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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF RIVERSIDE**
18

19 IN RE: RENOVATE AMERICA FINANCE
20 CASES

Case No.
RICJCCP4940

**SECOND SUPPLEMENTAL
DECLARATION OF CAMERON R. AZARI,
ESQ. ON IMPLEMENTATION AND
ADEQUACY OF SETTLEMENT NOTICES
AND NOTICE PLAN**

21
22
23 THIS DOCUMENT RELATES TO:

24 ALL ACTIONS

Date: July 8, 2020
Time: 8:30 a.m.
Dept.: 06
Judge: Hon. Sunshine Sykes

25
26
27 Complaint Filed: November 1, 2016
28 2nd Am. Consol. Compl. Filed: May 1, 2018

1 I, Cameron Azari, declare as follows:

2 1. My name is Cameron R. Azari, Esq. I am over the age of twenty-one. I have personal
3 knowledge of the matters set forth herein, and I believe them to be true and correct.

4 2. I am a nationally recognized expert in the field of legal notice and I have served as a
5 legal notice expert in dozens of federal and state cases involving class action notice plans.

6 3. I previously executed my “Declaration of Cameron R. Azari, Esq. on Settlement
7 Notices and Notice Plan,” on November 13, 2019, in which I detailed Hilsoft’s class action notice
8 experience and attached Hilsoft’s curriculum vitae. I also provided my educational and professional
9 experience relating to class actions and my ability to render opinions on overall adequacy of notice
10 programs. Subsequently, I executed my “Supplemental Declaration of Cameron R. Azari, Esq.” on
11 January 13, 2020, in which I addressed questions from the Court regarding the Notice Plan for the
12 Settlement. Also, I executed my “Declaration of Cameron R. Azari, Esq., on Implementation and
13 Adequacy of Settlement Notice and Notice Plan” (“Implementation Declaration”) on May 26, 2020,
14 in which I detailed the adequacy and successful implementation of the Notice Plan. In addition, I
15 executed my “Supplemental Declaration of Cameron R. Azari, Esq., on Implementation and
16 Adequacy of Settlement Notice and Notice Plan” (“Supplemental Declaration”) on June 12, 2020, in
17 which I provided updated settlement administration stats. The facts in this declaration are based on
18 my personal knowledge, as well as information provided to me by my colleagues in the ordinary
19 course of my business at Hilsoft and Epiq.

20 ***Requests for Exclusion and Objections***

21 7. The deadline to request exclusion from the Settlement or to object to the Settlement
22 was June 8, 2020. As reported in my Supplemental Declaration, as of June 12, 2020, Epiq had
23 received and processed 40 requests for exclusion from the Settlement (duplicate exclusion requests
24 were excluded from these statistics). The 40 redacted Exclusion Forms were included as an
25 attachment to my Supplemental Declaration. As of June 12, 2020, I was aware of 28 objections to
26 the Settlement, which I had reviewed, and none of the objections related to notice or settlement
27


1 administration. The 28 redacted Objection Forms were also included as an attachment to my
2 Supplemental Declaration.

3 8. Since my Supplemental Declaration, Epiq has received and processed additional
4 requests for exclusion from the Settlement (duplicate exclusion requests are excluded from these
5 statistics). As of July 1, 2020, five additional requests for exclusion from the Settlement have been
6 received (Epiq received seven additional Exclusion Forms, however, four were for two of the same
7 contracts). The redacted Exclusion Forms are included as **Attachment 1**.

8 9. Since my Supplemental Declaration, Epiq has received or is aware of additional
9 objections to the Settlement. As of July 1, 2020, I am aware of four additional objections to the
10 Settlement. The redacted objections are included as **Attachment 2**.

11 10. I have reviewed the objections. Objector Marlene Swenson and Lowell Swenson
12 appear together on the Class Member list with the same address as that listed on Ms. Swenson's
13 objection form, and they were named together on the same contract. We sent email notice to Lowell
14 Swenson and it did not bounce back. Objector Amy Zerofski's objection states notice was not
15 received via email or mail. We can confirm that Email Notice was delivered to
16 bergen@seacamp.com on April 9, 2020, and did not bounce back.

17 I declare under penalty of perjury that the foregoing is true and correct. Executed on
18 July 1st, 2020, at Beaverton, Oregon.

19 
20 _____
21 Cameron R. Azari

Attachment 1

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LEGAL SERVICES

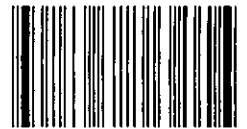
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EXCLUSION FORM

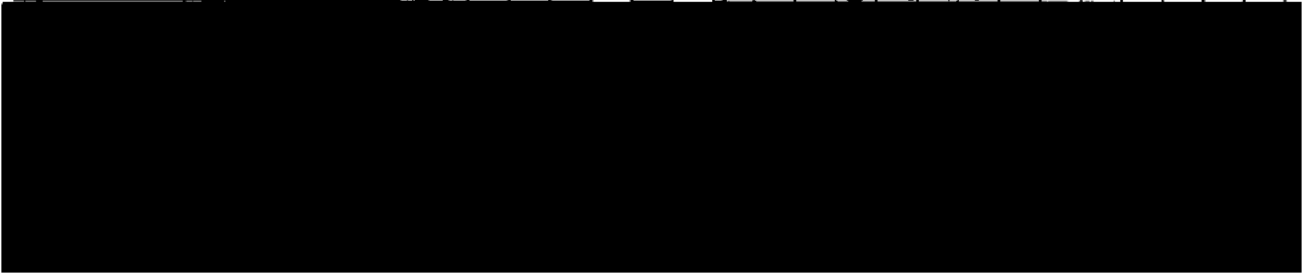
Pursuant to paragraph 3.05 of the Settlement Agreement in this Action, any Class Member who wishes to be excluded from the proposed Settlement must submit a written exclusion to the Settlement Administrator, Epiq Class Action & Mass Tort, using the Exclusion Form below, so that it is postmarked no later than **June 8, 2020**.

REQUEST TO BE EXCLUDED FROM CLASS ACTION SETTLEMENT

Renovate America Finance Cases
Riverside County Superior Court case number RICJCCP4940

To be excluded from the class action settlement, you must complete and mail this form to the Settlement Administrator at the address below, postmarked no later than **June 8, 2020**.

Class Member's First Name: MI: Last Name:
Bricio Delgado



IF YOU SEND IN THIS FORM, YOU WILL NOT RECEIVE A SETTLEMENT PAYMENT; RATHER, IF YOU USE THIS FORM, YOU WILL BE EXCLUDED FROM THE SETTLEMENT, AND WILL NOT BE BOUND BY ITS TERMS AND CONDITIONS.

I received notice of a settlement and I request to be excluded from the class action settlement in the above-entitled case.

Dated: 06 - 08 - 2020
MM DD YYYY

[Redacted Signature Box]
(SIGN HERE)

Mail this form to: Renovate America Settlement Administrator
P.O. Box 4234
Portland, OR 97208-4234

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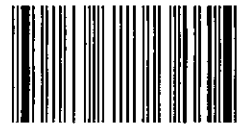
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EXCLUSION FORM

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Riverside County Superior Court case number RICJCCP4940

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Class Member's First Name:

MI:

Last Name:

DEANNA

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IF YOU SEND IN THIS FORM, YOU WILL NOT RECEIVE A SETTLEMENT PAYMENT; RATHER, IF YOU USE THIS FORM, YOU WILL BE EXCLUDED FROM THE SETTLEMENT, AND WILL NOT BE BOUND BY ITS TERMS AND CONDITIONS.

