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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' SUPPLEMENTAL BRIEF**
IN FURTHER SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND MOTION
FOR AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES,
AND CLASS REPRESENTATIVE
AWARDS

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

1 **I. INTRODUCTION**

2 Plaintiffs George Loya, Judith Loya, Richard Ramos, Michael Richardson and Shirley
3 Petetan (collectively, “Plaintiffs”) submit this supplemental memorandum in further support of their
4 Motion for Final Approval of Class Action Settlement (“Final Approval Motion”) and Motion for
5 Award of Attorneys’ Fees, Reimbursement of Expenses, and Class Representative Awards (“Fee
6 Motion”). The Settlement¹ should be finally approved because it has been overwhelmingly
7 accepted by the Settlement Class. Moreover, as detailed further below, the handful of objections do
8 not support rejection of the entire Settlement because they: (1) do not specifically relate to the
9 particular wrongdoing alleged by Plaintiffs; (2) only generally claim that the payments to the
10 Settlement Class should be greater or the attorneys’ fees sought should be less; or (3) are not in fact
11 objections at all. Accordingly, the Court should grant final approval to the Settlement and to the
12 requests for attorneys’ fees and expenses and Class Representative Awards.²

13 **II. THE LACK OF SUBSTANTIAL OPT-OUTS AND EXCLUSIONS FURTHER**
14 **SUPPORTS FINAL APPROVAL OF THE SETTLEMENT AND PLAINTIFFS’**
15 **ATTORNEYS’ FEES REQUEST**

16 Plaintiffs first seek to update the Court on the state of the claims process since they filed the
17 Final Approval Motion and Fee Motion on May 26, 2020. With the June 8, 2020 deadline for
18 objecting to or opting out of the Settlement having now passed, as of June 12, 2020, the Settlement
19 Administrator has received only 28 objections and 40 requests for exclusion. *See* Supplemental
20 Declaration of Cameron R. Azari, Esq. on Implementation and Adequacy of Settlement Notices and
21 Notice Plan (“Supp. Azari Decl.”), ¶ 16.³ By contrast, 74,914 Settlement Class members, by not
22 having opted out of the Settlement, are now entitled to their share of the \$2,550,000 Settlement

23 ¹ Any terms not otherwise defined herein have the same meaning as in the First Amended
24 Settlement Agreement dated February 5, 2020 (sometimes referred to herein as the “SA”), annexed
25 as Exhibit (“Ex.”) A to the Joint Declaration of Janine L. Pollack and Rachele R. Byrd in Support of
26 Plaintiffs’ Final Approval Motion and Fee Motion, filed on May 26, 2020.

26 ² No objections were raised to the requested Class Representative Awards.

27 ³ The Settlement Administrator received 42 exclusion requests, but Michael Minnick’s and
28 Jacquilynne Minnick’s exclusion requests were counted as one request and Darrell Coleman’s and
Pamela Coleman’s exclusion requests were counted as one request because each couple is named
together on the same contract.

1 Fund if the Settlement is approved and becomes final. *See id.*, ¶ 8. The tiny percentage (0.05%) of
2 Class members objecting supports final approval of the Settlement.

3 In assessing Class Counsel’s Fee Motion the Court should take into account Class Counsel’s
4 lodestar as a “cross-check” on fees calculated under the percentage-of-recovery method. *See*
5 *Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th 19, 37-39, 45-46 (2000). Here Class Counsel’s
6 lodestar as of May 26, 2020 (over three weeks ago) – which was \$1,890,867.75 (and has only
7 grown since then) – represented a negative multiplier of 0.45, well below what is typical. *See* Fee
8 Motion at 9-11; *see also, e.g., Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001)
9 (“Multipliers can range from 2 to 4 or even higher.”). Moreover, there is still work for Class
10 Counsel to do given that there are many claims left to review and potential questions by Settlement
11 Class members to respond to. In addition, Class Counsel will need to continue working with the
12 Settlement Administrator until all payments are distributed and any outstanding issues are resolved.
13 As Class Counsel seek less than half of their lodestar, they respectfully reiterate that the requested
14 \$841,500.00 in attorneys’ fees is fair, reasonable and adequate and should be awarded by the Court.

