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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. BC701809

Honorable William Highberger

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND AWARD OF ATTORNEY'S FEES AND COSTS; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION

[*Filed concurrently with Declarations of Zenia Ocana, Juan Ocana, Maria Alvarez, Aurelia Millender, Allen Bowen, Reginald Nemore, Carol Sobel, Stephanie Carroll, Taylor Amstutz,* *Reed Baessler, and Michael Maddigan; and [Proposed] Order Granting Final Approval of Class Action Settlement*]

AND RELATED ACTION.

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 24, 2024 at 9:00 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 Final Approval of the Class Action Settlement and for Certification of the Settlement Class in this matter, as well as for an award of attorneys' fees and costs.

This motion is based upon California Rules of Court, Rule 3.769.

This motion is further based upon this Notice of Motion, the accompanying Memorandum of Points and Authorities, the concurrently filed Declarations of Zenia Ocana, Juan Ocana, Maria Alvarez, Aurelia Millender, Allen Bowen, Reginald Nemore, Carol Sobel, Stephanie Carroll**,** Taylor Amstutz, Reed Baessler, and Michael M. Maddigan, and upon such further evidence and argument as may be presented prior to or at the time of hearing on the motion.

Dated: August 30, 2023

HOGAN LOVELLS US LLP

By ______________________

Michael M. Maddigan
Attorneys for Plaintiffs

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INTRODUCTION

On March 25, 2024, this Court gave preliminary approval to a settlement in this matter. By this motion, Plaintiffs respectfully request that the Court give (i) give final approval to the settlement and (ii) award attorneys' fees and costs consistent with the settlement agreement. The Court should give final approval of this settlement, and should award attorneys' fees and costs, for five main reasons.

First, notice of the class settlement was adequate and effective and provided in the manner directed in the Court's preliminary approval order.

Second, the response of the class to the settlement has been overwhelming. The settlement administrator mailed 29,122 class notices, received 5,623 timely responses, and ultimately received more than 3,500 valid claims. Currently, only 57 class members have opted-out of the settlement.

Third, the settlement delivers an excellent result for the class and provides important and meaningful relief to thousands of class members.

Fourth, only a single objection has been filed to the settlement – by an attorney who previously attempted unsuccessfully to intervene in this matter – and the objection largely advances arguments that this Court previously and properly found unpersuasive.

Fifth, the attorneys' fees and costs sought by counsel in this action are consistent with the parties' settlement agreement and are fair and reasonable. Indeed, those fees and costs represent compensation for only a fraction of the time and effort that counsel devoted to achieving the positive result for the class in this matter.

I. THE SETTLEMENT ADMINISTRATOR PROVIDED DIRECT NOTICE TO THE CLASS AND ALSO CONDUCTED EXTENSIVE ADVERTISING AND OUTREACH TO INFORM CLASS MEMBERS OF THE SETTLEMENT.

This Court gave preliminary approval to the settlement in this matter on March 25, 2024. On April 25, 2024, the settlement administrator, JND, received data files from Counsel for Defendant

County of Los Angeles, which contained the names and property addresses of individuals identified as Class Members. Using this data, JND mailed the Court approved ("Notice") to all 29,122 Class Members on May 9, 2024. The Notice included the Notice in both English and Spanish, Claim Form(s) in both English and Spanish, and the Opt-Out Form in both English and Spanish. See Declaration of Reed Baessler ("Baessler Declaration"), ¶¶ 7-9. The number of Claim Forms mailed in a Notice matched the number of times that name/address combination appeared in class list data, which was between 1 and 7, and reflected the fact that some individuals had multiple PACE liens.

As described in the accompanying declaration of Reed Baessler of JND, as of August 30, 2024, 107 Notices were forwarded by USPS to updated addresses and 1,498 Notices were returned as undeliverable. For the undeliverable Notices, JND conducted advanced address searches and received updated address information for 848 records. JND remailed 848 Notices to the new addresses. Of the 848 Notices mailed to new addresses, only 54 were undeliverable. Overall, Notices to Class Members were deliverable, a rate of 97.6%.

In addition, on May 30, 2024, JND mailed a reminder postcard ("Reminder Notice") to 28,534 Class Members who had not yet filed claims. Baessler Declaration, ¶¶ 11-12. These Reminder Notices were deliverable to class members at a rate of 96.6%. *Id*.

Supplementing the direct notice contemplated by the Court's preliminary approval Order, Plaintiffs' counsel, through JND, also took out advertisements regarding the settlement in both English and Spanish language newspapers. Specifically, JND caused a quarter page English language notice to appear in the *Los Angeles Daily News* on May 12, 2024, and a half page Spanish language notice to appear in *La Opinión* on May 13, 2024. See Baessler Declaration, ¶ 13. Both newspaper ads included a QR code with a direct link to the Settlement website, where Class Members could get more information about the Settlement, as well as file a claim electronically. *Id*., ¶ 14.

JND also engaged in a digital advertising campaign. Specifically, JND launched digital advertisements with the Google Display Network ("GDN") and with the most popular social media platform (Facebook). These digital advertisements appeared for four weeks from May 9, 2024 through June 5, 2024, delivering 1,446,466 impressions to Los Angeles County.[1] The GDN impressions targeted

[1] Impressions or Exposures are the total number of opportunities to be exposed to a media vehicle or combination of media

adults 65 years of age or older ("Adults 65+"), lower income households, and emphasized Spanish language sites. Similarly, the Facebook effort targeted Adults 65+ and an emphasis placed on Spanish language accounts. Like the traditional newspaper advertisements, the digital ads included a direct link to the settlement website where Class Members could get more information about the Settlement, as well as file a claim electronically. Baessler Declaration, ¶¶ 16-18.

In addition to providing notice and conducting an advertising campaign, the settlement administrator also established a Settlement website, www.PACELASettlement.com, which went live on May 7, 2024. The settlement website informs Class Members about the Settlement hosts copies of relevant case documents (including, but not limited to, copies of the Notice, Claim Form, Opt-Out Form, Complaints, Settlement Agreement and Release, and Preliminary Approval Order), provides answers to frequently asked questions, and lists contact information for JND by telephone, email, and mail. Prior to the claim filing deadline, the Settlement website allowed Class Members to submit claims electronically. As of August 30, 2024, the Settlement website had tracked 208,157 visits Baessler Declaration, ¶¶ 20-21.

As this brief description makes clear, the efforts to notify class members about the settlement in this action went above and beyond what was required by the parties' settlement agreement. Not only was directed notice provided to class members in accordance with the parties' settlement agreement and the Court's preliminary approval order, but additional, extensive advertising and digital outreach campaigns also succeeded in promoting awareness of the settlement.

