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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 **JOINT DECLARATION OF JANINE L.**
28 **POLLACK AND RACHELE R. BYRD**
IN SUPPORT OF: (1) PLAINTIFFS'
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT; AND
(2) PLAINTIFFS' MOTION FOR
AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES,
AND CLASS REPRESENTATIVE
AWARDS

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

1 We, Janine L. Pollack and Rachele R. Byrd, hereby jointly declare as follows:

2 1. We are attorneys duly licensed to practice law in the State of California or admitted
3 *pro hac vice* and are partners of Calcaterra Pollack LLP and Wolf Haldenstein Adler Freeman &
4 Herz LLP (“Wolf Haldenstein”), respectively. The following facts are based upon our personal
5 knowledge and, if called upon to do so, we could and would competently testify thereto.

6 2. We have been involved in the pending case since its inception. We submit this
7 declaration in support of Plaintiffs’ Motion for Final Approval of Class Action Settlement and
8 Plaintiffs’ Motion for Award of Attorneys’ Fees, Reimbursement of Expenses, and Class
9 Representative Awards.

10 3. Wolf Haldenstein, Calcaterra Pollack LLP, McLaughlin & Stern LLP, and Access
11 Lawyers Group (collectively, “Class Counsel”) represent Plaintiffs George and Judith Loya,
12 Richard Ramos, Michael Richardson, and Shirley Petetan (collectively, “Plaintiffs”) in this action.

13 4. This declaration sets forth the scope of this litigation, including pleadings, motions
14 and discovery, to show why the Settlement of this action on the terms agreed to is fair, reasonable,
15 and adequate. The facts recited concerning the nearly 4-year history of this litigation and the
16 efforts of Class Counsel in obtaining the Settlement cannot be all-inclusive. However, they
17 provide the Court with a meaningful description of the history, scope, risk, and complexity of this
18 action.

19 5. We respectfully submit that the facts herein demonstrate: (1) the settlement of this
20 action on the terms agreed to is fair, reasonable, and adequate for the plaintiff class; (2) Plaintiffs’
21 request for attorneys’ fees and reimbursement of expenses should be approved; and (3) payment of
22 the requested class representative awards is appropriate and should be approved. That more than
23 74,000 notices were sent to potential Class Members and Epiq has received, as of May 22, 2020,
24 only 22 objections (or just 0.3%) (two of which are from the same household for the same
25 financing agreement and many of which do not appear to be objections to the Settlement itself)
26 further confirms that the proposed Settlement, including the requested attorneys’ fees and
27 reimbursement of expenses, represents an excellent result, is eminently fair, reasonable and
28 adequate, and should be approved by the Court.

1 **I. INTRODUCTION**

2 6. This litigation concerns certain features of the tax assessment contracts each Plaintiff
3 and Class Member entered into under a Property Assessed Clean Energy (“PACE”) financing
4 program for purportedly “energy efficient” home improvement loans under Defendant Renovate
5 America, Inc.’s (“Defendant” or “Renovate”) Home Energy Renovation Opportunity (“HERO”)
6 program in Plaintiffs’ respective counties. Plaintiffs allege that certain fees and features of these
7 transactions were unlawful, fraudulent, and unfair.

8 7. The Settlement provides substantial benefits to the Settlement Class in the form of a
9 Settlement Fund of \$2,550,000 as well as injunctive relief. The Settlement was reached after an
10 exchange of informal discovery and several months of arm’s-length, non-collusive bargaining
11 between counsel, including an all-day mediation on November 20, 2018, with the Honorable Jeffrey
12 King (Ret.) at JAMS.

13 8. Class Counsel strongly believe that the Settlement is fair and appropriate and is in
14 the best interests of, and will result in significant financial benefit to, the Class.

15 **II. PLAINTIFFS’ LITIGATION EFFORTS AND SUMMARY OF THE CLAIMS**

16 9. On or about November 1, 2016, George Loya filed a putative class action lawsuit
17 against Renovate America, Inc. (“Renovate”) and the Western Riverside Council of Governments
18 (“WRCOG”) in the Riverside County Superior Court, captioned as *Loya v. Western Riverside*
19 *Council of Governments and Renovate America, Inc.*, Case No. RIC1614434 (the “Loya Action”).
20 On or about November 1, 2016, Richard Ramos filed a putative class action lawsuit against
21 Renovate and the San Bernardino Associated Governments (“SANBAG”) in the San Bernardino
22 County Superior Court, captioned as *Ramos v. San Bernardino Associated Governments and*
23 *Renovate America, Inc.*, Case No. CIVDS1618459 (the “Ramos Action”). On or about November
24 1, 2016, Michael Richardson filed a putative class action lawsuit against Renovate and the County
25 of Los Angeles (“LAC”) in the Los Angeles County Superior Court, captioned as *Richardson v.*
26
27
28

1 *County of Los Angeles and Renovate America, Inc.*, Case No. BC639230 (the “Richardson
2 Action”).¹

3 10. The original complaints all alleged that certain features of the tax assessment
4 contracts each plaintiff entered into under a PACE program in their respective counties for
5 purportedly “energy efficient” home improvement loans under Renovate’s HERO program were
6 unlawful, fraudulent, and unfair. Specifically, the original complaints asserted causes of action
7 for: (1) violations of the Truth in Lending Act (“TILA”), 15 U.S.C. § 1601, *et seq.*; (2) violations
8 of the Home Ownership and Equity Protection Act (“HOEPA”), 15 U.S.C. § 1639; (3) Conspiracy
9 to Violate TILA and HOEPA; (4) violations of TILA Mortgage Originator Rules; (5) violations of
10 California’s Covered Loan Law, California Financial Code § 4970, *et seq.* (“Covered Loan Law”)
11 (except that the Richardson Action did not contain this claim); and (6) violations of California
12 Business and Professions Code § 17200, *et seq.* (“Section 17200”) and the California common law.

13 11. On or about December 1, 2016, Renovate removed the Loya Action, Ramos Action,
14 and Richardson Action to the United States District Court, Central District of California. On or
15 about February 16, 2017, George Loya filed a First Amended Complaint in the Loya Action,
16 adding Plaintiffs Judith Loya and Beth Simpson.² Ramos filed a First Amended Complaint on
17 February 22, 2017, and Richardson filed a First Amended Complaint on or about February 24,
18 2017, adding Plaintiff Shirley Petetan. On or about March 1, 2017, the District Court granted
19 Plaintiffs’ Motion to Consolidate Actions for Pretrial Purposes and for Appointment of Interim
20 Class Counsel, designating the Loya Action, Case No. Case No. 16-cv-02478-AB-KK, as the lead
21 action.

22 12. Thereafter, Defendants moved to dismiss all of the consolidated cases. On or about
23 July 17, 2017, the District Court granted in part and denied in part motions to dismiss filed by
24 Renovate, WRCOG, SANBAG, and LAC in the consolidated action, dismissing the federal TILA

25 ¹ SANBAG’s HERO Loan program ceased to exist as of June 30, 2017, and LAC’s HERO
26 Loan program ceased to exist in or around May 2020 (*see* <https://www.latimes.com/homeless-housing/story/2020-05-21/la-fi-pace-home-improvement-loans-la-county>).

27 ² Plaintiff Beth Simpson settled her claims separately as she is not a member of the
28 Settlement Class as defined.

1 and HOEPA causes of action as well as the conspiracy claims based thereon. Because the TILA
2 and HOEPA claims were the only claims pled against WRCOG, SANBAG and LAC, the District
3 Court dismissed the cases against those governmental entities. The District Court declined to
4 retain jurisdiction over the remaining state law claims against Renovate and remanded the cases
5 back to state court.

6 13. After the cases were remanded, the parties jointly requested that the cases be
7 coordinated for pretrial purposes by filing a Joint Petition for Coordination and Application for
8 Order Staying All Proceedings Pending Consideration Thereof (the "Petition") with the Judicial
9 Council of California. On December 5, 2017, the Judicial Council of California granted the
10 Parties' Petition. The coordinated matter was assigned to the Riverside County Superior Court as
11 *In re Renovate America Finance Cases* under case number RICJCCP4940 (the "Action").

12 14. On March 15, 2018, Plaintiffs in the Loya Action and the Ramos Action filed
13 Amended Class Action Complaints, asserting, on behalf of themselves and putative classes, three
14 causes of action: (1) a cause of action for Violations of the Unfair and Fraudulent prongs of
15 Section 17200; (2) a cause of action for violations of the unlawful prong of Section 17200 based
16 on alleged violations of the Covered Loan Law; and (3) a cause of action for tortious interference
17 with contract. Also on March 15, 2018, Plaintiffs in the Richardson Action filed an Amended
18 Class Action Complaint asserting, on behalf of themselves and a putative class and subclass, three
19 causes of action: (1) a cause of action for violations of unfair and fraudulent prongs of Section
20 17200; (2) a cause of action for violations of the unfair and fraudulent prongs of Section 17200 on
21 behalf of a subclass; and (3) a cause of action for tortious interference with contract. On May 1,
22 2018, Plaintiffs in the Loya Action, Ramos Action, and Richardson Action re-filed identical
23 versions of the previously filed amended pleadings and named them Second Amended Class
24 Action Complaints.

25 15. Thereafter, Renovate filed Demurrers and, on June 13, 2018, the Court overruled
26 Defendant's demurrer to the Section 17200 claims and granted without leave to amend the
27 demurrer to the tortious interference claim. On July 17, 2018, the Court held a Case Management
28 Conference and ordered the parties to engage in informal discovery in anticipation of mediation.

1 Renovate provided Plaintiffs with informal discovery on certain issues, including the number of
2 PACE Assessments in the Settlement Class as well as all of the other information required by
3 applicable rules and orders of the Court.

4 **III. SETTLEMENT NEGOTIATIONS**

5 16. We can unequivocally say that the settlement negotiations in this matter were
6 conducted at arm's-length at all times. On November 20, 2018, the parties attended mediation in
7 San Diego with the Honorable Jeffrey King (Ret.). The parties failed to resolve the matter during
8 that mediation session. On December 18, 2018, the Court held another Case Management
9 Conference and formally opened discovery on class issues. While Plaintiffs began to conduct
10 discovery into class issues, the parties continued to discuss settlement for several months, engaging
11 in extensive and hard-fought settlement negotiations. The parties ultimately were able to bridge
12 the gap between their negotiation positions and signed a term sheet dated June 4, 2019. On July 2,
13 2019, the parties notified the Court of the Settlement.

14 17. The parties did not begin negotiating the attorneys' fees issues (or the class
15 representative awards) until after a settlement in principle had been reached on Class Members'
16 recovery and a proposed plan of allocation.

17 18. On November 11, 2019, the parties signed a Settlement Agreement, and Plaintiffs
18 filed a motion for preliminary approval of the Settlement on November 14, 2019. On December
19 16, 2019, the Court issued a Tentative Ruling requesting the parties provide additional information
20 and make corrections to the Settlement Administrator's declaration, the release provision in the
21 Settlement Agreement, the Class Notice, the proposed preliminary approval order, and the
22 objection form. The Court continued the preliminary approval hearing from December 12, 2019 to
23 January 22, 2020. The parties subsequently stipulated to continue the hearing from January 22,
24 2020 to January 23, 2020, and the Court approved the stipulation on December 20, 2019. On
25 January 15, 2020, Plaintiffs filed a supplemental submission in further support of their motion for
26 preliminary approval, and the Court issued a tentative ruling on January 22, 2020, granting the
27 motion. Since no party requested oral argument, the tentative ruling became the final ruling on
28 January 23, 2020 without a hearing. The parties then executed the First Amended Settlement

1 Agreement on February 5, 2020, incorporating the changes they had agreed upon in the
2 supplemental submission. Attached hereto as **Exhibit A** is a true and correct copy of the First
3 Amended Settlement Agreement (“SA”).

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

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

25 21. On or about May 1, 2020, I (Janine Pollack) left The Sultzer Law Group P.C. and
26 became a named partner of Calcaterra Pollack LLP. I (Janine Pollack) filed a Notice of Change of
27 Address or Other Contact Information with the Court on or about May 11, 2020. Plaintiffs will
28 submit, with their supplemental submissions on June 15, 2020, a [Proposed] Amended Final Order

1 and Judgment Approving Settlement³ which appoints my new firm, Calcaterra Pollack LLP, as one
2 of the Class Counsel in the place of The Sultzer Law Group P.C. I (Janine Pollack) have been
3 integrally involved since the inception of these cases (while a partner at Wolf Haldenstein Adler
4 Freeman & Herz LLP as well as The Sultzer Law Group P.C.) in formulating the litigation strategy
5 and prosecuting them as well as the Settlement currently before the Court and respectfully submit
6 that my new firm, Calcaterra Pollack LLP, is eminently qualified as Class Counsel. *See*
7 Declaration of Janine L. Pollack in Support of Plaintiffs’ Motion for Attorneys’ Fees,
8 Reimbursement of Expenses, and Class Representative Awards, Exhibit B.

9 **IV. SETTLEMENT TERMS**

10 **Monetary Relief**

11 22. Renovate will pay the sum of \$2,550,000 (the “Settlement Fund”), which will cover
12 refunds to Settlement Class Members in the form of a Benefit Check, Class Representative Awards
13 approved by the Court, the costs of providing notice and administering the Settlement incurred by
14 the Settlement Administrator, and attorneys’ fees and expenses paid to Class Counsel as approved
15 by the Court. *See* Exhibit A [SA], §§ 2.01-2.02.

16 23. The “Settlement Class” is defined as: (i) all persons or entities who received
17 residential PACE tax assessment financing from WRCOG through the HERO program where the
18 underlying assessment contract was executed by the person or entity between January 1, 2012 and
19 July 7, 2016; (2) all persons or entities who received residential PACE tax assessment financing
20 from LAC through the HERO program where the underlying assessment contract was executed by
21 the person or entity between January 1, 2012 and June 15, 2017; and (iii) all persons or entities
22 who received residential PACE tax assessment financing from SANBAG through the HERO
23 program where the underlying assessment contract was executed by the person or entity between
24 January 1, 2012 and June 15, 2017. *See id.*, § 1.27.

25
26
27 ³ Class Counsel will direct the Settlement Administrator to post a copy of the Amended Final
28 Order and Judgment Approving Settlement on the Settlement website, once entered by the Court, to
satisfy the requirements of Cal. Rules of Court, rule 3.771(b).

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

13 25. Within 120 days after the initial mailing of all Benefit Checks, the Settlement
14 Administrator shall provide a report regarding the amount of money remaining in the Settlement
15 Fund due to uncashed checks. If the amount exceeds \$200,000, the Settlement Administrator shall
16 calculate the "Supplemental Benefit Amount" and proceed to mail a new round of "Supplemental
17 Benefit Checks" to all Class Members who cashed an original Benefit Check. The Settlement
18 Administrator shall calculate the Supplemental Benefit Amount by determining the amount
19 remaining in the Settlement Fund and subtracting the Settlement Administration Costs necessary to
20 mail the Supplemental Benefit Checks and complete all remaining Settlement Administration.

21 26. The amount of each Supplemental Benefit Check will be calculated as follows:
22 First, the Settlement Administrator will calculate the total amount of original Benefit Checks
23 cashed. Second, the amount of each Class Member's original cashed Benefit Check will be
24 divided by the total amount of original Benefit Checks cashed to determine a proportion or ratio of
25 the Supplemental Benefit Amount attributable to each Class Member who cashed an original
26 Benefit Check. For each Class Member who cashed an original Benefit Check, the ratio will be
27 applied to the Supplemental Benefit Amount to determine each Class Member's proportionate
28 share of the Supplemental Benefit Amount. Any Supplemental Benefit Checks shall be mailed

1 within 150 days after the initial mailing of all original Benefit Checks and shall remain valid for 90
2 days. Within 60 days of either the expiration date of the original Benefit Checks, if the amount
3 remaining in the Settlement Fund is less than \$200,000, or the expiration of the Supplemental
4 Benefit Checks, Class Counsel shall present an amended judgment to the Court reflecting a
5 proposed *cy pres* recipient(s) for any remaining uncashed funds. Class Counsel shall select the
6 proposed *cy pres* recipient(s) in accordance with the Court's local rules and in consideration of the
7 remaining uncashed amount. Class Counsel must obtain Renovate's consent to any proposed *cy*
8 *pres* recipient(s) and any proposed amended judgment prior to presenting any such proposal to the
9 Court. *See* Exhibit A [SA], § 4.11.

10 **Disclosure Changes**

11 27. Within 30 days of the Final Approval Date, Renovate shall recommend to WRCOG
12 and LAC that certain changes be made to written disclosures used in connection with those
13 entities' respective HERO programs. The changes to be recommended shall be substantially in the
14 form attached as Ex. D to the Settlement Agreement (the "Disclosure Changes"). *See* Exhibit A
15 [SA], § 4.12. Those Disclosure Changes are as follows:

16 **Revised Disclosures:**

17 Current:

18 d. **Recording Fee and One-time Assessment Administration Fee.** At
19 the time of closing, the Authority will pass-through the assessment recording fee of
20 \$20.00 to you to cover the cost of recording the assessment, which will be included
21 in the principal amount of the assessment or may be paid upfront by you at closing.
22 At the time of closing, the Authority will charge you a one-time assessment
23 administration fee of \$100.00, which will be included in the principal amount of the
24 assessment or may be paid upfront by you at closing. In addition, you will be
25 required to pay recording fees charged by the County in connection with any
26 prepayment or the discharge of the assessment.

27 As Revised:
28

1 year. Interest will accrue on the amount of interest included in the principal amount
2 of the assessment in conformance with the Improvement Bond Act of 1915.

3 **New Disclosures:**

4 •**Semi-Annual Payments May Be Required:** Even though the maximum
5 annual Assessment Installment payments are amortized based on a single annual
6 payment, if you make semi-annual property tax payments you may be required to
7 make semi-annual payments on the principal amount of the assessment along with
8 your semi-annual property tax payments. Even if you make such semi-annual
9 payments towards the principal amount of your assessment, those payments may
10 still only be applied to your assessment's principal balance once per year.

11 •**Calculation of Annual Percentage Rate (APR):** The Annual Percentage
12 Rate (APR) disclosed to you in Exhibit B of the Assessment Contract is only an
13 estimated APR, as the accrued interest on your assessment may change depending
14 on your funding date.

15 **V. FACTORS CONSIDERED IN THE SETTLEMENT PROCESS**

16 28. The Settlement is the result of good-faith and aggressively contested negotiations
17 between Plaintiffs and Defendant through their respective attorneys.

18 29. The Settlement represents a significant recovery for the Class. The Settlement
19 amount of \$2,550,000 is more than reasonable based on the procedural history of this case and the
20 possibility of no recovery should the Court deny Plaintiffs' anticipated motion for class
21 certification and the slim likelihood that Class Members would thereafter pursue individual
22 actions. The Settlement Fund provides substantial compensation to all Class Members filing
23 claims. It represents slightly more than the \$2.4 million Class Counsel estimate Plaintiffs and the
24 Class would likely recover if successful at trial, taking into consideration the likelihood of
25 Plaintiffs recovering on each of the claims. Moreover, there is no claim form to fill out and Class
26 Members will automatically be sent a check as long as they do not opt out.

27 30. Attached hereto as **Exhibit D** is a true and correct copy of the November 14, 2019
28 Declaration of Randall S. Newman in Support of Plaintiffs' Unopposed Motion for Preliminary

1 Approval of Class Action Settlement (excluding the exhibits), wherein Mr. Newman, formerly a
2 partner with Wolf Haldenstein, estimates the number of Settlement Class Members, the total
3 amount of damages that would be awarded if the action were successful at trial on all of its claims,
4 and the total amount of damages that the Class could reasonably be expected to be awarded at trial,
5 taking into account the likelihood of prevailing, and provides other information required for
6 motions for preliminary approval by the Case Management Order #1 entered in this action on
7 November 8, 2016.

8 31. While Plaintiffs are prepared to file their motion for class certification, and to file a
9 motion for summary adjudication should the Settlement not be approved, Plaintiffs and the
10 Settlement Class would have to retain a damages expert to calculate the amount of restitution and
11 to propose a plan of allocation. Further litigation would also produce additional time-consuming
12 and expensive pre-trial motion practice and summary adjudication and/or judgment or trial.
13 Defendant would likely contend that several categories of Plaintiffs' claims for restitution are not
14 susceptible to measurement and that, therefore, those claims fail. Moreover, Defendant would
15 likely argue in opposing Plaintiffs' motion for class certification that individualized issues
16 predominate because each of the assessment contracts were in different amounts and for different
17 products. Defendant would also likely argue on summary judgment that all of the fees were
18 properly and fully disclosed, were authorized by the governmental entities, and that Plaintiffs and
19 the Class had a duty to read the contracts and understand them before signing. Further, it would
20 likely argue that the governmental entities, not Defendant, retained most if not all of the disputed
21 fees charged. While Plaintiffs have responsive arguments to Defendant's defenses, the outcome is
22 uncertain, and if Defendant were to prevail on any of its arguments the Settlement Class would
23 obtain little or nothing from this litigation. There is also the likelihood of appeals of the decisions
24 on summary judgment, class certification, and/or trial.

25 32. There is also the substantial risk that Defendant would be unable to pay a judgment
26 if this case was not resolved through settlement. In fact, shortly before the mediation session, it
27 was reported that Defendant filed paperwork with California's Employment Development
28 Department notifying the Department that it was planning on laying off 71 employees. During the

1 mediation session, Defendant provided Class Counsel with financial information that reflected on
2 Defendant's ability to pay a judgment if this case were not resolved through a settlement. In
3 settling when they did, Class Counsel acted prudently to avoid the possibility of a further downturn
4 in Defendant's business. Indeed, while no one could have foreseen the occurrence of a global
5 pandemic, Class Counsel's agreement to settle this matter before the development of the current
6 situation was, in hindsight, a great benefit to the Class.

7 33. Importantly, the Release in this Settlement is limited to claims that were or could
8 have been brought based on the facts alleged in the Second Amended Class Action Complaints.
9 As such, to the extent that Class Members wish to pursue claims based on facts not at issue or
10 against non-parties related to their assessment contracts, they retain the right to do so.

11 34. In sum, Class Counsel's opinion of the fairness of the Settlement was shaped by,
12 *inter alia*, the following factors:

- 13 a) The difficulty in proving the amount of restitution on many of Plaintiffs' Section
14 17200 claims;
- 15 b) The need to retain a damages expert to calculate the amount of restitution and
16 propose a plan of allocation;
- 17 c) The potential for individual issues to predominate and prevent class certification;
- 18 d) The risk of decertification if the Class is certified;
- 19 e) The risk of time-consuming appeals; and
- 20 f) Defendant's precarious financial condition and the risk that it would be unable to
21 pay any judgment after trial.

22 **VI. THE REASONABLENESS OF PLAINTIFFS' REQUEST FOR ATTORNEYS' FEES** 23 **AND REIMBURSEMENT OF EXPENSES**

24 35. Class Counsel seek an award of \$841,500.00 (33% of the Settlement Fund) in
25 attorneys' fees plus reimbursement of out-of-pocket expenses to be paid from the \$2.55 million
26 Settlement Fund as compensation for their considerable investment of time and effort over a nearly
27 4-year period and their success in achieving the Settlement. Class Counsel have collectively
28 incurred a total of \$58,423.66 in unreimbursed out-of-pocket costs and have invested a collective
lodestar of \$1,890,867.75 as follows:

Firm	Lodestar	Expenses
Wolf Haldenstein Adler Freeman & Herz LLP	\$1,505,149.50	\$52,602.60
Calcaterra Pollack LLP	\$44,747.50	\$0
McLaughlin & Stern LLP	\$172,553.75	\$4,984.19
C. Mario Jaramillo, PLC	\$13,680	\$0
The Sultzer Law Group P.C.	\$154,737.00	\$836.87
Totals	\$1,890,867.75	\$58,423.66

36. Therefore, the requested fee award represents a *negative* 0.45 multiplier of Class Counsel's lodestar. Class Counsel's request for 33% of the Settlement Fund in attorneys' fees is in line with the attorneys' fees awards in similar cases. Attached hereto as **Exhibit E** are true and correct copies of relevant pages of filings and orders in other California Superior Court cases where courts awarded 33% of the common fund in attorneys' fees.

37. This litigation was undertaken by Class Counsel on a wholly contingent basis. From the outset, Class Counsel understood that they were embarking on an intensive, complex, expensive litigation with no guarantee of ever being compensated for the substantial investment of time and money the case required. In undertaking the responsibility, Class Counsel were obligated to assure that sufficient attorney resources were dedicated to the prosecution of this litigation and that funds were available to compensate staff and to pay for the considerable out-of-pocket costs, which a case such as this entails.

38. Because of the nature of a contingent practice where cases are predominantly "big cases" lasting many years, not only do contingent firms have to pay regular overhead, but they also, as here, have to advance the expenses of the litigation, including travel costs. The financial burden on a contingent counsel is far greater than on a firm that is paid on an ongoing basis.

39. The above does not even take into consideration the possibility of no recovery. It is not unusual to spend tens of thousands of hours on losing efforts. The factor labeled by the courts as "the risks of litigation" is not an empty phrase.

1 40. There are numerous cases where plaintiffs' counsel in contingent cases such as this,
2 after the expenditure of thousands of hours, received no compensation. It is only because
3 defendants and their counsel know that the leading members of the plaintiffs' class action bar are
4 actually prepared to, and will, force a resolution on the merits and go to trial that meaningful
5 settlements in actions such as this can occur.

6 41. Class Counsel is aware of many hard-fought lawsuits where, because of the
7 discovery of facts unknown when the case was commenced, or changes in the law during the
8 pendency of the case, or a decision of a judge or jury following a trial on the merits, or the financial
9 collapse of the defendant(s), excellent professional efforts of members of the plaintiffs' bar
10 produced no fee for counsel.

11 42. Losses in these types of actions are exceedingly expensive. The fees that are
12 awarded in successful cases are used to cover enormous overhead expenses incurred during the
13 course of these complex litigations.

14 43. Courts have repeatedly held that it is in the public interest to have experienced and
15 able counsel enforce the laws. Vigorous private enforcement of consumer protection laws can only
16 occur if private plaintiffs can obtain parity in representation with that available to large
17 municipalities and corporations. If this important public policy is to be carried out, the courts must
18 award fees which will adequately compensate private plaintiffs' counsel, taking into account the
19 enormous risks undertaken with a clear view of the economic realities of class actions.

20 44. When Class Counsel undertook to act for the Plaintiffs in this matter, we were aware
21 that the only way we would be compensated was to achieve a successful result. The benefits
22 conferred on Plaintiffs and the Class by this Settlement are particularly noteworthy in that, despite
23 the existence of the substantial risks presented here, the Settlement Class Members obtained via the
24 Settlement a substantial monetary benefit.

25 45. As detailed above, Class Counsel were unwavering in their dedication to the
26 interests of the Plaintiffs and the Class in their investment of the necessary time and resources
27 during a period of intense litigation to bring this matter to successful conclusion despite the
28 substantial risk of no recovery. Further, despite the fact Epiq sent over 74,000 notices to all

1 identifiable Settlement Class Members advising them of their right to object to Class Counsel's fee
2 and expense award, as of May 22, 2020, Epiq has received only 22 objections (two of which are
3 from the same household for the same financing agreement and many of which do not appear to be
4 objections to the Settlement itself), amounting to a mere 0.03% of the Class.

5 46. In addition, Class Counsel believe that a \$5,000 service payment should be awarded
6 to each Plaintiff (one to the Loyas jointly) for their work and commitment over the course of nearly
7 four years to vindicate the rights of the Class. Any less would not viably promote the public policy
8 interest in encouraging those with claims to assert them notwithstanding the fears associated with
9 doing so. Each of the Plaintiffs have filed herewith declarations attesting to their work in and
10 commitment to the litigation.

11 **VII. CONCLUSION**

12 We declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct. Executed this 26th day of May 2020, at New York, New York and
14 San Diego, California, respectively.

15 

16 _____
17 JANINE L. POLLACK

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20 RACHELE R. BYRD

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EXHIBIT A

FIRST AMENDED SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into as of February 5th, 2020 between: (a) plaintiffs George Loya, Judith Loya, Richard Ramos (“Ramos”), Michael Richardson (“Richardson”) and Shirley Petetan (“Petetan”) (collectively, “Plaintiffs” or “Representative Plaintiffs”), and (b) defendant Renovate America, Inc. (“Defendant”). Plaintiffs and Defendant are the “Parties.” All capitalized terms shall be as defined herein.

RECITALS

WHEREAS, on November 1, 2016, George Loya filed a putative class action lawsuit against Renovate and the Western Riverside Council of Governments (“WRCOG”) in the Riverside County Superior Court, captioned as *Loya v. Western Riverside Council of Governments and Renovate America, Inc.*, Case No. RIC1614434 (the “Loya Action”);

WHEREAS, on November 1, 2016, Ramos filed a putative class action lawsuit against Renovate and the San Bernardino Associated Governments (“SANBAG”) in the San Bernardino County Superior Court, captioned as *Ramos v. San Bernardino Associated Governments and Renovate America, Inc.*, Case No. CIVDS1618459 (the “Ramos Action”);

WHEREAS, on November 1, 2016, Richardson filed a putative class action lawsuit against Renovate and the County of Los Angeles (“LAC”) in the Los Angeles County Superior Court, captioned as *Richardson v. County of Los Angeles and Renovate America, Inc.*, Case No. BC639230 (the “Richardson Action”);

WHEREAS, the above original Complaints all concerned tax assessment contracts each plaintiff had entered into under a Property Assessed Clean Energy (“PACE”) Program in their respective counties, and each plaintiff alleged that certain features of the respective PACE Programs were unlawful, fraudulent, and unfair;

WHEREAS, in the above original Complaints in the Loya Action and the Ramos Action, plaintiffs asserted, on behalf of themselves and putative classes, six causes of action: (1) a cause of action for alleged violations of the Truth in Lending Act (“TILA”), 15 U.S.C. § 1601 *et seq.*; (2) a cause of action for alleged Violations of the Home Ownership and Equity Protection Act (“HOEPA”), 15 U.S.C. § 1639; (3) a cause of action for Conspiracy to Violate TILA and HOEPA; (4) a cause of action for Violations of TILA Mortgage Originator Rules; (5) a cause of action for violations of California’s Covered Loan Law, California Financial Code § 4970 (“Covered Loan law”), *et seq.*; and (6) a cause of action for Violations of California Business and Professions Code section 17200, *et seq.* (“Section 17200”);

WHEREAS, in the original Complaint in the Richardson Action, plaintiff asserted, on behalf of himself and a putative class, five causes of action: (1) a cause of action for alleged violations of the Truth in Lending Act (“TILA”), 15 U.S.C. § 1601 *et seq.*; (2) a cause of action for alleged Violations of the Home Ownership and Equity Protection Act (“HOEPA”), 15 U.S.C. § 1639; (3) a cause of action for Conspiracy to Violate TILA and HOEPA; (4) a cause of action

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for Violations of TILA Mortgage Originator Rules; and (5) a cause of action for Violations of California Business and Professions Code section 17200, *et seq.* (“Section 17200”)

WHEREAS, on December 1, 2016, Renovate removed the Loya Action to the United States District Court, Central District of California (the “District Court”), Case No. 16-cv-02478-AB-KK;

WHEREAS, on December 1, 2016, Renovate removed the Ramos Action to the United States District Court, Central District of California, Case No. 16-cv-02491-AB-KK;

WHEREAS, on December 1, 2016, Renovate removed the Richardson Action to the United States District Court, Central District of California, Case No. 2:16-cv-08943-AB-KK;

WHEREAS, on February 16, 2017, George Loya filed a First Amended Complaint in the Loya Action, adding Plaintiffs Judith Loya and Beth Simpson;

WHEREAS, on February 22, 2017, Ramos filed a First Amended Complaint in the Ramos Action;

WHEREAS, on February 24, 2017, Richardson filed a First Amended Complaint in the Richardson Action, adding Plaintiff Shirley Petetan;

WHEREAS, on March 1, 2017, the District Court granted Plaintiffs’ Motion to Consolidate Actions for Pretrial Purposes and for Appointment of Interim Class Counsel, designating the Loya Action, Case No. 16-cv-02478-AB-KK, as the lead action (the “Consolidated Action”);

WHEREAS, on July 7, 2017, the District Court granted in part and denied in part motions to dismiss filed by Renovate, WRCOG, SANBAG, and LAC in the Consolidated Action, dismissing the federal TILA, HOEPA, and conspiracy causes of action;

WHEREAS, the TILA, HOEPA, and conspiracy claims were the only claims pled against WRCOG, SANBAG, and LAC, so the District Court dismissed the cases against those governmental entities;

WHEREAS, in its July 7, 2017 decision, the District Court declined to retain jurisdiction over the remaining state law claims against Renovate and remanded the cases back to state court;

WHEREAS, after the three cases were remanded back to state court, the parties jointly requested that the cases be coordinated for pretrial purposes by filing a Joint Petition for Coordination and Application for Order Staying All Proceedings Pending Consideration Thereof with the Judicial Council of California;

WHEREAS, on December 5, 2017, the Judicial Council of California granted the Parties’ Joint Petition for Coordination and Application for Order Staying All Proceedings Pending Consideration Thereof. The coordinated matter was assigned to the Riverside County Superior Court as *In re Renovate America Finance Cases* under case number RICJCCP4940;

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WHEREAS, on March 15, 2018, Plaintiffs in the Loya Action and the Ramos Action filed Amended Class Action Complaints, asserting, on behalf of themselves and putative classes, three causes of action: (1) a cause of action for Violations of Unfair and Fraudulent prongs of Section 17200; (2) a cause of action for Violations of the Unlawful prong of Section 17200 based on alleged violations of the Covered Loan Law; and (3) a cause of action for Tortious Interference with Contract.

