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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

OCT 20 2022

BY 
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Class and Collective Members, and
Aggrieved Employees*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

MANDELA BYAM, SEBASTIAN CIFUENTES,
ANDY FREE, MATTHEW HARMON, MIN
SOO KIM, JAMINE NYAMEKYE, DANIEL
ORTIZ, NATHAN PEGRAM, MARYANNE
PIRRELLO, JESUS RAMOS, and CODY
WILSON, individually and on behalf of all others
similarly situated,,

Plaintiffs,

v.

FLOCK FREIGHT, INC.,

Defendant.

Case No. CIV SB 2200575

**~~[PROPOSED]~~ ORDER (1)
CERTIFYING CLASS AND
COLLECTIVE FOR SETTLEMENT
PURPOSES ONLY; (2) GRANTING
PRELIMINARY APPROVAL OF
CLASS AND COLLECTIVE ACTION
SETTLEMENT; (3) APPROVING
NOTICE AND NOTICE PLAN; (4)
SETTING FINAL APPROVAL AND
FAIRNESS HEARING**

Judge: Hon. David Cohn
Dept.: S-26
Date: October 20, 2022
Time: 10:00 a.m.
Date Action Filed: January 4, 2022

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10 This Order incorporates by reference the definitions in the Settlement Agreement and all
11 terms defined therein shall have the same meaning in this Order.

1. Pursuant to California Code of Civil Procedure § 382, the Court preliminarily certifies the following Settlement Class for settlement purposes only: current and former employees who worked for Flock Freight, Inc. as exempt-classified Sales Representatives in California at any time between June 11, 2017 and the Release Date.

2. In preliminary certifying the Settlement Class, the Court finds and concludes that under the relevant standard for certifying a class for settlement purposes that: the Settlement Class is ascertainable and sufficiently numerous, there exists a well-defined community of interest, and a class action settlement is a superior method of adjudication for this case.

3. The Court appoints Named Plaintiffs Mandela Byam, Sebastian Cifuentes, Andy Free, Matthew Harmon, Min Soo Kim, Jamine Nyamekye, Daniel Ortiz, Nathan Pegram, Maryanne Pirrello, Jesus Ramos, and Cody Wilson as Settlement Class Representatives. The Court finds and concludes that for the purposes of certifying a settlement class, there is a commonality of interest between the Plaintiffs and the members of the Settlement Class and that the Plaintiffs' claims are typical of the claims of absent members of the Settlement Class.

1 4. The Court finds and concludes that the law firms Outten & Golden LLP and
2 Harlan Law, PC have extensive experience and expertise in litigating complex employment
3 class and collective actions and are hereby appointed Settlement Class Counsel.

4 5. The Court also conditionally certifies the following Settlement Collective for
5 settlement purposes only: exempt-classified Sales Representatives who worked for Flock
6 Freight, Inc. in the United States at any time between June 11, 2018 and the Release Date.

7 **Preliminary Approval of the Class and Collective Action Settlement**

8 6. The Court preliminarily approves the Settlement Agreement because the
9 Settlement appears to have been the product of serious, informed, and extensive arm's length
10 negotiation; and finds on a preliminary basis that the Settlement Agreement is fair, reasonable,
11 and adequate and appears to be within the range of reasonableness of a settlement which the
12 Court could ultimately give final approval and in the best interests of the Settlement Class
13 Members. The Settlement meets the standards for preliminary approval.

14 7. The Court finds that the settlement of Plaintiffs' California Labor Code Private
15 Attorney General Act ("PAGA") claim is fair and reasonable, and preliminarily approves the
16 settlement and release of that claim and the PAGA payment in the amount of \$29,600, with
17 25% allocated to PAGA Members and 75% allocated to the California Labor and Workforce
18 and Development Agency.

19 **Approval of Notice and Notice Plan**

20 8. The Court approves, as to form and content, the proposed Class Notice ("Notice")
21 to be sent to Settlement Class Members, which is attached hereto as Exhibit 1 and incorporated
22 by reference.

23 9. The Court approves the procedure for Settlement Class Members to exclude
24 themselves from or object to the Settlement as set forth in the Settlement Agreement and
25 Notice.

26 10. ILYM Group, Inc. ("ILYM Group") is appointed as the Settlement Administrator.
27 The Settlement Administrator shall comply with its duties as set forth in the Settlement
28 Agreement.

1 11. The Court approves the distribution of the Notice substantially in the manner and
2 form as set forth in the Settlement Agreement. The Court directs the mailing of the Notice by
3 first-class U.S. mail, email, text message, and website to Settlement Class Members in
4 accordance with the Implementation Schedule set forth below. The Court finds that the Notice
5 and distribution plan for the Notice meet the requirements of due process and provide the best
6 notice practicable under the circumstances and shall constitute due and sufficient notice to all
7 Settlement Class Members.

8 12. The Settlement Administrator shall, within thirty-five (35) calendar days of the
9 date of preliminary approval of the Settlement, mail the Notice by first-class U.S. Mail and
10 email to each Settlement Class Member. The Settlement Administrator will also send
11 Settlement Class Members a text message advising Settlement Class Members of a website
12 where they can view additional information about the settlement and update their contact
13 information.

