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

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

16 Plaintiff(s),

17 vs.

18 PRUCO LIFE INSURANCE
19 COMPANY, et al.

20 Defendants.

CASE NO. 2:17-cv-05290-MWF-FFM

**PLAINTIFF’S REPLY
MEMORANDUM IN SUPPORT OF
FINAL CERTIFICATION OF
SETTLEMENT CLASS, FINAL
APPROVAL OF PROPOSED
NATIONWIDE CLASS
SETTLEMENT AGREEMENT,
AND APPROVAL OF ATTORNEY
FEES, COSTS AND INCENTIVE
AWARD FOR CLASS
REPRESENTATIVE**

**Hearing: April 20, 2020
Time: 10:00 a.m.
Courtroom: 5A
Judge: Hon. Michael W. Fitzgerald**

[Filed Concurrently with Supplemental
Declaration of Cameron Azari]

[Telephonic Hearing Requested]

Complaint filed: 7/18/17

1 Plaintiff Richard Behfarin, individually and on behalf of the proposed
2 Settlement Class, respectfully submits this Reply Memorandum in support of final
3 approval of this nationwide class action settlement.

4 **I. INTRODUCTION**

5 The results are now in. The Class Settlement for which Plaintiff seeks final
6 approval has received an overwhelming endorsement from those on whose behalf it
7 was made. Nobody has objected to the Settlement, or for that matter, to the requested
8 fees, costs, and incentive award. From a class comprised of 45,488 policies, owners
9 of only two policies nationwide opted out. With the February 25, 2020 deadline for
10 objecting to or opting out of the Settlement now firmly in the rear-view mirror, not a
11 single voice from among those impacted raised an objection, and with only a
12 .000044% opt-out rate, the Settlement merits the Court’s final approval.

13 Measured based on the benefit achieved, the conclusion should be the same.
14 Including claims submitted via the settlement’s website and U.S. mail, holders of
15 1,134 class policies have so far made claims for Reinstatement Relief (reinstatement
16 of policies with living insureds or for basic relief of \$250); holders of 16 class
17 policies made claims for Enhanced Relief (reinstatement of policies with living
18 insureds where requested reinstatement was previously denied); and holders of 53
19 class policies made claims for Individualized Relief (a settlement payment based on
20 the scoring system for class policies with deceased insureds).¹ Because the process of
21 qualifying the Reinstatement Relief claimants for the relief they seek, and in some
22 cases the process of obtaining necessary clarification concerning claim forms
23 submitted, is just getting underway, information is not yet available on how many
24 policies will be reinstated, and in what face amounts. However, based on a
25 hypothetical one-third of the Reinstatement Relief claimants actually reinstating—a

26 _____
27 ¹ These figures are updated as of April 6, 2020, but are not complete because the deadline for submitting
28 claims has been extended, with the Court’s approval, to April 21, 2020 to make up for time the electronic
claim submission. systems capability was down due to a ransomware attack on the Claims Administrator’s website.

1 figure chosen based on the fact that so far, more than one-third of the Reinstatement
2 Relief claimants appear to be requesting reinstatement—and using the median face
3 value of those policies, a measure of benefit conferred can be calculated. The
4 median policy size for Class Policies in the population eligible to file Reinstatement
5 and Individualized Relief claims is \$100,000, and the median policy size for Class
6 Policies in the population eligible to file Enhanced Relief claims is \$300,000.
7 Reinstatement of 378 policies (one-third of 1,134 reinstatement relief claims), if all
8 have the median death benefit attributable to them, would restore \$37,800,000 in
9 insurance coverage. Attributing \$300,000 to the 16 Enhanced Relief policies adds
10 another \$4,800,000 in insurance coverage, for a total of \$42,600,000 in estimated
11 insurance coverage restored.

12 The Individualized Relief claimants and the remaining Reinstatement Relief
13 claimants will get cash recoveries. Quantifying the Individualized Relief claimants
14 requires an assumption as to how they will score, on average. Assuming an average
15 score of 2 on the 0 to 3 scale (a reasonable assumption for those interested enough to
16 make a claim), the benefit calculation would start at 55% of the \$100,000 attributed
17 face value of the policy, or \$55,000 for each of the 53 Individualized Relief
18 claimants, a total of \$2,915,000. That will be reduced, of course, for the 55% of
19 premium each claimant would have paid to the date of death, and augmented by the
20 3% interest provision. If, hypothetically, two-thirds of Reinstatement Relief
21 claimants request or are limited to basic relief, 756 claimants will get \$250 each, for a
22 total of \$189,000. Thus, the cash component of the Settlement, before reduction for
23 premium and addition of interest, is estimated at \$3,104,000.

