ADVERTISEMENT FOR LEGAL SERVICES – JAMES SWIDERSKI – State Bar Number 185761 – 325 West Washington Street, #2125, San Diego, CA 92103 – Law@WhatIsTheLaw.com – WhatIsTheLaw.com

In one sentence:

Join a mass arbitration and RISK $250 (or nothing if you earn at or below 300% of the Federal Poverty Level) to get back $2000-$3000 (possible / low end estimate of settlement value to defendant) from the high interest HERO loan you borrowed to finance home improvements.

Sign up at WhatIsTheLaw.com, click on "Join Mass Arbitration Claim".

Payment of $250 required for up-front to be applied toward arbitration filing fee (unless you qualify for a fee waiver, e.g. earnings at or less than 300% of the FPL for your family size. All funds paid are held in my retainer until sufficient homeowners sign on (number to be determined), and if not, are refunded 100%. $2000 to $3000 is estimated settlement value of the claim.

The BASICS:

I propose to represent you, along with a group of other borrowers from the HERO PACE loan program, run by Renovate America, in a MASS Arbitration claim against HERO Funding 2020-1, the company that now owns the loans you agreed and gets paid from the extra property taxes that you pay.

We ask to wipe the loan out, or at least wipe out the interest payment. The tax lien will stay, and you will have to keep making payments per the terms, but the result we seek is a money judgment paid by Hero Funding 2020-1 to you. If we win, you will get a lump sum of money, which you can use to pay down or pay off the lien or keep and use how you wish.

My legal theory is untested, but logically sound. I think these loans were DEFACTO PRIVATE loans, even though they are sold as a GOVERNMENT loan program. I believe Renovate America should have obtained a finance lender license and that their failure to do so makes the loans in whole, or in part, unenforceable.

Hero Funding will have to pay for each arbitration hearing, $1500 to start and $800 an hour for the cost of the private judge / arbitrator to decide each one. They CAN'T recovery this from YOU, even if YOU LOSE. This makes it rationale for them to settle for less to avoid this.

The case is novel and while meritorious too risky to turn down any sizeable settlement offer at or around $2000 to $3000.

I need a number of clients to sign up for the leverage to work best. Each client pays $250 for the arbitration filing fee (unless eligible for a fee waiver). If we get money in settlement or by collecting on a judgment, you get your filing fee back, then 2/3 of any settlement or judgment. I get one third.

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The Case and our deal in Detail:

These "government loans" are in reality a form of direct private lending, from a private party lender (Renovate America, Inc.) to a private borrower, you the homeowner. Yes, there are municipal bonds and assessment liens involved, but this is the same method used by banks and other "conduit lenders" to make loans to private parties building hospitals or sports stadiums, but doing so through the intermediary of a municipal bond offers. The municipality sells "limited obligation bonds" which are ALL bought by the lender and the money is loaned to the private borrower. Repayment is made to the municipality by way of property tax, but the county is a mere conduit as the money is repaid back to the private lender owning the bond. Here, that private lender is Renovate America, Inc. This HERO home loan program represents the first use of this municipal bond private conduit lender financing method to market and make loans direct to consumer borrowers.

Renovate America is an independent contractor who contracted with municipalities to implement PACE programs. It had the option of raising money for the program by finding third party investors to buy the bonds but CHOSE the more lucrative options of providing all capital itself. In its contracts with municipalities or groups of municipalities like the Western Riverside Council of Governments, it, not the government, was responsible for complying with any and all laws necessary for it to perform under the contracts. Renovate America had to attest that it had, or would obtain, any licenses necessary to that performance.

The legal and factual contention we are making in the claim is that Renovate was substantively "in the business of lending money to consumer borrowers" and under Financial Code section 22750 was required to obtain a finance lender license to do so. Their failure to obtain such a license, if willful, voids the loans and makes it uncollectible. Even if unintentional, the lack of a license where required voids the obligation to repay any interest on the loan, and limits them to recovery of the principal amount only.

One of the advocacy challenges here is addressing the issue of remedy. This is styled as a tax so technically a tax can't be challenged except in very limited circumstances not applicable here. But there is a California Supreme Court case that allowed homeowners to recover all of the money they paid toward assessment liens based on violations of generally applicable law by the parties that obtained that assessment lien. In this context, the Supreme Court said that no assessment lien or tax is being challenged. I believe this lawsuit fits that exception.

