

# **EXHIBIT C**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**VALERIE LEMBECK, ROBERT  
LANGE, and ANDREW MILLER**, *on behalf  
of themselves and all others similarly situated,*

Plaintiff,

v.

**ARVEST CENTRAL MORTGAGE CO.,**

Defendant.

Case No. 3:20-cv-03277-VC

~~PROPOSED~~ ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT AND FOR  
CERTIFICATION OF SETTLEMENT  
CLASS

Date: March 18, 2021  
Time: 10:00 a.m.  
Courtroom:  
Judge: Vince Chhabria

Date Filed: May 14, 2020  
Trial Date: None set

1 Plaintiffs Valerie Lembeck, Andrew Miller, and Robert Lange, individually and on behalf of the  
 2 proposed Settlement Class,<sup>1</sup> seek preliminary approval of a proposed Settlement of claims against  
 3 defendant Arvest Central Mortgage Company (“Arvest”). For the reasons set forth herein, the Court  
 4 GRANTS preliminary approval and GRANTS preliminary certification of the Settlement Class for  
 5 settlement purposes only.

6 **I. BACKGROUND**

7 Plaintiffs commenced separate actions in California, Florida, and Texas, respectively. Plaintiff  
 8 Lembeck initiated a class action lawsuit in this Court, alleging that Arvest violated California’s Rosenthal  
 9 Fair Debt Collections Act (“Rosenthal Act”) and Unfair Competition Law (“UCL”). *See* Compl., Dkt. 1.  
 10 Plaintiff Miller initiated a class action currently pending in state court in Florida against Arvest, alleging  
 11 violations of the Florida Consumer Collection Practices Act (“FCCPA”) and the Florida Deceptive Unfair  
 12 Trade Practices Act (“FDUTPA”). *Andrew Miller v. Arvest Central Mortgage Co.*, No. 20-010342-CA-01 (Fla.  
 13 Cir. Ct., Miami-Dade Cty.). And Plaintiff Lange initiated a class action in the Eastern District of Arkansas  
 14 against Arvest, alleging violations of the Texas Debt Collection Act (“TDCA”). *Robert Lange v. Arvest*  
 15 *Central Mortgage Co.*, No. 4:20-cv-293-LPR (E.D. Ark.). Although the three putative class actions were  
 16 brought separately, each is based on one allegation: Arvest charged and collected millions of dollars in \$5  
 17 and \$10 Pay-to-Pay Fees from homeowners, in addition to their regular mortgage payments, and Plaintiffs  
 18 allege that this practice violated the laws of California, Florida, and Texas, and breached their mortgage  
 19 agreements. Arvest denies the allegations in the complaints and denies any wrongdoing.

20 Before this Court, Arvest moved to dismiss the complaint filed by Plaintiff Lembeck, Plaintiff  
 21 Lembeck opposed, and the Court held a hearing on October 22, 2020. *See* Dkts. 24, 39, 45-46. On  
 22 November 3, 2020, the Court issued an order granting in part and denying in part the motion, permitting  
 23 all but one of Plaintiff Lembeck’s claims to proceed. *See* Dkt. 47. In the *Lange* matter, Arvest moved to  
 24 dismiss the Complaint and Plaintiff Lange opposed. *See Lange* Dkts. 13, 16, 19. The *Lange* court has not

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 26 <sup>1</sup> Unless otherwise specifically defined herein, all capitalized terms have the same meanings as those set  
 27 forth in the parties’ Settlement Agreement, attached as Exhibit 1 to the Declaration of Hassan A. Zavareei  
 (“Zavareei Decl.”).

1 ruled. *See Lange* Dkt. 35. In the *Miller* matter, Arvest removed the case to federal court and moved to  
2 dismiss. Plaintiff Miller moved to remand and opposed the motion to dismiss. The *Miller* court remanded  
3 the case to state court on December 18, 2020. After the Parties reached the proposed Settlement, the  
4 Parties agreed that, to preserve the resources of the Parties and the Court, Plaintiffs' claims should be  
5 consolidated and a single Settlement Agreement considered and approved by one Court, rather than  
6 proceeding piecemeal. Thus, in advance of this Motion, the Plaintiffs filed the current operative Amended  
7 Complaint consolidating their claims before this Court and notified the *Lange* and *Miller* courts of the  
8 pending Settlement.