24 Based on these figures, acceptance of the Settlement is strong from those
25 intended to benefit from it, and it will have been effective in restoring tens of millions
26 of dollars of insurance to class members, or it will have provided cash compensation
27 to those who either do not want to restore or who do not qualify to restore, their
28 policies and to those who cannot restore their policies because the insured is

1 deceased.

2 Based on the above analysis, the insurance coverage restored is more than 10
3 times the combined fees, costs, and incentive award requested. Nobody has objected
4 to the fees, costs, or incentive award requested, and the defendants do not oppose it.
5 Moreover, since the defendants have agreed to pay those sums separately from the
6 Reinstatement, Enhanced, and Individualized Relief provided by the Settlement, the
7 fees, costs and incentive award will not diminish any class recovery. As shown in the
8 moving papers, all fall well within the recognized permissible parameters in the Ninth
9 Circuit.

10 As a consequence of all the foregoing, there is no reason to delay the Fairness
11 Hearing required by Rule 23, and the timely final approval of the Settlement, as well
12 as the granting of the motion for fees, costs, and an incentive award. Assuming the
13 Court’s calendar can still accommodate it, these motions can be heard telephonically
14 on April 20, 2020. All counsel remain available to support this option, and the
15 proposed Final Order and Judgment and proposed Order Approving Fees, Costs, and
16 Incentive Award have previously been sent to the Court.

17 **II. THE ABSENCE OF OBJECTIONS AND THE DE MINIMUS**
18 **NUMBER OF EXCLUSIONS FROM THE SETTLEMENT**
19 **WARRANT FINAL APPROVAL OF THE SETTLEMENT AND**
20 **THE FEE, COST, AND INCENTIVE REQUESTS.**

21 To gauge the reaction of class members, it is appropriate to evaluate the
22 number of requests for exclusion, as well as the objections submitted. *Klee v. Nissan*
23 *North America, Inc.* (C.D. Cal., July 7, 2015) 2015 WL 4538426, at *9, No. CV12-
24 08238 AWT(PJWX), aff’d (Dec. 9, 2015). Favorable response from the Settlement
25 Class is a significant indicator that the settlement is fair should be approved, and a
26 mere two policies whose holders have excluded themselves from the Settlement,
27 coupled with no objections, is a very favorable response from the Settlement Class.
28 See e.g., *In re Toys “R” Us- Del., Inc. Fair & Accurate Credit Transactions Act*

1 (*FACTA Litig.*, 295 F.R.D. 438, 456 (C.D. Cal. 2014)(negligible number of opt-outs-
 2 -.0000077% of class-- and objections indicates class generally approves of
 3 settlement); *Schaffer v. Litton Loan Servicing, LP*, No. CV 05-07673 MMM (JCx),
 4 2012 U.S. Dist. LEXIS 189830 at *45 (C.D. Cal. Nov. 13, 2012) (approving
 5 settlement in part because “231 class members opted out of the settlement”, which
 6 was .00089% of those getting class notice, and “no class member submitted a timely
 7 objection”); see generally *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th
 8 Cir. 1977) (“The small number of class members indicating their disapproval of the
 9 settlement, here only one percent, also indicates its acceptability.”); *National Rural*
 10 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (“It is
 11 established that the absence of a large number of objections to a proposed class action
 12 settlement raises a strong presumption that the terms of a proposed class settlement
 13 action are favorable” and absence of a single objection supports final approval).

14 The same is true for the award of fees, costs, and incentive payments. *In re*
 15 *Toyota Motor Corp.*, No. 8:10ML 02151 JVS (FMOx), 2013 U.S. Dist. LEXIS
 16 94485 at **219, 221 (C.D. Cal. June 17, 2013) (approving award of fees where “only
 17 20 of the 77 objections filed relate[d] to the proposed fee award”). In this case,
 18 nobody has objected to or opposed those payments, and the Court should therefore
 19 grant them as requested.

