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20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

21 **FOR THE COUNTY OF RIVERSIDE**

22 IN RE: RENOVATE AMERICA FINANCE )  
23 CASES )

Case No. RICJCCP4940

24 \_\_\_\_\_ )  
25 THIS DOCUMENT RELATES TO: )

26 ALL ACTIONS )

27 **PLAINTIFFS' NOTICE OF MOTION**  
**AND MOTION FOR FINAL**  
**APPROVAL OF CLASS ACTION**  
**SETTLEMENT; MEMORANDUM OF**  
**POINTS AND AUTHORITIES**

28 DATE: July 8, 2020  
TIME: 8:30 a.m.  
JUDGE: Hon. Sunshine S. Sykes  
DEPT.: 6

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

2 **PLEASE TAKE NOTICE** that on July 8, 2020 at 8:30 a.m., or as soon thereafter as the  
3 matter may be heard, in Department 6 of the Superior Court of California, County of Riverside,  
4 located at 4050 Main Street, Riverside, California 92501, Plaintiffs George Loya, Judith Loya,  
5 Richard Ramos, Michael Richardson and Shirley Petetan (collectively, "Plaintiffs"), will move for  
6 an order:

- 7 1. Certifying the Settlement Class for purposes of settlement;  
8 2. Appointing Plaintiffs as Class Representatives for purposes of settlement;  
9 3. Appointing Wolf Haldenstein Adler Freeman & Herz LLP, Calcaterra  
10 Pollack LLP, McLaughlin & Stern LLP and Access Lawyers Group as Class  
11 Counsel for purposes of settlement; and  
12 4. Approving the class action settlement as fair, adequate, and reasonable based  
13 upon the terms set forth in the First Amended Settlement Agreement.

14 This motion is made pursuant to California Code of Civil Procedure section 382 and  
15 California Rules of Court, rule 3.769, on the grounds that the proposed Settlement is fair,  
16 reasonable and adequate and should be finally approved.

17 This motion is based upon this Notice; the accompanying Memorandum of Points and  
18 Authorities; the Joint Declaration of Janine L. Pollack and Rachele R. Byrd and all exhibits thereto;  
19 the declaration of Cameron R. Azari of Epiq, the settlement administrator; the First Amended  
20 Settlement Agreement and all exhibits attached thereto; the files and records in this action; and any  
21 argument and evidence which may be presented at the hearing on this motion.

22  
23 DATED: May 26, 2020

By:

  
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**TABLE OF CONTENTS**

**Page(s)**

1

2

3

4

5 I. INTRODUCTION ..... 1

6 II. STATEMENT OF FACTS ..... 2

7 III. SUMMARY OF THE SETTLEMENT ..... 4

8 A. Monetary Relief ..... 4

9 B. Injunctive Relief..... 6

10 C. The Release is Narrowly Tailored to the Claims ..... 6

11 D. Requested Attorneys’ Fees and Expenses and Class Representative Awards ..... 7

12 IV. METHODS AND REACH OF NOTICE AND ADMINISTRATION COSTS ..... 7

13 V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND THE

14 COURT SHOULD GRANT THE SETTLEMENT FINAL APPROVAL..... 8

15 A. Standards for Final Approval of Class Action Settlements ..... 8

16 B. The Settlement is a Reasonable Compromise of Claims in Light of

17 the Significant Risks Inherent in Continued Litigation ..... 8

18 C. The Settlement is the Result of Serious, Informed,

19 and Non-Collusive Negotiations ..... 10

20 D. The Extent of Pre-litigation Discovery was more than Sufficient to

21 Permit Final Approval of the Settlement ..... 11

22 E. Class Counsel Experienced in Similar Consumer Protection Litigation

23 Fully Support the Settlement ..... 12

24 F. The Percentage of Objectors is Small ..... 12

25 VI. THE NOTICE TO CLASS MEMBERS WAS ADEQUATE ..... 12

26 VII. THE SETTLEMENT CLASS SHOULD BE CERTIFIED ..... 13

27 A. An Ascertainable Settlement Class Exists and Is Numerous ..... 13

28 B. There is a Community of Interest ..... 13

C. A Class Action is Superior..... 15

VIII. CONCLUSION..... 15

**TABLE OF AUTHORITIES**

**Page(s)**

**Cases**

1		
2		
3		
4	<i>Chavez v. Netflix</i> ,	
	162 Cal. App. 4th 43 (2008) .....	8
5	<i>City of San Jose v. Superior Court</i> ,	
	12 Cal. 3d 447 (1974) .....	14
6	<i>Colgan v. Leatherman Tool Group, Inc.</i> ,	
7	135 Cal. App. 4th 663 (2006) .....	9
8	<i>Daar v. Yellow Cab Co.</i> ,	
	67 Cal. 2d 695 (1967) .....	13, 15
9	<i>Dunk v. Ford Motor Co.</i> ,	
	48 Cal. App. 4th 1794 (1996) .....	8
10	<i>Eisen v. Carlisle &amp; Jacquelin</i> ,	
11	417 U.S. 156 (1974).....	12
12	<i>Ellis v. Naval Air Rework Facility</i> ,	
	87 F.R.D. 15 (N.D. Cal. 1980).....	12
13	<i>Ellis v. Naval Air Rework Facility</i> ,	
	661 F.2d 939 (9th Cir. 1981) .....	12
14	<i>Glass v. UBS Fin. Serv., Inc.</i> ,	
15	No. C-06-4068 MMC, 2007 U.S. Dist.	
	LEXIS 8476 (N.D. Cal. Jan. 26, 2007).....	8
16	<i>Global Minerals &amp; Metals Corp. v. Superior Court</i> ,	
	113 Cal. App. 4th 836 (2003) .....	13
17	<i>Hanlon v. Chrysler Corp.</i> ,	
18	150 F.3d 1011 (9th Cir. 1998) .....	9
19	<i>In re Netflix Privacy Litig.</i> ,	
	No. 5:11-CV-00379 EJD, 2013 U.S. Dist.	
	LEXIS 37286 (N.D. Cal. Mar. 18, 2013) .....	10
20	<i>In re Vioxx Class Cases</i> ,	
21	180 Cal. App. 4th 116 (2009) .....	9
22	<i>Kullar v. Foot Locker Retail, Inc.</i> ,	
	168 Cal. App. 4th 116 (2008) .....	8, 10, 12
23	<i>Lazar v. Hertz Corp.</i> ,	
	143 Cal. App. 3d 128 (1983) .....	15
24	<i>Linder v. Thrifty Oil Co.</i> ,	
	23 Cal. 4th 429 (2000) .....	14
25	<i>McGhee v. Bank of Am.</i> ,	
26	60 Cal. App. 3d 442 (1976) .....	14
27	<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> ,	
	221 F.R.D. 523 (C.D. Cal. 2004).....	10
28	<i>Officers for Justice v. Civil Service Com.</i> ,	
	688 F.2d 615 (9th Cir. 1982) .....	8, 9, 10

