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SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

RENOVATE AMERICA FINANCE CASES)

Case No. RICJCCP4940

SECOND

AMENDED CLASS ACTION
COMPLAINT

THIS DOCUMENT RELATES TO:)

George Loya v. Western Riverside Council of
Governments
No. RIC1614434)

Judge: Hon. Craig G. Riemer
Dept.: 05

1 WRCOG. This case was centralized in Riverside County by the Judicial Council of California for
2 coordination pursuant to California Code of Civil Procedure § 404.

3 **PARTIES**

4 9. Plaintiffs George Loya and Judith Loya (the “Loyas”) are individuals residing at
5 22470 Climbing Rose Dr., Moreno Valley, California 92557 (the “Loya Property”). The Loyas
6 own the Loya Property as their primary residence.

7 10. Plaintiff Beth Simpson (“Simpson”) is an individual residing at 554 Meadowbrook
8 Dr., San Diego, California 92114 (the “Simpson Property”). Simpson owns the Simpson Property
9 as her primary residence.

10 11. Defendant Renovate America is a Delaware corporation with a principal place of
11 business located at 15073 Avenue of Science, San Diego, California 92128.

12 12. Non-party WRCOG is a joint exercise of powers authority, the members of which
13 include, in part, numerous cities in Riverside County and Riverside County itself. WRCOG’s
14 activities include regional review of environmentally significant projects, air quality planning,
15 regional housing needs assessment, hazardous and solid waste management, demographic
16 projections, growth management analysis and development of subregional strategies, review of
17 local general plan amendments, area wide water quality planning, transportation planning,
18 modeling and programming, and general planning support and technical assistance as directed by
19 member agencies.

20 **FACTUAL ALLEGATIONS**

21 **California’s PACE Program**

22 13. Chapter 29 of Part 3 of Division 7 of the Streets and Highways Code of the State of
23 California (“Chapter 29”) authorizes a legislative body, such as WRCOG, to designate an area
24 within which authorized public officials and property owners may enter into voluntary contractual
25 assessments to finance the installation of renewable, energy efficient improvements or water
26 conservation improvements that are permanently fixed to real property.

27 14. The financing for Chapter 29 home improvements is commonly known as Property
28 Assessed Clean Energy or “PACE” financing, and the home improvement loan is commonly

1 known as a "PACE Loan."

2 15. Unlike a typical home improvement loan, a PACE Loan is created by a homeowner
3 signing a voluntary assessment contract with a public entity that allows the public entity to collect
4 payments on the PACE Loan through the county tax collector.

5 16. The essential features of a PACE Loan are that: (1) the debt for the property
6 improvements attaches to the homeowner's property and is secured by a voluntary contractual
7 assessment recorded as a lien against the property; (2) the lien created by the PACE Loan has
8 priority over other debts on the property, including a homeowner's first mortgage; and (3) the
9 repayment of the PACE Loan is collected by the county tax collector.

10 17. The PACE Loan program has had a controversial history with mortgage industry
11 participants, such as the Federal National Mortgage Association ("Fannie Mae") and Federal
12 Home Loan Mortgage Corporation ("Freddie Mac"), that are concerned about local governments
13 lending money to homeowners who cannot obtain conventional financing for ordinary home
14 equity loans, especially when those loans are disguised as "tax assessments" with priority over
15 existing secured mortgage(s).

16 18. On July 6, 2010, the Federal Housing Finance Agency ("FHFA"), the independent
17 regulatory agency responsible for oversight of secondary mortgage markets including Fannie Mae
18 and Freddie Mac, issued a statement concerning PACE Loans which directed Fannie Mae, Freddie
19 Mac, and the twelve Federal Home Loan Banks (the "FHL Banks") to take certain actions to limit
20 their exposure to financial risks associated with first-lien PACE Loans.

21 19. In a directive issued on February 28, 2011, FHFA expressly directed Fannie Mae,
22 Freddie Mac, and the FHL Banks not to purchase mortgages affected by voluntary contractual
23 assessments such as PACE Loans.

24 20. On June 15, 2012, FHFA published Enterprise Underwriting Standards; Proposed
25 Rule in the Federal Register. In that publication, FHFA noted that:

26 Proponents of first-lien PACE programs have analogized the obligations to repay
27 *PACE loans* to traditional tax assessments. However, unlike traditional tax
28 assessments, *PACE loans* are voluntary and have other features not typical of tax
assessments – homeowners opt in, submit applications, and contract with the city
or county's PACE program to obtain the *loan* and repay it.

1 (Emphasis added).

2 21. On December 22, 2014, FHFA released the following Statement of the Federal
3 Housing Agency on Certain Super-Priority Liens:

4
5 Energy Retrofit Financing Programs Structured as Tax Assessments

6 While FHFA fully supports energy retrofit financing programs to allow
7 homeowners to improve energy efficiency, these programs must be structured to
8 ensure protection of the core financing for the home and, therefore, cannot
9 undermine the first-lien status of Fannie Mae and Freddie Mac mortgages. Some
10 entities and localities are advancing the argument that single-family energy retrofit
11 financing programs that are structured to make *loans* through the homeowner's
12 property tax assessment and require that borrowers repay their *loans* as part of their
13 property tax bill should have priority over all other *loans*, including pre-existing
14 Fannie Mae and Freddie Mac mortgages. One such program is known as the
15 Property Assessed Clean Energy (PACE) program, which often provides *loans* as
16 first-liens and is offered in California and in some other states. Localities offering
17 these *PACE loans* threaten to move existing Fannie Mae and Freddie Mac
18 mortgages to a second lien position and increase the risk of loss to the Enterprises
19 [Fannie Mae and Freddie Mac] and by extension, to taxpayers.

20
21 In issuing this statement, FHFA wants to make clear to homeowners, lenders, other
22 financial institutions, state officials, and the public that Fannie Mae and Freddie
23 Mac's policies prohibit the purchase of a mortgage where the property has a first-
24 lien *PACE loan* attached to it. This restriction has two potential implications for
25 borrowers. First, a homeowner with a first-lien *PACE loan* cannot refinance their
26 existing mortgage with a Fannie Mae or Freddie Mac mortgage. Second, anyone
27 wanting to buy a home that already has a first-lien *PACE loan* cannot use a Fannie
28 Mae or Freddie Mac loan for the purchase. These restrictions may reduce the
marketability of the house or require the homeowner to pay off the *PACE loan*
before selling the house.

21 FHFA believes it is important for states and municipalities to understand these
22 restrictions before continuing to offer the programs. Additionally, FHFA believes
23 that borrowers should fully understand these restrictions prior to taking out a first-
lien *PACE loan*.

24 (Emphasis added).

25 22. Despite FHFA's statements regarding PACE Loans, Renovate America's website
26 contained the following statement to potential consumers interested in a PACE Loan: "[I]f the
27 property is sold, any remaining balance may be legally passed on to the new owner." However,
28 Fannie Mae, Freddie Mac, the Federal Housing Administration ("FHA"), and the Veterans

1 Administration (“VA”) will not purchase mortgages on any property encumbered with an existing
2 PACE Loan.

3 **Intended Purpose of PACE Loans and DOE Guidelines**

4 23. In May 2010, the United States Department of Energy (“DOE”) issued Guidelines
5 for Pilot PACE Financing Programs (the “Guidelines”), in which the DOE announced best
6 practice guidelines to help implement the PACE programs. The Guidelines were updated in 2016.

