

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

**Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge**

Deputy Clerk:  
Rita Sanchez

Court Reporter:  
Not Reported

Attorneys Present for Plaintiff:  
None Present

Attorneys Present for Defendant:  
None Present

**Proceedings (In Chambers):** ORDER RE: PLAINTIFF’S MOTION FOR PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS, APPOINTMENT OF CLASS REPRESENTATIVE AND CLASS COUNSEL, PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, AND DIRECTION OF NOTICE UNDER FED. R. CIV. P. 23(e) AND (g) [74]

Before the Court is Plaintiff Richard Behfarin’s Motion for Preliminary Certification of Settlement Class, Appointment of Class Representative and Class Counsel, Preliminary Approval of Class Action Settlement, and Direction of Notice (the “Motion”), filed on October 11, 2019 (Docket No. 74). On October 28, 2019, Defendants Pruco Life Insurance Company (“Pruco”), Pruco Life Insurance Company of New Jersey (“Pruco NJ”), and The Prudential Insurance Company of America (“PICA”) filed a Notice of Non-Opposition. (Docket No. 83).

The Court has read and considered the papers filed on the Motion, and held a hearing on November 18, 2019.

For the reasons discussed below, the Motion is **GRANTED**. Preliminarily, the proposed settlement is procedurally and substantively fair with one exception; the Court has not yet determined whether the Fee Award and the Incentive Award are substantively fair. The proposed class also appears to meet the requirements of Federal Rules of Civil Procedure 23(a) and (b)(3). The proposed notices and dissemination

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

procedure appear effective, and meet the requirements of Federal Rule of Civil Procedure 23(c).

**I. BACKGROUND**

**A. Factual and Procedural Background**

On July 18, 2017, Plaintiff filed a class action complaint against Pruco. (Docket No. 1). After Plaintiff filed the Motion, he filed a First Amended Complaint (“FAC”) on October 17, 2019. (Docket No. 77). The FAC names two additional Defendants to Pruco: Pruco NJ, and PICA. (*See generally* FAC). Plaintiff also alleges that Pruco is a wholly-owned subsidiary of PICA, and that Pruco NJ is a wholly-owned subsidiary of Pruco. (FAC ¶ 12).

The FAC contains the following allegations:

Defendants impose contractually unauthorized charges on the owners of universal life or variable universal life insurance policies when they default on their premium payments or lapse their policies. (FAC at 2). Defendants’ universal life policies require that the policy owner pay an amount of premium estimated to keep the contract in force for three months to cure deficiency. (*Id.* ¶ 3). However, without contractual authorization, Defendants require policy owners who have deficiencies to pay three months’ worth of the maximum allowable premium under the policy from the date of default, plus lapse and reinstatement payment loads not described in the policy. (*Id.*).

Moreover, for policy owners who do not cure a deficiency and suffer a lapse as a result, Defendants’ universal life policies require payment of the amount required to bring the cash value to zero on the date of default, plus any deductions from the contract fund that occurred during the grace period, plus sufficient premium after administrative charges to cover three months of deductions from the contract fund after reinstatement to reinstate the policy. (*Id.*). The policy does not state the rate of those contract fund deductions, or premium payments. (*Id.*). Without contractual authorization, Defendants impose on policy owners who wish to reinstate an obligation

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

to pay three months' worth of the maximum allowable contract fund deductions under the policy from the date of reinstatement, plus reinstatement payment loads not described in the policy. (*Id.*). In addition, Defendants require insureds to meet underwriting requirements for reinstatement that are more stringent than those described in their policies. (*Id.*).

When insureds send in a premium sufficient to cover three months of insurance costs at the rates Defendants have actually been charging rather than the maximum rates allowed by contract, Defendants return that premium, without any contractual authorization to do so. (*Id.*). This return of premium manufactures a lapse in the policy, which then enables Defendants to re-underwrite the policy. (*Id.*). By forcing insureds out of coverage when they can no longer qualify for their original rate classification, Defendants then avoid the risk they have been paid to undertake. (*Id.*).

Behfarin brings the action on behalf of himself and a nationwide class, which is defined as follows: "All persons in the United States and its territories who owned universal life insurance policies issued by Defendants and who, within four years prior to the commencement of this litigation, either: (a) suffered deficiencies, defaults or lapses of their policies and paid either maximum cost of insurance charges or lapse and reinstatement payment loads, or both, to cure that deficiency or default or to reinstate the lapsed policy; or (b) suffered the lapse of their policies because they were unable to pay or chose not to pay maximum cost of insurance charges or lapse and reinstatement payment loads, or both, to cure that deficiency or default or to reinstate the lapsed policy; (c) suffered a lapse of their policies and paid either maximum cost of insurance charges or reinstatement payment loads, or both, to reinstate their policies; (d) suffered a lapse of their policies and could not or did not reinstate because they were unable to pay or chose not to pay maximum cost of insurance charges or reinstatement payment loads, or both; or (e) suffered a lapse of their policies and could not reinstate because they were no longer qualified for the same risk classification but were still insurable for universal life at some risk classification." (*Id.* ¶ 25).

Plaintiff's Complaint alleges five claims for relief: (1) breach of contract; (2) breach of the implied covenant of good faith and fair dealing; (3) violation of Business

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

and Professions Code § 17200, *et seq.*, also known as the California Unfair Competition Law (“UCL”); (4) declaratory relief under 28 U.S.C. § 2201(a); and (5) injunctive relief. (*Id.* ¶¶ 32-75).

**B. Discovery and Mediation**

The parties conducted extensive negotiations spanning nearly four months with the Honorable William J. Cahill, a highly regarded mediator associated with JAMS who has handled multiple other class action mediations. (Motion at 5).

Plaintiff conducted formal discovery and investigation of the claims, defenses, and underlying events and transactions involved in the action. (*Id.* at 6; Declaration of Steven C. Shuman (“Shuman Decl.”) ¶¶ 17-22, 31 (Docket No. 74-1)). The investigation included discovery responses and document production, consultation with life insurance experts, and the deposition of Behfarin. (Shuman Decl. ¶¶ 17-22, 31).

On January 25, 2019, the parties participated in a full-day mediation session before Judge Cahill. (Motion at 6). The parties attended a second full-day session on February 20, 2019 and engaged in conference calls with Judge Cahill on March 1, 2019 and April 26, 2019. (*Id.*). The parties conducted a third full-day mediation session at JAMS on April 30, 2019, reached an agreement in principle, and finalized a written term sheet with Judge Cahill’s guidance. (*Id.*). Since then, the parties continued negotiation over matters not specified in the April 30, 2019 Term Sheet. (Motion at 7).

