

STIPULATION OF SETTLEMENT AND RELEASE

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 and Defendant Flock Freight, Inc. hereby enter into this Stipulation of Settlement and Release to resolve the wage and hour claims of Named Plaintiffs and Settlement Class Members (as defined below).

RECITALS

- A.** WHEREAS, on May 21, 2021, Named Plaintiffs sent Defendant a letter in which they asserted that Defendant misclassified them and similarly situated Sales Representatives as exempt from overtime under federal and California state wage laws, and asserted related claims under California wage laws, and invited Defendant to engage in settlement negotiations;
- B.** WHEREAS, on or around June 11, 2021, Named Plaintiffs and Defendant agreed to engage in dialogue regarding the possibility of a resolution of the threatened wage and hour claims and agreed to toll the limitations period on those claims and to an exchange of information and payroll data to facilitate that dialogue;
- C.** WHEREAS, on October 8, 2021, the Parties participated in a full-day mediation session with the assistance of experienced wage and hour class and collective action mediator Deborah Crandall Saxe, Esq. of JAMS, and were unable to reach an agreement at mediation;
- D.** WHEREAS, the mediator continued working with both sides and made a mediator's proposal on October 11, 2021, which both sides accepted on October 12, 2021, subject to the Parties' agreement to additional non-monetary terms;
- E.** WHEREAS, the Parties engaged in extensive additional settlement discussions, resulting in a Memorandum of Understanding fully executed on October 19, 2021, which is attached as **Exhibit A**. In the event of any conflict or inconsistency between the terms and provisions of the Term Sheet and those of the Agreement, the terms and provisions of the Agreement shall govern;
- F.** WHEREAS, based upon their analysis and their evaluation of a number of factors, and recognizing the substantial risks of litigation, including the possibility that litigation, if not settled now, might result in a recovery that is less favorable to the Plaintiffs and Settlement Class Members, and that might not occur for several years, Plaintiffs' Counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate, and that the Agreement is in the best interests of the Plaintiffs and Settlement Class Members;
- G.** WHEREAS, Defendant has denied and continues to deny all allegations made by the Named Plaintiffs, has denied and continues to deny that Sales Representatives were misclassified under the Fair Labor Standards Act and California wage and hour laws, that Defendant is liable or owes damages or penalties to anyone with respect to the alleged facts and causes of action subject to this Agreement, and that the claims subject to this Agreement are appropriate for class or collective treatment, except for the purposes of settlement only. Nonetheless, without admitting or conceding any liability or damages whatsoever, Defendant has agreed to settlement of the Litigation on the terms and

conditions set forth in this Agreement, to avoid the burden, expense, and uncertainty of continuing the Litigation;

- H.** NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties agree to a full and complete settlement of the Litigation on the following terms and conditions:

1. DEFINITIONS

The defined terms set forth in this Agreement have the meanings ascribed to them below.

- 1.1. Agreement.** “Agreement” means this Stipulation of Settlement and Release.
- 1.2. Application for Final Approval.** “Application for Final Approval” means documents and materials to be filed with the Court pursuant to Section 9, seeking final approval of the settlement, Service Awards, and Plaintiffs’ attorneys’ fees and costs.
- 1.3. California Class.** “California Class” means all current and former employees who worked for Flock Freight as an exempt-classified Sales Representative in California during the California Covered Period. A member of the California Class is a “California Class Member.”
- 1.4. California Covered Period.** “California Covered Period” means the period from June 11, 2017 through the Release Date.
- 1.5. Class Counsel.** “Class Counsel” or “Plaintiffs’ Counsel” means Outten & Golden LLP.
- 1.6. Class List.** “Class List” means a list of all Settlement Class Members including their name, last known address, work location(s), Eligible Workweeks, Eligible PAGA Workweeks (if applicable), and, to the extent available, last known personal telephone number and last known personal e-mail address pursuant to Flock Freight’s business records.
- 1.7. Court.** “Court” means the Superior Court of California, County of San Bernardino.
- 1.8. Cy Pres.** “Cy Pres” means Centro Legal De La Raza.
- 1.9. Days.** “Days” means calendar days, unless otherwise noted.
- 1.10. Defendant’s Counsel.** “Defendant’s Counsel” means DLA Piper LLP.
- 1.11. Effective Date.** “Effective Date” means the later of the following dates: (a) if there is no appeal of the Final Approval Order, the day after the deadline for taking an appeal has passed; or (b) if there is an appeal of the Final Approval Order, the day after all appeals are resolved in favor of final approval.
- 1.12. Employer Payroll Taxes.** “Employer Payroll Taxes” means all taxes and withholdings an employer is required to make pursuant to federal, state, and/or local law arising out of or based upon the payment of employment compensation in this Litigation, including but not limited to FICA, FUTA, and SUTA obligations. Defendant shall pay Employer Payroll Taxes in addition to the Maximum Settlement Amount in accordance with the terms of this Agreement.

- 1.13. Fairness Hearing.** “Fairness Hearing” means the hearing before the Court relating to the Application for Final Approval.
- 1.14. Final Approval Order.** “Final Approval Order” means the Order entered by the Court after the Fairness Hearing, approving the terms and conditions of this Agreement, authorizing distribution of Settlement Checks, Service Awards, and Plaintiffs’ attorneys’ fees and costs, and dismissing the Litigation with prejudice.
- 1.15. FLSA Collective.** “FLSA Collective” means all current and former employees who worked for Flock Freight as an exempt-classified Sales Representative in the United States during the FLSA Covered Period. A member of the FLSA Collective is an “FLSA Collective Member.”
- 1.16. FLSA Covered Period.** “FLSA Covered Period” means the period from June 11, 2018 through the Release Date.
- 1.17. Eligible PAGA Workweeks.** “Eligible PAGA Workweeks” means the total number of weeks worked by an individual PAGA Member during the PAGA Covered Period in a Sales Representative role while the role was classified as an exempt position.
- 1.18. Eligible Workweeks.** “Eligible Workweeks” means: (a) for California Class Members, the total number of weeks worked by an individual California Class Member during the California Covered Class Period in a Sales Representative role while the role was classified as an exempt-position; and (b) for FLSA Collective Members who are not also California Class Members, the total number of weeks worked by an individual FLSA Collective Member during the FLSA Covered Period in a Sales Representative role while the role was classified as an exempt position.
- 1.19. Flock Freight or Defendant.** “Flock Freight” or “Defendant” means Defendant Flock Freight, Inc. and/or AuptiX, Inc.
- 1.20. Litigation.** “Litigation” refers to the proceedings that flow from the filing of the Complaint (as defined in Section 2 below).
- 1.21. Maximum Settlement Amount.** “Maximum Settlement Amount” refers to One Million Eight Hundred and Fifty Thousand Dollars (\$1,850,000), which is the maximum amount Defendant will be obligated to pay in connection with the settlement, subject to the Escalator Clause set forth in Section 6 herein, and inclusive of all Plaintiffs’, FLSA Collective’s, and California Class’s attorneys’ fees, costs and expenses associated in any way with the Litigation and/or settlement; Service Awards to the Named Plaintiffs; payment to the State of California Labor Workforce and Development Agency (“LWDA”) in connection with the claims for penalties under the California Private Attorneys General Act (“PAGA”), Cal. Labor Code §§ 2698, *et seq.*; the costs and expenses of the Settlement Administrator; and the settlement payments to Settlement Class Members and PAGA Members based on the formulas set forth in Section 11.5 below. Provided, however, that Defendant will be responsible for paying Employer Payroll Taxes in addition to the Maximum Settlement Amount.

- 1.22. **Named Plaintiffs.** “Named Plaintiffs” or “Plaintiffs” means 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.
- 1.23. **Net Fund.** “Net Fund” means the remainder of the Maximum Settlement Amount after deductions for: (1) the Settlement Administrator’s costs and expenses; (2) Court-approved attorneys’ fees and costs for Class Counsel; (3) Court-approved Service Awards to the Named Plaintiffs; and (4) the PAGA Fund.
- 1.24. **Notice.** “Notice” or “Notices” means the Court-approved Notice of Proposed Class Action Settlement (for California Class Members) and Notice of Proposed Collective Action Settlement (for FLSA Collective Members who are not also California Class Members), as authorized in the Preliminary Approval Order.
- 1.25. **Objection/Opt-Out Deadline.** “Objection/Opt-Out Deadline” means the deadline for Settlement Class Member Objections or California Class Member Opt-out Statements, if any.
- 1.26. **Objector.** “Objector” means an individual who properly files an Objection to the settlement and does not include any California Class Member who opts out of this settlement.
- 1.27. **Opt-out Statement.** “Opt-out Statement” is a written, signed statement that an individual California Class Member has decided to opt out and be excluded from this settlement.
- 1.28. **PAGA Check Enclosure Letter.** “PAGA Check Enclosure Letter” means the letter attached hereto as Exhibit E, which the Settlement Administrator shall mail to all PAGA Members together with the Settlement Check for the PAGA Member’s Net PAGA Amount.
- 1.29. **PAGA Covered Period.** “PAGA Covered Period” means the period from June 11, 2020 through the Release Date.
- 1.30. **PAGA Fund.** “PAGA Fund” means Twenty-Nine Thousand Six Hundred Dollars (\$29,600) of the Maximum Settlement Amount that is attributed to the settlement of the PAGA Claims of PAGA Members. Seventy-five percent (75%) of the PAGA Fund shall be paid to the LWDA and twenty-five percent (25%) of the PAGA Fund shall be paid to the PAGA Members (“PAGA Payment”) as set forth in Section 11.4 herein. Provided, however, that if Defendant elects option (a) or (c) of the Escalator Clause, as set forth in Section 6 herein, the PAGA Fund allocation will increase on a proportional basis such that it remains 1.6% of the increased Maximum Settlement Amount.
- 1.31. **PAGA Members.** “PAGA Members” means all current and former employees who worked for Flock Freight as an exempt-classified Sales Representative in California during the PAGA Covered period.
- 1.32. **Participating California Class Members.** “Participating California Class Members” means all California Class Members who do not opt out.

