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11  
12 **UNITED STATES DISTRICT COURT**  
**FOR THE CENTRAL DISTRICT OF CALIFORNIA**

13 SANDRA E. LISH, *on behalf of*  
14 *herself and all others similarly*  
15 *situated,*

16 Plaintiff,

17 v.

18 AMERIHOM MORTGAGE  
19 COMPANY, LLC,

20 Defendant.

Case No. 20-cv-7147

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

ACTION FOR VIOLATIONS OF:

1. ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT, CAL. CIV. CODE §§ 1788 *ET SEQ.*;
2. UNFAIR COMPETITION LAW, CAL. BUS. & PROF. CODE §§ 17200, *ET SEQ.*;
3. FLORIDA CONSUMER COLLECTION PRACTICES ACT § 559.72; and
4. FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT § 501.203

1 Plaintiff Sandra E. Lish (“Plaintiff”) brings this action on behalf of herself and all  
2 others similarly situated against Defendant AmeriHome Mortgage Company, LLC  
3 (“AmeriHome” or “Defendant”). In support, Plaintiff alleges the following based upon  
4 information and belief, the investigation of counsel, and personal knowledge as to the  
5 factual allegations pertaining to herself:

6 **NATURE OF THE ACTION**

7 1. Defendant AmeriHome is a privately held mortgage loan servicing  
8 company founded in 2013.

9 2. Upon information and belief, AmeriHome has a \$23 billion portfolio of  
10 mortgage servicing rights.<sup>1</sup>

11 3. AmeriHome is not content making money off the interest homeowners pay  
12 on their mortgage loans. Instead, it knowingly and deliberately squeezes unlawful fees  
13 out of the homeowners whose loans it is servicing by charging and collecting illegal  
14 payment processing fees when borrowers make their monthly mortgage payments by  
15 telephone (the “Pay-to-Pay Fees”). Upon information and belief, AmeriHome charges  
16 these Pay-to-Pay Fees to each and every consumer who makes his or her mortgage  
17 payment via telephone.

18 4. Specifically, AmeriHome charges a Pay-to-Pay Fee of up to \$2 when  
19 borrowers make payments over the phone, which is far more than AmeriHome’s actual  
20 cost to process the transaction. But AmeriHome is prohibited from making money off of  
21 consumers by imposing and collecting additional “service” fees that do not reflect the  
22 cost to AmeriHome of providing such services.

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<sup>1</sup> See [https://asreport.americanbanker.com/news/amerihome-tapping-securitization-](https://asreport.americanbanker.com/news/amerihome-tapping-securitization-market-to-fund-ginnie-mae-msrs)  
27 [market-to-fund-ginnie-mae-msrs](https://asreport.americanbanker.com/news/amerihome-tapping-securitization-market-to-fund-ginnie-mae-msrs) (last visited June 5, 2020).

1 5. Indeed, AmeriHome cannot legally impose unauthorized charges which are  
2 not explicitly contained in the mortgage agreement and Pay-to-Pay Fees are not  
3 permitted by Plaintiff’s and the Class Members’ the mortgage agreements.

4 6. Nonetheless, AmeriHome uses its position of power over homeowners to  
5 charge unreasonable Pay-to-Pay Fees. Upon investigation and belief, the actual cost for  
6 AmeriHome to process online mortgage payment transactions is much less than the Pay-  
7 to-Pay Fees that AmeriHome charges mortgagors. AmeriHome takes that money for  
8 themselves as pure profit.

9 7. In charging and collecting these Pay-to-Pay Fees, AmeriHome routinely  
10 violates state and federal debt collection law and breaches the uniform terms of  
11 borrowers’ mortgages (the “Uniform Mortgages”).

12 8. Plaintiff Sandra E. Lish was charged and paid AmeriHome’s illegal Pay-to-  
13 Pay Fees when she made her mortgage payments via telephone, and brings this class  
14 action to stop AmeriHome from continuing to charge these unlawful fees.

