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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **FOR THE COUNTY OF RIVERSIDE - RIVERSIDE COURT**

19 IN RE: RENOVATE AMERICA FINANCE
20 CASES

Case No. RICJCCP4940

21 **[PROPOSED] SECOND AMENDED FINAL
ORDER AND JUDGMENT APPROVING
SETTLEMENT**

22 THIS DOCUMENT RELATES TO ALL
23 CASES

Dept.: 06
Judge: Hon. Sunshine Sykes

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

1 This matter having come before the Court on July 8, 2020 upon the Motion of plaintiffs
2 George Loya, Judith Loya, Richard Ramos, Michael Richardson and Shirley Petetan (collectively,
3 “Representative Plaintiffs”), individually and on behalf of a class of persons, for Final Approval of a
4 settlement reached between the Parties, and upon review and consideration of the First Amended
5 Settlement Agreement dated February 5, 2020 (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 (“CRC”) 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 and Certifying
14 the Settlement Class (“Final Approval Order”). Capitalized terms in this Order shall, unless
15 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 CRC 3.764, 3.765
18 and 3.769(d) and Code of Civil Procedure section 382.

19 3. Solely for the purpose of the Settlement and pursuant to CRC 3.769(d), the Court
20 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 CRC 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 CRC 3.769:

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

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1 7. This Court convened the Final Approval Hearing at 8:30 on July 8, 2020, in
2 Department 6 of the Superior Court of California for the County of Riverside, located at 4050 Main
3 Street, Riverside, California 92501. The parties appeared through their counsel. Counsel presented
4 argument at that time.

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

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

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, other than those who requested
2 timely exclusion from the Settlement as identified in **Exhibit A** hereto, shall be forever bound by
3 this Final Approval Order and the Settlement Agreement including the Release set forth in
4 paragraphs 5.01 and 5.02 of the Settlement Agreement, which provides as follows:

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

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

1 principle of common law, which is similar, comparable, or equivalent to section 1542 of the
2 California Civil Code, with respect to the claims released pursuant to paragraph 5.01 above.

3 Section 1542 of the California Civil Code reads:

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

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

20 Whether a beneficiary of California law or otherwise, Representative Plaintiffs
21 acknowledge that he or she may hereafter discover facts other than or different from those
22 that he or she knows or believes to be true with respect to the subject matter of the claims
23 released pursuant to the terms of paragraph 5.01 above, but each of those individuals
24 expressly agree that, upon entry of the final judgment contemplated by this Settlement
25 Agreement, he and she shall have waived and fully, finally, and forever settled and released
26 any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-
27 contingent claim with respect to the claims released pursuant to paragraph 5.01 above,
28

1 whether or not concealed or hidden, without regard to subsequent discovery or existence of
2 such different or additional facts.

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

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

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

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

1 19. In the event that Final Approval is not achieved for any reason, then the Settlement
2 Agreement, this Final Approval Order, the certification of the Settlement Class and all other terms
3 herein, together with any other orders or rulings arising from or relating to the Settlement
4 Agreement, shall be void and their effect vacated.

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

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

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

16
17 **SO ORDERED.**

18
19
20 Dated: _____

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

EXHIBIT A