- 1.33. Participating FLSA Collective Members.** “Participating FLSA Collective Members” means an FLSA Collective Member or the authorized legal representative of such FLSA Collective Member who timely cashes, deposits, or otherwise negotiates a Settlement Check.
- 1.34. Parties.** “Parties” means Plaintiffs and Defendant Flock Freight, Inc., and each a “Party.”
- 1.35. Preliminary Approval Order.** “Preliminary Approval Order” means the Order entered by the Court: (1) certifying the California Class solely for the purpose of effectuating this Agreement; (2) conditionally certifying the FLSA Collective pursuant to 29 U.S.C. § 216(b) solely for the purpose of effectuating this Agreement; (3) preliminarily approving the terms and conditions of this Agreement; (4) appointing Class Counsel as defined above; (5) directing the manner and timing of providing Notice to Settlement Class Members; and (6) setting dates to effectuate the terms of this Agreement, including the Objection/Opt-Out Deadline and the date of the Fairness Hearing.
- 1.36. Qualified Settlement Fund.** “Qualified Settlement Fund” or “QSF” means the account established by the Settlement Administrator for the Maximum Settlement Amount paid by Defendant. The QSF will be controlled by the Settlement Administrator subject to the terms of this Agreement and the Court’s Orders for Preliminary Approval and Final Approval. Interest, if any, earned on the QSF, shall become part of the Net Fund.
- 1.37. Release Date.** “Release Date” is the date corresponding to the number of Total Eligible Workweeks covered by the Maximum Settlement Amount, as set forth in the Escalator Clause set forth in Section 6 herein.
- 1.38. Released Parties.** “Released Parties” means 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.
- 1.39. Sales Representative.** “Sales Representative” or “Sales Representatives” means the exempt-classified positions listed in Exhibit B attached hereto and which is expressly incorporated herein by reference.
- 1.40. Settlement Administrator.** “Settlement Administrator” means the qualified administrator selected pursuant to Section 3 to disseminate the Notice, administer the calculation, allocation, and distribution of the QSF, and perform the administrative duties set forth in this Agreement. The Settlement Administrator’s costs and expenses shall be paid from the Maximum Settlement Amount.
- 1.41. Settlement Class Members.** Settlement Class Members shall consist of all California Class Members and FLSA Collective Members.
- 1.42. Settlement Checks.** “Settlement Checks” means checks issued to Participating California Class Members and FLSA Collective Members for their share of the Net Fund in accordance with this Agreement; and checks issued to PAGA Members for their share of the PAGA Payment in accordance with this Agreement.

1.43. Total Eligible Workweeks. “Total Eligible Workweeks” means the sum of Eligible Workweeks for all Settlement Class Members.

2. PROCEDURAL ISSUES

- A. Filing of Complaint.** Within seven (7) days after the execution of this Agreement, Named Plaintiffs will file a class, collective, and (when ripe) representative PAGA action complaint in the Superior Court of California, County of San Bernardino (the “Complaint”). The Complaint will assert the following claims on behalf of the California Class, FLSA Collective, and PAGA Members, as applicable: (1) failure to pay overtime compensation for all hours worked over eight (8) in a workday pursuant to Cal. Labor Code §§ 510 and 1198; (2) failure to provide meal and rest breaks in accordance with Cal. Labor Code §§ 226.7 and 512 and applicable wage orders; (3) failure to timely pay wages due during employment and upon separation in accordance with Cal. Labor Code §§ 201, 202, 203, and 204; (4) failure to provide timely, accurate, and itemized wage statements in accordance with Cal. Labor Code § 226(a); (5) failure to reimburse employees for all required business expenses in accordance with Cal. Labor Code § 2802; (6) failure to maintain accurate payroll records in accordance with Cal. Labor Code § 1174; (7) failure to pay overtime wages under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*; (8) engaging in unlawful business practices within the meaning of Cal. Bus. & Prof. Code §§ 17200, *et seq.*; and (9) violation of PAGA, Cal. Labor Code §§ 2698, *et seq.*; provided, however, that if the LWDA notice period required by California Labor Code § 2699.3(a)(1)(C) has not yet passed as of the date of filing the Litigation, Plaintiffs shall promptly amend the Complaint to add PAGA violations within five (5) days after the close of the LWDA notice period.
- B. Jurisdiction and Venue.** The Parties mutually consent to jurisdiction in the Superior Court of California, County of San Bernardino. Defendant employs PAGA Members in various counties in California, including San Bernardino County. Defendant hereby consents in writing to San Bernardino County as venue for settlement approval purposes.

3. SETTLEMENT ADMINISTRATOR

- A. Retention.** Prior to filing the Motion for Preliminary Approval, Class Counsel shall engage ILYM Group, Inc. as Settlement Administrator.
- B. Funding Settlement Administrator.** The Settlement Administrator’s costs and expenses, not to exceed \$15,000.00, shall be paid from the Maximum Settlement Amount.
- C. Responsibilities of Settlement Administrator.** The Settlement Administrator shall be responsible for: preparing, printing, and disseminating to Settlement Class Members the Notice, as provided herein; performing a skip trace up to two (2) times and resending promptly any Notices returned without a forwarding address or resending to those with a new forwarding address; responding to requests or communications made by the Parties; preparing, monitoring, and maintaining a website where Settlement Class Members can review information regarding the settlement; keeping track of requests for exclusion, Objections, or otherwise,

including maintaining the original mailing envelope in which the request was mailed; providing counsel for the Parties with copies of all Objections and Opt-out Statements submitted by Settlement Class Members; providing Plaintiffs' Counsel with a list of the names, addresses, and contact information for FLSA Collective Members and Participating California Class Members; distributing the Settlement Checks to Participating California Class Members and FLSA Collective Members, including the PAGA Check Enclosure Letter for PAGA Members; preparing, sending, and/or wire-transferring Class Counsel's Court-approved attorneys' fees and costs; mailing Service Awards in accordance with this Agreement and the Final Approval Order; remitting required amounts to the LWDA pursuant to the provisions of PAGA; referring to Class Counsel all inquiries by Settlement Class Members regarding matters not within the Settlement Administrator's duties specified herein; responding to all inquiries of Class Counsel and Defendant's Counsel consistent with the Settlement Administrator's duties specified herein; promptly apprising counsel for the Parties of the activities of the Settlement Administrator; maintaining adequate records of its activities, including the dates of the mailing of Notices, returned mail and other communications and attempted written or electronic communications with Settlement Class Members; confirming in writing to Class Counsel and Defendant's Counsel its completion of the administration of the Agreement; timely responding to communications from the Parties and their counsel; calculating the settlement amounts; reporting on the status of the settlement to the parties on a weekly basis; notifying counsel for all Parties of all timely and untimely submissions; providing a compliance affidavit in connection with the Application for Final Approval within ten (10) days of the Parties' deadline to file the Application for Final Approval; locating Settlement Class Members; establishing and administering the QSF; calculating and paying, as provided herein, all appropriate taxes and complying with all tax reporting obligations, including preparing and filing all applicable tax forms; handling the California unclaimed property process for any Settlement Check to a Participating California Class Member or PAGA Member not cashed after the expiration of the check cashing period; posting notice of the Final Approval Order on the website; providing Class Counsel with information regarding the number of Eligible Workweeks associated with the Class List; providing the Parties with a complete list of the names of the California Class Members who validly elected to opt-out and calculating their share of the Net Fund allocated to California Class Members; and such other tasks as set forth herein, or as the Parties mutually agree.

- D. Access to the Settlement Administrator.** The Parties will have equal access to the Settlement Administrator and all information related to the administration of the settlement. Defendant shall provide the Settlement Administrator with the information necessary to calculate estimated settlement amounts and Settlement Checks for Settlement Class Members and both Parties shall reasonably assist the Settlement Administrator in locating Settlement Class Members.
- E. Disputes.** Disputes relating to the Settlement Administrator's ability and need to perform its duties shall be resolved by the Parties on consent or, in the event of a dispute, referred to the Court, if necessary, which will have continuing jurisdiction

over the terms and conditions of this settlement until all payments and obligations contemplated by the settlement have been fully carried out.

4. **PRELIMINARY APPROVAL MOTION.** Within twenty one (21) days after the execution of this Agreement, Class Counsel shall file a Motion for Preliminary Settlement Approval (“Preliminary Approval Motion”) which shall include: (1) the proposed Notices attached hereto as Exhibit C; (2) a proposed Preliminary Approval Order; (3) an executed version of this Agreement; and (4) necessary documents, memorandum, affidavits, and exhibits for purposes of certifying the California Class and FLSA Collective for settlement purposes only, and preliminarily approving the Agreement. The Preliminary Approval Motion will also seek the setting of the Objection/Opt-Out Deadline for Settlement Class Members to object or (for California Class Members) opt-out, in accordance with Section 5(E) herein, and the setting of the Fairness Hearing for final approval of the settlement before the Court at the earliest practicable date.

5. **NOTICE TO CLASS MEMBERS**

- A. **Class List to Settlement Administrator.** Within twenty-one (21) days of the date of the Preliminary Approval Order, Defendant’s Counsel shall provide the Settlement Administrator with the Class List. Within three (3) days after receipt of the Class List, the Settlement Administrator will provide Class Counsel with information regarding the number of Total Eligible Workweeks associated with the Class List, to allow the Parties to have equal information regarding a potential trigger of the Escalator Clause set forth in Section 6.
- B. **Notice Content.** The Notice will include information regarding: the nature of the Litigation, a summary of the substance of the Settlement Agreement, notice of Eligible Workweeks for each recipient and the corresponding estimated individual Net Amount, a summary of the formula used for calculating the individual Net Amount, the Eligible Workweek dispute procedure and time period for submission of a dispute regarding Eligible Workweeks, the Objection/Opt-Out Deadline, the date for the Fairness Hearing, and information regarding the requested Service Awards and Plaintiffs’ application for attorneys’ fees and costs. The Notice will include a neutral statement indicating that Defendant shall not retaliate against any Settlement Class Member for his or her decision to participate in the settlement. The Parties have agreed to the Notices substantially in the form set forth as Exhibit C hereto.
- C. **Notice Issuance.** Within fourteen (14) days after receipt of the Class List, the Settlement Administrator shall send the Court-approved Notices to all Settlement Class Members via First Class United States Mail and e-mail. At the same time, the Settlement Administrator shall send Settlement Class Members a text message notice advising Settlement Class Members of the website where they can view additional information about the settlement and update their contact information.
- D. **Skip Trace and Re-mailing.** The Settlement Administrator will use all commercially reasonable means to confirm Settlement Class Members’ contact information and obtain new contact information as necessary. In the event that a Notice is returned as undeliverable, the Settlement Administrator shall attempt to obtain the correct contact information of such person, including up to two (2) skip

traces, and shall attempt a re-mailing or re-emailing provided it obtains a more recent address or email address. The Settlement Administrator shall also mail and/or email a Notice to any Settlement Class Member who contacts the Settlement Administrator or Class Counsel during the time period between the initial mailing of the Notice and the Objection/Opt-Out Deadline and requests a Notice. The Settlement Administrator will notify Class Counsel and Defendant's Counsel of the number of Notices that are returned as undeliverable, including after any subsequent re-mailing(s) as set forth in this Agreement.