15 **JURISDICTION AND VENUE**

16 9. This Court has jurisdiction over AmeriHome because its principal place of  
17 business is 1 Baxter Way Suite 300, Thousand Oaks, CA 91362, and AmeriHome does  
18 business in California, and performed the wrongful acts giving rise to this lawsuit in  
19 California.

20 10. Venue is proper in this District because AmeriHome does business in and  
21 maintains its principal place of business in this District, and the causes of action asserted  
22 herein arose in this District.

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

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1 **PARTIES**

2 12. Plaintiff Sandra E. Lish is a natural person residing in and a citizen of  
3 Florida, who has a mortgage loan serviced by AmeriHome on her home located in  
4 Miami, Florida.

5 13. Defendant AmeriHome Mortgage Company, LLC is a Delaware limited  
6 liability company with its principal place of business in Thousand Oaks, Ventura County,  
7 California.

8 **APPLICABLE LAW**

9 ***THE ROSENTHAL ACT***

10 14. The Rosenthal Fair Debt Collection Practices Act (“Rosenthal Act”) is a  
11 remedial statute [that] should be interpreted broadly in order to effectuate its purpose.  
12 *See Komarova v. National Credit Acceptance, Inc.*, 175 Cal.App.4th 324, 95 Cal.Rptr.3d  
13 880 (2009).

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

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

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

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

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

4           20. The Rosenthal Act makes it illegal for any entity covered by it to violate the  
5 federal Fair Debt and Collection Practices Act (“FDCPA”). Cal. Civ. Code § 1788.17.

6 ***THE CALIFORNIA UNFAIR COMPETITION LAW***

7           21. The California Unfair Competition Law (“UCL”) defines unfair business  
8 competition to include any “unlawful, unfair, or fraudulent” act or practice. Cal. Bus. &  
9 Prof. Code § 17200.

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

12           23. In addition, a business act or practice is “unfair” under the UCL if it offends  
13 an established public policy or is immoral, unethical, oppressive, unscrupulous, or  
14 substantially injurious to consumers.

15 ***FLORIDA CONSUMER COLLECTION PRACTICES ACT***

16           24. The Florida Consumer Collection Practices Act (“FCCPA”) prohibits debt  
17 collectors from engaging in certain abusive practices in the collection of consumer debts.  
18 *See generally* Fla. Stat. § 559.72.

19           25. The FCCPA’s goal is to “provide the consumer with the most protection  
20 possible.” *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1192 (11th Cir. 2010)  
21 (citing Fla. Stat. § 559.552).

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

26           27. The FCCPA creates a private right of action under Fla. Stat. § 559.77.  
27

1           28. The FCCPA defines “consumer” as “any natural person obligated or  
2 allegedly obligated to pay any debt.” Fla. Stat. § 559.55(8).

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

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

12 ***FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT***

13           31. The Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) is  
14 “construed liberally to promote” the protection of consumers and businesses from  
15 “unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices  
16 in the conduct of any trade or commerce.” Fla. Stat. § 501.202.

17           32. The FDUTPA creates a private right of action for FDUTPA violations. Fla.  
18 Stat. § 501.211.

19           33. The FDUTPA prohibits “unfair methods of competition, unconscionable  
20 acts or practices, or unfair or deceptive acts or practices in the conduct of any trade or  
21 commerce” against consumers. Fla. Stat. § 501.204(1).

22           34. The FDUTPA defines “consumer” broadly as an individual, entity, or any  
23 group or combination. Fla. Stat. § 501.203(7).

24           35. The FDUTPA defines “trade or commerce” as “advertising, soliciting,  
25 providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or  
26 service, or any property, whether tangible or intangible, or any other article, commodity,  
27 or thing of value, wherever situated.” Fla. Stat. § 501.203(8).

