

EXHIBIT 1

To Declaration of Kelsey M. Szamet In Support of
Plaintiff's Motion for Preliminary Approval of Class
Action Settlement

Case No.: 5:20-cv-00214-JGB-KK

STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE OF CLAIMS

This Joint Stipulation of Class Action Settlement and Release of Claims is entered into by and between Plaintiff Martin Martinez Soto, individually and on behalf of the FCRA Class Members, on the one hand, and Defendant O'Reilly Auto Enterprises, LLC on the other hand. This Joint Stipulation of Class Action Settlement and Release of Claims shall be binding on Plaintiff, the FCRA Class Members, and Defendant, subject to the definitions, recitals, and terms set forth herein and the approval of the Court.

I. DEFINITIONS

1. Action

“Action” or “Lawsuit” means the civil action entitled Martin Martinez Soto v. O'Reilly Auto Enterprises, LLC, Central District of California Case No. 5:20-cv-00214-JGB-KK, filed on January 31, 2020.

2. Class Counsel

“Class Counsel” means Kingsley & Kingsley, APC and Davtyan Law Firm, Inc., who, subject to Court approval, shall act as counsel for the FCRA Class Members.

3. Class Counsel Award

“Class Counsel Award” means attorneys’ fees for Class Counsel’s litigation and resolution of this Lawsuit, and Class Counsel’s expenses and legal costs incurred in connection with this Lawsuit.

4. Class Information

“Class Information” or “Class Data” means information regarding FCRA Class Members that Defendant will in good faith compile from its records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each FCRA Class Members Member’s full name; last

known address; last known home telephone number; and social security number.

5. Class Member Settlement Payments

“Class Member Settlement Payments” means the amount paid from the Net Settlement Amount to be distributed pro rata to each Participating FCRA Class Member who does not submit a timely request for exclusion.

6. Class Notice

“Class Notice” means the Class Notice, substantially in the form attached hereto as **Exhibit A**, which shall be subject to Court approval and which the Settlement Administrator shall mail to each FCRA Class Member to explain the terms of this Agreement and the Settlement, and include the timing and manner in which to request exclusion from the Settlement or to object to the Settlement, and will inform FCRA Class Members of the date, place, and time of the Final Approval Hearing.

7. Complaint

“Complaint” means the operative complaint, filed in the Action.

8. Covered Period

“Covered Period” or “Class Period” means the period from January 31, 2015 to February 17, 2021.

9. Defendant

“Defendant” means Defendant O’Reilly Auto Enterprises, LLC.

10. Effective Date

“Effective Date” of the Settlement means the date on which the Court’s order granting Final Approval of this Joint Stipulation becomes final. Such order becomes final upon the following events: (i) upon the Court issuing the Final Approval Order granting approval of this Settlement if no objections to the settlement are filed, or if an objection is filed but is withdrawn prior to the Court’s Final Approval Hearing; or (ii) in the event there are written objections filed prior to the Final Approval

Hearing which are not thereafter withdrawn prior to the hearing, the later of the following events: (a) the day after the last day by which a notice of appeal of the Order may be timely filed, and none is filed; (b) if an appeal is filed and is finally disposed of by ruling, dismissal, denial, or otherwise, the day after the last date for filing a request for further review of the appellate court's decision passes and no further review is requested; (c) if an appeal is filed and there is a final disposition by ruling, dismissal, denial, or otherwise by the appellate court, and further review of the appellate court's decision is requested, the day after the request for review is denied with prejudice and/or no further review of the order can be requested; or (d) if review is accepted and the settlement affirmed, the day the Supreme Court affirms the Settlement.

11. FCRA Class Members

“FCRA Class Members” means all employees in the United States who completed O’Reilly Auto Enterprises, LLC’s disclosure, authorization, and digital signature forms in its job application and for whom a consumer report was procured during the Class Period.

12. Final Approval Hearing

“Final Approval Hearing” means the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Settlement.

13. Final Approval Order

“Final Approval Order” means the order granting final approval of the Parties’ settlement, in an order substantially similar to **Exhibit C** hereto.

14. Final Judgment

“Final Judgment” means a judgment issued by the Court approving this Settlement as binding upon the Parties.

15. Maximum Settlement Amount

“Maximum Settlement Amount” means the agreed upon settlement amount of

\$950,000.00 and no more, to be paid by Defendant in full settlement of the Released Claims, and includes without limitation the Class Counsel Award, Service Award, Class Member Settlement Payments, and Settlement Administrator Costs.

16. Net Settlement Amount

“Net Settlement Amount” means the Maximum Settlement Amount, less the Court-approved Class Counsel Award, Service Award, and Settlement Administration Costs.

17. Participating FCRA Class Members

“Participating FCRA Class Members” means those Class Members who did not submit a valid and timely Request for Exclusion pursuant to this Agreement.

18. Parties

“Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean either Plaintiff or Defendant, individually.

19. Plaintiff

“Plaintiff” means Plaintiff Martin Martinez Soto.

20. Preliminary Approval Date

“Preliminary Approval Date” means the date on which the Court issues an order granting preliminary approval of this Settlement in an order substantially similar to **Exhibit B** hereto.

21. Released Claims

“Released Claims” means any and all claims arising out of the allegations made in the operative complaint on file in the Action, or that could have arisen based on the facts alleged in the Action, including, but not limited to, claims arising from the procurement of background checks, reference checks, investigations, and/or consumer reports or investigative consumer reports of any kind by any of the Released Parties, and any other claims for violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681b, et seq., (including 15 U.S.C. § 1681n and 1681o) or related

federal, state, and/or local laws, including the California Consumer Reporting Agencies Act, the California Investigative Consumer Reporting Agencies Act, and California Business and Professions Code § 17200, et seq., whether willful or otherwise, for declaratory, injunctive and equitable relief or restitution, statutory damages, actual and compensatory damages, punitive damages, and costs and attorney's fees, during the Covered Period.

22. Released Parties

“Released Parties” means Defendant, its parents, subsidiaries, and affiliates and all of their shareholders, officers, directors, agents, attorneys, insurers, reinsurers, investors, successors and assigns, owners, officials, partners, assigns, principals, heirs, representatives, predecessors in interest, beneficiaries, executors, members, privies, administrators, fiduciaries, and trustees and any individual or entity which could be jointly liable with Defendant.

23. Request for Exclusion

“Request for Exclusion” means a letter setting forth a Class Member's name, present address, and a simple statement electing to be excluded from the Settlement.

24. Response Deadline

“Response Deadline” means the date sixty (60) days after the Settlement Administrator mails the Class Notice to FCRA Class Members, which is the last date on which FCRA Class Members may: (a) submit a Request for Exclusion; (b) file and serve objections to the settlement; or (c) dispute the information contained in the Class Notice.

25. Service Award

“Service Award” means the amount that the Court authorizes to be paid to Plaintiff, in addition to Plaintiff's Class Member Settlement Payment, in recognition of Plaintiff's efforts and risks in assisting with the prosecution of the Lawsuit and in return for executing a general release with Defendant.

