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9 and the Proposed Collective

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11 **UNITED STATES DISTRICT COURT**  
12 **SOUTHERN DISTRICT OF CALIFORNIA**  
13 **SAN DIEGO DIVISION**

14 JEFFREY PIPICH, individually and on  
15 behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 O'REILLY AUTO ENTERPRISES,  
19 LLC, a Delaware corporation,

20 Defendant.

Case No.: **'21CV1120 L LL**

21 **COLLECTIVE ACTION**  
22 **COMPLAINT FOR VIOLATIONS**  
23 **OF:**

24 (1) FAIR LABOR STANDARDS  
25 ACT (29 U.S.C. §§ 201, *et seq.*)

26 **DEMAND FOR JURY TRIAL**

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1 **COLLECTIVE ACTION COMPLAINT**

2 Plaintiff Jeffrey Pipich (“Plaintiff”), on behalf of himself and all others  
3 similarly situated, brings this lawsuit against O’Reilly Auto Enterprises, LLC,  
4 (“O’Reilly” or “Defendant”), seeking all available remedies under the Fair Labor  
5 Standards Act of 1938, 29 U.S.C. §§ 201, *et seq.* (“FLSA”). The allegations that  
6 follow are made on personal knowledge as to Plaintiff’s own conduct and on  
7 information and belief as to the acts of others.

8 **INTRODUCTION**

9 1. O’Reilly Auto Enterprises, LLC (“O’Reilly” or “Defendant”), owns  
10 and operates a line of automotive retailers that specializes in providing aftermarket  
11 parts and accessories to both consumers and businesses. O’Reilly relies on a robust  
12 network of distribution centers strategically located across the United States to  
13 ensure timely product availability and optimal inventory levels throughout their  
14 stores. O’Reilly employs thousands of individuals at distribution centers  
15 throughout the state of California and the United States, to support the flow of its  
16 automobile products into stores nationwide. The manual tasks these employees  
17 perform include, without limitation, storing inventory, reviewing and selecting  
18 orders, pulling specific parts according to retailers’ needs, packing orders, and  
19 loading and delivering orders.

20 2. This case is about O’Reilly’s failure to provide proper payment of all  
21 wages, including regular and overtime wages. As described in further detail below,  
22 O’Reilly administered illegal policies requiring its non-exempt workers to undergo  
23 COVID-19 screenings and security inspections each day without pay. These pre-  
24 shift off-the-clock COVID-19 screenings and pre- and post- shift security checks  
25 constitute compensable time that was worked by Plaintiff and Collective Members.  
26 By failing to pay for this time worked, O’Reilly has violated the FLSA.

27 **JURISDICTION AND VENUE**

28 3. The FLSA authorizes a private right of action to recover damages for

1 violation of its wage and hour provisions. 29 U.S.C. § 216(b). This Court has  
 2 federal question jurisdiction over Plaintiff's FLSA claims under 28 U.S.C. § 1331.

3 4. Venue is proper in the Southern District of California because O'Reilly  
 4 is subject to personal jurisdiction in this District.

5 5. O'Reilly is subject to personal jurisdiction before this Court because it  
 6 has purposefully availed itself of the privileges of conducting activities throughout  
 7 the State of California and established minimum contacts sufficient to confer  
 8 jurisdiction. O'Reilly transacts business in California, advertises in California, and  
 9 markets to California consumers. The violations of the law forming the basis of  
 10 this lawsuit occurred in California. Further, O'Reilly employs California residents.  
 11 Therefore, the assumption of jurisdiction over O'Reilly will not offend traditional  
 12 notions of fair play and substantial justice and is consistent with the constitutional  
 13 requirements of due process. O'Reilly also had and continues to have continuous  
 14 and systematic contacts with the State of California sufficient to establish general  
 15 jurisdiction over it.

#### 16 **PARTIES AND PERSONAL JURISDICTION**

17 6. Plaintiff Jeffrey Pipich resides in Moreno Valley, California. Plaintiff  
 18 worked for Defendant as a City Counter Route Driver from approximately July  
 19 2015 to February 2021. Plaintiff was a non-exempt employee and was  
 20 compensated on an hourly basis. Pursuant to 29 U.S.C. § 216(b), Plaintiff has  
 21 consented in writing to be a plaintiff in this action. *See* Exhibit A.

