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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

JEFFREY PIPICH, EVE STORM, GARY CULL, MELISSA KOLAKOWSKI, and DANIEL LOPEZ, on behalf of themselves and all others similarly situated, and as “aggrieved employees” on behalf of other “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,

Plaintiffs,

vs.

O'REILLY AUTO ENTERPRISES, LLC, a Delaware limited liability company; Express Services, Inc., a Colorado corporation dba Express Employment Professionals; and DOES 2–50, inclusive,

Defendants.

Case No. 3:21-cv-01120-AHG

**ORDER PRELIMINARILY
APPROVING CLASS ACTION
AND PAGA SETTLEMENT**

Action filed:	July 16, 2021
Ctrm:	2125, The Honorable Allison H. Goddard

1 The Unopposed Motion of Plaintiffs Jeffrey Pipich, Eve Storm, Gary Cull,
2 Melissa Kolakowski, and Daniel Lopez (hereafter referred to as “Plaintiffs”) for
3 Preliminary Approval of a Class Action Settlement (the “Motion”) was considered
4 by the Court, The Honorable Allison H. Goddard presiding. The Court having
5 considered the Motion, the Class Action and PAGA Settlement Agreement and
6 Class Notice (“Settlement” or “Settlement Agreement”), and supporting papers,
7 HEREBY ORDERS THE FOLLOWING:

8 1. The Court grants preliminary approval of the Settlement and the
9 Settlement Class based upon the terms set forth in the Settlement filed as an Exhibit
10 to the Motion for Preliminary Approval. All terms herein shall have the same
11 meaning as defined in the Settlement. The Court has determined only that there is
12 sufficient evidence to suggest that the proposed settlement might be fair, adequate,
13 and reasonable, and that any final determination of those issues will be made at the
14 final hearing. The Court will make a determination at the hearing on the motion for
15 final approval of class action settlement (the “Final Approval Hearing”) as to
16 whether the Settlement is fair, adequate and reasonable to the Settlement Class.

17 2. For purposes of this Preliminary Approval Order, the “Settlement
18 Class” means all individuals employed by Defendants as non-exempt, hourly
19 employees, either directly or indirectly through staffing agencies, at one of
20 Defendant O’Reilly Auto Enterprises, LLC’s distribution centers in California at
21 any time between July 5, 2018 and May 22, 2024.

22 3. Based on its records, Defendants estimate that, as of November 30,
23 2023, (1) there are 5,750 Class Members and 289,537 Total Workweeks during the
24 Class period and (2) there were 4,312 Aggrieved Employees who worked 78,609
25 Workweeks during the PAGA Period. “Effective Date” means the date when both
26 of the following have occurred: (a) the Court enters a Judgment on its Order
27 Granting Final Approval of the Settlement; and (b) the Judgment is final. The
28 Judgment is final as of the latest of the following occurrences: (a) if no Participating

1 Class Member objects to the Settlement, the day the Court enters Judgment; (b) if
2 one or more Participating Class Members objects to the Settlement, the day after
3 the deadline for filing a notice of appeal from the Judgment; or if a timely appeal
4 from the Judgment is filed, the day after the appellate court affirms the Judgment
5 and issues a remittitur.

6 4. This action is provisionally certified pursuant to Rule 23 of the Federal
7 Rules of Civil Procedure as a class action for purposes of settlement only with
8 respect to the proposed Settlement Class.

9 5. Not later than fifteen (15) days after the Court grants Preliminary
10 Approval of the Settlement, Defendants will simultaneously deliver the Class Data
11 to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class
12 Members' privacy rights, the Administrator must maintain the Class Data in
13 confidence, use the Class Data only for purposes of the Settlement and for no other
14 purpose, and restrict access to the Class Data to Administrator employees who need
15 access to the Class Data to effect and perform under the Settlement Agreement.
16 Defendants have a continuing duty to immediately notify Class Counsel if they
17 discover that the Class Data omitted class member identifying information and to
18 provide corrected or updated Class Data as soon as reasonably feasible. Without
19 any extension of the deadline by which Defendant must send the Class Data to the
20 Administrator, the Parties and their counsel will expeditiously use best efforts, in
21 good faith, to reconstruct or otherwise resolve any issues related to missing or
22 omitted Class Data.

23 6. No later than three (3) business days after receipt of the Class Data, the
24 Administrator shall notify Class Counsel that the list has been received and state the
25 number of Class Members, PAGA Members, Workweeks in the Class Data.

26 7. Using best efforts to perform as soon as possible, and in no event later
27 than fourteen (14) days after receiving the Class Data, the Administrator will send
28 to all Class Members identified in the Class Data, via first-class United States Postal

1 Service (“USPS”) mail, the Class Notice with Spanish translation, if applicable,
2 substantially in the form attached to this Order as Exhibit A. The first page of the
3 Class Notice shall prominently estimate the dollar amounts of any Individual Class
4 Payment and/or Individual PAGA Payment payable to the Class Member, and the
5 number of Workweeks and PAGA Workweeks (if applicable) used to calculate these
6 amounts. Before mailing Class Notices, the Administrator shall update Class Member
7 addresses using the National Change of Address database.

