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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ZENIA OCANA, et al.,

Plaintiffs,

v.

RENEW FINANCIAL HOLDINGS, INC., et al.,

Defendants.

Case No. BC701809

Related Case No. BC701810

Honorable William Highberger

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

[*Filed concurrently with Declaration of Michael M. Maddigan; Declaration of Stephanie Carroll; and [Proposed] Order Granting Preliminary Approval of Class Action Settlement*]

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 16, 2024 at 10:00 a.m., or as soon thereafter as the matter may be heard, in Department 10 of the above-entitled Court, Plaintiffs Zenia Ocana, Juan Ocana Lau, Violeta Senac, Maria Alvarez, Reginald Nemore, Aurelia Millender, and Allen Bowen, individually and on behalf of all others similarly situated, (collectively, "Plaintiffs") will move for the Preliminary Approval of the Class Action Settlement and for Certification of the Provisional Settlement Class in this matter. In addition, Plaintiffs will ask this court to issue orders directing the dissemination of notice to the Settlement Class and setting a hearing on final approval of the settlement.

This motion is based upon Rule 3.769 of the California Rules of Court, on California law governing class certification and class settlements, and on the facts set forth in this motion and the accompanying supporting papers.

This motion is further based upon (i) this Notice of Motion, (ii) the accompanying Memorandum of Points and Authorities, (iii) the concurrently filed Declarations of Stephanie Carroll and Michael M. Maddigan, and (iv) upon such further evidence and argument as may be presented prior to or at the time of hearing on the motion.

Dated: December 18, 2023

HOGAN LOVELLS US LLP

By 

Michael M. Maddigan
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In 1775, the famous essayist and moralist Samuel Johnson commented that "hell is paved with good intentions." This case illustrates that, nearly 250 years later, Johnson's famous dictum remains true.

Apparently seeking a way to bring clean energy and water-efficient home improvements to homeowners who otherwise could not afford them, the State of California authorized, and the County of Los Angeles implemented, a Property Assessed Clean Energy ("PACE") program. While the intentions behind the PACE program may have been good, the results were hellish for thousands of Los Angeles County homeowners.

As a result of PACE "improvements," thousands of non-English speaking residents were pressured to sign complicated loan documents in English. Thousands of elderly homeowners were victimized by predatory lending practices. Thousands of low-income residents found themselves facing unaffordable tax assessments, enforceable by foreclosure. In the end, a program that was intended to be "green" led to grief instead. In the end, a program that was meant to save water instead led to rivers of free-flowing tears.

In this case, Plaintiffs challenged the PACE program and sought remedies for the thousands of Los Angeles County homeowners who were victimized through its implementation. After years of hard-fought litigation, Plaintiffs have reached a settlement with Defendants.

Through this settlement, Plaintiffs and the class they represent will obtain substantial and meaningful relief through a $12 million common fund. This common fund will be distributed based on criteria that provide greater relief to those Class Members that were most seriously victimized. In addition, through this settlement, the County promises not to reconstitute the now discontinued PACE program.

This settlement provides an excellent result for the Plaintiffs and the class. This settlement helps to remedy thousands of serious wrongs. Plaintiffs respectfully request that the Court approve the settlement.

II. SUMMARY OF THE LITIGATION

A. RELEVANT FACTUAL BACKGROUND

In 2008, the California legislature authorized PACE programs to be enacted by local governments. A.B. 811, 2008. The stated purpose of this authorization was to offer a means of financing energy efficient and water-conserving improvements, especially for people who could not access traditional financing.

Residential PACE programs are meant to operate as follows: (1) a government entity (typically a county, city, or joint powers authority) authorizes the sale of public improvement bonds for initial funding of the program; (2) a non-governmental entity called a "Program Administrator," usually a private business, administers the lending program for the government entity; (3) home improvement contractors solicit homeowners to enter into qualifying energy efficiency or water conservation projects financed by the PACE program; (4) homeowners voluntarily enter PACE Assessment Agreements with the government entity, which result in individual property tax assessments on their properties, financed by the public improvement bonds and serviced by the Program Administrators; and (5) the Program Administrators pay the contractors directly for the work and are reimbursed by the County from the property owners' tax payments.

