

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

In re Prudential Insurance Company of
America SGLI/VGLI Contract Litigation

Master Case No. 3:11-md-02208-MAP

THIS DOCUMENT RELATES TO:

All Cases

Judge Michael A. Ponsor

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Agreement”), dated July 30, 2014, is made and entered into by and between Plaintiffs Kevin Lucey, Lorene Davey, Karen Meredith, Jorge Castro, Alexis Witt, Commander Drema Parsons, Colonel George D. Patrin, Abraham Wheeler, Jr., Priscilla Nueve, and Barbara Phillips (collectively, “Representative Plaintiffs”), on behalf of themselves and the Settlement Class (as defined below), and Defendant The Prudential Insurance Company of America (“Prudential”) (collectively, the “Parties”), by and through their respective counsel, to settle and compromise the claims asserted by Representative Plaintiffs on behalf of the themselves and the Settlement Class in the Consolidated Amended Complaint (“CAC”) filed April 18, 2011, in the above-captioned multi-district litigation (the “Litigation”), according to the terms and conditions herein and subject to approval by the above-captioned court (the “Court”).

I. PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS

The Parties stipulate, for settlement purposes only, to certification of the following plaintiff settlement class (the "Settlement Class"):

All individuals (a) who were beneficiaries of the group life insurance contract between the Department of Veterans Affairs and The Prudential Insurance Company of America for Servicemembers Group Life Insurance ("SGLI") (including the family coverage provided by Public Law 107-14 ("Family SGLI")) and/or Veterans Group Life Insurance ("VGLI"), (b) who made claims (or on whose behalf claims were made) for lump sum benefits prior to November 2010, and (c) whose claims were settled by Prudential through the use of an Alliance Account.

II. THE BENEFITS OF SETTLEMENT

Representative Plaintiffs allege in the CAC that Prudential, in administering group life insurance programs for military service members, veterans, and their families, failed to pay the death benefits on the SGLI, Family SGLI, and VGLI group life insurance policy in a lump sum as required by federal law and the policy when it instead settled those benefits through the establishment of an interest-bearing retained asset account ("Alliance Account") for each beneficiary. Although Representative Plaintiffs believe their claims have merit, after discovery and extensive motion practice Representative Plaintiffs fully appreciate the strengths and weaknesses of their claims and the attendant risks and uncertain outcome of the Litigation. Representative Plaintiffs have also considered the expense and length of continued proceedings that would be necessary to prosecute their claims against Prudential through trial and appeal, as well as the difficulties and delays inherent in such litigation. Based on their evaluation of all of these factors, and following vigorous, arms-length negotiations, and mediation under the auspices of the Court, Representative Plaintiffs and their attorneys ("Class Counsel") have determined that this Agreement confers substantial benefits upon the members of the Settlement Class ("Class Members") and is fair, reasonable, and in the best interests of the Settlement Class.

III. PRUDENTIAL'S DENIAL OF WRONGDOING

Prudential denies all of the material factual allegations and legal claims asserted in the Litigation, including any and all charges of wrongdoing or liability arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation and maintain that these claims have no factual or legal merit. By order dated November 22, 2013, the Court issued an order concluding that: (1) “none of the named Plaintiffs in this case suffered a cognizable legal injury”; (2) “Plaintiffs are not entitled to any damages based on delay” and (3) “in light of the absence of any evidence of cognizable harm, Plaintiffs are not entitled to disgorgement as a remedy.” Memorandum and Order Regarding Supplemental Briefing, 11-md-2208-MAP, Docket No. 205, Nov. 22, 2013, at *2. Nonetheless, Prudential has concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement. This Agreement is for settlement purposes only and shall have no precedential value in any future litigation. Prudential expressly denies any liability to any Class Member for any purpose and states that this Agreement was entered into solely for the purpose of settling and compromising disputed claims and to avoid the cost of litigation and for no other purpose.

IV. SETTLEMENT CONSIDERATION

A. Creation of the Common Fund Escrow Account

Pursuant to this Agreement, a common fund shall be created under the jurisdiction and control of the Court for the purpose of making cash payments to individual class members (“Common Fund”). A Common Fund escrow account shall be created within fifteen (15) calendar days after the Agreement is executed and shall be under the control of the Court

(“Common Fund Escrow Account”). The Settlement Administrator shall be responsible for all administrative, accounting, and tax compliance activities in connection with the Common Fund deposited in the Common Fund Escrow Account, including any filings necessary to obtain Qualified Settlement Fund status pursuant to Treas. Reg. §1.468B-1 for the Common Fund Escrow Account. Prudential will provide to the Settlement Administrator a W-9 or other documentation necessary to facilitate obtaining Qualified Settlement Fund status for the Common Fund Escrow Account pursuant to Treas. Reg. §1.468B-1. All costs and expenses associated with all administrative, accounting, and tax compliance activities of the Common Fund and Common Fund Escrow Account shall be paid by Prudential.