9 The proposed Settlement was negotiated during a full-day mediation before an experienced  
10 mediator, Jed. D. Melnick of JAMS. In advance of that mediation, Arvest provided Plaintiffs with  
11 informal discovery demonstrating the size of the Settlement Class and the amount of damages in issue.  
12 Following the mediations, the Parties continued to negotiate the details of the Settlement before arriving  
13 at the Settlement Agreement currently before the Court.

## 14 **II. SETTLEMENT TERMS**

### 15 **A. The Proposed Settlement Class**

16 The Settlement Agreement contemplates certification of the following Settlement Class for  
17 settlement purposes only:

18 All persons who (1) were borrowers on residential mortgage loans on properties located in Florida,  
19 Texas, or California to which Arvest acquired servicing rights, and (2) paid a fee to Arvest for  
20 making a loan payment by telephone, including through the use of the telephonic automated  
"IVR" (interactive voice response) system, or the internet, between January 1, 2017 and December  
31, 2020.

21 The proposed Settlement Class is identical to the class definition included in the Amended Complaint.

### 22 **B. Benefits to the Settlement Class**

23 The Settlement Agreement, if approved, will create a \$1,474,314 common fund and will resolve  
24 the claims of Plaintiffs and the Settlement Class Members deriving from Arvest's practice of charging fees  
25 for making mortgage payments online, over the phone, or IVR ("Pay-to-Pay Fees"). The common fund,  
26 which represents approximately 49.7% of damages, will provide cash payments to Settlement Class  
27 Members, as well as Administrative Costs to provide notice and administer the settlement, and any Fee

1 and Expense Award and Service Awards that the Court may approve. Settlement Class Members need not  
2 submit a claim form in order to receive monetary compensation *pro rata* according to the amount of Pay-  
3 to-Pay Fees they were charged. In addition to the common fund, the Settlement includes important and  
4 valuable injunctive relief. As of January 1, 2021, Defendant has ceased charging or collecting Pay-to-Pay  
5 Fees to any Settlement Class Member and to any borrower in California, Florida, and Texas. As a result of  
6 this Settlement, Defendant agrees to refrain from the charging or collection of Pay-to-Pay Fees from  
7 borrowers in California, Florida, and Texas for a period of at least three years after entry of the Final  
8 Approval Order.<sup>2</sup>

9 **C. Settlement Administrator and Administration Costs**

10 The proposed Settlement Administrator is KCC Class Action Services, LLC (“KCC”), a leading  
11 class action administration firm in the United States. The Parties reviewed proposals from three  
12 prominent settlement administrators before deciding on KCC based on overall cost and value to the  
13 Settlement Class. The Administrative Costs will be paid from the Gross Settlement Fund.

14 **D. Class Member Release**

15 In exchange for the benefits conferred by the Settlement, all Settlement Class Members will be  
16 deemed to have released the Released Entities from all claims that were or could have been asserted by the  
17 Class Representatives or Settlement Class Members arising out of, based upon, or related in any way to the  
18 charging, collection, or attempted collection of Pay-to-Pay Fees from the beginning of the world to the  
19 Effective Date, which the Settlement Class Member ever had or may have in the future.

20 **E. Proposed Plan of Notice**

21 The Parties’ proposed Notice Plan consists of direct notice in the form of Postcard Notice and  
22 Email Notice, as well as a Settlement Website where Settlement Class Members may view and download a  
23 Long Form Notice. Settlement Class Members may also request that the Settlement Administrator mail or  
24 email them a copy of the Long Form Notice.

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26  
27 <sup>2</sup> Arvest has also ceased charging Pay-to-Pay Fees in the rest of the country.

1           Within 14 days or such other time as provided in the Preliminary Approval Order, Arvest, at its  
2 own expense, will compile the Settlement Class Member List and provide it to the Settlement  
3 Administrator and Class Counsel.

4           As soon as practicable but starting no later than thirty (30) days after the date that the Defendant  
5 provides the Settlement Class Member List to the Settlement Administrator, the Settlement Administrator  
6 shall cause the Email Notice to be sent to all Settlement Class Members for whom the Settlement Class  
7 Member List includes an email address.

