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Attorneys for the Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

ALEKSANDR POVARNITSON and
BRADLEY BRIGHT, individually and
on behalf of all others similarly situated,

Plaintiffs,

vs.

ELECTRONIC CONTROL SYSTEMS,
LLC, a Delaware limited liability
company dba ALBIREO ENERGY,
LLC; ALBIREO ENERGY, LLC, a
Michigan corporation; and DOES 1-50,

Defendants.

Case No.: 37-2021-00043575-CU-OE-
CTL

Judge: Hon. Katherine Bacal
Dept.: 69

**DECLARATION OF THOMAS D.
RUTLEDGE ISO PLAINTIFFS'
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Judge: Hon. Katherine Bacal
Dept.: C-69
Hearing Date: September 21, 2023
Hearing Time: 1:30 p.m.

[Dec. of Ian Pancer, [Proposed] Order,
Not. of Mot., and Mem of P&As filed
concurrently herewith]

I, THOMAS D. RUTLEDGE, declare and state as follows:

1. I am counsel of record for the named Plaintiffs, indirectly for the Aggrieved Employees, and a quasi-assistant attorney general for the State of California (Plaintiffs) via the PAGA in this matter. As such, I am fully familiar with the facts, pleadings, and history of this matter. The following facts are within my own personal knowledge, and if called as a witness, I could testify competently to the matters stated herein.

2. This declaration is submitted in support of Plaintiffs' Motion for Court Approval of Class Settlement per the terms of the Settlement Agreement, a true and correct copy of which is attached hereto and marked as **Exhibit 1**.

My Experience Handling Class and Representative Actions.

3. The Law Office of Thomas D. Rutledge consists of me and various support staff during all times relevant to this litigation.

4. At all times, I have been the attorney of record in the above-entitled action for the Plaintiffs.

5. I am the originating and senior attorney primarily in charge of prosecuting this case.

6. I have had the privilege of practicing law for more than 28 years.

7. I have served the public during most of my adult life.

8. Before practicing law, from about April 1987 to April 1994, at the age of 21, I proudly served in the U.S. Army National Guard in various capacities: first, as a Private First Class in a combat engineer's unit; and in 1990, after receiving my commission from the Commonwealth of Massachusetts's State Officers' Candidate School, as a field artillery officer, mortar platoon leader, and infantry company executive officer in the Commonwealth of Pennsylvania (1992-1994) and Massachusetts (1987-1992) Army National Guard.

9. In 1990, I received a B.A. in History and Political Science from the

1 University of Massachusetts, Boston, Massachusetts.

2 10. In 1992, I received a C.S.S. in Management and Administration from
3 Harvard University, Cambridge, Massachusetts.

4 11. In 1995, I received a J. D. from Temple University and became a
5 member of the State Bars of Florida and Massachusetts.

6 12. In 1999, I obtained admission to the California Bar.

7 13. I am a former active member in the San Diego County Bar Association
8 (and several committees therein, such as the Labor and Employment Law Section,
9 Litigation Section, and Family Law Section), a current member of the California
10 Employment Lawyers Association, Consumer Attorneys of San Diego (CASD), and
11 National Employment Lawyers Association.

12 14. I am the former Co-Chairman to the San Diego County Bar Association
13 Labor and Employment Law Section.

14 15. I am a former Board of Director for CASD (served 2013-2016).

15 16. I am a former U.S. Navy Judge Advocate General's (JAG) Corps
16 attorney.

17 17. From 1995 to 2002, I served in various capacities on active duty as a
18 prosecutor, defense attorney, and staff judge advocate in the U.S. Navy JAG Corps
19 handling hundreds of criminal and civil litigation matters and personally preparing
20 and filing more than 5000 tax returns.

21 18. I served a total of 20 years in the U.S. military retiring from the U.S.
22 Naval Reserve in 2008.

23 19. From 2002 to 2004, I was a litigation associate at Christensen, Miller,
24 Fink, Jacobs, Glaser, Weil & Shapiro LLP in Los Angeles, California, a firm of more
25 than 100 lawyers at that time, working on complex litigation.

26 20. From 2004 to 2009, I was a litigation associate for Branton & Wilson,
27 APC, a firm of more than 15 lawyers at the time, working mostly on employment law
28 matters (defense and plaintiff).

21. From 2009 to the present, I have focused my practice exclusively on prosecuting employment law claims on behalf of employee-plaintiffs, with a very small amount of my practice devoted to personal injury, landlord-tenant, and family law matters.

22. All my employee-plaintiffs' cases, including this case, are accepted on a nothing down contingency fee basis.

23. I personally have represented thousands of class members and aggrieved employees in well over 40 class and/or representative (Private Attorney General Act) actions prosecuting wage and hour claims, more than 20 of which were certified as class actions. (See, e.g., *Julio, et al. v. Express Tires*, San Diego Superior Court Case No.: 37-2010-00097801; *Epton v. ADP TotalSource, et al.*, U.S.D.C. Case No.: 11cv0856-JM; *Tuter, et al. v. King's Seafood Company, LLC, et al.*, San Diego Superior Court Case No.: 37-2011-00084756; *Crosby v. CHMB*, San Diego Superior Court Case No.: 37-2011-0087583-CU-OE-CTL; *Diego v. JMS Properties LLC, et al.*, San Diego Superior Court Case No.: 37-2013-00056177-CU-0E-CTL; *Mitchell, et al. v. Phone Ware Inc., et al.*, San Diego Superior Court Case No.: 37-2014-00008449-CU-OE-CTL; *Long, et al. v. Stanley Black & Decker, Inc., et al.*, U.S.D.C. Case No.: 14CV1246 JLS BGS; *Villagrana v. 7-Eleven*, San Diego Superior Court Case No.: 37-2014-00008449-CU-OE-CTL; *Parnell, et al. v. Harte-Hanks Shoppers, Inc., et al.*, Orange Superior Court Case No.: 10-2014-00736236-CU-OE-CXC; *Martz v. T.R.L. Systems, Inc.*, San Bernardino Superior Court Case No.: CIVDS1515312; *Rosentein v. Pratt and Whitney, et al.*, U.S.D.C. Case No.: 15CV2183 JM/JLB; *Don v. Penn*, San Diego Superior Court Case No.: 37-2016-00025005; *Ramirez v. Coastal Trans. Serv.*, San Diego Superior Court Case No.: 37-2016-00020248; *Velez v. CoWorx Staffing Services LLC*, San Bernardino Superior Court Case No.: CIVDS1803229; *Martz v. HCI Systems Inc.*, San Bernardino Superior Court Case No.: CIVDS1607545, and many more.)

24. I have attended dozens of lectures presented by legal professionals on the

1 topic of prosecuting class action litigation in the last 28 years, I have tried wage and
2 hour cases in Superior Court, I have appeared before the Labor Commissioner on
3 scores of wage claims, and I have handled the representation of parties in dozens of
4 mediations before well-known mediators, such as Mark Rudy, Jeff Ross, Mike
5 Dickstein, David Rotman, Robert Kaplan, and Judge Herbert B. Hoffman (Ret.)

6 **Procedural History & Settlement Negotiations.**

7 25. During the prosecution of the case, Plaintiffs obtained the Class List
8 following a *Belaire West* notice process and my office spent months conducting a
9 survey of the putative Class to determine what they witnessed in the workplace.

10 26. My staff interviewed scores of witnesses, current and former employees
11 who worked for the Defendants using a survey of questions I personally prepared for
12 the assignment.

13 27. Many putative Class Members witnessed how Defendants committed a
14 variety of Labor Code violations.

15 28. One of these witnesses was Plaintiff Bright, who retained our office to
16 pursue the claims alleged in this action.

17 29. The survey we conducted was instrumental towards our analysis of
18 liability and damages.

19 30. We also engaged in extensive written discovery and had multiple
20 discussions over a two-year period regarding the merits of Plaintiffs' claims and the
21 underlying facts, as well as Defendants' potential defenses.

22 31. Defendants provided information concerning the FCRA disclosure forms
23 Defendants used; Defendants' employee handbooks; 100% of Class Members'
24 payroll information, timesheets, and similar records; records concerning Defendants'
25 hiring practices including, the type of correspondence Defendants sent to Plaintiffs
26 and Class Members regarding the background check process; the number of
27 individuals in the putative Class; and the number of workweeks putative Class
28 Members worked and how many consumer reports the Defendants procured, among

1 other things.

2 32. This information was critical for our analysis of liability and damages.

3 33. On November 16, 2022, after considerable debate, the Parties
4 participated in an all-day private mediation before the Honorable Steven Denton
5 (Ret.)

6 34. Before the mediation, the Parties submitted detailed briefs outlining our
7 respective positions.

8 35. At the conclusion of the mediation, counsel reached a handshake deal.

9 36. On June 14, 2023, all Parties signed the Settlement Agreement. See
10 **Exhibit 1.**

11 **Reasons for settlement.**

12 37. The 20% allocation to Subclass A is based on the low damage provisions
13 of the FCRA, which generally provides only \$100 to \$1,000 per negatively affected
14 person unless Class Member can prove actual damages (something very difficult in
15 FCRA cases).