14 13. Any Settlement Class Member may choose to opt out of and be excluded from the
15 Settlement Class as provided in the Notice by following the instructions set forth therein.
16 Requests to be excluded must be postmarked with forty-five (45) calendar days after mailing of
17 the Notice or thirty (30) days from the date a Notice returned undeliverable was re-mailed
18 (“Objection/Opt-Out Deadline”). Any Settlement Class Member who timely submits an Opt-
19 Out Statement will not be entitled to any recovery under the Settlement, will not be bound by
20 the Settlement, and will not have any right to object to the Settlement or appeal the Final
21 Approval Order and Judgment. Any Opt-Out Statement must be made in accordance with the
22 Settlement Agreement and the instructions in the Notice. California Class Members who do not
23 submit a timely Opt-Out Statement and Participating FLSA Collective Members shall be bound
24 by all determinations of the Court, the Settlement, and any Final Approval Order and Judgment
25 that may be entered thereon; and any California Class Member who cashes a Settlement Check
26 shall be subject to the FLSA Release.

27 14. Any Settlement Class Member may choose to object to the Settlement by
28 following the instructions set forth in the Notice and appearing at the Final Approval Hearing to

object ("Objectors"). As provided in the Notice, no later than forty-five (45) calendar days after mailing of the Notice or thirty (30) days from the date a Notice returned undeliverable was re-mailed ("Objection/Opt Out Deadline"), Objectors shall mail the Settlement Administrator a written statement objecting to the Settlement ("Objection") via First Class United States Mail and must not have submitted an Opt-Out Statement. The Objection must: (a) contain the name, address, telephone number, and signature of the person submitting the Objection; (b) state all reasons for the objection and any supporting documentation; and (c) be postmarked by the Objection/Opt Out Deadline and returned to the Settlement Administrator at the specified address provided in the Notice. Settlement Class Members who fail to substantially comply with these requirements may be deemed to have waived any objections and may be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement. Settlement Class Members who submit a timely Objection will have a right to appear at the Final Approval Hearing in order to have their objections heard by the Court.

Final Approval Hearing

15. A final fairness hearing on the question of whether the proposed settlement should be finally approved is scheduled in Department S-26 of this Court located at 247 West Third Street, San Bernardino, CA 92415 on [4/20], 2023 at [10:00am a.m./p.m.] to determine all necessary matters concerning the Settlement, including: whether the proposed Settlement is fair, adequate, and reasonable; whether the Settlement should be finally approved by the Court; whether the plan of allocation contained in the Settlement should be approved as fair, adequate, and reasonable; whether to grant the motion for attorneys' fees and costs payment, the class representative service awards, and settlement administration costs; and whether a Final Approval Order and Judgment should be entered.

16. The Motion for Final Approval shall be filed by Plaintiffs no later than sixteen (16) court days before the Final Fairness and Approval Hearing.

17. Pending the Fairness Hearing, all proceedings in this action, other than those necessary to carry out or enforce the terms of the Settlement Agreement and this Order, are stayed.

1 18. To facilitate administration of the Settlement pending final approval, the Court
2 hereby enjoins all Settlement Class Members from filing or prosecuting any claims, suits or
3 administrative proceedings regarding claims released by the settlement unless and until such
4 Settlement Class Members have filed an Opt-Out Statement with the Administrator and the time
5 for filing claims has elapsed.

6 19. In accordance with the Settlement, the Court adopts the following
7 "Implementation Schedule" for further proceedings:

<u>EVENT</u>	<u>DATE</u>
Defendant to provide Settlement Administrator with the Class List	<u> </u> , 2022 (21 calendar days after entry of order granting Preliminary Approval of Settlement)
Settlement Administrator mails Notice to Class Members	<u> </u> , 2022 (35 calendar days after entry of order granting Preliminary Approval of Settlement)
Response deadline to opt-out or object or dispute the individual settlement payment or eligible workweeks listed on the Notice.	45 calendar days after the Settlement Administrator mails Notice to Class Members (or 30 calendar days after Notice is re-mailed)
Last day for Class Counsel to file: Supplemental Declarations by Counsel and the Settlement Administrator verifying proper service of class notice; Written objections (if any); Written response(s) to objections (if any); Briefs and Declarations in Support of Final Approval, Attorneys' Fees and Costs, and Service Awards	<u>per CCP</u> (16 court days before Final Approval Hearing)
Final Approval Hearing	<u>4/20/22</u> (at least 151 calendar days after entry of order granting Preliminary Approval of Settlement)


25 20. The Fairness Hearing and related prior deadlines set forth above may, from time
26 to time and without further notice to the Settlement Class Members (except those who have
27 submitted timely and valid Objections), be continued or adjourned by Order of the Court.
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21. If the Settlement does not become effective in accordance with its terms, or the Settlement is not finally approved, or is terminated, canceled, or fails to become effective for any reason, this Order shall be deemed vacated and shall have no force or effect whatsoever, and the Action shall proceed as if no settlement has been attempted.

IT IS SO ORDERED.

