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

14 JEFFREY PIPICH, EVE STORM, GARY
15 CULL, MELISSA KOLAKOWSKI, and
16 DANIEL LOPEZ, on behalf of themselves
17 and all others similarly situated, and as
18 “aggrieved employees” on behalf of other
19 “aggrieved employees” under the Labor
20 Code Private Attorneys General Act of
21 2004,

22 *Plaintiffs,*

23 vs.

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

Defendants.

Case No. 3:21-cv-01120-L-JLB

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT
AND CLASS NOTICE**

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

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Attorneys for Defendants

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made
2 by and between Plaintiffs Jeffrey Pipich, Eve Storm, Gary Cull, Melissa
3 Kolakowski, and Daniel Lopez (collectively, “Plaintiffs”) and Defendants O'Reilly
4 Auto Enterprises, LLC (“O'Reilly”) and Express Services, Inc. *dba* Express
5 Employment Professionals (“Express”) (together, “Defendants”). The Agreement
6 refers to Plaintiffs and Defendants collectively as “Parties,” or individually as
7 “Party.”

8 **1. DEFINITIONS.**

9 1.1. “Action” means the Plaintiffs’ lawsuit alleging wage and hour
10 violations against Defendants captioned “Jeffrey Pipich, Eve Storm, Gary Cull,
11 Melissa Kolakowski, and Daniel Lopez, on behalf of themselves, and all others
12 similarly situated, and as ‘aggrieved employees’ on behalf of other ‘aggrieved
13 employees’ under the Labor Code Private Attorneys General Act of 2004, *Plaintiffs,*
14 *vs. O'Reilly Auto Enterprises, LLC, a Delaware limited liability company; Express*
15 *Services, Inc., a Colorado corporation dba Express Employment Professionals and*
16 *DOES 2 through 50, inclusive, Defendants,”* Case No. 3:21-cv-01120-L-JLB
17 initiated on June 16, 2021 and pending in United States District Court, Southern
18 District of California.

19 1.2. “Administrator” means Xpand Legal Consulting LLC, the neutral
20 entity the Parties have agreed to appoint to administer the Settlement.

21 1.3. “Administration Expenses Payment” means the amount the
22 Administrator will be paid from the Gross Settlement Amount to reimburse its
23 reasonable fees and expenses in accordance with the Administrator’s “not to
24 exceed” bid submitted to the Court in connection with Preliminary Approval of the
25 Settlement.

26 1.4. “Aggrieved Employee” means a person employed by one or both
27 Defendants in California and classified as non-exempt, hourly employees, either

1 directly or indirectly through staffing agencies, and who worked at one of
2 Defendant O'Reilly Auto Enterprises, LLC's distribution centers in California at
3 any time during the PAGA Period.

4 1.5. "Class" means all individuals employed by one or both Defendants as
5 non-exempt, hourly employees, either directly or indirectly through staffing
6 agencies, and who worked at one of Defendant O'Reilly Auto Enterprises, LLC's
7 distribution centers in California at any time during the Class Period. Defendants
8 have represented that there are approximately 5,750 Class Members as of
9 November 30, 2023, and Plaintiffs have relied on this number in entering into this
10 Settlement Agreement.

11 1.6. "Class Counsel" means Alexandra K. Piazza of Berger Montague PC,
12 David G. Spivak of The Spivak Law Firm, and Walter L. Haines of United
13 Employees Law Group.

14 1.7. "Class Counsel Fees Payment" and "Class Counsel Litigation
15 Expenses Payment" mean the amounts allocated to Class Counsel for
16 reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to
17 litigate and resolve the Action, as awarded by the Court.

18 1.8. "Class Data" means Class Member identifying information in
19 Defendants' possession including the Class Member's name, last-known mailing
20 address, Social Security number, phone number, personal email address, and
21 number of Class Period Workweeks and PAGA Workweeks.

22 1.9. "Class Member" or "Settlement Class Member" means a member of
23 the Class, as either a Participating Class Member or Non-Participating Class
24 Member (including a Non-Participating Class Member who qualifies as an
25 Aggrieved Employee).

26 1.10. "Class Member Address Search" means the Administrator's
27 investigation and search for current Class Member mailing addresses using all

1 reasonably available sources, methods and means including, but not limited to, the
2 National Change of Address database, skip traces, and direct contact by the
3 Administrator with Class Members.

4 1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS
5 ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT
6 APPROVAL, to be mailed to Class Members in English with a Spanish translation
7 in the form, without material variation, attached as Exhibit A and incorporated by
8 reference into this Agreement.

9 1.12. "Class Period" means the period from July 05, 2018 to the date
10 preliminary approval of the settlement is entered by the Court, or May 22, 2024,
11 whichever is earlier.

12 1.13. "Class Representatives" means the named Plaintiffs in the Operative
13 Complaint in the Action seeking Court approval to serve as Class Representatives.

14 1.14. "Class Representative Service Payments" means the payment to the
15 Class Representatives for initiating the Action and providing services to the Class
16 in support of the Action.

17 1.15. "Court" means the United States District Court, Southern District of
18 California.

19 1.16. "Defendants" means named Defendants O'Reilly Auto Enterprises,
20 LLC and Express Services, Inc. *dba* Express Employment Professionals.

21 1.17. "Defense Counsel" means James M. Peterson, Edwin Boniske, and
22 Derek W. Paradis of Higgs Fletcher & Mack, and Morgan Forsey of ArentFox
23 Schiff LLP.

24 1.18. "Effective Date" means the date when both of the following have
25 occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of
26 the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest
27 of the following occurrences: (a) if no Participating Class Member objects to the

1 Settlement, the day the Court enters Judgment; (b) if one or more Participating Class
2 Members objects to the Settlement, the day after the deadline for filing a notice of
3 appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day
4 after the appellate court affirms the Judgment. Defendants will not be obligated to
5 fund this Settlement until and unless the Effective Date is reached.

6 1.19. “Final Approval” means the Court’s order granting final approval of
7 the Settlement.

8 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for
9 Final Approval of the Settlement.

10 1.21. “Gross Settlement Amount” means Four Million One Hundred
11 Thousand Dollars and Zero Cents (\$4,100,000.00), which is the total amount
12 Defendant O’Reilly agrees to pay under the Settlement. The Gross Settlement
13 Amount will be used to pay Individual Class Payments, Individual PAGA
14 Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel
15 Expenses, Class Representative Service Payments, and the Administration
16 Expenses Payment. O’Reilly shall not be required to pay more than the Gross
17 Settlement Amount, with the exception of the employers’ side payroll taxes.

18 1.22. “Individual Class Payment” means the Participating Class Member’s
19 *pro rata* share of the Net Settlement Amount calculated according to the number of
20 Workweeks worked during the Class Period.

21 1.23. “Individual PAGA Payment” means the Aggrieved Employee’s *pro*
22 *rata* share of 25% of the PAGA Penalties calculated according to the number of
23 PAGA Workweeks worked during the PAGA Period.

24 1.24. “Judgment” means the Judgment entered by the Court upon Granting
25 Final Approval of the Settlement. A proposed final Judgment form is attached as
26 Exhibit C.

27 1.25. “LWDA” means the California Labor and Workforce Development
28

1 Agency, the agency entitled, under Labor Code section 2699, subd. (i).

2 1.26. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid
3 to the LWDA under Labor Code section 2699, subd. (i).

4 1.27. “Net Settlement Amount” means the Gross Settlement Amount, less
5 the following payments in the amounts approved by the Court: Individual PAGA
6 Payments, the LWDA PAGA Payment, Class Representative Service Payments,
7 Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the
8 Administration Expenses Payment. The remainder is to be paid to Participating
9 Class Members as Individual Class Payments.

10 1.28. “Non-Participating Class Member” means any Class Member who
11 opts out of the Settlement by sending the Administrator a valid and timely Request
12 for Exclusion.

13 1.29. “PAGA Workweek” means any Workweek during which an
14 Aggrieved Employee worked for Defendant for at least one day during the PAGA
15 Period.

16 1.30. “PAGA Period” means the period from May 11, 2020 to the date
17 preliminary approval of the settlement is entered by the Court, or May 22, 2024,
18 whichever is earlier.

19 1.31. “PAGA” means the Labor Code Private Attorneys General Act of
20 2004, Labor Code §§ 2698, *et seq.*

21 1.32. “PAGA Notices” means Jeffrey Pipich’s letters to the LWDA of May
22 11, 2021 and January 4, 2022, Eve Storm’s letters to the LWDA of August 11, 2021
23 and January 5, 2022, and Plaintiffs’ letter to the LWDA of May 16, 2024 providing
24 notice pursuant to Labor Code section 2699.3, subd.(a).

25 1.33. “PAGA Penalties” means the total amount of PAGA civil penalties in
26 the amount of \$410,000.00 to be paid from the Gross Settlement Amount, allocated
27 25% to the Aggrieved Employees (\$102,500.00) and the 75% to LWDA

1 (\$307,500.00) in settlement of PAGA claims.

2 1.34. "Participating Class Member" means a Class Member who does not
3 submit a valid and timely Request for Exclusion from the Settlement.

4 1.35. "Plaintiffs" means Jeffrey Pipich, Eve Storm, Gary Cull, Melissa
5 Kolakowski, and Daniel Lopez, the named plaintiffs in the Action.

6 1.36. "Preliminary Approval" means the Court's Order Granting
7 Preliminary Approval of the Settlement.

8 1.37. "Preliminary Approval Order" means the proposed Order Granting
9 Preliminary Approval and Approval of PAGA Settlement. A proposed Preliminary
10 Approval Order form is attached as Exhibit B.

11 1.38. "Released Class Claims" means the claims being released as described
12 in Paragraph 6.2 below.

13 1.39. "Released PAGA Claims" means the claims being released as
14 described in Paragraph 6.3 below.

15 1.40. "Released Parties" means: Defendants and their parents, subsidiaries,
16 affiliated entities, franchisors, franchisees, officers, employees, and agents.

17 1.41. "Request for Exclusion" means a Class Member's submission of a
18 written request to be excluded from the Class Settlement signed by the Class
19 Member.

20 1.42. "Response Deadline" means sixty (60) days after the Administrator
21 mails Notice to Class Members and Aggrieved Employees, and shall be the last date
22 on which Class Members may: (a) fax, email, or mail a Request for Exclusion from
23 the Settlement, or (b) fax, email, or mail an Objection to the Settlement. The
24 Response Deadline shall be extended by fourteen (14) days for Class Members to
25 whom Class Notices are resent after having been returned undeliverable to the
26 Administrator.

27 1.43. "Settlement" means the disposition of the Action effected by this

1 Agreement and the Judgment.

2 1.44. “Workweek” means any week during which a Class Member worked
3 for Defendant for at least one day, during the Class Period.
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5 **2. RECITALS.**

6 2.1. On May 11, 2021, Jeffrey Pipich (“Pipich”) electronically submitted
7 written notice to the LWDA of O’Reilly’s violations of Labor Code §§ 510, 512,
8 558, 1174, 1182.11, 1194, and 1197.

9 2.2. On July 16, 2021, Pipich filed his FLSA collective action Complaint
10 in the United States District Court for the Southern District of California. It was
11 assigned to the Honorable Judge M. James Lorenz. Pipich’s FLSA claims in the
12 First Amended Complaint were dismissed on March 14, 2022.

13 2.3. On July 22, 2021, Pipich filed his First Amended Complaint
14 asserting, among other things, PAGA claims on behalf of himself and similarly
15 aggrieved employees for Defendant O’Reilly’s Labor Code violations for unpaid
16 wages for time spent in Covid-19 and security screenings, meal and rest break
17 violations, failure to reimburse for business expenses, inaccurate wage statements,
18 untimely wages, and related violations.

19 2.4. By letter dated August 11, 2021, Eve Storm (“Storm”) gave written
20 notice by certified mail to the LWDA of violations of the California Labor Code.
21 Storm filed her PAGA representative action in the Riverside County Superior Court
22 on October 15, 2021, case no. CVRI2202748. The bases for Storm’s private
23 attorney general action are Defendants’ failure to pay all wages earned at the correct
24 rates, including for time spent in security checks, failure to provide meal breaks,
25 failure to authorize and permit rest breaks, failure to reimburse for expenses, failure
26 to provide accurate and complete itemized wage statements, untimely wages during
27 and at the conclusion of employment, failure to provide toilet and storage facilities,
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1 lockers, and acceptable work temperatures, and failure to maintain accurate
2 employment records.

3 2.5. On January 4, 2022, Pipich submitted an Amended PAGA Notice to
4 the LWDA for violations of Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7,
5 510, 512, 1174, 1194, 1197, 1198, and 2802 and Wage Order 9.

6 2.6. On April 7, 2022, Pipich filed a Second Amended Complaint
7 asserting only representative PAGA claims to recover civil penalties for violations
8 of the Labor Code, including sections 201, 202, 203, 204, 226, 226.7, 510, 512,
9 1174, 1194, 1197, 1198, 2350, and 2802.

10 2.7. On November 22, 2021, Storm filed an Amendment to Complaint to
11 add O'Reilly in place of Doe Defendant 1.

12 2.8. On January 5, 2022, Storm sent a supplemental written notice by
13 certified mail to the LWDA. On January 27, 2022, the Parties agreed to stay the
14 Storm PAGA case pending the resolution of the first filed Pipich PAGA case.

15 2.9. On June 15, 2022, Pipich and O'Reilly participated in an early neutral
16 evaluation conference in the United States District Court for the Southern District
17 of California. The Parties engaged in settlement negotiations at that time. The
18 disputes between the Parties did not resolve at that time.

19 2.10. On July 5, 2022, Storm filed a class action lawsuit against
20 Defendants, *Eve Storm v. Express Services, Inc. dba Express Employment*
21 *Professionals, at al.*, Superior Court for the State of California, County of Riverside,
22 Case No. CVR12202748. Storm's Class Action Complaint presented the following
23 causes of action: Failure to pay all wages earned at the correct rates; Failure to
24 provide meal periods; Failure to authorize and permit rest breaks; Failure to
25 reimburse for expenses; Waiting time penalties; and Unfair competition.

26 2.11. On August 26, 2022, Defendant O'Reilly removed Storm's class
27 action lawsuit to the United States District Court for the Central District of

1 California, case no. 5:22-cv-01510 FLA (MARx). The parties in the Storm Action
2 entered into a tolling agreement and dismissed the class action pending the results
3 of a mediation.

