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8 Attorney for Plaintiffs

9 **UNITED STATES DISTRICT COURT**  
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

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

14 Plaintiffs,

15 vs.

16 PRUCO LIFE INSURANCE  
17 COMPANY, THE PRUDENTIAL  
18 INSURANCE COMPANY OF  
19 AMERICA, PRUCO LIFE  
20 INSURANCE COMPANY OF NEW  
21 JERSEY, and DOES 1-10, inclusive,

22 Defendants.

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

[Hon. Michael W. Fitzgerald, Judge]

**[PROPOSED] ORDER**  
**APPROVING ATTORNEY FEES**  
**AND COSTS AND INCENTIVE**  
**AWARD FOR CLASS**  
**REPRESENTATIVE**

**Hearing: April 20, 2020**  
**Time: 10:00 a.m.**  
**Courtroom: 5A**

[Filed concurrently with Notice of Motion  
and Motion for Final Certification of  
Settlement Class and Final Approval of  
Proposed Nationwide Class Settlement  
Agreement and Approval of Notice Under  
Fed. R. Civ. P. 23(e) and (g), and Notice of  
Motion and Motion for Attorneys' Fees;  
Declaration of Steven C. Shuman and  
Richard Behfarin

**Complaint filed: 7/18/17**

1 This Court has reviewed at length Plaintiff's Counsel's submissions in  
2 support of their application for approval of fees and costs and incentive award for  
3 the class representative. Based on those uncontradicted submissions, the Court  
4 finds that the requested Plaintiffs' Counsel's attorneys' fees and Plaintiffs'  
5 Counsel's expenses are fully supported as a percentage of the overall benefit  
6 conferred on the Settlement Class by the Settlement, achieved solely through  
7 Plaintiffs' Counsel's efforts, the estimated value of which is at least \$19,562,792.  
8 Plaintiffs' Counsel's requested attorneys' fees of \$3,500,000 equal 17.89% of the  
9 value of the Settlement, well within the 25% benchmark recognized in the Ninth  
10 Circuit.  
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14 Further, the Court has conducted a lodestar cross-check analysis on the fee  
15 award and finds the rates charged by Plaintiffs' Counsel consistent with the hourly  
16 rates approved in *Ybarra v. Board of Trustees of Supplemental Income Trust Fund*  
17 *et al.*, SACV 17-2091 JVS (C.D. Cal. Sept 30, 2019); *In re American Equity*  
18 *Annuity Practices and Sales Litig.*, No. CV-05-6735-CAS-MAN (C.D. Cal); *In re*  
19 *High-Tech Emp. Antitrust Litig.*, 11-CV-02509-LHK, 2015 WL 5158730, at \*9  
20 (N.D. Cal. Sept. 2, 2015); *Aichele v. City of L.A.*, CV 12-10863-DMG, 2015 WL  
21 5286028 at \*7; and *Gutierrez v. Wells Fargo Bank, N.A.*, No. C 07-05923 WHA,  
22 2015 WL 2438274, at \*5 (N.D. Cal. May 21, 2015). The hourly rates are  
23 commensurate with the skill and experience of the participating attorneys and their  
24 legal support.  
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1 Likewise, the amount of time devoted to the Consolidated Actions was  
2 reasonable, given the defendants' vigorous defense of Plaintiff's claims. Plaintiff's  
3 Counsel has submitted evidence supporting the total number of hours they devoted  
4 to this litigation. In their submissions, Plaintiffs' Counsel provided detailed charts  
5 that segregate their time by individual attorney and support personnel, identifying  
6 the position of the attorney or support personnel. The charts further segregate each  
7 individual's time by separate litigation tasks and by time frames. According to their  
8 submissions, Plaintiffs' Counsel firms and attorneys have collectively devoted  
9 approximately 887 hours of attorney and litigation support time to this litigation.  
10 Based upon their contemporaneous internal billing records, Plaintiffs' Counsel  
11 calculates a total lodestar of \$796,164. The evidence shows that Plaintiffs' Counsel  
12 exercised sound billing practices in a complex case they had to litigate for years  
13 against first-rate defense counsel.  
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18 The Court has observed the zealotness and efficiency with which Class  
19 Counsel prosecuted this action, and the high quality of Class Counsel's  
20 representation of the Settlement Class throughout that time. The representation was  
21 on a pure contingent-fee basis, with no assurance that Plaintiffs' Counsel would be  
22 compensated for their efforts on behalf of the Class. Class Counsel succeeded in  
23 negotiating a highly beneficial Settlement for the Settlement Class. The Court has  
24 carefully reviewed the task-based summary of Plaintiffs' Counsel's time in this  
25 case, submitted by Plaintiffs' Counsel in addition to their overall time and  
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1 expenses. The Court finds that the role of Plaintiffs' Counsel is adequately set forth  
2 and described in Plaintiffs' Counsel's task-based summary and that the hours spent  
3 by them were reasonable, appropriate and necessary to the effective and efficient  
4 prosecution of this complex and vigorously contested litigation. The Court accepts  
5 the submissions of Plaintiffs' Counsel.  
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8 Having reviewed and approved Plaintiffs' Counsel's hourly rates and time  
9 spent, and fully familiar with the litigation and circumstances leading to the  
10 Settlement as elaborated above, the Court finds, based on ample and uncontroverted  
11 evidence, that a reasonable lodestar in this case is \$796,164, and the requested fee  
12 of \$3,500,000 yields a multiplier of 4.4, which is well-within the range of  
13 appropriate multipliers recognized by this Court and by other courts within the  
14 Ninth Circuit.  
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17 The Court further finds that the costs and expenses incurred by Plaintiff's  
18 Counsel have been fully documented and are reasonable. All submitted expenses  
19 are of the sort typically billed by attorneys to paying clients. *Harris v. Marhoefer*,  
20 24 F.3d 16, 19 (9th Cir. 1994). Accordingly, Plaintiff's Counsel's costs and  
21 expenses in the amount of \$500,000 are approved.  
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24 Accordingly, given the foregoing factors and the result obtained for the  
25 Class, the Court finds payment of Plaintiffs' Counsel's attorneys' fees and expenses  
26 to be reasonable, and approves payment by defendants to Class Counsel Engstrom,  
27 Lipscomb & Lack of attorneys' fees in the total amount of \$3,500,000, plus  
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1 litigation expenses, in the total amount of \$500,000. The Court directs Defendants  
2 to pay these sums directly to Class Counsel within 10 days of this Final Approval  
3 Order becoming final and following receipt of an IRS Form W-9 and wire  
4 instructions from Class Counsel.  
5