22 7. The "FLSA Collective" are all current and former non-exempt  
 23 employees of O'Reilly who underwent a COVID-19 screening or security  
 24 inspection during at least one week in the three-year period before the filing of this  
 25 Complaint to the present.

26 8. Plaintiff reserves the right to redefine the FLSA Collective prior to  
 27 notice or certification, and thereafter, as may be warranted or necessary.

28 9. O'Reilly is a Delaware corporation registered to do business in

1 California, and at all relevant times has been engaged in the business of selling  
2 automobile parts in the State of California and nationwide. O'Reilly owns 5,616  
3 stores and relies on a network of 28 distribution centers nationwide to support its  
4 retail operations.

5 10. O'Reilly's corporate headquarters is located at 233 South Patterson,  
6 Springfield, Missouri 65802.

7 11. At all material times, O'Reilly has been governed by and subject to the  
8 FLSA, 29 U.S.C. § 207.

9 12. O'Reilly employed Plaintiff and continues to employ similarly situated  
10 employees as defined by the FLSA, 29 U.S.C. § 203(d). See also 29 C.F.R.  
11 791.2(a).

12 13. At all material times, O'Reilly has been an enterprise within the  
13 meaning of section 3(r) of the FLSA. 29 U.S.C. § 203(r).

14 14. During all times relevant hereto, Plaintiff was an employee of O'Reilly  
15 and was covered by the FLSA.

16 15. The unlawful acts alleged in this Complaint were committed by  
17 O'Reilly or O'Reilly's officers, agents, employees, or representatives, while  
18 actively engaged in the management of O'Reilly's businesses or affairs and with  
19 the authorization of O'Reilly.

20 16. At all material times, the unlawful conduct against Plaintiff and the  
21 FLSA Collective as described in this Complaint was actuated, in whole or in part,  
22 by a purpose to serve O'Reilly. At all relevant times, the unlawful conduct  
23 described in this Complaint was reasonably foreseeable by O'Reilly and  
24 committed under actual or apparent authority granted by O'Reilly such that all  
25 unlawful conduct is legally attributable to O'Reilly.

26 17. O'Reilly employs individuals engaged in commerce or in the  
27 production of goods for commerce or handling, selling, or otherwise working on  
28 goods or materials that have been moved in or produced in commerce by any

1 person, as described by 29 U.S.C. §§ 206-207.

2 18. O'Reilly's annual gross sales exceed \$500,000.

3 **FACTUAL ALLEGATIONS**

4 19. Plaintiff incorporates herein by reference the allegations set forth  
5 above.

6 20. Defendant O'Reilly specializes in offering aftermarket automobile  
7 parts to professional and amateur consumers at their 5,594 stores nationwide.  
8 O'Reilly operationalizes its value proposition of offering excellent customer  
9 service to consumers in part through the support of a strategic network of 28  
10 distribution centers that channel inventory into O'Reilly's stores. Indeed,  
11 O'Reilly's business model is designed so that timely product availability and  
12 optimal inventory levels are achieved via this network of distribution centers,  
13 which provide five-nights-a-week delivery to substantially all stores nationwide.  
14 See <https://corporate.oreillyauto.com/onlineapplication/careerpage/dc> (last visited  
15 June 4, 2021).

16 21. Plaintiff Pipich worked for O'Reilly as an hourly, non-exempt  
17 employee at O'Reilly Distribution Center Number 25 in Moreno Valley,  
18 California, from July 2015 to February 2021. Plaintiff's job duties included loading  
19 and transporting automobile parts from the distribution center to stores throughout  
20 the southern California region.

21 22. As an hourly, non-exempt employee, Plaintiff was required to clock-  
22 in and clock-out at one of O'Reilly's timekeeping stations located inside the  
23 distribution center. However, prior to clocking in each day, Plaintiff was subject to  
24 a health screening for Covid-19 and a security inspection. After clocking out each  
25 day, Plaintiff was subject to an additional security inspection.

26 23. The Covid-19 screening was implemented in 2020 following the  
27 outbreak of the Coronavirus.

28 24. O'Reilly responded to the public health crisis by systematically

1 implementing various safety measures as recommended by the Centers for Disease  
2 Control and Prevention, one of which included conducting mandatory health  
3 screenings for employees, to mitigate the impact of Covid-19 on its operations and  
4 safeguard its business interests. The Covid-19 screening was necessary to ensure  
5 that the virus did not infect O'Reilly employees and disrupt the work performed by  
6 Plaintiff and the FLSA Collective.