II. THE RESPONSE TO THE SETTLEMENT HAS BEEN STRONG AND OVERWHELMINGLY POSITIVE.

Consistent with these extensive notice and outreach efforts, the response to the settlement from class members has been very strong. The settlement administrator received a total of 5,623 timely claims, including approximately 4,439 claims submitted on-line, and 1,184 claims

vehicles containing a notice. Impressions are a gross or cumulative number that may include the same person more than once. As a result, impressions can and often do exceed the population size.

submitted by email or mail. Of these claims, the settlement administrator has determined that approximately 3,538 claims are valid and complete claims from class members. Interestingly, many individuals with PACE liens through other program administrators besides Renew or Renovate, the two administrators at issue in this case, submitted claims, even though they are not class members. These submissions underscore both the effectiveness of the Plaintiffs' notice and outreach program, but also the appeal of and need for the settlement in this action to assist class members who have been harmed by the PACE program.

In addition to the large number of claims received, there were very few opt-outs. As of the date of this filing, only fifty-seven class members submitted valid opt-outs. Because class members can change their decision to opt-out until five days before the final settlement hearing, the final number of opt-outs is not yet known. In addition, the settlement administrator is still following up with respect to whether a small number of additional class members intended to opt-out, and also is completing the validation of a small number of claims. In any event, regardless of the outcome of these few, final remaining inquiries, the number of opt-outs will be very small. As of today, the 57 opt-outs represent only 0.0019% of notices and 0.016% of valid submitted claims (as currently estimated).

Moreover, only one class member objected to the settlement. (This objection is discussed in more detail in section IV.)

With a high number of claims, a very small number of opt-outs, and only a solitary objection, there is no doubt that the settlement has been well received by class members.

III. THE SETTLEMENT PROVIDES AN EXCELLENT RESULT FOR, AND MEANINGFUL RELIEF TO, CLASS MEMBERS.

As the Court well knows from its oversight of this matter, these cases arise from Los Angeles County's implementation of a Property Assessed Clean Energy ("PACE") program. The PACE program may have been well-intentioned, but its implementation was a disaster, and, as a result, thousands of low-income, elderly, and non-English speaking residents ended up with unaffordable tax assessments that they did not understand and did not want. Thousands struggled to afford their homes, or simply no longer could do so. Recognizing this reality, the County itself eventually discontinued its PACE program.

A. <u>Defendants Mounted A Strong Defense To Plaintiffs' Claims</u>.

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. Specifically, Plaintiffs alleged 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; (9) Refund (against County).

Defendants mounted an extensive defense and, prior to reaching a resolution, they gave every indication that they intended to continue to do so, both in opposing class certification and in defending themselves against the substance of Plaintiffs' allegations.

At the very outset of the case, 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.

Then, Defendants 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 and reached an agreement in principle to settle the matter.

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.

B. <u>The Settlement Provides Substantial and Meaningful Relief To Class Members.</u>

The parties' settlement agreement provides substantial and meaningful relief to class members through a $12 million common fund.

The settlement benefits two separate classes of Plaintiffs:

- **<u>The "*Ocana* Class"</u>**: 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.

Under the parties' settlement agreement, at least $10 million dollars of the common fund will be distributed to class members, based on criteria that provide greater relief to those class members that were most seriously victimized by the practices challenged in this case.

- **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.
- **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.
- **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.

Now that the claims have been submitted and the validation process is substantially complete, Plaintiffs can report to the Court about the preliminary distribution of claims under the settlement and the amounts that class members will receive from the common fund.

- **Level One**: Under the Settlement Agreement, $500,000 of the common fund is to be distributed on a pro rata basis to each class member who submits a valid claim. Thus, all 3,538 valid claims are in Level One. Each class member therefore will receive $141 per-PACE lien for being in Level One.
- **Level Two**: Under the Settlement Agreement class members who had a debt-to-income ration of greater than 50% are in Level Two. Approximately 1,346 of the

claims submitted constituted Level Two claims. Each class member will receive approximately $2,694 per-PACE lien for being in Level Two. The total amount of the common fund distributed to Level Two class members, in addition to the amounts they will receive for their membership in Level One, will be approximately $3,626,124.

- **<u>Level Three</u>**: Level Three provides additional recovery to class members who meet the DTI criteria for Level Two, but also are elderly and/or have limited English proficiency. Approximately 502 of the claims submitted constituted Level Three claims. Each class member will receive approximately $5,388 per-PACE lien for being in Level Three. The total amount of the common fund distributed to Level Three Class Members, in addition to the amounts they will receive for their membership in Level One, will be approximately $2,704,776.

- **<u>Level Four</u>**: Level Four provides additional recovery to class members whose DTI exceeded 100%. Approximately 392 of the claims submitted constituted Level Four claims. Each class member will receive approximately $8,082 for being in Level Four. The total amount of the common fund distributed to Level Four Class Members, in addition to the amounts they will receive for their membership in Level One will be approximately $3,168,144.

The settlement administrator is finalizing its claim validations and follow-up inquiries for a small number of claims and so the numbers reported here are preliminary and may change slightly. Nevertheless, these preliminary results of the claims process demonstrate that the settlement worked exactly as Plaintiffs intended – providing substantial and increasing relief to those class members who were most victimized by the practices challenged in the Plaintiffs' Complaints. Focusing on simply Level Two through Level Four claims reveals that approximately 2,200 class members will receive settlement amounts for each PACE assessment ranging from $2,694 to $8,082. These amounts are substantial amounts.

In addition, the settlement agreement provides that the named or representative plaintiffs shall recover an incentive award of $12,500. In support of this motion, the named representatives have submitted declarations setting forth their understanding of the role of a named or representative plaintiff, their willingness to undertake the role, and their understanding that they would receive an incentive award for doing so.

Under California Rules of Court, Rule 3.769, the settlement of a class action is warranted if the trial court determines that it is "fair, adequate, and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). The court has broad discretion in this determination and 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. *Id.*

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 1801 (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.* at 1802.

Here, all of these criteria are easily met. And the claims process has made clear that (i) the class members responded very positively to the settlement, and (ii) the settlement will afford very substantial monetary relief to class members with claims in Level Two-Level Four, exactly as intended. The settlement deserves to be approved.

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IV. ONLY ONE CLASS MEMBER – WHOSE ATTORNEY ALREADY UNSUCCESSFULY SOUGHT TO INTERVENE IN THIS ACTION – FILED AN OBJECTION, AND THAT OBJECTION PROVIDES NO REASON NOT TO APPROVE THE SETTLEMENT.