**C. The Settlement**

The Stipulation of Settlement (the “Stipulation” or “Settlement Agreement”) is attached to the Declaration of Steven C. Shuman. (Shuman Decl., Ex. 2). The Stipulation contains the following key class definition, relief, notice, and release provisions:

- “Settlement Class Members” are defined as: “all Policyowners of Class Policies and, where all Policyowners and insureds of a Class Policy are also deceased,

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

then also any designated beneficiary(ies) of that Class Policy at time of final lapse.” (Stipulation §§ II.zz, V.D.);

- “Class Policy” or “Class Policies” are defined as “one or more individual universal life or variable universal life insurance policies issued by a Defendant, as to which Guaranteed Charges were applicable to the calculation of the deficiency and/or reinstatement amount, and which policy either entered into default or lapsed between July 18, 2013 and the date of Preliminary Approval, or which had default cured or was reinstated on or after July 18, 2013 and remains in force on the date of Preliminary Approval.” (Stipulation §§ II.m and V.D.);
- “Guaranteed Rate(s)” is defined as “with respect to a Class Policy, the monthly cost of insurance rate applicable to the particular policy and insured that is guaranteed by the policy contract as a rate that cannot be exceeded when determining the Current Rate.” (Stipulation § II.cc). “Guaranteed Charge(s)” is defined as “with respect to a Class Policy, the monthly cost of insurance that a Policyowner would be charged with respect to a particular policy and insured if calculated based on Guaranteed Rate(s), along with guaranteed maximum applicable charges including, but not limited to, sales loads and administrative fees.” (Stipulation § II.bb);
- “Class Period” is defined as “July 18, 2013 to and through the date of Preliminary Approval.” (Stipulation § II.l);
- The Stipulation divides the Settlement Class Member into three categories: (1) Lapsed/ Alive Population; (2) Lapsed/ Deceased Population; and (3) Current Policyholders. The Stipulation provides for the following benefits for each category:
  - The “Lapsed/ Alive Population” refers to “Settlement Class Members associated with Class Policies that lapsed for a final time during the Class Period and have not been reinstated to date where there is at least one living insured.” (Stipulation § II.ee);

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

- “[Defendants] will offer Authorized Claimants who fall within Lapsed/Alive Population and who have not timely and validly excluded themselves from the Settlement, the opportunity to reinstate their Class Policy/ies, upon the same contract terms and face amount as existed at the time of final lapse, without underwriting, at Current Rates and Current Charges as of the date of reinstatement, but subject to both (a) the Gating Rules . . . and (b) Claimants’ timely submission of a completed Claim Form . . .” (*Id.* § III.A.1.). The Stipulation defines the “Gating Rules,” “Gating Process,” and “Required Claimant Certifications” in Section III.A.2 and III.A.3 of the Stipulation. “The Gating Rules and Claim Form certifications are intended to cull out Class Members not affected or harmed by the practice sued upon. (Motion at 9);
- Claimants subject to the Gating Rules/ Exceptions in Section III.A.2, and Claimants who are unable to truthfully sign the requisite Claimant Certifications described in Section III.A.3, or any other Claimant who elects such relief shall be eligible for Basic Relief. (Stipulation § III.A.4). Basic Relief is \$250. (*Id.* § II.d);
- “[I]f [Defendants’] existing records confirm that the Policyowner submitted a timely application for reinstatement pursuant to that policy’s contract terms, the final lapse occurred during the Class Period but before February 25, 2019, and an application for reinstatement was submitted and not approved,” Class Policies may be entitled to “Enhanced Relief.” (Stipulation § III.B.1). Specifically, if the Settlement Class Member meets all the requirements, “at the beginning of the fourth and fifth year following the Reinstatement Date, [Defendants] will pay on the Policyowner’s behalf and apply the policy the amount of premium (inclusive of all premium/tax loads) necessary to satisfy the cost of insurance for the policy, based on the then-Current Rates and

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

Current Charges for that year.” (*Id.* § III.B.2). The criteria and benefit of Enhanced Relief is detailed in Section III.B.2 of the Stipulation;

- The “Lapsed/ Deceased Population” refers to “Settlement Class Members associated with policies that lapsed for a final time during the Class Period and were not reinstated where the insured(s) are deceased.” (Stipulation § II.ff);
  - “[Defendants] will offer individualized relief to Authorized Claimants who fall within the Lapsed/Deceased Population, and who have not timely and validly excluded themselves from the Settlement.” (Stipulation § III.C.1). “The individualized relief will be in the form of a monetary Settlement Payment . . . , the amount of which will be determined by a Claim Scoring Process.” (*Id.*). “The Claim Scoring Process is based on an individual analysis and determination of each Claim according to Scoring Guidelines developed and agreed to by the Parties.” (*Id.*). The Scoring Guidelines and related details are provided in Section III.C of the Stipulation;
- The Current Policyowners will get the following benefit:
  - “Defendants will maintain policies and procedures to ensure that, from the date of this Settlement Agreement going forward, with respect to universal life and variable universal life policies issued by a Defendant in the United States and that remain in force, in the absence of a contract term providing for a different or lower amount or a different calculation formula . . . , and in the absence of a state statutory or regulatory or administrative directive to the contrary, the amount requested to cure a default or to reinstate a policy will be calculated by reference to Current Rates and then-Current

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

Charges and not by reference to Guaranteed Rates. (Stipulation § III.D.1);

- Within 21 days after the date of entry of the Preliminary Approval Order, Defendants will provide to the Claims Administrator the names, addresses, and email addresses to the extent available in Defendants' records. (Stipulation § VI.B);
- Within 28 days thereafter, the Claims Administrator shall send summary notice of the Settlement by U.S. Mail to all Settlement Class Members, and notice via e-mail with a link to the website to all Settlement Class Members with known email addresses. (Stipulation §§ VI.E, VI.F);
- No later than 2 days prior to the date on which Direct Notice is to be mailed, notice shall be provided on a website at an available settlement URL which shall include the ability to file Claim Forms online. (Stipulation § VI.G);
- “The obligations incurred pursuant to this Stipulation are in consideration of: (a) the full and final disposition of Action as against Defendants; and (b) the Releases provided” in Section IV of the Stipulation. (Stipulation § IV.A). The Released Claims “include all claims that have been, could have been, may be, or could be alleged or asserted in this Action regarding or concerning directly or indirectly any Class Policy, by Plaintiff, any Settlement Class Member, or any Releasing Party, against any of the Releasees.” (Stipulation § IV.B);
- Settlement Class Members may exclude themselves from the Class by sending a Request for Exclusion to the Claims Administrator by the Objection/Exclusion Deadline. (Stipulation § VII.A);
- Defendants may unilaterally withdraw from and terminate the Settlement Agreement if five percent (5%) or more of Class Policies and/or the Settlement Class validly elect to exclude themselves from the Settlement. (Stipulation § XI.D);