- E. Objection/Opt-Out Deadline.** Unless otherwise specified by the Court in its Preliminary Approval Order, the Objection/Opt-Out deadline shall be forty-five (45) days from the initial mailing of the Notice, except for Settlement Class Members to whom Notice is re-mailed, for whom the Objection/Opt-Out Deadline shall be forty-five (45) days from the initial mailing or thirty (30) days from the date of re-mailing, whichever is later. Notwithstanding the foregoing, any re-mailing must be made within the original forty-five (45) day period.

6. ESCALATOR CLAUSE AND RELEASE DATE.

- A.** Should the number of Total Eligible Workweeks identified at mediation (10,919) increase by more than ten percent (10%) (*i.e.*, 12,011) then Defendant shall have the option of: (a) increasing the Maximum Settlement Amount on a proportional basis by the same number of percentage points above ten percent (10%) by which the number of Total Eligible Workweeks exceeds 10,919 (for example, if the Total Eligible Workweeks exceed 10,919 by 15%, the Maximum Settlement Amount would be increased by 5%), in which case the Release Date shall be the date the Court issues the Preliminary Approval Order, (b) adjusting the Release Date to the date prior to the Preliminary Approval Order when the Total Eligible Workweeks are equal to or less than 10,919 plus 10% (for example, if the Total Eligible Workweeks are equal to or less than 12,011 on November 5, 2021 but exceed 12,011 on November 6, 2021, then any claims accruing after November 5, 2021 shall not be released, and the Release Date shall be November 5, 2021), or (c) such other date after the Total Eligible Workweeks exceed 12,011 but prior to the date the Court issues the Preliminary Approval Order, in which case the Release Date shall be the date designated by Flock Freight and the Maximum Settlement Amount will be increased on a proportional basis by the same number of percentage points above ten percent (10%) by which the number of Total Eligible Workweeks exceeds 10,919 as of the designated Release Date (for example, if Flock Freight designates February 1, 2022, as the Release Date, and Total Eligible Workweeks exceed 10,919 by 15% as of February 1, 2022, the Maximum Settlement Amount would increase by 5%, and no claims accruing after February 1, 2022 will be released). Under no circumstances shall the Release Date be later than the date of the Court's Preliminary Approval Order.
- B. Timing.** If the Escalator Clause is triggered as of preliminary approval, Defendant must elect option (a) or (c) within 26 calendar days after an order granting preliminary approval.

7. CALIFORNIA CLASS MEMBER OPT-OUTS

- A. California Class Members who choose to opt-out of the settlement as set forth in this Agreement must mail via First Class United States Mail a written, signed statement to the Settlement Administrator that states he or she is opting out of the settlement, and include his or her name, social security number, address, telephone number, and a statement indicating his or her intention to opt-out, such as: "I opt out of the Flock Freight wage and hour settlement." ("Opt-out Statement"). To be effective, an Opt-out Statement must be post-marked or otherwise received by the Objection/Opt-Out Deadline. Notwithstanding any other provision herein, Named Plaintiffs expressly waive their right to opt out of the settlement.
- B. The Settlement Administrator will stamp the received date on the original of each Opt-out Statement that it receives and shall serve copies of each Opt-out Statement on Class Counsel and Defendant's Counsel via email not later than three (3) days after receipt. The Settlement Administrator shall provide all Opt-out Statements, with the social security numbers and contact information redacted, in its compliance affidavit to be filed with the Application for Final Approval. The Settlement Administrator will retain the stamped originals of all Opt-out Statements and the originals of all envelopes accompanying Opt-out Statements in its files until such time as the Settlement Administrator is relieved of its duties and responsibilities under this Agreement.
- C. Within three (3) days after the expiration of the Objection/Opt-Out Deadline, the Settlement Administrator shall provide Plaintiffs' Counsel with a list of the names, addresses, and contact information for Participating California Class Members and FLSA Collective Members.
- D. Within three (3) days after the expiration of the Objection/Opt-Out Deadline, the Settlement Administrator shall provide the Parties with a complete list of the names of the California Class Members who validly elected to opt-out and calculate their share of the Net Fund allocated to California Class Members.

8. OBJECTIONS TO SETTLEMENT

- A. Settlement Class Members who wish to present objections to the settlement or the Agreement at the Fairness Hearing must first do so in writing ("Objection"). To be considered, such Objection must be mailed to the Settlement Administrator via First Class United States Mail and post-marked or otherwise received by the Objection/Opt-Out Deadline. The Objection must include all reasons for objecting to the settlement or the Agreement, and any supporting documentation. The Objection must also include the name, address, telephone number, and signature for the Settlement Class Member making the objection (the "Objector"). The Settlement Administrator will stamp the date received on the original and send copies of each Objection and supporting documents, as well as a copy of the Notice mailed to the Objector, to Class Counsel and Defendant's Counsel by email no later than three (3) days after receipt of the Objection. A California Class Member who opts out may not object to the settlement.
- B. An Objector has the right to appear at the Fairness Hearing either in person or through counsel hired by the Objector. An Objector who wishes to appear at the Fairness Hearing must state his or her intention to do so in writing on his or her

written Objection at the time he or she submits his or her written Objection. An Objector may withdraw his or her Objection at any time.

- C. The Parties may file with the Court written responses to any filed Objections no later than three (3) days before the Fairness Hearing.

9. FAIRNESS HEARING AND APPLICATION FOR FINAL APPROVAL

- A. After the Objection/Opt-Out Deadline, in accordance with the schedule set by the Court in the Preliminary Approval Order and in advance of the Fairness Hearing, Class Counsel shall file supporting documents and materials for Final Approval of the settlement (“Application for Final Approval”). The Application for Final Approval will include a compliance affidavit from the Settlement Administrator, an application for attorneys’ fees, costs, and Service Awards, and supporting affidavits and documents from Class Counsel regarding the fairness, adequacy, and reasonableness of the settlement or any aspect related to this Agreement, and a proposed Final Approval Order.
- B. At the Fairness Hearing and through the Application for Final Approval, the Parties shall request that the Court, among other things: (1) finally certify the California Class for settlement purposes only; (2) approve the settlement and this Agreement as fair, reasonable, adequate, and binding on all California Class Members who have not timely opted out of the settlement and all Participating Collective Members; (3) order the Settlement Administrator to distribute Settlement Checks to Participating California Class Members and FLSA Collective Members and Service Awards, if any, to the Named Plaintiffs; order the LWDA Payment, PAGA Payment, Settlement Administrator costs and expenses and Class Counsel’s attorneys’ fees and costs to be paid from the QSF; (5) order entry of the Final Approval Order in accordance with this Agreement; and (6) retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the settlement contemplated hereby.
- C. The Parties waive all appeals from the Court’s approval of the settlement unless the Court materially modifies the settlement without the agreement of the Parties. Plaintiffs and Class Counsel do not waive the right to an appeal regarding the application for attorneys’ fees and costs or Service Awards.

10. TERMINATION OF AGREEMENT

- A. **Grounds for Settlement Termination.** In the event that the Court declines to enter the Preliminary Approval Order or the Final Approval Order, except if the Court declines to enter the Preliminary Approval Order or the Final Approval Order due solely to the amount of attorneys’ fees and costs and/or Service Awards sought by Plaintiffs, the Parties agree to work together in an effort to resolve any issues identified by the Court in an attempt to reach a modified agreement to resubmit to the Court for approval. If the Parties are unable to reach an agreement, then either Party has the right to terminate the Agreement. This Agreement is not contingent upon approval by the Court of Plaintiffs’ application for attorneys’ fees and costs or Plaintiffs’ application for Service Awards, and if the Court approves the

settlement payment amount allocated to Settlement Class Members as set forth in this Agreement, but not the application for attorneys' fees and costs and/or the application for Service Awards, (a) the Agreement may not be terminated, and (b) any Court-required reduction of the attorneys' fees and costs and/or Service Awards will be reallocated to Participating Class Members and FLSA Collective Members as part of the Net Fund.

- B.** If the proportion of the Net Fund associated with California Class Members who validly elect not to participate in the settlement is equal to or greater than fifteen percent (15%) of the portion of the Net Fund allocated to all California Class Members, then Defendant will have the right to rescind the settlement. Defendant must exercise this right within fourteen (14) days after the Settlement Administrator notifies the Parties of the list of valid opt-outs and whether their share of the Net Fund allocated to California Class Members equals or exceeds fifteen percent (15%). Notwithstanding any other provision herein, if Defendant chooses to exercise this right, it will be responsible for all settlement administration costs incurred and to be incurred in notifying Settlement Class Members of the termination. Defendant further represents and warrants that it will not discourage or retaliate against any Settlement Class Member for participating in the settlement.
- C. Procedures for Termination.** To terminate this Agreement, the terminating Party shall give written notice to the other Party via email and overnight mail.
- D. Effect of Termination.** Termination shall have the following effects:
 - i.** The Agreement shall be terminated as to the affected Parties and shall have no force or effect.
 - ii.** Defendant shall have no obligation to make any payments to any Party, Settlement Class Member, or Class Counsel, except that the Parties shall be equally responsible for (a) the costs and expenses associated with the Settlement Administrator subsequent to the signing of this Agreement; and (b) the costs and expenses of the Settlement Administrator associated with the mailing of termination notice to Settlement Class Members informing them of the settlement termination, if any, pursuant to Section 10(D)(iii).
 - iii.** If the Court grants Preliminary Approval but not Final Approval, the Settlement Administrator will provide a Court-approved notice to Settlement Class Members that the Agreement did not receive Final Approval and that, as a result, no payments will be made to Settlement Class Members under the Agreement. Such notice shall be sent by the Settlement Administrator via email and First Class United States Mail.
 - iv.** The Parties may jointly or individually seek reconsideration of a ruling by the Court declining to enter the Preliminary Approval Order or Final Approval Order in the form submitted by the Parties or seek Court approval of a renegotiated settlement.
 - v.** The Litigation will resume as if no settlement had been attempted and the Agreement and all negotiations, statements, and proceedings relating thereto shall be without prejudice to the right of any of the Parties, all of

whom shall be restored to their respective positions in the action as of October 8, 2021, with all rights, arguments, and defenses preserved. For the avoidance of doubt, all Parties will preserve all rights, arguments, and defenses as to the enforceability or lack thereof of any arbitration agreements entered into between Flock Freight and Plaintiffs or any other Settlement Class Members; as to the appropriateness or lack thereof of any class, collective, or representative action; and otherwise preserve all rights, arguments, and defenses that would have been available to any Party as of October 8, 2021. For the avoidance of doubt, tolling shall not be deemed merged into this Agreement and shall separately and independently survive the termination of this Agreement and be in full force and effect.