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*Retta v. Millennium Prods.*,  
No. CV15-1801 PSG AJWx, 2017 U.S.  
Dist. LEXIS 220288 (C.D. Cal. Aug. 22, 2017)..... 9

*Richmond v. Dart Industries, Inc.*,  
29 Cal. 3d 462 (1981) ..... 14, 15

*Sav-On Drug Stores, Inc. v. Superior Court*,  
34 Cal. 4th 319 (2004) ..... 15

*Vasquez v. Superior Court*,  
4 Cal. 3d 800 (1971) ..... 14, 15

*Washington Mutual Bank v. Superior Court*,  
24 Cal. 4th 906 (2001) ..... 14

**Statutes**

Cal. Business & Professions Code, § 17200, *et seq.*..... 14

**Rules**

Cal. Rules of Court,  
rule 3.771(b)..... 7  
rule 3.769(f) ..... 13

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs George Loya, Judith Loya, Richard Ramos, Michael Richardson and Shirley  
4 Petetan (collectively, “Plaintiffs”) submit this memorandum in support of their Motion for Final  
5 Approval of Class Action Settlement. Plaintiffs alleged that certain features of the tax assessment  
6 contracts each Plaintiff and Class Member entered into under a Property Assessed Clean Energy  
7 (“PACE”) financing program for purportedly “energy efficient” home improvement loans under  
8 Defendant Renovate America, Inc.’s (“Defendant” or “Renovate”) Home Energy Renovation  
9 Opportunity (“HERO”) program in Plaintiffs’ respective counties were unlawful, fraudulent, and  
10 unfair.<sup>1</sup> For the reasons detailed below, the parties have agreed to settle the claims on a class-wide  
11 basis. The Court granted preliminary approval to the Settlement on February 24, 2020, and the  
12 Claims Administrator provided notice of the Settlement to the Class. Plaintiffs now seek the  
13 Court’s final approval of the Settlement as fair, reasonable and adequate.

14 The Settlement provides substantial benefits to the Settlement Class in the form of a  
15 Settlement Fund of \$2,550,000 as well as injunctive relief. Under the First Amended Settlement  
16 Agreement, all Class Members will receive a partial refund of certain monies paid in connection  
17 with their tax assessment contracts. *See* Joint Decl., Ex. A (SA), § 4.03.

18 The Settlement was reached after an exchange of informal discovery and several months of  
19 arm’s-length, non-collusive bargaining between counsel, including an all-day mediation on  
20 November 20, 2018, with the Honorable Jeffrey King (Ret.) at JAMS. While the parties were  
21 unable to reach agreement at the mediation, they continued to negotiate for several months, which  
22 culminated in an agreement between the parties. *See* Joint Decl., Ex. D (Newman Decl.) ¶ 2.  
23 Plaintiffs respectfully submit that the terms of the Settlement are fair, reasonable and adequate and  
24

25 \_\_\_\_\_  
26 <sup>1</sup> Any terms not otherwise defined herein have the same meaning as in the First Amended  
27 Settlement Agreement dated February 5, 2020 (sometimes referred to herein as the “SA”), annexed  
28 as Exhibit (“Ex.”) A to the Joint Declaration of Janine L. Pollack and Rachele R. Byrd in Support  
of: (1) Plaintiffs’ Motion for Final Approval of Settlement; and (2) Plaintiffs’ Motion for Award of  
Attorneys’ Fees, Reimbursement of Expenses and Class Representative Awards (the “Joint  
Declaration” or “Joint Decl.”), filed concurrently herewith.

1 that the requirements for final approval are satisfied.

2 As of May 22, 2020, the Claims Administrator has received 22 objections to the Settlement  
3 (two of which are from the same household for the same financing agreement and many of which  
4 do not appear to be objections to the settlement itself) and 13 exclusion requests. The objection  
5 and exclusion deadline is not until June 8, 2020. *See* Joint Decl., Ex. A (SA) at §§ 3.05, 3.08.  
6 Therefore, Plaintiffs will address all objections in their supplemental brief due on June 15, 2020  
7 and identify all exclusion requests in a [Proposed] Amended Judgment submitted therewith.

8 Plaintiffs respectfully ask the Court to certify the Settlement Class for settlement purposes  
9 only, appoint Plaintiffs as Class Representatives and the undersigned as Class Counsel to the  
10 Settlement Class, and grant final approval of the Settlement.