16 38. The lower allocation to Subclass A is also attributed to the recent case
17 law on this subject that requires plaintiff-consumers to prove concrete harm. *See*
18 *Limon v. Circle K Stores Inc.*, 84 Cal. App. 5th 671 (2022).

19 39. The Settlement was reached only after extensive arm's-length settlement
20 negotiations that took place over a period of months.

21 40. During the Parties' settlement discussions, the Parties explored all
22 aspects of this litigation, including Defendants' defenses to liability and class
23 certification.

24 41. Additionally, attorneys' fees and a service payment for the Plaintiffs
25 were not discussed until all other material settlement terms had been agreed upon,
26 eliminating the possibility of a trade-off between compensation for the Class and
27 compensation for me, my co-counsel or the Plaintiffs.

28

1 **Kullar Analysis.**

2 42. As for the FCRA Subclass, there are only 819 putative Class Members.

3 43. As far as our reasoning is concerned consistent with the *Kullar* analysis,
4 we valued Plaintiffs' FCRA claim on the high side to be worth no more than
5 \$819,000 (819 x \$1,000) and on the realistic low side of \$0 given the *Limon* case.

6 44. Thus, \$44,420 for the FCRA Subclass members is incredibly good in my
7 opinion.

8 45. As for the Labor Code Subclass, there are only 358 putative Class
9 Members about 25% of which (90) are exempt employees all who worked a total of
10 36,600 workweeks.

11 46. Plaintiffs alleged nine Labor Code class claims (minimum wage,
12 overtime, meal break, rest break, Labor Code § 203, Labor Code § 226, Labor Code §
13 2802, failure to maintain records, and B&P § 17200), but only four of these claims
14 have a chance for certification.

15 47. Plaintiffs only alleged the B&P § 17200 class claim to extend the statute
16 of limitations to four years and, as such, it has no independent value.

17 48. As for Plaintiffs' unpaid minimum wage claim, premised on Defendants'
18 failure to pay its employees for "off-the-clock" work and prevailing wages when they
19 worked on public works projects, Plaintiffs assessed this claim very little value (less
20 than 1%) because "off-the-clock" claims almost inherently require individualized
21 inquiries making certification virtually impossible.

22 49. As far as the prevailing wage aspect of Plaintiffs' unpaid minimum wage
23 claim, it is true that a reasonable number of Class Members worked on public works
24 projects whose pay was governed by California's prevailing wage laws (about 89 total
25 during the typical workweek).

26 50. A deep dive in this area would require us to obtain a voluminous amount
27 of information, such as the number and type (state or federal) of public works projects
28 putative Class Members worked at, what type of work each of the workers performed

1 on these projects, how many hours Class Members worked on public works projects,
2 and what Defendants paid them compared to what they were required to pay them per
3 California's prevailing wage laws.

4 51. Based on our survey of the putative Class, less than a third of the Labor
5 Code Class (about 89) worked on public works projects at any given time.

6 52. About half of the public works projects were governed by federal
7 prevailing wage laws, which imposes significant restrictions on Plaintiffs recovering
8 anything in this case due to the procedural differences of state and federal prevailing
9 wage laws, which basically means we gave this a \$0 value assessment when workers
10 performed work on federal projects.

11 53. Of the third of the Labor Code Class nonexempt workers who worked on
12 state public works projects, Defendants argued they complied with state prevailing
13 wage laws by paying its workers the same or more than what they were required to
14 pay when their workers worked on state public works projects.

15 54. Further investigation of Plaintiffs' state prevailing wage claim would
16 require us to obtain copies of every contract that Defendants had with state and
17 municipal governmental agencies, what each of those contracts said as to the issue of
18 prevailing wages, what each worker did at each of these projects, what Defendants
19 paid them, and many other details requiring extensive investigation that ultimately,
20 Defendants argue, would create individualized inquiries making class certification
21 impossible.

22 55. As for Plaintiffs' overtime claim, this involved a variety of aspects, such
23 as how the Defendants misapplied the weighted average method when calculating
24 Class Members' overtime and how they did not include things like COVID bonus
25 payments into the regulate rate for overtime pay calculations.

26 56. Before mediation we were in possession of all the putative Class's wage
27 records.

28 57. Upon close inspection of the putative Class's wage records, less than 5%

1 of the Class were negatively affected by Plaintiffs' theories of overtime pay violations
2 and damages for each of the putative Class Members was often less than \$5 for each
3 pay period, meaning the total value of the claim was less than \$10,000 not including
4 the prevailing wage aspect discussed above.

5 58. As for Plaintiffs' meal and rest break claims, Plaintiffs valued this claim
6 for settlement purposes at less than \$50,000, which is based on a small percentage of
7 nonexempt employees whose records show meal break violations (less than 20%) and
8 our interviews with putative Class Members.

9 59. Defendants pointed out how their written policies were lawful and, as
10 such, class certification would be near impossible under *Brinker Rest. Corp. v. Super.*
11 *Ct.* (2012) 53 Cal.4th 1004, 1053.

12 60. Defendants also maintain the large number of Class Members who
13 worked jobs different from one another, raised too many individualized inquires and
14 diluted damages.

15 61. During the Class Period, for example, the named Plaintiffs were
16 essentially construction workers, but many other nonexempt Class Members worked
17 in a variety of different jobs (e.g., sales, office staff, janitorial, etc.) under different
18 managers at different locations.

19 62. Defendants argue that because of the significant differences in job
20 assignments among the Class Members, significant individualized inquiries were
21 inevitable raising obstacles to Plaintiffs obtaining class certification via a contested
22 motion.

23 63. These and many other defenses Defendants raised and continue to assert
24 played a large part in the settlement amount accepted by the Plaintiffs.

25 64. As for Plaintiffs' unpaid reimbursement claim, Plaintiffs' estimate
26 putative Class damages for unreimbursed cell phone expenses is only about \$25.41
27 per each negatively affected putative Class Member who worked in the field, not an
28 office (about 72 total).

65. This figure is based on the monthly average cost of cell phones of \$65 per month (see <https://www.nerdwallet.com/blog/utilities/att-cell-phone-plans>), substantially discounted by personal use of the phone compared to work-related use. (See *Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140 [the reimbursement amount is a reasonable percentage of the employee's phone bill].)

66. These calculations are illustrated as follows:

Cell Phone LC sec. 2802 Calcs		Math Formulas
Avg. Price of Cell Phone Plan Per month	\$65.00	
Avg. Price of Cell Phone Plan Per workweek	\$16.25	$\$65/4$
Avg. # of Actual Hours Using Phone on Job		
During workweek	2.5	
Actual cost of phone for work usage per		
workweek	\$0.15	$2.5/16.25$
Total Workweeks for the Class	12,200	
Total Owed to the Class for Cell Phone		
Usage	\$1,830	$12,200 * .15$
Owed Per Class Member	\$25.41	$\$1,830/72$

67. Thus, 100% of the total value of Plaintiffs' unpaid reimbursement claim is \$1,830 for cell phone usage assuming no defense.

68. As for unpaid mileage and tool purchases alleged in the case, this happened so infrequently based on our survey of the putative Class that we gave it a token value of only \$1,000.

69. The two remaining viable class claims, i.e., Plaintiffs' Labor Code §§ 203 and 226 claims, can largely be discounted by the sometimes unsurmountable legal requirements that Plaintiffs must prove "willfulness" in connection with their Labor Code § 203 claim and "injury" with respect to their Labor Code § 226 claim.

70. These are not foregone conclusions.

71. The non-derivative Lab. Code § 226 violations stem from Defendants' inconsistent statements concerning the identity of the employer on Plaintiffs' wage statements and W2 forms.

1 72. The employer identified on the wage statements was “Albireo Energy.”

2 73. The actual employer in this case, as identified on the W2 forms issued to
3 employees, was Defendant Electronic Control Systems, LLC (ECS).

4 74. Defendant ECS had a fictitious name statement on file with the County
5 from May 20, 2015 to May 20, 2020 indicating that it was doing business under the
6 fictitious name “Albireo Energy.”

7 75. Defendant ECS let the foregoing fictitious name statement expire on
8 May 20, 2020 and neglected to file a new one until February 3, 2021.

9 76. Statutory damages for the non-derivative penalties are \$496,800 for the
10 36 pay periods from May 20, 2020 through February 3, 2021 during which time
11 Defendants had no fictitious business name on file.

12 77. This is calculated as: [35 pay periods] x [\$100/pay period] x [138
13 employees] = \$496,800.

14 78. The statutory damages for the non-derivative penalties are \$1,097,200
15 for the 104 nonexempt employees for the 106 pay periods from February 1, 2020 –
16 May 19, 2020 (15 pay periods) and February 4, 2021 – November 9, 2022 (91 pay
17 periods).