1           36. Where there is a violation of a statute prohibiting unfair or deceptive acts, a  
2 *per se* violation of Florida’s FDUTPA has also occurred. *See* Fla. Stat. § 501.203(3)  
3 (stating a violation of any law proscribing unfair methods of competition, or unfair,  
4 deceptive, or unconscionable acts is also a violation the FDUTPA); *Blair v. Wachovia*  
5 *Mortg. Corp.*, No. 11–cv–566–Oc–37TBS, 2012 WL 868878, at \*3 (M.D. Fla. Mar. 14,  
6 2012) (“[A] *per se* violation of FDUTPA stems from the transgression of any law,  
7 statute, rule, regulation, or ordinance which proscribes unfair methods of competition or  
8 unfair, deceptive, or unconscionable acts or practices.”).

9   **FACTUAL ALLEGATIONS**

10 ***The Mortgage Servicing Industry***

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

16           38. A mortgage servicer is a company that, in turn, handles the day-to-day  
17 administrative tasks of a mortgage loan, including receiving payments, sending monthly  
18 statements, and managing escrow accounts.

19           39. AmeriHome is a loan servicer that operates around the country, including in  
20 Los Angeles county.

21           40. Each time a mortgage borrower whose loan is serviced by AmeriHome  
22 makes a payment over the phone (“Pay-to-Pay Transaction”), AmeriHome charges the  
23 borrower a Pay-to-Pay Fee of at least \$2 when borrowers make payments over the  
24 phone.

25           41. Based on information and belief, the usual cost that a servicer like  
26 AmeriHome pays to process Pay-to-Pay Transactions is \$.50 or less per transaction.

1 42. Thus, the actual cost to AmeriHome to process the Pay-to-Pay Transactions  
2 is well below the amounts charged to borrowers, and AmeriHome pockets the difference  
3 as profit.

4 43. The Uniform Mortgages of AmeriHome’s customers do not authorize  
5 AmeriHome to charge Pay-to-Pay Fees. In fact, the Pay-to-Pay Fees constitute a breach  
6 of borrowers’ mortgages.

7 ***Facts of Named Plaintiff***

8 44. On or around November 26, 2018, Plaintiff purchased a home in Miami,  
9 Florida, through a loan from All Western Mortgage, Inc., secured by a mortgage on the  
10 property (the “Mortgage Agreement”). The Mortgage Agreement is attached as **Exhibit**  
11 **A.**

12 45. Plaintiff took out the mortgage loan secured by her property for personal,  
13 family, or household uses.

14 46. At some point, AmeriHome was assigned the servicing rights to the loan.

15 47. As servicer, AmeriHome has the right to collect payments and to perform  
16 services for the borrower on behalf of the lender.

17 48. The Mortgage Agreement provides that the loan servicer possesses a  
18 “partial interest in” the Note, which may be transferred. Ex. A at ¶ 20.

19 49. The Mortgage Agreement further provides that “[t]he covenants and  
20 agreements of this Security Instrument shall bind (except as provided in section 20) and  
21 benefit the successors and assigns of Lender.” Ex. A at ¶ 13.<sup>2</sup>

22 \_\_\_\_\_  
23 <sup>2</sup> Section 20 provides: “The note or a partial interest in the Note (together with this  
24 Security Instrument) can be sold one or more times without prior notice to Borrower. A  
25 sale might result in a change in the entity (known as the “Loan Servicer”) that collects  
26 periodic payments due under the Note and this Security Instrument and performs other  
27 mortgage loan servicing obligations under the Note, this Security Instrument, and  
Applicable Law. There might also be one or more changes of the Loan Servicer  
unrelated to a sale of the Note. If there is a change under the Loan Servicer, Borrower  
will be given written notice of the change . . . . If the Note is sold and thereafter the Loan  
is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan  
servicing obligations to Borrower will remain with the Loan Servicer or be transferred to



1 50. AmeriHome thus became bound as an assignee to the Mortgage Agreement  
2 at the time it acquired the servicing rights for Plaintiff's loan.