## 11 **II. STATEMENT OF FACTS**

12 The procedural history of this litigation is detailed in the Joint Declaration, and for the sake  
13 of efficiency, Plaintiffs will not repeat it in full here. *See* Joint Decl., ¶¶ 9-21.

14 The parties began discussing settlement of this litigation on November 20, 2018, when they  
15 attended mediation in San Diego with the Honorable Jeffrey King (Ret.). The parties failed to  
16 resolve the matter during that mediation session. The parties continued to discuss settlement for  
17 several months, engaging in extensive and hard-fought settlement negotiations. The parties  
18 ultimately were able to bridge the gap between their negotiation positions and signed a term sheet  
19 dated June 4, 2019. On July 2, 2019, the parties notified the Court of the settlement. *See* Joint  
20 Decl., Ex. D (Newman Decl.), ¶ 2.

21 On November 11, 2019, the parties signed a Settlement Agreement, and Plaintiffs filed a  
22 motion for preliminary approval of the Settlement on November 14, 2019. On December 16, 2019,  
23 the Court issued a Tentative Ruling requesting that the parties provide additional information and  
24 make corrections to the Settlement Administrator's declaration, the release provision in the  
25 Settlement Agreement, the Class Notice, the proposed preliminary approval order, and the objection  
26 form. The Court continued the preliminary approval hearing from December 12, 2019 to January  
27 22, 2020. The parties subsequently stipulated to continue the hearing from January 22, 2020 to  
28 January 23, 2020, and the Court approved the stipulation on December 20, 2019. On January 15,



1 2020, Plaintiffs filed a supplemental submission in further support of their motion for preliminary  
2 approval, and the Court issued a tentative ruling on January 22, 2020, granting the motion. Since  
3 no Party requested oral argument, the tentative ruling became the final ruling on January 23, 2020  
4 without a hearing. The parties then executed the First Amended Settlement Agreement on February  
5 5, 2020, incorporating the changes they had agreed upon in the supplemental submission. *See* Joint  
6 Decl., ¶ 18 & Ex. A.

7 On February 24, 2020, the Court entered the Amended Order Preliminarily Approving  
8 Settlement, Preliminarily Approving Class for Settlement Purposes, and with Respect to Class  
9 Notice, Final Approval Hearing, and Administration (the “Preliminary Approval Order”) in which  
10 it: (1) preliminarily approved the Settlement; (2) preliminarily approved certification of the  
11 Settlement Class; (3) preliminarily designated Plaintiffs as representatives of the Settlement Class  
12 and the undersigned counsel as Class Counsel;<sup>2</sup> (4) directed that notice be given as provided in the  
13 First Amended Settlement Agreement; (5) appointed Epiq as Settlement Administrator; (6) set  
14 deadlines for opting out and submitting objections; (7) set a Final Approval Hearing for July 8,  
15 2020 at 8:30 a.m.; and (8) set a briefing schedule for this motion for final approval and Plaintiffs’  
16 application for attorneys’ fees, expenses and Class Representative Awards. *See* Joint Decl., Ex. B.

17 On March 26, 2020, the parties filed and posted on the Settlement website a Notice of  
18 Modification to Paragraph 2.01 of the First Amended Class Action Settlement Agreement (the  
19 “Notice of Modification”), giving notice to the Court, all parties and the Settlement Class that the  
20 parties modified paragraph 2.01 of the First Amended Settlement Agreement to provide that  
21 Defendant would fund the Settlement Fund by making an initial payment of \$1.7 million within 30  
22 days after the Preliminary Approval Date (instead of the full \$2.55 million), and that Defendant  
23 would pay the remaining \$850,000 within fifteen (15) days of the Final Approval Date. *See* Joint  
24 Decl., Ex. C (Notice of Modification). Defendant did in fact fund the Settlement Fund as stated in

25 <sup>2</sup> On or about May 1, 2020, Ms. Pollack left The Sultz Law Group P.C. and became a  
26 named partner of Calcaterra Pollack LLP. Ms. Pollack filed a Notice of Change of Address or  
27 Other Contact Information with the Court on or about May 11, 2020. Plaintiffs will submit, with  
28 their supplemental submissions on June 15, 2020, a [Proposed] Amended Final Order and Judgment  
Approving Settlement which appoints Ms. Pollack’s new firm, Calcaterra Pollack LLP, as one of  
the Class Counsel in the place of The Sultz Law Group P.C.

1 the Notice of Modification.

2 Notice was provided to the Settlement Class as detailed in the Declaration of Cameron R.  
3 Azari, Esq. on Implementation and Adequacy of Settlement Notices and Notice Plan (“Azari  
4 Declaration” or “Azari Decl.”), filed herewith. As of May 22, 2020, Epiq has received only 22  
5 objections (many of which are not objections to the settlement itself) and 13 exclusion requests.<sup>3</sup>

6 The parties respectfully submit that the Court should grant final approval to the Settlement  
7 as fair, reasonable and adequate, certify the Settlement Class, appoint Plaintiffs as representatives of  
8 the Settlement Class and the undersigned counsel as Class Counsel, and enter the proposed  
9 amended order and the proposed final judgment.