Dated: 10/20/20



HONORABLE DAVID COHN
SUPERIOR COURT OF CALIFORNIA

Exhibit 1

OFFICIAL COURT NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

[NAME]
[ADDRESS]
[CITY, STATE ZIP]

If you worked for Flock Freight as a salesperson in California, you may be entitled to a payment from a class action lawsuit settlement.

A court authorized this notice. This is not a solicitation from a lawyer.

- You have received this Notice because Flock Freight's records indicate that you were employed by Flock Freight, Inc. and/or AuptiX, Inc. (collectively, "Flock Freight") as an exempt-classified (*i.e.*, overtime ineligible) Sales Representative¹ in the State of California between June 11, 2017 and [Release Date].
- Eleven former Sales Representatives ("Plaintiffs") filed a lawsuit alleging that Flock Freight misclassified them and other Sales Representatives as exempt from overtime protections and failed to pay proper overtime wages under federal and California state wage laws. Plaintiffs also asserted that Flock Freight failed to provide proper meal and rest breaks, failed to timely pay all wages due during employment and upon separation, failed to provide timely, accurate, and itemized wage statements, and failed to reimburse Sales Representatives for required business expenses in violation of California law. Flock Freight denies these allegations and the Court has not made any ruling on the merits of Plaintiffs' claims. The parties have entered into a settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expense.
- Under the allocation formula created by the settlement, your potential settlement payment is estimated to be approximately **\$[AMOUNT]**, subject to deductions for applicable taxes and withholdings.

Your legal rights may be affected by this settlement, and you have a choice to make:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING NOW,	If you do nothing, you will remain a part of this case, give up (also called "releasing") the Released California Class Claims discussed in Section 10 below, and be sent a settlement check for approximately

¹ "Sales Representatives" refers to individuals employed by Flock Freight in various exempt-classified sales roles. The Settlement Agreement includes a full list of the job titles included in the proposed settlement. You may obtain a copy of the Settlement Agreement at [Website] or by contacting Class Counsel or the Settlement Administrator using the information provided in Sections 7 and 20 below.

CASH A SETTLEMENT CHECK	\$[AMOUNT] , subject to applicable taxes and withholdings. If you endorse and deposit your settlement check, you will also release the Released Collective Claims discussed in Section 10 below. If you remain in the case but do not cash your settlement check, you will release the Released California Class Claims, but not the Released Collective Claims.
EXCLUDE YOURSELF	If you do not want to participate in the settlement and want to retain your right to sue Flock Freight for unpaid wages and related wage and hour claims under not only federal law but also under state law, you must submit a written Opt-out Statement to the Settlement Administrator, as discussed in Section 11 below. If you submit an Opt-out Statement, you will exclude yourself from the settlement, and you will not be eligible to receive a settlement payment or object to the settlement.
OBJECT	If you do not submit an Opt-out Statement, you may write to the Court about why you object to the settlement. More information about objecting is set forth in Section 15 below.

- These rights and options – **and the deadlines to exercise them** – are explained in greater detail in this Notice.
- **The Court in charge of this case still has to decide whether to approve the settlement. Settlement payments will be made if the Court approves the settlement and after any appeals are resolved. Please be patient.**

BASIC INFORMATION

1. Why did I get this notice?

The Court ordered that you be sent this Notice because you have a right to know about a proposed class action settlement, and about all of your options, before the Court decides whether to finally approve the settlement. This Notice explains the lawsuit, your legal rights, and what benefits are available.

The Court overseeing this case is the Superior Court of California, County of San Bernardino. The litigation is *Byam et al. v. Flock Freight, Inc.*, No. CIV SB 2200575.

2. Am I covered by this settlement?

Flock Freight's records state that you were employed by Flock Freight as an exempt-classified Sales Representative in California between June 11, 2017 and [Release Date]. You are therefore considered a "California Class Member."

3. What is the litigation about?

Plaintiffs allege that Flock Freight misclassified Sales Representatives as exempt from overtime protections and failed to pay proper overtime wages under federal and California state wage laws. Plaintiffs also allege that Flock Freight failed to provide Sales Representatives with proper meal and rest breaks, failed to timely pay all wages due during employment and upon separation, failed to provide timely, accurate, and itemized wage statements, and failed to reimburse Sales Representatives for required business expenses in violation of California law. Flock Freight denies these allegations and the Court has not made any ruling on the merits of Plaintiffs' claims. The parties have entered into a settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expense.

4. Why is this a class action?

In a class action, one or more people called "class representatives" sue not only for themselves, but on behalf of other people who have similar claims. The people are called "class members" and together are the "class." The individuals who initiated this case are called the "Plaintiffs." In a class action, the Plaintiffs ask the court to resolve the issues for every member of the class.

5. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or Flock Freight. Both sides believe they will prevail in the litigation, but there was no decision in favor of either party. Instead, the Parties have agreed to resolve this matter solely in order to avoid the burden, expense and risks associated with continued litigation. The Plaintiffs and Class Counsel think the settlement is in the best interests of all Class Members.