8           As soon as practicable but starting no later than thirty (30) days after the date that the Defendant  
9 provides the Settlement Class Member List to the Settlement Administrator, the Settlement Administrator  
10 shall cause the Postcard Notice to be sent to all Settlement Class Members for whom no email address  
11 appears on the Settlement Class Member List. Prior to mailing Class Notice, the Settlement Administrator  
12 will update the last known addresses of the members of the Settlement Class using the National Change of  
13 Address database. Within a reasonable time before the Response Deadline, the Settlement Administrator  
14 shall also cause the Postcard Notice to be sent to all Settlement Class Members whose Email Notices are  
15 returned undeliverable, after running those Settlement Class Members' last known addresses through the  
16 National Change of Address database. If the Postcard Notice is returned with a forwarding address, the  
17 Settlement Administrator shall make one attempt to re-mail the Postcard Notice to that forwarding  
18 address, as soon as possible before the Response Deadline. If the Postcard Notice is returned  
19 undeliverable without a forwarding address, the Settlement Administrator shall make a reasonable attempt  
20 to locate an updated address and make one attempt to re-mail the Postcard Notice to the updated address,  
21 as soon as possible before the Response Deadline.

22           The Settlement Administrator shall mail or email the Long Form Notice to any Settlement Class  
23 member who requests a copy.

24           Prior to the date on which the Settlement Administrator mails the Postcard Notice, the Settlement  
25 Administrator shall establish the Settlement Website. The Settlement website shall contain: (1) the Long  
26 Form Notice in downloadable PDF format; (2) the Long Form Notice in HTML format with a clickable  
27 table of contents, described as answers to frequently asked questions; (3) a contact information page with

1 contact information for the Settlement Administrator, and addresses and telephone numbers for Class  
2 Counsel and Defendant’s Counsel; (4) the Settlement Agreement; (5) the signed Preliminary Approval  
3 Order and publicly filed motion papers and declarations in support thereof; (6) the operative complaints  
4 in each of the Actions; and (6) when they become available, the Fee and Service Award Application, the  
5 motion for entry of the Final Approval Order, and any motion papers and declarations filed publicly in  
6 support thereof. The Settlement Website shall remain accessible until 30 days after the Settlement  
7 Administrator has completed its obligations under the Settlement Agreement.

8 The Settlement Administrator shall also establish a 24-hour toll-free telephone line with  
9 information about frequently asked questions about the Settlement. The number shall be included in the  
10 Class Notice and posted on the Settlement Website.

11 The Settlement Administrator will also ensure that the necessary and timely notice is provided to  
12 any state and federal officers as required by the Class Action Fairness Act, 28 U.S.C. § 1715.

13 **F. Opt-Outs and Objections**

14 The Class Notice will advise Settlement Class Members of their right to opt out of the Settlement  
15 or to object to the Settlement and/or to Class Counsel’s application for attorneys’ fees, costs, and  
16 expenses and/or Service Award to the Class Representative, and of the associated deadlines to opt out or  
17 object.

18 Settlement Class Members who choose to opt out must submit a written request for exclusion.  
19 Any request for exclusion must be postmarked on or before the “Response Deadline”—105 days after  
20 entry of the Preliminary Approval Order. Any request for exclusion must include the name of the case,  
21 and the name, address, phone number, and signature of the borrower or borrowers seeking exclusion and  
22 must contain language clearly indicating a request for exclusion. If there are co-borrowers on the loan all  
23 co-borrowers must sign the request for exclusion. Any Settlement Class Member who does not submit a  
24 request to opt out in accordance with the deadlines and other requirements will be bound by the  
25 Settlement absent a court order to the contrary.

26 Settlement Class Members who wish to object to the Settlement must mail a written objection,  
27 postmarked on or before the Response Deadline, to the Court c/o the Class Action Clerk, United States

1 District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102  
2 or file their objection in person on or before the Response Deadline at any location of the United States  
3 District Court for the Northern District of California. All objections must be in writing and personally  
4 signed by the Settlement Class Member and include: (1) the objector's name, address, email address if any,  
5 and telephone number; (2) the case caption; (3) the specific factual basis and legal grounds for the  
6 objection; (4) a list of all cases in which the objector has objected to a class action settlement, including  
7 case name, court, and docket number; (5) if the objector is represented by counsel, a list of all cases in  
8 which the objector's counsel has represented an objector in objecting to a class action settlement, case  
9 name, court, and docket number; (6) a statement indicating whether the Settlement Class Member and/or  
10 their lawyer(s) intend to appear at the Final Fairness Hearing; (7) a list of witnesses, if any, that the  
11 objecting Settlement Class Member intends to call; and (8) whether the objection relates only to the  
12 objector, or to a subset of the Settlement Class, or to the entire Settlement Class. The objector should also  
13 comply with Local Rule 3-15 and promptly file a Certification of Interested Entities or Persons in the  
14 docket.

