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10 [Additional counsel on signature page]

11 *Counsel for Plaintiff and the Putative Class*

13 **IN THE UNITED STATES DISTRICT COURT**  
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 VALERIE LEMBECK, individually, and on  
16 behalf of classes of similarly situated persons,

17 Plaintiff,

18 v.

19 ARVEST CENTRAL MORTGAGE  
20 COMPANY,

21 Defendant.

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

**STIPULATION FOR CONDITIONAL  
LEAVE TO FILE AMENDED  
COMPLAINT, AND PROPOSED  
AMENDED COMPLAINT**

1           **WHEREAS**, Plaintiff Valerie Lembeck and other putative class representatives, on the one hand,  
2 and Defendant, Arvest Central Mortgage Company (“Arvest”), on the other, entered into a Settlement  
3 Agreement, a copy of which is being filed concurrent with this Stipulation along with a Motion for  
4 Preliminary Approval of Class Action Settlement;

5           **WHEREAS**, in connection with and for purposes of effectuating that Settlement Agreement,  
6 Lembeck and Arvest have agreed that Lembeck may file an Amended Complaint and that the following  
7 additional persons may join as named plaintiffs: Robert Lange and Andrew Miller (collectively, including  
8 Ms. Lembeck, the “Plaintiffs”);

9           **WHEREAS**, the counsel of record for Lembeck are also counsel for the additional plaintiffs  
10 named in the Amended Complaint;

11           **WHEREAS**, Plaintiffs and Arvest (collectively, the “Parties”) consent to jurisdiction and venue  
12 in this Court over all claims in the Amended Complaint by Plaintiffs and the proposed classes they  
13 purport to represent;

14           **WHEREAS**, the proposed Amended Complaint is attached hereto as **Exhibit A**;

15           **WHEREAS**, the Parties have agreed that Arvest is not required to file an answer or otherwise  
16 respond to the Amended Complaint;

17           **WHEREAS**, in the even that Preliminary Approval is denied, Final Approval is denied, or a  
18 mandate is issued reversing an award of Final Approval, or the Settlement Agreement otherwise is  
19 terminated or the Effective Date does not occur according to the terms and definitions set forth in the  
20 Settlement Agreement, the attached Amended Complaint will be deemed withdrawn, the newly added  
21 Plaintiffs and their claims will be considered as dismissed without prejudice, and the original Complaint  
22 (*see* Dkt. 1) will be the operative complaint in this matter.

23           **NOW, THEREFORE, IT IS STIPULATED**, by and between the undersigned Parties,  
24 through their respective counsel of record, that, pursuant to the terms of this stipulation and Rules  
25 15(a)(2) and 16 of the Rules of Civil Procedure: (1) Lembeck conditionally is granted leave to file an  
26 Amended Complaint adding named plaintiffs Lange and Miller; (2) that Arvest be relieved of any  
27 obligation to respond to the Amended Complaint; and (3) in the event that Preliminary Approval is

1 denied, Final Approval is denied, or a mandate is issued reversing an award for Final Approval, or the  
2 Settlement Agreement otherwise is terminated and the Effective Date does not occur according to the  
3 terms and definitions set forth in the Settlement Agreement, the attached Amended Complaint will be  
4 deemed withdrawn, the newly added Plaintiffs' claims will be considered as dismissed without prejudice,  
5 and the original Complaint will be the operative complaint in this matter.

6 **STIPULATED AND AGREED.**

7 Dated: February 26, 2021

Respectfully Submitted,

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*Attorneys for Plaintiffs*

21 Dated: February 26, 2021

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# EXHIBIT A

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19 *Counsel for Plaintiff and the Putative Class*

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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

Plaintiffs,

v.

**ARVEST CENTRAL MORTGAGE CO.,**

Defendant.

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

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

**JURY TRIAL DEMANDED**

**Action for Breach of Contract; Unfair  
Competition Law, Cal. Bus. & Prof. Code  
§§ 17200 et seq.; Rosenthal Fair Debt  
Collection Practices Act, Cal. Civ. Code §§  
1788 et seq.; Texas Fin. Code §392.001 et  
seq.; Fla. Stat. §559.55 et seq.; Fla. Stat.  
§501.201 et seq.**

1 Plaintiffs Valerie Lembeck, Robert Lange, and Andrew Miller (“Plaintiffs”), on behalf of  
2 themselves and all others similarly situated, allege breach of contract, violations of the Rosenthal Fair  
3 Debt Collection Practices Act (“Rosenthal Act”), violations of the Unfair Competition Law (“UCL”),  
4 violations of the Texas Debt Collection Act (“TDCA”), violations of the Florida Consumer Collections  
5 Practices Act (“FCCPA”) and Florida Unfair and Deceptive Trade Practices Act (“FDUTPA”) against  
6 Defendant Arvest Central Mortgage Co. (“Arvest”). In support of these claims, Plaintiffs state as  
7 follows:

8 **NATURE OF THE ACTION**

9 1. Defendant Arvest Central Mortgage Co. (“Arvest”), a servicer of residential mortgages,  
10 routinely violates state debt collection law and breaches the uniform terms of borrowers’ mortgages  
11 (“Uniform Mortgages”) by charging and collecting illegal processing fees when borrowers pay their  
12 monthly mortgage by phone or online (“Pay-to-Pay Fees”). Arvest charges homeowners a fee of \$10.00  
13 for making mortgage payments over the phone with a customer service representative, and \$5.00 for  
14 making mortgage payments online or over the phone with an Interactive Voice Response (“IVR”)  
15 system.