20 **III. THE COURT SHOULD GRANT FINAL APPROVAL DESPITE** 21 **THE COVID-19 EMERGENCY.**

22 The parties recognize that the coronavirus pandemic has shut down the Court
 23 for in-person hearings through April. However, that should not prevent the Court
 24 from granting final approval of this Settlement and awarding the fees, costs and
 25 incentive payment requested. The Court set a deadline of March 30, 2020 for anyone
 26 planning to appear at the hearing to give notice of his or her intent to appear. Nobody
 27 served such notice. That is because nobody objected to any aspect of the Settlement,
 28 including the fees, costs, and incentive award requested. Additionally, defendants

1 have filed a formal non-opposition to both motions that are on calendar. In light of
2 the absence of any objections and the lack of any controversy concerning either of the
3 motions, the Court should exercise its discretion to hear those motions at a telephonic
4 hearing on April 20, 2020.

5 If at all possible, the parties would like the motions heard on April 20, 2020,
6 and from the Court’s standpoint, there should be no reason to add to the burden of
7 clearing up the anticipated case backlog arising from the current public health
8 emergency by postponing this uncontroverted matter to a later date.

9 **IV. CONCLUSION.**

10 For all the reasons outlined in the moving papers on the Motion for Final
11 Approval of Class Settlement and Motion for Approval of Fees, Costs, and Incentive
12 Award, and in this Reply, the Court should grant all relief sought in those motions as
13 requested and enter the proposed Final Order and Judgment, as well as the proposed
14 Order Approving Fees, Costs, and Incentive Award, previously sent to the Court.

15
16 Dated: April 6, 2020

WALTER J. LACK
STEVEN C. SHUMAN
ENGSTROM, LIPSCOMB & LACK

18
19 ROBERT MOBASSERI, ESQ.

20 By: /s/ Steven C. Shuman
21 Steven C. Shuman, Esq.
22 Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

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I hereby certify that on April 6, 2020, a true and correct copy of:
**PLAINTIFF’S REPLY MEMORANDUM IN SUPPORT OF FINAL
CERTIFICATION OF SETTLEMENT CLASS, FINAL APPROVAL OF
PROPOSED NATIONWIDE CLASS SETTLEMENT AGREEMENT, AND
APPROVAL OF ATTORNEY FEES, COSTS AND INCENTIVE AWARD FOR
CLASS REPRESENTATIVE** was filed electronically and will be served via Notice
of Electronic Filing under the Court’s CM/ECF system this 6th day of April 2020, to
all parties with an email address on record, who have consented to electronic service
in this action.

/S/ Steven C. Shuman
STEVEN C. SHUMAN

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.

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

DECLARATION OF CAMERON R. AZARI, ESQ. ON SETTLEMENT NOTICE PLAN

I, Cameron Azari, declare as follows:

1. My name is Cameron R. Azari, Esq. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.
2. I am a nationally recognized expert in the field of legal notice and I have served as an expert in dozens of federal and state cases involving class action notice plans.
3. I am the Director of Legal Notice for Hilsoft Notifications (“Hilsoft”); a firm that specializes in designing, developing, analyzing and implementing large-scale legal notification plans. Hilsoft is a business unit of Epiq Class Action & Claims Solutions, Inc. (“Epiq”).
4. I previously executed my *Declaration of Cameron R. Azari, Esq. on Settlement Notice Plan* [Dkt. 74], on October 10, 2019, in which I detailed Hilsoft’s class action notice experience and attached Hilsoft’s *curriculum vitae*. I also provided my educational and professional experience relating to class actions and my ability to render opinions on overall

DECLARATION OF CAMERON R. AZARI, ESQ. ON SETTLEMENT NOTICE PLAN

adequacy of notice programs. Subsequently, I executed my *Declaration of Cameron R. Azari, Esq. on Settlement Notice Plan* [Dkt. 98], on February 18, 2020 (“*Implementation Declaration*”), in which I detailed the implementation of the Settlement Notice Plan (“Notice Plan” or “Plan”) and notices (the “Notice” or “Notices”).

5. I submit this declaration to provide the Court with updated administration statistics for *Behfarin v. Pruco Life Insurance Company, et al*, No. 2:17-cv-05290-MWF-FFM (C.D. California) (the “Settlement”). The facts in this declaration are based on what I personally know, as well as information provided to me in the ordinary course of my business by my colleagues from Hilsoft, and by Epiq who worked with Hilsoft to implement the notification effort.

6. Separately, and in addition, I provide my opinion for the Court in support of final approval that the Notice Plan implemented in this case satisfies the requirements of due process as well as Rule 23.