THE SETTLEMENT BENEFITS – WHAT YOU GET

6. What does the settlement provide?

Under the Settlement Agreement, Flock Freight has agreed to pay \$1,850,000.00 (the "Maximum Settlement Amount"). The Maximum Settlement Amount may increase depending on the number of Sales Representative workweeks included in the settlement.

The Maximum Settlement Amount will be used to pay: (1) individual settlement payments; (2) Class Counsel's attorneys' fees of up to one-third of the Maximum Settlement Amount (or \$616,666.67) plus reimbursement of actual litigation expenses and costs; (3) Service Awards of up to \$7,500 each to the eleven Named Plaintiffs (\$82,500 total); (4) payments of \$22,200 to the California Labor and Workforce Development Agency and \$7,400 to the California PAGA

Members for the California Private Attorneys General Act claims asserted in the litigation; and (5) the Settlement Administrator's fees and costs of up to \$15,000.00.

7. How much will my settlement payment be and how was it calculated?

Based on the formula that has been preliminarily approved by the Court, your settlement payment is estimated to be **\$[AMOUNT]**, half of which is considered a settlement of a claim for wages and is subject to deductions for applicable employee taxes and withholdings, and for which you will receive a W-2, and half of which will be reported on an IRS Form 1099. Flock Freight will pay the employer's share of the payroll taxes in addition to the Maximum Settlement Amount. Neither Class Counsel nor Flock Freight's counsel can advise you regarding the tax consequences of the settlement. You may wish to consult with your own personal tax advisor in connection with the settlement.

The formula that has been approved by the Court and used to calculate your settlement payment considers the number of weeks you worked and whether you worked as a Sales Representative in California or somewhere else in the United States during the relevant period. The Settlement Agreement contains the exact allocation formula. You may obtain a copy of the Settlement Agreement at [Website] or by contacting Class Counsel (using the contact information in Section 20) or the Settlement Administrator (using the contact information below).

[SETTLEMENT ADMINISTRATOR CONTACT]

The Settlement Administrator used information from Flock Freight's business records to calculate your payment. According to Flock Freight's business records, you worked for [Amount] workweeks as an exempt-classified Sales Representative during the period June 11, 2017 to [Release Date]. If you have questions about your calculation, you may contact Class Counsel or the Settlement Administrator.

If you dispute Flock Freight's records and/or the calculation of your settlement payment, you must provide written documentation supporting your contention and send it to the Settlement Administrator by [Objection/Opt-Out Deadline]. Flock Freight's records are presumed to be correct unless you prove otherwise with documentary evidence. The Settlement Administrator will evaluate the information you provide and will make the final decision as to any dispute.

HOW YOU GET A PAYMENT

8. How can I get my payment?

If you wish to participate in the Settlement, you do not need to take any current action. You will release the Released California Class Claims, as explained in Section 10 below, and receive a payment of approximately **\$[AMOUNT]**. If you cash the Settlement Check within 120 days after its issuance, you will further release the Released Collective Claims, as explained in Section 10 below.

9. When will I get my settlement payment?

The Court will hold a hearing on _____, at _____ to determine whether to give final approval to the settlement. If the Court approves the settlement, and there are no appeals, settlement checks will be mailed within 36 days after the expiration date of the time for an appeal to have been filed. If there is an appeal, settlement checks will be mailed within 36 days after all appeals are resolved in favor of final approval of the settlement. Please be patient.

10. What am I giving up by releasing my claims?

The Released Parties are Flock Freight and its parents, subsidiaries and affiliated corporations, predecessors, and successors, and all current and former directors, officers, employees, agents, insurers, investors, attorneys, and other persons affiliated with any of such entities.

Released California Class Claims: Regardless of whether you cash your settlement check, if you do not exclude yourself from the settlement (as described in Section 11 below), you will release the Released California Class Claims. This means that you release and discharge the Released Parties from any and all wage-and-hour claims, rights, demands, liabilities and causes of action of every nature and description, whether known or unknown, pled in the Complaint or that reasonably arise out of or reasonably relate to the allegations pled in the Complaint, including overtime premium pay, meal and rest period penalty pay, failure to reimburse business expenses, statutory or civil penalties, and any other claims under state or local law pled in the Complaint or that reasonably arise out of or reasonably relate to the allegations pled in the Complaint, including but not limited to claims reasonably arising out of or reasonably relating to alleged misclassification as an exempt employee, relating back to June 11, 2017 and continuing through [Release Date]. The Released California Class Claims include, but are not limited to, statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief, for the following categories of allegations: (a) all claims for failure to provide required meal periods; (b) failure to provide required rest periods; (c) failure to pay overtime wages; (d) failure to pay all wages due to discharged and quitting employees or during employment; (e) failure to furnish accurate itemized wage statements; (f) unfair and unlawful business practices; (g) failure to reimburse business expenses; (h) failure to maintain accurate payroll records; and (i) any other related civil and statutory penalties (except as to PAGA claims which shall be released only for PAGA Members as set forth below). The Released California Class Claims include without limitation claims meeting the above definition(s) under any and all applicable statutes, ordinances, regulations, common law, constitutional, or other claims available under the law of any jurisdiction whatsoever, including without limitation the California Payment of Wages Law, and in particular, California Labor Code §§ 200 *et seq.*, including California Labor Code §§ 200, 201, 202, 203, 204, 226, 226.3, California Working Hours Law, including California Labor Code §§ 510, 512, 558, 558.1; California Labor Code §§ 1174, 1174.5, 1193.6, 1198, 1198.5; California Labor Code § 2802; the California Unfair Competition Act, and in particular, California Bus. & Prof. Code §§ 17200 *et seq.*; California Code of Civil Procedure § 1021.5; California Civil Code §§ 3287 and 3288; California Industrial Wage Order No. 9, and any other provision of the California Labor Code or any applicable California Industrial Welfare Commission Wage Orders, in all of their iterations, as well as any

