

1 **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND STIPULATION**

2 This Class Action and PAGA Settlement Agreement and Stipulation (“Settlement,”
3 “Agreement,” or “Settlement Agreement”) is entered into between Defendant Zero Motorcycles, Inc.
4 (“Defendant” or “Zero Motorcycles”), and Plaintiff Edgar Gutierrez (“Plaintiff”), individually and on
5 behalf of the Class Members, as defined below.

6 **A. DEFINITIONS**

7 1. “Class Counsel” means Lawyers *for* Justice, P.C. and CounselOne, P.C.

8 2. “Class” or “Class Member(s)” means all current and former hourly-paid or non-exempt
9 employees who worked for Defendant within the State of California at any time during the Class
10 Period.

11 3. “Class Notice” means the document to be sent via first class U.S. mail to the Class
12 following preliminary approval, in substantially the form that is attached hereto as “**EXHIBIT 1**,”
13 which will notify Class Members of the Settlement, explain the basic terms of the Settlement, and
14 inform Class Members of their options with regard to the Settlement.

15 4. “Class Period” means the period beginning on December 16, 2015 and ending on June
16 13, 2021.

17 5. “Released Claims” means all claims contained in the operative complaint in the
18 Lawsuit, or that could have been brought in the Lawsuit based on the facts and claims alleged in the
19 operative complaint during the Class Period. The Released Claims include all claims for unpaid wages,
20 including, failure to pay minimum wages, straight time compensation, overtime compensation,
21 double-time compensation, and interest; the incorrect calculation of the regular rate of pay; wages
22 related to alleged illegal time rounding; non-compliant meal periods and rest periods and
23 compensation related thereto; payment for all hours worked, including off-the-clock work; inaccurate
24 wage statements; failure to keep accurate records; unfair business practices related to the Released
25 Claims; penalties, including, but not limited to, recordkeeping penalties, wage statement penalties,
26 minimum-wage penalties, and waiting-time penalties; and attorneys’ fees and costs; all claims related
27 to the Released Claims arising under the Wage Orders of the California Industrial Welfare
28 Commission; the California Private Attorneys General Act of 2004; and California Business and

1 Professions Code section 17200, *et seq.* This release excludes the release of claims not permitted by
2 law.

3 6. "Court" means the Superior Court for the State of California, County of Santa Cruz.

4 7. "Defendant's Counsel" means Freeman Mathis & Gary, LLP

5 8. "Effective Date" will be the date of entry of the Court's order granting final approval
6 of the Settlement if no objections to the Settlement are filed. If objections are filed and overruled, and
7 no appeal is taken, then the Effective Date will be sixty-five (65) calendar days after the date of entry
8 of the Court's order granting final approval of the Settlement. If an appeal is taken from the Court's
9 overruling of objections to the Settlement, then the Effective Date will be twenty (20) calendar days
10 after the appeal is dismissed or after an appellate decision affirming the Court's order granting final
11 approval of the Settlement becomes final.

12 9. "Lawsuit" means the action entitled *Edgar Gutierrez v. Zero Motorcycles, Inc., et al.*
13 filed on December 16, 2019 in the Santa Cruz County Superior Court and assigned case number
14 19CV03725.

15 10. "PAGA Period" means the period beginning on April 26, 2020 and ending on June 13,
16 2021.

17 11. "Parties" means Plaintiff and Defendant, who are individually referred to as "Party."

18 12. "Released Parties" means Defendant Zero Motorcycles, Inc., and each of its past,
19 present and future employees, officers, directors, partners, shareholders, owners, trustees,
20 representatives, agents, attorneys, parents, subsidiaries, related companies/corporations and/or
21 partnerships, divisions, assigns, predecessors, successors, affiliates, and insurers, and all of their
22 respective past, present and future employees, officers, directors, agents, attorneys, shareholders,
23 owners, parents, subsidiaries, and assigns.

24 13. "Response Deadline" means the date forty-five (45) calendar days after the initial
25 mailing of the Class Notice to Class Members and the last date on which Class Members may submit
26 a request for exclusion or object to the Settlement.

27 14. "Settlement Administrator" means Atticus Administration, the neutral third-party
28 administrator mutually agreed upon by the Parties, subject to approval by the Court.

1 15. “Workweek(s)” means a seven-day work week during the Class Period or PAGA
2 Period during which, based on Defendant’s records, Class Members were actively employed by
3 Defendant in an hourly-paid or non-exempt position in California.

4 **B. RECITALS**

5 1. Procedural History. Plaintiff filed his complaint on December 16, 2019 in the Santa
6 Cruz County Superior Court, alleging: (1) failure to pay overtime pursuant to Labor Code §§ 510 and
7 1198; (2) failure to provide meal period premiums in violation of Labor Code §§ 226.7 and 512(a);
8 (3) failure to provide rest period premiums in violation of Labor Code § 226.7; (4) failure to pay
9 minimum wages pursuant to Labor Code §§ 1194, 1197, and 1197.1; (5) failure to pay all wages owed
10 upon termination in violation of Labor Code §§ 201-203; (6) failure to timely pay wages during
11 employment in violation of Labor Code § 204; (7) failure to provide accurate and itemized wage
12 statements in violation of Labor Code § 226(a); (8) failure to keep requisite payroll records in violation
13 of Labor Code § 1174(d); (9) failure to reimburse business expenses in violation of Labor Code §§
14 2800 and 2802; and (10) violations of California Business and Professions Code § 17200, *et seq.*
15 Defendant filed its Answer including a general denial and twenty-six (26) affirmative defenses on
16 February 13, 2020.

17 2. Pre-Filing PAGA Notice. On April 26, 2021, Plaintiff’s counsel provided pre-filing
18 written notice to the Labor Workforce Development Agency (“LWDA”) and by certified mail to
19 Defendant of the above-identified allegations on behalf of Plaintiff and similarly situated aggrieved
20 employees in accord with the Private Attorneys General Act of 2004 (“PAGA”), California Labor
21 Code § 2698, *et seq.*

22 3. Amended Pleading To Add PAGA. The Parties agree that, once the requisite time has
23 lapsed without notice of intent to investigate by the LWDA, Defendant and Plaintiff will jointly
24 stipulate that Plaintiff seeks leave to amend the operative complaint to allege a PAGA claim and
25 Defendant may file an answer to the amended complaint.

26 4. Formal Discovery. The Parties engaged in extensive discovery and investigation prior
27 to participating in mediation and sufficient to allow the Parties to evaluate the case. For example,
28 Plaintiff propounded an initial round of written formal discovery (including requests for documents

1 and multiple sets of special interrogatories) related to wage-and-hour practices, policies, and records,
2 along with seeking putative class member contact information. While some substantive responses were
3 exchanged, some of the discovery was contested and resulted in objections. Thereafter, counsel for the
4 Parties undertook the meet and confer process, but in the interim, however, it was decided that
5 exploring the potential for early resolution would be most pragmatic. As a result, formal discovery
6 was held in abeyance in order to pursue informal discovery for mediation purposes.

7 **5. Informal Discovery and Investigation.** In advance of mediation, the Parties agreed to
8 an informal exchange of data. For example, Class Counsel requested production of key information
9 such as the number of putative class members and aggrieved employees, relevant wage and hour
10 policies and time and payroll records, among other things. Having enlisted the assistance of a
11 consultant, Class Counsel also analyzed a 20% random sampling of time and payroll records of
12 employees (consisting of approximately 7,797 shifts) in order to determine violation rate(s) across the
13 Class, along with other relevant data counts.