7 24. According to the Guidelines, the cost of PACE program home improvements are
8 expected to pay for themselves over the life of a PACE Loan. In other words, the PACE program
9 must be designed so that a homeowner’s energy savings should be more than the total amount of
10 the payments due on the PACE Loan over the life of the loan. The Guidelines provide that PACE
11 lenders only approve PACE Loans for homeowners who are expected to achieve those net savings.

12 25. The Guidelines also direct that first mortgage holders receive a notice when liens to
13 secure PACE Loans are placed on property secured by a first mortgage. Since most homeowners
14 who obtain a PACE Loan to finance home improvements escrow their taxes with their first
15 mortgage lenders, if a mortgage holder is unaware of a PACE lien, the homeowner’s escrow
16 balance will be insufficient when a PACE Loan payment is due, requiring the homeowner to pay
17 the full amount of the PACE Loan payment to the mortgage holder to make up for the shortfall in
18 his or her escrow account.

19 26. Finally, the Guidelines direct PACE lenders to consider a homeowner’s ability to
20 repay a PACE Loan and not merely rely upon the homeowner’s equity in his or her property when
21 approving a PACE loan.

22 27. As alleged more fully below, Renovate America has failed to adhere to the DOE’s
23 Guidelines.

24 **Renovate America’s HERO Loan Program**

25 28. Defendant Renovate America was formed in 2008 to work with local governments
26 to implement residential PACE programs.

27 29. Renovate America’s PACE program is known as the Home Energy Renovation
28 Opportunity program, commonly known as the “HERO Loan Program.” Home improvement loans

1 under the HERO Loan Program are commonly known as “HERO Loans.”

2 30. When Defendant Renovate America creates and implements a HERO Loan
3 Program with a local government partner, it is hired to market, originate and administer HERO
4 Loans. According to its website, Renovate America offers HERO Loans in at least 48 counties in
5 the State of California, including Riverside County.

6 31. Property owners seeking to participate in the HERO Loan Program are identified,
7 selected, and pre-approved by Renovate America and then enter into a home improvement
8 contract with a contractor and have the improvements completed before the financing is put in
9 place and before any lien is recorded against the property.

10 32. To participate in the HERO Loan Program, a property owner must meet the
11 following three qualifications:

- 12 a. mortgage related debt on the property must not exceed 90% of the value of
13 the property;
- 14 b. the property owner must be current on his or her property taxes and there
15 must be no more than one late payment in the past three years; and
- 16 c. the property owner must be current on all property debt at the time of the
17 application and cannot have had more than one 30-day mortgage late
18 payment over the previous 12 months.

19 33. In addition, to qualify for the HERO Loan Program, the proposed project must
20 meet the following two requirements:

- 21 a. the amount to be financed under the program may not exceed 15% of the
22 value of the property; and
- 23 b. the combined amount to be financed under the program plus the mortgage-
24 related debt must not exceed 100% of the value of the property.

25 34. Renovate America determines the value of a property using an automated valuation
26 model (“AVM”), provided by a purportedly independent third-party vendor. If an AVM value is
27 not available for a particular property, Defendant Renovate America uses the assessed value of the
28 property instead.

1 35. Renovate America does not perform the home improvements it finances. Instead,
2 Renovate America uses thousands of local contractors participating in the Hero Loan Program to
3 perform the home improvements.

4 36. Renovate America enters into a Registered Contractor Participation Agreement
5 with each and every contractor that participates in the Hero Loan Program. That agreement
6 requires participating contractors to “[c]omply with all local, state and federal marketing and
7 telemarketing laws, regulations and rules, including but not limited to the Telephone Consumer
8 Protection Act and the Truth in Lending Act.”

9 37. Defendant Renovate America provides participating contractors with marketing
10 materials as well as information about the value of a potential customer’s home.

11 38. Therefore, a door-to-door salesman (i.e. contractor) trying to induce a homeowner
12 to enter into a HERO Loan will know before even approaching a homeowner approximately how
13 much the homeowner can borrow through the HERO Loan Program.

14 39. With this information in hand, a door-to-door salesman (i.e. contractor) seeking to
15 induce a homeowner into entering into a HERO Loan typically gives a homeowner an inflated
16 quote on the home improvement work that purportedly will reduce his or her energy costs so that
17 the amount quoted comes fairly close to the maximum amount the salesman knows the
18 homeowner will be able to borrow under the HERO Loan Program.

19 40. Renovate America’s marketing materials include “Contractor Talking Points,”
20 which advise contractors that they may inform prospective HERO Loan borrowers that they will
21 “be able to transfer any remaining balance” on a HERO Loan to the new owners if they sell their
22 homes. However, as alleged above, Fannie Mae, Freddie Mac, FHA, and the VA will not
23 purchase mortgages on any property encumbered with an existing PACE Loan.

24 **Renovate America and WRCOG’s Involvement in the PACE Program**

25 41. On or about January 12, 2011, WRCOG agreed with Defendant Renovate America
26 that Renovate America would implement the PACE Program in Riverside County (the “WRCOG
27 HERO Loan Program”).

28 42. Defendant Renovate America agreed with WRCOG that WRCOG would raise

1 funds for the WRCOG HERO Loan Program exclusively through the sale of improvement bonds
2 to Renovate America.

3 43. Renovate America agreed to provide services for the WRCOG HERO Loan
4 Program, including, but not limited to: reviewing and editing all policies for the HERO Loan
5 Program; providing documentation required for registering HERO contractors; accepting,
6 processing and approving borrowers' HERO Loan applications; approving proposed HERO
7 improvements; providing HERO financing disclosures; accepting, processing and approving
8 HERO funding requests; issuing and executing contractual assessment agreements; recording lien
9 documents; issuing payments to contractors; creating all forms needed for the WRCOG HERO
10 Loan Program; designing and building the WRCOG HERO Loan Program website; pulling all
11 credit, title, valuation and other reports; reviewing the eligibility of borrowers' properties;
12 providing notifications of approval, denial or incomplete status of borrowers' HERO applications;
13 and preparing HERO Loan payoff letters.

14 44. Defendant Renovate America also agreed to work with WRCOG and its member
15 jurisdictions to promote the WRCOG HERO Loan Program.

16 45. Renovate America further agreed to develop a standard set of documents suitable to
17 the parties for use in the WRCOG HERO Loan Program.

18 46. In addition, Renovate America agreed to ensure that the HERO assessments are
19 placed on the appropriate property owner's property tax bill.

20 47. WRCOG announced its WRCOG HERO Loan Program and began taking
21 applications to participate in the WRCOG HERO Loan Program in December 2011.

22 48. In or about June 2013, WRCOG launched what is known as the "California HERO
23 Loan Program" throughout California. The California HERO Loan Program allows cities and
24 counties in California that are not located in Riverside County to become associate members of
25 WRCOG thereby allowing residents in those jurisdictions to participate in the California HERO
26 Loan Program. The California HERO Loan Program is administered by Renovate America.