I received notice of a settlement and I request to be excluded from the class action settlement in the above-entitled case.

Dated: 06 - 08 - 2020
MM DD YYYY



Mail this form to: Renovate America Settlement Administrator
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Portland, OR 97208-4234

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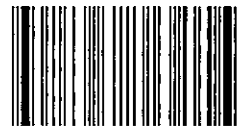
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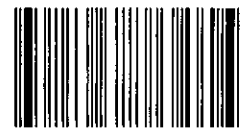


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EXCLUSION FORM

Pursuant to paragraph 3.05 of the Settlement Agreement in this Action, any Class Member who wishes to be excluded from the proposed Settlement must submit a written exclusion to the Settlement Administrator, Epiq Class Action & Mass Tort, using the Exclusion Form below, so that it is postmarked no later than **June 8, 2020**.

REQUEST TO BE EXCLUDED FROM CLASS ACTION SETTLEMENT

Renovate America Finance Cases
Riverside County Superior Court case number RICJCCP4940

To be excluded from the class action settlement, you must complete and mail this form to the Settlement Administrator at the address below, postmarked no later than **June 8, 2020**.

Class Member's First Name:

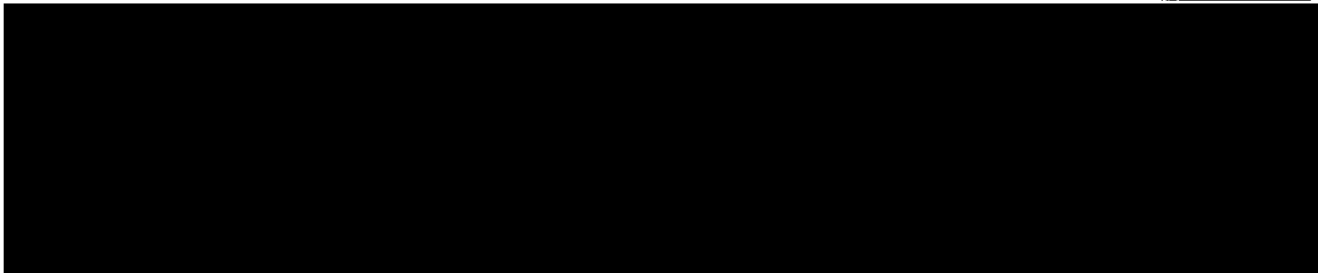
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IF YOU SEND IN THIS FORM, YOU WILL NOT RECEIVE A SETTLEMENT PAYMENT; RATHER, IF YOU USE THIS FORM, YOU WILL BE EXCLUDED FROM THE SETTLEMENT, AND WILL NOT BE BOUND BY ITS TERMS AND CONDITIONS.

I received notice of a settlement and I request to be excluded from the class action settlement in the above-entitled case.

Dated:

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Mail this form to: Renovate America Settlement Administrator
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		B907
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EXCLUSION FORM

Pursuant to paragraph 3.05 of the Settlement Agreement in this Action, any Class Member who wishes to be excluded from the proposed Settlement must submit a written exclusion to the Settlement Administrator, Epiq Class Action & Mass Tort, using the Exclusion Form below, so that it is postmarked no later than **June 8, 2020**.

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Riverside County Superior Court case number RICJCCP4940

To be excluded from the class action settlement, you must complete and mail this form to the Settlement Administrator at the address below, postmarked no later than **June 8, 2020**.

Class Member's First Name:

DIANA

MI:

Last Name:

KELPIN

IF YOU SEND IN THIS FORM, YOU WILL NOT RECEIVE A SETTLEMENT PAYMENT; RATHER, IF YOU USE THIS FORM, YOU WILL BE EXCLUDED FROM THE SETTLEMENT, AND WILL NOT BE BOUND BY ITS TERMS AND CONDITIONS.

I received notice of a settlement and I request to be excluded from the class action settlement in the above-entitled case.

Dated: 06 - 08 - 2020
MM DD YYYY

[Redacted Signature Line]

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Portland, OR 97208-4234

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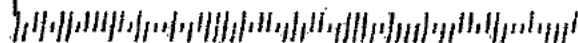
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Renovate America
Settlement Administrator

PO Box 4234

Portland, OR 97208-4234

97208-423434



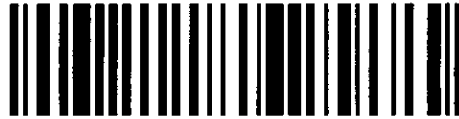
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EXCLUSION FORM

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Riverside County Superior Court case number RICJCCP4940

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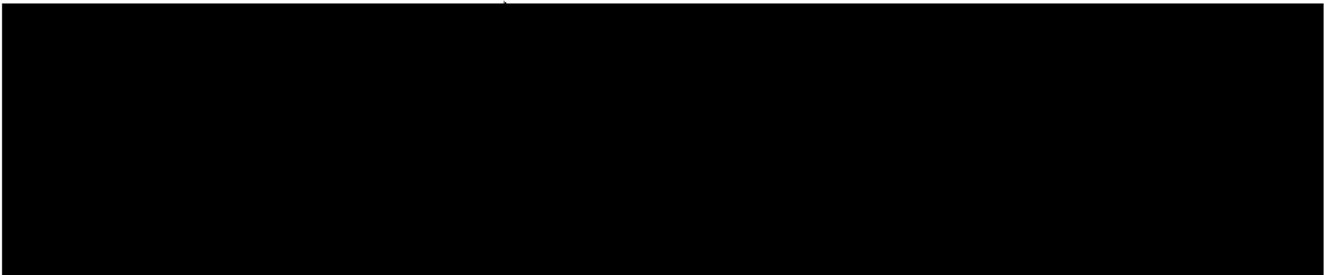
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I received notice of a settlement and I request to be excluded from the class action settlement in the above-entitled case.

Dated: 05 - 31 - 2020
MM DD YYYY

[Redacted signature area] _____

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Portland, OR 97208-4234

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* Domestic only

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SHIP TO:	Renovate Amer. Settlement Administrator P.O. Box 4234 Portland OR 97208-4234	
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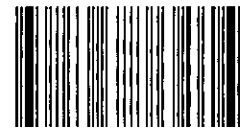
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EXCLUSION FORM

Pursuant to paragraph 3.05 of the Settlement Agreement in this Action, any Class Member who wishes to be excluded from the proposed Settlement must submit a written exclusion to the Settlement Administrator, Epiq Class Action & Mass Tort, using the Exclusion Form below, so that it is postmarked no later than **June 8, 2020**.

REQUEST TO BE EXCLUDED FROM CLASS ACTION SETTLEMENT

Renovate America Finance Cases
Riverside County Superior Court case number RICJCCP4940

To be excluded from the class action settlement, you must complete and mail this form to the Settlement Administrator at the address below, postmarked no later than **June 8, 2020**.

