

1 DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com

2 CAROLINE TAHMASSIAN (SBN 285680)
3 caroline@spivaklaw.com

4 **THE SPIVAK LAW FIRM**

8605 Santa Monica Blvd., PMB 42554

West Hollywood, CA 90069

Telephone: (213) 725-9094

Facsimile: (213) 634-2485

Attorneys for Plaintiffs and all others similarly situated
(Additional attorneys for parties on following page)

10 **UNITED STATES DISTRICT COURT**
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

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

18 *Plaintiffs,*

20 vs.

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

25 *Defendants.*

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

**PLAINTIFFS’ NOTICE OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Action filed: June 16, 2021
Hearing 2125, The
Court: Honorable Allison
H. Goddard

**Submitted Herewith Under Separate
Cover:**

1. Memorandum of Points and Authorities;
2. Declaration(s) of David Spivak, Alexandra K. Piazza, and Walter L. Haines; and
3. [Proposed] Order



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

ADDITIONAL ATTORNEYS FOR PLAINTIFFS

Alexandra K. Piazza (SBN 341678)

apiazza@bm.net

BERGER MONTAGUE PC

8241 La Mesa Blvd, Suite A

La Mesa, CA 91942

Telephone: (619) 489-0300

Facsimile: (215) 875-4604

Shanon J. Carson* (PA 85957)

scarson@bm.net

Camille Fundora Rodriguez*

(PA 312533, NJ 01764-2011)

crodriguez@bm.net

Michael J. Anderson* (PA 332185)

manderson@bm.net

BERGER MONTAGUE PC

1818 Market Street, Suite 3600

Philadelphia, PA 19103

Telephone: (215) 875-3000

Facsimile: (215) 875-4604

* admitted *pro hac vice*

WALTER L. HAINES (SBN 71075)

walter@uelglaw.com

UNITED EMPLOYEES LAW GROUP, PC

8605 Santa Monica Blvd., PMB 63354

West Hollywood, CA 90069

Telephone: (562) 256-1047

Facsimile: (562) 256-1006



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
1801 Century Park East
25th Fl
Los Angeles, CA 90067

ATTORNEYS FOR DEFENDANTS

JAMES M. PETERSON (SBN 137837)

peterson@higgslaw.com

EDWIN M. BONISKE (SBN 265701)

boniske@higgslaw.com

DEREK W. PARADIS (SBN 269556)

paradisd@higgslaw.com

HIGGS FLETCHER & MACK LLP

401 West "A" Street, Suite 2600

San Diego, California 92101-7913

Telephone: 619.236.1551

Facsimile: 619.696.1410

Attorneys for Defendant,

O'REILLY AUTO ENTERPRISES, LLC

MORGAN FORSEY (SBN 241207)

morgan.forsey@afslaw.com

ARENTFOX SCHIFF LLP

555 West Fifth Street

48th Floor

Los Angeles CA 90013

Telephone: (213) 443-7538

Facsimile: (213) 629-7401

Attorneys for Defendant,

Express Services, Inc.



SPIVAK LAW
EMPLOYEE RIGHTS

Mail:
8605 Santa Monica Bl
PMB 42554
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1 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that Plaintiffs Jeffrey Pipich, Eve Storm, Gary
3 Cull, Melissa Kolakowski, and Daniel Lopez (collectively “Plaintiffs”) hereby
4 move this Court for an order: (1) granting class certification of the Settlement Class
5 solely for settlement purposes pursuant to Federal Rules of Civil Procedure § 23;
6 (2) preliminarily approving the Class Action and PAGA Settlement Agreement and
7 Class Notice (the “Settlement” or “Settlement Agreement”)¹ between Plaintiffs and
8 Defendants O'Reilly Auto Enterprises, LLC (“O'Reilly”) and Express Services, Inc.
9 (“Express”) (collectively, “Defendants”) (Plaintiffs and Defendants are referred to
10 below collectively as the “Parties”), (3) appointing David Spivak of The Spivak
11 Law Firm, Alexandra K. Piazza of Berger Montague PC, and Walter L. Haines of
12 United Employees Law Group as Class Counsel; (5) appointing Plaintiffs as Class
13 Representatives (“Class Representatives”); (6) approving the use of the proposed
14 notice procedures; (7) directing that notice be mailed to the proposed Settlement
15 Class; and (8) scheduling a hearing date for motion for final approval of class action
16 settlement and awards of attorneys’ fees and costs.

17 The “Settlement Class” or “Class Members” consists of all individuals
18 employed by one or both Defendants as non-exempt, hourly employees, either
19 directly or indirectly through staffing agencies, and who worked at one of
20 Defendant O'Reilly Auto Enterprises, LLC’s distribution centers in California at
21 any time during the Class Period. Settlement ¶ 1.5. “Class Period” means the period
22 from July 5, 2018 to May 22, 2024. *Id.* ¶ 1.12.

23 This Motion is made on the following grounds: (1) the Settlement Class
24 meets all the requirements for class certification for settlement purposes only under
25

26 ¹ The Settlement Agreement is attached as Exhibit 1 to the Declaration of David
27 Spivak (“DS”), which is submitted herewith under a separate cover. Unless
28 otherwise stated, all capitalized terms have the meaning ascribed to them in the
Settlement Agreement.



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1 Federal Rules of Civil Procedure § 23; (2) Plaintiffs and their counsel are adequate
2 to represent the Settlement Class; (3) the Settlement reflects a fair, adequate, and
3 reasonable compromise of all disputed claims in view of Defendants' potential
4 liability exposure as compared against the risks of continued litigation; (4) the
5 proposed notice procedures and related forms adequately apprise the Class
6 Members of their rights under the Settlement and fully comport with due process;
7 and (5) in view of the foregoing, notice should be disseminated to the Class
8 Members and a hearing date for motion for final approval of class action settlement,
9 and awards of attorneys' fees and costs should be set.

10 The Motion is based on this Notice of Motion and Motion, the attached
11 Memorandum of Points and Authorities, the Declarations of David Spivak,
12 Alexandra K. Piazza, and Walter L. Haines, all papers and pleadings on file with
13 the Court in this action, all matters judicially noticeable, and on such oral and
14 documentary evidence as may be presented in connection with the hearing on the
15 Motion.

16 Respectfully submitted,

17
18 THE SPIVAK LAW FIRM

19
20 Dated: May 24, 2024

By: /s/ David Spivak

21 DAVID G. SPIVAK, Attorneys
22 for Plaintiffs, JEFFREY PIPICH,
23 EVE STORM, GARY CULL,
24 MELISSA KOLAKOWSKI, and
25 DANIEL LOPEZ, and all others
26 similarly situated



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28 EMPLOYEE RIGHTS

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