27 49. In 2014, San Diego County became an associate member of WRCOG thereby
28 allowing residents in San Diego County to participate in the California HERO Loan Program.

1 50. WRCOG and Renovate America agreed that Renovate America would provide the
2 services alleged above for the California HERO Loan Program throughout California (the
3 WRCOG HERO Loan Program and the California HERO Loan Program are collectively referred
4 to as the "HERO Loan Program").

5 51. As alleged above, WRCOG has no funds to finance the HERO Loans to property
6 owners. Thus, to fund the HERO Loans, WRCOG issues improvement bonds under the
7 Improvement Bond Act of 1915 (California Streets and Highways Code §§ 8500, *et seq.*) (the
8 "PACE Bonds"). Pursuant to a Bond Purchase Agreement between WRCOG and Defendant
9 Renovate America, Renovate America is required to buy all the PACE Bonds issued by WRCOG
10 for a purchase price equal to the outstanding principal amount of the bond plus accrued interest.

11 52. The PACE Bonds are secured by the liens created as a result of the HERO Loans
12 on real property owned by the HERO Loan participants.

13 53. Renovate America's PACE Bond portfolio is pooled and asset-backed notes are
14 issued and sold to investors to finance the purchase of WRCOG's bonds by Renovate America.

15 54. Defendant Renovate America's principal source of revenue is derived from HERO
16 Loan origination fees as well as the interest rate differential between the interest it receives on the
17 PACE Bonds and the interest it pays on the asset-backed notes sold to investors.

18 55. To date, Renovate America has originated over 100,000 HERO Loans, representing
19 more than \$2 billion in funding for residential property owners in California.

20 56. The PACE Bonds are practically risk-free because the bonds are secured by the
21 unpaid contractual assessments and have first-lien status over each borrower's pre-existing
22 mortgage(s).

23 57. At all times relevant hereto, Defendant Renovate America has charged each HERO
24 Loan participant an administrative fee of between five and more than seven percent of the stated
25 amount of his or her HERO Loan, a portion of which is then retained by Renovate America.

26 58. On or about November 19, 2013, Renovate America filed PTO Form 1553 –
27 Trademark/Service Mark Allegation of Use with the United States Patent and Trademark Office.
28 On that form, Renovate America stated that the HERO trademark was being used in connection

1 with the “financial administration of *loans* for home improvements under property assessed clean
2 energy (PACE) programs; financial consulting in the field of *financing and loan services* for
3 property assessed clean energy (PACE) programs.” (Emphasis added).

4 **Facts Related to the Loyas’ HERO Loan Transaction with Renovate America**

5 59. In May 2014, a salesman/contractor from Vinyl Window Broker, Inc. (“Vinyl
6 Window Broker”) made a visit to the Loyas’ primary residence to discuss replacing the windows
7 on the Loya Property.

8 60. The salesman/contractor told the Loyas that they could obtain financing for the
9 work through Defendant Renovate America’s HERO Loan Program.

10 61. The salesman/contractor told the Loyas that the cost of the new windows would be
11 \$13,566.00.

12 62. The Loyas completed and executed the HERO Loan application on June 26, 2014.

13 63. The Loyas also executed a HERO Loan Program assessment contract on June 26,
14 2014 (the “Loya Assessment Contract”).

15 64. Section 4 of the Loya Assessment Contract stated that the assessment plus interest,
16 the additional administrative assessment, and any penalties incurred as a result of any delinquency
17 in the payment of any installment of the assessment “shall constitute a lien” on the Loya Property.

18 65. Attached as Exhibit B to the Loya Assessment Contract is a “List of Contract
19 Documents, Disbursement, and Schedule of Annual Assessment Installments, Including Principal,
20 Interest and Annual Assessment Administrative Fee.”

21 66. According to Exhibit B to the Loya Assessment Contract, the maximum
22 disbursement amount was \$16,532.75 and the estimated disbursement date was to be no later than
23 October 13, 2014.

24 67. Exhibit B to the Loya Assessment Contract also stated as follows: “[i]nterest
25 totaling a maximum of \$1,687.72 will accumulate until your first Payment. That amount will be
26 added to Owner’s Maximum Disbursement Amount.”

27 68. Exhibit B to the Loya Assessment Contract stated that the “Assessment Interest
28 Rate is 8.75%.”

1 69. Exhibit B to the Loya Assessment Contract stated that:

2 The Annual Percentage Rate (APR) of your assessment is 10.80%. APR is the
3 Effective Cost of Credit in *consumer loans* and *real estate loans* expressed as a
4 percentage interest rate. The annual percentage rate is the interest rate the borrower
 actually pays, including fees required in order to participate in the program.

5 (Emphasis added).

6 70. Exhibit B to the Loya Assessment Contract estimated that “[t]he total
7 administrative fees, recording fees and annual assessment added to your assessment is \$1,279.03.”

8 71. Exhibit B of the Loya Assessment Contract contains the following paragraph:

9 **Prepayment**

10 You have the right to pay off your assessment lien amount in full, or in part in
11 increments of \$5,000 at any time pursuant to Section 3(c) of the Assessment
12 Contract. However, if you do so, you will have to pay (i) the principal amount of
13 the assessment to be prepaid (the “Assessment Prepayment Amount”), (ii) *a*
14 *prepayment premium if you prepay within the first five years from the Effective*
15 *Date (if you prepay after the first five years, there is no prepayment premium)*,
 see table below, (iii) interest on the Assessment Prepayment Amount to the earlier
 of March 2 or September 2 occurring at least 90 days following the date the
 prepayment is made, and (vi) a processing fee (not to exceed \$500).

16 (Emphasis added).

17 72. The prepayment premium contained in Exhibit B of the Loya Assessment Contract
18 states that the prepayment premium “shall be a percentage of the principal amount of the
19 Assessment” with the premium being 5% in the first year, 4% in the second year and 3% in the
20 third, fourth and fifth years. In addition to the prepayment premium discussed above, Exhibit B to
21 the Loya Assessment Contract required the Loyas to pay interest on the Assessment Prepayment
22 Amount “to the earlier of March 2 or September 2 occurring at least 90 days following the date the
23 prepayment is made.”

24 73. WRCOG countersigned the Loya Assessment Contract on June 27, 2014.

25 74. On July 22, 2014, the Loyas and the contractor executed a Completion Certificate.
26 The fully executed Completion Certificate was returned to Renovate America shortly thereafter.

27 75. According to the Completion Certificate, Renovate America paid the sum of
28 \$13,566.00 directly to Vinyl Window Broker after receiving the fully executed Completion

1 Certificate.

2 76. On July 29, 2014, Renovate America recorded a Notice of Assessment dated June
3 26, 2014 with the Riverside County Recorder's Office (the "Recorded Notice of Assessment").

4 77. The Recorded Notice of Assessment for the Loyas' HERO Loan was in the
5 principal amount of \$16,359.95. Renovate America never provided any information as to how the
6 principal amount of the Loyas' HERO Loan was calculated.