14 **6. Mediation.** On February 01, 2021, after having performed extensive investigation and
15 analysis of the legal and factual issues and risks, the Parties participated in a full-day mediation before
16 mediator, Jeffrey A. Ross, Esq. of Employment Mediation, in an attempt to resolve the Lawsuit. The
17 settlement discussions were conducted at arm's-length. While it did not resolve that day, with mediator
18 Ross' assistance and a mediator's proposal, the Parties ultimately came to agreement on all material
19 terms for this Settlement and resolution of the Lawsuit.

20 **7. Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the
21 expense and length of continued proceedings necessary to litigate their disputes through trial and
22 through any possible appeals. Plaintiff has also taken into account the uncertainty and risks of the
23 outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and
24 Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims
25 asserted in the Lawsuit, both generally and in response to Defendant's defenses thereto, and the
26 difficulties in establishing damages for the Class. Plaintiff and Class Counsel have also taken into
27 account the extensive settlement negotiations conducted. Based on the foregoing, Plaintiff and Class
28 Counsel have determined that the Settlement is a fair, adequate and reasonable settlement, and is in

1 the best interests of the Class Members.

2 **8. Defendant's Reasons for Settlement and Non-Admission.** Defendant has concluded
3 that any further defense of this litigation would be protracted and expensive for all Parties. Substantial
4 amounts of time and resources of Defendant have and, unless this Settlement is made, will continue
5 to be devoted to the defense of the claims asserted by Plaintiff. Defendant has also taken into account
6 the risks of further litigation in reaching its decision to enter into this Settlement. Despite maintaining
7 its position that it is not liable for any of the claims set forth by Plaintiff, and that this matter is
8 inappropriate for class treatment, Defendant has, nonetheless, agreed to settle in the manner and upon
9 the terms set forth in this Agreement to put to rest the claims as set forth in the Lawsuit. Defendant
10 continues to deny any liability or wrongdoing of any kind associated with the claims in the Lawsuit
11 and contends that it has complied at all times with all state, local, and federal laws and regulations.
12 This Agreement is a compromise of disputed claims.

13 **9. This Settlement Is Fair, Adequate and Reasonable.** The Parties believe this
14 Settlement is a fair, adequate and reasonable settlement of this Lawsuit and have arrived at this
15 Settlement after extensive arms-length negotiations, taking into account all relevant factors, present
16 and potential. In addition, the mediator may, at his discretion, execute a declaration supporting the
17 Settlement and the reasonableness of this Settlement, and the Court may in its discretion, contact the
18 mediator to discuss the Settlement and whether or not the Settlement is fair and reasonable.

19 **C. TERMS AND CONDITIONS**

20 **NOW, THEREFORE**, in consideration of the Recitals listed above and the promises and
21 warranties set forth below, and intending to be legally bound and acknowledging the sufficiency of
22 the consideration and undertakings set forth herein, the Plaintiff, individually and on behalf of the
23 Class Members and on behalf of the State of California as a private attorney general, on the one hand,
24 and Defendant, on the other hand, agree that the Lawsuit shall be, and is finally and fully compromised
25 and settled on the following terms and conditions, subject to Court approval:

26 **1. Non-Admission of Liability.** The Parties enter into this Agreement to resolve the
27 Lawsuit and to avoid the burden, expense, and risk of continued litigation. In entering into this
28 Agreement, Defendant does not admit, and specifically denies, that it has: violated any federal, state,

1 or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other
2 applicable laws, regulations or legal requirements; breached any contract; violated or breached any
3 duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with
4 respect to its employees. Neither this Agreement, nor any of its terms or provisions, nor any of the
5 negotiations connected with it, shall be construed as an admission or concession by Defendant of any
6 such violation(s) or failure(s) to comply with any applicable law. Pursuant to California Evidence
7 Code Section 1152 and/or Federal Rule of Evidence 408 and/or any other similar law, this Settlement
8 Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret or enforce this
9 Settlement Agreement. In addition, as set forth herein, the Parties intend this Settlement to be
10 contingent upon the Court's preliminary and final approval of this Agreement; and the Parties do not
11 waive, and instead expressly reserve, their respective rights to prosecute and defend the Lawsuit as if
12 this Agreement never existed in the event the Settlement is not fully and finally approved as set forth
13 herein.

14 **2. Release of Claims by Class Members.**

15 a. Upon the Court's final approval of this Settlement, Plaintiff and each Class
16 Member who does not validly request exclusion from the Settlement, shall be deemed to have fully,
17 finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties
18 of and from any and all Released Claims.

19 b. The Parties agree for settlement purposes only that, because the Class Members
20 are so numerous, it is impossible or impracticable to have each Class Member execute this Agreement.
21 Accordingly, the Class Notice will advise all Class Members of the binding nature of the release
22 provided herein and the release shall have the same force and effect as if the Agreement were executed
23 by each Class Member.

24 c. Plaintiff represents, covenants, and warrants that he has not directly or
25 indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
26 person or entity any portion of any liability, claim, demand, action, cause of action, or rights herein
27 released and discharged, except as set forth herein.

28 **3. Full Release by Plaintiff.** In exchange for and in consideration of the individual

1 settlement payment and Enhancement Payment, along with the terms and undertakings herein, the
2 sufficiency and fairness of which are acknowledged, Plaintiff Edgar Gutierrez, individually, releases,
3 acquits, discharges, and covenants not to sue the Released Parties for any claim, whether known or
4 unknown, which he has ever had, or hereafter may claim to have, arising on or before the date he
5 signed this Agreement including without limitation to, any claims relating to or arising out of any
6 aspect of his relationship with Zero Motorcycles, along with a General Release of Released Parties.
7 The release by Plaintiff includes a waiver of his individual rights under Section 1542 of the Civil Code
8 of the State of California, which provides:

9 **A general release does not extend to claims that the creditor or**
10 **releasing party does not know or suspect to exist in his or her favor**
11 **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.

12 Thus, subject to and in accordance with this Agreement, even if Plaintiff may hereafter discover facts
13 in addition to or different from those he now knows or believes to be true, Plaintiff is deemed to have
14 fully, finally, and forever settled and released any and all claims against the Released Parties that were
15 alleged or could have been alleged in the Lawsuit, as well as any other claims, whether known or
16 unknown, suspected or unsuspected, contingent or non-contingent, that now exist, upon any theory of
17 law or equity, including without limitation, conduct which is negligent, intentional, with or without
18 malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence
19 of such different or additional facts (the "Plaintiff's Released Claims").

20 **4. Payments under the Settlement.** In consideration of the mutual covenants and
21 promises set forth herein, Defendant agrees to make a total payment under this Agreement in an
22 amount up to but not to exceed Four Hundred Twenty-Five Thousand Dollars (\$425,000.00) in full
23 and complete settlement of the Lawsuit (the "Gross Settlement Amount"). In no event shall Defendant
24 be required to pay any amount above the Gross Settlement Amount under this Agreement, except that
25 the payment of employer's share of payroll taxes and contributions in connection with the wages
26 portion of the payouts to Class Members will be in addition to the Gross Settlement Amount. The
27 Parties agree that the Gross Settlement Amount will be paid by Defendant on a non-reversionary basis
28 and no portion of the Gross Settlement Amount will revert to Defendant. The Parties agree, subject to

1 Court approval, that the Gross Settlement Amount shall be inclusive of the following:

2 a. Attorneys' Fees and Costs. Plaintiff will apply to the Court for an award of
3 attorneys' fees of no more than Thirty Five Percent (35%) of the Gross Settlement Amount
4 (\$148,750.00) and for an award of reimbursement of actual litigation costs and expenses of up to
5 Twenty Thousand Dollars (\$20,000.00), ("Attorneys' Fees and Costs"). Defendant will not oppose
6 such application.

