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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
PEGGRAM, 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

**PLAINTIFFS' NOTICE OF MOTION AND
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND COLLECTIVE ACTION
SETTLEMENT; MEMORANDUM OF
POINTS & AUTHORITIES IN SUPPORT
THEREOF.**

Judge: Hon. David Cohn

DEPT.: S-26

Date: October 20, 2022

Time: 10:00 a.m.

Date Action Filed: January 4, 2022

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

SEP 01 2022

BY Sandra Ortega
SANDRA ORTEGA, DEPUTY

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:
2 PLEASE TAKE NOTICE that on October 20, 2022 at 10:00 a.m. or as soon thereafter as the
3 matter may be heard, in Department S-26 of this Court, or such other Department to which Judge
4 Cohn may be reassigned, located at 247 West Third Street, San Bernardino, CA 92415, Plaintiffs
5 MANDELA BYAM, SEBASTIAN CIFUENTES, ANDY FREE, MATTHEW HARMON, MIN
6 SOO KIM, JAMINE NYAMEKYE, DANIEL ORTIZ, NATHAN PEGRAM, MARYANNE
7 PIRRELLO, JESUS RAMOS, and CODY WILSON ("Plaintiffs"), on behalf of themselves and
8 all others similarly situated ("Settlement Class Members"), will and hereby do move this Court
9 for an order provisionally certifying the proposed settlement class ("Settlement Class") and
10 granting preliminary approval of the settlement.¹

11 This unopposed motion is based upon this Notice of Motion and Motion; the
12 accompanying Memorandum of Points and Authorities; the Declarations of Melissa L. Stewart
13 and Jordon Harlan filed herewith; all exhibits attached hereto, including the executed settlement
14 agreement; the pleadings, papers, and other records on file in this action; and oral argument on
15 the motion.

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28 ¹ All capitalized terms have the meaning set forth in the Settlement Agreement unless indicated otherwise.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Mandela Byam, Sebastian Cifuentes, Andy Free, Matthew Harmon, Min Soo
4 Kim, Jamine Nyamekye, Daniel Ortiz, Nathan Pegram, Maryanne Pirrello, Jesus Ramos, and
5 Cody Wilson (“Plaintiffs”) seek preliminary approval of a settlement on behalf of Sales
6 Representatives who worked for Defendant Flock Freight, Inc. (“Defendant” or “Flock Freight”).

7 The settlement provides a non-reversionary fund of \$1,850,000 (the “Maximum
8 Settlement Amount”) which covers no more than 12,011 Sales Representative workweeks. The
9 Maximum Settlement Amount is inclusive of attorneys’ fees and costs, settlement administration
10 costs, Service Awards to the Named Plaintiffs, and the Private Attorneys’ General Act
11 (“PAGA”) Fund. In the face of significant risk to a classwide recovery, including Defendant’s
12 contention that Sales Representatives are bound by individual arbitration agreements, the
13 settlement provides substantial monetary relief for the Class Members. The estimated individual
14 Net Award is approximately \$3,925.28, and Class Members will not need to submit a Claim
15 Form or take any other action to receive a Settlement Check.

16 Plaintiffs request that the Court: (1) grant preliminary settlement approval; (2)
17 preliminarily certify the California Class and conditionally certify the Fair Labor Standards Act
18 (“FLSA”) Collective for settlement purposes; (3) approve the form, content, and method of
19 distribution of the Notice; (4) appoint ILYM Group, Inc. as the Settlement Administrator; (5)
20 appoint Outten & Golden LLP and Harlan Law, PC as Class Counsel; (6) appoint Plaintiffs as
21 Class Representatives; and (7) schedule a final approval hearing.

22 **II. FACTUAL AND PROCEDURAL BACKGROUND²**

23 Defendant is a logistics technology company that sells third-party logistics services.
24 Comp. ¶¶ 2-3. Plaintiffs and Class Members worked for Defendant as exempt-classified
25 salespeople.

26
27 ² This factual and procedural background is provided in accordance with the Checklists for
28 Approval of Class Action Settlements, San Bernardino County Superior Court Complex
Litigation Program, Preliminary Approval Checklist (“Preliminary Approval Checklist”) ¶ 5.

1 In May 2021, Plaintiffs sent a letter outlining their claims and inviting Defendant to
2 engage in pre-suit settlement discussions.³ Stewart Decl. ¶ 16. In June 2021, the Parties agreed
3 to engage in a dialogue regarding the possibility of resolving Plaintiffs' and other Sales
4 Representatives' claims and agreed to toll the applicable statutes of limitations. *Id.* ¶ 18. The
5 Parties then began extensive settlement discussions. *Id.* ¶ 19. In connection with negotiations,
6 the Parties engaged in significant informal discovery to allow both sides to value the claims and
7 evaluate litigation risks. *Id.* ¶ 20. Defendant produced job descriptions, corporate policies,
8 handbooks, commission plans, wage statements, personnel files, and personnel data for Sales
9 Representatives. *Id.*

10 In October 2021, the Parties participated in a full-day mediation with Deborah Crandall
11 Saxe, Esq., a respected JAMS mediator with significant experience in wage and hour class action
12 litigation. *Id.* ¶ 21. The Plaintiffs each provided testimony in the form of mediation declarations
13 detailing their primary duties, hours worked, training, and compensation. *Id.* ¶ 23. Although the
14 Parties were unable to reach an agreement at mediation, Ms. Saxe continued working with both
15 sides and made a mediator's proposal. *Id.* ¶ 24. The Parties accepted the mediator's proposal on
16 October 12, 2021. *Id.* Thereafter, the Parties engaged in additional discussions on non-monetary
17 terms, resulting in a Memorandum of Understanding on October 19, 2021, and a final settlement
18 agreement on December 9, 2021. *Id.* ¶ 25.

19 In January 2022, Plaintiffs filed the Complaint. *Id.* ¶ 26. The Parties submitted an initial
20 case management conference joint report on June 17, 2022 and attended the CMC on July 13,
21 2022. *Id.* There are no related cases pending in other jurisdictions.⁴ *Id.*

22 **III. TERMS OF THE PROPOSED SETTLEMENT**

23 **A. Eligible Employees⁵**

24
25 ³ Before approaching Defendant, Plaintiffs' Counsel conducted a thorough investigation
26 which included factual and legal research into the underlying merits of the claims, possible
27 defenses, the proper measure of damages, and the likelihood of class and collective certification;
28 in-depth interviews with Plaintiffs and other Sales Representatives; and review of relevant
documents. Stewart Decl. ¶ 17.

⁴ See Preliminary Approval Checklist ¶ 19.

⁵ See Preliminary Approval Checklist ¶ 4.