15 Any Settlement Class Member who has not submitted a timely request for exclusion may appear at  
16 the Final Fairness Hearing either in person or through an attorney. However, if the Settlement Class  
17 Member intends to appear through counsel, the Settlement Class Member must have submitted a written  
18 objection pursuant to this section. Any lawyer who intends to appear at the Final Fairness Hearing also  
19 must enter a written Notice of Appearance of Counsel with the Clerk of the Court no later than the  
20 Response Deadline. Any Settlement Class Member who intends to request the Court to allow him or her  
21 to call witnesses at the Final Fairness Hearing must make such a request in a written brief, which contains  
22 a list of such witnesses and a summary of their requested testimony.

23 No person who has opted out of the Settlement may object to it. Any Settlement Class Member  
24 who does not provide a timely written objection or who does not make a record of his or her objection at  
25 the Final Approval Hearing shall be deemed to have waived any objection and shall forever be foreclosed  
26 from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement, Fee  
27 and Service Awards Application, or the Fee and Expense Award or Service Awards.



1           **G.       Attorneys' Fees and Costs and Service Award**

2           The Settlement Agreement contemplates Class Counsel petitioning the Court for attorneys' fees,  
3 as well as documented, customary costs incurred by Class Counsel. The Settlement Agreement provides  
4 that Class Counsel may seek attorneys' fees in an amount not to exceed one third of the Gross Settlement  
5 Fund (33.33%) as well as reasonable expenses incurred in the litigation. Any approved Fee and Expense  
6 Award will be paid from the Gross Settlement Fund prior to distribution to the Settlement Class  
7 Members.

8           On or before 21 days prior to the Response Deadline, Class Counsel will file a petition for  
9 attorneys' fees and costs explaining why the requested Fee and Expense Award is reasonable. Class  
10 Counsel will provide lodestar information sufficient for the Court to perform a lodestar cross-check  
11 should the Court choose to exercise its discretion to perform one. Arvest has not agreed to any award of  
12 attorneys' fees or expenses and reserves the right to respond as it deems appropriate.

13           Class Counsel may also petition the Court for up to \$5,000 each for Valerie Lembeck, Andrew  
14 Miller, and Robert Lange as Service Awards as compensation for their time and effort in the Action. Any  
15 approved awards will be deduced from the Gross Settlement Fund prior to distribution to the Settlement  
16 Class Members. Plaintiffs will submit declarations detailing their participation in the Action along with the  
17 Fee and Service Award Application.

18           Neither final approval, nor the size of the Common Fund, are contingent upon approval of the  
19 full amount of requested Fee and Expense Award or Service Awards.

20           **III.       LEGAL STANDARD FOR PRELIMINARY APPROVAL**

21           The Ninth Circuit has a strong judicial policy favoring the settlement of class actions. *See In re*  
22 *Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1269,  
23 1276 (9th Cir. 1992). The settlement of complex cases greatly contributes to the efficient utilization of  
24 scarce judicial resources and achieves the speedy provision of justice. Federal Rule of Civil Procedure 23  
25 requires court approval of a class action settlement, a decision that is committed to the sound discretion of  
26 the trial judge. Fed. R. Civ. P. 23(e). *See also In re Mego Fin. Corp.*, 213 F.3d 454, 458 (9th Cir. 2000)  
27 (recognizing that the trial judge is "exposed to the litigants, and their strategies, positions, and proof").

1 “Approval of a class action settlement requires a two-step process — a preliminary approval  
2 followed by a later final approval.” *Behfarin v. Pruco Life Ins. Co.*, No. CV 17-5290-MWF-FFMx, 2019 WL  
3 7188575, at \*5 (C.D. Cal. Nov. 26, 2019) (quoting *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 319 (C.D. Cal.  
4 2016)). Preliminary approval is appropriate where the “proposed settlement appears to be the product of  
5 serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant  
6 preferential treatment to class representatives or segments of the class, and falls within the range of  
7 possible approval.” *Ma v. Covidien Holding, Inc.*, No. SACV 12-02161, 2014 WL 360196, at \*10 (C.D. Cal.  
8 Jan. 31, 2014). Courts in this District generally consider at preliminary approval whether a proposed  
9 settlement is both procedurally and substantively fair and reasonable, holding the settlement to the same  
10 rigorous standards applied at final approval. *See, e.g., Behfarin*, 2019 WL 7188575, at \*6. The question for  
11 the Court is whether the settlement is “within the range of reasonableness.” *Ma*, 2014 WL 360196, at  
12 \*10.