3 51. Plaintiff's mortgage payments are due on the 1st of the month each and  
4 every month, and AmeriHome will assess a late charge if payments are not received  
5 during a 15-day grace period.

6 52. Each time Plaintiff makes a mortgage payment over the phone, AmeriHome  
7 charges her a Pay-to-Pay Fee.

8 53. For example, on November 15, 2019, December 16, 2019, January 14,  
9 2020, and February 14, 2020, AmeriHome charged Plaintiff a \$2.00 Pay-to-Pay Fee for  
10 making a payment over the phone.

11 54. When Plaintiff made her monthly mortgage payments, she made such  
12 payments after the first day of each month and after the due date for such payments.

13 55. AmeriHome knowingly and deliberately collects the Pay-to-Pay Fees even  
14 though it is aware that such fees are not authorized under the Mortgage Agreement and  
15 that it therefore has no right to collect them.

16 56. Prior to filing this Complaint, Plaintiff made written pre-suit demands upon  
17 AmeriHome.

18 57. AmeriHome was given a reasonable opportunity to cure the breaches  
19 complained of herein but has failed to do so.

20 ***Facts Common to the Class***

21 58. Like Plaintiff's AmeriHome Mortgage Agreement, the Mortgage  
22 Agreements of the Class Members incorporates standard language from Fannie Mae  
23 model mortgages. And like other Fannie Mae mortgages, the Mortgage Agreement states  
24 that the servicer "may not charge fees that are expressly prohibited by this Security  
25 Instrument, or by Applicable Law." Ex. A at ¶ 14.

26  
27 a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise  
provided by the Note purchaser." Ex. A at ¶ 20.

1           59. “Applicable Law” is defined as “all controlling applicable federal, state and  
2 local statutes, regulations, ordinances, and administrative rules and orders (that have the  
3 effect of law) as well as all applicable final, non-appealable judicial opinions.” Ex. A at  
4 2, ¶ (J).

5           60. By collecting Pay-to-Pay Fees in violation of “Applicable Law, “including  
6 the FDCPA, AmeriHome breached the uniform covenants of the Mortgage Agreement.  
7 *See* Fla. Stat. § 559.72(9) (prohibiting collection, or attempts at collection, of debts  
8 known not to exist and prohibiting the assertion of a legal right known not to exist); *cf.*  
9 *Prescott v. Seterus Inc.*, No. 15-10038, 2015 WL 7769235, at \*2-6 (11th Cir. Dec. 3,  
10 2015) (holding that charging certain fees not agreed to in the mortgage agreement  
11 violated the FCCP A and FDCP A); *Bradley v. Franklin Collection Serv., Inc.*, 739 F.3d  
12 606, 610 (11th Cir. 2014) (holding that certain fees violate the FDCPA where they are not  
13 supported by the language of the consumer agreement underlying the debt at issue); Fla.  
14 Stat. § 559.77(5) (“In applying and construing [the FCCPA], due consideration and great  
15 weight shall be given to the interpretations of the Federal Trade Commission and the  
16 federal courts relating to the federal Fair Debt Collection Practices Act.”) ( emphasis  
17 added).

18           61. Charging Pay-to-Pay Fees not authorized by the Mortgage Agreement also  
19 violates the Rosenthal Act, *i.e.*, California law. *See* Cal. Civ. Code §§ 1788.13(e),  
20 1788.14(b), and 1788.17.

21           62. AmeriHome’s demand for payment of Pay-to-Pay Fees was and is a direct  
22 breach of Paragraph 9 of the Mortgage Agreement, which states that only “amounts  
23 *disbursed* by Lender under this Section 9 shall become an additional debt of Borrower  
24 secured by this Security Instrument.” *See* Ex. A ¶ 9 (emphasis added).

25           63. AmeriHome collected more than the amount it disbursed to process the Pay-  
26 to-Pay Transactions.