15 **III. THE OBJECTIONS SHOULD BE OVERRULED**

16 None of the 28 objections submitted in this case comes close to providing a sufficient basis
17 for the Court to reject the Settlement that has now been validated by the 74,886 Settlement Class
18 members who have chosen to not object to, or opt-out of, the Settlement. *See, e.g., Rodriguez v. W.*
19 *Publ’g Corp.*, No. CV-05-3222 R(MCx), 2007 U.S. Dist. LEXIS 74849, at *52-53 (C.D. Cal. Aug.
20 10, 2007) (a settlement must be accepted or rejected in its entirety) (citing *Evans v. Jeff D.*, 475
21 U.S. 717, 726 (1986)). The objections amount to a minuscule percentage (0.04%) of the Class and
22 none presents a valid reason for denying final approval of the Settlement. *See Dandan Pan v.*
23 *Qualcomm Inc.*, No. 16-cv-01885-JLS-DHB, 2017 U.S. Dist. LEXIS 120150, at *30 (S.D. Cal. July
24 31, 2017) (“the absence of a large number of objections to a proposed class action settlement raises
25 a strong presumption that the terms of a proposed class action settlement are favorable to the class
26 members.”) (internal quotations omitted).

27 Each of the 28 forms submitted as objections should be overruled for one or more of the
28 reasons discussed below. First, many of the objections contain only complaints about the HERO

1 program in general, or about specific aspects of the program, but do not address the fairness of the
2 Settlement itself and/or the attorneys’ fees and reimbursement of expenses sought except in very
3 broad terms. Others object to the potential amount of payments due Settlement Class members, but
4 where a settlement is otherwise deemed fair, such objection is insufficient to justify the complete
5 rejection of the Settlement. A handful of objectors critique, in general terms, the amount of
6 attorneys’ fees sought, but Plaintiffs have well justified the fees requested in the detailed Fee
7 Motion and through extensive documents submitted in support of the motion. Finally, a handful of
8 the objections are procedurally improper, or do not appear to be objections at all. When considered
9 separately or as a whole, the objections do not provide a basis to deny Plaintiffs’ Final Approval
10 Motion or Fee Motion.

11 **A. Complaints Regarding the HERO Program**

12 Plaintiffs’ operative Complaints focus on specific items contained in the financing contracts
13 of every Settlement Class member that Plaintiffs allege were deceptive. The Complaints were not a
14 general condemnation of the HERO program. As such, the Release in this case is narrowly tailored
15 to those specific items alleged in each of the Complaints to have been deceptive. For any other
16 issues with the HERO program, each Settlement Class member retains the right to pursue litigation
17 regarding those issues to the fullest extent of the law while still remaining a Settlement Class
18 member. As such, the purported objections that take issue with the HERO program generally but
19 do not address the Settlement, while certainly understandable, are not valid and should be rejected
20 by the Court. *See* Objections of Alan Jacobson, Alfred & Michelle Lopez, Angelina Cardenas,
21 Arzell Dupree, Carol Nunemaker, Charles Buckley, Elga Van Bergen, Falinda Pena, Jeffrey Van
22 Bergen, Jose Medrano, Juliana Westbrook, Mansoor Azodi, Patricia Gaipa, Trina Ross, Alberto
23 Carillo and James Stahlschmidt. *See also, e.g., Dandan Pan*, 2017 U.S. Dist. LEXIS 120150, at
24 *31 (“generalized objections are insufficient to bar final approval”).