13 Courts in the Ninth Circuit consider specific factors when approving a settlement. *See e.g., In re*  
14 *Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 964 (9th Cir. 2011) (citing *Churchill Vill., L.L.C. v. Gen.*  
15 *Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)); *Avina*, 2019 WL 8163642, at \*5. These factors include: (1) the  
16 strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3)  
17 the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the  
18 extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel;  
19 (7) the presence of a governmental participant; and (8) the reaction of the class members of the proposed  
20 settlement. *See Churchill Vill.*, 361 F.3d at 575; *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).  
21 Rule 23, as amended in 2018, provides additional guidance to federal courts considering whether to grant  
22 preliminary approval of a class action settlement. *See Fed. R. Civ. P. 23(e)3*. Those factors include whether:  
23 (A) the class representative and class counsel have adequately represented the class; (B) the proposal was  
24 negotiated at arm's length; (C) the relief provided is adequate; and (D) whether the proposed settlement  
25 treats class members equitably relative to each other.

1 **IV. FINDINGS AND ORDERS**

2 **A. The Settlement Agreement warrants preliminary approval.**

3 The Court finds, on a preliminary basis, that the Settlement Agreement appears to be within the  
4 range of reasonableness of a settlement that could ultimately be given final approval by this Court.

5 1. It appears to the Court that the Settlement was negotiated at arm's length before an  
6 experienced mediator, between experienced and sophisticated counsel. "The assistance of an experienced  
7 mediator in the settlement process confirms that the settlement is non-collusive." *Adams v. Inter-Con Sec.*  
8 *Sys. Inc.*, No. C-06-05248-MHP, 2007 WL 3225466, at \*3 (N.D. Cal. Oct. 30, 2007). *See also Coborst v. BRE*  
9 *Prods.*, No. 3:10-CV-2666-JM-BGS, 2011 WL 7061923, at \*12 (S.D. Cal. Nov. 9, 2011) ("[V]oluntary  
10 mediation before a retired judge in which the parties reached an agreement-in-principle to settle the claims  
11 in the litigation are highly indicative of fairness."). The Ninth Circuit puts "a good deal of stock in the  
12 product of an arm's-length, non-collusive, negotiated resolution" in approving a class action settlement.  
13 *Rodriguez v. West Pub'lg Corp.*, 563 F.3d 948, 965 (9th Cir. 2009); *see* Fed. R. Civ. P. 23(e)(2)(B). Based on the  
14 vigorous litigation of the issues, the exchange of informal discovery, and the rigorous negotiations before  
15 Mr. Melnick described in Plaintiffs' submission, it appears to the Court that the Settlement was negotiated  
16 at arms' length and under circumstances evidencing a lack of collusion. This conclusion is furthered by the  
17 fact that it appears the factors under *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935 (9th Cir. 2011)  
18 are satisfied.

19 2. It appears to the Court that the Settlement is fair, reasonable, and adequate when balanced  
20 against the probable outcome of further litigation, liability, and damages issues, and potential appeals of  
21 rulings. The amount offered in Settlement represents 49.7% of damages, as well as significant injunctive  
22 relief. Plaintiffs' motion describes the legal issues that would be decided before this Court and before the  
23 *Lange* and *Miller* courts should the settlement not be approved, both on the merits and at class  
24 certification. While litigation presents serious risks at many stages, not to mention substantial expense and  
25 delay without any guarantee of additional benefit to the Settlement Class, the Settlement provides  
26 immediate and substantial benefits to over 48,000 Settlement Class Members. Further, continued litigation  
27 would likely take several years to resolve and involve expensive discovery. "Regardless of the risk,

1 litigation is always expensive, and both sides would bear those costs if the litigation continued.” *Paz v. AG*  
2 *Adriano Goldschmeid, Inc.*, No. 14CV1372DMS(DHB), 2016 WL 4427439, at \*5 (S.D. Cal. Feb. 29, 2016). It  
3 is “plainly reasonable for the parties at this stage to agree that the actual recovery realized and risks  
4 avoided here outweigh the opportunity to pursue potentially more favorable results through full  
5 adjudication.” *Dennis v. Kellogg Co.*, No. 09-cv-1786-L(WMc), 2013 WL 6055326, at \*3 (S.D. Cal. Nov. 14,  
6 2013). “Here, as with most class actions, there was risk to both sides in continuing towards trial. The  
7 settlement avoids uncertainty for all parties involved.” *Chester v. TJX Cos.*, No. 5:15-cv-01437-  
8 ODW(DTB), 2017 WL 6205788, at \*6 (C.D. Cal. Dec. 5, 2017). The Court also affords substantial weight  
9 to the views of Class Counsel, who support the Settlement.