27



1           71. Numerosity is satisfied. There are at least thousands of class members given  
2 the size of AmeriHome’s portfolio and nationwide operations. Individual joinder of these  
3 persons is impracticable.

4           72. There are questions of law and fact common to Plaintiff and to the Class,  
5 including, but not limited to:

- 6           a. Whether AmeriHome assessed Pay-to-Pay Fees on Class members;
- 7           b. Whether AmeriHome was authorized to charge and collect Pay-to-  
8 Pay Fees under the Mortgage Agreement;
- 9           c. Whether AmeriHome’s assessment and collection of Pay-to-Pay Fees  
10 violated applicable laws;
- 11           d. Whether AmeriHome’s cost to process Pay-to-Pay Transactions is  
12 less than the amount that it charged for Pay-to-Pay Fees;
- 13           e. Whether Plaintiff and the Class were damaged by AmeriHome’s  
14 conduct;
- 15           f. Whether Plaintiff and the Class are entitled to injunctive relief to  
16 enjoin AmeriHome from further engaging in these wrongful  
17 practices; and
- 18           g. Whether Plaintiff and the Class are entitled to attorney’s fees and  
19 costs.

20           73. Plaintiff’s claims are typical of the claims of the Class members.  
21 AmeriHome charged her Pay-to-Pay Fees in the same manner as the rest of the Class  
22 members. Plaintiff and the Class members entered into uniform covenants in their  
23 Mortgage Agreements that prohibit Pay-to-Pay charges or, at most, cap the amount of  
24 Pay-to-Pay Fees allowed to be charged at the actual amount disbursed by AmeriHome to  
25 process Pay-to-Pay Transactions.

26           74. Plaintiff is an adequate class representative because her interests do not  
27 conflict with the interests of the class members and she will adequately and fairly protect

1 the interests of the class members. Plaintiff has taken actions before filing this amended  
2 complaint, by hiring skilled and experienced counsel, and by making a pre-suit demand  
3 on behalf of class members to protect the interests of the class.

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

7 76. The likelihood that individual members of the class will prosecute separate  
8 actions is remote due to the time and expense necessary to conduct such litigation.

9 **COUNT I**

10 **Violation of the Rosenthal Fair Debt Collection Practices Act**

11 **Cal. Civ. Code §§ 1788 *et seq.* (Rosenthal Act)**

12 **(On behalf of Plaintiff and the Nationwide Class)**

13 77. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

14 78. The Rosenthal Act applies because AmeriHome regularly engages in debt  
15 collection as defined by the statute. Cal. Civ. Code § 1788.2.

16 79. AmeriHome knew that the Pay-to-Pay Fees were not expressly authorized  
17 by the Mortgage Agreement or the mortgage agreements of the other Class Members, yet  
18 it collected them anyway.

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

22 81. By assessing Pay-to-Pay Fees, AmeriHome represented that the mortgage  
23 loan debts of Plaintiff and the Class Members may be increased by the addition of the  
24 Pay-to-Pay Fees, even though Pay-to-Pay Fees may not be legally added to the existing  
25 obligation.

26 82. This conduct violates the Rosenthal Act.  
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1           83. The Rosenthal Act also prohibits “collecting or attempting to collect from  
2 the debtor the whole or any part of the debt collector’s fee or charge for services  
3 rendered, or other expense incurred by the debt collector’s fee or charge for services  
4 rendered, or other expense incurred by the debt collector in the collection of the  
5 consumer debt, except as permitted by law.” Cal. Civ. Code § 1788.14.

6           84. When AmeriHome collected Pay-to-Pay Fees from Plaintiff and the Class  
7 Members, it collected (or attempted to collect) fees or charges for services rendered that  
8 were not permitted by law. This conduct violated the Rosenthal Act.