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

- A Settlement Class Member who does not request exclusion may object to the fairness, reasonableness, or adequacy of the proposed Settlement by filing a written statement or objection. (Stipulation § VII.D);
- Once the Settlement becomes final, Plaintiff and Settlement Class Members will release and discharge Defendants from any and all claims that have been, could have been, may be, or could be alleged or asserted in this action that directly or indirectly concern any Class Policy. (Stipulation §§ IV.A.2, IV.B).

**II. PRELIMINARY APPROVAL OF SETTLEMENT**

“Approval of a class action settlement requires a two-step process — a preliminary approval followed by a later final approval.” *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 319 (C.D. Cal. 2016). The standard of review differs at each stage. At the preliminary approval stage, the Court need only “evaluate the terms of the settlement to determine whether they are within a range of possible judicial approval.” *Wright v. Linkus Enters., Inc.*, 259 F.R.D. 468, 472 (E.D. Cal. 2009).

“[P]reliminary approval of a settlement has both a procedural and a substantive component.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007). Procedurally, the Ninth Circuit emphasizes that the parties should have engaged in an adversarial process to arrive at the settlement. *See Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (“We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution, and have never prescribed a particular formula by which that outcome must be tested.”) (citations omitted). “A presumption of correctness is said to attach to a class settlement reached in arm’s-length negotiations between experienced capable counsel after meaningful discovery.” *Spann*, 314 F.R.D. at 324 (quoting *In re Heritage Bond Litig.*, 2005 WL 1594403, \*9 (C.D. Cal. June 10, 2005)).

Substantively, the Court should look to “whether the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

compensation of attorneys.” *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. 2008) (quoting *West v. Circle K Stores, Inc.*, No. 04-cv-0438-WBS, 2006 WL 1652598, at \*11 (E.D. Cal. June 13, 2006)).

**A. Procedural Component**

The proposed settlement appears to be procedurally fair to Settlement Class Members.

Plaintiff’s counsel have extensive experience working in the areas of business torts, insurance bad faith, life insurance matters that arose out of failure to pay death benefits and that arose out of contract breaches and torts, and other complex litigation. (See Shuman Decl. ¶¶ 67, 85). Plaintiff’s firm Engstrom, Lipscomb & Lack has also served as class counsel, lead or co-lead counsel, or steering committee member in more than 15 different mass and class actions in California, both in state and federal courts. (*Id.* ¶¶ 68-84).

The Court is familiar with the action and is confident that they were vigorously litigated on both sides. The parties conducted formal discovery over the course of this action, including written discovery, document production, and deposition of Plaintiff. (Shuman Decl. ¶¶ 17-22). Plaintiff also fully briefed a motion for class certification, which was pending when this Settlement was reached. (Docket Nos. 50, 51). Given the parties’ vigorous and often contentious litigation of this case, the Court has no doubt that the settlement is “the product of an arms-length, non-collusive, negotiated resolution[.]” *Rodriguez*, 563 F.3d at 965.

Additionally, the parties attended three full-day mediation sessions with Judge Cahill and the parties engaged in settlement negotiations over multiple months. (Shuman Decl. ¶¶ 34-36). During the last session at JAMS on April 30, 2019, the parties reached an agreement in principle and were able to finalize a written term sheet with Judge Cahill’s guidance. (*Id.* ¶ 36). The fact that the parties utilized an experienced mediator to reach the settlement agreement supports the notion that it was the product of an arms-length negotiation. See *Alberto*, 252 F.R.D. at 666-67 (noting the parties’ enlistment of “a prominent mediator with a specialty in [the subject of the

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

litigation] to assist the negotiation of their settlement agreement” as an indicator of non-collusiveness) (citing *Parker v. Foster*, No. 05-cv-0748-AWI, 2006 WL 2085152, at \*1 (E.D. Cal. July 26, 2006)); *Glass v. UBS Fin. Servs., Inc.*, No. 06-cv-4068-MMC, 2007 WL 221862, at \*5 (N.D. Cal. Jan. 26, 2007)).

The Court concludes that the proposed class is represented by experienced counsel who engaged in meaningful discovery and motion practice while pursuing arms-length settlement negotiations. The procedural component of the inquiry is met.

**B. Substantive Component**

The proposed settlement also appears to be generally reasonable and fair to Settlement Class Members.

As discussed above, pursuant to the Stipulation, Defendants have agreed to compensate Settlement Class Members who have suffered the practice alleged in this action and change their practice going forward for Current Policyholders. (Motion at 16). The Settlement places those who are insured and still alive in exactly the position they would have been in had the challenged practice not occurred. (*Id.*). For those whose insureds are deceased, the Settlement will enable them to recover a portion of the death benefit as a Settlement recovery even though the policy was not in force. (*Id.* at 16-17). The Settlement also confers a benefit on current policyowners through Defendants’ change in practice. (*Id.* at 17).

Specifically, qualified claimants in the Lapsed/Alive population will get an opportunity to reinstate the Class Policy on the same terms that existed at the time of the final lapse. (*Id.* at 9). Qualified claimants in the Lapsed/Deceased population will receive an individualized monetary Settlement Payment calculated by a Claim Scoring Process administered by the Claims Administrator using Defendants’ records and data. (*Id.* at 10). The Claims Administrator will determine the Claim Score on a scale of zero to three, which will then trigger application of either Basic Relief (\$250) or a percentage of death benefit minus a percentage of premium that would have been paid to calculate the actual award, plus 3% interest from the date of death. (*Id.*). For the benefit of the all current and future universal and variable universal policyholders,

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIACIVIL MINUTES—GENERAL**Case No. CV 17-5290-MWF-FFMx****Date: November 26, 2019****Title: Richard Behfarin v. Pruco Life Insurance Company**

---

---

Defendants have also agreed to end the challenged business practices and ensure that the amount billed to cure a default or to reinstate a policy will be calculated based on current rates (or less), and not Guaranteed Rates. (*Id.* at 11).