These assessments, with interest and amortized over a term of five to twenty years, appear as line items on the homeowners' annual property tax bills. If a homeowner is unable to afford their PACE assessment, they face risk of foreclosure from their county tax collector, their mortgage holder, or both.

In 2015, the County of Los Angeles entered into agreements with Renovate America and Renew Financial, making them Program Administrators for the County's residential PACE program.

Under these agreements, Renovate America and Renew Financial agreed to provide "best in class protections for property owners from actions such as, including but not limited to, predatory lending, unscrupulous contractors and poor-quality assessment servicing." These "best in class protections" were to include: implementing a multi-faceted approach to consumer

protection; providing special protections for seniors; providing assistance in multiple languages; enforcing policies and procedures for compliance; and creating a "Consumer Protection Measures Plan."

Despite these promises, the Los Angeles County PACE Program, as administered by Renovate America and Renew Financial between 2015 and April 2018, utterly failed to offer even the most basic protections to property owners. Most glaringly, in underwriting the PACE assessments, Renovate America and Renew Financial did not consider whether a property owner had the ability to pay the assessment. As a result, the Los Angeles County PACE program put tens of thousands of people at risk of losing their homes due to loans they could not afford and that no responsible lender would make. Even worse, the Program Administrators allowed these predatory loans to be sold door-to-door by home improvement contractors and did not offer standardized disclosures of the costs and fees that other lenders are required to provide under lending disclosure laws and regulations. Finally, the Program Administrators failed to use the document and identity verification procedures standard in other loans secured by people's homes—as a result, the Los Angeles County PACE program was rife with fraud and forgery committed by the contractor salespeople.

In April 2018, a new California law took effect that required PACE Program Administrators to consider property owners' ability to pay their assessments. Renovate America reported to the federal Consumer Financial Protection Bureau that, as a result, its application approval rate dropped by 26%.[1]

In May 2020, the Los Angeles County Board of Supervisors voted to end the County's PACE Program. In doing so, the Supervisors specifically cited their concerns about inadequate consumer protections as a reason for the Program's termination. Despite the termination of the Program, however, thousands of homeowners[2] still are saddled with PACE assessments that were structured, sold, and underwritten in a predatory manner – assessments that continue to put their homes at risk.

[1] Renovate America subsequently sought bankruptcy protection in December 2020.

[2] Prior to the cancellation of the PACE program, and during the class period, more than 30,000 liens were originated in Los Angeles County.

B. RELEVANT PROCEDURAL BACKGROUND

On April 18, 2018, Plaintiffs Zenia Ocana, Juan Ocana Lau, Violeta Senac, Maria Alvarez, and Neptali Sical filed a class action lawsuit against the Defendants Renew Financial Holdings and Renew Financial Corp. II (collectively "Renew") and the County of Los Angeles. The same day, Plaintiffs Reginald Nemore, Violeta Senac, Aurelia Millender, and Allen Bowen filed a class action lawsuit against Defendant Renovate America, Inc. ("Renovate") and the County of Los Angeles.

Both lawsuits, which were formally related, sought to enforce Defendants' contractual obligations to provide "best in class" consumer protections and special protections for elders, to hold Defendants accountable for financial elder abuse, and to void contracts that are unenforceable as a matter of law and public policy. Plaintiffs filed these lawsuits on behalf of themselves, and similarly situated homeowners, to relieve themselves of the burden of unaffordable financing that threatened their ability to remain in their homes. Principally, Plaintiffs sought cancellation of existing PACE assessments and damages.

Defendants demurred, and Defendants Renovate and Renew also sought to compel arbitration. Defendants' demurrers were overruled in large part. Defendants' motions to compel arbitration were denied, and the denial was upheld on appeal.

On January 24, 2019, Plaintiffs filed their First Amended Complaints. The County demurred again, arguing that Plaintiffs' claims were subject to administrative exhaustion. Specifically, the County argued that Plaintiffs were required to file administrative claims seeking cancellation of their PACE assessments with the County Assessment Appeals Board ("AAB") before filing suit.