16 2. Arvest services mortgages throughout the United States, collecting thousands of  
17 borrowers’ monthly payments and remitting them to the lender. Arvest is supposed to be compensated  
18 out of the interest paid on each borrower’s monthly payment—not via additional “service” fees that  
19 do not reflect the cost to Arvest of providing such services. Under California, Texas and Florida law  
20 (“State Laws”), Arvest cannot mark-up the amounts it pays third parties to provide borrowers’ services  
21 and impose unauthorized charges to create a profit center for itself. In addition, the Uniform Mortgage  
22 also bars Arvest from charging fees prohibited by applicable law. Arvest’s Pay-to-Pay Fees violate State  
23 Law prohibition on charging fees not expressly provided for in the contract, and thus also violate the  
24 Uniform Mortgage.

25 3. Arvest charges users fees that far exceeded the cost to Arvest to process the mortgage  
26 payments, which, based on industry practice, is typically around \$0.50 per payment. Arvest pockets the  
27 difference (\$4.50 and \$9.50 per payment) as profit. Arvest leverages its position of power over  
28 homeowners, demands exorbitant Pay-to-Pay Fees, and profits from the inflated charges it imposes on

1 its borrowers in violation of State Law. And, in turn, it violates its contractual obligations to Plaintiffs  
2 and other parties to the Uniform Mortgage.

3 4. Plaintiffs paid these Pay-to-Pay Fees, and they bring this class action lawsuit individually  
4 and on behalf of all similarly situated putative class members to recover the unlawfully charged Pay-to-  
5 Pay Fees.

### 6 **JURISDICTION AND VENUE**

7 5. This Court has personal jurisdiction because Arvest conducts business in California  
8 and commits torts in California, as described in this Complaint.

9 6. Subject matter jurisdiction exists under the Class Action Fairness Act because diversity  
10 exists between the defendant and at least one class member and the amount in controversy exceeds  
11 \$5,000,000.

12 7. Venue is proper because a substantial part of the causes of action described herein  
13 arose in this District.

### 14 **PARTIES**

15 8. Plaintiff Valerie Lembeck is a natural person residing in Walnut Creek, California with  
16 a mortgage loan serviced by Arvest. Each time Ms. Lembeck makes a mortgage payment over the  
17 phone, Arvest charges her a Pay-to-Pay Fee. For example, on or about February 12, 2020, Arvest  
18 charged Ms. Lembeck a \$5.00 fee for making a payment over the phone.

19 9. Plaintiff Robert Lange is a natural person residing in Texas with a mortgage loan  
20 serviced by Arvest. Each time Dr. Lange makes a mortgage payment online, Arvest charges him a Pay-  
21 to-Pay Fee. For example, on or about November 29, 2019, Arvest charged Dr. Lange a \$5.00 fee for  
22 making a payment online.

23 10. Plaintiff Andrew Miller is a natural person residing in Miami, Florida with a mortgage  
24 loan serviced by Arvest. Each time Mr. Miller makes a mortgage payment online, Arvest charges him  
25 a Pay-to-Pay Fee. For example, on or about May 4, 2017, Arvest charged Mr. Miller a \$5.00 fee for  
26 making a payment online.

27 11. Defendant Arvest Central Mortgage Co. is an Arkansas corporation with its principal  
28 place of business in Arkansas.



**APPLICABLE LAW**

**ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

10. The Rosenthal Act is a remedial statute that should be interpreted broadly in order to effectuate its purpose. *See generally* California Civil Code §§ 1788, *et seq.*

11. The Rosenthal Act defines “debt collector” as “any person who, in the ordinary course of business, regularly, on behalf of himself or herself or others, engages in debt collection.” Cal. Civ. Code §1788.2(c).

12. The Rosenthal Act defines a “consumer debt” as “money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction.” Cal. Civ. Code §1788.2(f).

13. The Rosenthal Act defines “consumer credit transaction” as “a transaction between a natural person and another person in which property, services or money is acquired on credit by that natural person from such other person primarily for personal, family, or household purposes.” Cal. Civ. Code §1788.2(e).

14. The Rosenthal Act prohibits “[c]ollecting or attempting to collect from the debtor the whole or any part of the debt collector’s fee or charge for services rendered, or other expense incurred by the debt collector in the collection of the consumer debt, except as permitted by law.” Cal. Civ. Code § 1788.14(b).

15. The Rosenthal Act also makes it illegal to represent that consumer debt “may be increased by the addition of . . . charges if, in fact, such fees and charges may not be legally added to the existing obligation.” Cal. Civ. Code § 1788.13(e).

