

Anthony J. Orshansky (SBN 199364)
anthony@counselonegroup.com
Jennifer L. Connor (SBN 241480)
jennifer@counselonegroup.com
COUNSELONE, P.C.
9301 Wilshire Boulevard Suite 650
Beverly Hills, California 90210
Tel: (310) 277-9945 / Fax: (424) 277-3727

Edwin Aiwazian (SBN 232943)
edwin@lfjpc.com
LAWYERS for JUSTICE, P.C.
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff

Electronically Filed
Superior Court of California
County of Santa Cruz
July 26, 2022
Alex Calvo, Clerk
By Deputy, Salsedo, Declan

7/26/2022 2:08:10 PM

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ**

EDGAR GUTIERREZ, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

v.

ZERO MOTORCYCLES INC., an unknown
business entity; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 19-CV-03725

Assigned for all purposes to:
Hon. Timothy Volkmann, Dept. 5

**[PROPOSED] FINAL ORDER AND
JUDGMENT GRANTING PLAINTIFF'S
UNOPPOSED MOTION FOR FINAL
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT, ATTORNEYS' FEES AND
COSTS, AND CLASS
REPRESENTATIVE'S ENHANCEMENT
PAYMENT**

Final Approval Hearing

Date: July 26, 2022
Time: 8:30 a.m.
Dept.: 5

[PROPOSED] FINAL ORDER AND JUDGMENT

1 WHEREAS, this matter came on for hearing on July 26, 2022, at 8:30 a.m. before the
2 Honorable Timothy Volkmann in Department 5 of the Santa Cruz County Superior Court, located
3 at 701 Ocean Street, Santa Cruz, California 95060, upon the motion of the Plaintiff Edgar Gutierrez
4 (“Plaintiff”) for final approval of the settlement set forth in the proposed Class Action and PAGA
5 Settlement Agreement and Stipulation (“Settlement” or “Settlement Agreement”) attached as
6 Exhibit “1” to the Declaration of Jennifer L. Connor filed concurrently with the motion, and due
7 and adequate notice was given to the members of the Class, the Court having considered all papers
8 filed and proceedings in this case and good cause appearing therefore, and

9 WHEREAS, all defined terms contained herein have the same meanings as set forth in the
10 Stipulation,

11 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that:

12 1. Capitalized terms not otherwise defined herein shall have the same meaning as set
13 forth in the Settlement.

14 2. The Court has jurisdiction over this matter and venue is proper.

15 3. The Court finds that this Action is properly maintained as a class action, for
16 settlement purposes only, pursuant to California Code of Civil Procedure Section 382 and California
17 Rule of Court 3.769.

18 4. For settlement purposes only, the “Class” and “Class Member(s)” for purposes of
19 this Order shall mean:

20 **Class Members** - All current and former hourly-paid or non-exempt employees who
21 worked for Defendant Zero Motorcycles, Inc. within the State of California at any
time during the Class Period (collectively, the “Class” or “Class Members”).

22 The “Class Period” is defined as the time period between December 16, 2015 and ending on June
23 13, 2021.

24 5. After distribution of the Court-approved Notice of Class Action and PAGA
25 Settlement (“Notice”) and a forty-five (45) day opt-out period, the Settlement Administrator reports
26 that response from the 116 Class Members resulted in zero objections and zero opt-outs/request for
27 exclusions. There was also reported one undeliverable class notice after an additional skip-trace and
28

1 address search was performed. Thus, Class consisting of 116 Class Members shall be bound by this
2 Final Approval Order or any release provided herein.

3 6. CounselOne, P.C. and Lawyers *for* Justice, P.C. are appointed Class Counsel.

4 7. Named Plaintiff Edgar Gutierrez is appointed Class Representative.

5 8. The Court approves Atticus Administration, Inc. as the Settlement Administrator.

6 9. The Court finds that the 6-page Notice of Proposed Class Action Settlement, along
7 with Share Form and Workweek Dispute (collectively, "Notice Packets") which were attested to
8 and authenticated by the Settlement Administrator – [see, internal exhibit "A" to the Declaration of
9 Bryn Bridley Regarding Notice and Settlement Administration] - as mailed to Class Members by
10 the Settlement Administrator was the best notice practicable under the circumstances. Except for
11 one individual whose Notice Packet was undeliverable, the Class Notice provided due process and
12 adequate notice of the proceedings and of the matters set forth therein, including the proposed terms
13 of settlement set forth in the Settlement Agreement, to all persons entitled to such notice, and said
14 Class Notice fully satisfied the requirements of the law and the requirements of due process. Out of
15 the 116 putative Class Members, zero Class Members submitted opt-outs/requests for exclusion
16 (thus, 100% of the Class Members are participating in the Settlement), and no Settlement Class
17 Members objected to the Settlement.

18 10. The Court finds that the Settlement Agreement is fair, reasonable, and adequate to
19 the Class Members, is in the best interest of the Class Members, has been entered into in good faith
20 and should be and hereby is fully and finally approved. The Settlement represents a fair resolution
21 of all claims asserted on behalf of Plaintiff and the Class Members, and fully and finally resolves
22 all such claims.

23 11. The Court hereby approves the class settlement set forth in the Settlement Agreement
24 and finds that the settlement is, in all respects, fair, adequate and reasonable and directs the Parties
25 and Settlement Administrator to effectuate the Settlement according to its terms. The Court finds
26 that the settlement has been reached as result of intensive, serious and non-collusive arm's length
27 negotiations. The Court finds that the Parties have conducted extensive investigation and research
28 and counsel for the Parties are able to reasonably evaluate their respective positions. The Court also

1 finds that settlement at this time will avoid additional substantial costs, as well as avoid the delay
2 and risks that would be presented by the further prosecution of this Action. The Court has noted the
3 significant benefits to the Class Members under the Settlement.