4 2.12. On February 14, 2023, Pipich and Storm participated in mediation
5 with Defendants and mediator Ann Kotlarski, Esq. The disputes between all the
6 Parties did not resolve at that time.

7 2.13. On April 5, 2023, Storm filed another class action lawsuit against
8 Defendants, titled *Eve Storm v. Express Services, Inc. dba Express Employment*
9 *Professionals, at al.*, United States District Court, Central District of California,
10 Case No. 5:23-CV-00597-FLA-MAR. Storm's Class Action Complaint presented
11 the following causes of action: Failure to pay all wages earned at the correct rates;
12 Failure to provide meal periods; Failure to authorize and permit rest breaks; Failure
13 to reimburse for expenses; Waiting time penalties; and Unfair competition.
14 Defendants subsequently filed a motion to compel arbitration of this case.

15 2.14. On April 14, 2023, Pipich filed a Third Amended Complaint for
16 Defendant O'Reilly's alleged failure to: (1) Provide all rest and meal periods; (2)
17 Indemnify for necessary work-related expenditures; (3) Pay all wages earned for all
18 hours worked at the correct rates of pay; (4) Issue accurate and complete itemized
19 wage statements; (5) Timely pay wages during and upon termination of
20 employment and; (6) Provide toilet and storage facilities, lockers, change rooms,
21 and acceptable work temperatures, and (7) Maintain accurate employment records.

22
23 2.15. On June 12, 2023, Plaintiff Gary Cull ("Cull") filed a class action
24 complaint in the Superior Court of the State of California, County of Riverside, case
25 no. CVRI2303008. It contains causes of action for: (1) Failure To Provide Meal
26 Periods; (2) Failure To Provide Rest Breaks; (3) Failure To Pay All Wages Earned
27 For All Our Worked at The Correct Rates Of Pay; (4) Failure To Indemnify; and

1 (5) Unfair Competition. On August 14, 2023, Defendant O'Reilly removed the *Cull*
2 lawsuit to the United States District Court for the Central District of California, case
3 no. 5:23-cv-01623-FLA-MAR.

4 2.16. On December 26, 2023, Cull filed a First Amended Class Action
5 Complaint adding Melissa Kolakowski and Daniel Lopez as named plaintiffs. It
6 contains causes of action for: (1) Failure To Provide Meal Periods; (2) Failure To
7 Provide Rest Breaks; (3) Failure To Pay All Wages Earned For All Our Worked at
8 The Correct Rates Of Pay; (4) Failure To Indemnify; (5) Waiting Time Penalties;
9 and (5) Unfair Competition.

10 2.17. On February 5 and 21, 2024, the Parties participated in mandatory
11 settlement conferences which led to this Agreement to settle the Action.

12 2.18. On May 16, 2024, pursuant to Labor Code section 2699.3, subd.(a),
13 Plaintiffs gave additional written notice to Defendants and the LWDA of
14 Defendants' violations of the Labor Code.

15 2.19. On May 21, 2024, Plaintiff Pipich filed a Fourth Amended Complaint
16 that added Eve Storm, Gary Cull, Melissa Kolakowski, and Daniel Lopez as
17 additional Plaintiffs and Express Services, Inc. in place of Doe Defendant 1. It
18 contains the claims made in the prior actions of the Plaintiffs recounted above and
19 additional factual allegations investigated and discovered by the Plaintiffs which
20 were part of the settlement negotiations at the mediation and mandatory settlement
21 conferences. The Fourth Amended Complaint is the "Operative Complaint."

22 2.20. During discovery and settlement negotiations, and prior the final
23 mandatory settlement conference, Plaintiffs obtained, through formal and informal
24 discovery the number of Workweeks, sample time records, sample payroll records,
25 sample schedules, written policies, the number of comparable employees, average
26 rates of pay, and related information. Plaintiffs' investigation was sufficient to
27 satisfy the criteria for court approval.

2.21. The Court has not granted class certification and the matters listed in Section 2.22.2 have not been certified.

2.22. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement other than the following:

2.22.1. *Stephanie Perez v. O'Reilly Auto Enterprises, LLC*, Superior Court of the State of California for County of San Joaquin, case no. STK-CV-UOE-2023-7289, filed on July 14, 2023, and amended on September 23, 2023. This is a class and PAGA action for (1) Failure To Provide Duty-Free Meal Periods; (2) Failure To Provide Duty-Free Rest Periods; (3) Failure To Pay Minimum Wages; (4) Failure To Pay Overtime Wages; (5) Unfair, Competition; (6) Failure To Provide Accurate Wage Statements; (7) Failure To Pay All Wages Owed Upon Termination; and (8) Civil Penalties Under PAGA.; and

2.22.2. *Sally Fonseca v. O'Reilly Auto Enterprises, LLC*, Superior Court of the State of California for County of San Joaquin, case no. STK-CV-UOE-2024-354, filed on January 11, 2024. This is a class and PAGA action for (1) Failure To Pay Minimum Wages; (2) Failure To Pay Overtime Wages; (3) Meal Period Liability; (4) Rest Break Liability; (5) Failure To Provide Accurate Itemized Employee Wage Statements; (6) Violation Of Labor Code Section 1174; (7) Violation Of Labor Code Sections 2102 And 2103; (8) Failure To Pay Wages Timely And Upon Separation Of Employment; And (9) Violation Of Unfair Competition Law.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Defendant O'Reilly promises to pay \$4,100,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual

1 Class Payments. Defendant O'Reilly has no obligation to pay the Gross Settlement
2 Amount (or any payroll taxes) prior to the deadline stated in Paragraphs 6.1 and 6.2
3 of this Agreement. The Administrator will disburse the entire Gross Settlement
4 Amount without asking or requiring Participating Class Members or Aggrieved
5 Employees to submit any claim as a condition of payment. None of the Gross
6 Settlement Amount will revert to Defendants.

7 3.2. Payments from the Gross Settlement Amount. Subject to Court
8 approval, the Administrator will make and deduct the following payments from the
9 Gross Settlement Amount, in the amounts specified by the Court in the Final
10 Approval:

11 3.2.1. To Plaintiff: Class Representative Service Payments to the
12 Class Representatives of not more than \$55,000.00 (in addition to any Individual
13 Class Payment and any Individual PAGA Payment each Class Representative is
14 entitled to receive as a Participating Class Member). This total will be divided as
15 follows: (1) \$22,500.00 to Jeffrey Pipich; (2) \$10,000.00 to Eve Storm; (3) \$7,500
16 to Gary Cull; (4) \$7,500 to Melissa Kolakowski; and (5) \$7,500 to Daniel Lopez.
17 As part of the motion for Class Counsel Fees Payment and Class Litigation
18 Expenses Payment, Plaintiffs will seek Court approval for any Class Representative
19 Service Payments no later than sixteen (16) calendar days prior to the Final
20 Approval Hearing. If the Court approves Class Representative Service Payments
21 less than the amount requested, the Administrator will retain the remainder in the
22 Net Settlement Amount. Plaintiffs and the Class Representatives shall not have the
23 right to revoke or cancel this Agreement if the Court does not approve any or all of
24 the requested Class Representative Service Payments. The Administrator will pay
25 the Class Representative Service Payments using IRS Form 1099. The Class
26 Representatives agree to provide the Administrator with an updated IRS Form W-
27 9 before the Class Representative Service Payments are issued to the extent required

1 by the Settlement Administrator. Plaintiffs assume full responsibility and liability
2 for employee taxes owed on the Class Representative Service Payments and shall
3 hold Defendants harmless from any claim or liability for taxes, penalties, or interest
4 arising as a result of the Class Representative Service Payments.

5 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more
6 than one-third of the Gross Settlement Amount (*i.e.*, 33 and 1/3%) which is
7 estimated to be \$1,366,666.67, and a Class Counsel Litigation Expenses Payment
8 of not more than \$120,000.00. Plaintiffs and/or Class Counsel will file a motion for
9 Class Counsel Fees Payment and Class Litigation Expenses Payment no later than
10 fourteen (14) calendar days prior to the Response Deadline, which shall be decided
11 as part of the Final Approval Hearing. If the Court approves a Class Counsel Fees
12 Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts
13 requested, the Administrator will allocate the remainder to the Net Settlement
14 Amount. This Agreement is not contingent upon the Court's decision to award Class
15 Counsel any particular amount, or any amount, for Class Counsel Fees Payment or
16 Class Litigation Expenses Payment. Released Parties shall have no liability to Class
17 Counsel or any other Plaintiff's Counsel arising from any claim to any portion any
18 Class Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment.
19 Class Counsel shall be solely responsible for the division and distribution of any
20 and all Court-approved Class Counsel Fees Payment and Class Litigation Expenses
21 Payment. Class Counsel agrees to release Defendants and the Released Parties from
22 any responsibility for and liability arising out of or related to the division and
23 distribution of any Court-approved Class Counsel Fees Payment and Class
24 Litigation Expenses Payment. Class Counsel agrees to assume all responsibility for
25 the payment of any liens asserted by any former attorneys in its firm and agrees to
26 indemnify and hold harmless Defendants for any such lien. The Administrator will
27 pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using

one or more IRS 1099 Forms. Class Counsel agrees to provide the Administrator with an executed IRS Form W-9 before the Class Counsel Fees Payment and Class Litigation Expenses Payment are issued to the extent required by the Administrator. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any claim or liability for taxes, penalties, or interest arising as a result of the Class Counsel Fees Payment or the Class Litigation Expenses Payment.

3.2.3. To the Administrator: An Administration Expenses Payment not to exceed Forty Thousand Dollars and Zero Cents (\$40,000.00) except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$40,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. 10.00% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 90.00% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class

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2 **4. SETTLEMENT FUNDING AND PAYMENTS.**

3 4.1. Class Members' Workweeks and Aggrieved Employees'
4 Workweeks. Based on a review of their records to date, Defendants estimate there
5 are 5,750 Class Members who collectively worked a total of 289,537 Workweeks,
6 and 4,312 Aggrieved Employees who worked a total 78,609 of PAGA Workweeks,
7 as of November 30, 2023.

8 4.2. Class Data. Not later than fifteen (15) calendar days after the Court
9 grants Preliminary Approval of the Settlement, Defendants will deliver all available
10 Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To
11 protect Class Members' privacy rights, the Administrator must maintain the Class
12 Data in confidence, use the Class Data only for purposes of this Settlement and for
13 no other purpose, and restrict access to the Class Data to Administrator employees
14 who need access to the Class Data to effect and perform under this Agreement.
15 Defendants have a continuing duty to immediately notify Class Counsel if it
16 discovers that the Class Data omitted class member identifying information and to
17 provide corrected or updated Class Data as soon as reasonably feasible. Without
18 any extension of the deadline by which Defendants must send the Class Data to the
19 Administrator, the Parties and their counsel will expeditiously use best efforts, in
20 good faith, to reconstruct or otherwise resolve any issues related to missing or
21 omitted Class Data.

22 4.3. Funding of Gross Settlement Amount. Defendant O'Reilly shall fully
23 fund the Gross Settlement Amount, and also fund the amounts necessary to fully
24 pay Defendants' share of payroll taxes by transmitting the funds to the
25 Administrator no later than fourteen (14) calendar days after the Effective Date.

26 4.4. Payments from the Gross Settlement Amount. Within fourteen (14)
27 calendar days after Defendant O'Reilly funds the Gross Settlement Amount, the

1 Administrator will mail checks for all Individual Class Payments, all Individual
2 PAGA Payments, the LWDA PAGA Payment, the Administration Expenses
3 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
4 Payment, and the Class Representative Service Payments. Disbursement of the
5 Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and
6 the Class Representative Service Payment shall not precede disbursement of
7 Individual Class Payments and Individual PAGA Payments.

8 4.4.1. The Administrator will issue checks for the Individual Class
9 Payments and/or Individual PAGA Payments and send them to the Class Members
10 via First Class U.S. Mail, postage prepaid. The face of each check shall prominently
11 state the date (not less than 180 days after the date of mailing) when the check will
12 be voided. The Administrator will cancel all checks not cashed by the void date.
13 The Administrator will send checks for Individual Settlement Payments to all
14 Participating Class Members (including those for whom Class Notice was returned
15 undelivered). The Administrator will send checks for Individual PAGA Payments
16 to all Aggrieved Employees including Non-Participating Class Members who
17 qualify as Aggrieved Employees (including those for whom Class Notice was
18 returned undelivered). The Administrator may send Participating Class Members a
19 single check combining the Individual Class Payment and the Individual PAGA
20 Payment. Before mailing any checks, the Administrator must update the recipients'
21 mailing addresses using the National Change of Address Database.

22 4.4.2. The Administrator must conduct a Class Member Address
23 Search for all other Class Members whose checks are returned undelivered without
24 USPS forwarding address. Within seven (7) calendar days of receiving a returned
25 check the Administrator must re-mail checks to the USPS forwarding address
26 provided or to an address ascertained through the Class Member Address Search.
27 The Administrator need not take further steps to deliver checks to Class Members

1 whose re-mailed checks are returned as undelivered. The Administrator shall
2 promptly send a replacement check to any Class Member whose original check was
3 lost or misplaced, requested by the Class Member prior to the void date.

4 4.4.3. For any Class Member whose Individual Class Payment check
5 or Individual PAGA Payment check is uncashed and cancelled after the void date,
6 the Administrator shall transmit the funds represented by such checks to the San
7 Diego County Bar Foundation, a *cy pres* recipient agreed upon by the Parties and
8 subject to the Court's approval.

9 4.4.4. The payment of Individual Class Payments and Individual
10 PAGA Payments shall not obligate Defendants to confer any additional benefits or
11 make any additional payments to Class Members (such as 401(k) contributions or
12 bonuses) beyond those specified in this Agreement.