The Court sustained the County's demurrer and stayed the cases pending administrative exhaustion. Plaintiffs then filed claims with the AAB on behalf of themselves and all others similarly situated. Eight months after Plaintiffs filed their claims with the AAB, Plaintiffs received summary recommendations on their claims from a different County department. All but two of the Plaintiffs received denials.

In August of 2020, Plaintiffs filed Second Amended Complaints, alleging they had

exhausted the County's administrative process. On August 20, 2020, Defendants filed Motions to Strike Plaintiffs' Class Allegations, arguing that each Class Member individually had to exhaust the County's administrative process.

Because Defendants based their Motions to Strike on the County's administrative process, Plaintiffs obtained discovery related to that process, including depositions of the County's person-most-qualified. Plaintiffs then filed oppositions to Defendants' Motions to Strike. Because the County withheld certain responsive documents and communications related to the administrative process as privileged, Plaintiffs also moved to compel production of all documents and communications related to the administrative process.

On March 26, 2021, the Court granted Plaintiffs' Motion to Compel, holding that the County had waived all privileges over documents related to the administrative process. The County sought writ review by the California Court of Appeal, which was denied. The County then sought review by the California Supreme Court, which declined. Following summary denial of its appeals, the County produced the previously withheld documents related to the administrative process.

Plaintiffs then filed additional Motions to Compel against the County and Renew seeking production of additional documents related to the PACE program itself.

With Defendants' Motions to Strike and Plaintiffs' Motions to Compel pending, on November 1, 2021, Plaintiffs, the County, and Renew participated in a daylong mediation session before Anthony Piazza, an experienced complex litigation mediator. Through the mediation, the parties reached an agreement to settle the matter in principle. The terms of the agreement later were finalized in the Settlement Agreement, which, after an extended process, ultimately was approved by the Los Angeles County Board of Supervisors on November 7, 2023. The parties now ask this Court to preliminarily approve their settlement.

C. THE PROPOSED SETTLEMENT

The detailed terms of the Settlement are embodied in the Settlement Agreement, attached as Exhibit A to the Declaration of Michael M. Maddigan ("Maddigan Decl."). As described below, in exchange for Plaintiffs' release of claims, this Settlement will provide relief to the Class

Members through a $12 million common fund. The common fund will be distributed based upon a tier-system. The tier-system will utilize objective criteria to determine the appropriate amount of monetary relief awarded to each Class Member. The Class Members will receive adequate notice from the Settlement Administrator, as defined by the Settlement Agreement, through First Class Mail. Counsel for the class will ask the Court to award up to (but no more than) $2 million in attorney's fees and costs, ensuring that – even after accounting for the estimated costs of settlement administration – at least $10 million will be available for distribution to Class Members.

1. The Proposed Class

The Plaintiffs represent the interests of two classes, as defined in their respective Second Amended Complaints. These classes are:

- **The "*Ocana* Class"**: The "PACE Class" consists of all homeowners who purportedly entered into a Renew Financial Assessment Contract with Los Angeles County between March 1, 2015 and March 31, 2018, where that assessment contract has been recorded as a lien against the homeowner's real property; and

- **The "*Nemore* Class"**: The "PACE Class" consists of all homeowners who purportedly entered into a Renovate America Hero Assessment Contract with Los Angeles County between March 1, 2015 and March 31, 2018, where that assessment contract has been recorded as a lien against the homeowner's real property.

2. Relief for Class Members

The Defendants will pay Plaintiffs Twelve Million Dollars and Zero Cents ($12,000,000.00) to establish a common fund on behalf of Plaintiffs and the Class Members. This common fund will be distributed based on a per claim basis. A claims-based settlement distribution is appropriate here where the relief will vary based upon the harm suffered by the individual class member. The evaluation of harm will be made utilizing an objective criteria-based tier system.[3] The general criteria upon which distribution will be based are:

Level One (All Class Members): $500,000 of the Settlement Fund shall be distributed on an equal pro-rata basis to every Class Member who submits a claim based on a PACE lien.

[3] The Settlement Administrator will engage in an extensive media campaign, in English and Spanish, in addition to providing notice through mail. In addition, the Settlement Administrator will establish a Settlement website in order to bolster claims rates. At this time, Plaintiffs are unable to provide an estimate of anticipated claims rates.