26. Settlement

“Settlement” or “Settlement Agreement” means the disposition of the Lawsuit pursuant to this Joint Stipulation of Class Action Settlement and Release of Claims.

27. Settlement Administrator

“Settlement Administrator” means ILYM Group, Inc., the third-party company that the Parties have jointly selected to be responsible for administering the Settlement.

28. Settlement Administrator Costs

“Settlement Administrator Costs” means the amount to be paid to the Settlement Administrator from the Maximum Settlement Amount for administration of this Settlement.

II. RECITALS

1. Class Certification.

The Parties stipulate to class certification for purposes of settlement only. If the Court does not grant either preliminary or final approval of this Settlement, the Parties agree that this stipulation regarding class certification will be revoked and the Parties will return to a point in the litigation prior to the execution of this Agreement.

2. Procedural History.

On January 31, 2020, Plaintiff filed a Class Action Complaint against Defendant in United States District Court for the Central District of California, Case No. 5:20-cv-00214-JGB-KK (the “Complaint”). The claims currently pending in the Action include the following: (1) failure to make proper disclosures to obtain proper authorizations in violation of the Fair Credit Reporting Act (“FCRA”) 15 U.S.C. § 1681b(b)(2)(A)(i), and (2) failure to obtain valid authorizations before procuring backgrounds checks in violation of the FCRA 15 U.S.C. §§ 1681b(b)(2)(A)(ii).

After the matter was at issue, the Parties began to engage in formal discovery

to understand the nature of the allegations and the scope of potential liability. Defendant provided Plaintiff's counsel with documents and pertinent data for the Class Members so that the Parties could fully investigate the claims at issue and understand their strengths and weaknesses. Defendant took the Plaintiff's deposition on December 30, 2020.

On January 13, 2021, the Parties participated in a private mediation session with Tripper Ortman, a well-regarded and experienced class action mediator. Through the course of further post-mediation negotiations with Mr. Ortman, the Parties, through counsel, reached an agreement in principle to fully resolve this Action in its entirety, subject to the Parties entering into a more comprehensive written settlement agreement.

3. Plaintiff's Reasons for Settlement

The Named Plaintiff is represented by Class Counsel. Class Counsel conducted an investigation into the facts relevant to the Lawsuit, including reviewing documents and information provided by Defendant. Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is fair, reasonable and adequate, and in the best interest of the FCRA Class Members in light of all known facts and circumstances, including the risks of significant delay, defenses asserted by Defendant, uncertainties regarding a class and representative action trial on the merits, and numerous potential appellate issues.

4. Defendant's Reasons for Settlement

Defendant denies any liability or wrongdoing of any kind associated with the claims asserted in Plaintiff's Complaint, disputes the damages and penalties claimed by Plaintiff, and further contends that, for any purpose other than settlement, Plaintiff's claims are not appropriate for class or representative action treatment. This Stipulation is a compromise of disputed claims. Defendant contends, among other things, that, at all times, it has complied with all applicable state, federal and

local laws related to the FCRA Class Members' employment.

Defendant has concluded that further defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of Defendant's time, energy, and resources have been and, unless this Settlement is completed, will continue to be devoted to the defense of the claims asserted by Plaintiff and FCRA Class Members. Defendant has also taken into account the risks of further litigation in reaching its decision to enter into this Settlement. Even though Defendant continues to contend that it is not liable for any of the claims set forth by Plaintiff in this Lawsuit, Defendant has agreed, nonetheless, to settle in the manner and upon the terms set forth in this Agreement to put to rest the claims in this Lawsuit.

5. Benefits of Settlement to Class Members.

Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to litigate their disputes through trial and through any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Lawsuit, both generally and in response to Defendant's defenses thereto, and the difficulties in establishing damages for the FCRA Class Members. Plaintiff and Class Counsel have also taken into account Defendant's agreement to enter into a settlement that confers substantial relief upon the FCRA Class Members. Based on the foregoing, Class Counsel have concluded that settlement for the consideration and on the terms set forth in this Settlement Agreement, is fair, reasonable, and adequate and is in the best interest of the putative class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, numerous potential appellate issues, and other risks inherent in litigation.

6. Settlement of Disputed Claims.

This Agreement is a compromise of disputed claims. Defendant has claimed and continues to claim that the Released Claims have no merit and do not give rise to liability. FCRA Class Members have claimed and continue to claim that the Released Claims have merit and give rise to liability on the part of Defendant. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement, no documents referred to herein, and no action taken to carry out this Agreement, may be construed or used as an admission by or against the FCRA Class Members, Class Counsel, or Defendant as to the merits or lack thereof of the claims asserted in this Lawsuit.

III. TERMS OF AGREEMENT

1. Release as To All Participating FCRA Class Members.

As of the Effective Date, the Participating FCRA Class Members, including Plaintiff, release the Released Parties from the Released Claims for the Covered Period.

2. Release of Claims by Plaintiff

As of the Effective Date, Plaintiff releases the Released Parties from all of the Released Claims during the Covered Period. Plaintiff, for himself and his heirs, successors and assigns, further waives, releases, acquits and forever discharges the Released Parties from any and all claims, obligations, demands, actions, rights, causes of action, and liabilities against the Released Parties, of whatever kind and nature, character, and description, whether in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law or contract, whether known or unknown, and whether anticipated or unanticipated, including all unknown claims covered by California Civil Code § 1542 that could have been or are asserted based on Plaintiff's application for employment, employment with, and separation from employment with Defendant for any type of relief, including, without limitation, claims based on

alleged violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681b et seq.; and any other federal, state or local law governing the procurement and use of background/credit checks, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.; the Civil Rights Act of 1866, 42 U.S.C. § 1981, as amended; the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101 et seq.; the ADA Amendments Act; the Family Medical Leave Act, 29 U.S.C. § 2601 et seq.; the California Family Rights Act, the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 203 et seq.; the California Fair Employment and Housing Act, as amended, Cal. Gov’t Code § 12900 et seq.; the California Constitution; any applicable California Industrial Welfare Commission Wage Order and any other claims under local, state or federal law for wage and hour violations including minimum wage, overtime, overtime premium pay; expense reimbursement, meal periods, rest periods, inaccurate wage statements, claims for vacation, sick pay, paid time off or leave; federal and state claims for discrimination, harassment, and retaliation; and all other known and unknown claims under any federal, state or local common law, statutory, or regulatory provision, now or hereafter recognized, and all claims for attorneys’ fees and costs, to the fullest extent permissible by law (including a waiver of any and all rights and benefits conferred by Cal. Civ. Code § 1542 and any similar provision under any other law).

Plaintiff’s releases set forth herein include a waiver of all rights under California Civil Code §1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF 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.

Plaintiff may hereafter discover claims or facts in addition to, or different from, those which he now knows or believes to exist, but Plaintiff expressly agrees

to fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist on behalf of or against the other at the time of execution of this Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiff's employment with Defendant.