7 b. Administration Costs. Plaintiff will also apply to the Court for payment to the
8 Settlement Administrator, for the fees and costs of notice and settlement administration not to exceed
9 Twelve Thousand Dollars (\$12,000.00) ("Administration Costs"). Defendant will not oppose such
10 application.

11 c. Enhancement Payment. Plaintiff will apply to the Court for payment in the
12 amount of Seven Thousand Five Hundred Dollars (\$7,500.00) for his services and responsibilities in
13 prosecuting the Lawsuit, and for his role as class representative and private attorney general
14 ("Enhancement Payment"). Defendant will not oppose such application.

15 d. PAGA Payment. The amount of Forty Thousand Dollars (\$40,000.00) is
16 allocated to penalties pursuant to California Labor Code Section 2698, *et seq.* ("PAGA Payment").
17 Pursuant to California Labor Code Section 2699(i), seventy-five percent (75%) of the PAGA Payment,
18 or Thirty Thousand Dollars (\$30,000.00), will be payable to the LWDA, and twenty-five percent
19 (25%), or Ten Thousand Dollars (\$10,000.00), will be payable to all Class Members, on a pro-rata
20 Workweeks basis (*i.e.*, individual recovery depends on each Class Member's ratio of his or her
21 Workweeks relative to the total of Workweeks of all Class Members) worked during the PAGA Period,
22 and irrespective of whether the Class Member requests exclusion.

23 e. All Payments to Class Members. The portion of the Gross Settlement Amount
24 available for distribution to the Class Members shall be calculated by subtracting the amounts awarded
25 for Attorneys' Fees and Costs, Administration Costs, Enhancement Payment, and the PAGA Payment
26 from the Gross Settlement Amount ("Net Settlement Amount"). The Net Settlement Amount will be
27 distributed to Class Members who do not timely request exclusion from the Settlement on a *pro rata*
28 basis, based on Workweeks. The Settlement Administrator will determine each participating Class

1 Member's individual Workweeks in accordance with Paragraph A.15. The sum of all Class Members'
2 individual Workweeks will be the "Total Workweeks." The Net Settlement Amount will be divided
3 by the Total Workweeks to yield the "Workweek Value." Each Class Member's individual settlement
4 payments will be determined by multiplying his or her individual Workweeks by the Workweek Value.
5 Class Members' individual settlement payment is subject to withholding of employee-side payroll
6 taxes owed on any amounts allocated as taxable wages.

7 **5. No Credit Toward Benefit Plans.** Payments made to Plaintiff and the Class under
8 this Agreement shall not be utilized to calculate any additional benefits under any benefit plans to
9 which they may be eligible, including, but not limited to, profit-sharing plans, bonus plans, 401(k)
10 plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan.
11 Rather, it is the Parties' intention that this Agreement will not affect any rights, contributions, or
12 amounts to which Plaintiff and/or any Class Member may be entitled under any benefit plans. The
13 Parties agree that any payments to Class Members, including the Enhancement Payment paid to
14 Plaintiff under the terms of this Agreement do not represent any modification of Class Members' or
15 Plaintiff's previously credited hours of service or other eligibility criteria under any employee pension
16 benefit plan, employee welfare benefit plan, or any other plan or program, sponsored by Defendant.
17 Further, any payments and the Enhancement Payment paid hereunder shall not be considered
18 "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an
19 employee pension benefit plan, employee welfare benefit plan, or any other plan or program sponsored
20 by Defendant.

21 **6. Taxation of Settlement Proceeds.**

22 a. The Parties agree that twenty percent (20%) of each individual settlement
23 payment will be considered taxable wages, subject to normal payroll taxes and withholdings, and will
24 be reported as such to each Class Member on a W-2 Form. The Parties agree that eighty percent (80%)
25 of each individual settlement payment will be considered interest and penalties and will be reported
26 as such to each Class Member on an IRS Form 1099 (if required).

27 b. The Settlement Administrator shall calculate and remit to applicable taxing
28 authorities sufficient amounts for the employee and employer taxes. Any funds returned by taxing

1 authorities due to cancellation of any individual settlement checks will be transmitted in accordance
2 with this Agreement, the same as all other residual funds associated with individual settlement checks.

3 c. The Settlement Administrator will issue appropriate tax forms to each Class
4 Member consistent with the foregoing breakdown.

5 d. Class Counsel will be issued an IRS Form 1099 for Attorneys' Fees and Costs
6 awarded by the Court. Except as provided herein, each of the Parties shall bear his, her, their, or its
7 own attorneys' fees, costs, and expenses incurred in the prosecution, defense, or settlement of the
8 Lawsuit. Plaintiff has confirmed that, other than Class Counsel, he has no other attorney representing
9 him in the Lawsuit and no other attorney has any claims to any attorneys' fees or costs in the Lawsuit
10 or under this Agreement.

11 e. Plaintiff will be issued an IRS Form 1099 for any Enhancement Payment. The
12 Enhancement Payment payable to Plaintiff shall be in addition to the individual settlement payment
13 he is contemplated to receive under the Settlement.

14 f. Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR
15 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO
16 THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY")
17 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND
18 NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES
19 OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
20 SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE
21 CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED
22 STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2)
23 THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS OR ITS OWN,
24 INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN
25 CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT
26 BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR
27 ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
28 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER

1 PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
2 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
3 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
4 ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER
5 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
6 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
7 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
8 AGREEMENT.

9 g. Defendant, Defendant's Counsel, the Settlement Administrator, and Class
10 Counsel make no representation as to the tax treatment or legal effect of the payments called for
11 hereunder, and Plaintiff and the Class Members are not relying on any statement, representation, or
12 calculation by Defendant, Defendant's Counsel, Class Counsel, or by the Settlement Administrator in
13 this regard. Plaintiff and the Class Members understand and agree that they will be solely responsible
14 for the payment of any and all taxes and penalties assessed on their respective payments described
15 herein and will defend, indemnify, and hold Defendant, Defendant's Counsel, Class Counsel and the
16 Settlement Administrator free and harmless from and against any claims resulting from treatment of
17 such payments as non-taxable penalties/damages.

18 **7. Notice Procedure.**

19 a. Within fifteen (15) calendar days of the Court's entry of the order granting
20 preliminary approval, Defendant shall provide the Settlement Administrator a list of all Class
21 Members, including full name, last known mailing address, last known telephone number, Social
22 Security number and start and end dates of employment in an hourly-paid or non-exempt position at
23 any of Defendant's locations in California during the Class Period.

24 b. Each Class Member's total Workweeks will be calculated by the Settlement
25 Administrator, based on the data provided by Defendant. The Class Member information and any
26 other data provided by Defendant to the Settlement Administrator shall be treated as confidential and
27 shall not be used by the Settlement Administrator for any purpose other than as permitted by this
28 Agreement. The Settlement Administrator will keep the list confidential, use it only for the purposes

1 described herein, and ensure that any other communications to Class Members shall not include the
2 Class Members' Social Security Number except for the last four digits.