18 79. This is calculated as: \$1,092,000 = [105 pay periods] x [\$100/pay
19 period] x [104 employees] + \$5,200 = [1 pay periods] x [\$50/pay period] x [104
20 employees] = \$1,097,200.

21 80. While Plaintiffs believe their Labor Code § 226 claim is their best claim,
22 Defendants are quick to point out how it is highly technical and consists more of a
23 “got you” type claim that many courts abhor than a claim involving concrete harm
24 and proof of injury.

25 81. As for Plaintiffs’ Labor Code § 203 claim, of the 358 members, the class
26 includes 181 former employees – i.e., those who left employment with Defendants
27 during the class period of which only about 136 were nonexempt employees who,
28 Plaintiffs allege, were underpaid wages.

1 82. The average rate of pay for Defendants' employees was about \$35.39.

2 83. Thus, the average waiting time penalty per former employee is about
3 \$8,494 for a total value of this claim of more than \$1.1 million.

4 84. Based on the foregoing, Plaintiffs estimate Defendants total exposure for
5 the Labor Code class claims to be about \$2.5 million assuming no defenses and 100%
6 success on all claims.

7 85. This Settlement provides the gross sum of \$388,000 to the Labor Code
8 Subclass, which is about 15% of Plaintiffs' estimated best case scenario.

9 86. As for Plaintiffs' PAGA claim, we recognize that PAGA penalties are
10 left to the court's discretion to award per the Labor Code.

11 87. A court can award the maximum amount of PAGA penalties, nothing, or
12 somewhere in the middle depending on the circumstances.

13 88. In limiting Defendants' exposure to PAGA penalties, Plaintiffs took into
14 account the immediate remedial measures Defendants voluntary undertook that would
15 likely have lent Defendants huge support in requesting the Court to award the
16 Plaintiffs low or even no PAGA penalties if this case went to trial.

17 89. In considering whether to reduce PAGA penalties, courts may evaluate
18 factors such as whether the employer's violations were harmless, whether the
19 violations occurred because the employer simply lacked awareness of the violations,
20 whether the employer took prompt measures to comply with the law upon being
21 notified of its violations, and the employer's inability to pay. *See Thurman v.*
22 *Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, at 1135-36 (2012) (affirming a
23 30% reduction of a PAGA award where employer was not financially able to pay the
24 penalties); *Liv. A Perfect Day Franchise, Inc.*, 2012 WESTLAW 2236752, *15 (N.D.
25 Cal., 2012) (denying PAGA penalties for violation of California Labor Code § 226 as
26 redundant with recovery on a class basis of wage statement penalties pursuant to
27 California Labor Code § 226(e)); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504
28 (2018) (upholding a lower court's significant reduction of PAGA penalties);

1 *Kaanaana et al. v. Barrett Business Services Inc.*, Case No. BC496090 (Super Ct. Los
2 Angeles Cty., Cal.) (reducing PAGA penalties from \$409,950 to \$53,294 after finding
3 the maximum statutory penalty amount to be unjust, arbitrary, oppressive, or
4 confiscatory); *Aguirre v. Genesis Logistics*, 2013 WESTLAW 10936035, *3 (C.D.
5 Cal. 2013) (reducing PAGA penalty for past wage statement violations by nearly 75%
6 where the full penalty amount would have been punitive and PAGA penalties were
7 largely duplicative of wage statement penalties); *Fleming v. Covidien, Inc.*, 2011
8 WESTLAW 7563047, *4 (C.D. Cal. 2011) (reducing PAGA penalties by more than
9 80% where the "aggrieved employees suffered no injury due to the erroneous wage
10 statements, and made no complaint of the errors or omissions contained therein prior
11 25 to filing suit.").

12 90. Here, many of the foregoing factors are present because Defendants'
13 violations were generally harmless, the violations occurred because Defendants
14 simply lacked awareness of the violations, once this suit was filed, Defendants took
15 prompt measures to comply with the law upon being notified of its violations.

16 91. During all times relevant, I believe we have kept the LWDA informed
17 and have exhausted all of Plaintiffs' administrative remedies.

18 92. I intend to file these papers immediately with the LWDA when filing
19 these papers with the Court.

20 93. So far, the LWDA has given no notice to the parties of their intent to
21 take this case over and prosecute the claims alleged herein.

22 **Plaintiffs' Counsel's Recommendation.**

23 94. Notwithstanding the foregoing, me and my co-counsel believe the
24 Settlement is fair and reasonable.

25 95. This belief is based on a variety of factors, such as the disputed factual
26 and legal issues involved in the Action, the risks and substantial expenses involved in
27 the further prosecution of this case, and the benefits Aggrieved Employees will
28 receive via the Settlement.

1 96. Defendants deny each and every one of Plaintiffs' allegations asserted in
2 the operative Complaint and assert they have no liability.

3 97. Nonetheless, Defendants told us they similarly believe there are benefits
4 associated with settling the Action.

5 98. After taking into account the disputed factual and legal issues involved in
6 the Action, the expense and burden of protracted litigation, and their desire to put the
7 controversy to rest, Defendants said they believe the Settlement is in Defendants' best
8 interests and is fair and reasonable.

9 **Enhancement Awards.**

10 99. The named Plaintiffs very respectfully request \$5,000 apiece as an
11 Enhancement Award.

12 100. The named Plaintiffs each played a substantial role in this litigation and
13 have the right to receive an Enhancement Award for their services as the
14 representatives of the Settlement Class and for the risks assumed by serving as the
15 named Plaintiffs, such as liability for costs and stigma to his reputation for suing their
16 former employer.

17 101. Defendants do not oppose the requested Enhancement Award.

18 102. While the details of their services will be briefed more fully when
19 Plaintiffs file their Motion Seeking Attorneys' Fees and an Enhancement Award for
20 the Plaintiffs during the final approval process, I can attest that Plaintiffs spent
21 considerable time assisting us in the case, were well aware of their duties of serving
22 the putative Class, how they always put their duty to the putative Class over their own
23 interest, and how they likewise were negatively affected by the class claims asserted
24 in this case.

25 103. Plaintiffs spent hours communicating with my office frequently,
26 providing us documents, names of witnesses, locations where events took place, and
27 were invaluable participants in the strategy for and success of the settlement
28 negotiations.

1 104. Plaintiffs risked having to succumb to extensive discovery and to the
2 payment of costs if they lost this case.

3 105. Plaintiffs also assumed the risk of retaliation in their industry for suing a
4 former employer.

5 106. Via this settlement, Plaintiffs will cause members of the Settlement Class
6 to receive money they otherwise would not have received but for this litigation.

7 107. Because the requested service payments are reasonable, Plaintiffs very
8 respectfully request the Court to approve the Enhancement Award.

9 108. The named Plaintiffs also very respectfully request \$10,000 apiece as
10 consideration for their Civil Code § 1542 release.

11 109. The foregoing amounts are fair and reasonable because the named
12 Plaintiff each maintain they have individual claims, Labor Code and the Investigative
13 Consumer Reporting Agencies Act (ICRAA) under Civ. Code § 1786, *et seq.*, the
14 total value of which for each well exceed \$10,000 if this case were to go to trial.

15 110. Under the ICRAA alone, the named Plaintiffs have the right to recover
16 “actual damages sustained by the consumer as a result of the failure or, except in the
17 case of class actions, \$10,000, whichever sum is greater.” Civ. Code § 1786.50(a)(1).

18 111. For a willful or grossly negligent violations the named Plaintiffs may
19 recover punitive damages. Civ. Code § 1786.50(b).

20 112. And under either case, the named Plaintiffs may recover costs and
21 attorneys’ fees. Civ. Code § 1786.50(a)(2).

22 113. As the First Amended Complaint alleges, the question is not whether
23 Defendants violated the ICRAA, but how many times.

24 114. Plaintiffs maintain the Defendants violated the ICRAA in many different
25 ways, each violation warrants the imposition of \$10,000 in statutory damages.

26 115. They each also suffered many Labor Code violations where if their
27 cases went to trial, the total amount they would recover would exceed \$25,000 apiece
28 if they prevail.

1 **Class Counsel's Proposed Fees and Costs.**

2 116. Per the Settlement, me and my co-counsel will seek, and Defendants do
3 not oppose, an award of fees not to exceed 33.33% of the gross settlement and costs
4 not to exceed \$30,000.

5 117. The requested fees and costs are fair compensation for undertaking
6 complex, risky, expensive, and time-consuming litigation solely on a contingency
7 basis.

8 118. Further, the requests are in line with other attorneys' fees awards in
9 California for wage and hour putative class actions.

10 119. As will be demonstrated in Plaintiffs' Counsel's moving papers, which
11 will be filed concurrently with Plaintiffs' Motion for Final Approval, Plaintiffs'
12 Counsel's requested fees are also consistent with our lodestar.

13 120. Accordingly, Plaintiffs very respectfully request the Court to approve our
14 fees and costs.

15 **Class Notice.**

16 121. Attached hereto as **Exhibit 2** are copies of the draft notices we request
17 the Court to approve following preliminary approval of the settlement.