3. Tax Liability and Medicare.

The Parties make no representations as to the tax treatment or legal effect of the payments called for hereunder, and FCRA Class Members are not relying on any statement or representation by the Parties or their counsel in this regard. Participating FCRA Class Members understand and agree that they will be responsible for the payment of taxes and penalties assessed on the payments described herein and will hold the Parties free and harmless from and against any claims resulting from treatment of such payments as non-taxable damages, including the treatment of such payment as not subject to withholding or deduction for payroll and employment taxes. Moreover, this Agreement is based upon a good faith determination of the Parties to resolve a disputed claim.

4. Circular 230 Disclaimer.

Each Party to this Agreement (for purposes of this section, the "acknowledging party" and each Party to this Agreement other than the acknowledging party, an "other party") acknowledges and agrees that (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered

into this Agreement based upon the recommendation of any other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty that may be imposed on the acknowledging party; and (3) no attorney or advisor to any other party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

5. Preliminary Approval of Settlement.

Plaintiff will move the Court to grant preliminary approval of this Settlement, certifying the FCRA Class for settlement purposes only and setting a date for a final approval hearing. All Parties agree to work diligently and cooperatively to have this Settlement presented to the Court for preliminary approval. The proposed preliminary approval order shall provide for the Class Notice to be sent to FCRA Class Members as specified herein.

6. Settlement Administrator.

Within fourteen (14) days of the Court granting preliminary approval of this Agreement, Defendant shall provide the Settlement Administrator with the Class Information for purposes of mailing the Class Notice to the FCRA Class Members. No later than three (3) days after receipt of the Class Information, the Settlement Administrator shall notify counsel for the Parties that the list has been received and state the number of FCRA Class Members.

7. Notice by First Class U.S. Mail.

Upon receipt of the Class Information, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. Within thirty (30) days of the

Court granting preliminary approval of this Settlement, the Settlement Administrator shall mail copies of the Class Notice to all FCRA Class Members via regular First-Class U.S. Mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each FCRA Class Member, including performing a skip-trace to identify any updated addresses. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each FCRA Class Member.

8. Undeliverable Notices.

Any Class Notice returned to the Settlement Administrator as undeliverable on or before the Response Deadline shall be re-mailed once to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by use of skip-tracing, or other search using the name, address and/or social security number of the FCRA Class Member whose notice was undeliverable, and shall then re-mail all returned, undelivered mail within ten (10) days of receiving notice that a notice was undeliverable. FCRA Class Members who receive a re-mailed Class Notice shall have their Response Deadline extended twenty (20) days from the original Response Deadline.

9. Determination of Class Member Settlement Payments.

The Settlement Administrator shall determine the eligibility for, and the amounts of, any Class Member Settlement Payments under the terms of this Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Class Member Settlement Payments shall be binding upon the FCRA Class Members and the Parties. In the absence of circumstances indicating fraud, manipulation or destruction, Defendant's records will be given a rebuttable presumption of accuracy.

10. Disputes Regarding Administration of Settlement.

Any disputes not resolved by the Settlement Administrator concerning the administration of the Settlement will be resolved by the Court, under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the disputes without the necessity of involving the Court.

11. Exclusions.

The Class Notice shall state that FCRA Class Members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, and telephone number of the FCRA Class Member requesting exclusion; (2) contain a statement expressing that the FCRA Class Member elects to be excluded from the Settlement; (3) be signed by the FCRA Class Member; and (4) be postmarked by the Response Deadline and returned to the Settlement Administrator at the specified address. The Request for Exclusion will be deemed invalid if it does not contain an FCRA Class Member's name, address, signature, and a statement that the FCRA Class Member elects to be excluded from the Settlement. The date of the postmark on the return mailing envelope of the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any FCRA Class Member who requests to be excluded from the Settlement will not be entitled to any recovery under the Settlement and will not be bound by the terms of the Settlement or have any right to object, appeal, or comment thereon. FCRA Class Members who fail to submit a valid and timely Request for Exclusion on or before the Response Deadline shall be bound by all terms of the Settlement and any Final Judgment entered in this Lawsuit if the Settlement is approved by the Court. No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a complete list of all FCRA Class Members who have timely submitted a Request for

Exclusion.

12. Objections.

The Class Notice shall state that FCRA Class Members who wish to object to the Settlement may do so in writing or in person at the Final Approval Hearing. Any written objection (“Notice of Objection”) must be mailed to the Settlement Administrator by the Response Deadline. The date of mailing on the envelope shall be deemed the exclusive means for determining that a Notice of Objection was timely received. The Notice of Objection must (1) contain the name, address, and telephone number of the FCRA Class Member; (2) contain a statement expressing the FCRA Class Member’s grounds for objection; (3) be signed by the FCRA Class Member; and (4) be postmarked by the Response Deadline and returned to the Settlement Administrator at the specified address. Class Counsel will ensure that any Notice of Objection received by the Settlement Administrator by the Response Deadline are filed with the Court along with the Motion for Final Approval. Either of the Parties may file a responsive document to any objection before the Final Approval Hearing.

Any Class Member who fails to submit a timely written objection or to present an objection in person at the Final Approval Hearing shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Settlement whether by appeal or otherwise.

13. No Solicitation of Settlement Objections or Exclusions.

The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage FCRA Class Members to submit either written objections to the Settlement or requests for exclusion from the Settlement, or to appeal from the Court’s Final Judgment.

14. Funding and Allocation of Maximum Settlement Amount.

No later than twenty (20) days after the Effective Date, Defendant shall provide the Maximum Settlement Amount to the Settlement Administrator to fund the Settlement, as set forth in this Agreement. Defendant will not be obligated to make any payments contemplated by this Agreement unless and until the Court enters the Final Approval Order and Final Judgment, and after the Effective Date of the Agreement.

15. Net Settlement Amount.

The Net Settlement Amount will be determined by the Settlement Administrator by subtracting the Class Counsel Award, Service Award, and Settlement Administrator Costs from the Maximum Settlement Amount. The anticipated Net Settlement Amount is \$495,044.36. The Parties estimate the amount of the Net Settlement Amount as follows:

Maximum Settlement Amount:	\$	950,000.00
Named Plaintiff Service Award:	\$	7,500.00
Class Counsel Fees:	\$	237,500.00
Class Counsel Costs:	\$	12,500.00
Settlement Administrator Costs:	\$	197,455.64
Net Settlement Amount	\$	495,044.36

This is a non-reversionary Settlement in which Defendant is required to pay the entire Maximum Settlement Amount, which includes the Class Counsel Award, Service Award, Class Member Settlement Payments, and Settlement Administrator Costs. No portion of the Maximum Settlement Amount will revert to Defendant.

16. Class Member Settlement Payments.

Class Member Settlement Payments will be paid from the Net Settlement Amount and shall be paid pursuant to the settlement formula set forth herein. The Class Member Settlement Payments amount due to each Participating FCRA Class

Member shall be paid in the form of a check to each Participating FCRA Class Member. Checks shall be made payable to each Participating FCRA Class Member for payment of each Participating FCRA Class Member's Class Member Settlement Payment.