3 c. The Settlement Administrator shall be responsible for:

4 i. Mailing the Class Notice to the Class Members as directed by the Court;
5 ii. Consulting with counsel for the Parties concerning any relevant issue,
6 including (without limitation) the estimated amounts of individual settlement payments;

7 iii. Receiving and processing Workweek Disputes and rejecting timely or
8 improper Workweek Disputes;

9 iv. Keeping track of Requests for Exclusion, and rejecting timely or
10 improper Requests for Exclusion;

11 v. Keeping track of Objections that it receives;

12 vi. Calculation and distribution of payments in accordance with this
13 Agreement and the Court's orders;

14 vii. Providing weekly status reports to counsel for the Parties, including: (a)
15 the number of Class Notices mailed; (b) the number of Workweek Disputes received; (c) the number
16 of Objections received; and (d) the number of Requests for Exclusion received;

17 viii. No later than twenty-one (21) calendar days before the final approval
18 hearing, preparing and providing to Class Counsel and Defendant's Counsel, for filing with the Court
19 in support of Plaintiff's motion for final approval of the Settlement, a declaration of due diligence
20 setting forth its compliance with its obligations under this Agreement;

21 ix. Notifying Defendant's Counsel, within three (3) business days after the
22 Effective Date, of the wiring instructions to fund the Gross Settlement Amount, which must be paid
23 by Defendant in the amounts and in accordance with the deadlines set forth in in this Agreement;

24 x. Issuing all appropriate and necessary tax forms, as contemplated above,

25 xi. Such other tasks as the Parties mutually agree or the Court orders the
26 Settlement Administrator to perform, including responding to questions from Class Members.

27 d. Within thirty (30) calendar days after entry of the Court's order granting
28 preliminary approval of the Settlement, the Settlement Administrator shall mail the Class Notice to

1 the Class via first class U.S. mail, using the most current mailing address available after a National
2 Change of Address search. The Class Notice shall state an estimate of each Class Member's respective
3 individual settlement payment and the number of Workweeks credited to him or her.

4 e. Any Class Notice returned to the Settlement Administrator as undelivered within
5 thirty (30) calendar days of initial mailing and bearing a forwarding address shall be re-mailed by the
6 Settlement Administrator within three (3) business days following receipt of the returned mail. For
7 any such Class Notice returned to the Settlement Administrator without a forwarding address, the
8 Settlement Administrator shall first conduct a National Change of Address search as required for
9 undeliverable notices, followed by a computer/SSN and "skip trace" search to obtain an updated
10 address, and shall promptly re-mail the Class Notice to any newly-found address or addresses. The
11 Settlement Administrator shall also re-mail by first class U.S. mail any such Class Notice returned by
12 the Post Office with a forwarding address. It shall be conclusively presumed that those Class Members
13 whose re-mailed Class Notice is not returned to the Settlement Administrator as undeliverable within
14 five (5) calendar days after re-mailing, received the Class Notice.

15 f. Class Counsel shall provide the Court with a declaration from the Settlement
16 Administrator confirming that the Class Notice was mailed to all Class Members as required by this
17 Agreement, as well as any additional information Class Counsel deems appropriate to provide to the
18 Court, before the final approval hearing.

19 g. Class Members are not required to submit a claim form to receive an individual
20 settlement payment. The Class Notice will state that Class Members who wish to receive individual
21 settlement payments need not do anything except, they must not submit a valid and timely Request for
22 Exclusion and they must keep the Settlement Administrator apprised of a current mailing address in
23 order to receive an individual settlement check following the Effective Date of the Settlement.

24 **8. Submission of Workweek Disputes.**

25 a. The Class Notice will provide that Class Members who wish to dispute the
26 Workweeks set forth on the Class Notice must timely submit to the Settlement Administrator a fully
27 completed and signed written dispute ("Workweek Dispute"). To be timely, a Workweek Dispute must
28 be mailed to the Settlement Administrator and postmarked on or before the Response Deadline.

1 Untimely Workweek Disputes may be summarily rejected by the Settlement Administrator, in
2 consultation with Class Counsel and Defendant's Counsel.

3 b. A Workweek Dispute must: (1) be signed by the Class Member (2) contain the
4 case name and case number of the Lawsuit; (3) contain the Class Member's full name, telephone
5 number, mailing address, and e-mail address; (4) clearly state that the number of Workweeks attributed
6 to the Class Member in the Class Notice is incorrect and clearly state the number of Workweeks that
7 the Class Member contends is correct; and (5) provide facts and/or documents supporting the number
8 of Workweeks the Class Member contends is correct.

9 c. If there is a dispute, the Settlement Administrator will consult with the Parties to
10 determine whether an adjustment is warranted. The Settlement Administrator shall determine the
11 eligibility for, and the amounts of, any individual settlement payments under the terms of this
12 Agreement. The Settlement Administrator's determination of the eligibility for and amount of any
13 individual settlement payment shall be binding upon the Class Member and the Parties.

14 **9. Pro-Rata Increase of Gross Settlement Amount.**

15 Defendant's best estimate of the Class size as of January 25, 2021 is 113 individuals, and
16 Plaintiff is entering into this Agreement based on that representation. In the event it is determined that
17 the actual number of Class Members exceeds 113 by more than 10%, then the Gross Settlement
18 Amount shall be increased by the percentage amount in excess of 10%. For example, if the actual
19 number of Class Members is determined to be 11% higher than 113, the Gross Settlement Amount
20 shall be increased by 1%. However, the Gross Settlement Amount will not be reduced based on
21 Defendant's estimated Class size.

22 **10. Request For Exclusion Procedure.**

23 a. Class Members will have until the Response Deadline to mail by first class U.S.
24 mail, with proof of date of submission to be the postmark date, a written request to opt out of the
25 Settlement ("Request for Exclusion"). Unless a Class Member submits a timely and valid Request for
26 Exclusion, he/she shall be bound by the terms and conditions of this Agreement, including the release
27 of claims as set forth herein.

1 b. A Request for Exclusion, in order to be deemed valid, must: (1) be signed by
2 the Class Member; (2) contain the case name and case number of the Lawsuit; (3) contain the Class
3 Member's full name, telephone number, and mailing address; and (4) clearly state that the Class
4 Member wants to be excluded from the Settlement.

5 c. Upon receipt of any timely Request for Exclusion, the Settlement Administrator
6 shall review the request to verify the information contained therein and confirm that the request
7 complies with the requirements of this Agreement.

8 d. Any Class Member who fails to submit via first class U.S. mail a timely,
9 complete, and valid Request for Exclusion shall be barred from opting out of this Settlement. The
10 Settlement Administrator shall not review or consider any Request for Exclusion postmarked after the
11 Response Deadline. Under no circumstances shall the Settlement Administrator have the authority to
12 extend the Response Deadline for Class Members to file a Request for Exclusion, except as ordered
13 by the Court or mutually agreed by the Parties.

14 **11. Defendant's Right To Cancel.**

15 a. PAGA Release. As obtaining a PAGA release is a material aspect of this
16 Settlement and the agreed upon Gross Settlement Amount, in the event a PAGA release cannot be
17 successfully included as part of the Settlement for whatever reason, Defendant shall have the right to
18 declare the Settlement null and void.

19 b. Request for Exclusion. If ten percent (10%) or more of the Class Members
20 submit a timely and valid Request for Exclusion, Defendant shall have the sole and absolute discretion
21 to withdraw from this Agreement by providing written notice of such withdrawal to Class Counsel.
22 The Settlement Administrator shall notify Class Counsel and Defendant's Counsel of the total number
23 of valid Requests for Exclusion as soon as practicable, but no later than ten (10) days after the
24 expiration of the Response Deadline. If Defendant elects to withdraw from this Agreement,
25 Defendant's Counsel shall notify Class Counsel no later than ten (10) days after receiving notice of
26 the number of valid Requests for Exclusion from the Settlement Administrator. In the event that
27 Defendant elects to withdraw as set forth in this provision, the withdrawal shall have the same effect
28 as a termination of this Agreement for failure to satisfy a condition of settlement and the Agreement

1 shall become null and void and have no further force or effect. If Defendant exercises its option to
2 terminate this Settlement, it shall pay all Administration Costs incurred up to the date of and as a result
3 of the termination.