WHEREAS, on March 15, 2018, Plaintiffs in the Richardson Action filed an Amended Class Action Complaint asserting, on behalf of themselves and a putative class and subclass three causes of action: (1) a cause of action for Violations of Unfair and Fraudulent prongs of Section 17200; (2) a cause of action for Violations of Unfair and Fraudulent prongs of Section 17200 on behalf of a subclass; and (3) a cause of action for Tortious Interference with Contract;

WHEREAS, on May 1, 2018, Plaintiffs in the Loya Action, Ramos Action, and Richardson Action re-filed identical versions of the previously filed amended pleadings and named them Second Amended Class Action Complaints;

WHEREAS, on May 21, 2018, Renovate filed Demurrers to the Second Amended Class Action Complaints in the Loya Action, the Ramos Action and the Richardson Action;

WHEREAS, on June 13, 2018, the Riverside Superior Court sustained Renovate's Demurrers as to the Tortious Interference with Contract causes of actions but overruled the Demurrers as to the Section 17200 causes of action;

WHEREAS, this Agreement resolves the Plaintiffs' remaining Section 17200 claims, as detailed in their Second Amended Class Action Complaints, which were brought on behalf of putative classes of similarly situated individuals;

WHEREAS, Plaintiffs and Defendant have conducted an investigation into the facts and law, including Defendant's ability to pay a judgment in excess of the amount of the Settlement Fund (as defined in Paragraph 2.01 below);

WHEREAS, Defendant has denied and continues to deny the material allegations in the Action, has denied and continues to deny any wrongdoing and any liability to Plaintiffs or any putative Class Member, in any amount, in connection with the claims asserted in the Action, has denied that class certification is required or appropriate, and contends that it would prevail in the Action;

WHEREAS, Plaintiffs, individually and on behalf of the Settlement Class (as defined in Paragraph 1.27 below), desire to settle the Action and all matters within the scope of the Release set forth herein, having taken into account the risks, delays, and difficulties involved in establishing liability, the likelihood of recovery in excess of that offered by this Agreement, the desirability of payment now, the likelihood that the Action could be protracted and expensive, and Defendant's ability to pay a judgment in the event Plaintiffs prevailed in the Action at trial;

WHEREAS, Defendant believes that it is desirable and in its best interest to settle the Action and all matters within the scope of the Release in the manner and upon the terms and

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conditions provided for in this Agreement in order to avoid the further expense, inconvenience, and distraction of litigation, and in order to put to rest the claims that have been asserted in the Action and/or are within the scope of the Release; and

WHEREAS, the Parties have agreed on all of the terms and conditions of this Agreement through an arm's-length negotiation between their respective counsel, as facilitated by a neutral mediator.

NOW THEREFORE, in consideration of the foregoing and the covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged herein, the Parties agree as follows:

I. DEFINITIONS

1.01 "Action" means the action captioned as *In re Renovate America Finance Cases*, Case No. RICJCCP4940, now pending before the Superior Court for the County of Riverside, and all included cases within that coordinated matter, including *Loya v. Western Riverside Council of Governments and Renovate America, Inc.*, Riverside County Superior Court Case No. RIC1614434, *Ramos v. San Bernardino Associated Governments and Renovate America, Inc.*, San Bernardino County Superior Court Case No. CIVDS1618459; and *Richardson v. County of Los Angeles and Renovate America, Inc.*, Los Angeles County Superior Court Case No. BC639230;

1.02 "Agreement" or "Settlement Agreement" means this Settlement Agreement.

1.03 "Attorney Fee/Litigation Cost Award" means the award(s), if any, made to Class Counsel by the Court, upon application pursuant to paragraphs 3.15 and 3.16 below.

1.04 "Benefit Check" means the negotiable check to be sent to those Class Members who shall receive the Class Benefit Amount pursuant to paragraphs 2.02, 4.02, and 4.03 below.

1.05 "Class" means the "Settlement Class."

1.06 "Class Counsel" means Mark C. Rifkin, Randall S. Newman, Betsy C. Manifold and Rachele R. Byrd, Wolf Haldenstein Adler Freeman & Herz LLP; Janine L. Pollack, The Sultzer Law Group, P.C.; Lee Shalov, McLaughlin & Stern LLP; and C. Mario Jaramillo, Access Lawyers Group.

1.07 "Class Member(s)" means a member of the Settlement Class as defined below.

1.08 "Class Notice" means the notice of this Settlement that is contemplated by this Agreement, including an accompany objection form and an exclusion form that Class Members may use.

1.09 "Class Period" refers to the period on and after January 1, 2012.

1.10 "Class Representative Award" means the sums awarded, if any, to Representative Plaintiffs by the Court, upon application pursuant to paragraph 3.17 below.

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1.11 “Counsel for the Defendant” means Matthew S. Sheldon, Steven A. Ellis, and Todd A. Boock, of Goodwin Procter LLP.

1.12 “Court” means the Riverside County Superior Court, and/or such judge of the court to whom the Action, or a proceeding in the Action, may hereafter be assigned.

1.13 “Defendant” means Renovate America, Inc.

1.14 “Final Approval” means the last date on which all of the following have occurred:

(a) The Court has issued all necessary orders under California Rules of Court, rule 3.769, approving of the Settlement in a manner substantially consistent with the terms and intent of this Agreement;

(b) The Court enters the Final Approval Order;

(c) Either: (i) Sixty-five (65) days have passed after the Final Approval Order has been entered and served on all parties and within such time, no appeal is taken; or (ii) in the event the Final Approval Order is appealed, ten (10) days after all appellate remedies are exhausted and the Final Approval Order is upheld, or not altered in a manner that is substantially inconsistent with the Final Approval Order, provided that any change or modification that may increase the Defendant’s liability or reduce the scope of the Release or of the Settlement Class shall be considered as preventing the occurrence of Final Approval; and

(d) No Party with a right to do so has terminated the Agreement.

1.15 “Final Approval Date” means the date upon which Final Approval occurs.

1.16 “Final Approval Order” means the order and judgment of the Court approving the Settlement in a manner substantially consistent with the terms and intent of this Agreement, and entering judgment resolving the Action.

1.17 “Party” means Representative Plaintiffs or Defendant individually, and “Parties” means each of the Representative Plaintiffs and Defendant, collectively.

1.18 “Preliminary Approval Date” means the date on which the Court enters the Preliminary Approval Order (as defined in Paragraph 1.19 below).

1.19 “Preliminary Approval Order” means the order or orders of the Court preliminarily approving the terms and conditions of this Agreement as contemplated by this Agreement, as set forth in California Rules of Court, rule 3.769.

1.20 “Release” means the release set forth in Paragraphs 5.01 and 5.02 of this Agreement.

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1.21 “Released Persons” shall mean the entities and persons defined in Paragraph 5.01.

1.22 “Renovate” means

(a) Renovate America, Inc.

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

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

1.23 “Representative Plaintiffs” or “Plaintiffs” mean plaintiffs George Loya, Judith Loya, Richard Ramos, Michael Richardson, and Shirley Petetan.

1.24 “Settlement” means the resolution of the matters within the scope of the Release and this Agreement.

1.25 “Settlement Administration Costs” means the costs for administering the Settlement provided for herein to be paid exclusively from the Settlement Fund, including but not limited to, the costs of distributing the Class Notice to the Class Members and providing the Benefit Checks and Supplemental Benefit Checks to Class Members.

1.26 “Settlement Administrator” means such *bona fide* person or entity in the business of class action settlement administration as may be selected by mutual agreement of the Parties and approved by the Court.

1.27 “Settlement Class” means: (i) all persons or entities who received residential PACE tax assessment financing from WRCOG through the HERO program where the underlying assessment contract was executed by the person or entity between January 1, 2012 and July 7, 2016; (ii) all persons or entities who received residential PACE tax assessment financing from LAC through the HERO program where the underlying assessment contract was executed by the person or entity between January 1, 2012 and June 15, 2017; and (iii) all persons or entities who received residential PACE tax assessment financing from SANBAG through the HERO program where the underlying assessment contract was executed by the person or entity between January 1, 2012 and June 15, 2017.

1.28 “Successful Opt-Out” means a person or entity who timely and validly exercises a right to be excluded from the Settlement Class, pursuant to paragraph 3.05 and California Rules of Court, rule 3.769.

1.29 As used herein, the plural of any defined term includes the singular thereof and *vice versa*, except where the context requires otherwise. All references to days shall be interpreted to mean calendar days, unless otherwise noted. When a deadline or date falls on a

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weekend or a legal Court holiday, the deadline or date shall be extended to the next business day that is not a weekend or legal Court holiday.

1.30 Other terms are defined in the text of this Agreement, and shall have the meaning given those terms in the text. It shall be the intent of the Parties in connection with all documents related to the Settlement that defined terms as used in other documents shall have the meaning given to them in this Agreement.

II. SETTLEMENT FUND

2.01 Renovate will pay the sum of two million, five hundred fifty thousand dollars (\$2,550,000.00) (“Settlement Fund”) to the Settlement Administrator, minus any Settlement Administration Costs already advanced to the Settlement Administrator, within thirty (30) days after the Preliminary Approval Date, which, together with any interest that shall accrue thereafter, shall be used to pay all moneys to be paid in connection with the Settlement. The Settlement Fund will be the maximum monetary exposure to Renovate under the Settlement.

2.02 The Attorney Fee/Litigation Cost Award, if any, and the Class Representative Award, if any, shall be paid from the Settlement Fund. Any remainder in the Settlement Fund after the payment of the Attorney Fee/Litigation Cost Award, if any, and the Class Representative Award, if any, and after reserving for payment of the actual and estimated remaining Settlement Administration Costs, plus any interest that has accrued in the Settlement Fund between the time of deposit of the Settlement Fund and the time of distribution of Benefit Checks, shall be the “Class Benefit Amount.”

2.03 Renovate shall have no obligation to create the Settlement Fund, or pay any portion thereof, until the above-specified date, and no person, entity or Class Member shall have any claim to, entitlement to, or rights in the Settlement Fund or any portion thereof other than as set forth in this Agreement. In the event Final Approval does not occur, all money in the Settlement Fund shall be returned to Renovate, except for any money already expended for Settlement Administration Costs, which shall be non-refundable.

III. SETTLEMENT PROCEDURES

A. Preliminary Approval.

3.01 As soon as practical after the execution of this Settlement Agreement, Class Counsel, on behalf of the Settlement Class, shall move the Court for entry of the Preliminary Approval Order substantially in the form of Exhibit A hereto: (a) preliminarily approving the Settlement memorialized in this Settlement Agreement as fair, reasonable, and adequate, including the material terms of this Agreement; (b) provisionally approving the Settlement Class for settlement purposes only; (c) setting a date for a final approval hearing (“Final Approval Hearing”); (d) approving the proposed Class Notice substantially in the form attached hereto as Exhibit B, and authorizing its dissemination to the Settlement Class; (e) setting deadlines consistent with this Agreement; (f) conditionally designating Representative Plaintiffs as the representatives of the Settlement Class and Class Counsel as counsel for the Settlement Class; (g) prohibiting all generalized notices or communications, whether by written correspondence, advertisements, Internet postings, or other media, to Class Members by the Parties about the

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Settlement or its terms other than as specifically authorized by this Agreement; and (h) approving the Settlement Administrator. Defendant agrees not to oppose the entry of the Preliminary Approval Order, provided it is substantially in the form of Exhibit A hereto. Without implication of limitation, Defendant's agreement not to oppose the entry of the Preliminary Approval Order shall not be an admission or concession by Defendant that a class was appropriate in the Action or would be appropriate in any other matter, and/or that relief was appropriate in the Action or would be appropriate in any other matter.

B. Administration.

3.02 Defendant shall prepare the list of Class Members ("Class Member List") and provide it to the Settlement Administrator within fifteen (15) days after the entry of the Preliminary Approval Order. In preparing the Class Member List, Defendant shall use reasonable good faith efforts to identify Class Members by their last known email and mailing addresses, but shall have no obligation to look beyond information obtainable from readily searchable computer media maintained by Defendant. After receiving the Class Member List, the Settlement Administrator shall obtain updates, if any, to the mailing addresses contained therein using the National Change of Address ("NCOA") database maintained by the United States Postal Service ("Postal Service").

3.03 Within forty-five (45) days after the entry of the Preliminary Approval Order, the Settlement Administrator shall email to each Class Member for whom Renovate's records reflect an email address, a Class Notice substantially in the form attached hereto as Exhibit B. For those Class Members with no such email address, the Settlement Administrator shall mail a paper copy of the Class Notice. Before sending, the Settlement Administrator shall fill in all applicable dates in the Class Notice to conform to the dates specified by the Court in the Preliminary Approval Order. The Settlement Administrator also shall have discretion to format the Class Notice in a reasonable manner to minimize mailing or administrative costs. Neither Defendant nor the Settlement Administrator shall have any obligation to mail the Class Notice to any Class Member for whom no mailing address was identified through the process set forth in Paragraph 3.02 above. The Settlement Administrator shall also maintain a website providing information and documents concerning the Settlement and the website address shall be listed in the Class Notice, on the Benefit Checks, and on any Supplemental Benefit Checks. The Settlement Administrator shall maintain the website for at least one year after the Final Approval Date.

3.04 If any Class Notice sent under paragraph 3.03 is returned by the Postal Service as undeliverable, the Settlement Administrator shall re-mail the Class Notice to the forwarding address, if any, provided by the Postal Service on the face of the returned mail. In the case of a Class Notice returned without a forwarding address, the Settlement Administrator shall conduct a skip-trace search for any further update to the address for purposes of re-mailing, but otherwise no further action will be necessary by the Settlement Administrator. If any Class Notice sent under paragraph 3.03 via email is returned as undeliverable, the Settlement Administrator shall re-mail the Class Notice to the mailing address for that Class Member, following the same procedure set forth in Paragraphs 3.03 and this Paragraph. Other than as set forth above, the Settlement Administrator shall have no other obligation to re-mail Class Notices unless requested by a Class Member. Other than as set forth in this Section III of the Agreement, there shall be no other provision for Class Notice.

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3.05 Each Class Member is entitled to request exclusion from the Settlement Class and not to be bound by the Settlement, if, within such time as is ordered by the Court and contained in the Class Notice (“Opt-Out Period”), the Class Member completes and mails a request for exclusion (“Opt-Out”) to the Settlement Administrator at the address set forth in the Class Notice. The Parties will recommend that the Opt-Out Period conclude sixty (60) days after the Class Notice deadline in paragraph 3.03. For a Class Member’s Opt-Out to be valid and treated as a Successful Opt-Out, it must (a) state his or her full name, address, and telephone number; (b) contain the Class Member’s personal and original signature or the original signature of a person previously authorized by law, such as a trustee, guardian, or person acting under a power of attorney, to act on behalf of the Class Member (*i.e.*, conformed, reproduced, facsimile, or other non-original signatures are not valid); and (c) unequivocally state in some way the Class Member’s intent to be excluded from the Settlement Class, to not participate in the Settlement, and/or to waive all rights to the benefits of the Settlement. An exclusion form will be provided to Class Members along with the Class Notice that they may use to exclude themselves if they so choose. In those cases where a Class Member includes two or more persons who were co-owners of a property and multiple co-owners entered into the relevant PACE tax assessment contract, any or all of the co-owners can opt out and that PACE tax assessment contract will not be part of the Settlement Class. Other than in the circumstances described in the preceding sentence, no person shall purport to exercise any exclusion rights of any other person, or purport to opt-out Class Members as a group, aggregate, or class; any such purported Opt-Outs shall be void, and the Class Member(s) that is or are the subject of such purported Opt-Out shall be treated as a Class Member. At the expiration of the Opt-Out Period, the Settlement Administrator shall create a list of Successful Opt-Outs and provide to the Parties the list and copies of all communications from the Opt-Outs. Defendant or Class Counsel may dispute an Opt-Out or purported Opt-Out, and the Court shall decide any disputes.

3.06 Any Class Member who does not submit a timely Opt-Out, or otherwise comply with all requirements for opting-out as may be contained in this Agreement, in the Class Notice, or as otherwise ordered by the Court, or who is not a Successful Opt-Out shall be bound by this Agreement, this Settlement and the Release, as embodied in paragraphs 5.01 and 5.02 of this Agreement. If a Class Member is a Successful Opt-Out, that Class Member shall be excluded from the Settlement, and shall not receive a Benefit Check, and will not be bound by the terms of the Settlement or this Agreement.

3.07 No Class Member may assign or delegate to any individual or entity the right to receive a Benefit Check on behalf of the Class Member. Nothing herein shall preclude a person previously authorized by law, such as a trustee, guardian or person acting under a power of attorney, to act on behalf of the Class Member from receiving the Benefit Check.

3.08 Any Class Member who wishes to object to the proposed Settlement must serve a written objection to the Settlement (“Objection”) upon the Settlement Administrator, at the address set forth in the Class Notice. The Settlement Administrator shall file any such Objections with the Court as provided for in the Preliminary Approval Order. The Parties will recommend that the deadline to object will be sixty (60) days after the Class Notice deadline in paragraph 3.03. Each Objection must set forth the Class Member’s name and a statement of the legal and factual basis for the Objection and provide copies of any documents that the Class Member wishes to submit in support of his/her position. An objection form will be provided to

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Class Members along with the Class Notice that they may use to state their objection if they so choose. Any Class Member who does not submit a timely Objection in complete accordance with this Agreement, the Class Notice, or as otherwise ordered by the Court shall not be treated as having filed a valid Objection to the Settlement.

3.09 Any Class Member who wishes to appear at the Final Approval Hearing, whether *pro se* or through counsel, will be requested, but not required, to file a notice of appearance in the Action at least fourteen (14) days before the Final Approval Hearing, and to serve the notice and other pleadings upon Class Counsel and Counsel for the Defendant.

3.10 Unless the Court directs otherwise, the dates set forth in the Class Notice shall govern the rights of the Class Members.

3.11 The settlement administration shall be conducted by either Renovate or the Settlement Administrator, except as otherwise provided in this Agreement.

3.12 For a period of one hundred fifty (150) days after the Final Approval Date, the Settlement Administrator shall maintain a mailing address and telephone number to receive inquiries with respect to the Settlement.

C. Final Approval.

3.13 At the time appointed by the Court, Representative Plaintiffs and Class Counsel shall move the Court for entry of the Final Approval Order, which order shall be substantially in the form of Exhibit C hereto, and shall: (a) finally approve the Settlement as fair, reasonable, and adequate; (b) give the terms of the Settlement final and complete effect; (c) finally certify the Settlement Class; (d) find that all requirements of statute, rule, and state and federal Constitutions necessary to effectuate this Settlement have been met and satisfied; and (e) enter final judgment on the merits in the Action. Defendant agrees not to oppose the entry of the Final Approval Order, provided it is substantially in compliance with the form of Exhibit C hereto. Without implication of limitation, Defendant's agreement not to oppose the entry of the Final Approval Order shall not be an admission or concession by Defendant that a class was appropriate in the Action in the absence of the Settlement or would be appropriate in any other matter, and/or that any relief was appropriate in the Action in the absence of the Settlement or would be appropriate in any other matter.

3.14 [Intentionally left blank].

3.15 No later than forty-five (45) days after the Class Notice deadline in paragraph 3.03, Representative Plaintiffs and Class Counsel may make a written application to the Court for an attorneys' fee award not to exceed thirty-three percent (33%) of the Settlement Fund, plus expenses. The total amount awarded by the Court shall constitute the Attorney Fee/Litigation Cost Award. Defendant agrees not to oppose, or cause to be opposed, such application provided it is in accord with the limitations set forth in this paragraph and paragraph 3.16 below. To the extent approved, such an Award shall be paid exclusively from, and not in addition to, the Settlement Fund. Also no later than forty-five (45) days after the Class Notice deadline in paragraph 3.03, Representative Plaintiffs and Class Counsel shall file their motion seeking final approval of the settlement. No later than sixteen (16) court days prior to the Final Approval

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Hearing, Representative Plaintiffs and Class Counsel may submit any supplemental papers to the Court in further support of their application for final approval of the settlement, attorneys' fee award or expenses, and/or application for a Class Representative Award as provided for in paragraph 3.17 below.

3.16 Defendant shall have no liability to (a) Class Counsel, (b) any attorney or law firm associated with Class Counsel or party to any agreement (written or oral) with Class Counsel with respect to the prosecution of this Action, and/or (c) any other person or entity for attorneys' fees or actual litigation costs relating to the Action and/or the Settlement other than as provided for in this Agreement. Defendant's maximum potential liability under the Settlement for attorneys' fees and actual litigation costs incurred in the Action, to be paid to either Class Counsel or anyone else, shall be limited to the fees and cost amount provided for in paragraph 3.15, above.

3.17 Prior to the Final Approval Hearing, Representative Plaintiffs and Class Counsel may make a written application to the Court for a Class Representative Award to be paid to Representative Plaintiffs exclusively from, and not in addition to, the Settlement Fund for their service as plaintiffs in the Action in an aggregate amount not to exceed five thousand dollars (\$5,000.00) to each of the Representative Plaintiffs. Any married Representative Plaintiffs will receive a single five thousand dollar (\$5,000.00) payment rather than separate payments. Defendant agrees not to oppose, or cause to be opposed, such application provided it is in accordance with the limitations in this paragraph. To the extent approved, such an award shall be paid exclusively from, and not in addition to, the Settlement Fund.

3.18 Notwithstanding any provision herein to the contrary, Class Counsel shall be paid the amount awarded to them in the Attorney Fee/Litigation Cost Award within ten (10) calendar days after entry of the order awarding such Attorney Fee/Litigation Cost Award. In the event that the Court denies, in whole or in part, (a) any application made by Class Counsel pursuant to paragraph 3.15 above; and/or (b) any application made by Representative Plaintiffs and Class Counsel pursuant to paragraph 3.17 above, the remainder of the terms of this Agreement shall remain in effect. If the amount awarded to Class Counsel in the Attorney Fee/Litigation Cost Award shall be reduced in whole or in part on appeal, Class Counsel shall promptly return the amount of the reduction to the Settlement Fund.

3.19 At the Final Approval Hearing, Representative Plaintiffs and Class Counsel shall make a good faith effort to support the entry of a Final Approval Order.

3.20 If and when the Court gives Final Approval to the Settlement, as part of such approval, the Action shall be resolved in a final judgment reflected in the Final Approval Order, with all parties to bear his, her, or its own costs and attorneys' fees not otherwise awarded.

IV. CLASS SETTLEMENT BENEFITS

4.01 The Benefit Checks available to Class Members, as well as Renovate's payment from the Settlement Fund of (a) the Attorney Fee/Litigation Cost Award, if any, (b) the Class Representative Award, if any, (c) the Settlement Administration Costs, and (d) other benefits in

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this Agreement, including the Disclosure Changes described in paragraph 4.12, shall be the sole benefits in exchange for the Release and consideration for this Settlement.

4.02 If a Class Member does not submit a Successful Opt-Out, said Class Member shall receive a Benefit Check in the amount set forth in paragraph 4.03, subject to the other terms and conditions of this Agreement.

4.03 The amount of the Benefit Check shall be calculated as follows: First, the Settlement Administrator will calculate the total initial principal amount of PACE tax assessments entered into by Class Members who are not Successful Opt-Outs. Second, the principal amount of each Class Member's PACE tax assessment(s) will be divided by the total principal amount of PACE tax assessments entered into by all Class Members who are not Successful Opt-Outs to determine a proportion or ratio of the total Class Benefit Amount attributable to each Class Member who is not a Successful Opt-Out. For each Class Member who is not a Successful Opt-Out, the ratio will be applied to the Class Benefit Amount to determine each Class Member's proportionate share of the Class Benefit Amount. For purposes of this calculation, in those cases where a Class Member includes two or more persons who were co-owners of a property and multiple co-owners entered into the relevant PACE tax assessment contract, they shall be treated collectively as a single Class Member.

4.04 Subject to the terms and conditions of the Agreement, within forty five (45) days after the Final Approval Date, the Settlement Administrator shall mail the Benefit Checks. The Benefit Checks will be mailed to the addresses provided for the Class Members on the Class Member List or, if applicable, to any updated address provided by the Postal Service or received as a result of the Class Notice process. All Benefit Checks issued pursuant to this paragraph shall be void if not negotiated within ninety (90) calendar days of their date of issue, and shall contain a legend to that effect. The payment to be made by the Benefit Check shall remain the property of the Settlement Fund until such time as the Benefit Check is negotiated. For Class Members receiving more than one Benefit Check, the Settlement Administrator may elect, at his or her discretion, to mail a single combined check rather than multiple checks. In those cases where a Class Member includes two or more persons who were co-owners of a property and multiple co-owners entered into the relevant PACE tax assessment contract, they shall be mailed a single check, made out jointly to all such persons.

4.05 If a Class Member is a Successful Opt-Out, then that Class Member shall be excluded from the Settlement, shall not receive any benefits of the Settlement (including a Benefit Check), and shall not be bound by the terms of this Agreement.

4.06 Subject to the terms and conditions of this Agreement, within ten (10) calendar days of entry of the Attorney Fee/Litigation Cost Award, the Settlement Administrator shall pay the amount of any Attorney Fee/Litigation Cost Award ordered by the Court to Wolf Haldenstein Adler Freeman & Herz LLP on behalf of all Class Counsel. Neither the Settlement Administrator nor Renovate shall have any liability arising from any claim regarding the division of any Attorney Fee/Litigation Cost Award between and among Class Counsel, so long as the Settlement Administrator complies with its obligations under this paragraph.

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4.07 Subject to the terms and conditions of this Agreement, within ten (10) days after the Final Approval Date, the Settlement Administrator shall pay the amount of any Class Representative Award ordered by the Court to Representative Plaintiffs. The checks for the Representative Awards shall be made payable to each Representative Plaintiff and shall be sent to Wolf Haldenstein Adler Freeman & Herz LLP. Neither the Settlement Administrator nor Renovate shall have any liability to Representative Plaintiffs or Class Counsel arising from any claim regarding the delivery or payment of the Class Representative Award by Class Counsel to Representative Plaintiffs or division of the Class Representative Award(s) between and among Representative Plaintiffs, so long as the Settlement Administrator complies with its obligations under this paragraph.

4.08 The Settlement Administrator's obligations with respect to the distribution of Benefit Checks, Supplemental Benefit Checks, if any, the Attorney Fee/Litigation Cost Award, if any, and the Class Representative Award, if any, shall be performed reasonably and in good faith. Class Counsel and Plaintiffs shall provide all necessary tax information and otherwise cooperate in advance with all requirements necessary to enable the Settlement Administrator or Renovate to make any payments without incurring additional liability. So long as Class Counsel, Renovate, and the Settlement Administrator perform their duties under this Agreement reasonably and in good faith, Class Counsel, Renovate, and the Settlement Administrator shall not be liable for erroneous, improper, or inaccurate distribution, and the Release (as embodied in paragraphs 5.01 and 5.02 of this Agreement) and any judgment shall be effective as of the Final Approval Date as to Representative Plaintiffs, Class Counsel, and every Class Member notwithstanding any such error and regardless of whether such error is corrected.

4.09 All monies that might in the future be paid to any Class Member are not vested, or otherwise monies in which the Class Member has an enforceable legal, tangible or intangible interest, and instead shall remain the sole and exclusive property of Renovate unless and until all conditions precedent to payment under this Agreement are met and the monies are paid. In order to give effect to the Parties' intention, no person, entity, or governmental body shall have any rights to the Settlement Fund, the Benefit Checks or any portion of the Benefit Checks, whether claimed or unclaimed, or in any amounts of uncashed Benefit Checks. The Parties further acknowledge and agree that to the extent a separate account or fund may be established as part of settlement administration, including but not limited to setting up an account for the payment of Benefit Checks, such accounts or funds are for administrative or legal convenience or requirements only and do not create any vested or ownership interest on the part of the Settlement Class or any Class Member or any other person, entity, or governmental body. Such accounts or funds set up by the Settlement Administrator shall be treated as property of Renovate held in escrow.

4.10 The maximum aggregate amount Renovate shall be obligated to pay under this Agreement is limited to the amount of the Settlement Fund. The Parties further agree that, in the event a court determines or otherwise issues an order or opinion that there should be any money paid from the Settlement Fund, or from any other source, by Renovate in this Action other than to (a) eligible Class Members (who are not Successful Opt-Outs); (b) Class Counsel, as an Attorney Fee/Litigation Cost Award ordered by the Court; (c) Representative Plaintiffs, as a Class Representative Award ordered by the Court; and (d) the Settlement Administrator for

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Settlement Administration Costs, this Settlement and Agreement shall be void at the option of Renovate.

4.11 Subject to the terms and conditions of this Agreement, the Settlement Administrator shall, within one hundred twenty (120) days after the initial mailing of all Benefit Checks issued pursuant to paragraph 4.02 of this Agreement, provide a report to Class Counsel and counsel for Renovate regarding the amount of money remaining in the Settlement Fund due to uncashed checks. If the amount exceeds two hundred thousand (\$200,000.00) dollars then the Settlement Administrator shall calculate the Supplemental Benefit Amount (“Supplemental Benefit Amount”) and proceed to mail a new round of checks (“Supplemental Benefit Checks”) to all Class Members who cashed an original Benefit Check. The Settlement Administrator shall calculate the Supplemental Benefit Amount by determining the amount remaining in the Settlement Fund and subtracting the Settlement Administration Costs necessary to mail the Supplemental Benefit Checks and complete all remaining Settlement Administration. The amount of each Supplemental Benefit Check will be calculated as follows: First, the Settlement Administrator will calculate the total amount of original Benefit Checks cashed. Second, the amount of each Class Member’s original cashed Benefit Check will be divided by the total amount of original Benefit Checks cashed to determine a proportion or ratio of the Supplemental Benefit Amount attributable to each Class Member who cashed an original Benefit Check. For each Class Member who cashed an original Benefit Check, the ratio will be applied to the Supplemental Benefit Amount to determine each Class Member’s proportionate share of the Supplemental Benefit Amount. Any Supplemental Benefit Checks shall be mailed within one hundred fifty (150) days after the initial mailing of all original Benefit Checks issued pursuant to paragraph 4.02 of this Agreement and shall remain valid for ninety (90) days, and shall contain a legend to that effect. Within sixty (60) days of either the expiration date of the original Benefit Checks, if the amount remaining in the Settlement Fund is less two hundred thousand (\$200,000.00) dollars, or the expiration of the Supplemental Benefit Checks, Class Counsel shall present an amended judgment to the Court reflecting a proposed cy pres recipient(s) for any remaining uncashed funds. Class Counsel shall select the proposed cy pres recipient(s) in accordance with the Court’s local rules and in consideration of the remaining uncashed amount. Class Counsel must obtain Renovate’s consent to any proposed cy pres recipient(s) and any proposed amended judgment prior to presenting any such proposal to the Court.

4.12 Within thirty (30) days of the Final Approval Date, Renovate shall recommend to WRCOG and LAC that certain changes be made to written disclosures used in connection with those entities’ respective HERO programs. The changes to be recommended shall be substantially in the form attached hereto as Exhibit D (the “Disclosure Changes”). The Parties agree that Renovate does not have the authority under the HERO programs to mandate either the implementation or continued use of the Disclosure Changes by either WRCOG or LAC. Renovate’s obligations under this paragraph shall be satisfied at the time Renovate recommends the Disclosure Changes to WRCOG and LAC.

V. RELEASE

5.01 Upon Final Approval, and in consideration of the promises and covenants set forth in this Agreement, the Representative Plaintiffs and each Class Member who is not a Successful Opt-Out, and all those who claim through them or who assert claims (or could assert

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claims) on their behalf (including the government in the capacity as *parens patriae* or on behalf of creditors or estates of the releasees), and each of them (collectively and individually, the “Releasing Persons”), will be deemed to have completely released and forever discharged Renovate America, Inc., and each of its past, present, and future officers, directors, employees, and agents (collectively and individually, the “Released Persons”), from any claims asserted in the Second Amended Class Action Complaints and any other claims that could have been brought based on the facts alleged in the Second Amended Class Action Complaints. This Release does not release or discharge any causes of action brought against any of the Released Parties in the unrelated matter *Barbara Morgan, et al. v. Renew Financial Group, LLC, et al.*, San Diego County Superior Court Case No. 37-2019-00052045-CU-OR-CTL, which alleges certain causes of action relating to California Civil Code sections 1804.1(j) and 1804.2 of the California Retail Installments Sales Act. This Release does not release or discharge any causes of action brought against any of the Released Parties in the unrelated matter *Reginald Nemore, et al. v. Renovate America, et al.*, Los Angeles County Superior Court Case No. BC701810. This Release shall be included as part of any judgment, so that all released claims and rights shall be barred by principles of *res judicata*, collateral estoppel, and claim and issue preclusion.