11. SETTLEMENT TERMS

11.1 Settlement Amount

- A. **Maximum Settlement Amount.** Defendant agrees to pay a Maximum Settlement Amount of One Million Eight Hundred and Fifty Thousand Dollars (\$1,850,000), subject to the Escalator Clause provided in Section 6 herein.
- B. **Funding.** Within ten (10) days after the Court has issued an Order granting Final Approval of the Settlement, the Settlement Administrator will calculate the total amount to be paid by Defendant, including the Maximum Settlement Amount (subject to the Escalator Clause set forth in Section 6) and Employer Payroll Taxes. Defendant shall pay the Maximum Settlement Amount and Employer Payroll Taxes into the Qualified Settlement Fund within twenty-one (21) days of the Effective Date.

11.2 Attorneys' Fees, Expenses and Costs

- A. At the Fairness Hearing and through the Application for Final Approval, Plaintiffs will petition the Court for an award of attorneys' fees of no more than one-third of the Maximum Settlement Amount, plus reimbursement of actual litigation expenses and costs to be paid from the QSF ("Fees and Costs"). Defendant will not oppose this application, including any appeal or request for reconsideration if the application is denied or modified by the Court.
- B. The substance of Plaintiffs' application for Fees and Costs is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Litigation. The outcome of any proceeding related to Plaintiffs' application for Fees and Costs shall not terminate this Agreement or otherwise affect the Court's ruling on the Application for Final Approval. Any amount not approved by the Court will become part of the Net Fund to be distributed to Participating California Class Members and FLSA Collective Members.

11.3 Service Awards

- A. In recognition of services rendered to the Settlement Class Members, Named Plaintiffs will apply to the Court to receive up to Seven Thousand Five Hundred

Dollars (\$7,500.00) each as Service Awards from the Maximum Settlement Amount. Defendant will not oppose this application, including any appeal or request for reconsideration if the application is denied or modified by the Court.

- B. The application for Service Awards is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Litigation. The outcome of the Court's ruling on the application for Service Awards will not terminate this Agreement or otherwise affect the Court's ruling on the Application for Final Approval, Final Approval Order, or the fairness and reasonableness of this Agreement. Any amount not approved by the Court will become part of the Net Fund to be distributed to Participating California Class Members and FLSA Collective Members.
- C. Named Plaintiffs will execute the Named Plaintiff Release set forth in Section 12.4 in exchange for receiving the requested Service Awards.

11.4 Private Attorneys General Act Payment. The Parties agree that Twenty-Nine Thousand Six Hundred Dollars (\$29,600) of the Maximum Settlement Amount shall be allocated as settlement of claims under the PAGA. Seventy-five percent (75%) of the PAGA Fund, or Twenty-Two Thousand Two Hundred Dollars (\$22,200), shall be paid to California's LWDA pursuant to the provisions of PAGA. The remaining PAGA Payment (*i.e.*, twenty-five percent (25%) of the PAGA Fund, or Seven Thousand Four Hundred Dollars (\$7,400)) shall be distributed to PAGA Members pursuant to the allocation formula set forth in Section 11.5. Provided, however, that if Defendant elects option (a) or (c) of the Escalator Clause set forth in Section 6 herein, the PAGA Fund allocation will increase on a proportional basis such that it remains 1.6% of the increased Maximum Settlement Amount ("Revised PAGA Fund"). The Settlement Administrator will distribute the Revised PAGA Fund such that seventy-five percent (75%) of the Revised PAGA Fund is paid to the LWDA and twenty-five percent (25%) of the Revised PAGA Fund is paid to the PAGA Members.

11.5 Allocation to Settlement Class and PAGA Members

- A. Settlement Class Members' estimated proportionate share of the Net Fund shall be determined by the Settlement Administrator pursuant to the following formula:
 - i. California Class Members will receive one and 14/100 (1.14) points for each Eligible Workweek. FLSA Collective Members who are not also California Class Members will receive one (1) point for each Eligible Workweek. For the avoidance of doubt, no Settlement Class Member shall be entitled to a double recovery based on their inclusion in the California Class and FLSA Collective during the same workweek.
 - ii. To calculate each Settlement Class Member's proportionate share:
 - a. Add all points for all Settlement Class Members together to obtain the "Denominator";

- b. Divide the number of points for each Settlement Class Member by the Denominator to obtain each Settlement Class Member's "Portion of the Net Fund";
 - c. Multiply each Settlement Class Member's Portion of the Net Fund by the Net Fund to determine each Settlement Class Member's "Net Amount";
 - d. For each Settlement Class Member, their Net Amount will be the amount of their Settlement Check, subject to deductions for applicable taxes and withholdings, and except that PAGA Members will be entitled to an additional PAGA Amount, as set forth below.
- B. PAGA Members' estimated proportionate share of the PAGA Payment shall be determined by the Settlement Administrator pursuant to the following formula:
 - i. PAGA Members will receive one (1) point for each Eligible PAGA Workweek.
 - ii. To calculate each PAGA Member's proportionate share of the PAGA Payment:
 - a. Add all points for all PAGA Members together to obtain the "Denominator";
 - b. Divide the number of points for each PAGA Member by the Denominator to obtain each PAGA Member's "Portion of the PAGA Payment";
 - c. Multiply each PAGA Member's Portion of the PAGA Payment by the PAGA Payment to determine each PAGA Member's Net PAGA Amount;
 - d. Each PAGA Member will receive a separate Settlement Check for the Net PAGA Amount, in addition to the amount they are entitled to recover as a California Class Member.
- C. The calculation of Eligible Workweeks and Eligible PAGA Workweeks shall be based on Flock Freight's business records. If a Settlement Class Member disputes his or her Eligible Workweeks and/or the calculation of his or her Net Amount, he or she must provide written documentation supporting his or her contention by the Objection/Opt-Out Deadline. Flock Freight's records will be presumed to be correct, but that presumption may be rebutted by the Settlement Class Member's showing. The Settlement Administrator will resolve all such disputes, and the Settlement Administrator's resolution will be binding on all Parties.
- D. Defendant and the Settlement Administrator shall exchange such information as is necessary for the Settlement Administrator to make proper tax withholdings and comply with tax reporting obligations as set forth in this Agreement.

11.6 Tax Characterization

- A. For tax purposes, fifty percent (50%) of the payments to Participating California Class Members and Participating FLSA Collective Members pursuant to Section

11.5(A) shall be treated as W-2 wage payments and fifty percent (50%) of such payments shall be treated as 1099 non-wage income as liquidated damages, statutory penalties, and interest. In addition, one hundred percent (100%) of the Net PAGA Amount paid to each PAGA Member pursuant to Section 11.5(B) shall be treated as 1099 non-wage compensation as statutory penalties.

- B.** Payments treated as W-2 wages shall be made net of all applicable employment taxes, including, without limitation, federal, state, and local income tax withholding and the employee share of the FICA tax, and shall be reported to the Internal Revenue Service (“IRS”) and the payee under the payee’s name and social security number on an IRS Form W-2. Payments treated as liquidated damages, statutory penalties, and interest shall be made without withholding and shall be reported to the IRS and the payee, to the extent required by law, under the payee’s name and social security number on an IRS Form 1099. Payments of attorneys’ fees and costs pursuant to Section 11.2 shall be made without withholding. Class Counsel will receive a Form 1099 for this payment. Payment of Service Awards pursuant to Section 11.3 will be reported as deemed appropriate by the Settlement Administrator.
- C.** The employee portion of all applicable income and payroll taxes for the individual wage payments and any tax responsibility for the individual non-wage payments shall be the sole responsibility of the Settlement Class Member who receives such payment(s).
- 11.7 Timing of Payments.** Within fourteen days of receipt of the Maximum Settlement Amount and Employer Payroll Taxes pursuant to Section 11.1(B), the Settlement Administrator will mail Settlement Checks to Participating California Class Members and FLSA Collective Members, Service Awards to Named Plaintiffs, and the PAGA Payment to the LWDA; and shall wire Fees and Costs to Class Counsel. Together with the Settlement Check for their Net PAGA Amount, PAGA Members shall be mailed the PAGA Check Enclosure Letter attached hereto as Exhibit E.
- 11.8 Settlement Checks.** The memorandum line of each settlement check shall state: “Class Action Settlement.” By cashing, depositing, or otherwise negotiating their Settlement Check, Settlement Class Members shall consent to opt in to and release any and all overtime claims under the FLSA. The back of each settlement check shall include language to the following effect acknowledging the opt-in and release of FLSA claims and other claims to the extent set forth in this settlement: “I understand that by signing and cashing this settlement check, I consent to opt-in to the Fair Labor Standards Act (“FLSA”) collective action in the matter in [Case No. _____] in the Superior Court of California, County of San Bernardino, entitled [_____] and will release and waive all overtime claims under the FLSA and all other claims arising out of or reasonably related to my alleged misclassification as an exempt employee during the FLSA Collective Period to the extent set forth in the Stipulation of Settlement and Release.”
- 11.9. Check Cashing Reminders.** The Settlement Administrator will send reminders via e-mail and First Class United States Mail within sixty (60) days after the initial distribution of Settlement Checks to Participating California Class Members and

FLSA Collective Members who have not yet cashed their Settlement Check(s) reminding them to negotiate their check(s) prior to the Void Date (as defined below). Simultaneously with the issuance of the check cashing reminders, the Settlement Administrator shall apprise Class Counsel of the names of Participating California Class Members and FLSA Collective Members who have not yet cashed their Settlement Check(s).