13 **5. DISMISSAL OF RELATED ACTIONS.** Within fourteen (14) days after
14 Final Approval, Plaintiffs shall dismiss the following cases, without prejudice:

- 15 • *Eve Storm v. O'Reilly Auto Enterprises, et al.*, Riverside Superior Court,
16 Case No. CVRI2104730, filed October 15, 2021. ("Storm I")
- 17 • *Eve Storm v. O'Reilly Auto Enterprises, et al.*, United States District Court,
18 Central District of California, Case No. 5:23-CV-00597-FLA-MAR, filed
19 April 5, 2023. ("Storm II")
- 20 • *Gary Cull, et. al. v. O'Reilly Auto Enterprises, LLC*, United States District
21 Court, Central District of California, Case No. 5:23-CV-01623-FLA-MAR,
22 filed June 12, 2023. ("Cull")

23 The Parties shall bear their own respective attorneys' fees and costs related to
24 the Storm I, Storm II, and Cull lawsuits, and agree they shall not pursue any other
25 Party for any attorneys' fees or costs relating to the dismissal of these matters.

26 **6. RELEASES OF CLAIMS.** Effective on the date when Defendant O'Reilly
27 fully funds the entire Gross Settlement Amount and funds all employer payroll taxes
28 owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Class
Members, and Class Counsel will release claims against all Released Parties as

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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.

6.2 Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims stated in the Operative Complaint and those based solely upon the facts alleged in the Operative Complaint. Upon entry of Judgment and funding of the Gross Settlement Amount, the Defendants and their parents, subsidiaries, affiliated entities, franchisors, franchisees, officers, employees, and agents shall be entitled to a release from the Settlement Class members of all class claims, actions, demands, causes of action, suits, debts, obligations, damages, penalties, rights or liabilities, of any nature and description whatsoever, that are either asserted in the Action, or could have been asserted in the Action based on the facts, claims, and theories plead in the Operative Complaint on file at the time of final approval, including but not limited to, Labor Code sections 90.5(a), 201, 201.3, 202, 203, 204, 210, 218, 218.5, 218.6, 223, 226, 226.3, 226.7, 246, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1682, 2102, 2103, 2350, 2802, and 6404, and the applicable IWC Wage Orders which occurred during the Class Period. (“Released Class Claims”) Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period. Released Class Claims also includes all claims that were or that could have been alleged in the Action based on the facts stated in

the Operative Complaint, including but not limited to any claims for violations of the California Labor Code, and the relevant Wage Orders. The term “Released Class Claims” also includes Plaintiffs’ claim that Defendants are liable for the attorneys’ fees incurred to prosecute this Action on behalf of Class Members, including fees incurred for the services of Class Counsel, and any claim that Defendants are liable for any other remedies, civil penalties, statutory penalties, or interest under California law based on the facts alleged in the Operative Complaint. The term “Released Class Claims” also includes all claims that the Class Members may have against the Released Parties relating to (i) the payment, taxation and allocation of attorneys’ fees and costs to Class Counsel pursuant to this Agreement, and (ii) the payment, taxation, and allocation of the Class Representative Service Payments pursuant to this Settlement Agreement. Class Members may discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the Released Class Claims, 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 Released Claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist or have existed, upon any theory of law or equity now existing. It is the intent of the Parties that the Final Approval Order and Judgement entered by the Court shall have full res judicata and collateral estoppel effect and be final and binding upon Class Members regarding the Released Class Claims.

6.3 Release of PAGA Claims. Upon entry of Judgment and funding of the Gross Settlement Amount, Plaintiffs, on behalf of themselves and the State of California, and the Aggrieved Employees fully releases and discharge Defendants and their parents, subsidiaries, affiliated entities, franchisors, franchisees, officers, employees, and agents, from any and all claims for relief under the PAGA, based on the claims for penalties that could have been sought by the Labor Commissioner

1 or Plaintiffs based on the facts and legal claims as alleged in the Operative
2 Complaint at the time of final approval by Plaintiffs in the Action and Plaintiffs’
3 notice letters to the LWDA including, but not limited to, Labor Code sections
4 90.5(a), 201, 201.3, 202, 203, 204, 210, 218, 218.5, 218.6, 223, 226, 226.3, 226.7,
5 246, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198,
6 1682, 2102, 2103, 2350, 2802, and 6404, and the applicable IWC Wage Orders, and
7 any resulting claim for attorneys’ fees and costs under the PAGA, which occurred
8 during the PAGA Period. Plaintiffs do not release the claim for wages or damages
9 of any Aggrieved Employee unless such Aggrieved Employee is a Participating
10 Class Member.

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12 **7. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly
13 prepare and Plaintiffs will file a motion for preliminary approval (“Motion for
14 Preliminary Approval”) that complies with the Court’s current checklist for
15 Preliminary Approvals. A Preliminary Approval Order form is attached as Exhibit
16 B.

17 7.1 Defendants’ Declaration in Support of Preliminary Approval. Within
18 ten (10) calendar days of the full execution of this Agreement, Defendants will
19 prepare and deliver to Class Counsel signed Declarations from Defendants and
20 Defense Counsel disclosing all facts relevant to any actual or potential conflicts of
21 interest with the Administrator and *Cy Pres* Recipient. In their Declarations,
22 Defense Counsel and Defendants shall aver that they are not aware of any other
23 pending matter or action asserting claims that will be extinguished or adversely
24 affected by the Settlement other than those expressly identified in Section 2.22.

25 7.2 Plaintiffs’ Responsibilities. Plaintiffs will prepare and deliver to
26 Defense Counsel all documents necessary for obtaining Preliminary Approval,
27 including: (i) a draft of the notice, and memorandum in support, of the Motion for
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Preliminary Approval that includes an analysis of the Settlement under Rule 23 of the Federal Rules of Civil Procedure, and a request for approval of the PAGA Settlement under Labor Code section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiffs, Class Counsel or Defense Counsel; (v) signed declarations from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the *Cy Pres* Recipient. In their Declarations, Plaintiffs and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement other than those expressly identified in Section 2.22.

7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing

1 in Court to advocate in favor of the Motion for Preliminary Approval. Class
2 Counsel is responsible for delivering the Court's Preliminary Approval to the
3 Administrator.

4 7.4 Duty to Cooperate. If the Parties disagree on any aspect of the
5 proposed Motion for Preliminary Approval and/or the supporting declarations and
6 documents, Class Counsel and Defense Counsel will expeditiously work together
7 on behalf of the Parties by meeting in person or by telephone, and in good faith, to
8 resolve the disagreement. If the Court does not grant Preliminary Approval or
9 conditions Preliminary Approval on any material change to this Agreement, Class
10 Counsel and Defense Counsel will expeditiously work together on behalf of the
11 Parties by meeting in person or by telephone, and in good faith, to modify the
12 Agreement and otherwise satisfy the Court's concerns.

13 14 **8. SETTLEMENT ADMINISTRATION.**

15 8.1 Selection of Administrator. The Parties have jointly selected Xpand
16 Legal Consulting LLC to serve as the Administrator and verified that, as a condition
17 of appointment, Xpand Legal Consulting LLC agrees to be bound by this
18 Agreement and to perform, as a fiduciary, all duties specified in this Agreement in
19 exchange for payment of Administration Expenses. The Parties and their Counsel
20 represent that they have no interest or relationship, financial or otherwise, with the
21 Administrator other than a professional relationship arising out of prior experiences
22 administering settlements.

23 8.2 Employer Identification Number. The Administrator shall have and
24 use its own Employer Identification Number for purposes of calculating payroll tax
25 withholdings and providing reports to state and federal tax authorities.

26 8.3 Qualified Settlement Fund. The Administrator shall establish a
27 settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF")

1 under US Treasury Regulation section 468B-1.

2 8.4 Notice to Class Members.

3 8.4.1 No later than three (3) business days after receipt of the Class
4 Data, the Administrator shall notify Class Counsel that the list has been received
5 and state the number of Class Members, PAGA Members, Workweeks, and PAGA
6 Workweeks in the Class Data.

7 8.4.2 Using best efforts to perform as soon as possible, and in no event
8 later than fourteen (14) calendar days after receiving the Class Data, the
9 Administrator will send to all Class Members identified in the Class Data, via first-
10 class United States Postal Service (“USPS”) mail, the Class Notice with Spanish
11 translation, if applicable. The first page of the Class Notice shall prominently
12 estimate the dollar amounts of any Individual Class Payment and/or Individual
13 PAGA Payment payable to the Class Member, and the number of Workweeks and
14 PAGA Workweeks (if applicable) used to calculate these amounts. Before mailing
15 Class Notices, the Administrator shall update Class Member addresses using the
16 National Change of Address database.

17 8.4.3 Not later than three (3) business days after the Administrator’s
18 receipt of any Class Notice returned by the USPS as undelivered, the Administrator
19 shall re-mail the Class Notice using any forwarding address provided by the USPS.
20 If the USPS does not provide a forwarding address, the Administrator shall conduct
21 a Class Member Address Search, and re-mail the Class Notice to the most current
22 address obtained. The Administrator has no obligation to make further attempts to
23 locate or send Class Notice to Class Members whose Class Notice is returned by
24 the USPS a second time.

25 8.4.4 The deadlines for Class Members’ written Objections,
26 Challenges to Workweeks (disputes), and Requests for Exclusion will be extended
27 an additional fourteen (14) days beyond the sixty (60) days otherwise provided in

1 the Class Notice for all Class Members whose notice is re-mailed. The
2 Administrator will inform the Class Member of the extended deadline with the re-
3 mailed Class Notice.

4 8.4.5 If the Administrator, Defendants or Class Counsel are contacted
5 by or otherwise discovers any persons who believe they should have been included
6 in the Class Data and should have received Class Notice, the Parties will
7 expeditiously meet and confer in person or by telephone, and in good faith, in an
8 effort to agree on whether to include them as Class Members. If the Parties agree,
9 such persons will be Class Members entitled to the same rights as other Class
10 Members, and the Administrator will send, via email or overnight delivery, a Class
11 Notice requiring them to exercise options under this Agreement not later than
12 fourteen (14) calendar days after receipt of Class Notice, or the deadline dates in the
13 Class Notice, whichever are later.

14 8.5 Requests for Exclusion (Opt-Outs).

15 8.5.1 Class Members who wish to exclude themselves (opt-out of) the
16 Class Settlement must send the Administrator, by fax, email, or mail, a signed
17 written Request for Exclusion not later than sixty (60) days after the Administrator
18 mails the Class Notice (plus an additional fourteen (14) days for Class Members
19 whose Class Notice is re-mailed). A Request for Exclusion is a signed letter from a
20 Class Member or his/her representative that reasonably communicates the Class
21 Member's election to be excluded from the Settlement and includes the Class
22 Member's name, address and email address or telephone number. To be valid, a
23 Request for Exclusion must be timely faxed, emailed, or postmarked by the
24 Response Deadline. The date of the postmark on the return mailing envelope or the
25 date of the sent email shall be the exclusive means used to determine whether a
26 Request for Exclusion has been timely submitted.

27 8.5.2 The Administrator may not reject a Request for Exclusion as

1 invalid because it fails to contain all the information specified in the Class Notice.
2 The Administrator shall accept any Request for Exclusion as valid if the
3 Administrator can reasonably ascertain the identity of the person as a Class Member
4 and the Class Member's desire to be excluded. The Administrator's determination
5 shall be final and not appealable or otherwise susceptible to challenge. If the
6 Administrator has reason to question the authenticity of a Request for Exclusion,
7 the Administrator may demand additional proof of the Class Member's identity.
8 The Administrator's determination of authenticity shall be final and not appealable
9 or otherwise susceptible to challenge.

10 8.5.3 Every Class Member who does not submit a timely and valid
11 Request for Exclusion is deemed to be a Participating Class Member under this
12 Agreement, entitled to all benefits and bound by all terms and conditions of the
13 Settlement, including the Participating Class Members' Releases under Paragraphs
14 6.2 and 6.3 of this Agreement, regardless of whether the Participating Class Member
15 actually receives the Class Notice or objects to the Settlement.

16 8.5.4 Every Class Member who submits a valid and timely Request
17 for Exclusion is a Non-Participating Class Member and shall not receive an
18 Individual Class Payment or have the right to object to the class action components
19 of the Settlement. Aggrieved Employees cannot exclude themselves from the
20 PAGA portion of the Settlement and are eligible for an Individual PAGA Payment.

21 8.6 Challenges to Calculation of Workweeks. Each Class Member shall
22 have sixty (60) calendar days after the Administrator mails the Class Notice (plus
23 an additional fourteen (14) calendar days for Class Members whose Class Notice is
24 re-mailed) to challenge the number of Class Workweeks and PAGA Workweeks (if
25 any) allocated to the Class Member in the Class Notice. This is also known as a
26 dispute. The Class Member may challenge the allocation by communicating with
27 the Administrator via fax, email or mail. The Administrator must encourage the

challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks to Defense Counsel and Class Counsel and the Administrator's determination of the challenges.

8.7 Objections to Settlement.

8.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payments.

8.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than sixty (60) calendar days after the Administrator's mailing of the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice was re-mailed). The postmark on the return mailing envelope or the date of the sent email shall be the exclusive means used to determine whether an Objection has been timely submitted. To be valid, the written objection must state the factual and legal grounds for the objection to the Settlement. The written objection must be signed by the Class Member submitting it, and it must state the person's full name, address, telephone number, and email address (if applicable). A Participating Class Member who has submitted a timely objection may attend the Final Approval Hearing (or personally retain a lawyer to object and attend at the Participating Class Member's

own cost).

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

8.7.4 No Solicitation of Exclusions or Objections. The Parties agree to use their best efforts to carry out the terms of this Agreement. At no time shall the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit an Objection or a Request for Exclusion from the Agreement or to appeal from the Court's Final Approval Order. Class Counsel shall not represent Class Members with respect to any objections or appeals to this Agreement. The Parties are not precluded from contacting Class Members in an effort to encourage them to participate in the Settlement.

8.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payments, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five (5) calendar days after the expiration of

1 the deadline for submitting Requests for Exclusion, the Administrator shall email a
2 list to Class Counsel and Defense Counsel containing (a) the names and other
3 identifying information of Class Members who have timely submitted valid
4 Requests for Exclusion (“Exclusion List”); (b) the names and other identifying
5 information of Class Members who have submitted invalid Requests for Exclusion;
6 (c) copies of all Requests for Exclusion submitted (whether valid or invalid).

7 8.8.3 Weekly Reports. The Administrator must, on a weekly basis,
8 provide written reports to Class Counsel and Defense Counsel that, among other
9 things, tally the number of: Class Notices mailed or re-mailed, Class Notices
10 returned undelivered, Requests for Exclusion (whether valid or invalid) received,
11 Objections received, Challenges to Workweeks received and/or resolved, and
12 checks mailed for Individual Class Payments and Individual PAGA Payments
13 (“Weekly Report”). The Weekly Reports must include the Administrator’s
14 assessment of the validity of Requests for Exclusion and attach copies of all
15 Requests for Exclusion and Objections received.