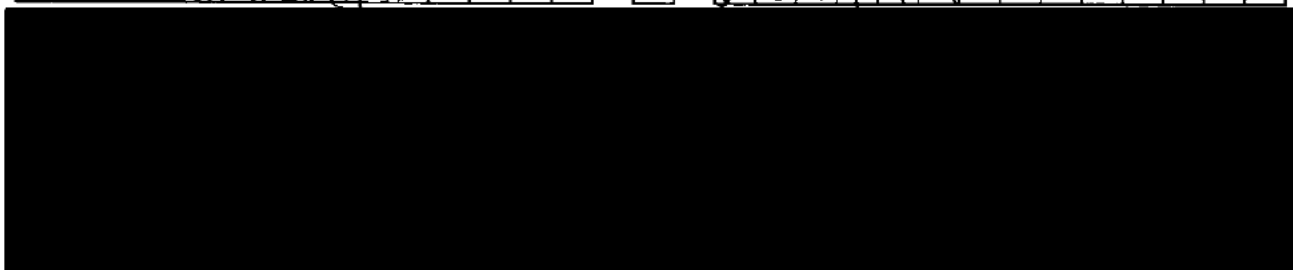
Class Member's First Name:

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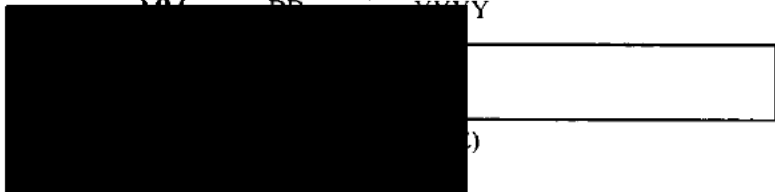


IF YOU SEND IN THIS FORM, YOU WILL NOT RECEIVE A SETTLEMENT PAYMENT; RATHER, IF YOU USE THIS FORM, YOU WILL BE EXCLUDED FROM THE SETTLEMENT, AND WILL NOT BE BOUND BY ITS TERMS AND CONDITIONS.

I received notice of a settlement and I request to be excluded from the class action settlement in the above-entitled case.

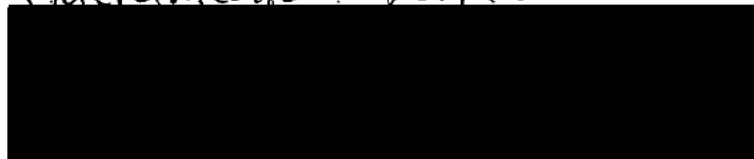
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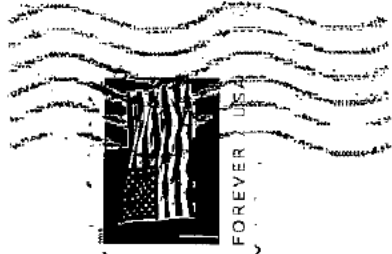
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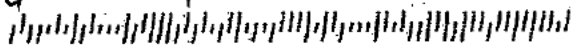


Renovate America Settlement
Administrator.

P.O. Box 4234

Portland OR, 97208-4234

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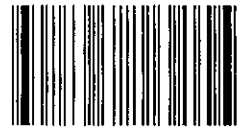
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EXCLUSION FORM

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Pursuant to paragraph 3.05 of the Settlement Agreement in this Action, any Class Member who wishes to be excluded from the proposed Settlement must submit a written exclusion to the Settlement Administrator, Epiq Class Action & Mass Tort, using the Exclusion Form below, so that it is postmarked no later than **June 8, 2020**.

REQUEST TO BE EXCLUDED FROM CLASS ACTION SETTLEMENT

Renovate America Finance Cases
Riverside County Superior Court case number RICJCCP4940

To be excluded from the class action settlement, you must complete and mail this form to the Settlement Administrator at the address below, postmarked no later than **June 8, 2020**.

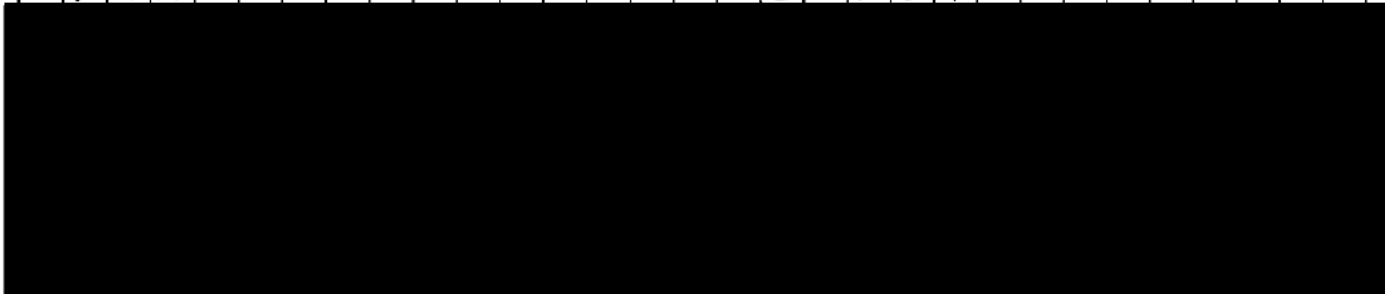
Class Member's First Name:

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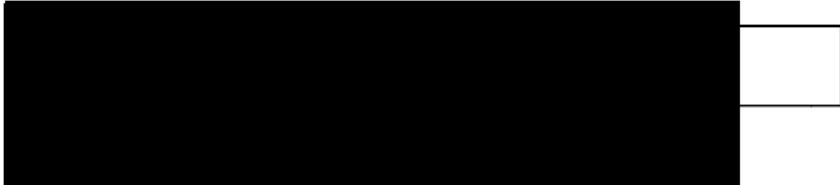
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IF YOU SEND IN THIS FORM, YOU WILL NOT RECEIVE A SETTLEMENT PAYMENT; RATHER, IF YOU USE THIS FORM, YOU WILL BE EXCLUDED FROM THE SETTLEMENT, AND WILL NOT BE BOUND BY ITS TERMS AND CONDITIONS.

I received notice of a settlement and I request to be excluded from the class action settlement in the above-entitled case.

Dated: 06 - 08 - 2020
MM DD YYYY



Mail this form to: Renovate America Settlement Administrator
P.O. Box 4234
Portland, OR 97208-4234

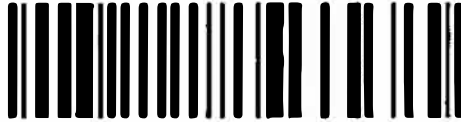
Attachment 2

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LEGAL SERVICES

Renovate America Finance Cases CA4975



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OBJECTION FORM

Pursuant to paragraph 3.08 of the Settlement Agreement in this Action, any Class Member who wishes to object to the proposed Settlement must submit the written objection to the Settlement Administrator, Epiq Class Action & Mass Tort, using the Objection Form below, so that it is postmarked no later than **June 8, 2020**. If the settlement is approved by the Court, despite your objection, you will still receive a payment mailed to you.