7 25. The Covid-19 screening was imposed by O'Reilly as a requirement for  
8 work each shift. The examination was conducted on O'Reilly's premises, was  
9 required by O'Reilly, and was necessary for each employee to perform their work  
10 for O'Reilly.

11 26. After parking, Plaintiff was subject to a Covid-19 screening at a  
12 designated area in the employee parking lot and, later, in the employee lounge area,  
13 both which anteceded access to the main distribution center area where employees  
14 conduct their work and where timekeeping stations were located.

15 27. The screening process involved a security guard or another employee  
16 of O'Reilly asking a series of questions related to the employee's potential  
17 exposure to the virus and present health symptoms. The screening process also  
18 entailed taking the employee's temperature. If the employee passed the  
19 examination, they were allowed to continue to the next screening, namely the  
20 security inspection, before they could officially clock in and commence getting  
21 paid for their work.

22 28. The amount of time that it took to undergo the Covid-19 screening  
23 ranged between two to five minutes on average. However, this time may have been  
24 prolonged in excess of five minutes depending on the number of employees waiting  
25 in line to undergo the screening.

26 29. This Covid-19 daily screening should have been paid by O'Reilly  
27 because Plaintiff and the FLSA Collective were subject to the control of O'Reilly,  
28 had no option of opting out of the health screening, and were threatened with

1 disciplinary action if they failed to comply with the screening. Plaintiff and the  
2 FLSA Collective, specifically, were compelled to remain on O'Reilly's premises  
3 during the duration of the screening and perform a series of tasks as instructed by  
4 O'Reilly, namely answering questions related to their health and submitting to their  
5 temperatures being taken. O'Reilly's control and restraint prevented Plaintiff and  
6 the FLSA Collective from using this time for their own purposes.

7 30. Plaintiff and the FLSA Collective nonetheless completed this work  
8 while off the clock and without time added to their pay to compensate for the  
9 Covid-19 screening.

10 31. The security inspection prior to each shift, like the Covid-19 screening,  
11 was imposed by O'Reilly as a requirement for work. The inspection was conducted  
12 on O'Reilly's premises, was required by O'Reilly, and entailed significant control  
13 over employees' time.

14 32. Plaintiff underwent the security screening in tandem with and after  
15 undergoing the Covid-19 screening, but prior to clocking in for work, at the start  
16 of the workday. Indeed, the security screening took place inside the employee  
17 lounge, which was outside the main distribution center area where employees  
18 accessed timekeeping stations to clock-in.

19 33. The security screening was overseen by a security guard. On a typical  
20 morning, Plaintiff would walk up to the security station, empty his pockets, remove  
21 any metals, open any bags, walk through the metal detector, collect all belongings,  
22 walk across the remaining twenty-five (25) feet of the security area, enter the main  
23 distribution center area, and only then would he clock in. The clock-in station was  
24 located about ten (10) to fifteen (15) feet from the door. .

25 34. Moreover, Plaintiff was subject to the same security inspection upon  
26 clocking out for the day and before leaving O'Reilly's premises.

27 35. The amount of time that it took to undergo the pre- shift security  
28 inspection ranged between three to five minutes on average. However, this time



1 may have been prolonged in excess of five minutes depending on the number of  
2 employees waiting in line to undergo the screening.

3 36. The amount of time that it took to undergo the post-shift security  
4 inspection was slightly longer and ranged between three to ten minutes on average.  
5 However, this time often exceeded ten minutes depending on the number of  
6 employees waiting in line to undergo the screening. Plaintiff noticed that lengthier  
7 lines occurred most frequently post-shift when larger groups of employees ended  
8 their shift around the same time.

9 37. The daily pre-shift and post-shift off-the-clock security inspections  
10 should have been paid by O'Reilly because Plaintiff and the FLSA Collective were  
11 subject to the control of O'Reilly, had no option of opting out of the security  
12 inspections, and were threatened with disciplinary action if they failed to comply  
13 with the security inspections. Plaintiff and the FLSA Collective, specifically, were  
14 compelled to remain on O'Reilly's premises during the duration of the inspection  
15 and perform a series of tasks as instructed by O'Reilly, namely opening bags,  
16 removing any metals, walking through the metal detector, and collecting all  
17 belongings. O'Reilly's control and restraint prevented Plaintiff and the FLSA  
18 Collective from using this time for their own purposes. For instance, Plaintiff and  
19 the FLSA Collective could not use their cell phones or consume any food given  
20 that these items were prohibited from entering the distribution center.

