

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/18/2023 at 05:04:00 PM

Clerk of the Superior Court
By Emily Schilawski, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

ALEKSANDR POVARNITSON and) Case No.: 37-2021-00043575-CU-OE-
BRADLEY BRIGHT, individually and) CTL
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.

Judge: Hon. Katherine Bacal
Dept.: 69

~~PROPOSED~~ ORDER

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8
9

10
11
12
13
14
15
16
17
18
19

20
21
22
23
24
25
26
27
28

1 Parties.

2 Accordingly, good cause appearing, the Motion for Preliminary Approval of
3 the Class Action Settlement is hereby GRANTED, and as a part of said preliminary
4 approval, the Court hereby orders that the class be conditionally certified for
5 settlement purposes only, and that the Law Offices of Thomas D. Rutledge and Ian
6 Pancer are conditionally and preliminarily appointed Class Counsel.

7 **THE COURT FURTHER FINDS AS FOLLOWS:**

8 1. The Court finds on a preliminary basis that the settlement agreement,
9 incorporated by this reference and made a part of this order granting preliminary
10 approval, is within the range of reasonableness of a settlement that could ultimately
11 be given final approval by this court, although the Court notes that Defendants
12 vigorously deny and continue to deny generally each and all the claims and
13 contentions alleged in this Action.

14 2. The Court preliminarily finds that the terms of the settlement are fair,
15 just, reasonable, and adequate, pursuant to § 382 of the California Code of Civil
16 Procedure.

17 3. The Court finds that the elements of numerosity, commonality,
18 typicality, and adequacy have been established to support conditional certification of
19 the class for settlement purposes only, with Plaintiffs Povarnitson and Bright acting as
20 Class Representatives, and that the settlement has no obvious deficiencies and does
21 not improperly grant preferential treatment to the Class Representative or segments of
22 the Class.

23 4. The Court further finds that significant investigation, research, litigation,
24 and formal and informal discovery have been conducted such that the Counsel for the
25 Parties are able to reasonably evaluate their respective positions, and that the
26 settlement appears to be the product of serious, informed, and non-collusive
27 negotiations.

28 5. The Court hereby appoints, for settlement purposes, Plaintiffs

1 Povarnitson and Bright as Class Representatives.

2 6. The court further finds that the Law Offices of Thomas D. Rutledge and
3 Ian Pancer have established adequacy to be appointed as Class Counsel.

4 7. The Settlement Class provisionally certified by this Order for settlement
5 purposes The Settlement Class consist of the following three subclasses:

6 a. The FCRA Class shall consist of all persons residing in the
7 United States regarding whom Defendants ran a background
8 check for employment purposes during the period from October
9 13, 2016 to December 31, 2022.

10 b. The Labor Code Class shall consist of all current or former
11 persons Defendants employed in the State of California during
12 the period from August 7, 2016 to December 31, 2022.

13 c. The PAGA Representative Action Class shall consist of all
14 current or former persons Defendants employed in the State of
15 California during the period from December 7, 2019 to
16 December 31, 2022.

17 8. The Court approves and appoints Phoenix Settlement Administrators to
18 serve as the Settlement administrator.

19 9. The Court approves the proposed Class Notice (attached as Exhibit 2 to
20 the Declaration of Thomas D. Rutledge filed in support of the Motion for Preliminary
21 Approval), and orders an appropriately modified version of this Notice to be mailed to
22 Settlement Class Members in accordance with the terms of the Settlement.

23 10. The Court finds that the Class Notice constitutes the best notice
24 practicable under the circumstances and is in full compliance with the laws of the
25 state of California and, to the extent applicable, the United States Constitution and the
26 requirements of due process.

27 11. The Court further finds that the Class Notice fully and accurately informs
28 Settlement Class Members of all material elements of the proposed Class Action
Settlement, of each Settlement Class Member's right to be excluded from the class,

1 and each Settlement Class Member's right and opportunity to object to the proposed
2 Class Action Settlement.

