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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

IN RE: RENOVATE AMERICA FINANCE CASES	Case No. RICJCCP4940
THIS DOCUMENT RELATES TO: ALL ACTIONS	**PLAINTIFFS' <u>SECOND</u> SUPPLEMENTAL BRIEF IN FURTHER SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND CLASS REPRESENTATIVE AWARDS** DATE: July 8, 2020 TIME: 8:30 a.m. JUDGE: Hon. Sunshine S. Sykes DEPT.: 6

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I. INTRODUCTION

Plaintiffs George Loya, Judith Loya, Richard Ramos, Michael Richardson and Shirley Petetan (collectively, "Plaintiffs") submit this second supplemental memorandum in further support of their Motion for Final Approval of Class Action Settlement ("Final Approval Motion") and Motion for Award of Attorneys' Fees, Reimbursement of Expenses, and Class Representative Awards ("Fee Motion"). Pursuant to the Preliminary Approval Order, Plaintiffs' first supplemental memorandum was timely filed on June 15, 2020.[1] After Plaintiffs filed their First Supplemental Memorandum, the parties received five (5) additional requests for exclusion and four (4) additional objections, which Plaintiffs address in this memorandum. These additional submissions bring the total number of received requests for exclusion to 45 and the total number of received objections to 32.

The Settlement[2] should be finally approved because it has been overwhelmingly accepted by the Settlement Class. The percentage of class members who submitted objections is still only 0.04%. Moreover, as detailed further below, the four (4) new objections do not support rejection of the entire Settlement. Two of the objections were filed after the deadline and one was filed by nonprofit legal services organizations that lack standing to object because they are not Class Members. Moreover, none of newly-submitted objections provides a basis for denial of final approval of the Settlement because they: (1) do not specifically relate to the particular wrongdoing alleged by Plaintiffs; (2) mistakenly argue that claims not related to this litigation are being released by the Settlement; (3) only generally claim that the payments to the Settlement Class should be greater; and (4) argue that the Class Notice should have been sent by regular mail rather than email and translated into languages other than English, without citation to authority. Accordingly, the

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[1] *See* Plaintiffs' Supplemental Brief in Further Support of Motion for Final Approval of Class Action Settlement and Motion for Award of Attorneys' Fees, Reimbursement of Expenses, and Class Representative Awards, filed June 15, 2020 ("First Supplemental Memorandum").

[2] Any terms not otherwise defined herein have the same meaning as in the First Amended Settlement Agreement dated February 5, 2020 (sometimes referred to herein as the "Settlement Agreement"), annexed as Exhibit ("Ex.") A to the Joint Declaration of Janine L. Pollack and Rachele R. Byrd in Support of Plaintiffs' Final Approval Motion and Fee Motion, filed on May 26, 2020 ("Joint Decl.").

Court should grant final approval to the Settlement and to the requests for attorneys' fees and expenses and Class Representative Awards.[3]

II. THE FIVE ADDITIONAL REQUESTS FOR EXCLUSION SHOULD BE HONORED EVEN IF NOT TIMELY

After Plaintiffs filed their First Supplemental Memorandum on June 15, 2020, the settlement administrator received and forwarded to the parties' counsel five (5) additional requests for exclusion that it received on or after June 15, 2020.[4] Those five (5) new opt-out requests are attached to the Second Supplemental Declaration of Cameron R. Azari, Esq. on Implementation and Adequacy of Settlement Notices and Notice Plan ("Azari 2nd Supp. Decl.") as Attachment 1. The exclusion requests were required to be postmarked by June 8, 2020 in order for them to be considered timely. It appears that the opt-out requests of Sean Carey, Diana Carey and Diana Kelpin may have been postmarked on June 9, 2020.[5] However, Plaintiffs recommend the Court accept these potentially untimely exclusion requests; Plaintiffs understand Defendant has no objection to this recommendation. In the event that the Court agrees to do so, Plaintiffs herewith submit a Second Amended [Proposed] Final Order and Judgment that includes the five (5) newly-received opt-out requests in the Exhibit A attached thereto.