9           85. Additionally, by charging Pay-to-Pay Fees, at least a portion of which it  
10 retains, AmeriHome acted in violation of the federal Fair Debt Collection Practices Act,  
11 which prohibits “the collection of any amount (including any interest, fee, charge, or  
12 expense incidental to the principal obligation) unless such amount is expressly  
13 authorized by the agreement creating the debt or permitted by law.” 15 U.S.C. §  
14 1692f(1).

15           86. The Rosenthal Act makes it illegal for any entity covered by the Rosenthal  
16 Act to violate the federal FDCPA. Cal. Civ. Code § 1788.17. By violating the federal  
17 FDCPA, AmeriHome violated the Rosenthal Act.

18           87. Plaintiff and the Class Members were harmed when AmeriHome violated  
19 the Rosenthal Act through the above-described conduct.

20           88. As a result of each and every violation of the Rosenthal Act, Plaintiff and  
21 the Class Members are entitled to, among other forms of relief deemed appropriate by  
22 the court, reasonable attorneys’ fees and costs under Cal. Civ. Code § 1788.30(c).

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**COUNT II**

**Violation of California’s Unfair Competition Law**

**Cal. Bus. & Prof. Code § 17200, *et seq.***

**(On behalf of Plaintiff and the Nationwide Class)**

89. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

90. The California Unfair Competition Law defines unfair business competition to include any “unlawful, unfair, or fraudulent” act or practice. Cal. Bus. & Prof. Code § 17200.

***The Unlawful Prong***

91. AmeriHome’s conduct is unlawful under the UCL because it violates the Rosenthal Act and the FDCPA.

92. As a result of the above conduct, Plaintiff and the Class Members have suffered economic injury, and AmeriHome has been unjustly enriched at their expense. AmeriHome has been unjustly enriched by obtaining revenues and profits that it would not have obtained otherwise absent its unlawful conduct.

93. Through its unlawful acts and practices, AmeriHome has improperly obtained money from Plaintiff and the members of the Class. As such, Plaintiff requests that the Court enjoin AmeriHome from continuing to violate the Rosenthal Act, FDCPA, and UCL. Plaintiff’s mortgage continues to be serviced by AmeriHome, and they intend to make mortgage payments over the phone in the future. Absent an injunction, Plaintiff and the Class Members may be irreparably harmed and/or denied an effective and complete remedy.

***The Unfair Prong***

94. In addition, a business act or practice is “unfair” under the UCL if it offends an established public policy or is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.

1 95. AmeriHome’s actions constitute “unfair” business practices because, as  
2 alleged above, AmeriHome engaged in the immoral, unethical, oppressive, and  
3 unscrupulous practice of charging Pay-to-Pay Fees not authorized by the Uniform  
4 Mortgages or applicable law. AmeriHome’s unfair practice was substantially injurious to  
5 consumers, who were forced to pay \$2 each time they wished to make payments by  
6 phone. Because AmeriHome charged fees well above the actual cost of providing phone  
7 payment services, there are no countervailing benefits to consumers or competition that  
8 outweigh the injuries suffered by Plaintiff and the Class.

9 96. As a result of the above conduct, Plaintiff has suffered economic injury, and  
10 AmeriHome has been unjustly enriched at the expense of Plaintiff and members of the  
11 Class. AmeriHome has been unjustly enriched by obtaining revenues and profits that it  
12 would not have obtained otherwise absent its unlawful conduct.

13 97. Through its unlawful acts and practices, AmeriHome has improperly  
14 obtained money from Plaintiff and the Class Members. As such, Plaintiff requests that  
15 the Court enjoin AmeriHome from continuing to violate the UCL in the future.  
16 Plaintiff’s mortgage continues to be serviced by AmeriHome, and they intend to make  
17 mortgage payments over the phone in the future. Absent an injunction, Plaintiff and the  
18 Class Members may be irreparably harmed and/or denied an effective and complete  
19 remedy.