25 A handful of objections touch on issues with the HERO program raised in the Complaints,
26 specifically undisclosed fees and prepayment penalties. *See* Objections of Gilbert Gonzalez, Jesus
27 Amezcua, Julio Yokoyama, Mansoor Massey and Michael de la Cruz. However, none of these
28 objections takes issue with the fairness of the Settlement or the appropriateness of the attorneys’

1 fees requested except in very general terms not sufficient here, as discussed below. *See id.*
2 Moreover, to the extent that these objectors believe that the Settlement does not sufficiently address
3 and rectify the undisclosed fees, the objectors have the opportunity to opt out, as 40 other
4 Settlement Class members have done, and bring their own litigation. *See id.* at *31-32 (“to the
5 extent that any of the Objectors feel that the Settlement Agreement does not adequately address
6 their specific circumstances, the more appropriate course of action is for these Objectors to opt out
7 of the class, rather than bar final approval of a settlement where 3,466 of 3,483 class members find
8 the Settlement to be in their best interest.”) (citing *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d
9 566, 577 (9th Cir. 2004)) (affirming final approval where approximately 0.61% of class members
10 either opted out or objected).

11 **B. Objections to the Estimated Average Individual Payment Amount**

12 Twelve (12) of the Objectors claim that the amount of the payment made to each Settlement
13 Class member, currently estimated at an average of \$20.00, is insufficient.⁴ *See* Objections of Alan
14 Jacobson, Alfred & Michelle Lopez, Arzell Dupree, Elga & Jeffrey Van Bergen, Jesus Amezcua,
15 Julio Yokoyama, Mansoor Massey, Michael de la Cruz, Norman Haussman, Patricia Gaipa,
16 Michael Forcen, and James Stahlschmidt. But there is little question that the Settlement meets the
17 pertinent standards of fairness because: “(1) the settlement [was] reached through arm’s-length
18 bargaining; (2) investigation and discovery [were] sufficient to allow counsel and the court to act
19 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
20 small.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996) (citations omitted). And
21 courts have consistently held that merely objecting on the basis that a Settlement provides too little
22 benefit is not a valid objection. *See, e.g., Vargas v. Ford Motor Co.*, No. CV 12-08388-AB
23 (FFMx), 2017 U.S. Dist. LEXIS 177149, at *9 (C.D. Cal. Oct. 18, 2017) (“Simply wanting a more
24 favorable settlement is not a sufficient basis for an objection to a class action settlement that is
25 otherwise fair, adequate, and reasonable”). Moreover, as detailed in the Final Approval Motion and
26

27 ⁴ The Notice states that the average Class member is expected to receive approximately
28 \$20.00 but that could vary from a range of approximately \$4.35 to approximately \$242.61
depending on a variety of factors, including the size of the Class member’s financing contract.

1 Fee Motion, the estimated payments to Class members are reasonable and in line with other class
2 settlements. *See* Final Approval Motion at 9-10; Fee Motion at 5-6. *See also, e.g., Wershba*, 91
3 Cal. App. 4th at 250 (“A settlement need not obtain 100 percent of the damages sought in order to
4 be fair and reasonable.”).⁵ Moreover, the total Settlement Fund is more than the Settlement Class
5 would be likely to receive if successful at trial. *See* Final Approval Motion at 10.

6 Finally, to the extent these objectors are unsatisfied with the amount of the Settlement, they
7 are entitled to opt-out as 40 other Settlement Class members have done and pursue their own
8 claims. *See, e.g., Dandan Pan*, 2017 U.S. Dist. LEXIS 120150, at *31.

9 C. Objections to the Amount of Attorneys’ Fees Sought

10 Of the 74,954 Settlement Class members, only seven (7) have objected to the amount of
11 attorneys’ fees Class Counsel seek. The majority of these seven objections simply state the
12 objectors’ opinion that the attorneys’ fees requested are excessive in relation to the benefits
13 provided to the Settlement Class members. *See* Objections of Elga and Jeffrey Van Bergen, Frank
14 Hogancamp, James Chappell, and Juliana Westerbrook. The Court should overrule these objections
15 because, as demonstrated in Plaintiffs’ Fee Motion, the amount of attorneys’ fees requested is fair
16 and reasonable by any measure. *See* Fee Motion. Indeed, Plaintiffs seek a *negative* multiplier of
17 0.45, meaning Class Counsel will obtain *less than half* of their lodestar spent litigating the case; this
18 fact strongly supports the reasonableness of the fee request. *See id.* at 9-11; *see also, e.g., In re*
19 *Amgen Sec. Litig.*, No. CV 7-2536 PSG (PLAx), 2016 U.S. Dist. LEXIS 148577, at *27 (C.D. Cal.
20 Oct. 25, 2016) (“courts have recognized that a percentage fee that falls below counsel’s lodestar
21 strongly supports the reasonableness of the award”) (citations omitted).