### 10 **III. SUMMARY OF THE SETTLEMENT**

#### 11 **A. Monetary Relief**

12 Renovate will pay the sum of \$2,550,000 (the “Settlement Fund”), which will cover  
13 refunds to Settlement Class Members in the form of a Benefit Check, Class Representative Awards  
14 approved by the Court, the costs of providing notice and administering the Settlement incurred by  
15 the Settlement Administrator, and attorneys’ fees and expenses paid to Class Counsel as approved  
16 by the Court. *See* Joint Decl., Ex. A (SA), §§ 2.01-2.02. The “Settlement Class” is defined as: (i)  
17 all persons or entities who received residential PACE tax assessment financing from Western  
18 Riverside Council of Governments (“WRCOG”) through the HERO program where the underlying  
19 assessment contract was executed by the person or entity between January 1, 2012 and July 7, 2016;  
20 and (ii) all persons or entities who received residential PACE tax assessment financing from Los  
21 Angeles County (“LAC”) or San Bernardino Associated Governments (“SANBAG”) through the  
22 HERO program where the underlying assessment contract was executed by the person or entity  
23 between January 1, 2012 and June 15, 2017. *Id.*, § 1.27.

24 The amount of the Benefit Check to each Class Member shall be calculated as follows:  
25 First, the Settlement Administrator will calculate the total initial principal amount of PACE tax

26  
27 <sup>3</sup> Plaintiffs will address all timely objections in their supplemental brief due on June 15,  
28 2020, after the objection deadline has passed, and will identify all exclusion requests in a  
[Proposed] Amended Final Order and Judgment Approving Settlement submitted therewith.

1 assessments entered into by Class Members who are not Successful Opt-Outs. Second, the  
2 principal amount of each Class Member's PACE tax assessment(s) will be divided by the total  
3 principal amount of PACE tax assessments entered into by all Class Members who are not  
4 Successful Opt-Outs to determine a proportion or ratio of the total Class Benefit Amount  
5 attributable to each Class Member who is not a Successful Opt-Out. For each Class Member who is  
6 not a Successful Opt-Out, the ratio will be applied to the Class Benefit Amount to determine each  
7 Class Member's proportionate share of the Class Benefit Amount. For purposes of this calculation,  
8 in those cases where a Class Member includes two or more persons who were co-owners of a  
9 property and multiple co-owners entered into the relevant PACE tax assessment contract, they shall  
10 be treated collectively as a single Class Member. *See* Joint Decl., Ex. A (SA), § 4.03.

11         Within 120 days after the initial mailing of all Benefit Checks, the Settlement Administrator  
12 shall provide a report regarding the amount of money remaining in the Settlement Fund due to  
13 uncashed checks. If the amount exceeds \$200,000, the Settlement Administrator shall calculate the  
14 "Supplemental Benefit Amount" and proceed to mail a new round of "Supplemental Benefit  
15 Checks" to all Class Members who cashed an original Benefit Check. The Settlement  
16 Administrator shall calculate the Supplemental Benefit Amount by determining the amount  
17 remaining in the Settlement Fund and subtracting the Settlement Administration Costs necessary to  
18 mail the Supplemental Benefit Checks and complete all remaining Settlement Administration. The  
19 amount of each Supplemental Benefit Check will be calculated as follows: First, the Settlement  
20 Administrator will calculate the total amount of original Benefit Checks cashed. Second, the  
21 amount of each Class Member's original cashed Benefit Check will be divided by the total amount  
22 of original Benefit Checks cashed to determine a proportion or ratio of the Supplemental Benefit  
23 Amount attributable to each Class Member who cashed an original Benefit Check. For each Class  
24 Member who cashed an original Benefit Check, the ratio will be applied to the Supplemental  
25 Benefit Amount to determine each Class Member's proportionate share of the Supplemental Benefit  
26 Amount. Any Supplemental Benefit Checks shall be mailed within 150 days after the initial  
27 mailing of all original Benefit Checks and shall remain valid for 90 days. Within 60 days of either  
28 the expiration date of the original Benefit Checks, if the amount remaining in the Settlement Fund

1 is less than \$200,000, or the expiration of the Supplemental Benefit Checks, Class Counsel shall  
2 present an amended judgment to the Court reflecting a proposed *cy pres* recipient(s) for any  
3 remaining uncashed funds. Class Counsel shall select the proposed *cy pres* recipient(s) in  
4 accordance with the Court’s local rules and in consideration of the remaining uncashed amount.  
5 Class Counsel must obtain Renovate’s consent to any proposed *cy pres* recipient(s) and any  
6 proposed amended judgment prior to presenting any such proposal to the Court. *See* Joint Decl.,  
7 Ex. A (SA), § 4.11.

8 **B. Injunctive Relief**

9 The Settlement Agreement provides that within 30 days of the Final Approval Date,  
10 Renovate shall recommend to WRCOG and LAC that certain changes be made to written  
11 disclosures used in connection with those entities’ respective HERO programs, substantially in the  
12 form attached as Ex. D to the First Amended Settlement Agreement (the “Disclosure Changes”).<sup>4</sup>

13 **C. The Release is Narrowly Tailored to the Claims**

14 The Release contained in the First Amended Settlement Agreement is narrowly tailored to  
15 provide that Plaintiffs and Class Members shall release Renovate, and each of its past, present, and  
16 future officers, directors, employees, and agents from “any claims asserted in the Second Amended  
17 Class Action Complaints and any other claims that could have been brought based on the facts  
18 alleged in the Second Amended Class Action Complaints.” Joint Decl., Ex. A (SA), § 5.01. The  
19 Release also provides that *only* the Representative Plaintiffs are releasing any and all provisions,  
20 rights, and benefits conferred by Section 1542 of the California Civil Code or similar law. *See id.*,  
21 § 5.02. As such, the Release is appropriate pursuant to this Court’s Case Management Order #1,  
22 dated November 8, 2016, at section G.6., as it is limited to the claims stated in the complaint and  
23 those based on the facts alleged in the complaint, and the defendants named in the complaint,

24 \_\_\_\_\_  
25 <sup>4</sup> The parties agree that Renovate does not have the authority under the HERO programs to  
26 mandate either the implementation or continued use of the Disclosure Changes by either WRCOG  
27 or LAC. Renovate’s obligations under the paragraph shall be satisfied at the time Renovate  
28 recommends the Disclosure Changes to WRCOG and LAC. *See* Joint Decl., Ex. A (SA),  
§ 4.12. *But see* [https://www.latimes.com/homeless-housing/story/2020-05-21/la-fi-pace-home-  
improvement-loans-la-county](https://www.latimes.com/homeless-housing/story/2020-05-21/la-fi-pace-home-improvement-loans-la-county) (reporting on May 21, 2020 that LAC did not renew its contract with  
Renovate).