B. Cash Payment to Each Class Member

As consideration for this Agreement, no later than seven (7) calendar days after the Effective Date (as defined below in Section XI), Prudential will transfer an amount into the Common Fund Escrow Account equal to the total number of Class Members who have not timely exercised the right to opt out in compliance with the Class Notice - to be determined by Prudential’s records, with the assistance of the Settlement Administrator - multiplied by one hundred twenty-five dollars (\$125.00). The Parties presently estimate that there are approximately sixty-seven thousand (67,000) Class Members, and that Prudential will pay approximately eight million, four hundred thousand dollars (\$8,400,000) into the Common Fund Escrow Account.

The Parties agree that the Individual Payments do not constitute or otherwise represent interest allegedly owed to Class Members by Prudential.

No later than twenty-one (21) calendar days after the Effective Date, the Settlement Administrator will mail a payment from the Common Fund Escrow Account by check of one

hundred twenty-five dollars (\$125.00) (the “Individual Payment”) to each Class Member who has not timely exercised the right to opt out in compliance with the Class Notice (as defined below). Any interest that accrues on amounts in the Common Fund Escrow Account shall be deemed to be part of the Common Fund and shall not revert back to Prudential.

For Individual Payments to Class Members returned as undeliverable and for which no correct address can be located at the time the check is returned as undeliverable, Individual Payment checks that are not cashed within one hundred twenty (120) calendar days of the date of mailing, or Individual Payments intended to be paid to Class Members who cannot be located for whatever reason (collectively, “Uncashed Individual Payments”), the Settlement Administrator will within one hundred fifty (150) calendar days of the mailing of the Individual Payments pay the sum of all such Uncashed Individual Payments to the Fisher House Foundation.

C. Charitable Donations

As additional consideration for this Agreement, Prudential will make charitable donations totaling twenty million, five hundred thousand dollars (\$20,500,000) over the five years following the entry of Final Judgment (as defined herein), according to the following procedures. As set forth below, the final decision on all charitable donations shall be made by Prudential.

1. Charities Selected By Prudential

Within thirty (30) calendar days after the Effective Date (the “Initial Charitable Donation Date”), Prudential will make charitable donations in the total amount of \$4,000,000 to not-for-profit organization(s), institution(s), and/or charity(ies) devoted to veterans of the United States Armed Services and/or their families (referred to herein as “Charitable Donation Recipient(s)”). No later than one year after the Initial Charitable Donation Date, Prudential will make a second donation of four million dollars (\$4,000,000) to Charitable Donation Recipient(s). No later than

two years after the Initial Charitable Donation Date, Prudential will make a third donation of four million dollars (\$4,000,000) to Charitable Donation Recipient(s). No later than three years after the Initial Charitable Donation Date, Prudential will make a fourth donation of four million dollars (\$4,000,000) to Charitable Donation Recipient(s). No later than four years after the Initial Charitable Donation Date, Prudential will make a fifth and final donation of four million dollars (\$4,000,000) to Charitable Donation Recipient(s). In performing its obligations under this Subsection IV.C(1), Prudential will consider in good faith suggestions made by Representative Plaintiffs as to potential Charitable Donation Recipient(s). As part of its decision-making process to determine Charitable Donation Recipient(s), Prudential will provide a list of potential recipients to Representative Plaintiffs and will in its discretion consider any comments from Representative Plaintiffs in determining which organizations will receive donations under this Agreement. Prudential shall retain final discretion over the choice of all Charitable Donation Recipient(s) and the amounts paid to each Charitable Donation Recipient in each year, so long as the total donation amount to all Charitable Donation Recipients is \$4,000,000 per year. Prudential may, in its discretion, designate one or more new or different Charitable Donation Recipient(s) each year.

2. Charitable Donations in the Names of Representative Plaintiffs

Also within thirty (30) calendar days after the Effective Date, Prudential will make additional donations in the name of the Representative Plaintiffs in the total amount of five hundred thousand dollars (\$500,000) to the Charitable Donation Recipients agreed upon by Prudential and identified in the attached Exhibit C.