5.02 In addition to the provisions of paragraph 5.01 above, the Representative Plaintiffs only hereby expressly agree that, upon Final Approval, each will waive and release any and all provisions, rights, and benefits conferred either: (a) by Section 1542 of the California Civil Code, or (b) by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to section 1542 of the California Civil Code, with respect to the claims released pursuant to paragraph 5.01 above. Section 1542 of the California Civil Code reads:

Section 1542. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

The Representative Plaintiffs’ waiver of all rights and benefits afforded by Section 1542 is done with the understanding and acknowledgement of the significance of such a specific waiver of Section 1542. Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of each and all the Released Persons, the Representative Plaintiffs expressly acknowledge that this Agreement is intended to include in its effect (without limitation) all claims that the Representative Plaintiffs know or suspect to exist in their favor, as well as all claims that the Representative Plaintiffs do not know or suspect to exist in their favor at the time the Parties execute this Agreement, which contemplates the extinguishment of any such claims. This waiver also applies to any other relevant re-codification or similar laws implemented hereafter substantially covering the subject matter of Section 1542.

Whether a beneficiary of California law or otherwise, Representative Plaintiffs acknowledge that he or she may hereafter discover facts other than or different from those that he or she knows or believes to be true with respect to the subject matter of the claims released pursuant to the terms of paragraph 5.01 above, but each of those individuals expressly agree that, upon entry of the final judgment contemplated by this Settlement Agreement, he and she shall have waived and fully, finally, and forever settled and released any known or unknown,

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suspected or unsuspected, asserted or unasserted, contingent or non-contingent claim with respect to the claims released pursuant to paragraph 5.01 above, whether or not concealed or hidden, without regard to subsequent discovery or existence of such different or additional facts.

5.03 Upon Final Approval, and in consideration of the promises and covenants set forth in this Agreement, the undersigned Class Counsel, for themselves, and each of his, her or their present and former owners, predecessors, successors, partners, shareholders, agents (alleged or actual), experts, representatives, employees and affiliates (“Attorney Releasers”), unconditionally and irrevocably remise, waive, satisfy, release, acquit, and forever discharge the Released Persons from any and all right, lien, title or interest in any attorneys’ fee or award or any claim for reimbursement of costs in connection with the Action or the Released Rights, except as otherwise provided herein.

5.04. Upon Final Approval, and in consideration of the promises and covenants set forth in this Agreement, the Released Persons shall be deemed to have fully, finally, and forever released, relinquished, and discharged the Representative Plaintiffs and Class Counsel from all claims which arise out of, concern, or relate to the institution, prosecution, settlement or dismissal of the Action, including but not limited to that the Action was not brought in good faith (the “Defendant Released Claims”), and shall be permanently enjoined from prosecuting the Defendant Released Claims against the Representative Plaintiffs and Class Counsel. The Released Persons hereby represent and warrant that they are not aware of any claims that they have or may have against the Representative Plaintiffs and Class Counsel that are not released by virtue of this paragraph. Nothing contained herein shall, however, bar the Released Persons from bringing any action or claim to enforce the terms of this Agreement.

VI. REPRESENTATIONS AND WARRANTIES

6.01 In addition to the provisions hereof, this Agreement and the Settlement shall be subject to the ordinary and customary judicial approval procedures under California Rules of Court, rules 3.769 and 3.770. Until and unless this Agreement is dissolved or becomes null and void by its own terms, or unless otherwise ordered by the Court, or if Final Approval is not achieved, Representative Plaintiffs and Class Counsel represent and warrant to Defendant that they shall take all appropriate steps in the Action necessary to preserve the jurisdiction of the Court, use their best efforts to cause the Court to grant Preliminary and Final Approval of this Agreement as promptly as possible, and take or join in such other steps as may be necessary to implement this Agreement and to effectuate the Settlement. This includes: (a) the obligation to oppose objections and to defend the Agreement and the Settlement before the Court and on appeal, if any; (b) to seek approval of this Agreement and of the Settlement by the Court; and (c) to move for the entry of the orders set forth in paragraphs 3.01 and 3.13.

6.02 Until and unless this Agreement is dissolved or becomes null and void by its own terms, or unless otherwise ordered by the Court, or if Final Approval is not achieved, Defendant represents and warrants to Representative Plaintiffs and Class Counsel that it will take appropriate steps in the Action necessary to preserve the jurisdiction of the Court, and take or join in such other steps as may be reasonably necessary to implement this Agreement and to effectuate the Settlement.

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6.03 Representative Plaintiffs and Class Counsel represent and warrant that any Attorney Fee/Litigation Cost Award they may seek upon application to the Court pursuant to Paragraph 3.15 above shall include all attorneys' fees and litigation costs that Representative Plaintiffs, Class Counsel, and any of the current and former owners, predecessors, successors, partners, shareholders, agents (alleged or actual), representatives, employees, and affiliates of Class Counsel, seek or may have any right or claim to in connection with the Action and the Released Rights.

6.04 Representative Plaintiffs and Class Counsel represent and warrant that other than "Class Counsel," as that term is defined above, there are no persons that they know of (natural or legal) having any interest in any award of attorneys' fees, expenses or litigation costs in connection with the Action. Representative Plaintiffs and Class Counsel represent and warrant that any Attorney Fee/Litigation Cost Award they may seek upon application to the Court pursuant to paragraph 3.15 above shall include all attorneys' fees and litigation costs that Representative Plaintiffs, and any of the current and former owners, predecessors, successors, partners, shareholders, agents (alleged or actual), representatives, employees, and affiliates of Class Counsel, seek or may have any right or claim to in connection with the Action.

6.05 Representative Plaintiffs, Class Counsel, and Defendant represent and warrant that he, she, or it are fully authorized to enter into this Agreement and to carry out the obligations provided for herein. Each person executing this Agreement on behalf of a Party, entity, or other person(s) covenants, warrants, and represents that he, she, or it has been fully authorized to do so by that Party, entity, or other person(s). Representative Plaintiffs, Class Counsel, and Defendant represent and warrant that he, she, or it intends to be bound fully by the terms of this Agreement.

6.06 Representative Plaintiffs, Class Counsel, and Defendant represent and warrant that they have not, nor will they, unless expressly authorized to do so by the terms of this Agreement, (a) attempt to void this Agreement in any way; (b) Opt-Out of the Settlement under this Agreement; (c) solicit or encourage in any fashion Class Members to Opt-Out; or (d) solicit or encourage in any fashion any effort by any person (natural or legal) to object to the Settlement under this Agreement. Nothing herein shall prohibit Class Counsel from responding to any Class Member inquiry with advice that Class Counsel deems appropriate given the Class Member's individual circumstances. Nor shall anything herein prohibit Defendant from responding to any Class Member inquiry by directing the Class Member to Class Counsel and/or publicly-available information concerning the Settlement.

6.07 Until and unless this Agreement is dissolved or becomes null and void by its own terms, or unless otherwise ordered by the Court, or if Final Approval is not achieved, Defendant represents and acknowledges to Representative Plaintiffs that it will not oppose the Settlement, Preliminary Approval, and/or Final Approval, provided that the Preliminary Approval Order and Final Approval Order sought by Plaintiffs and Class Counsel are substantially in the forms of Exhibits A and C hereto, respectively.

VII. MISCELLANEOUS PROVISIONS

7.01 This Agreement reflects, among other things, the compromise and settlement of disputed claims and defenses among the Parties hereto, and nothing in this Agreement nor any

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action taken to effectuate this Agreement is intended to be an admission or concession of liability of any Party or third party or of the validity of any claim. Defendant denies the allegations in the Action, and contends that its conduct has been lawful and proper.

7.02 This Agreement is entered into only for purposes of settlement. In the event that Final Approval of this Agreement and this Settlement does not occur for any reason, this Agreement shall become null and void. In that event, the Parties shall be absolved from all obligations under this Agreement, and this Agreement, any draft thereof, and any discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions leading to the execution of this Agreement shall have no effect and shall not be admissible evidence for any purpose. In addition, in that event, the status of the Action shall revert to the state it was in prior to the Agreement, the pleadings shall revert to that date, and the agreements contained herein shall be null and void, shall not be cited or relied upon as an admission as to the Court's jurisdiction or the propriety of class certification in the absence of the Settlement, and the Parties shall have all rights, claims and defenses that they had or were asserting prior to entering into this Agreement or any predecessor agreement.

7.03 Nothing shall prevent Representative Plaintiffs or Defendant from appealing any denial by the Court of Final Approval of this Settlement, and the Parties agree that, in the event of such an appeal, the case should be stayed pending the resolution of any such appeal. The Parties agree they will continue to support and advocate for approval of the Settlement on appeal or in post-appeal proceedings, if there is such an appeal, to the same extent as they are bound herein to do so while the case is before the Court. In the event such an appeal results, by order of the appellate court or by an order after remand or a combination thereof, in the entry of an order(s) whereby the Settlement is approved in a manner substantially consistent with the substantive terms and intent of this Agreement, and entering final judgment in the Action, and otherwise meeting the substantive criteria of this Agreement for approval of the Settlement, such order shall be treated as a Final Approval Order.

7.04 The Parties agree that all negotiations, statements, proceedings, and other items related to this Agreement are for settlement purposes only, and shall not be offered or be admissible in evidence by or against either Party or cited or referenced by Class Counsel or Defendant in any other action or proceeding against Defendant or Plaintiffs.

7.05 This Agreement shall be terminable at the option of Defendant: (a) in the event the Court fails to enter the orders contemplated by paragraphs 3.01 and 3.13, or does so in a form materially different from the forms contemplated by this Agreement; or (b) if the Agreement becomes null and void in accordance with paragraph 7.02, or the Court fails to approve this Agreement as written and agreed to by the Parties, including but not limited to a failure to approve the Preliminary Approval Order or the Final Approval Order, or (c) in the event the number of Successful Opt-Outs meet or exceed two percent (2%) of the Settlement Class. In the event a termination option arises, Defendant shall exercise the option by the later of twenty (20) days after the events giving rise to the termination right or Final Approval. The Agreement also shall be terminable upon the mutual agreement of the Representative Plaintiffs and Defendant.

7.06 If this Agreement is terminated pursuant to its terms, or if the Final Approval Date does not occur, or if this Agreement is not approved in full, then any and all orders vacated

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or modified as a result of this Agreement shall be reinstated, and any judgment or order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated nunc pro tunc.

7.07 Representative Plaintiffs and Class Counsel shall refrain from making any disparaging statements about Renovate America of any kind whatsoever in the course of making any written or oral statements regarding the Action or the Settlement. General statements concerning the fact of the Settlement and its terms and otherwise public information about the Action shall not violate this paragraph. Renovate America, Inc. shall also refrain from making any disparaging statements about Representative Plaintiffs or Class Counsel of any kind whatsoever in the course of making any written or oral statements regarding the Action or the Settlement.

7.08 The Parties agree that nothing in this Agreement shall be construed to prohibit communications between Defendant and the Released Persons, on the one hand, and Class Members, on the other hand, in the regular course of Defendant's and the Released Persons' businesses.

7.09 Representative Plaintiffs and Class Counsel shall not produce or provide to any governmental body or agency, administrative body or agency, regulator, board or commission, attorney general of a State, the United States Department of Justice, or any other government or law enforcement agency or body any discovery materials or other documents obtained from Defendant in the Action and/or material relating to the Action unless required to do so by law and after reasonable notice to Defendant in advance of any production such that either or both of them may seek a court order or other relief precluding or preventing production.

7.10 This Agreement is intended to and shall be governed as a contract executed under the laws of the State of California, drafted jointly by the Parties.

7.11 The terms and conditions set forth in this Agreement constitute the complete and exclusive agreement between the Parties hereto, and may not be contradicted by evidence of any prior or contemporaneous agreement, and no extrinsic evidence may be introduced in any judicial proceeding to interpret this Agreement. Any modification of the Agreement must be confirmed and executed in writing by all Parties and served upon Counsel for the Defendant and Class Counsel. The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

7.12 This Agreement shall be deemed to have been drafted jointly by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Agreement.

7.13 This Agreement shall inure to the benefit of the Released Persons and heirs, successors and assigns of each Released Person, and each and every one of the Released Persons shall be deemed to be intended third-party beneficiaries of this Agreement and, once approved by the Court, of the Settlement.

7.14 This Agreement, and the Settlement provided for herein, shall not be admissible in any lawsuit, administrative action, or any judicial or administrative proceeding if offered to

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show, demonstrate, evidence, or support a contention that (a) Defendant and/or any of the Released Persons acted illegally, improperly, or in breach of law, contract, ethics, or proper conduct; and/or (b) class certification is required or appropriate.

7.15 This Agreement shall become effective upon its execution by Class Counsel and Counsel for the Defendant. The signature of Counsel for the Defendant as an agent of Defendant shall be for this purpose only, and shall not create any separate duties or obligations on Counsel for the Defendant. The Parties shall thereafter execute this Agreement promptly and may execute this Agreement in counterparts. Each counterpart shall be deemed to be an original, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument. Plaintiffs and Defendant authorize their respective counsel to execute this Agreement for this purpose.

7.16 No representations or advice regarding the tax consequences of this Agreement have been made by any Party. The Parties further understand and agree that each Party, each Class Member, and each of Class Counsel shall be responsible for his, her, its, or their own taxes, if any, resulting from this Agreement and any payments made pursuant to this Agreement.

7.17 The Parties agree that any Class Member who is in active bankruptcy proceedings or previously was a party to bankruptcy proceedings during the Class Period may only participate in the Settlement subject to applicable bankruptcy law and procedures. Defendant is under no obligation to notify any bankruptcy court that has, had, or may have jurisdiction over such Class Member's bankruptcy proceedings or any trustee or examiner appointed in such Class Member's bankruptcy proceedings of this Agreement or the benefits conferred by the Agreement and the Settlement.

7.18 Each Class Member agrees that if he, she, or they are in active bankruptcy proceedings or previously was a party to a bankruptcy proceeding during the Class Period and the Released Claims are or may be part of the Class Member's bankruptcy estate and not the property of the Class Member, the Class Member will (a) advise the bankruptcy trustee of this Agreement and the benefits conferred by the Agreement and Settlement, in time for the trustee to exercise any rights or object to the Settlement, (b) comply with any direction from his, her or their bankruptcy trustee with respect to this Settlement and the benefits conferred by the Agreement and the Settlement, and (c) in the event of any disagreement with the direction of the bankruptcy trustee, seek relief from the appropriate bankruptcy court (without the involvement of any other party to this Agreement).

7.19 Under no circumstances shall the Settlement or Agreement or the Release be deemed to alter, amend, or change the terms and conditions of any contract, agreement, and/or tax assessment to which any Class Member is or was a party, or to provide a defense to any such contract, agreement, and/or tax assessment, including but not limited to a defense based on the so-called "one action" rule, nor shall the Settlement or the Agreement or the Release be deemed to have any effect in any bankruptcy case or in any other action involving a Class Member hereto. Nor shall the Settlement Agreement create or be construed as evidence of any violation of law or contract. In the event this Agreement is so construed as to a particular Class Member, it can be declared by Defendant to be null and void as to that Class Member only (and in such latter event, the Release as to that Class Member shall also be void). Representative Plaintiffs

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expressly covenant and agree, as a material inducement to Defendant, and recognizing the practical difficulties faced by Defendant in ongoing or future matters, that each of them waive and forever relinquish any rights or entitlement they may possess or come to possess (other than as set forth herein) to have Defendant or the Released Persons amend, alter or revise proofs of claims, rights, demands, suits, or other claims made (or to be made) in order to reflect the benefit of the Benefit Checks provided or to be provided or to reflect the other terms of this Agreement and the Settlement.

7.20 Although the Court shall enter a judgment, the Court shall retain jurisdiction over the interpretation, effectuation, enforcement, administration, and implementation of this Agreement.

7.21 Defendant and Representative Plaintiffs acknowledge that they have been represented and advised by independent legal counsel throughout the negotiations that have culminated in the execution of this Agreement, and that they have voluntarily executed the Agreement with the consent of and on the advice of counsel. The Parties have negotiated and reviewed fully the terms of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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IN WITNESS WHEREOF, the Parties hereto, acting by and through their respective counsel of record, have entered into this Agreement on the date first above written, and have executed this Agreement on the date indicated below each respective signature.

Dated: 5/13/2020

GEORGE LOYA



Dated: 5/13/2020

JUDITH LOYA



Dated: _____

RICHARD RAMOS

Dated: _____

MICHAEL RICHARDSON

Dated: _____

SHIRLEY PETETAN

Dated: _____

RENOVATE AMERICA, INC.

By: _____

Title: _____

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IN WITNESS WHEREOF, the Parties hereto, acting by and through their respective counsel of record, have entered into this Agreement on the date first above written, a have executed this Agreement on the date indicated below each respective signature.

GEORGE LOYA

Dated: _____

JUDITH LOYA

Dated: _____

RICHARD RAMOS

Dated: _____

5-8-20

Richard Ramos

MICHAEL RICHARDSON

Dated: _____

SHIRLEY PETETAN

Dated: _____

RENOVATE AMERICA, INC.

Dated: _____

By: _____

Title: _____

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IN WITNESS WHEREOF, the Parties hereto, acting by and through their respective counsel of record, have entered into this Agreement on the date first above written, and have executed this Agreement on the date indicated below each respective signature.

GEORGE LOYA

Dated: _____

JUDITH LOYA

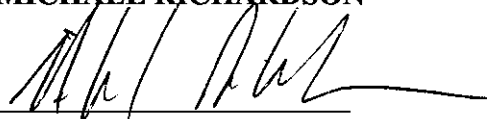
Dated: _____

RICHARD RAMOS

Dated: _____

MICHAEL RICHARDSON

Dated: 2/14/2020



SHIRLEY PETETAN

Dated: _____

RENOVATE AMERICA, INC.

Dated: _____

By: _____

Title: _____

EXECUTION COPY

IN WITNESS WHEREOF, the Parties hereto, acting by and through their respective counsel of record, have entered into this Agreement on the date first above written, and have executed this Agreement on the date indicated below each respective signature.

GEORGE LOYA

Dated: _____

JUDITH LOYA

Dated: _____


RICHARD RAMOS

Dated: _____

MICHAEL RICHARDSON

Dated: _____

SHIRLEY PETETAN

Handwritten signature of Shirley Petetan in black ink, written over a horizontal line.

Dated: _____

RENOVATE AMERICA, INC.

Dated: _____

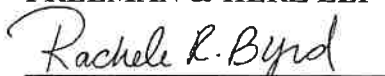
By: _____

Title: _____

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CLASS COUNSEL:

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**



Mark C. Rifkin
Randall S. Newman
Betsy C. Manifold
Rachele R. Byrd

DATE: February 4, 2020

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**

270 Madison Avenue
New York, NY 10016

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**

750 B Street, Suite 1820
San Diego, CA 92101

THE SULTZER LAW GROUP P.C.



Janine L. Pollack

DATE: February 5, 2020

THE SULTZER LAW GROUP P.C.

270 Madison Ave., Suite 1800
New York, NY 10016

McLAUGHLIN & STERN LLP



Lee Shalov

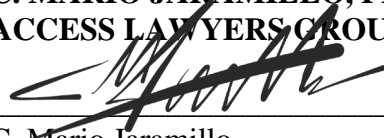
DATE: 2/5/20

McLAUGHLIN & STERN LLP

260 Madison Avenue, 10th Floor
New York, NY 10016

EXECUTION COPY

**C. MARIO JARAMILLO, PLC (DBA
ACCESS LAWYERS GROUP)**



C. Mario Jaramillo

DATE: February 5, 2020

**C. MARIO JARAMILLO, PLC (DBA
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527 South Lake Ave., Suite 200
Pasadena, CA 91101

ATTORNEYS FOR PLAINTIFFS

COUNSEL FOR DEFENDANT:

GOODWIN PROCTER LLP

DATE: _____

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Todd A. Boock

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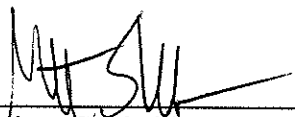
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EXHIBIT A

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

20 RENOVATE AMERICA FINANCE CASES,

Case No. RICJCCP4940

21
22
23 THIS DOCUMENT RELATES TO ALL
24 CASES

AMENDED [PROPOSED] ORDER
PRELIMINARILY APPROVING
SETTLEMENT, PRELIMINARILY
APPROVING CLASS FOR SETTLEMENT
PURPOSES, AND WITH RESPECT TO
CLASS NOTICE, FINAL APPROVAL
HEARING, AND ADMINISTRATION

25
26 Dept.: 06
Judge: Hon. Sunshine Sykes

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

1 Upon consideration of the Parties' First Amended Settlement Agreement dated February 5,
2 2020 (the "Settlement Agreement"), attached hereto as Exhibit 1, and the Plaintiffs' Motion for
3 Preliminary Approval of Class Action Settlement, IT IS HEREBY ORDERED AS FOLLOWS:

4 1. The Settlement Agreement and the exhibits thereto are hereby incorporated by
5 reference in this Order as if fully set forth herein. Capitalized terms in this Order shall, unless
6 otherwise defined herein, have the same meaning as in the Settlement Agreement.

7 2. Solely for the purpose of settlement in accordance with the Settlement Agreement,
8 and pursuant to California Rules of Court, rule 3.769, this Court hereby preliminarily approves the
9 following settlement class ("Settlement Class"):

10 (i) all persons or entities who received residential PACE tax
11 assessment financing from WRCOG through the HERO program
12 where the underlying assessment contract was executed by the person
13 or entity between January 1, 2012 and July 7, 2016; (ii) all persons or
14 entities who received residential PACE tax assessment financing from
15 LAC through the HERO program where the underlying assessment
16 contract was executed by the person or entity between January 1, 2012
17 and June 15, 2017; and (iii) all persons or entities who received
18 residential PACE tax assessment financing from SANBAG through
19 the HERO program where the underlying assessment contract was
20 executed by the person or entity between January 1, 2012 and June 15,
21 2017.

22 If, for any reason, the Settlement is not approved or does not become effective, this preliminary
23 approval shall be null and void, the preliminary certification shall be revoked, and the preliminary
24 approval shall not be used or referred to for any purpose in this Action or any other action or
25 proceeding.

26 3. For settlement purposes only, and subject to further consideration at the Final
27 Approval Hearing described in paragraph 14 below, the Settlement Class is preliminarily found to
28 meet the requirements of Rules of Court, rules 3.764 and 3.769(d) and Code of Civil Procedure
section 382. It appears to the Court on a preliminary basis that: (a) the settlement amount is fair and
reasonable to the Class Members when balanced against the probable outcome of further litigation
relating to class certification, liability and damages issues, and potential appeals; (b) significant
investigation, research, discovery and motion practice have been conducted such that counsel for the
Parties at this time are able to reasonably evaluate their respective positions; (c) settlement at this

1 time will avoid substantial costs, delay and risks that would be presented by further litigation; and
2 (d) the proposed Settlement has been reached as the result of intensive, serious and non-collusive
3 negotiations between the Parties and their counsel.

4 4. For settlement purposes only, and after considering the relevant factors in Rule 3.764
5 and 3.769(d), George Loya, Judith Loya, Richard Ramos, Michael Richardson and Shirley Petetan
6 are preliminarily designated as representatives of the Settlement Class. The following attorneys are
7 preliminarily appointed as Class Counsel to represent the Settlement Class:

8 Mark C. Rifkin
9 Randall S. Newman
10 Wolf Haldenstein Adler Freeman & Herz LLP
11 270 Madison Avenue
12 New York, NY 10016
13 (212) 545-4600

14 Betsy C. Manifold
15 Rachele R. Byrd
16 Wolf Haldenstein Adler Freeman & Herz LLP
17 750 B Street, Suite 1820
18 San Diego, CA 92101
19 (619) 239-4599

20 Janine L. Pollack
21 The Sultz Law Group P.C.
22 270 Madison Avenue, Suite 1800
23 New York, NY 10016
24 (212) 969-7810

25 Lee Shalov
26 McLaughlin & Stern LLP
27 260 Madison Avenue, 10th Floor
28 New York, NY 10016
(646) 278-4298

C. Mario Jaramillo
C. Mario Jaramillo, PLC (dba Access Lawyers Group)
527 South Lake Ave., Suite 200
Pasadena, CA 91101
(866) 643-9099

5. Pursuant to Rules of Court, rule 3.769(c) and (g), the Court finds that the terms of the
Settlement Agreement, and the Settlement provided for therein, are preliminarily approved as
(a) fair, reasonable, and adequate in light of the relevant factual, legal, practical and procedural
considerations of the Action, (b) free of collusion to the detriment of Class Members, and (c) within

1 the range of possible final judicial approval, subject to further consideration thereof at the Final
2 Approval Hearing described at paragraph 14 of this Order. Accordingly, the Settlement Agreement
3 and the Settlement are sufficient to warrant notice thereof, as set forth below, and a full hearing on
4 the Settlement.

5 6. Pursuant to the terms of the Settlement Agreement, Defendant will prepare the Class
6 Member List and provide it to Epiq Systems, Inc. (hereafter, the “Settlement Administrator”).
7 Within forty-five (45) days of the date of entry of this Order, and pursuant to the procedures detailed
8 in the Settlement Agreement, the Settlement Administrator shall provide notice of the Settlement and
9 of the Final Approval Hearing to each Class Member by emailing to the email address for the Class
10 Member a copy of the Class Notice, substantially in the form attached hereto as Exhibit 2, which
11 shall include accompanying exclusion and objection forms that Class Members may use,
12 substantially in the forms attached hereto as Exhibit 3. Before sending, the Settlement Administrator
13 shall fill-in all applicable dates and deadlines in the Class Notice to conform with the dates and
14 deadlines specified for such events in this Order. As provided in the Settlement Agreement, if no
15 such email address exists for a Class Member, the notice will be mailed to his or her mailing address.
16 All other notice provisions in the Settlement Agreement shall also be followed.

17 7. Epiq is hereby approved and appointed as Settlement Administrator and will perform
18 the necessary settlement administration duties, including providing notice to Class Members,
19 responding to Class Member inquiries, notifying the parties of any Successful Opt-Outs, providing
20 any approved Settlement Checks to Class Members, and undertaking any other settlement
21 administration duties required by the Settlement Agreement or the Court.

22 8. If any Class Notice mailed pursuant to the Settlement Agreement and paragraph 6
23 above is returned by the United States Postal Service as undeliverable, then the Settlement
24 Administrator and Defendant shall comply with the terms of the Settlement Agreement for re-
25 mailing and further attempts to locate Class Members. If any Class Notice sent by email is returned
26 as undeliverable, the Settlement Administrator shall re-mail the Class Notice to the mailing address
27 for that Class Member, following the same procedures as set forth for mailed notice in the
28 Settlement Agreement.

1 9. The Court finds that the Settlement Agreement’s plan for class notice is the best
2 notice practicable under the circumstances and satisfies the requirements of due process and Rules of
3 Court, rules 3.766 and 3.769(f). That plan is approved and accepted. This Court further finds that
4 the Class Notice complies with Rules of Court, rules 3.766 and 3.769(f) and is appropriate as part of
5 the notice plan and the Settlement, and thus it is hereby approved and adopted. This Court further
6 finds that no other notice other than that identified in the Settlement Agreement is reasonably
7 necessary in the Action.

8 10. Any person in the Class who wishes to be excluded from the Settlement Class and not
9 be bound by the Settlement Agreement must complete and mail a request for exclusion (“Opt-Out”)
10 to the Settlement Administrator at the address set forth in the Class Notice, postmarked no later than
11 one hundred and five (105) days of the date of entry of this Order. For an Opt-Out to be valid, it
12 must be timely (as judged by the postmark deadline set forth above) and (a) state the person’s full
13 name, address and telephone number; (b) contain the person’s personal and original signature(s) or
14 the original signature of a person previously authorized by law, such as a trustee, guardian, or person
15 acting under power of attorney, to act on behalf of the Class Member (*i.e.*, conformed, reproduced,
16 facsimile, or other non-original signatures are not valid); and (c) unequivocally state the person’s
17 intent to be excluded from the Settlement Class, to be excluded from the Settlement, not to
18 participate in the Settlement, and/or to waive all right to the benefits of the Settlement. The Class
19 Member may use the exclusion form provided with the Class Notice. In those cases where a Class
20 Member includes two or more persons who were co-owners of a property and multiple co-owners
21 entered into the relevant PACE tax assessment contract, any or all of the co-owners can opt out and
22 that PACE tax assessment contract will not be part of the Settlement Class. Any person who does
23 not submit a Successful Opt-Out, or otherwise comply with all requirements for opting out as are
24 contained in this Order, the Settlement Agreement and the Class Notice, shall be bound by the
25 Settlement Agreement, including the Release, as embodied in paragraphs 5.01 and 5.02 of the
26 Settlement Agreement, and any Final Judgment entered in the Action. Further, any person who is a
27 Successful Opt-Out will be deemed to have waived any rights or benefits under the Settlement, and
28 will not have standing to object to the Settlement.

1 11. Any Class Member who wishes to object to the Settlement, in whole or in part, must
2 serve a written Objection to the Settlement or Settlement Agreement to the Settlement Administrator
3 no later than one hundred and five (105) days after the date of entry of this Order. After this period
4 has run, the Settlement Administrator must file, concurrently with the Plaintiffs' motion for final
5 approval, a declaration with the Court of any received Objections. To be considered valid, each
6 Objection must be timely (as judged by the filing deadline set forth above) and set forth the Class
7 Member's full name, a statement of the legal and factual bases for the Objection, and provide copies
8 of any documents that the Class Member wishes to submit in support of his/her objection(s). The
9 Class Member may use the objection form provided with the Class Notice. Any Class Member who
10 does not submit a timely and valid Objection in complete accordance with this Order, the Class
11 Notice and the Settlement Agreement, or as otherwise ordered by the Court, may not be treated as
12 having filed a valid Objection to the Settlement. Objections that are untimely and/or otherwise
13 invalid may not be considered by this Court.

14 12. Class Counsel shall give notice to any objecting Class Member of any continuance of
15 the date or time for the Final Approval Hearing.

16 13. Class Counsel shall file their petition for attorneys' fees and expenses no later than
17 forty-five (45) days after the Class Notice deadline. Prior to the Final Approval Hearing (described
18 in Paragraph 14 below), Representative Plaintiffs and Class Counsel may make a written application
19 to the Court for a Class Representative Award. No later than sixteen (16) court days prior to the
20 Final Approval Hearing, Representative Plaintiffs and Class Counsel may submit any supplemental
21 papers to the Court in further support of their application for final approval of the attorneys' fee
22 award or expenses, and/or application for Class Representative Awards.

23 14. A final hearing (the "Final Approval Hearing") shall be held before the undersigned
24 at 8:30 a.m. on July 8, 2020, in Department 6 of the Superior Court of California for the County of
25 Riverside, located at 4050 Main Street, Riverside, California 92501, to determine, among other
26 things, (a) whether the proposed Settlement should be approved as fair, reasonable and adequate, (b)
27 whether judgement should be entered in the Action pursuant to the terms of the Settlement
28 Agreement, (c) whether Class Members who have not opted out should be bound by the Release set

1 forth in the Settlement Agreement, (d) whether the Settlement Class should be finally certified, (e)
2 the amount of attorneys' fees and costs to be awarded to Class Counsel, if any, and (f) the amounts
3 to be awarded to Representative Plaintiffs for their service as class representatives, if any. This
4 hearing may be postponed, adjourned, or continued by docketed order of the Court without further
5 written notice to the Settlement Class.

6 15. No later than forty-five (45) days after the Class Notice deadline, Representative
7 Plaintiffs and Class Counsel shall file their motion seeking final approval of the settlement. No later
8 than sixteen (16) court days prior to the Final Approval Hearing, Representative Plaintiffs and Class
9 Counsel may submit any supplemental papers to the Court in further support of their application for
10 final approval of the settlement.

11 16. Any Class Member who wishes to appear at the Final Approval Hearing, whether *pro*
12 *se* or through counsel, will be requested, but not required, to file a notice of appearance in the Action
13 at least fourteen (14) days before the Final Approval Hearing, and to serve the notice and other
14 pleadings upon Class Counsel and Counsel for the Defendant.

15 17. All other events contemplated by the Settlement Agreement to occur after this Order
16 and before the Final Approval Hearing shall be governed by the Settlement Agreement, to the extent
17 not inconsistent herewith.

18 18. All proceedings in the Action, other than such as may be necessary to carry out the
19 terms and conditions of the Settlement Agreement or the responsibilities related or incidental thereto,
20 are stayed and suspended until further order of this Court.