21 38. The primary job duties of Plaintiff and the FLSA Collective do not fall  
22 under any exemptions under the FLSA or California Wage Laws.

23 39. Plaintiff was regularly scheduled to work, and indeed worked, five (5)  
24 days per week, typically between forty-five (45) and fifty (50) hours per week.  
25 Plaintiff observed that other the FLSA Collective were scheduled to work, and  
26 indeed worked, similar schedules.

27 40. On workdays where Plaintiff and the FLSA Collective already worked  
28 over eight hours and in workweeks where Plaintiff and the FLSA Collective

1 already worked forty hours, the foregoing off-the-clock work resulted in time  
2 which Plaintiff and the FLSA Collective were not compensated at their overtime  
3 rate of pay.

4 41. Plaintiff is representative of the members of the Collective and is  
5 acting on behalf of their interests, as well as Plaintiff's own interests, in bringing  
6 this action.

7 42. Plaintiff will fairly and adequately represent and protect the interests  
8 of the members of the Collective. Plaintiff has retained counsel competent and  
9 experienced in employment and wage and hour class action and collective action  
10 litigation.

11 43. The similarly situated members of the Collective are known to  
12 O'Reilly, are readily identifiable, and may be located through O'Reilly's records.  
13 These similarly situated employees may readily be notified of this action, and  
14 allowed to "opt-in" to this case pursuant to 29 U.S.C. § 216(b) for the purpose of  
15 collectively adjudicating their claims for unpaid wages, unpaid overtime  
16 compensation, liquidated damages (or, alternatively, interest), and attorneys' fees  
17 and costs under the FLSA.

#### 18 **COLLECTIVE ACTION ALLEGATIONS**

19 44. Plaintiff brings the First Cause of Action (the FLSA claim) as an "opt-  
20 in" collective action pursuant to 29 U.S.C. § 216(b) on behalf of a proposed  
21 collection of similarly situated employees defined as:

22 All current and former non-exempt employees of  
23 O'Reilly who underwent a COVID-19 screening or  
24 security inspection during at least one week in the three-  
25 year period before the filing of this Complaint to the  
26 present. (the "FLSA Collective").

27 45. Plaintiff, individually and on behalf of other similarly situated persons  
28 defined above, seeks relief on a collective basis challenging O'Reilly's policy and

1 practice of failing to accurately record all hours worked, and failing to properly  
 2 pay Plaintiff for all hours worked, including overtime compensation, for time spent  
 3 undergoing Covid-19 screenings or security inspections. The number and identity  
 4 of other similarly situated persons yet to opt-in and consent to be party-plaintiffs  
 5 may be determined from O'Reilly's records, and potential opt-ins may be easily  
 6 and quickly notified of the pendency of this action.

7 46. Plaintiff's claims for violations of the FLSA may be brought and  
 8 maintained as an "opt-in" collective action pursuant to Section 216(b) of the FLSA,  
 9 because Plaintiff's FLSA claims are similar to the claims of the members of the  
 10 Collective.

11 47. The members of the Collective are similarly situated, as they have  
 12 substantially similar non-exempt job duties and are subject to a common policy,  
 13 practice, or plan that requires them to perform work off-the-clock and without  
 14 compensation in violation of the FLSA.

15 48. Unless the Court promptly issues such notice, the numerous similarly  
 16 situated workers nationwide will be unable to secure unpaid overtime pay, which  
 17 has been unlawfully withheld by O'Reilly.

18 **FIRST CAUSE OF ACTION**  
 19 **Violation of the Fair Labor Standards Act**  
 20 **29 U.S.C. § 201, *et seq.***  
 21 **(On Behalf of Plaintiff and the FLSA Collective)**

22 49. Plaintiff re-alleges and incorporates the foregoing paragraphs as  
 23 though fully set forth herein.

24 50. The FLSA requires that covered employees receive compensation for  
 25 all hours worked and overtime compensation not less than one and one-half times  
 26 the regular rate of pay for all hours worked in excess of forty hours in a workweek.  
 27 29 U.S.C. § 207(a) (1).