NOTICE PLAN IMPLEMENTATION

7. Rule 23 of the Federal Rules of Civil Procedure directs that the best notice practicable under the circumstances must include “individual notice to all members who can be identified through reasonable effort.”¹ As I stated in my Implementation Declaration, the Notice Plan satisfied this requirement with direct, individual notice being sent to at least one Policyowner of every Class Policy via United States Postal Service (“USPS”) first class mail. Address updating (both prior to mailing and on undeliverable pieces) and re-mailing protocols met or exceeded

¹ FRCP 23(c)(2)(B).

those used in other class action settlements. Where email addresses were available, an Email Notice was also sent to each email address provided.

8. In my opinion, based on the facts set forth herein, the Notice Plan as designed and implemented to date, has reached the greatest practicable number of Settlement Class Members through the use of individual notice. In my opinion, providing individual notice to the Settlement Class satisfied the requirements of due process, including its “desire to actually inform” requirement.²

INDIVIDUAL NOTICE

Direct Mail Notice

9. As I stated in my Implementation Declaration, on January 10, 2020, Epiq sent a summary notice to all 45,850 Settlement Class Members for whom a valid physical mailing address was provided from Prudential. The mailed notice consisted of three separate summary notices:

- Lapsed Policy Postcard Notice – 32,645 Notices mailed to all Settlement Class Members whose Class Policy had lapsed for a final time during the Class Period and who are not eligible for Enhanced Relief (the Lapsed/Alive and Lapsed/Deceased Populations);
- Current Policyowners Postcard Notice –13,071 Notices mailed; and

² “But when notice is a person’s due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950).

- Enhanced Relief Postcard Notice – 134 Notices mailed to members of the Lapsed/Alive Population who are entitled to submit a claim for Enhanced Relief.

10. Epiq was initially unable to mail direct notice to 865 of the 46,715 Settlement Class Members.

11. As I stated in my Implementation Declaration, on January 10, 2020, and January 13, 2020, Epiq received two additional data files containing physical addresses attributable to 332 beneficiaries of Class Policies in the Lapsed/Deceased Population. These are individuals for whom Prudential did not have addresses in its file, but undertook research outside of the Settlement requirements in an attempt to locate additional individuals. Epiq updated the addresses and subsequently mailed the Lapsed Policy Postcard Notice to each of the 332 beneficiaries.

12. As I stated in my Implementation Declaration, in total, Epiq mailed Postcard Notices to 46,182 of the 46,740 Class Members identified in the Notice List and supplemental beneficiary contact data provided by Prudential. Since policies frequently have multiple beneficiaries, and Prudential does not have contact information for many, there are 558 Class Members on the beneficiary list (i.e. not Policyowner Class Members) for whom no form of notice was attempted because no address or email address was available. However, at least one Postcard Notice was mailed and/or emailed for every Class Policy, including the Class Policies of the 558 beneficiaries for whom Epiq lacked valid addresses.

13. The return address on the Postcard Notices is a post office box maintained by Epiq. The USPS automatically forwards Postcard Notices with an available forwarding address order that has not expired (“Postal Forwards”). For Postcard Notices returned by the USPS to Epiq as

undeliverable, Epiq re-mails the Notice to any new address provided by the postal service. Epiq also obtains better addresses by using a third-party lookup service. Upon successfully locating better addresses, Postcard Notices are promptly re-mailed. As of April 6, 2020, Epiq has received 2,416 undeliverable Postcard Notices and re-mailed 2,189 Postcard Notices where a forwarding address was provided by USPS or address research identified a new address. Address updating and re-mailing for undeliverable Postcard Notices is ongoing.

Direct Email Notice

14. As I stated in my Implementation Declaration, in addition to sending direct mail notice to each Class Member for whom a physical mailing address was provided by Prudential, Epiq also sent an Email Notice to each email address provided in the data provided by Prudential. Email notice was in addition to Postcard Notices sent to the same person(s).

15. Like the Postcard Notices, the Email Notice consisted of three separate Email Notices:

- Lapsed Policy Email Notice – 25,213 Notices emailed to all Settlement Class Members whose Class Policy had lapsed for a final time during the Class Period and who are not eligible for Enhanced Relief (the Lapsed/Alive and Lapsed/Deceased Populations);
- Current Policyowners Email Notice – 11,855 Notices emailed; and
- Enhanced Relief Email Notice – 121 Notices emailed to members of the Lapsed/Alive Population who are entitled to submit a claim for Enhanced Relief.

16. On January 10, 2020, Epiq sent 11,855 Current Policyowner Emails to 10,023 individual Class Members; 25,213 Lapsed Policy Emails to 21,631 individual Class Members;

and 121 Enhanced Relief Emails to 103 individual Class Members. This included sending an Email Notice to each email address where multiple email addresses were available for a Settlement Class Member.

