

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

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JEFFREY BOUDER, et al., on behalf of themselves,
the general public, and all others similarly situated,

Plaintiffs,

- vs -

PRUDENTIAL FINANCIAL, INC., THE
PRUDENTIAL INSURANCE COMPANY OF
AMERICA,¹ et al.,

Defendants.

Civil Action No. 2:06-cv-4359
(CCC) (MF)

**ORDER
GRANTING PRELIMINARY
APPROVAL OF SETTLEMENT
AGREEMENT AND RELEASE
REGARDING CLASS AND
COLLECTIVE ACTION AND
INDIVIDUAL CLAIMS**

-----X
JIM WANG, individually and on behalf of all others
similarly situated,

Plaintiffs,

- vs -

PRUDENTIAL FINANCIAL, INC., THE
PRUDENTIAL INSURANCE COMPANY OF
AMERICA,¹ DOES,

Defendants.

-----X
The Court has before it the unopposed joint motion by Plaintiffs Jeffrey Boudier, Vincent Cammisa, Tracy Chosa, John Costa, Joseph Gawron, Michael Todd Hinchliffe, Ryan Holmes, Sandra King, Timothy Munson, Christine Musthaler, Michele Otten, Goran Oydanich, Robert Paventi, Jason Persinger, Alan Scott Rudo, Steven Song, Julie Stalla, Julie Sullivan, Alex Tejada, David Uchansky, and Jim Wang (collectively, the “Named Plaintiffs”) and Defendants Prudential Financial, Inc. and The Prudential Insurance Company of America (“Prudential”) (collectively the “Parties”) for preliminary approval of a proposed class and collective action settlement. The Court has considered the Settlement Agreement and Release Regarding Class and Collective Action and Individual Claims and its Exhibits A through D (the “Agreement”), the submissions of counsel, and all other papers filed in this action. The matter having been submitted and good cause appearing therefor:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

¹ Incorrectly referred to as “Prudential Insurance Co. of America” in the case caption.

The Court finds as follows:

1. All defined terms contained herein shall have the same meanings as set forth in the Agreement executed by the Parties and filed with this Court;

2. The Named Plaintiffs and Prudential, through Class Counsel as their counsel of record in the Action, have reached an agreement to settle all Asserted Claims in the Action;

3. The Court grants preliminary approval of the Agreement based upon the terms set forth in the Agreement;

4. The Court conditionally finds that, for the purposes of approving this Settlement only and for no other purpose and with no preclusive, estoppel or other effect on the Action, including no effect on the Action should the Agreement not ultimately be approved or should the Settlement Effective Date not occur, the proposed Deductions Class meets the requirements for certification of a settlement class under Rule 23 of the Federal Rules of Civil Procedure, as follows: (a) the proposed Deductions Class is ascertainable and so numerous that joinder of all members of each of the classes is impracticable; (b) there are questions of law or fact common to the proposed Deductions Class Members, and there is a well-defined community of interest among Deductions Class Members with respect to the subject matter of the Action; (c) the Claims of Named Plaintiffs who are Deduction Class Members (“Class Representatives”) are typical of the claims of the Members of the proposed Classes; (d) the Class Representatives will fairly and adequately protect the interests of the Deductions Class Members; (e) a class action is superior to other available methods for an efficient adjudication of these claims; and (f) the Class Counsel previously appointed by the Court in the Court’s Opinion & Order filed herein on February 26, 2015 (ECF No. 320), are qualified to serve as counsel for Class Representatives and as counsel for the Deductions Class;

5. The Court reaffirms its Order of February 26, 2015 appointing the attorneys identified in Paragraph 2 of this Order as Class Counsel for the Certified Deductions Class;

6. The Parties have presented the Agreement to the Court for review. The Agreement appears to be fair, adequate and reasonable and the Settlement falls within the range

of reasonableness and appears to be presumptively valid. It appears to the Court that the Gross Settlement Amount is fair, adequate, and reasonable when balanced against the probable outcome of further litigation, and ultimately relating to liability and damages issues. It also appears that extensive and costly investigation and research has been conducted such that counsel for the Parties are reasonably able to evaluate their respective positions. It further appears to the Court that Settlement at this time will avoid substantial additional costs by all parties, as well as the delay and risks that would be presented by the further prosecution of the Action. It appears from a review of the Agreement that the Settlement has been reached as a result of intensive, conclusive, arms-length negotiations utilizing an experienced third party neutral;

7. The Parties have also presented to the Court for review a plan to provide notice to the Notice Recipients of the terms of the Settlement and the options facing such Notice Recipients, including, *inter alia*: to file a Claim Form and become a Participating Claimant, and, with respect to Class Members, to exclude themselves from the Settlement, to object to the terms of the Settlement, with counsel if desired, and/or to do nothing, and thereby remain bound by the terms of Settlement without becoming a Participating Claimant. The notice plan proposed by the Parties is the best practical under the circumstances.