28 51. At all times material herein, Plaintiff and the Collective are covered

1 employees entitled to the rights, protections, and benefits provided under the  
2 FLSA. See 29 U.S.C. § 203(e).

3 52. Defendant O'Reilly Auto Enterprises, LLC, is a covered employer  
4 required to comply with the FLSA's mandates. See 29 U.S.C. § 203(d); 29 C.F.R.  
5 § 552.109(a).

6 53. O'Reilly violated the FLSA with respect to Plaintiff and the Collective,  
7 by, among other things, failing to compensate Plaintiff and the Collective for all  
8 hours worked and, with respect to such hours, failing to pay the legally mandated  
9 minimum wage or overtime premium for such work. See 29 U.S.C. § 206; 29  
10 C.F.R. § 531.35; 29 U.S.C. § 207 (a), (g). O'Reilly also violated the FLSA by  
11 failing to keep required, accurate records of all hours worked by Plaintiff and the  
12 Collective. 29 U.S.C. § 211(c).

13 54. Plaintiff and the Collective are victims of a uniform and company-wide  
14 compensation policy. This uniform policy, in violation of the FLSA, has been  
15 applied to current and former non-exempt, hourly employees of O'Reilly, working  
16 in its locations throughout the United States.

17 55. Plaintiff and the Collective are entitled to damages equal to the  
18 mandated pay, including minimum wage, straight time, and overtime premium pay  
19 within the three years preceding the filing of this Complaint, plus periods of  
20 equitable tolling, because O'Reilly has acted willfully and knew or showed  
21 reckless disregard for whether the alleged conduct was prohibited by the FLSA.

22 56. O'Reilly has acted neither in good faith nor with reasonable grounds  
23 to believe that its actions and omission were not a violation of the FLSA, and as a  
24 result thereof, Plaintiff and the Collective are entitled to recover an award of  
25 liquidated damages in an amount equal to the amount of unpaid overtime pay or  
26 prejudgment interest at the applicable rate. 29 U.S.C. § 216(b).

27 57. As a result of the aforesaid violations of the FLSA's provisions, pay,  
28 including straight time and overtime compensation, has been unlawfully withheld

1 by O'Reilly from Plaintiff and the Collective. Accordingly, O'Reilly is liable for  
2 unpaid wages, together with an amount equal as liquidated damages, attorneys'  
3 fees, and costs of this action.

4 58. Wherefore, Plaintiff and the Collective request relief as hereinafter  
5 provided.

6 **PRAYER FOR RELIEF**

7 Plaintiff, on behalf of himself and the FLSA Collective, prays for relief as  
8 follows:

9 a. That, at the earliest possible time, the Plaintiff be allowed to give  
10 notice of this collective action, or that the Court issue such notice, to the FLSA  
11 Collective Members as defined herein so that such persons shall be informed that  
12 this civil action has been filed, of the nature of the action, and of their right to join  
13 the FLSA collective suit if they believe they were denied unpaid wages;

14 b. The Court certify that this action may proceed as a collective action  
15 under 29 U.S.C. §216(b);

16 c. The Court find that O'Reilly's policies and practices described above  
17 violate the FLSA;

18 d. The Court award damages, liquidated damages, restitution, and  
19 statutory penalties to be paid by O'Reilly for the causes of action alleged herein;

20 e. The Court award interest, costs, and expenses, including reasonable  
21 attorneys' fees and expert fees, pursuant; and

22 f. The Court order such other and further legal and equitable relief the  
23 Court deems just, necessary, and proper.

1 Dated: June 16, 2021

Respectfully submitted,

2 BERGER MONTAGUE PC

3 *s/ Sophia M. Rios*

4 Sophia M. Rios

5 Shanon J. Carson

6 Camille Fundora Rodriguez

7 Daniel F. Thornton

8 Attorneys for Plaintiff and the Proposed  
9 Collective

**DEMAND FOR JURY DEMAND**

Plaintiff hereby demands a trial by jury on all claims and issues for which  
Plaintiff and the Collective are entitled to a jury.

Dated: June 16, 2021

Respectfully submitted,

BERGER MONTAGUE PC

s/ Sophia M. Rios

Sophia M. Rios

Shanon J. Carson

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