- 11.10. Unclaimed Funds.** Any California Class Member or PAGA Member's Settlement Check not cashed after the expiration of One Hundred and Twenty (120) days following the issuance of such Settlement Check ("Void Date") will be transferred to the Controller of the State of California, Unclaimed Property Fund in the name of the Settlement Class Member whose check was cancelled. Any other portion of the Maximum Settlement Amount not distributed as per the terms hereof, including any interest accrued on the QSF, and any Settlement Check not cashed by an FLSA Collective Member who is not also a California Class Member after the Void Date shall be redistributed pro rata to Participating Collective Members and Participating California Class Members who cashed or otherwise negotiated a Settlement Check; or, if a second distribution is impractical on the basis that the amount remaining in the Net Fund is similar to or less than the cost of a second distribution, it shall be donated to the Cy Pres.

12. RELEASE

- 12.1. California Class Release.** By operation of the Final Approval Order, Participating California Class Members will 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 the alleged misclassification of the California Class Members as exempt employees, arising during the period from June 11, 2017, to the Release Date.

The claims released by the Participating California Class Members 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) (“California Class Members’ Released Claims”).

The California Class Members’ Released 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, Participating California Class Members who are not also PAGA Members shall not release any claims for penalties under the PAGA, and Fair Labor Standards Act claims shall be released only if a Participating California Class Member cashes, deposits, or otherwise negotiates his or her Settlement Check.

- 12.2 FLSA Release.** Participating FLSA Collective Members will 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 the Participating FLSA Collective Member was 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 the alleged misclassification of the FLSA Collective Members as exempt employees, and specifically including but not limited to any claims for overtime pay during the FLSA Collective Period. The claims released by the Participating FLSA Collective Members 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.
- 12.3 PAGA Release.** By operation of the Final Approval Order, PAGA Members will release and discharge the Released Parties from 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 the alleged misclassification of PAGA Members as exempt employees during the PAGA Covered Period.

12.4 Named Plaintiffs' Complete and General Release. In addition to the California Class Release, FLSA Release, and PAGA Release set forth above, and in consideration for the promises and payments set forth in this Agreement including but not limited to the Service Award, to which Plaintiffs are otherwise not entitled, Plaintiffs agree to completely, irrevocably, unconditionally and generally release the Released Parties from any and all charges, complaints, claims, causes of action, debts, sums of money, controversies, agreements, promises, damages, and liabilities of any kind or nature whatsoever, both at law and equity, known or unknown, suspected or unsuspected related to the Plaintiffs employment with Defendant and/or the Litigation, including but not limited to any rights or claims arising under the California Constitution; the California Labor Code; the California Business & Professions Code; the California Code of Regulations; the California Fair Employment and Housing Act; the Fair Labor Standards Act; Title VII of the Civil Rights Act of 1964; the Americans with Disabilities Act; federal and state family leave statutes; and any and all other federal, state and local laws, statutes, executive orders, regulations and common law, including contract, employment, and tort law, arising from the beginning of time through the date this Agreement is fully executed. This "Complete and General Release" includes a 1542 Waiver. Plaintiffs may discover facts in addition to or different from those he or she now knows or believes to be true with respect to the subject matter of the Complete and General Release, but upon the Effective Date, shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever settled and released any and all of the claims covered by the Complete and General Release. Provided, however, that Plaintiffs do not release claims under the Employee Retirement Income Security Act of 1974. Further, as to Plaintiff Sebastian Cifuentes, this release does not include claims against the Released Parties relating to his individual stock option awards, stock incentive plans, and/or stock option agreements.

Plaintiffs agree and understand that Defendants and Plaintiffs have had a bona fide dispute regarding, inter alia, wages owed. Nothing in this provision or in this Settlement Agreement is intended to interfere with Plaintiff's ability to be a member of any future class and/or collective action so long as any such action does not assert the claims released in and through the settlement of this action.

"1542 Waiver" means an express waiver, to the fullest extent permitted by law, of the provisions, rights, and benefits of California Civil Code section 1542, or any other similar provision under federal or state law, which Section provides: A

general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

12.5 Denial of Liability. Defendant has agreed to the terms of this Agreement without in any way acknowledging any fault or liability, and with the understanding that the terms have been reached because this settlement will avoid further expense and disruption of Defendant's business due to the pendency and expense of litigation. Nothing in this Agreement shall be deemed or used as an admission of liability by Defendant, nor as an admission that a class or collective should be certified for any purposes in this case other than settlement purposes.

13. INTERPRETATION AND ENFORCEMENT

13.1. Cooperation between the Parties; Further Acts. The Parties shall reasonably cooperate with each other and use their reasonable best efforts to obtain the Court's approval of this Agreement and all of its terms. Each Party, upon the request of any other Party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.

13.2. Publicity. If contacted by a member of the Media regarding the Litigation or settlement, Plaintiffs and/or Class Counsel shall state only that they are pleased with the settlement, that they think it provides real relief for the impacted employees, and they are pleased they could bring the case to a resolution without the need for further litigation.

13.3. No Assignment. Class Counsel and Named Plaintiffs represent and warrant that they have not assigned or transferred or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the Litigation, or any related action.

13.4. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement, except that the Parties' separate tolling agreement remains in full force and effect and is not merged with this Agreement.

13.5. Binding Effect. This Agreement shall be binding upon the Parties; and Defendant's successor and/or assigns will be bound by this Agreement as well.

13.6. Arms' Length Transaction; Materiality of Terms. The Parties have negotiated all the terms and conditions of this Agreement at arms' length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless expressly stated.

- 13.7. Captions.** The captions or headings of the Sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- 13.8. Governing Law.** This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of California, without regard to choice of law principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.
- 13.9. Continuing Jurisdiction.** The Parties shall request the Court to retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the settlement contemplated hereby. The Parties shall not petition the Court to modify the terms of the Agreement.
- 13.10. Waivers, etc. to Be in Writing.** No waiver, modification or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth in such written waiver, modification or amendment, subject to any required Court approval. Any failure by any Party to insist upon the strict performance by the other Party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any other provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all provisions of this Agreement.
- 13.11. When Agreement Becomes Effective; Counterparts.** This Agreement shall become effective upon its full execution. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same instrument.
- 13.12. Signatures.** This Agreement is valid and binding if signed by the Parties and their authorized representatives.
- 13.13. Facsimile, Electronic, and Email Signatures.** Any Party may execute this Agreement by signing or causing its counsel to sign on the designated signature block below and transmitting that signature page via facsimile, email, or other electronic means to counsel for the other Party. Any signature made and transmitted by facsimile, email, or other electronic means for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Party whose counsel transmits the signature page by facsimile or email.
- 13.14. Construction.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each Party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any Party by virtue of draftsmanship.

READ CAREFULLY BEFORE SIGNING

Dated: 12/7/2021, 2021

FLOCK By: 

Its: CFO

Dated: _____, 2021

MANDELA BYAM

Mandela Byam

Dated: _____, 2021

SEBASTIAN CIFUENTES

Sebastian Cifuentes

Dated: _____, 2021

ANDY FREE

Andy Free

Dated: _____, 2021

MATTHEW HARMON

Matthew Harmon

Dated: _____, 2021

MIN SOO KIM

Min Soo Kim

Dated: _____, 2021

JAMINE NYAMEKYE

Jamine Nyamekye

READ CAREFULLY BEFORE SIGNING

Dated: _____, 2021

FLOCK FREIGHT, INC.

By: _____

Its: _____

Dated: December 6, 2021

MANDELA BYAM



Mandela Byam

Dated: _____, 2021

SEBASTIAN CIFUENTES

Sebastian Cifuentes

Dated: _____, 2021

ANDY FREE

Andy Free

Dated: _____, 2021

MATTHEW HARMON

Matthew Harmon

Dated: _____, 2021

MIN SOO KIM

Min Soo Kim

Dated: _____, 2021

JAMINE NYAMEKYE

Jamine Nyamekye

READ CAREFULLY BEFORE SIGNING

Dated: _____, 2021

FLOCK FREIGHT, INC.

By: _____

Its: _____

Dated: _____, 2021

MANDELA BYAM

Mandela Byam

Dated: December 6, 2021

SEBASTIAN CIFUENTES



Sebastian Cifuentes

Dated: _____, 2021

ANDY FREE

Andy Free

Dated: _____, 2021

MATTHEW HARMON

Matthew Harmon

Dated: _____, 2021

MIN SOO KIM

Min Soo Kim

Dated: _____, 2021

JAMINE NYAMEKYE

Jamine Nyamekye

READ CAREFULLY BEFORE SIGNING

Dated: _____, 2021

FLOCK FREIGHT, INC.

By: _____

Its: _____

Dated: _____, 2021

MANDELA BYAM

Mandela Byam

Dated: _____, 2021

SEBASTIAN CIFUENTES

Sebastian Cifuentes

Dated: December 8, 2021

ANDY FREE



Andy Free

Dated: _____, 2021

MATTHEW HARMON

Matthew Harmon

Dated: _____, 2021

MIN SOO KIM

Min Soo Kim

Dated: _____, 2021

JAMINE NYAMEKYE

Jamine Nyamekye

READ CAREFULLY BEFORE SIGNING

Dated: _____, 2021

FLOCK FREIGHT, INC.

By: _____

Its: _____

Dated: _____, 2021

MANDELA BYAM

Mandela Byam

Dated: _____, 2021

SEBASTIAN CIFUENTES

Sebastian Cifuentes

Dated: _____, 2021

ANDY FREE

Andy Free

Dated: December 6, 2021

MATTHEW HARMON



Matthew Harmon

Dated: _____, 2021

MIN SOO KIM

Min Soo Kim

Dated: _____, 2021

JAMINE NYAMEKYE

Jamine Nyamekye

READ CAREFULLY BEFORE SIGNING

Dated: _____, 2021

FLOCK FREIGHT, INC.

By: _____

Its: _____

Dated: _____, 2021

MANDELA BYAM

Mandela Byam

Dated: _____, 2021

SEBASTIAN CIFUENTES

Sebastian Cifuentes

Dated: _____, 2021

ANDY FREE

Andy Free

Dated: _____, 2021

MATTHEW HARMON

Matthew Harmon

Dated: December 6, 2021

MIN SOO KIM



Min Soo Kim

Dated: _____, 2021

JAMINE NYAMEKYE

Jamine Nyamekye

READ CAREFULLY BEFORE SIGNING

Dated: _____, 2021

FLOCK FREIGHT, INC.