16. The Rosenthal Act makes it illegal for any entity covered by it to violate the federal Fair Debt Collection Practices Act. Cal. Civ. Code § 1788.17.

**THE CALIFORNIA UNFAIR COMPETITION LAW**

17. The UCL defines unfair business competition to include any “unlawful, unfair, or fraudulent” act or practice. Cal. Bus. & Prof. Code § 17200.

18. A business act or practice is “unlawful” under the UCL if it violates any other law or regulation.

1 **TEXAS FINANCE CODE**

2 19. Texas Finance Code 10. Chapter 392 of the Texas Finance Code protects Texas  
 3 consumers from deceptive and predatory debt collection practices. 11. The Texas Finance Code defines  
 4 "consumer debt" as "an obligation, or an alleged obligation, primarily for personal, family, or household  
 5 purposes and arising from a transaction or alleged transaction." Tex. Fin. Code § 392.001(2). 12. A  
 6 "debt collector" is a person who "directly or indirectly engages in debt collection," which is in turn  
 7 defined as "an action, conduct, or practice in collecting ... consumer debts that are due or alleged to be  
 8 due a creditor." Tex. Fin. Code §§ 392.001(5)-(6). 13. The Texas Finance Code prohibits (1) collecting  
 9 or attempting to collect a ... charge, fee, or expense incidental to the obligation unless the ... incidental  
 10 charge, fee, or expense is expressly authorized by the agreement creating the obligation or legally  
 11 chargeable to the consumer." Tex. Fin. Code § 392.303(a)(2). 14. The Texas Finance Code also prohibits  
 12 representing that a consumer debt "may be increased by the addition of ... service fees, or other charges  
 13 if a written contract or statute does not authorize the additional fees or charges." Tex. Fin. Code §  
 14 392.304(a)(12). Case 4:20-cv-00293-LPR Document 1 Filed 03/19/20 Page 3 of 12

15 20. In addition, a business act or practice is "unfair" under the UCL if it offends an  
 16 established public policy or is immoral, unethical, oppressive, unscrupulous or substantially injurious  
 17 to consumers.

18 **FCCPA**

19 12. The FCCPA prohibits debt collectors from engaging in certain abusive practices in the  
 20 collection of consumer debts. *See generally* Fla. Stat. § 559.72.

21 13. The FCCPA's goal is to "provide the consumer with the most protection possible."  
 22 *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1192 (11th Cir. 2010) (citing Fla. Stat. § 559.552).

23 14. Specifically, the FCCPA states that no person shall "claim, attempt, or threaten to  
 24 enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some  
 25 other legal right when such person knows that the right does not exist." Fla. Stat. § 559.72(9).

26 15. The FCCPA creates a private right of action under Fla. Stat. § 559.77.

27 16. The FCCPA defines "consumer" as "any natural person obligated or allegedly obligated  
 28 to pay any debt." *Id.* § 559.55(8).

1           17.     The FCCPA mandates that “no person” shall engage in certain practices in collecting  
2 consumer debt. *Id.* § 559.72. This language includes all allegedly unlawful attempts at collecting  
3 consumer claims. *Williams v. Streeps Music Co.*, 333 So. 2d 65, 67 (Fla. Dist. Ct. App. 1976).

4           18.     The FCCPA defines “debt” as “any obligation or alleged obligation of a consumer to  
5 pay money arising out of a transaction in which the money, property, insurance, or services which are  
6 the subject of the transaction are primarily for personal, family, or household purposes, whether or not  
7 such obligation has been reduced to judgment.” *Id.* § 559.55(6).

## 8 **FDUTPA**

9           19.     The FDUTPA is “construed liberally to promote” the protection of consumers and  
10 businesses from “unfair methods of competition, or unconscionable, deceptive, or unfair acts or  
11 practices in the conduct of any trade or commerce.” Fla. Stat. § 501.202.

12           20.     The FDUTPA creates a private right of action for FDUTPA violations. *Id.* § 501.211.

13           21.     The FDUTPA prohibits “unfair methods of competition, unconscionable acts or  
14 practices, or unfair or deceptive acts or practices in the conduct of any trade or commerce” against  
15 consumers. *Id.* § 501.204(1).

16           22.     The FDUTPA defines “consumer” broadly as an individual, entity, or any group or  
17 combination. *Id.* § 501.203(7).

18           23.     The FDUTPA defines “trade or commerce” as “advertising, soliciting, providing,  
19 offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property,  
20 whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated.”  
21 *Id.* § 501.203(8).

22           24.     Where there is a violation of a statute prohibiting unfair or deceptive acts, a *per se*  
23 violation of Florida’s FDUTPA has also occurred. *See* Fla. Stat. § 501.203(3) (stating a violation of any  
24 law proscribing unfair methods of competition, or unfair, deceptive, or unconscionable acts is also a  
25 violation the FDUTPA); *Blair v. Wachovia Mortg. Corp.*, No. 11–cv–566–Oc–37TBS, 2012 WL 868878,  
26 at \*3 (M.D. Fla. Mar. 14, 2012) (“[A] *per se* violation of FDUTPA stems from the transgression of any  
27 law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition or unfair,  
28 deceptive, or unconscionable acts or practices.”).