Class Member Settlement Payments shall be mailed by regular First-Class U.S. Mail to each Participating FCRA Class Member's last known mailing address within seven calendar days after Defendant makes the final settlement payment.

All Class Member Settlement Payments will be allocated 100% as statutory damages.

17. Class Member's Payment Ratio.

Each Participating FCRA Class Member will receive an equal share of the Net Settlement Amount. The Net Settlement Amount will be divided by the number of Participating FCRA Class Members and each Participating FCRA Class Member shall receive that amount.

18. Unclaimed Settlement Payment(s).

After one hundred and sixty (160) days of the mailing of the Class Member Settlement Payments checks, funds attributable to unclaimed, undeliverable, or expired Class Member Settlement Payment checks will be distributed to United Way as an agreed-upon cy pres designee.

19. Service Award.

Plaintiff will request that the Court approve a Service Award of up to \$7,500.00. Subject to Court approval, in exchange for the release of all Released Claims and for his time and effort in bringing and prosecuting this matter, Plaintiff shall be paid a Service Award of up to \$7,500.00. The Service Award shall be paid to Plaintiff from the Maximum Settlement Amount at the same time that Participating Settlement Class Members' checks are mailed out. The Settlement Administrator shall issue an IRS Form 1099 – MISC to Plaintiff for his respective

Service Award. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on his Service Award and shall hold harmless Defendant and Class Counsel from any claim or liability for taxes, penalties, or interest arising as a result of the Service Award. The Service Award shall be in addition to the Plaintiff's Class Member Settlement Payments as an FCRA Class Member. Any amount requested by Plaintiff for the Service Award and not granted by the Court shall return to the Net Settlement Amount and be distributed to Participating FCRA Class Members as provided in this Agreement.

20. Class Counsel Award.

Class Counsel will request that the Court approve attorneys' fees in the amount of up to twenty five percent (25%) of the Maximum Settlement Amount. Class Counsel will also request that the Court approve the reimbursement of any litigation costs or expenses associated with Class Counsel's prosecution of this matter from the Maximum Settlement Amount not to exceed \$12,500.00. Class Counsel shall be paid at the same time that Participating Settlement Class Members' checks are mailed out. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS Form 1099 – MISC to Class Counsel for the payments made pursuant to this paragraph. This Settlement is not contingent upon the Court awarding Class Counsel any particular amount in attorneys' fees and costs. Any amount requested by Class Counsel for the Class Counsel Award and not granted by the Court shall return to the Net Settlement Amount and be distributed to Participating FCRA Class Members as provided in this Agreement.

21. Settlement Administrator Costs.

The Parties agree to allocate up to \$197,455.64 of the Maximum Settlement Amount for Settlement Administrator Costs. The actual cost of settlement administration is expected to be \$216,723.96 but the parties have agreed for

Defendant to pay \$19,268.32 of this amount to the Settlement Administrator separately from the Maximum Settlement Amount. The Settlement Administrator shall have the authority and obligation to make payments, credits and disbursements to FCRA Class Members in the manner set forth herein, calculated in accordance with the methodology set out in this Agreement and orders of the Court. The Parties agree to cooperate in the Settlement administration process and to make all reasonable efforts to control and minimize the cost and expenses incurred in administration of the Settlement. The Settlement Administrator shall be paid at the same time that Participating Settlement Class Members' checks are mailed out

22. Responsibilities of the Settlement Administrator.

The Settlement Administrator shall be responsible for the following: processing and mailing payments to Plaintiff, Class Counsel, and Participating FCRA Class Members; printing and mailing the Class Notice and any legally-required tax forms to the Participating FCRA Class Members as directed by the Court and indicated herein; including sending out compliant notices to all attorneys general of every state where FCRA Class Members reside according to Defendant's records pursuant to the Class Action Fairness Act ("CAFA"); receiving and reporting the requests for exclusion and objections submitted by FCRA Class Members; providing declaration(s) as necessary in support of preliminary and/or final approval of this Settlement; and other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities.

23. Final Approval Hearing and Entry of Final Judgment.

Upon expiration of the Response Deadline, with the Court's permission, a final approval hearing shall be conducted to determine final approval of the Settlement along with the amount properly payable for: (i) the Class Counsel Award;

(ii) the Service Award; (iii) Class Member Settlement Payments; and (iv) the Settlement Administrator Costs.

24. Final Approval Order.

Plaintiff will request, and Defendant will concur in said request, that the Court enter, after the Final Approval Hearing, a Final Approval Order in the form attached hereto as **Exhibit C**. Plaintiff will request that the Final Approval Order certify the FCRA Class Members; find that this Agreement is fair, just, adequate, and in the best interests of the Class; and require the Parties to carry out the provisions of this Agreement.

25. Nullification of Settlement Agreement.

In the event: (i) the Court denies preliminary approval of the Settlement; (ii) the Court denies final approval of the Settlement; (iii) the Court refuses to enter a Final Judgment as provided herein; or (iv) the Settlement does not become final for any other reason, this Settlement Agreement shall be null and void and any order or judgement entered by the Court in furtherance of this Settlement shall be treated as void from the beginning. To the extent the total number of opt outs exceed 5%, Defendant has the option to void this settlement within fourteen (14) days of the last day of the Response Deadline via a written notice to Plaintiff's counsel. If one or more of such events occur causing the Settlement Agreement to become null and void, the Parties shall proceed in all respects as if this Agreement had not been executed, except that any fees already incurred by the Settlement Administrator shall be paid by the party terminating the Settlement or Defendant will be solely responsible for the costs incurred for the settlement administration should it exercise its option to void this agreement. In the event an appeal is filed from the Court's Final Judgment, or any other appellate review is sought, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review.

26. Increase in Class Members.

It was represented to Class Counsel that there are an estimated 169,383 FCRA Class Members. The Settlement Administrator shall confirm the number of FCRA Class Members with all counsel no later than three (3) days after receipt of the Class Information, pursuant to paragraph six of Section III of this Agreement. To the extent the number of FCRA Class Members increases beyond 169,383 by more than 10%, Defendant shall have the option to increase the Maximum Settlement Amount by a proportionate amount beyond the 10% increase. For example, if the number of FCRA Class Members increases by 12%, Defendant shall have the option to increase the Maximum Settlement Amount by 2%. Defendant shall provide written notice to Plaintiff's counsel of its decision whether to increase the Maximum Settlement Amount pursuant this paragraph within ten (10) days of the Settlement Administrator's confirming the number of FCRA Class Members with all counsel.

If Defendant declines to exercise its option to increase the Maximum Settlement Amount under this paragraph, Plaintiff shall have the option to terminate this Agreement via written notice to Defendant's counsel within ten (10) days of Defendant's providing notice of its decision not to increase the Maximum Settlement Amount pursuant to this paragraph. Plaintiff's decision to terminate the Agreement will have the effect of restoring the Parties to their positions prior to the Settlement and making the Settlement null and void.

27. No Effect on Employee Benefits.

Amounts paid to Plaintiff or other FCRA Class Members pursuant to this Agreement shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of Plaintiff or FCRA Class Members.