1 California Class Members worked for Defendant as Sales Representatives in California
2 from June 11, 2017 through the Release Date.⁶ Ex. 1 to Stewart Decl. (Settlement Agreement)
3 §§ 1.3-1.4. PAGA Members worked as Sales Representatives in California from June 11, 2020
4 through the Release Date. FLSA Collective Members worked in the United States from June 11,
5 2018 through the Release Date. Ex. 1 (Settlement Agreement) §§ 1.15-1.16. Based on the data
6 produced for mediation, Plaintiffs estimate 173 California Class Members,⁷ and approximately
7 104 FLSA Collective Members who are not California Class Members. Stewart Decl. ¶ 27-28.

8 **B. Settlement Fund⁸**

9 The Settlement Agreement creates a non-reversionary Maximum Settlement Amount of
10 \$1,850,000. The Maximum Settlement Amount may increase before final approval if the
11 number of workweeks identified at the mediation (10,919) increases by more than 10% and
12 Defendant exercises its option to pay a proportionate additional amount for each additional
13 workweek, in exchange for adjusting the Release Date accordingly. *See supra* n.6.; Ex. 1
14 (Settlement Agreement) § 6(A). The following table lists the key financial terms:

15

Maximum Settlement Amount	\$1,850,000.00
<i>Total Service Awards to 11 Named Plaintiffs</i>	<i>- \$82,500.00</i>
<i>Plaintiffs' Counsel's Attorneys' Fees</i>	<i>- \$616,666.67</i>
<i>Plaintiffs' Counsel's Estimated Costs</i>	<i>- \$18,931.88</i>

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20 ⁶ "Release Date" is the date corresponding to the number of accrued workweeks covered
21 by the Maximum Settlement Amount. *See* Ex. 1 (Settlement Agreement) § 6(A). If the number
22 of workweeks identified at the mediation (10,919) increases by more than 10% (up to 12,011),
23 Defendant will have the option to pay a proportionate additional amount for each additional
24 workweek up to the date of preliminary approval, and the Release Date will be adjusted
25 accordingly. *See id.* If Defendant declines to exercise this option, the Release Date will
correspond with the date on which the 12,011 workweeks accrue. *See id.* Accordingly, the
precise Release Date will be set after preliminary approval, before Notice issues to the
Settlement Class, and will be no later than the date of the Preliminary Approval Order.

26 ⁷ 126 California Class Members appear in the mediation data, which covers the relevant
27 period up to June 17, 2021 and includes 8,745 total workweeks. Because the Maximum
Settlement Amount covers no more than 12,011 workweeks, Plaintiffs' headcount estimates
multiply the number of Settlement Class Members in the mediation data by 1.37 (12,011/ 8,745).

28 ⁸ *See* Preliminary Approval Checklist ¶¶ 1, 6, 7, 11, 18. The settlement does not include
non-cash consideration. *See* Preliminary Approval Checklist ¶ 6.

<i>Settlement Administrator's Fees and Costs (not to exceed)</i>	- \$15,000.00
<i>PAGA Fund</i>	- \$29,600.00
<i>Net Fund</i>	= \$1,087,301.46

The Maximum Settlement Amount does not include the employer's portion of payroll taxes, which will be paid separately by Defendant. Ex. 1 (Settlement Agreement) § 1.21.

C. Release of Claims⁹

California Class Members who do not opt-out will release any and all wage and hour claims pled in the Complaint or that reasonably arise out of or reasonably relate to the allegations pled in the Complaint, arising during the period June 11, 2017 to the Release Date, except that Participating California Class Members who are not PAGA Members shall not release claims for penalties under the PAGA, and FLSA claims shall be released only if a Participating California Class Member cashes, deposits, or otherwise negotiates his or her Settlement Check. *Id.* § 12.1.

FLSA Collective Members who cash a Settlement Check release any and all wage-and-hour claims under the laws of any jurisdiction in which the Participating FLSA Collective Member was employed or worked that are pled in the Complaint or that reasonably arise out of or reasonably relate to the allegations pled in the Complaint. *Id.* § 12.2.

PAGA Members will release any and all wage-and-hour 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. *Id.* § 12.3.

D. Distribution¹⁰

Settlement Class Members will receive a Settlement Check for their share of the Net Fund (defined as the amount remaining after all fees, costs, awards, and the PAGA Fund are deducted) based on the number of workweeks during the applicable California Class Period or FLSA Collective Period during which the Settlement Class Member was employed by Defendant as an exempt-classified Sales Representative. *See id.* § 11.5(A). Settlement Class Members will not need to submit a Claim Form or take affirmative action to receive a Settlement Check.

⁹ Preliminary Approval Checklist ¶ 16.

¹⁰ Preliminary Approval Checklist ¶¶ 4, 17, 27.

1 California Class Members will receive one and 14/100 (1.14) points for each Eligible Workweek
2 in recognition of the relative value of California state law claims. *Id.* FLSA Collective Members
3 who are not also California Class Members will receive one (1) point for each Eligible
4 Workweek. *Id.* PAGA Members will be entitled to an additional PAGA amount based on weeks
5 worked during the PAGA Period. *See id.* § 11.5(B).

6 **E. Unclaimed Funds¹¹**

7 After issuance of Settlement Checks, the Settlement Administrator will send reminders
8 via email and First-Class U.S. Mail within sixty (60) days after the initial distribution of checks
9 to Participating California Class Members and FLSA Collective Members who have not yet
10 cashed their Settlement Checks. Ex. 1 (Settlement Agreement) § 11.9.

11 None of the Maximum Settlement Amount will revert to Defendant. Any California
12 Class Member or PAGA Member's Settlement Check not cashed after the 120-day deadline will
13 be transferred to the Controller of the State of California, Unclaimed Property Fund, in the name
14 of the Settlement Class Member whose check was cancelled. *Id.* § 11.10. Any other portion of
15 the Maximum Settlement Amount not distributed as per the terms of the Settlement Agreement,
16 including any interest accrued on the QSF and any Settlement Check not cashed by an FLSA
17 Collective Member who is not also a California Class Member after the Void Date, will be
18 redistributed *pro rata* to Participating FLSA Collective Members and Participating California
19 Class Members who cashed or otherwise negotiated a Settlement Check; or, if a second
20 distribution is impractical on the basis that the amount remaining in the Net Fund is similar to or
21 less than the cost of a second distribution, it shall be donated to the *cy pres* recipient, Centro
22 Legal De La Raza.¹² *Id.*

23 **F. Tax Characterization¹³**

24 Fifty percent (50%) of the individual net settlement payments to Settlement Class

25 ¹¹ Preliminary Approval Checklist ¶¶ 7, 8.