7 78. Page 2 of the Recorded Notice of Assessment states that:

8 NOTICE IS FURTHER GIVEN that upon the recording of this notice in the office
9 of the County Recorder, the Assessment shall become a lien upon the Property. In
10 addition, the Annual Administrative Assessment shall become a lien upon the
11 Property at the same time as property taxes upon the Property become a lien each
12 year.

12 **Payments Pursuant to the Loyas' HERO Assessment**

13 79. In California, property taxes are collected by the various counties although they are
14 governed by California State law. In order to determine the amount of a homeowner's property
15 taxes, the county assessor must first assess the value of the property. Generally, the assessed value
16 is the market value at the time of purchase. Pursuant to Proposition 13, a law approved by
17 California voters in 1978, the value of a property cannot increase by more than 2% per year unless
18 the property is sold or any new construction is completed, at which time the property must be
19 reassessed.

20 80. After the assessor has determined the property's value, the auditor-controller
21 applies the appropriate tax rates, which include the general tax levy, locally voted special taxes,
22 and any city or district assessments. The general tax levy is determined in accordance with State
23 law and is limited to \$1 per \$100 of the assessed value of the property pursuant to Proposition 13.
24 Special taxes and district assessments are passed by vote. The county tax collector prepares
25 property tax bills based on the Auditor-Controller's tax calculations, distributes the tax bills and
26 collects the taxes.

27 81. Property taxes are payable in two installments for a fiscal year that begins on July 1
28 and ends on June 30. The first installment is due on November 1 (and must be paid on or before

1 December 10 without incurring a 10% penalty); the second installment is due on February 1 (and
2 must be paid on or before April 10 without incurring a 10% penalty). Thus, for example, in the
3 2015-2016 Fiscal Tax Year, the first installment was due on November 1, 2015 and the second
4 installment was due on February 1, 2016.

5 82. The Loyas' first mortgage lender, Wells Fargo, made the first half of the annual
6 HERO Loan payment in November 2015, through the escrow account Wells Fargo maintained on
7 their behalf.

8 83. The Loyas' first mortgage lender, Wells Fargo, made the second half of the annual
9 HERO Loan payment in March 2016, through the escrow account Wells Fargo maintained on their
10 behalf.

11 **The Loyas Paid Off Their HERO Loan**

12 84. In 2016, the Loyas decided to refinance their mortgage with Wells Fargo.
13 However, in order to refinance their mortgage, Wells Fargo insisted that a portion of the loan
14 proceeds from the refinance transaction be used to pay off the Loyas' HERO Loan.

15 85. Thereafter, Renovate America provided the Loyas with a "HERO Loan Program
16 Payoff Statement" dated April 26, 2016 (the "HERO Payoff"). Upon information and belief, the
17 HERO Payoff was prepared by Renovate America.

18 86. According to the HERO Payoff, the total payoff amount needed to satisfy the
19 Loyas' HERO Loan was \$15,565.05 broken down as follows:

Description of Payment	
Project Cost (labor and products) 8/8/2014	\$13,566.00
HERO Administrative program cost	\$1,137.02
County recording and processing fee	\$225.43
Interest from 9/2/2014 to 7/5/2016	\$2,636.34
Assessment payments via property tax bill from 7/1/2015 to 6/30/2015	\$(1,999.74)
TOTAL PAYOFF AMOUNT DUE:	\$15,565.05

26
27 87. According to the HERO Payoff, WRCOG issued Bond Series 150406-BE-R-03-15
28 to finance the cost of the Loyas' improvements.

1 88. The Loyas paid \$15,565.05 to satisfy their HERO Loan after receiving the HERO
2 Payoff.

3 89. As part of paying off the Loyas' HERO Loan, Renovate America required the
4 Loyas to pay interest from the date they paid off the HERO Loan to July 5, 2016 even though the
5 Loyas had paid the principal amount of their HERO Loan prior to July 5, 2016.

6 90. In total, the Loyas paid \$17,564.79 for the "benefit" of participating in the HERO
7 Loan Program, \$3,998.79 or more than 30% more than their project cost, and their energy savings
8 as a result of the improvements have been virtually nonexistent.

9 **Facts Related to Simpson's HERO Loan Transaction with Renovate America**

10 91. In August 2016, a salesman/contractor from Semper Solaris Constructions, Inc.
11 ("Semper"), made a visit to Simpson's Property to discuss certain improvements to the property.

12 92. The salesman/contractor told Simpson that she could obtain financing for the work
13 through Renovate America's HERO Loan Program.

14 93. The salesman/contractor told Simpson that the cost of the improvements would be
15 \$29,482.00.

16 94. Simpson completed and executed the HERO Loan application on August 29, 2016.

17 95. Simpson also executed a HERO Loan Program assessment contract on August 29,
18 2016 (the "Simpson Assessment Contract").

19 96. Section 6 of the Simpson Assessment Contract stated that the assessment plus
20 interest, the additional administrative assessment, and any penalties incurred as a result of any
21 delinquency in the payment of any installment of the assessment "shall constitute a lien" on the
22 Simpson Property.

23 97. Attached as Exhibit B to the Simpson Assessment Contract is a "List of Contract
24 Documents, Disbursement, and Schedule of Annual Assessment Installments, Including Principal,
25 Interest and Annual Assessment Administrative Fee."

26 98. According to Exhibit B to the Simpson Assessment Contract, the maximum
27 disbursement amount was \$68,596.00 and the estimated disbursement date was February 15, 2017.

28 99. Exhibit B to the Simpson Assessment Contract also stated as follows: "Interest

1 totaling a maximum of \$2,874.45 will accumulate until your first Payment. That amount will be
2 added to Owner's Estimated Disbursement Amount."

3 100. Exhibit B to the Simpson Assessment Contract stated that the "Assessment Interest
4 Rate is 8.35%."

5 101. Exhibit B to the Simpson Assessment Contract stated that:

6 The Annual Percentage Rate (APR) of your assessment is 9.30%. APR is the
7 annual interest rate you will actually pay on your assessment, including fees
8 required in order to participate in the HERO Loan Program.

9 102. Exhibit B to the Simpson Assessment Contract estimated that "[t]he total
10 administrative fees, recording fees and annual assessment added to your assessment is \$1,783.59."

11 103. Exhibit B of the Simpson Assessment Contract contains the following paragraph:

12 **Prepayment**

13 You have the right to pay off your assessment lien amount in full, or in any amount
14 of at least \$2,500 pursuant to section 3(e) of the Assessment Contract. However, if
15 you do so, you will have to pay the principal amount of the assessment to be
16 prepaid ("Assessment Prepayment Amount") and interest on the Assessment
Prepayment Amount to the second business day of the second month following the
date the prepayment is made.

17 104. WRCOG countersigned the Assessment contract on August 31, 2016.

18 105. Sometime thereafter, Simpson and Semper executed a Completion Certificate and
19 returned it to Defendant Renovate America.

20 106. Based upon information and belief, Renovate America paid the sum of \$29,482.00
21 directly to Semper after receiving the fully executed Completion Certificate.