18 122. Class Members will receive one or both versions of the Notice of Class
19 Action Settlement (the "Notice") depending the Subclass they are in

20 **Conclusion.**

21 For all the foregoing reasons, the parties very respectfully request this Court to
22 judicially approve the Class Settlement and sign the [Proposed] Order filed herewith.

23 Except as to those matters made upon information and belief, I declare under
24 penalty of perjury under the laws of the State of California that the foregoing is true
25 and correct.

26 Executed this day of August 28, 2023, in San Diego, California

27 Thomas D. Rutledge

28 /s/Declarant

Exhibit 1

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

The Parties to this Settlement Agreement and Release of Claims (“Agreement” or “Settlement Agreement” or “Settlement”) are named Plaintiffs Alek Povarnitson and Bradley Bright (“Plaintiffs”) and Defendants Albireo Energy, LLC, Electronic Control Systems, LLC, and Phil Rogers (“Defendants”). This Agreement is for the benefit of Plaintiffs and Defendants and the “Settlement Class Members,” as defined in Paragraph 3 below, and the “Releasees,” as defined in Paragraph 20 below.

RECITALS

A. WHEREAS, on October 13, 2021, Plaintiff Alek Povarnitson filed a putative class action on behalf of himself and others entitled *Povarnitson, et al. v. Albireo Energy, LLC, et al.*, in the Superior Court for the State of California, County of San Diego, Case Number: 37-2021-00043575-CU-OE-CTL (the “Lawsuit”) alleging Defendants violated the Fair Credit Reporting Act and the California Investigative Consumer Reporting Agencies Act;

B. WHEREAS, on March 22, 2022, Plaintiff Bradley Bright filed a Labor Code related complaint on behalf of himself and others with the California Labor Workforce and Development Agency (“LWDA”) Case No. LWDA-CM-820276-21 alleging Defendants violated various provisions of the California Labor Code;

C. WHEREAS, on November 16, 2022, the Parties attended a mediation with mediator and retired Superior Court Judge Steven Denton, and thereafter reached a settlement through arms-length negotiations;

D. WHEREAS, via stipulation, the Plaintiffs filed a First Amended Complaint (the operative Complaint in the Lawsuit) that adds Plaintiff Bradley Bright as a named Plaintiff and additional claims that allege 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 break requirements in violation of the California Labor Code; (6) failed to comply with rest break requirements in violation of the California Labor Code; (7) failed to pay timely earned wages during employment and upon separation of employment in violation of the California Labor Code; (8) issued inaccurate wage and earning statements in violation of the California Labor Code; (9) failed to indemnify/reimburse business

expenses in violation of the California Labor Code; (10) failed to maintain records; (11) must pay statutory and civil penalties for the foregoing Labor Code violations via the Private Attorneys General Act of 2004 (“PAGA”), California Labor Code §§ 2698, *et seq.*; and (12) violated the California Business and Professions Code §§ 17200 *et seq.*;

E. WHEREAS, pursuant to § 382 of the California Code of Civil Procedure, Plaintiffs seek to represent a putative class of all persons residing in the United States regarding whom Defendants procured or caused to be procured a consumer report for employment purposes under the Fair Credit Reporting Act during the period five years before the filing of the Lawsuit through the date of certification;

F. WHEREAS, pursuant to § 382 of the California Code of Civil Procedure, Plaintiffs seek to represent a putative class of all current or former employees who worked in California from August 7, 2016 to December 31, 2022 for Defendants, as well as a related representative group under the PAGA;

G. WHEREAS, Defendants deny they have violated the law and contend the facts do not justify class, collective, or representative treatment under the governing legal standards; and

H. WHEREAS, the Parties desire to fully and finally settle the “Released Claims,” as defined in Paragraph 20 below.

NOW, THEREFORE, in consideration of the terms, conditions, and promises set forth herein, the Parties agree as follows:

TERMS OF SETTLEMENT

1. Requirement of Court Approval.

This Settlement Agreement is conditioned upon approval by the Superior Court of California for the County of San Diego (“the Court”). The Parties agree that, in the event the Court’s approval is ultimately denied, this Agreement shall be null and void. The Parties, however, agree to work together in good faith to do everything reasonably necessary to obtain the Court’s approval of the Settlement and to cure any issues that may have caused the Court initially to deny approval of the Settlement.

2. Class Certification for Settlement Purposes Only.

Upon the Court's preliminary approval of this Agreement, the Settlement Class shall be certified for purposes of the Settlement only and for the Released Claims (as defined in Paragraph 20 below), and for no other purpose, and with Defendants maintaining unimpaired all their defenses to class certification for all other purposes other than a possible settlement. Defendants contend the facts do not justify class, collective, or representative treatment under the governing legal standards. For purposes of settling this action only, the Parties conditionally have agreed the requirements for establishing class certification have been met for settlement purposes with respect to the Settlement Class as defined in Paragraph 3 below. If the Court does not grant either preliminary or final approval of the Settlement, the fact the Parties were willing to stipulate to class certification for the purposes of this Agreement shall not have any bearing on, or be admissible in connection with, the issue of whether any class should be certified in a non-settlement context. It is not, and it should not be construed as, any admission of fact or law in this matter or any other matter that class, collective, or representative treatment is appropriate. If the Effective Date, as defined in Paragraph 15 below, does not occur, this Agreement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever, and Defendants shall retain the right to challenge the propriety of class certification, or to affirmatively move to deny class certification, for any purpose.

3. The Settlement Class.

The Settlement Class shall consist of the following three subclasses:

- a. The FCRA Class shall consist of all persons residing in the United States regarding whom Defendants ran a background check for employment purposes during the period from October 13, 2016 to December 31, 2022 (the "FCRA Class Period").
- b. The Labor Code Class shall consist of all current or former persons Defendants employed in the State of California during the period from August 7, 2016 to December 31, 2022 (the "Labor Code Class Period").
- c. The PAGA Representative Action Class shall consist of all current or former persons Defendants employed in the State of California during the period from December 7, 2019 to December 31, 2022 (the "PAGA Representative Action Class Period").

Class members may be members of one or more of the three subclasses. Class Members who do not timely opt out of the Settlement, in response to the Court-approved notice, and in conformity with the requirements set forth herein and ordered by the Court, are referred to as the “Settlement Class” or “Settlement Class Members.”

Defendants warrant and represent that as of December 31, 2022 there were approximately: (i) 819 FCRA Class Members; (ii) 358 Labor Code Class Members; and (iii) 247 PAGA Representative Action Class Members.

4. Class Counsel.

For purposes of settling this action only, the Parties agree to the designation of Thomas D. Rutledge and Ian Pancer as Class Counsel for the Settlement Class (collectively, “Class Counsel”).

5. Class Representatives.

For purposes of settling this action only, the Parties agree to the appointment of Plaintiffs Alek Povarnitson and Bradley Bright as the class representatives of the Settlement Class (the “Class Representatives”). Defendants agree not to oppose an enhancement award of up to \$5,000.00 each to the Class Representatives, Alek Povarnitson and Bradley Bright (the “Enhancement Awards” and/or “Incentive Awards”). The Class Representatives will be issued an IRS Form 1099-MISC for their Enhancement Awards. Defendants further agree not to oppose an individual general release payment, separate from any Court-awarded Enhancement Award and class Settlement Share as defined in Paragraph 13 below, of up to \$10,000.00 each to the Class Representatives, Alek Povarnitson and Bradley Bright, for individual general releases, including a waiver of rights granted pursuant to Civil Code section 1542, of all claims they may have against Defendants (the “Individual General Release Payments”). Each Class Representative’s right to receive an Enhancement Award and an Individual General Release Payment is contingent on his or her acceptance of, and agreement to, a general release and Civil Code section 1542 waiver and other terms and conditions set forth below. Each Class Representative agrees that he or she shall not opt out or otherwise request exclusion from the Settlement. The Enhancement Awards and Individual General Release Payments are not material terms of the Settlement Agreement and awards of less than the requested amounts by the Court will not give rise to a basis to abrogate the Settlement Agreement.

6. Gross Settlement Fund.

Defendants will pay \$485,000.00 (hereinafter referred to as the “Gross Settlement Fund”) in connection with this Settlement. The Gross Settlement Fund will be fully-distributed without reversion to the benefit of Defendants. Defendants shall pay no more than the Gross Settlement Fund, except that if, as of the date of preliminary approval of the Settlement, the total number of Settlement Class Members increases or decreases by more than ten percent (10%) of the number of Settlement Class Members there were estimated as of December 31, 2022, as set forth in Paragraph 3 above, there will be a commensurate increase or decrease in the amount of the Gross Settlement Fund by the same percentage by which the number of Settlement Class Members increased or decreased. Payment by Defendants of the Gross Settlement Fund pursuant to this Settlement Agreement will fully resolve the Lawsuit and settle the Released Claims as to the Releasees (as defined in Paragraph 20 below) and as to all Settlement Class Members.