21 19. If Final Approval of the Settlement is not achieved, or if the Settlement is terminated
22 for any reason, the Settlement and all proceedings had in connection therewith shall be without
23 prejudice to the status quo ante rights of the Parties to the Action, and all Orders issued pursuant to
24 the Settlement may be vacated upon a motion or stipulation from the Parties. In such an event, the
25 Settlement and all negotiations concerning it shall not be used or referred to in this Action for any
26 purpose whatsoever. This Order shall be of no force or effect if Final Approval does not occur for
27 any reason, and nothing in this Order shall be construed or used as an admission, concession, or
28 declaration by or against Defendant, of any fault, wrongdoing, breach, or liability. Nor shall this

1 Order be construed by or against Representative Plaintiffs or the Class Members that their claims
2 lack merit or that the relief requested in these Action is inappropriate, improper, or unavailable, or as
3 a waiver by any Party of any defenses it may have. Nor shall this Order be construed or used to
4 show that certification of one or more classes would or would not be appropriate if the Action were
5 to be litigated rather than settled.

6 20. Neither the Settlement nor the Settlement Agreement constitutes an admission,
7 concession, or indication by the Parties of the validity of any claims or defenses in the Action or of
8 any wrongdoing, liability, or violation of law by the Defendant, who vigorously denies all of the
9 claims and allegations raised in the Action.

10 **SO ORDERED.**

11
12
13 Dated: _____

By: _____
Hon. Sunshine Sykes
Judge of the Superior Court

EXHIBIT B

A court authorized this notice. This is not a solicitation from a lawyer.

The case is *In re Renovate America Finance Cases*,
Riverside County Superior Court Case No. RICJCCP4940

**NOTICE OF PENDENCY OF CLASS ACTION,
PROPOSED SETTLEMENT, AND FINAL APPROVAL
HEARING**

You have received this notice because you obtained Property Assessed Clean Energy (“PACE”) tax assessment financing through Renovate America, Inc.’s (“Renovate”) HERO Program. Your PACE assessment was authorized and financed by either Los Angeles County between January 1, 2012 and June 15, 2017, the Western Riverside Council of Governments between January 1, 2012 and July 7, 2016, or the San Bernardino Associated Governments between January 1, 2012 and June 15, 2017.

A class action lawsuit may affect your rights.

- This notice describes a proposed class action settlement. Please read this Notice carefully, as the proposed settlement described below may affect your legal rights and provide benefits. *This is not a notice of a lawsuit against you. This is not an attempt to collect money from you.*

- On November 1, 2016, three class action lawsuits were filed against Renovate that were later coordinated into one action before the Riverside County Superior Court and renamed: *In re Renovate America Finance Cases*, Case No. RICJCCP4940. Those lawsuits, which have been amended over time, generally allege that Renovate’s HERO programs with Los Angeles County, the Western Riverside Council of Governments, and the San Bernardino Associated Governments, failed to adequately disclose certain fees and interest associated with the HERO programs. The lawsuits allege that these disclosures, and the resulting receipt of those fees and interest, violated California’s Unfair Competition Law, as further described below. Renovate vigorously disputes all of these claims and does not believe that the HERO programs violated any law.
- There is now a proposed class action settlement in the matter. Under the terms of the Settlement Agreement, Renovate has agreed to make a payment to each eligible Class Member (each person receiving this notice).
- The Court has not decided whether Renovate did anything wrong or whether to approve the settlement. However, your legal rights are affected, and you have a choice to make now:

YOUR LEGAL RIGHTS AND OPTIONS IN THE LAWSUIT	
DO NOTHING	<p>Await the outcome. Give up certain rights.</p> <p>If the proposed settlement is approved, you would receive a payment mailed to you; the parties estimate the average check will be approximately \$ _____.</p>
OBJECT	<p>Write to the Court about why you don’t like the proposed settlement. You can use the enclosed form.</p> <p>If the settlement is approved by the Court despite your objection, you will still receive a payment mailed to you.</p>
EXCLUDE YOURSELF SO THAT YOU MAY FILE AN INDIVIDUAL LAWSUIT	<p>Write to the Court and exclude yourself from this class action settlement. You can use the enclosed form.</p> <p>You will not receive any payment if the settlement is approved, but you will keep any rights to sue Renovate individually about the same legal claims in this lawsuit.</p>

Any further questions? Contact _____.

WHAT THIS NOTICE CONTAINS

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- 1. Why did I get this notice?
- 2. What is this lawsuit about?
- 3. What is a class action and who is involved?
- 4. Has the Court decided who is right?
- 5. What are the Plaintiffs asking for?
- 6. What does the settlement provide?

WHO IS IN THE CLASS..... PAGE 6

- 7. How do I know if I am part of this Class?

YOUR RIGHTS AND OPTIONS..... PAGE 6

- 8. What happens if I do nothing at all?
- 9. Why would I ask to be excluded?
- 10. How do I ask the Court to exclude me from the Class?
- 11. How do I Object to the Settlement?

THE LAWYERS REPRESENTING YOU PAGE 7

- 12. Do I have a lawyer in this case?
- 13. Should I get my own lawyer?
- 14. How will the lawyers be paid?

THE COURT’S FINAL APPROVAL HEARING PAGE 8

- 15. When and where will the Court decide whether to approve the settlement?
- 16. Do I have to come to the hearing?

GETTING MORE INFORMATION..... PAGE 8

- 17. Are more details available?

BASIC INFORMATION

1. Why did I get this notice?

A Court authorized the notice because you have a right to know about a proposed settlement of this class action lawsuit and about all of your options before the Court decides whether to give “Final Approval” to the settlement. This notice explains the lawsuit, the settlement, and your legal rights. Judge Sunshine Sykes, of the Riverside County, California, Superior Court is overseeing this class action. The case is known as *In re Renovate America Finance Cases*, Case No. RICJCCP4940.

A court hearing to consider whether to finally approve the Settlement will be held on _____, **2020 at ____ a.m./p.m.**, in Department 6 of the Superior Court of California for the County of Riverside, located at 4050 Main Street, Riverside, California 92501 (“Final Approval Hearing”).

2. What is this lawsuit about?

In the Action, Plaintiffs allege that Renovate violated California’s Unfair Competition Law (“UCL”), California Business & Professions Code section 17200 *et seq.*, based on certain written disclosures used in connection with PACE tax assessments under the HERO programs offered through Los Angeles County, the Western Riverside Council of Governments, and the San Bernardino Associated Governments (the “Government PACE Providers”). Under the UCL, a party may not conduct business or otherwise engage in conduct that is unfair, unlawful or fraudulent. Plaintiffs allege the disclosures relating to certain interest and fees were inadequate, and that it was unfair for consumers to have to pay inadequately disclosed interest and fees. Plaintiffs initially sued the Government PACE Providers and alleged other claims, but those defendants and claims have been dismissed by a court.

Renovate disputes all the Plaintiffs’ claims and does not believe that the HERO programs violated any laws. Renovate also denies that class certification is required or appropriate.

Class Counsel has conducted an investigation into the relevant facts and law. Class Counsel has concluded that the outcome of the Action is uncertain and that a settlement is in the best interests of Plaintiffs and the Settlement Class.

3. What is a class action and who is involved?

In a class action lawsuit, one or more people called “Plaintiffs” or “Class Representatives” (in this case George Loya, Judith Loya, Richard Ramos, Michael Richardson and Shirley Petetan) sue on behalf of other people who have similar claims. The people together are a “Class” or “Class Members.” The company they sued (in this case Renovate) is called the Defendant.

The Riverside County Superior Court (the “Court”) has preliminarily approved a settlement class (the “Settlement Class”), consisting of the following persons:

(i) all persons or entities who received residential PACE tax assessment financing from WRCOG through the HERO program where the underlying assessment contract was executed by the person or entity between January 1, 2012 and July 7, 2016; (ii) all persons or entities who received residential PACE tax assessment financing from LAC through the HERO program where the underlying assessment contract was executed by the person or entity between January 1, 2012 and June 15, 2017; and (iii) all persons or entities who received residential PACE tax assessment financing from SANBAG through the HERO program where the underlying assessment contract was executed by the person or entity between January 1, 2012 and June 15, 2017.

According to Renovate’s records, you are a member of this Settlement Class. Further, if you have received more than one copy of this Notice in the mail that may be because you are a member of this Settlement Class with respect to more than one PACE assessment. Moreover, if you joined with another person (such as a spouse or family member) on an account, then you and each person who joined you as to that account collectively have the rights outlined in this Notice.

4. Has the Court decided who is right?

The Court never resolved the claims or defenses in the Action. The Court also never resolved whether Renovate did anything wrong. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the Final Approval Hearing.

5. What are the Plaintiffs asking for?

The Plaintiffs are asking for money to compensate them and the Settlement Class for Renovate’s alleged violation of the UCL.

6. What does the settlement provide?

Under the terms of the proposed Settlement, if the Court approves it, Renovate has agreed to provide \$2,550,000.00 in benefits to the Settlement Class. Out of this \$2,550,000.00 in total class benefits, Class Counsel (identified in Section 12 below) has agreed to seek no more than a maximum of \$841,500.00 for attorneys’ fees (33% of the settlement fund), plus expenses not to exceed \$_____, and \$20,000 in total service awards for the Class Representatives, all to be paid out of the settlement fund. The remainder of the cash settlement fund, estimated to be approximately \$ _____, will be used to pay the settlement administration costs of a third party (the “Settlement Administrator”) and will be used to pay the Settlement Class pro rata based on the total number of Class Members who do not opt-out of the settlement. The Settlement Administrator estimates that settlement administration costs will be approximately \$116,647.

Based upon information provided by Defendant, which included the number of PACE assessments in the Settlement Class as well as to total principal amount of PACE assessments in the Settlement Class, and if the Court approves the requested attorneys' fees, expenses and awards, Plaintiffs estimate that, pursuant to the allocation formula described in the Settlement Agreement, the average Class Member will receive a check for approximately \$20; however, that amount could be more or less depending on a variety of factors including the size of the Class Member's financing contract. Plaintiffs estimate that the lowest net recovery will be approximately \$4.35 and the largest net recovery will be approximately \$242.61.

WHO IS IN THE CLASS

7. How do I know if I am part of this Class?

This Notice is being issued only to consumers that Renovate has identified as Class Members. The preliminarily approved Settlement Class is described in Section 3 above.

YOUR RIGHTS AND OPTIONS

8. What happens if I do nothing at all?

You don't have to do anything now if you want to keep the possibility of getting money or benefits from this proposed settlement. If this settlement is approved by the Court, you will automatically receive a check in the mail. You will be releasing any claims you may have related to the allegations in this lawsuit. You will not be able to participate in any lawsuit against Renovate for the same legal claims that are the subject of this lawsuit. You will also be legally bound by all of the orders the Court issues and judgments the Court makes in this class action. The Settlement Agreement specifically provides:

Upon Final Approval, and in consideration of the promises and covenants set forth in this Agreement, the Representative Plaintiffs and each Class Member who is not a Successful Opt-Out, and all those who claim through them or who assert claims (or could assert claims) on their behalf (including the government in the capacity as *parens patriae* or on behalf of creditors or estates of the releasees), and each of them (collectively and individually, the "Releasing Persons"), will be deemed to have completely released and forever discharged Renovate America, Inc., and each of its past, present, and future officers, directors, employees, and agents (collectively and individually, the "Released Persons"), from any claims asserted in the Second Amended Class Action Complaints and any other claims that could have been brought based on the facts alleged in the Second Amended Class Action Complaints. This Release does not release or discharge any causes of action brought against any of the Released Parties in the unrelated matter *Barbara Morgan, et al. v. Renew Financial Group, LLC, et al.*, San Diego County Superior Court Case No. 37-2019-00052045-CU-OR-CTL, which alleges certain causes of action relating to California Civil Code sections 1804.1(j) and 1804.2 of

the California Retail Installments Sales Act. This Release does not release or discharge any causes of action brought against any of the Released Parties in the unrelated matter *Reginald Nemore, et al. v. Renovate America, et al.*, Los Angeles County Superior Court Case No. BC701810. This Release shall be included as part of any judgment, so that all released claims and rights shall be barred by principles of *res judicata*, collateral estoppel, and claim and issue preclusion.

9. Why would I ask to be excluded?

If you already have your own lawsuit against Renovate for the kind of violations alleged by the Plaintiffs and want to continue with it, or if you want to preserve your right to file such a lawsuit, you need to ask to be excluded from the Class. If you exclude yourself from the Class—which also means to remove yourself from the Class, which is sometimes called “opting out” of the Class—you won't get any money or benefits from this lawsuit or settlement. If you exclude yourself, you will not be legally bound by the Court's judgments in this class action.

If you start your own lawsuit against Renovate after you exclude yourself, you'll have to hire and pay your own lawyer for that lawsuit, and you'll have to prove your claims. Renovate can defend itself, and you may lose and recover nothing.

10. How do I ask the Court to exclude me from the Class?

To ask to be excluded, you must send an “Exclusion Request.” If you choose to, you can use the enclosed exclusion form. Be sure to include your name, address, telephone number and date, sign the form and clearly state, “I want to be excluded” or something similar. You must mail your Exclusion Request postmarked by _____ 2020, to:

[Settlement Administrator Address Placeholder]

11. How do I object to the Settlement?

If you wish to object to the settlement or any matters as described in this Notice, you may do so and, if you choose to, you can use the enclosed objection form. Be sure to include your name and identify each objection, the basis for the objection and sign the form. You should include any papers that support the objection. You must mail your objection postmarked by _____ 2020, to:

[Settlement Administrator Address Placeholder]

DO NOT CALL THE COURT. DO NOT CALL OR SEND CORRESPONDENCE TO THE JUDGE OR HER CLERKS.

If you wish to appear at the Final Approval Hearing, whether by yourself or through counsel, you are requested, but not required, to file a notice of appearance in the Action no later than _____, 2020, and to serve the notice and other pleadings upon Class Counsel and Counsel for the Defendant.

If the settlement is approved by the Court, despite your objection, you will still receive a payment mailed to you.

THE LAWYERS REPRESENTING YOU

12. Do I have a lawyer in this case?

Yes. The Court has approved as “Class Counsel” (the attorneys representing you and other members of the Class):

Mark C. Rifkin, Randall S. Newman, Wolf Haldenstein Adler Freeman & Herz LLP, 270 Madison Avenue, New York, NY 10016, (212) 545-4600

Betsy C. Manifold, Rachele R. Byrd, Wolf Haldenstein Adler Freeman & Herz LLP, 750 B Street, Suite 1820, San Diego, CA 92101, (619) 239-4599

Janine L. Pollack, The Sultzer Law Group P.C., 270 Madison Avenue, Suite 1800, New York, NY 10016, (212) 969-7810

Lee Shalov, McLaughlin & Stern LLP, 260 Madison Avenue, 10th Floor, New York, NY, 10016, (646) 278-4298

C. Mario Jaramillo, C. Mario Jaramillo, PLC (dba Access Lawyers Group), 527 South Lake Ave., Suite 200, Pasadena, CA 91101, (866) 643-9099

They are experienced in handling similar consumer cases against other companies.

13. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. But, if you want your own lawyer, you will have to pay that lawyer. For example, you can ask him or her to appear in Court for you if you want someone other than Class Counsel to speak for you.

14. How will the lawyers be paid?

If Class Counsel obtain money or benefits for the Class, they will ask the Court for fees and expenses. You won't have to pay these fees and expenses, they will be deducted from the Settlement Fund. The amount Class Counsel may seek for fees and costs is described in Section 6 above. You may review Class Counsel's petition for fees and costs which will be filed with the Clerk of the Court within 45 days of the mailing of this notice.

THE COURT'S FINAL APPROVAL HEARING

15. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval Hearing to consider whether to finally approve the Settlement. It will be held on _____, 2020 at _____ a.m./p.m., Department 6, Superior Court for the County of Riverside, 4050 Main Street, Riverside, California 92501.

At the Final Approval Hearing, the Court will consider whether the settlement, including Class Counsel's request for attorneys' fees and costs, is fair, reasonable, and adequate and should be granted Final Approval. If there are objections, the Court will consider them. The Final Approval Hearing may be moved to a different date, extended, or moved to a different Courtroom without additional notice.

16. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. However, you are welcome to attend the hearing at your own expense. If you send in a written objection, you do not have to come to the Final Approval Hearing to talk about it. As long as you mailed your written objection on time, the Court will consider it. See Section 13 above for details on what to do if you or your attorney wish to attend the hearing.

GETTING MORE INFORMATION

17. Are more details available?

Yes. You may contact Class Counsel or the Settlement Administrator for more details and documents, including the Settlement Agreement.

You may also access additional details and all papers regarding the settlement online at the settlement website at www._____.com; or via the electronic document filing system maintained by the Clerk of the Court for the Superior Court for the County of Riverside, at <https://www.riverside.courts.ca.gov/>. You may also get case documents from the Superior Court for the County of Riverside at 4050 Main Street, Riverside, California 92501. The Settlement Agreement was filed with the Court as an attachment to the Declaration of [Name], which was filed on [Date].

DATE: _____

EXHIBIT C

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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF RIVERSIDE - RIVERSIDE COURT**
19

20 RENOVATE AMERICA FINANCE CASES,

Case No. RICJCCP4940

FINAL ORDER AND JUDGMENT
APPROVING SETTLEMENT,
CERTIFYING SETTLEMENT CLASS, AND
DISMISSING ACTION

23 THIS DOCUMENT RELATES TO ALL
24 CASES

Dept.: 06
Judge: Hon. Sunshine Sykes

Complaint Filed: November 1, 2016
2nd Am. Consol. Compl. Filed: May 1, 2018

1 This matter having come before the Court on _____ upon the Motion of
2 plaintiffs George Loya, Judith Loya, Richard Ramos, Michael Richardson and Shirley Petetan
3 (collectively, “Representative Plaintiffs”), individually and on behalf of a class of persons, for Final
4 Approval of a settlement reached between the Parties, and upon review and consideration of the
5 Settlement Agreement dated _____ (the “Settlement Agreement”), the exhibits to the
6 Settlement Agreement, the evidence and arguments of counsel presented at the Final Approval
7 Hearing, and the submissions filed with this Court in connection with the Final Approval Hearing,
8 IT IS HEREBY ORDERED and adjudged as follows:

9 1. Pursuant to California Rules of Court, rules 3.769(g) and (h) and 3.770, the
10 Settlement of this action, as embodied in the terms of the Settlement Agreement, is hereby finally
11 approved as a fair, reasonable and adequate settlement of this Action in light of the factual, legal,
12 practical and procedural considerations raised by this action. The Settlement Agreement is hereby
13 incorporated by reference into this Final Order and Judgment Approving Settlement, Certifying
14 Settlement Class, and Dismissing Action (“Final Approval Order”). Capitalized terms in this Order
15 shall, unless otherwise defined, have the same meaning as in the Settlement Agreement.

16 2. For settlement purposes only, the Settlement Class, as that term is defined in
17 Paragraph 1.27 of the Settlement Agreement, is found to meet the requirements of Rules of Court
18 3.764, 3.765 and 3.769(d) and Code of Civil Procedure section 382.

19 3. Solely for the purpose of the Settlement and pursuant to Rule of Court 3.769(d), the
20 Court hereby finally certifies the following Settlement Class:

21 (i) all persons or entities who received residential PACE tax
22 assessment financing from WRCOG through the HERO program
23 where the underlying assessment contract was executed by the person
24 or entity between January 1, 2012 and July 7, 2016; (ii) all persons or
25 entities who received residential PACE tax assessment financing from
26 LAC through the HERO program where the underlying assessment
27 contract was executed by the person or entity between January 1, 2012
28 and June 15, 2017; and (iii) all persons or entities who received
residential PACE tax assessment financing from SANBAG through
the HERO program where the underlying assessment contract was
executed by the person or entity between January 1, 2012 and June 15,
2017.

4. The Court specifically finds that:

(a) The Class is so numerous that joinder of all members is impracticable.

- 1 (b) There are questions of law or fact common to the Class.
- 2 (c) The claims of Representative Plaintiffs are typical of the claims of the Class that
- 3 Representative Plaintiffs seek to certify.
- 4 (d) Representative Plaintiffs and Class Counsel will fairly and adequately protect the
- 5 interests of the Class.
- 6 (e) The questions of law or fact common to members of the Class, and which are
- 7 relevant for settlement purposes, predominate over the questions affecting only
- 8 individual members.
- 9 (f) Certification of the Class is superior to other available methods for fair and
- 10 efficient adjudication of the controversy.

11 5. The Court appoints George Loya, Judith Loya, Richard Ramos, Michael Richardson

12 and Shirley Petetan as Representative Plaintiffs of the Settlement Class, and finds that they meet the

13 requirements of Rule of Court 3.769(d) and Code of Civil Procedure section 382.

14 6. The Court appoints the following lawyers as Class Counsel to the Settlement Class,

15 and finds that they meet the requirements of Rule of Court 3.769:

16 Mark C. Rifkin
17 Randall S. Newman
18 Wolf Haldenstein Adler Freeman & Herz LLP
19 270 Madison Avenue
20 New York, NY 10016
21 (212) 545-4600

22 Betsy C. Manifold
23 Rachele R. Byrd
24 Wolf Haldenstein Adler Freeman & Herz LLP
25 750 B Street, Suite 1820
26 San Diego, CA 92101
27 (619) 239-4599

28 Janine L. Pollack
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C. Mario Jaramillo
C. Mario Jaramillo, PLC (dba Access Lawyers Group)
527 South Lake Ave., Suite 200
Pasadena, CA 91101
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1
2 7. This Court convened the Final Approval Hearing at _____ on
3 _____, in Department 6 of the Superior Court of California for the County of
4 Riverside, located at 4050 Main Street, Riverside, California 92501. The parties appeared through
5 their counsel. Counsel presented argument at that time.

6 8. The Court finds that notice previously given to Class Members in the Action was the
7 best notice practicable under the circumstances and satisfies the requirements of due process and
8 Rules of Court, rules 3.766 and 3.769(f). The Court further finds that, because (a) adequate notice
9 has been provided to all Class Members and (b) all Class Members have been given the opportunity
10 to object to, and/or request exclusion from, the Settlement, the Court has jurisdiction over all Class
11 Members. The Court further finds that all requirements of statute, rule, and the Constitution
12 necessary to effectuate this Settlement have been met and satisfied.

13 9. Pursuant to Rule of Court 3.769(g), the Court has considered whether the Settlement,
14 as set forth in the Settlement Agreement, should be approved under the fairness standards set forth in
15 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008); *see also Dunk v. Ford Motor*
16 *Co.*, 48 Cal. App. 4th 1794, 1801 (1996). The Court finds that the Settlement is fair, adequate, and
17 reasonable, after due consideration of (1) the strength of plaintiff's case balanced against the
18 settlement amount; (2) the risk, expense, complexity and likely duration of further litigation,
19 including the risk of maintaining class action status through trial; (3) the amount offered in
20 settlement; (4) the extent of discovery completed and the stage of the proceedings; (5) the experience
21 and view of counsel; and (6) the reaction of the Class Members to the proposed Settlement. In
22 reaching these findings on the *Kullar* factors, the Court considered all written submissions,
23 affidavits, and arguments of counsel, as well as the entire record in the case. After notice and a
24 hearing, this Court finds that the terms of the Settlement and the Settlement Agreement, including all
25 exhibits thereto, are fair, adequate and reasonable, and are in the best interest of the Settlement
26 Class. Accordingly, the Settlement and the Settlement Agreement should be and are approved and
27 the Settlement Agreement shall govern all issues regarding the Settlement and all rights of the
28 Parties, including the rights of the Class Members.

1 10. Upon consideration of Class Counsel’s application for attorneys’ fees and litigation
2 costs, the aggregate amount of the Attorney Fee/Litigation Cost Award is hereby fixed at
3 \$_____, which consists of \$_____ in attorneys’ fees and \$_____ in costs.
4 This aggregate award resolves, without limitation, all claims for attorneys’ fees and litigation costs
5 incurred by (a) Class Counsel, (b) any other counsel representing (or purporting to represent) the
6 Representative Plaintiffs or Class Members (or any of them), and (c) Representative Plaintiffs or the
7 Class Members (or any of them), in connection with or related to any matter in the Action, the
8 Settlement, the administration of the Settlement, and any of the matters or claims within the scope of
9 the Release, as embodied in paragraphs 5.01 and 5.02 of the Settlement Agreement.

10 11. Upon consideration of Representative Plaintiffs’ application for an award to the
11 Representative Plaintiffs, the amount of the Class Representative Award is hereby fixed at five
12 thousand dollars (\$5,000.00) to individual plaintiffs Richard Ramos, Michael Richardson and
13 Shirley Petetan. George and Judith Loya will receive one joint \$5,000.00 payment.

14 12. In accordance with the Settlement Agreement, and to effectuate the Settlement,
15 Defendant shall cause:

16 (a) the Benefit Checks (and Supplemental Benefit Checks if appropriate) to be
17 provided to Class Members in accordance with the terms of the Settlement Agreement, which shall
18 all expire after ninety (90) days;

19 (b) the aggregate Attorney Fee/Litigation Cost Award made in Paragraph 10
20 above to be disbursed to Class Counsel in accordance with the terms of the Settlement Agreement;

21 (c) the Class Representative Award made in Paragraph 11 above to be disbursed
22 to Class Counsel in accordance with the terms of the Settlement Agreement;

23 (d) to be recommended to WRCOG and LAC the Disclosure Changes; and

24 (e) the Settlement Administration Costs to be paid in accordance with the terms
25 of the Settlement Agreement.

26 13. This Final Approval Order shall be the final judgment resolving the Action and all
27 claims against the Defendant. The judgment shall be without costs to any Party.
28

1 14. Representative Plaintiffs and each Class Member shall be forever bound by this Final
2 Approval Order and the Settlement Agreement including the Release set forth in paragraphs 5.01
3 and 5.02 of the Settlement Agreement, which provides as follows:

4 5.01 Upon Final Approval, and in consideration of the promises and covenants set
5 forth in this Agreement, the Representative Plaintiffs and each Class Member who is not a
6 Successful Opt-Out, and all those who claim through them or who assert claims (or could
7 assert claims) on their behalf (including the government in the capacity as *parens patriae* or
8 on behalf of creditors or estates of the releasees), and each of them (collectively and
9 individually, the “Releasing Persons”), will be deemed to have completely released and
10 forever discharged Renovate America, Inc., and each of its past, present, and future officers,
11 directors, employees, and agents (collectively and individually, the “Released Persons”),
12 from any claims asserted in the Second Amended Class Action Complaints and any other
13 claims that could have been brought based on the facts alleged in the Second Amended Class
14 Action Complaints. This Release does not release or discharge any causes of action brought
15 against any of the Released Parties in the unrelated matter *Barbara Morgan, et al. v. Renew*
16 *Financial Group, LLC, et al.*, San Diego County Superior Court Case No. 37-2019-
17 00052045-CU-OR-CTL, which alleges certain causes of action relating to California Civil
18 Code sections 1804.1(j) and 1804.2 of the California Retail Installments Sales Act. This
19 Release does not release or discharge any causes of action brought against any of the
20 Released Parties in the unrelated matter *Reginald Nemore, et al. v. Renovate America, et al.*,
21 Los Angeles County Superior Court Case No. BC701810. This Release shall be included as
22 part of any judgment, so that all released claims and rights shall be barred by principles of res
23 *judicata*, collateral estoppel, and claim and issue preclusion.

24 5.02 In addition to the provisions of paragraph 5.01 above, the Representative
25 Plaintiffs only hereby expressly agree that, upon Final Approval, each will waive and release
26 any and all provisions, rights, and benefits conferred either: (a) by Section 1542 of the
27 California Civil Code, or (b) by any law of any state or territory of the United States, or
28 principle of common law, which is similar, comparable, or equivalent to section 1542 of the

1 California Civil Code, with respect to the claims released pursuant to paragraph 5.01 above.

2 Section 1542 of the California Civil Code reads:

3 Section 1542. A general release does not extend to claims that the creditor
4 or releasing party does not know or suspect to exist in his or her favor at
5 the time of executing the release and that, if known by him or her, would
6 have materially affected his or her settlement with the debtor or released
7 party.

8 The Representative Plaintiffs' waiver of all rights and benefits afforded by Section
9 1542 is done with the understanding and acknowledgement of the significance of such a
10 specific waiver of Section 1542. Notwithstanding the provisions of Section 1542, and for the
11 purpose of implementing a full and complete release and discharge of each and all the
12 Released Persons, the Representative Plaintiffs expressly acknowledge that this Agreement is
13 intended to include in its effect (without limitation) all claims that the Releasing Persons
14 know or suspect to exist in their favor, as well as all claims that the Representative Plaintiffs
15 do not know or suspect to exist in their favor at the time the Parties execute this Agreement,
16 which contemplates the extinguishment of any such claims. This waiver also applies to any
17 other relevant re-codification or similar laws implemented hereafter substantially covering
18 the subject matter of Section 1542.

19 Whether a beneficiary of California law or otherwise, Representative Plaintiffs
20 acknowledge that he or she may hereafter discover facts other than or different from those
21 that he or she knows or believes to be true with respect to the subject matter of the claims
22 released pursuant to the terms of paragraph 5.01 above, but each of those individuals
23 expressly agree that, upon entry of the final judgment contemplated by this Settlement
24 Agreement, he and she shall have waived and fully, finally, and forever settled and released
25 any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-
26 contingent claim with respect to the claims released pursuant to paragraph 5.01 above,
27 whether or not concealed or hidden, without regard to subsequent discovery or existence of
28 such different or additional facts.

1 15. The Release set forth in paragraph 14 above and in the Settlement Agreement shall
2 have *res judicata* and other preclusive effect in all pending and future claims, lawsuits, other
3 proceedings maintained by or on behalf of Representative Plaintiffs, Class Members and each of the
4 Releasing Persons concerning matters and claims that are encompassed within the scope of the
5 Release, as embodied in paragraphs 5.01 and 5.02 of the Settlement Agreement.

6 16. The Released Persons each are hereby forever discharged by Representative
7 Plaintiffs, Class Members and the Releasing Parties from all matters and claims within the scope of
8 the Release, as embodied in paragraphs 5.01 and 5.02 of the Settlement Agreement.

9 17. This Final Approval Order, the Settlement Agreement, any document referred to in
10 this Order, any action taken to carry out this Order, any negotiations or proceedings related to any
11 such documents or actions, and the carrying out of and entering into the terms of the Settlement
12 Agreement, shall not be construed as, offered as, received as or deemed to be evidence,
13 impeachment material, or an admission or concession with regard to any fault, wrongdoing or
14 liability on the part of the Defendant whatsoever in the Action, or in any other judicial,
15 administrative, regulatory action or other proceeding; provided, however, this Order may be filed in
16 any action or proceeding against or by the Defendant or the Released Persons, or any one of them, to
17 enforce the Settlement Agreement or to support a defense of *res judicata*, collateral estoppel, release,
18 accord and satisfaction, good faith settlement, judgment bar or reduction, or any theory of claim
19 preclusion or issue preclusion or similar defense or counterclaim. Successful Opt-Outs, as defined in
20 the Settlement Agreement, shall be exempted from being covered by the terms of this Order and the
21 Release.

22 18. The notice required by Rule of Court, rule 3.769(f) has been provided, more than 90
23 days has passed between when that notice was given and the entry of this Final Approval Order, and
24 there shall be no basis under Rules of Court 3.766 and 3.769 for any Class Member to refuse or fail
25 to be bound by the Settlement Agreement or this Order.

26 19. In the event that Final Approval is not achieved for any reason, then the Settlement
27 Agreement, this Final Approval Order, the certification of the Settlement Class and all other terms
28

1 herein, together with any other orders or rulings arising from or relating to the Settlement
2 Agreement, shall be void and their effect vacated.

3 20. Within thirty (30) days after the expiration of all Benefit Checks and Supplemental
4 Benefit Checks, the parties shall file a report with the Court detailing the distribution of the
5 Settlement Fund and, if necessary, submitting a declaration and proposed amended judgment
6 pursuant to California Code of Civil Procedure section 384(b).

7 21. Except as expressly provided for in this Final Approval Order, the Settlement
8 Agreement shall govern all matters incident to the administration of the Settlement hereafter,
9 including applicable deadlines, until further order of this Court or written agreement of the Parties.

10 22. Without in any way affecting the finality of this Final Approval Order for purposes of
11 appeal, this Court hereby retains jurisdiction as to all matters relating to the interpretation,
12 administration, implementation, effectuation and/or enforcement of the Settlement Agreement and/or
13 this Order.

14
15 **SO ORDERED.**

16
17
18 Dated: _____

18 By: _____
19 Hon. Sunshine Sykes
20 Judge of the Superior Court

EXHIBIT D

EXISTING DISCLOSURES

Current:

- d. **Recording Fee and One-time Assessment Administration Fee.** At the time of closing, the Authority will pass-through the assessment recording fee of \$20.00 to you to cover the cost of recording the assessment, which will be included in the principal amount of the assessment or may be paid upfront by you at closing. At the time of closing, the Authority will charge you a one-time assessment administration fee of \$100.00, which will be included in the principal amount of the assessment or may be paid upfront by you at closing. In addition, you will be required to pay recording fees charged by the County in connection with any prepayment or the discharge of the assessment.