D. Incentive Awards, Attorneys' Fees and Expenses

Above and beyond the settlement consideration described in Subsection IV(B) and (C) above, and without diminishing in any way the benefits afforded to the Settlement Class under this Agreement, Prudential agrees to pay to each Representative Plaintiff an incentive award in accordance with Section IX of this Agreement, subject to Court approval, as full and complete compensation for their service as Representative Plaintiffs. Prudential will pay these amounts in addition to any benefits that Representative Plaintiffs are entitled to receive as Class Members. Prudential will not oppose or support any application for approval of or objection to an incentive award made in accordance with the terms of this Agreement. The approval of an incentive award in any particular amount is not a condition of this Agreement. The incentive awards are not conditioned on Representative Plaintiffs' support for the Settlement.

Above and beyond the settlement consideration described in Subsection IV(B) and (C) above, and without diminishing in any way the benefits afforded to the Settlement Class under this Agreement, Prudential agrees to pay attorneys' fees and expenses in accordance with Section IX of this Agreement, subject to Court approval. Prudential will not oppose or support any application for approval of or objection to attorneys' fees and expenses made in accordance with the terms of this Agreement. The approval of attorneys' fees and expenses in any particular amount is not a condition of this Agreement. The fee and expense awards are not conditioned on Class Counsel's support for the Settlement.

E. Settlement Administrator

The Parties will request the Court to appoint Gilardi & Co. (the "Settlement Administrator") to fulfill the duties set forth in this Agreement, including but not limited to the administration of the program of notice to the Settlement Class, the administration of the

Common Fund Escrow Account, the mailing of the Individual Payments, and the payment of the Uncashed Individual Payments to a Charitable Donation Recipient as set forth above. Prudential will pay all expenses of or otherwise incurred by the Settlement Administrator, regardless of whether the Agreement becomes final.

Except as provided in this Agreement, Prudential shall not be liable for any costs, fees, or expenses of the Representative Plaintiffs, the Class Members, or their counsel, experts, advisors, agents, or representatives.

F. Rights of Opt Out or Objection

1. Opt-Out Process

Class Members shall have forty-five (45) calendar days from the date that the Class Notice is mailed to opt out of the Settlement Class. Opt-out requests must be post-marked by the date approved by the Court and specified in the Class Notice (the “Opt-out Deadline”). To exercise the right to opt out, the Class Member must, before the Opt-out Deadline, send to the Settlement Administrator a written request for exclusion that complies with the instructions in the Class Notice (“Request for Exclusion”). Except for those who have properly and timely opted out, Class Members will be bound by this Settlement and the Final Judgment. A Class Member who elects to opt out of the Settlement Class will (i) not be bound by any orders or the Final Judgment entered in this Litigation; (ii) not be entitled to relief under this Agreement; (iii) not gain any rights by virtue of this Agreement; and (iv) not be entitled to object to any aspect of this Agreement.

The right to opt out is an individual decision by each Class Member and no person or entity, specifically including counsel, may exercise the right to opt out on behalf of another

person or entity, except for a legal guardian of a Class Member or someone with similar legal status. Class Members cannot exclude a group of Class Members or a class of Class Members.

The Settlement Administrator will provide to the Parties and the Court within seven (7) business days of the Opt-out Deadline a report identifying all timely Requests for Exclusion. The report will state the number and identity of those Class Members who have validly requested exclusion from the Settlement Class.

2. Objections

Class Members shall have forty-five (45) calendar days from the date that Class Notice is mailed to object to any aspect of this Agreement (the “Objection Deadline”). A Class Member who intends to object must, on or before the Objection Deadline, submit a written objection that includes: the objector’s name and address, evidence of membership in the Settlement Class, the basis for the objection, all arguments and authority supporting the objection, and any evidence supporting the objection. An objection will be deemed submitted and will be considered by the Court only if it is post-marked by the Objection Deadline set forth in the Class Notice and mailed to the Court, to Class Counsel and to Prudential’s Counsel (at the addresses provided in the Class Notice). It is the responsibility of the objector to ensure timely receipt of the objection by the Court, Class Counsel and Prudential’s counsel.

The Class Member must also provide a statement whether the objector intends to appear at the Final Approval Hearing (as defined below), either with or without counsel. If the objector intends to appear at the Final Approval Hearing through counsel, his/her/its counsel must file a notice of appearance with the Court within ten (10) business days after the objection is post-marked.