III. THE ADDITIONAL OBJECTIONS SHOULD ALSO BE OVERRULED

In Plaintiffs' First Supplemental Memorandum, Plaintiffs demonstrated why all of the 28 objections submitted as of June 12, 2020 should be overruled. The four (4) additional objections received since then should also be overruled or disregarded.

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[3] The parties still have not received any objections to the requested Class Representative Awards.

[4] The settlement administrator received seven (7) additional requests for exclusion, but Bricio Delgado's and Sacramento Delgado's exclusion requests are counted as one request and Sean Carey's and Deanna Carey's exclusion requests are counted as one request because each couple is named together on the same contract.

[5] Sean Carey, Diana Carey and Diana Kelpin used one envelope to send all of their forms. The postmarked date on their envelope is difficult to read. It may have been postmarked on June 9, 2020, one day late.

A. Ana Menses' Objection Should Be Disregarded as Untimely or, Alternatively, Overruled

Ana Menses' objection is postmarked on June 11, 2020 and is therefore untimely and on that basis should be rejected. *See* Azari 2nd Supp. Decl., Attachment 2 at 2.

Even if considered by the Court, however, Ms. Menses' objection should be overruled because it takes issue with the HERO program generally but does not address the Settlement (other than to say "I object to the settlement"). While Ms. Menses' frustration with Renovate America's alleged false claims and lack of disclosure of fees is certainly understandable, her objection is not valid and should be rejected by the Court. *See Dandan Pan v. Qualcomm Inc.*, No. 16-cv-01885-JLS-DHB, 2017 U.S. Dist. LEXIS 120150, at *31 (S.D. Cal. July 31, 2017) ("generalized objections are insufficient to bar final approval"). *See also* Plaintiffs' First Supplemental Memorandum at 3-4.

Like many of the objections Plaintiffs addressed in their First Supplemental Memorandum, Ms. Menses' objection does not take issue with the fairness of the Settlement except in very general terms not sufficient here. Moreover, to the extent Ms. Menses believes that the Settlement does not sufficiently address and rectify the undisclosed fees, she had the opportunity to opt out, as 45 other Settlement Class members have done, and bring her own litigation. *See Dandan Pan*, 2017 U.S. Dist. LEXIS 120150, at *31-32 ("to the extent that any of the Objectors feel that the Settlement Agreement does not adequately address their specific circumstances, the more appropriate course of action is for these Objectors to opt out of the class, rather than bar final approval of a settlement where 3,466 of 3,483 class members find the Settlement to be in their best interest.") (citing *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 577 (9th Cir. 2004)) (affirming final approval where approximately 0.61% of class members either opted out or objected).

B. Marlene Swenson's Objection Should be Overruled

Ms. Marlene Swenson objects to the proposed settlement as purportedly unfair because: (1) she supposedly "did not get any notice of this class action or the settlement;" (2) she claims "the maximum amount [she] could recover is nowhere near enough to help [her] with [her] mortgage;" and (3) supposedly "it releases everyone [she] could have a claim against including the contractors who took advantage of [her]." *See* Azari 2nd Supp. Decl., Attachment 2 at 14-16. These objections

are unfounded and should be overruled.

First, Ms. Swenson's claim that notice was inadequate is meritless. Her objection to the notice program is based entirely upon the following: (1) she does not use email regularly; (2) she has "no idea if anyone emailed [her] notice of this settlement;" (3) because she is not in contact with her estranged husband, she has "no idea if [he] received notice of this settlement;" and (4) she does not think anyone ever communicated with her husband about the PACE program via email because, as far as she knows, all of the paperwork her husband received was either delivered in-person or by regular postal mail. However, Ms. Swenson and her estranged husband, Lowell Swenson, appear together on the Class Member list with the same address as that listed on Ms. Swenson's objection form. *See* Azari 2nd Supp. Decl., ¶ 10. Mr. and Mrs. Swenson are counted as one Class Member because they were named together on the same contract. *Id*. Lowell Swenson's email address also appears on the list, and the administrator sent notice to each of the email addresses on the Class Member list. *See* Supplemental Declaration of Cameron R. Azari, Esq. on Implementation and Adequacy of Settlement Notices and Notice Plan, filed on June 15, 2020 ("Azari Supp. Decl."), ¶ 12. The administrator also sent notice packets by first class mail to all Class Members where the email notice was returned as not deliverable. *See* Declaration of Cameron R. Azari, Esq. on Implementation and Adequacy of Settlement Notices and Notice Plan, filed on May 26, 2020 ("Azari Decl."), ¶ 14. Therefore, if the email notice to Mr. Swenson had come back as undeliverable, Mr. Swenson would have received a notice packet by mail at the address listed on Ms. Swenson's objection form. Therefore, it is reasonable to assume that Mr. Swenson received notice of the Settlement by email. Plaintiffs are not required to ensure actual notice to every Class Member, although Ms. Swenson appears to have received actual notice since she objected. The best notice practicable under the circumstances is all that is required. *See* § III.C.2., *infra*.