Remarkably, despite the mailing of more than 29,000 notices to class members, and the receipt of more than 3,500 valid claims, ***only one*** class member objected to the settlement. That single class member, Joan Banks – through her attorney, James Swiderski – previously sought to intervene in this action.

This sole objection to the settlement largely recycles the same arguments made in Ms. Banks' motion to intervene. In summary, the objection argues that the settlement forces class members to give too broad a release, for too little compensation, especially because the release in the settlement agreement potentially would release factually distinct claims that Mr. Swiderski is asserting on behalf of Ms. Banks in an entirely distinct putative class action. *See* Notice of Intention To Appear At Final Approval Hearing (with attached Objection) (attached hereto as Exhibit A). The Court denied Mr. Swiderski and Ms. Banks' intervention efforts before, and their objection likewise should be rejected now, for three reasons.

First, like the motion to intervene, the objection vastly understates the amount of relief received by most class members under the settlement. In particular, the objection asserts that the settlement is inadequate because it offers only $312.50 in relief per class member. However, as Plaintiffs explained in opposing Ms. Banks' motion to intervene, this argument misunderstands the structure of the compensation under settlement agreement. Under the settlement agreement, everyone with a PACE assessment obtains a relatively small amount of relief, but the lion's share of the relief goes to those low-income, elderly, non-English speaking class members who were primary victims of the predatory practices associated with the PACE program that were the focus of this lawsuit. In opposing intervention, Plaintiffs informed the Court that they anticipated that those class members would receive substantial relief. As discussed in section III, we now know that Plaintiffs' counsel were correct in their predictions. Class members with Level Two through Level Four claims will receive thousands of dollars for each PACE assessment. Indeed, the

$8,082 per-assessment recovery that Level Four class members will receive is approximately 26 times the relief that Ms. Banks anticipated they would receive in her objections.

Second, like the motion to intervene, the objection argues that the release in the settlement agreement is overbroad and improper. But, as Plaintiffs explained in their opposition to the motion for intervention, the Release of Claims in the settlement agreement provides for the full and final release of the County and Renew from the causes of action alleged in the *Ocana* Complaint. This includes the release of "any and all claims . . . that were or could have been pleaded against Renew or the County" in the *Ocana* action. *See* Settlement Agreement, p. 6, ¶ A.r. A release of this nature, which covers "all claims" that were or could have been raised in the suit is not "uncommon in class action settlements." *Villacres v. ABM Indus. Inc.*, 189 Cal. App. 4th 562, 588 (2010) ("*Villacres*") (listing numerous cases where "all claims" were released). Indeed, the purpose of a settlement to "resolve all disputes" amongst the Parties entering the agreement and ensure "a final resolution of all issues." *See id.* at 588-89. "The weight of authority establishes that . . . a court may release not only those claims alleged in the complaint and before the court, but also claims which could have been alleged by reason of or in connection with any matter or fact set forth or referred to in the complaint." *See id.* at 586 (internal citation omitted). This is precisely what the Parties have done in this matter - negotiated a release to resolve the claims of the *Ocana* class fully and finally. Furthermore, this Release is not so broad that it will reach claims that are not alleged or that could not have been alleged in the *Ocana* Complaint. *See Nen Thio v. Genji*, 14 F. Supp. 3d 1324, 1334 (N.D. Cal. 2014) (concluding that a settlement agreement may properly release claims related to facts asserted in operative complaint). Because the Release is properly limited to the scope of claims that were or could have been alleged against Renew or the County in this case, Proposed Intervenor's claims regarding overbreadth are incorrect and the sole objection to this settlement provides no reason for the Court not to approve it.

Third, the objection continues to ignore the advantages of providing real and tangible benefits to the class, right now, through this settlement. As the objection and previous motion to intervene make clear, even if counsel is successful before the California Supreme Court in reviving the *Roberts* case in which Ms. Banks is a named Plaintiff (which itself is far from guaranteed), it likely will be years before Plaintiffs in that case obtain any relief, if they ever succeed in doing so. Weighed against the highly speculative prospect of a potential future payday in *Roberts* that might, in some scenarios, be larger than the settlement here, and could, in some scenarios, potentially be barred in whole or in part by the release in the settlement in this case is the very real and concrete benefit that thousands of class members will receive through the settlement in this case. Many of these class members will be able to pay off substantial amounts, or even potentially all, of their PACE assessments.[2] The thousands of dollars that class members will receive ***now*** will make a real difference, especially for the low-income and elderly members of the class for whom justice delayed really is justice denied. In sum, the uncertain and speculative scenarios conjured in the single objection to the settlement provide no reason for the Court not to approve the settlement.

V. THE COURT SHOULD AUTHORIZE SERVICE AWARDS TO THE REPRESENTATIVE PLAINTIFFS AND SHOULD AWARD ATTORNEY'S FEES AND COSTS AS PROVIDED BY THE SETTLEMENT AGREEMENT.

The Settlement Agreement provides that $2 million of the $12 million common fund may be awarded to counsel as attorney's fees and costs. Plaintiffs' claims in this case involved very creative legal theories, complex facts, multiple parties, novel legal issues, several trips to the Courts of Appeal, substantial interaction with the County's various real and alleged administrative processes for addressing challenges to PACE assessments, substantial discovery, mediation before a leading mediator, and extensive negotiations to work out the details and language of the final settlement agreement. As previously described, Defendants contested Plaintiffs' allegations at every turn and used every creative tool available to good lawyers to try to defeat Plaintiffs' claims.

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[2] Under the Settlement Agreement, claim recovery amounts (as distinct from service awards to the named Plaintiffs) are to be used first to pay off existing liens. In the proposed order granting final approval, Plaintiffs proposed that the County be required to provide this information to Plaintiffs' counsel within 30 days of final approval and that, if the County does not do so, that distribution of the settlement amounts be made directly to Plaintiffs.

To prosecute this case, Plaintiffs were fortunate to be represented by both leading legal services organizations, Public Counsel and Bet Tzedek, and by prominent private law firms, first Irell & Manella and then Hogan Lovells. This representation was necessary, given the skilled and vigorous defense mounted by the County and Renew and the multiple highly regarded firms that they each retained to represent them.

The public and private firms representing the Plaintiffs devoted substantial time, and brought to bear considerable expertise, in order to reach the favorable result for the class in this case. Specifically, Bet Tzedek expended more than $2 million in attorney time, Public Counsel expended more than $1.4 million in attorney time, Irell & Manella expended more than $1.4 million in attorney time, and Hogan Lovells expended more than $2 million in attorney time. *See* concurrently filed Declarations of Taylor Amstutz, Stephanie Carroll, Michael Ermer, and Michael Maddigan. Moreover, as demonstrated by the detailed declaration of Carol Sobel, the rates for attorneys at both Bet Tzedek and Public Counsel are reasonable, representative of the rates charged for similar complex legal work in our community, and consistent with the rates that other courts have approved in other cases.