V. CLASS NOTICE AND SETTLEMENT ADMINISTRATION

Within ten (10) business days after the Court enters its order preliminarily certifying the Settlement Class and preliminarily approving the class settlement provided in this Agreement (the “Preliminary Approval Order”), Prudential will provide the Settlement Administrator with the name, Social Security number, and last-known address for each Class Member (to the extent it is available). The Settlement Administrator will verify and update the addresses received from Prudential. No later than thirty (30) calendar days after the Court enters the Preliminary Approval Order, the Settlement Administrator will send a copy of a detailed notice of pendency and settlement substantially in the form set forth as Exhibit B to this Agreement (the “Class Notice”) to all Class Members by First Class U.S. Mail. The entire cost of providing notice to Class Members in the manner agreed to by the Parties and approved by the Court, like all other costs of the Settlement Administrator, will be paid by Prudential without diminishing any other benefit to the Settlement Class under this Agreement. In the event this Agreement is not approved or is terminated for any reason before the Effective Date, any portion of the notice and administration costs already spent will be borne by Prudential and nonrefundable.

The Settlement Administrator shall establish and maintain a settlement website (“Settlement Website”), as well as a Post Office box for receipt of Requests for Exclusion or other communications from the Class Members. The Class Notice will be posted on the Settlement Website. The Settlement Administrator will respond to any Class Member inquiries, and will provide copies of all such correspondence to the Parties’ counsel upon request.

The Settlement Administrator will administer the Common Fund Escrow Account and mail the Individual Payments to Class Members to all Class Members by First Class U.S. Mail. The Settlement Administrator will also pay the Uncashed Individual Payments to a Charitable Donation Recipient according to the procedures set forth in Section IV, above. The entire cost of

mailing Individual Payments to Class Members, like all other costs of the Settlement Administrator, will be paid by Prudential without diminishing any other benefit to the Settlement Class under this Agreement.

Subject to the approval of the Court, Class Counsel and Prudential shall have the right to approve the content and methods of all notice activity conducted by the Settlement Administrator. Class Counsel and Prudential shall also approve the form and content of the Settlement Website. If the Parties are unable to agree on the form or content, the Parties agree to submit such issues to the Court for binding resolution, and no appeal may be taken from such disposition or resolution.

The Settlement Administrator will periodically and upon request provide reports to Class Counsel and Prudential regarding efforts to provide notice to Class Members and related expenses.

The Settlement Administrator shall maintain a list of all Class Members who cannot be located or whose mailings of the initial notice of settlement were returned as undeliverable. The Settlement Administrator shall also maintain a list of all Uncashed Individual Payments and pay the total Uncashed Individual Payment amount to a Charitable Donation Recipient, according to the procedures set forth above.

VI. MUTUAL RELEASES

Upon the Effective Date, Representative Plaintiffs, Class Counsel, and each and every Class Member who has not timely and validly opted out of the Settlement, and their successors, heirs, assigns, agents, trusts, attorneys or anyone acting on their behalf (collectively, "Releasing Persons"), shall, and shall be deemed as of the Effective Date, and by operation of the Final Judgment (as defined herein), to: (i) have, fully, finally, and forever released, relinquished, and discharged The Prudential Insurance Company of America and its past, present, and future

parents, subsidiaries, divisions, affiliates, predecessors, successors, insurers, stockholders, benefit plans, officers, directors, employees, trustees, agents, and any of their legal representatives, and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing (collectively, the “Released Persons”) from any and all claims, debts, liabilities, obligations, covenants, promises, contracts, agreements, and/or obligations to any extent, or in any way, made or which could have been made, known or unknown, arising out of, resulting from, connected with or relating to the facts, circumstances, matters, transactions, occurrences, representations, statements and omissions alleged in this Litigation, including the settlement of claims for life insurance benefits under the Servicemembers Group Life Insurance Contract between the Department of Veterans Affairs and Prudential through an Alliance Account, and any claim for attorneys’ fees or expenses of any type arising therefrom (collectively, “Released Claims”); and (ii) have covenanted not to sue the Released Persons based on any Released Claims. The Released Claims do not include claims regarding rights to the monies currently held in Alliance Accounts in the names of Class Members and do not include disputes over the proper beneficiary of the life insurance benefits from SGLI, Family SGLI and VGLI life insurance.