Good cause appearing therefore, IT IS HEREBY ORDERED that:

1. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Agreement is preliminarily approved and the Deductions Class is provisionally certified for settlement purposes only, as stated therein, to wit: Deductions Classes in the Settling States of California, Hawaii, Illinois, Michigan, New York, New Jersey, Oregon, Pennsylvania and Washington;

2. The Court, for settlement purposes only, appoints Named Plaintiffs who are Deductions Class Members as Class Representatives of the Deductions Class and appoints their attorneys, Lovell Stewart Halebian Jacobson LLP, John Halebian, 420 Lexington Avenue, Suite 2400, New York, New York 10170; Winne, Banta, Basralian & Kahn, P.C., Kenneth Kaufmann Lehn, Court Plaza South - East Wing, Suite 101, 21 Main Street, P.O. Box 647, Hackensack, New Jersey 07602; Jerry K. Cimmet, Attorney at Law, 177 Bovet Road, Suite 600,

San Mateo, CA 94402; Law Offices of John M. Kelson, John M. Kelson, 483 Ninth Street, Suite 200, Oakland CA 94607; and Kessler Topaz Meltzer & Check, LLP, Peter Muhic, 280 King of Prussia Road, Radnor, PA 19087 as class counsel for the Deductions Class;

3. The Court, for settlement purposes only, hereby approves the allocation formula for distributions to Participating Claimants as set forth in the Agreement;

4. The draft Notice of Class and Collective Action Settlement (“Class Notice”) attached to the Agreement as Exhibit B with all Attachments thereto, is approved as to form and content, and may be mailed to Notice Recipients at their last known addresses. The Court finds that the Class Notice and accompanying forms, as well as the procedure set forth in the Settlement Agreement for providing notice to Notice Recipients, including the dates selected for mailing and distribution of the Class Notice, will provide the best notice practicable, satisfies the notice requirements of Rule 23(c), and adequately advises Notice Recipients of their rights under the Settlement, and therefore meets the requirements of due process. The Court further approves the procedure for Notice Recipients to file a Claim Form, exclude themselves from the Settlement or to object to the Settlement, as set forth in the Class Notice and the Agreement.

5. A Fairness Hearing to consider whether the Settlement should be given final approval by the Court is hereby ordered set for December 8, 2017 at which time:

(a) Written objections by Class Members to the proposed Settlement will be considered if received by the Court on or before the Claims/Exclusion/Objection Deadline;

(b) At the Fairness Hearing, Class Members may be heard orally in support of the Settlement, or in opposition to the Settlement, provided they have submitted a timely written objection on or before the Claims/Exclusion/Objection Deadline;

(c) Class Counsel and counsel for Prudential should be prepared at the Fairness Hearing to respond to objections filed by Class Members and to provide other information, as appropriate, bearing on whether or not the Settlement should be approved; and

(d) The Parties shall file a joint motion for final approval of the

Settlement and the Named Plaintiffs and Class Counsel shall file their motion for a Fee and Expense Award, Enhancement Payments and Incentive Awards on or before November 17, 2017.

6. This Court further orders the following schedule for further proceedings:

Event	Timing
Prudential to deposit the Gross Settlement Sum into the Settlement Fund	No later than ten (10) days following the date of this Order granting preliminary approval.
Prudential to provide Claims Administrator with list of Notice Recipients and approximation of work weeks	First business day following the 10th calendar day after the date of this Order granting preliminary approval.
Notice Mailing Deadline	30 calendar days after the date of this Order granting preliminary approval.
Claim/Exclusion/Objection Deadline	60 calendar days after the Notice Mailing Deadline, unless extended for individual Notice Recipients, by operation of the Agreement
Parties to submit papers/briefing in response to any objections and for Named Plaintiffs to submit papers/briefing in support of final approval	<u>21</u> calendar days before Fairness Hearing
Fairness Hearing	<p>December <u>8</u>, 2017 at <u>11:00</u> (am/pm). (No earlier than 30 days after the Claim/Exclusion/Objection Deadline)</p> <p>The date and time of the Fairness Hearing shall be subject to adjournment by the Court without further notice to the members of the Settlement Class, other than that which may be posted by the Court. Class Counsel will advise Settling Plaintiffs of any scheduling issues.</p>

7. This Court appoints Garden City Group, LLC, as Claims Administrator. Promptly following entry of this order, the Claims Administrator will prepare a final version of the Class Notice and accompanying forms, incorporating into it the relevant dates and deadlines

set forth in this Order and the Agreement and will commence the notice process in accordance with the schedule set forth below.

8. To facilitate administration of the Settlement pending final approval, this Court hereby enjoins Named Plaintiffs, Class Members, Opt-In Plaintiffs and any other Participating Claimants (as those terms are defined in the Agreement) from filing any new actions asserting claims against Prudential similar to those presented in the Action and which would otherwise be released under the Agreement or from attempting to effect an opt-out of a group, class or subclass of individuals until the Court's final judgment as to Settlement becomes Final.

9. In the event that the Settlement Effective Date occurs, all Settling Plaintiffs will be deemed to have forever released and discharged all of the Released Claims against Prudential and the Releasees. In the event that the Settlement Effective Date does not occur for any reason whatsoever, the Agreement shall be deemed null and void and shall have no effect whatsoever. In such case, nothing in the Agreement or this Order shall be relied upon, cited as, constitute evidence of, or constitute an admission that class certification or a collective action may be appropriate. The Agreement and the negotiations leading to it shall not be admissible or referenced in the Action if the Settlement Effective Date does not occur.

IT IS SO ORDERED.

DATED: August 1, 2017



The Honorable Claire C. Cecchi
United States District Court Judge