By: _____

Its: _____

Dated: _____, 2021

MANDELA BYAM

Mandela Byam

Dated: _____, 2021

SEBASTIAN CIFUENTES

Sebastian Cifuentes

Dated: _____, 2021

ANDY FREE

Andy Free

Dated: _____, 2021

MATTHEW HARMON

Matthew Harmon

Dated: _____, 2021

MIN SOO KIM

Min Soo Kim

Dated: December 6
_____, 2021

JAMINE NYAMEKYE



Jamine Nyamekye

Dated: December 8, 2021

DANIEL ORTIZ



Daniel Ortiz

Dated: _____, 2021

NATHAN PEGRAM

Nathan Pegram

Dated: _____, 2021

MARYANNE PIRRELLO

MaryAnne Pirrello

Dated: _____, 2021

JESUS RAMOS

Jesus Ramos

Dated: _____, 2021

CODY WILSON

Cody Wilson

Dated: _____, 2021

DANIEL ORTIZ

Daniel Ortiz

Dated: December 6, 2021

NATHAN PEGRAM



Nathan Pegram

Dated: _____, 2021

MARYANNE PIRRELLO

MaryAnne Pirrello

Dated: _____, 2021

JESUS RAMOS

Jesus Ramos

Dated: _____, 2021

CODY WILSON

Cody Wilson

Dated: _____, 2021

DANIEL ORTIZ

Daniel Ortiz

Dated: _____, 2021

NATHAN PEGRAM

Nathan Pegram

Dated: December 8, 2021

MARYANNE PIRRELLO



MaryAnne Pirrello

Dated: _____, 2021

JESUS RAMOS

Jesus Ramos

Dated: _____, 2021

CODY WILSON

Cody Wilson

Dated: _____, 2021

DANIEL ORTIZ

Daniel Ortiz

Dated: _____, 2021

NATHAN PEGRAM

Nathan Pegram

Dated: _____, 2021

MARYANNE PIRRELLO

MaryAnne Pirrello

Dated: December 7, 2021

JESUS RAMOS



Jesus Ramos

Dated: _____, 2021

CODY WILSON

Cody Wilson

Dated: _____, 2021

DANIEL ORTIZ

Daniel Ortiz

Dated: _____, 2021

NATHAN PEGRAM

Nathan Pegram

Dated: _____, 2021

MARYANNE PIRRELLO

MaryAnne Pirrello

Dated: _____, 2021

JESUS RAMOS

Jesus Ramos

Dated: December 6
_____, 2021

CODY WILSON



Cody Wilson

APPROVED AS TO FORM

Dated: December 9, 2021

DLA PIPER LLP

A handwritten signature in blue ink, appearing to read "Kevin Harlow", is positioned above a horizontal line.

Kevin Harlow
Attorneys for Defendant

Dated: _____, 2021

OUTTEN & GOLDEN, LLP

Melissa L. Stewart
Counsel for Plaintiffs and the Class

APPROVED AS TO FORM

Dated: _____, 2021

DLA PIPER LLP

Kevin Harlow
Attorneys for Defendant

Dated: December 8, 2021

OUTTEN & GOLDEN, LLP



Melissa L. Stewart
Counsel for Plaintiffs and the Class

EXHIBIT A

Memorandum of Understanding

Subject to approval in a California federal or state court venue to be selected by Plaintiffs (the “**Court**”), and with the proviso that this Memorandum of Understanding will be further memorialized in a Stipulation of Settlement and Release, 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 (collectively, “**Plaintiffs**”) and Defendant Flock Freight, Inc. (“**Defendant**”) hereby agree to the following binding Memorandum of Understanding (the “**Settlement**”) of the wage & hour claims asserted by Plaintiffs against Defendant on their own behalf and on behalf of all “**Settlement Class Members**.” Plaintiffs and Defendant are collectively referred to herein as the “**Parties**,” and Plaintiffs’ counsel are sometimes referred to herein as “**Class Counsel**.”

1) **Class Definitions:**

a) An “**Inside Sales Representative**” role is defined as any of the exempt-classified positions in Exhibit A attached hereto.

b) The “**California Class Members**” shall consist of all current and former employees who worked for Defendant and/or AuptiX, Inc. (collectively, “**Flock Freight**”) in an Inside Sales Representative role in California during the California Covered Period.

c) The “**California Covered Period**” means the period from June 11, 2017 through the Release Date (as defined below).

d) The “**FLSA Collective Members**” shall consist of all current and former employees who worked for Flock Freight in an Inside Sales Representative role in the United States during the FLSA Covered Period.

e) The “**FLSA Covered Period**” means the period from June 11, 2018 through the Release Date.

f) “**Participating FLSA Members**” shall mean all FLSA Collective Members who cash, deposit, or otherwise negotiate their Settlement check.

g) “**Participating California Class Members**” means all California Class Members who do not opt out.

h) The “**PAGA Members**” shall consist of all current and former employees who worked for Flock Freight in an Inside Sales Representative role in California during the PAGA Covered Period.

i) The “**PAGA Covered Period**” means the period from June 11, 2020 through the Release Date.

j) The “**Settlement Class Members**” shall consist of all California Class Members and FLSA Collective Members.

2) Maximum Settlement Amount: The “**Maximum Settlement Amount**” that Defendant will be obligated to pay in connection with the Settlement (subject to the Escalator Clause) is \$1,850,000.00 (One Million Eight Hundred and Fifty Thousand Dollars and Zero Cents), inclusive of all Plaintiffs’ attorneys’ fees, costs and expenses associated in any way with the Lawsuit and/or Settlement; the service awards to the named Plaintiffs; the payment to the State of California Labor Workforce and Development Agency (“LWDA”) in connection with the claim for penalties under the Private Attorneys General Act, California Labor Code section 2698, *et seq.* (“PAGA”); the expenses of the Settlement Administrator; and the settlement payments to Settlement Class Members and PAGA Members based on the formulas set forth below. Provided, however, that Defendant will be responsible for paying the employer’s portion (and only the employer’s portion) of FICA, FUTA, and all other state and federal payroll taxes, in addition to the Maximum Settlement Amount.

3) Service Awards: Defendant will not oppose Plaintiffs’ application to the Court for service awards in an amount up to \$8,000.00 (Eight Thousand Dollars and Zero Cents) each (\$88,000 total), to be paid from the Maximum Settlement Amount, in addition to each named Plaintiff’s settlement payments, in exchange for a full release of claims, except that the full release for named Plaintiff Sebastian Cifuentes may contain a carve-out for any and all claims against the Released Parties relating to stock option awards, stock incentive plans, and/or stock option agreements, in which case any and all such claims shall not be released (“**Potential Cifuentes carve-out**”). Each named Plaintiff shall execute a general release of all known and unknown claims he/she may have against 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 Parties**”), based on his/her employment with Flock Freight or any of the other entities described above (and specifically including, but not limited to, Auptix, Inc.), including a waiver of all rights under California Civil Code Section 1542, subject to the Potential Cifuentes Carve Out. Each Plaintiff represents that he or she has carefully reviewed the terms of the Settlement prior to entering into the Settlement and, accordingly, waives his or her right to opt out of the Settlement. The Settlement Administrator shall determine the appropriate tax treatment for the service award payments. The Parties expressly acknowledge and agree that the enforceability of the forthcoming final Stipulation of Settlement and Release (“**Settlement Agreement**”) is not contingent upon the amount of the service awards, if any, awarded to Plaintiffs by the Court. The Parties will negotiate the inclusion of the Potential Cifuentes Carve Out, if any, in the forthcoming Settlement Agreement.

4) Attorneys’ Fees and Costs: The Parties agree that Plaintiffs’ counsel may seek, and Defendant will not oppose, Plaintiffs’ attorneys’ fees in an amount up to thirty-three and

one third percent (33.3%) of the Maximum Settlement Amount (*i.e.*, \$616,666.67) (Six Hundred Sixteen Thousand Six Hundred and Sixty Six Dollars and Sixty Seven Cents)), plus reimbursement of reasonable out-of-pocket costs and expenses. The Parties expressly acknowledge and agree that the enforceability of the Settlement Agreement is not contingent upon the amount of attorneys' fees and costs awarded to Class Counsel by the Court.

5. PAGA Payments: The Parties agree that a reasonable portion of the Maximum Settlement Amount will be allocated to settle the PAGA claim ("PAGA Settlement Amount"), and will be distributed as follows: 75 percent of the apportioned PAGA Settlement Amount will be paid to the LWDA, and the remaining 25 percent will be divided among the PAGA Members on a pro rata basis according to the number of weeks he or she worked for Flock Freight in an exempt Inside Sales Representative role during the PAGA Covered Period, and shall be awarded in addition to in his or her Individual Settlement Payments. PAGA Members will receive a tax form 1099 for amounts paid under this provision. The Parties will negotiate the precise amount of the PAGA Settlement Amount in the forthcoming Settlement Agreement.

6. Allocation Formula for Individual Settlement Payments: After deducting Plaintiffs' Court-approved service awards, Class Counsel's Court-approved attorneys' fees and costs, payments to the State of California and PAGA Members under PAGA, and the Settlement Administrator's fees and expenses, the remainder of the Maximum Settlement Amount (the "**Net Settlement Amount**") will be allocated to the Settlement Class Members on a pro rata basis according to the number of weeks he or she worked for Defendant in an exempt Inside Sales Representative role during the California Covered Period and/or FLSA Covered Period, as applicable. The allocation of the Net Settlement Amount may award California Class Members a higher per workweek amount than FLSA Collective Members who are not also California Class Members in recognition of the relative value of the California and FLSA claims asserted in this matter. The Parties will negotiate the exact allocation formula in the forthcoming final Settlement Agreement.

a. **"Total Weeks Worked"** will be the total number of weeks worked by: (i) all California Class Members during the California Covered Period in an Inside Sales Representative role while the role was classified as an exempt position according to Defendant's records, and (ii) all FLSA Collective Members who are not California Class Members during the FLSA Covered Period in an Inside Sales Representative role while the role was classified as an exempt position according to Defendant's records.

b. **"Individual Weeks Worked"** will be: (i) for California Class Members, the total number of weeks worked by an individual California Class Member during the California Covered Period in an Inside Sales Representative role while the role was classified as an exempt position according to Defendant's records, and (ii) for FLSA Collective Members who are not California Class Members, the total number of weeks worked by an individual FLSA Collective Member during the FLSA Covered Period in

an Inside Sales Representative role while the role was classified as an exempt position according to Defendant's records. For the avoidance of doubt, no Settlement Class Member shall be entitled to a double recovery based on their inclusion in the California Class and FLSA Collective during the same workweek.

c. The **"Individual Settlement Payment"** will be calculated by dividing a Settlement Class Member's Individual Weeks Worked by the Total Weeks Worked and multiplying this result by the Net Settlement Amount. The settlement administrator will allocate fifty percent (50%) of each Individual Settlement Payment to wages (W-2) and 50% to non-wage compensation (1099), for each Participating Collective Member and Participating Class Member.