26 ¹² Centro Legal is a proper *cy pres* beneficiary because it performs employment-related
27 legal services to low-income workers – work closely aligned with the claims in this case.
28 Stewart Decl. ¶ 29. Plaintiffs' Counsel do not have an interest in or affiliation with Centro
Legal. *Id.*

¹³ Preliminary Approval Checklist ¶ 18.

Members will be treated as W-2 wage payments for tax purposes and 50% of such payments will be treated as 1099 non-wage income as liquidated damages, statutory penalties, and interest. *Id.* § 11.6(A). In addition, 100% of the Net PAGA Amount paid to each PAGA Member will be treated as 1099 non-wage compensation as statutory penalties. *Id.* Defendant will fund the employer's portion of payroll taxes separately from the Maximum Settlement Amount. *See id.* § 1.12.

G. Notice and Settlement Administrator¹⁴

The Parties have selected ILYM Group, Inc. ("ILYM Group") as the settlement claims administrator ("Settlement Administrator"). ILYM Group has agreed to administer the settlement for an amount not to exceed \$15,000, which includes all service fees, costs, and expenses associated with administration. *Id.* § 3(B). A declaration from ILYM Group regarding its qualifications and estimate of the administration costs is submitted herewith. *See* Ex. 2, Declaration of Jonathan Paul ("Paul Decl.").

Within fourteen (14) days of the Preliminary Approval Order, Defendant will produce the Class List. Ex. 1 (Settlement Agreement) § 5(A). Within thirty-five (35) days of the Preliminary Approval Order, the Settlement Administrator will send Notice to Settlement Class Members via First-Class U.S. Mail and email. Settlement Agreement §§ 5(A), 5(C). The Settlement Administrator will also send Settlement Class Members a text message advising Settlement Class Members of a website where they can view additional information about the settlement and update their contact information. *Id.* § 5(C). *See* Preliminary Approval Checklist ¶ 20. The Settlement Administrator believes that notice by mail, email, text, and website is the best means available to reach the greatest number of class members. Ex. 2 (Paul Decl.) ¶ 3. If a Notice mailed to a Settlement Class Member is returned as undeliverable, the Settlement Administrator will take all reasonable steps to obtain the correct address, including two skip traces, and will attempt a re-mailing to any individual for whom it obtains a more recent address. *Id.* ¶ 6; Ex. 1 (Settlement Agreement) § 5(D).

Settlement Class Members will have forty-five (45) days from issuance of the Notice to

¹⁴ Preliminary Approval Checklist ¶¶ 22, 24, 25, 26.

1 opt out (for California Class Members), file an objection with the Settlement Administrator, or
2 challenge the workweek data. Ex. 1 (Settlement Agreement) §§ 5(E), 11.5(B). Settlement
3 Class Members to whom Notice is re-mailed will have the later of forty-five (45) days from the
4 initial mailing or thirty (30) days from the date of re-mailing to opt out, object, or lodge a
5 workweek dispute. *Id.* § 5(E).

6 **H. Attorneys' Fees and Costs and Service Awards.¹⁵**

7 Subject to Court approval and as described in greater detail below, at the final approval
8 stage, Plaintiffs' Counsel will apply for up to one-third (33.3%) of the Maximum Settlement
9 Amount as attorneys' fees (\$616,666.67), plus actual litigation expenses and costs. *Id.* § 11.2.
10 As of the date of this filing, Plaintiffs' Counsel's litigation expenses and costs amount to
11 \$18,453.38. These include mediation fees, court filing fees, expert data analysis services for
12 mediation, printing (at a rate of \$0.06 per page), and mailing/shipping costs. *See* Stewart Decl.
13 ¶ 31; Declaration of Jordon Harlan ("Harlan Decl.") ¶ 10. Plaintiffs' Counsel also estimate
14 future filing fee costs of \$478.50. Stewart Decl. ¶ 31. Plaintiffs will also request Court
15 approval for the payment of Service Awards of \$7,500 each.

16 **IV. ARGUMENT**

17 **A. Certification of the California Class Is Appropriate.**

18 The Court should provisionally certify the California Class for purposes of settlement
19 because it is ascertainable and sufficiently numerous, there exists a well-defined community of
20 interest, and a class is superior to alternative proceedings. *See Brinker Rest. Corp. v. Super. Ct.*,
21 53 Cal. 4th 1004, 1021 (2012); *see also* Cal. Code Civ. Proc. § 382. A well-defined community
22 of interest exists when there are "(1) predominant common questions of law or fact; (2) class
23 representatives with claims or defenses typical of the class; and (3) class representatives who can
24 adequately represent the class." *Brinker*, 53 Cal. 4th at 1021 (citation and quotation marks
25 omitted).

26 **1. The California Class Is Ascertainable.**

27 A class is ascertainable when its members may be identified by reference to official

28 ¹⁵ Preliminary Approval Checklist ¶¶ 11, 13.

1 records. *Rose v. City of Hayward* 126 Cal. App. 3d 926, 932 (Cal. Ct. App. 1981), *disapproved*
2 *of on other grounds by Noel v. Thrifty Payless, Inc.*, 445 P.3d 626 (Cal. 2019). Here, the
3 California Class Members are current and former employees of Defendant, whose identities can
4 be identified from its employment records. Stewart Decl. ¶ 32.

5 **2. The California Class is Sufficiently Numerous.**

6 The numerosity requirement is satisfied because the Settlement Class is estimated to
7 include 173 members, *Id.* ¶ 33, and is thus of such a size that is “it is impracticable to bring them
8 all before the court.” Cal. Code Civ. Proc. § 382; *see also Rose*, 126 Cal. App. 3d at 934.

9 **3. Common Questions of Law and Fact Predominate.**

10 Common questions predominate where the legal theory is “amenable to class treatment,”
11 such that the resolution of claims “in a single class proceeding would be both desirable and
12 feasible.” *Brinker*, 53 Cal. 4th at 1021-22 (quoting *Sav-On Drug Stores, Inc. v. Super. Ct.*, 34
13 Cal. 4th 319, 327 (2004)). The test for determining predominance is whether the proposed class
14 is sufficiently cohesive to warrant adjudication on a classwide basis. *Hanlon v. Chrysler Corp.*,
15 150 F.3d 1011, 1022 (9th Cir. 1998). Here, Plaintiffs alleged a single policy of classifying all
16 Sales Representatives as exempt from overtime protections, and the other claims – meal breaks,
17 wage statements, and timely pay claims – are largely derivative of the misclassification question.

18 **4. The Typicality Requirement Is Met.**

19 Where plaintiffs’ injuries are of the same nature as those of other class members and
20 arise from the same general course of conduct, the typicality requirement is satisfied. *See, e.g.*,
21 *Seastrom v. Neways, Inc.*, 149 Cal. App. 4th 1496, 1502 (Cal. Ct. App. 2007). Here, all Class
22 Members were subject to the same policy of exempt classification and related violations.