4 **12. Objections to Settlement.**

5 a. Any Class Member may object to the Settlement by mailing a written objection
6 to the Settlement Administrator (“Objection”). To be timely, Objections must be mailed to the
7 Settlement Administrator, postmarked on or before the Response Deadline.

8 b. An Objection must: (1) be signed by the Class Member; (2) contain the case
9 name and case number of the Lawsuit; (3) contain the Class Member’s full name, telephone number,
10 and mailing address; (4) clearly state the factual and legal basis for objecting to the Settlement; (5)
11 indicate whether the Class Member is represented by counsel and identify said counsel; and (6)
12 indicate whether the Class Member intends to appear at the final approval hearing and seeks to be
13 heard at the final approval hearing.

14 c. If a Class Member does not submit an Objection in accordance with the terms
15 of this Settlement Agreement, he or she shall conclusively be deemed to have waived his or her right
16 to object to the Settlement, and the Class Member will be barred from asserting any objection. The
17 Settlement Administrator will provide the Parties’ counsel with any Objections received and also
18 attach the Objections as exhibits to its declaration regarding due diligence that will be filed with the
19 Court in advance of the final approval hearing.

20 **13. Settlement Proceeds Distribution Deadlines.**

21 a. Defendant shall fund the Gross Settlement Amount within ten (10) business
22 days after the Effective Date. If the Gross Settlement Amount increases pursuant to Paragraph C.9.,
23 then the amount to be paid by Defendant will proportionally increase.

24 b. No later than fourteen (14) calendar days after Defendant fully funds the Gross
25 Settlement Amount, the Settlement Administrator shall distribute payments in accordance with this
26 Agreement and the Court’s orders, as follows: (i) full payment of the Enhancement Payment to
27 Plaintiff; (ii) full payment of the LWDA’s portion of the PAGA Payment to the LWDA; (iii) full
28 payment of individual settlement payments to participating Class Members; (iv) remittance of all taxes

1 and withholdings to the appropriate taxing authorities; (v) full payment of Attorneys' Fees and Costs
2 to Class Counsel; and (vi) full payment of Administration Costs to the Settlement Administrator.

3 c. Class Members will be issued their individual settlement payments by way of
4 one (1) check. Each check will be valid for a period of one hundred and eighty (180) calendar days
5 from the date of issuance of the check, and after this time period, the check(s) will be cancelled and
6 the funds associated with such cancelled checks will be transmitted to Legal Services for Children in
7 conformity with the requirements of California Code of Civil Procedure section 384. The Parties agree
8 that Code of Civil Procedure section 384 is not applicable to any portion of the Gross Settlement
9 Amount (including but not limited to any portion of the Net Settlement Amount), except for the
10 residual described in this Paragraph.

11 d. The remittance of all Court ordered and approved payments, under this
12 Agreement, to the Settlement Administrator shall constitute the full and complete discharge of the
13 entire obligation of Defendant under this Agreement.

14 e. No person shall have any claim against the Settlement Administrator,
15 Defendant, Class Counsel, Defendant's Counsel, or any other agent designated by Plaintiff or
16 Defendant based upon the distribution of payments made in accordance with this Agreement or further
17 orders of the Court.

18 f. Defendant shall not be obligated to make any payments contemplated by this
19 Agreement unless and until the Court enters the order granting final approval, and after the Effective
20 Date, and no amounts will be owed or payable until all appeals or other collateral attack have lapsed
21 or have been favorably resolved in favor of the Settlement and no further challenge to the Settlement
22 is possible.

23 **14. Binding Effect of Agreement on Class.** Subject to final approval, the Class shall be
24 bound by this Agreement and shall be enjoined from pursuing, or seeking to reopen, Released Claims
25 against the Released Parties.

26 **15. Provisional Approval of Settlement.** After execution of this Agreement, Plaintiff
27 shall file a motion requesting preliminary approval of the Settlement. Defendant shall not oppose the
28 motion so long as the motion and supporting papers are consistent with the terms of this Agreement.

1 By way of the motion, the Court will be requested to enter an order that:

- 2 a. Preliminarily approves this Agreement and finds its terms to be fair, reasonable
3 and adequate;
- 4 b. Conditionally certifies the Class, for purposes of settlement only;
- 5 c. Preliminarily appoints Plaintiff as representative of the Class, for settlement
6 purposes only;
- 7 d. Preliminarily appoints Class Counsel as counsel for the Class, for settlement
8 purposes only;
- 9 e. Approves and appoints the Settlement Administrator to administer the
10 Settlement;
- 11 f. Approves the form and content of the Class Notice and requires that it be sent
12 to Class Members by first class U.S. mail; and,
- 13 g. Schedules the final approval hearing.

14 **16. Non-Interference with Settlement Administration.** The Parties and their counsel
15 agree that they shall not seek to solicit or otherwise encourage Class Members to submit Requests for
16 Exclusion or Objections to the Settlement or to appeal from the order granting final approval.

17 **17. Final Approval of Settlement.** Following final approval of this Settlement, Plaintiff
18 will request, and Defendant will concur in said request, that the Court enter a proposed final approval
19 order drafted by Plaintiff in the form that is consistent with this Agreement and subject to prior review
20 and approval by Defendant. Plaintiff will request that the Court find that this Settlement is fair, just,
21 equitable, reasonable, adequate and in the best interests of the Class, enter judgment in accordance
22 with California Rules of Court Rule 3.769, and require the Parties to carry out the provisions of this
23 Agreement.

24 **18. Voiding of Agreement if Settlement Not Finalized Or for Failure to Satisfy**
25 **Conditions.**

- 26 a. The Court may award less to Plaintiff, Class Counsel, the Settlement
27 Administrator, and/or the LWDA than is provided for herein, without impacting the validity and
28 enforceability of the Agreement.

1 b. If for any reason the Settlement is terminated as permitted under this Agreement
2 or does not otherwise become final:

3 i. The Settlement shall be null and void and the orders and judgment to be
4 entered pursuant to this Agreement shall be vacated; and the Parties will be returned to the status quo
5 prior to entering into this Agreement with respect to the Lawsuit, as if the Parties had never entered
6 into this Agreement.

7 ii. The Agreement and all negotiations, court orders and proceedings
8 relating thereto shall be without prejudice to the rights of any and all Parties hereto and Class Members,
9 who shall be restored to their respective positions existing prior to the execution of this Agreement,
10 and evidence relating to the Agreement and all negotiations shall not be admissible or discoverable in
11 the litigation and/or Lawsuit or otherwise.

12 iii. Defendant will not have waived, and instead expressly reserves, its
13 rights to challenge the continuing propriety of class certification or representative adjudication for any
14 purpose.

15 iv. Plaintiff and Class Counsel will not have waived, and instead expressly
16 reserve, their rights to move for collective and/or class certification and seek representative
17 adjudication.

18 v. To the extent one exists, the Court's order granting preliminary approval
19 of the Settlement shall be vacated in its entirety and neither this Agreement nor any other document
20 in any way relating to any of the foregoing, shall be relied upon, referred to, or used in any way for
21 any purpose in connection with any further proceedings in this or any related action, including class
22 certification proceedings.