17. If the receiving email server could not deliver the message, a “bounce code” was returned along with the unique message identifier. For any Email Notice for which a bounce code was received indicating that the message was undeliverable, at least two additional attempts were made to deliver the Email Notice. After completion of the initial Email Notice effort, 1,083 Current Policyowners Email Notices, 3,464 Lapsed Policy Email Notices, and nine Enhanced Relief Email Notices remain undeliverable. Overall, 32,633 of the 37,189 (approximately 87.7%) of the Email Notices sent were delivered.

18. As of April 6, 2020, there are only 138 Class Policies for which a Class Member did not receive notice. In other words, direct notice reached 45,350 (approximately 99.6%) of the 45,488 Class Policies identified in the Notice Lists provided by Prudential.

Settlement Website

19. The dedicated settlement website (www.LapsedPolicySettlement.com) continues to be available. As of April 6, 2020, there have been 5,013 visits to the website and 23,183 pages presented.

Toll-free Telephone Number and Postal Mailing Address

20. The toll-free telephone number (1-855-915-0909) continues to be available to allow callers to hear an introductory message and have the option to continue to get information about the Settlement in the form of recorded answers to FAQs. Callers also have the option to speak to a service agent during normal business hours (Monday – Friday 9:00 a.m. – 9:00 p.m. Eastern Time). As of April 6, 2020, the toll-free telephone number has received 1,335 calls totaling

9,483 minutes of use, and service agents have handled 757 incoming calls totaling 9,017 minutes of use. Service agents have also made 263 outbound calls totaling 711 minutes of use.

21. The post office box and email address continue to allow Settlement Class Members the opportunity to request additional information, ask questions, or submit Claim Forms. As of April 6, 2020, Epiq has received 18 pieces of written correspondence to the post office box and 157 emails.

Status of Claims Process

22. As of April 6, 2020, Epiq has received a total of 1,203 claims (1,022 online and 181 paper) consisting of 1,134 Reinstatement Claim Forms, 53 Individualized Relief Claim Forms, and 16 Enhanced Relief Claim Forms. The deadline for Settlement Class Members to submit Claim Forms is April 21, 2020 (the original March 31, 2020 deadline was extended by the Court), so these numbers are preliminary and Epiq expects to continue receiving timely claims submitted or postmarked by the claim filing deadline.

23. The level of participation of the Class, including online and phone interactions, is consistent with what Epiq has seen in other settlements and represents strong engagement and participation by the Class.

Requests for Exclusion and Objections

24. The deadline to request exclusion from the Settlement or to object to the Settlement was February 25, 2020. As of April 6, 2020, Epiq has received requests for exclusion pertaining to two Class Policies. Epiq has not received any objections to the Settlement. This reflects an exceptional reaction by the Class.

CONCLUSION

25. In class action notice planning, execution, and analysis, we are guided by due process considerations under the United States Constitution, by state and local rules and statutes, and by case law pertaining to the recognized notice standards. This framework directs that the notice program be optimized to reach the class and, in a settlement class action notice situation such as this, that the notice or notice program itself not limit knowledge of the availability of benefits—nor the ability to exercise other options—to class members in any way. All of these requirements were met in this case.

26. The notice effort in this action followed the guidance for how to satisfy due process obligations that a notice expert gleans from the United States Supreme Court’s seminal decisions which are: a) to endeavor to actually inform the class, and b) to demonstrate that notice is reasonably calculated to do so:

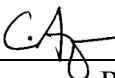
- A. “But when notice is a person’s due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it,” *Mullane v. Central Hanover Trust*, 339 U.S. 306, 315 (1950).
- B. “[N]otice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections,” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174 (1974) (citing *Mullane* at 314).

27. As detailed previously, the Notice Plan has been highly successful and has reached at least one Settlement Class Member for over 99.6% of Class Policies. It delivered “noticeable” Notices to capture Settlement Class Members’ attention, and provide them with information necessary to understand their rights and options.

28. The Notice Plan schedule afforded sufficient time to provide full and proper notice to Settlement Class Members before the opt-out and objection deadlines.

29. The Notice Program described above, including individual notice to all identifiable Settlement Class Members, provided the best notice practicable under the circumstances of this case and conformed to all aspects of Federal Rule of Civil Procedure 23, and comported with the guidance for effective notice set out in the Manual for Complex Litigation, Fourth Edition.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 6, 2020.



Cameron R. Azari