Another advocacy issue is the perception that if what we are saying is true, then how did every other lawyer who sued Renovate miss this? How and why did the legislature enact reforms to the PACE lender programs, including putting in place a licensing requirement on PACE Administrators effective January 1, 2019 without consideration of this already existing liability ? Why didn't the government require them to get a finance lender license? Our response is that California case law makes it clear that the governments' failure to enforce a law does not stop private parties from enforcing it, even after years of non-enforcement by the government. As to the new Finance Lender license requirement effective January 1, 2019, it only purports to regulate the conduct of an "Administrator" of a PACE program, and

not a defacto "lender of money" under our legal theory. The new license is expressly separate and distinct from the one required by LENDERS. It applies to PACE Program Administrators and simultaneous with the new license provision, amended the Real Estate Law to provide an EXEMPTION for PACE Program Administrators from the need to obtain a MORTGAGE BROKER LICENSE. This makes it plain that the legislature viewed PACE administrators from the perspective of their acting as facilitators for the lending of money by OTHER PARTIES, the function of a loan BROKER. The government did not consider the argument that by virtue of the conduit lending program of Renovate America, Inc. that it might already be deemed in the business of lending money to consumer and subject to a broader licensing requirement.

While these arguments are unassailable (in my opinion) there is mischief to be made with the way the legislator responded to problems in the PACE industry. The argument will be that the legislature somehow DECIDED that PACE Program Administrators were NOT LENDERS, when it only regulated them as BROKERS. But this is a stretch. Legislative history can aid in interpreting the law, but here there is only a speculative inference to be drawn as to what the Legislature intended as to the applicability of a lender license requirement on the actions of Renovate America, Inc. The plain language of the statute requires licensure as a finance lender for those "in the business of lending money to consumer" and Renovate was plainly in that business. The new requirement regulates PACE administrators, who are actually engaged in broker like activities. If for example a PACE Program sold municipal bonds to third party investors, which funds were then administered by Renovate America, Inc, to make the home improvement loans, the PACE Program Administrator license would be required and would be enough because Renovate would not be itself loaning money. But the legislature simply did not consider the issue of whether Renovate was the true lender in these loans. The speculative inference that it might have cannot overcome the plain language of the statute.

This is an uphill advocacy battle, but the legal theory is sound. The same legal theory is being tested in Court in a Class Action I have filed on behalf of senior citizen homeowners with these same loans (without arbitration clauses like yours) and is currently on appeal with the 4th District Court of Appeal. A result in not expected for at least a year. Proving an intent to evade the license requirement will be improbable, but not impossible. There is evidence that the CEO of Renovate America knew his company was engaged in a form of consumer lending, and "White Papers" made by a pro PACE lobbying group, of which Renovate was a member, discuss the argument that this IS a form of consumer lending. Its possible we can convince a Judge that they deliberately didn't ask about licensure, so in effect their violation was "willful". But even if we did, there is case law that limits such a PENALTY to case brough within a year of the transaction, so only a small subset of you would qualify. More likely, IF we succeed, we could obtain a judgment amount based on the elimination of interest. This should not be deemed a penalty and would be subject to a three year statute of limitations.

But this order cannot and will not affect the HERO Assessment lien on your home. **You must keep paying that**. The order / judgment will be instead for a monetary amount that equals the discounted value of wiping out the interest for the remainder of the loan term. I have made estimates, but I'm not an economist, and don't warrant the accuracy of my numbers. But its not cost effective to hire an economist for these cases so we go with what is logical and I think, reasonable and provable, along the lines of this example.

Example: HERO loan for $25,000 for 20 years at 9% interest. Payments are $225 per month (if impounded) for 20 years. If interest was eliminated, you would repay the loan in 111 months at that payment rate. This would wipe out payments of $225 per month for the remaining 129 months. For ease of computation, taking the sum total of those amounts as if all were paid at the end of 240 months or $225 times 129 = $29,025, and discounted to present value at a discount rate of 4%, makes the present value of that sum of interest saved equal to $13,246.63. This is a low-end estimate of the damage amount we will seek. I'm sure there are other ways to calculate this, and if there is one that leads to a lower sum we can count on the defendants proving it.

LEVERAGE: The legal theory is solid. Factually, it is provable. Most of the way Renovate operates is admitted to in recordings I have of their CEO, and in sworn declarations they filed in bankruptcy court recently. Renovate pays the contractors for the homeowners on completion of the work. It gets the assessment lien in exchange. When it accumulates thousands of these assessment liens, it BUYS the municipal bond sold by WRCOG, and in effect and reality, PAYS ITSELF BACK. It now owns the same assessment lien, except now, as part of the security for the bond it owns. It then "sells" this bond to a company IT CREATED for the PURPOSE of "BUYING" these bonds and underlying assessment liens. This company, Hero Funding 2020-1 is the party we will sue in arbitration. It is a Cayman Island Company which sold investments IN ITSELF to wealthy accredited investors in a "GREEN BOND" offering. The ONLY ASSET of this Cayman Island Company are the HERO PACE municipal bonds sold to it by Renovate. As a wholly created assignee company, made by the violator of the licensing laws, it will be deemed to have knowledge of the violation and cannot claim it was innocent third party. This is important because Renovate America, Inc. is BANKRUPT, and off the hook for any of this.