23 **19. No Publicity.** The Parties and their counsel will neither initiate nor respond to public
24 relations or media inquiries about the Settlement except as required by the settlement approval process.
25 In addition, the Parties and their counsel agree that they will not engage in any advertising or distribute
26 any marketing materials relating to the settlement of the Lawsuit in any manner that identifies
27 Defendant, including but not limited to any postings on any websites maintained by Class Counsel.
28 However, Defendant retains the right to provide information about the litigation to actual or potential

1 clients or business partners or as otherwise required by law.

2 **20. Notices.** All notices, requests, demands, and other communications required or
3 permitted to be given pursuant to this Agreement shall be in writing, and shall be delivered by first
4 class U.S. mail to the Settlement Administrator, as follows:

5 Atticus Administration
6 1250 Northland Drive, Suite 240
7 Mendota Heights, MN 55120

8 For Plaintiff and the Class:

9 Edwin Aiwazian
10 Arby Aiwazian
11 Lawyers for Justice, PC
12 410 West Arden Avenue, Suite 203
13 Glendale, California 91203

14 Anthony J. Orshansky
15 Jennifer L. Connor
16 CounselOne, PC
17 9301 Wilshire Boulevard Suite 650
18 Beverly Hills, California 90210

19 For Defendant:

20 Julie A. Marquis
21 Nicole M. Clowdsley
22 Freeman Mathis & Gary, LLP
23 1010 B Street, Suite 300
24 San Rafael, California 94901

25 **21. Modification in Writing.** This Agreement may be altered, amended, modified or
26 waived, in whole or in part, only in a writing signed by counsel for the Parties and approved by the
27 Court. This Agreement may not be amended, altered, modified or waived, in whole or in part, orally.

28 **22. Ongoing Cooperation.** Plaintiff and Defendant and each respective counsel shall
execute all documents and perform all acts necessary and proper to effectuate the terms of this
Agreement. The executing of documents must take place prior to the final approval hearing.

23. Binding on Successors. This Agreement shall be binding on and shall inure to the
benefit of the Parties and their respective successors, assigns, executors, administrators, heirs, and
legal representatives.

24. Entire Agreement. This Agreement constitutes the full, complete, and entire

1 understanding, agreement, and arrangement between the Parties with respect to the settlement of the
2 Lawsuit, Released Claims, and Plaintiff's Released Claims. This Agreement supersedes any and all
3 prior oral or written understandings, agreements, and arrangements between the Parties with respect
4 to the settlement of the Lawsuit, Released Claims, and Plaintiff's Released Claims. Except as to those
5 set forth and included expressly in this Agreement, there are no other agreements, covenants, promises,
6 representations, or arrangements between the Parties with respect to the settlement of the Lawsuit,
7 Released Claims, and Plaintiff's Released Claims.

8 **25. Execution in Counterparts.** This Agreement may be signed in one or more
9 counterparts and electronic signatures are acceptable. All executed copies of this Agreement, and
10 photocopies thereof (including facsimile copies of the signature pages), shall have the same force and
11 effect and shall be as legally binding and enforceable as the original.

12 **26. Captions.** The captions and section numbers in this Agreement are inserted for the
13 reader's convenience and in no way define, limit, construe, or describe the scope or intent of the
14 provisions of this Agreement.

15 **27. Governing Law.** This Agreement shall be interpreted, construed, enforced, and
16 administered in accordance with the laws of the State of California, without regard to conflict of law
17 rules.

18 **28. Reservation of Jurisdiction.** Notwithstanding entry and filing of the final approval
19 order, the Court shall retain jurisdiction for purposes of interpreting and enforcing the terms of this
20 Agreement.

21 **29. Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms
22 and conditions of this Agreement. Accordingly, this Agreement shall not be construed more strictly
23 against one Party than another merely by virtue of the fact that it may have been prepared by counsel
24 for one of the Parties, it being recognized that, because of the arms-length negotiations between the
25 Parties, all Parties have contributed to the preparation of this Agreement.

26 **30. Warranties and Representations.** With respect to themselves, each of the Parties to
27 this Agreement and/or their agents or counsel represent, covenant, and warrant that (a) they have full
28 power and authority to enter into and consummate all transactions contemplated by this Agreement

1 and have duly authorized the execution, delivery, and performance of this Agreement and (b) the
2 person executing this Agreement has the full right, power, and authority to enter into this Agreement
3 on behalf of the Party for whom he/she has executed this Agreement, and the full right, power, and
4 authority to execute any and all necessary instruments in connection herewith, and to fully bind such
5 Party to the terms and obligations of this Agreement.

6 **31. Representation by Counsel.** The Parties acknowledge that they have been represented
7 by counsel throughout all negotiations that preceded the execution of this Agreement and that this
8 Agreement has been executed with the consent and advice of counsel. Further, Plaintiff and Class
9 Counsel warrant and represent, to their knowledge, that there are no liens on the Agreement.

10 **32. Authorization by Plaintiff.** Plaintiff authorizes Class Counsel to sign this Agreement
11 and further agrees not to request to be excluded from the Settlement.

12
13 **IT IS SO AGREED:**

14
15 Dated: _____, 2021

Plaintiff Edgar Gutierrez

16
17 Dated: December 15, 2021

Name: CURTIS JACKS
Title: CEO

18
19 On Behalf of Defendant Zero Motorcycles, Inc.

20 **APPROVED AS TO FORM**

21
22 Dated: _____, 2021

Anthony J. Orshansky
Jennifer L. Connor
CounselOne, PC
Attorneys for Plaintiff Edgar Gutierrez

23
24
25
26 Dated: December 17, 2021

Julie A. Marquis
Nicole M. Cloudsley
Freeman Mathis & Gary, LLP
Attorneys for Defendant Zero Motorcycles, Inc.

1 and have duly authorized the execution, delivery, and performance of this Agreement and (b) the
2 person executing this Agreement has the full right, power, and authority to enter into this Agreement
3 on behalf of the Party for whom he/she has executed this Agreement, and the full right, power, and
4 authority to execute any and all necessary instruments in connection herewith, and to fully bind such
5 Party to the terms and obligations of this Agreement.

6 **31. Representation by Counsel.** The Parties acknowledge that they have been represented
7 by counsel throughout all negotiations that preceded the execution of this Agreement and that this
8 Agreement has been executed with the consent and advice of counsel. Further, Plaintiff and Class
9 Counsel warrant and represent, to their knowledge, that there are no liens on the Agreement.

10 **32. Authorization by Plaintiff.** Plaintiff authorizes Class Counsel to sign this Agreement
11 and further agrees not to request to be excluded from the Settlement.

12
13 **IT IS SO AGREED:**

14 Dated: 12 / 06 / 2021, 2021

Edgar Gutierrez

Plaintiff Edgar Gutierrez

15
16
17 Dated: _____, 2021

Name: _____
Title: _____

On Behalf of Defendant Zero Motorcycles, Inc.

18
19
20 **APPROVED AS TO FORM**

21
22 Dated: 12-03, 2021

Anthony J. Orshansky
Anthony J. Orshansky
Jennifer L. Connor
CounselOne, PC
Attorneys for Plaintiff Edgar Gutierrez

23
24
25
26 Dated: _____, 2021

Julie A. Marquis
Nicole M. Cloudsley
Freeman Mathis & Gary, LLP
Attorneys for Defendant Zero Motorcycles, Inc.

Exhibit 1

Edgar Gutierrez v. Zero Motorcycles, Inc.
SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SANTA CRUZ
(CASE NO. 19-CV-03725)

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT (“NOTICE”)

YOU MAY BE ELIGIBLE TO RECEIVE A SETTLEMENT PAYMENT. PLEASE READ THIS NOTICE CAREFULLY.