applicable federal labor, state, or local law, ordinance, or regulation of any jurisdiction. Notwithstanding the foregoing, if you are not also a PAGA Member, you will not release any claims for penalties under the California Private Attorneys General Act, and Fair Labor Standards Act claims shall be released only if you cash, deposit, or otherwise negotiate your Settlement Check.

Released Collective Claims: If you cash or otherwise negotiate your settlement check, you will release the Released Collective Claims. This means that you release and discharge the Released Parties from any and all wage-and-hour claims, rights, demands, liabilities and causes of action of every nature and description under the laws of any jurisdiction in which you were employed or worked, whether known or unknown, that are pled in the Complaint or that reasonably arise out of or reasonably relate to the allegations pled in the Complaint, including but not limited to claims that reasonably arise out of or reasonably relate to alleged misclassification as an exempt employee, and specifically including but not limited to any claims for overtime pay. The claims include, but are not limited to, statutory (including any applicable federal, state, or local ordinances or regulations), constitutional, contractual or common law claims for overtime wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief pled in the Complaint or that reasonably arise out of or reasonably relate to the allegations pled in the Complaint, relating back to June 11, 2018 and continuing through [Release Date].

Released PAGA Claims: Regardless of whether you exclude yourself from the settlement, and, only if you worked as a Sales Representative in California on or after June 11, 2020, you will also release any and all claims relating to penalties under the California Private Attorneys General Act ("PAGA"), California Labor Code §§ 2698 *et seq.*, pled in the Complaint or that reasonably arise out of or reasonably relate to the allegations pled in the Complaint, including overtime premium pay, meal and rest period penalty pay, failure to reimburse business expenses, statutory or civil penalties, and any other claims under the PAGA pled in the Complaint or that reasonably arise out of or reasonably relate to the allegations pled in the Complaint, including but not limited to claims that reasonably arise out of or reasonably relate to alleged misclassification as an exempt employee, relating back to June 11, 2020 and continuing through [Release Date].

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not wish to release your California claims, you must take steps to exclude yourself. This is sometimes referred to as "opting out" of the settlement.

11. How do I opt out of the settlement?

If you wish to exclude yourself from the settlement, you must submit a written, signed Opt-out Statement to the Settlement Administrator, stating: (i) your name, social security number, address, and telephone number; and (ii) a statement indicating your intent to exclude yourself from the settlement, such as "I opt out of the Flock Freight wage and hour settlement." The Opt-out Statement must be postmarked by or otherwise received on or before [Objection/Opt-Out Deadline].

If you submit an Opt-out Statement, you will not be eligible to receive a settlement check. You will retain the right to bring your own legal action against Flock Freight. You should be aware that your claims are subject to a statute of limitations, which means that they will expire on a certain date.

If you ask to be excluded, you cannot object to the settlement.

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

No. If you exclude yourself, you will not be eligible to receive a settlement check.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court has decided that the lawyers at the law firm of Outten & Golden LLP and Harlan Law, P.C. are qualified to represent you and all class members. These lawyers are called "Class Counsel." You will not be charged separately for these lawyers; their fees are being covered by the settlement fund. You do not need to retain your own attorney in order to participate and receive a settlement check. If you do not opt out of the class and want to be represented by your own lawyer, you may hire one at your own expense.

14. How will the lawyers be paid?

Class Counsel will ask the Court to approve payment of up to one-third of the Maximum Settlement Amount (\$616,666.67) for their attorneys' fees. These fees would compensate Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. Class Counsel will also ask the Court to approve reimbursement for the out-of-pocket costs they incurred litigating the case.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the settlement or some part of it.

15. How do I tell the Court that I disapprove of the settlement?

If you have not submitted an Opt-out Statement, you can object to any portion of the settlement of which you disapprove. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object to the settlement, send a letter to the Settlement Administrator saying that you object to the settlement which includes all of the following: (i) all reasons for objecting to the settlement, and any supporting documentation; and (ii) your name, address, telephone number, and signature.

As a Class Member making an objection, you also have the right to appear at the Fairness Hearing before the Court (explained in Section 17 below) either in person or through your own counsel. If you wish to appear at the Fairness Hearing, you should state your intention to do so in your letter to the Settlement Administrator.

Objections should be mailed to the Settlement Administrator at:

[SETTLEMENT ADMINISTRATOR CONTACT]

Absent good cause found by the Court, to be considered, your objection must be postmarked by or otherwise received on or before [Objection/Opt-Out Deadline].

