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JS-6

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

RICHARD BEHFARIN, individually  
and on behalf of a class of similarly  
situated individuals,

Plaintiff,

v.

PRUCO LIFE INSURANCE  
COMPANY, et al.

Defendants

Case No. 2:17-cv-05290-MWF-FFM

**JUDGMENT APPROVING  
CLASS ACTION SETTLEMENT  
AND ORDER AWARDED  
ATTORNEYS' FEES, COSTS,  
AND CLASS  
REPRESENTATIVE  
INCENTIVE AWARD**

The above-entitled matter came before the Court pursuant to Plaintiff Richard Behfarin's Motion for Final Certification of Settlement Class and Final Approval of Proposed Nationwide Class Settlement Agreement, and Approval of Notice Under Fed. R. Civ. P. 23(e) and (g) ("Settlement Motion") (Docket No. 98) and Plaintiff's Motion for Attorney Fees and Costs and Incentive Award for Class Representative ("Fee Motion") (Docket No. 92). The Court has received no objections to the Settlement. The Court determines that the Settlement is fair, adequate, and reasonable.

Good cause appearing, it is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

1           1.     For purposes of this Order, the Court adopts and incorporates all  
2 definitions and exhibits set forth in the Settlement Agreement and the Court’s  
3 Preliminary Approval Order (Docket No. 87) unless a different definition is  
4 set forth in this Order.

5           2.     The Court finds that the requirements of Rule 23 of the Federal  
6 Rule of Civil Procedure and other laws and rules applicable to final settlement  
7 approval of class actions have been satisfied, and the Court approves the  
8 settlement of this Action as memorialized in the Settlement Agreement, which  
9 is incorporated herein by this reference, as being fair, just reasonable and  
10 adequate to the Settlement Classes and its members.

11           3.     The Court specifically approves the process by which Settlement  
12 Class Members who are Authorized Claimants for Reinstatement Relief will  
13 receive notice and information regarding the amounts that will need to be paid  
14 to reinstate the Policy (the “Reinstatement Amount”), and specifically  
15 approves the model form of policy illustration which will be provided for  
16 settlement purposes only, solely to aid the Authorized Claimant in  
17 understanding the premium amounts that may be required (on a guaranteed as  
18 well as non-guaranteed basis) to keep the Reinstated Class Policy in force, so  
19 that the Authorized Claimant can make an informed decision regarding  
20 whether to pursue reinstatement under the terms of the Settlement. (*See*  
21 Settlement Exhibit C (revised), inclusive of appendices). Actual amounts due  
22 to keep the policy in force may differ from illustration values. The settlement  
23 illustration will show the amounts required to keep the policy in force through  
24 the policy’s premium period based on non-guaranteed values that are derived  
25 from using both current charges and interest crediting assumptions. The  
26 Parties are authorized to make adjustments to the notice and model form as  
27 may be necessary for purposes of accuracy in light of differences between  
28 Class Policies or as otherwise may be needed by Prudential for operational

1 reasons.

2 4. The Court further finds that the Settlement Agreement  
3 substantially fulfills the purposes and objectives of the class action, and  
4 provides substantial relief to the Settlement Class without the risks, burdens,  
5 costs or delays associated with continued litigation, trial and/or appeal. The  
6 Settlement is not a finding or admission of liability by the Defendants or any  
7 other person, nor a finding of the validity of any claims asserted in the Action  
8 or of any wrongdoing or any violation of law.

9 5. The following Settlement Class shall be finally certified pursuant  
10 to Federal Rules of Civil Procedure 23(a), 23(b)(3) and 23(e), for settlement  
11 purposes only:

12 All Policyowners of Class Policies and, where all Policyowners and  
13 insureds of a Class Policy are deceased, then also any designated  
14 beneficiary(s) of that Class Policy at the time of final lapse.

15 Class Policies include all individual universal life or variable  
16 universal life insurance policies issued by a Defendant as to which  
17 Guaranteed Charges were applicable to the calculation of the  
18 deficiency and/or reinstatement amount, and which policy either  
19 entered into default or lapsed between July 18, 2013 and November  
20 26, 2019, or which had default cured or was reinstated on or after  
21 July 18, 2013 and remains in force on November 26, 2019.