16 8.8.4 Workweek and/or Workweek Challenges. The Administrator
17 has the authority to address and make final decisions consistent with the terms of
18 this Agreement on all Class Member challenges over the calculation of Workweeks.
19 The Administrator’s decision shall be final and not appealable or otherwise
20 susceptible to challenge.

21 8.8.5 Administrator’s Declaration. Not later than fourteen (14)
22 calendar days before the date by which Plaintiff is required to file the Motion for
23 Final Approval of the Settlement, the Administrator will provide to Class Counsel
24 and Defense Counsel, a signed declaration suitable for filing in Court attesting to
25 its due diligence and compliance with all of its obligations under this Agreement,
26 including, but not limited to, its mailing of the Class Notices, the Class Notices
27 returned as undelivered, the re-mailing of Class Notices, attempts to locate Class

Members, the total number of Requests for Exclusion it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

8.8.6 Final Report by Administrator. Within ten (10) calendar days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fifteen (15) calendar days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

9. CLASS SIZE ESTIMATES. Based on its records, Defendant estimates that, as of November 30, 2023, (1) there are approximately 5,750 Class Members and 289,537 Total Workweeks during the Class period and (2) there were 4,312 Aggrieved Employees who worked 78,609 Workweeks during the PAGA Period.

10. DEFENDANT'S RIGHT TO WITHDRAW. If twenty-six (26) or more of the Settlement Class Members opt out, Defendants may, but are not obligated to, elect to withdraw from the Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be void *ab initio*, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant O'Reilly will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendants

1 must notify Class Counsel and the Court of its election to withdraw not later than
2 fourteen (14) calendar days after the Administrator sends the final Exclusion List
3 to Defense Counsel; late elections will have no effect.

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5 **11. MOTION FOR FINAL APPROVAL.** Not later than sixteen (16) calendar
6 days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a
7 motion for final approval of the Settlement that includes a request for approval of
8 the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final
9 Approval Order and a proposed Judgment (collectively “Motion for Final
10 Approval”). Plaintiffs shall provide drafts of these documents to Defense Counsel
11 not later than seven (7) calendar days prior to filing the Motion for Final Approval.
12 Class Counsel and Defense Counsel will expeditiously meet and confer via video
13 conference or by telephone, and in good faith, to resolve any disagreements
14 concerning the Motion for Final Approval.

15 11.1 Response to Objections. Each Party retains the right to respond to any
16 objection raised by a Participating Class Member, including the right to file
17 responsive documents in Court no later than five (5) calendar days prior to the Final
18 Approval Hearing, or as otherwise ordered or accepted by the Court.

19 11.2 Duty to Cooperate. If the Court does not grant Final Approval or
20 conditions Final Approval on any material change to the Settlement (including, but
21 not limited to, the scope of release to be granted by Class Members), the Parties
22 will expeditiously work together in good faith to address the Court’s concerns by
23 revising the Agreement as necessary to obtain Final Approval. The Court’s decision
24 to award less than the amounts requested for the Class Representative Service
25 Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses
26 Payment and/or Administration Expenses Payment shall not constitute a material
27 modification to the Agreement within the meaning of this paragraph.

11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment

1 or any payments to Class Counsel shall not constitute a material modification of the
2 Judgment within the meaning of this paragraph, as long as the Gross Settlement
3 Amount remains unchanged.

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5 **12. AMENDED JUDGMENT.** If any amended judgment is required, the Parties
6 will work together in good faith to jointly submit and a proposed amended
7 judgment.

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9 **13. ADDITIONAL PROVISIONS.**

10 13.1 No Admission of Liability, Class Certification or Representative
11 Manageability for Other Purposes. This Agreement represents a compromise and
12 settlement of highly disputed claims. Nothing in this Agreement is intended or
13 should be construed as an admission by Defendants that any of the allegations in
14 the Operative Complaint have merit or that Defendants have any liability for any
15 claims asserted; nor should it be intended or construed as an admission by Plaintiffs
16 that Defendants' defenses in the Action have merit. The Parties agree that class
17 certification and representative treatment is for purposes of this Settlement only. If,
18 for any reason the Court does not grant Preliminary Approval, Final Approval or
19 enter Judgment, Defendants reserve the right to contest certification of any class for
20 any reasons, and Defendants reserve all available defenses to the claims in the
21 Action, and Plaintiffs reserve the right to move for class certification on any grounds
22 available and to contest Defendants' defenses. The Settlement, this Agreement and
23 Parties' willingness to settle the Action will have no bearing on, and will not be
24 admissible in connection with, any litigation (except for proceedings to enforce or
25 effectuate the Settlement and this Agreement).

26 13.2 Confidentiality Prior to Preliminary Approval. Plaintiffs, Class
27 Counsel, Defendants and Defense Counsel separately agree that, until the Motion

1 for Preliminary Approval of Settlement is filed, they and each of them will not
2 disclose, disseminate and/or publicize, or cause or permit another person to
3 disclose, disseminate or publicize, any of the terms of the Agreement directly or
4 indirectly, specifically or generally, to any person, corporation, association,
5 government agency, or other entity except: (1) to the Parties' attorneys,
6 accountants, or spouses, all of whom will be instructed to keep this Agreement
7 confidential; (2) counsel in a related matter; (3) to the extent necessary to report
8 income to appropriate taxing authorities; (4) in response to a court order or
9 subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
10 government agency.

11 Each Party agrees to immediately notify each other Party of any
12 judicial or agency order, inquiry, or subpoena seeking such information. Plaintiffs,
13 Class Counsel, Defendants and Defense Counsel separately agree not to, directly or
14 indirectly, initiate any conversation or other communication, before the filing of the
15 Motion for Preliminary Approval, any with third party regarding this Agreement or
16 the matters giving rise to this Agreement except to respond only that "the matter
17 was resolved," or words to that effect. This paragraph does not restrict Class
18 Counsel's communications with Class Members in accordance with Class
19 Counsel's ethical obligations owed to Class Members.

20 13.3 No Solicitation. The Parties separately agree that they and their
21 respective counsel and employees will not solicit any Class Member to opt out of
22 or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph
23 shall be construed to restrict Class Counsel's ability to communicate with Class
24 Members in accordance with Class Counsel's ethical obligations owed to Class
25 Members.

26 13.4 Integrated Agreement. Upon execution by all Parties and their
27 counsel, this Agreement together with its attached exhibits shall constitute the entire
28

1 agreement between the Parties relating to the Settlement, superseding any and all
2 oral representations, warranties, covenants, or inducements made to or by any Party.

3 13.5 Attorney Authorization. Class Counsel and Defense Counsel
4 separately warrant and represent that they are authorized by Plaintiffs and
5 Defendants, respectively, to take all appropriate action required or permitted to be
6 taken by such Parties pursuant to this Agreement to effectuate its terms, and to
7 execute any other documents reasonably required to effectuate the terms of this
8 Agreement including any amendments to this Agreement.

9 13.6 Cooperation. The Parties and their counsel will cooperate with each
10 other and use their best efforts, in good faith, to implement the Settlement by,
11 among other things, modifying the Settlement Agreement, submitting supplemental
12 evidence and supplementing points and authorities as requested by the Court. In the
13 event the Parties are unable to agree upon the form or content of any document
14 necessary to implement the Settlement, or on any modification of the Agreement
15 that may become necessary to implement the Settlement, the Parties will seek the
16 assistance of a mediator and/or the Court for resolution.

17 13.7 No Prior Assignments. The Parties separately represent and warrant
18 that they have not directly or indirectly assigned, transferred, encumbered, or
19 purported to assign, transfer, or encumber to any person or entity and portion of any
20 liability, claim, demand, action, cause of action, or right released and discharged by
21 the Party in this Settlement.

22 13.8 No Tax Advice. Neither Plaintiffs, Class Counsel, Defendants nor
23 Defense Counsel are providing any advice regarding taxes or taxability, nor shall
24 anything in this Settlement be relied upon as such within the meaning of United
25 States Treasury Department Circular 230 (31 CFR Part 10, as amended) or
26 otherwise.

27 13.9 Modification of Agreement. This Agreement, and all parts of it, may

1 be amended, modified, changed, or waived only by an express written instrument
2 signed by all Parties or their representatives, and approved by the Court.

3 13.10 Agreement Binding on Successors. This Agreement will be binding
4 upon, and inure to the benefit of, the successors of each of the Parties.

5 13.11 Applicable Law. All terms and conditions of this Agreement and its
6 exhibits will be governed by and interpreted according to the internal laws of the
7 state of California, without regard to conflict of law principles.

8 13.12 Cooperation in Drafting. The Parties have cooperated in the drafting
9 and preparation of this Agreement. This Agreement will not be construed against
10 any Party on the basis that the Party was the drafter or participated in the drafting.

11 13.13 Confidentiality. To the extent permitted by law, all agreements made,
12 and orders entered during Action and in this Agreement relating to the
13 confidentiality of information shall survive the execution of this Agreement.

14 13.14 Use and Return of Class Data. Information provided to Class Counsel
15 for mediation and settlement discussions, and all copies and summaries of the Class
16 Data provided to Class Counsel by Defendant in connection with the mediation, the
17 early neutral evaluation conference, the mandatory settlement conferences, other
18 settlement negotiations, or in connection with the Settlement, may be used only
19 with respect to this Settlement, and no other purpose, and may not be used in any
20 way that violates any existing contractual agreement, statute, or rule of court. Not
21 later than ninety (90) calendar days after the date when the Court discharges the
22 Administrator's obligation to provide a Declaration confirming the final pay out of
23 all Settlement funds, Plaintiffs shall destroy, all paper and electronic versions of
24 Class Data received from Defendants unless, prior to the Court's discharge of the
25 Administrator's obligation, Defendants make a written request to Class Counsel for
26 the return, rather than the destructions, of Class Data.

27 13.15 Headings. The descriptive heading of any section or paragraph of this
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1 Agreement is inserted for convenience of reference only and does not constitute a
2 part of this Agreement.

3 13.16 Calendar Days. Unless otherwise noted, all reference to “days” in this
4 Agreement shall be to calendar days. In the event any date or deadline set forth in
5 this Agreement falls on a weekend or federal legal holiday, such date or deadline
6 shall be on the first business day thereafter.

7 13.17 Notice. All notices, demands or other communications between the
8 Parties in connection with this Agreement will be in writing and deemed to have
9 been duly given as of the third business day after mailing by United States mail, or
10 the day sent by email or messenger, addressed as follows:

11
12 To Plaintiffs:
13 David Glenn Spivak, Esq.
14 The Spivak Law Firm
15 8605 Santa Monica Bl
16 PMB 42554
17 West Hollywood, CA 90069
18 david@spivaklaw.com

19 Alexandra K. Piazza, Esq.
20 Berger Montague PC
21 8241 La Mesa Blvd, Suite A
22 La Mesa, CA 91942
23 apiazza@bm.net

24 To Defendant:
25 James M. Peterson, Esq.
26 Derek W Paradis, Esq.
27 Higgs Fletcher & Mack
28 401 West A Street, Suite 2600
San Diego, CA 92101
Peterson@higgslaw.com
Paradisd@higgslaw.com

13.18 Execution in Counterparts. This Agreement may be executed in one

1 or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for
 2 purposes of this Agreement shall be accepted as an original. All executed
 3 counterparts and each of them will be deemed to be one and the same instrument if
 4 counsel for the Parties will exchange between themselves signed counterparts. Any
 5 executed counterpart will be admissible in evidence to prove the existence and
 6 contents of this Agreement.

7 13.19 Stay of Litigation. The Parties agree that upon the execution of this
 8 Agreement the litigation shall be stayed, except to effectuate the terms of this
 9 Agreement. The Parties further agree that upon the signing of this Agreement to
 10 extend the date to bring a case to trial for the entire period of this settlement process.

11 Dated: 5/22/2024

By:

DocuSigned by:

Jeffrey Pipich

JEFFREY PIPICH

12 Dated: _____

By: _____

EVE STORM

13 Dated: _____

By: _____

GARY CULL

14 Dated: _____

By: _____

MELISSA KOLAKOWSKI

15 Dated: _____

By: _____

DANIEL LOPEZ

16 Dated: _____

By: _____

Tamara Conn, Senior Vice
 President Legal & General
 Counsel, for O'REILLY AUTO
 ENTERPRISES, LLC

1 or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for
2 purposes of this Agreement shall be accepted as an original. All executed
3 counterparts and each of them will be deemed to be one and the same instrument if
4 counsel for the Parties will exchange between themselves signed counterparts. Any
5 executed counterpart will be admissible in evidence to prove the existence and
6 contents of this Agreement.

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8 Agreement the litigation shall be stayed, except to effectuate the terms of this
9 Agreement. The Parties further agree that upon the signing of this Agreement to
10 extend the date to bring a case to trial for the entire period of this settlement process.

11 Dated: _____
12

By: _____
JEFFREY PIPICH

13 Dated: 05 / 24 / 2024
14

By: 
EVE STORM

15 Dated: 05 / 22 / 2024
16

By: 
GARY CULL

17 Dated: 05 / 22 / 2024
18

By: 
MELISSA KOLAKOWSKI

19 Dated: 05 / 23 / 2024
20

By: 
DANIEL LOPEZ

21 Dated: _____
22

By: _____
Tamara Conn, Senior Vice
President Legal & General
Counsel, for O'REILLY AUTO
ENTERPRISES, LLC

1 or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for
2 purposes of this Agreement shall be accepted as an original. All executed
3 counterparts and each of them will be deemed to be one and the same instrument if
4 counsel for the Parties will exchange between themselves signed counterparts. Any
5 executed counterpart will be admissible in evidence to prove the existence and
6 contents of this Agreement.

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8 Agreement the litigation shall be stayed, except to effectuate the terms of this
9 Agreement. The Parties further agree that upon the signing of this Agreement to
10 extend the date to bring a case to trial for the entire period of this settlement process.