20 **COUNT III**

21 **Violation of Florida’s Consumer Protection Practices Act**

22 **Fla. Stat. § 555.72(9)**

23 **(On Behalf of Plaintiff and the Florida Sub-class)**

24 98. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

25 99. Plaintiff and the Florida Class Members are “consumers” as defined by Fla.  
26 Stat. § 559.55(8).  
27



1 100. Defendant is a “person” as stated in the FCCPA.

2 101. Plaintiff and the Florida Class Members purchased their homes by  
3 residential mortgage for personal, family or household use.

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

7 103. Defendant’s acts of illegally attempting to collect a debt from Plaintiff and  
8 the Florida Class Members and deliberately charging monthly Pay-to-Pay Fees  
9 constitutes a knowing violation of § 559.72(9) of the FCCPA.

10 104. As a result of Defendant’s FCCPA violations, Plaintiff and the Florida Class  
11 Members suffered substantial damages, including but not limited to financial damage  
12 incurred from Defendant’s illegal Pay-to-Pay Fees.

13 **COUNT IV**

14 **Violation of Florida’s Deceptive and Unfair Practices Act**

15 **Fla. Stat. §§ 501.203(3), 501.204**

16 **(On Behalf of Plaintiff and the Florida Sub-class)**

17 105. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

18 106. Plaintiff and the Florida Class Members are “consumers” as defined by Fla.  
19 Stat. § 501.203(7).

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

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

24 109. A violation of Fla. Stat. § 559.72(9) of the FCCPA is a per se violation of  
25 FDUTPA under Fla. Stat. § 501.203(3).  
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1           110. In addition to the above-referenced per se FDUTPA violations, Defendant  
2 also generally violated FDUTPA under Fla. Stat. § 501.204(1) when it engaged in unfair  
3 and deceptive practices in trade or commerce by taking advantage of consumers in  
4 claiming and collecting debts for amounts not owed.

5           111. Defendant never informed Plaintiff and the Florida Class Members when  
6 they made their Pay-to-Pay Fee payments that the actual cost to Defendant for the Pay-  
7 to-Pay Transactions was far less than the amount charged in Pay-to-Pay Fees.

8           112. As a result of Defendant's FDUTPA violations, Plaintiff and the Florida  
9 Class Members suffered substantial damage, including but not limited to financial  
10 damage incurred from Defendant's unlawful Pay-to-Pay Fees.

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**COUNT V**

**Breach of Contract**

**(On Behalf of Plaintiff, the Nationwide Class, and the Florida Sub-Class)**

113. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

114. Plaintiff and the Class Members entered into contracts with AmeriHome. AmeriHome breached its contracts with Plaintiff and the Class Members when it charged Pay-to-Pay Fees not agreed to in their mortgage agreements, specifically prohibited by their mortgage agreements, and in excess of the amounts actually disbursed by AmeriHome to pay for the cost of Pay-to-Pay Transactions.

115. Plaintiff purchased a home subject to the Mortgage Agreement. *See* Ex. A.

116. At some point, AmeriHome was assigned the servicing rights to the loan. As servicer, AmeriHome has the right to collect payments and perform services for the borrower on behalf of the lender. The Mortgage Agreement provides that the loan servicer possesses a “partial interest in” the Note, which may be transferred. *See* Ex. A ¶ 20.

117. The Mortgage Agreement further provides that “[t]he covenants and agreements of this Security Instrument shall bind (except as provided in section 20) and benefit the successors and assigns of Lender.” Ex. A ¶ 13. AmeriHome thus became bound as an assignee to the Mortgage Agreement at the time it acquired the servicing rights to the subject mortgage loan.

118. Each time Plaintiff makes mortgage payments over the phone, AmeriHome charges her a Pay-to-Pay Fee. For example, on November 15, 2019, December 16, 2019, January 14, 2020, and February 14, 2020, AmeriHome charged Plaintiff a \$2.00 Pay-to-Pay Fee for making a payment over the phone.