For example, if 1,000 Class Members submit claims based on 1,000 PACE liens, then each Class Member will receive $500 from this "Level One" portion of the distribution. Similarly, if 10,000 Class Members submit a claim, then each Class Member will receive $50 from this Level One portion of the distribution.

In addition, certain Class Members shall be eligible for additional compensation according to the criteria described in the Level Two, Level Three, and Level Four sections below. Those additional amounts will be paid based on the amounts remaining in the $12 million Settlement Fund after subtracting the $500,000 Level One distribution, the costs of settlement administration, and any attorneys' fees and costs the Court may award.

Level Two: Titleholders who had a debt-to-income ratio, after consideration of the PACE assessment, of greater than 50% at the time the PACE assessment was entered, or who meet the residual income test, as described in paragraph 152 of the Second Amended *Ocana* Complaint.

Level Three (Claimants must meet Level Two Criteria) (Claimants receive 1x-2x Level Two): Titleholders who were 65 years old or older at the time of their PACE assessment, or Titleholder(s) with limited English proficiency who only received documents in English.

Level Four (Claimants must meet at least one Level Two criteria) (Claimants receive 2x-3x Level Two): Titleholders who had a debt-to-income ratio, after consideration of the PACE assessment, of greater than 100% at the time the PACE assessment was entered.

No Class Member shall receive more than the amount needed to pay-off their existing PACE assessments at the time that Class Member submits a claim (or claims) unless and until (i) all Class Members who submit claims have received from the settlement common fund the entire amount to which each Class Member is entitled, up to the amount of the Class Member's remaining PACE assessments at the time the Class Member submitted a claim under this settlement, and (ii) funds remain in the settlement common fund after the payment of those claims.

In addition to this criteria-based tier system to distribute the award, each named Class representative shall receive an award of $12,500 from the settlement common fund. This Class

representative award is appropriate because the class representatives spent considerable time assisting Class Counsel, providing information, responding to questions, and, in a few instances, attending court proceedings in this matter. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles,* 186 Cal.App.4th 399, 412 (2010).

3. Released Claims

As a result of this Settlement, Plaintiffs agree to release the County and Renew from the causes of action alleged in both the *Nemore* and *Ocana* Complaints. The Complaints allege causes of action for (1) Financial Elder Abuse (against Renovate), (2) Financial Elder Abuse (against County), (3) Breach of Contract, (4) Declaratory Relief Re Unlawful Contract (California Civil Code § 1670.5), (5) Declaratory Relief Re Unlawful Contract (California Civil Code § 1668), (6) Violation of Business & Prof. Code § 17200, (7) Cancellation of Taxes, (8) Declaratory Relief, and (9) Refund (against County). However, the Settlement Agreement does not release or in any way affect the claims asserted against Renovate in the *Nemore* Complaint.

4. Notice

The Class Members will be provided notice by the Settlement Administrator. The notice will be provided in English and Spanish, but all other claims forms will be available in multiple languages on the Class Website. The notice will provide the URL to the settlement website, which will be established after the entry of the Preliminary Approval Order. This website will be available in at least English and Spanish. No more than 30 days after the entry of the Preliminary Approval Order, the Settlement Administrator will send mail notices using first-class mail to a list of last known addresses of each person in the Class. This list will be provided by Defendants no later than 20 days after the entry of the Preliminary Approval Order. Prior to mailing, the Settlement Administrator will update the mailing list by use of the National Change of Address Registry. If the mail is returned, the Settlement Administrator will work diligently to find an alternate address and will re-mail the notice promptly.

5. Attorney's Fees

Counsel for the Plaintiffs and the Class will apply to the Court for an award of attorney's fees and costs, to be paid from the Settlement Fund, in an amount not to exceed a total of $2

million in fees and costs. The amount of fees Class Counsel will seek is significantly less than the amount to which they would be entitled if their fees were calculated on "lodestar" basis without any multiplier.