11 Dated: _____

12 By: _____
13 JEFFREY PIPICH

14 Dated: _____

15 By: _____
16 EVE STORM

17 Dated: _____

18 By: _____
19 GARY CULL

20 Dated: _____

21 By: _____
22 MELISSA KOLAKOWSKI

23 Dated: _____

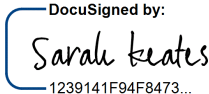
24 By: _____
25 DANIEL LOPEZ

26 Dated: 05/22/2024

27 By: Tamara Conn
28 Tamara Conn, Senior Vice
President Legal & General
Counsel, for O'REILLY AUTO
ENTERPRISES, LLC

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Dated: 5/23/2024 _____

By: 
Sarah Keates, Director and Senior Legal Counsel, for EXPRESS SERVICES, INC.

APPROVED AS TO FORM:

BERGER MONTAGUE PC

Dated: _____

By: _____
ALEXANDRA K. PIAZZA,
Attorneys for Plaintiffs,
JEFFREY PIPICH, EVE
STORM, GARY CULL,
MELISSA KOLAKOWSKI,
AND DANIEL LOPEZ, and all
others similarly situated

THE SPIVAK LAW FIRM

Dated: _____

By: _____
DAVID GLENN SPIVAK,
Attorneys for Plaintiffs,
JEFFREY PIPICH, EVE
STORM, GARY CULL,
MELISSA KOLAKOWSKI,
AND DANIEL LOPEZ, and all
others similarly situated

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Dated: _____

By: _____
Sarah Keates, Director and
Senior Legal Counsel, for
EXPRESS SERVICES, INC.

APPROVED AS TO FORM:

BERGER MONTAGUE PC

Dated: May 21, 2024

By: 
ALEXANDRA K. PIAZZA,
Attorneys for Plaintiffs,
JEFFREY PIPICH, EVE
STORM, GARY CULL,
MELISSA KOLAKOWSKI,
AND DANIEL LOPEZ, and all
others similarly situated

THE SPIVAK LAW FIRM

Dated: _____

By: _____
DAVID GLENN SPIVAK,
Attorneys for Plaintiffs,
JEFFREY PIPICH, EVE
STORM, GARY CULL,
MELISSA KOLAKOWSKI,
AND DANIEL LOPEZ, and all
others similarly situated

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Dated: _____

By: _____
Sarah Keates, Director and
Senior Legal Counsel, for
EXPRESS SERVICES, INC.

APPROVED AS TO FORM:

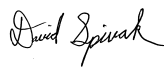
BERGER MONTAGUE PC

Dated: _____

By: _____
ALEXANDRA K. PIAZZA,
Attorneys for Plaintiffs,
JEFFREY PIPICH, EVE
STORM, GARY CULL,
MELISSA KOLAKOWSKI,
AND DANIEL LOPEZ, and all
others similarly situated

THE SPIVAK LAW FIRM

Dated: 05 / 22 / 2024

By: 

DAVID GLENN SPIVAK,
Attorneys for Plaintiffs,
JEFFREY PIPICH, EVE
STORM, GARY CULL,
MELISSA KOLAKOWSKI,
AND DANIEL LOPEZ, and all
others similarly situated

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UNITED EMPLOYEES LAW
GROUP

Dated: 05 / 22 / 2024

By: Walter L. Haines
WALTER L. HAINES, Attorneys
for Attorneys for Plaintiffs,
JEFFREY PIPICH, EVE
STORM, GARY CULL,
MELISSA KOLAKOWSKI,
AND DANIEL LOPEZ, and all
others similarly situated

HIGGS FLETCHER & MACK

Dated: _____

By: _____
DEREK W PARADIS, Attorneys
for Defendant, O'REILLY AUTO
ENTERPRISES, LLC

ARENTFOX SCHIFF LLP

Dated: _____

By: _____
MORGAN FORSEY, Attorneys
for Defendant, EXPRESS
SERVICES, INC.

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UNITED EMPLOYEES LAW
GROUP

Dated: _____

By: _____
WALTER L. HAINES, Attorneys
for Attorneys for Plaintiffs,
JEFFREY PIPICH, EVE
STORM, GARY CULL,
MELISSA KOLAKOWSKI,
AND DANIEL LOPEZ, and all
others similarly situated

HIGGS FLETCHER & MACK

Dated: May 22, 2024

By: 
DEREK W PARADIS, Attorneys
for Defendant, O'REILLY AUTO
ENTERPRISES, LLC

ARENTFOX SCHIFF LLP

Dated: _____

By: _____
MORGAN FORSEY, Attorneys
for Defendant, EXPRESS
SERVICES, INC.

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UNITED EMPLOYEES LAW
GROUP

Dated: _____

By: _____
WALTER L. HAINES, Attorneys
for Attorneys for Plaintiffs,
JEFFREY PIPICH, EVE
STORM, GARY CULL,
MELISSA KOLAKOWSKI,
AND DANIEL LOPEZ, and all
others similarly situated

HIGGS FLETCHER & MACK

Dated: _____

By: _____
DEREK W PARADIS, Attorneys
for Defendant, O'REILLY AUTO
ENTERPRISES, LLC

ARENTFOX SCHIFF LLP

Dated: 5/23/2024

By: 
MORGAN FORSEY, Attorneys
for Defendant, EXPRESS
SERVICES, INC.

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EXHIBIT A

1 **COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND**
2 **HEARING DATE FOR FINAL COURT APPROVAL**

3 *Jeffrey Pipich, et al. v. O'Reilly Auto Enterprises, LLC, et. al.*
4 3:21-CV-01120-L-JLB (S.D. Cal.)

5 ***The United States District Court for the Southern District of California***
6 ***authorized this Notice. Read it carefully!***

7 ***It is not junk mail, spam, an advertisement, or solicitation by a lawyer.***

8 ***You are not being sued.***

9 **You may be eligible to receive money** from an employee class action lawsuit
10 (“Action”) against O'Reilly Auto Enterprises, LLC (“O'Reilly”) and Express
11 Services, Inc. dba Express Employment Professionals (together, “Defendants”) for
12 alleged violations of California’s labor laws. The Action was filed by five
13 employees Jeffrey Pipich, Eve Storm, Gary Cull, Melissa Kolakowski, and Daniel
14 Lopez (collectively “Plaintiffs”) and seeks payment of (1) wages and other relief
15 for a class of all individuals employed by either or both Defendants as non-exempt,
16 hourly employees, either directly or indirectly through staffing agencies, and who
17 worked at one of Defendant O'Reilly Auto Enterprises, LLC’s distribution centers
18 in California at any time between July 5, 2018 and <<END DATE>> (“Class
19 Members”); and (2) penalties under the California Private Attorney General Act
20 (“PAGA”) for all individuals employed by either or both Defendants as non-
21 exempt, hourly employees, either directly or indirectly through staffing agencies,
22 and who worked at one of Defendant O'Reilly Auto Enterprises, LLC’s distribution
23 centers in California at any time between May 11, 2020 and <<END DATE>>
24 (“Aggrieved Employees”). July 5, 2018 and <<END DATE>> is the “Class
25 Period.” May 11, 2020 and <<END DATE>> is the PAGA Period.

26 The proposed Settlement has two main parts: (1) a Class Settlement requiring
27 Defendant O'Reilly to fund Individual Class Payments, and (2) a PAGA Settlement
28 requiring Defendant O'Reilly to fund Individual PAGA Payments and pay penalties
to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendant’s records, and the Parties’ current assumptions, **your**
Individual Class Payment is estimated to be
\$<<IndividualClassPaymentAmount>> (less withholding) and your Individual
PAGA Payment is estimated to be \$<<IndividualPAGAPaymentAmount>>.
The actual amount you may receive likely will be different and will depend on a

1 number of factors. (If no amount is stated for your Individual PAGA Payment, then
2 according to Defendants' records you are not eligible for an Individual PAGA
3 Payment under the Settlement because you didn't work during the PAGA Period.)
4 The individual payments amounts will vary. However, the average Individual Class
5 Payment to a Class Member is estimated to be <<\$Average Individual Class
6 Payment Amount>>. The average Individual PAGA Payment to a Class Member is
7 estimated to be <<\$Average Individual PAGA Payment Amount>>. The highest
8 Individual Class Payment to a Class Member is estimated to be <<\$Highest
9 Individual Class Payment Amount>> and the lowest is estimated to be <<\$Lowest
Individual Class Payment Amount>>. The highest Individual PAGA Payment to a
Class Member is estimated to be <<\$Highest Individual PAGA Payment
Amount>> and the lowest is estimated to be <<\$Lowest Individual PAGA Payment
Amount>>.

10 The above estimates are based on Defendants' records showing that **you**
11 **worked** <<__>> **Workweeks** during the Class Period and **you worked** <<__>>
12 **Workweeks** during the PAGA Period. If you believe that you worked more
13 Workweeks during either period, you can submit a challenge by the deadline date.
See Section 4 of this Notice.

14 The Court has already preliminarily approved the proposed Settlement and
15 approved this Notice. The Court has not yet decided whether to grant final approval.
16 The Court has determined only that there is sufficient evidence to suggest that the
17 proposed settlement might be fair, adequate, and reasonable, and that any final
18 determination of those issues will be made at the Final Approval Hearing. Your
19 legal rights are affected whether you act or not act. Read this Notice carefully. You
20 will be deemed to have carefully read and understood it. At the Final Approval
21 Hearing, the Court will decide whether to finally approve the Settlement and how
22 much of the Settlement will be paid to Plaintiffs and Plaintiffs' attorneys ("Class
23 Counsel"). The Court will also decide whether to enter a judgment that requires
24 Defendant O'Reilly to make payments under the Settlement and requires Class
25 Members and Aggrieved Employees to give up their rights to assert certain claims
26 against Defendant.

27 SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS 28 SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the claims against Defendants that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is <<RESPONSE DEADLINE>>	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant O'Reilly must pay Individual PAGA Payments to all Aggrieved Employees and Plaintiffs release Defendants from civil penalties it may owe to the Aggrieved Employees.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by <<RESPONSE DEADLINE>>	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement by submitting a signed, written statement to the Settlement Administrator stating the basis for your objection.
You Can Participate in the <<FinalApprovalHearingDate>> Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on <<FinalApprovalHearingDate>>. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform (if available and permitted by the Court).

You Can Challenge the Calculation of Your Workweek / Workweeks Written Challenges Must be Submitted by <<RESPONSE DEADLINE>>	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Workweeks you worked at least one day during the Class Period and how many Workweeks you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Workweeks you worked according to Defendants’ records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by <<RESPONSE DEADLINE>>. See Section 4 of this Notice.
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Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs are former employees of Defendant O’Reilly’s California distribution centers. The Action accuses Defendants of violating California labor laws by failure to pay wages, unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, and related violations of the Labor Code. Based on the same claims, Plaintiffs have also asserted a claim for civil penalties under the PAGA (Labor Code section 2698 and sections that follow) (“PAGA”).

O’Reilly and Express strongly deny violating any laws or failing to pay any wages and contends that at all times they treated workers fairly and in compliance with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiffs are correct on the merits. During the course of this litigation, which has spanned almost three years, the Parties have participated in several arm’s length settlement conferences, including most recently, two virtual settlement conferences before a United States District Court Magistrate Judge in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and

1 agreeing to jointly ask the Court to enter a judgment ending the Action and
2 enforcing the Agreement, Plaintiffs and Defendants have negotiated a proposed
3 Settlement that is subject to the Court's Final Approval. Both sides agree the
4 proposed Settlement is a compromise of disputed claims. By agreeing to settle,
Defendants do not admit any violations or concede the merit of any claims.

5 The Parties, Class Counsel and Defense Counsel are not aware of any other pending
6 matter or action asserting claims that will be extinguished or affected by the
7 Settlement other than the following:

8 *Stephanie Perez v. O'Reilly Auto Enterprises, LLC*, Superior Court of the
9 State of California for County of San Joaquin, case no. STK-CV-UOE-2023-
10 7289, filed on July 14, 2023, and amended on September 23, 2023. This is a
11 class and PAGA action for (1) Failure To Provide Duty-Free Meal Periods;
12 (2) Failure To Provide Duty-Free Rest Periods; (3) Failure To Pay Minimum
13 Wages; (4) Failure To Pay Overtime Wages; (5) Unfair, Competition; (6)
14 Failure To Provide Accurate Wage Statements; (7) Failure To Pay All Wages
15 Owed Upon Termination; and (8) Civil Penalties Under PAGA.

16 *Sally Fonseca v. O'Reilly Auto Enterprises, LLC*, Superior Court of the State
17 of California for County of San Joaquin, case no. STK-CV-UOE-2024-354,
18 filed on January 11, 2024. This is a class and PAGA action for (1) Failure
19 To Pay Minimum Wages; (2) Failure To Pay Overtime Wages; (3) Meal
20 Period Liability; (4) Rest Break Liability; (5) Failure To Provide Accurate
21 Itemized Employee Wage Statements; (6) Violation Of Labor Code Section
22 1174; (7) Violation Of Labor Code Sections 2102 And 2103; (8) Failure To
23 Pay Wages Timely And Upon Separation Of Employment; And (9)
24 Violation Of Unfair Competition Law.

25 Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you
26 because they believe that: (1) Defendant O'Reilly has agreed to pay a fair,
27 reasonable, and adequate amount considering the strength of the claims and the risks
28 and uncertainties of continued litigation; and (2) Settlement is in the best interests
of the Class Members and Aggrieved Employees. The Court preliminarily
approved the proposed Settlement as fair, reasonable, and adequate, authorized this
Notice, and scheduled a hearing to determine Final Approval.

1 **3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED**
2 **SETTLEMENT?**

3 A. Gross Settlement Amount. Defendant O'Reilly Will Pay
4 \$4,100,000.00 as the Gross Settlement Amount ("Gross Settlement"). Defendant
5 O'Reilly has agreed to deposit the Gross Settlement into an account controlled by
6 the Administrator of the Settlement. The Administrator will use the Gross
7 Settlement to pay the Individual Class Payments, Individual PAGA Payments,
8 Class Representative Service Payments, Class Counsel's attorney's fees and
9 expenses, the Administration Expenses Payment, and penalties to be paid to the
10 California Labor and Workforce Development Agency ("LWDA"). Assuming the
11 Court grants Final Approval, Defendant O'Reilly will fund the Gross Settlement not
12 more than 14 days after the Judgment entered by the Court become final. The
13 Judgment will be final on the date the Court enters Judgment, or a later date if
14 Participating Class Members object to the proposed Settlement or the Judgment is
15 appealed.