The Santa Cruz County Superior Court authorized this Notice. This is not an advertisement. This is not a solicitation from a lawyer.

- If you are a current or former hourly-paid or non-exempt employee who worked for Zero Motorcycles, Inc. (“Defendant”) within the State of California at any time from December 16, 2015 through June 13, 2021 (the “Class Period”), you may be able to collect money from a class action settlement.
- This Notice relates to a proposed settlement of class action litigation brought against Defendant by a former employee, Edgar Gutierrez (“Plaintiff”). The lawsuit, Case No. 19-CV-03725, is pending in the Superior Court for the State of California, County of Santa Cruz (the “Lawsuit”).

I. INTRODUCTION

This Notice explains a proposed settlement of the Lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this Notice because Defendant’s records indicate you actively worked for Defendant as a non-exempt employee in the State of California during the Class Period.

The Court has granted preliminary approval of the settlement and the Court ordered this Notice be sent to you because you may be entitled to money under the settlement and because the settlement affects your legal rights.

II. DESCRIPTION OF THE LAWSUIT

Plaintiff’s Claims. On December 16, 2019, Plaintiff initiated this Lawsuit on behalf of himself and a class of similarly-situated individuals against Defendant. On behalf of the putative class, Plaintiff alleged causes of action for: (a) failure to pay all minimum and overtime wages for all hours worked including, but not limited to, those resulting from rounding, miscalculated regular rate, and off-the-clock work (Labor Code §§ 510, 1194, 1197, 1197.1, and 1198); (b) failure to provide timely and compliant duty-free meal periods and pay premiums owed thereon (Labor Code §§ 226.7 and 512); (c) failure to provide timely and compliant duty-free rest breaks and pay premiums owed thereon (Labor Code § 226.7); (d) failure to reimburse all necessary business expenses incurred (Labor Code §§ 2800, 2802); (e) failure to maintain and furnish accurate itemized wage statements (Labor Code §§ 226, 1174(d)); (f) failure to timely pay wages during employment and all final wages owed upon separation (Labor Code §§ 201-203, 204); and (g) engaging in unfair and unlawful business practices (Business & Professions Code § 17200 *et seq.*) Subsequently, and after exhaustion of notice to the Labor Workforce Development Agency (“LWDA”), Plaintiff filed the operative First Amended Complaint adding a cause of action for violation of California’s Private Attorneys General Act of 2004 (Labor Code § 2699) (collectively, “Claims”).

Defendant expressly denies any and all liability and wrongdoing. There has been no finding of wrongdoing by Defendant. Defendant maintains that, at all times, it has complied in good faith with California wage and hour laws and has dealt legally and fairly with Plaintiff and all employees. Defendant further denies that, for any purpose other than settling this Lawsuit, these Claims are appropriate for class or representative treatment. Defendant has entered into this settlement solely with the intention to avoid costly, disruptive, and time-consuming litigation.

The Court has not ruled on the merits of Plaintiff's Claims. By approving the settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. However, to avoid additional expense, inconvenience, and the inherent risks of continued litigation, the parties and their respective counsel have concluded that it is in their respective best interests and the interests of the Class Members to settle the Lawsuit on the terms summarized in this Notice. The parties believe the settlement is a fair, reasonable and adequate way to resolve the disputed Claims.

Under this settlement, the following Class will be certified under California law for settlement purposes only:

“Class” or “Class Members”: All current and former hourly-paid or non-exempt employees who worked for Defendant Zero Motorcycles, Inc. within the State of California at any time from December 16, 2015 through June 13, 2021.

IF YOU STILL WORK FOR DEFENDANT, PARTICIPATION IN THIS SETTLEMENT WILL NEITHER AFFECT, NOR DISRUPT YOUR WORK IN ANY MANNER.

California law strictly prohibits retaliation. Defendant is prohibited by law from taking any adverse action against or otherwise retaliating or discriminating against any Class Member because of the Class Member's participation or decision not to participate in this settlement.

III. TERMS OF THE SETTLEMENT

Defendant has agreed to pay a non-reversionary sum of \$425,000.00 (the “Gross Settlement Amount”) to resolve the Claims in the Lawsuit. The following sums will be paid from the Gross Settlement Amount: (1) reasonable settlement administration costs to Atticus Administration (the “Settlement Administrator”), not to exceed \$12,000.00; (2) Class Counsel's attorney's fees, not to exceed \$148,750.00; (3) Class Counsel's actual litigation costs and expenses, not to exceed \$20,000.00; (4) class representative service award to Plaintiff, not to exceed \$7,500, for his efforts and risks in assisting with the prosecution of the Lawsuit and in exchange for providing a general release; (5) payment of \$30,000 to the California LWDA.

After deducting the amounts above, the balance of the Gross Settlement Amount will form the “Net Settlement Amount” for distribution to the Class Members who do not timely request exclusion from the settlement.

You can view the Settlement Agreement and other Court documents related to this case by visiting www._____.

IV. YOUR INDIVIDUAL SHARE OF THE SETTLEMENT AMOUNT

The individual settlement payment for each Class Member who does not timely request exclusion from the Settlement will be paid from the Net Settlement Amount and will be calculated as follows: The Net Settlement Amount shall be divided by the total compensable workweeks for all Class Members to yield the “Workweek Value.” Each Class Member’s individual settlement payment will be determined by multiplying his or her individual Workweeks by the Workweek Value.

Workweeks Credited to You. The Workweeks you worked as a qualifying Class Member in California for Defendant during the Class Period – which is from December 16, 2015 through June 13, 2021 - will be calculated based on Defendant’s records.

According to Defendant’s records:

From December 16, 2015 through June 13, 2021, you were employed by Defendant as an hourly-paid or non-exempt employee in California for [] Workweeks.

If you feel that you were not credited with the correct number of Workweeks, you may submit evidence to the Settlement Administrator postmarked or confirmed received on or before [**Insert Response Deadline**] with documentation to establish the number of Workweeks you claim to have actually worked during the Class Period. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The parties and Settlement Administrator will promptly evaluate the evidence submitted and discuss in good faith how many Workweeks should be credited. The Settlement Administrator will make the final decision as to how many weeks are credited, and report the outcome to you. If you are unsatisfied with the decision, you may submit an Objection, as discussed below.

Furthermore, **irrespective of whether or not you request exclusion from the settlement**, as a qualifying Class Member you shall also receive your share of the PAGA Payment allocation to all Class Members as part of the individual settlement payment.

Tax Withholdings. Each Class Member’s individual settlement payment will be reduced by any legally mandated tax withholdings for each Class Member. Of the amounts paid to individual Class Members, eighty percent (80%) shall be designated as penalties and interest for which an IRS Form 1099 shall be issued and twenty percent (20%) to wages for which an IRS Form W-2 shall be issued.

V. THE RELEASE OF CLAIMS

If the Court approves the settlement, the Court will enter judgment and the settlement agreement will bind all Class Members who have not requested exclusion from the settlement, and will bar all Class Members from bringing certain claims against Defendant as described below.