10 3. It appears to the Court that the relatively early resolution of this Action will conserve the  
11 resources of the Parties and the Court, while at the same time, the Parties have vigorously litigated the  
12 legal issues and Arvest provided sufficient informal discovery to permit Class Counsel and the Court to  
13 intelligently evaluate the Settlement offered against the risks and benefits of continued litigation. “The  
14 efficiency with which the Parties were able to reach an agreement need not prevent this Court from  
15 granting preliminary approval.” *Hillman v. Lexicon Consulting, Inc.*, No. EDCV 16-01186-VAP(SPx), 2017  
16 WL 10433869, at \*8 (C.D. Cal. April 27, 2017).

17 3. It appears to the Court that the Parties’ proposed allocation of the Settlement is fair and  
18 reasonable. Payments will be made on a *pro rata* basis depending on the number of Pay-to-Pay Fees each  
19 Settlement Class Member paid. According to this allocation, Class Members are treated fairly as to one  
20 another because they are compensated according to the amount of Pay-to-Pay Fees they were charged. *See*  
21 Fed. R. Civ. P. 23(e)(2)(D). This method is consistent with the distribution of common funds in other fee  
22 cases. *See, e.g., Lloyd v. Navy Federal Credit Union*, No. 17-cv-1280-BAS-RBB, 2018 WL 2269958, at \*3 (S.D.  
23 Cal. May 28, 2019) (approving settlement from which class members would receive *pro rata* distribution of  
24 common fund based on number of fees paid); *Walters v. Target Corp.*, No. 3:16-cv-1678-L-MDD, 2019 W  
25 6696192, at \* (S.D. Cal. Dec. 6, 2019) (same). A *pro rata* distribution means that Settlement Class Members  
26 who paid more Pay-to-Pay Fees will receive a relatively larger share of the Settlement Fund, and those  
27 who paid fewer will receive less. This allocation treats Settlement Class Members equitably.

1           4.       It appears to the Court that the Class Representatives and Class Counsel have adequately  
2 represented the proposed Settlement Class. *See* Fed. R. Civ. P. 23(e)(2)(A). Class Counsel are experienced  
3 and sophisticated, with years of experience in complex class action litigation and litigation involving  
4 mortgage servicers, financial institutions, and fees. The Class Representatives have also supervised the  
5 litigation by reviewing pleadings, reviewing the Settlement, and communicating with Class Counsel  
6 regarding the litigation. In advance of final approval, the Class Representatives shall submit declarations  
7 detailing their involvement in the litigation.

8           5.       It appears to the Court that the terms of the proposed award of attorneys' fees and  
9 expenses are fair and reasonable. However, prior to final approval, Class Counsel shall file a separate  
10 motion seeking approval of Attorneys' Fees and Expenses in an amount not to exceed one third (33.33%)  
11 of the Gross Settlement Fund, plus their reasonable expenses of litigation. In this submission, Class  
12 Counsel will set forth the specific legal and factual bases for their request for attorneys' fees and expenses,  
13 and provide lodestar information. It likewise appears to the Court that the proposed Service Awards are  
14 fair and reasonable.

15           **B.       Certification of the Settlement Class for settlement purposes is appropriate.**

16           On a motion for preliminary approval, the parties must also show that the Court "will likely be  
17 able to ... certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1). The Court  
18 finds for purposes of settlement only that Settlement Class meets all of the requirements of Fed. R. Civ.  
19 P. 23(a) and (b)(3).

20           1.       It appears to the Court for purposes of settlement only that the proposed Settlement Class  
21 is sufficiently numerous that joinder would be logistically impossible. The proposed Settlement Class  
22 consists of over 48,000 Settlement Class Members. The numerosity requirement is satisfied.