16. What's the difference between objecting and opting out?

Objecting is telling the Court that you do not like something about the settlement and asking the Court not to approve the settlement as is. You can object only if you stay in the Class.

Opting out (also known as excluding yourself) is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you. If you submit both an objection and an Opt-out Statement, the Settlement Administrator will attempt to contact you to determine whether you intended to object or exclude yourself. If the Settlement Administrator cannot reach you, it will be presumed that you intended to exclude yourself, and your objection will not be considered.

THE COURT'S FAIRNESS HEARING

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

The Court will hold the Fairness Hearing on _____ at _____, at _____. Please be advised that the Court may change the date, time, or location of the Fairness Hearing without further notice to the Class. If you have any questions about the date, time, or location of the Fairness Hearing please contact Class Counsel using the contact information in Section 20 below.

At the hearing, the Court will determine whether the settlement is fair, adequate, and reasonable and will consider any properly submitted objections.

18. Do I have to come to the fairness hearing?

No. Class Counsel will attend to answer questions the Court may have. But, you are welcome to come at your own expense.

GETTING MORE INFORMATION

19. Are there more details about the settlement?

This Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement from Class Counsel or the Settlement Administrator using the contact information below or at [Website]. You can also access the website using this QR Code:

[insert QR Code]

20. How do I get more information?

If you have other questions about the settlement or want more information, you can contact:

- The Settlement Administrator at [insert email].
- Class Counsel at:

Melissa L. Stewart
Theanne Liu
OUTTEN & GOLDEN LLP
685 Third Avenue, 25th Floor
New York, NY 10017
Telephone: (212) 245-1000
Email: FlockFreightSettlement@outtengolden.com

DATED: _____, 20__

Do not contact the Court directly for any reason.

**OFFICIAL COURT NOTICE OF PROPOSED COLLECTIVE ACTION SETTLEMENT
AND OPPORTUNITY TO JOIN**

[NAME]
[ADDRESS]
[CITY, STATE ZIP]

If you worked for Flock Freight as salesperson, you may be entitled to a payment from a collective action settlement.

A court authorized this notice. This is not a solicitation from a lawyer.

- You have received this Notice because Flock Freight's records indicate that you were employed by Flock Freight, Inc. and/or AuptiX, Inc. (collectively, "Flock Freight") as an exempt-classified (*i.e.*, overtime ineligible) Sales Representative² between June 11, 2018 and [Release Date].
- Eleven former Sales Representatives ("Plaintiffs") filed a lawsuit alleging that Flock Freight misclassified them and other Sales Representatives as exempt from overtime protections and failed to pay proper overtime wages under federal law. Plaintiffs also asserted related wage and hour claims under California law on behalf of Sales Representatives employed in California. Flock Freight denies these allegations and the Court has not made any ruling on the merits of Plaintiffs' claims. The parties have entered into a settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expense.
- Under the allocation formula created by the settlement, your potential settlement payment is estimated to be approximately \$[AMOUNT], subject to deductions for applicable taxes and withholdings.

Your legal rights may be affected by this settlement, and you have a choice to make:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

² "Sales Representatives" refers to individuals employed by Flock Freight in various exempt-classified sales roles during the relevant period. The Settlement Agreement includes a full list of the job titles included in the proposed settlement. You may obtain a copy of the Settlement Agreement at [Website] or by contacting Class Counsel or the Settlement Administrator using the information provided in Sections 7 and 14 below.

SIGN AND CASH A SETTLEMENT CHECK	If you do nothing and the settlement is finally approved by the Court, you will be sent a settlement check for approximately \$[AMOUNT] , subject to applicable taxes and withholdings. By signing and cashing the settlement check, you are agreeing to participate in the lawsuit and be bound by the settlement. This means that you will give up (also called “releasing”) the Released Claims, as explained in Section 10.
IF YOU DO NOT SIGN AND CASH A SETTLEMENT CHECK	If you do not sign and cash your settlement check on or before [120 days from mailing], your check will be canceled, and you will not release any claims against Flock Freight.

- These rights and options – **and the deadlines to exercise them** – are explained in greater detail in this Notice.
- **The Court in charge of this case still has to decide whether to approve the settlement. Settlement payments will be made if the Court approves the settlement and after any appeals are resolved. Please be patient.**

BASIC INFORMATION

1. Why did I get this notice?

The Court ordered that you be sent this Notice because you have a right to know about a proposed collective action settlement, and about all of your options, before the Court decides whether to finally approve the settlement. This Notice explains the lawsuit, your legal rights, and what benefits are available.

The Court overseeing this case is the Superior Court of California, County of San Bernardino. The litigation is *Byam et al. v. Flock Freight, Inc.*, No. CIV SB 2200575.

2. Am I covered by this settlement?

Flock Freight’s records state that you were employed by Flock Freight as an exempt-classified Sales Representative between June 11, 2018 and [Release Date]. You are therefore considered an “FLSA Collective Member.”

3. What is the litigation about?

Plaintiffs allege that Flock Freight misclassified Sales Representatives as exempt from overtime protections and failed to pay proper overtime wages under federal law. Flock Freight denies these allegations and believes that its Sales Representatives were properly classified and received all wages and payments to which they were entitled. The Court has not made any ruling on the merits of the claims, and no party has prevailed in this action.