Moreover, Ms. Swenson's complaint that she will not recover enough to help her with her mortgage payment is essentially an objection that her portion of the Settlement Fund is not large enough. However, courts have consistently held that merely objecting on the basis that a Settlement provides too little benefit is not a valid objection. *See, e.g.*, *Vargas v. Ford Motor Co*.,

No. CV 12-08388-AB (FFMx), 2017 U.S. Dist. LEXIS 177149, at *9 (C.D. Cal. Oct. 18, 2017) ("Simply wanting a more favorable settlement is not a sufficient basis for an objection to a class action settlement that is otherwise fair, adequate, and reasonable"). *See also* Plaintiffs' First Supplemental Memorandum at 4-5.

Finally, Ms. Swenson objects that the release is too broad because it releases the contractors who took advantage of her. However, the release was narrowly-tailored, in conformance with this Court's Case Management Order #1 entered in this case. Moreover, the only claims that will be released by the Settlement are those that were asserted in the operative complaints in these cases or that could have been asserted based upon the facts alleged in those complaints. Ms. Swenson's concern, therefore, that this Settlement will release her claims against the contractors for work they performed on her house are unfounded. The Complaints in these coordinated cases do not bring claims related to the quality of the work done by the contractors. Therefore, those claims are not released by the Settlement. Ms. Swenson's objections should be overruled.

C. The Nonprofits' Objection Should be Disregarded as They Do Not Have Standing to Object as Non-Class Members and Their Objections are Otherwise Meritless

Four legal services organizations, the Public Law Center ("PLC"), University of California at Irvine Consumer Law Clinic ("UCI"), East Bay Community Law Center ("EBCLC") and Legal Aid Society of San Diego ("LASSD") (collectively, the "Nonprofits"), have submitted an objection, not as counsel on behalf of a Class Member, but on behalf of themselves. *See* Azari 2nd Supp. Decl., Attachment 2 at 5-11. They are admittedly not Class Members, and, therefore, do not have standing to submit an objection to this Settlement. They attempt to meet the standing requirements for litigants, which is inapplicable. But even if that standard were applicable here, they do not meet that standard either. They have not demonstrated that they share a common interest with Class Members, that the Settlement will cause them concrete injury or that Class Members are not being adequately protected by the Class Representatives and Class Counsel. The Court should therefore disregard entirely the objection. However, even if the Court were to consider the objection, none of the claims are valid or have any merit. The objection, if the Court even considers it, should therefore be overruled.

1. The Nonprofits Do Not Have Standing to Object

It is undisputed that the Nonprofits are not Class Members; therefore, they lack standing to object. Section 3.08 of the Settlement Agreement provides that ***Class Members*** may object.[6] Moreover, the applicable jurisprudence leaves no doubt that in order to have standing to object to a class action settlement, an objector must be a member of the class. *See Roos v. Honeywell Int'l, Inc*., 241 Cal. App. 4th 1472, 1485 (2015), *overruled on other grounds*. "[C]lass membership is an essential prerequisite for standing to object" because "[o]bjectors to a class settlement who are not members of the class typically cannot demonstrate standing—under either the federal case-or-controversy standard or under the state personal interest standard—because they will not be affected by the settlement." *Id*. (citing 4 Rubenstein, Newberg on Class Actions (5th ed. 2014) § 13:22, p. 353). *See also In re Equity Funding Corp. etc*., 603 F.2d 1353, 1360 (9th Cir. 1979) (because Chemical Bank was not a member of the plaintiff classes or otherwise a claimant to any portion of the settlement fund, it lacked standing to object); *Zepeda v. PayPal, Inc*., No. C 10-2500 SBA, 2017 U.S. Dist. LEXIS 43672, at *56 (N.D. Cal. Mar. 24, 2017) (objector who was "not a member of the [] Class" had "no standing to object."); *Parker v. Bowron*, 40 Cal. 2d 344, 353 (1953) ("Parker cannot give himself standing to sue by purporting to represent a class of which he is not a member."). Furthermore, the California Rules of Court provide that notice is to be given to ***class members*** so that ***class members*** may have an opportunity to object. *See* California Rules of Court, rule 3.769(f) ("If the court has certified the action as a class action, notice of the final approval hearing must be given to the ***class members*** in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for ***class members*** to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.") (emphasis added). Because the Nonprofits are not Class Members, the Court should disregard their objection.