III. ARGUMENT

A. THE SETTLEMENT CLASS SHOULD BE CERTIFIED.

The Court should certify the Settlement Class because there is (1) an ascertainable and sufficiently numerous class and (2) a well-defined community of interest among the members of that class. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1021 (2012). Certification is appropriate here because there are "substantial benefits from certification that render proceeding as a class superior to the alternatives." *Id.* at 1021. Furthermore, because certification of the Settlement Class will conserve the time and judicial resources of the Court, and the judicial system "substantially benefits by the efficient use of its resources, class certification[] should not be denied[.]" *See Richmond v. Dart Indus., Inc.*, 29 Cal.3d 462, 474 (1981); *Neary v. Regents of Univ. of Cal.*, 3 Cal.4th 273, 277-281 (1992);

1. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous.

The proposed Settlement Class is both ascertainable and sufficiently numerous. The California Supreme Court recently reiterated that an ascertainable class requires only that it be "defined in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible when that identification becomes necessary." *Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 967 (2019) (citations omitted). This standard is met when "the class definition provide[s] a basis for class members to self-identify." *Id.* Critically, an ascertainable class does *not* require that class members "must be identifiable by reference to official records." *Id.* at 981 (citations omitted).

Here, the Class members are easily identifiable through common and objective characteristics. Each Class member had a PACE lien recorded on their property through the County program during the class period and each therefore is identifiable from records related to the lien recordation process. In addition, Class members have the option to self-identify as having had a PACE assessment contract recorded as a lien against their real property (a self-

identification that can be confirmed through records). *See Noel*, 7 Cal.5th at 967 (finding that ascertainability is satisfied when "the class definition provide[s] a basis for class members to self-identify.").

In addition, the class is sufficiently numerous. "To be certified, a class must be 'numerous' in size such that it is 'impracticable to bring them all before the court.'" *Hendershot v. Ready to Roll Transp., Inc.*, 228 Cal.App.4th 1213, 1222 (2014) (citing to Cal. Civ. Pro. § 382). While there is no set number required as a matter of law for the maintenance of a class action, the California Supreme Court has upheld a class of as little as ten members as sufficient to satisfy the numerosity requirement. See *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981).

Here, the Settlement Class easily meets the numerosity threshold for relief. Throughout the class period, Defendants recorded approximately 30,000 PACE assessments on homeowners' properties. Plaintiffs' proposed "*Nemore*" and "*Ocana*" classes include thousands of individuals. See Maddigan Decl., ¶ 3. Public Counsel alone has been in contact with 151 putative class members, with 209 liens between them. See Declaration of Stephanie Carroll, ¶ 5 ("Carroll Decl."). Accordingly, the class is sufficiently numerous.

2. <u>The Settlement Class Members Share A Well-Defined Community of Interest</u>.

The "community of interest" requirement "embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Brinker*, 53 Cal.4th at 1021. Here, the Settlement Class satisfies all three factors.

First, "the 'ultimate question' the element of predominance presents is whether 'the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.'" *Id.* (quoting *Collins v. Rocha*, 7 Cal.3d 232, 238 (1972)). "As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." *Id.* at 1022.

Plaintiffs' claims are based upon (1) the Administration Contract between Defendant County of Los Angeles and each of its PACE administrators, (2) the underwriting process for approving PACE assessments, and (3) the Assessment Agreement between Defendant County and homeowners. These claims can be established through common proof because all three are uniform for all class members. Only one Administration Contract governed each PACE administrator's implementation of the PACE program. Every homeowner went through the same underwriting process. And each homeowner signed a standard Assessment Agreement, which then was recorded on their property. Thus, while homeowners may have had varied experiences with the home improvement contractors that performed the work on their property, the improvement work itself and those variable experiences are not the subject of Defendants' liability for Plaintiffs' class claims.

Second, the Settlement Class easily meets the typicality requirement. The "test of typicality" is merely whether "other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Martinez v. Joe's Crab Shack Holdings*, 231 Cal. App. 4th 362, 375 (2014), *as modified on denial of reh'g* (Dec. 3, 2014) (internal citation omitted). Here, Plaintiffs' claims are typical of the proposed classes as they are based on the same Administration Contract, underwriting processes, and Assessment Contract. Their claims are identical in nature to those suffered and continuing to be suffered by class members.