22 107. On November 28, 2016, Defendant Renovate America recorded a Notice of
23 Assessment and Payment of Contractual Assessment Required with the San Diego County
24 Recorder's Office (the "Simpson Recorded Notice of Assessment").

25 108. The Simpson Recorded Notice of Assessment for the Simpson HERO Loan was in
26 the principal amount of \$33,249.41.

27 109. Page 2 of the Recorded Notice of Assessment states that:

28

1 NOTICE IS FURTHER GIVEN that upon the recording of this notice in the office
2 of the County Recorder, the Contractual Assessment shall become a lien upon the
3 Property. In addition, the Annual Administrative Assessment shall become a lien
4 upon the Property at the same time as property taxes upon the Property become a
5 lien each year.

6 110. In 2017, Simpson requested a payoff of her HERO Loan.

7 111. Thereafter, Renovate America provided Simpson with a "HERO Loan Program
8 Payoff Statement" dated February 8, 2017 (the "HERO Payoff"). Upon information and belief,
9 the HERO Payoff was prepared by Renovate America.

10 112. According to the HERO Payoff, the total payoff amount needed to satisfy
11 Simpson's HERO Loan was \$32,100.32 broken down as follows:

Description of Payment	
Project Cost (labor and products) 12/9/2016	\$29,482.00
HERO Administration program cost	\$1,659.15
County recording and processing fee	\$80.00
Interest from 9/2/2014 to 7/5/2016	\$879.17
TOTAL PAYOFF AMOUNT DUE:	\$32,100.32

16 113. According to the HERO Payoff, WRCOG issued Bond Series 161209-CA-RA2-R-
17 20C to finance the cost of Simpson's improvements.

18 114. According to the HERO Payoff, Renovate America is demanding that Simpson pay
19 interest on the amount of interest that was capitalized into Simpson's HERO Loan.

20 115. On November 4, 2017, Simpson paid \$1,750.10 towards her \$3,500.20 annual
21 payment on her HERO Loan for the 2017/2018 tax year.

22 116. Based upon information and belief, Renovate America did not apply Simpson's
23 payment to outstanding principal and accrued interest on her HERO Loan when it was made and
24 will not apply that payment to outstanding principal and accrued interest until September 2, 2018.

25 **Secret Double-Counting of Accrued Interest**

26 117. In the HERO Loan application, Renovate America tells each HERO Loan borrower
27 that interest will be computed *from the closing date of the loan* until the date of the borrower's
28 first loan payment, and that accrued interest for that period of time computed in that manner will

1 be added to the stated amount of the HERO Loan. In the HERO Loan application, Renovate
2 America does not tell HERO Loan borrowers that they will be charged interest *twice* for that
3 specified period of time.

4 118. Thus, in their HERO Loan application, the Loyas were told by Renovate America
5 that interest would be computed from the closing date of their HERO Loan until their first loan
6 payment, but were not told that they would be charged interest *twice* for that period of time.

7 119. Likewise, in her HERO Loan application, Simpson was told by Renovate America
8 that interest would be computed from the closing date of her HERO Loan until her first loan
9 payment, but was not told that she would be charged interest *twice* for that period of time.

10 120. In the Assessment Contract, however, Renovate America identifies a *different*
11 period of time for computing accrued interest. In the Assessment Contract, Renovate America
12 tells each HERO Loan borrower that interest will be computed starting *from the date on which*
13 *WRCOG issues bonds to finance the work*. In their respective Assessment Contracts, Renovate
14 America did not tell the Loyas or Simpson that they will be charged interest *twice* for that other
15 specified period of time.

16 121. Beginning in or about October 2015, however, in the financing summary, Renovate
17 America has identified a *third* period of time for computing accrued interest. Since in or about
18 October 2015, in the financing summary Renovate America has told each HERO Loan borrower
19 that interest will be computed *from the date on which the work is completed* until the date of the
20 borrower's first loan payment, and that accrued interest computed in that third manner would be
21 added to the stated amount of the HERO Loan. In the financing summary, Renovate America
22 does not tell HERO Loan borrowers they will be charged interest *twice* for that third specified
23 period of time.

24 122. Upon information and belief, prior to 2015, Renovate America did not state in the
25 financing summary how accrued interest would be calculated. In the financing summary given to
26 the Loyas, Renovate America did not state how or when accrued interest would be calculated
27 before their first HERO Loan payment was due and the Loyas were not told that they would be
28 charged *twice* for any accrued interest.

1 123. Renovate America never told HERO Loan borrowers, and HERO Loan borrowers
2 did not agree, that interest would be charged for a *second time* on the accrued interest added to the
3 stated amount of the HERO Loan.

4 124. In fact, Defendant Renovate America secretly charges interest *twice* on the amount
5 of accrued interest added to the stated amount of all the HERO Loans from whenever the accrued
6 interest is calculated until the date of the borrower's first loan payment. Renovate America
7 inflated the stated amount of each HERO Loan by the amount of accrued interest, and then re-
8 computed interest on that inflated amount from the first day of the accrual period, (whether the
9 closing date of the loan, the bond issuance date, or the completion date), as though the interest had
10 not been paid and capitalized.

11 125. The double-counted interest, which is *not* disclosed to HERO Loan borrowers
12 (Plaintiffs and the Class members herein) or agreed to by them, is amortized over the entire life of
13 the loans and included (without any credit or setoff) in any payoff amounts given to them.

14 126. By capitalizing accrued interest *and* compounding interest on the higher principal
15 amount from the first day of the accrual period as though interest had not been accrued and
16 capitalized, Defendant Renovate America secretly double-counted interest on the HERO Loans.

17 **Secret Double-Counting of Administration Fees**

18 127. During the relevant time period, in the HERO Loan applications, Renovate
19 America stated that it would charge each HERO Loan borrower a "one-time administration fee"
20 based upon the "principal amount" of his or her HERO Loan, a portion of which is then retained
21 by Renovate America. During the relevant time period, the amount of the administration fee
22 ranged from a low of 4.99% to a high of 6.95%.

23 128. In the HERO Loan application given to the Loyas, Renovate America stated that
24 the Loyas would be charged a one-time administration fee of 6.95% of the "principal amount" of
25 their assessment and that the one-time administration fee would be added to the assessment
26 amount.

27 129. In the HERO Loan application given to Simpson, Renovate America stated that
28 Simpson would be charged a one-time administration fee of 4.99% of the "principal amount" of

1 her assessment and that the one-time administration fee would be added to the assessment amount.

2 130. Renovate America does not define the term “principal amount” in any of the HERO
3 Loan Program documents. In the documents, Renovate America variously uses the terms
4 “principal amount,” “assessment,” “assessment amount,” “assessment lien amount,” and “total
5 amount financed” without defining any of those terms, leaving the meaning of the terms
6 misleading, unclear and confusing to Plaintiffs and Class members.

7 131. In fact, the actual administration fee charged and collected by Renovate America is
8 not between 4.99% and 6.95% percent, but in fact is between 5.25% and 7.5%. These higher
9 numbers are because Renovate America charges and collects an administration fee *on the*
10 *administration fee* as well as on the principal amount of the HERO Loan, thus secretly double-
11 counting the administration fees it receives in the same way it secretly double-counts interest.