6 Engstrom, Lipscomb & Lack will determine the amount of fees and expenses  
7 approved by the Court to be paid to other Plaintiff's Counsel, subject to any written  
8 agreements between or among them. Disagreements, if any, between or among  
9 Plaintiff's Counsel relating to the Court's award of fees and expenses, or of their  
10 individual shares of such an award, will be determined by the Court, which will  
11 retain sole and exclusive jurisdiction to resolve any such disagreements, subject to  
12 any agreement by the disputing counsel to arbitrate. Disagreements between or  
13 among Plaintiff's Counsel will have no impact on the effectiveness or the  
14 implementation of this Settlement, nor will such disagreements have any impact on  
15 or result in any increase of the obligations imposed upon defendants by this Final  
16 Approval Order.  
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18 The Court also approves payment of an incentive award in the amount of  
19 \$50,000.00 to Plaintiff Richard Behfarin as provided in the Settlement Agreement.  
20 Based on the declarations of Class Counsel and Richard Behfarin submitted in  
21 support of the Motion for Attorney Fees, Costs, and Incentive Award, Plaintiff has  
22 actively participated and assisted Class Counsel in this litigation for the substantial  
23 benefit of the Settlement Class notwithstanding that he may have had an  
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1 opportunity for greater personal gain by proceeding individually. Apart from this  
2 incentive award, Plaintiff will receive no settlement payments or benefits of any  
3 nature other than his share of the Settlement relief available to the Settlement Class  
4 generally. This incentive award is approved to compensate the Plaintiff for the  
5 burdens of his active involvement in this litigation and his commitment and effort  
6 on behalf of the Class. The Court directs Defendants to pay this incentive award to  
7 Engstrom, Lipscomb & Lack in trust for Plaintiff within 10 days after this Final  
8 Approval Order final and following receipt of wire or check mailing instructions.  
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11 **IT IS SO ORDERED.**  
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14 DATED: \_\_\_\_\_, 2020

15 \_\_\_\_\_  
16 HON. MICHAEL A. FITZGERALD  
17 UNITED STATES DISTRICT JUDGE  
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**CERTIFICATE OF SERVICE**

I hereby certify that on February 11, 2020, a true and correct copy of:  
**[PROPOSED] ORDER APPROVING ATTORNEY FEES AND 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 11<sup>TH</sup> day of February, 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