22 For avoidance of doubt, all Class Policies are part of the Settlement Class.

23 6. For the reasons set forth in this Court's Preliminary Approval  
24 Order, each of the prerequisites for settlement, voluntary dismissal, or  
25 compromise under Fed R. Civ. P. 23(e) have been satisfied.

26 7. This Court finds that the Claims Administrator caused notice to  
27 be disseminated to the Class in accordance with the plan to disseminate Notice  
28 outlined in the Settlement Agreement and the Preliminary Approval Order,  
and that Notice was given in an adequate and sufficient manner and complies  
with Due Process and Fed. R. Civ. P. 23.

1           8.     In addition, the Court finds that Defendants fully satisfied their  
2 obligations of providing Notice of the proposed Settlement Agreement to the  
3 public officials designated under the Class Action Fairness Act, 28 U.S.C.  
4 § 1715, to receive such notice, as set forth in the Defendants' Notice of  
5 Compliance with 28 U.S.C. § 1715, filed on November 1, 2019 (Docket No.  
6 84.)

7           9.     The Court has considered and finds Class Counsel and the Class  
8 Representative have adequately represented the Class. Plaintiff, by and  
9 through his counsel, has investigated the pertinent facts and law, has engaged  
10 in discovery, and has evaluated the risks associated with continued litigation,  
11 class certification, trial, and/or appeal. The Court finds that the Settlement  
12 Agreement was reached in the absence of collusion, is the product of  
13 informed, good-faith, arms-length negotiations between the parties and their  
14 capable and experienced counsel.

15          10.    The Court finds that the Settlement is effective in appropriately  
16 distributing relief to the Settlement Class in light of the claims and defenses  
17 asserted, that the method of processing Settlement Class Member claims is  
18 reasonable and appropriate, and that the Settlement Agreement treats all  
19 Settlement Class Members equitably relative to each other.

20          11.    The Court has been informed that no objections to the Settlement  
21 Agreement were submitted in accordance with the requirements of the Class  
22 Notices and the Preliminary Approval Order.

23          12.    The Court has been further informed that two (2) persons have  
24 submitted timely requests to be excluded from the Settlement Class in  
25 accordance with the requirements of Notices and the Preliminary Approval  
26 Order.

27          13.    The Court has evaluated this overall reaction of the Class to the  
28 Settlement, and finds that the overall acceptance of the Settlement Agreement

1 by Settlement Class Members supports the Court's conclusion that the  
2 Settlement Agreement is in all respects fair, reasonable, adequate, and in the  
3 best interests of the Class.

4 14. The method of Claims processing, the Claim Forms, the Scoring  
5 Guidelines and Reinstatement Guidelines, as well as the overall process of  
6 Claims Administration are all fair and reasonable and facilitate the filing of  
7 legitimate claims. The Settlement appropriately apportions relief among  
8 Settlement Class Members, taking into account differences among their  
9 claims. The Court specifically approves the method of distribution of  
10 Settlement Payments in accordance with the hierarchy set forth in the  
11 Settlement Agreement and Scoring Guidelines as fair, reasonable and in the  
12 best interests of the Class.

13 15. The Court further finds that it is fair and reasonable to require  
14 that all Authorized Claimants warrant that they are the proper party to receive  
15 relief under the Settlement Agreement and that they assume all responsibilities  
16 and liabilities associated with distribution of any Settlement Payment,  
17 including making any payments that may be owed to others, without recourse  
18 to the Court, the Claims Administrator, Plaintiff, Defendants, the Releasing  
19 Parties, the Releasees, Class Counsel or Counsel for Defendants, or experts or  
20 consultants to any of them. All aforementioned Settlement Payments made  
21 pursuant to the Settlement Agreement shall not be considered or treated as a  
22 death benefit payment (or any other type of payment) under the terms of a  
23 Class Policy or otherwise.

