

**OFFICIAL COURT NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

ILYM ID: «ILYM\_ID»  
«First\_Name» «Last\_Name»  
«Address\_1»  
«City», «State» «Zip»

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**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 Representative<sup>1</sup> in the State of California between June 11, 2017 and November 5, 2021.
- 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 Estimated Settlement 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:**

| <b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b> |  |
|--|--|
| <b>DO NOTHING NOW, SIGN AND CASH A SETTLEMENT CHECK</b>  | 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 <b>«AMOUNT Estimated Settlement Amount»</b> , subject to applicable taxes and withholdings. If you sign 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 sign and cash your settlement check, you will release the Released California Class Claims, but not the Released Collective Claims. |
| <b>EXCLUDE YOURSELF</b>                                  | 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   |

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<sup>1</sup> “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 [www.ilymgroup.com/FlockFreight](http://www.ilymgroup.com/FlockFreight) or by contacting Class Counsel or the Settlement Administrator using the information provided in Sections 7 and 20 below.

|               |  |
|---------------|--|
|               | 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. |
| <b>OBJECT</b> | If you do not submit an Opt-out Statement, you may write to the Court about why you object to the settlement. More information about objecting is set forth in Section 15 below.   |

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

## **BASIC INFORMATION**

### **1. Why did I get this notice?**

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

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

### **2. Am I covered by this settlement?**

Flock Freight’s records state that you were employed by Flock Freight as an exempt-classified Sales Representative in California between June 11, 2017 and November 5, 2021. You are therefore considered a “California Class Member.”

### **3. What is the litigation about?**

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

### **4. Why is this a class action?**

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

### **5. Why is there a settlement?**

The Court did not decide in favor of Plaintiffs or Flock Freight. Both sides believe they will prevail in the litigation, but there was no decision in favor of either party. Instead, the Parties have agreed to resolve this matter

solely in order to avoid the burden, expense and risks associated with continued litigation. The Plaintiffs and Class Counsel think the settlement is in the best interests of all Class Members.

## THE SETTLEMENT BENEFITS – WHAT YOU GET

### 6. What does the settlement provide?

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

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

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

Based on the formula that has been preliminarily approved by the Court, your settlement payment is estimated to be «AMOUNT Estimated Settlement 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 [www.ilymgroup.com/FlockFreight](http://www.ilymgroup.com/FlockFreight) or by contacting Class Counsel (using the contact information in Section 20) or the Settlement Administrator (using the contact information below).

ILYM Group, Inc.  
P.O. Box 2031  
Tustin, CA 92781  
Telephone: (888) 250-6810  
Fax: (888) 845-6185

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 «Eligible\_Workweeks» workweeks as an exempt-classified Sales Representative during the period June 11, 2017 to November 5, 2021. 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 January 9, 2023. 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 Estimated Settlement Amount»**. If you sign and 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 April 20, 2023, at 10:00 a.m. 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 sign and 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 November 5, 2021. 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 sign and cash your Settlement Check.

**Released Collective Claims:** If you sign and 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 November 5, 2021.

**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 November 5, 2021.

## 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 January 9, 2023.

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

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

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

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

## THE LAWYERS REPRESENTING YOU

### 13. Do I have a lawyer in this case?

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

#### **14. How will the lawyers be paid?**

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

### **OBJECTING TO THE SETTLEMENT**

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

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

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

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

Objections should be mailed to the Settlement Administrator at:

ILYM Group, Inc.  
P.O. Box 2031  
Tustin, CA 92781  
Telephone: (888) 250-6810  
Fax: (888) 845-6185

Absent good cause found by the Court, to be considered, your objection must be postmarked by or otherwise received on or before January 9, 2023.

#### **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 April 20, 2023 at 10:00 a.m., at The Superior Court of California, County of San Bernardino, Department S-26 at 247 West Third Street, San Bernardino, CA 92415. 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 [www.ilymgroup.com/FlockFreight](http://www.ilymgroup.com/FlockFreight). You can also access the website using this QR Code:

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**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 [claims@ilymgroup.com](mailto:claims@ilymgroup.com)
- Class Counsel at:  
Melissa L. Stewart  
Theanne Liu  
OUTTEN & GOLDEN LLP  
685 Third Avenue, 25th Floor  
New York, NY 10017  
Telephone: (212) 245-1000  
Email: [FlockFreightSettlement@outtengolden.com](mailto:FlockFreightSettlement@outtengolden.com)

DATED: November 25, 2022

**Do not contact the Court directly for any reason.**