OBJECTION TO CLASS ACTION SETTLEMENT

Renovate America Finance Cases
Riverside County Superior Court, case number RICJCCP4940

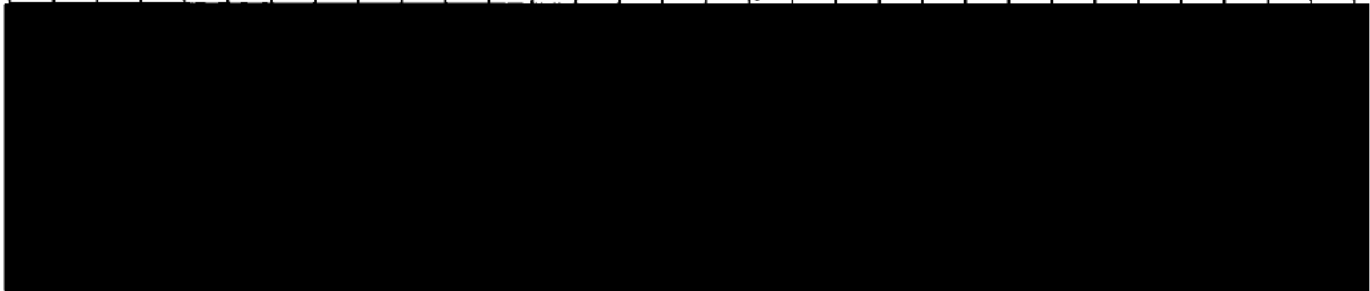
NOTE: DO NOT FILL OUT OR SEND THIS FORM UNLESS YOU OBJECT TO THE TERMS AND/OR CONDITIONS OF THE PROPOSED SETTLEMENT.

Class Member's First Name:

MI:

Last Name:

A N A M M E W E S E S



I received notice of a settlement and I object to the class action settlement in the above-entitled case. The reasons for my objection are as follows (attach additional sheets if more space is required).

I object to settlement because Renovate America has made false claims and did not fully disclose all fees for transactions. Please call me for more information as needed. I have been charged with many undisclosed fees.

Please provide copies of any documents that you wish to submit in support of your position.

Dated: 06 - 08 - 2020
MM DD YYYY

[Redacted Signature Box]

(SIGN HERE)

Mail this form to: Renovate America Settlement Administrator
P.O. Box 4234
Portland, OR 97208-4234



Ana M. Meneses



SAN DIEGO CA 921

11 JUN 2000 PM 3 L

Urgent please!



To Renovate America Settlement Administrator
PO Box 4234
Portland, OR 97208-4234

97208-423434



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LEGAL SERVICES

Renovate America Finance Cases CA4975



Objection #

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Route to: Vault

*Route to: _____

1 EmmaElizabeth A. Gonzalez (SBN 266223)
2 Cassandra N. Martinez (SBN 319095)
3 Kenneth W. Babcock (SBN 100183)
4 PUBLIC LAW CENTER
5 601 Civic Center Drive West
6 Santa Ana, CA 92701
7 Telephone: (714) 541-1010
8 Fax: (714) 541-5157
9 Email: egonzalez@publiclawcenter.org

7 Stacey Tutt (SBN 325277)
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17 Attorneys for Objectors
18 The Public Law Center
19 The University of California at Irvine Consumer Law Clinic
20 East Bay Community Law Center
21 The Legal Aid Society of San Diego

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
22 **FOR THE COUNTY OF RIVERSIFE**

23 IN RE: RENOVATE AMERICA FINANCE
24 CASES,

Case No.: RICJCCP4940

25 **OBJECTION TO PROPOSED CLASS**
26 **ACTION SETTLEMENT**

27 THIS DOCUMENT RELATES TO:

DATE OF HEARING: July 8, 2020
TIME: 8:30 AM
JUDGE: Hon. Sunshine S. Sykes
DEPT.: 6

1
OBJECTION TO CLASS ACTION SETTLEMENT

1 **TO THE HONORABLE COURT, ALL PARTIES AND THEIR ATTORNEYS OF**
2 **RECORD:**

3 The Public Law Center, the University of California at Irvine Consumer Law Clinic, East
4 Bay Community Law Center, and the Legal Aid Society of San Diego hereby object to the proposed
5 class action settlement in this matter.

6 **I. INTRODUCTION**

7 The Public Law Center (“PLC”) is a 501(c)(3) non-profit providing free legal services to
8 low income residents and other nonprofits in Orange County, including to Class Members. The
9 University of California at Irvine Consumer Law Clinic (“UCI”) is a law school clinic that provides
10 free legal services to lower income consumers. Legal Aid Society of San Diego (“LASSD”) is a
11 nonprofit law firm that provides free legal services to lower income San Diego residents, including
12 to Class Members. The East Bay Community Law Center (“EBCLC”) is a nonprofit law firm and
13 clinic of the University of California, Berkeley School of Law that provides free legal services to
14 lower income Alameda County residents, including to Class Members. PLC, UCI, LASSD, and
15 EBCLC object to the proposed settlement because: (1) the settlement is not in the best interest of the
16 class members as it provides at most \$242.61 of relief when Class Members have, on average,
17 \$48,000.00 in damages that, if left unpaid, may lead to the loss of their homes; (2) Defendant’s
18 business practices have almost certainly denied class members any notice of their rights under the
19 class action; and (3) PLC, UCI, LASSD, and EBCLC are in a better position to advocate on behalf
20 of the Class Members due to the issues regarding notice, as well as the language barriers facing
21 many class members who do not speak or read English.

22 **II. DESCRIPTION OF PLC, UCI, LASSD, AND EBCLC**

23 PLC has handled Property-Assessed Clean Energy (“PACE”) cases since approximately
24 2015. UCI has handled PACE cases since 2018. LASSD has handled PACE cases since 2016.
25 EBCLC has handled PACE cases since 2017. PLC, UCI, LASSD, and EBCLC handle cases through
26 demand letters, agency complaints, litigation, and mediation. Attorneys from PLC, UCI, LASSD,
27 and EBCLC have spoken on panels, and at community roundtables, discussing the challenges
28

1 associated with PACE and providing examples of specific fraudulent conduct involved in PACE
2 cases. PLC is able to utilize its private attorney network to expand the provision of services.

3 Additionally, PLC, UCI, LASSD, and EBCLC have been active participants in legislative
4 and regulatory advocacy, co-drafting a 25-page comment on the DBO's proposed regulations in
5 2018 and working with various state agencies and legislators to provide better consumer protections
6 for homeowners who access PACE.

7 In 2019, PLC and EBCLC, along with several other legal services organizations, were
8 awarded a grant from the State Bar of California to assist homeowners throughout California with
9 claims against PACE administrators, including Renovate America. Among other deliverables, this
10 grant requires PLC, EBCLC, and the other grantees to conduct clinics and screen and provide direct
11 representation to hundreds of homeowners each year. Since obtaining the grant, the majority of
12 PACE cases PLC and EBCLC have seen involve Renovate America.

13 While PLC, LASSD, EBCLC, and their volunteer attorneys, and UCI currently represent a
14 number of Class Members, PLC, UCI, LASSD, and EBCLC are very aware that the majority of
15 Class Members do not have representation or even an understanding of this class action.

16 **III. STANDING**

17 PLC, UCI, LASSD, and EBCLC anticipate questions will be raised as to whether they have
18 standing to object to the proposed settlement. As discussed below, PLC, UCI, LASSD, and EBCLC
19 can establish: (1) the proposed settlement causes them concrete injuries-in-fact as PLC, UCI,
20 LASSD, and EBCLC will no longer be able to serve Class Members in need of full relief not
21 offered by this settlement, resulting in significant decreases in grant and other funding; (2) that PLC,
22 UCI, LASSD, and EBCLC, as only a handful of non-profit legal organizations providing PACE
23 assistance in Orange County, Los Angeles County, San Diego County, and Alameda County, have a
24 close relationship to the Class Members such that they and the Class Members hold common
25 interests; and (3) PLC, UCI, LASSD, and EBCLC can be better advocates for the many Class
26 Members who likely did not receive notice of the Class Settlement because it was sent in a language
27 they did not understand to email addresses created by and controlled by the contractors who utilized
28 unlawful practices to burden Class Members with Defendant's PACE programs.