It is important to note that neither Hogan Lovells nor Irell & Manella are seeking to recover any attorneys' fees in this matter. Similarly, Public Counsel and Bet Tzedek are seeking to recover only $750,000 each, a small percentage of the value of the time their attorneys actually expended. Thus, collectively, counsel in this case are seeking to recover only $1.5 million in attorneys' fees, despite expending more than $6.5 million in attorney time. Thus, the request for attorney's fees is reasonable on its face. Plaintiffs' request for attorneys' fees also is consistent with the Settlement Agreement in this case, which provides for $2 million of the common fund to be allocated to attorney's fees and costs.

Bet Tzedek and Public Counsel's fee request leaves approximately $500,000 of the $2 million portion of the common fund allocated to fees and costs to reimburse counsel for litigation costs and to pay for settlement administration. Specifically, Hogan Lovells seeks reimbursement of $84,963 in costs, Irell & Manella seeks reimbursement of $68,772.01 in costs, Bet Tzedek seeks reimbursement of $146.19 in costs, and Public Counsel seeks reimbursement of $1,790.63

in costs, for a total litigation cost reimbursement request of $155,671.83. *See* Maddigan, Ermer, Amstutz, and Carroll declarations. This amount of requested cost reimbursement leaves $344,328.17 remaining to pay for the costs of settlement administration, an amount consistent with the overall estimated costs of settlement administration, including costs incurred to date and estimated future costs. (This estimate builds in some "cushion" above the prior $300,000 estimate, in part to account for still ongoing follow-up with some class members and also for any unanticipated issues that may arise in the distribution of the settlement payments.) Any small amounts that may remain in the $500,000 portion of the common fund that Plaintiffs' counsel have identified for potential reimbursement of fees and costs will be distributed pro rata to Public Counsel and Bet Tzedek.

Accordingly, Plaintiffs request that the Court approve counsel's requested fees and costs, consistent with the parties' settlement agreement, in the amounts set forth below.

Party	**Amount**	**Fees or Costs**
Public Counsel	$750,000	Fees
Public Counsel	$1,790.63	Costs
Bet Tzedek	$750,000	Fees
Bet Tzedek	$146.19	Costs
Hogan Lovells	$84,963	Costs
Irell & Manella	$68,722.01	Costs

In support of this motion, the named Plaintiffs have provided declarations stating that they understand that $2 million of the common fund is going to be used to cover attorney's fees, costs, and settlement administration expenses. The named Plaintiffs also have expressed their understanding that the attorney's fees remaining after costs and settlement expenses are to be divided evenly between Public Counsel and Bet Tzedek and that Hogan Lovells and Irell & Manella are not seeking to recover their fees.

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CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request that the Court give final approval to the settlement in this matter and award attorney's fees and costs to Plaintiffs' counsel, consistent with the parties' settlement agreement. When final judgment is entered, it will be posted on the settlement website in order to provide notice to the class.

Dated: August 30, 2024

HOGAN LOVELLS US LLP

By: ______________________
Michael M. Maddigan
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EXHIBIT 1

James Swiderski, SBN 185761
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Attorney for Plaintiff Intervenor
Joan Banks, individually and on behalf of a class of similarly situated persons.

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ZENIA OCANA, et al., Plaintiffs, v. RENEW FINANCIAL HOLDINGS, INC., et al., Defendants. JOAN BANKS, Plaintiff Intervenor, v. RENEW FINANCIAL HOLDINGS, INC., a Delaware corporation; RENEW FINANCIAL CORP. II, a Pennsylvania corporation; the COUNTY OF LOS ANGELES; and DOES I through 10, Defendants.	Case No. BC701809 Related Case No. BC701810 **NOTICE OF INTENTION TO APPEAR AT FINAL APPROVAL HEARING** Date: August 9, 2024 Time 11:00 am Judge: Honorable William Highberger Dept. 10

Notice is hereby given that objector Joan Banks, on her behalf and on behalf of a class of similarly situated persons, will be appearing at the Final Approval Hearing for the Class Action Settlement in the matter, by and through her counsel, James Swiderski, on August 9, 2024 at 11 am in the above captioned Court. Attached to this Notice and Declaration is a copy of the written objection Joan Banks, by and through her counsel James Swiderski, submitted to the Settlement Administrator by mail on June 5, 2024.

Detailed grounds for the objection are made in the June 5, 2024 objection correspondence, and also on the record in the files of this Court per Joan Banks motion for permissive intervention which the Court denied. The mainstay of the objection is that the scope of the proposed release in the class action settlement is plainly overbroad and settled meritorious claims of greater value that have no common factual predicate with the claims being settled by the Ocana class.

> a court cannot release claims that are outside the scope of the allegations of the complaint. … Nearly all federal circuits have found that "[a] *settlement agreement may preclude a party from bringing a related claim* … **<u>only where the released claim is 'based on the identical factual predicate</u> as that underlying the claims in the settled class action.**'"….'Put another way, *a release of claims that "go beyond the scope of the allegations in the operative complaint" is **impermissible**.'"…*

Amaro v. Anaheim Arena Management, LLC, (4th Dist.2021) 69 Cal. App. 5th 521, 537

The settlement here runs directly afoul of the command of the Court in *Amaro v. Anaheim Arena Management*. The scope of the proposed release is way overbroad and the settlement must be rejected.

Date: July 2, 2024

James Swiderski

James Swiderski

Declaration of James Swiderski

1. I am counsel for objector Joan Banks. I have personal knowledge of all facts set forth in this declaration and will testify to the same at trial.

2. I represent Joan Banks and other lead plaintiffs in a putative class in Roberts v. Renew Financial, San Diego Superior Court Case Number 37-2019-00059601-CU-ORCTL.

3. Attached to this document is a true and correct copy of the Objection that I mailed to the settlement administrator via U.S. Mail on June 5, 2024 on behalf of Joan Banks.