16 B. Court Approved Deductions from Gross Settlement. At the Final
17 Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the
18 following deductions from the Gross Settlement, the amounts of which will be
19 decided by the Court at the Final Approval Hearing:

20 1. Attorney Fees and Costs. Up to \$1,366,666.67 (33 and 1/3% of
21 the Gross Settlement to Class Counsel for attorneys' fees and up to \$120,000.00 for
22 their litigation expenses. To date, Class Counsel have worked and incurred expenses
23 on the Action without payment.

24 2. Class Representative Service Awards. Up to \$55,000.00 for
25 Class Representative Service Awards for filing the Action, working with Class
26 Counsel and representing the Class. The Class Representative Service Awards will
27 be the only monies Plaintiffs will receive other than Plaintiffs' Individual Class
28 Payment and any Individual PAGA Payment. Plaintiffs seek to divide the \$55,000
Class Representative Service Awards as follows: (1) \$22,500.00 to Jeffrey Pipich;
(2) \$10,000.00 to Eve Storm; (3) \$7,500 to Gary Cull; (4) \$7,500 to Melissa
Kolakowski; and (5) \$7,500 to Daniel Lopez.

3. Administration Expenses Payment. Up to \$40,000.00 to the
Administrator for services administering the Settlement.

4. PAGA Penalties. Up to \$410,000.00 for PAGA Penalties,

1 allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA
2 Payments to the Aggrieved Employees based on their PAGA Workweeks.

3 Participating Class Members have the right to object to any of these
4 deductions. The Court will consider all objections.

5 Based on their records, Defendants estimated that, as of the date of the
6 Settlement, (1) there are 5,750 Class Members and 289,537 total Workweeks during
7 the Class period and (2) there were 4,312 Aggrieved Employees who worked
8 78,609 Workweeks during the PAGA Period. If the Workweeks and/or Class
9 Members as of May 22, 2024 exceeds the referenced 289,537 Workweeks and/or
10 5,750 Class Members by more than 10.00%, the Gross Settlement Amount,
11 including the Class Counsel Fees Payment, the Class Representative Service
Payments, and the LWDA payment, will increase proportionally according to the
number of additional Workweeks or Class Members, whichever results in a higher
increase in the Gross Settlement Amount.

12 C. Net Settlement Distributed to Class Members. After making the above
13 deductions in amounts approved by the Court, the Administrator will distribute the
14 rest of the Gross Settlement (the “Net Settlement”) by making Individual Class
15 Payments to Participating Class Members based on their Class Period Workweeks.

16 D. Taxes Owed on Payments to Class Members. Plaintiffs and
17 Defendants are asking the Court to approve an allocation of 10.00% of each
18 Individual Class Payment to taxable wages (“Wage Portion”) and 90.00% to interest
19 and penalties (“Non-Wage Portion.”). The Wage Portion is subject to withholdings
20 and will be reported on IRS W-2 Forms. Defendant O’Reilly will separately pay
21 employer payroll taxes it owes on the Wage Portion. The Individual PAGA
Payments are counted as penalties rather than wages for tax purposes. The
Administrator will report the Individual PAGA Payments and the Non-Wage
Portions of the Individual Class Payments on IRS 1099 Forms.

22 Although Plaintiffs and Defendants have agreed to these allocations, neither
23 side is giving you any advice on whether your Payments are taxable or how much
24 you might owe in taxes. You are responsible for paying all taxes (including
25 penalties and interest on back taxes) on any Payments received from the proposed
26 Settlement. You should consult a tax advisor if you have any questions about the
27 tax consequences of the proposed Settlement.

1 E. Need to Promptly Cash Payment Checks. The front of every check
2 issued for Individual Class Payments and Individual PAGA Payments will show the
3 date when the check expires (the void date). If you do not cash it by the void date,
4 your check will be automatically cancelled, and the monies will irrevocably lost to
5 you because they will be paid to a non-profit organization or foundation, the San
6 Diego County Bar Foundation (“Cy Pres”).

7 F. The Proposed Settlement Will be Void if the Court Denies Final
8 Approval. It is possible the Court will decline to grant Final Approval of the
9 Settlement or decline to enter a Judgment. It is also possible the Court will enter a
10 Judgment that is reversed on appeal. Plaintiffs and Defendants have agreed that, in
11 either case, the Settlement will be void: Defendant O’Reilly will not pay any money
12 and Class Members will not release any claims against Defendants.

13 G. Administrator. The Court has appointed a neutral company, Xpand
14 Legal Consulting LLC (the “Administrator”) to send this Notice, calculate and
15 make payments, and process Class Members’ Requests for Exclusion and
16 Objections. The Administrator will also decide Class Member challenges of
17 Workweeks, mail and re-mail settlement checks and tax forms, and perform other
18 tasks necessary to administer the Settlement. The Administrator’s contact
19 information is contained in Section 9 of this Notice.

20 H. Participating Class Members’ Release. After the Judgment is final and
21 Defendant O’Reilly has fully funded the Gross Settlement (and separately paid all
22 employer payroll taxes), Participating Class Members will be legally barred from
23 asserting any of the claims released under the Settlement. This means that unless
24 you opted out by validly excluding yourself from the Class Settlement, you cannot
25 sue, continue to sue, or be part of any other lawsuit against Defendants or their
26 parents, subsidiaries, affiliated entities, franchisors, franchisees, officers,
27 employees, and agents for wages based on the Class Period facts and PAGA
28 penalties based on PAGA Period facts, as alleged in the Action and resolved by this
Settlement.

The Participating Class Members will be bound by the following release:
All Participating Class Members, on behalf of themselves and their respective
former and present representatives, agents, attorneys, heirs, administrators,
successors, and assigns, release Released Parties from all claims stated in the
Operative Complaint and those based solely upon the facts alleged in the Operative
Complaint. Upon entry of Judgment and funding of the Gross Settlement Amount,
the Defendants and their parents, subsidiaries, affiliated entities, franchisors,

1 franchisees, officers, employees, and agents shall be entitled to a release from the
2 Settlement Class members of all class claims, actions, demands, causes of action,
3 suits, debts, obligations, damages, penalties, rights or liabilities, of any nature and
4 description whatsoever, that are either asserted in the Action, or could have been
5 asserted in the Action based on the facts, claims, and theories plead in the Operative
6 Complaint on file at the time of final approval, including but not limited to, Labor
7 Code sections 90.5(a), 201, 201.3, 202, 203, 204, 210, 218, 218.5, 218.6, 223, 226,
8 226.3, 226.7, 246, 510, 512, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1,
9 1197.2, 1198, 1682, 2102, 2103, 2350, 2802, and 6404, and the applicable IWC
10 Wage Orders which occurred during the Class Period. (“Released Class Claims”)
11 Except as set forth in Section 6.3 of this Agreement, Participating Class Members
12 do not release any other claims, including claims for vested benefits, wrongful
13 termination, violation of the Fair Employment and Housing Act, unemployment
14 insurance, disability, social security, workers’ compensation, or claims based on
15 facts occurring outside the Class Period. Released Class Claims also includes all
16 claims that were or that could have been alleged in the Action based on the facts
17 stated in the Operative Complaint, including but not limited to any claims for
18 violations of the California Labor Code, and the relevant Wage Orders. The term
19 “Released Class Claims” also includes Plaintiffs’ claim that Defendants are liable
20 for the attorneys’ fees incurred to prosecute this Action on behalf of Class Members,
21 including fees incurred for the services of Class Counsel, and any claim that
22 Defendants are liable for any other remedies, civil penalties, statutory penalties, or
23 interest under California law based on the facts alleged in the Operative Complaint.
24 The term “Released Class Claims” also includes all claims that the Class Members
25 may have against the Released Parties relating to (i) the payment, taxation and
26 allocation of attorneys’ fees and costs to Class Counsel pursuant to this Agreement,
27 and (ii) the payment, taxation, and allocation of the Class Representative Service
28 Payments pursuant to this Settlement Agreement. Class Members may discover
facts in addition to or different from those they now know or believe to be true with
respect to the subject matter of the Released Class Claims, 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 Released
Claims, whether known or unknown, suspected or unsuspected, contingent or non-
contingent, which now exist or have existed, upon any theory of law or equity now
existing. It is the intent of the Parties that the Final Approval Order and Judgement
entered by the Court shall have full res judicata and collateral estoppel effect and
be final and binding upon Class Members regarding the Released Class Claims.

1 I. The PAGA Release. After the Court's Judgment is final, and
2 Defendant O'Reilly has paid the Gross Settlement (and separately paid the
3 employer-side payroll taxes), Plaintiffs, on behalf of themselves and the State of
4 California, and the Aggrieved Employees fully releases and discharges Defendants
5 and their parents, subsidiaries, affiliated entities, officers, franchisors, franchisees,
6 employees, and agents, from any and all claims for relief under the PAGA, based
7 on the claims for penalties that could have been sought by the Labor Commissioner
8 or Plaintiffs based on the facts and legal claims as alleged in the Operative
9 Complaint at the time of final approval (with the inclusion of the facts and claims
10 mentioned in paragraph 6 above) by Plaintiffs in the Action and Plaintiffs' notice
11 letters to the LWDA including, but not limited to, Labor Code sections 90.5(a), 201,
12 201.3, 202, 203, 204, 210, 218, 218.5, 218.6, 223, 226, 226.3, 226.7, 246, 510, 512,
13 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1682, 2102,
14 2103, 2350, 2802, and 6404, and the applicable IWC Wage Orders, and any
15 resulting claim for attorneys' fees and costs under the PAGA, which occurred
16 during the PAGA Period. Plaintiffs do not release the claim for wages or damages
17 of any Aggrieved Employee unless such Aggrieved Employee is a Participating
18 Class Member.

14 **4. HOW WILL THE ADMINISTRATOR CALCULATE MY 15 PAYMENT?**

16 A. Individual Class Payments. The Administrator will calculate
17 Individual Class Payments by (a) dividing the Net Settlement Amount by the total
18 number of Workweeks worked by all Participating Class Members, and (b)
19 multiplying the result by the number of Workweeks worked by each individual
20 Participating Class Member.

21 B. Individual PAGA Payments. The Administrator will calculate
22 Individual PAGA Payments by (a) dividing \$102,500.00 by the total number of
23 PAGA Workweeks worked by all Aggrieved Employees and (b) multiplying the
24 result by the number of PAGA Period Workweeks worked by each individual
25 Aggrieved Employee.

26 C. Workweek Challenges. The number of Class Workweeks you worked
27 during the Class Period and the number of PAGA Workweeks you worked during
28 the PAGA Period, as recorded in Defendants' records, are stated in the first page of
this Notice. You have until <<RESPONSE DEADLINE>> to challenge the number
of Workweeks credited to you. You can submit a workweek challenge by signing
and sending a letter to the Administrator by email, fax or regular U.S. mail outlining

1 the basis for your challenge.

2 You need to support your challenge by submitting copies of pay stubs or other
3 records. The Administrator will accept Defendants' calculation of Workweeks
4 based on Defendants' records as accurate unless you send copies of records
5 containing contrary information to the Administrator. You should send copies
6 rather than originals because the documents will not be returned to you. The
7 Administrator will resolve Workweek challenges based on your submission. The
Administrator's decision is final. You cannot appeal or otherwise challenge its final
decision.

8 **5. HOW WILL I GET PAID?**

9
10 A. Participating Class Members. The Administrator will send, by U.S.
11 mail, a single check to every Participating Class Member (i.e., every Class Member
12 who does not opt-out) including those who also qualify as Aggrieved Employees.
The single check will combine the Individual Class Payment and the Individual
PAGA Payment.

13
14 B. Non-Participating Class Members. The Administrator will send, by
15 U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee
who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

16 **Your check will be sent to the same address as this Notice. If you change**
17 **your address, be sure to notify the Administrator as soon as possible. Section**
18 **9 of this Notice has the Administrator's contact information.**

19 **6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?**

20 Email, fax, or mail a written and signed letter with your name, present
21 address, telephone number, and a simple statement that you do not want to
22 participate in the Settlement. The Administrator will exclude you based on any
writing communicating your request be excluded. Be sure to personally sign your
23 request, identify the Action as *Jeffrey Pipich et al. vs. O'Reilly Auto Enterprises,*
24 *LLC*, Case No. 3:21-cv-01120-L-JLB, and include your identifying information
(full name, address, telephone number, approximate dates of employment, and
25 social security number for verification purposes). You must make the request
26 yourself. If someone else makes the request for you, it will not be valid. You should
27 send your Request for Exclusion to the Administrator by email, fax, or regular U.S.
mail. **You must send to the Administrator your request to be excluded by**

1 <<RESPONSE DEADLINE>>, or it will be invalid. Section 9 of the Notice has
2 the Administrator's contact information. If you are an Aggrieved Employee, you
3 will still receive an Individual PAGA Payment.

4 **7. HOW DO I OBJECT TO THE SETTLEMENT?**

5 Only Participating Class Members have the right to object to the Settlement. Before
6 deciding whether to object, you may wish to see what Plaintiffs and Defendants are
7 asking the Court to approve. At least fourteen (14) days prior to the Response
8 Deadline, Plaintiffs will file in Court a Motion for Fees, Litigation Expenses and
9 Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees
10 and litigation expenses; and (ii) the amount Plaintiffs are requesting as a Class
11 Representative Service Award. At least sixteen (16) days before the Final Approval
12 Hearing, Plaintiffs will file in Court a Motion for Final Approval that includes,
13 among other things, the reasons why the proposed Settlement is fair. You may view
14 these documents and the Settlement Agreement on the Administrator's Website
15 <<ADMINISTRATOR WEBSITE>> or the Court's website <<COURT
16 WEBSITE>>.

17 **The deadline for sending written objections to the Administrator is**
18 **<<RESPONSE DEADLINE>>.** Be sure to tell the Administrator what you object
19 to, why you object, and any facts that support your objection. Make sure you
20 identify the Action, *Jeffrey Pipich et al. vs. O'Reilly Auto Enterprises, LLC*, case
21 no. 3:21-cv-01120-L-JLB, and include your name, current address, telephone
22 number, and approximate dates of employment for Defendants and sign the
23 objection. Section 9 of this Notice has the Administrator's contact information. You
24 should send your objection to the Administrator by email, fax, or regular U.S. mail.
25 A Participating Class Member who has submitted a timely objection may attend the
26 Final Approval Hearing (or personally retain a lawyer to object and attend at your
27 own cost). You (or your attorney) should be ready to tell the Court what you object
28 to, why you object, and any facts that support your objection. See Section 8 of this
Notice (immediately below) for specifics regarding the Final Approval Hearing.

