

*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.zeromotorcyclesettlement.com](http://www.zeromotorcyclesettlement.com).

**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.

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 **July 11, 2022** 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**, qualifying Class Members employed during the PAGA Period, from April 26, 2020 through June 13, 2021, shall receive his or her share of the PAGA Payment allocation 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 July 11, 2022:**

Gutierrez v. Zero Motorcycles, Inc.  
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., c/o Atticus Administration, P.O. Box 64053, Saint Paul, Minnesota 55164, **postmarked by no later than July 11, 2022** 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 July 26, 2022 at 8:30 a.m. 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 July 11, 2022. 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.zeromotorcyclesettlement.com](http://www.zeromotorcyclesettlement.com) after the Final Approval and Fairness Hearing.

## **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., c/o Atticus Administration, P.O. Box 64053, Saint Paul, Minnesota 55164 or via e-mail: [zeromotorcyclesettlement@atticusadmin.com](mailto:zeromotorcyclesettlement@atticusadmin.com). **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., c/o Atticus Administration, P.O. Box 64053, Saint Paul, Minnesota 55164, by e-mail at: [zeromotorcyclesettlement@atticusadmin.com](mailto:zeromotorcyclesettlement@atticusadmin.com), or call toll-free: 1-888-900-8779. You may also contact Class Counsel at the address or phone number listed below.

COUNSELONE, P.C.  
Anthony J. Orshansky, Esq.  
[anthony@counselonegroup.com](mailto:anthony@counselonegroup.com)  
Jennifer L. Connor, Esq.  
[jennifer@counselonegroup.com](mailto: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.  
Edwin Aiwazian, Esq.  
[edwin@lfjpc.com](mailto:edwin@lfjpc.com)  
410 West Arden Avenue, Suite 203  
Glendale, California 91203  
Telephone: (818) 265-1020  
Facsimile: (818) 265-1021