As Plaintiff contends, there are certain risks should he continue to pursue his action. (Motion at 17-18). First, Plaintiff asserts that there was a risk posed by the inevitable battle of experts, with the parties advancing competing insurance practices and actuarial analyses. (Shuman Decl. ¶ 39). Plaintiff also asserts that there was a risk that the class would not be certified for lack of uniformity. (Motion at 17). For example, policy holders lapsed their policies for different reasons, not all of which trace back to the conduct alleged. (*Id.* at 18). Some policyholders had no-lapse guarantees, which put them on a different footing than others. (*Id.*). Moreover, Defendants did not always bill for curing at Guaranteed Rates, and not all policyowners requested or received reinstatement notices. (*Id.*). Plaintiff asserts that the Settlement structure accounts for causation issues while awarding some compensation to all Settlement Class Members, even where lapse did not result from conduct alleged. (*Id.*).

The Court determines that the proposed settlement provides a reasonable level of compensation to those affected by Defendants' challenged practices. *See, e.g., Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (emphasizing the requirement that courts "consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation") (citation omitted).

**1. Fee Award and Incentive Award**

In the Ninth Circuit, there are two primary methods to calculate attorneys' fees: the lodestar method and the percentage-of-recovery method. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 949 (citation omitted).

"The lodestar method requires 'multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate documentation)

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIACIVIL MINUTES—GENERAL**Case No. CV 17-5290-MWF-FFMx****Date: November 26, 2019**Title: Richard Behfarin v. Pruco Life Insurance Company

---

by a reasonable hourly rate for the region and for the experience of the lawyer.” *Id.* (citation omitted). “Under the percentage-of-recovery method, the attorneys’ fees equal some percentage of the common settlement fund; in this circuit, the benchmark percentage is 25%.” *Id.* (citation omitted). However, the “benchmark percentage should be adjusted, or replaced by a lodestar calculation, when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors.” *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990).

“The Ninth Circuit has identified a number of factors that may be relevant in determining if the award is reasonable: (1) the results achieved; (2) the risks of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee; (5) the burdens carried by class counsel; and (6) the awards made in similar cases.” *Martin v. Ameripride Services, Inc.*, No. 08-cv-440–MMA, 2011 WL 2313604, at \*8 (S.D. Cal. June 9, 2011) (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002)). The choice of “the benchmark or any other rate must be supported by findings that take into account all of the circumstances of the case.” *Vizcaino*, 290 F.3d at 1048.

The Stipulation provides that Class Counsel may apply to the Court for attorneys’ fees up to \$3.5 million and costs and expenses up to \$500,000 (the “Fee Award”) to be paid by Defendants. (Stipulation § IX.A). The Stipulation also provides that Class Counsel may apply for an Incentive Award to be given to the Class Representative for an amount up to \$50,000. (*Id.* § IX.D).

The Court does not determine at this stage whether the Fee Award or the Incentive Award is reasonable. The parties have not provided sufficient information to determine whether an attorneys’ fee award of \$3,500,000 would be reasonable under either the lodestar method or the percentage-of-recovery method. Moreover, while named Plaintiff Behfarin appears to have been closely involved in the litigation, Plaintiff has not demonstrated why an incentive award of \$50,000 is reasonable.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

However, Plaintiff asserts that he is not seeking approval of the amount of the awards, but rather, only the form of notice informing Settlement Class Members of the proposed amount of Defendants' payment. (Motion at 13). Moreover, the Stipulation states that "[t]he procedures for, and the allowance or disallowance by the Court of, any Fee Award or Incentive Award are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this Stipulation." (Stipulation § IX.B). Accordingly, the Court only determines at this stage that the form of notice is reasonable, but does not determine whether the amount requested under the Fee Award or the Incentive Award is reasonable.

The Court finds the Agreement to be procedurally fair. The Court also finds the Agreement – excluding the provisions regarding the Fee Award and the Incentive Award – to be substantively fair. The Motion is therefore **GRANTED** insofar as the Agreement is preliminarily **APPROVED**.

**III. CLASS CERTIFICATION**

Plaintiffs seeks certification of a class for settlement purposes only pursuant to Federal Rule of Civil Procedure 23(b)(3). A court may certify a class for settlement purposes only. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d at 942. In *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997), the Supreme Court explained the differences between approving a class for settlement and for litigation purposes:

Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, *see* Fed. Rule Civ. Proc. 23(b)(3)(D), for the proposal is that there be no trial. But other specifications of the Rule — those designed to protect absentees by blocking unwarranted or overbroad class definitions — demand undiluted, even heightened, attention in the settlement context. Such attention is of vital importance, for a court asked to certify a settlement class will lack the opportunity, present when a case

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

is litigated, to adjust the class, informed by the proceedings as they unfold.

*Id.* at 620.

As discussed above, the proposed Settlement Class is defined in the Stipulation as: “all Policyowners of Class Policies and, where all Policyowners and insureds of a Class Policy are also deceased, then also any designated beneficiary(ies) of that Class Policy at time of final lapse.” (Stipulation §§ II.zz, V.D.)

Federal Rule of Civil Procedure 23(a) requires the putative class to meet four threshold requirements: numerosity, commonality, typicality, and adequacy of representation. *Id.*; *see also Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 512 (9th Cir. 2013). In addition, the proposed class must satisfy Rule 23(b)(3), which requires that “questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). Considering these requirements, the Court concludes that class certification is appropriate.

**A. Numerosity**

Under Rule 23(a)(1), a class must be “so numerous that joinder of all members is impracticable . . . .” *Id.* The Settlement Class encompasses approximately 32,585 lapsed Policies in addition to Current Policyholders. (Motion at 20-21). This is more than enough to satisfy Rule 23(a)(1)’s numerosity requirement.

**B. Commonality**

Rule 23(a)(2) requires that the case present “questions of law or fact common to the class.” *Id.* The Supreme Court’s decision in *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), clarified that to demonstrate commonality, the putative class must show that their claims “depend upon a common contention . . . that it is capable of classwide resolution — which means that determination of its truth or falsity will

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIACIVIL MINUTES—GENERAL**Case No. CV 17-5290-MWF-FFMx****Date: November 26, 2019**Title: Richard Behfarin v. Pruco Life Insurance Company

---

resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.* at 350. That requirement is met here, as (if this case were to proceed to trial) each member of the Settlement Class would seek resolution of the same legal and factual issues: whether Defendants breached the terms of their contract and violated other laws by billing amounts in excess of the current cost of insurance and load rates for policy holders to cure or reinstate their policies. (Motion at 21). The commonality requirement is satisfied.