23 **5. The Adequacy Requirement Is Met.**

24 The adequacy requirement is met if the named plaintiffs and their counsel have no
25 interests adverse to the proposed class and are committed to vigorously prosecuting the case on
26 behalf of the class. *See McGhee v. Bank of Am.*, 60 Cal. App. 3d 442, 450-51 (Cal. Ct. App.
27 1976). Here, Plaintiffs have no known conflicts of interest with the California Class, and their
28 claims are consistent with the claims of other California Class Members. Stewart Decl. ¶ 34.

1 Plaintiffs' Counsel are adequate because they are experienced in employment class action
2 litigation and have prosecuted the case vigorously. *Id.* ¶ 35; Harlan Decl. ¶¶ 4-9.

3 **6. A Class Action Is Superior to Other Available Means.**

4 Class treatment is superior to individual adjudication of class members' claims when it
5 would prevent repetitive litigation and provide "a method of obtaining redress for claims which
6 would otherwise be too small to warrant individual litigation." *Richmond v. Dart Indus., Inc.*,
7 29 Cal. 3d 462, 469 (1981) (quoting *Eisen v. Carlisle & Jacquelin*, 391 F.2d 555, 560 (2d Cir.
8 1968)). Here, each California Class Member's claim is relatively small but would consume
9 substantial judicial resources if litigated individually to trial. It would therefore be inefficient
10 to resolve these claims in separate trials. *See Bufil v. Dollar Fin. Grp., Inc.*, 162 Cal. App. 4th
11 1193, 1208 (Cal. Ct. App. 2008), *disapproved of on other grounds by Noel*, 445 P.3d 626.
12 Because the class mechanism will achieve economies of scale, conserve judicial resources, and
13 avoid repetitive proceedings, superiority is met.

14 **B. Conditional Certification of the Settlement Collective Is Appropriate.**

15 Employees alleging violation of their rights under the FLSA may bring a claim seeking
16 relief on their own behalf and on behalf of "other employees similarly situated." 29 U.S.C. §
17 216(b). At the lenient conditional certification stage, courts determine whether the proposed
18 collective should be given notice. *Campbell v. City of Los Angeles*, 903 F.3d 1090, 1109 (9th
19 Cir. 2018); *Hernandez v. Dutton Ranch Corp.*, 2020 U.S. Dist. LEXIS 47106, at *3 (N.D. Cal.
20 Mar. 17, 2020). Plaintiffs are similarly situated when they share "a similar issue of law or fact
21 material to the disposition of their FLSA claims." *Campbell*, 903 F.3d at 1117. Here,
22 Plaintiffs challenge a common policy that classifies them as exempt from overtime. *See Karl*
23 *v. Zimmer Biomet Holdings, Inc.*, 2019 U.S. Dist. LEXIS 111705, at *6-7 (N.D. Cal. July 2,
24 2019) (salespeople similarly situated where they alleged a common misclassification policy).

25 **C. The Settlement Meets the Requirements for Preliminary Approval.**

26 Settlement of class actions is favored by public policy. *See Ferguson v. Lieff, Cabraser,*
27 *Heimann & Bernstein*, 30 Cal. 4th 1037, 1054 (2003) ("Settlement of class actions is
28 encouraged . . . because they consume substantial judicial resources and present unusually

1 large risks for the litigants.”) (citation and quotation marks omitted). At this stage, the court
2 “need only determine whether the proposed settlement is within the range of possible approval
3 . . . such that there is a reason to notify the class members of the proposed settlement and to
4 proceed with a fairness hearing.” *Palacios v. Penny Newman Grain, Inc.*, 2015 U.S. Dist.
5 LEXIS 87457, at *17-18 (E.D. Cal. July 2, 2015) (citation and quotation marks omitted).¹⁶

6 The factors that the Court should consider in evaluating the reasonableness of a class
7 action settlement include “the strength of plaintiffs’ case, the risk, expense, complexity and
8 likely duration of further litigation, the risk of maintaining class action status through trial, the
9 amount offered in settlement, the extent of discovery completed and the stage of the
10 proceedings, [and] the experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.
11 App. 4th 1794, 1801 (Cal. Ct. App. 1996). “[A] presumption of fairness exists where: (1) the
12 settlement is reached through arm’s-length bargaining; (2) investigation and discovery are
13 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
14 similar litigation; and (4) the percentage of objectors is small.” *Id.* at 1802.

15 **1. The Settlement Is the Product of Arm’s Length Negotiations by**
16 **Experienced Counsel After Sufficient Information Exchange.**

17 “The court . . . should give considerable weight to the competency and integrity of
18 counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement
19 represents an arm’s length transaction entered without self-dealing or other potential
20 misconduct.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129 (Cal. Ct. App.
21 2008). Here, the proposed settlement was reached through vigorous arm’s-length negotiation
22 between lawyers with significant experience. Plaintiffs’ Counsel are experienced in litigation,
23 certification, settlement, and trial of class actions cases. Stewart Decl. ¶¶ 5-8; Harlan Decl. ¶¶
24 4-8. Mediator Saxe, who assisted the Parties in negotiating the settlement, has significant
25 complex class and collective litigation experience. Stewart Decl. ¶ 21.

26
27 ¹⁶ The California Supreme Court has authorized California’s trial courts to use Rule 23 of
28 the Federal Rules of Civil Procedure and cases applying it for guidance in considering class
issues. *See Vasquez v. Super. Ct.*, 4 Cal. 3d 800, 821 (Cal. 1971), *disapproved of on other*
grounds by Noel, 445 P.3d 626.

1 The Parties also engaged in sufficient mediation discovery to recommend settlement. *Id.*
2 ¶ 20. Flock Freight provided Plaintiffs' Counsel with Settlement Class Members' dates of
3 employment and compensation data as well as Plaintiffs' personnel files, representative wage
4 statements, Sales Representatives' job descriptions, and corporate policies and compensation
5 plans. *Id.* The Parties exchanged extensive mediation statements which outlined the key
6 arguments they would make in litigation. *Id.* ¶ 22. Plaintiffs' Counsel further provided
7 Defendant with detailed declaration testimony from all eleven Named Plaintiffs, describing job
8 responsibilities, hours worked, and similarities they shared with other Sales Representatives.
9 *Id.* ¶ 23. This substantial information exchange was more than sufficient to create "an
10 understanding of the amount that is in controversy and the realistic range of outcomes of the
11 litigation." *Kullar*, 168 Cal. App. 4th at 120.