1 A litigant has standing to bring a claim on behalf of someone else's rights when "(1) the
2 litigant suffers a distinct and palpable injury in fact; (2) the litigant has a close relationship to the
3 third party such that the two share a common interest; and (3) there is some hindrance to the third
4 party's ability to protect his or her own interests." (*People ex rel. Becerra v. Superior Court* (2018)
5 29 Cal.App.5th 486, 499-500 (internal citations omitted).)

6 PLC has been handling PACE cases since approximately 2015. As a current grantee of the
7 State Bar of California for a PACE-specific grant program, and as one of only three legal services
8 providers (one of the other being UCI) in the entirety of Orange County that helps low-income
9 individuals with PACE disputes, PLC has standing to object to the proposed settlement in *In re*
10 *Renovate America Finance Cases*. The majority of PACE cases PLC handles involve Defendant.
11 UCI has handled PACE cases since 2018. The majority of PACE cases UCI handles involve
12 Defendant. LASSD has handled PACE cases since 2016. The majority of PACE cases LASSD
13 handles involve Defendant. EBCLC has been handling PACE cases since 2017. The majority of
14 PACE cases EBCLC handles involve Defendant. As a current grantee of the State Bar of California
15 for a PACE-specific grant program, EBCLC has standing to object to the proposed settlement. This
16 settlement would directly impact funding to PLC, UCI, LASSD, and EBCLC as it effectively
17 prohibits all groups from assisting low-income homeowners with PACE disputes, and significantly
18 undermines the purpose of the State Bar of California grant awarded to PLC and ECBLC.

19 PLC and EBCLC have deliverables that will be affected by this settlement, likely resulting
20 in a significant decrease in grant funding. In addition, a settlement in this matter will place
21 additional burdens on PLC, UCI, LASSD, and EBCLC to figure out if any future clients are bound
22 by the settlement and make a decision not to help those clients. Worse, because of the underfunding
23 of legal services organizations, PLC, UCI, LASSD, and EBCLC may have to make the difficult
24 decision to not help any homeowner who may be part of the class in order to conserve resources.

25 More importantly, PLC, UCI, LASSD, and EBCLC have close relationships with Class
26 Members, and the parties share a common interest: obtaining full relief from PACE assessments
27 that, on average, total \$48,000.00, and which directly lead to the threat of homelessness because
28 homeowners simply cannot pay the assessments.

1 Finally, PLC, UCI, LASSD, and EBCLC are in a much better position to protect Class
2 Members' interests due to major hindrances created by Defendant's business practices. Specifically,
3 the proposed settlement (1) required notice to *only* be emailed to Class Members when Defendant's
4 records included an email address for Class Members; and (2) did not require notice to be sent in
5 any language other than English.

6 As demonstrated in several cases, including County of Los Angeles Superior Court cases
7 *Alma Foster v. Renovate America, Inc., A Delaware Corporation, et al.* (case no. 19STCV27965)
8 and *Ramona Garcia, et al. v. Renovate America, Inc., A Delaware Corporation, et al.* (case no. 20
9 STCV18226), Defendant and other PACE administrators encouraged and/or allowed contractors to
10 set up email addresses for Class Members in order to obtain signatures on documents. Usually, the
11 Class Member had never previously used email at all, did not actually receive any emails from
12 PACE, and was never given direct access to the email address created by the contractor. It is
13 impossible to determine how many Class Members failed to receive proper notice of the proposed
14 settlement because the settlement did not require notice to *also* be mailed to *the very property that is*
15 *subject to the PACE assessment* at issue. Thus, PLC, UCI, LASSD, and EBCLC are in a much
16 better position to protect the interests of Class Members who did not receive actual notice of the
17 settlement and their rights.

18 In addition, the majority of PLC's, UCI's, LASSD's, and EBCLC's clients do not speak or
19 read English. Often, PACE claims involve violations of California Civil Code section 1689.7.
20 Contractors communicated with Class Members in a language other than English, yet did not
21 provide translations of contracts or indicate the Class Member spoke a language other than English.
22 Thus, even if non-English speaking Class Members received the email notice, which PLC, UCI,
23 LASSD, and EBCLC do not concede, they likely did not understand their rights. Thus, PLC, UCI,
24 LASSD, and EBCLC seek to be a voice for the Class Members who have no knowledge or lack a
25 complete understanding of this proposed settlement.

26 PLC, UCI, LASSD, and EBCLC have demonstrated standing.

27 IV. BASIS FOR OBJECTIONS

28 **A. The Settlement Notice Was Not Reasonably Calculated to Provide Actual Notice to Class Members.**

1 As discussed above, the settlement notice was not reasonably calculated to provide actual
2 notice to Class Members. It was sent to email addresses that were likely not controlled by Class
3 Members, in a language Class Members likely did not understand.

4 **B. The Court Should Exercise Its Fiduciary Duty to the Class Members and Deny**
5 **Approval Because the Proposed Settlement Is Not Fair, Adequate, or Reasonable, and**
6 **Is Not in the Best Interest of the Class Members.**

7 On average, the total owed on a PACE assessment in Orange County is \$48,000.00. The
8 assessment is collected as part of a homeowner's property taxes either through direct payment to the
9 Orange County Tax Collector or as part of an escrow payment in a mortgage. Homeowners usually
10 see an unexpected \$4,000.00 per year increase in their property taxes as a result of the PACE
11 assessment. Unable to pay, homeowners are met with tax liens or significant increases in their
12 monthly mortgage payments. Unable to pay those, homeowners risk losing their homes.

13 The proposed settlement provides, at most, \$242.61 to Class Members. This does nothing to
14 even put a dent in a \$48,000.00 assessment that, unpaid, will lead to the loss of a Class Member's
15 home. \$242.61 is no remedy for Class Members.

16 The proposed settlement is not fair, adequate, or reasonable, and fails to provide protection
17 to Class Members, and approval should be denied.

18 **C. The Language of the Proposed Settlement's Release Is Overly Broad and May Prohibit**
19 **Class Members from Obtaining Remedies from Contractors and Program**
20 **Administrators.**

21 The token settlement payment is even more lacking when taken together with the broad
22 release language in the settlement. In exchange for, at most, \$242.61, Class Members are required to
23 give up the right to sue not only Defendant, but any of its "its past, present, and future officers,
24 directors, employees, and agents." The Settlement actually defines Defendant even more broadly:

25 "Renovate" means

26 (a) Renovate America, Inc.

27 (b) any agent or entity acting in its name or under its authority (*alleged or*
28 *actual*); and

(c) all present and former parents, predecessors, successors, assigns, subsidiaries, affiliates, divisions, owners, shareholders, officers, directors, attorneys, vendors, accountants, agents, representatives, and employees of each of the persons or entities in subparagraphs (a), and (b) of this paragraph.


1 (See Section 1.22 (emphasis added).) Thus, Class Members are releasing any individuals or entities
2 that held themselves out as acting as Defendant or under Defendant's authority. This would include
3 the contractors, contractors' employees, solicitors, solicitor agents. In short, even if Class Members
4 argued the contractor who performed the PACE "improvements" was the bad actor and attempted to
5 file a lawsuit, the contractor could, and would, claim it was an agent of or acted under Defendant's
6 authority and would thus be immune from suit.