As Revised:

- d. **Recording Fee and One-time Assessment Administration Fee.** At the time of closing, the Authority will charge you an assessment recording fee of \$20.00 to cover the cost of recording the assessment, which will be included in the principal amount of the assessment or may be paid upfront by you at closing. At the time of closing, the Authority will charge you a one-time assessment administration fee of \$100.00, which will be included in the principal amount of the assessment or may be paid upfront by you at closing. In addition, you will be required to pay a recording fee charged by the County in connection with any prepayment or the discharge of the assessment.

* * *

Current:

- f. **Interest Before First Payment:** Interest that accrues during the period between your funding date and September 2nd of the year in which you make your first assessment payment will be included in the principal amount of the assessment in accordance with the Improvement Bond Act of 1915. The maximum amount of interest before your first assessment payment will be disclosed in your financing documents. Depending on the date the assessment is recorded on your Property, your first assessment payment may not be due until the following tax year.

As Revised:

- f. **Interest Before First Payment:** Interest that accrues during the period between your funding date and September 2nd of the year in which you make your first assessment payment will be included in the principal amount of the assessment in conformance with the Improvement Bond Act of 1915. The maximum amount of interest before your first assessment payment will be disclosed in your financing documents. Depending on the date the assessment is recorded on your Property, your first assessment payment may not be due until the following tax year. Interest will accrue on the amount of interest included in the principal amount of the assessment in conformance with the Improvement Bond Act of 1915.

NEW DISCLOSURES

- x. **Semi-Annual Payments May Be Required:** Even though the maximum annual Assessment Installment payments are amortized based on a single annual payment, if you make semi-annual property tax payments you may be required to make semi-annual payments on the principal amount of the assessment along with your semi-annual property tax payments. Even if you make such semi-annual payments towards the principal amount of your assessment, those payments may still only be applied to your assessment's principal balance once per year.

- x. **Calculation of Annual Percentage Rate (APR):** The Annual Percentage Rate (APR) disclosed to you in Exhibit B of the Assessment Contract is only an estimated APR, as the accrued interest on your assessment may change depending on your funding date.

EXHIBIT B

FEB 24 2020

S. Salazar *LSJ*

LM1
FEB 25 2020

ORIGINAL

EX-113

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16 Attorneys for Plaintiffs

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF RIVERSIDE - RIVERSIDE COURT**
19

20 RENOVATE AMERICA FINANCE CASES,

Case No. RICJCCP4940

21
22
23 THIS DOCUMENT RELATES TO ALL
24 CASES

AMENDED ~~PROPOSED~~ ORDER
PRELIMINARILY APPROVING
SETTLEMENT, PRELIMINARILY
APPROVING CLASS FOR SETTLEMENT
PURPOSES, AND WITH RESPECT TO
CLASS NOTICE, FINAL APPROVAL
HEARING, AND ADMINISTRATION

25 Dept.: 06
26 Judge: Hon. Sunshine Sykes

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

1 Upon consideration of the Parties' First Amended Settlement Agreement dated February 5,
2 2020 (the "Settlement Agreement"), attached hereto as Exhibit 1, and the Plaintiffs' Motion for
3 Preliminary Approval of Class Action Settlement, IT IS HEREBY ORDERED AS FOLLOWS:

4 1. The Settlement Agreement and the exhibits thereto are hereby incorporated by
5 reference in this Order as if fully set forth herein. Capitalized terms in this Order shall, unless
6 otherwise defined herein, have the same meaning as in the Settlement Agreement.

7 2. Solely for the purpose of settlement in accordance with the Settlement Agreement,
8 and pursuant to California Rules of Court, rule 3.769, this Court hereby preliminarily approves the
9 following settlement class ("Settlement Class"):

10 (i) all persons or entities who received residential PACE tax
11 assessment financing from WRCOG through the HERO program
12 where the underlying assessment contract was executed by the person
13 or entity between January 1, 2012 and July 7, 2016; (ii) all persons or
14 entities who received residential PACE tax assessment financing from
15 LAC through the HERO program where the underlying assessment
16 contract was executed by the person or entity between January 1, 2012
17 and June 15, 2017; and (iii) all persons or entities who received
18 residential PACE tax assessment financing from SANBAG through
19 the HERO program where the underlying assessment contract was
20 executed by the person or entity between January 1, 2012 and June 15,
21 2017.

22 If, for any reason, the Settlement is not approved or does not become effective, this preliminary
23 approval shall be null and void, the preliminary certification shall be revoked, and the preliminary
24 approval shall not be used or referred to for any purpose in this Action or any other action or
25 proceeding.

26 3. For settlement purposes only, and subject to further consideration at the Final
27 Approval Hearing described in paragraph 14 below, the Settlement Class is preliminarily found to
28 meet the requirements of Rules of Court, rules 3.764 and 3.769(d) and Code of Civil Procedure
section 382. It appears to the Court on a preliminary basis that: (a) the settlement amount is fair and
reasonable to the Class Members when balanced against the probable outcome of further litigation
relating to class certification, liability and damages issues, and potential appeals; (b) significant
investigation, research, discovery and motion practice have been conducted such that counsel for the
Parties at this time are able to reasonably evaluate their respective positions; (c) settlement at this

1 time will avoid substantial costs, delay and risks that would be presented by further litigation; and
2 (d) the proposed Settlement has been reached as the result of intensive, serious and non-collusive
3 negotiations between the Parties and their counsel.

4 4. For settlement purposes only, and after considering the relevant factors in Rule 3.764
5 and 3.769(d), George Loya, Judith Loya, Richard Ramos, Michael Richardson and Shirley Petetan
6 are preliminarily designated as representatives of the Settlement Class. The following attorneys are
7 preliminarily appointed as Class Counsel to represent the Settlement Class:

8 Mark C. Rifkin
9 Randall S. Newman
10 Wolf Haldenstein Adler Freeman & Herz LLP
11 270 Madison Avenue
12 New York, NY 10016
13 (212) 545-4600

12 Betsy C. Manifold
13 Rachele R. Byrd
14 Wolf Haldenstein Adler Freeman & Herz LLP
15 750 B Street, Suite 1820
16 San Diego, CA 92101
17 (619) 239-4599

15 Janine L. Pollack
16 The Sultzer Law Group P.C.
17 270 Madison Avenue, Suite 1800
18 New York, NY 10016
19 (212) 969-7810

18 Lee Shalov
19 McLaughlin & Stern LLP
20 260 Madison Avenue, 10th Floor
21 New York, NY 10016
22 (646) 278-4298

21 C. Mario Jaramillo
22 C. Mario Jaramillo, PLC (dba Access Lawyers Group)
23 527 South Lake Ave., Suite 200
24 Pasadena, CA 91101
25 (866) 643-9099

24 5. Pursuant to Rules of Court, rule 3.769(c) and (g), the Court finds that the terms of the
25 Settlement Agreement, and the Settlement provided for therein, are preliminarily approved as
26 (a) fair, reasonable, and adequate in light of the relevant factual, legal, practical and procedural
27 considerations of the Action, (b) free of collusion to the detriment of Class Members, and (c) within
28

1 the range of possible final judicial approval, subject to further consideration thereof at the Final
2 Approval Hearing described at paragraph 14 of this Order. Accordingly, the Settlement Agreement
3 and the Settlement are sufficient to warrant notice thereof, as set forth below, and a full hearing on
4 the Settlement.

5 6. Pursuant to the terms of the Settlement Agreement, Defendant will prepare the Class
6 Member List and provide it to Epiq Systems, Inc. (hereafter, the "Settlement Administrator").
7 Within forty-five (45) days of the date of entry of this Order, and pursuant to the procedures detailed
8 in the Settlement Agreement, the Settlement Administrator shall provide notice of the Settlement and
9 of the Final Approval Hearing to each Class Member by emailing to the email address for the Class
10 Member a copy of the Class Notice, substantially in the form attached hereto as Exhibit 2, which
11 shall include accompanying exclusion and objection forms that Class Members may use,
12 substantially in the forms attached hereto as Exhibit 3. Before sending, the Settlement Administrator
13 shall fill-in all applicable dates and deadlines in the Class Notice to conform with the dates and
14 deadlines specified for such events in this Order. As provided in the Settlement Agreement, if no
15 such email address exists for a Class Member, the notice will be mailed to his or her mailing address.
16 All other notice provisions in the Settlement Agreement shall also be followed.

17 7. Epiq is hereby approved and appointed as Settlement Administrator and will perform
18 the necessary settlement administration duties, including providing notice to Class Members,
19 responding to Class Member inquires, notifying the parties of any Successful Opt-Outs, providing
20 any approved Settlement Checks to Class Members, and undertaking any other settlement
21 administration duties required by the Settlement Agreement or the Court.

22 8. If any Class Notice mailed pursuant to the Settlement Agreement and paragraph 6
23 above is returned by the United States Postal Service as undeliverable, then the Settlement
24 Administrator and Defendant shall comply with the terms of the Settlement Agreement for re-
25 mailing and further attempts to locate Class Members. If any Class Notice sent by email is returned
26 as undeliverable, the Settlement Administrator shall re-mail the Class Notice to the mailing address
27 for that Class Member, following the same procedures as set forth for mailed notice in the
28 Settlement Agreement.

1 9. The Court finds that the Settlement Agreement's plan for class notice is the best
2 notice practicable under the circumstances and satisfies the requirements of due process and Rules of
3 Court, rules 3.766 and 3.769(f). That plan is approved and accepted. This Court further finds that
4 the Class Notice complies with Rules of Court, rules 3.766 and 3.769(f) and is appropriate as part of
5 the notice plan and the Settlement, and thus it is hereby approved and adopted. This Court further
6 finds that no other notice other than that identified in the Settlement Agreement is reasonably
7 necessary in the Action.

8 10. Any person in the Class who wishes to be excluded from the Settlement Class and not
9 be bound by the Settlement Agreement must complete and mail a request for exclusion ("Opt-Out")
10 to the Settlement Administrator at the address set forth in the Class Notice, postmarked no later than
11 one hundred and five (105) days of the date of entry of this Order. For an Opt-Out to be valid, it
12 must be timely (as judged by the postmark deadline set forth above) and (a) state the person's full
13 name, address and telephone number; (b) contain the person's personal and original signature(s) or
14 the original signature of a person previously authorized by law, such as a trustee, guardian, or person
15 acting under power of attorney, to act on behalf of the Class Member (*i.e.*, conformed, reproduced,
16 facsimile, or other non-original signatures are not valid); and (c) unequivocally state the person's
17 intent to be excluded from the Settlement Class, to be excluded from the Settlement, not to
18 participate in the Settlement, and/or to waive all right to the benefits of the Settlement. The Class
19 Member may use the exclusion form provided with the Class Notice. In those cases where a Class
20 Member includes two or more persons who were co-owners of a property and multiple co-owners
21 entered into the relevant PACE tax assessment contract, any or all of the co-owners can opt out and
22 that PACE tax assessment contract will not be part of the Settlement Class. Any person who does
23 not submit a Successful Opt-Out, or otherwise comply with all requirements for opting out as are
24 contained in this Order, the Settlement Agreement and the Class Notice, shall be bound by the
25 Settlement Agreement, including the Release, as embodied in paragraphs 5.01 and 5.02 of the
26 Settlement Agreement, and any Final Judgment entered in the Action. Further, any person who is a
27 Successful Opt-Out will be deemed to have waived any rights or benefits under the Settlement, and
28 will not have standing to object to the Settlement.

1 11. Any Class Member who wishes to object to the Settlement, in whole or in part, must
2 serve a written Objection to the Settlement or Settlement Agreement to the Settlement Administrator
3 no later than one hundred and five (105) days after the date of entry of this Order. After this period
4 has run, the Settlement Administrator must file, concurrently with the Plaintiffs' motion for final
5 approval, a declaration with the Court of any received Objections. To be considered valid, each
6 Objection must be timely (as judged by the filing deadline set forth above) and set forth the Class
7 Member's full name, a statement of the legal and factual bases for the Objection, and provide copies
8 of any documents that the Class Member wishes to submit in support of his/her objection(s). The
9 Class Member may use the objection form provided with the Class Notice. Any Class Member who
10 does not submit a timely and valid Objection in complete accordance with this Order, the Class
11 Notice and the Settlement Agreement, or as otherwise ordered by the Court, may not be treated as
12 having filed a valid Objection to the Settlement. Objections that are untimely and/or otherwise
13 invalid may not be considered by this Court.

14 12. Class Counsel shall give notice to any objecting Class Member of any continuance of
15 the date or time for the Final Approval Hearing.

16 13. Class Counsel shall file their petition for attorneys' fees and expenses no later than
17 forty-five (45) days after the Class Notice deadline. Prior to the Final Approval Hearing (described
18 in Paragraph 14 below), Representative Plaintiffs and Class Counsel may make a written application
19 to the Court for a Class Representative Award. No later than sixteen (16) court days prior to the
20 Final Approval Hearing, Representative Plaintiffs and Class Counsel may submit any supplemental
21 papers to the Court in further support of their application for final approval of the attorneys' fee
22 award or expenses, and/or application for Class Representative Awards.

23 14. A final hearing (the "Final Approval Hearing") shall be held before the undersigned
24 at 8:30 a.m. on July 8, 2020, in Department 6 of the Superior Court of California for the County of
25 Riverside, located at 4050 Main Street, Riverside, California 92501, to determine, among other
26 things, (a) whether the proposed Settlement should be approved as fair, reasonable and adequate, (b)
27 whether judgement should be entered in the Action pursuant to the terms of the Settlement
28 Agreement, (c) whether Class Members who have not opted out should be bound by the Release set

1 forth in the Settlement Agreement, (d) whether the Settlement Class should be finally certified, (e)
2 the amount of attorneys' fees and costs to be awarded to Class Counsel, if any, and (f) the amounts
3 to be awarded to Representative Plaintiffs for their service as class representatives, if any. This
4 hearing may be postponed, adjourned, or continued by docketed order of the Court without further
5 written notice to the Settlement Class.

6 15. No later than forty-five (45) days after the Class Notice deadline, Representative
7 Plaintiffs and Class Counsel shall file their motion seeking final approval of the settlement. No later
8 than sixteen (16) court days prior to the Final Approval Hearing, Representative Plaintiffs and Class
9 Counsel may submit any supplemental papers to the Court in further support of their application for
10 final approval of the settlement.

11 16. Any Class Member who wishes to appear at the Final Approval Hearing, whether *pro*
12 *se* or through counsel, will be requested, but not required, to file a notice of appearance in the Action
13 at least fourteen (14) days before the Final Approval Hearing, and to serve the notice and other
14 pleadings upon Class Counsel and Counsel for the Defendant.

15 17. All other events contemplated by the Settlement Agreement to occur after this Order
16 and before the Final Approval Hearing shall be governed by the Settlement Agreement, to the extent
17 not inconsistent herewith.

18 18. All proceedings in the Action, other than such as may be necessary to carry out the
19 terms and conditions of the Settlement Agreement or the responsibilities related or incidental thereto,
20 are stayed and suspended until further order of this Court.

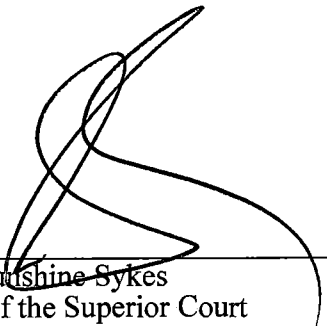
21 19. If Final Approval of the Settlement is not achieved, or if the Settlement is terminated
22 for any reason, the Settlement and all proceedings had in connection therewith shall be without
23 prejudice to the status quo ante rights of the Parties to the Action, and all Orders issued pursuant to
24 the Settlement may be vacated upon a motion or stipulation from the Parties. In such an event, the
25 Settlement and all negotiations concerning it shall not be used or referred to in this Action for any
26 purpose whatsoever. This Order shall be of no force or effect if Final Approval does not occur for
27 any reason, and nothing in this Order shall be construed or used as an admission, concession, or
28 declaration by or against Defendant, of any fault, wrongdoing, breach, or liability. Nor shall this

1 Order be construed by or against Representative Plaintiffs or the Class Members that their claims
2 lack merit or that the relief requested in these Action is inappropriate, improper, or unavailable, or as
3 a waiver by any Party of any defenses it may have. Nor shall this Order be construed or used to
4 show that certification of one or more classes would or would not be appropriate if the Action were
5 to be litigated rather than settled.

6 20. Neither the Settlement nor the Settlement Agreement constitutes an admission,
7 concession, or indication by the Parties of the validity of any claims or defenses in the Action or of
8 any wrongdoing, liability, or violation of law by the Defendant, who vigorously denies all of the
9 claims and allegations raised in the Action.

10 **SO ORDERED.**

11
12
13 Dated: 2/14/20

14 By: 
Hon. Sunshine Sykes
Judge of the Superior Court

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EXHIBIT C

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12 *Attorneys for Plaintiffs*
13 [Additional Counsel Appear on Signature Page]

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF RIVERSIDE**

17 RENOVATE AMERICA FINANCE CASES) Case No. RICJCCP4940
18)
19) **NOTICE OF MODIFICATION TO**
THIS DOCUMENT RELATES TO:) **PARAGRAPH 2.01 OF FIRST AMENDED**
20) **CLASS ACTION SETTLEMENT**
21) **AGREEMENT**
22)
ALL ACTIONS)
23)
24)
25)
26)
27)
28)

Judge: Hon. Sunshine Sykes
Lead Compl. Filed: November 1, 2016

1 TO ALL PARTIES, THEIR ATTORNEYS OF RECORD, AND MEMBERS OF THE
2 SETTLEMENT CLASS, PLEASE TAKE NOTICE THAT:

3 Pursuant to Paragraph 7.11 of the First Amended Settlement Agreement (“Agreement”),
4 dated February 5, 2020, as incorporated by the Preliminary Approval Order, filed on February 24,
5 2020, Plaintiffs George Loya, Judith Loya, Richard Ramos, Michael Richardson and Shirley Petetan
6 (collectively, “Plaintiffs”) and Defendant Renovate America, Inc. (“Renovate”) (collectively, the
7 “Parties”) hereby agree to modify the Agreement as follows:

- 8 1. Paragraph 2.01 of the Agreement as written provides:

9 2.01 Renovate will pay the sum of two million, five hundred
10 fifty thousand dollars (\$2,550,000.00) (“Settlement Fund”) to the
11 Settlement Administrator, minus any Settlement Administration
12 Costs already advanced to the Settlement Administrator, within
13 thirty (30) days after the Preliminary Approval Date, which,
together with any interest that shall accrue thereafter, shall be used
to pay all moneys to be paid in connection with the Settlement.
The Settlement Fund will be the maximum monetary exposure to
Renovate under the Settlement.

- 14 2. Paragraph 2.01 of the Agreement shall be modified to provide:

15 2.01 Renovate will pay the sum of two million, five hundred
16 fifty thousand dollars (\$2,550,000.00) (“Settlement Fund”) to the
17 Settlement Administrator, minus any Settlement Administration
18 Costs already advanced to the Settlement Administrator. Renovate
19 will make an initial payment of one million, seven hundred
20 thousand dollars (\$1,700,000), within thirty (30) days after the
21 Preliminary Approval Date; and a second payment of eight
hundred and fifty thousand dollars (\$850,000) within fifteen (15)
days of the Final Approval Date; which, together with any interest
that shall accrue thereafter, shall be used to pay all moneys to be
paid in connection with the Settlement. The Settlement Fund will
be the maximum monetary exposure to Renovate under the
Settlement.

22 (“Modified Terms”)

23 All other terms of the Agreement remain unchanged and as set forth in the Agreement itself.
24

25 ///

26 ///

27 ///

28 ///

1 ///

2 The Parties' agreement to these Modified Terms is reflected by the signatures of their
3 attorneys below.

4
5 Respectfully submitted,

6
7 **CLASS COUNSEL**

8
9
10 Dated: March 26, 2020

11 By: 
12 RACHELE R. BYRD

13 Betsy C. Manifold
14 manifold@whafh.com
15 RACHELE R. BYRD
16 byrd@whafh.com
17 **WOLF HALDENSTEIN ADLER FREEMAN
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260 Madison Avenue

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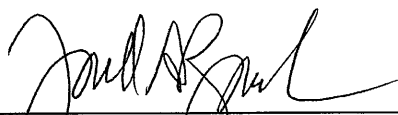
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Attorneys for Plaintiffs:
GEORGE LOYA; JUDITH LOYA; RICHARD
RAMOS; MICHAEL RICHARDSON; and
SHIRLEY PETETAN

COUNSEL FOR DEFENDANT

Dated: March 26, 2020

By: 

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Attorneys for Defendant:
RENOVATE AMERICA, INC.

1 **PROOF OF SERVICE**

2 *Renovate America Finance Cases*
3 Riverside Superior Court Case No. RICJCCP4940

4 At the time of service I was over 18 years of age and not a party to this action. My
5 business address is: 601 South Figueroa Street, 41st Floor, Los Angeles, California 90017.

6 On **March 26, 2020**, I served the following document on the person(s) below:

7 **NOTICE OF MODIFICATION TO PARAGRAPH 2.01 OF FIRST AMENDED**
8 **CLASS ACTION SETTLEMENT AGREEMENT**

9 Betsy C. Manifold
10 Rachele R. Byrd
11 WOLF HALDENSTEIN ADLER FREEMAN
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23 Pasadena, CA 91101

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Facsimile: 866.686.5590
cmj@access.law

22 (E-MAIL or ELECTRONIC TRANSMISSION) By electronic service on **March 26,**
23 **2020.** Based upon a court order or an agreement of the parties to accept electronic
24 service, I caused the documents to be served via electronic transfer to CASE
25 ANYWHERE.

26 I declare under penalty of perjury under the laws of the State of California that the foregoing
27 is true and correct.

28 Executed on **March 26, 2020**, at Los Angeles, California.

Angie Zuñiga-García

(Type or print name)

(Signature)

EXHIBIT D

COPIES

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Attorneys for Plaintiffs

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
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L. Freeland

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

IN RE: RENOVATE AMERICA FINANCE) Case No. RICJCCP4940
CASES)
) **DECLARATION OF RANDALL S.**
) **NEWMAN IN SUPPORT OF**
) **PLAINTIFFS' UNOPPOSED MOTION**
) **FOR PRELIMINARY APPROVAL OF**
) **CLASS ACTION SETTLEMENT**
THIS DOCUMENT RELATES TO:)
)
ALL ACTIONS) Date: December 17, 2019
) Time: 8:30 a.m.
) Judge: Hon. Sunshine S. Sykes
) Dept.: 06
)

1 RANDALL S. NEWMAN declares under penalty of perjury under the laws of the State
2 of California and the United States as follows:

3 1. I am a member in good standing of the State Bar of California and am one of the
4 attorneys for Plaintiffs George Loya, Judith Loya, Richard Ramos, Michael Richardson and
5 Shirley Petetan, in the within action. I make this Declaration on behalf of Plaintiffs and in
6 support of Plaintiffs' Motion for Preliminary Approval of this proposed Class Action Settlement,
7 a true and correct copy of which is attached hereto as **Exhibit 1** (the "Settlement Agreement").¹
8 If sworn as a witness, I could competently testify to each and every fact set forth herein from my
9 own personal knowledge.

10 2. The settlement in this matter was reached after an exchange of informal discovery
11 and several months of arm's length, non-collusive bargaining between Class Counsel and
12 Defendant's Counsel, including an all-day mediation in San Diego on November 20, 2018, with
13 the Honorable Jeffrey King (Ret.) at JAMS. Though cordial and professional, the settlement
14 negotiations were adversarial and non-collusive in nature. The Parties were unable to reach a
15 settlement agreement at the mediation session but continued to negotiate a settlement over a
16 period of several months, which culminated in the execution of the Settlement Agreement.
17 Shortly before the mediation session in San Diego, it was reported that Defendant filed
18 paperwork with California's Employment Development Department notifying the Department
19 that it was planning on laying off 71 employees. During the mediation session in San Diego,
20 Defendant provided Class Counsel with financial information that reflected on Defendant's
21 ability to pay a judgment if this case was not resolved through a settlement. It should also be
22 noted that prior to the filing of the Actions, Class Counsel conducted an exhaustive review of
23 Plaintiffs' PACE Assessment contract documents, the statutory history of PACE Assessments
24 and related regulations and the extensive materials publicly available about the PACE programs
25 at issue due to the involvement of the governmental entities.

26 _____
27 ¹ Any terms not otherwise defined herein have the same meaning as in the Settlement Agreement
28 dated November 14, 2019 (the "Settlement Agreement"), annexed as **Exhibit 1** hereto.

1 **Estimate of Number of Individuals in the Settlement Class (CMO ¶ G1a)**²

2 3. Based upon information provided by Defendant, Renovate America, Inc.
3 (“Defendant” or “Renovate America”), I estimate the number of PACE Assessments in the
4 Settlement Class to be approximately 76,273. The PACE Assessment contract and related
5 documentation were typically sent by email to Class Members. Defendant has indicated that it
6 has email addresses for all PACE Assessments in the Settlement Class except for approximately
7 4,996 primary applicants. Defendant has also indicated it has email addresses for a small
8 number of secondary applicants where the primary applicants are missing email addresses.
9 Defendant has no information regarding the ability of Class Members to understand English, but
10 the documentation necessary to enter into a PACE Assessment was in English and all Class
11 Members are of legal age and homeowners. The average age of the primary applicant for a
12 PACE Assessment is 52 years old.

13 **Estimate of Total Amount of Damages and Monetary Penalties that Would be**
14 **Awarded if the Action were Successful at Trial on all of its Claims (CMO ¶ G1b)**

15 4. Plaintiffs’ remaining causes of action in the Consolidated Action consist of claims
16 based on Defendant’s violations of the unfair, fraudulent and unlawful prongs of Section 17200.
17 Plaintiffs allege that Renovate America engaged in false, deceptive, unfair, and otherwise
18 unlawful practices in originating and administering purportedly energy efficient home
19 improvement loans under its Home Energy Renovation Opportunity (“HERO”) program,
20 commonly referred to as “HERO Loans.” Renovate America created, designed, and implemented
21 the HERO Loan program to lend money under California’s Property Assessed Clean Energy
22 (“PACE”) program. Plaintiffs allege that during the relevant time periods, Renovate America
23 operated the HERO Loan program by materially false, deceptive, unfair and unlawful means and
24 that its actions violated Section 17200.

25 5. Renovate America’s HERO Loan program consists of an extremely complex
26 series of transactions between, among others: (a) Renovate America; (b) the public agency, such

27 _____
28 ² CMO refers to the Class Action Case Management Order #1 filed November 8, 2016.

1 as WRCOG, SANBAG³ or the County of Los Angeles; (c) the local taxing authorities, such as
2 the Riverside County Tax Collector; (d) investors in securitized notes (the proceeds of which are
3 used to fund the HERO Loans); and (e) the HERO Loan borrowers (*i.e.*, Plaintiffs and the other
4 Class members). The HERO Loan program was designed to give low and middle-income
5 homeowners the ability to make energy efficient home improvements through the HERO Loan
6 program. Payments on HERO Loans are collected by the local taxing authorities with the
7 borrowers' semi-annual property tax payments. HERO Loans are essentially home equity loans:
8 homeowners obtain financing to improve their properties and are required to repay HERO Loans
9 with interest over a period of years, which is the essence of a home improvement loan. Plaintiffs
10 allege that Renovate America ran the HERO Loan program by materially false and deceptive
11 means, including: (1) overcharging for recording fees; (2) secretly double-counting and
12 collecting administration fees on HERO Loans; (3) secretly double-counting and collecting
13 compound interest on HERO Loans; (4) not crediting semi-annual payments on HERO Loans
14 until long after borrowers make payments; and (5) providing annual percentage rate ("APR")
15 computations that understate the actual cost of HERO Loan financing. Plaintiffs and the Class
16 were damaged as a result of these unlawful, unfair, and deceptive practices.

17 6. California Business and Professions Code section 17203 provides:

18 Any person who engages, has engaged, or proposes to engage in unfair
19 competition may be enjoined in any court of competent jurisdiction. The court
20 may make such orders or judgments including the appointment of a receiver, as
21 may be necessary to prevent the use or employment by any person of any practice
22 which constitutes unfair competition as defined in this chapter, or as may be
23 necessary to restore to any person in interest any money or property, real or
24 personal, which may have been acquired by means of such unfair competition.

25 7. Under the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*
26 ("UCL"), a plaintiff is entitled to injunctive relief and restitution, but not damages. *Cel-Tech*
27 *Communications, Inc. v. Los Angeles Cellular Telephone Co.*, 20 Cal. 4th 163, 179 (1999).

28 8. **Recording Fee Overcharge**: Plaintiffs allege that Renovate America's HERO

³ SANBAG's HERO Loan program ceased to exist as of June 30, 2017.

1 Loan application states that Renovate America will “*pass-through* the assessment recording fee”
2 to HERO Loan borrowers which it merely estimates in the application. As a result, Plaintiffs and
3 other Class Members reasonably expected to be charged at closing, on a “pass-through” basis,
4 the *actual* fees paid to record their HERO Loans. Contrary to the statement in the application,
5 Renovate America charges a *mark-up* without disclosing the actual recording fee or the amount
6 of its mark-up. For example, the Loya Plaintiffs were charged a recording fee of \$95 even though
7 the actual cost for recording their HERO Loan was only \$75. Borrowers were never told that the
8 estimated “pass-through” recording fee was, in fact, marked up.

9 9. Based upon information provided by Defendant, Plaintiffs estimate that Class
10 Members paid approximately \$1,327,140 in recording fee overcharges. This amount represents
11 the difference between the recording fees charged to Class Members compared to the amount of
12 the recording fees that were actually paid to record the Class Members’ PACE Assessments.
13 However, Defendant did not maintain records regarding the actual amount each Class Member
14 actually paid to record the PACE Assessment. Therefore, it was virtually impossible to calculate
15 each Class Member’s damages on this issue.

16 10. During informal discovery, Renovate America provided Plaintiffs with
17 information that showed that Renovate America did not keep any portion of the recording fees
18 and those fees were paid to WRCOG, SANBAG and the County of Los Angeles. As such, there
19 was a significant question regarding whether Plaintiffs would be able to recover any of the
20 recording fee overcharges from Defendant because it did not retain any of the overcharges.

21 11. **Administration Fee Overcharge:** The HERO Loan application states that
22 Renovate America will charge each HERO Loan borrower a “one-time administration fee” equal
23 to a stated percentage of the “principal amount” of each HERO Loan.⁴ The administration fee
24

25 ⁴ For example, the Application provided to the Loyas stated:

26 **Program Administration Fee.** At the time of closing, the Authority will charge
27 you a one-time administration fee of 6.95% of the principal amount of the
28 assessment on the Property to cover the costs of administering the Program. This
fee will be added to the assessment amount.

1 percentage ranged from a low of 4.99% to a high of 6.95%. The term “principal amount” is not
2 defined in any HERO Loan documents, which do not disclose how the administrative fee was to be
3 computed. Unbeknownst to HERO Loan borrowers, Renovate America double-counts the
4 administrative fee in the following manner: *first*, it multiplies the sum of the project cost, plus
5 accrued interest, the annual assessment administration fee, and the recording fee by the stated
6 percentage administrative fee; *next*, it adds that amount to the previously calculated sum; *then*, it
7 again multiplies that higher amount by the stated percentage administrative fee, effectively double-
8 counting the administrative fee, which it then adds to the higher sum. The result is that the
9 administrative fee actually charged to HERO Loan borrowers is as much as 7.5% *higher* than the
10 percentages stated in the loan documents. Renovate America retains a portion of this artificially
11 inflated administrative fee for its own profit.

12 12. Based upon information provided by Defendant, Plaintiffs estimate that Class
13 Members paid approximately \$2,432,700 in Administration Fee Overcharges to Defendant. That
14 amount represents the amount of Administration Fee Overcharges that Defendant retained.
15 Renovate America retained between 43%-45% of the Administration Fee Overcharges to Class
16 members. Thus, the total Administration Fee Overcharges paid by Plaintiffs and Class Members is
17 approximately \$5.5 million (although only a portion of this amount was retained by Defendant as
18 stated above).

19 13. **Double Interest Charge:** Plaintiffs allege that HERO borrowers are not told how
20 interest is computed on their HERO Loans. Renovate America calculates interest from the date of
21 each HERO Loan (or some other arbitrary date) until the borrower’s first payment is made, which
22 it then adds to the principal amount of the HERO Loan. Unbeknownst to the borrowers, however,
23 Renovate America then re-computes interest on that entire amount (including the added interest)
24 from the original start date of the HERO Loan, effectively double-counting the amount of interest
25 computed from the start date until the first payment date as if interest had not been capitalized.

26 14. For example, if a borrower closes on an ordinary mortgage on July 15th, the lender
27 will normally capitalize interest for the remaining 16 days of the month and include it in the
28 borrower’s first mortgage payment, which is due on September 1st. The lender begins accruing

1 interest on August 1st, not July 15, because interest on the 16-day period from July 15th to August
2 1st is paid by being capitalized into the principal amount of the loan. Unlike that common practice,
3 Renovate America capitalizes interest during the period between when a HERO Loan closes and
4 when the borrower's first payment is due – which can be as long as a full year after the closing –
5 but then begins accruing interest *again* from the *loan closing date* as if the interest had not been
6 capitalized. This results in HERO Loan borrowers paying *double interest* on the capitalized
7 interest for the period between when they borrow the money and when they make their first HERO
8 Loan payment – which can be as long as an entire year – and that *double-counted interest* affects
9 the principal balance for the life of the HERO Loan.