1 together with their officers, directors, employees and agents.

2 **D. Requested Attorneys' Fees and Expenses and Class Representative Awards**

3 Filed concurrently herewith is Plaintiffs' motion for an award of attorneys' fees of thirty-  
4 three percent (33%) of the Settlement Fund, plus reimbursement of expenses. The application also  
5 requests \$5,000 Class Representative Awards for each Representative Plaintiff for their service as  
6 plaintiffs, except for the Loyas who are married and request one joint \$5,000 payment.

7 **IV. METHODS AND REACH OF NOTICE AND ADMINISTRATION COSTS**

8 Notice was given as directed in the February 24, 2020 Preliminary Approval Order to reach  
9 as many Class Members as possible. The Class Notice was emailed to 74,947 Class Members for  
10 whom Renovate has an email address, and the Settlement Administrator mailed a printed copy of  
11 the Class Notice to those Class Members for whom Defendant had no email address and to those  
12 Class Members for whom the email notice was returned as undeliverable. *See* Azari Decl., ¶¶ 12,  
13 14. Moreover, the Settlement Administrator updated the mailing addresses in the Class Member  
14 List using the NCOA database, a reliable tool used by the United States Postal Service, as well as  
15 other various tools for ensuring successful mailing. *See id.*, ¶ 14.

16 In addition, the Settlement Administrator maintained a website providing information and  
17 documents concerning the Settlement during the Settlement process and will continue to do so for  
18 at least one year after the Final Approval Date. *See* Joint Decl., Ex. A (SA), § 3.03; Azari Decl.,  
19 ¶ 16. A toll-free telephone number was also established to allow Settlement Class members to call  
20 for additional information, listen to answers to FAQs and request that a Notice be mailed to them.  
21 *See* Azari Decl., ¶ 18.

22 The Settlement Administrator estimates that this notice campaign reached more than 90%  
23 of the Class Members and believes that the combination of email and mailed notice in this case  
24 satisfies due process. *See id.*, ¶ 22. Notice of final judgment entered in this case will be posted on  
25 the Settlement website. Cal. Rules of Court ("CRC"), rule 3.771(b). *See* Joint Decl., ¶ 21 n.3.

26 As of April 30, 2020, the cost of services performed for notice is approximately \$16,400.01  
27 and the cost of settlement administration activities is approximately \$18,749.35. Azari Decl., ¶ 23.  
28 The total cost of administration is still estimated to be at or below \$116,647, with Epiq's agreed cap

1 of \$135,000 for the costs of notice and administration. *See id.*, ¶ 24.

2 **V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND THE**  
3 **COURT SHOULD GRANT THE SETTLEMENT FINAL APPROVAL**

4 **A. Standards for Final Approval of Class Action Settlements**

5 A class action settlement should be approved where the court finds it is fair, adequate, and  
6 reasonable to the class members. *See Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116,  
7 127, 133 (2008). Moreover, a class action settlement is presumed to be fair if: (1) it is “reached  
8 through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and  
9 the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage  
10 of objectors is small.” *Chavez v. Netflix*, 162 Cal. App. 4th 43, 52 (2008) (quoting *Dunk v. Ford*  
11 *Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996)).

12 As shown below, the Settlement meets these standards and the Court should grant it final  
13 approval.

14 **B. The Settlement is a Reasonable Compromise of Claims in Light of the**  
15 **Significant Risks Inherent in Continued Litigation**

16 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court  
17 should consider “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of  
18 further litigation, [and] the risk of maintaining class action status. . . .” *See Dunk*, 48 Cal. App. 4th  
19 at 1801.

20 With regard to the strength of Plaintiffs’ case, Plaintiffs and their counsel believe that their  
21 claims are meritorious. The Court upheld most of Plaintiffs’ claims by overruling Defendant’s  
22 demurrer. Despite this, there are significant obstacles to Plaintiffs obtaining a classwide judgment,  
23 including persuading the Court to certify the proposed class and proving classwide damages.  
24 “[T]he very essence of a settlement is compromise, a yielding of absolutes and an abandoning of  
25 highest hopes,” and “it is the very uncertainty of outcome in litigation and avoidance of wasteful  
26 and expensive litigation that induce consensual settlements.” *Officers for Justice v. Civil Service*  
27 *Com.*, 688 F.2d 615, 624-25 (9th Cir. 1982) (internal quotations and citations omitted); *see also*  
28 *Glass v. UBS Fin. Serv., Inc.*, No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at \*13 (N.D.  
Cal. Jan. 26, 2007) (finding settlement of wage and hour class action for 25 to 35% of the claimed  
damages to be reasonable “in light of the uncertainties involved in the litigation”). In light of the

1 risks and uncertainties presented by continued litigation in this case, the Settlement is an  
2 extraordinary result for the Settlement Class.