24 16. Epiq Class Action & Claims Solutions, Inc. is finally appointed to  
25 continue to serve as the Claims Administrator as provided in the Settlement  
26 Agreement. The Claims Administrator is directed to process all Authorized  
27 Claims in accordance with the Settlement Agreement. Class Counsel and  
28 Counsel for Defendants are hereby authorized to employ all reasonable

1 procedures in connection with administration of the Settlement Agreement  
2 that are not materially inconsistent with this Order or the Settlement  
3 Agreement.

4 17. The Claims Administrator shall administer the Escrow Account,  
5 which is a Qualified Settlement Fund within the meaning of Treasury  
6 Regulation § 1.468B-1. The Claims Administrator, as administrator of the  
7 fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be  
8 solely responsible for filing or causing to be filed all informational and other  
9 tax returns as may be necessary or appropriate (including, without limitation,  
10 the returns described in Treasury Regulation § 1.468B-2(k)) for the Escrow  
11 Account. The Claims Administrator shall also be responsible for causing  
12 payment to be made from the Escrow Account of any Taxes and Tax Expenses  
13 owed. None of the Releasees, Plaintiff, Class Counsel or Counsel for  
14 Defendants shall have any liability or responsibility for any such Taxes or Tax  
15 Expenses, or any required filings regarding same. The Claims Administrator  
16 shall also issue any 1099s to Settlement Class Members as to whom payment  
17 is issued on claims for Individual Relief pursuant to the Settlement, but only to  
18 the extent required by law.

19 18. There shall be no recourse to any Defendant, Releasee, Released  
20 Party or their counsel, or to the Class Representative or Class Counsel, or to  
21 the Claims Administrator or to this Court, for any determination made by the  
22 Claims Administrator pursuant to its responsibilities under the Settlement  
23 Agreement.

24 19. The Hon. William J. Cahill (Ret.) of JAMS, San Francisco,  
25 California, is finally appointed to serve as the Special Master as provided for  
26 in the Settlement Agreement and the Scoring Guidelines with respect to  
27 Authorized Claims for Individual Relief. All reasonable fees, costs, and  
28 expenses of the Special Master shall be paid as provided in the Settlement

1 Agreement and the Scoring Guidelines.

2 20. The Special Master's determinations of any Limited Appeal will  
3 be final, and not subject to any challenge or further appeal. The Settlement  
4 Class and Defendants waive any right of recourse to the Court for purposes of  
5 challenging any Limited Appeal decision by the Special Master.

6 21. As provided by the Settlement Agreement and now directed by  
7 this Court, the Releasing Parties include Plaintiff and Settlement Class  
8 Members who do not validly and timely opt out of the Settlement Class, all  
9 beneficiaries of Class Policies, and with respect to each Class Policy, all of  
10 their respective present or past heirs, executors, estates, administrators,  
11 predecessors, successors, assigns, parent companies, subsidiaries, associates,  
12 affiliates, agents, consultants, officers, partners, principals, members,  
13 attorneys, accountants, financial and other advisors, shareholders, investment  
14 advisors, and legal representatives.

15 22. As provided by the Settlement Agreement and now directed by  
16 this Court, the Releasees include Pruco Life Insurance Company, The  
17 Prudential Insurance Company of America and Pruco Life Insurance  
18 Company of New Jersey, individually and collectively, and all of their current,  
19 former and future parents, subsidiaries, affiliates, partners, predecessors,  
20 successors and assigns, and each of their respective past, present and future  
21 officers, directors, employees, agents, independent contractors, brokers,  
22 representatives, attorneys, heirs, administrators, executors, predecessors,  
23 successors and assigns, or any of them.

24 23. Plaintiff, the Settlement Class, and the Releasing Parties: (i) have  
25 and shall be deemed to have fully, finally, and forever waived, released,  
26 relinquished, discharged, and dismissed each and every one of the Plaintiff's  
27 and the Settlement Class' claims against each and every one of the Releasees;  
28 (ii) have and shall be deemed to have covenanted not to sue, directly or

1 indirectly, any of the Releasees with respect to any or all of the Released  
2 Claims; and (iii) shall forever be barred and enjoined from directly or  
3 indirectly, filing, commencing, instituting, prosecuting, maintaining, or  
4 intervening in any action, suit, cause of action, arbitration, claim, demand, or  
5 other proceeding in any jurisdiction, or before any administrative body  
6 (including any state Department of Insurance or other regulatory commission)  
7 whether in the United States or elsewhere, on their own behalf or in a  
8 representative capacity, that is based upon or arises out of any or all of the  
9 Released Claims.