The Nonprofits cite an inapposite case, *People ex rel. Becerra v. Superior Court*, 29 Cal. App. 5th 486, 499-500 (2018), to argue that they have standing to object. The standards set forth in *Becerra* apply to "litigants" not objectors to settlements. *See id*. at 499 ("As a general rule, a third

[6] *See* Joint Decl., Ex. A at 9.

party does not have standing ***to bring a claim*** asserting a violation of someone else's rights.") (emphasis added, internal quotations and citations omitted); s*ee also Nat'l Solar Equip. Owners' Ass'n. v. Grumman Corp*., 235 Cal. App. 3d 1273, 1282 (1991) (unnamed class members are not the same as named parties). Even if the standards applicable to litigants and articulated in *Becerra* were applicable to objectors, however, the case does not support the Nonprofits' argument that they have standing. The court in that case held that a group of doctors and a professional organization that promotes ethical standards in the medical profession (collectively, the "Ahn parties") could not sue on behalf of the doctors' terminally ill patients to challenge the constitutionality of the End of Life Option Act, Health & Safety Code §§ 443-443.22. The Court found the Ahn parties lacked third party standing because they and the persons they sought to represent lacked a community of interest, and that they lacked personal standing because their claims of injury were too attenuated, conjectural or hypothetical. *Becerra*, 29 Cal. App. 5th at 499-503. Here, too, the Nonprofits' claims that they hold common interests with Class Members, that the Settlement causes them injury, and that Class Members do not have the ability to protect their own interests are unsubstantiated, too attenuated, conjectural and hypothetical and lack merit.

First, the fact that the Nonprofits are legal services providers who have received grant money from the State Bar of California and help low-income people, many of whom do not speak English, with PACE disputes or cases against or involving Defendant Renovate America, Inc. does not mean that they hold common interests with Class Members such that they would have standing to litigate on their behalves. The Nonprofits do not claim to have entered into financing contracts with Defendant. That they may provide legal services to people who have entered into such financing contracts does not mean they share a common interest with their clients, just as a law firm that represents a client does not thereby share a common interest with the client such that it is entitled to sue as a named plaintiff on behalf of its client. Indeed, it is not one of their clients making the objection—it is the Nonprofits themselves, which have suffered no injury at the hands of the Defendant. The Nonprofits' interest is in retaining whatever grant money they have been given by the State Bar of California. Class Members do not share that same interest and it is far too attenuated to satisfy the test. The Nonprofits therefore cannot possibly share a common interest

with Class Members.

Second, the Nonprofits' claim that they have standing because the Settlement will allegedly cause them injury is meritless. The possibility of decreased funding or increased burden in determining whether their clients' particular claims are released by the Settlement are too attenuated and speculative to meet the requirement that they suffer "a distinct and palpable injury in fact." *Id*. at 499 (internal quotations and citations omitted). "The party must be able to demonstrate that he or she has some . . . beneficial interest[7] that is concrete and actual, and not conjectural or hypothetical." *Id*. at 496 (internal quotations and citations omitted). The Nonprofits are not Class Members and so they are not even releasing any claims in the Settlement. Like the Ahn parties in *Becerra*, the Nonprofits here fail to articulate an actual and distinct injury that they will suffer if the Settlement is approved.