12 132. The formula used by Renovate America to calculate the administration fee is not
13 simply the “principal amount” of the HERO Loan multiplied by the stated percentage of the
14 administration fee, as the HERO Loan documents state. Rather, the actual formula Renovate
15 America uses to calculate the administration fee is the sum of the project cost, plus accrued
16 interest, the annual assessment administration fee, and the recording fee, multiplied by the
17 reciprocal of one minus the stated percentage of the administration fee minus one. That formula,
18 which yields a percentage administration fee significantly *higher* than the percentage stated in
19 each HERO Loan borrower’s loan application, is never disclosed to the HERO Loan borrowers
20 (Plaintiffs and the Class members).

21 133. For the Loyas, the actual formula Renovate America used to calculate the
22 administration fee is as follows:

23
$$\$15,222.93 \times (1/(1 - 0.0695) - 1) = \$1,137.02$$

24 134. Therefore, the actual administration fee charged to the Loyas was 7.4691%, which
25 is significantly higher than the 6.95% administration fee disclosed in the Loyas’ HERO Loan
26 application.

27 135. For Simpson, the actual formula Renovate America used to calculate the
28 administration fee is as follows:

1
$$\$33,249.41 \times (1/(1 - 0.0499) - 1) = \$1,659.15$$

2 136. Therefore, the actual administration fee charged to Simpson was 5.2521%, which is
3 significantly higher than the 4.99% administration fee disclosed in Simpson's HERO Loan
4 application.

5 **Failure to Credit Payments When Made**

6 137. Unbeknownst to Plaintiffs and the other Class members, Renovate America does
7 not apply the semi-annual HERO Loan payments to outstanding principal and accrued interest
8 when they are made. Rather, Renovate America applies payments to outstanding principal and
9 accrued interest only once every year, on September 2 of each year, the date principal payments on
10 the PACE Bonds are due.

11 138. Despite the fact that the Loyas made *two* timely semi-annual HERO Loan
12 payments in November 2015 and March 2016, Renovate America did not apply *either* of the two
13 payments to accrued interest and outstanding principal when those payments were received and
14 instead calculated interest on the entire HERO Loan amount for the entire period their HERO
15 Loan was outstanding when calculating his HERO Loan payoff amount, thereby secretly
16 increasing the total amount of interest that Renovate America collected from the Loyas.

17 139. Based upon information and belief, despite the fact that Simpson made a timely
18 semi-annual HERO Loan payment in November 2017, Renovate America did not apply that
19 payment to accrued interest and outstanding principal when that payment was received.

20 140. The Loyas and Simpson as well as the other Class members reasonably expected
21 that their HERO Loan payments would be applied and credited against accrued interest and
22 outstanding principal when those HERO Loan payments were made, not months after the
23 payments were made.

24 141. Renovate America likewise secretly increased the total amount of interest it charges
25 and collects from all other Class members.

26 **Improper Amortization of HERO Loans**

27 142. To amortize a HERO Loan, Defendant Renovate America calculated the amount of
28 each semi-annual HERO Loan payment by calculating a single annual payment, and then dividing

1 that annual payment by two. That amortization method was improper and resulted in two semi-
2 annual payments that were higher than they would have been had Renovate America properly
3 amortized the HERO Loans.

4 143. To amortize the HERO Loans properly, Renovate America was required to take
5 into account two semi-annual payments, not a single annual payment. This is because the first
6 semi-annual payment, made before the end of the year in which the two payments were made,
7 reduced the outstanding principal amount of the HERO Loan on which interest accrued during the
8 interim period before the second semi-annual payment was made.

9 144. By amortizing the HERO Loans as though only a single annual payment was made
10 at the end of the year, Renovate America inflated the amount paid by Plaintiffs and the other
11 HERO Loan borrowers each year. That Renovate America divided the inflated amount in two
12 equal payments did not change the over-calculation of the total amount of the payments each year.

13 145. By amortizing the HERO Loans in this improper manner, Renovate America
14 increased the amount of interest it collected and will collect from Plaintiffs and the other HERO
15 Loan borrowers.

16 **Defendant Renovate America Overcharged the "Pass-Through" Recording Fee**

17 146. In the Loyas' HERO Loan application, Renovate America stated that: "At the time
18 of closing, WRCOG will *pass-through* the assessment recording fee of *approximately* \$95 to you
19 to cover the costs of recording the assessment. This fee will be added to the assessment amount."

20 147. In Simpson's HERO Loan application, Renovate America stated that "[a]t the time
21 of closing, the Authority will *pass-through* the assessment recording fee of *approximately* \$55.00
22 to you to cover the costs of recording the assessment."

23 148. Upon information and belief, prior to the time that Renovate America provided the
24 Loyas with a HERO Financing Program Final Payment Summary, Renovate America knew that
25 the actual recording fees to record the Loyas' HERO Loan documents with the Riverside County
26 recorder would be \$75, or \$20 less than the \$95 "estimated" recording fee disclosed in the Loyas'
27 HERO Loan Application. However, Renovate America included the \$95 "estimated" recording
28 fee instead of the \$75 actual recording fee in the Loyas' HERO Loan.

1 149. Upon information and belief, prior to the time that Renovate America provided
2 Simpson with a HERO Financing Program Final Payment Summary, Renovate America knew that
3 the actual recording fees to record Simpson's HERO Loan documents with the San Diego County
4 recorder would be \$45, or \$10 less than the \$55 "estimated" recording fee disclosed in Simpson's
5 HERO Loan Application. However, Renovate America included the \$55 "estimated" recording
6 fee instead of the \$45 actual recording fee in Simpson's HERO Loan.

7 150. Defendant Renovate America mislead Plaintiffs and the HERO Loan borrowers to
8 believe that they would only be charged for the actual or "pass-through" cost of the recording fees
9 when in fact, Renovate America charged Plaintiffs and the HERO Loan borrowers the "estimated"
10 recording fee regardless of the actual amount of the recording fee, which "estimated" amount was
11 higher than the actual amount.

12 151. In addition, Renovate America computed accrued interest on the project cost plus
13 the inflated "estimated" recording fee (not the actual "pass-through" recording fee), and charged
14 the administration fee on the project cost, plus the over-stated accrued interest and the inflated
15 recording fee. Renovate America then amortized interest on that entire overstated amount for the
16 entire duration of each Class members' HERO Loan.

17 152. As a result of the foregoing, Renovate America overcharged Plaintiffs and each
18 Class member on accrued interest (which they secretly double-counted), on administration fees
19 (which they secretly double-counted), on recording fees (which they secretly inflated), and on
20 amortized interest for the duration of each borrower's HERO Loan.

21 **Understatement of Estimated APR**

22 153. Throughout the relevant time period, Renovate America disclosed to Plaintiffs and
23 each Class member the estimated annual percentage rate ("APR") for each borrower's HERO
24 Loan. On information and belief, prior to September 2016, Renovate America did not disclose the
25 final APR to HERO Loan borrowers.

26 154. On information and belief, during the relevant time period, Renovate America
27 improperly calculated the estimated APR for each HERO Loan by failing to subtract
28 administration fees, recording fees, and the annual assessment fee from the APR calculation and

1 by treating prepaid and capitalized interest as if it had not been prepaid.