All payments contemplated by this Settlement Agreement shall be made from the Gross Settlement Fund, including but not limited to, all Settlement Shares to the Settlement Class Members as defined in Paragraph 13 below, any Court-approved Enhancement Awards and Individual General Release Payments to the Class Representatives, all costs including Settlement Administration Costs as defined in Paragraph 9 below, Class Counsels’ attorneys’ fees and costs, the “PAGA Settlement Amount” as defined in Paragraph 7 below, all interest, and liquidated and/or multiple damages, but not applicable employer-side payroll taxes. Any funds remaining in the Gross Settlement Fund after conclusion of the Settlement, including funds from any uncashed settlement checks after their expiration date (as set forth in Paragraph 14 below), shall be paid to a *cy pres* organization. No Settlement funds will revert to the Defendants.

The payments contemplated by this Settlement Agreement are not being made for any purpose other than the Settlement and will not be construed as compensation for purposes of determining eligibility for or calculation of any health and welfare or other employee benefits or unemployment compensation. The Parties agree these payments do not represent any modification of any employee’s previously credited hours of service or other eligibility criteria under any employee pension benefit plan, employee welfare benefit plan, or other program or policy. These payments also will not be considered wages, compensation, or annual earnings for benefits in any year for purposes of determining eligibility for, or benefit accrual within, any employee pension benefit plan, employee welfare benefit plan or other program or policy.

7. The PAGA Settlement Amount.

From the Gross Settlement Fund, Fifteen Thousand Dollars (\$15,000.00) (the “PAGA Settlement Amount”) will be allocated to the resolution of the PAGA Representative Action Class Members’ Labor Code claims asserted via the PAGA. Pursuant to the PAGA, 75% of the PAGA Settlement Amount (i.e., \$11,250) shall be paid to the LWDA, and the remaining 25% (i.e., \$3,750) shall be paid to the PAGA Representative Action Class on a workweek basis as set forth in Paragraph 13 below. The Settlement Administrator (as defined in Paragraph 9 below) shall issue the payment to the LWDA. The Parties agree that, given the uncertainty of litigation, and the issues and difficulty involved in prevailing on the claims, this allocation is reasonable under the circumstances.

8. Attorneys’ Fees and Costs.

Class Counsel will request the Court to approve an award of attorneys’ fees in an amount not to exceed one-third of the Gross Settlement Fund (i.e., an amount not to exceed \$161,667.00) and reasonable litigation costs not to exceed \$30,000. Defendants will not oppose these requests as consistent with applicable law. Attorneys’ fees and costs will be paid out of the Gross Settlement Fund. Class Counsel, all or one, may elect to have the Settlement Administrator (as defined in Paragraph 9 below), directly or indirectly, disperse all or part of his attorneys’ fees award paid to them in periodic payments through a structured settlement. Class Counsel will bear any and all costs, fees, and expenses of administration for any periodic payments of such award and shall be fully responsible for any taxes, costs, liabilities, attorneys’ fees, and/or penalties resulting from any issues, claims, and/or disputes arising out of, related to, or incurred in connection with any such periodic payments, including without limitation, any such issues, claims, and/or disputes brought by the state or federal government concerning the payment of taxes thereon. Class Counsel shall indemnify, defend, and hold Defendants harmless for any and all taxes, costs, liabilities, attorneys’ fees, and/or penalties resulting from any issues, claims, and/or disputes arising out of, related to, or incurred in connection with any such periodic payments.

To the extent the Court approves any award for attorneys’ fees that does not equal one-third of the Gross Settlement Fund, Class Counsel retains the right to appeal the Court’s award. Should Class Counsel appeal the Court’s award, the difference between the amount awarded and the amount disputed on appeal shall be retained by the Settlement Administrator pending Class Counsel’s appeal. If Class Counsel’s appeal is unsuccessful, any funds not awarded to Class Counsel in possession of the Settlement Administrator will be added to the Net Settlement

Fund (as defined in Paragraph 12 below), for distribution to Settlement Class Members by the Settlement Administrator on a proportional basis relative to the size of their Settlement Shares (as defined in Paragraph 13 below), in accordance with other administration and distribution requirements hereunder, and Class Counsel shall pay any additional costs incurred by the Settlement Administrator for this purpose. Plaintiffs, Class Counsel, and the Settlement Class waive any additional claim for attorneys' fees and costs incurred in connection with this Lawsuit. The Parties agree the Court's approval of any request for attorneys' fees and costs is not a condition of the Settlement Agreement and that an award of less than the amounts requested would not give rise to a basis for Plaintiffs or their counsel to abrogate the Settlement Agreement.

9. Settlement Administration.

Subject to approval of the Court, the Parties agree to use Phoenix Settlement Administrators as a neutral third-party Settlement Administrator (the "Settlement Administrator") to perform all acts to carry out administration of the Settlement, including setting up, administering and making payments from the Settlement Account as defined in Paragraph 10 below; researching and updating addresses for undeliverable mail through skip-tracing; calculating and distributing Settlement Shares (as defined in Paragraph 13 below) to the Settlement Class Members pursuant to this Agreement; reporting on the status of the administration of the settlement to the Parties; paying any Court-approved Enhancement Awards and Individual General Release Payments to the Class Representatives; paying to Class Counsel any Court-approved attorneys' fees and costs; paying the fees for administration of the settlement to itself (in conformity with the Settlement and any orders of the Court); processing all necessary 1099 and W-2 IRS Forms; making employer tax payments; meeting any reporting obligations and remitting appropriate tax forms to the appropriate government agencies; distributing funds to the LWDA in resolution of the PAGA claims; receiving written objections and requests for exclusions; processing and resolving with Defendants any workweek disputes; making a Spanish-only version of the Class Notice available upon request of Class Members; and performing such duties as the Parties may mutually direct and otherwise ensuring the terms of the Settlement Agreement are achieved. The cost of administration of the Settlement by the Settlement Administrator including the Settlement Administrator's fee (the "Settlement Administration Costs") will be paid out of the Gross Settlement Fund.

10. Settlement Account.

The Settlement Administrator shall open and administer an interest-bearing account at a federally-insured bank that is mutually acceptable to the Parties and the Settlement Administrator (the “Settlement Account”). The Settlement Administrator shall: (1) open and administer the Settlement Account in such a manner as to qualify and maintain the qualification of the Settlement Account as a Qualified Settlement Fund; (2) satisfy all tax reporting, return, and filing requirements with respect to the Settlement Account and any interest or other income earned by the Settlement Account; and (3) pay from the Settlement Account all taxes (including any estimated taxes, interest, or penalties) with respect to the interest or other income earned by the Settlement Account. Fees, expenses, and costs incurred in connection with the opening and administration of the Settlement Account shall be treated as Settlement Administration Costs. No funds other than those described in this Settlement Agreement shall be added to or comingled with the Settlement Account.

11. Funding of Settlement.

Defendants shall fund the Settlement Account with the full amount of the Gross Settlement Fund (\$485,000.00) within five business days of the Effective Date of the Settlement Agreement. (See Paragraph 15.) In addition to the foregoing sum, Defendants shall pay employer taxes.

12. Net Settlement Fund.

The Net Settlement Fund shall be defined as the Gross Settlement Fund, less Court-approved attorneys’ fees and costs awarded to Class Counsel, the Class Representatives’ Court-approved Enhancement Awards and Individual General Release Payments, the LWDA portion of the PAGA Settlement Amount, and the Settlement Administration Costs.

13. Calculation of Settlement Class Member Payments.

Each Settlement Class Member’s share of the Net Settlement Fund (“Settlement Share”) shall be calculated as follows:

- a. FCRA Class: 20% of the Net Settlement Fund will be allocated in equal *pro rata* shares to each FCRA Class Member regardless of the number of reports procured on them.

- b. Labor Code Class: 80% of the Net Settlement Fund minus the 25% of the PAGA Settlement Amount to be paid to the PAGA Representative Action Class (*i.e.*, minus \$3,750) will be allocated to the Labor Code Class on a workweek basis. The Settlement Administrator will calculate the number of workweeks for each Labor Code Class Member during the Labor Code Class Period 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 by the total number of workweeks for all Labor Code Class Members during the Labor Code Class Period. The Settlement Share 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.
- c. PAGA Representative Action Class: 25% of the PAGA Settlement Amount (*i.e.*, \$3,750) will be allocated to the PAGA Representative Action Class on a workweek basis. The Settlement Administrator will calculate the number of workweeks for each PAGA Representative Action Class Member during the PAGA Representative Action Class Period based on information provided by Defendants. The Settlement Administrator will calculate the amount to be paid per workweek by dividing \$3,750 by the total number of workweeks for all PAGA Representative Action Class Members during the PAGA Representative Action Class Period. The Settlement Share 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.
- d. Settlement Class Members who are members of more than one class shall be allocated Settlement Shares for their membership in each class of which they are a member.

Each Settlement Share will be allocated as follows for tax purposes.