The settlement includes a release by Class Members who do not submit a timely request to be excluded of Defendant Zero Motorcycles, Inc., and each of its past, present and future employees, officers, directors, partners, shareholders, owners, trustees, representatives, agents, attorneys, parents, subsidiaries, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, affiliates, and insurers, and all of their respective past, present and future employees, officers, directors, agents, attorneys, shareholders, owners, parents, subsidiaries, and assigns, and each of them, of and from all Class Members’ claims as set forth below:

Class Members' Released Claims: means all claims contained in the operative complaint in the Lawsuit, or that could have been brought in the Lawsuit based on the facts and claims alleged in the operative complaint during the Class Period. This include all claims for unpaid wages, including, failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; the incorrect calculation of the regular rate of pay; wages related to alleged illegal time rounding; non-compliant meal periods and rest periods and compensation related thereto; payment for all hours worked, including off-the-clock work; inaccurate wage statements; failure to keep accurate records; unfair business practices related to the Lawsuit; penalties, including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs; all claims related to the Lawsuit arising under the Wage Orders of the California Industrial Welfare Commission; the California Private Attorneys General Act of 2004; and California Business and Professions Code section 17200, *et seq.* This release excludes the release of claims not permitted by law.

Class Members will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Lawsuit are disputed, and that the individual settlement payments constitute payment of all sums allegedly due to them. Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the individual settlement payments. That section provides in pertinent part as follows:

“An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.”

VI. WHAT ARE YOUR OPTIONS?

A. Do Nothing and Receive Your Portion of the Settlement.

You are automatically included as a Class Member and will receive a settlement payment and do not have to take any further action to receive your settlement payment. It is the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or a settlement payment. The estimated amount of your settlement payment if you do nothing is included on the attached Share Form.

B. Request To Be Excluded from the Class and the Settlement.

If you **do not** wish to take part in the settlement, you may exclude yourself (*i.e.*, opt-out) by sending to the Settlement Administrator a written Request for Exclusion from the Settlement letter, with your name, address, telephone number, and signature. The written request should state:

“I WISH TO BE EXCLUDED FROM THE CLASS AND SETTLEMENT IN THE EDGAR GUTIERREZ v. ZERO MOTORCYCLES, INC. LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT OF THIS LAWSUIT AND WILL NOT BE RELEASING ANY CLAIMS I MIGHT HAVE.”

Send the Request for Exclusion letter directly to the Settlement Administrator at the following address **postmarked by no later than**[Insert Response Deadline]:

Gutierrez v. Zero Motorcycles, Inc., Settlement Administrator
c/o Atticus Administration
P.O. Box 64053
Saint Paul, Minnesota 55164

Any person who submits a timely Request for Exclusion from the settlement shall, upon receipt, no longer be a Class Member, shall be barred from participating in any portion of the settlement, and shall receive no benefits from the settlement. If you want confirmation of receipt of your Request for Exclusion letter, please send it by U.S. certified mail, return receipt requested and/or contact the Settlement Administrator.

C. Object to the Settlement.

You also have the right to object to the terms of the settlement. However, if the Court rejects your objection, you will still be bound by the terms of the settlement. If you wish to object to the proposed settlement, or any portion of it, you must file with the Settlement Administrator a written objection stating: your name, address, and telephone number; dates of work as an hourly or non-exempt employee in California with Defendant; the case name and number; each specific reason in support of your objection; and any legal support for each objection. Objections must be in writing and must be mailed to the Settlement Administrator at: Gutierrez v. Zero Motorcycles, Inc., Settlement Administrator, c/o Atticus Administration, P.O. Box 64053, Saint Paul, Minnesota 55164, **postmarked by no later than [Response Deadline]** for your objection to be considered. **OBJECTIONS THAT DO NOT INCLUDE ALL REQUIRED INFORMATION, OR THAT ARE NOT SUBMITTED TIMELY, MAY NOT BE CONSIDERED BY THE COURT.**

If you object to the settlement, you will remain a member of the Class, and if the Court approves the settlement, you will receive payment and be bound by the terms of the settlement in the same way as Class Members who do not object. Any Class Member who does not object in the manner provided above shall have waived any objection to the settlement, whether by appeal or otherwise.

D. Your Right to Appear at the Final Approval and Fairness Hearing Through an Attorney or In Person.

If you choose to object to the settlement, you may also appear at the Final Approval and Fairness Hearing scheduled for _____, at _____ in Department 5 of the Santa Cruz County Superior Court, located at 701 Ocean Street, Santa Cruz, California 95060. You have the right to appear either in person or through your own attorney at this hearing. Objections not previously filed in writing in a timely manner as described above will not be considered by the Court. Any attorney who intends to represent an individual objecting to the settlement must file a notice of appearance with the Court and serve counsel for all parties on or before [Response Deadline]. All objections or other correspondence must state the name and number of the case, which is *Edgar Gutierrez v. Zero Motorcycles, Inc.*, Case No. 19-CV-03725.

You can also view the final approval order and final judgment and payment schedule at:
www._____.

VII. UPDATE FOR YOUR CHANGE OF ADDRESS?

If you move after receiving this Notice or if it was mis-addressed, you must provide your correct mailing address to the Settlement Administrator as soon as possible. Please send updated address information to the Settlement Administrator at: Gutierrez v. Zero Motorcycles, Inc., Settlement Administrator, c/o Atticus Administration, P.O. Box 64053, Saint Paul, Minnesota 55164. **THIS**

IS IMPORTANT SO THAT FUTURE NOTICES AND/OR THE SETTLEMENT PAYMENT REACH YOU.

VIII. IF THE STIPULATION OF SETTLEMENT AND RELEASE OF CLASS ACTION IS NOT APPROVED

If the settlement is not approved by the Court, or if any of its conditions are not satisfied, the conditional settlement will be voided, no money will be paid, and the case will return to litigation. If that happens, there is no assurance: (1) that the Class will be certified; (2) that any decision at trial would be in favor of Class Members; (3) that a trial decision, if any, would be as favorable to the Class Members as this settlement; or (4) that any favorable trial decision would be upheld if an appeal was filed.

IX. QUESTIONS OR COMMENTS

This Notice summarizes the basic terms of the Lawsuit and proposed settlement. For a more detailed statement of the matters involved in the Lawsuit and proposed settlement, you may refer to the pleadings, Settlement Agreement, and other papers on file with the Santa Cruz County Superior Court.

PLEASE DO NOT CALL OR CONTACT THE COURT FOR MORE INFORMATION ABOUT THIS SETTLEMENT. If you have any questions about the settlement, you may contact the Settlement Administrator at: Gutierrez v. Zero Motorcycles, Inc., Settlement Administrator, c/o Atticus Administration, P.O. Box 64053, Saint Paul, Minnesota 55164 or by e-mail at _____. You may also contact Class Counsel at the address or phone number listed below.

COUNSELONE, P.C.
Anthony J. Orshansky, Esq.
anthony@counselonegroup.com
Jennifer L. Connor, Esq.
jennifer@counselonegroup.com
9301 Wilshire Boulevard, Suite 650
Beverly Hills, California 90210
Telephone: (310) 277-9945
Facsimile: (424) 277-3727

LAWYERS *for* JUSTICE, P.C.
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 9301 Wilshire Boulevard, Suite 650, Beverly Hills, CA 90210..

On January 27, 2022, I caused to be served the following document(s) to the address(es) and by the method of service described below:

DECLARATION OF JENNIFER L. CONNOR IN SUPPORT OF PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

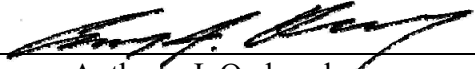
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Attorneys for Defendants

(BY E-SERVICE) I delivered to ONELEGAL, LLC, an e-filing and e-service provider with the Superior Court of California for the County of Santa Cruz, the above-described document(s), to be filed and electronically served through the Superior Court’s e-filing system on the above registered participants on this date.

I declare under penalty of perjury that the above is true and correct.

Executed on January 27, 2022 at Beverly Hills, California.



Anthony J. Orshansky