1 **FACTUAL ALLEGATIONS**

2 *The Mortgage Servicing Industry*

3 35. Mortgage lenders rarely service their own loans. In many cases, lenders specialize in the  
4 origination of the loan, but they are not equipped to handle the day-to-day administrative tasks that  
5 come with a mortgage. Instead of managing these duties in-house, they assign the servicing rights of  
6 their loans to a designated servicer—a company that specializes in the actual management and  
7 administration of mortgages.

8 36. A mortgage servicer is a company that, in turn, handles the day-to-day administrative  
9 tasks of a mortgage loan, including receiving payments, sending monthly statements and managing  
10 escrow accounts.

11 37. Arvest is a loan servicer that operates around the country.

12 38. Each time a mortgage borrower whose loan is serviced by Arvest makes a payment  
13 online or over the phone (a “Pay-to-Pay Transaction”), Arvest charges the borrower a Pay-to-Pay Fee:  
14 \$10.00 for telephone payments with a customer representative, and \$5.00 for payments made online or  
15 over the phone with IVR.

16 39. The usual cost that a servicer like Arvest pays to process Pay-to-Pay Transactions is  
17 \$0.50 or less per transaction. Therefore, the actual cost to Arvest to process the Pay-to-Pay  
18 Transactions is well below the amounts charged to borrowers, and Arvest pockets the difference as profit.

19 40. The Uniform Mortgages of Arvest’s customers do not authorize Arvest to charge Pay-  
20 to-Pay Fees. In fact, the Pay-to-Pay Fees violate borrowers’ mortgages.

21 **Named Plaintiffs’ Facts**

22 41. Ms. Lembeck is the owner of property located in Walnut Creek, CA, which is subject  
23 to a mortgage. *See Ex. A.* Ms. Lembeck took out the mortgage secured by the property for personal,  
24 family, or household uses.

25 42. The original lender was Downey Savings and Loan Association, F.A. At some point,  
26 Arvest acquired the servicing rights to the mortgage and, as servicer, has the right to collect payments  
27 on behalf of the lender. The Mortgage Agreement provides that the loan servicer possesses a “partial  
28

1 interest in” the Note, which may be transferred. Arvest became bound as an assignee to the Mortgage  
2 Agreement at the time it acquired the servicing rights.

3 43. Ms. Lembeck’s mortgage payments are due on the 1st of the month each and every  
4 month, and a late charge will be assessed if payments are not received by the 16th of the month.

5 44. Each time Ms. Lembeck makes a payment over the phone, Arvest charges her a Pay-  
6 to-Pay Fee. For example, when she made her mortgage payment that was due February 1, 2020 on  
7 February 12, 2020, Arvest charged Ms. Lembeck a \$5.00 fee for making a payment over the phone  
8 using IVR.

9 45. On or about May 21, 2012, Mr. Miller purchased property in Miami-Dade County  
10 secured by a mortgage (the “Mortgage Agreement”). *See Ex. B.* Mr. Miller took out the mortgage  
11 secured by the property for personal, family, or household uses. The lender on the mortgage is  
12 identified as Caliber Funding LLC, now known as Caliber Home Loan, Inc. (“Caliber”). *See Id.*

13 46. At some point, Arvest acquired the servicing rights to the mortgage to collect payments  
14 on behalf of Caliber. On or about April 3, 2018, Mr. Miller entered into a loan modification agreement  
15 with Arvest that “amends and supplements” the Mortgage Agreement. *See Ex. B.*

16 47. Each time Mr. Miller makes an online payment, Arvest charges him a Pay-to-Pay Fee.  
17 For example, on or about May 4, 2017, Arvest charged Mr. Miller \$5.00 for making a mortgage payment  
18 online.

19 48. On or about May 26, 2017, Dr. Lange purchased a home in Forney County, Texas,  
20 secured by a Mortgage Agreement labeled as a Deed of Trust. *See Ex. C.* Dr. Lange took out the  
21 mortgage loan secured by his property for personal, family, or household uses.

22 49. At some point, Arvest acquired the servicing rights to Dr. Lange's loan.

23 50. Dr. Lange makes loan payments online and each time he does so, Arvest charges him  
24 a Pay-to-Pay Fee. For example, on or about November 29, 2019, Arvest charged Dr. Lange \$5.00 for  
25 making a mortgage payment online.

26 51. These fees are not authorized by any of the Plaintiffs’ Mortgage Agreements. Arvest  
27 collects the Pay-to-Pay Fees even though it knows that such fees are not authorized under the Mortgage  
28 Agreements and it therefore has no right to collect them.