23 **8. CAN I ATTEND THE FINAL APPROVAL HEARING?**

24 You can, but don't have to, attend the Final Approval Hearing on <<FINAL
25 APPROVAL HEARING DATE>> at <<FINAL APPROVAL HEARING TIME>> in
26 Courtroom 5140 of the United States District Court, Southern District of California,
27 located at Edward J. Schwartz United States Courthouse, 221 West Broadway, San
28 Diego, CA 92101 (the Honorable Allison H. Goddard, United States Magistrate

1 Judge). At the Hearing, the judge will decide whether to grant Final Approval of
2 the Settlement and how much of the Gross Settlement will be paid to Class Counsel,
3 Plaintiffs, and the Administrator. The Court will invite comment from objectors,
4 Class Counsel and Defense Counsel before making a decision. You can attend (or
hire a lawyer to attend). Check the Court's website for the most current information.

5 It's possible the Court will reschedule the Final Approval Hearing. You should
6 check the Administrator's website <<ADMINISTRATOR WEBSITE>> beforehand
7 or contact Class Counsel to verify the date and time of the Final Approval Hearing.

8 **9. HOW CAN I GET MORE INFORMATION?**

9 The Agreement sets forth everything Defendants and Plaintiffs have promised to do
10 under the proposed Settlement. The easiest way to read the Agreement, the
11 Judgment, or any other Settlement documents is to go to the Administrator's
12 website at <<ADMINISTRATOR'S WEBSITE>>. You can also telephone or send an
13 email to the Administrator using the contact information listed below, or consult
14 the Court website by going to (<http://www.<< COURT'S WEBSITE>>.aspx>) and
15 entering the Case Number for the Action, Case No. 3:21-cv-01120-L-JLB. You can
16 also make an appointment to personally review court documents in the Clerk's
Office at the United States District Court, Southern District of California, located at
Edward J. Schwartz United States Courthouse, 221 West Broadway, San Diego, CA
92101 by calling <<CLERK OF COURT'S PHONE NUMBER>>.

17 **DO NOT TELEPHONE THE COURT TO OBTAIN INFORMATION** 18 **ABOUT THE SETTLEMENT.**

19 Class Counsel:

20 David Glenn Spivak, Esq.
21 The Spivak Law Firm
22 8605 Santa Monica Bl
23 PMB 42554
24 West Hollywood, CA 90069
25 david@spivaklaw.com
Telephone: (213) 725-9094

26 Alexandra K. Piazza, Esq.
27 Berger Montague PC
8241 La Mesa Blvd, Suite A

La Mesa, CA 91942
apiazza@bm.net
Telephone: (619) 489-0300

Administrator:

Name of Company: Xpand Legal Consulting LLC
Email Address: _____
Mailing Address: _____
Telephone: _____
Fax Number: _____

O'Reilly Counsel:

James M. Peterson. Esq.
Derek W. Paradis, Esq.
HIGGS FLETCHER & MACK LLP
401 West "A" Street, Suite 2600
San Diego, California 92101-7913
peterston@higgslaw.com
paradisd@higgslaw.com
Telephone: 619.236.1551

Express Counsel:

Morgan Forsey, Esq.
ARENTFOX SCHIFF LLP
555 West Fifth Street
48th Floor
Los Angeles CA 90013
mforsey@sheppardmullin.com
Telephone: (213) 443-7538

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If you do not request a replacement by the void date, you will have no way to recover the money.

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11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

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EXHIBIT B

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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,

Plaintiff(s),

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,

Defendant(s).

Case No. 3:21-CV-01120-L-JLB

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION AND PAGA
SETTLEMENT**

Ctrm: 2125, The Honorable
Allison H. Goddard

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

1 1. The Court grants preliminary approval of the Settlement and the
2 Settlement Class based upon the terms set forth in the Settlement filed as an Exhibit
3 to the Motion for Preliminary Approval. All terms herein shall have the same
4 meaning as defined in the Settlement. The Court has determined only that there is
5 sufficient evidence to suggest that the proposed settlement might be fair, adequate,
6 and reasonable, and that any final determination of those issues will be made at the
7 final hearing. The Court will make a determination at the hearing on the motion for
8 final approval of class action settlement (the “Final Approval Hearing”) as to
9 whether the Settlement is fair, adequate and reasonable to the Settlement Class.
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13 2. For purposes of this Preliminary Approval Order, the “Settlement
14 Class” means all individuals employed by Defendants as non-exempt, hourly
15 employees, either directly or indirectly through staffing agencies, at one of
16 Defendant O’Reilly Auto Enterprises, LLC’s distribution centers in California at
17 any time between July 5, 2018 and <<END DATE>>.
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20 3. Based on its records, Defendants estimate that, as of November 30,
21 2023, (1) there are 5,750 Class Members and 289,537 Total Workweeks during the
22 Class period and (2) there were 4,312 Aggrieved Employees who worked 78,609
23 Workweeks during the PAGA Period. “Effective Date” means the date when both
24 of the following have occurred: (a) the Court enters a Judgment on its Order
25 Granting Final Approval of the Settlement; and (b) the Judgment is final. The
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1 Judgment is final as of the latest of the following occurrences: (a) if no Participating
2 Class Member objects to the Settlement, the day the Court enters Judgment; (b) if
3 one or more Participating Class Members objects to the Settlement, the day after
4 the deadline for filing a notice of appeal from the Judgment; or if a timely appeal
5 from the Judgment is filed, the day after the appellate court affirms the Judgment
6 and issues a remittitur.
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9 4. This action is provisionally certified pursuant to Rule 23 of the Federal
10 Rules of Civil Procedure as a class action for purposes of settlement only with
11 respect to the proposed Settlement Class.
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13 5. Not later than fifteen (15) days after the Court grants Preliminary
14 Approval of the Settlement, Defendants will simultaneously deliver the Class Data
15 to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class
16 Members' privacy rights, the Administrator must maintain the Class Data in
17 confidence, use the Class Data only for purposes of the Settlement and for no other
18 purpose, and restrict access to the Class Data to Administrator employees who need
19 access to the Class Data to effect and perform under the Settlement Agreement.
20
21 Defendants have a continuing duty to immediately notify Class Counsel if they
22 discover that the Class Data omitted class member identifying information and to
23 provide corrected or updated Class Data as soon as reasonably feasible. Without
24 any extension of the deadline by which Defendant must send the Class Data to the
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1 Administrator, the Parties and their counsel will expeditiously use best efforts, in
2 good faith, to reconstruct or otherwise resolve any issues related to missing or
3 omitted Class Data.
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5 6. No later than three (3) business days after receipt of the Class Data,
6 the Administrator shall notify Class Counsel that the list has been received and state
7 the number of Class Members, PAGA Members, Workweeks in the Class Data.
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9 7. Using best efforts to perform as soon as possible, and in no event later
10 than fourteen (14) days after receiving the Class Data, the Administrator will send
11 to all Class Members identified in the Class Data, via first-class United States Postal
12 Service (“USPS”) mail, the Class Notice with Spanish translation, if applicable,
13 substantially in the form attached to this Order as Exhibit A. The first page of the
14 Class Notice shall prominently estimate the dollar amounts of any Individual Class
15 Payment and/or Individual PAGA Payment payable to the Class Member, and the
16 number of Workweeks and PAGA Workweeks (if applicable) used to calculate these
17 amounts. Before mailing Class Notices, the Administrator shall update Class Member
18 addresses using the National Change of Address database.
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22 8. Not later than three (3) business days after the Administrator’s receipt
23 of any Class Notice returned by the USPS as undelivered, the Administrator shall
24 re-mail the Class Notice using any forwarding address provided by the USPS. If
25 the USPS does not provide a forwarding address, the Administrator shall conduct a
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1 Class Member Address Search, and re-mail the Class Notice to the most current
2 address obtained. The Administrator has no obligation to make further attempts to
3 locate or send Class Notice to Class Members whose Class Notice is returned by
4 the USPS a second time.

6 9. Class Counsel's contact information is David Glenn Spivak, Esq., The
7 Spivak Law Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA
8 90069, and Alexandra K. Piazza, Esq., Berger Montague PC, 8241½ La Mesa Blvd.
9 La Mesa, CA 91942. Defense Counsel's contact information is James M. Peterson
10 and Derek W Paradis, Esq., Higgs Fletcher & Mack, 401 West A Street, Suite 2600,
11 San Diego, CA, 92101.

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

21 11. If the Administrator, Defendants or Class Counsel is contacted by or
22 otherwise discovers any persons who believe they should have been included in the
23 Class Data and should have received Class Notice, the Parties will expeditiously
24 meet and confer in person or by telephone, and in good faith, in an effort to agree
25 on whether to include them as Class Members. If the Parties agree, such persons

1 will be Class Members entitled to the same rights as other Class Members, and the
2 Administrator will send, via email or overnight delivery, a Class Notice requiring
3 them to exercise options under the Settlement Agreement not later than fourteen
4 (14) days after receipt of Class Notice, or the deadline dates in the Class Notice,
5 which ever are later.
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8 12. Requests for Exclusion. Class Members who wish to exclude
9 themselves from the Class Settlement must send to the Administrator, by fax, email,
10 or mail, a signed written Request for Exclusion not later than 60 days after the
11 Administrator mails the Class Notice (plus an additional 14 days for Class Members
12 whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class
13 Member that reasonably communicates the Class Member's election to be excluded
14 from the Settlement and includes the Class Member's name, address and email
15 address or telephone number. To be valid, a Request for Exclusion must be timely
16 faxed, emailed, or postmarked by the Response Deadline.
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20 13. The Administrator may not reject a Request for Exclusion as invalid
21 because it fails to contain all the information specified in the Class Notice. The
22 Administrator shall accept any Request for Exclusion as valid if the Administrator
23 can reasonably ascertain the identity of the person as a Class Member and the Class
24 Member's desire to be excluded. The Administrator's determination shall be final
25 and not appealable or otherwise susceptible to challenge. If the Administrator has
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1 reason to question the authenticity of a Request for Exclusion, the Administrator
2 may demand additional proof of the Class Member's identity. The Administrator's
3 determination of authenticity shall be final and not appealable or otherwise
4 susceptible to challenge.

6 14. Every Class Member who does not submit a timely and valid Request
7 for Exclusion is deemed to be a Participating Class Member under the Settlement
8 Agreement, entitled to all benefits and bound by all terms and conditions of the
9 Settlement, including the Participating Class Members' Releases under Paragraphs
10 6.2 and 6.3 of the Settlement, regardless of whether the Participating Class Member
11 actually receives the Class Notice or objects to the Settlement.
12

14 15. Every Class Member who submits a valid and timely Request for
15 Exclusion is a Non-Participating Class Member and shall not receive an Individual
16 Class Payment or have the right to object to the class action components of the
17 Settlement. Aggrieved Employees cannot opt out of the PAGA portion of the
18 Settlement. Plaintiffs, on behalf of herself and the State of California, and the
19 Aggrieved Employees, release all claims for civil penalties that could have been
20 sought by the Labor Commissioner for the violations identified in Plaintiffs' pre-
21 filing letter to the LWDA; Plaintiffs do not release any claim for wages or damages
22 of any Aggrieved Employee unless such Aggrieved Employee is a Participating
23 Class Member.
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1 16. Challenges to Calculation of Workweeks. Each Class Member shall
2 have sixty (60) days after the Administrator mails the Class Notice (plus an
3 additional fourteen (14) days for Class Members whose Class Notice is re-mailed)
4 to challenge the number of Class Workweeks and PAGA Workweeks (if any)
5 allocated to the Class Member in the Class Notice. This is also known as a dispute.
6 The Class Member may challenge the allocation by communicating with the
7 Administrator via fax, email, or mail. The Administrator must encourage the
8 challenging Class Member to submit supporting documentation. In the absence of
9 any contrary documentation, the Administrator is entitled to presume that the
10 Workweeks contained in the Class Notice are correct so long as they are consistent
11 with the Class Data. The Administrator's determination of each Class Member's
12 allocation of Workweeks shall be final and not appealable or otherwise susceptible
13 to challenge. The Administrator shall promptly provide copies of all challenges to
14 calculation of Workweeks along with the Administrator's determination of the
15 challenges to Defense Counsel and Class Counsel.

21 17. Objections to Settlement. Only Participating Class Members may
22 object to the Settlement, including contesting the fairness of the Settlement, and/or
23 amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation
24 Expenses Payment and/or Class Representative Service Payments. Participating
25 Class Members may send written objections to the Administrator, by fax, email, or
26

1 mail. To be valid, the written objection must state the factual and legal grounds for
2 the objection to the Settlement. The written objection must be signed by the Class
3 Member submitting it, and it must state the person's full name, address, telephone
4 number, and email address (if applicable). A Participating Class Member who elects
5 to send a written objection to the Administrator must do so not later than sixty (60)
6 days after the Administrator's mailing of the Class Notice (plus an additional
7 fourteen (14) days for Class Members whose Class Notice was re-mailed). The
8 Participating Class Member who has submitted a timely objection may attend the
9 Final Approval Hearing (or personally retain a lawyer to object and attend at their
10 own cost).