12 Because the settlement is the product of good faith negotiations involving an
13 experienced mediator, meaningful document exchange, and experienced counsel, this
14 settlement is entitled to a presumption of fairness and preliminary approval is warranted.

15 **2. The Settlement Provides Substantial Relief for Class Members.¹⁷**

16 The Court should approve the proposed settlement because it provides substantial relief
17 to the Settlement Class relative to the theoretical maximum recovery. The average Net Award
18 Settlement Class Members stand to recover is approximately **\$90.53** per workweek; with an
19 estimated average net total payment of **\$3,925.28** per Settlement Class Member based on 277
20 estimated Settlement Class Members. Stewart Decl. ¶ 36. This is a substantial portion of the
21 unpaid wages and other damages Class Members could have recovered at trial, as described
22 below.

23 **a. Labor Code and FLSA Claims**

24 • Unpaid Overtime. Based on seven and one-half (7.5) hours of unpaid overtime
25 per workweek, assuming Settlement Class Members worked overtime in 80% of workweeks (to
26 account for periods of vacations, leave, and other days off), the Settlement Class could have
27 recovered approximately **\$3,340,843.82**. Stewart Decl. ¶ 37.

28 ¹⁷ Preliminary Approval Checklist ¶¶ 3, 5, 9.

- 1 • FLSA Liquidated Damages. The Settlement Class could have recovered
2 **\$2,943,862.51** (an amount equal to the unpaid wages for workweeks within the three-year
3 FLSA Period) if Plaintiffs succeeded in rebutting Defendant's good faith defense. *Id.* ¶ 38.
- 4 • Interest. California interest on the overtime damages is estimated at
5 **\$458,108.65.** *Id.* ¶ 39.
- 6 • Meal and Rest Break Penalties. Plaintiffs' Counsel estimated that there were
7 three missed meal and/or rest breaks per week for 90% of workweeks, which would yield a
8 recovery of **\$543,820.81** in penalties. *Id.* ¶ 40.
- 9 • Waiting Time Penalties. Plaintiffs' Counsel estimated waiting time penalties
10 pursuant to Labor Code § 203 of **\$1,276,919.21.** *Id.* ¶ 41.
- 11 • Wage Statement Penalties. California Class Members could have recovered
12 approximately **\$153,423.90** in wage statement penalties under Labor Code § 226(e). *Id.* ¶ 42.

13 In sum, the total exposure for Settlement Class Members' wage and hour claims is
14 approximately **\$8,716,978.90.**¹⁸ The Maximum Settlement Amount thus represents a 21.2%
15 recovery for Settlement Class Members' Labor Code and FLSA claims, and the Net Fund
16 represents a 12.5% recovery. Stewart Decl. ¶ 44. This is substantial given the litigation risks
17 and the risks in recovering the full extent of possible damages and penalties. *See, e.g., In re*
18 *Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (finding a gross recovery of
19 approximately one sixth (16.67%) of the potential recovery adequate in light of litigation risks).

20 **b. PAGA Penalties**¹⁹

21 The settlement provides that \$29,600 of the Maximum Settlement Amount will be
22 allocated to the Settlement of the PAGA Members' claims, which represents approximately
23 1.6% of the Maximum Settlement Amount.²⁰ Ex. 1 (Settlement Agreement) § 11.4; Stewart

24 ¹⁸ Plaintiffs' Counsel did not calculate separate estimated exposure for expense
25 reimbursement damages because the potential exposure was small and the risks in certifying and
26 proving those claims were high, and thus that their value would be adequately covered by the
substantial recovery for other claims. Stewart Decl. ¶ 43.

27 ¹⁹ Plaintiff Pegram gave notice to the LWDA of his intent to pursue PAGA penalties as
28 required by Cal. Lab. Code § 2699.3. Stewart Decl. ¶ 45. Plaintiffs' Counsel also submitted a
copy of the proposed settlement to the LWDA, as required by Cal. Lab. Code § 2699(1)(2). *Id.*

²⁰ Courts that look at the proportion of the PAGA settlement to the overall settlement

Decl. ¶ 45. Plaintiffs estimated PAGA penalties at approximately **\$1,020,041.10** based on the above Labor Code violations. The PAGA Fund represents approximately 2.6% of Plaintiffs' maximum theoretical PAGA recovery. Stewart Decl. ¶ 45. This recovery is reasonable because of courts' discretion to reduce PAGA penalties (Cal. Lab. Code § 2699(e)(2)) and is well within the range that courts routinely approve. *See Ruch v. AM Retail Grp., Inc.*, 2016 U.S. Dist. LEXIS 133832, at *20, *28 (N.D. Cal. Sept. 28, 2016) (approving PAGA recovery that represented less than 2% of maximum potential recovery).

3. Plaintiffs Faced Significant Risks in the Absence of Settlement.²¹

This settlement recovery is particularly reasonable in light of the significant litigation risks Plaintiffs faced. Stewart Decl. ¶ 46. Although Plaintiffs believe their case is strong, they recognize that class action litigation inherently involves risk and delay and that they faced particular risks here. *See Ferguson*, 30 Cal. 4th at 1054 (Kennard, J., concurring in part) (class actions "present unusually large risks for litigants") (internal citation and quotations omitted).

As an initial matter, Defendant argued that Plaintiffs and all, or substantially all, Sales Representatives were subject to individual arbitration agreements which foreclose bringing or participating in a class or collective action. *Id.* ¶ 47. While Plaintiffs would challenge the validity and enforceability of these agreements, Plaintiffs' Counsel are experienced class action litigators and recognize the challenges associated with these arguments. *Id.* If Plaintiffs were compelled to individual arbitration, the statutes of limitations for similarly situated Sales Representatives' claims would continue to run and there would be no mechanism to formally advise them of their legal rights. *Id.* ¶ 48. Moreover, any Sales Representative who wished to pursue a recovery would be required to participate in intensive individual arbitrations, including document production, deposition testimony, and testifying at the arbitration hearing, only to recover on a relatively small dollar value misclassification claim. *Id.*

Even if Plaintiffs succeeded in challenging the arbitration agreements, the risks would

recovery have approved similar proportionate recoveries. *See, e.g., Van Kempen v. Matheson Tri-Gas, Inc.*, 2017 U.S. Dist. LEXIS 137182, at *29-30 (N.D. Cal. Aug. 25, 2017) (1.4%).

²¹ Preliminary Approval Checklist ¶ 5.