Upon the Effective Date and in consideration of the releases described in this section and this Agreement, and for other valuable consideration, the Releasing Persons shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature, whether directly, representatively, derivatively or in any other capacity that the Released Persons ever had, now have, or hereafter can, shall, or may have on account of, related to, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected injuries,

damages, and the consequences thereof relating to any act or omission of the Releasing Persons concerning the institution, prosecution, assertion, settlement or resolution of the Litigation or the Released Claims.

The Parties expressly understand that principles of law such as Section 1542 of the Civil Code of the State of California provides that a general release does not extend to claims which a creditor does not know or suspect to exist in his favor at the time of executing the release which, if known by him, must have materially affected his settlement with the debtor. To the extent that, notwithstanding the choice of law provisions in the Agreement, California or other law may be applicable, the Parties hereby agree that the provisions of Section 1542 and all similar federal or state laws, rights, rules, or legal principles of any other jurisdiction which may be applicable herein, are by this Agreement knowingly and voluntarily waived and relinquished with respect to the Released Claims, and the Parties hereby agree and acknowledge that this is an essential term of this Release. The Parties acknowledge that they may hereafter discover facts in addition to or different from those that they know or believe to be true with respect to the subject matter of this Agreement or the Litigation, but that it is their intention to fully and finally settle and release the Released Claims notwithstanding the discovery or existence of any such additional or different facts and notwithstanding any mutual mistake of law or fact by the Parties.

VII. TAXES

The Parties make no representation as to any tax consequences of this Agreement. Each Class Member will be responsible for any tax consequences arising from, related to, or any way connected with the relief afforded to him, her or it under this Agreement. Individual Payments and Incentive Payments mailed to Class Members shall be accompanied by a notice advising

Class Members to consult with a tax advisor regarding the potential tax consequences of this Agreement.

VIII. PRELIMINARY APPROVAL ORDER; FINAL APPROVAL HEARING

The Parties agree to jointly move to continue and stay all proceedings relating to the Litigation through the Final Approval Hearing.

Within five (5) business days of the execution of this Agreement, the Parties will jointly submit the Agreement and its exhibits to the Court and apply for preliminary approval of the settlement and for entry of the Preliminary Approval Order. A proposed Preliminary Approval Order is attached as Exhibit A to this Agreement, but may be modified by the Court so long as the modification is consistent with this Agreement or otherwise approved by the Parties.

Within thirty (30) calendar days of the Court's entry of the Preliminary Approval Order, the Settlement Administrator shall set up the Settlement Website and mail the Class Notice to Class Members as described above.

The Parties will request that the Court set a hearing on a date forty-five (45) calendar days after the Opt-out Deadline and the Objection Deadline, or the next available date on the Court's calendar thereafter, for a hearing (the "Final Approval Hearing") on whether the Settlement Class should be finally certified, whether the Agreement should be approved by the Court, whether the Final Judgment should be entered, and whether Prudential's payment of incentive awards and attorneys' fees should be approved. The date, time, and place of this hearing will be included in the Class Notice and on the Settlement Website. The Parties will submit the motions for final settlement approval, including any memoranda or other materials in support thereof, no later than thirty (30) calendar days before the Final Approval Hearing. Class Counsel will move for approval of fees, expenses and incentive awards at least twenty-one (21)

days prior to the Objection Deadline, or such other date set by the Court. Any objection to these motions shall be filed no later than fourteen (14) calendar days before the Final Approval Hearing. Any reply by the Parties in support of the motions shall be filed no later than seven (7) calendar days before the Final Approval Hearing.

IX. ATTORNEYS' FEES, EXPENSES AND INCENTIVE AWARDS

Prudential will, subject to Court approval, pay Class Counsel's attorneys' fees in the amount of nine million, seven hundred thousand dollars (\$9,700,000), and Class Counsel's expenses incurred in the Litigation not to exceed the amount of five hundred thousand dollars (\$500,000). Class Counsel will apply for Court approval of these payments. These payments shall be in addition to and not in lieu of any other consideration in this Agreement.

Prudential will, subject to Court approval, pay incentive awards for the ten Representative Plaintiffs in an amount of ten thousand dollars (\$10,000) each. Class Counsel will apply for Court approval of these payments. These payments shall be in addition to and not in lieu of any other consideration in this Agreement. Any such amounts shall be subject to withholding for taxes to the extent required by law.

The Parties contemplate that the Court's approval Prudential's payment of attorneys' fees and expenses to Class Counsel will be set forth in an order separate from the Judgment. Prudential agrees not to appeal, and expressly waives any right to appeal, the Court's ruling on Prudential's payment of attorneys' fees, expenses and incentive awards in accordance with this Agreement, or to support in any way an appeal by any other person or entity of the same.