Third, "[u]nder the third prong of the community of interest requirement, the class representative must be able to represent the class adequately." *Caro v. Procter & Gamble Co.*, 18 Cal.App.4th 644, 669 (1993). Here, Plaintiffs' pro bono attorneys — Bet Tzedek, Public Counsel, and Hogan Lovells — are experienced in consumer litigation and class actions, and have vigorously pursued this class action on behalf of all class members. None of the Plaintiffs has any interest that conflicts with, or is antagonistic to, the interests of the proposed class.

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3. Substantial Benefits From Class Certification Make Proceeding As A Settlement Class Superior to the Alternatives.

In this matter, there are "substantial benefits from certification . . . [which] render proceeding as a class superior" to the alternative of individualized adjudications. *Brinker*, 53 Cal.4th at 1021. Certifying the class would allow for the claims of many to be resolved at once, "both eliminat[ing] the possibility of repetitious litigation and provid[ing] small claimants with a method of obtaining redress." *Richmond*, 29 Cal.3d at 469.

As described above, there are thousands of potential Class Members, which make joinder impracticable. *See id.* (finding joinder of a class of 2,600 impracticable). In addition to the significant and unnecessary burden to the courts that would be created by the prosecution of separate actions by individual class members, prosecuting such actions also would impose further financial hardship upon the class. Further, maintaining these individual and duplicative actions would create the possibility of inconsistent adjudications, risking the creation of incompatible rights within the Settlement Class.

Accordingly, Plaintiffs request an order certifying the Settlement Class.

B. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL.

Rule 3.769 of the California Rules of Court conditions settlement of a class action upon court approval. The settlement of a class action is warranted if the trial court determines that the settlement is "fair, adequate, and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (4th Dist. 1996). The Court has broad discretion in this determination. The Court may consider relevant factors, such as:

> "[T]he strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

This list of factors is not exclusive or "exhaustive and should be tailored to each case." *Id.* Where it is clear that the agreement is "not the product of fraud or overreaching by, or

collusion between, the negotiating parties, and that the settlement taken as a whole, is fair, reasonable, and adequate to all concerned," the Court's inquiry should be limited. *Id.* at 1802 (quotation omitted). Proposed class action settlements are presumed to be fair where: (1) the parties reached settlement after arms-length negotiations; (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. *Id.*

Although the number of objectors cannot be anticipated prior to the dissemination of the class notice, the proposed settlement satisfies the three other factors in this test. Here, as described above, the proposed settlement is the result of extensive negotiations and of a fair and impartial mediation process. Class Counsel is a team of experienced class action and consumer litigators from Bet Tzedek, Public Counsel, and Hogan Lovells. *See* Maddigan Decl. ¶¶ 6-7; Carroll Decl. ¶¶ 7-13. Prior to engaging in the mediation process, the parties vigorously litigated for nearly four years. *See* Maddigan Decl. ¶ 2; Carroll Decl. ¶ 6. Over this multi-year period, Plaintiffs and Defendants engaged in an investigation and discovery process. *See id.* Among other things, this process resulted in an exchange of documents regarding the County's purported administrative process to resolve PACE program issues. From these documents, Plaintiffs learned that the County did not have an administrative process to resolve Plaintiffs' issues prior to this action. Further, Plaintiffs' discovery efforts uncovered the fact that the administrative process created during this litigation lacked due process or legal adequacy because the process, among other things, failed to provide an opportunity for a hearing or sworn testimony. This information, and other facts developed through their multi-year investigation and discovery process, demonstrate that Counsel were able to act intelligently on behalf of the Class.

Plaintiffs' case on the merits is strong. Plaintiffs allege causes of action based on breach of contract, financial elder abuse, and violations of the Unfair Competition Law, among other things. This Court already has held that Plaintiffs have alleged sufficient facts to show: (i) standing as third-party beneficiaries to the Administration Contract; (ii) breach of contract for failure to provide protections to homeowners from predatory lending; (iii) that Defendants were engaged in financial elder abuse by encumbering homeowners' properties with liens when they

knew or should have known that the elder homeowners could not afford such liens; and (iv) that Defendants breached their contractual obligation to provide "special protections for seniors." *See* December 5, 2018 Minute Order. Defendants, however, are represented by skilled counsel at nationally recognized law firms. They have defended the case vigorously and likely would mount vigorous challenges to Plaintiffs' claims, particularly to Plaintiffs' ability to maintain this action as a class action in light of the allegedly disparate situations of the individuals who have PACE liens.

