

Nemore v. Renovate America and Ocana v. Renew Financial

Frequently Asked Questions

1. Who are the named plaintiffs?

All of the named plaintiffs are low-income Los Angeles County homeowners. They live in South Los Angeles, North Hollywood, and Pasadena. Three of the four Renovate America named plaintiffs are seniors. Three of them are African American, and one is Latina. All of the Renew Financial plaintiffs are Latino, and speak limited English. Two of the Renew Financial plaintiffs are seniors.

2. Are there other names that these companies use for PACE loans?

Renovate America uses the brand name “HERO” for its PACE loan product and Renew Financial uses the brand name “California First.”

3. How many people are affected by PACE?

According to Los Angeles County Treasurer and Tax Collector records, there were 11,823 residential properties in Los Angeles County encumbered by a PACE lien as of July 19, 2017 – a number that continues to rise rapidly.

4. What consumer protections did these companies promise to implement?

In their contracts with Los Angeles County, both Renovate America and Renew Financial promised “best in class” consumer protections, including protections against “predatory lending.” They also promised to “provide special protection for seniors” and “assistance in multiple languages.”

5. Who will be part of the class action?

Homeowners will be members of the proposed class if their PACE financing caused their debt-to-income ratio to increase to 50% or more, or if their debt-to-income ratio remained below 50%, but left them with insufficient money to pay for basic expenses.

6. I heard that PACE is a federal program—how does PACE work?

At the federal level, PACE is primarily an idea or a framework. The Department of Energy has published best practices guidelines for PACE administrators such as Renovate America and Renew Financial, but there is no federal law regulating PACE. PACE is enabled at the state level. Most of California’s PACE provisions are located in the Streets & Highways Code. Once the California Legislature enacted this enabling legislation, cities, counties and joint powers authorities were free to establish local PACE programs within their jurisdictions. The County of Los Angeles implemented its PACE program in March 2015, with Renovate America and Renew Financial acting as its PACE administrators. Many cities within Los Angeles County also have their own PACE programs, but those are not at issue in the present lawsuits.

7. Why are you filing lawsuits, when there is new legislation that will fix these problems?

Assembly Bill 1284, signed into law in October 2017, requires PACE administrators such as Renovate America and Renew Financial to perform an ability to repay analysis, effective April 1, 2018. We hope the new law will keep consumers from entering into PACE financing transactions they cannot afford. However, the ability to repay language in AB 1284 is vague as to what is actually required, and underwriting is not currently required to take place before approval for financing, so individuals may still end up approved for PACE loans they cannot afford.

Even if this new law were to solve the predatory lending problem, it provides no retroactive protection or redress to homeowners who entered into contracts with the County of Los Angeles between March 2015 and March 2018, when no ability to repay analysis was performed. We estimate that approximately 15,000 Renovate America and Renew Financial liens were originated in Los Angeles County before April 1, 2018.

8. Why aren't we seeing more foreclosures on PACE liens?

While PACE finance companies have touted low default rates, the plaintiffs allege that those default rates are misleading. There are homeowners who did not have the ability to pay their property tax bill after it increased due to the PACE lien, but their mortgage servicer or reverse mortgage servicer jumped in and made the property tax payment for them. In some cases, those mortgage servicers are threatening to foreclose to recoup those payments.

This is also true for homeowners who have elected to impound their taxes in a mortgage escrow account. When the PACE payment becomes due, the mortgage servicer pays the increased tax bill, creating an escrow shortage that the homeowner is responsible for. If the homeowner cannot make up for the escrow shortage—which may be hundreds of dollars per month—the mortgage servicer may foreclose.

In both cases, a foreclosure will be delayed, and ultimately attributed to the mortgage servicer, rather than to the PACE lien.

9. But doesn't PACE help the environment?

PACE is used to sell many types of supposedly environmentally-friendly home improvements that may provide little or no environmental benefit. Most of the dozens of homeowners who have contacted Public Counsel and Bet Tzedek were sold “reflective” or “cool coat” exterior paint for between \$18,000 and \$28,000, without seeing any appreciable energy savings. Solar panels can provide energy savings, but only if they work. Some PACE-installed solar panels are not operational. Even in the best-case scenario, where the improvements can and do confer real energy savings, the cost of the work can outweigh the reduction in utility expenses. Homeowners should be given clear disclosures of the costs and benefits of their project, so that they can make an informed decision about whether they are willing to pay extra to help the environment.