2 155. The stated interest rate in the Loyas' Assessment Contract was 8.75% and the
3 estimated APR for the Loyas' HERO Loan disclosed in their Assessment Contract was 10.80%.
4 However, if calculated properly, the APR for the Loyas' HERO Loan using the assumptions listed
5 on Exhibit B of the Loyas' Assessment Contract exceeds 11.5%.

6 156. The stated interest rate in Simpson's Assessment Contract was 8.35% and the
7 estimated APR for Simpson's HERO Loan disclosed on her Assessment Contract was 9.30%.
8 However, if calculated properly, the APR for Simpson's HERO Loan, using the assumptions listed
9 on Exhibit B of Simpson's Assessment Contract exceeds 10%. Moreover, the actual APR for
10 Simpson's HERO Loan disclosed on the Final Payment Summary prepared by Renovate America
11 and given to her by Renovate America on or about November 22, 2016, states that her APR is
12 9.36%. However, if calculated properly, the APR for Simpson's HERO Loan, using the actual
13 figures listed on her Final Payment Summary exceeds 10%.

14 **CLASS ACTION ALLEGATIONS**

15 157. Plaintiffs bring this action pursuant to Code of Civil Procedure § 382 as a class
16 action on behalf of themselves and all others similarly situated for the purpose of asserting the
17 claims alleged in this Amended Complaint on a common basis.

18 158. The Class is comprised of all persons or entities who signed a contract with
19 WRCOG for a HERO Loan on their principal dwelling (the "Class"). Renovate America and its
20 directors, officers, employees, and affiliates are excluded from the Class.

21 a. The "Subclass" is comprised of all members of the Class for whom the
22 disclosed administrative fee in the HERO Loan documents was equal to or
23 exceeded 5.7%.

24 159. Although Plaintiffs do not presently know the exact size of the Class or the names
25 and addresses of all Class members, such information can be readily obtained from the books and
26 records of Renovate America. Upon information and belief, over 90,000 HERO Loans were made
27 to Class members who participated in WRCOG's HERO Loan Program during the relevant time
28 period. Thus, the proposed Class is so numerous that joinder of all members is impracticable.

1 160. The claims of all members of the Class involve common question of law and fact
2 including:

- 3 a. whether Renovate America violated § 17200 by engaging in unlawful, unfair
4 and/or deceptive activities with respect to the HERO Loans;
- 5 b. whether Renovate America tortiously interfered with Plaintiffs and the Class
6 members' Assessment Contracts;
- 7 c. whether Plaintiffs and the Class members are entitled to damages/equitable
8 relief by reason of Renovate America's wrongful conduct alleged herein and, if
9 so, what measure of such damages and/or equitable relief is proper;
- 10 d. whether Plaintiffs and the Class members are entitled to injunctive relief by
11 reason of Renovate America's wrongful conduct.

12 161. In addition, Renovate America has acted or failed to act as alleged herein on
13 grounds that apply generally to the Class, so that final injunctive relief is appropriate respecting
14 the Class as a whole.

15 162. The common questions of law and fact predominate over any potential individual
16 issues.

17 163. Plaintiffs' claims are typical of the claims of all other members of the Class.
18 Plaintiffs' interests do not conflict with the interests of any other member of the Class, in that
19 Plaintiffs and the other members of the Class were subjected to the same unlawful conduct.

20 164. Plaintiffs are committed to the vigorous prosecution of this action and have
21 retained competent legal counsel experienced in class action and complex litigation.

22 165. Plaintiffs are adequate representatives of the Class and, together with their
23 attorneys, are able to and will fairly and adequately protect the interests of the Class and its
24 members.

25 166. A class action is superior to other available methods for the fair, just, and efficient
26 adjudication of the claims asserted herein. Joinder of all members of the Class is impracticable
27 and, for financial and other reasons, it would be impractical for individual members of the Class to
28 pursue separate claims.

1 within the meaning of California Business and Professions Code §§ 17200, *et seq.* because, *inter*
2 *alia*, Renovate America engaged in acts that deceived, or were likely to deceive, the public.

3 175. Defendant Renovate America's conduct resulted in profits and pecuniary gain
4 received from homeowners – *i.e.*, Plaintiffs and the other Class members – who entered into
5 HERO Loans.

6 176. As a direct and proximate result of Defendant Renovate America's conduct alleged
7 herein, Renovate America has received ill-gotten gains or profits. Therefore, Renovate America
8 was and is unjustly enriched.

9 177. Pursuant to California Business and Professions Code § 17203, Plaintiffs and the
10 Class request restitution or disgorgement of all ill-gotten gains, including profits, obtained in
11 violation of California Business and Professions Code §§ 17200, *et seq.*

12 178. Plaintiffs and the Class seek to enjoin Defendant Renovate America from engaging
13 in these wrongful practices, as alleged herein, in the future. There is no other adequate remedy at
14 law and if an injunction is not ordered, Plaintiffs and the Class will suffer irreparable harm.

15
16 **SECOND CAUSE OF ACTION**
17 **Violations of Unlawful Prong of California Business and Professions Code**
18 **§§ 17200, *et seq.***

19 179. Plaintiffs the Loyas repeat and reallege the allegations set forth above as though
20 they were fully set forth herein.

21 180. This claim is asserted by the Loyas on their own behalf and on behalf of the
22 Subclass.

23 181. At all times relevant hereto, Defendant Renovate America originated consumer
24 loans because Renovate America arranged the HERO Loans. Therefore, Renovate America is
25 subject to the provisions of California's Covered Loan Law, California Financial Code § 4970, *et*
26 *seq.*, for each HERO Loan.

27 182. Each HERO Loan is a "consumer loan" within the meaning of California Financial
28 Code § 4970(d) because each HERO Loan is a consumer credit transaction secured by real
property located in the State of California that is used as the principal dwelling of the HERO Loan

1 borrower.

2 183. Each Subclass member's HERO Loan is a "covered loan" within the meaning of
3 California Financial Code § 4970(b) because the total points and fees charged to each Subclass
4 member exceeded six percent of the total loan amount.

5 184. Under the Covered Loan Law, the total loan amount of each HERO Loan is
6 calculated by subtracting the administrative fee from the principal amount of his or her HERO
7 Loan.

8 185. Renovate America charged the Loyas an administrative fee of 6.95%, or \$1,137.02,
9 on the total principal amount of their HERO Loan ($\$16,359.95 \times 6.95\% = \$1,137.02$). However,
10 because Renovate America secretly double-counted the disclosed administrative fee charged to the
11 Loyas, the actual administrative fee charged was, in fact, approximately 7.4691%.

12 186. For all HERO Loans in which the disclosed administrative fee was 5.70% or
13 greater, the actual administrative fee was, in fact, greater than six percent. Therefore, the Loyas'
14 and each Subclass member's HERO Loan is a "covered loan" as defined by California Financial
15 Code § 4970(b) because the total points and fees payable exceed six percent of the total loan
16 amount.