The strength of Plaintiffs' claims also must be balanced against the needs of the class. *See Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 129 (2008) (explaining that a settlement agreement must be a reasonable compromise given the merit of the claims, balanced with the risks and expenses of pursuing the litigation). The common fund contemplated by this settlement will provide meaningful and substantial financial relief to class members, many of whom will have the amount of their liens substantially reduced or even eliminated. Based on state-wide information published by the California Treasurer,[4] Class Counsel estimates (i) the total number of Renovate and Renew liens originated in Los Angeles County during the class period as approximately 32,000. Maddigan Decl. ¶5. In the Renovate bankruptcy, Renovate had approximately 73,500 lienholders who submitted approximately 51.4 million in claims.[5] If applied here, those percentages would result in the holders of the approximately 32,000 liens here submitting claims in the approximate amount of $22,400,000. Thus, it is evident that, in that scenario, the common fund would allow lienholders to recover a substantial percentage of their potential claims (a $10M fund available for distribution would amount to 44% of the full amount of the estimated potential claims, a high percentage). Even if the rate of participation in the settlement is higher than in the Renovate bankruptcy, the size of the fund here should allow for substantial and meaningful recovery for class members.

In addition, the settlement will provide relief ***now***, eliminating the need for extensive further litigation, trial, and, potentially, appeal. Obtaining much-needed monetary relief sooner

[4] *See* https://www.treasurer.ca.gov/caeatfa/pace/activity.pdf.
[5] These claims were submitted by approximately 1.8% of Renovate lienholders.

rather than later is significant for Plaintiffs and Members because it will reduce or eliminate the ongoing risk posed to them by PACE assessments they cannot afford and that have put the Class Members at risk of losing their homes. In addition to removing or reducing financial risks faced by the Plaintiffs and the Class, this settlement also removes the litigation risk that Plaintiffs and the class could face from proceeding with this lawsuit. For all of these reasons, the proposed Settlement is reasonable, and the Court should grant this motion for preliminary approval.

C. THE COURT SHOULD SCHEDULE THE HEARING FOR FINAL APPROVAL AND DIRECT THE DISSEMINATION OF THE CLASS NOTICE.

Under Rule 3.769(e) of the California Rules of Court, the Court's preliminary approval order must include the time, date, and place of the final approval hearing. Accordingly, if this Court grants preliminary approval, Plaintiffs respectfully request that the Court set the final approval hearing before this Court for April 30, 2024, in Department 10 of the Spring Street Courthouse, or at a time thereafter that is convenient for the Court. In addition, under Rule 3.769(f), once the matter has been certified as a class action by the Court, "a notice of the final approval hearing must be given to the class members." A copy of the proposed class notice is attached to the Declaration of Michael M. Maddigan as Exhibit B. In this class notice, class members are provided with an overview of such things as basic information about the case, the benefits of the settlement, how to opt-out of the settlement, and how to object to the settlement, as well as of the date and time of the final approval hearing. Accordingly, this notice satisfies the requirements of Rule 3.769(f).

IV. CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion for preliminary approval.

Dated: December 18, 2023

HOGAN LOVELLS US LLP

By: _____
Michael M. Maddigan
Attorneys for Plaintiffs

PROOF OF SERVICE

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is Hogan Lovells US LLP, 1999 Avenue of the Stars, Suite 1400, Los Angeles, California 90067. On December 18, 2023, I served a copy of the within document(s):

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

- ☒ by transmitting via electronic transmission through Case Anywhere the document(s) listed above to the person(s) at the e-mail address(es) set forth below.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at Los Angeles, California addressed as set forth below.
- ☐ by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.
- ☐ by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

SEE ATTACHED SERVICE LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on December 18, 2023, at Lancaster, California.

Tiffany de Jonge

SERVICE LIST

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