3 The \$2.55 million Settlement Fund provides the Settlement Class with significant monetary  
4 compensation. “The proposed settlement is not to be judged against a hypothetical or speculative  
5 measure of what *might* have been achieved by the negotiators.” *Officers for Justice*, 688 F.2d at  
6 625 (citations omitted). Rather, any analysis of a fair settlement amount must account for the risks  
7 of further litigation and trial, as well as expenses and delays associated with continued litigation.  
8 *See Retta v. Millennium Prods.*, No. CV15-1801 PSG AJWx, 2017 U.S. Dist. LEXIS 220288, at  
9 \*14 (C.D. Cal. Aug. 22, 2017); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998)  
10 (holding that the possibility that the settlement amount could have been greater “does not mean the  
11 settlement presented was not fair, reasonable or adequate.”). Class Counsel estimate, taking into  
12 account the likelihood of prevailing on each of the claims, that the total amount of damages and  
13 monetary penalties that Class Members could reasonably expect to be awarded at trial is  
14 approximately \$2.4 million. *See* Joint Decl. Ex. D (Newman Decl.), ¶¶ 4-22. Therefore, the  
15 Settlement Fund provides *more* compensation than the Class could reasonably expect to recover at  
16 trial.<sup>5</sup>

17 The \$2.55 million Settlement Fund is also substantial given the risk that Defendant would  
18 be unable to pay a judgment if this case was not resolved through settlement. In fact, Defendant  
19 was unable to pay the entire \$2.55 million on the date originally agreed upon and the parties had to  
20 modify the First Amended Settlement Agreement to instead provide for an initial payment of  
21 \$1,700,000 30 days after preliminary approval and the deposit of the remaining \$850,000 within 15  
22 days of the Final Approval Date. *See* Joint Decl., Ex. C (Notice of Modification).

23 Moreover, courts have found that even settlements for substantially less than the plaintiffs’

24 \_\_\_\_\_  
25 <sup>5</sup> While the total potential damages may be larger than \$2.4 million, Defendant is likely to  
26 argue that several categories of Plaintiffs’ claims for restitution are not susceptible to measurement  
27 and that, therefore, those claims fail. *See* Joint Decl., Ex. D (Newman Decl.), ¶¶ 15, 17, 19; *In re*  
28 *Vioxx Class Cases*, 180 Cal. App. 4th 116, 136 (2009) (“[I]n order to obtain classwide restitution  
under [Business & Professions Code, § 17200, *et seq.*], plaintiffs need establish . . . the existence of  
a ‘measurable amount’ of restitution, supported by the evidence.”) (citing *Colgan v. Leatherman*  
*Tool Group, Inc.*, 135 Cal. App. 4th 663, 698 (2006)).

1 claimed damages were fair and reasonable, particularly “where monetary relief is but one form of  
2 the relief requested by the plaintiffs.” *Officers for Justice*, 688 F.2d at 628. Here, the Settlement  
3 provides valuable injunctive relief in the form of recommended Disclosure Changes that give  
4 significant additional information to HERO loan purchasers going forward and address most, if not  
5 all, of Plaintiffs’ deficiencies identified in the Complaints. *See* Joint Decl., Ex. A (SA), § 4.12 and  
6 Ex. D; *see also In re Netflix Privacy Litig.*, No. 5:11-CV-00379 EJD, 2013 U.S. Dist. LEXIS  
7 37286, at \*21 (N.D. Cal. Mar. 18, 2013) (settlement value “includes the size of the cash  
8 distribution, the *cy pres* method of distribution, and the injunctive relief”); *Nat’l Rural Telecomms.*  
9 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“[I]t is the complete package  
10 taken as a whole, rather than the individual component parts, that must be examined for overall  
11 fairness.”) (quoting *Officers for Justice*, 688 F.2d at 628).

12 Taking all the foregoing arguments and defenses into account, the Settlement represents a  
13 realistic and fair compromise of the class claims. Proceeding with the litigation would impose  
14 significant risk of no recovery as well as ongoing, substantial additional expenditures of time and  
15 resources. By contrast, the Settlement will yield a prompt, certain, and substantial recovery for  
16 Class Members, which also benefits Defendant and the Court.

17 **C. The Settlement is the Result of Serious, Informed, and Non-Collusive**  
18 **Negotiations**

19 The settlement was the product of extensive arm’s-length negotiations between counsel for  
20 the parties who are very experienced consumer class action practitioners. *See* Joint Decl., Ex. D  
21 (Newman Decl.), ¶ 2. Though cordial and professional, the settlement negotiations were  
22 adversarial and non-collusive in nature. *See id.* The settlement reached is the product of substantial  
23 effort by the parties and their counsel and included an all-day mediation session on November 20,  
24 2018, with the Honorable Jeffrey King (Ret.), an experienced and impartial mediator. *See id.*; *see*  
25 *also Kullar*, 168 Cal. App. 4th at 129 (2008) (“The court undoubtedly should give considerable  
26 weight to the competency and integrity of counsel and the involvement of a neutral mediator in  
27 assuring itself that a settlement agreement represents an arm’s-length transaction entered without  
28 self-dealing or other potential misconduct.”). While the mediation did not result in a settlement on  
that day, the parties continued to negotiate while engaging in informal discovery as per the Court’s



1 direction. In fact, the parties spent over six months negotiating every aspect of the Settlement,  
2 which culminated in a signed term sheet dated June 4, 2019. *See* Joint Decl., Ex. D (Newman  
3 Decl.), ¶ 2.

4 Although Plaintiffs and Class Counsel believe there is a possibility of ultimately prevailing  
5 on their class claims, they recognized the potential risk, expense, and complexity posed by  
6 litigation, including the need to overcome a number of hurdles including class certification,  
7 summary judgment, trial and potentially an appeal that could take years to litigate, as well as  
8 potential collectability issues. *See* Joint Decl., ¶¶ 31-32. As such, this factor weighs strongly in  
9 favor of final approval.