**C. Typicality**

Rule 23(a)(3) requires the putative class to show that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” *Id.* The claims of the representative parties need not be identical to those of the other putative class members; “[i]t is enough if their situations share a ‘common issue of law or fact,’ and are ‘sufficiently parallel to insure a vigorous and full presentation of all claims for relief.’” *California Rural Legal Assistance, Inc. v. Legal Servs. Corp.*, 917 F.2d 1171, 1175 (9th Cir. 1990) (internal citations omitted). Here, the named Plaintiff’s claims are premised on exactly the same practice as those of the absent settlement class members: Defendants’ required payment from Plaintiff based on guaranteed cost of insurance and load rates, instead of current rates, at the time he tried to cure the default and when he tried to reinstate his policy. (Motion at 22). The typicality requirement is satisfied.

**D. Adequacy**

Finally, Rule 23(a)(4) requires the representative parties to “fairly and adequately protect the interests of the class.” *Id.* “In making this determination, courts must consider two questions: ‘(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?’” *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)). Additionally, “the honesty and credibility of a class representative is a relevant consideration when performing the

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

adequacy inquiry because an untrustworthy plaintiff could reduce the likelihood of prevailing on the class claims.” *Harris v. Vector Mktg. Corp.*, 753 F. Supp. 2d 996, 1015 (N.D. Cal. 2010) (citation omitted).

As to the first prong, the Court perceives no obvious conflicts between Plaintiff and his counsel on the one hand and the absent Settlement Class Members on the other. As to the second prong, as discussed above, Plaintiff and his counsel have vigorously prosecuted this action, Plaintiff’s counsel have substantial experience litigating similar types of class actions, and there is no reason to believe that Plaintiff and his counsel would not vigorously pursue this action on behalf of the Settlement Class. The adequacy requirement is satisfied.

The requirements imposed by Rule 23(a) are thus satisfied. The Court next considers whether the additional requirements of Rule 23(b)(3) are met.

**E. Predominance**

“The Rule 23(b)(3) predominance inquiry asks the court to make a global determination of whether common questions prevail over individualized ones.” *Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1134 (9th Cir. 2016). That is, “an individual question is one where members of a proposed class will need to present evidence that varies from member to member, while a common question is one where the same evidence will suffice for each member to make a prima facie showing or the issue is susceptible to generalized, class-wide proof.” *Id.* (quoting *Tyson Foods v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016)).

Here, all claims turn on Defendants’ determining the payment owed to cure or reinstate the policies using guaranteed instead of current cost of insurance and load rates. (Motion at 23). Therefore, common issues predominate regarding Plaintiff’s claims. *See In re Med. Capital Sec. Litig.*, No. SACV-09-1048 DOC, 2011 WL 5067208, at \*3 (C.D. Cal. July 26, 2011) (collecting cases and concluding that “[c]ourts routinely certify class actions involving breaches of form contracts.”). While the amount of payments to individual Settlement Class Members may differ, such a difference does not defeat class action treatment. *See Yokoyama v. Midland Nat. Life*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

*Ins. Co.*, 594 F.3d 1087, 1089 (9th Cir. 2010) (noting that the “amount of damages is invariably an individual question and does not defeat class action treatment”). Accordingly, the predominance requirement is also satisfied.

**F. Superiority**

Rule 23(b)(3)’s superiority requirement is also met. Rule 23(b)(3) sets out four factors that together indicate that a class action is “superior to other available methods for the fair and efficient adjudication of the controversy”:

(A) the class members’ interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3). “The purpose of the superiority requirement is to assure that the class action is the most efficient and effective means of resolving the controversy.” *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (quoting Charles Wright, Arthur Miller & Mary Kay Kane, *Federal Practice and Procedure*, § 1779 at 174 (3d ed. 2005)).

When deciding whether to certify a settlement class, the fourth superiority factor need not be considered. *See Amchem*, 521 U.S. at 620 (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . .”). The three relevant factors favor certifying the proposed settlement class:

*First*, individual Settlement Class Members would likely have little interest in prosecuting separate actions. Each putative class member’s claim is likely too small to justify the cost or risk of litigation. Thus, a class action is a more efficient means for each individual class member to pursue his or her claims. *See Wolin*, 617 F.3d at 1175 (“Where recovery on an individual basis would be dwarfed by the cost of litigating on

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

an individual basis, this factor weighs in favor of class certification.”). Moreover, because the claims of all putative class members are virtually identical, there is no reason that any given class member should need to pursue his or her claims individually. *See Westways World Travel, Inc. v. AMR Corp.*, 218 F.R.D. 223, 240 (C.D. Cal. 2003) (“Here, no one member of the Class has an interest in controlling the prosecution of the action because the claims of all members of the Class are virtually identical.”).

*Second*, there does not appear to be any other litigation currently or previously pending concerning similar claims to those at issue in this action.

*Third*, Plaintiff, as resident of California who was charged guaranteed rates when he attempted to cure his policy, has alleged that Defendants’ practices violate California law. Therefore, this District Court is a proper forum for resolution of the action. *Negrete v. Allianz Life Ins. Co. of N. Am.*, 238 F.R.D. 482, 495 (C.D. Cal. 2006) (“[B]ecause plaintiffs have alleged an overarching fraudulent scheme and include a California sub-class, it is desirable to consolidate the claims in this forum.”).

Accordingly, the Motion is **GRANTED** insofar as the proposed class is **CERTIFIED** for purposes of settlement.

**IV. NOTICE AND SETTLEMENT ADMINISTRATION**

After the Court certifies a class under Rule 23(b)(3), it must direct to class members the best notice practicable under the circumstances. Fed. R. Civ. P. 23(c)(2)(B).

The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

(vii) the binding effect of a class judgment on members under Rule 23(c)(3).

*Id.* Class notice 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.” *Mullane v. Central Hanover Trust*, 339 U.S. 306, 314 (1950).