1 not end there. Among other things, Plaintiffs would have to obtain and maintain class and
2 collective action certification through trial. Stewart Decl. ¶ 49. Although Plaintiffs believe this
3 case is well-suited for class treatment, Defendant would likely argue that Sales Representatives’
4 job duties and compensations varied in ways that are material to the exemption analysis, and
5 courts have been persuaded by similar arguments. *Id.* Further, to recover on behalf of Sales
6 Representatives, Plaintiffs would have to defeat Defendant’s exemption defenses, which are
7 fact-intensive multifactored analyses, at summary judgment, at trial, and on appeal. *Id.*

8 Additionally, Plaintiffs would have to establish willfulness to recover liquidated damages
9 under the FLSA, and defeat Defendant’s good faith defense to win a three-year statute of
10 limitations. *Id.* ¶ 50. A trial on the merits would also entail various risks in establishing
11 damages. Flock Freight would claim that Settlement Class Members did not miss meal or rest
12 breaks and dispute the hours they claim to have worked. Without contemporaneous records of
13 time worked and breaks taken (which Flock Freight did not maintain), proving the existence and
14 extent of overtime hours worked and breaks missed would be an evidentiary challenge. *Id.*

15 Finally, Plaintiffs recognize that the Supreme Court’s decision in *Viking River Cruises,*
16 *Inc. v. Moriana*, 596 U.S. ___, 142 S. Ct. 1906 (2022) has created additional risks to pursuing
17 their PAGA claims in court. Stewart Decl. ¶ 51. While Plaintiffs dispute the validity and
18 enforceability of the arbitration agreements, they recognize the risk of the Court finding that
19 those claims must be brought individually in arbitration. *Id.*; see *Viking River Cruises*, 142 S.
20 Ct. at 1925. And even if Plaintiffs could pursue their PAGA claims in court, to recover
21 maximum PAGA penalties, Plaintiffs would need to establish that penalties should be stacked,
22 and defeat Flock Freight’s likely argument that Plaintiffs may recover heightened PAGA
23 penalties only after a court or the Labor Commissioner has determined that the employer
24 violated the Labor Code. See, e.g., *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209
25 (Cal. Ct. App. 2008); see also Stewart Decl. ¶ 52.

26 In sum, although Plaintiffs would dispute each of Flock Freight’s arguments, a class trial
27 and the formal discovery to prepare for it would be long, arduous, and risky; and even if
28 Plaintiffs prevailed on each claim, they might face lengthy appeals. In light of the myriad risks

1 and delay of litigation, Plaintiffs' Counsel believes that the proposed Settlement is in the best
2 interests of the Class Members. Stewart Decl. ¶ 52; Harlan Decl. ¶ 9.

3 * * *

4 Because all the considerations indicate that the settlement is fair, adequate, and
5 reasonable, the Court should grant preliminary approval of the Settlement.

6 **D. Plaintiffs' Forthcoming Request for Attorneys' Fees is Appropriate.²²**

7 Pursuant to Preliminary Approval Checklist ¶ 10, Plaintiffs submit this argument in
8 support of their forthcoming request for one-third (33.3%) of the Maximum Settlement Amount
9 as attorneys' fees (\$616,666.67). At the Final Approval stage, Plaintiffs' Counsel will file an
10 application to approve of attorney's fees and memorandum of points and authorities in
11 support.²³

12 "California has long recognized, as an exception to the general American rule that
13 parties bear the costs of their own attorneys, the propriety of awarding an attorney fee to a party
14 who has recovered or preserved a monetary fund for the benefit of himself or herself and
15 others." *Laffitte v. Robert Half Int'l Inc.*, 376 P.3d 672, 676 (Cal. 2016). In awarding fees in a
16 class action, courts generally use either the percentage of the recovery or the lodestar approach.
17 *See generally id.* at 677-82. "The choice of a fee calculation method is generally one within the
18 discretion of the trial court, the goal under either the percentage or lodestar approach being the
19 award of a reasonable fee to compensate counsel for their efforts." *Id.* at 687. In this case, the
20 proposed attorneys' fee award is reasonable and supported by the percentage-of-recovery
21 method.

22 The California Supreme Court confirmed that the percentage method is appropriate, fair,
23 and efficient. *See id.* at 688. The Court noted that "most courts and commentators now believe
24 that the percentage method is superior." *Id.* at 680. It explained that there are numerous
25 "recognized advantages of the percentage method—including relative ease of calculation,
26

27 ²² Preliminary Approval Checklist ¶ 10.

28 ²³ *See* Cal. Rules of Court, Rule 3.769(b); San Bernardino County Superior Court Complex
Litigation Program, Final Approval Checklist ¶¶ 2-3.

1 alignment of incentives between counsel and the class, a better approximation of market
2 conditions in a contingency case, and the encouragement it provides counsel to seek an early
3 settlement and avoid unnecessarily prolonging the litigation.” *Id.* at 686.

4 Plaintiffs’ Counsel’s request for one-third of the Maximum Settlement Amount is
5 reasonable because it is consistent with the percentages awarded in other class action settlements.
6 In California, “[e]mpirical studies show that, regardless [of] whether the percentage method or
7 the lodestar method is used, fee awards in class actions average around one-third of the
8 recovery.” *Chavez v. Netflix, Inc.*, 75 Cal. Rptr. 3d 413, 433 n.11 (Cal. Ct. App. 2008) .

9 Employing the percentage method in this case rewards the extreme efficiency with which
10 Plaintiffs’ Counsel obtained a resolution in this case. *See Laffitte*, 376 P.3d at 686 (benefit of the
11 percentage method is “the encouragement it provides counsel to seek an early settlement and
12 avoid unnecessarily prolonging the litigation.”). Plaintiffs’ Counsel’s efforts to master the
13 relevant facts and legal questions – through extensive investigation and mediation discovery –
14 made the resolution of this case possible prior to court rulings that could have significantly
15 weakened Plaintiffs’ claims. Stewart Decl. ¶¶ 17-20. Plaintiffs’ Counsel made an informed
16 judgment that this Settlement, as opposed to protracted litigation, is in the best interests of
17 Settlement Class Members and secures substantial benefits for the Class now. *Id.* ¶¶ 46-53.

18 At the final approval stage, Plaintiffs will also explain – with the support of detailed time
19 records pursuant to the Court’s Final Approval Checklist – how the fee request is also
20 appropriate based on a lodestar cross check. *See Laffitte*, 376 P.3d at 687-88 (California trial
21 courts have discretion to conduct a lodestar cross-check on the percentage fee).

22 **E. Plaintiffs’ Forthcoming Request for Service Awards is Appropriate.**²⁴

23 At final approval, Plaintiffs will respectfully request that the Court approve a service
24 award of \$7,500 each (or \$82,500 total) in recognition of the services they rendered to the
25 Settlement Class, the time they spent for the Class’s benefit, and, importantly, the risks they
26 incurred in publicly stepping forward to assert claims for the benefit of the Settlement Class.