22 Objector Mansoor Massey argues that Defendant should have to pay for any attorneys’ fees

23 _____
24 ⁵ *See also In re Celera Corp. Sec. Litig.*, No. 5:10-CV-02604-EJD, 2015 U.S. Dist. LEXIS
25 157408, at *18-19 (N.D. Cal. Nov. 20, 2015) (granting final approval on a settlement fund which
26 represented 17% of the plaintiffs’ total estimated damages); *In re Omnivision Techs., Inc.*, 559 F.
27 Supp. 2d 1036, 1042 (N.D. Cal. 2007) (granting final approval of a settlement fund where the gross
28 class recovery was 9% of maximum potential recovery); *Destefano v. Zynga, Inc.*, No. 12-cv-
04007-JSC, 2016 U.S. Dist. LEXIS 17196, at *37-38 (N.D. Cal. Feb. 11, 2016) (finding settlement
amount reasonable where it represented “approximately 14 percent of likely recoverable aggregate
damages at trial.”).

1 directly instead of having them “come out of the settlement.” But this is not a basis for the Court to
2 reject the Settlement because, *inter alia*, if Plaintiffs had made such demand it would likely have
3 caused Defendant to simply reduce the offered Settlement Fund by the amount of attorneys’ fees
4 sought. Moreover, “California has long recognized . . . the propriety of awarding an attorney fee to
5 a party who has recovered or preserved a monetary fund for the benefit of himself or herself and
6 others.” *Laffitte v. Robert Half Int’l Inc.*, 1 Cal. 5th 480, 488-89 (2016) (citing cases). “In
7 awarding a fee *from the fund* . . . , the trial court acts within its equitable power” *Id.* (emphasis
8 added).

9 Objector Norman Haussman contends that the Court should “reduce attorneys[’] fee[s] to no
10 more than 20% and expenses not to exceed \$40,000.” Mr. Haussman’s demand that Class
11 Counsel’s fees be reduced to 20% is without basis, particularly where the 33% of the Settlement
12 Fund sought is routinely awarded in cases like this. *See* Fee Motion at 5-6. Moreover, as discussed
13 *supra*, the negative multiplier here, 0.45, strongly supports the reasonableness of the requested fees.
14 And finally, Mr. Haussman’s demand that Class Counsel’s request for reimbursement of
15 \$58,423.66 in out-of-pocket expenses be reduced to \$40,000 is groundless as Mr. Haussman does
16 not identify any specific expenses he believes were not appropriately incurred, while Class Counsel
17 has submitted extensive details of the basis for the expense reimbursement sought through sworn
18 declarations.

19 **D. Procedurally Improper Objections and Non-Objections**

20 A small number of objections are procedurally improper or do not appear to be objections at
21 all, and accordingly should be disregarded. Objectors Elga Van Bergen and her apparent spouse
22 Jeffrey Van Bergen each submitted separate, more or less identical objections but entered into a
23 single financing contract. *See* Supp. Azari Decl., ¶ 16. Thus, only one Van Bergen objection has
24 been counted as such herein. Jeffrey Davis simply states in his objection, “I have no issues with
25 HERO financing,” which may indicate a desire to opt-out of the Settlement but is not a valid
26 objection. It appears Patricia Hernandez was attempting to submit a claim instead of an objection,
27 as she merely identifies her homes associated with the HERO program and the associated loan
28

1 amounts.⁶ Finally, Stephen Landgraf filed a blank objection. Thus, these objection forms should
2 be disregarded.

3 **IV. CONCLUSION**

4 For the foregoing reasons, Plaintiffs reiterate their request that the Court grant the Final
5 Approval Motion and Fee Motion in all respects.

6
7 DATED: June 15, 2020

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8 By providing her information and not having opted-out Ms. Hernandez will receive any
settlement payment she is due.

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