The Agreement sets forth a highly detailed notice regime involving, in short, the Settlement Administrator acquiring the mailing addresses and email addresses for the Settlement Class Members from Defendants’ records and then disseminating a Class Notice via U.S. Mail and e-mail. (Stipulation § VI). The Class Notice will explain the Settlement, give directions or a link to a website notice that provides all the information needed for Class Members to make informed decisions, and provide an avenue for Settlement Class Members to exclude themselves from the Class. (*Id.* §§ VI, VII.A). The Court has reviewed the contemplated notice regime and the form and substance of the proposed notices, and concludes that the proposed class notice satisfies the requirements set forth in Rule 23(c)(2)(B).

Accordingly, the proposed notices and plan of dissemination are **APPROVED**.

**V. APPOINTMENT OF COUNSEL FOR THE SETTLEMENT CLASS**

Plaintiff also asks that the Court appoint Engstrom, Lipscomb & Lack and Robert B. Mobasser P.C. as Class Counsel. (Motion at 24).

In appointing class counsel, the court must consider: “(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel’s knowledge of the applicable law; and (iv) the

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

resources that counsel will commit to representing the class.” Fed. R. Civ. P. 23(g)(1)(A).

Here, the proposed Class Counsel have experience handling class actions, have shown knowledge of the legal issues relating to Defendants’ conduct, have retained experts and consultants to address relevant issues, and negotiated a favorable settlement. *See* Shuman Decl. ¶¶ 41-57, 67-86.

Accordingly, Plaintiff’s request to appoint Engstrom, Lipscomb & Lack and Robert B. Mobasser P.C. as Class Counsel is **APPROVED**.

**VI. CONCLUSION**

For the reasons discussed above, the Motion is **GRANTED** insofar as the proposed settlement agreement is preliminarily **APPROVED**; the class is provisionally **CERTIFIED** for purposes of settlement only; the notices and plan of dissemination are **APPROVED**; and the appointment of Class Counsel is **APPROVED**.

The Proposed Order Preliminarily Approving Class Action Settlement Class, Approving Proposed Notice, and Scheduling Final Approval Hearing (Docket No. 74-3) is adopted and incorporated into this Order, as Exhibit A.

The Final Approval Hearing shall be scheduled for **April 20, 2020 at 10 a.m.**

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

EXHIBIT A

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

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, THE  
PRUDENTIAL INSURANCE COMPANY OF  
AMERICA, PRUCO LIFE INSURANCE  
COMPANY OF NEW JERSEY

Defendants

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

**[PROPOSED] ORDER  
PRELIMINARILY APPROVING CLASS  
ACTION SETTLEMENT, CERTIFYING  
SETTLEMENT CLASS, APPROVING  
PROPOSED NOTICE, AND  
SCHEDULING FINAL APPROVAL  
HEARING**

Upon review and consideration of Plaintiff's Motion for Preliminary Approval of Class Action Settlement (Docket No. 74), the Stipulation of Settlement and Release and its exhibits ("Settlement Agreement") (Dkt. No. 74-1, Ex. 2), which have been filed with the Court, and the presentations of counsel, it is hereby ORDERED and ADJUDGED as follows:

1. The parties have agreed to settle and dismiss with prejudice *Richard Behfarin, et al. v. Pruco Life Insurance Company, The Prudential Insurance Company*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

*of America, Pruco Life Insurance Company of New Jersey*, Case No. 2:17-cv-05290-MWF-FFM (C.D. California) (the “Action”), upon the terms and conditions set forth in the Settlement Agreement. The definitions in the Settlement Agreement are hereby incorporated as though fully set forth in this Order. This Court has jurisdiction over the subject matter and all parties to this Action, including the proposed Settlement Class, pursuant to 28 U.S.C. § 1332(d)(2).

2. This Court finds that, subject to the Final Approval Hearing, the Settlement Agreement, including all exhibits thereto, is preliminarily approved as fair, reasonable and adequate, and in the best interests of the Settlement Class. The Court further finds that the Settlement Agreement substantially fulfills the purposes and objectives of the class action, and provides substantial relief to the Settlement Class without the risks, burdens, costs or delays associated with continued litigation, trial and/or appeal. The Settlement is not a finding or admission of liability by the Defendants or any other person, nor a finding of the validity of any claims asserted in the Action or of any wrongdoing or any violation of law.

3. The Plaintiff, by and through his counsel, has investigated the pertinent facts and law, has engaged in discovery, and has evaluated the risks associated with continued litigation, trial, and/or appeal.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

4. The Court finds that the Settlement Agreement was reached in the absence of collusion, is the product of informed, good-faith, arms-length negotiations between the parties and their capable and experienced counsel, and was reached with the assistance of a well-qualified and experienced mediator, the Honorable William J. Cahill (Ret).

5. The following Settlement Class shall be certified pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(3) and 23(e), for settlement purposes only and for purposes of disseminating Class Notice, and without prejudice to Defendants' right to contest class certification if the Settlement Agreement is not approved:

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

Class Policies include all individual universal life or variable universal life insurance policies issued by a Defendant as to which Guaranteed Charges were applicable to the calculation of the deficiency and/or reinstatement amount, and which policy either entered into default or lapsed between July 18, 2013 and the date of Preliminary Approval, or

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

which had default cured or was reinstated on or after July 18, 2013 and remains in force on the date of Preliminary Approval.

6. The Court finds for purposes of the Settlement Agreement only and without prejudice to Defendants' right to contest class certification if the Settlement is not approved, that the Settlement meets the requirements of Federal Rules of Civil Procedure 23(a), 23(b)(3), and 23(e).

7. The Settlement Agreement confers substantial benefits upon the Settlement Class and avoids the costs, uncertainty, delays, and other risks associated with continued litigation, trial, and/or appeal.

8. The named Plaintiff in the Action, Richard Behfarin, is appointed as Class Representative. This Court finds that Plaintiff Behfarin will adequately protect the interests of the Settlement Class.

9. For purposes of settlement only, the following attorneys are appointed as Class Counsel for the Settlement Class: Steven C. Shuman of Engstom, Lipscomb & Lack and Robert B. Mobasserri of Robert B. Mobasserri, P.C. The Court finds that these attorneys are competent and capable of exercising the responsibilities of Class Counsel and will adequately represent the whole Settlement Class.

10. Pursuant to the recommendation of the parties, the Court appoints Epiq Class Action & Claims Solutions, Inc. as the Claims Administrator who shall perform

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

the Claims Administration duties assigned to it by this Order and the Settlement Agreement.

11. The Court hereby appoints the Honorable William J. Cahill (Ret.), of JAMS, to serve as the Special Master as provided for by the Settlement Agreement.