10 15. Based on discussions we had with Defendant's counsel during the informal
11 discovery process, we determined that Plaintiffs' claim was better suited to injunctive relief
12 because certain aspects of Plaintiffs' damages were undeterminable or nearly impossible to
13 determine.

14 16. **Timely Application of PACE Assessment Payments:** Plaintiffs allege that HERO
15 borrowers reasonably understood that their semi-annual HERO Loan payments would be applied
16 and credited against unpaid principal and accrued interest when those payments were made.
17 Renovate America did not disclose that the loan payments would not be credited in that manner.
18 Unbeknownst to HERO Loan borrowers, Renovate America does *not* apply payments when made,
19 but instead delays crediting them until September 2nd each year which increases the total amount
20 of interest that accrues on the supposedly "unpaid" loan balances.

21 17. Based on discussions we had with Defendant's counsel during the informal
22 discovery process, we determined that Plaintiffs' claim was better suited to injunctive relief
23 because certain aspects of Plaintiffs' damages were undeterminable or nearly impossible to
24 determine.

25 18. **Miscalculation of APR:** Plaintiffs allege that Renovate America improperly
26 calculated the APR stated in the Assessment Contracts by failing to subtract administration fees,
27 recording fees, and the annual assessment fee from the APR calculation and by improperly
28 accounting for the capitalized interest charge. This caused the stated APRs to be substantially

1 lower than they would have been had Renovate America calculated them properly. This led HERO
2 Loan borrowers to believe that the finance costs for their HERO Loans were lower than they
3 actually were.

4 19. Based on discussions we had with Defendant’s counsel during the informal
5 discovery process, we determined that Plaintiffs’ claim was better suited to injunctive relief
6 because certain aspects of Plaintiffs’ damages were undeterminable or nearly impossible to
7 determine.

8 20. **Covered Loan Law:** Plaintiffs alleged a claim pursuant to the unlawful prong of
9 the UCL based on Defendant’s violation of the Covered Loan Law, Cal. Fin. Code § 4970, *et seq.*
10 (the “CLL”). Defendant’s demurrer to Plaintiff’s CLL claim was denied by the Court in its June
11 13, 2018 ruling. However, in the ruling, the Court stated that “[a]ny future challenge to this cause
12 of action by motion for judgment on the pleadings, motion for summary judgment, or otherwise on
13 this same ground shall be supported by evidence of the legislative history of Chapter 29 to the
14 extent that it sheds light on the nature of these transactions and the interrelation, if any, between
15 Chapter 29 and the CLL.”

16 21. On July 17, 2017, the Honorable Andre Birotte Jr., United States District Court
17 Judge for the Central District of California, dismissed Plaintiffs’ federal Truth in Lending claims
18 ruling that PACE assessments are not “consumer credit transactions” subject to TILA and
19 HOEPA. A copy of Judge Birotte’s decision is attached hereto as **Exhibit 2**. Although
20 Defendant’s demurrer to this claim was denied, Plaintiffs believed that there was a strong
21 likelihood that the UCL claim based on a violation of the CLL would have ultimately been
22 dismissed by this Court based on the same logic used by the District Court. As such, Plaintiffs
23 have not attributed any portion of the settlement to this claim.

24 **Estimate of Total Amount of Damages, Monetary Penalties or Other Relief that the**
25 **Class Could Reasonably be Expected to be Awarded at Trial, Taking Into Account**
26 **the Likelihood of Prevailing (CMO ¶ G1c)**

27 22. Based upon the experience of Class Counsel, we estimated that the total amount
28 of damages and monetary penalties that Class Members could reasonably expect to be awarded
at trial would be approximately \$2.4 million taking into account the likelihood of prevailing.

1 This amount represents the amount of the administrative fee overcharges that were actually
2 retained by Renovate America. Renovate America claimed that the public entities (WRCOG,
3 SANBAG and Los Angeles County) approved all of the HERO Loan disclosures and retained the
4 recording fee overcharges and the vast majority of the administrative fee overcharges. Class
5 Counsel could not find any cases dealing with joint and several liability in the context of a
6 private Section 17200 claim.

7 **Estimate of Recovery of Average Class Member (CMO ¶ G1d)**

8 23. Based upon information provided by Defendant which included the number of
9 PACE Assessments in the Settlement Class as well as the total principal amount of PACE
10 Assessments in the Settlement Class, Plaintiffs estimate that pursuant to the allocation formula
11 described below, the average Class Member's net recovery will be approximately \$20. Plaintiffs
12 estimate that the lowest net recovery will be approximately \$4.35 and the largest net recovery
13 will be approximately \$242.61.

14 24. Paragraph 4.03 of the Settlement Agreement sets forth the allocation formula that
15 will be used to calculate each Class Member's initial share of the Settlement Fund. The
16 allocation of the Settlement Fund is based upon the principal amount of a Class Member's PACE
17 Assessment compared to the total principal amount of all Class Members' PACE Assessments.
18 Thus, Class Members with higher PACE Assessments will receive a larger portion of the
19 Settlement Fund. Class Counsel believe the allocation formula contained in Paragraph 4.03 of
20 the Settlement Agreement is equitable as the amount of the administration fee overcharge is
21 based on the principal amount of a Class Members' PACE Assessment and because Defendant
22 has no records that would allow Class Counsel to calculate each Class Member's recording fee
23 overcharge.

24 **Formal and Informal Discovery Exchange and Other Factual Investigation**
25 **Conducted to Determine Size of the Class and Strength of Claims**

26 25. Defendant provided Plaintiffs with information regarding the number of PACE
27 Assessments in the Settlement Class. Defendant's defense is based upon its argument that the
28 HERO Loan disclosures were sufficient and that the PACE statutes allowed it to charge the fees

1 Plaintiffs contest. As such, the dispute between the parties is largely a legal and not a factual
2 dispute and thus the Parties focused informal discovery less on the merits of Plaintiffs' claims
3 and more on the damages suffered by Class Members.

4 **Other Class, Representative or Collective Actions That Assert Similar Claims**
5 **(CMO ¶ G1e)**

6 26. During the pendency of this action, I have made a reasonable inquiry of the
7 Plaintiffs and Defendant's counsel to determine whether any class, representative or collective
8 actions are pending that assert similar claims. I am not aware of any other class, representative or
9 collective actions pending in any court that allege claims similar to those alleged in this action on
10 behalf of a class or group of individuals who would be members of the class defined in this
11 action.

12 **Fee Splitting Agreement (CMO ¶ G1f)**

13 27. This firm has a fee-splitting agreement with The Sultzer Law Group P.C.
14 ("Sultzer Law Group") and McLaughlin & Stern LLP ("McLaughlin & Stern") in all three cases
15 in the Action, and additionally with C. Mario Jaramillo, A Professional Law Corporation (dba
16 Access Lawyers Group) ("ALG") in the WRCOG and SANBAG cases. Under the agreement in
17 the WRCOG and SANBAG cases, ALG will receive 15% of the fees awarded to Class Counsel
18 in those two cases. Plaintiffs George Loya, Judith Loya and Richard Ramos have approved that
19 agreement in writing. For all three cases, the fees will be shared by Wolf Haldenstein, Sultzer
20 Law Group and McLaughlin & Stern based upon their respective contributions to the cases,
21 including lodestars. This division of fees will not increase the fees paid by the Class.

22 **Disposition of Uncashed Checks, Unpaid Cash Residue and Unclaimed Funds**

23 28. Paragraph 4.11 of the Settlement Agreement provides for the distribution of
24 Supplemental Benefit Checks 120 days after the mailing of the initial Benefit Checks if the
25 amount of uncashed checks exceeds \$200,000. Supplemental Benefit Checks will only be sent to
26 Class Members that cashed an initial Benefit Check and will be allocated based on the amount of
27 a Class Members' initial Benefit Check divided by the total amount of all initial Benefit Checks
28 cashed.

1 29. In the event that the amount of uncashed initial Benefit Checks is less than
2 \$200,000 or if Settlement Funds remain after the distribution of Supplemental Benefit Checks,
3 Paragraph 4.11 of the Settlement Agreement provides that Class Counsel will present an
4 amended judgment to the Court reflecting a proposed cy pres recipient(s) for any remaining
5 Settlement Funds.

6 **Does Settlement Require Any Class Member to Submit Claims?**

7 30. A Class Member need not take any action in order to receive a cash payment from
8 the Settlement. If a Class Member does not Opt-Out of the Settlement, he or she will receive a
9 Settlement Check.

10 **Released Claims**

11 31. Paragraph 5.01 of the Settlement Agreement provides as follows, which Class
12 Counsel believe complies with all applicable Rules of Court:

13 Upon Final Approval, and in consideration of the promises and covenants set
14 forth in this Agreement, the Representative Plaintiffs and each Class Member who
15 is not a Successful Opt-Out, and each of their respective spouses, children,
16 executors, representatives, guardians, wards, heirs, estates, successors,
17 predecessors, next friends, joint tenants, tenants in common, tenants by the
18 entirety, co-account-holders, co-borrowers, co-obligors, co-debtors, legal
19 representatives, attorneys, agents and assigns, and all those who claim through
20 them or who assert claims (or could assert claims) on their behalf (including the
21 government in the capacity as *parens patriae* or on behalf of creditors or estates
22 of the releasees), and each of them (collectively and individually, the “Releasing
23 Persons”), will be deemed to have completely released and forever discharged
24 Renovate America, Inc., and each of its past, present, and future officers,
25 directors, employees, and agents (collectively and individually, the “Released
26 Persons”), from any claim, right, demand, charge, complaint, action, cause of
27 action, obligation, or liability of any and every kind, including without limitation
28 (i) those known or unknown or capable of being known, and (ii) those which are
unknown but might be discovered or discoverable based upon facts other than or
different from those facts known or believed at this time, including facts in the
possession of and concealed by any Released Person, and (iii) those accrued,
unaccrued, matured or not matured, all from the beginning of the world until the
date on which this Settlement Agreement is fully executed (collectively, the
“Released Rights”), that were stated in the Second Amended Class Action
Complaints in the Action and/or those based upon the factual allegations in those
Complaints, including without limitation (a) any disclosures made in connection
with each Released Person’s PACE tax assessment financing that were put at
issue in the Action; (b) any claim that any disclosures put at issue in the Action

1 made it improper or illegal to attempt to impose, assess, collect and/or allocate
2 any closing costs, administrative fees, interest, installment payments, or any other
3 fees, penalties or payments; (c) any and all claims arising out of or which are or
4 may be based on any facts, acts, conduct, documents, representations, omissions,
5 contracts, claims, events, or other things that were asserted in or could have been
6 asserted by reason of, or arising out of, the subject matters, facts, and claims set
7 forth or alleged in the Action at any time, including but not limited to the claims
8 in the original complaints and all amended complaints; and (d) any and all claims
9 for violation of Business & Professions Code section 17200, *et seq.*, and
10 California's Covered Loan Law, California Financial Code § 4970, that were put
11 at issue in the Action. This Release shall be included as part of any judgment, so
12 that all released claims and rights shall be barred by principles of *res judicata*,
13 collateral estoppel, and claim and issue preclusion.

14 32. Additionally, Paragraph 5.02 of the Settlement Agreement provides that Class
15 Members who have not timely and effectively opted out of the Settlement will be deemed to
16 have waived the provisions, rights and benefits of California Civil Code section 1542.

17 **Settlement Administrator**

18 33. Class Counsel received bids from several class action administrators and submits
19 Epiq as the proposed settlement administrator to be approved by the Court. Bids were solicited
20 from experienced class action administrators, Epiq, JND and RG2 Claim Administration LLC.
21 Epiq submitted the lowest bid. In addition, Epiq has impeccable credentials as a settlement
22 administrator. The duties of the proposed class action administrator are described in the
23 Settlement. Epiq is submitting a separate declaration detailing the proposed fee to be charged to
24 the Class and its qualifications.

25 34. Attached hereto as **Exhibit 3** is my firm's resume. Attached hereto as **Exhibit 4**
26 is The Sultzer Law Group, P.C.'s firm resume. Attached hereto as **Exhibit 5** is McLaughlin &
27 Stern, LLP's firm resume. Attached hereto as **Exhibit 6** is Access Lawyers Group's firm
28 resume.

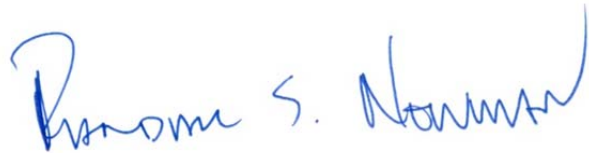
35. The Plaintiffs George Loya, Judith Loya, Richard Ramos, Michael Richardson
and Shirley Petetan participated in these Actions, including by providing documentation related
to their individual PACE Assessments, reviewing the various complaints in the Actions,
discussing the various court orders in the Actions with counsel and participating in settlement
discussions. Their claims are all similar to the other Class Members and there are no known

1 conflicts.

2 36. Based upon the above, Plaintiffs respectfully request that the Court grant
3 preliminary approval of the Settlement and approve the Notice Package so that it can be
4 distributed forthwith to the Class Members.

5 I declare under penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct.

7 Executed this 14th day of November, 2019 in New York, New York.

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RANDALL S. NEWMAN

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26102

EXHIBIT E

FILED

LOS ANGELES SUPERIOR COURT

MAY 14 2008

JOHN A. CLARKE, CLERK

BY SHAUNYA WESLEY, DEPUTY

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3 Mónica Balderrama, Esq. (SBN 196424)
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11 OArellano@InitiativeLegal.com
12 Attorneys for Plaintiff Kay Barrett and Class Members

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

11 KAY BARRETT, individually, and on
12 behalf of other members of the general
13 public similarly situated,

14 Plaintiffs,

15 vs.

16 THE ST. JOHN COMPANIES, INC., a
17 California corporation; and DOES 1
18 through 10, inclusive,

19 Defendants.

CASE NO.: BC354278

ASSIGNED FOR ALL PURPOSES TO:

Judge: Hon. Gregory W. Alarcon

Dept.: 36

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: June 3, 2008

Time: 8:30 a.m.

Dept.: 36

Action Filed: June 21, 2006

[CONCURRENTLY FILED DOCUMENTS: NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT; DECLARATION OF MARC PRIMO;
DECLARATION OF MONICA BALDERRAMA ; DECLARATION
OF BECKY VANIDES; [PROPOSED] ORDER]

BY FAX

1 Sections 17200 et seq. of the California Business and Professions Code (“Section
2 17200”).⁵ Plaintiff sought to recover damages for meal and rest period payments, waiting
3 time penalties, wage statement penalties, interest, restitution, attorneys’ fees and costs.⁶
4 Subsequently, on September 13, 2006, Plaintiff filed an Amended Complaint to add
5 Private Attorneys General Act (“PAGA”)⁷ allegations.

6 The Class Members, as defined in the Settlement Agreement, consist of those
7 individuals who held the position of Account Manager for Defendant as well as all other
8 non-exempt, hourly employees within the State of California at any time during the period
9 beginning June 21, 2002 and ending on December 20, 2007.

10 **B. The Settlement.**

11 The settlement terms were reached after extensive discovery, fact investigation,
12 legal research, financial analysis, discussions, exchange of correspondence, study of
13 payroll and commission statements and intensive settlement discussions.⁸ Both Parties
14 vigorously negotiated during two days of mediation, from morning until evening, after
15 reviewing documents that reflected possible financial liability, and Plaintiff extensively
16 researched legal arguments pertaining to the seven causes of action alleged in the
17 Complaint.⁹

18 The mediation sessions ultimately yielded a comprehensive settlement by which the
19 Parties agreed that Defendant’s maximum liability would be \$1,100,000.00.¹⁰ Defendant
20 agreed to provide the \$1,100,000.00 on a claims-made basis. Administration costs,
21 attorneys’ fees and costs and service payments to the Class Representatives will be made
22 from this \$1,100,000.00. Consistent with the claims made doctrine, the Settlement
23 Agreement provided for attorneys’ fees and costs in the amount of \$366,666.66;
24 administration costs in the amount of \$15,250.00; and a \$20,000.00 Class Representative

25 ⁵ See Balderrama Decl., ¶ 4 and see Settlement Agreement, ¶ 4 (defining “Settlement Class”).

26 ⁶ Id.

27 ⁷ Cal. Lab. Code §§ 2699.3 et. seq.

28 ⁸ See Balderrama Decl., ¶¶ 18-20.

⁹ Id.

¹⁰ Id.

RECEIVED

JUL 09 2008

DEPT. 36

FILED
LOS ANGELES SUPERIOR COURT

JUL 10 2008

JOHN A. CLARKE, CLERK
BY B. GREGG, DEPUTY

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12 Attorneys for Plaintiff Kay Barrett and Class Members

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

10 KAY BARRETT, individually, and on
11 behalf of other members of the general
12 public similarly situated,

13 Plaintiffs,

14 vs.

15 THE ST. JOHN COMPANIES, INC., a
16 California corporation; and DOES 1 through
17 10, inclusive,

18 Defendants.
19
20
21

CASE NO.: BC354278

ASSIGNED FOR ALL PURPOSES
TO:

Judge: Hon. Gregory W. Alarcon
Dept.: 36

~~PROPOSED~~ AMENDED ORDER
GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT

Hearing Date: July 1, 2008
Hearing Time: 8:30 a.m.
Department: Dept. 36

1 8. The Settlement Agreement is not an admission by Defendant or any of the
2 other Released Parties, nor is this Order a finding of the validity of any claims in the
3 Action or of any wrongdoing by Defendant or any of the other Released Parties. Neither
4 this Order, the Settlement Agreement, nor any document referred to herein, nor any action
5 taken to carry out the Settlement Agreement, may be construed as, or may be used as an
6 admission by or against Defendant or any of the other Released Parties of any fault,
7 wrongdoing or liability whatsoever.

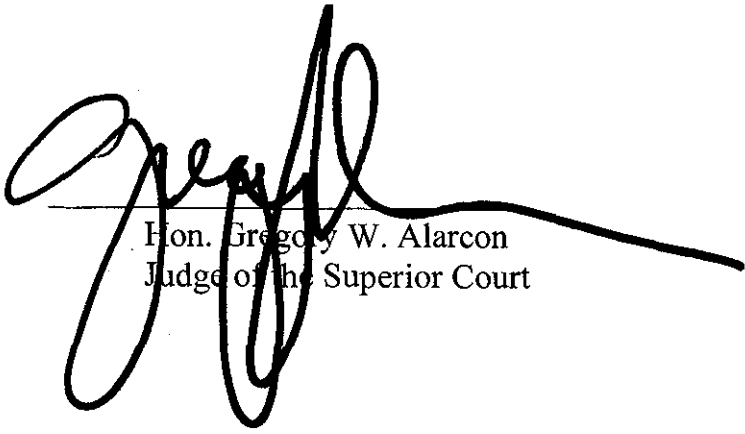
8 9. The entering into or carrying out of the Settlement Agreement, and any
9 negotiations or proceedings related thereto, shall not in any event be construed as, or
10 deemed to be evidence of, an admission or concession with regard to the denials or
11 defenses by Defendant or any of the other Released Parties and shall not be offered in
12 evidence in any action or proceeding against Defendant or any of the Released Parties in
13 any court, administrative agency or other tribunal for any purpose whatsoever other than to
14 enforce the provisions of this Order, the Settlement Agreement, or any related agreement
15 or release. Notwithstanding these restrictions, any of the Released Parties may file in any
16 other proceeding the Order, Settlement Agreement, or any other papers and records on file
17 as evidence of the Settlement Agreement to support a defense of res judicata, collateral
18 estoppel, release, or other theory of claim or issue preclusion or similar defense as to the
19 Released Claims.

20 10. The Court hereby awards Initiative Legal Group LLP (hereinafter, "Class
21 Counsel") attorneys' fees and costs in the amount of \$366,666.66. The Court finds that the
22 attorneys' fees and costs sought are fair and reasonable and should be paid to Class
23 Counsel. Class Counsel has proceeded on a contingency basis despite the uncertainty of
24 any fee award. Class Counsel risked that they would be unable to obtain any relief on
25 behalf of Plaintiff or the Class Members, and so risked no recovery of any fees or the costs
26 advanced to sustain this litigation. In addition, Class Counsel was necessarily precluded
27 from pursuing other potential sources of fees due to their prosecution of the claims in this
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IT IS SO ORDERED.

DATED: 10 JUL 2008



Hon. Gregory W. Alarcon
Judge of the Superior Court

ORIGINAL

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13 Attorneys for Plaintiffs and Class Members

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF LOS ANGELES
16

17 PATTI BLAIR, an individual; ROBERT
EHRIG, an individual; MICHAEL
18 SHOESMITH, an individual; PAULA
BUCKMIRE, an individual; NALLELY
19 DOMINGUEZ, an individual; KATIE
MARTIN, an individual; for themselves,
20 and on behalf of all others similar situated,

21 Plaintiff,

22 vs.

23 JO-ANN STORES, INC., an Ohio
corporation, doing business in California as
24 JO-ANN FABRIC AND CRAFT STORES,
and DOES 1 through 52, inclusive,

25 Defendant.
26

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

APR 26 2010

John A. Clarke, Executive Officer/Clerk
By GLORIETTA ROBINSON, Deputy

Case No.: BC 394795

CLASS ACTION

Hon. Maureen Duffy-Lewis

**SUPPLEMENTAL MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: May 25, 2010

Time: 9:30 a.m.

Place: Department 38

1 This Settlement³ was the product of arm's-length negotiations by experienced counsel
2 before a well-respected mediator. Class Counsel have considerable experience and have
3 broadly demonstrated their competence litigating wage and hour class actions.⁴ Accordingly,
4 this Court should grant final approval of the Settlement Agreement, including the service
5 payment to the Class Representatives, claims administration costs, and award of attorneys'
6 fees and costs to Initiative Legal Group APC, Law Offices of Gary M. Tetalman and Law
7 Offices of Lauren J. Udden (Class Counsel),⁵ enter judgment pursuant to the terms of the
8 Settlement Agreement, and retain jurisdiction to enforce the terms of the Settlement.

9 **II. DISCUSSION**

10 **A. Plaintiffs Negotiated A Settlement That Is Beneficial To The Class**

11 **1. Defendant Agreed to Pay Up to \$5,000,000 to Settle the Class**
12 **Claims**

13 Under the terms of the Settlement Agreement, Defendant agreed to pay \$5,000,000 to
14 settle the class claims and damages (Total Settlement Amount). (Settlement, ¶ 18(a)). This
15 amount is inclusive of the Class Representative Incentive Awards of \$15,000 to each of Class
16 Representatives Patti Blair, Robert Ehrig and Paula Buckmire and \$10,000 to each of Class
17 Representatives Michael Shoosmith, Nallely Dominguez and Katie Martin; the Claims
18 Administration Costs of approximately \$83,000; the LWDA Payment of \$50,000; the Class
19 Counsel Award of up to \$1,666,667 (33.3% of the Total Settlement Amount); costs of up to
20 \$50,000; and the Individual Settlement Payments to Participating Settlement Class Members.
21 (Settlement, ¶¶ 18-22.) After deducting the LWDA Payment, the Class Representative

22
23 ³ Capitalized defined terms used herein have the same definition as those in the
Stipulation of Settlement.

24 ⁴ See Declaration of Marc Primo in Support of (1) Motion for Final Approval of Class
25 Action Settlement and (2) Motion for an Award of Attorneys' Fees and Costs (Primo Decl.)
26 ¶¶ 3-6); Declaration of Garry M. Tetalman in Support of (1) Motion for Final Approval of
27 Class Action Settlement and (2) Motion for an Award of Attorneys' Fees and Costs (Tetalman
Decl.) ¶¶ 4-8.); Declaration of Lauren John Udden in Support of (1) Motion for Final
Approval of Class Action Settlement and (2) Motion for an Award of Attorneys' Fees and
Costs (Udden Decl.) ¶¶ 4-8.

28 ⁵ Defendant has agreed not to oppose Plaintiffs' motion for attorneys' fees of thirty-
three and one third percent of the Total Settlement Amount and costs of up to \$50,000.

1 of \$15,000 each to Patti Blair, Robert Ehrig and Paula Buckmire, and \$10,000 each to Michael
2 Shoemith, Nallely Dominguez and Katie Martin. (*See generally* Final Approval Motion.)

3 **D. The Attorneys' Fees and Costs Are Reasonable**

4 Class Counsel was subject to the risks articulated above, as the operative fee
5 agreement with the Class Representatives was strictly contingent, meaning that there would be
6 no payment whatsoever to Class Counsel without a successful resolution. *See Torrissi v.*
7 *Tucson Elec. Power Co.*, 8 F.3d 1370, 1377 (9th Cir. 1993) (class counsel who takes a case on
8 a contingency basis bears a "double contingency; first they must prevail on the class claims,
9 and then they must find some way to collect what they win."). (*See generally* Plaintiffs'
10 Memorandum of Points and Authorities in Support of Motion for an Award of Attorneys' Fees
11 and Costs (Plaintiffs' Fees and Costs Motion)). With the successful resolution of this
12 litigation, Plaintiffs move for an award of attorney's fees in the amount of \$1,666,667 (one-
13 third of the Total Settlement Amount) and costs of \$50,000. (*See generally* Plaintiffs' Fees
14 and Costs Motion, pending concurrently.)

15 California courts routinely award attorneys' fees equalling 33%, or more, of the
16 maximum value of a common fund.¹⁰ Class Counsel's awards in employment class actions
17 have frequently equalled 33% of the common fund's maximum value. (*See* Primo Decl. ¶ 15;
18 Tetelman Decl. ¶ 16; Udden Decl. ¶ 16.)

19 Furthermore, California state and federal courts have increasingly recognized that non-
20 monetary benefits also ought to be considered when courts evaluate the reasonableness of the
21 attorneys' fees negotiated in connection with class action settlements. *See, e.g., Ripee v.*
22 *Boston Market Corp.*, No. 70, 05-1359, slip op. 1, 8 (S.D. Cal. October 10, 2006) (Moskowitz,

23
24 ¹⁰ *See, e.g., Chalmers v. Elecs. Boutique*, No. BC306571 (L.A. Super. Ct.) (33%);
25 *Vivens, et al. v. Wackenhut Corp.*, No. BC290071 (L.A. Super. Ct.) (31%); *Crandall v. U-Haul*
26 *Int'l, Inc.*, No. BC178775 (L.A. Super. Ct.) (40%); *Albrecht v. Rite Aid Corp.*, No. 729219
27 (San Diego Super. Ct.) (35%); *Marroquin v. Bed Bath & Beyond*, No. RG04145918 Alameda
28 Super. Ct.) (33.3%); *In re Milk Antitrust Litig.*, No. BC070061 (L.A. Super. Ct.) (33%); *In re*
Liquid Carbon Dioxide Cases, No. 1 C.C.P. 3012 (San Diego Super. Ct.) (33%); *In re Cal.*
Indirect-Purchaser Plastic ware Antitrust Litig., Nos. 961814, 963201, and 963590 (San
Francisco Super. Ct.) (33%); *Bright v. Kanzaki Specialty Papers*, No. 964899 (San Francisco
Super. Ct.) (33%).

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Attorneys for Plaintiffs and Class Members

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

PATTI BLAIR, an individual; ROBERT
EHRIG, an individual; MICHAEL
SHOESMITH, an individual; PAULA
BUCKMIRE, an individual; NALLELY
DOMINGUEZ, an individual; KATIE
MARTIN, an individual; for themselves,
and on behalf of all others similar situated,

Plaintiff,

vs.

JO-ANN STORES, INC., an Ohio
corporation, doing business in California as
JO-ANN FABRIC AND CRAFT STORES,
and DOES 1 through 52, inclusive,

Defendant.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

REC'D

JUN 11 2010

JUN 02 2010

FILING WINDOW

John A. Clarke, Executive Officer/Clerk

By R. Alva Deputy
ROBERT ALVA

Case No. BC 394795

CLASS ACTION

Hon. Maureen Duffy-Lewis

**[REDACTED] JUDGMENT
AND ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND AN AWARD OF
ATTORNEYS' FEES AND COSTS**

BY FAX

INITIATIVE LEGAL GROUP-APC
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

1 Robert Ehrig, and Paula Buckmire \$15,000 for their service to the Class. The Court finds that
2 this amount is fair and reasonable in light of Plaintiffs' contributions to this litigation. This
3 award amount is unopposed by Defendant.

4 9. The Court awards the Named Plaintiffs and Class Representatives Michael
5 Shoemith, Nallely Dominguez, and Katie Martin \$10,000 for their service to the Class. The
6 Court finds that this amount is fair and reasonable in light of Plaintiffs' contributions to this
7 litigation. This award amount is unopposed by Defendant.

8 10. The Court grants final approval of the payment of \$50,000, pursuant to
9 California Labor Code section 2699, *et seq.*, the California Private Attorneys General Act of
10 2004, for the Release of Class Members' PAGA claims.

11 11. The Court hereby awards attorneys' fees of \$1,666,667 and costs of \$50,000
12 payable to Class Counsel. This award amount is unopposed by Defendant. The Court finds
13 that the attorneys' fees and costs requested were reasonable in light of the relevant factors
14 under California law.

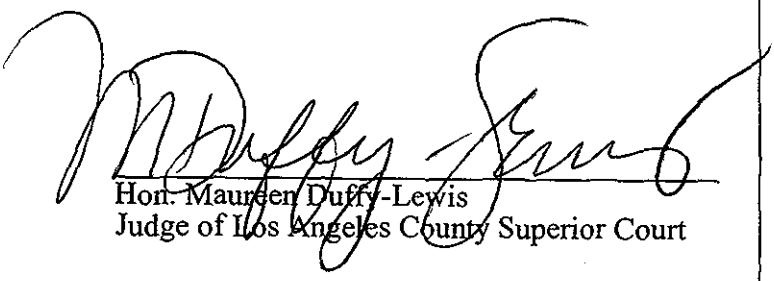
15 12. The Court approves claims administration expenses in the amount of \$85,310
16 payable to Simpluris, Inc.

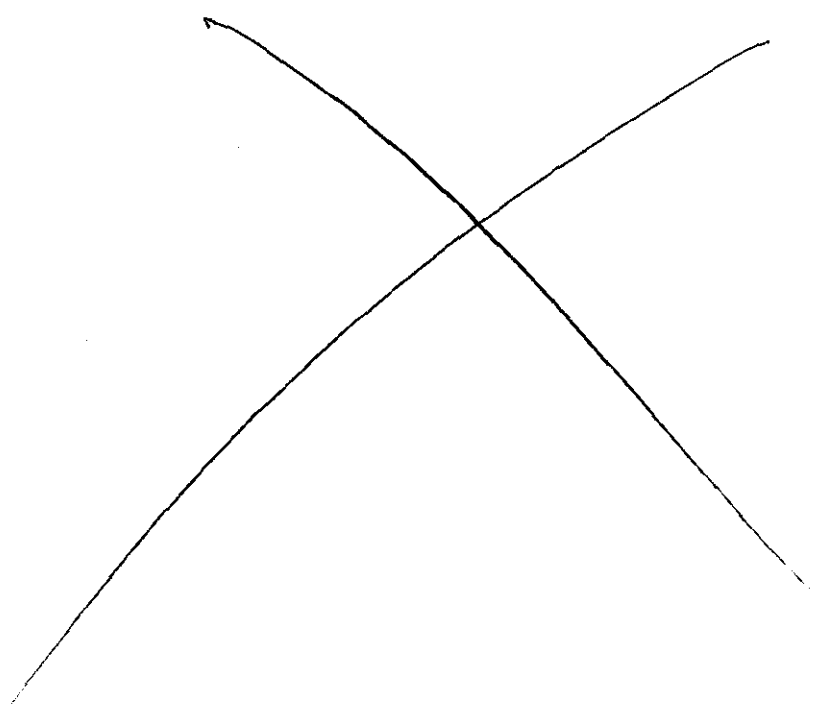
17 13. The Parties agree that, upon final approval of the Settlement, the Court shall
18 enter a Judgment on the terms set forth herein, which Judgment shall have the effect of
19 releasing and/or resolving the claims by Plaintiffs and Class Members who have not opted out
20 of the Settlement against Defendant, and declaring that Plaintiffs and all Class Members who
21 have not opted out of the Settlement are bound by the release as described in the Settlement
22 Agreement. The Court shall have continuing jurisdiction over the construction, interpretation,
23 implementation, and enforcement of the Settlement Agreement in accordance with its terms,
24 and over the administration and distribution of the Settlement proceeds, pursuant to Code of
25 Civil Procedure section 664.6.

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IT IS SO ORDERED.