7 The proposed settlement is not fair, adequate, or reasonable, and fails to provide protection
8 to Class Members, and approval should be denied.

9 **V. CONCLUSION**

10 The proposed settlement is not fair, adequate, or reasonable, and fails to provide protection
11 to Class Members. Damages per homeowner average \$48,000.00 and an, at most, \$242.61 payment
12 will do nothing to protect Class Members from losing their homes as they will continue to be unable
13 to pay the costly assessments that will continue to burden them for decades.

14 DATED: June 8, 2020

PUBLIC LAW CENTER

ez

17 DATED: June 8, 2020

UNIVERSITY OF CALIFORNIA AT IRVINE
CONSUMER LAW CLINIC
/s/ Stacey Tutt
Stacey Tutt

20 DATED: June 8, 2020

EAST BAY COMMUNITY LEGAL CENTER
/s/ Kara Acevedo
Kara Acevedo

23 DATED: June 8, 2020

LEGAL AID SOCIETY OF SAN DIEGO
/s/ Alysson Snow
Alysson Snow

PUBLIC LAW CENTER

Elizabeth Gonzalez



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OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

CERTIFIED MAIL®



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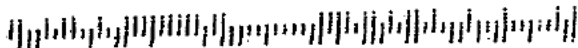
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Renovate America Settlement Administrator
P.O. Box 4234
Portland, OR 97208-4234

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JUN 11 2020

LEGAL SERVICES

Renovate America Finance Cases CA4975



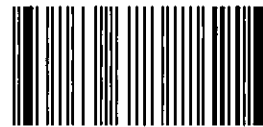
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OBJECTION FORM

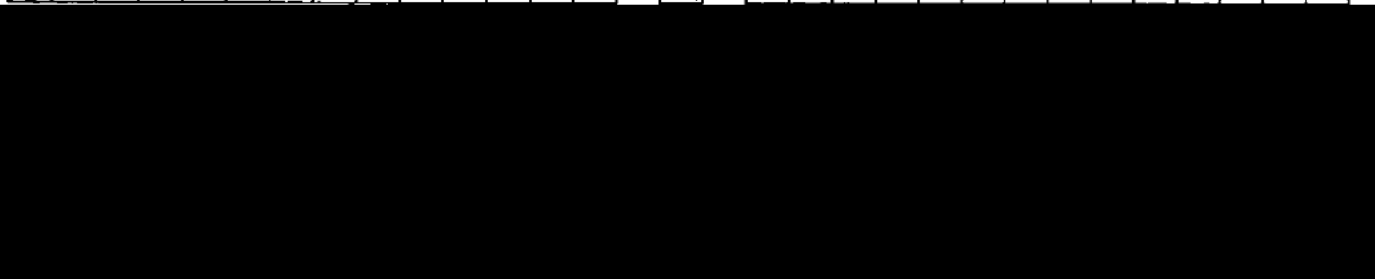
Pursuant to paragraph 3.08 of the Settlement Agreement in this Action, any Class Member who wishes to object to the proposed Settlement must submit the written objection to the Settlement Administrator, Epiq Class Action & Mass Tort, using the Objection Form below, so that it is postmarked no later than **June 8, 2020**. If the settlement is approved by the Court, despite your objection, you will still receive a payment mailed to you.

OBJECTION TO CLASS ACTION SETTLEMENT

Renovate America Finance Cases
Riverside County Superior Court, case number RICJCCP4940

NOTE: DO NOT FILL OUT OR SEND THIS FORM UNLESS YOU OBJECT TO THE TERMS AND/OR CONDITIONS OF THE PROPOSED SETTLEMENT.

Class Member's First Name: MI: Last Name:
M a r l e n e S w e n s o n



I received notice of a settlement and I object to the class action settlement in the above-entitled case. The reasons for my objection are as follows (attach additional sheets if more space is required).

Please see attached letter.

Please provide copies of any documents that you wish to submit in support of your position.

Dated: 06 - 08 - 2020
MM DD YYYY

(SIGN HERE)

Mail this form to: Renovate America Settlement Administrator
P.O. Box 4234
Portland, OR 97208-4234

My name is Marlene Swenson, and I am writing to object to the proposed settlement in Riverside Superior Court Case No. RICJCCP4940 called *In re Renovate America Finance Cases*. I am a 74 year-old retiree, and I believe my now estranged husband applied for a PACE loan from HERO and Renovate America in January of 2015 to make cost saving upgrades to our home in Buena Park, California. Since my husband left me, I have struggled to afford my monthly mortgage payments with the PACE assessments added to my property taxes. I currently rent out most of my home just to stay afloat with my mortgage. The supposed cost savings are nowhere near what I understood them to be, so I am not getting any advantage from the "upgrades."

I believe this settlement is unfair because I did not get any notice of this class action or the settlement, the maximum amount I could recover is nowhere near enough to help me with my mortgage, and it releases everyone I could have a claim against including the contractors who took advantage of me.

When my estranged husband and I were still living together, he got involved with a company called HERO that promised to reduce our monthly bills through a government program called PACE. My husband handled virtually all of the paperwork, and I still have no idea what he negotiated or why I have been charged so much since. As far as I know, all of the paperwork my husband received was either delivered in-person or by regular postal mail.

I do not use e-mail regularly. I do not think anyone ever communicated with my husband by email about the PACE program. I have no idea if anyone emailed me notice of this settlement. Because I am not in contact with my estranged-husband, I have no idea if he received notice of this settlement. I think it is unfair, and unrealistic to expect people like me will actually receive notice of this settlement if it is sent by email only.

At the time, my husband told me the PACE program would make home upgrades that would save us money. Instead, my monthly property and energy expenses have actually increased. My total annual property tax assessment for the PACE program is currently

Because I pay property taxes through my mortgage, this assessment increased my monthly payment by about . Although I think my energy bill decreased slightly, with the

██████████ monthly increase in my mortgage, I do not see any benefit to the “upgrades” supposedly made as part of the PACE program. A one-time payment of, at most, ██████████ will do absolutely nothing to help me deal with these long-term expenses.

I understand that this settlement will release anyone who worked for or with Renovate America, including contractors who used the program to prey on me. I believe my roof may have been damaged by the contractors who installed my PACE upgrades, and it is not fair that this settlement will not allow me to recover for what they did to me and my home. I also believe I may be a victim of elder financial abuse because of how this program was pushed on me, and do not think it is fair that I have to give up those claims because of this settlement.

I do not think this settlement will do anything at all to help me, or senior citizens like me. I do not think that Renovate America and everyone who worked with them should get away with just making a few small payments to their victims. Please deny this settlement agreement because it does nothing to offer fair and reasonable protection for people who were taken advantage of by Renovate America.

CERTIFIED MAIL



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MAILED FROM ZIP CODE 92701

Renovate America Settlement Administrator
P.O. Box 4234
Portland, OR 97208-4234

97208-423434



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5 Tel: 619/296-8400
6 steve@smnlaw.com

7 Attorneys for Victim Amy Bergen Zerofski

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF RIVERSIDE**

11 IN RE: RENOVATE AMERICA FINANCE
12 CASES,

Case No. RICJCCP4940

Assigned for All Purposes to:
Judge Sunshine S. Sykes
Department 6

MOTION FOR LEAVE TO FILE A LATE
OBJECTION; MEMORANDUM OF POINTS
AND AUTHORITIES; DECLARATION OF
AMY BERGEN ZEROFSKI;
DECLARATION OF STEVEN M. NUÑEZ;
[PROPOSED] OBJECTION

Date: July 8, 2020
Dept. 6
Time: 8:30 a.m.