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

Date: July 2, 2024

James Swiderski

James Swiderski

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June 5, 2024

PACE L.A. Settlement
c/o JND Legal Administration
PO Box 91201
Seattle, WA 98111

Superior Court of California
County of Los Angeles
Spring Street Courthouse
312 North Spring Street
Los Angeles, CA 90012

Re: Objection to Settlement in Ocana, et al. v. Renew Financial Holdings, Inc., et al., Case No. BC701809

Your honor:

I represent Joan Banks, who is a member of the Ocana class and also putative class counsel in a related class action now pending in the California Supreme Court upon the Court's grant of Ms. Banks' petition for review. Ms. Banks appeared before this Court on February 14, 2024 in a motion to intervene to object to the scope of the proposed class action settlement. Her request to intervene was denied based on the availability of objection as a remedy. She now makes the objection on behalf of herself and on behalf of the class of senior citizen plaintiff homeowners who are within the class definition of the pending San Diego action and the Ocana class definition. Essentially, these are Ocana class members who borrowed from a Renew Financial related PACE program and were 65 years of age or older at the time they obtained their PACE loan. Ms. Banks borrowed from Renew's PACE programs with respect to improvements to her home at 1945 Kenneth Way, Pasadena, CA 91103.

The basis for the objection is simple. The scope of the release proposed in the Ocana settlement could be read to bar claims based on **wholly different factual predicates** than the matters being settled in Ocana. Under existing binding precedent in both California and Federal courts, such a release is improper. If the settlement as drafted is permitted to go through, the wholly distinct and unrelated claims brought in the San Diego based class action will be settled out as they are within the scope of the overly broad language of the release in the proposed settlement. The case law is clear. The only remedy is to negate the validity of this settlement, as once approved, it will in fact waive unrelated claims based on wholly distinct factual predicates. **Banks' relief on behalf of herself and the class she seeks to represent must come from this Court's rejection of the entirely of the settlement or it will be forever extinguished for her and for the class.**

1. Legal Authorities and Argument

The following arguments are excerpted from prior legal briefing by Banks in support of her earlier motion for permissive intervention. *References to declarations and exhibits refer to those submitted in support of the motion for intervention and are in the Court's files in connection with that prior motion.*

Class counsel for the Ocana class and defendants Renew Financial Holdings, Inc., Renew Financial Corp (collectively "Renew"), and the County of Los Angeles are asking the Court to give approval to a class wide settlement of $12,000,000 in compensation to the class which they estimate to be 32,000 homeowner borrowers in Los Angeles County. Attorney fees are requested in an amount to be determined by motion but capped at $2,000,000. Lead plaintiffs are each paid $12,000 for their work toward getting the matter resolved. Computed on a per litigant basis, the settlement fund, net of maximum attorney fees, comes to $312.50 per plaintiff in the putative class. In exchange for this consideration, the putative class is asked to agree to an extensive release of claims against the private party Renew Entities that purports to bar claims ***completely unconnected to the factual predicate underlying the claims raised by the Ocana class*** as framed by the operative pleading. The release reads as follows:

q. **"Related Parties" means** a party's current, former, and future spouses, heirs, beneficiaries, executors, administrators, successors, predecessors, parent organizations, **subsidiaries, affiliates**, partners, **joint venturers**, officers, directors, shareholders, elected officials, counsel, employees, members, managers, trustees, agents, representatives, attorneys, insurers, and **assigns.**

r. **''Released Claims"** means any and all claims, causes of action, suits, setoffs, costs, complaints, disputes, damages, promises, omissions, duties, agreements, rights, and any and all demands, obligations and liabilities, **of whatever kind or character,** direct or indirect, whether known or unknown, at law or in equity, by right of action or otherwise, arising out of, based upon, or **<u>related in any way</u> to the facts**, allegations, or claims **that were or could have been pleaded against Renew** or the County in the Ocana or Nemore actions. For the avoidance of doubt, nothing in this agreement or in this settlement releases or in any way affects the claims asserted against Renovate in the Nemore Complaint.

s. "Released Parties" means the County and Renew and each of their respective Related Parties.

Maddington Decl. Exhibit A (Proposed Settlement Agreement), pages 5-6

Proposed Intervenor Joan Banks has existing claims in litigation against Renew Financial Group, LLC and Renew 2017-2; Renew 2018-1; Golden Bear 2016-1 LLC; Golden Bear 2016-2, LLC; and Golden Bear 2016-R, LLC which claims would arguably be barred under the bolded language of the release. These claims are made as part of a putative class action in which Ms. Banks is seeking appointment as a class representative for a class of senior citizen borrowers from Renew throughout all of California, from the date the complaint was first filed on November 8, 2019, back to the inception of the program. Decl. Swiderski, Roberts Cpt. ¶61, page 43. Roberts v. Renew Financial, San Diego Superior Court Case Number 37-2019-00059601-CU-ORCTL. Aside from Ms. Banks' individual interest in preventing the loss of her own claims, she also has concerns about the interests of the putative class she wishes to represent. At the hearing before the Court on January 16, 2024, ***plaintiffs' counsel Mr. Maddington informed the court that he was not familiar with the claims made in the Roberts class action.*** Yet his recommended release would eviscerate those same claims. *Class counsel's unfamiliarity with the factual basis and theories advanced in Roberts would imply that release of the Roberts claims by the class was not a measured one which considered the potential settlement value of the dismissed case*.

The Roberts complaint is based on a completely different factual predicate than the claims of the Ocana class. The Ocana claims focus on the conduct of Renew in the performance of its contractual duties as PACE Program Administrator for the County of Los Angeles PACE program. Specifically, Renew is alleged to have not implemented the "best in class" consumer protections they promised the County of Los Angeles they would provide. It is alleged to have negligently trained and supervised its affiliated home improvement contractor sales force in the promotion of the LA County PACE Program, causing lies and omissions to be made by the contractors to the senior citizens and others in the putative class. The failure to provide the "best in class" consumer protections is alleged to result in the assessment contracts being "unconscionable" and unenforceable and justifies a cancellation of taxes as against the County. Renew's breach of its contract to provide "best in class" consumer standards is alleged to have resulted in injury to the senior citizen subclass constituting financial elder abuse, which claim also supports an Unfair Competition Law premised on its violation. **All the causes of action involved <u>facts suggesting gross negligence / fraudulent conduct in Renew's Administration of the LA County PACE Program.</u>**

In contrast, such a factual predicate is completely missing in the Roberts class action purportedly released in the proposed class settlement:

> 9. This case is not premised upon any legal fraud. ……The special vulnerability of senior citizens to predatory lending practices is what prompted passage of Civil Code section 1804.1(j) in the first instance. It is a prophylactic measure designed to protect senior citizen, even in the absence of fraud. The same is true with the other laws alleged to be violated in this case,

> the California Finance Lender law licensing requirements, and Civil Code section 1803.2's requirement for large print warning above the signature line on finance contracts that might result in a loss of the home. **Each is not dependent on actionable fraud, <u>but rather are prophylactic measures that provides safeguards against predatory lending generally</u>.**
>
> Roberts Complaint ¶ 9; Swiderski Dec. ¶5, Exhibit A