1           52.     Like other borrowers whose mortgages are serviced by Arvest, Plaintiffs' Mortgage  
2     Agreements incorporate standard language from the Fannie Mae model mortgage agreement. And like  
3     other Fannie Mae mortgages, the Mortgage Agreement provides that "Lender may not charge fees that  
4     are expressly prohibited by this Security Instrument or by Applicable Law." *See Ex. A, B, C ¶ 14.*

5           53.     "Applicable Law," in turn, is defined as "all controlling applicable federal, state and  
6     local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law)  
7     as well as all applicable final, non-appealable judicial opinions." *See Ex. A, B, C ¶ (I).* The Mortgage  
8     Agreement also states that the Mortgage Agreement "shall be governed by federal law and the law of  
9     the jurisdiction in which the Property is located," i.e., California, Florida, or Texas law. *See Ex. A, B,*  
10    **C ¶ 16.**

11          54.     Charging Pay-to-Pay Fees not authorized by the Mortgage Agreement violated the  
12    Rosenthal Act, *i.e.*, California law. *See* Cal. Civ. Code §§ 1788.13(e), 1788.14(b), 1788.17.

13          55.     Charging Pay-to-Pay Fees not authorized by the Mortgage Agreement violated the  
14    FCCPA and FDUTPA. *See* Fla. Stat. §§559.72, 501.203.

15          56.     Charging Pay-to-Pay Fees not authorized by the Mortgage Agreement violated the  
16    TDCA. *See* Texas Fin. Code §392.303.

17          57.     By collecting Pay-to-Pay Fees in violation of "Applicable Law," *i.e.*, the Rosenthal Act,  
18    FCCPA, FDUTPA and TDCA Arvest breached the uniform covenants of the Plaintiffs' Mortgage  
19    Agreements.

20          58.     Even if Arvest was somehow permitted to collect a fee under the auspice that it is a  
21    default related fee, under Paragraph 9 of the Mortgage Agreements, Arvest's demand for payment of  
22    Pay-to-Pay Fees was and is a direct breach of that paragraph, too.

23          59.     Paragraph 9 of the Mortgage Agreement states that only "amounts *disbursed* by Lender  
24    under this Section 9 shall become an additional debt of Borrower secured by this Security Instrument."  
25    *See Ex. A, B, C ¶ 9* (emphasis added).

26          60.     Arvest collected more than the amount it disbursed to process the Pay-to-Pay  
27    Transactions.

28



- 1 c. Whether Arvest's business practices are unfair;
- 2 d. Whether Arvest's business practices are unlawful;
- 3 e. Whether Arvest's costs of the Pay-to-Pay Transactions are less than the amount
- 4 it charged for Pay-to-Pay fees;
- 5 f. Whether Plaintiffs and the Class were damaged by Arvest's conduct;
- 6 g. Whether Plaintiffs and the Class are entitled to actual and/or statutory damages
- 7 as a result of Arvest's actions;
- 8 h. Whether Plaintiffs and the Class are entitled to restitution;
- 9 i. Whether Plaintiffs and the Class are entitled to injunctive relief;
- 10 j. Whether Plaintiffs and the Class are entitled to actual and/or statutory damages
- 11 as a result of Arvest's actions; and
- 12 k. Whether Plaintiffs and the Class are entitled to attorney's fees and costs.

13 72. Plaintiffs' claims are typical of the claims of Class members. Arvest charged Plaintiffs  
14 Pay-to-Pay Fees in the same manner as the Class Members. Plaintiffs and the Class Members entered  
15 into uniform covenants in their Mortgage Agreements that prohibit Pay-to-Pay charges. Alternatively,  
16 if Arvest is allowed under the Mortgage Agreements to charge Pay-to-Pay Fees, such amount is capped  
17 at the actual amounts disbursed by Arvest to process the Pay-to-Pay Transactions.

18 73. Plaintiffs are adequate representatives of the Class because Plaintiffs' interests do not  
19 conflict with the interests of the Class Members and Plaintiffs will fairly and adequately protect the  
20 interests of the Class. Plaintiffs have taken actions before filing this Complaint, by hiring skilled and  
21 experienced counsel, and by making a pre-suit demand on behalf of Class members to protect the  
22 interests of the Class.

23 74. Plaintiffs have hired counsel that is skilled and experienced in class actions and are  
24 adequate class counsel capable of protecting the interests of the class members.

25 75. Common questions of law and fact predominate over questions affecting only  
26 individual class members, and a class action is the superior method for fair and efficient adjudication  
27 of this controversy.

28 76. The likelihood that individual members of the Class will prosecute separate actions is



1 remote due to the time and expense necessary to conduct such litigation.

2 **COUNT I**  
3 **Violation of the Rosenthal Fair Debt Collection Practices Act**  
4 **Cal. Civ. Code §§ 1788 *et seq.* (Rosenthal Act)**  
5 **On Behalf of Plaintiff Lembeck and the Class**

6 77. Paragraphs 1 to 76 are hereby incorporated by reference.

7 78. The Rosenthal Act applies to Arvest because Arvest regularly engages in debt collection  
8 as defined by the statute. Cal. Civ. Code § 1788.2.

9 79. Arvest knew that the Pay-to-Pay Fees were not expressly set out in the Mortgage  
10 Agreement or the mortgage agreements of the other Class Members, yet it collected them anyway.