- a. FCRA Class and PAGA Representative Action Classes: The distribution shall be treated as liquidated damages and/or penalties, for which IRS Forms 1099 will issue to the extent required by the tax code.

- b. Labor Code Class: (i) 50% shall be treated as lost wages for which IRS Forms W-2 will issue and from which employment taxes and withholdings have been deducted; and (ii) 50% shall be treated as liquidated damages and/or penalties, for which IRS Forms 1099 will issue to the extent required by the tax code.

14. Uncashed Settlement Class Member Payments.

Settlement payment checks issued to Settlement Class Members that remain uncashed ninety (90) calendar days after such checks are mailed by the Settlement Administrator shall be distributed pursuant to § 384(b) of the California Code of Civil Procedure. Uncashed settlement payment checks will not be re-issued, except for good cause and as mutually agreed upon by the Parties in writing. Under no circumstances will Defendants be responsible for paying amounts beyond the Gross Settlement Fund for re-issued settlement payment checks. In accordance with § 384, the Settlement Administrator shall maintain the funds from which the settlement checks are distributed in the Settlement Account. Under no circumstances will Defendants be responsible for paying any interest on the unclaimed funds; instead, any interest will be paid for only by the Settlement Account. The Parties agree that uncashed checks or unclaimed funds will be distributed to Hire Heroes, USA, a nonprofit organization whose purpose is to help U.S. Veterans find employment, within ninety (90) calendar days after the expiration of the deadline for Settlement Class Members to cash their settlement payment checks. See <https://www.hireheroesusa.org/about>.

15. Timing and Manner of Payment.

The Effective Date of the Settlement Agreement shall be the later of: (1) the time for an appeal has expired without the filing of any appeal if an objection has been filed or (2) the final resolution of any appeal, writ, or challenge to the Settlement upholding the Settlement that has been filed. The Settlement is not effective pending any appeal, writ, or challenge to the Settlement. If the Court fails to approve the Settlement, or if any appellate court per an appeal fails to approve the Settlement: (i) the Settlement Agreement shall have no force and effect and the Parties shall be restored to their respective positions before the Settlement and no Party shall be bound by any of its terms; (ii) Defendants shall have no obligation to make any payments to the Settlement Class Members, Class Representatives, or Class Counsel; (iii) any preliminary approval order, or final approval order or judgment, shall be vacated; and (iv) the Settlement Agreement and all negotiations, statements, and proceedings and data relating thereto shall be

deemed confidential and not subject to disclosure for any purpose in any proceeding.

The Settlement Administrator shall pay any attorneys' fees and costs awarded by the Court to Class Counsel, pay any Enhancement Awards and Individual General Release Payments awarded by the Court to the Class Representatives, issue the payment to the LWDA, pay itself the Settlement Administration Costs that have been awarded and approved by the Court, and pay all Settlement Shares to the Settlement Class Members within ten (10) calendar days after the Effective Date. The Settlement Shares to Settlement Class Members shall be transmitted by U.S. Mail to the last-known addresses. Settlement Class Members will not have to submit a claim form or take any other affirmative action to participate in and receive Settlement Shares under the Settlement.

16. No Tax or Legal Advice.

The Parties understand and agree that Defendants are not providing tax or legal advice, or making any representations regarding tax obligations or consequences, if any, related to this Agreement, and that Settlement Class Members will assume any such employee-side tax obligations or consequences that may arise from this Agreement.

17. Class Notice, Opt-Outs, and Objections.

Subject to the Court's approval, the following shall apply:

a. Data to The Settlement Administrator. Within thirty (30) calendar days after the Court grants preliminary approval of this Settlement Agreement, Defendants shall provide the Settlement Administrator with the following information regarding the Settlement Class in an electronic format for each person within the Settlement Class. This information must include the name, last-known residence mailing address, last-known residence telephone number (if available), last-known e-mail address (if available) of all Class Members, and the weeks worked during the Class Periods for the Labor Code Class Members and the PAGA Representative Action Class Members. The Settlement Administrator will keep this data confidential and will not use the information for any purpose other than administration of this Settlement Agreement. Defendants shall cooperate with and provide additional reasonably available information to the Settlement Administrator as necessary for the purpose of giving notice to the Settlement Class Members, allocating and distributing the Settlement Shares, and otherwise administering this Settlement Agreement.

b. Notice to the Settlement Class Members. Within forty-five (45) calendar days after the Court grants preliminary approval of the Settlement Agreement, the Settlement Administrator shall mail the Notice of Class Action Settlement (the “Class Notice”) to Settlement Class Members at their last-known residence mailing addresses. This mailing shall be made via first class mail through the U.S. Postal Service. Before the mailing, the Settlement Administrator shall run the addresses through the U.S. Postal Service’s National Change of Address database and update the last-known residence mailing addresses as necessary. If any Class Notice is returned as undeliverable and received by the Settlement Administrator, the Settlement Administrator shall perform one skip trace to locate a current address and, if a current address is located, shall update the Settlement Class Member’s address and re-mail the Class Notice within five (5) calendar days. Defendants agree to provide to the Settlement Administrator all information reasonably necessary for those Settlement Class Members who cannot be located through reasonable efforts by the Settlement Administrator to the extent that Defendants possess such information.

c. Content of Notice. The Class Notice shall be attached to Plaintiffs’ Motion for Preliminary Approval of this Settlement Agreement and shall be submitted to the Court for its review and approval. One form of Class Notice shall go to each FCRA Class Member, and another form of Class Notice shall go to each Labor Code Class Member and PAGA Representative Action Class Member. Each Settlement Class Member shall receive no more than one of each type of Class Notice. The Class Notices to all Settlement Class Members shall describe the terms of the Settlement, and will set forth each Class Member’s estimated Settlement Share, assuming the Court were to approve and award the payment to the LWDA, the Class Counsels’ attorneys’ fees and litigation costs, the Class Representatives’ Enhancement Awards and Individual General Release Payments, and the Settlement Administration Costs in the full amounts allocated and available under the Settlement. The Class Notice to the Labor Code Class and the PAGA Representative Action Class shall also set forth the Settlement Administrator’s best estimate of the number of workweeks that the Settlement Class Member is being credited under the Settlement based on information provided to the Settlement Administrator by Defendants. The Class Notice to the Labor Code Class and the PAGA Representative Action Class will also instruct Class Members on how to dispute the workweeks that are attributed to them as reflected in the Class Notice. Specifically, the Class Notice will state that Class Members who wish to dispute the calculation of their workweeks shall be required to send a communication in writing to the Settlement Administrator advising of the dispute (such challenges are also referred to as “Disputes”). The communication

shall state the Class Member's name, current address, and phone number, and last four digits of his or her Social Security number, and should be signed by the Class Member or a lawful representative. The communication shall also clearly state the name of this case, the number of workweeks the Class Member contends are incorrect, and attach any documentation in support of the Dispute. The communication must be postmarked no later than forty-five (45) calendar days after the initial mailing of the Class Notice (the "Response Deadline").

Defendants' workweek data and the Settlement Administrator's calculation of the workweeks based thereon shall be presumed correct unless the Class Member proves otherwise by presenting credible written evidence as determined by the Settlement Administrator that the workweeks attributed to him or her should be revised. The Settlement Administrator shall confer with Defendants, as may be needed, to resolve any and all timely Disputes that it receives from Class Members. All Disputes will be resolved and decided by the Settlement Administrator, and the Settlement Administrator's decision on all Disputes will be final.

d. **Opting-Out.** The Class Notices to all Settlement Class Members will instruct Class Members on how to exclude themselves from the Settlement Class. The Class Notice shall state that Class Members who wish to exclude themselves from the Settlement Class shall send a communication in writing to the Settlement Administrator that clearly references the name of this case (i.e., the *Povarnitson, et al. v. Albireo Energy LLC, et al.* action), and that the Class Member wishes to be excluded from the Settlement (such requests for exclusion are also referred to as "Opt-Outs") within the 45-day Response Deadline. The communication shall state the Class Member's name, current address, phone number, last four digits of his or her Social Security number, and should be signed by the Class Member or a lawful representative. In order to validly request exclusion, Opt-Outs must be completed in their entirety in accordance with all instructions set forth herein and in the Class Notice. Any Class Member who does not affirmatively opt-out of the Settlement by submitting a timely and complete Opt-Out shall be bound by all the Settlement's terms, including those pertaining to the release of Released Claims as defined in Paragraph 20 below, as well as any final judgment that may be entered by the Court, if the Court grants final approval of the Settlement Agreement. The Settlement Administrator shall send all Opt-Outs to counsel for Defendants and Class Counsel upon request. Any person who opts out of the Settlement is not a Settlement Class Member, and is ineligible to object to the Settlement or to participate in the Settlement.

e. **Report By Settlement Administrator.** Within ten (10) calendar days following the Response Deadline, the Settlement Administrator shall provide

a written report to all Parties' counsel noting the number of Class Notices sent, the number which were returned as undeliverable (after the follow-up described above), the number of valid Opt-Outs by Class Members, and any objections received. Before the due date for this report, the Settlement Administrator will reasonably respond to requests from any Party's counsel for a report on the current status of the notice and settlement administration process and also provide regular updates to all counsel.