Renew's failure to perform its obligations and promises made in connection with its role as LA County PACE Program Administrator **are irrelevant** to the Roberts action. The Roberts action brings three UCL class claims premised on violations of statutory provisions that if proven, give rise to liability independent of any fraudulent or negligent conduct. **The underlying factual predicate of the Roberts class action is that Renew was substantively "in the business of lending money to California consumer borrowers" and was defacto "a seller of retail home improvement services".** Proof of these facts depends on factual evidence of Renew's role in providing 100% of the capital needed to fund LA County's PACE program, and its relationship to the County government in the performance of that duty. Once these facts are established, Renew's liability stems from its status as an unlicensed consumer lender working in close connection with a pool of affiliated pool of home improvement contractors and itself, providing substantial ancillary home improvement services. Together, proof of these facts would deem Renew to be acting as an unlicensed lender, subject to forfeiture of interest earned and finance charges collected for not seeking prior licensure, and / or a "seller of home improvement services" subject to the restrictions of the Retail Installment Sales Act under Civil Code section 1801.6 and the Supreme Court's decision in *King v. Central Bank*, (1977) 18 Cal. 3d 840. Assignees of any obligation made in violation of Civil Code section 1804.1(j) are liable to the same extent as the original violator. Civil Code §1804.2. Co-Defendant Renew and Golden Bear entities are alleged to be liable under this assignee liability provision.

The respective cases rest upon different universes of fact. Under the applicable case governing the scope of class action settlement releases, **the Ocana class lacks even the power to waive the claims at issue in the Roberts class action:**

> In a class action settlement, "'[a] clause providing for the release of claims may refer to all claims, both potential and actual, that may have been raised in the pending action with respect to the matter in controversy.'" (Villacres v. ABM Industries Inc. (2010) 189 Cal.App.4th 562, 586 [117 Cal. Rptr. 3d 398] (Villacres).) "'[A] court may release not only those claims alleged in the complaint and before the court, but also claims which "could have been alleged by reason of or in connection with any matter or fact set forth or referred to in" the complaint.'" (Ibid., italics omitted.) (9) While these statements do not expressly address the limits of a class release, **they contain an**

> **implicit boundary: <u>a court cannot release claims that are outside the scope of the allegations of the complaint</u>**. … Nearly all federal circuits have found that *"[a] settlement agreement may preclude a party from bringing a related claim … only where the released claim is 'based on <u>the identical factual predicate</u> as that underlying the claims in the settled class action*.'" ….'Put another way, a release of claims that "go beyond the scope of the allegations in the operative complaint" is impermissible.'"…
>
> *Amaro v. Anaheim Arena Management, LLC*, (4th Dist. 2021) 69 Cal. App. 5th 521, 537

In *Amaro*, the Court rejected a settlement and release provisions substantively the same as that at issue in the proposed settlement:

> Here, the release extends past this boundary. The allegations in Amaro's complaint pertain to AAM's timekeeping system, unpaid time spent waiting in line, [**579] missed meal and rest periods, and reimbursement for work-related expenses. By extending to claims that **"<u>in any way relat[e]</u>"** to these allegations, the release ensnares claims outside the scope of Amaro's complaint.
>
> *Amaro v. Anaheim Arena Management, LLC*, (4th Dist. 2021) 69 Cal. App. 5th 521, 537

The release here is similarly sweeping:

> r. **''Released Claims"** means any and all claims, causes of action, suits, setoffs, costs, complaints, disputes, damages, promises, omissions, duties,

> agreements, rights, and any and all demands, obligations and liabilities, of whatever kind or character**,** direct or indirect, whether known or unknown, at law or in equity, by right of action or otherwise, arising out of, based upon, or **<u>related in any way</u> to the facts**, allegations, or claims **that were or could have been pleaded against Renew** or the County in the Ocana or Nemore actions. For the avoidance of doubt, nothing in this agreement or in this settlement releases or in any way affects the claims asserted against Renovate in the Nemore Complaint.
>
> s. "Released Parties" means the County and Renew and each of their respective Related Parties.
>
> Maddington Decl. Exhibit A (Proposed Settlement Agreement), pages 5-6

This broad release plainly encompasses claims that do not derive from the identical factual predicate underpinning the claims at issue in the Ocana complaint. The majority of federal courts, including those in the 9th Circuit, "rely on a Second Circuit case *TBK Partners, Ltd. v. Western Union Corp*., (2nd Cir. 1982) 675 F.2d 456 that serves as one of the foundational, and most cited cases, for Identical Factual Predicate determinations. Kris J. Kostolansky & Diane R. Hazel, Class Action Settlements, Res Judicata, Release, and the Identical Factual Predicate Doctrine, 55 Idaho Law Review page 271. Swiderski Dec ¶ 7, Exhibit H. The claims at issue in TBK involved two cases with an identical factual predicate:

We recognize, [**15] however, that in fulfilling the court's responsibility to scrutinize the fairness of a class action as required by Fed.R.Civ.P. 23(e), special care must be taken to ensure that the release of a claim not asserted within a class action or not shared alike by all class members does not represent an "advantage to the class … by the uncompensated sacrifice of claims of members, whether few or many." National Super Spuds, Inc. v. New York Mercantile Exchange, supra, 660 F.2d at 19. In National Super Spuds, a class action was brought on behalf of all persons who purchased potato futures contracts on the Exchange that were liquidated between April 13, 1976 and May 7, 1976. Objector Richards was a member of this class, but he also brought a separate state court class action regarding incomplete deliveries pursuant to unliquidated potato futures contracts bought after May 7, 1976. Although the notice of pendency of the federal class action and the notice of settlement made no mention of the claims on the unliquidated [*462] contracts that were the subject of the state action, the settlement extinguished the claims on the unliquidated as well as the liquidated contracts [**16] and did so in exchange for settlement shares determined solely on the basis of the liquidated contracts owned. **We refused to affirm the District Court's approval of a settlement that would release distinct claims that not only "depend(ed) … upon a different legal theory but upon proof of further facts, namely, the holding of unliquidated contracts after May 7, wrongful default on those contracts, and the damages caused by the default."**

TBK Partners at 461-462.