7. Process for Notice and Court Approval:

a. Within ten (10) days following the execution of this Memorandum of Understanding by all parties, Plaintiffs will submit a letter to the LWDA alleging the following claims against Defendant:

- i. failure to pay minimum wage for all time worked in violation of Cal. Labor Code §§ 1194, 1197, 1197.1, and applicable wage orders; provided, however, that Plaintiffs shall promptly conduct a reasonable investigation as to whether there is a good faith basis to allege California state and/or federal minimum wage claims in this matter, and shall only allege such California state and/or federal minimum wage claims in Plaintiffs' letter to the LWDA (for California minimum wage claims) and/or the Lawsuit if Plaintiffs determine there is a good faith basis to do so ("Minimum Wage Investigation");
- ii. failure to pay overtime compensation for all hours worked over eight in a workday pursuant to Cal. Labor Code §§ 510 and 1198;
- iii. failure to provide meal and rest breaks in accordance with Cal. Labor Code §§ 226.7 and 512 and applicable wage orders;
- iv. failure to timely pay wages due during employment and upon separation in accordance with Cal. Labor Code §§ 201, 202, 203, and 204;
- v. failure to provide timely, accurate, and itemized wage statements in accordance with Cal. Labor Code § 226(a);
- vi. failure to maintain accurate payroll records in accordance with Cal. Labor Code § 1174; and
- vii. failure to reimburse employees for all required business expenses in accordance with Cal. Labor Code § 2802.

b. Within fourteen (14) days after the execution of this Memorandum of Understanding by all parties, Plaintiffs' counsel shall prepare and send to Defendant's counsel a draft final settlement agreement incorporating these terms. Defendant shall respond with any edits to the settlement agreement within fourteen (14) days. The parties shall endeavor to execute a final settlement agreement seven (7) days later. The parties agree that Plaintiffs will file a putative class and collective action lawsuit against Defendant in the Court alleging the following claims within seven (7) days after the execution of the settlement agreement ("**the Lawsuit**"):

- i. failure to pay minimum wage for all time worked in violation of Cal. Labor Code §§ 1194, 1197, 1197.1, and applicable wage orders, subject to the Minimum Wage Investigation;
- ii. failure to pay overtime compensation for all hours worked over eight in a workday pursuant to Cal. Labor Code §§ 510 and 1198;
- iii. failure to provide meal and rest breaks in accordance with Cal. Labor Code §§ 226.7 and 512 and applicable wage orders;
- iv. failure to timely pay wages due during employment and upon separation in accordance with Cal. Labor Code §§ 201, 202, 203, and 204;
- v. failure to provide timely, accurate, and itemized wage statements in accordance with Cal. Labor Code § 226(a);
- vi. failure to reimburse employees for all required business expenses in accordance with Cal. Labor Code § 2802;
- vii. failure to maintain accurate payroll records in accordance with Cal. Labor Code § 1174.
- viii. failure to pay all minimum and overtime wages under the Fair Labor Standards Act ("FLSA"), subject to the Minimum Wage Investigation;
- ix. engaging in unlawful business practices within the meaning of Cal. Bus. & Prof. Code § 17200 *et seq.*; and
- x. violation of PAGA, provided that if the LWDA notice period required by California Labor Code § 2699.3(a)(1)(C), has not yet passed as of the date of filing the Lawsuit, Plaintiffs shall promptly amend the Complaint to add PAGA violations within 5 days after the close of the LWDA notice period.

c. As soon as practicable after the filing of the Lawsuit, Plaintiffs will move the Court for preliminary approval of the Settlement.

d. The Parties agree that Plaintiffs' counsel will select (subject to Defendant's approval) a third-party administrator, to be determined prior to the signing of the long-form Settlement Agreement and approved by the Court, to perform the duties of a Settlement Administrator for the purpose of issuing payments to Settlement Class

Members. Disputes relating to the Settlement Administrator's ability and need to perform its duties shall be resolved by the Parties on consent or, in the event of a dispute, referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement until all payments and obligations contemplated by the Settlement have been fully carried out.

e. Each Settlement Class Member will be fully advised of the Settlement Agreement by a Notice sent via e-mail, text message, and First Class U.S. Mail, with a website where Settlement Class Members can view additional information about the Settlement and update their contact information. The Notice will include information regarding: the nature of the contemplated Lawsuit, a summary of the substance of the Settlement Agreement, notice of Individual Weeks Worked (and the corresponding estimated Individual Settlement Payment), a summary of the formula used for calculating Individual Settlement Payments, the work week dispute procedure and time period for submission of a dispute regarding work weeks, a request for exclusion (for California Class Members) or objection to the Settlement, the date for the final approval hearing, and information regarding the requested service awards and Plaintiffs' attorney fees' and costs. The Notice shall further include a neutral statement indicating that Defendant shall not retaliate against any Settlement Class Member for his or her decision to participate in the Settlement.

f. Within 21 calendar days after an order granting preliminary approval is issued by the Court, Defendant will provide the Settlement Administrator with a list containing the names, work locations, last known addresses, Individual Weeks Worked, and, to the extent available, last known personal telephone numbers and last known personal e-mail addresses of the Settlement Class Members pursuant to Defendant's business records. Within 14 calendar days after receiving the Settlement Class Member information from Defendant, the Settlement Administrator will send notice to each of the Settlement Class Members. In the event of returned or non-deliverable notices, the Settlement Administrator will make reasonable efforts to locate Settlement Class Members and re-send the notices. Settlement Class Members shall have 45 days from the date of initial mailing (or 30 days from re-mailing, whichever is later) to object, opt-out, dispute work weeks, and/or update their mailing address with the Settlement Administrator. No re-mailing shall be made later than forty-five (45) days after the initial mailing. After the expiration of the 45-day period, the Settlement Administrator shall provide Plaintiffs' Counsel with a list of the names, addresses, and contact information for Collective Members and Participating California Class Members. After the expiration of the deadline for California Class Members to opt-out of the Settlement, the Settlement Administrator shall provide the Parties with a complete list of the names of the California Class Members who validly elected to opt-out and calculate their share of the Net Settlement Amount allocated to California Class Members.

g. The **Option Trigger** shall be a specific percentage of the Net Settlement Amount allocated to California Class Members. The Parties will negotiate the precise Option Trigger in the forthcoming Settlement Agreement. If the proportion of the Net Settlement Amount associated with California Class Members who validly elect not to participate in the Settlement is equal to or greater than the Option Trigger, Flock Freight will have the right to rescind the Settlement; all actions taken in furtherance will be null and void; and the Parties will be returned to their respective positions as of October 8, 2021, with all rights, arguments, and defenses preserved. Flock Freight must exercise this right within 14 calendar days after the Settlement Administrator notifies the Parties of the list of valid opt-outs and whether their share of the Net Settlement Amount allocated to California Class Members equals or exceeds the Option Trigger. In the event Flock Freight exercises its option to rescind the Settlement, Flock Freight will be responsible for all settlement administration costs incurred and to be incurred in notifying Settlement Class Members of the termination. Defendant further represents and warrants that it will not discourage or retaliate against any Settlement Class Member for participating in the Settlement.

h. In the event of a dispute regarding the amount of a Settlement Class Member's settlement payment or the number of Individual Weeks Worked, Flock Freight's records will be presumed to be correct, but that presumption may be rebutted by the Settlement Class Member's showing. The Settlement Administrator will resolve all such disputes, and the Settlement Administrator's resolution will be binding on all Parties.

i. In accordance with the schedule set by the Court at preliminary approval, Class Counsel will move for final approval of the Settlement Agreement, which motion will include a request for approval of service awards for the named Plaintiffs and Class Counsels' attorneys' fees and expenses pursuant to the Settlement Agreement.

j. Within 10 calendar days after the Court has issued an order granting final approval of the Settlement, the Settlement Administrator will calculate the total amount to be paid by Defendant, including the Maximum Settlement Amount (subject to the Escalator Clause) and the employer-side taxes.

k. Within 21 calendar days of receiving an order granting final approval of the Settlement and the expiration of the time to file appeals or the resolution of any appeals filed, Defendant will deliver to the Settlement Administrator the Maximum Settlement Amount (subject to the Escalator Clause) and the amount of employer-side taxes for deposit into a Qualified Settlement Fund (or QSF) maintained by the Settlement Administrator.

l. The Settlement Administrator will make all required payments from the QSF within 14 calendar days later.

m. If the Court does not grant approval of the Settlement Agreement, or if the Court's approval of the Settlement Agreement is reversed or materially modified on appellate review, then this Settlement and the forthcoming final Settlement Agreement will become null and void, except that an award of service awards or Class Counsels' attorneys' fees and expenses in an amount less than sought will not constitute a failure to grant approval or a material modification. All Parties will be returned to their respective positions as of October 8, 2021 with all rights, arguments, and defenses preserved. For the avoidance of doubt, all Parties will preserve all rights, arguments, and defenses as to the enforceability or lack thereof of any arbitration agreements entered into between Flock Freight and Plaintiffs or any other Settlement Class Members; as the appropriateness or lack thereof of any class, collective, or representative action; and otherwise preserve all rights, arguments, and defenses that would have been available to any Party as of October 8, 2021.

n. The Parties will work together expeditiously to obtain preliminary and final approval of this Settlement.

o. The memorandum line of each settlement check shall state: "Class Action Settlement." By cashing, depositing, or otherwise negotiating their settlement check, Settlement Class Members shall consent to opt in to and release any and all overtime and minimum wage claims under the Fair Labor Standards Act ("FLSA"), subject to the Minimum Wage Investigation. The back of each settlement check shall include language to the following effect acknowledging the opt-in and release of FLSA claims and other claims to the extent set forth in this Settlement: "I understand that by signing and cashing this settlement check, I consent to opt-in to the Fair Labor Standards Act ("FLSA") collective action in the matter in [Case No. _____] in the [Court], entitled [_____] and will release and waive all overtime and minimum wage claims under the FLSA and all other claims arising out of or reasonably related to my alleged misclassification as an exempt employee during the FLSA Collective Period to the extent set forth in the Stipulation of Settlement and Release." Provided, however, that the inclusion of minimum wage claims in the back-of-check opt-in and release language shall be subject to the Minimum Wage Investigation.