11 80. The Rosenthal Act makes it illegal to represent that consumer debt “may be increased  
12 by the addition of . . . charges if, in fact, such fees and charges may not be legally added to the existing  
13 obligation.” Cal. Civ. Code § 1788.13(e).

14 81. By assessing Pay-to-Pay Fees, Arvest represented that the mortgage loan debts of  
15 Plaintiff Lembeck and the Class Members may be increased by the addition of the Pay-to-Pay Fees,  
16 even though Pay- to-Pay Fees may not be legally added to the existing obligation.

17 82. This conduct violated the Rosenthal Act.

18 83. The Rosenthal Act also prohibits “collecting or attempting to collect from the debtor  
19 the whole or any part of the debt collector’s fee or charge for services rendered, or other expense  
20 incurred by the debt collector’s fee or charge for services rendered, or other expense incurred by the  
21 debt collector in the collection of the consumer debt, except as permitted by law.” Cal. Civ. Code §  
22 1788.14.

23 84. When Arvest collected Pay-to-Pay Fees from Plaintiff and members of the Class, it  
24 collected (or attempted to collect) fees or charges for services rendered that were not permitted by law.  
25 This conduct violated the Rosenthal Act.

26 85. By charging Pay-to-Pay Fees, a portion of which it retains, Arvest acted in violation of  
27 the federal FDCPA, which prohibits “the collection of any amount (including any interest, fee, charge,  
28 or expense incidental to the principal obligation) unless such amount is expressly authorized by the  
agreement creating the debt or permitted by law.” 15 U.S.C. § 1692f(1).

1 86. The mortgage agreements of Plaintiff Lembeck and the members of the Class do not  
2 expressly authorize Arvest to collect Pay-to-Pay Fees. At most, the Uniform Mortgages permit Arvest  
3 to collect the actual amount disbursed to process the Pay-to-Pay Transactions.

4 87. Although the Mortgage Agreements of Plaintiff Lembeck and the members of the Class  
5 do not expressly authorize collection of Pay-to-Pay Fees, Arvest collected such fees anyway.

6 88. In so doing, Arvest violated 15 U.S.C. § 1692f.

7 89. The Rosenthal Act makes it illegal for any entity covered by the Rosenthal Act to violate  
8 the federal FDCPA. Cal. Civ. Code § 1788.17. By violating the federal FDCPA, Arvest violated the  
9 Rosenthal Act.

10 90. Plaintiff Lembeck and the Class were harmed when Arvest violated the Rosenthal Act  
11 through the above-described conduct.

12 91. As a result of each and every violation of the Rosenthal Act, Plaintiff Lembeck and the  
13 Class members are entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory  
14 damages for knowing or willful violations pursuant to Cal. Civ. Code §§ 1788.30(b), 1788.17, and  
15 1788.32, to the full extent provided by law; and reasonable attorneys' fees and costs under Cal. Civ.  
16 Code § 1788.30(c).

17 **COUNT II**  
18 **Violation of California's Unfair Competition Law**  
19 **Cal. Bus. & Prof. Code § 17200, *et seq.***  
20 **On Behalf of Plaintiff Lembeck and the Class**

21 92. Paragraphs 1 to 76 are hereby incorporated by reference.

22 93. The California Unfair Competition Law ("UCL") defines unfair business competition  
23 to include any "unlawful, unfair, or fraudulent" act or practice. Cal. Bus. & Prof. Code § 17200.

24 **Unlawful Prong**

25 94. A business act or practice is "unlawful" under the UCL if it violates any other law or  
26 regulation.

27 95. Arvest's conduct violated the Rosenthal Act and the Fair Debt Collection Practices Act  
28 (the "FDCPA"). These violations are sufficient to support Plaintiff Lembeck's and the Class's claim  
under the unlawful prong of the UCL.

1           96.     The Rosenthal Act applies to Arvest because Arvest regularly engages in debt collection  
2 as defined by the statute. Cal. Civ. Code § 1788.2.

3           97.     Arvest knew that the Pay-to-Pay Fees were not expressly set out in the Mortgage  
4 Agreement or the mortgage agreements of the other Class Members, yet it collected them anyway.

5           98.     The Rosenthal Act makes it illegal to represent that consumer debt “may be increased  
6 by the addition of . . . charges if, in fact, such fees and charges may not be legally added to the existing  
7 obligation.” Cal. Civ. Code § 1788.13(e).

8           99.     By assessing Pay-to-Pay Fees, Arvest represented that the mortgage loan debts of  
9 Plaintiff Lembeck and the Class Members may be increased by the addition of the Pay-to-Pay Fees,  
10 even though Pay- to-Pay Fees may not be legally added to the existing obligation.

11          100.    This conduct violated the Rosenthal Act.

12          101.    The Rosenthal Act also prohibits “collecting or attempting to collect from the debtor  
13 the whole or any part of the debt collector’s fee or charge for services rendered, or other expense  
14 incurred by the debt collector’s fee or charge for services rendered, or other expense incurred by the  
15 debt collector in the collection of the consumer debt, except as permitted by law.” Cal. Civ. Code §  
16 1788.14.