Here, similar concerns weigh against a settlement in the Ocana class releasing the claims in the Roberts class. The settlement releases claims against Renew and the Renew trusts based on <u>**distinct** claims that rest upon **different** legal theories and upon proof of **different** facts</u>. The policy reason underpinning the identical factual predicate doctrine was articulated by the TBK court as follows:

> **At the heart of our concern was the danger that a class representative not sharing common interests with other class members would "endeavor( ) to obtain a better settlement by sacrificing the claims of others at no cost to themselves" by throwing the others' claims "to the winds.**" Id. at 19 n.10, 17 n.6. There would be no assurance that the class representative [**17] had fully advanced the unshared claims of the class members. Id. at 17 n.6. <u>**But these concerns are not implicated where the released claim rests on the same factual predicate as the class action claim.**</u>
>
> *TBK Partners, Ltd. v. Western Union Corp*., (2nd Cir. 1982) 675 F.2d 456, 461-462("The Settlement Agreement release rests on the same factual basis as the claim in the complaint - the improper payment of commissions"); See also *Ranger v. Shared Imaging, LLC*, (ED CA 2023) U.S. Dist. LEXIS 29374, *6 ("a release of claims [going] beyond the scope of the allegations in the operative complaint is impermissible"); *Anderson v. Nextel Retail Stores, LLC*, (CD CA 2010) U.S. Dist. LEXIS 43377, *20; *Consol. Edison, Inc. v. Northeast Utils*., (NYSD 2004) 332 F. Supp. 2d 639, 651-652 ("An advantage to the class, no matter how great, simply cannot be bought by the

> uncompensated sacrifice of claims of members, whether few or many, which were not within the description of claims assertable by the class."); *Reyn's Pasta Bella, LLC v. Visa USA, Inc*., 442 F.3d 741, 748-749 (*Price fixing claims and factual allegations* formed the factual predicate of both actions, permitting the release of one to bar the other)
>
> *TBK Partners* at 462.

The claims at issue in Ocana **do not share the same factual predicate** with those at issue in Roberts, thus the Roberts claims <u>cannot be waived in this action</u>. **But the language of the settlement does exactly that.**

Moreover, Banks' claims have a settlement value an order of magnitude higher than those in Ocana. Class action litigation typically settles ***based on the likelihood of class certification being granted after a contested motion***. Rare is the case that proceeds to trial. Here, the Roberts plaintiffs' claims are uniquely amenable to class resolution. All the key issues of fact pertain to Renew's business model. There are *zero individual questions of fact*. The ability of the Roberts class to be certified as a class is of an order of magnitude greater than that of the Ocana class whose allegations of harm to seniors, and lies by contractors depend on evidence of what each senior citizen was told by their particular home improvement contractor, what their individual financial situation was with regard to their ability to repay the loans, and the particular quality of the work performed by each of the senior citizens' different contractors financed by the program (the lead plaintiffs in Ocana all complain of getting less than the full extent and quality of the improvements they bargained for). **Any objective observer would concede that class certification is far more likely on the issues presented in the Roberts case than those presented by the Ocana matter.**

Collectability of any eventual award is also a key factor in determining respective settlement value. The Renew Trusts, the SPV who have the *exclusive* power to initiate *immediate* judicial foreclosure proceedings against delinquent senior citizen borrowers **are flush with assets**. Swiderski Decl ¶ 8. Collectively, these entities initially held billions of dollars of assets in the form of PACE bonds. Under the Roberts plaintiffs' theory of the case, the collectability of about a quarter of their PACE bond assets (counsel estimates about 25% of the assessment liens originated in PACE programs are on the homes of senior citizens) will be put at some risk if class certification is granted. The value of such a claim is worth significantly more than $312.50 per borrower. That the claims are still before the Supreme Court based on that courts **<u>grant</u>** of the Robert Class's petition for review does not substantially reduce its settlement value when the merits of the appeal are examined. Copies of the challenged pleading and key briefs on appeal to the Supreme Court are included for the Courts' review. Swiderski Dec ¶ 3.

A. The Roberts Class Theory of Liability is Based On Clear Law and Precedent

The substantive merits of the claim are likewise solid, and the release of such claims has significant value to the subclass of Senior Citizens. Pages 7-43 of the Roberts Complaint attached to the Declaration of James Swiderski lay out the history and evolution of the private PACE lending industry. Swiderski Dec ¶ 3, Ex A. The briefs on the merits to the Supreme Court filed by the parties, and the amicus brief submitted by the Attorney General and the State Board of Equalization speak to the high probability that the case will be reversed and remanded for class certification proceedings. The briefs show that the Renew entities rely heavily on *Loeffler v. Target Corp*., (2014) 58 Cal. 4th 1081, a primary jurisdiction decision that involved only private parties in support of the motion purportedly limited to the "procedural" defense of exhaustion. The principal argument advance by Renew in its appeal is that the case against it, even though brought only against private party defendants with no government tax collector defendant, *is substantively a suit to prevent the collection of a tax and obtain a tax refund.*   The Court granted review on this issue. When reversed any challenge premised upon the characterization of the lawsuit as being a challenge to a tax will fail. The case will be, as described by the Attorney General in its amicus brief, a typical UCL action for wrongful marketplace conduct harming consumers. Swiderski Dec ¶ 3, Ex G, page 28.

When stripped of their attempt to hide beyond immunities and protections afforded government tax collectors, Renew is simply a consumer home improvement lender working with a closely affiliated pool of home improvement contractors and offering, with them, an extensive array of home improvement goods and services in the consumer marketplace to California homeowners. The basis for liability is simple and indisputable. Renew provides 100% of the money loaned to consumer borrowers. The only distinction from an ordinary private lender is that loan is arranged via a municipal finance template, so called conduit bond lending. Where such loans are made by one lender to one borrower in the context of traditional municipal financing long used to finance the construction of private works of improvement with a perceived public benefit (airports, sports stadiums, hospitals, etc. the bond markets view them as essentially private commercial loans. Orrick Manual, Swiderski Dec ¶ 9. **PACE, as structured by the voluntary business decisions of Renew, represents the first ever use of such direct conduit bond financing to engage in direct-to-consumer lending**.

The retail installment sales act, like many consumer protection laws, looks to the substance of a transaction and not its form. Civil Code section 1801.6. *King v. Central Bank*, (1977) 18 Cal.