f. **No Solicitation of Opt-Outs.** All Parties and their respective counsel are proponents of the Settlement Agreement, and believe that it is fair, adequate, and reasonable. It is therefore agreed that neither the Parties nor their respective counsel will encourage persons to opt-out of the Settlement, except to the extent that failure to do so would cause Class Counsel to violate their professional obligations as counsel to any Settlement Class Member.

g. **Objections to Settlement.** The Class Notice to be sent to all Settlement Class Members will advise each of their right to object to all or any part of the Settlement Agreement. Only Class Members who do not opt-out of the Settlement may file an objection. Any Class Member who wishes to present an objection must submit it in writing to the Settlement Administrator within 21 days of the final approval hearing date contained in the Class Notice. The Objection must state the Class Member's name, current address, and last four digits of the Social Security number of the Objector. The Objection must also reference the name of this case (i.e., the *Povarnitson, et al. v. Albireo Energy LLC, et al.* action), that the Class Member wishes to object to the Settlement, and clearly state the grounds for the objection. Within three (3) business days of receipt of an Objection, the Settlement Administrator shall promptly provide a copy of the Objection to all Parties' counsel. The Settlement Administrator shall also present and submit any timely Objections that it receives to the Court, by way of declaration to be filed in advance of the final approval hearing. The Parties' counsel may file, at least five (5) court days before the final approval hearing (or some other date as set by the Court), responses to any Objections.

18. Tolerance of Opt-Outs.

Notwithstanding any other provision of this Agreement, if more than ten percent (10%) of the Settlement Class Members exercise their right to opt-out of this Settlement, Defendants shall have the unilateral right, in the exercise of their sole discretion, to nullify the Settlement Agreement within twenty (20) calendar days following the Response Deadline. Defendants may exercise this option to nullify the Settlement by providing written notice to Class Counsel within twenty

(20) calendar days following the Response Deadline. The Parties agree they will not encourage any Class Member to object to the Settlement or to opt-out, including without limitation any individuals represented by Class Counsel. If any individuals represented by Class Counsel, including without limitation those individuals on whose behalf Class Counsel requested personnel records, Defendants shall have the unilateral right, in the exercise of their sole discretion, to nullify the Settlement Agreement within twenty (20) calendar days following the Response Deadline. If Defendants revoke the Agreement, the Lawsuit will proceed as if no settlement had been attempted, and Defendants shall be solely responsible for any costs incurred by the Settlement Administrator through the date of revocation.

19. Non-Admission of Liability.

This Agreement is entered into in compromise of disputed claims. Plaintiffs and their attorneys acknowledge and agree the execution of this Agreement and the payment of consideration hereunder are not and shall not be construed in any way as an admission of wrongdoing or liability on the part of Defendants or any other person or business entity affiliated with Defendants, and that Defendants deny all allegations of wrongdoing alleged by Plaintiffs. The Parties intend, by their actions pursuant to this Agreement, merely to avoid the expense, delay, uncertainty, and burden of litigation.

20. Release By the Settlement Class and Covenant Not to Sue.

The “Releasees” under the Settlement shall consist of: (1) Defendants Albireo Energy, LLC, Electronic Control Systems, LLC, and Phil Rogers and (2) their past, present, and future shareholders, directors, and officers including but not limited to Phil Rogers.

Upon the Effective Date, Plaintiffs and each member of the Settlement Class shall be deemed to have released the Releasees as to the following “Released Claims.”

- a. FCRA Class: The FCRA Class Members shall be deemed to have released the Releasees from 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 claims that were alleged or that could have been alleged in the First Amended Complaint relating to each FCRA Class Member’s background check, including but not limited to

claims under the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.*, arising at any time during and up through the FCRA Class Period.

- b. Labor Code and PAGA Representative Action Classes: The Labor Code Class Members and PAGA Representative Action Class Members shall be deemed to have released the Releasees from 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 First Amended Complaint, including but not limited to any and all claims for unpaid wages, failure to pay minimum and prevailing 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 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 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 Labor Code Class Period based on the facts alleged in the operative Complaint.
- c. The Scope of Settlement and the release of claims herein is intentionally intended by the Parties to be as broad as possible and include "all claims," which is expressly intended by the Parties to "includ[e] 'claims that are not expressly enumerated in the release'" as recognized by the Court of Appeal in *Villacres v. ABM Industries, Inc.*, 189 Cal. App. 4th 562, 587 (2010) (acknowledging broad waiver of potential claims, including PAGA-based claims). Thus, the Parties intend this release to cover all claims for relief of any kind based on the allegations raised by Plaintiffs, including the LWDA, and all transactions and occurrences upon which those claims were based,

including all legal remedies and damages brought under state, local or federal law; any claim brought pursuant to the common law; all injunctive remedies and restitution; all statutory damages and civil penalties sought on behalf of the LWDA under the PAGA, as well as alleged violations of IWC Wage Orders, the California Labor Code, California Business & Professions Code § 17200, *et seq.*, or any other source thereof; and all costs and attorneys' fees related thereto based on the facts alleged in the operative Complaint.

- d. Settlement Class Members who are members of more than one class shall be deemed to be releasing Released Claims for each class of which they are a member.
- e. This release does not extend to claims which do not arise out of or are not reasonably related to the allegations contained in the First Amended Complaint, and specifically excludes claims for workers' compensation, personal injuries, unemployment insurance, state disability compensation, claims under the Employment Retirement Income Security Act of 1974, previously vested benefits under any employer-sponsored benefits plan, wrongful termination, discrimination, retaliation, and harassment, including but not limited to, those arising under the Age Discrimination in Employment Act, the California Fair Employment and Housing Act, Title VII of the Federal Civil Rights Act of 1964, and/or Federal Civil Rights Act of 1991, or any similar state or federal laws, the Federal Equal Pay Act of 1963, violations of the Americans with Disabilities Act of 1990 or violations of any other state or federal law, rule or regulation concerning discrimination, retaliation, and/or harassment if they are unrelated to the allegations in the First Amended Complaint.

The Parties stipulate that beyond the Gross Settlement Fund, except as otherwise provided in Paragraph 6 above, Defendants shall not owe any further monies to the Settlement Class or to the State of California based upon any claim made in the Lawsuit or in any original or amended complaint filed therein.

21. General Release by Class Representatives.

In consideration for the promises set forth in this Agreement, the named Plaintiffs Alek Povarnitson and Bradley Bright do hereby – for themselves and for their heirs, representatives, attorneys, executors, administrators, successors, and assigns – release, acquit, and forever discharge Defendants and the Releasees from

any and all actions, cause of actions, obligations, costs, expenses, damages, penalties, losses, claims, liability, suits, debts, demands, and benefits (including attorneys' fees and costs), of whatever character, in law or in equity, known or unknown, suspected or unsuspected, matured or unmatured, of any kind or nature whatsoever, now existing or arising in the future, based on any act, omission, event, occurrence, or non-occurrence from the beginning of time to the date of execution hereof, including but not limited to any claims or causes of action arising out of or in any way relating to Plaintiffs' employment with Defendants, and any other claims which have been or could have been made in Plaintiffs' original and amended complaints and this Lawsuit.

Plaintiffs and Defendants agree this release of claims includes, but is not limited to, claims for breach of any implied or express contract or covenant; claims for promissory estoppel; claims of entitlement to any pay, including commissions; claims of wrongful denial of insurance and employee benefits; claims for wrongful termination, retaliatory discharge or public policy violations of whatever kind or nature, defamation, invasion of privacy, fraud, misrepresentation, emotional distress or other common law or tort matters; claims for any penalties; claims of harassment, retaliation or discrimination based on race, color, religion, sex, sexual orientation, national origin, ancestry, physical or mental disability, medical condition, marital status, age, or any other protected status under federal, state, or local law; claims under the California Labor, Government, Business and Professions, and Health and Safety Codes; claims based upon the California Constitution; claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*; claims under the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.*; claims under the California Investigative Consumer Reporting Agencies Act, as well as California Civil Code §§ 1786, *et seq.*; claims under the California Consumer Credit Reporting Agencies Act, California Civil Code §§ 1785, *et seq.*; claims based on any federal, state or governmental statute, regulation or ordinance, including, without limitation, the California Confidentiality of Medical Information Act, the California Fair Employment & Housing Act, the California Unfair Competition Law, disputed claims under the California Wage Orders, the California Family Rights Act, the Age Discrimination in Employment Act ("ADEA"), the Older Workers Benefits Protection Act ("OWBPA"), Title VII of the Civil Rights Act, the Americans With Disabilities Act, the Labor Management Relations Act, and the Family Medical Leave Act, all as amended. Plaintiffs further agree they will not serve as putative class or collective action representatives in any future action purporting to bring any of these released claims against any of the Releasees (as set forth in Paragraph 20 above).