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Case No. RICJCCP4940

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

2 PLEASE TAKE NOTICE that on July 8, 2020, at 8:30 a.m. in Department 6 of the
3 Riverside County Superior Court, HERO victim Amy Bergen Zerfoski will, and hereby does
4 seek leave of court to submit a late Objection to the proposed settlement. This motion is made
5 pursuant to the March 13, 2020, Statement by the Chief Justice of the California Supreme Court
6 on the Emergency Response of California Courts, the March 17, 2020 Order of the Judicial
7 Council of the State of California regarding the Riverside County Superior Courts, the March
8 20, 2020 Order of the Judicial Council of the State of California regarding the Riverside County
9 Superior Courts, the April 1, 2020 Order of the Judicial Council of the State of California
10 regarding the Riverside County Superior Courts, the April 24, 2020 Order of the Judicial Council
11 of the State of California regarding the Riverside County Superior Courts, the May 26, 2020
12 Order of the Judicial Council of the State of California regarding the Riverside County Superior
13 Courts, the June 23, 2020 Order of the Judicial Council of the State of California regarding the
14 Riverside County Superior Courts, and the April 22, 2020 General Order re Civil Division
15 Reorganization. This motion is made on the grounds that victim Amy Bergen Zerfoski is the
16 very type of litigant for whom the entire justice system was upended and placed on hold.

17 This motion is based on this notice, the attached memorandum of points and authorities,
18 the accompanying declarations of Steven M. Nuñez and Amy Bergen Zerfoski, the attached
19 Objection Form, all pleadings and files maintained by the Court on this action, as well as any
20 oral argument or evidence that may be presented at the hearing on this motion.

21
22 Dated: June 29, 2020

SMN LAW GROUP APC
STEVEN M. NUÑEZ (185421)

23
24 By: 
25 _____
Steven M. Nuñez

26
27 *Attorneys for Victim Amy Bergen Zerfoski*

28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Introduction**

3 Defendants and its related entities conducted a large fraud concerning the tax
4 deductibility aspects of the HERO financing. Defendants actively stated to contractors and
5 others that its product was superior to traditional financing because the entirety of the
6 payments were tax deductible. Those statements were made in power point presentations
7 made to contractors and other financing professionals, were intended to be repeated to
8 homeowners, and were repeated to homeowners, such as Ms. Zerofski, both orally and through
9 marketing materials prepared by Defendants and presented to homeowners through tablets,
10 such as iPads. Ms. Zerofski represents a subgroup of victims who relied on those
11 representations in choosing HERO over traditional financing and who refinanced once the
12 truth was learned, incurring not only the financing costs and abhorrent interest rates, but also
13 prepayment penalties in contradiction to the specific statements that there were no prepayment
14 penalties. The proposed payment of approximately \$20 is inadequate. Regardless of the
15 financial condition of the defendant, as between the victims, who have suffered as a result of
16 COVID 19, and the perpetrator who may also be in a precarious financial position, it is the
17 perpetrator who should suffer the greater consequences and the victim who should be made
18 somewhat whole.
19
20

21 Ms. Zerofski requests leave to file a late objection because as a proprietor of a youth
22 camp she has been directly and monumentally affected by COVID 19 and the ensuing
23 economic devastation. Ms. Zerofski is, in fact, the very person for whom the various Judicial
24 Council emergency orders relating to COVID 19 were promulgated. It would be extremely
25 ironic if she were not allowed to rely on the Judicial Council emergency orders to file the late
26 objection to this Judicial Council Coordinated Proceeding proposed settlement.
27
28

1 **II. FACTS**

2 Ms. Zerofski is a homeowner and resident of the University City community of San
3 Diego. She is also the proprietor of a small youth camp business. (Zerofsky Decl. ¶ 2.) She
4 received financing for solar equipment from the HERO program between January 1, 2012 and
5 January 7, 2016. (Zerofski Decl. ¶ 2.) She did not receive a Notice of Hero Financing Class
6 Action Settlement either through email or regular mail. (Zerofski Decl., ¶ 4.)

7
8 As the proprietor of a small youth camp business, she has been substantially affected
9 by COVID 19 and the ensuing shutdown, necessary as it was. She spent the months of March,
10 April, May and June dealing with the cascading cancellations of every aspect of her business,
11 the need to provide payments to employees so that they might survive, and the establishment
12 of a small portion of the camp, with all appropriate safety precautions, so that she might retain
13 her valued employees and potentially have a business remaining once a vaccine is ready or
14 some other miracle allows us all to return to the majority of our former lives. (Zerofski Decl. ¶
15 5.) She first learned of the impending settlement on June 26, 2020, and worked to request
16 leave to file a late objection as well as working to craft the objection to this proposed
17 settlement. (Zerofski Decl. ¶ 6.)

18
19 She was presented with the offer to utilize HERO financing by her solar contractor. He
20 presented the idea that HERO financing was superior to traditional financing because, as a
21 government program, the entire monthly or yearly payment, principal and interest, was
22 deductible on their taxes. (Zerofski Decl. ¶ 7.) In addition to telling her about this beneficial
23 tax aspect of HERO financing, her contractor presented her with a tablet during the contracting
24 phase which explicitly demonstrated that although HERO financing came with interest rates
25 that were higher than the rates she could obtain through traditional financing and came with
26 financing costs greater than those of traditional financing, the effective rate of the financing
27 was less than traditional financing because of the ability to deduct the entirety of the
28

1 payments. In addition, the program specifically stated that there were no prepayment penalties
2 with HERO financing. (Zerofski Decl., ¶ 8.)

3 She decided to utilize HERO financing for her solar project specifically because of the
4 advertised tax advantages. (Zerofski Decl. ¶ 9.) At the time of filing her first taxes after
5 installing solar she learned that HERO financing was no more deductible than traditional
6 financing. Without the added tax advantage, HERO was simply a very expensive form of
7 financing. (Zerofski Decl. ¶ 10.) Immediately after learning the truth about HERO financing
8 she sought to refinance utilizing traditional financing. When going through this process she
9 was confronted by the reality that there were prepayment penalties with the HERO
10 financing. Ultimately, she paid those penalties in order to be out from the onerous financing
11 terms. (Zerofski Decl. ¶ 11.)
12

13 **III. Legal Argument**

14 These plaintiffs and their attorneys failed in their attempt to bring Truth in Lending
15 causes of action against these defendants because of deference shown to the regulating
16 authorities stating that TILA requirements did not apply because the program was deemed to
17 be a tax assessment and not a loan. However, the exact opposite exists with respect to Ms.
18 Zerofski's claim of fraud regarding the tax benefits of the HERO program. Because of the
19 marketing complained of by Ms. Zerofski, on June 16, 2016, the IRS specifically issued a
20 guidance stating that HERO program payments were no more deductible than regular loans.
21 (<https://www.irs.gov/taxtopics/tc503>).
22

23 The HERO program's affirmative statements regarding the deductibility of its program
24 payments could be viewed as negligent or intentional misrepresentation. Evidence of these
25 fraudulent statements are present in the advertising of numerous contractors touting the HERO
26 program, power point presentations made by HERO employees to contractors and other
27
28

1 financing professionals, and the marketing program given by the HERO program to
2 contractors to be presented to homeowners through tablets at the time of signing the contracts
3 for financing.