10 24. As provided by the Settlement Agreement and now directed by  
11 this Court, the Released Claims include all claims that have been, could have  
12 been, may be or could be alleged or asserted in this Action regarding or  
13 concerning directly or indirectly any Class Policy, by anyone, including  
14 Plaintiff, any Settlement Class Member, or any Releasing Party, against any of  
15 the Releasees (individually or together) either in the Action or in any other  
16 court action or before any administrative body (including any state  
17 Department of Insurance or other regulatory commission), tribunal or  
18 arbitration panel, and that are made on the basis of, connected with, arising out  
19 of, or related to, in whole or in part, claims that were raised or that could have  
20 been raised in the Action, which include without limitation those regarding:

- 21 (i) Any or all of the acts, omissions, facts, matters, transactions or  
22 occurrences that were directly or indirectly alleged, asserted,  
23 described, set forth or referred to in the Action;
- 24 (ii) The amount of monies or other requirements that were requested by or  
25 on behalf of Defendants in order to keep a Class Policy that has  
26 entered default in force or to reinstate a Class Policy after lapse  
27 including, but not limited to, premium and all fees, charges and other  
28 monies, verifications or documentation requested;
- (iii) Claims, acts or omissions regarding the method of, and/or



1 administration of, and/or communication regarding, the calculations by  
2 or on behalf of Defendants of the amount of monies that were  
3 requested, including in order to keep a Class Policy that has entered  
4 default in force or to reinstate a Class Policy after lapse, and including  
5 but not limited to premium, fees, charges and other monies or  
6 requirements. This includes but is not limited to any and all claims  
7 regarding:

- 8 (a) premiums;
- 9 (b) cost of insurance charges, rates and assumptions;
- 10 (c) administrative fees or loads;
- 11 (d) underwriting or other requirements; and/or
- 12 (e) other policy costs.

13 (iv) Claims regarding Defendants' policies and procedures concerning  
14 default, grace periods, lapse or reinstatement, including, but not  
15 limited to, claims concerning communications, notices, absence or  
16 omission of communications or specific information regarding grace  
17 periods, default or lapse, or the timing thereof, and claims relating to  
18 notice to identified third parties, including, but not limited to, any  
19 claims made under any state's law, regulation or administrative  
20 directive; and

21 (v) Claims related to Defendants' declination or refusal of an attempt to  
22 cure a default or reinstate a Class Policy, for any reason.

23 25. Plaintiff, the Settlement Class including all Class Policies, and the  
24 Releasing Parties shall be bound by the provisions of the Settlement  
25 Agreement and all proceedings, determinations, orders and judgments in the  
26 Action relating thereto, including, without limitation, this Order and Judgment  
27 and the Releases provided for herein and in the Settlement Agreement. This  
28 Order shall forever be binding and shall have res judicata and claim preclusive  
effect in all pending and future lawsuits maintained by or on behalf of  
Plaintiff, the Settlement Class including all Class Policies and the Releasing  
Parties, as well as their heirs, executors, administrators, successors and  
assigns.

1           26. Plaintiff, the Settlement Class including all Class Policies and the  
2 Releasing Parties, as well as their heirs, executors, administrators, successors  
3 and assigns, and all persons acting on behalf of or in concert with any of the  
4 above, shall forever be barred and enjoined from, whether directly or  
5 indirectly, filing, commencing, instituting, prosecuting, maintaining, or  
6 intervening in any action, suit, cause of action, arbitration, claim, demand, or  
7 other proceeding in any jurisdiction, or before any administrative body  
8 (including any state Department of Insurance or other regulatory entity)  
9 whether in the United States or elsewhere, on their own behalf or in a  
10 representative capacity, that is based upon or arises out of any or all of the  
11 Released Claims or is based upon or arises out of the facts and circumstances  
12 underlying the claims and causes of action in this lawsuit. The Court finds  
13 that issuance of the permanent injunction described in this paragraph is  
14 necessary and appropriate in aid of the Court's jurisdiction over this Action  
15 and to protect and effectuate this Order. This Order may be raised as, a  
16 complete defense to and will preclude any action or proceeding encompassed  
17 by the terms of this paragraph.