8 8. Not later than three (3) business days after the Administrator’s receipt
9 of any Class Notice returned by the USPS as undelivered, the Administrator shall
10 re-mail the Class Notice using any forwarding address provided by the USPS. If
11 the USPS does not provide a forwarding address, the Administrator shall conduct a
12 Class Member Address Search, and re-mail the Class Notice to the most current
13 address obtained. The Administrator has no obligation to make further attempts to
14 locate or send Class Notice to Class Members whose Class Notice is returned by
15 the USPS a second time.

16 9. Class Counsel’s contact information is David Glenn Spivak, Esq., The
17 Spivak Law Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA
18 90069, and Alexandra K. Piazza, Esq., Berger Montague PC, 8241½ La Mesa Blvd.
19 La Mesa, CA 91942. Defense Counsel’s contact information is James M. Peterson
20 and Derek W Paradis, Esq., Higgs Fletcher & Mack, 401 West A Street, Suite 2600,
21 San Diego, CA, 92101.

22 10. The deadlines for Class Members’ written objections, challenges to
23 workweeks (disputes), and requests for exclusion will be extended an additional
24 fourteen (14) days beyond the sixty (60) days otherwise provided in the Class Notice
25 for all Class Members whose notice is re-mailed. The Administrator will inform
26 the Class Member of the extended deadline with the re-mailed Class Notice.

27 11. If the Administrator, Defendants or Class Counsel is contacted by or
28 otherwise discovers any persons who believe they should have been included in the

1 Class Data and should have received Class Notice, the Parties will expeditiously
2 meet and confer in person or by telephone, and in good faith, in an effort to agree
3 on whether to include them as Class Members. If the Parties agree, such persons
4 will be Class Members entitled to the same rights as other Class Members, and the
5 Administrator will send, via email or overnight delivery, a Class Notice requiring
6 them to exercise options under the Settlement Agreement not later than fourteen
7 (14) days after receipt of Class Notice, or the deadline dates in the Class Notice,
8 which ever are later.

9 12. Requests for Exclusion. Class Members who wish to exclude
10 themselves from the Class Settlement must send to the Administrator, by fax, email,
11 or mail, a signed written Request for Exclusion not later than 60 days after the
12 Administrator mails the Class Notice (plus an additional 14 days for Class Members
13 whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class
14 Member that reasonably communicates the Class Member's election to be excluded
15 from the Settlement and includes the Class Member's name, address and email
16 address or telephone number. To be valid, a Request for Exclusion must be timely
17 faxed, emailed, or postmarked by the Response Deadline.

18 13. The Administrator may not reject a Request for Exclusion as invalid
19 because it fails to contain all the information specified in the Class Notice. The
20 Administrator shall accept any Request for Exclusion as valid if the Administrator
21 can reasonably ascertain the identity of the person as a Class Member and the Class
22 Member's desire to be excluded. The Administrator's determination shall be final
23 and not appealable or otherwise susceptible to challenge. If the Administrator has
24 reason to question the authenticity of a Request for Exclusion, the Administrator
25 may demand additional proof of the Class Member's identity. The Administrator's
26 determination of authenticity shall be final and not appealable or otherwise
27 susceptible to challenge.

28 14. Every Class Member who does not submit a timely and valid Request

1 for Exclusion is deemed to be a Participating Class Member under the Settlement
2 Agreement, entitled to all benefits and bound by all terms and conditions of the
3 Settlement, including the Participating Class Members' Releases under Paragraphs
4 6.2 and 6.3 of the Settlement, regardless of whether the Participating Class Member
5 actually receives the Class Notice or objects to the Settlement.

6 15. Every Class Member who submits a valid and timely Request for
7 Exclusion is a Non-Participating Class Member and shall not receive an Individual
8 Class Payment or have the right to object to the class action components of the
9 Settlement. Aggrieved Employees cannot opt out of the PAGA portion of the
10 Settlement. Plaintiffs, on behalf of herself and the State of California, and the
11 Aggrieved Employees, release all claims for civil penalties that could have been
12 sought by the Labor Commissioner for the violations identified in Plaintiffs' pre-
13 filing letter to the LWDA; Plaintiffs do not release any claim for wages or damages
14 of any Aggrieved Employee unless such Aggrieved Employee is a Participating
15 Class Member.