28. No Admission by Defendant.

Defendant denies any and all claims alleged in this Lawsuit and deny all

wrongdoing whatsoever. This Agreement is not a concession or admission and shall not be used against Defendant as an admission or indication with respect to any claim of any fault, concession, or omission by Defendant.

29. Exhibits and Headings.

The terms of this Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

30. Interim Stay of Proceedings.

Upon full execution of this Agreement, the Lawsuit shall be stayed in its entirety except for the proceedings necessary to implement and complete the Settlement.

31. Amendment or Modification.

This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

32. Entire Agreement.

This Agreement and any attached Exhibits constitute the entire Agreement among these Parties, and no oral or written representations, warranties, or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties, and covenants contained and memorialized in the Agreement and its Exhibits. The Parties are entering into this Agreement based solely on the representations and warranties herein and not based on any promises, representation, and/or warranties not found herein.

33. Authorization to Enter into Settlement Agreement.

Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all

appropriate actions required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement. The persons signing this Agreement on behalf of Defendant represent and warrant that they are authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and warrants that he is authorized to sign this Agreement and that he does have not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

34. Binding on Successors and Assigns.

This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

35. California Law Governs.

All terms of this Agreement and the Exhibit hereto shall be governed by and interpreted according to the laws of the State of California.

36. No Publicity.

No public comment, communications to media, or any form of advertising or public announcement (including social media) regarding the Action or this Settlement shall be made by Plaintiff or his counsel at any time.

37. Counterparts.

This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

38. Jurisdiction of the Court.

The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith. All terms of this Agreement are subject to approval by the Court.

39. Invalidity of Any Provision.

Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

WHEREFORE, Plaintiff, on behalf of himself and the FCRA Class Members, and Defendant, have executed this Agreement as of the dates set forth below.

IT IS SO AGREED:

Dated: October 30, 2021

By: 
8E0627728E2A49B
MARTIN MARTINEZ SOTO

Dated: _____

By: _____
O'REILLY AUTO ENTERPRISES, LLC

The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith. All terms of this Agreement are subject to approval by the Court.

39. Invalidity of Any Provision.

Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

WHEREFORE, Plaintiff, on behalf of himself and the FCRA Class Members, and Defendant, have executed this Agreement as of the dates set forth below.

IT IS SO AGREED:

Dated: _____

By: _____
MARTIN MARTINEZ SOTO

Dated: 11-11-21

By: Tamara J. Conn
O'REILLY AUTO ENTERPRISES, LLC

APPROVED AS TO FORM AND CONTENT:

Dated: November 1, 2021

KINGSLEY & KINGSLEY APC

By: 

Eric B. Kingsley
Ari J. Stiller
Attorneys for Plaintiff MARTIN
MARTINEZ SOTO and the Proposed
Class

Dated: Nov. 17, 2021

SHOOK, HARDY & BACON L.L.P.

By: 

Jesus J. Torres
William C. Martucci
Kristen A. Page
Attorneys for Defendant O'REILLY
AUTO ENTERPRISES, LLC

EXHIBIT “A”

[CLASS MEMBER NAME]

MARTIN MARTINEZ SOTO v. O'REILLY AUTO ENTERPRISES, LLC

[Case No.]

If you are or were an employee of O'Reilly Auto Enterprises, LLC ("O'Reilly" or "Defendant") between January 31, 2015 to February 17, 2021, a class action lawsuit may affect your rights, and you may be entitled to benefits under the proposed settlement, as described below.

You are not being sued. A court authorized this notice. This is not a solicitation from a lawyer.

PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHTS.

- This lawsuit involves a class defined as: all employees in the United States who completed O'Reilly Auto Enterprises, LLC's disclosure, authorization, and digital signature forms in its job application and for whom a consumer report was procured from January 31, 2015 to February 17, 2021.
- You are receiving this Notice because O'Reilly's records reflect that you may be one of the above Class Members.
- Plaintiff alleges that O'Reilly violated the Fair Credit Reporting Act ("FCRA") by procuring a consumer report with the use of disclosure forms that contained extraneous information. O'Reilly denies that it did anything wrong. The proposed settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on O'Reilly's part.
- The proposed settlement may affect your rights. Although the Court has authorized the Parties to provide this notice of the proposed settlement, the Court has expressed no opinion on the merits of Plaintiff's claims or Defendant's defenses.
- You will not be penalized or retaliated against by O'Reilly for participating in this class action settlement. If you are currently employed by O'Reilly, your employment will not be affected in any way.
- You have several options available to you:

DO NOTHING	By doing nothing, you <u>will</u> receive a share of the settlement proceeds, and you will give up any rights to sue for claims arising out of the allegations made in the Action, or that could have arisen based on the facts alleged in the Action, including, but not limited to, claims that O'Reilly failed to make proper disclosures prior to procuring consumer reports in violation of the Fair Credit Reporting Act ("FCRA") 15 U.S.C. § 1681b(b)(2)(A)(i), and failed to obtain valid authorizations before procuring consumer reports in violation
-------------------	---

	of the FCRA 15 U.S.C. §§ 1681b(b)(2)(A)(ii).
ASK TO BE EXCLUDED (OPT OUT)	Exclude yourself from this lawsuit. Keep your rights to file a separate claim against O'Reilly. If you ask to be excluded, you will not receive a share of the settlement proceeds, but you keep any rights you may have to bring your own claims against O'Reilly for the same legal claims in this lawsuit.
OBJECT	Object to the terms of this Settlement.

**Your options are explained in this notice.
To opt out or object, you must act by **XXXX**.**

1. Why did I get this notice?

A proposed settlement has been reached in a class action lawsuit that was brought on behalf of Defendant's employees. You have received this notice because O'Reilly's records indicate that you are a member of this class.

2. What is this lawsuit about?

This lawsuit was filed on January 31, 2020 on behalf of employees in the United States who completed O'Reilly Auto Enterprises, LLC's disclosure, authorization, and digital signature forms in its job application and for whom a consumer report was procured from January 31, 2015 to February 17, 2021. The operative complaint alleges class-wide causes of action against O'Reilly for failure to make proper disclosures that a consumer report may be obtained, in violation of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681b(b)(2)(A)(i), and failure to obtain valid authorizations before procuring consumer reports in violation of the FCRA, 15 U.S.C. §§ 1681b(b)(2)(A)(ii).

3. Has the Court decided who is right?

No. The Court has not made a decision regarding the merits of Plaintiff's allegations or O'Reilly's defenses.

4. Why did this case settle?

The Parties reached a settlement in order to avoid the risk, inconvenience and expense of further litigation. Plaintiff and his attorneys believe the proposed settlement is fair, adequate and in the best interest of the class members to whom it applies given the outcome of their investigation, the consumption of time and resources required in connection with further litigation, and the uncertainty in the law governing some of the claims presented. Although O'Reilly disputes Plaintiff's claims and asserts that it has complied with all of its legal obligations toward its employees, it has also concluded that further litigation would be protracted and expensive, and would also divert management and employee time.