Third, the Nonprofits have failed to demonstrate that Class Members have "some hindrance [in their] ability to protect [their] own interests." *Id.* at 500. The Nonprofits claim to be aware that "the majority of Class Members do not have representation or even an understanding of this class action" without attempting to substantiate that assertion. Plaintiffs, who are Class Members, do share common interests with all Class Members and were therefore appointed as Class Representatives for the very purpose of protecting Class Members' interests. Moreover, Plaintiffs' counsel were appointed as Class Counsel to also protect Class Members' interests. The Nonprofits do not directly challenge the adequacy of the Class Representatives or Class Counsel, but vaguely claim that they "can be better advocates" for Class Members because they have a "close relationship" to some of them (who they do not identify) and are in a "much better position to protect Class Members' interests," but do not explain how or why. Rather, "[c]ourts have recognized that for groups with disadvantages such as a limited understanding of English, . . . the class action mechanism is a superior way of pursuing relief." *Kerr v. Kaiser Found. Health Plan*, No. BC556863, 2018 Cal. Super. LEXIS 3877, at *26 (L.A. Cty. Super. Ct. Jul. 24, 2018).

[7] A "beneficial interest" is a "special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." *Id*. at 496 (internal quotations and citations omitted).

Therefore, the Nonprofits' claims that Class Members do not have representation or an understanding of the Settlement are without merit.

Finally, the Nonprofits make many factual assertions that are completely unsupported by any evidence. For example, the Nonprofits claim that the majority of their clients (not the majority of Class Members)[8] do not speak English, that Class Members "likely" do not understand their rights, that Defendant and PACE administrators encouraged and/or allowed contractors to set up email addresses for Class Members in order to obtain signatures on documents and that "usually, the Class Member had never previously used email at all, did not actually receive any emails from PACE, and was never given direct access to the email address created by the contractor." However, the Nonprofits do not submit one iota of evidence to support their claims. While the Nonprofits claim that these facts were "demonstrated" in other cases, they do not explain how they were "demonstrated" in those cases as they appear to be only unproven allegations. As such, these baseless assertions should not be credited by the Court. *See Coordination Proceeding Special Title Rule 1550b Natural Gas Trust Cases*, JCCP Nos. 4221, 4224, 4226, 4228, 2006 Cal. Super. LEXIS 1321, at *156 (San Diego Cty. Super. Ct. July 20, 2006) ("Unsubstantiated allegations are insufficient to deny approval of the settlement."). Given that the documentation for the PACE contracts at issue was in English, there is no basis to suggest that the settlement notice should not have been in English.

In sum, the Nonprofits are not Class Members and do not meet the standing requirements of a litigant who is permitted to sue on behalf of someone else's rights. They therefore lack standing to object and the Court should disregard their objection. *See Sierra Club v. Morton*, 405 U.S. 727, 732 (1972) ("the question of standing depends upon whether the party has alleged such a 'personal stake in the outcome of the controversy,'. . . as to ensure that 'the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution.'") (citations omitted).

[8] Defendant has no information regarding the ability of Class Members to understand English, but the documentation necessary to enter into a PACE Assessment was in English. *See* Joint Decl., Ex. D (Newman Decl.), ¶ 3.

However, even if the Court were to consider the Nonprofits' objections, they lack merit, as demonstrated below.