Dated: 6-11-10


Hon. Maureen Duffy-Lewis
Judge of Los Angeles County Superior Court



ORIGINAL

INITIATIVE LEGAL GROUP APC
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

03/01/11

1 Mónica Balderrama (SBN 196424)
2 Miriam Schimmel (SBN 185089)
3 David Cheng (SBN 240926)
4 Joshua Carlon (SBN 263838)
5 Initiative Legal Group APC
6 1800 Century Park East, 2nd Floor
7 Los Angeles, California 90067
8 Telephone: (310) 556-5637
9 Facsimile: (310) 861-9051

10 Attorneys for Plaintiff James Blue
11 and the Settlement Class

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

FEB 25 2011

John A. ~~Clarke~~, Executive Officer/Clerk
BY Shaunya Wesley, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

11 JAMES BLUE, individually, and on behalf
12 of other members of the general public
13 similarly situated,

13 Plaintiff,

14 vs.

15 COLDWELL BANKER RESIDENTIAL
16 BROKERAGE COMPANY, a California
17 Corporation; COLDWELL BANKER
18 REALTORS, a business entity form
19 unknown; and DOES 1 through 10,
20 inclusive,

18 Defendants.

Case No.: BC417335

CLASS ACTION

ASSIGNED FOR ALL PURPOSES TO:
Hon. John S. Wiley Jr.

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

Date: March 21, 2011

Time: 8:30 a.m.

Place: Department 50

Complaint Filed: July 7, 2009

20 AND CROSS ACTION

CIT/CASE: BC417335 LEA/REF#:
RECEIPT #: CCH465990129
DATE PAID: 02/25/11 04:11:59 PM
PAYMENT: \$40.00 0310
RECEIVED:
CHECK: 40.00
CASH:
CHANGE:
CARD:

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 On November 18, 2010, the Court granted preliminary approval of the Joint
4 Stipulation of Class Action Settlement and Release ("Settlement Agreement" or "Settlement")
5 and approved distribution of the Notice of Class Action Settlement and Claim Form ("Class
6 Notice") to 1280 Class Members. Plaintiff James Blue ("Plaintiff" or "Class
7 Representative"), through Class Counsel, now seeks final approval of this Settlement of wage
8 and hour claims against Defendant Coldwell Banker Residential Brokerage Company
9 ("Coldwell Banker" or "Defendant") (collectively with Plaintiff, the "Parties").

10 Class Counsel negotiated a substantial recovery for class members: Defendant has
11 agreed to pay a Class Settlement Amount² of \$1,000,000 to resolve Plaintiff's claims for
12 violations of the California Labor Code and California Business & Professions Code.
13 Payment to the Class Members will be proportional to each Class Member's period of
14 employment during the Class Period. Plaintiff moves this Court to grant final approval of the
15 terms and distribution plan set forth in the Settlement Agreement.

16 The Class Members' response reflects their satisfaction with the Settlement.
17 Participating Class Members claimed 32.55% of the Net Settlement Amount. Because the
18 terms of the settlement require Defendant to pay at least 55% of the Net Settlement Amount,
19 altogether, Participating Class Members claim 55% of the Net Settlement Amount. Only ten
20 Class Members chose to opt out and there was not a single objection. This is a strong,
21 positive Class response.

22 Based on the foregoing information and on its own independent investigation and
23 evaluation, Class Counsel is of the opinion that this Settlement Agreement, which was reached
24 after extensive arm's-length negotiations, is fair, reasonable and adequate, and is in the best
25

26 ² Unless otherwise indicated, capitalized defined terms have the same definition as
27 established in the Settlement Agreement. See Exhibit 1 to the Declaration of Mónica
28 Balderrama in Support of Motion for Preliminary Approval of Class Action Settlement
(executed on November 11, 2010 and filed on November 12, 2010) attached as Exhibit C to
the Declaration of Marc Primo in Support of Motion for Class Representative Enhancement
Payment and an Award of Attorneys' Fees and Costs ["Primo Decl."] ¶ 18.

INITIATIVE LEGAL GROUP APC
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

TEL: 213-412-1428

1 **E. Defendant Filed A Motion For Non-Certification Of Class Claims**

2 In its Motion for Non-Certification of Class Claims, filed on August 26, 2010,
3 Coldwell Banker aggressively challenged Plaintiff's certification arguments by, among other
4 things, contesting Plaintiff's ability to demonstrate class-wide liability on the basis of
5 common proof. (Balderrama Decl. ¶ 8.) For example, as to Plaintiff's meal break claim,
6 Coldwell Banker argued that individualized questions of law and fact would predominate
7 because whether a Class Member took a break as scheduled depended on various factors
8 including staffing levels and clientele demand. (*Id.*)

9 While the motions were pending, the Parties agreed to mediate their grievances on
10 September 17, 2010. (Balderrama Decl. ¶ 9.) The Settlement Agreement before the Court is
11 the product of that successful mediation. (*Id.*)

12 **F. The Parties Settled Their Disputes At Mediation**

13 On September 17, 2010, the Parties participated in mediation with Mark Rudy of
14 Rudy, Exelrod, Zief & Lowe, LLP, a well-known and respected mediator with extensive
15 experience in wage and hour disputes. (Balderrama Decl. ¶ 10.) Throughout the day, the
16 Parties continued their contentious and arm's-length negotiations and were eventually able to
17 reach a compromise of the disputed claims that is now set forth in complete and final form in
18 the Joint Stipulation of Class Action Settlement and Release. (*Id.*) The settlement reached in
19 this wage and hour case constitutes a fair, adequate, and reasonable compromise of the claims
20 at issue. (*Id.*)

21 **G. The Class Action Settlement Fully Resolves The Claims**

22 **1. Composition of the Class**

23 The members of the covered Class shall include all persons who are or were employed
24 by Coldwell Banker in California as a non-exempt employee from July 8, 2005 through
25 November 18, 2010. (Settlement Agreement ¶ 11, 36.)

26 **2. Settlement Consideration**

27 Plaintiff and Defendant have agreed to settle the class claims in exchange for a specific
28 amount of monetary compensation. (Settlement Agreement ¶ 13.) Coldwell Banker has

1 agreed to pay \$1,000,000. This amount is inclusive of: (1) the Class Representative
2 Enhancement Payment of \$10,000 to Plaintiff for his services to the class; (2) \$333,333 in
3 attorneys' fees and \$25,000 in costs; (3) \$25,000 in claims administrator's fees and expenses;
4 and (4) the \$5000 payment to resolve any of the Class Members' claims arising under PAGA,
5 of which 75% will be paid to LWDA and 25% shall be paid to Class Members. The
6 remaining \$602,917 fund will be used to compensate Class Members. (*Id.* at ¶ 24.) Coldwell
7 Banker will not oppose Plaintiff's motion for attorneys' fees and costs. (*Id.* at ¶ 40(a)(iv).)

8 **3. Release By Class And Dismissal With Prejudice**

9 Plaintiff and Class Members will agree to release the settled claims in exchange for
10 Individual Settlement Payments. Pursuant to the Settlement Agreement (Settlement
11 Agreement ¶ 32), the "Released Claims" are:

12 [A]ny and all claims, debts, rights, demands, liabilities,
13 obligations, guarantees, costs, expenses, attorneys' fees,
14 damages and causes of action of any kind, whether known or
15 unknown, whether in law or equity, arising from, or related to
16 the allegations in the Complaint, including claims under state
17 and federal law for wages, restitution, statutory and civil
18 penalties, interest, fees, costs, and claims arising under the
19 Private Attorneys General Act ("PAGA"), related to the
20 following categories of claims and allegations: (i) failure to
21 provide meal periods, including, but not limited to violations of
22 California Labor Code sections 226.7 and 512(a); (ii) failure to
23 provide rest periods, including, but not limited to violations of
24 California Labor Code section 226.7; (iii) failure to pay
25 minimum wages, including, but not limited to violations of
26 California Labor Code sections 1194, 1197, and 1197.1;
27 (iv) failure to pay overtime, including, but not limited to
28 violations of California Labor Code sections 510 and 1198;
29 (v) failure to pay all wages due during employment, including,
30 but not limited to violations of California Labor Code section
31 204; (vi) failure to pay all wages due upon termination,
32 including, but not limited to violations of California Labor Code
33 sections 201 and 202; and (vii) failure to provide employees with
34 compliant wage statements, including, but not limited to
35 violations of California Labor Code section 226 and statutory
36 and civil penalties arising from such claims, including, but not
37 limited to California Labor Code sections 203, 210, 226.3, 558
38 and 2699.

39 The Released Claims cover the period from July 8, 2005 through November 18, 2010.⁷

40 ⁷ Defendant has also agreed to dismiss its Cross-Action against Plaintiff with
41 prejudice. (Settlement Agreement, ¶ 16, 47.)

ORIGINAL

INITIATIVE LEGAL GROUP APC
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

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Attorneys for Plaintiff James Blue
and the Settlement Class

REC'D
FEB 23 2011
FLING WINDOW
FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
MAR 21 2011
By John A. Clarke, Executive Officer/Clerk
MARIBEL MATA, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JAMES BLUE, individually, and on behalf
of other members of the general public
similarly situated,

Plaintiff,

vs.

COLDWELL BANKER RESIDENTIAL
BROKERAGE COMPANY, a California
Corporation; COLDWELL BANKER
REALTORS, a business entity form
unknown; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: BC417335

CLASS ACTION

ASSIGNED FOR ALL PURPOSES TO:
Hon. John S. Wiley Jr.

~~[PROPOSED]~~ ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT

Date: March 21, 2011
Time: 8:30 a.m.
Place: Department 50

Complaint Filed: July 7, 2009

AND CROSS ACTION

1 (\$3750) of which shall be paid to the California Labor and Workforce Development Agency
2 (“LWDA”) and twenty-five percent (\$1250) of which shall be distributed to Class Members.

3 10. The Court hereby awards attorneys’ fees of \$333,333 and costs of \$25,000 to
4 Class Counsel. The Court finds that the attorneys’ fees and costs requested were reasonable in
5 light of the relevant factors under California law.

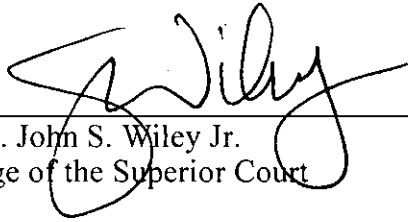
6 11. The Court approves claims administration expenses in the amount of \$25,000
7 payable to Simpluris, Inc.

8 12. The Court approves the designation of Public Counsel [or
9 _____]
10 _____] as the cy pres recipient of any unpaid residue pursuant to the
11 Settlement Agreement.

12 13. The Parties agree that, upon final approval of the Settlement, the Court shall
13 enter a Judgment on the terms set forth herein, which shall have the effect of releasing and
14 resolving the claims by Plaintiff and Class Members who have not opted out of the Settlement
15 against Defendant, and declaring that Plaintiff and all Class Members who have not opted out
16 of the Settlement are bound by the release as described in the Settlement Agreement. The
17 Court shall have continuing jurisdiction over the construction, interpretation, implementation,
18 and enforcement of the Settlement Agreement in accordance with its terms, and over the
19 administration and distribution of the Settlement proceeds.

20 **IT IS SO ORDERED.**

21
22 Dated: _____



23 Hon. John S. Wiley Jr.
24 Judge of the Superior Court

DEC 12 2008

JOHN A. CLARKE, CLERK
BY RUGENA LOPEZ, DEPUTY

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Marc Primo (SBN 216796)
2 Joseph Cho (SBN 198844)
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5 Facsimile: (310) 861-9051

6 Attorneys for Plaintiffs Tiffany Clymer and Amanda Benton, and
Class Members
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

11 TIFFANY CLYMER, individually, and on
12 behalf of other members of the general public
similarly situated,

13 Plaintiffs,

14 vs.

15 CANDLE ACQUISITION CO., a Delaware
16 corporation, and DOES 1 through 10,
inclusive,

17 Defendants.

18 AMANDA L. BENTON, individually, and on
19 behalf of other members of the general public
similarly situated,

20 Plaintiffs,

21 vs.

22 CANDLE ACQUISITION CO., a Delaware
23 corporation, and DOES 1 through 10,
inclusive,

24 Defendants.

CASE NO.: BC328765

[Assigned for all purposes to Hon. Teresa Sanchez-Gordon]

(Consolidated with LASC Case No. BC328772)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT**

Hearing date: January 7, 2009
Time: 8:30 a.m.
Crtm: Dept. 74

- 1 ▪ Researching relevant legal and procedural questions, including successfully
2 appealing and reversing the trial Court's denial of Plaintiffs' Certification
3 Motion with respect to their wage statement claims; and successfully
4 certifying Plaintiffs' wage statement claims pursuant to California Labor
5 Code § 226(a) and California Business & Professions Code section 17200;
- 6 ▪ Taking substantial discovery (written discovery and a deposition), studying
7 discovery responses and documents produced by Defendant, including, but
8 not limited to wage records;
- 9 ▪ Drafting settlement briefs for both mediation and mandatory settlement
10 conference, as well as filing a motion to compel Defendant to produce the
11 contact information of putative class members; and
- 12 ▪ Intensive settlement negotiations.

13 The settlement negotiations eventually yielded a settlement in which Defendant has agreed to
14 provide a settlement fund of \$75,000.00 with no reversion. Administration costs, attorneys' fees, and
15 the service payment to the Class Representatives will be deducted from this settlement fund. The
16 remaining net settlement amount will be divided by the total amount of pay periods to be claimed by
17 Class Members, as computed by the Claims Administrator.¹⁰ A value will then attach to each pay
18 period.¹¹ Class Members had 60 days in which to submit a valid Claim Form.¹² Upon submitting a
19 valid Claim Form, the Class Members' pay periods will be multiplied by the amount awarded per pay
20 period.¹³

21 To the extent that there are monies not claimed by Class Members that are not awarded as
22 claims administration costs, attorneys' fees and costs, and the Class Representative's service

25 10 See Settlement Agreement, ¶ 15(c)(v).

26 11 Id.

27 12 See Settlement Agreement, ¶¶ 15(c)(x) and 22.

28 13 See Settlement Agreement, ¶ 15(c)(v) and Shahian Decl. ¶ 3.

1 common fund for the benefit of persons other than himself or his client is entitled to a reasonable
2 attorney's fee from the fund as a whole."); Mills v. Electric Auto-Lite Co., 396 U.S. 375, 391-392
3 (1970) (United States Supreme Court endorsing the common benefit approach in class actions).

4 In Quinn v. State of California, 15 Cal. 3d 162, 167 (1995), the California Supreme Court
5 stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others
6 derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs."
7 Similarly in City and County of San Francisco v. Sweet, 12 Cal. 4th 105, 110-111 (1995), the
8 California Supreme Court recognized that the common benefit doctrine has been applied
9 "consistently in California when an action brought by one party creates a fund in which other persons
10 are entitled to share."

11 Although there are no bright line rules in this area, fifty percent of the fund is typically
12 considered the upper limit, with thirty to fifty percent commonly awarded as attorneys' fees in cases
13 where the common fund is relatively small.³⁰ Here, Class Counsel is seeking \$25,000, which is 33%
14 of the funded amount and consists of \$17,290.88 in attorneys' fees (23% of the funded amount) and
15 \$7,709.12 for reimbursement of litigation costs.³¹ The attorneys' fees award is on the lower end of
16 similar class actions.³² Attorneys' fee awards of 33% are well-established by California law and
17 practice.

18
19 ³⁰ 3 Newberg and Conte, Newberg on Class Actions (3d Ed. 1992) § 14.03; Van Vranken v. Atlantic Richfield
20 Company, 901 F. Supp. 294 (N.D. Cal. 1995) (stating that most cases where 30-50 percent was awarded involved smaller
21 settlement funds of under \$10 million); In re Ampicillin Antitrust Lit., 526 F. Supp. 494 (D. D.C. 1981) (awarding
22 attorney's fees consisting of 45% of \$7.3 million settlement); Howes v. Atkins, 668 F. Supp. 1021 (E.D. Ky. 1987)
(awarding 50% of \$1,000,000 fund in attorney's fees – 40% to class counsel and 10% to counsel for objectors); In re
Warner Communications Securities Litigation, 618 F. Supp. 735, 749-50 (S.D.N.Y. 1985) (stating that traditionally courts
have awarded fees in the 20%-50% range).

23 ³¹ Shahian Decl. ¶ 6.

24 ³² See, e.g., Chalmers v. Electronics Boutique, LASC Case No. BC306571 (Hon. Robert Hess) (33% of common
25 fund); Vivens, et al. v. Wackenhut Corp., LASC Case No. BC290071 (Hon. Robert Hess) (31% award); Crandall v. U-
Haul International, Inc., LASC Case No. BC178775 (40% award); Albrecht v. Rite Aid Corp., San Diego Super. Ct. Case
26 No. 729219 (35% award); Marroquin v. Bad Bath & Beyond, Alameda Super. Ct. Case No. RG04145918 (33.3% award);
27 In re Milk Antitrust Litigation, LASC Case No. BC070061 (33% award); In re Liquid Carbon Dioxide Cases, San Diego
Super. Ct Case No. J.C.C.P. 3012 (33% award plus costs); In re California Indirect-Purchaser Plasticware Antitrust
Litigation, San Francisco Super. Ct. Case Nos. 961814, 963201, and 963590 (33% fee award plus costs); Bright v.
Kanzaki Specialty Papers, S.F. Super. Ct. Case No. 964899 (33% fee plus costs).

1 Mark Yablonovich (SBN 186670)
2 Marc Primo (SBN 216796)
3 Payam Shahian (SBN 228406)
4 INITIATIVE LEGAL GROUP LLP
5 1800 Century Park East, 2nd Floor
6 Los Angeles, California 90067
7 Telephone: (310) 556-5637
8 Facsimile: (310) 861-9051

9 Attorneys for Plaintiffs Tiffany Clymer and Amanda Benton
10 Class Members, and Aggrieved Employees

FILED
LOS ANGELES SUPERIOR COURT

FEB 04 2009

JOHN A. CLARKE, CLERK

[Signature]
BY GLORIETTA ROBINSON, DEPUTY

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

10 TIFFANY CLYMER, individually, and on
11 behalf of other members of the general
12 public similarly situated,

13 Plaintiffs,

14 vs.

15 CANDLE ACQUISITION CO., a
16 Delaware corporation, and DOES 1
17 through 10, inclusive,

18 Defendants.

19 AMANDA L. BENTON, individually, and
20 on behalf of other members of the general
21 public similarly situated,

22 Plaintiffs,

23 vs.

24 CANDLE ACQUISITION CO., a
25 Delaware corporation, and DOES 1
26 through 10, inclusive,

27 Defendants.

CASE NO.: BC328765

[Assigned for all purposes to Hon.
Teresa Sanchez-Gordon]

(Consolidated with LASC Case No.
BC328772)

**NOTICE OF RULING GRANTING
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing date: February 3, 2009

Time: 8:30 a.m.

Crtm: Dept. 74

1 TO DEFENDANT CANDLE ACQUISITION CO., AND DEFENDANT'S
2 ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE THAT on February 3, 2009, at 8:30 a.m., in Department 74
4 of this Court, 111 North Hill Street, Los Angeles, California 90012, the Honorable Teresa
5 Sanchez-Gordon presiding, GRANTED Plaintiffs' Motion for Final Approval of Class Action
6 Settlement and awarded Class Counsel attorneys' fees and costs ("Fees Award") in the
7 amount of **\$25,000.00**. Plaintiffs were represented by their counsel of record, Initiative
8 Legal Group, LLP, and Payam Shahian; Defendant did not appear, but made a special
9 appearance through Plaintiffs' counsel, Payam Shahian.

10 Please note that previously, on January 7, 2009, the Court awarded Class
11 Representatives Tiffany Clymer and Amanda Benton a class enhancement fee of \$7,500 each
12 for their services to the Class, finding that the service payment is fair and reasonable. On
13 January 7, 2009 the Court also approved of the claims administration expenses in the amount
14 of \$10,000.00 to Simpluris, Inc.

15
16 Dated: February 4, 2009

INITIATIVE LEGAL GROUP

17 BY: 
18 _____

19 Attorney for Plaintiffs
20 Payam Shahian
21
22
23
24
25
26
27
28

ORIGINAL

INITIATIVE LEGAL GROUP APC
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

1 Gene Williams (SBN 211390)
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MPifko@InitiativeLegal.com
3 Jamie R. Greene (SBN 249355)
JGreene@InitiativeLegal.com
4 Initiative Legal Group APC
1800 Century Park East, 2nd Floor
5 Los Angeles, California 90067
Telephone: (310) 556-5637
6 Facsimile: (310) 861-9051

7 Attorneys for Plaintiff Gycela Ethridge
and the Settlement Class
8

FILED
Los Angeles Superior Court

AUG 09 2010

John A. Clarke, Executive Officer/Clerk
By *[Signature]* Deputy
DOROTHY SWAIN

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

11
12 GYCELA ETHRIDGE, individually, and
13 on behalf of other members of the general
public similarly situated,

14 Plaintiff,

15 vs.

16 UNIVERSAL HEALTH SERVICES, INC,
17 a Delaware corporation; UHS OF
DELAWARE, INC., a Delaware
18 corporation; UNIVERSAL HEALTH
SERVICES OF DELAWARE, INC., a
19 Delaware corporation, LANCASTER
HOSPITAL CORPORATION, a California
20 corporation, and DOES 1 through 10,
inclusive,

21 Defendants.
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Case No.: BC391958

[Assigned for all purposes to:
Judge Ramona G. See]

CLASS ACTION and LABOR CODE
PRIVATE ATTORNEYS GENERAL
ACTION

**DECLARATION OF GENE WILLIAMS
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: October 18, 2010
Time: 8:30 a.m.
Place: Department 69

Date Filed: June 3, 2008

1 **DECLARATION OF GENE WILLIAMS**

2 I, Gene Williams, declare as follows:

3 1. I am an attorney licensed to practice before all courts of the State of California.

4 Unless the context indicates otherwise, I have personal knowledge of the facts stated in this
5 declaration and if called as a witness, I could and would competently testify thereto. I am an
6 associate of Initiative Legal Group APC ("Initiative"), counsel of record for Plaintiff and
7 Class Members in the above-captioned matter. I make this declaration in Support of
8 Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

9 2. Based upon my review of the file, on June 3, 2008, Plaintiff filed a class action
10 Complaint, designated as Case No. BC391958, in Los Angeles Superior Court (the "Action"),
11 on behalf of herself and all other similarly situated employees of the Lancaster Community
12 Hospital facility, owned and operated by Universal Health Services, Inc., UHS of Delaware,
13 Inc., Universal Health Services of Delaware, Inc., and Lancaster Hospital Corporation
14 (collectively "Defendants"), alleging that Defendants failed to: (i) pay all overtime owed
15 pursuant to California Labor Code § 511;¹ (ii) provide meal periods in accordance with §§
16 226.7 and 512, and pay the full meal period premium due under § 226.7; (iii) authorize and
17 permit rest periods in accordance with § 226.7, and pay the full rest period premium due under
18 § 226.7; (iv) pay all wages due upon termination under §§ 201 and 202; (v) pay all wages due
19 within any time period permissible under § 204; (vi) furnish compliant wage statements in
20 accordance with § 226; (vii) reimburse all necessary business expenses in violation of §§ 2800
21 and 2802; and (viii) comply with California Business & Professions Code §§ 17200 *et seq.*

22 3. Plaintiff sought to represent a class of all non-exempt or hourly paid employees
23 who have been employed by Defendants at the Lancaster Community Hospital facility within
24 four years prior to the filing of the Complaint until the resolution of this lawsuit. On behalf of
25 herself and the proposed class, Ethridge sought damages, statutory penalties, restitution,
26 interest, and attorneys' fees and costs. On August 1, 2008, Ethridge filed a First Amended

27
28 ¹ All statutory references are to the California Labor Code, unless otherwise noted.

INITIATIVE LEGAL GROUP APC
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

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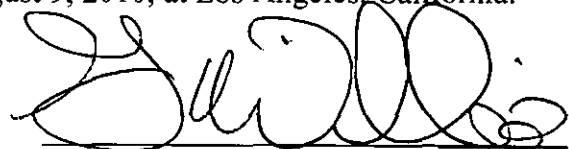
1 within which an Exclusion Form must be submitted, or an objection to the Settlement, the date
2 for the final approval hearing, and the formula used for the Individual Settlement Payments.
3 The Claim Form includes the time period during which the Class Member worked during the
4 Class Period and the Class Member's estimated Individual Settlement Payment. The Notice
5 will also inform the Class Members of the terms and scope of the release.

6 11. Plaintiff spent considerable time and effort in the prosecution of this action,
7 including providing documents and consulting with Class Counsel. Plaintiff has served
8 effectively throughout the duration of her role as a Class Representative. Plaintiff assisted
9 Initiative during the discovery process and was deposed on January 28, 2009 and April 15,
10 2009.

11 12. Class Counsel believes that no action would have been taken by class members
12 individually, and no compensation would have been recovered for them, but for the
13 representative action brought by Plaintiff on their behalf. Plaintiff, in agreeing to bring this
14 action, formally agreed to accept the responsibilities of representing the interests of all Class
15 Members, and to assume risks. By actively pursuing this action, Plaintiff furthered the
16 California public policy goals of enforcing the labor laws and making appropriate use of the
17 class action device. As a direct result of Plaintiff's efforts, Class Members stand to reap
18 substantial rewards. Initiative, therefore, fully supports the service payment of \$10,000 to
19 Class Representative as being fair, reasonable, and appropriate.

20 13. Attached hereto as Exhibit A, B, and C are true and correct copies of the Joint-
21 Stipulation of Class Action Settlement, the Notice of Pendency of Class Action Settlement,
22 and the Exclusion Form.

23 I declare under penalty of perjury and the laws of the State of California that the
24 foregoing is true and correct. Executed on August 9, 2010, at Los Angeles, California.

25 

26 Gene Williams
27

INITIATIVE LEGAL GROUP APC
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Telephone: (310) 556-5637
6 Facsimile: (310) 861-9051

7 Attorneys for Plaintiff Gycela Ethridge

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

11 GYCELA ETHRIDGE, individually,
and on behalf of other members of the
12 general public similarly situated,

13 Plaintiff,

14 vs.

15 UNIVERSAL HEALTH SERVICES,
INC, a Delaware corporation; UHS OF
16 DELAWARE, INC., a Delaware
corporation; UNIVERSAL HEALTH
17 SERVICES OF DELAWARE, INC., a
Delaware corporation, LANCASTER
18 HOSPITAL CORPORATION, a
California corporation, and DOES 1
19 through 10, inclusive,

20 Defendants.

Case No.: BC391958

[Assigned for all purposes to:
Judge Ramona G. See

CLASS ACTION and LABOR CODE
PRIVATE ATTORNEYS GENERAL
ACTION

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT**

EX. A

28

1 Class Counsel Award of up to **one-third** of the Total Class Settlement Amount, or One
2 Million Dollars (**\$1,000,000.00**), subject to the Court finally approving this Settlement
3 Agreement and subject to the exhaustion of any and all appeals. Any portion of the
4 Class Counsel Award not awarded to Class Counsel shall be added to the Gross
5 Settlement Amount.

6 6. "Class List" means a list of Class Members that Defendants will
7 diligently and in good faith compile from their records and provide to the Claims
8 Administrator within seven (7) calendar days after preliminary approval of this
9 Settlement. The Class List shall be formatted in Microsoft Office Excel and shall
10 include each Class Member's full name; last known address and last known home
11 telephone number to the extent available in Defendants' business records; Social
12 Security number; title identifying job description; and dates of employment as a non-
13 exempt employee in California during the Class Period.

14 7. "Class Members" include all individuals employed by Defendants in non-
15 exempt positions in California between June 3, 2004 and the date of Preliminary
16 Approval, excluding any such employee who has a claim currently pending in court,
17 arbitration, or before the Labor Commissioner's Office, other than related to the instant
18 action.

19 8. "Class Period" means the period from June 3, 2004 through the date of
20 Preliminary Approval.

21 9. "Class Representative Enhancement" means the amount to be paid to
22 Plaintiff in recognition of her efforts and work in prosecuting the Action on behalf of
23 Class Members. Defendants agree to pay a Class Representative Enhancement of up to
24 Ten Thousand Dollars (\$10,000.00) to Plaintiff, subject to the Court finally approving
25 this Settlement Agreement and subject to the exhaustion of any and all appeals. Any
26 portion of the Class Representative Enhancement not awarded to Plaintiff will not
27 revert to Defendants but instead shall be returned to the Class Settlement Amount for
28 distribution.

1 10. “Complaint” means the operative complaint in the Action.

2 11. “Court” means the Superior Court of California, County of Los Angeles,
3 or any other court taking jurisdiction of the litigation.

4 12. “Defendants” means Universal Health Services, Inc., UHS of Delaware,
5 Inc., Universal Health Services of Delaware, Inc., and Lancaster Hospital Corporation
6 (including their predecessors, successors, as well as their current, former and future
7 subsidiaries, affiliates, fiduciaries, insurers, agents, employees, assigns, subrogees,
8 privies, officers, officials, directors, administrators, attorneys, and shareholders).

9 13. “Defendants’ Counsel” are, William D. Naeve and Ellen M. Tipping of
10 Murchison & Cumming and Catherine Dacre and Aaron R. Lubeley of Seyfarth Shaw
11 LLP.

12 14. “Effective Date” means: (i) if any timely objections are filed, the date of
13 expiration of the time to file appeals regarding an Order granting final approval, or the
14 resolution of any such appeals in a way that does not alter the terms of the settlement;
15 or (ii) if no timely objections are filed, the date upon which the Court enters an order
16 granting final approval of the Joint Stipulation of Class Action Settlement.

17 15. “Exclusion Form” means the exclusion form to be submitted by Class
18 Members (substantially in the form attached hereto as Exhibit C) who wish to opt-out
19 and be excluded from this Settlement.

20 16. “Final” means the latest of: (i) the date of final affirmance of an appeal
21 of the Judgment; (ii) the date of final dismissal with prejudice of the last pending
22 appeal from the Judgment; or (iii) if no appeal is filed, the expiration date of the time
23 for the filing or noticing of any form of valid appeal from the Judgment.

24 Notwithstanding the foregoing, any proceeding, order, or appeal pertaining solely to
25 the award of attorneys’ fees or attorneys’ costs shall not, by itself, in any way delay or
26 preclude the Judgment from becoming a Final Judgment.

27 17. “Gross Settlement Amount” means the total amount of Three Million
28 Dollars (**\$3,000,000.00**) that Defendants are required to pay by this Settlement

1 Agreement (subject to final approval and exhaustion of any and all appeals) to satisfy
2 the Individual Settlement Payments to Participating Class Members, the Class
3 Representative Enhancement to Plaintiff, the Claims Administration Costs to the
4 Claims Administrator, the Class Counsel Award, and the Labor Workforce and
5 Development Agency Payment to the State of California.

6 18. "Individual Settlement Payment" means each Participating Class
7 Member's share of the Net Settlement Amount calculated in accordance with the
8 Payout Ratio.

9 19. "Labor Workforce and Development Agency Payment" means the
10 amount that the Parties have agreed to pay to the Labor Workforce and Development
11 Agency ("LWDA") in connection with the Labor Code Private Attorneys General Act
12 of 2004 (Cal. Lab. Code §§ 2698, et seq., "PAGA").

13 20. "Net Settlement Amount" means the portion of the Class Settlement
14 Amount remaining after deduction of the Class Representative Enhancement, Claims
15 Administration Costs, the Class Counsel Award, employee and employer tax
16 obligations on the Individual Settlement Payments, and the Labor Workforce and
17 Development Agency Payment, which will be distributed to Participating Class
18 Members.

19 21. "Notice Deadline" means the deadline by which Class Members must
20 postmark or fax to the Claims Administrator a valid Exclusion Form. The Notice
21 Deadline shall be sixty (60) calendar days from the initial mailing of the Notice Packet
22 by the Claims Administrator, unless the 60th day falls on a Sunday or Federal holiday,
23 in which case the Notice Deadline will be extended to the next day on which the U.S.
24 Postal Service is open. The Notice Deadline for Exclusion Forms shall be extended
25 twenty-eight (28) calendar days for any Class Member who is re-mailed a Notice
26 Packet by the Claims Administrator in accordance with the Notice Procedure, unless
27 the 28th day falls on a Federal holiday, in which case the Notice Deadline will be
28 extended to the next day on which the U.S. Postal Service is open. The Notice

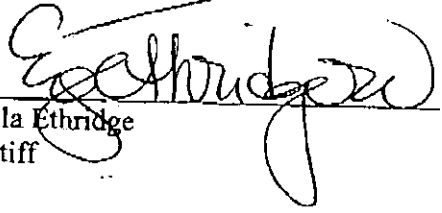
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52. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class certification for purposes of this settlement only; provided, however, Plaintiff or Class Counsel may appeal any reduction in the Class Counsel Award. Plaintiff is deemed the prevailing party in the Action for purposes of determination of the Class Counsel Award only.