3 12. The Class Notice adequately advises the class about:

- 4 A. The class action;
- 5 B. The settlement terms and the benefits available to each Settlement
6 Class Member;
- 7 C. Each Settlement Class Member's right to object and/or "opt out,"
8 and the timing and procedures for doing so;
- 9 D. The conditional certification of the Class for settlement purposes
10 only;
- 11 E. Preliminary court approval of the proposed settlement;
- 12 F. Timing and procedures for distributing the settlement funds; and
- 13 G. The date of the final fairness hearing, as well as the rights of
14 members to submit objections and appear in connection with said
15 hearing.

16 Accordingly, the Court hereby approves the proposed Class Notice and finds
17 that mailing to the last known address of members of the class, as specifically
18 described within the Settlement Agreement, constitutes an effective method of
19 notifying Settlement Class Members of their rights with respect to the class action and
20 proposed settlement.

21 **THE COURT FURTHER ORDERS AS FOLLOWS:**

22 13. Within 30 days after entry by the Court of its Order of Preliminary
23 Approval, Defendants shall provide the Settlement Administrator with an updated list
24 containing names, social security numbers, dates of employment, weeks worked
25 based on Defendants' payroll records, and last-known mailing addresses for each
26 member of the Class.

27 14. Any Class Member who wishes to object to the Settlement must file with
28 the Court and submit the objection to the Settlement Administrator pursuant to the

1 directions set forth in the Class Notice within 21 days after the date that the Class
2 Notice is sent to the Settlement Class.

3 15. Any Class Member who wishes to request exclusion from the Settlement
4 including excluding themselves from any monetary relief and associated releases
5 must submit a request for exclusion pursuant to the directions set forth in the Class
6 Notice, and return the Request for Exclusion Form to the Settlement Administrator
7 post-marked within 45 days after the date that the Class Notice is sent to the
8 Settlement Class.

9 16. The Court will hold a hearing at **1:30 p.m. on March 8, 2024**, in
10 Department C-69 of the Superior Court of California, County of San Diego located at
11 330 West Broadway, San Diego, California 92101, to determine whether the Court
12 should grant final approval of the Settlement as fair, reasonable, and adequate.

13 17. The Court will hear all evidence and argument necessary to evaluate the
14 Settlement, and will consider Plaintiffs' request for the Enhancement Awards and
15 Class Counsel's request for attorneys' fees and costs.

16 18. The Court expressly reserves the right to adjourn or continue the Final
17 Fairness Hearing from time to time without further notice to the Class.

18 19. Any Class Member may be heard in support of, or in opposition to, the
19 Court's determination of the good faith, fairness, reasonableness and adequacy of the
20 proposed settlement, the requested attorney's fees and costs, the requested class
21 representative's enhancement, and any order granting final approval; provided,
22 however, that no person, except Class Counsel and counsel for Defendants shall be
23 heard regarding such matters unless such person has complied with the conditions set
24 forth in the Class Notice.

25 20. If, for any reason, the court does not execute and file an order granting
26 final approval, or if the effective settlement date does not occur for any reason
27 whatsoever, the settlement agreement and the proposed settlement which is the
28 subject of this order and all evidence and proceedings had in connection therewith

1 shall be dismissed without prejudice to the status quo ante rights of the parties to the
2 litigation, as more specifically set forth in the Settlement Agreement.

3 21. Pending further order of this court, all proceedings in this matter except
4 those contemplated herein and in the Settlement Agreement are stayed.

5 22. To facilitate administration of the settlement pending final approval,
6 Class Members are enjoined from initiating or prosecuting any proceedings (including
7 filing any claims with the California Division of Labor Standards Enforcement) on
8 any claims to be released pursuant to the settlement, unless and until the Class
9 Member has submitted a valid and timely request to be excluded from the settlement.

10 23. In the event the settlement does not become final for any reason, this
11 preliminary order shall be of no further force or effect and the fact that the Parties
12 were willing to stipulate to class certification as part of the settlement shall have no
13 bearing on, and not be admissible in connection with, the issue of whether a class
14 should be certified in a non-settlement context.

15 **IT IS SO ORDERED.**

16
17 Dated: October 18, 2023



18 Hon. Katherine Bacal
19 Judge of the Superior Court of California
20 County of San Diego
21
22
23
24
25
26
27
28