5. What are the terms of the settlement and how much will I receive?

The Maximum Settlement Amount is \$950,000.00. Under the proposed settlement, the

following amounts will be deducted before any payments are made to employees, subject to final approval by the Court:

Attorneys' Fees:	\$237,500.00
Litigation Costs:	Up to \$12,500.00
Claims Administration Costs:	\$197,455.64
Service Award to Named Plaintiff:	\$7,500.00

After these deductions, \$495,044.36 will be available for payment to the FCRA Class Members receiving this notice ("Net Settlement Amount").

Each Participating FCRA Class Member will receive an equal amount of the Net Settlement Amount. In other words, the Net Settlement Amount will be divided by the number of Participating FCRA Class Members and that amount will be each individual's share.

All Class Member Settlement Payments will be allocated as 100% statutory damages for tax purposes.

Your estimated settlement amount is \$_____.

6. What do I have to do to receive a share of the settlement?

If you wish to receive an award under the terms of this settlement, you do not have to do anything. However, you should make sure that your current mailing address is on file with the Settlement Administrator in order to ensure you receive your settlement check. You will be covered by the release summarized in Section 7, immediately below.

7. What rights am I giving up?

The claims you will Release by doing nothing are:

Any and all claims arising out of the allegations made in the operative complaint on file in the Action, or that could have arisen based on the facts alleged in the Action, including, but not limited to, claims arising from the procurement of background checks, reference checks, investigations, and/or consumer reports or investigative consumer reports of any kind on them by any of the Released Parties, and any other claims for violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681b, et seq., (including 15 U.S.C. § 1681n and 1681o) or related federal, state, and/or local laws, including the California Consumer Reporting Agencies Act, the California Investigative Consumer Reporting Agencies Act, and California Business and Professions Code § 17200, et seq., whether willful or otherwise, for declaratory, injunctive and equitable relief or restitution, statutory damages, actual and compensatory damages, punitive damages, and costs and attorney's fees, from January 31, 2015 to February 17, 2021.

8. What if I do not wish to be involved?

Anyone not wishing to participate in the settlement may exclude himself or herself ("opt out") by completing, signing, and mailing a letter indicating that they do not want to participate in the settlement to the Settlement Administrator, ILYM Group, Inc., by [Response Deadline].

Settlement Administrator
c/o ILYM Group, Inc.
[Toll-Free Number]
[www.SettlementWebsite.com]
[Facsimile]

Any request for exclusion (1) must contain your name, address, and telephone number; (2) must contain a statement expressing that you want to be excluded from the Settlement; (3) must be signed by you; and (4) must be postmarked by [Response Deadline] and returned to the Settlement Administrator at the specified address above.

If your Request for Exclusion is postmarked after [Response Deadline], it will be rejected, and you will be a Participating FCRA Class Member and be bound by the settlement terms and release. Anyone who submits a timely and valid Request for Exclusion shall not be deemed a Participating FCRA Class Member and will not receive any payment as part of this settlement. Such persons will keep any rights to assert claims against O'Reilly separately for the claims made in this lawsuit.

9. What if I have an objection?

A class member may object to the settlement in writing or in person. Written objections and all supporting briefs or other materials must be submitted to the Settlement Administrator no later than [Response Deadline].

Settlement Administrator
c/o ILYM Group, Inc.
[Toll-Free Number]
[www.SettlementWebsite.com]
[Facsimile]

Any written objection must (1) contain your name, address, and telephone number; (2) contain a statement expressing the grounds for your objection; (3) must be signed by you; and (4) must be postmarked or fax stamped by [Response Deadline] and returned to the Settlement Administrator at the specified address.

Any class member may make an objection at the Final Approval Hearing with or without filing or serving any written objection. The Class Member may appear personally or through an attorney, at his or her own expense, at the Final Approval hearing to present his or her objection directly to the Court. The Final Approval Hearing on the fairness, reasonableness, and adequacy of the Settlement will be held at [INSERT TIME] on [INSERT DATE], 2021 at [REDACTED]. The hearing may be continued without further notice. **You are not required to attend the Final Approval Hearing, although any FCRA Class Member is welcome to attend.**

Class Counsel:	Counsel for O'Reilly
Eric B. Kingsley	SHOOK, HARDY & BACON L.L.P.
Ari J. Stiller	Jesus J. Torres

<p>KINGSLEY & KINGSLEY, APC 16133 Ventura Blvd., Suite 1200 Encino, California 91436 Telephone: (818) 990-8300 Facsimile: (818) 990-2903</p>	<p>2049 Century Park East, Suite 3000 Los Angeles, California 90067 Telephone: 424.285.8330 Facsimile: 424.204.9093</p> <p>William C. Martucci Kristen A. Page 2555 Grand Blvd. Kansas City, Missouri 64108 Telephone: 816.474.6550 Facsimile: 816.421.5547</p>
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10. Do I need a lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, you are free to hire one at your own expense.

11. What happens next in the case?

The Settlement has only been preliminarily approved. The Court will hold a hearing at [INSERT TIME] on [INSERT DATE], 2021 at _____, to consider any objections and determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel’s request for attorneys’ fees and costs, Plaintiff’s Service Awards, and the costs of claims administration. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing.

12. How can I receive more information?

This notice is a summary of the basic terms of the settlement. For further information, you may also telephone the O’Reilly Settlement Administrator, ILYM Group, Inc. (listed above) or visit www.SettlementWebsite.com.

Please do not telephone the Court, the Office of the Clerk, or O’Reilly’s counsel for information regarding this settlement.

EXHIBIT “B”

1 **KINGSLEY & KINGSLEY, APC**
 2 ERIC B. KINGSLEY, Esq., Cal. Bar No. 185123
 3 eric@kingsleykingsley.com
 4 KELSEY M. SZAMET, Esq., Cal. Bar No. 260264
 5 kelsey@kingsleykingsley.com
 6 ARI J. STILLER, Esq., Cal. Bar No. 294676
 7 ari@kingsleykingsley.com
 8 ZACHARY D. GREENBERG, Esq., Cal. Bar No. 331501
 9 zach@kingsleykingsley.com
 10 16133 Ventura Blvd., Suite 1200
 11 Encino, CA 91436
 12 (818) 990-8300, Fax (818) 990-2903

13 **DAVTYAN LAW FIRM, INC.**
 14 EMIL DAVTYAN, Esq., Cal. Bar No. 299363
 15 emil@davtyanlaw.com
 16 880 E. Broadway
 17 Glendale, CA 91205
 18 Telephone: (818) 875-2008
 19 Fax: (818) 722-3974

20 Attorneys for Plaintiff and the Proposed Class

21 **UNITED STATES DISTRICT COURT**

22 **CENTRAL DISTRICT OF CALIFORNIA – RIVERSIDE DIVISION**

23 MARTIN MARTINEZ SOTO an
24 individual, on behalf of himself and
25 others similarly situated

26 PLAINTIFF,

27 v.