119. These fees were not authorized by the Mortgage Agreement.

120. Like other borrowers whose mortgages are serviced by AmeriHome, Plaintiff’s Mortgage Agreement incorporates standard language from Fannie Mae model

1 mortgages. And like other Fannie Mae mortgages, the Mortgage Agreement states that  
2 the servicer “may not charge fees that are expressly prohibited by this Security  
3 Instrument, or by Applicable Law.” Ex. A ¶ 14.

4 121. The Mortgage Agreement states that “[t]his Security Instrument shall be  
5 governed by federal law and the law of the jurisdiction in which the Property is located,”  
6 i.e., Florida. Ex. A ¶ 16. It further states that “Lender may not charge fees that are  
7 expressly prohibited by this Security Instrument or by Applicable Law.” *Id.* ¶ 14.

8 122. “Applicable Law” is defined as “all controlling applicable federal, state and  
9 local statutes, regulations, ordinances and administrative rules and orders (that have the  
10 effect of law) as well as all applicable final, non-appealable judicial opinions.” Ex. A at 2  
11 ¶ (J).

12 123. The Mortgage Agreement further states that it is “governed by federal law  
13 and the law of the jurisdiction in which the Property is located,” i.e., Florida. Ex. A ¶ 16.

14 124. By collecting Pay-to-Pay Fees in violation of “Applicable Law,” i.e., the  
15 FCCPA, AmeriHome breached the uniform covenants of the Mortgage Agreement. *See*  
16 Fla. Stat. § 559.72(9) (prohibiting collection, or attempts at collection, of debts known  
17 not to exist and prohibiting the assertion of a legal right known not to exist); *cf. Prescott*  
18 *v. Seterus Inc.*, No. 15-10038, 2015 WL 7769235, at \*2-6 (11th Cir. Dec. 3, 2015)  
19 (holding that charging certain fees not agreed to in the mortgage agreement violated the  
20 FCCP A and FDCP A); *Bradley v. Franklin Collection Serv., Inc.*, 739 F.3d 606, 610 (11th  
21 Cir. 2014) (holding that certain fees violate the FDCPA where they are not supported by  
22 the language of the consumer agreement underlying the debt at issue); Fla. Stat. §  
23 559.77(5) (“In applying and construing [the FCCPA], due consideration and great weight  
24 shall be given to the interpretations of the Federal Trade Commission and the federal  
25 courts relating to the federal Fair Debt Collection Practices Act.”) (emphasis added).

1 125. Charging Pay-to-Pay Fees not authorized by the Mortgage Agreement also  
2 violated the Rosenthal Act, *i.e.*, California law. *See* Cal. Civ. Code §§ 1788.13(e),  
3 1788.14(b), 1788.17.

4 126. Alternatively, by assessing more than the amounts it actually disbursed to  
5 the balance of Plaintiff's mortgage, AmeriHome violated Paragraph 9 of the Mortgage  
6 Agreement.

7 127. Because the above provisions are contained in the "Uniform Covenants"  
8 section of the Mortgage Agreement, AmeriHome has breached their contracts on a class-  
9 wide basis.

10 128. Plaintiff and the Class Members were damaged by AmeriHome's breach.

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiff, on behalf of herself and others similarly situated,  
13 respectfully requests that the Court:

- 14 • Certify the proposed Class;
- 15 • Permanently enjoin AmeriHome from the wrongful and unlawful  
16 conduct alleged herein;
- 17 • Award Plaintiff and the Class their expenses and costs of suit,  
18 including reasonable attorneys' fees to the extent provided by law;
- 19 • Award pre- and post-judgment interest to the extent provided by law  
20 and
- 21 • Award such further relief as the Court deems appropriate.

22 **PLAINTIFF DEMANDS A JURY ON ALL ISSUES SO TRIABLE.**

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1 Dated: August 9, 2020

Respectfully submitted,

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