10 **D. The Extent of Pre-litigation Discovery was more than Sufficient to Permit Final**  
11 **Approval of the Settlement**

12 The parties thoroughly investigated and evaluated the factual and legal strengths and  
13 weaknesses of this case before reaching the Settlement. *See id.*, Ex. D (Newman Decl.), ¶¶ 4-25.  
14 In particular, Class Counsel conducted an exhaustive review of Plaintiffs' PACE Assessment  
15 contract documents, the statutory history of PACE Assessments and related regulations and the  
16 extensive materials publicly available about the PACE programs at issue due to the involvement of  
17 the governmental entities. *See id.*, ¶ 2. The Settlement was reached after extensive investigation  
18 and research, production of data by Defendant, and a thorough evaluation of Plaintiffs' claims in  
19 light of such information. *See id.*, ¶¶ 4-25. Additionally, the parties litigated the motion to dismiss  
20 in federal court and Renovate's demurrer in this Court. Accordingly, the parties are now well  
21 aware of the strengths and weaknesses of their claims and defenses and were well-equipped to  
22 negotiate the Settlement.

23 Moreover, Plaintiffs uncovered facts about Defendant's financial condition that informed  
24 their negotiations. Shortly before the mediation session in San Diego, it was reported that  
25 Defendant filed paperwork with California's Employment Development Department notifying the  
26 Department that it was planning on laying off 71 employees. *See id.*, ¶ 2. During the mediation  
27 session in San Diego, Defendant provided Class Counsel with financial information that reflected  
28 on Defendant's ability to pay a judgment if this case was not resolved through a settlement. *See id.*  
Confirming Defendant's precarious financial condition, subsequent to preliminary approval,

1 Defendant was unable to deposit the entire \$2.55 million into the Settlement Fund by the deadline,  
2 and the parties therefore modified the Settlement to permit Defendant to fund the Settlement in two  
3 installments. *See id.*, Ex. C.

4 **E. Class Counsel Experienced in Similar Consumer Protection Litigation Fully**  
5 **Support the Settlement**

6 Class Counsel are highly qualified with substantial experience litigating complex class  
7 actions of all kinds. *See* Class Counsel Decls., Ex. B.<sup>6</sup> Additionally, Plaintiffs, as the proposed  
8 Class Representatives, have no conflicts with the Settlement Class, have participated actively in the  
9 case, and are represented by attorneys experienced in class action litigation. *See id.*; *see also*  
10 Plaintiffs' Decls., ¶¶ 3-11.<sup>7</sup>

11 Experienced counsel for the parties, operating at arm's-length, have weighed the strengths  
12 and risks of the case and endorse the proposed settlement. *See* Joint Decl., ¶¶ 5, 34. The view of  
13 the attorneys actively conducting the litigation is entitled to significant weight in deciding whether  
14 to approve the settlement. *See Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal.  
15 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981); *Kullar*, 168 Cal. App. 4th at 128 (court must account for  
16 "the experience and views of counsel") (internal quotations and citation omitted). Accordingly, this  
17 factor weighs in favor of final approval.

18 **F. The Percentage of Objectors is Small**

19 So far, as of May 22, 2020, only 22 Settlement Class members have objected to the  
20 settlement. This amounts to only approximately 0.03% of the Settlement Class. Plaintiffs will  
21 update these figures in their June 15, 2020 supplemental submission.

22 **VI. THE NOTICE TO CLASS MEMBERS WAS ADEQUATE**

23 Due process requires that reasonable notice of the settlement be given to all potential class  
24 members. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974). Moreover, "notice of the  
25 final approval hearing must be given to the class members in the manner specified by the court."

26 \_\_\_\_\_  
27 <sup>6</sup> "Class Counsel Decls." refers to the declarations of Rachele R. Byrd, Janine L. Pollack,  
28 Lee S. Shalov, C. Mario Jaramillo and Jason P. Sultzer.

<sup>7</sup> "Plaintiffs' Decls." refers to the declarations of George Loya and Judith Loya (jointly),  
Richard Ramos, Michael Richardson and Shirley Petetan, filed concurrently herewith.

1 CRC, rule 3.769(f). The notice methods utilized here complied with the direction of the  
2 Preliminary Approval Order. Joint Decl., Ex B, ¶ 9. Notice was provided as set forth in the First  
3 Amended Settlement Agreement. See Azari Decl., ¶¶ 6-21. Consequently, the Settlement meets  
4 the requirements for reasonable notice in order to obtain final approval.

## 5 **VII. THE SETTLEMENT CLASS SHOULD BE CERTIFIED**

6 This Court’s Preliminary Approval Order conditionally certified the Settlement Class and  
7 appointed Plaintiffs as class representatives and their counsel as Class Counsel. The Court should  
8 now finally certify the Settlement Class for purposes of this Settlement and appoint Plaintiffs as  
9 class representatives and their undersigned counsel as Class Counsel.

10 There are two requirements to certify a class: (1) the class must be ascertainable; and (2)  
11 there must be a well-defined community of interest in the questions of law and fact involved  
12 affecting the parties to be represented. See *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 704 (1967).  
13 California courts apply a “lesser standard of scrutiny” to certification of settlement classes. *Global*  
14 *Minerals & Metals Corp. v. Superior Court*, 113 Cal. App. 4th 836, 859 (2003). Each of the  
15 criteria for class certification is clearly satisfied in this case.