28 O'REILLY AUTO ENTERPRISES,
LLC; and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 5:20-cv-00214-JGB-KK

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

1 The Motion for Preliminary Approval of the Joint Stipulation of Class Action
2 Settlement and Release of Claims (“Settlement Agreement”) came before this Court
3 on XXXX. The Court, having considered the papers submitted in support of the
4 motion of the parties, **HEREBY ORDERS THE FOLLOWING:**

5 1. The Court grants preliminary approval of the Settlement Agreement
6 based upon the terms set forth therein. The settlement appears fair, adequate, and
7 reasonable to the Class. The Court finds that: (a) the Agreement resulted from
8 extensive arm’s length negotiations; and (b) the Agreement is sufficient to warrant
9 notice of the Settlement to FCRA Class Members and a full hearing on the final
10 approval of the Settlement.

11 2. The following settlement class is certified for settlement purposes only:
12 all employees in the United States who completed O’Reilly Auto Enterprises,
13 LLC’s disclosure, authorization, and digital signature forms in its job application
14 and for whom a consumer report was procured from January 31, 2015 to February
15 17, 2021.

16 3. The Settlement falls within the range of reasonableness and appears to
17 be presumptively valid, subject only to any objections that may be raised at the final
18 fairness hearing and final approval by this Court.

19 4. The Court makes the following preliminary findings for settlement
20 purposes only:

- 21 A. The FCRA Class , which consists of approximately XX
22 persons, is so numerous that joinder of all members is
impracticable;
- 23 B. There appear to be questions of law or fact common to the
24 FCRA Class Members for purposes of determining whether this
Settlement should be approved;
- 25 C. Plaintiff’s claims appear to be typical of the claims being
resolved through the proposed settlement;
- 26 D. Plaintiff appears to be capable of fairly and adequately
27 protecting the interests of the FCRA Class Members in
connection with the proposed settlement;
- 28 E. Common questions of law and fact appear to predominate

over questions affecting only individual persons in the FCRA Class Members. Accordingly, the FCRA Class Members appear to be sufficiently cohesive to warrant settlement by representation; and

F. Certification of the FCRA Class Members appears to be superior to other available methods for the fair and efficient resolution of the claims of the FCRA Class Members.

5. The Court approves, as to form and content, the Class Notice in substantially the form attached to the Settlement Agreement as Exhibit A.

6. The Court directs the mailing of the Notice to Class Members by first class mail to the FCRA Class Members in accordance with the Implementation Schedule set forth below. The Court finds that the dates selected for the mailing and distribution of the Notice, as set forth in the Implementation Schedule, meet the requirements of due process and provide the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

7. The Court approves the procedure for Class Members to object to the Settlement as set forth in the Class Notice.

8. The Court approves the procedure for Class Members to become Participating FCRA Class Members as set forth in the Class Notice.

9. The Court confirms Eric B. Kingsley and Ari J. Stiller of Kingsley & Kingsley, APC and Davtyan Law Firm, Inc., as Class Counsel.

10. The Court confirms Martin Martinez Soto as the Named Plaintiff.

11. The Court approves ILYM Group, Inc. as the Settlement Administrator.

12. The Court orders the following Implementation Schedule for further proceedings:

a.	Preliminary Approval	XXXX
b.	Deadline for Defendant to Provide Class Data to Settlement Administrator	14 calendar days from Preliminary Approval

c.	Mail Notice to Class Members	30 calendar days from Settlement Administrator’s receipt of Class Data
d.	Deadline for Class Members to Postmark Request for Exclusion	60 calendar days from mailing of Notice Packet (judged by postmark date)
e.	Deadline for Class Members to Postmark Any Objection	60 calendar days from mailing of Notice Packet (judged by postmark date)
f.	Deadline for Class Counsel to file Motion for Final Approval of Class Settlement	To be determined by the Court _____ _____
g.	Deadline for Class Counsel to file Motion for Class Counsel Award	To be determined by the Court _____ _____
h.	Final Approval Hearing	To be determined by the Court _____ _____

15. IT IS FURTHER ORDERED that if the Court does not execute and file an Order of Final Approval and Judgment, or if the Effective Date of Settlement, as defined in the Settlement Agreement, does not occur for any reason, the Settlement Agreement and the proposed Settlement that is the subject of this Order shall become null, void, unenforceable and inadmissible in any judicial, administrative or arbitral proceeding for any purpose, and all evidence, court orders and proceedings had in connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the litigation, as more specifically set forth in the Settlement Agreement.

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16. IT IS FURTHER ORDERED that, pending further Order of this Court, all proceedings in this matter except those contemplated herein and in the Settlement Agreement are hereby stayed.

17. The Court expressly reserves the right to adjourn or continue the Final Fairness Hearing from time to time without further notice to the FCRA Class Members.

DATED: _____
_____ **DISTRICT COURT JUDGE**

EXHIBIT “C”

1 **KINGSLEY & KINGSLEY, APC**
 ERIC B. KINGSLEY, Esq., Cal. Bar No. 185123
 2 eric@kingsleykingsley.com
 ARI J. STILLER, Esq., Cal. Bar No. SBN 260264
 3 kelsey@kingsleykingsley.com
 ARI J. STILLER, Esq., Cal. Bar No. 294676
 4 ari@kingsleykingsley.com
 ZACHARY D. GREENBERG, Esq., Cal. Bar No. 331501
 5 zach@kingsleykingsley.com
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 6 Encino, CA 91436
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7 **DAVTYAN LAW FIRM, INC.**
 8 EMIL DAVTYAN, Esq., Cal. Bar No. 299363
 emil@davtyanlaw.com
 9 880 E. Broadway
 Glendale, CA 91205
 10 Telephone: (818) 875-2008
 Fax: (818) 722-3974

11
12 Attorneys for Plaintiff and the Proposed Class

13 **UNITED STATES DISTRICT COURT**

14 **CENTRAL DISTRICT OF CALIFORNIA – RIVERSIDE DIVISION**

15
16
17 MARTIN MARTINEZ SOTO, an
18 individual, on behalf of himself and
others similarly situated,

19 PLAINTIFF,

20 v.

21 O'REILLY AUTO ENTERPRISES,
22 LLC; and DOES 1 thru 50, inclusive,

23 DEFENDANTS.
24

CASE NO. 5:20-cv-00214-JGB-KK

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND
ENTERING JUDGMENT**

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 The above captioned Action is a class action lawsuit brought by Plaintiff
3 Martin Martinez Soto (“Plaintiff”) against Defendant O’Reilly Auto Enterprises,
4 LLC (“Defendant”). The Motion for Final Approval of Class Action Settlement
5 came before this Court on XXXX.

6 **WHEREAS**, the Court granted preliminary approval of the Joint Stipulation
7 of Class Action Settlement and Release of Claims (“Settlement Agreement”),
8 attached to the concurrently filed Declaration of Ari J. Stiller as Exhibit “1”, on XX.

9 **WHEREAS**, Plaintiff Martin Martinez Soto has applied to the Court for an
10 order granting final approval of the Settlement Agreement.