Excluded from this release are any claims for breach of this Settlement Agreement and any claims that cannot be waived by law, including but not limited to the right to file a charge with, or participate in an investigation conducted by, the Equal Employment Opportunity Commission (“EEOC”) and/or the California Department of Fair Employment and Housing (“DFEH”). Plaintiffs waive, however, their right to any monetary recovery or other relief should any agency pursue claims on Plaintiffs’ behalf that arose on or before the date of this Settlement Agreement.

22. Class Representatives’ Individual Releases of Unknown Claims.

For the purpose of implementing a full and complete release, the named Plaintiffs expressly acknowledge the general release they give pursuant to this Agreement is intended to include in its effect, without limitation, claims they did not know or suspect to exist at the time of execution hereof, regardless of whether the knowledge of such claims, or the facts upon which they might be based, would materially have affected the settlement of this matter, and the consideration given under this Agreement is also for the release of those claims and contemplates the extinguishment of any such unknown claims. In furtherance of this Settlement, Plaintiffs waive any rights they may have under California Civil Code § 1542 (and other similar statutes and regulations). Section 1542 states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

23. Advice of Counsel.

The Parties to this Settlement Agreement are represented by competent counsel, and they have had an opportunity to consult with their counsel. The Parties to this Settlement Agreement also agree that it reflects their good faith compromise of the claims raised or that could have been raised in the Lawsuit, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel.

24. Indemnification for Liens.

Defendants agree to satisfy any liens asserted by the AEGIS LAW FIRM, PC or their predecessors or assigns that may be asserted in this case or in any other related case and hold harmless and indemnify Plaintiffs, Class Members, and Class Counsel for any payment thereof.

25. Predecessors and Successors.

This Agreement shall be binding upon the Parties, and their heirs, representatives, executors, administrators, predecessors and successors, insurers, and assignees, and shall inure to the benefit of each and all the Releasees, and to their heirs, representatives, executors, administrators, successors, and assignees.

26. No Prior Assignments.

The Parties hereto represent, covenant, and warrant they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights herein released and discharged except as set forth herein.

27. Injunction Barring Pursuit of Released Claims.

The Parties agree the final approval order will include a provision enjoining the Settlement Class Members from filing any new claims before the California Division of Labor Standards Enforcement (“DLSE”) or the LWDA, or from initiating any other proceedings with any other entities or in any courts, regarding the Released Claims pending final approval of the Settlement; this provision is intended to provide all Settlement Class Members the opportunity to participate in the Settlement or to opt out of the Settlement, and to ensure finality of the Settlement and the Released Claims to the fullest extent permitted by law.

28. Confidentiality of Confidential Documents.

Upon distribution of all Settlement funds, the Parties shall either (a) return documents designated as confidential to counsel for the party who provided such information within thirty (30) calendar days; or (b) destroy such documents upon consent of the party who provided the confidential documents and, upon request, certify in writing within thirty (30) calendar days the documents have been destroyed.

29. Parties' Authority.

The signatories hereto hereby represent they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

30. Mutual Full Cooperation.

The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become reasonably necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendants and their counsel, take all reasonably necessary steps to secure the Court's preliminary and final approval of this Settlement Agreement.

31. Notices

Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the fifth (5th) calendar day after mailing by First Class U.S. Mail, addressed as follows:

To Class Counsel:

Thomas D. Rutledge, Esquire
Law Office of Thomas D. Rutledge
16956 Via de Santa Fe, Suite 1847
Rancho Santa Fe, California 92091-4606

Ian Pancer, Esquire
105 West F St. 4th Floor
San Diego, California 92101

///

///

To Counsel For Defendants:

Christopher Rowlett, Esquire
Perez, Vaughn, & Feasby, Inc.
600 B. Street, Suite 2100
San Diego, California 92101

32. Final Settlement Approval Requirement.

Should the Court ultimately decline to approve this Settlement Agreement in any material respect, except for approval of the award of Class Counsels' attorneys' fees and costs, Plaintiffs' Enhancement Awards and Individual General Release Payments, or Settlement Administration Costs, or should the Court fail to enter final judgment, Defendants shall have no obligation to make any payment under this Settlement Agreement, and in the event that Defendants have made any such payment, such monies shall be returned promptly to Defendants (less any Settlement Administration Costs already reasonably incurred by the Settlement Administrator).

33. Stay On Any New Actions.

The Parties agree that Settlement Class Members shall be enjoined from initiating or prosecuting any new or existing proceeding on any claim to be released under the Settlement Agreement, unless and until the class member has opted-out of the Settlement Class in the manner described above.

34. Miscellaneous.

a. The language of all parts in this Agreement shall be construed as a whole, according to its fair meaning, and not strictly for or against any party.

b. This Agreement constitutes a single, integrated contract setting forth the entire agreement between the Parties and fully supersedes any and all prior agreements and understandings between the Parties pertaining to the subject matter of this Agreement.

c. The headings used herein are for reference only and shall not affect the construction of this Agreement.

d. This Agreement is made and entered into in the State of California and shall in all respects be interpreted and governed under the laws of California.

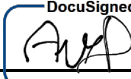
e. This Agreement may be executed in one or more counterparts, by facsimile, email (*i.e.*, PDF), or original signature, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

f. Material terms of this Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties' counsel, and approved by the Court.

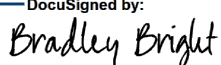
g. Without further order of the Court, the Parties via counsel hereto may agree in writing to reasonable extensions of time to carry out any of the provisions of the Settlement, modify immaterial terms of this Agreement, or both.

h. Should any provision in this Agreement be declared or determined to be illegal or invalid, the validity of the remaining parts, terms, or provisions, shall not be affected thereby, and the illegal or invalid part, term, or provision shall be deemed not to be part of this Agreement, and all remaining provisions shall remain valid and enforceable.

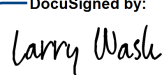
Dated: 5/31/2023

By: 
Alek Povarnitsyn
Plaintiff and Class Representative

Dated: 5/31/2023

By: 
Bradley Bright
Plaintiff and Class Representative

Dated: 6/10/2023

By: 
Larry Wash
Its CEO
Authorized Officer or Agent for
Defendants Albireo Energy, LLC and
Electronic Control Systems, LLC

Dated: 6/14/2023

By: 
Phil Rogers

Exhibit 2

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????

?????

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 *cypres* 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????

????

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????

????

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????

?????

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**

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 ran a background check on you for employment purposes during the period of October 13, 2016 to December 31, 2022.

If Defendants' records also indicate that you worked for Defendants in California during the foregoing periods, 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 in the Action, 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 their individual general releases of all claims encompassed in the Action, 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 allocate the 20% of the Net Settlement Fund that is allocated to the FCRA Class in equal *pro rata* shares to each FCRA Class Member.

According to the calculations by the Settlement Administrator, it is estimated you will receive a gross payment of \$[insert].

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.

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.

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 such, 100% of each Individual Settlement Payment to an FCRA Class Member 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. 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 calendar 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 FCRA 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 claims that were alleged or that could have been alleged in the operative First Amended Complaint filed in the Action relating to each FCRA Class Member's background check, including but not limited to claims under the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.*, arising at any time during and up through the period starting from October 13, 2016 to December 31, 2022.

EXCLUDING YOURSELF FROM THE SETTLEMENT

You are automatically a Class Member and will be bound by the Released Claims 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????

?????

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 only receive 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????

????

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.

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THE COURT'S FINAL APPROVAL HEARING

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

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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?

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

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

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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:

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

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

I, THOMAS D. RUTLEDGE, the undersigned, am employed in the County of San Diego, State of California; I am over the age of 18 and not a party to the within action; my business address is 16956 Via de Santa Fe, Suite 1847, Rancho Santa Fe, California 92091-4606.

On August 28, 2023, I served the foregoing document(s) described as:

**DECLARATION OF THOMAS D. RUTLEDGE AND IAN PANCER ISO
PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

on the interested parties to this action by placing a copy thereof enclosed in a sealed envelope addressed as follows: **See Attached List.**

☒ **(BY MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence was deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in San Diego, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

☒ **(BY E-MAIL via E-file)** I am readily familiar with the business practice for collection and processing of correspondence for emailing with the Court authorized third-party vendor. This correspondence was sent via email via this third-party vendor pursuant to the vendor's policies and practices.

☐ **(BY OVERNIGHT DELIVERY SERVICE)** I served the foregoing document by Federal Express, an express service carrier which provides overnight delivery, as follows. I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.

☐ **(BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to the offices of the above named addressee(s).

☐ **(BY FACSIMILE)** I caused such documents to be delivered via facsimile to the offices of the addressee(s) at the following facsimile number:

Executed August 28, 2023, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

THOMAS D. RUTLEDGE
/s/THOMAS D. RUTLEDGE

SERVICE LIST

Christopher Rowlett, Esquire
PEREZ, VAUGHN, & FEASBY, INC.
600 B. Street, Suite 2100
San Diego, California 92101

Attorneys for Defendants