4 These negligent or intentional misrepresentations allow for causes of action for fraud,
5 including punitive damages in addition to the 17200 claims.

6
7 This court preliminarily approved this proposed settlement in February, before the
8 largest impact of the COVID 19 pandemic. For this reason, the objection procedures require
9 potential objectors to lick a stamp and mail the objections to the Claims Administer rather than
10 simply replying to the email that was designed to provide Notice. The subsequent emergency
11 orders by both the Judicial Council as well as the Riverside Superior Court were intended to
12 extend the deadlines, such as the objection deadline for this proposed settlement. The April
13 22nd Order by presiding Judge Vineyard extending deadlines and hearings specifically states
14 that it applies to complex cases as well as normal civil cases. It is unclear whether these
15 parties have taken into consideration those orders in acting on behalf of the proposed class and
16 ultimately having the hearing moved to July 8, 2020. Regardless, Ms. Zerofsky is the very
17 type of victim for whose benefit those emergency orders were promulgated. Therefore, she
18 requests that she be allowed to submit, and that this court consider her objection to this
19 proposed settlement
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IV. Conclusion

Ms. Zerofski is the very type of victim for whom the Emergency Orders have been promulgated. She, therefore, requests that she be allowed to submit her late objection. She also requests that this court consider the evidence that she has of the fraud committed by defendants on her and her specific subclass of victims regarding the tax benefits of the HERO program.

Dated: June 29, 2020

SMN LAW GROUP APC
STEVEN M. NUÑEZ (185421)

By: 

Steven M. Nuñez

Attorneys for Victim Amy Bergen Zerofski

1 **DECLARATION OF AMY BERGEN ZEROFSKI**

2 1. I am an adult over the age of 18 and am a victim of the HERO financing program. I
3 have personal, first-hand knowledge of the following and if called as a witness would
4 competently testify to the following.

5 2. I am a resident of San Diego and a homeowner within the University City area. I
6 am also the proprietor of a small youth camp business known as SEACAMP.
7

8 3. I received financing for solar equipment from the HERO program between January
9 1, 2012 and January 7, 2016.

10 4. I do not recall having received a Notice of Hero Financing Class Action Settlement
11 either through email or regular mail.

12 5. As the proprietor of a small youth camp business, I have been substantially affected
13 by COVID 19 and the ensuing shutdown, necessary as it was. I spent the months of March,
14 April, May and June dealing with the cascading cancellations of every aspect of the business,
15 the need to provide payments to employees so that they might survive, and the establishment
16 of a small portion of the camp, with all appropriate safety precautions, so that I might retain
17 my valued employees and potentially have a business remaining once a vaccine is ready or
18 some other miracle allows us to return to the majority of our former lives.
19

20 6. I first learned of the impending settlement on June 26, 2020, and worked to request
21 leave to file a late objection as well as working to craft the objection to this proposed
22 settlement.
23

24 7. I was presented with the offer to utilize HERO financing by my solar
25 contractor. He presented the idea that HERO financing was superior to traditional financing
26 because, as a government program, the entire monthly or yearly payment, principal and
27 interest, was deductible on our taxes.
28

1 8. In addition to telling us about this beneficial tax aspect of HERO financing, my
2 contractor presented me with a tablet during the contracting phase which explicitly
3 demonstrated that although HERO financing came with interest rates that were greater than the
4 rates I could obtain through traditional financing and came with financing costs greater than
5 those of traditional financing, the effective rate of the financing was less than traditional
6 financing because of the ability to deduct the entirety of the payments. In addition, the
7 program specifically stated that there were no prepayment penalties with HERO financing.
8

9 9. We decided to utilize HERO financing for our solar project specifically because of
10 the advertised tax advantages.

11 10. At the time of filing our first taxes after installing solar we learned that HERO
12 financing was no more deductible than traditional financing. Without the added tax advantage,
13 HERO was simply a very expensive form of financing.
14

15 11. Immediately after learning the truth about HERO financing we sought to refinance
16 utilizing traditional financing. When going through this process we were confronted by the
17 reality that there were prepayment penalties with the HERO financing. Ultimately, we paid
18 those penalties in order to be out from the onerous financing terms.

19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct. Dated this 29th of June, 2020, in San Diego, California.
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23 _____
24 Amy Bergen Zerofski
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DECLARATION OF STEVEN M. NUÑEZ

1. I am an attorney at law licensed to practice before all of the courts of the State of California and am the member of SMN Law Group APC. I am the attorney for Amy Bergen Zerofski.

2. I have prepared this motion as well as an [proposed] Objection to the preliminary settlement sought. A Copy of the Objection is attached hereto as Exhibit A so that it can be lodged with the court.

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3. On or about June 16, 2016, the IRS specifically issued a guidance stating that HERO program payments were no more deductible than regular loans. The guidance specifically states: "There are popular loan programs that finance energy saving improvements through government-approved programs. You sign up for a home energy system loan and use the proceeds to make energy improvements to your home. In some programs, the loan is secured by a lien on your home and appears as a special assessment or special tax on your real estate property tax bill over the period of the loan. The payments on these loans may appear to be deductible real estate taxes; however, they're not deductible real estate taxes. Assessments or taxes associated with a specific improvement benefitting one home aren't deductible. However, the interest portion of your payment may be deductible as home mortgage interest. The link to Topic No. 503 Deductible Taxes, the IRS guidance, can be found at the following internet link (<https://www.irs.gov/taxtopics/tc503>).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Dated this 29th of June, 2020, in San Diego, California.



Steven M. Nuñez

EXHIBIT A

1 **DECLARATION OF SERVICE**

2 *IN RE: RENOVATE AMERICA FINANCE CASES*
3 Riverside Superior Court Case No. RICJCCP4940

4 I, the undersigned, declare:

5 1. That declarant is and was, at all times herein mentioned, a citizen of the United
6 States and a resident of the State of California, over the age of 18 years, and not a party to or
7 interested party in the within action; that declarant’s business address is 401 West A St., Suite
8 1100, San Diego, California 92101. My electronic service address is steve@smnlaw.com

9 2. That on June 29, 2020, declarant served the **MOTION FOR LEAVE TO FILE A**
10 **LATE OBJECTION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF AMY**
11 **BERGEN ZEROFSKI; DECLARATION OF STEVEN M. NUÑEZ** by electronic service. I served the
12 documents as follows:

13 Mark C. Rifkin rifkin@whafh.com *Class Counsel*
14 Randall S. Newman newman@whafh.com
15 Betsy C. Manifold manifold@whafh.com
16 Rachele R. Byrd Byrd@whafh.com
17 WOLF HALDENSTEIN ADLER FREEMAN
18 & HERZ LLP

19 Janine L. Pollack *Class Counsel*
20 jpollack@calcaterrapollack.com

21 Lee Shaolov lshalov@mclaughlinstern.com
22 McLaughlin & Stern LLP

23 C. Mario Jaramillo info@accesslg.com *Class Counsel*
24 C. MARIO JARAMILLO, PLC
25 dba ACCESS LAWYERS GROUP

26 Matthew S. Sheldon msheldon@goodwinlaw.com *Defense Counsel*
27 Todd A. Boock Todd@bnsklaw.com
28 GOODWIN PROCTOR LLP

No email was returned as undeliverable.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 29, 2020, at San Diego, California.

Steven 