2. The Notice Was Adequate

The Nonprofits argue that the notice was not adequate because it was only written in English and because it was only sent by email to most Class Members. However, the Nonprofits do not cite to any authority holding that notice cannot be sent primarily by electronic mail or that it must be provided in multiple languages. To the contrary, courts often approve of notice that was provided by email rather than U.S. mail and written only in English. *See, e.g., Gray v. Beverages & More, Inc.*, No. CGC-09-493678, 2015 Cal. Super. LEXIS 14251, at *7 (San Francisco Cty. Super. Ct. Sept. 21, 2015) ("The Notice Plan set forth in the Court's Preliminary Approval Order provided for giving notice to the class members by email;" the notice plan "constituted the best notice practicable"); *Law Enforcement Officers v. J2 Web Servs.*, BC555721, 2017 Cal. Super. LEXIS 8364, at *6-7 (L.A. Cty. Super. Ct. Apr. 24, 2017) ("[N]otice by email was appropriate because all Settlement Class Members signed up for their j2 service online and provided their email address. Further, j2's primary means of communicating with Settlement Class Members while they are (or were) customers is to contact them via email. Therefore, providing Settlement Class Members notice of the Settlement via email constitutes the best notice practicable under the circumstances."); *Gil v. SF Peninsula GME, LLC*, No. CIV498539, 2014 Cal. Super. LEXIS 9178, at *8 (San Mateo Cty. Super. Ct. Jan. 27, 2014) (final approval granted to settlement where notice was provided only in English); *Chavez v. Netflix, Inc.*, No. CGC-04-434884, 2006 Cal. Super. LEXIS 1385, at *74 (San Francisco Cty. Super. Ct. July 28, 2006) (final approval granted to settlement where notice was "written in plain English and . . . readily understandable by Class Members.").

Due process requires that reasonable notice of the settlement be given to all potential class members. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974). Reasonable notice is understood to be the best notice that is practicable under the circumstances. The notice may be "by one or more of the following: United States mail, electronic means, or other appropriate means." Fed. R. Civ. P. 23(c)(2)(b). Where emails were given by current or recent customers to a defendant with the expectation that they would be communicated with via email, sending notice in the first

instance by email is often preferable, as there will an expectation to receive communication from or related to the defendant via email. *See* Azari Decl., ¶ 10. This is the case here, as evidenced by the high number of email addresses Defendant possesses. *Id.* Furthermore, the Settlement Administrator estimates that this notice campaign reached more than 90% of the Class Members and believes that the combination of email and mailed notice in this case satisfies due process. *See id.*, ¶ 22.

Furthermore, "notice of the final approval hearing must be given to the class members in the manner specified by the court." California Rules of Court, rule 3.769(f). The notice methods utilized here complied with the direction of the Preliminary Approval Order. *See* Joint Decl., Ex B, ¶ 9. Notice was provided as set forth in the Settlement Agreement. *See* Azari Decl., ¶¶ 6-21. Consequently, the Settlement meets the requirements for reasonable notice in order to obtain final approval.

3. The Settlement is Fair, Reasonable and Adequate

The Nonprofits next argue, without evidence, that because the total owed on a PACE assessment in Orange County is allegedly $48,000.00 and homeowners usually see an unexpected $4,000.00 per year increase in their property taxes as a result of the PACE assessment, the Settlement is not adequate because Class Members stand to receive at most a payment of $242.61. But, there is little question that the Settlement meets the pertinent standards of fairness because: "(1) the settlement [was] reached through arm's-length bargaining; (2) investigation and discovery [were] sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996) (citations omitted). Courts have consistently held that merely objecting on the basis that a Settlement provides too little benefit is not a valid objection. *See, e.g., Vargas*, 2017 U.S. Dist. LEXIS 177149, at *9. *See also* Plaintiffs' First Supplemental Memorandum at 4-5.

Moreover, Plaintiffs' operative Complaints focus on specific items contained in the financing contracts of every Settlement Class member that Plaintiffs allege were deceptive. The Complaints were not a general condemnation of the HERO program. For any other issues with the HERO program, each Settlement Class member retains the right to pursue litigation regarding those

issues to the fullest extent of the law while still remaining a Class Member.

Finally, the Nonprofits' objection does not explain why they believe the fairness of Class Member payment amounts should be measured against the entire amount of the average PACE assessment. As detailed in the Final Approval Motion and Fee Motion, the estimated payments to Class members are reasonable and in line with other class settlements. *See* Final Approval Motion at 9-10; Fee Motion at 5-6. *See also, e.g., Wershba v. Apple Computer Inc.*, 91 Cal. App. 4th 224, 250 (2001), *overruled on other grounds* ("A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable.").[9] Moreover, the total Settlement Fund is more than the Settlement Class would likely receive if successful at trial. *See* Final Approval Motion at 10.