4. What is a collective action?

In a "Collective Action," one or more people sue on behalf of people who have similar claims. However, others who have similar claims do not become part of the Collective Action unless they "opt-in" to join the Collective Action. People who join the lawsuit are referred to as "Collective Members."

5. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or Flock Freight. Both sides believe they will prevail in the litigation, but there was no decision in favor of either party. Instead, the Parties have agreed to resolve this matter solely in order to avoid the burden, expense and risks associated with continued litigation. The Plaintiffs and Class Counsel think the settlement is in the best interests of all Collective Members.

THE SETTLEMENT BENEFITS – WHAT YOU GET

6. What does the settlement provide?

Under the Settlement Agreement, Flock Freight has agreed to pay \$1,850,000.00 (the "Maximum Settlement Amount"). The Maximum Settlement Amount may increase depending on the number of Sales Representative workweeks included in the settlement.

The Maximum Settlement Amount will be used to pay: (1) individual settlement payments; (2) Class Counsel's attorneys' fees of up to one-third of the Maximum Settlement Amount (or \$616,666.67) plus reimbursement of actual litigation expenses and costs; (3) Service Awards of up to \$7,500 each to the eleven Named Plaintiffs (\$82,500 total); (4) payments of \$22,200 to the California Labor and Workforce Development Agency and \$7,400 to the California PAGA Members for the California Private Attorneys General Act claims asserted in the litigation; and (5) the Settlement Administrator's fees and costs of up to \$15,000.00.

7. How much will my payment be?

Based on the formula that has been preliminarily approved by the Court, your settlement payment is estimated to be **\$[AMOUNT]**, half of which is considered a settlement of a claim for wages and is subject to deductions for applicable employee taxes and withholdings, and for which you will receive a W-2, and half of which will be reported on an IRS Form 1099. Flock Freight will pay the employer's share of the payroll taxes in addition to the Maximum Settlement Amount. Neither Class Counsel nor Flock Freight's counsel can advise you regarding the tax consequences of the settlement. You may wish to consult with your own personal tax advisor in connection with the settlement.

The formula that has been approved by the Court and used to calculate your settlement payment considers the number of weeks you worked and whether you worked as a Sales Representative in California or somewhere else in the United States during the relevant period. The Settlement Agreement contains the exact allocation formula. You may obtain a copy of the Settlement

Agreement at [Website] by contacting Class Counsel using the information in Section 14 or the Settlement Administrator using the information below.

[SETTLEMENT ADMINISTRATOR CONTACT]

The Settlement Administrator used information from Flock Freight's business records to calculate your payment. According to Flock Freight's business records, you worked for [Amount] workweeks as an exempt-classified Sales Representative during the period June 11, 2018 to [Release Date]. If you have questions about your calculation, you may contact Class Counsel or the Settlement Administrator.

If you dispute Flock Freight's records and/or the calculation of your settlement payment, you must provide written documentation supporting your contention and send it to the Settlement Administrator by [Objection/Opt-Out Deadline]. Flock Freight's records are presumed to be correct unless you prove otherwise with documentary evidence. The Settlement Administrator will evaluate the information you provide and will make the final decision as to any dispute.

HOW YOU GET A PAYMENT

8. How can I get my payment?

If you wish to participate in the settlement, you do not need to take any current action. You will receive a payment of approximately \$[AMOUNT], subject to applicable taxes and withholdings. If you cash the settlement check within 120 days after its issuance, you will release the Released Claims, as explained in Section 10 below.

9. When will I get my payment?

The Court will hold a hearing on _____, at _____ to determine whether to give final approval to the settlement. If the Court approves the settlement, and there are no appeals, settlement checks will be mailed within 36 days after the expiration date of the time for an appeal to have been filed. If there is an appeal, settlement checks will be mailed within 36 days after all appeals are resolved in favor of final approval of the settlement. Please be patient.

10. What am I giving up to get a payment?

Released Claims: If you cash or otherwise negotiate your settlement check, you will release the Released Claims. This means that you release and discharge the Released Parties from any and all wage-and-hour claims, rights, demands, liabilities and causes of action of every nature and description under the laws of any jurisdiction in which you were employed or worked, whether known or unknown, that are pled in the Complaint or that reasonably arise out of or reasonably relate to the allegations pled in the Complaint, including but not limited to claims that reasonably arise out of or reasonably relate to alleged misclassification as an exempt employee, and specifically including but not limited to any claims for overtime pay. The Released Claims include, but are not limited to, statutory (including any applicable federal, state, or local ordinances or regulations), constitutional, contractual or common law claims for overtime wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief pled in the Complaint or that reasonably arise out

of or reasonably relate to the allegations pled in the Complaint, relating back to June 11, 2018 and continuing through [Release Date].

The Released Parties are Flock Freight and its parents, subsidiaries and affiliated corporations, predecessors, and successors, and all current and former directors, officers, employees, agents, insurers, investors, attorneys, and other persons affiliated with any of such entities.

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in this case?