9. Escalator Clause: It is estimated that there are approximately 10,919 Total Weeks Worked as of October 8, 2021. If it is determined that the Total Weeks Worked through the date the Court issues an order granting preliminary approval exceeds 10,919 by more than ten percent (10%) (*i.e.*, 12,011), then Defendant shall have the option of: (a) increasing the Maximum Settlement Amount on a proportional basis by the same number of percentage points above ten percent (10%) by which the number Total Weeks Worked exceeds 10,919 (for example, if the Total Weeks Worked exceed 10,919 by 15%, the Maximum Settlement Amount would be increased by 5%), in which case the Release

Date shall be the date the Court issues an order granting preliminary approval, or (b) adjusting the effective date of the release to the date prior to preliminary approval when the workweeks are equal to or less than 10,919 plus 10% (for example, if the Total Weeks Worked are equal to or less than 12,011 on November 5, 2021 but exceed 12,011 on November 6, 2021, then any claims accruing after November 5, 2021 shall not be released, and the Release Date shall be November 5, 2021). Under no circumstances shall the Release Date be later than the date of the Court's preliminary approval order. After preliminary approval and upon delivery of the list of Settlement Class Members from Defendant to the Settlement Administrator, the Settlement Administrator will provide class counsel with information regarding the number of workweeks associated with the list, to allow the parties to have equal information regarding a potential trigger of the Escalator Clause. If the Escalator Clause is triggered as a result of preliminary approval, Defendant must elect option (a) within 26 calendar days after an order granting preliminary approval.

10. Disposition of Uncashed Settlement Checks: If an FLSA Collective Member who is not a California Class Member fails to cash the check for his or her settlement share within 120 days after it is mailed to the Settlement Class Member, the uncollected monies shall be redistributed *pro rata* to Participating Collective Members and Participating Class Members who cashed or otherwise negotiated a settlement check, or, if a second distribution is impractical on the basis that the amount remaining in the Net Fund is similar to or less than the cost of a second distribution, it shall be donated to a *cy pres* recipient jointly selected by Defendant's and Plaintiffs' counsel and approved by the Court. Any California Class Member or PAGA Member settlement check not cashed will be transferred to the Controller of the State of California, Unclaimed Property Fund in the name of the Settlement Class Member whose check was cancelled. The settlement administrator will send reminders via e-mail, phone, and First Class U.S. Mail within sixty (60) days after the initial distribution of checks to California Class Members and Participating FLSA Members who have not yet negotiated their checks reminding them to negotiate their checks prior to the 120-day deadline.
11. Settlement Class Members' Release of Claims:

- a. California Class Release: By operation of the final approval order, Participating California Class Members will 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 the

alleged misclassification of the California Class Members as exempt employees, arising during the period from June 11, 2017, to the Release Date.

The claims released by the California Class Members 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) ("**California Class Members' Released Claims**"). Subject to the Minimum Wage Investigation, California Class Members' Released Claims will further include failure to pay minimum wages, in addition to the aforementioned enumerated categories. For the avoidance of doubt, and notwithstanding any other provision herein, Settlement Class Members shall not release federal and/or state minimum wage claims in connection with the Settlement unless Plaintiffs determine based on their Minimum Wage Investigation that there is a good faith basis to assert such claims in the PAGA letter and/or Lawsuit.

The California Class Members' Released 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, 1193.61198, 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. Subject to the Minimum Wage Investigation, California Class Members' Released Claims will further include California Labor Code §§ 1194, 1194.2, 1197, 1197.1, in addition to the aforementioned statutory provisions.

Notwithstanding the foregoing, Participating California Class Members who are not also PAGA Members shall not release any claims for penalties under the PAGA, and Fair Labor Standards Act claims shall be released only if a Participating California Class Member cashes, deposits, or otherwise negotiates his or her Settlement Check.

b. FLSA Release: Participating FLSA Members will 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 the Participating FLSA Member was 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 the alleged misclassification of the FLSA Collective Members as exempt employees, and specifically including but not limited to any claims for overtime pay during the FLSA Collective Period. The claims released by the Participating FLSA Members 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. Subject to the Minimum Wage Investigation, the FLSA Release will further include claims for minimum wages.

c. PAGA Release: PAGA Members will release and discharge the Released Parties from 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 the alleged misclassification of PAGA Members as exempt employees during PAGA Covered Period.

11. Publicity: The Parties shall negotiate publicity consistent with applicable case law in the forthcoming Settlement Agreement.
12. Fair Adequate and Reasonable Settlement: The parties agree that the Settlement is fair and reasonable and will so represent to the Court.
13. Waiver of Appeals: The parties waive all appeals from the Court's approval of the Settlement unless the Court materially modifies the Settlement without the agreement of the parties. Plaintiffs' counsel does not waive the right to an appeal regarding the application for attorneys' fees or service awards.
14. Dismissal of the Action: The parties agree that, in connection with final approval of the settlement, dismissal of the Lawsuit in its entirety with prejudice will be requested.
15. Binding Agreement: The parties intend that this Memorandum of Understanding shall be fully enforceable and binding upon all of the parties, and that it shall be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding the

mediation confidentiality provisions that otherwise might apply under federal or state law. Counsel for Plaintiffs represent that Plaintiffs have authorized them to enter this Settlement and execute this Memorandum of Agreement on their behalf.

DATED: October 19, 2021

DEFENDANT:

FLOCK FREIGHT, INC.

DocuSigned by:

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Pete Price
Chief Financial Officer
Flock Freight, Inc.

DLA PIPER LLP



Kevin Harlow
Attorneys for Defendant

PLAINTIFF AND THE CLASS:



Melissa L. Stewart
OUTTEN & GOLDEN, LLP
On behalf of Plaintiffs and the Class

EXHIBIT A

Account Coordinator
Account Executive
Account Manager
Activation Specialist
Activation Specialist
Business Development Associate
Business Development Executive
Business Development Manager
Carrier Engagement Specialist
Carrier Sales
Carrier Sales Lead
Carrier Sales- Regional Lead
Carrier Sales Rep
Carrier Sales Representative
Client Sales Representative
Customer Acquisition Specialist
Customer Activation Specialist
Customer Growth Specialist
Customer Retention Specialist
Customer Success Manager
Enterprise Account Manager
Fulfillment Rep
Fulfillment Representative
Growth Specialist
Growth Specialist
Lead Account Manager
Lead Activation Specialist
Lead Customer Acquisition Specialist
Loyalty Specialist
LTL Fulfillment Lead
LTL Operations Lead
Manager of Customer Activation
National Account Manager
Operations Associate
Operations Associate, Carrier Development and Truckload Fulfillment
Pooling Enablement Lead

Pooling Enablement Rep
Retention Specialist
Retention Specialst
Sales Development Representative
Senior Account Exec
Senior Account Executive
Senior Account Manager
Senior Carrier Sales Rep
Senior Truckload Fulfillment Associate
Strategic Account Manager
Strategic Partnerships Manager
Strategic Solutions Operations Associate
Strategic Solutions Representative
TL Fulfillment Associate
TL Fulfillment Lead
Truckload Fulfillment Assiciate
Truckload Fulfillment Associate
Truckload Fulfillment Lead
Truckload Fulfillment Operations Associate
Truckload Fulfillment Rep
Truckload Fulfillment Senior Associate

EXHIBIT B

EXHIBIT A

Account Coordinator
Account Executive
Account Manager
Activation Specialist
Activation Specialist
Business Development Associate
Business Development Executive
Business Development Manager
Carrier Engagement Specialist
Carrier Sales
Carrier Sales Lead
Carrier Sales- Regional Lead
Carrier Sales Rep
Carrier Sales Representative
Client Sales Representative
Customer Acquisition Specialist
Customer Activation Specialist
Customer Growth Specialist
Customer Retention Specialist
Customer Success Manager
Enterprise Account Manager
Fulfillment Rep
Fulfillment Representative
Growth Specialist
Growth Specialist
Lead Account Manager
Lead Activation Specialist
Lead Customer Acquisition Specialist
Loyalty Specialist
LTL Fulfillment Lead
LTL Operations Lead
Manager of Customer Activation
National Account Manager
Operations Associate
Operations Associate, Carrier Development and Truckload Fulfillment
Pooling Enablement Lead

Pooling Enablement Rep
Retention Specialist
Retention Specialst
Sales Development Representative
Senior Account Exec
Senior Account Executive
Senior Account Manager
Senior Carrier Sales Rep
Senior Truckload Fulfillment Associate
Strategic Account Manager
Strategic Partnerships Manager
Strategic Solutions Operations Associate
Strategic Solutions Representative
TL Fulfillment Associate
TL Fulfillment Lead
Truckload Fulfillment Assiciate
Truckload Fulfillment Associate
Truckload Fulfillment Lead
Truckload Fulfillment Operations Associate
Truckload Fulfillment Rep
Truckload Fulfillment Senior Associate

EXHIBIT C

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 [Case Caption].

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 \$7,500.00 each to the eleven Named Plaintiffs (\$82,500.00 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 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 [REDACTED], at [REDACTED] 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 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 [REDACTED] at [REDACTED], at [REDACTED]. 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
Jared W. Goldman
Theanne Liu
OUTTEN & GOLDEN LLP
685 Third Avenue, 25th Floor
New York, NY 10017
Telephone: (212) 245-1000
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 **[Case Caption]**.

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 \$7,500.00 each to the eleven Named Plaintiffs (\$82,500.00 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 [redacted], at [redacted] 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 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
Jared W. Goldman
Theanne Liu

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

DATED: _____, 20__

EXHIBIT D

**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, Jared Goldman, or Theanne Liu at Outten & Golden LLP at (212) 245-1000 or via email at FlockFreightSettlement@outtengolden.com.

Exhibit E

Dear [California PAGA Member Name]:

The enclosed check is your share of the California Private Attorneys General Act ("PAGA") settlement payment in the [Caption] class, collective, and representative action lawsuit (Case No. XX) 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