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14 18. Non-Participating Class Members have no right to object to any of the
15 class action components of the Settlement.
16

17 19. Not later than fourteen (14) days before the date by which Plaintiffs
18 are required to file the Motion for Final Approval of the Settlement, the
19 Administrator will provide to Class Counsel and Defense Counsel, a signed
20 declaration suitable for filing in Court attesting to its due diligence and compliance
21 with all of its obligations under the Settlement Agreement, including, but not
22 limited to, its mailing of the Class Notices, the Class Notices returned as
23 undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the
24 total number of Requests for Exclusion it received (both valid or invalid), the
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1 number of written Objections, and attach the Exclusion List. The Administrator
2 will supplement its declaration as needed or requested by the Parties and/or the
3 Court. Class Counsel is responsible for filing the Administrator's declaration(s) in
4 Court.
5

6 20. The Court approves, as to form and content, the Class Notice in
7 substantially the form attached as Exhibit A to this Order.
8

9 21. The Court approves, for settlement purposes only Berger Montague
10 PC, The Spivak Law Firm, and United Employees Law Group as Class Counsel.
11

12 22. The Court approves, for settlement purposes only, Jeffrey Pipich, Eve
13 Storm, Gary Cull, Melissa Kolakowski, and Daniel Lopez as the Class
14 Representatives.
15

16 23. The Court approves Xpand Legal Consulting LLC as the
17 Administrator.
18

19 24. The Court preliminarily approves Class Counsel's request for
20 attorneys' fees and costs subject to final review by the Court. Class Counsel shall
21 file a Motion for Approval of Attorneys' Fees and Costs fourteen (14) days before
22 the Response Deadline.
23

24 25. The Court preliminarily approves the estimated Administrator costs
25 payable to the Administrator subject to final review by the Court.
26

26 26. The Court preliminarily approves Plaintiffs' Class Representative
27
28

1 Service Payment subject to final review by the Court.

2 27. A Final Approval Hearing shall be held on ____ at _____.m. in Courtroom
3
4 5140 of the United States District Court, Southern District of California, located at
5 the Edward J. Schwartz United States Courthouse, 221 West Broadway, San Diego,
6 CA 92101 to consider the fairness, adequacy and reasonableness of the proposed
7 Settlement preliminarily approved by this Preliminary Approval Order, and to
8 consider the application of Class Counsel for attorneys' fees and costs and the Class
9 Representative Service Payments to the Class Representatives. The notice of
10 motion and all briefs and materials in support of the motion for final approval of
11 class action settlement and motion for attorneys' fees and litigation costs shall be
12 served and filed with this Court on or before _____. Plaintiffs' counsel must give
13 notice to any objecting party of any continuance of the hearing of the motion for
14 final approval.

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

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

2 **IT IS SO ORDERED.**

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6 **DATE**

**THE HONORABLE ALLISON H.
GODDARD
UNITED STATES DISTRICT
COURT MAGISTRATE JUDGE**

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EXHIBIT C

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

3 JEFFREY PIPICH, EVE STORM, GARY
4 CULL, MELISSA KOLAKOWSKI, and
5 DANIEL LOPEZ, on behalf of themselves
6 and all others similarly situated, and as
7 “aggrieved employees” on behalf of other
8 “aggrieved employees” under the Labor
9 Code Private Attorneys General Act of
10 2004,

11 *Plaintiff(s),*

12 vs.

13 O'REILLY AUTO ENTERPRISES, LLC,
14 a Delaware limited liability company;
15 EXPRESS SERVICES, INC., a Colorado
16 corporation dba Express Employment
17 Professionals; and DOES 2–50, inclusive,

18 *Defendant(s).*

Case No. 3:21-CV-01120-L-JLB

**[PROPOSED] FINAL ORDER
AND JUDGMENT APPROVING
CLASS ACTION AND PAGA
SETTLEMENT**

Ctrm: 2125, The Honorable
Allison H. Goddard

19 This matter came on for hearing on ____ at ____m. in Department 5140 of the
20 above-captioned court on Plaintiffs’ Motion for Final Approval of a Class Action
21 Settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure, as set forth
22 in the Class Action And PAGA Settlement Agreement And Class Notice (the
23 “Settlement”) filed herewith which provides for a Gross Settlement Amount
24 (“GSA”) of up to \$4,100,000.00 in compromise of all disputed claims on behalf of
25 all individuals employed by Defendants as non-exempt, hourly employees, either
26 directly or indirectly through staffing agencies, at one of Defendant O’Reilly Auto

1 Enterprises, LLC's distribution centers in California at any time between July 5,
2 2018 and <<END DATE>> ("Settlement Class Period"). All capitalized terms used
3
4 herein shall have the same meaning as defined in the Settlement.

5 In accordance with the Court's prior Order Granting Preliminary Approval
6 of Class Action Settlement, Class Members have been given notice of the terms of
7 the Settlement and the opportunity to submit a claim, request exclusion, comment
8 upon or object to it or to any of its terms. Having received and considered the
9 Settlement, the supporting papers filed by the Parties, and the evidence and
10 argument received by the Court in conjunction with the motions for preliminary and
11 final approval of the Settlement, the Court grants final approval of the Settlement
12 and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE
13 FOLLOWING DETERMINATIONS¹:
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17 1. The Court has jurisdiction over the subject matter of the Action and
18 over all Parties to the Action, including all Class Members. Pursuant to this Court's
19 Order Granting Preliminary Approval of Class Action Settlement of ____, the Class
20 Notice was sent to each Class Member by First Class U.S. mail. The Class Notice
21 informed Class Members of the terms of the Settlement, their right to receive their
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25
26 ¹ A true and correct copy of the Court's ruling on the Motion for Final Approval of Class Action
27 Settlement entered on [REDACTED] is attached hereto as **Exhibit A** and incorporated by reference. A true
28 and correct copy of the Court's Minute Order dated [REDACTED] is attached hereto as **Exhibit B** and
incorporated by reference.

1 proportional share of the Settlement, their right to request exclusion, their right to
2 comment upon or object to the Settlement, and their right to appear in person or by
3 counsel at the final approval hearing and be heard regarding final approval of the
4 Settlement. Adequate periods of time were provided by each of these procedures.
5 No member of the Settlement Class presented written objections to the proposed
6 Settlement as part of this notice process, stated an intention to appear, or actually
7 appeared at the final approval hearing.
8

9
10 2. For purposes of this Final Order and Judgment, the Class Members are
11 all individuals employed by Defendants as non-exempt, hourly employees, either
12 directly or indirectly through staffing agencies, at one of Defendant O'Reilly Auto
13 Enterprises, LLC's distribution centers in California at any time between July 5,
14 2018 and <<END DATE>> ("Settlement Class Period").
15
16

17 3. The Court finds and determines that the notice procedure afforded
18 adequate protections to Class Members and provides the basis for the Court to make
19 an informed decision regarding final approval of the Settlement based on the
20 responses of Class Members. The Court finds and determines that the notice
21 provided in this case was the best notice practicable, which satisfied the
22 requirements of law and due process as to all persons entitled to such notice.
23
24

25 **Release by Plaintiffs and Class Members.** The Parties agree that it is their
26 intent that the resolution set forth in this Settlement will release and discharge the
27

1 Released Claims by way of any further attempt, by lawsuit, administrative claim or
2 action, arbitration, demand, or other action of any kind by each and all of the
3 Settlement Class Members (including participation to any extent in any
4 representative or collective action) against the Released Parties. This release will
5 not take effect until Defendant has paid the Gross Settlement Amount in full per
6 this Settlement Agreement.
7

8
9 **PAGA Release.** Plaintiffs release all claims for civil penalties that could
10 have been sought by the Labor Commissioner for the violations identified in
11 Plaintiffs pre-filing letters to the LWDA; Plaintiffs do not release the claim for
12 wages or damages of any Aggrieved Employee unless such Aggrieved Employee is
13 a Participating Class Member.
14

15
16 **“Released Claims”** shall mean all claims stated in the Operative Complaint
17 and based solely on the facts alleged in the Operative Complaint. **“Released**
18 **Parties”** shall mean Defendants and their parents, subsidiaries, affiliated entities,
19 franchisors, franchisees, officers, employees, and agents.
20

21 2. The Court further finds and determines that the terms of the Settlement
22 are fair, reasonable and adequate, that the Settlement is ordered finally approved,
23 and that all terms and provisions of the Settlement, including the release of claims
24 contained therein, should be and hereby are ordered to be consummated, and directs
25 the Parties to effectuate the Settlement according to its terms. As of the Effective
26
27

1 Date of Settlement, and for the duration of the Settlement Class Period, all Class
2 Members are hereby deemed to have waived and released all Released Claims and
3 are forever barred and enjoined from prosecuting the Released Claims against the
4 Released Parties as fully set forth in the Settlement. No objections were received by
5 the Parties or the Court through the date of this Final Order and Judgment. The
6 Court finds ____ Class Member(s) - ____ - submitted a request for exclusion from
7 the Settlement as determined by the Administrator and therefore is/are not in the
8 Settlement Class.

11
12 3. The Court finds and determines that (a) the Settlement Shares to be
13 paid to Participating Class Members and (b) the LWDA payment as civil penalties
14 under the California Labor Code Private Attorneys General Act of 2004, as
15 amended, California Labor Code sections 2699 *et seq.*, as provided for by the
16 Settlement are fair and reasonable. The Court hereby grants final approval to, and
17 orders the payment of, those amounts be made to the Participating Class Members
18 and to the California Labor & Workforce Development Agency (“LWDA”), in
19 accordance with the terms of the Settlement.

22 4. The Court further grants final approval to and orders that the following
23 payments be made in accordance with the terms of the Settlement:

25 a. Class Counsel fees & costs of \$1,366,666.67 in attorneys’ fees
26 plus Class Counsel’s actual litigation costs, which presently are \$ [REDACTED], and are
27

1 not to exceed \$120,000.00;

2 b. \$55,000.00 as a Class Representative Service Payments payable
3
4 to Plaintiffs for their services as a Class Representatives as follows: (1) \$22,500.00
5 to Jeffrey Pipich; (2) \$10,000.00; (3) \$7,500 to Gary Cull; (4) \$7,500 to Melissa
6 Kolakowski; and (5) \$7,500 to Daniel Lopez;

7
8 c. \$40,000.00 in costs of the Administrator payable to Xpand
9 Legal Consulting LLC for its services as the Administrator; and

10 d. Payment of \$307,500.00 (75% of the (\$410,000.00 PAGA
11 penalty) to the LWDA.
12

13 7. The settlement shall proceed as directed in the Settlement, and no
14 payments pursuant to the Settlement shall be distributed until after the Effective
15 Date of Settlement. Without affecting the finality of this Final Order and Judgment
16 in any way, the Court retains jurisdiction of all matters relating to the interpretation,
17 administration, implementation, effectuation and enforcement of this Final Order
18 and Judgment and the Settlement pursuant to California Rule of Court 3.769(h).
19
20

21 8. Within fourteen (14) calendar days of the Effective Date of Settlement,
22 Defendant O'Reilly Auto Enterprises, LLC ("O'Reilly") shall deposit the
23 Settlement proceeds in an account designated by the Administrator: (i) the total
24 amount of all Individual Class Payments to Participating Class Members, (ii) the
25 Court approved Class Counsel fees & costs, (iii) the Court-approved Class
26
27

1 Representative Service Payments, (iv) the Court-approved costs of the
2 Administrator, (v) the payment to the LWDA, and (vi) the total amount of all
3 Individual PAGA Payments to Aggrieved Employees.

4
5 9. Other than its employer side payroll taxes, Defendant O'Reilly's
6 payment of such sums shall be the sole financial obligation of Defendants under the
7 Settlement, and shall be in full satisfaction of all claims released herein, including,
8 without limitation, all claims for wages, penalties, interest, attorneys' fees, costs
9 and expenses.
10

11
12 10. Pursuant to Federal Rule of Civil Procedure 23 and the Settlement,
13 Participating Class Members shall have one hundred and eighty (180) days from
14 the date of the check's issuance to cash their Settlement check. After the expiration
15 of the 180-day period, on Defendant's behalf, the Administrator shall remit any
16 amounts from voided settlement checks and otherwise unclaimed, plus interest on
17 the Residue at the legal rate of interest from the date of entry of the initial judgement
18 to _____.
19
20

21 11. The Parties shall file a final accounting report by _____. A non-
22 appearance case review of a final report is scheduled for ____ at _____.m. in
23 **Courtroom 5140**. The Parties shall also prepare and file a stipulation and proposed
24 order and proposed Amended Final Order and Judgment by _____, which includes the
25 amount of distribution of unpaid cash Residue, and unclaimed or abandoned funds
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1 to the non-party, the accrued interest on that sum. The stipulation shall be signed
2 by counsel for the class and defense counsel in accord with the proposed Amended
3 Final Order and Judgment. If there are objections by any party or non-party, class
4 counsel shall immediately notify the Court and the matter will be set for further
5 hearing. A non-appearance hearing for the lodging of the stipulation and proposed
6 order and separate amended judgment is scheduled for ____ at ____m. in
7
8 **Courtroom 5140.**

10 12. Nothing in this Final Order and Judgment shall preclude any action to
11 enforce the Parties' obligations under the Settlement or hereunder, including the
12 requirement that Defendant O'Reilly deposit funds for distribution by the
13 Administrator to Participating Class Members in accordance with the Settlement.
14

15 13. The Court hereby enters final judgment in this case in accordance with
16 the terms of the Settlement, Order Granting Preliminary Approval of Class Action
17 Settlement, and this Final Order and Judgment.
18

19 14. The Parties are hereby ordered to comply with the terms of the
20 Settlement.
21

22 15. The Parties shall bear their own costs and attorneys' fees except as
23 otherwise provided by the Settlement and this Final Order and Judgment.
24

25 16. The Settlement is not an admission by Defendants nor is this Final
26 Order and Judgment a finding of the validity of any claims in the Action or of any
27

1 wrongdoing by Defendants. Furthermore, the Settlement is not a concession by
2 Defendants and shall not be used as an admission of any fault, omission, or
3 wrongdoing by Defendants. Neither this Final Order and Judgment, the Settlement,
4 any document referred to herein, any exhibit to any document referred to herein,
5 any action taken to carry out the Settlement, nor any negotiations or proceedings
6 related to the Settlement are to be construed as, or deemed to be evidence of, or an
7 admission or concession with regard to, the denials or defenses of Defendants, and
8 shall not be offered in evidence in any proceeding against the Parties hereto in any
9 Court, administrative agency, or other tribunal for any purpose whatsoever other
10 than to enforce the provisions of this Final Order and Judgment. This Final Order
11 and Judgment, the Settlement and exhibits thereto, and any other papers and records
12 on file in the Action may be filed in this Court or in any other litigation as evidence
13 of the settlement by Defendants to support a defense of res judicata, collateral
14 estoppel, release, or other theory of claim or issue preclusion or similar defense as
15 to the Released Claims.

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21 17. This document shall constitute a Judgment.

22 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

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26 **DATE**

**THE HONORABLE ALLISON H.
GODDARD**

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**UNITED STATES DISTRICT
COURT MAGISTRATE JUDGE**