In many cases, if a consumer can afford the home improvements, they can obtain financing on similar or better terms, with more consumer protections, from conventional lenders. Helping the environment is laudable, but there is no need for it to come at such a price.

10. **Renovate America claims that its PACE program has been used nationwide by over 115,000 homeowners to make energy and efficiency improvements and that it has saved billions of dollars in energy and water bills. Isn't that a good thing?**

Proponents of PACE calculate these alleged savings based on estimates. For example, they project that installing a double-paned window will save X dollars in heating and cooling costs. However, those estimates can be misleading: the benefits of installing a new window vary drastically by climate, and also depend on what kind of window is being replaced, whether the home is otherwise well-insulated, and other factors. We are not aware of any studies showing actual savings, based on individual homeowner energy costs.

Even if these projects save on energy and water bills, there is no economic benefit to a homeowner who is charged inflated prices for the "improvement" and an above-market interest rate. Renovate America has profited from low-income, elderly, and non-English fluent homeowners, without making sure they have the means to repay these PACE loans. This is not something Renovate America should be gloating about. It's something Renovate America should be apologizing for and seeking to remedy.

11. **Renovate America claims that its PACE program has created over 25,000 local trade jobs. Isn't that a positive benefit from the PACE program?**

No trade job is a good trade job if it comes from selling a senior citizen, living on a small fixed income, a solar energy system at top-of-the-market prices at an above-market interest rate, that will cause that senior citizen to default and risk losing his or her home. The complaint alleges that Renovate America and Renew Financial have breached their contract promises to Los Angeles County and its citizens to ensure that Renovate America's and Renew Financial's contractors and solicitors engage in "best practices" to protect consumers, including seniors and persons who are not fluent in English, avoid predatory lending, and take other steps to avoid the problems this lawsuit addresses. That is not a "benefit" from the PACE program.

12. **Homeowners took out over \$4 billion in PACE loans in 2017. Doesn't that tell us that PACE is a viable and positive program?**

That tells us that businesses that profit from the PACE program, such as Renovate America and Review Financial, are making a lot of money from PACE. But the Federal Housing Finance Agency, the Federal Housing Administration, and the Department of Energy have for several years expressed concerns about the PACE program and its potential to harm homeowners. Fannie Mae and Freddie Mac will not assume a loan on a property with a PACE lien. California realtors are reporting problems selling houses with PACE liens. Kern County and the City of Bakersfield have cancelled their PACE program. The SEC and FBI are investigating Renovate America's California activities.

13. **What about people who are being sued by contractors on mechanic's liens?**

In some instances, the PACE financing falls through for some reason. This may be because the homeowner refused to sign required documents, or because the PACE administrator identified that there was a problem with the project. In those cases, the homeowner is still ostensibly liable for the home improvements that were performed, and the contractor is entitled to collect through a mechanic's lien. Like a PACE lien, a mechanic's lien can expose a homeowner to foreclosure. Irell & Manella represents one such homeowner in *Best Solar Power v. Williams*, and Public Counsel has represented or placed several other mechanic's lien cases with pro bono counsel. There are numerous defenses that can and are being raised in these cases, but many people

may not know what their rights are unless they get legal advice. These homeowners are not members of the proposed class actions.

14. Will these lawsuits solve all of the problems with PACE?

No. Class action lawsuits can address only problems that are common to all plaintiffs and class members. Class actions cannot address individual issues, such as improper business practices of the home improvement contractors. Some of those problems that we have seen include overcharging, verbal misrepresentations, forgery, failure to obtain building permits, failure to perform work, failure to use licensed/registered contractors, or improperly performed work.

15. Is it true that PACE is disproportionately affecting communities of color?

Below is a map of Renovate America projects in Los Angeles. The image is a composite based on screenshots from Renovate America's website, taken in late September-early October 2017.

It appears that African American communities are particularly affected, and that the high number of HERO projects in some predominantly African American neighborhoods may not be attributable to the correlation between race and poverty. For example, the densely-red rectangular neighborhood at the bottom of the map south of CSU Dominguez Hills has a median income of approximately \$86,000, and a population that is approximately 82% African American.