4. The Release is Narrowly Tailored

The Nonprofits' final erroneous argument is that the Settlement provides that Class Members are giving up the right to sue not only Defendant but also "any individuals or entities that held themselves out as acting as Defendant or under Defendant's authority," including contractors, contractors' employees, solicitors and solicitors' agents. However, this argument stems from a fundamental misreading of the release. In fact, contrary to the Nonprofits' misunderstanding of the terms used, the parties purposely released "Renovate America, Inc." and not "Renovate," the latter of which is defined more broadly. *Compare* Settlement Agreement at ¶ 5.01 (releasing only "Renovate America, Inc.") *with* ¶ 1.22 (defining "Renovate" broadly and including "Renovate America, Inc." in that definition). While the broader term "Renovate" is used elsewhere in the Settlement Agreement, it is intentionally not used in the release because the parties were complying with CMO #1, and the release mirrors word-for-word the language in CMO #1 and is appropriate. *See* CMO #1 at G.6. In addition, the release in the Settlement Agreement, as demonstrated above,

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

was narrowly-tailored to only release claims that were brought in the operative Complaints, or that could have been brought based upon the facts alleged therein. *Id.* The allegations did not relate to the work the contractors performed, and, as such, those claims are not released by this Settlement.

Finally, if Class Members are unhappy with the Settlement and wish to preserve their right to sue Defendant for the claims at issue, or that could have been brought in this litigation, they had the option of opting out of the Settlement as 45 other people did.

D. The Late Objection of Amy Bergen Zerofski Should be Deemed Untimely and Lacks Merit

The parties received notice of a late objection by Amy Bergen Zerofski on June 29, 2020, twenty-one (21) days after the objection deadline. *See* Azari 2nd Supp. Decl., Attachment 2 at 18. Ms. Zerofski argues that the objection deadline was extended by certain orders of the Judicial Council and Riverside Superior Court related to the COVID-19 crisis, but cites to no specific provisions applicable here. Indeed, none are.[10] Because the objection is untimely, the Court should disregard it.

Moreover, even if the Court considers the Zerofski objection, the Court should overrule it because it lacks merit.

First, Ms. Zerofski's claim that she did not receive notice of this Settlement is not well-taken. The Settlement Administrator timely sent Ms. Zerofski notice of the settlement by email (bergen@seacamp.com) and it did not bounce back as undeliverable. *See* Azari 2nd Supp. Decl., ¶ 10. Her email address has not changed. *See* https://www.seacamp.com/team/ (last visited June 29, 2020).

Second, the release is narrowly-tailored to only release claims that were brought or could

[10] The only order that Plaintiffs' counsel could locate that even comes remotely close to applying here is General Order No.: 2020-29, Fifth Implementation of Emergency Relief Authorized Pursuant to Government Code Section 68115, paragraph 1, which provides that "[f]or purposes of computing time for ***filing*** papers ***with the Court*** under Code of Civil Procedure §§12 and 12a, from 5/26/2020 to 6/24/2020, inclusive, are deemed holidays . . . ." If objectors were required to file their objections with the Court, they would have had until June 25, 2020, instead of June 8, 2020. However, objectors were required to ***mail*** their objection to the settlement administrator, not ***file*** it, and so this Order does not apply. Even if it did, however, Ms. Zerofski did not serve her objection until June 29, 2020, and so it is late in any event.

have been brought based upon the facts alleged in the operative Complaints, and Plaintiffs' operative Complaints do not bring claims for representations about the tax deductibility of the improvements. Therefore, any claims about misrepresentations concerning the tax deductibility of the costs of the improvements are not released by the Settlement, and Ms. Zerofski is free to file a lawsuit against her contractor, or anyone else, about this issue.

Third, if Ms. Zerofski was concerned about this Settlement potentially releasing her claims for what she views as inadequate compensation, she was free to exclude herself from it, as 45 others have done, and pursue those claims on an individual basis.

IV. CONCLUSION

The objections still amount to a minuscule percentage (0.04%) of the Class and none presents a valid reason for denying final approval of the Settlement. *See Dandan Pan*, 2017 U.S. Dist. LEXIS 120150, at *30 ("the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class action settlement are favorable to the class members.") (internal quotations omitted). For this reason and the others provided in this Second Supplemental Brief, together with the reasons stated in previous submissions, Plaintiffs reiterate their request that the Court grant the Final Approval Motion and Fee Motion in all respects.

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