member and will be bound by the settlement described above unless you exclude yourself from the Settlement. If you elect to be excluded from the Settlement, you will not receive any money from the Settlement and will not be bound by the Settlement.

11. How do I exclude myself from the settlement?

To exclude yourself from the settlement, you must send a written letter to the Settlement Administrator, and include your name, current address, phone number, last four digits of your Social Security number, a statement that you wish to exclude yourself from the *Povarnitson, et al. v. Albireo Energy LLC, et al.* Action, and signed by you or a lawful representative. In order for the exclusion request to be valid, you must mail the request for exclusion postmarked no later than **?????, 2023**, to:

Povarnitson, et al. v. Albireo Energy, LLC, et al.

Settlement Administration

PO Box????

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Phone: ?????

AlbireoConsumerReportLaborCodeSettlement@gmail.com

You cannot exclude yourself by making a telephone call. If you submit a request for exclusion, you will only receive a PAGA settlement payment if you are eligible (which cannot be waived), and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit except for the released claims under the PAGA.

Any Class Member who submits a timely and valid Request for Exclusion will NOT have a right to receive any money from the Class Settlement (except your pro rata right to a PAGA payment if eligible) and will not be bound by the terms of the Settlement except for the release of Plaintiffs' PAGA claims.

If you submit a timely Request for Exclusion, you will still receive your individual share of the PAGA settlement, if applicable. It is your choice to cash the check for your individual share of the PAGA settlement or not. If you do not cash the check for your individual share of the PAGA settlement within 90 days of the date it was issued, proceeds will be payable to a court approved *cy pres*.

12. If I don't exclude myself, can I sue Defendants for the same thing later?

No. Unless you exclude yourself, you give up the right to sue Defendants for claims this Settlement resolves. If you have a pending lawsuit against Defendants, this Settlement may affect your claims.

13. If I exclude myself, can I get money from this settlement?

You will receive only your pro rata PAGA payment if eligible.

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in this case?

The Court has approved the following law firms as Class Counsel. Their contact information is:

Thomas D. Rutledge, Esq.
LAW OFFICE OF THOMAS D. RUTLEDGE
16956 Via de Santa Fe, Suite 1847
Rancho Santa Fe, California 92091-4606
Telephone: (619) 886-7224
thomasrutledgelaw@gmail.com

Ian Pancer, Esq.
105 West F St. 4th Floor
San Diego, CA 92101
Telephone: (619) 955-6644
Fax: (619) 374-7410
ian@sandiegolegal.net

15. How will the lawyers be paid?

There is no charge to you. Class Counsel will ask the Court for attorneys' fees of up to \$161,667, and reimbursement of reasonable incurred litigation costs, as approved by the Court, but not to exceed \$30,000. Defendants have agreed not to oppose Class Counsels' request. If approved by the Court, these amounts will be deducted from the Total Settlement Amount of \$485,000.00.

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I object to the settlement?

If you are dissatisfied with any of the terms of the Settlement, you may, but are not required to 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 lawsuit will continue. If that is what you want to happen, you should object. The objection need not be in any specific form, but it must include your full name, most current address, the last four digits of your Social Security number, your signature, and the basis for your objection. Your objection must also state the name of the *Povarnitson, et al. v. Albireo Energy LLC, et al.* In addition, your objection must indicate whether you intend to appear at the Final Approval Hearing as discussed in section 18 below. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

To be valid and effective, your objection must be mailed to the Settlement Administrator postmarked by no later than **??????????**, 2023 to the following address:

Povarnitson, et al. v. Albireo Energy, LLC, et al.

Settlement Administration

PO Box????

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Phone: ?????

AlbireoConsumerReportLaborCodeSettlement@gmail.com

If the Court approves the Settlement despite any objections, you will receive your Individual Settlement Payment(s) from the Settlement, even if you submitted an objection.

17. What is the difference between objecting to the settlement and excluding myself?

Objecting is simply telling the Court that you don't like something about the Settlement. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no right to object because the case no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

18. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval Hearing on **???????, 2023 at ??? a.m.** PST, before the Honorable Katherine Bacal at the Superior Court for the State of California for the County of San Diego, in Department 69 located at 330 West Broadway, San Diego, California 92101. The hearing may be postponed without further notice to you. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will also be asked to approve Class Counsels' request for attorneys' fees and litigation costs, the Enhancement Awards to Plaintiffs, the Individual General Release Payments to Plaintiffs, the payment to the LWDA, and the payment to the Settlement Administrator. If there are objections, the Court will consider them at that time. The Judge will listen to anyone who has filed a valid objection and who has asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long that decision will take.

19. Do I have to come to the hearing?

No. If you are an objector, as long as you filed and mailed your written objection on time as described above, the Court will consider it. However, you may attend and speak, or you may also pay your own lawyer to attend.

IF YOU DO NOTHING

20. What happens if I do nothing at all?

If you do nothing, you will receive a Settlement payment and you will be bound by the terms of the Settlement, including the Released Claims described above.

GETTING MORE INFORMATION

21. How do I get more information?

This notice summarizes the basic terms of the Settlement. For the precise terms and conditions of the Settlement, contact the Settlement Administrator. You can also access the pleadings, and other records in this litigation, including the Settlement Agreement and Release of Claims, that are on file with the Clerk of the Court by visiting the Court's business office located at 330 West Broadway, San Diego, California 92101 during its business hours or going online at <https://www.sdcourt.ca.gov>.

If you have questions about the Settlement, you may contact the Settlement Administrator as follows:

Povarnitson, et al. v. Albireo Energy, LLC, et al.

Settlement Administration

PO Box????

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Phone: ?????

AlbireoConsumerReportLaborCodeSettlement@gmail.com

You may also contact Class Counsel whose information is provided above.

This notice is available in Spanish upon request by contacting the Claims Administrator at:

Povarnitson, et al. v. Albireo Energy, LLC, et al.

Settlement Administration

PO Box????

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Phone: ?????

AlbireoConsumerReportLaborCodeSettlement@gmail.com

**PLEASE DO NOT CALL THE COURT, DEFENDANTS, OR DEFENDANTS' COUNSEL FOR
INFORMATION REGARDING THIS SETTLEMENT**