17          102.    When Arvest collected Pay-to-Pay Fees from Plaintiff and members of the Class, it  
18 collected (or attempted to collect) fees or charges for services rendered that were not permitted by law.  
19 This conduct violated the Rosenthal Act.

20          103.    By charging Pay-to-Pay Fees, a portion of which it retains, Arvest acted in violation of  
21 the federal FDCPA, which prohibits “the collection of any amount (including any interest, fee, charge,  
22 or expense incidental to the principal obligation) unless such amount is expressly authorized by the  
23 agreement creating the debt or permitted by law.” 15 U.S.C. § 1692f(1).

24          104.    The mortgage agreements of Plaintiff Lembeck and the members of the Class do not  
25 expressly authorize Arvest to collect Pay-to-Pay Fees. At most, the Uniform Mortgages permit Arvest  
26 to collect the actual amount disbursed to process the Pay-to-Pay Transactions.

27          105.    Although the Mortgage Agreements of Plaintiff Lembeck and the members of the Class  
28 do not expressly authorize collection of Pay-to-Pay Fees, Arvest collected such fees anyway.



1 would not have obtained otherwise absent its unlawful conduct.

2 113. Through its unlawful acts and practices, Arvest has improperly obtained money from  
3 Plaintiff Lembeck and the members of the Class. As such, Plaintiff requests that the Court cause Arvest  
4 to restore the money to Plaintiff and the Class.

5 **COUNT III**  
6 **Violation of the Florida Consumer Collection Practices Act**  
7 **On behalf of Plaintiff Miller and the Class**

8 114. Paragraphs 1 to 76 are hereby incorporated by reference.

9 115. Plaintiff Miller and the Class Members are “consumers” as defined by Fla. Stat. §  
10 559.55(8).

11 116. Defendant is a “person” as stated in the FCCPA.

12 117. Plaintiff Miller and the Class Members purchased their homes by residential mortgage  
13 for personal, family or household use.

14 118. Defendant attempted to enforce, claimed, and asserted a known non-existent legal right  
15 to a debt as defined by Fla. Stat. § 559.55(6) when it charged, attempted to collect, and collected Pay-  
16 to-Pay Fees. *Id.* § 559.72(9).

17 119. Defendant’s acts of illegally attempting to collect a debt from Plaintiff Miller and the  
18 Class Members and deliberately charging monthly Pay-to-Pay Fees constitutes a knowing violation of  
19 § 559.72(9) of the FCCPA.

20 120. As a result of Defendant’s FCCPA violations, Plaintiff Miller and the Class Members  
21 suffered substantial damages, including but not limited to financial damage incurred from Defendant’s  
22 illegal Pay-to-Pay Fees.

23 **COUNT IV**  
24 **Violation of the Florida Deceptive and Unfair Trade Practices Act**  
25 **On behalf of Plaintiff Miller and the Class**

26 121. Paragraphs 1 to 76 are hereby incorporated by reference.

27 122. Plaintiff Miller and the Class Members are “consumers” as defined by Fla. Stat. §  
28 501.203(7).

1 123. Defendant engaged in “trade or commerce” as defined by § 501.203(8) when it  
2 attempted to collect, and collected, a debt associated with mortgage payments.

3 124. Defendant violated § 559.72(9) of the FCCPA when it attempted to collect, and  
4 collected, a debt associated with mortgage payments.

5 125. A violation of Fla. Stat. § 559.72(9) of the FCCPA is a per se violation of FDUTPA  
6 under Fla. Stat. § 501.203(3).  
7

8 126. In addition to the above-referenced per se FDUTPA violations, Defendant also  
9 generally violated FDUTPA under Fla. Stat. § 501.204(1) when it engaged in unfair and deceptive  
10 practices in trade or commerce by taking advantage of consumers in claiming and collecting debts for  
11 amounts not owed.

12 127. Defendant never informed Plaintiff Miller and the Class Members when they made  
13 their Pay-to-Pay Fee payments that the actual cost to Defendant for the Pay-to-Pay Transactions was  
14 far less than the amount charged in Pay-to-Pay Fees. This was also an unfair and deceptive trade  
15 practice.  
16

17 128. As a result of Defendant’s FDUTPA violations, Plaintiff Miller and the Class Members  
18 suffered substantial damage, including but not limited to financial damage incurred from Defendant’s  
19 unlawful Pay-to-Pay Fees.

20 **COUNT V**  
21 **Violation of the Texas Finance Code**  
22 **On behalf of Plaintiff Lange and the Class**

23 129. Paragraphs 1 to 76 are hereby incorporated by reference.

24 130. Chapter 392 of the Texas Finance Code protects Texas consumers from deceptive and  
25 predatory debt collection practices.

26 131. The Texas Finance Code defines "consumer debt" as "an obligation, or an alleged  
27 obligation, primarily for personal, family, or household purposes and arising from a transaction or  
28 alleged transaction." Tex. Fin. Code § 392.001(2).