18           27. Any and all claims for attorneys' fees, costs or disbursements  
19 incurred by Class Counsel or any other counsel or other representative  
20 representing or assisting Plaintiff or any Settlement Class Member (including  
21 providing counsel or advice to Claimants), or any of them, in connection with  
22 or related in any manner to the Action, the Settlement of the Action, the  
23 administration of such Settlement and/or the Released Claims, are released  
24 and waived and shall not be tendered to Defendants or reimbursed except to  
25 the extent otherwise specified by Orders of this Court.

26           28. All Settlement Class Members and all Class Policies as to which  
27 a Claim was submitted in the Settlement shall be bound by the Settlement and  
28 Release and the bar order contained herein, even if a request for exclusion was

1 also served. The submission of a Claim on behalf of a Class Member or Class  
2 Policy shall be deemed to nullify any attempt to opt out of the Settlement.  
3 Any such Settlement Class Member and any Class Policy as to which  
4 exclusion is not sought, shall not be entitled to receive any payment or benefits  
5 pursuant to the Settlement, but will otherwise be bound by all of its terms  
6 including the terms of this Order and Judgment, and will be barred from  
7 bringing any action (or having any action brought on his/her/its behalf) against  
8 any of the Released Parties concerning the Released Claims.

9         29. Claims documents in this case, and all materials and data held by  
10 the Claims Administrator regarding Defendants' Policyowners, Class Policies  
11 and/or the Settlement Class shall be strictly confidential and not subject to  
12 publication or disclosure. No person other than the Parties and their counsel,  
13 the Claims Administrator, the Special Master and the Court shall be permitted  
14 to obtain or review any Claim Form, or any decision of the Claims  
15 Administrator with respect to accepting or rejecting any Claim, except as  
16 provided for herein or upon Court Order for good cause shown.

17         30. Notwithstanding anything else in this Order, if the Claims  
18 Administrator or any Party has reason to believe that a false or fraudulent  
19 Claim has been submitted in this Settlement, or that any Claim has been  
20 submitted under false pretenses, or contrary to the required Certifications, the  
21 Claims Administrator may reject the Claim and shall bring any such situation  
22 to the attention of the Parties. In addition, either Party may bring any such  
23 Claim(s) and all evidence relating thereto to the attention of the Special Master  
24 and/or this Court and request that the Claim be investigated by the Parties  
25 and/or be directly set aside and not honored in this Settlement, and/or that the  
26 Claimant(s) shall be limited to Basic Relief, and may further request any other  
27 relief that is equitable and proper under the circumstances.

28         31. As set forth in the Settlement Agreement, Defendants have

1 denied, and continue to deny, any wrongdoing or liability of any kind relating  
2 to the Action or any of subject matter addressed by the Release. Neither this  
3 Order, nor any provisions of the Settlement Agreement including the exhibits  
4 thereto (inclusive of any modification(s)), the negotiations leading to the  
5 execution of the Settlement Agreement, nor any proceedings taken pursuant to  
6 or in connection with the Settlement Agreement and/or approval of the  
7 Settlement including any arguments proffered in connection therewith: (a)  
8 shall be offered against any of the Releasees as evidence of, or construed as, or  
9 deemed to be evidence of any presumption, concession, or admission by any  
10 of the Releasees with respect to the truth of any allegation in the Action or the  
11 validity of any claim or the deficiency of any defense that has been or could  
12 have been asserted in the Action or in any other litigation, including the  
13 appropriateness of the certification of a litigation class, or of any liability,  
14 negligence, fault, or other wrongdoing of any kind by any of the Releasees,  
15 nor shall it be in any way referred to for any other reason as against any of the  
16 Releasees, in any civil, criminal or administrative action or proceeding; or (b)  
17 shall be construed against any of the Releasees or Releasing Parties as an  
18 admission, concession, or presumption that the consideration to be given  
19 represents the amount which could be or would have been recovered after  
20 trial; provided, however, that, notwithstanding the foregoing, the Parties and  
21 the Releasees and their respective counsel may file or refer to the Settlement  
22 Agreement or this Order in any action that may be brought to enforce its  
23 terms.