11 **WHEREAS**, the Settlement Agreement sets forth the terms and conditions of
12 the proposed Settlement and for entry of an order of final approval and entry of final
13 judgment thereon. The Court has read and considered Plaintiff’s Motion for Final
14 Approval of Class Action Settlement; Motion for Approval of Approval of
15 Attorneys’ Fees and Costs; the Declarations of Ari J. Stiller, Martin Martinez Soto,
16 and [Name of Admin] of ILYM Group, Inc.; and the supporting documents annexed
17 thereto.

18 **NOW THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY**
19 **ORDERED:**

20 1. The Court has personal jurisdiction over all FCRA Class Members and
21 has subject matter jurisdiction to approve the Settlement.

22 2. The Settlement is fair, just, reasonable, and adequate, complies with
23 due process, and is in the best interests of each of the Parties and the FCRA Class
24 Members, and is hereby finally approved in all respects.

25 3. The Parties are hereby directed to perform the terms of the Settlement
26 as described in the Settlement Agreement.

27 4. The FCRA Class is hereby made final. The FCRA Class is defined as:
28 all employees in the United States who completed O’Reilly Auto Enterprises, LLC’s

1 disclosure, authorization, and digital signature forms in its job application and for
2 whom a consumer report was procured from January 31, 2015 to February 17, 2021.

3 5. The Settlement Agreement is binding on Plaintiff and all other FCRA
4 Class Members, except those who timely and properly filed Requests for Exclusion,
5 as well as their heirs, executors, administrators, successors, and assigns.

6 6. There are XX (XX) valid requests for exclusion.

7 7. There are XX (XX) valid objections.

8 8. It is ordered that the proposed class is certified for settlement purposes
9 only. The Court finds that an ascertainable class exists and a well-defined
10 community of interest exists in the questions of law and fact involved because in the
11 context of the Settlement: (i) there are questions of law and fact common to the Class
12 Members which, as to the Settlement and all related matters, predominate over any
13 individual questions; (ii) the Claims of Plaintiff are typical of the Claims of the Class
14 members; and (iii) in negotiating, entering into and implementing the Settlement,
15 Plaintiff and Plaintiff's Attorneys have fairly and adequately represented and
16 protected the interest of the Class Members.

17 9. The Court finds that the Notice and notice methodology implemented
18 pursuant to this Settlement (i) constituted the best practicable notice; (ii) constituted
19 notice that was reasonably calculated, under the circumstances, to apprise FCRA
20 Class Members of the pendency of the Action, their right to object to or exclude
21 themselves from the proposed Settlement and their right to appear at the Final
22 Settlement Hearing; (iii) were reasonable and constituted due, adequate and
23 sufficient notice to all persons entitled to receive notice; and (iv) met all applicable
24 requirements of the California Code of Civil Procedure, the California and United
25 States Constitution (including the Due Process Clause), the California Rules of Court
26 and any other applicable law.

27 10. The Settlement Agreement is not an admission by Defendant, nor is this
28 Final Order a finding of the validity of any allegations or of any wrongdoing by

1 Defendant. Neither this Final Order, the Settlement, nor any document referred to
2 herein, nor any action taken to carry out the Settlement, shall be construed or deemed
3 an admission of liability, culpability, negligence, or wrongdoing on the part of
4 Defendant.

5 11. Pursuant to the Settlement Agreement, upon entry of this Final Order,
6 Plaintiff and each Participating FCRA Class Member shall fully release and
7 discharge the Released Parties of:

8 any and all claims arising out of the allegations made in the operative
9 complaint on file in the Action, or that could have arisen based on the
10 facts alleged in the Action, including, but not limited to, claims arising
11 from the procurement of background checks, reference checks,
12 investigations, and/or consumer reports or investigative consumer
13 reports of any kind by any of the Released Parties, and any other claims
14 for violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681b, et
15 seq., (including 15 U.S.C. § 1681n and 1681o) or related federal, state,
16 and/or local laws, including the California Consumer Reporting
17 Agencies Act, the California Investigative Consumer Reporting
18 Agencies Act, and California Business and Professions Code § 17200,
19 et seq., whether willful or otherwise, for declaratory, injunctive and
20 equitable relief or restitution, statutory damages, actual and
21 compensatory damages, punitive damages, and costs and attorney's
22 fees, from January 31, 2015 to February 17, 2021.

23 12. The Settlement Agreement provides that the Maximum Settlement
24 Amount is nine hundred and fifty thousand dollars and zero cents (\$950,000.00).
25 The Net Settlement Amount shall be determined according to the terms of the
26 Settlement Agreement.

27 13. The Court orders the calculations and the payments to be made and
28 administered in accordance with the terms of the Settlement Agreement.

14. The Court hereby finds that Plaintiff and Class Counsel adequately
represented the Participating FCRA Class Members for purposes of entering into
and implementing the settlement. The Court hereby confirms Kingsley & Kingsley,
APC and Davtyan Law Firm, Inc. as Class Counsel in the Action.

1 15. The Court hereby finds the unopposed application of Class Counsel for
2 a costs and attorneys' fees award provided for under the proposed Settlement to be
3 fair and reasonable in light of all the circumstances and is hereby granted. Of the
4 Maximum Settlement Amount, \$237,500 shall be paid for attorney fees and \$12,500
5 shall be paid for litigation costs.

6 16. The unopposed application of Class Counsel for a Service Award to be
7 paid to Named Plaintiff Martin Martinez Soto is hereby granted. Of the Maximum
8 Settlement Amount, a \$7,500.00 Service Award shall be allocated to Named Plaintiff
9 Martin Martinez Soto.

10 17. The unopposed application of Class Counsel for claims administration
11 fees to be paid to ILYM Group, Inc. is hereby granted. Of the Maximum Settlement
12 Amount, \$197,455.64 shall be paid for settlement administration fees.

13 18. If a FCRA Class Member does not cash his or her settlement check
14 within 160 days, the uncashed funds shall be transmitted to United Way, a non-profit
15 organization which the parties have agreed to as a cy pre designee.

16 19. Defendant shall have no further liability for costs, expenses, interest,
17 attorneys' fees, or for any other charge, expense, or liability, except as provided for
18 in the Settlement Agreement.

19 20. The Court shall retain continuing jurisdiction over this action, the
20 Parties, and the FCRA Class Members, as well as the administration and
21 enforcement of the terms of the Settlement of this action, to enforce the terms of the
22 judgment. Any disputes or controversies arising with respect to the interpretation,
23 consummation, enforcement, or implementation of the Settlement shall be presented
24 by motion to the Court, provided however, that nothing in this part shall restrict the
25 ability of the Parties to exercise their rights to terminate the Settlement pursuant to
26 the terms of the Settlement Agreement.

27 21. This Final Order shall constitute a final judgment.

28 22. The Court hereby dismisses the action (including all individual claims

1 and Released Claims presented thereby) with prejudice, without fees or costs to any
2 party except as provided in the Settlement Agreement.

3 **DATED:** _____
4 _____
5 **DISTRICT COURT JUDGE**

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