4 12. As of the Effective Date, Plaintiff and each Settlement Class Member, on behalf of
5 himself or herself and on behalf of his or her respective heirs, assigns, beneficiaries and successors,
6 shall be deemed to have, and by operation of the Final Approval Order shall have, fully and
7 irrevocably released and forever discharged the Released Parties from all Settlement Class
8 Members' Released Claims, as more fully set forth in the Settlement Agreement.

9 13. The Court orders that, upon the Effective Date, the Settlement shall be the exclusive
10 remedy for any and all Plaintiff's Released Claims of Plaintiff, and for any and all Class Members'
11 Released Claims of each and every Class Member.

12 14. The Settlement Amount to be paid by Defendant Zero Motorcycles, Inc. is a non-
13 reversionary \$425,000.00 as part of the Gross Settlement Amount. The Gross Settlement Amount
14 ("GSA") will be used for the following: (1) to satisfy the Individual Settlement Payments to Class
15 Members; (2) to pay the Court-approved Class Representative Enhancement Payment; (3) to pay
16 the PAGA Penalties including the Labor and Workforce Development Agency ("LWDA") payment
17 and to Class Members who worked during the PAGA Period; (4) to pay the Settlement
18 Administration Costs; (5) to pay the Court-approved Class Counsel's attorneys' fees; and (6) to pay
19 the Court-approved Class Counsel's actual litigation costs. The Gross Settlement Amount is
20 exclusive of employer federal and state payroll taxes.

21 15. The requested award of attorneys' fees to Class Counsel in the amount of \$148,750
22 is approved as fair, adequate, and reasonable and is to be divided between the two law firms,
23 Lawyers *for* Justice, P.C. and CounselOne, P.C. in accord with their respective 57.5% and 42.5%
24 fee split terms per their written fee agreement.

25 16. The requested award of litigation costs of \$8,847.04 to Class Counsel - \$1,914.39 on
26 behalf of Lawyers *for* Justice, P.C. and \$6,932.65 on behalf of CounselOne, P.C. - for expenses
27 incurred is approved as fair, adequate, and reasonable.

1 17. The Class Representative enhancement payment in the amount of \$7,500.00 to the
2 Class Representative is approved as being fair and reasonable compensation for the Class
3 Representative's efforts in initiating and prosecuting this action, the work involved, and the risks
4 assumed.

5 18. The Court approves the costs of the Settlement Administrator, Atticus
6 Administration, Inc., in the amount of \$10,000 for the notification and settlement administration
7 services it performed in connection with this Action.

8 19. The payment of the California Labor and Workforce Development Agency
9 ("LWDA") for civil penalties in the amount of \$40,000.00, \$30,000.00 of which will be paid to the
10 LWDA pursuant to statute, is approved.

11 20. From the Net Settlement Amount, the Settlement Administrator shall pay all
12 individual settlement amount payments to Class Members, including the employment taxes for
13 wage-related portions thereto. The calculation, timing, and payment of individual settlement checks
14 to Class Members will be made by the Defendant and Settlement Administrator in specific accord
15 with paragraph C.13.a-b, and among other paragraphs, in the Settlement Agreement. (Settlement
16 Agreement ¶ C.13.a-b.)

17 21. The Settlement provides that any uncashed checks remaining 180 days after
18 distribution will be provided to a *cy pres* recipient, pursuant to Code of Civil Procedure section 384.
19 Counsel for the Parties propose and the Court approves the California non-profit, Legal Services for
20 Children. (Settlement Agreement ¶ C.13.c.) Legal Services for Children is a 501(c)(3) not-for-profit
21 with a mission to train volunteers to advocate and represent the interests of abused and neglected
22 children and youth in the juvenile court process, along with schools and other community
23 environments. Finally, pursuant to amendments to section 384 that took effect January 1, 2019,
24 counsel must report to the Court on the ultimate amount of money actually dispersed. This reporting
25 will be made at a status conference to be held on April 03, 2023 at 8:30 a.m. [or,
26 _____] with a declaration regarding the status of the settlement
27 administration submitted five (5) court days prior to the final accounting hearing.

1 22. The Court finds the settlement on the terms set forth in the Settlement Agreement
2 was made in good faith and constitutes a fair, reasonable, and adequate compromise of the released
3 claims against Defendant. Without affecting the finality of this Judgment in any way, this Court
4 hereby retains continuing jurisdiction over the interpretation, implementation, and enforcement of
5 the settlement and all orders and judgments entered in connection therewith.

6 23. Without further order of the Court, the Parties may agree to reasonably necessary
7 extensions of time to carry out any of the provisions of the settlement.

8 Based on the foregoing Order the Court enters the following Judgment:

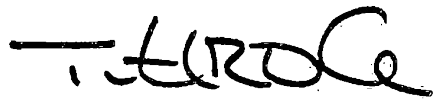
9 **Judgment**

10 24. Judgment is hereby entered pursuant to California Rules of Court, Rule 3.769(h).
11 Without affecting the finality of this Order and further pursuant to Rule 3.769(h), the Court retains
12 exclusive and continuing jurisdiction over the litigation for purposes of supervising, implementing,
13 interpreting, and enforcing this order and the Settlement Agreement, and in order to conduct the
14 final compliance hearing on certification of distribution procedure.

15 25. The Settlement Administrator shall post this Judgment on the Settlement website for
16 a period of at least 30 days. This posting shall provide the requisite notice of the Judgment to the
17 Settlement Class and satisfy the requirements of California Rules of Court, Rule 3.771(b).

18
19 **IT IS SO ORDERED.**

20
21 Dated: 7/26/2022 10:47:44 AM
22 _____

23
24
25
26
27
28


Hon. Timothy Volkmann
Judge of the Superior Court