24         32. The Court hereby finds the unopposed application of Class  
25 Counsel for attorneys' fees award and costs provided for under the proposed  
26 Settlement to be fair and reasonable in light of all the circumstances is hereby  
27 granted. \$3,500,000 (17.89% of the estimated value of the Settlement) shall  
28 be paid for attorneys' fees and \$500,000 shall be paid for litigation costs. The

1 Court directs Defendants to pay these sums directly to Class Counsel within  
2 10 days of this Order becoming final and following receipt of an IRS Form W-  
3 9 and wire instructions from Class Counsel.

4 33. Engstrom, Lipscomb & Lack will determine the amount of fees  
5 and expenses approved by the Court to be paid to other Plaintiff's Counsel,  
6 subject to any written agreements between or among them. Disagreements, if  
7 any, between or among Plaintiff's Counsel relating to the Court's award of  
8 fees and expenses, or of their individual shares of such an award, will be  
9 determined by the Court, which will retain sole and exclusive jurisdiction to  
10 resolve any such disagreements, subject to any agreement by the disputing  
11 counsel to arbitrate. Disagreements between or among Plaintiff's Counsel will  
12 have no impact on the effectiveness or the implementation of this Settlement,  
13 nor will such disagreements have any impact on or result in any increase of the  
14 obligations imposed upon defendants by this Order.

15 34. The Court finds the requested incentive award of \$50,000 to  
16 Named Plaintiff Richard Behfarin to be excessive. However, the Court  
17 approves payment of an incentive award in the amount of \$25,000 to Named  
18 Plaintiff. Apart from this incentive award, Plaintiff will receive no settlement  
19 payments or benefits of any nature other than his share of the Settlement relief  
20 available to the Settlement Class generally. The Court directs Defendants to  
21 pay this incentive award to Engstrom, Lipscomb & Lack in trust for Plaintiff  
22 within 10 days after this Order becoming final and following receipt of wire or  
23 check mailing instructions.

24 35. The Action is hereby dismissed with prejudice in its entirety,  
25 except to the extent that this Court has maintained continuing jurisdiction.  
26 Except as expressly granted by this Order and as set forth in the Settlement  
27 Agreement, it is adjudged that Plaintiff and all Settlement Class Members take  
28 nothing by reason of the Action against Defendants, and their claims are

1 hereby dismissed with prejudice.

2 36. Without affecting the finality of this Order, the Court reserves  
3 exclusive jurisdiction as to all matters related to administration,  
4 consummation, enforcement, and interpretation of the Settlement Agreement  
5 and this Order, including, without limitation, for the purpose of:

- 6 a. enforcing the terms and conditions of the Settlement Agreement and  
7 resolving any disputes, claims, or causes of action that, in whole or in  
8 part, are related to or arise out of the Settlement Agreement or this  
9 Order (including, without limitation, whether a person or entity is or  
10 is not a Class member and whether any complaint, claim, demand,  
11 cause of action or administrative complaint is or are not barred or  
12 released by this Order and the Settlement Agreement);
- 13 b. entering such additional orders, if any, as may be necessary or  
14 appropriate to protect or effectuate this Order and the Settlement  
15 Agreement, or to ensure the fair and orderly administration of the  
16 Settlement; and
- 17 c. entering any other necessary or appropriate orders to protect and  
18 effectuate the Court's retention of continuing jurisdiction.

19 37. Upon completing of administration of the Settlement Agreement,  
20 the parties shall file a declaration setting forth (1) the total number of claims  
21 submitted; (2) the total number of claims approved; and (3) a summary and  
22 amount of the relief granted. These numbers should be broken out by group  
23 and by requested relief.

24 IT IS SO ORDERED.

25 DATED: June 3, 2020



26 MICHAEL W. FITZGERALD

27 United States District Judge

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