27 Representative service awards are “fairly typical in class action cases.” *In re Cellphone*

28 ²⁴ Preliminary Approval Checklist ¶¶ 14, 15.

1 *Fee Termination Cases*, 113 Cal. Rptr. 3d 510, 521 (Cal. Ct. App. 2010) (quoting *Rodriguez v.*
2 *West Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009)). “[T]he rationale for making
3 enhancement or incentive awards to named plaintiffs is that they should be compensated for the
4 expense or risk they have incurred in conferring a benefit on other members of the class.” *Clark*
5 *v. Am. Residential Servs. LLC*, 96 Cal. Rptr. 3d 441, 458 (Ct. App. 2009). In evaluating the
6 reasonableness of a proposed award, courts consider, *inter alia*, (1) the amount of time and effort
7 spent by the class representative, the duration of the litigation, and the actions they took to
8 protect the interests of the class; (2) the degree to which the class has benefitted from those
9 actions; (3) the personal benefit received by the class representative as a result of the litigation;
10 (4) the risk, both financial and otherwise, the class representative faced in bringing the suit; and
11 (5) the notoriety and personal difficulties encountered by the class representative. *Id.* at 456;
12 *Cellphone Fee Termination Cases*, 113 Cal.Rptr.3d at 521 (same, affirming approval of \$10,000
13 service awards).

14 Here, Plaintiffs contributed significantly to the prosecution of this action on behalf of the
15 Settlement Class Members. Plaintiffs Byam, Cifuentes, Free, Harmon, Nyamekye, Ortiz,
16 Pegram, Ramos, and Wilson have served as class representatives since April 2021, and Plaintiffs
17 Kim and Pirrello since May 2021.²⁵ Plaintiffs spent time reviewing and approving the demand
18 letter, providing documents, preparing for mediation, discussing settlement negotiations,
19 reviewing and approving the settlement, filing the Complaint, and seeking approval of the
20 settlement. Plaintiffs were regularly available to speak to Plaintiffs’ Counsel, providing
21 information relating to the claims and describing Flock Freight’s policies and practices.
22 Plaintiffs worked with Plaintiffs’ Counsel to provide mediation testimony that detailed their
23 experience. Plaintiffs were available by phone and contributed to Plaintiffs’ Counsel’s

24 ²⁵ Ex. 3 (Declaration of Mandela Byam (“Byam Decl.”)) ¶ 3; Ex. 4 (Declaration of
25 Sebastian Cifuentes (“Cifuentes Decl.”)) ¶ 3; Ex. 5 (Declaration of Andy Free (“Free Decl.”)) ¶
26 3; Ex. 6 (Declaration of Matthew Harmon (“Harmon Decl.”)) ¶ 3; Ex. 7 (Declaration of Min Soo
27 Kim (“Kim Decl.”)) ¶ 3; Ex. 8 (Declaration of Jamine Nyamekye (“Nyamekye Decl.”)) ¶ 3; Ex.
28 9 (Declaration of Daniel Ortiz (“Ortiz Decl.”)) ¶ 3; Ex. 10 (Declaration of Nathan Pegram
 (“Pegram Decl.”)) ¶ 3; Ex. 11 (Declaration of MaryAnne Pirrello (“Pirrello Decl.”)) ¶ 3; Ex. 12
 (Declaration of Jesus Ramos (“Ramos Decl.”)) ¶ 3; Ex. 13 (Declaration of Cody Wilson
 (“Wilson Decl.”)) ¶ 3.

arguments during mediation and after, reviewed and approved the Settlement Agreement. Plaintiffs then reviewed and approved the Complaint. In total, Plaintiffs estimate that they each spent approximately 5 to 20 hours fulfilling their duties as class representatives.²⁶

Plaintiffs' efforts resulted in a substantial benefit to the Settlement Class Members, who stand to recover an average estimated net payment of approximately \$3,925.28 assuming 277 estimated class members. Courts regularly approve incentive awards even where the incentive award is more than the average class member payment. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 112 Cal.Rptr.3d 324, 335 (Cal. Ct. App. 2010) (approving incentive payment of \$5,000 where average payment to class members was \$4,300); *c.f. Clark*, 96 Cal.Rptr.3d at 457-58 (reversing incentive award that gave plaintiffs at least 44 times the average class member award). In fact, several Plaintiffs who worked at Flock Freight for approximately 8-9 months stand to recover estimated net payments of \$2,895.81 (Byam), \$3,051.61 (Free), \$3,362.12 (Kim), \$3,194.64 (Pegram) and \$3,323.19 (Pirrello), receiving less than the average Settlement Class Member if their requested service awards are not approved, despite the time they committed and the reputational risk they assumed.²⁷

Importantly, Plaintiffs took on considerable reputational risks with respect to their current and future employers by putting their names on a wage and hour complaint.²⁸ The logistics and technology startup industry is a tight-knit community in which sales representatives frequently change employers, and requires an internet presence to build relationships with clients.²⁹ This

²⁶ Ex. 3 (Byam Decl.) ¶ 4; Ex. 4 (Cifuentes Decl.) ¶ 4; Ex. 5 (Free Decl.) ¶ 4; Ex. 6 (Harmon Decl.) ¶ 4; Ex. 7 (Kim Decl.) ¶ 4; Ex. 8 (Nyamekye Decl.) ¶ 4; Ex. 9 (Ortiz Decl.) ¶ 4; Ex. 10 (Pegram Decl.) ¶ 4; Ex. 11 (Pirrello Decl.) ¶ 4; Ex. 12 (Ramos Decl.) ¶ 4; Ex. 13 (Wilson Decl.) ¶ 4.

²⁷ *See Boyd v. Bank of Am. Corp.*, 2014 U.S. Dist. LEXIS 162880, at *20 (C.D. Cal. Nov. 18, 2014) (approving \$15,000 service award where "due to his workweeks, without the enhancement, [plaintiff] would recover less than many other Class Members").

²⁸ "[C]ourts recognize the 'unique risks' named plaintiffs in employment class actions face with respect to future employment." *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991, at *40 (N.D. Cal. Oct. 3, 2017); *see also Lopez v. Mgmt. & Training Corp.*, 2020 U.S. Dist. LEXIS 70029, at *30 (S.D. Cal. Apr. 20, 2020) (class representatives "face stigma upon future employment opportunities having sued a former employer").