12. The Court approves the plan to disseminate Notice to the Settlement Class, all forms of Notice to the Settlement Class, and the Claim Forms, as set forth in Section VI of the Settlement Agreement and the Exhibits thereto. The Court finds that the plan to disseminate Notice complies with Rule 23(c)(2)(A) and 23(c)(2)(B). The Notice explains the general terms of the Settlement Agreement, the general terms of the proposed Fee Award and Incentive Award, and a description of Settlement Class Members' rights to object to the Settlement Agreement, request exclusion from the Class and appear at the Settlement Hearing. The Court finds that the proposed plan to disseminate Notice is reasonable and calculated to provide due, adequate and sufficient notice to all persons entitled to receive notice. Thus, no notice other than that specifically identified in the Settlement Agreement is necessary in this Action. The Parties, by agreement, may revise the Notice and Claim Forms in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting.

13. Pursuant to Section VI and VIII of the Settlement Agreement, the Claims

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

Administrator is directed to publish the Notice and Claim Form on the Settlement Website and to send direct notice via U.S. Mail and email (where available) in accordance with the plan to disseminate Notice called for by the Settlement Agreement and within the time frame set forth therein. The Claims Administrator shall also maintain the Settlement Website to provide full information about the Settlement and allow for the filing of claims online. The Settlement Website shall prominently display the right of the Settlement Class to object to the Settlement Agreement, request exclusion from the Class, and appear at the Settlement Hearing.

14. Defendants are directed to provide Prudential Records, including Class Policy records, with respect to the Settlement Class and Class Policies to the Claims Administrator as necessary to effectuate the Notice Plan and to inform the Claims process. These materials will include personal information, and may include Social Security numbers, individually identifiable health and/or financial information, regarding Class Members. Class Counsel has authorized and agreed to the provision of this information on behalf of the Settlement Class. Claim Forms submitted in this Action, and all materials and data held by the Claims Administrator regarding Defendants' Policyholders, Class Policies and/or the Settlement Class shall be strictly confidential and not subject to publication or disclosure. No person other than the Parties, their counsel (including their consultants and experts who are bound by the

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

Protective Order in this Action), the Claims Administrator, the Special Master, and the Court shall be permitted to obtain or review any Claim Form, or any decision of the Claims Administrator with respect to accepting or rejecting any Claim, except as provided for herein or upon Court Order for good cause shown.

15. The Objection/Exclusion Deadline is February 25, 2020.

16. A Class Member may request to be excluded from the Settlement Class by sending a timely written request postmarked on or before the Objection/Exclusion Deadline. To exercise the right to be excluded (or “opt out”), the Class Member must individually or through an attorney timely send a written request for exclusion to the Claims Administrator providing (1) his/her name and address; (2) the Policy Number of the applicable Class Policy(ies), (3) a statement that the person seeking exclusion is authorized to act on behalf of the Class Policy; (4) a signature, (5) the name and civil action number of the case; (6) and a clear statement that he or she, on behalf of the Class Policy associated with them, wishes to be excluded from the Settlement Class for purposes of this Settlement. A request to be excluded that does not include all of this information, or that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified, or is not sent by an authorized representative, shall be invalid, and the person(s) serving such a request and the subject

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

Class Policy shall be a member(s) of the Settlement Class and shall be bound as a Settlement Class Member by this Agreement, if approved.

17. Any request for exclusion that is served by a person who is not a Class Member or an attorney representing a Class Member shall not be valid, and the person serving the attempted exclusion and the Class Policy shall remain subject to all terms of this Settlement Agreement. Likewise, any request for exclusion that purports to opt out fewer than all Policyowners and/or fewer than all designated beneficiary(s) at time of final lapse of a Class Policy shall not be valid. The request for exclusion must be personally signed by each person requesting exclusion. No request for exclusion may be made on behalf of a group of Class Policies owned by different Policyowners. “Mass” opt outs, and/or attempts to opt out a “class,” shall not be allowed.

18. Any member of the Settlement Class who validly elects to be excluded from the Settlement Agreement shall not: (i) be bound by any orders or the Final Judgment; (ii) be entitled to relief under the Settlement Agreement; (iii) gain any rights by virtue of the Settlement Agreement or (iv) be entitled to object to any aspect of the Settlement Agreement.

19. Upon receiving any request(s) for exclusion, the Claims Administrator shall stamp on the original the date it was received and shall promptly notify Class Counsel and Defendants’ Counsel of such request(s) by email no later than two (2)

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

calendar days after receipt. In doing so, the Claims Administrator shall indicate whether such request is timely received, and provide copies of the request(s) for exclusion, the mailing envelope and any accompanying documentation, by email.

20. Any Settlement Class Member who has not filed a written request for exclusion for all of his/her/its Class Policies and who wishes to object to the fairness, reasonableness or adequacy of the Settlement Agreement must do so in writing and any such objection or appearance must be received by the Court and by Class Counsel and Defendants' Counsel no later than the Objection/Exclusion Deadline. The objection must be personally signed by the objector, and must include: (1) the objector's name and address; (2) an explanation of the basis upon which the objector claims to be a Settlement Class Member, including the Policy Number of the applicable Class Policy(ies), and a statement that the person seeking to object is authorized to act on behalf of the Class Policy per Section VII of the Settlement Agreement; (3) all grounds for the objection, including all citations to legal authority and evidence supporting the objection; (4) the name and contact information of any and all attorneys, brokers, advisors or others who are representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the "Objecting Attorneys and Advisors"); and (5) a statement indicating whether the objector intends to appear at the Final Approval

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

Hearing (either personally or through counsel who files an appearance with the Court in accordance with the Local Rules). Any attorney who wishes to appear must file an appearance so indicating. Any objection that purports to be submitted on behalf of fewer than all Policyowners and/or fewer than all designated beneficiary(s) at the time of final lapse shall not be valid or recognized by the Court.

21. If a Settlement Class Member or any of the Objecting Attorneys and Advisors has objected to any class action settlement in a different case where the objector or the Objecting Attorneys or Advisors asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection must also include a statement identifying each such case by full case caption and amount of payment received.

22. All Claim Forms must be submitted by no later than March 31, 2020. A Claim Form shall be deemed to be submitted when submitted by the online Claims process or when postmarked, if mailed by first-class mail and addressed in accordance with the instructions thereon.