### 16 **A. An Ascertainable Settlement Class Exists and Is Numerous**

17 The Class is defined by objective characteristics and common transactional facts, *i.e.*, (i) all  
18 persons or entities who received residential PACE tax assessment financing from WRCOG through  
19 the HERO program where the underlying assessment contract was executed by the person or entity  
20 between January 1, 2012 and July 7, 2016; and (2) all persons or entities who received residential  
21 PACE tax assessment financing from LAC or SANBAG through the HERO program where the  
22 underlying assessment contract was executed by the person or entity between January 1, 2012 and  
23 June 15, 2017. See Joint Decl., Ex. A (SA), § 1.27. Therefore, Class Members are readily  
24 ascertainable. Moreover, it is undisputed that there were approximately 74,000 HERO assessments  
25 during the relevant period and therefore the Settlement Class is also sufficiently numerous. See  
26 Joint Decl., Ex. D (Newman Decl.), ¶ 3.

### 27 **B. There is a Community of Interest**

28 “The community of interest requirement involves three factors: ‘(1) predominant common

1 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and  
2 (3) class representatives who can adequately represent the class.” *Linder v. Thrifty Oil Co.*, 23 Cal.  
3 4th 429, 435 (2000).

4 The first factor means that it would be more efficient to jointly try the issues in the action,  
5 rather than requiring “each member . . . to individually litigate numerous and substantial questions  
6 to determine his or her right to recover following the class judgment . . . .” *Washington Mutual*  
7 *Bank v. Superior Court*, 24 Cal. 4th 906, 913 (2001), *accord City of San Jose v. Superior Court*, 12  
8 Cal. 3d 447, 460 (1974). The central questions behind the claims in this litigation are: (1) whether  
9 Defendant violated Business & Professions Code, § 17200, *et seq.* by engaging in unlawful, unfair  
10 and/or deceptive activities with respect to the HERO loans; (2) whether Plaintiffs and the Class  
11 would be entitled to relief by reason of Defendant’s wrongful conduct; (3) what is the proper  
12 measure of damages; and (4) whether Plaintiffs and the Class would be entitled to injunctive relief  
13 by reason of Renovate’s wrongful conduct. The answers to these questions depend on common  
14 evidence that does not vary from Class Member to Class Member, and so can be fairly resolved—  
15 whether through litigation or settlement—for all Class Members at once.

16 The second factor, typicality, requires only that the named plaintiff’s interests in the action  
17 be similar to those of other class members. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462,  
18 470, 478 (1981); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 811 (1971) Here, typicality is satisfied  
19 because the claims of the Settlement Class arise from the same misconduct that Plaintiffs seek to  
20 remedy – common misrepresentations and omissions contained in standardized documents across  
21 the entire Class in the sale of HERO financing contracts.

22 With respect to the third factor, the representative plaintiff must adequately protect the  
23 interests of the class: (1) there must be no disabling conflict of interest between the class  
24 representative and the class; and (2) the class representative must be represented by counsel who are  
25 competent and experienced in the kind of litigation to be undertaken. *See McGhee v. Bank of Am.*,  
26 60 Cal. App. 3d 442, 450 (1976); *See also Richmond*, 29 Cal. 3d at 478-79. Plaintiffs have no  
27 conflicts with the Settlement Class, and during the nearly four years that this action has been  
28 pending, Plaintiffs have participated actively in the case. *See Plaintiffs’ Decls.*, ¶¶ 3-10.

1           Moreover, Class Counsel have diligently litigated this case and have successfully  
2 prosecuted numerous class actions across the country in both state and federal courts in recent  
3 years, recovering billions of dollars for injured class members. *See Richmond*, 29 Cal. 3d at 479  
4 (counsel adequate where they had “substantial experience in class action litigation”); Class Counsel  
5 Decls., Ex. B.

6           On or about May 1, 2020, Ms. Janine Pollack left The Sultz Law Group P.C., one of the  
7 firms appointed Class Counsel in the Preliminary Approval Order, and became a named partner of  
8 Calcaterra Pollack LLP. Plaintiffs will submit, with their supplemental submissions on June 15,  
9 2020, a [Proposed] Amended Final Order and Judgment Approving Settlement which appoints Ms.  
10 Pollack’s new firm, Calcaterra Pollack LLP, as one of the Class Counsel in the place of The Sultz  
11 Law Group P.C. Ms. Pollack, a plaintiffs’ class action attorney for nearly three decades, has been  
12 integrally involved since the inception of these cases in formulating the litigation strategy and  
13 prosecuting them as well as the Settlement currently before the Court, and Calcaterra Pollack LLP  
14 is eminently qualified to be one of the Class Counsel. *See Joint Decl.*, ¶ 21; *Pollack Decl.*, Ex. B.

15           **C. A Class Action is Superior**

16           The California Supreme Court has consistently recognized that class actions provide  
17 accessible judicial review and deter unfair and illegal conduct and are therefore favored in  
18 California. *See Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 340 (2004);  
19 *Richmond*, 29 Cal. 3d at 474; *Vasquez*, 4 Cal. 3d at 807-08; *Daar*, 67 Cal. 2d at 715. Here, given  
20 the common questions and the large number of Settlement Class members, each with relatively  
21 small amounts of damages, litigating this case as a class action is superior to each having to file his  
22 or her own lawsuit. *See Lazar v. Hertz Corp.*, 143 Cal. App. 3d 128, 143 (1983) (class actions held  
23 “appropriate when numerous parties suffer injury of insufficient size to warrant individual action  
24 and when denial of class relief would result in unjust advantage to the wrongdoer.”).

25           **VIII. CONCLUSION**

26           For the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion  
27 for final approval of the parties’ Settlement in all respects.

28           DATED: May 26, 2020

By:   
RACHELE R. BYRD

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