17 187. The Loyas' HERO Loan contained two prepayment penalties that exceed 36
18 months after the date of consummation of the HERO Loan. *First*, the Loyas' HERO Loan
19 contained a five-year prepayment penalty of a percentage of the principal amount of the HERO
20 Loan. *Second*, the Loyas' HERO Loan contained a prepayment penalty during the entire loan
21 term that required them to pay interest to the earlier of March 2 or September 2 occurring at least
22 90 days following the date of the prepayment.

23 188. Every Subclass member's HERO Loan contains a prepayment penalty that lasts the
24 entire loan term, because the HERO Loan documents require HERO Loan borrowers to pay
25 interest that is calculated by treating the HERO Loan balance as outstanding for a period of time
26 *after* repayment in full and then applying the interest rate to such "balance." Therefore, Renovate
27 America violated California Financial Code § 4973(a)(1) because that section prohibits a covered
28 loan from containing a prepayment penalty after the first 36 months after the date of

1 consummation of the loan.

2 189. Renovate America originated a covered loan to each Subclass member without
3 considering his or her current and expected income, current obligations, employment status, and
4 other financial resources and based its approval of the HERO Loan almost entirely on the Subclass
5 member's equity in the dwelling that secured the HERO Loan in violation of California Financial
6 Code § 4973(f).

7 190. The proceeds of the Loyas' HERO Loan were paid directly to the Loyas' contractor
8 in violation of California Financial Code § 4973(g). Upon information and belief, the proceeds of
9 each Subclass member's HERO Loan was paid to the Subclass member's contractor in violation
10 of California Financial Code § 4973(g).

11 191. Renovate America did not provide the disclosure required by California Financial
12 Code § 4973(k) to the Loyas or any Subclass member before or after the Loyas and the other
13 Subclass members signed their HERO Loan documents.

14 192. California Financial Code § 4973(n) prohibits a person who originates a covered
15 loan from acting in any manner, whether specifically prohibited by California Financial Code §
16 4973 or of a different character, that constitutes fraud.

17 193. As alleged above, Renovate America: (i) secretly double-counted accrued interest
18 charged on HERO Loans; (ii) secretly double-counted administrative fees charged on HERO
19 Loans; (iii) secretly charged an administrative fee on capitalized interest; (iv) secretly did not
20 apply payments on HERO Loans when those payments were made; and (v) secretly overcharged
21 recording fees. These acts constitute fraud and are prohibited by California Financial Code §
22 4973(n).

23 194. Renovate America has engaged in and continues to engage in unlawful business
24 practices which are substantially likely to mislead the public by committing the acts in violation of
25 the Covered Loan Law alleged above.

26 195. As a direct and proximate result of Renovate America's conduct alleged herein,
27 Renovate America has received ill-gotten gains or profits. Therefore, Renovate America was and
28 is unjustly enriched.

1 196. Pursuant to California Business and Professions Code § 17203, the Loyas and the
2 Subclass request restitution or disgorgement of all ill-gotten gains, including profits, obtained in
3 violation of California Business and Professions Code §§ 17200, *et seq.*

4 197. The Loyas and the Subclass seek to enjoin Renovate America from engaging in
5 these wrongful practices, as alleged herein, in the future. There is no other adequate remedy at
6 law and if an injunction is not ordered, the Loyas and the Subclass will suffer irreparable harm.

7
8 **THIRD CAUSE OF ACTION**

9 **Tortious Interference with Contract**

10 198. Plaintiffs repeat and reallege the allegations set forth above as thou they were fully
11 set forth herein.

12 199. Plaintiffs entered into Assessment Contracts with WRCOG as alleged herein.

13 200. At all times, Renovate America was aware of the existence of these Assessment
14 Contracts between, on the one hand, Plaintiffs and the Class Members and, on the other, WRCOG.

15 201. The Assessment Contracts executed by Plaintiffs nowhere authorize Renovate
16 America to: (i) charge and collect double interest; (ii) charge and collect double administrative
17 fees; (iii) fail to credit payments when made; (iv) improperly amortize HERO Loans; (v)
18 overcharge recording fees; and (vi) improperly calculate the APRs disclosed to HERO Loan
19 borrowers.

20 202. Defendant Renovate America imposed the unauthorized fees described above on
21 Plaintiffs and Class Members.

22 203. Therefore, Defendant Renovate America knowingly, intentionally, and tortiously
23 interfered with the performance of Plaintiffs' and the Class Members Assessment Contracts.

24 204. Renovate America's tortious interference has resulted in an actual breach of
25 Plaintiffs' and the Class Members' Assessment Contracts because Plaintiffs and the Class
26 Members have been assessed fees not authorized by the Assessment Contracts.

27 205. As a direct, proximate, and foreseeable result of Defendant Renovate America's
28 tortious interference with Plaintiffs and the Class Members' Assessment Contracts, Plaintiffs and
the Class Members have been injured and sustained damages by not receiving the full benefit of

1 their contractual bargain.

2 206. Plaintiffs and the Class Members have performed all, or substantially all, of the
3 obligations imposed on them under the Assessment Contracts.

4 207. As a direct result of Renovate America's breaches, Plaintiffs and the Class
5 Members have sustained economic losses and are entitled to compensatory damages in an amount
6 to be proven at trial.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated,
9 demand relief and judgment against Renovate America as follows:

10 a. certifying the Class and Subclass as requested herein, appointing Plaintiffs as class
11 representatives for the Class and Subclass as applicable and appointing Wolf Haldenstein Adler
12 Freeman & Herz LLP and McLaughlin & Stern LLP as Lead Counsel for the Class and Subclass;

13 b. actual damages in an amount to be determined at trial for those counts for which
14 actual damages are available;

15 c. equitable relief for those counts for which equitable relief is available, including
16 requiring Defendant Renovate America to disgorge or return all monies, revenues and profits
17 obtained by means of any wrongful act;

18 d. declaratory and/or injunctive relief as described in each count hereinabove;


19 e. an award of reasonable attorneys' fees and costs; and

20 f. such other relief at law or equity as this Court may deem just and proper.

21 **DEMAND FOR TRIAL BY JURY**

22 Plaintiffs hereby demand a trial by jury on all issues so triable.

23 DATED: March 15, 2018

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25 **FREEMAN & HERZ LLP**
26 By: 
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Judith Loya and Beth Simpson and the Class*

HERO RIVERSIDE: 798221

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CERTIFICATE OF SERVICE

I, Kathryn Cabrera, the undersigned, do declare as follows:

I am a resident of the County of San Diego; I am over the age of 18 years, and not a party to, or have any interest in, this legal action; my business address is 750 B Street, Suite 2770, San Diego, California 92101.

On March 15, 2018, I served the following document(s):

AMENDED CLASS ACTION COMPLAINT

on the interested parties in this action:

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in the manner identified below on all interested parties:

VIA U.S. MAIL – I enclosed a copy of the document identified above in an envelope or envelopes and placed the envelope(s) for collection and mailing on the date and at the place shown above, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope with postage prepaid.

VIA ELECTRONIC MAIL – Pursuant to an agreement among the parties, I served the above document via email to the above parties.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 15th day of March 2018, at San Diego, California.


KATHRYN CABRERA