23           2.       It appears to the Court for purposes of settlement only that there is a commonality of  
24 interests between the Settlement Class Members, including both questions of law and questions of fact.  
25 Plaintiffs' claims here depend on the common contentions that Pay-to-Pay Fees are neither authorized by  
26 class members' mortgages or permitted by law. For the same reason, the predominance requirement of  
27 Fed. R. Civ. P. 23(b)(3) is satisfied for settlement purposes.

1           3.       It appears to the Court for purposes of settlement only that the Class Representatives'  
2 claims are typical of those of the Settlement Class Members. The Class Representatives' claims arise from  
3 the same alleged course of conduct as those of the Settlement Class Members. The typicality requirement  
4 is satisfied.

5           4.       It appears to the Court for purposes of settlement only that the Class Representatives and  
6 Class Counsel are adequate representatives and have no conflicts with the proposed Settlement Class.

7           5.       It appears to the Court for purposes of settlement only that a class action is a superior  
8 method of resolving the claims of the Settlement Class Members, which are of modest amounts.

9           **C.       The proposed Notice Plan is approved.**

10          Due process under Rule 23 requires that class members receive notice of the settlement and an  
11 opportunity to be heard and participate in the litigation. *See* Fed. R. Civ. P. 23(c)(2)(B); *Phillips Petroleum Co.*  
12 *v. Shutts*, 472 U.S. 797, 812 (1985); *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 175-76 (1974) (“[I]ndividual  
13 notice must be provided to those class members who are identifiable through reasonable effort.”). The  
14 mechanics of the notice process are left to the discretion of the Court, subject only to the broad  
15 “reasonableness” standards imposed by due process. *See Tapia v. Zale Del. Inc.*, No. 13cv1565-PCL, 2017  
16 WL 1399987, at \*4 (S.D. Cal. April 18, 2017); *see also Rosenberg v. I.B.M.*, No. CV06–00430PJH, 2007 WL  
17 128232, \*5 (N.D. Cal. Jan. 11, 2007) (stating that notice should inform class members of essential terms of  
18 settlement including claims procedure and their rights to accept, object or opt-out of settlement).

19          It appears to the Court that the proposed Notice Plan, which consists of Email Notice and  
20 Postcard Notice to be sent directly to Settlement Class Members, as well as a Long Form Notice,  
21 Settlement Website, and toll-free phone line, comports with due process, Rule 23, and all other applicable  
22 law. Given the relatively small value at stake for each class member, Court finds that email notice is the  
23 best practicable notice under the circumstances and orders that Arvest provide email addresses to the  
24 Settlement Administrator for each Settlement Class Member for whom it is in possession of such  
25 information. The Ninth Circuit has approved class notice in the form of email and postcard notice. *See,*  
26 *e.g., In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 946 (9th Cir. 2015) (finding notice satisfied due  
27 process and Rule 23(e) where an initial email notice was supplemented by a postcard notice to those

1 whose emails bounced back).

2 Moreover, the substance of the proposed Class Notice will fully apprise class members of their  
 3 rights. Under Rule 23(e), notice to class members “must ‘generally describe[ ] the terms of the settlement  
 4 in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be  
 5 heard.’” *Lane v. Facebook, Inc.*, 696 F. 3d 811, 826 (9th Cir. 2012) (quoting *Rodriguez v. West Publ'g Corp.*, 563  
 6 F. 3d 948, 962 (9th Cir. 2009)) (alteration in original). The Notice contains all the critical information  
 7 required to apprise Class Members of their rights under the settlement, directs them to the settlement  
 8 website, where they can obtain more detailed information, and provides a toll-free number for Class  
 9 Members to call with questions. This approach to notice is adequate. *See e.g. Sarabri v. Weltman, Weinberg &  
 10 Reis Co., L.P.A.*, No. 10cv1777 AJB (NLS), 2012 WL 3809123, at \*2 (S.D. Cal. Sept. 4, 2012) (approving  
 11 mailed notice where notice would include the settlement website with a full settlement details and the  
 12 claim administrator’s toll free number); *Knutson v. Schwan’s Home Serv., Inc.*, No. 3:12-cv-00964-GPC-DHB,  
 13 2014 WL 3519064, at \*5 (S.D. Cal. 2014) (same). The Court also finds that the proposed costs associated  
 14 with the Notice Plan appear to be fair and reasonable.