The assessment contract that is recorded on your property is the authority for the taxes you pay to be sent to the current owner of the bond, HERO FUNDING 2020-1. This contract contains an arbitration clause that requires you to arbitrate any claim against WRCOG or its assignees in JAMS Arbitration. The application you filed with Renovate America, Inc. at the beginning of this process also has a requirement that you arbitrate and not litigate any claims against Renovate or ITS ASSIGNESS in JAMS Arbitration. These provisions were added to prevent a class action. Class actions may only be prohibited by including an arbitration clause in a contract. To make sure that a Court does not refuse to enforce the arbitration clause, Renovate and WRCOG chose a consumer-friendly arbitration administrator, JAMS dispute resolution services. JAMS rules require the BUSINESS using them in a standard form contract to pay nearly 100% of the costs of the arbitration. The consumer pays only $250, and even that is waived if they sign a statement that they earn at or less than 300 % of the federal poverty level. The cost to the business of JAMS arbitration are HUGE. Once a claim is filed, the business MUST pay a $1500 filing fee within 30 days or risk a default. It then must pay for all of the hourly fees of an appointed arbitrator, which can be $800 an hour. Even a short arbitration with 10 hours of arbitrator time can approach $10,000. Importantly, win or lose, the business CANNOT get the consumer to pay for these costs. The only exception is if the arbitrator finds the claims by the Consumer to be "frivolous" or wholly lacking any merit, intended to harass and extort. This is not the case here, but you can expect them to make the argument. The arbitrator's decision is final and there is no right of appeal, so this is a risk. JAMS arbitrators are retired state and federal judges and are unlikely to see this case as frivolous. A party always has a right to advance new legal theories and claims, and as long as they are made in good faith and in reliance on the advice of counsel, cannot be deemed frivolous.

We will send the arbitration claim by mail (as allowed by JAMS rules) to the Cayman Island entities. I will send courtesy notices to WRCOG and Renovate (which came out of Chapter 11 bankruptcy recently) to make sure there is no practical argument the Cayman Island entity is unaware of the allegations against it.

This dynamic makes it rationale for Hero Funding 2020-1 to settle the case by paying each claimant the $1500 filing fee and perhaps more, to avoid the certain and unrecoverable arbitration costs. This same formula has been used recently by a law firm bringing mass arbitration claims on behalf of UBER drivers, involving 10,000 claims that would have cost $15,000,000 for UBER to even start to arbitrate. But that firm had millions to spend. I am a sole practitioner so the size of the mass arbitration I am seeking is at least 100 claimants. I may do it with less. But in any event, if I decide NOT to proceed, I will refund any money's paid to me for expected costs / fees.

To make the threat credible, I have to be able to actually take these 100, maybe more, cases through to an arbitration hearing and decision. I can do that, but I need all the clients to be on board with the approach.

1. I can provide a legal brief explaining the law.

2. I can provide sample copies of the relevant documentary evidence, and will simply seek to compel the other side to validate their accuracy. Rules of evidence don't apply in Arbitration, so if we can't get them to admit that the documents are genuine (burning up arbitrator time on their dime if they resist) then we can go to a hearing with documents I have with my testimony to support them.

3. Clients can have in person hearing near their homes, according to JAMS rules. I will appear remotely in cases outside of San Diego, and even then will keep that option open. Client should also be able to appear remotely, and we might agree to have a documents only arbitration, as the in person testimony is not necessary for the claims here to be proven. This document only process will make it CHEAPER for the defendant, but might work to both our advantage. I need flexibility in HOW we respond to guard against the TACTICS they may try to beat this.

If they REFUSE to pay you can sue in Superior Court to get a court order that they participate and pay. This will require payment of a Court filing fee of $435 that will be completely recoverable from them so I doubt they will fight it. If we go that route I will represent you in Superior Court to force them to arbitrator (and pay the thousands necessary to do so) IF you agree to pay the $435 filing fee.

So to sum it up. Go to my website at WhatIsTheLaw.com. Click on the link to sign up to the Mass Arbitration. Pay the $250 IF you don't qualify for the fee waiver. IF you qualify, sign the fee waiver and sign my fee agreement provided at the website. Email me the signed documents. I will take it from there. You must have a good email address that you can check regularly. I will need to keep communications with all clients via email so I can manage a case of this size. Thanks.

Jim Swiderski

Attorney CA State Bar No. 185761

University of San Diego School of Law, Class of 1996

Check out my clean State Bar Record at Calbar.org, click on attorney search and look for me by name and bar number.