The Court has decided that the lawyers at the law firm of Outten & Golden LLP and Harlan Law, P.C. are qualified to represent you and all class and collective members. These lawyers are called "Class Counsel." You will not be charged separately for these lawyers; their fees are being covered by the settlement fund. You do not need to retain your own attorney in order to participate and receive a settlement check.

12. How will the lawyers be paid?

Class Counsel will ask the Court to approve payment of up to one-third of the Maximum Settlement Amount, or \$616,666.67, for their attorneys' fees. These fees would compensate Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. Class Counsel will also ask the Court to approve reimbursement for the out-of-pocket costs they incurred litigating the case.

GETTING MORE INFORMATION

13. Are there more details about the settlement?

This Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement from Class Counsel or the Settlement Administrator using the contact information below or at [Website]. You can also access the website using this QR Code:

[insert QR Code]

14. How do I get more information?

If you have other questions about the settlement or want more information, you can contact:

- The Settlement Administrator at [insert email].
- Class Counsel at:

Melissa L. Stewart
Theanne Liu
OUTTEN & GOLDEN LLP

685 Third Avenue, 25th Floor
New York, NY 10017
Telephone: (212) 245-1000
FlockFreightSettlement@outtengolden.com

DATED: _____, 20__

**IMPORTANT REMINDER REGARDING
FLOCK FREIGHT OVERTIME SETTLEMENT**

On [Date], you were mailed a check regarding the Flock Freight Sales Representative overtime settlement. Our records reflect that the check has not yet been cashed or deposited. To claim your monetary award in the settlement, your check must be cashed or deposited by:

[Void Date]

If you do not cash or deposit your check by [Void Date], it will become void and cannot be reissued. If you did not receive your check, you can contact the Settlement Administrator in writing at [Email].

If you have any questions about the case, you should contact Melissa Stewart or Theanne Liu at Outten & Golden LLP at **(212) 245-1000** or via email at **FlockFreightSettlement@outtengolden.com**.

Dear [California PAGA Member Name]:

The enclosed check is your share of the California Private Attorneys General Act ("PAGA") settlement payment in the *Byam et al. v. Flock Freight, Inc.* class, collective, and representative action lawsuit (Case No. CIV SB 220057) filed in the Superior Court of California, County of San Bernardino. You are receiving this check because you are a member of this settlement's California PAGA Group, which is defined to include all individuals who worked for Flock Freight in California as Sales Representatives from June 11, 2020 through [Release Date].

In this lawsuit, Plaintiffs alleged that Flock Freight misclassified Sales Representatives as exempt from the overtime pay requirements of federal and California state law, and consequently failed to pay them overtime pay. Plaintiffs also brought related claims against Flock Freight for alleged violations of the California Labor Code, including claims for failure to provide proper meal and rest breaks, failure to timely pay all wages due during employment and upon separation, failure to provide timely, accurate, and itemized wage statements, and failure to reimburse Sales Representatives for required business expenses.

The lawsuit also included a PAGA claim brought on behalf of the State of California that sought penalties from Flock Freight for the overtime and other violations that Plaintiffs alleged. Flock Freight denies that it did anything wrong and contends that, among other things, it has complied at all times with applicable federal and California law.

As part of the settlement of the PAGA claim, Flock Freight agreed to pay \$29,600.00, which will be distributed according to PAGA's requirement that 75% (or \$22,200.00) be distributed to the California Labor Workforce Development Agency and the remaining 25% (or \$7,400.00) be paid to members of the California PAGA Group. Your individual PAGA settlement payment is determined by your proportional share of the \$7,400.00 based on the number of workweeks you worked between June 11, 2020 and [Release Date] as an exempt-classified Sales Representative. This PAGA settlement check is separate from and in addition to any other individual settlement payment you may receive in this case.

Because the State of California has released its PAGA claims through this settlement, you are precluded from bringing any and all claims relating to penalties under the PAGA pled in the Complaint or that reasonably arise out of or reasonably relate to the allegations pled in the Complaint, including overtime premium pay, meal and rest period penalty pay, failure to reimburse business expenses, statutory or civil penalties, and any other claims under the PAGA pled in the Complaint or that reasonably arise out of or reasonably relate to the allegations pled in the Complaint, including but not limited to claims that reasonably arise out of or reasonably relate to alleged misclassification as an exempt employee, relating back to June 11, 2020 and continuing through [Release Date]. Unless you excluded yourself from the class action portion of this settlement, you are also bound by the settlement release described in the settlement notice.

Enclosed you will also find an IRS Form 1099 for 100% of this payment. Please note that neither the Settlement Administrator nor Class Counsel can provide tax advice. If you have questions about the tax treatment of this payment, we suggest that you consult your tax advisor or accountant.

Please cash or deposit the check on or before its printed void date. Checks will not be re-issued after the void date and will revert to the California unclaimed property fund. If you have any questions about the calculation of your payment, please visit [Website]. You can also contact Class Counsel, Outten & Golden LLP, at 212-245-1000 or FlockFreightSettlement@outtengolden.com; or the Settlement Administrator at [insert email].

Regards,

Flock Freight Settlement Administrator