## 15 **V. SCHEDULE AND PROCEDURES**

16 The Court orders the following schedule and procedures for disseminating the Notice, requesting  
 17 exclusion from the Settlement Class, objecting to the Settlement, filing the Fee and Service Award  
 18 Application, and filing the motion for final approval:

19 Date	Event
20 14 days from Preliminary Approval Order	Arvest to provide Settlement Class Member List to the Settlement Administrator
21 30 days from the date that the Defendant provides the Settlement Class Member List to the Settlement Administrator	Settlement Administrator to cause Email Notice to be sent to Settlement Class Members with email addresses
22 30 days from the date that the Defendant provides the Settlement Class Member List to the Settlement Administrator	Settlement Administrator to cause Postcard Notice to be sent to Settlement Class Members without email addresses
23 30 days from Preliminary Approval Order	Settlement Administrator to establish Settlement Website and toll-free telephone line
24	
25	
26	
27	



84 days from Preliminary Approval Order	Deadline for Class Counsel to file Fee and Service Award Application
105 days from Preliminary Approval Order	Response Deadline (deadline to request exclusion or file objections)
14 days prior to Final Approval Hearing	Deadline to file Motion for Final Approval
7 days prior to Final Approval Hearing	Deadline for the Parties to respond to objections
[_____ August 12, 2021 at 2:00 p.m._____]	Final Approval Hearing

## VI. FINAL APPROVAL HEARING

The Court shall hold a Final Approval Hearing before the Honorable Vince Chhabria, for a final determination whether the proposed Settlement is fair, reasonable, and adequate. The Hearing will be conducted using Zoom videoconferencing software. Further information about the Zoom videoconference, including the public URL for the videoconference, will be available on the Court's website at <https://www.cand.uscourts.gov/judges/chhabria-vince-vc/>. Objections by Settlement Class Members will be considered if filed in writing with the clerk by the Response Deadline above. Settlement Class Members who have not requested exclusion may be heard orally in support of or opposition to the Settlement. Settlement Class Members who wish to appear at the Final Approval Hearing through counsel are required to file a notice with the Clerk of his or her desire to appear personally, and counsel must file a notice of appearance on the docket. Settlement Class Members proceeding *pro se* are requested, but not required, to file a notice with the Clerk of his or her desire to appear personally. These written notice requirements may be excused upon a showing of good cause.

## VII. OTHER PROVISIONS

Class Counsel and Defendant are authorized to take, without further Court approval, all necessary and appropriate steps to implement the Settlement, including the proposed Notice Plan and confirmatory discovery. The deadlines set forth in this Order may be extended by Order of the Court without further notice to Settlement Class Members, except that notice shall be posted on the Settlement Website. Settlement Class Members should check the Settlement Class Website regularly for updates and further details regarding the deadlines. Exclusions and objections must meet the deadlines and follow the



1 requirements set forth in the approved Class Notice to be valid, although the Court will accept exclusions  
2 and objections deemed to be in substantial compliance.

3 If for any reason the Court does not execute and file an Order of Final Approval, or if the  
4 Effective Date does not occur for any reason, the Parties will be restored to the *status quo ante* as set forth  
5 more specifically in the Settlement.

6 **VIII. CONCLUSION**

7 Accordingly, the Court having considered the Unopposed Motion for Preliminary Approval of  
8 Class Action Settlement and Certification of the Settlement Class, it is hereby ORDERED that:

- 9 1. The Motion is GRANTED;
- 10 2. The proposed Settlement Class is certified for settlement purposes only pursuant to Rules  
11 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure;
- 12 3. The proposed Settlement is preliminarily approved as being fair, reasonable, and adequate  
13 pursuant to Rule 23(e);
- 14 4. Valerie Lembeck, Andrew Miller, and Robert Lange are appointed as Class Representatives;
- 15 5. Hassan A. Zavareei, Kristen G. Simplicio, and James L. Kauffman are appointed as Class  
16 Counsel;
- 17 6. Arvest is ordered to provide the Settlement Class Member List to the Settlement  
18 Administrator, including email addresses where available, who is ordered to follow the confidentiality  
19 provisions set forth in the Settlement Agreement with respect to such information; and
- 20 7. The proposed Notice Plan complies with the requirements of Rule 23 and Due Process,  
21 and Class Notice is to be sent to the Settlement Class Members as set forth in the Settlement Agreement  
22 and pursuant to the deadlines above.

23 **IT IS SO ORDERED.**

24 Dated: March 23, 2021



25 Hon. Vince Chhabria  
26 United States District Judge  
27