23. Class Counsel shall file their Motion for Final Approval and Motion for Class Counsel's Attorneys' Fees and Cost Reimbursement and Incentive Awards to Class Representative no later than February 11, 2020.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

24. The Parties shall file any responses to Objections and any other papers supporting Final Approval no later than April 6, 2020.

25. Any person wanting to appear at the Final Approval Hearing should file and serve a Notice of Appearance or otherwise indicate an intent to appear no later than March 30, 2020.

26. The Court schedules the Final Approval Hearing on April 20, 2020 at 10:00 a.m.

27. The Final Approval Hearing will (i) consider the fairness, reasonableness and adequacy of the Settlement Agreement; (ii) consider entry of the Final Order and Judgment approving the Settlement Agreement and the dismissal with prejudice of the Action; (iii) provide the Settlement Class with the opportunity to object to the proposed Settlement Agreement; (iv) consider Class Counsel's application for a Fee Award and for an award of costs; (v) consider the payment of an Incentive Award to the Class Representative and (vi) consider such other matters as the Court may deem necessary or proper under the circumstances in accordance with Federal Rule of Civil Procedure 23.

28. The Final Approval Hearing may be postponed, adjourned, or continued by Order of the Court. The new date of Hearing, if any, shall be published on Court's docket and on the Settlement Website without further notice to the Class.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

29. After the Final Approval Hearing, the Court may enter a Final Order and Judgment in accordance with the Settlement Agreement.

30. Pending the Final Approval Hearing, other than proceedings necessary to carry out or to enforce the terms and conditions of the Settlement Agreement, this matter is stayed.

31. The Settlement Agreement, by its terms, may be terminated at the sole option and discretion of Defendants or Plaintiff if (a) this Court, or any appellate court(s), rejects, modifies or denies approval of any portion of the Proposed Settlement that the terminating party in its (or their) sole judgment and discretion reasonably determines is material and adverse to the terminating party; or (b) this Court, or any appellate court(s), does not enter or completely affirm, or alters or expands, any portion of the Final Order and Judgment that the terminating party in its (or their) sole judgment and discretion reasonably determines is material and adverse to the terminating party. Defendants may terminate the Settlement Agreement at their sole discretion if the opt out limit in Section IX, D. of the Settlement Agreement is triggered.

32. If the Settlement Agreement does not receive Final Approval, or if Final Approval is reversed on appeal, or if the Settlement Agreement is terminated or otherwise fails to become effective, the Court's grant of class certification shall be

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

vacated and the Settlement Agreement shall become null and void. Plaintiff, the Settlement Class and the Defendants shall be restored to their respective positions prior to the entry of this Order. In such case, neither the certification of the Settlement Class for settlement purposes, nor any other act relating to the negotiation or execution of the Settlement Agreement shall be considered as a factor in connection with any class certification issue(s).

33. Prudential may continue to act on, respond to and otherwise address matters in the usual course of business that pertain to Class Policies or originate with Settlement Class Members; provided, however, that after the Class Notice mailing and before the implementation of Settlement Relief for a particular Class Policy, any offer of relief by Prudential in response to any complaint concerning a Class Policy will be accompanied by a copy of the Settlement Agreement.

34. Class Counsel and Counsel for Defendants are hereby authorized to employ all reasonable procedures in connection with approval and administration of the Settlement Agreement that are not materially inconsistent with this Order or the Settlement Agreement.

35. The dates of performance contained herein may be extended by Order of the Court, for good cause shown. Any further Orders of this Court, including any

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

revision(s) or amendment(s) to this Preliminary Approval Order shall be published on the Court docket and on the Settlement Website without further notice to the Class.

36. All further proceedings in the Action are ordered stayed until Final Judgment or termination of the Settlement Agreement, whichever occurs earlier, except for those matters necessary to obtain and/or effectuate final approval of the Settlement Agreement.

37. The Settlement Class shall be bound by all determinations and judgments in the Action concerning the Action and/or Settlement Agreement, whether favorable or unfavorable.

38. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement Agreement. The Court may approve the Settlement Agreement, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Class.

39. Any Settlement Class Member and any Settlement Class Policy as to whom/which a timely and valid exclusion is not received: (a) shall be bound by the terms of the Settlement Agreement and all proceedings, determinations, orders and judgments in the Action relating thereto, including, without limitation, the Final Order and Judgment and the Releases provided for in the Settlement Agreement, whether favorable or unfavorable to the Settlement Class; and (b) shall forever be barred and

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

enjoined from directly or indirectly filing, commencing, instituting, prosecuting, maintaining or intervening in any action, suit, cause of action, arbitration, claim, demand or other proceeding in any jurisdiction, or before any administrative body (including any state Department of Insurance or other regulatory entity) whether in the United States or elsewhere, on their own behalf or in a representative capacity, that is based upon or arises out of any or all of the Released Claims, whether or not a Claim Form is required or submitted, as more fully described in the Settlement Agreement.

40. Neither this Order, the Settlement Agreement (whether or not consummated), including the Exhibits thereto (inclusive of any modification(s) that may be made or approved by the Court or Special Master), the negotiations leading to the execution of the Settlement Agreement, nor any proceedings taken pursuant to or in connection with the Settlement Agreement and/or approval of the Settlement including any arguments proffered in connection therewith: (a) shall be referred to or offered against any of the Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession or admission by any of the Releasees with respect to the truth of any allegation, the validity of any claim or the deficiency of any defense that has been or could have been asserted in the Action or in any other litigation, including the appropriateness of the litigation class, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Releasees, in any civil, criminal or

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

**Case No. CV 17-5290-MWF-FFMx**

**Date: November 26, 2019**

**Title: Richard Behfarin v. Pruco Life Insurance Company**

---

administrative action or proceeding; or (b) shall be construed against any of the Releasees or Releasing Parties as an admission, concession, or presumption that the consideration to be given represents the amount which could be or would have been recovered after trial; provided, however, that, notwithstanding the foregoing, if the Settlement Agreement is approved by the Court, the Parties and the Releasees and their respective counsel may file or refer to the Settlement Agreement or the Judgment in any action that may be brought to enforce its terms.

41. Pending final determination of whether the proposed Settlement Agreement should be approved, neither the Class Representative nor any Settlement Class Member, directly or indirectly, or in a representative or any other capacity, shall commence or prosecute against Defendants and the other Released Parties any action or proceeding in any court or tribunal asserting any of the Released Claims.

**IT IS SO ORDERED.**