3d 840. The scope of consumer protection laws are to be interpreted liberally to protect consumers. King v. Central Bank, (1977)18 Cal. 3d 840, 846 ("…we have acknowledged this protective policy and have repeatedly held that the [retail installment sales] act's provisions should be liberally construed to protect consumers, ***with a view toward expanding, rather than limiting, its coverage***. The *King* case ruled a bank, financing automobile insurance premiums could, by virtue of its lending and other ancillary insurance related services, be liable as a retail seller of those services under the Retail Installment Sales Act:

> …it is at least arguable that an agreement to finance an automobile insurance policy through installment payments constitutes a "service" transaction covered by the act… Nevertheless, we need not, and do not, decide at this time whether the Unruh Act applies to all routine insurance financing transactions, for plaintiffs have alleged additional facts from which it reasonably may be inferred that defendant Bank actually engaged in providing insurance to them, conduct which would have fallen within the act's scope, by reason of the definition of "services" in section 1802.2. (We note, in passing, a 1967 opinion of the Attorney General which explains that the word "services" in that section would include providing the insurance policy itself, as well as providing collateral services in connection therewith.
>
> *King v. Central Bank*, (1977) 18 Cal. 3d 840, 844-845

The scope of Renew's connection to home improvement services is of an order of magnitude greater than that of the

Bank in the King case. As a matter of common sense there is no doubt that Renew is **in the business of selling green energy home improvements to California consumers**. As such it was barred from including a provision for a security interest in its contracts of home improvement with senior citizens. Civil Code section 1804.1(j) which was passed in 1999 in response to a crisis of senior citizens losing their homes to predatory home improvement loans peddled by zealous contractors working with banks. The Act requires that the financing component of any retail contract be included in a single document with the construction contract, and had that been complied with, the assessment lien and home improvement contract would constitute one contract with a provision for a security interest in violation of the law as applied to contracts with senior citizens. Civil Code § 1803.2. The law was controversial for its scope and a prior identical version of the bill was vetoed by Governor Wilson (“"eliminating the use of lien contracts for an entire class of consumer is too blunt a weapon to fight this kind of fraud."). **If Renew complied with it would have protected the Ocana subclass.** But the law now provides a remedy. The senior citizens can protect themselves from foreclosure as against Renew’s assignees by seeking an injunction against their making a request to initiate an early foreclosure. Civil Code section 1804.2 (assignee liability for violation of Civil Code section 1804.1(j))

The law fell into disuse as banks and finance lenders lobbied for an exemption from the Retail Installment Sales Act and within a year Civil Code section 1801.6 was enacted exempting "supervised financial organization" from the definition of a "seller" covered by the Act. Renew, and PACE Lenders like it, are the first businesses to engage in defacto consumer lending, sans regulation as a "supervised financial organization" since the passage of Civil Code section 1801.6. Hired as an independent contractor by Los Angeles County to implement all aspects of PACE, Renew was contractually bound to comply with all laws in the performance of their consumer lending activity and to attest that it had, or would obtain any licenses necessary for performance. Renew's choice to act sans license resulted in its not being entitled to the exception from the Retail Installment Sales act definition of "seller" for "supervised financial organizations" provided by Civil Code section 1801.6.

In practice the doctrine is hardly a draconian restriction on the ability of parties to reach a viable class action settlement. *Edwards v. Heartland Payment Systems, Inc.* (2nd Dist. 2018) 29 Cal. App. 5th 725, relied upon extensively by the Defendants here, is illustrative of how straightforward the process could have been had the parties wished to accomplish a settlement with a far broader release. The parties seeking to settle in *Edwards* were aware of other cases pending between other putative class action plaintiffs and the defendant. **They amended their pleadings to include the exact same claims made in those other actions, thus making their litigation encompass the exact same factual predicate of the cases that they sought to settle.** *Edwards* at 730. The only remaining question for the Court was to examine the fairness of the settlement terms themselves. While such an amendment may seem like a mere formality, it is far from it. ***The express inclusion of identical claims and factual predicates in both cases ensures that the parties have taken them into account when negotiating the settlement and provides the Court with a record to review as to whether or not the settlement took account of the relative strengths and weakness of the claims raised in the other litigation*****.** The express reference to the other claims and the factual predicate underlying them in the pleadings of the case to be settled provides due process protections for absentee class members, who when receiving notice of the proposed settlement can review the allegations of the complaint and see what exactly it is that they are giving up in litigation claims to get what is offered to them in the proposed settlement.

The settlement here does not reflect that there was any meeting of the minds on the scope of the release in the proposed settlement and whether or not it releases Renew and its assignee co-defendants in the Roberts litigation, the Renew Trusts, and Golden Bear entities from any further liability. *Plaintiffs* seem to argue that the Roberts claims may survive the settlement:

> **…Finally, while the Release does Release the Renew affiliated SPVs from claims that were asserted against Renew in the Ocana action, the Ocana Complaint focused on Renew's wrongdoing and did not identify any basis for asserting that the SPVs participated in or were responsible for that wrongdoing. Additionally, the Release in <u>the Settlement does not release the SPVs from any claim that was not or could not have been asserted against Renew in the Ocana action</u>.**
>
> Page 10 of the Ocana Opposition brief.

Renew reads the release differently. It insists the release of the Roberts action was a key part of the consideration it received for the settlement.

> Narrowing the scope of the release to exclude the Roberts action impacts **the bargained for consideration** that each party received under the terms of the settlement agreement
>
> Page 6 of the Renew Brief

This disconnect is evidence of how the "throw away" nature of the claims to the Plaintiff class and the Defendant's reasoned desire for the broadest possible of release of claims can combine to work an injustice. Here, **the injustice is that the meritorious claims in Roberts are settled out <u>without any serious consideration being paid to their value to the class</u>.**

The Court, and the existing litigants here, have options to correct this and finalize the settlement if they choose to do so. It is clear that the broad release of the Roberts action was not a considered judgment of Plaintiff's counsel. *It was certainly considered by Renew's counsel* who viewed the release of the Robert's claims *as a key component of the consideration it received* by agreeing to the settlement deal. **If Renew wishes to release the claims at issue in Roberts, the parties can agree to amend the pleading here and add in the claims raised and parties named in Roberts and then negotiate how the new amendment affects their settlement positions.** The end result can vary from keeping the consideration for settlement the same as it is now (reflecting the view that the Roberts claims add no value) or agreeing upon an additional amount for its inclusion in the settlement. Whatever the result, the use of the process employed in *Edwards* ensures complete transparency.

Respectfully Submitted,

James Swiderski

James Swiderski.

Counsel for Joan Banks

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1999 Avenue of the Stars, Suite 1400, Los Angeles, California 90067.

On August 30, 2024, I served a true and correct copy of the document described as **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND AWARD OF ATTORNEY'S FEES AND COSTS; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION** on the interested parties in this action as follows:

SEE CASE ANYWHERE SERVICE LIST

BY ELECTRONIC SERVICE: Complying with Code of Civil Procedure section 1010.6, my electronic business address is tiffany.dejonge@hoganlovells.com, and I caused the above-referenced document to be electronically served through CASE ANYWHERE to the party(ies) indicated above.

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

Executed on August 30, 2024, at Lancaster, California.

Tiffany de Jonge