16 16. Challenges to Calculation of Workweeks. Each Class Member shall
17 have sixty (60) days after the Administrator mails the Class Notice (plus an
18 additional fourteen (14) days for Class Members whose Class Notice is re-mailed)
19 to challenge the number of Class Workweeks and PAGA Workweeks (if any)
20 allocated to the Class Member in the Class Notice. This is also known as a dispute.
21 The Class Member may challenge the allocation by communicating with the
22 Administrator via fax, email, or mail. The Administrator must encourage the
23 challenging Class Member to submit supporting documentation. In the absence of
24 any contrary documentation, the Administrator is entitled to presume that the
25 Workweeks contained in the Class Notice are correct so long as they are consistent
26 with the Class Data. The Administrator's determination of each Class Member's
27 allocation of Workweeks shall be final and not appealable or otherwise susceptible
28 to challenge. The Administrator shall promptly provide copies of all challenges to

1 calculation of Workweeks along with the Administrator's determination of the
2 challenges to Defense Counsel and Class Counsel.

3 17. Objections to Settlement. Only Participating Class Members may
4 object to the Settlement, including contesting the fairness of the Settlement, and/or
5 amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation
6 Expenses Payment and/or Class Representative Service Payments. Participating
7 Class Members may send written objections to the Administrator, by fax, email, or
8 mail. To be valid, the written objection must state the factual and legal grounds for
9 the objection to the Settlement. The written objection must be signed by the Class
10 Member submitting it, and it must state the person's full name, address, telephone
11 number, and email address (if applicable). A Participating Class Member who elects
12 to send a written objection to the Administrator must do so not later than sixty (60)
13 days after the Administrator's mailing of the Class Notice (plus an additional
14 fourteen (14) days for Class Members whose Class Notice was re-mailed). The
15 Participating Class Member who has submitted a timely objection may attend the
16 Final Approval Hearing (or personally retain a lawyer to object and attend at their
17 own cost).

18 18. Non-Participating Class Members have no right to object to any of the
19 class action components of the Settlement.

20 19. Not later than fourteen (14) days before the date by which Plaintiffs
21 are required to file the Motion for Final Approval of the Settlement, the
22 Administrator will provide to Class Counsel and Defense Counsel, a signed
23 declaration suitable for filing in Court attesting to its due diligence and compliance
24 with all of its obligations under the Settlement Agreement, including, but not
25 limited to, its mailing of the Class Notices, the Class Notices returned as
26 undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the
27 total number of Requests for Exclusion it received (both valid or invalid), the
28 number of written Objections, and attach the Exclusion List. The Administrator

1 will supplement its declaration as needed or requested by the Parties and/or the
2 Court. Class Counsel is responsible for filing the Administrator's declaration(s) in
3 Court.

4 20. The Court approves, as to form and content, the Class Notice in
5 substantially the form attached as Exhibit A to this Order.

6 21. The Court approves, for settlement purposes only Berger Montague
7 PC, The Spivak Law Firm, and United Employees Law Group as Class Counsel.

8 22. The Court approves, for settlement purposes only, Jeffrey Pipich, Eve
9 Storm, Gary Cull, Melissa Kolakowski, and Daniel Lopez as the Class
10 Representatives.

11 23. The Court approves Xpand Legal Consulting LLC as the
12 Administrator.

13 24. The Court preliminarily approves Class Counsel's request for
14 attorneys' fees and costs subject to final review by the Court. Class Counsel shall
15 file a Motion for Approval of Attorneys' Fees and Costs fourteen (14) days before
16 the Response Deadline.

17 25. The Court preliminarily approves the estimated Administrator costs
18 payable to the Administrator subject to final review by the Court.

19 26. The Court preliminarily approves Plaintiffs' Class Representative
20 Service Payment subject to final review by the Court.

21 27. A Final Approval Hearing shall be held on
22 _____ at _____ .m. in Courtroom 2125 of the United
23 States District Court, Southern District of California, located at the Edward J.
24 Schwartz United States Courthouse, 221 West Broadway, San Diego, CA 92101 to
25 consider the fairness, adequacy and reasonableness of the proposed Settlement
26 preliminarily approved by this Preliminary Approval Order, and to consider the
27 application of Class Counsel for attorneys' fees and costs and the Class
28 Representative Service Payments to the Class Representatives. The notice of motion

1 and all briefs and materials in support of the motion for final approval of class action
2 settlement and motion for attorneys' fees and litigation costs shall be served and
3 filed with this Court on or before _____. Plaintiffs' counsel
4 must give notice to any objecting party of any continuance of the hearing of the
5 motion for final approval.

6 28. If for any reason the Court does not execute and file a Final Approval
7 Order and Judgment, or if the Effective Date, as defined in the Settlement, does not
8 occur for any reason, the proposed Settlement that is the subject of this order, and
9 all evidence and proceedings had in connection therewith, shall be without
10 prejudice to the status quo ante rights of the Parties to the litigation, as more
11 specifically set forth in the Settlement.

12 29. The Court expressly reserves the right to adjourn or continue the Final
13 Approval Hearing from time to time without further notice to members of the Class.

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15 **IT IS SO ORDERED**

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17 DATED: _____

18 _____
19 HON. ALLISON H. GODDARD
20 United States Magistrate Judge
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