1 became bound as an assignee to the mortgages held by Plaintiffs and the Class Members when it  
2 became the servicer of their mortgage loans. The uniform terms of Class members' mortgages provide  
3 that that the loan servicer possesses a "partial interest in" the Note, which may be transferred. The  
4 mortgage agreements further provide that the covenants and agreements of this Security Instrument  
5 shall bind (except as provided in section 20) and benefit the successors and assigns of Lender.

6 141. Arvest breached its contracts with Plaintiffs and the Class Members when it charged  
7 Pay-to-Pay Fees in violation of the Uniform Mortgages and in excess of the amounts actually disbursed  
8 by Arvest to pay for the cost of the Pay-to-Pay Transactions.

9 142. Plaintiffs and the Class Members suffered damages when Arvest violated its contracts  
10 with them by assessing Pay-to-Pay Fees.

11 143. Plaintiffs are the owners of property, which are subject to Mortgage Agreements. *See*  
12 **Ex. A, B, C.**

13 144. At some point, Arvest acquired the servicing rights to the mortgage. The Mortgage  
14 Agreement provides that the loan servicer possesses a "partial interest in" the Note, which may be  
15 transferred. **Ex. A, B, C ¶ 20.** The mortgage agreements further provide that "[t]he covenants and  
16 agreements of this Security Instrument shall bind (except as provided in section 20) and benefit the  
17 successors and assigns of Lender." **Ex. A, B, C ¶ 13.** Arvest thus became bound as an assignee to the  
18 Mortgage Agreement at the time it acquired the servicing rights. *See Ex. A, B, C ¶¶ 13, 20.*

19 145. Each time Plaintiffs made a payment over the phone or internet, Arvest charged them  
20 a Pay-to-Pay fee.

21 146. These fees are not authorized by the Mortgage Agreements. Arvest collects the Pay-to-  
22 Pay Fees even though it knows that such fees are not authorized under the Mortgage Agreements and  
23 it therefore has no right to collect them.

24 147. Like other borrowers whose mortgages are serviced by Arvest, Plaintiffs' Mortgage  
25 Agreements incorporate standard language from Fannie Mae model mortgages. And like other Fannie  
26 Mae mortgages, the Mortgage Agreements provides that "Lender may not charge fees that are expressly  
27 prohibited by this Security Instrument or by Applicable Law." *See Ex. A, B, C ¶ 14.*

28



1 148. "Applicable Law," in turn, is defined as "all controlling applicable federal, state and  
2 local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law)  
3 as well as all applicable final, non-appealable judicial opinions." See **Ex. A, B, C ¶ (I)**. The Mortgage  
4 Agreement also states that the Mortgage Agreement "shall be governed by federal law and the law of  
5 the jurisdiction in which the Property is located," i.e., California, Florida or Texas law. See **Ex. A, B, C**  
6 **¶ 16**.

7 149. Charging Pay-to-Pay Fees not authorized by the Mortgage Agreement violated the  
8 California, Florida and Texas law. See Cal. Civ. Code §§ 1788.13(e), 1788.14(b), 1788.17; Fla. Sta. §§  
9 559.72(9); 501.203(3). Tex. Fin. Code § 392.303.

10 150. By collecting Pay-to-Pay Fees in violation of "Applicable Law," Arvest breached the  
11 uniform covenants of the Mortgage Agreements.

12 151. Even if Arvest was somehow permitted to collect a fee under the auspice that it is a  
13 default related fee, under Paragraph 9 of the Mortgage Agreements, Arvest's demand for payment of  
14 Pay-to-Pay Fees was and is a direct breach of that paragraph, too.

15 152. Paragraph 9 of the Mortgage Agreements states that only "amounts *disbursed* by Lender  
16 under this Section 9 shall become an additional debt of Borrower secured by this Security Instrument."  
17 See **Ex. A, B, C ¶ 9** (emphasis added).

18 153. Arvest collected more than the amount it disbursed to process the Pay-to-Pay  
19 Transactions.

20 154. Because the above provisions are contained in the "Uniform Covenants" section of the  
21 Mortgage Agreements, Arvest has breached their contracts on a class-wide basis.

22 155. Plaintiffs and the members of the Class were damaged by Arvest's breach.

#### 23 **PRAYER FOR RELIEF**

24 156. **WHEREFORE**, Plaintiffs, on behalf of themselves and others similarly situated,  
25 respectfully requests that the Court:

26 157. Certify the proposed Classes pursuant to Rule 23 of the Federal Rules of Civil  
27 Procedure;  
28

1 158. Award damages, including compensatory and exemplary damages, to Plaintiffs and  
2 the Class in an amount to be determined at trial;

3 159. Award statutory damages and/or penalties to Plaintiffs and the Class;

4 160. Permanently enjoin Arvest from the wrongful and unlawful conduct alleged herein;

5 161. Award Plaintiffs and the Class their expenses and costs of suit, including reasonable  
6 attorneys' fees to the extent provided by law;

7 162. Award pre- and post-judgment interest to the extent provided by law; and

8 163. Award such further relief as the Court deems appropriate.

9 **PLAINTIFFS DEMANDS A JURY ON ALL ISSUES SO TRIABLE.**

10 Dated: February 26, 2021

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11 /s/ Hassan A. Zavareei

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