SIGNATURES

Dated: 8/9/10

Plaintiff Gycela Ethridge

By: 
Gycela Ethridge
Plaintiff

Dated: _____

Universal Health Services, Inc., UHS of Delaware, Inc., Universal Health Services of Delaware, Inc., Lancaster Hospital Corporation

By: _____
[NAME]
[TITLE]


INITIATIVE

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Dated: August 9, 2010

Initiative Legal Group APC

By: 
Gene Williams
Attorneys for Plaintiff Gycela Ethridge

Dated: _____

Murchison & Cumming

By: _____
Ellen M. Tipping
Attorneys for Defendants Lancaster
Community Hospital and UHS of Delaware,
Inc.

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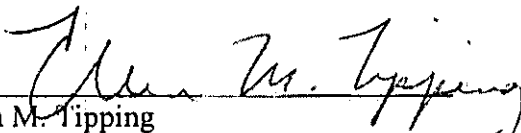
Dated: _____

Initiative Legal Group APC

By: _____
Gene Williams
Attorneys for Plaintiff Gycela Ethridge

Dated: 8/9/2010

Murchison & Cumming

By: 
Ellen M. Tipping
Attorneys for Defendants Lancaster
Community Hospital and UHS of Delaware,
Inc.

FILED
LOS ANGELES SUPERIOR COURT

MAY 27 2011

REC'D
MAY 09 2011
FILING WINDOW

JOHN A. CLARKE, EXECUTIVE OFFICER/CLERK
BY: T. FREEMAN DEPUTY

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GWilliams@InitiativeLegal.com
2 Melissa Grant (SBN 205633)
MGrant@InitiativeLegal.com
3 Theodore O'Reilly (SBN 267675)
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4 Initiative Legal Group APC
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5 Los Angeles, California 90067
Telephone: (310) 556-5637
6 Facsimile: (310) 861-9051

7 Attorneys for Plaintiff Gycela Ethridge
and the Settlement Class

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

12 GYCELA ETHRIDGE, individually, and
on behalf of other members of the general
13 public similarly situated,

14 Plaintiff,

15 vs.

16 UNIVERSAL HEALTH SERVICES, INC,
a Delaware corporation; UHS OF
17 DELAWARE, INC., a Delaware
corporation; UNIVERSAL HEALTH
18 SERVICES OF DELAWARE, INC., a
Delaware corporation, LANCASTER
19 HOSPITAL CORPORATION, a California
corporation, and DOES 1 through 10,
20 inclusive,

21 Defendants.

Case No.: BC391958

[Assigned for all purposes to:
Judge Ramona G. See]

CLASS ACTION and LABOR CODE
PRIVATE ATTORNEYS GENERAL
ACTION

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: May 4, 2011
Time: 8:30 a.m.
Place: Department 69

Date Filed: June 3, 2008

INITIATIVE LEGAL GROUP APC
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

1777 861-9051

BY FAX

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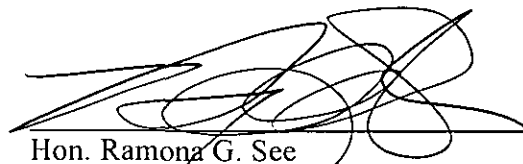
9. The Court hereby awards attorneys' fees of \$1,000,000 and costs of \$20,000 to Class Counsel. The Court finds that the attorneys' fees and costs requested were reasonable in light of the relevant factors under California law.

10. The Court approves claims administration expenses in the amount of \$19,000 payable to Simpluris, Inc.

11. The Parties agree that, upon final approval of the Settlement, the Court shall enter a Judgment on the terms set forth herein, which shall have the effect of releasing and resolving the claims by Plaintiff and Class Members who have not opted out of the Settlement against Defendants, and declaring that Plaintiff and all Class Members who have not opted out of the Settlement are bound by the release as described in the Settlement Agreement. The Court shall have continuing jurisdiction over the construction, interpretation, implementation, and enforcement of the Settlement Agreement in accordance with its terms, and over the administration and distribution of the Settlement proceeds.

IT IS SO ORDERED.

Dated: 5/27/11



Hon. Ramona G. See
Judge of the Superior Court

ORIGINAL

INITIATIVE LEGAL GROUP APC
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

03/29/11

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Mónica Balderrama (SBN 196424)
Miriam Schimmel (SBN 185089)
David Cheng (SBN 240926)
Joshua Carlon (SBN 263838)
Initiative Legal Group APC
1800 Century Park East, 2nd Floor
Los Angeles, California 90067
Telephone: (310) 556-5637
Facsimile: (310) 861-9051

Attorneys for Plaintiff Louis Magee, Jr.

FILED
Los Angeles Superior Court

MAR 29 2011

John A. Clarke, Executive Officer/Clerk
By ~~John A. Clarke~~ Deputy
DONOTHY SWAIN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

LOUIS MAGEE, JR., individually, and on
behalf of other members of the general
public similarly situated,

Plaintiff,

vs.

AMERICAN RESIDENTIAL SERVICES,
LLC, d/b/a RESCUE ROOTER, a Delaware
Limited Liability Corporation; ARS
ACQUISITION HOLDINGS LLC, a
Delaware Limited Liability Corporation;
and DOES 1 through 10, inclusive,

Defendants.

Case No.: BC423798

CLASS ACTION

Assigned for All Purposes to:
Hon. Mark V. Mooney

**NOTICE OF MOTION AND MOTION
FOR CLASS REPRESENTATIVE
ENHANCEMENT AND AN AWARD OF
ATTORNEYS' FEES AND COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: April 21, 2011
Time: 8:30 a.m.
Place: Department 68

Complaint Filed: October 15, 2009

V.A.S.C. - FILINGS #32

CIT/CASE: BC423798 LEA/DEF#:
RECEIPT #: CCH118792336
DATE PAID: 03/29/11 03:07:11 PM
PAYMENT: \$40.00 0310
RECEIVED:
CHECK: 48.00
CASH:
CHANGE:
CARDS:

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

2 **PLEASE TAKE NOTICE** that on April 21, 2011 at 8:30 a.m., or as soon thereafter as
3 counsel may be heard, in Department 68 of the above-captioned court, located at 111 North
4 Hill Street, Los Angeles, California 90012, the Honorable Mark V. Mooney presiding,
5 Plaintiff Louis Magee, Jr. (“Plaintiff” or “Class Representative) will, and hereby does, move
6 this Court for entry of an order granting a Class Representative Enhancement and an award of
7 attorneys’ fees and costs. This Motion is unopposed by Defendant American Residential
8 Services, LLC, doing business as Rescue Rooter, and ARS Acquisition Holdings LLC
9 (collectively “Defendant” or “Rescue Rooter”) (collectively with Plaintiff, “the Parties”).

10 Specifically, Plaintiff requests that the Court award a \$15,000 Class Representative
11 Enhancement and reasonable attorneys’ fees and costs in the amounts of \$216,450 and
12 \$25,000, respectively, to Initiative Legal Group APC (“Initiative” or “Class Counsel”). This
13 Motion should be granted because: (1) no action would likely have been taken by Class
14 Members individually, and no compensation would have been recovered for them, but for
15 Plaintiff’s services on their behalf; (2) the requested fees and costs are fair and reasonable
16 under California law based upon the work performed and the result obtained by Class
17 Counsel; (3) California state and federal courts regularly approve similar or higher fee awards
18 in comparable class action settlements; and (4) public policy suggests that if competent
19 counsel is to be attracted to litigate cases on behalf of clients unable to pay hourly fees,
20 attorney fee awards must be made in recognition of the risks inherent in contingent fee
21 agreements.

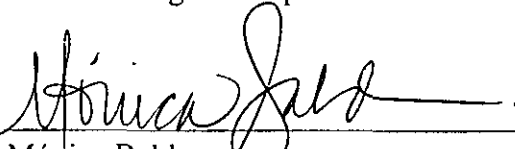
22 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the
23 Memorandum of Points and Authorities in Support of Motion for a Class Representative
24 Enhancement Payment and an Award of Attorneys’ Fees and Costs; (3) the Declaration of
25 Marc Primo; (4) the Declaration of Louis Magee, Jr.; (5) the Declaration of Patricia Ebener;
26 (6) the Proposed Order Granting Final Approval of Class Action Settlement; (7) the Proposed
27 Judgment; (8) the records, pleadings, and papers filed in this action; and (9) upon such other
28

1 documentary and/or oral evidence as may be presented to the Court at the hearing of this
2 Motion.

3
4 Dated: March 29, 2011

Respectfully submitted,

Initiative Legal Group APC

6
7 By: 

8 Mónica Balderrama
9 Miriam Schimmel
10 David Cheng
11 Joshua Carlon

12 Attorneys for Plaintiff Louis Magee, Jr.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Consistent with the terms of the Joint Stipulation of Class Action Settlement
4 (“Settlement Agreement” or “Settlement”), Plaintiff Louis Magee, Jr. (“Plaintiff,” “Class
5 Representative”) moves for a Class Representative Enhancement of \$15,000, attorneys’ fees
6 of \$216,450 (33.3% of the Gross Settlement Amount¹), and litigation costs of \$25,000. The
7 concurrently filed memorandum of points and authorities seeking final approval of the
8 Settlement establishes that its terms are fair, reasonable, and adequate, thereby meriting
9 approval.²

10 Plaintiff deserves an enhancement payment for his substantial efforts and time
11 expended in this case. Mr. Magee was deposed, regularly assisted Initiative Legal Group APC
12 (“Class Counsel” or “Initiative”) in discovery and the compilation of evidence, and remained
13 active and involved throughout the case.

14 The requested attorneys’ fees are also reasonable and appropriate. An award of one-
15 third of the common fund is typical in California. Indeed, studies have specifically shown that
16 fee awards generally average to about one-third of the recovery. *Chavez v. Netflix, Inc.*, 162
17 Cal. App. 4th 43, 66, n.11 (2008). Further, the lodestar cross-check establishes that Class
18 Counsel’s request for attorneys’ fees is fair and reasonable—indeed, Class Counsel seeks only
19 86% of the value of its services. Such common fund awards have long been considered fair
20 and appropriate in class action contingent-fee cases to compensate for the risks inherent to
21 class counsel receiving no payment at all in cases that end at denial of class certification,
22 summary judgment, or otherwise, without a favorable settlement or judgment. The fact that
23 only ten Class Members (less than 1% of the entire Settlement Class) opted out of the
24

25 ¹ Unless indicated otherwise, capitalized terms used herein have the same meaning as
26 those referenced in the Settlement Agreement. See Exhibit 1 to the Declaration of Mónica
27 Balderrama in Support of Motion for Preliminary Approval of Class Action Settlement,
executed and filed on November 23, 2010, is attached as Exhibit C to the Declaration of Marc
Primo.

28 ² Plaintiff incorporates by reference the Memorandum of Points and Authorities in
Support of the Motion for Final Approval of Class Action Settlement (“Pl.’s Final Approv.
Mem. P. & A.”).

1 in the accompanying Motion for Final Approval, filed concurrently, Class Counsel negotiated
2 a total settlement valued at \$650,000 despite obstacles. (See Pl.'s Final Approv. Mem. P. &
3 A.'s 10-13.) Under the settlement, Class Members will receive an average settlement payment
4 of \$356.54, with the highest payment being \$998.10 (see Declaration of Patricia A. Ebener
5 ["Ebener Decl.,"] ¶ 13)—a substantial recovery for wage-and-hour claims, particularly for a
6 case such as this, where Defendant's liability for meal and rest break violations were and
7 remain uncertain in light of pending decisions of the California Supreme Court in
8 *Brinker/Brinkley*.⁷ (See Pl.'s Final Approv. Mem. P. & A. 10-11.)

9 Accordingly, the cumulative benefits achieved by the Settlement favor approval of the
10 requested fees.

11 **3. The Requested Attorneys' Fees Are Supported by the Complexity of**
12 **the Litigation and the Risk Assumed by Class Counsel**

13 Settlement agreements are to be assessed realistically. See *Munoz v. BCI Coca-Cola*
14 *Bottling Co.*, 186 Cal. App. 4th 399, 409 (2010). A summary of the risks associated with the
15 prosecution of Plaintiff's wage-and-hour claims provides some insight into the challenges
16 posed by this case.

17 To determine Rescue Rooter's exposure for meal period violations, Class Counsel
18 analyzed payroll data for a randomly sampled group of 49 employees, which consisted of
19 3268 different pay periods for the 49 employees. The payroll data included hours worked,
20 hours paid, commissions paid, meal premiums paid, and other remunerations. Class Counsel
21 also conducted extensive interviews with Class Members regarding their meal break
22 experiences at Rescue Rooter.

23 Based upon the information gathered from payroll data and interviews with
24 prospective Class Members, Class Counsel determined that a significant percentage of the
25 employees surveyed experienced meal period violations. Each unpaid meal premium is
26 approximately \$16.45 (average hourly rate of pay). Class Counsel determined Rescue

27 _____
28 ⁷ It should be noted that Class Members were not required to submit claims to receive
payment from the Settlement. Accordingly, all Class Members who did not opt out will
receive their share of the Settlement Fund.

1 Mónica Balderrama (SBN 196424)
2 Miriam Schimmel (SBN 185089)
3 David Cheng (SBN 240926)
4 Joshua Carlon (SBN 263838)
5 Initiative Legal Group APC
6 1800 Century Park East, 2nd Floor
7 Los Angeles, California 90067
8 Telephone: (310) 556-5637
9 Facsimile: (310) 861-9051

FILED
LOS ANGELES SUPERIOR COURT

S APR 20 2011 aw
JOHN A. CLARKE, CLERK
BY ANITA WILLIAMS, DEPUTY

6 Attorneys for Plaintiff Louis Magee, Jr.

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10 LOUIS MAGEE, JR., individually, and on
11 behalf of other members of the general
12 public similarly situated,

12 Plaintiff,

13 vs.

14 AMERICAN RESIDENTIAL SERVICES,
15 LLC, d/b/a RESCUE ROOTER, a Delaware
16 Limited Liability Corporation; ARS
17 ACQUISITION HOLDINGS LLC, a
18 Delaware Limited Liability Corporation;
19 and DOES 1 through 10, inclusive,

20 Defendants.

Case No.: BC423798

CLASS ACTION

Assigned for All Purposes to:
Hon. Mark V. Mooney

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: April 21, 2011
Time: 8:30 a.m.
Place: Department 68

Complaint Filed: October 15, 2009

1 the circumstances.

2 5. The Court hereby approves the terms set forth in the Settlement Agreement and
3 finds that the Settlement Agreement is, in all respects, fair, adequate, and reasonable and
4 directs the Parties to effectuate the Settlement Agreement according to its terms. The Court
5 finds that the Settlement Agreement has been reached as a result of informed and non-
6 collusive arm's-length negotiations. The Court further finds that the Parties have conducted
7 extensive investigation and research, and their attorneys were able to reasonably evaluate their
8 respective positions. The Court also finds that settlement now will avoid additional and
9 potentially substantial litigation costs, as well as delay and risks if the Parties were to continue
10 to litigate the case. The Court has reviewed the monetary recovery being provided as part of
11 the Settlement and recognizes the significant value accorded to Class Members.

12 6. The Settlement Agreement is not an admission by Defendant or by any other
13 Released Party, nor is this Order a finding of the validity of any allegations or of any
14 wrongdoing by Defendant or any other Released Party. Neither this Order, the Settlement
15 Agreement, nor any document referred to herein, nor any action taken to carry out the
16 Settlement Agreement, may be construed as, or may be used as, an admission of any fault,
17 wrongdoing, omission, concession, or liability whatsoever by or against Defendant or any of
18 the other Released Parties.

19 7. Defendant shall pay the Class Members pursuant to the claim procedure
20 described in the Settlement Agreement. Defendant shall have no further liability for costs,
21 expenses, interest, attorneys' fees, or for any other charge, expense, or liability, except as
22 provided in the Settlement Agreement.

23 8. The Court awards named Plaintiff and Class Representative Louis Magee, Jr.
24 \$15,000 for his services to the Class. The Court finds that this amount is fair and reasonable
25 in light of Plaintiff's contributions to this litigation.

26 9. The Court hereby awards attorneys' fees of \$216,450 and costs of \$25,000 to
27 Class Counsel. The Court finds that the attorneys' fees and costs requested were reasonable in
28 light of the relevant factors under California law.

ORIGINAL

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Attorneys for Plaintiffs Tony Mares,
Gary Madderra and Class Members

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

TONY MARES and GARY MADDERRA,
individually, and on behalf of other
members of the general public similarly
situated,

Plaintiffs,

vs.

BFS RETAIL & COMMERCIAL
OPERATIONS, LLC, a Delaware limited
liability company; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: BC375967

[Assigned for all purposes to
Hon. Susan Bryant-Deason]

CLASS ACTION

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT

Date: June 21, 2010
Time: 9:00 a.m.
Place: Department 52

Date Action Filed: August 17, 2007
Trial Date: None

FILED
Los Angeles Superior Court

JUN 01 2010

John A. Clarke, Executive Officer/Clerk
By SHAUNYA WESLEY, Deputy

INITIATIVE LEGAL GROUP APC
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 On March 1, 2010, the Court granted preliminary approval of the Joint Stipulation of
4 Class Action Settlement and Release ("Settlement Agreement" or "Settlement") and approved
5 distribution of the Notice of Pendency of Class Action Settlement, Claim Form and Exclusion
6 Form ("Class Notice") to 2571 Class Members. Plaintiffs now seek final approval of this
7 Settlement of wage and hour claims against Defendant Bridgestone Retail Operations, LLC,
8 ("BFS") (collectively with Plaintiffs, the "Parties").

9 Defendant has agreed to pay a Total Settlement Amount¹ of \$3,350,000² to Class
10 Members to settle class-wide wage and hour claims. Additionally, this payment will resolve
11 claims for any remedies available pursuant to the Labor Code Private Attorneys General Act
12 of 2004 (PAGA), with a portion of the settlement payment going to the State.

13 The Class Members' response affirmed their satisfaction with the Settlement. Less
14 than one percent of the settlement class opted out. Not a single Class Member objected.

15 Accordingly, this Court should grant this motion for final approval of the Settlement
16 Agreement; grant final approval of the service payments to the Class Representatives; grant
17 final approval of the claims administration costs; enter judgment pursuant to the Settlement
18 Agreement; and retain jurisdiction to enforce the Settlements. Class Representatives
19 separately move for an award of attorneys' fees and costs to Initiative Legal Group APC
20 ("Initiative" or "Class Counsel").³

21
22
23
24 ¹ Unless otherwise indicated, capitalized defined terms used herein have the same
25 definition as those in the Settlement Agreement.

26 ² It was agreed that no less than 55% of the Net Settlement Amount would be paid to
27 the Class, regardless of the actual number of claims submitted. In total, the Class claimed
28 approximately \$943,341 of the Net Settlement Amount (45.19%). After imposing the 55%
floor, approximately \$1,148,125 will be paid to participating Class Members.

³ Defendant has agreed not to oppose Plaintiffs' motion for attorneys' fees and costs in
the amount of \$1,105,500 and costs of up to \$50,000.

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1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

INITIATIVE LEGAL GROUP APC
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

ORIGINAL

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Attorneys for Plaintiffs Tony Mares,
Gary Madderra and Class Members

REC'D

JUN 22 2010
FILING WINDOW

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JUN 24 2010

John Clarke, Executive Officer/Clerk
By Atty Wilson Deputy
ATTOY WILSON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

TONY MARES and GARY MADDERRA,
individually, and on behalf of other
members of the general public similarly
situated,

Plaintiffs,

vs.

BFS RETAIL & COMMERCIAL
OPERATIONS, LLC, a Delaware limited
liability company; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: BC375967

[Assigned for all purposes to
Hon. Susan Bryant-Deason]

CLASS ACTION

~~PROPOSED~~ ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND AN AWARD OF
ATTORNEYS' FEES AND COSTS

Date: June 21, 2010
Time: 9:00 a.m.
Place: Department 52

Date Action Filed: August 17, 2007
Trial Date: None

1 5. The Court hereby approves the terms set forth in the Settlement Agreement and
2 finds that the Settlement Agreement is, in all respects, fair, adequate and reasonable and
3 directs the Parties to effectuate the Settlement Agreement according to its terms. The Court
4 finds that the Settlement Agreement has been reached as a result of informed and non-
5 collusive arm's-length negotiations. The Court further finds that the Parties have conducted
6 extensive investigation and research, and their attorneys were able to reasonably evaluate their
7 respective positions. The Court also finds that settlement now will avoid additional and
8 potentially substantial litigation costs, as well as delay and risks if the Parties were to continue
9 to litigate the case. The Court has reviewed the monetary recovery being provided as part of
10 the Settlement and recognizes the significant value accorded to Class Members.

11 6. The Settlement Agreement is not an admission by Defendant or by any other
12 Released Party, nor is this Order a finding of the validity of any allegations or of any
13 wrongdoing by Defendant or any other Released Party. Neither this Order, the Settlement
14 Agreement, nor any document referred to herein, nor any action taken to carry out the
15 Settlement Agreement, may be construed as, or may be used as, an admission of any fault,
16 wrongdoing, omission, concession, or liability whatsoever by or against Defendant or any of
17 the other Released Parties.

18 7. Defendant shall pay the Class Members pursuant to the claim procedure
19 described in the Settlement Agreement. Defendant shall have no further liability for costs,
20 expenses, interest, attorneys' fees, or for any other charge, expense, or liability, except as
21 provided in the Settlement Agreement.

22 8. The Court awards Named Plaintiffs and Class Representatives Tony Mares and
23 Gary Madderra \$15,000 each for their service to the Class. The Court finds that these
24 amounts are fair and reasonable in light of Plaintiffs' contributions to this litigation.

25 9. The Court grants final approval of the payment of \$50,000 to the California
26 Labor and Workforce Development Agency ("LWDA").

27 10. The Court hereby awards attorneys' fees of \$1,105,500 and costs of \$50,000 to
28 Class Counsel. The Court finds that the attorneys' fees and costs requested were reasonable in

1 light of the relevant factors under California law.

2 11. The Court approves claims administration expenses in the amount of \$27,000
3 payable to Simpluris, Inc.

4 12. The Parties agree that, upon final approval of the Settlement, the Court shall
5 enter a Judgment on the terms set forth herein, which shall have the effect of releasing and
6 resolving the claims by Plaintiffs and Class Members who have not opted out of the
7 Settlement against Defendant, and declaring that Plaintiffs and all Class Members who have
8 not opted out of the Settlement are bound by the release as described in the Settlement
9 Agreement.

10 13. All Class Members are hereby permanently enjoined and forever barred from
11 instituting or prosecuting any action against Defendant or any other Released Party for the
12 released claims as set forth in the Release. The Court shall have continuing jurisdiction over
13 the construction, interpretation, implementation and enforcement of the Settlement Agreement
14 in accordance with its terms, and over the administration and distribution of the Settlement
15 proceeds.

16
17 **IT IS SO ORDERED.**

18
19 Dated: June 24, 2010

Hon Susan Bryant-Deason
20 Hon. Susan Bryant-Deason
21 Judge of the Superior Court
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ORIGINAL

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7 Attorneys for Plaintiffs Gil Silva,
Alfonso Rojano and the Settlement Class
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

11
12 GIL SILVA and ALFONSO ROJANO,
individually, and on behalf of other
13 members of the general public similarly
situated,

14 Plaintiffs,

15 vs.

16 CATHOLIC MORTUARY SERVICES,
17 INC., a California corporation; STEWART
SERVICES, INC., a Mississippi
18 corporation; STEWART ENTERPRISES,
INC., a California corporation, and DOES 1
19 through 10, inclusive,

20 Defendants.
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Case No.: BC408054

[Assigned to Hon. Michael C. Solner]

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

Date: January 18, 2011

Time: 9:00 a.m.

Place: Department 39

Complaint Filed: February 19, 2009

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
JAN 04 2011
John A. Clarke, Executive Officer/Clerk
By Rugena Lopez Deputy

CIT/CASE: BC408054 LEA/DEF#:
RECEIPT #: CCH47722927
DATE PAID: 01/04/11 03:21:42 PM
PAYMENT: \$40.00
RECEIVED: 0310
CHECK: 40.00
CASH:
CHANGE:
CARD:

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On September 15, 2010, the Court granted preliminary approval of the Joint
4 Stipulation of Class Action Settlement and Release (“Settlement Agreement” or “Settlement”)
5 and approved distribution of the Notice of Pendency of Class Action Settlement, Claim Form,
6 and Request for Exclusion Form (“Class Notice”) to 467 Class Members. Plaintiffs Gil Silva
7 and Alfonso Rojano (“Plaintiffs” or “Class Representatives”) now seek final approval of this
8 Settlement of wage and hour claims against Defendants Catholic Mortuary Services, Inc.,
9 Stewart Services, Inc., and Stewart Enterprises, Inc. (collectively “Defendants”) (collectively
10 with Plaintiffs, “Parties”).

11 Class Counsel negotiated a substantial recovery for class members: Defendants have
12 agreed to pay a Class Settlement Amount² of \$1,500,000 (“Class Settlement Amount”) to
13 resolve Plaintiffs’ claims for violations of the California Labor Code and California
14 Business & Professions Code. Payment to the Class Members will be (1) proportional to each
15 Class Member’s period of employment during the Class Period and (2) based on the Class
16 Member’s job position with Defendants. Plaintiffs move this Court to grant final approval of
17 the terms and distribution plan set forth in the Settlement Agreement.

18 The Class Members’ response reflects their satisfaction with the Settlement.
19 Participating Class Members claimed 78.73% of the Net Settlement Amount. Only six Class
20 Members chose to opt out and there was a single, meritless objection. This is a strong,
21 positive Class response. Accordingly, the Court should: (1) grant this Motion for Final
22 Approval of the Settlement Agreement; (2) grant final approval of the claims administration
23 costs; (3) enter judgment pursuant to the Settlement Agreement; and (4) retain jurisdiction to
24 enforce the Settlement.

25 Based on the forgoing information and on its own independent investigation and
26 evaluation, Class Counsel is of the opinion that this Settlement Agreement, which was reached

27
28 ² Unless otherwise indicated, capitalized defined terms have the same definition as established in the Settlement Agreement.

1 **E. The Parties Settled the Dispute After Two Substantial Mediation Sessions**

2 On November 18, 2009, the parties mediated their respective grievances before Mark
3 Rudy, Esq., a well-known and respected mediator with extensive experience in wage and hour
4 disputes. (Williams Decl. ¶ 6.) The first mediation ended when it became clear that further
5 investigation of the claims and defenses was necessary for both sides to properly evaluate the
6 potential claims in this action. (*Id.*) Following that further investigation, which included
7 Defendants providing additional data to Class Counsel, the parties participated in a second
8 mediation session with Mr. Rudy on April 8, 2010. (*Id.*) Although the parties were unable to
9 settle the claims at the second mediation, negotiations continued through Mr. Rudy, and the
10 parties accepted the mediator's proposal that he presented, which facilitated the Settlement
11 Agreement now before the Court. (*Id.*) Mr. Rudy's supervision of the mediation was critical
12 in managing the parties' expectations providing a neutral analysis of the issues and risks to
13 both sides. (*Id.*)

14 **F. The Proposed Settlement Fully Resolves the Claims**

15 **1. Composition of the Class**

16 The members of the covered class are: (i) all commissioned employees of Defendants
17 who worked in California under any of the Categories of Employment between February 19,
18 2005 and April 30, 2010; (ii) all persons employed by Defendants in California under any of
19 the Categories of Employment who paid for business-related expenses, including expenses for
20 travel, mileage, cell phones, supplies, and client lunches, between February 19, 2005 and
21 April 30, 2010; and (iii) all employees of Defendants working in California under any of the
22 Categories of Employment who received a wage statement between February 19, 2008 and
23 April 30, 2010. (Settlement Agreement, Definitions, ¶ 24.)

24 **2. Settlement Consideration**

25 Plaintiffs and Defendants have agreed to settle the class claims in exchange for a
26 specific amount of monetary compensation. (Settlement Agreement, Definitions ¶ 12.)
27 Defendants have agreed to pay **\$1,500,000** to the Settlement Class; this amount is inclusive of
28

1 the \$15,000 payment to resolve any of the Class Members' claims arising under PAGA;⁷
2 claims administrator's fees and expenses not to exceed \$14,000; \$10,000 to each Plaintiff for
3 their services to the class; and \$500,000 in attorneys' fees and \$50,000 in costs to Class
4 Counsel. (*Id.* at ¶¶ 7, 11, 12, 17.)

5 **3. Release by Class and Dismissal With Prejudice**

6 Plaintiffs and Class Members have agreed to release the settled claims in exchange for
7 the consideration described herein. (Settlement Agreement, Definitions ¶ 22.)⁸

8 **G. The Notice and Claims Administration Process Were Completed Pursuant**
9 **to the Preliminary Approval Order**

10 As authorized by the Court's Order preliminarily approving the Settlement Agreement,
11 the Parties engaged Simpluris, Inc. ("Simpluris") to provide settlement administration
12 services. (Declaration of Eric Springer ["Springer Decl."] ¶ 3.) Simpluris' duties include:
13 (1) printing and mailing the Class Notice; (2) receiving and logging undeliverable Class
14 Notices; (3) receiving and validating Claim Forms and Exclusion Forms; (4) calculating claim
15 payments (this will include distribution of funds and tax-reporting following final approval);
16 and (5) answering questions from Class Members. (*Id.*) Simpluris also set up a toll-free
17 telephone number which was included in the Class Notice so that Class Members can call and
18 ask questions about the Settlement. (*Id.* at ¶ 4.)

19 On September 14, 2010, Simpluris received from Class Counsel the Class Notice
20 prepared jointly by Class Counsel and counsel for Defendants. (Springer Decl. ¶ 5.) The
21 Class Notice advised Class Members that they could submit a Claim Form to receive payment
22 from the Settlement, an Exclusion Form to opt out of the Settlement (enclosed with the Class
23 Notice), or file and serve an objection to the Settlement, on or before November 29, 2010.

24 (*Id.*)

25 Simpluris is responsible for processing all Claim Forms. Simpluris has received 255

26 ⁷ Pursuant to PAGA, 75% (\$11,250) of the PAGA Settlement Amount shall be paid to
27 the California Labor Workforce and Development Agency, and 25% (\$3750) of the PAGA
28 Settlement Amount shall be distributed to Class Members.

⁸ Defendants have also agreed to dismiss their cross-claims against Plaintiffs.
(Settlement Agreement, Terms, ¶ 3.)

ORIGINAL

INITIATIVE LEGAL GROUP APC
1800 CENTURY PARK EAST, SECOND FLOOR, LOS ANGELES, CALIFORNIA 90067

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
FEB -8 2011
John A. Clarke, Executive Officer/Clerk
By K. THOMAS Deputy

RECEIVED
JAN 04 2011
ROOM 102

Attorneys for Plaintiffs Gil Silva, Alfonso Rojano,
and the Settlement Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

GIL SILVA and ALFONSO ROJANO,
individually, and on behalf of other members
of the general public similarly situated,

Plaintiffs,

vs.

CATHOLIC MORTUARY SERVICES,
INC., a California corporation; STEWART
SERVICES, INC., a Mississippi corporation;
STEWART ENTERPRISES, INC., a
California corporation, and DOES 1 through
10, inclusive,

Defendants.

Case Number: BC408054

[Assigned to Hon. Michael C. Solner-
Department 39]

**[REDACTED] ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: January 18, 2011
Time: 9:00 a.m.
Place: Department 39

Complaint Filed: February 19, 2009

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6. Defendants shall pay the Class Members pursuant to the claim procedure described in the Settlement Agreement. Defendants shall have no further liability for costs, expenses, interest, attorneys' fees, or for any other charge, expense, or liability, except as provided in the Settlement Agreement.

7. The Court awards Named Plaintiffs and Class Representatives Gil Silva and Alfonso Rojano \$10,000 each for their services to the Class. The Court finds that these amounts are fair and reasonable in light of Plaintiffs' contributions to this litigation.

8. The Court grants final approval of the \$15,000 payment pursuant to California Labor Code sections 2698, et seq., and the California Labor Code Private Attorneys General Act of 2004 ("PAGA") for the Release of Class Members' PAGA claims, seventy-five percent of which (\$11,250) shall be paid to the California Labor and Workforce Development Agency ("LWDA") and twenty-percent (\$3,750) shall be distributed to Class Members.

9. The Court hereby awards attorneys' fees of \$500,000 and costs of \$50,000 to Class Counsel. The Court finds that the attorneys' fees and costs requested were reasonable in light of the relevant factors under California law.

10. The Court approves claims administration expenses in the amount of \$14,000 payable to Simpluris, Inc.

11. The Parties agree that, upon final approval of the Settlement, the Court shall enter a Judgment on the terms set forth herein, which shall have the effect of releasing and resolving the claims by Plaintiffs and Class Members who have not opted out of the Settlement against Defendants, and declaring that Plaintiffs and all Class Members who have not opted out of the Settlement are bound by the release as described in the Settlement Agreement. The Court shall have continuing jurisdiction over the construction, interpretation, implementation, and enforcement of the Settlement Agreement in accordance with its terms, and over the administration and distribution of the Settlement proceeds.

IT IS SO ORDERED.

Dated: Feb. 8, 2011

Michael C. Solner
Hon. Michael C. Solner
Judge of the Superior Court

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