²⁹ Ex. 3 (Byam Decl.) ¶ 5; Ex. 4 (Cifuentes Decl.) ¶ 5; Ex. 5 (Free Decl.) ¶ 5; Ex. 6 (Harmon Decl.) ¶ 5; Ex. 7 (Kim Decl.) ¶ 5; Ex. 8 (Nyamekye Decl.) ¶ 5; Ex. 9 (Ortiz Decl.) ¶ 5; Ex. 10 (Pegram Decl.) ¶ 5; Ex. 11 (Pirrello Decl.) ¶ 5; Ex. 12 (Ramos Decl.) ¶ 5; Ex. 13 (Wilson

1 risk was not theoretical; in approximately September 2021, in advance of the October mediation,
2 Flock Freight disclosed Plaintiffs' names to its employees in connection with its investigation of
3 Plaintiffs' claims.³⁰ Consequently, Plaintiffs' professional and personal relationships with Flock
4 Freight employees have suffered; they are reluctant to, or no longer use Flock Freight as a
5 reference.³¹

6 Plaintiffs made the Settlement possible for other Class Members. The sheer number of
7 named Plaintiffs who stepped forward to represent the class forced Defendant to contend with
8 the very real possibility that if it sought to enforce its class waiver arbitration agreements, it
9 would face a significant number of individual claims in arbitration, a costly prospect which
10 helped leverage this settlement. Plaintiffs were able to attain this early Settlement for the benefit
11 of the class, but also were prepared and ready to perform additional tasks, including sitting for a
12 deposition, responding to formal discovery, and testifying at trial.³² In short, each Plaintiffs'
13 participation in the case was imperative to its success. The requested service awards are
14 therefore reasonable in light of the substantial recovery and applicable precedent.³³

15 **F. The Proposed Notice and Settlement Procedure Are Appropriate.**³⁴

16 The Parties have agreed to the proposed Notice. Ex. 1 to the Proposed Order (Proposed
17 Notice). Due process requires that notice to class members provide sufficient information to

18 Decl.) ¶ 5.

19 ³⁰ Ex. 3 (Byam Decl.) ¶ 7; Ex. 4 (Cifuentes Decl.) ¶ 7; Ex. 5 (Free Decl.) ¶ 7; Ex. 6
20 (Harmon Decl.) ¶ 7; Ex. 8 (Nyamekye Decl.) ¶ 7; Ex. 9 (Ortiz Decl.) ¶ 7; Ex. 10 (Pegram Decl.)
21 ¶ 7; Ex. 11 (Pirrello Decl.) ¶ 7; Ex. 12 (Ramos Decl.) ¶ 7; Ex. 13 (Wilson Decl.) ¶ 7.

22 ³¹ Ex. 3 (Byam Decl.) ¶ 6; Ex. 4 (Cifuentes Decl.) ¶ 6; Ex. 5 (Free Decl.) ¶ 6; Ex. 6
(Harmon Decl.) ¶ 6; Ex. 7 (Kim Decl.) ¶ 7; Ex. 8 (Nyamekye Decl.) ¶ 6; Ex. 9 (Ortiz Decl.) ¶ 6;
23 Ex. 10 (Pegram Decl.) ¶ 6; Ex. 11 (Pirrello Decl.) ¶ 6; Ex. 12 (Ramos Decl.) ¶ 6.

24 ³² Ex. 3 (Byam Decl.) ¶ 9; Ex. 4 (Cifuentes Decl.) ¶ 9; Ex. 5 (Free Decl.) ¶ 9; Ex. 6
(Harmon Decl.) ¶ 9; Ex. 7 (Kim Decl.) ¶ 9; Ex. 8 (Nyamekye Decl.) ¶ 9; Ex. 9 (Ortiz Decl.) ¶ 9;
25 Ex. 10 (Pegram Decl.) ¶ 9; Ex. 11 (Pirrello Decl.) ¶ 9; Ex. 12 (Ramos Decl.) ¶ 9; Ex. 13 (Wilson
26 Decl.) ¶ 9.

27 ³³ See *Chen v. W. Dig. Corp.*, 2021 U.S. Dist. LEXIS 6728, at *29 (C.D. Cal. Jan. 5, 2021)
(\$18,000 service award in pre-suit settlement); *Marks v. Everlaw, Inc.*, 2021 Cal. Super. LEXIS
102072, at *6 (\$7,500 service awards in pre-suit settlement) (Cal. Super Ct. Jan. 20, 2021);
28 *Sebastian v. Sprint/United Mgmt. Co.*, 2019 U.S. Dist. LEXIS 225167, at *26 (C.D. Cal. Dec. 5,
2019) (\$10,000 service award, where the court did "not find Plaintiff's efforts . . . especially
onerous, [it] recognize[d] and [took] into account Plaintiff's reputational concerns").

³⁴ Preliminary Approval Checklist ¶¶ 20-23, 26, 28(a).

1 make an informed decision to accept or object to a proposed settlement and an opportunity to
2 be heard. *See Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). The
3 Parties' proposed Notice satisfies this requirement because it provides sufficient information
4 for Settlement Class Members to decide whether to participate in, object to, or opt out of the
5 Settlement and meets all of the requirements of California Rule of Court 3.766(d). It provides
6 (1) a brief explanation of the case, (2) the material settlement terms, (3) the proposed fees and
7 costs of Plaintiffs' Counsel and settlement administration, (4) the proposed Service Awards to
8 Plaintiffs, (5) that Class Members may opt out of or object to the Settlement (and instructions
9 on how), (5) a statement that the settlement will bind all Class Members who do not request
10 exclusion, (6) a statement that any Class Member who does not request exclusion may enter an
11 appearance through counsel, (7) details about the hearing on settlement approval and the
12 opportunity to object; and (8) how Class Members can obtain additional information. Ex. 1 to
13 the Proposed Order (Proposed Notice).

14 The manner of giving notice also complies with California Rule of Court 3.766(e)
15 because the proposed procedure has a likelihood of reaching a substantial percentage of
16 Settlement Class Members. *See supra*, III.G. Terms of the Proposed Settlement, Notice and
17 Settlement Administrator. The proposed Settlement Administrator, ILYM Group, which
18 estimates fees not to exceed \$15,000,³⁵ is experienced and was chosen only after comparing bids
19 from several other administrators. Ex. 1 (Settlement Agreement) § 3.B; Stewart Decl. ¶ 30; Ex.
20 2 (Paul Decl.) ¶ 10.

21 **G. A Final Approval Hearing Should be Scheduled.**³⁶

22 The last step in the approval process is the formal hearing, at which the Court may hear
23 evidence and argument necessary to evaluate the proposed Settlement. *See* Cal. Rules of Court,
24 Rule 3.769(e). A proposed order is submitted contemporaneously setting forth the proposed
25 briefing schedule and hearing date for final approval of the settlement.

26
27
28 ³⁵ The estimate ILYM Group provided is capped at \$14,750. *See* Ex. 2 (Paul Decl.) ¶ 10.
³⁶ Preliminary Approval Checklist ¶¶ 25, 28.

1 Dated: September 1, 2022

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