Incentive awards, in the amount approved by the Court, shall be paid by check to the Representative Plaintiffs within fourteen (14) calendar days after the Effective Date.

Attorneys' fees and expenses, in the amount approved by the Court, shall be payable by wire to an account established for that purpose by The Daniel D. King Law Firm PLLC, Kerr & Wagstaffe LLP and Scott + Scott, Attorneys at Law, LLP (collectively, "Lead Counsel") within fourteen (14) calendar days after the Effective Date. Lead Counsel shall provide wire instructions and other necessary documentation to effect the wire transfers. Lead Counsel will determine the amount of fees and expenses from any fee or expense payment approved by the Court to be paid to other Class Counsel.

X. PUBLIC COMMUNICATIONS REGARDING SETTLEMENT

Neither the Parties nor their counsel will make any public statement regarding the proposed settlement. The Parties or their counsel may, however, make pre-Final Approval Hearing disclosures to comply with applicable law or existing contract or in any submission to or filing with the Court, and counsel for the Parties may respond to communications from individual Class Members.

The Parties shall exchange drafts prior to issuing any press release announcing the settlement, its preliminary approval by the Court, its final approval by the Court, and/or its implementation. The Parties shall only issue such press releases upon prior review and approval by the opposing Party, which shall not be unreasonably withheld. The Parties and/or their counsel may post the agreed-upon press release on their respective websites.

If contacted by the press, investors or analysts at any time, the Parties will only direct the inquiring party to any approved press release, the Class Settlement Website, or the motions and briefing filed with the Court. Each Party will notify the other party in writing within three (3) business days of such inquiries.

Representative Plaintiffs and Class Counsel agree not to make any statement, directly or indirectly, oral or written (including, without limitation, on social media and the internet), which criticizes, disparages or which is intended or could reasonably be expected to damage the business or reputation of Prudential, its parents, subsidiaries, affiliates, officers, directors, employees, or counsel. Prudential agrees not to make any corporate statement, directly or indirectly, oral or written, which criticizes, disparages or which is intended or could reasonably be expected to damage the business or reputation of Representative Plaintiffs or Class Counsel.

XI. CONDITIONS FOR EFFECTIVE DATE, FINAL APPROVAL, TERMINATION, AND EFFECT THEREOF

The Effective Date of this Agreement is the first date on which all of the following events have occurred:

1. Entry of a Preliminary Approval Order in substantially the same form as set forth in Exhibit A;
2. Entry of the Judgment by the Court finally certifying the Settlement Class and finally approving the Agreement, following Class Notice and the Final Approval Hearing (“Final Approval”); and
3. The Judgment has become a Final Judgment.

“Judgment” means the judgment entered by the Court approving the Agreement in all material respects. The Parties agree to use their best efforts to negotiate in good faith a joint proposed form of a Judgment. “Final Judgment” means (i) if no appeal from the Judgment is filed, the date of expiration of the time for the filing or noticing of any appeal from the Judgment; or (ii) if an appeal from the Judgment is filed, the date the Judgment is no longer subject to any further

appellate review, whether because the Judgment was upheld in all material respects and/or the appeal was withdrawn or otherwise dismissed.

If this Agreement is not approved by the Court as submitted, or otherwise fails to become effective in accordance with its terms, the Parties will be restored to their respective positions as they existed on the day before signing this Agreement. (However, the Parties agree that, at that time, they will attempt in good faith to renegotiate the terms of this Agreement.) In such event, the terms and provisions of this Agreement and all negotiations, proceedings, documents prepared, and statements made in connection herewith shall be without prejudice and will have no further force or effect with respect to the Parties, shall not be deemed or construed to be an admission or confession by the Parties of any fact, matter or proposition of law, and will not be used in this Litigation or in any other proceeding for any purpose, including cross-examination and impeachment, except to enforce or interpret the terms herein in any dispute between the Parties, and any judgment or order entered by the Court in accordance with the terms of this Agreement will be treated as vacated, *nunc pro tunc*.

Prudential shall have the right, but not the obligation, to withdraw from the Settlement and terminate this Settlement Agreement if, after the occurrence of the Opt-out Deadline and the submission of the report identifying all timely Requests for Exclusion from the Settlement Administrator as described in Subsection IV(E)(1), above, the number of Class Members who properly and timely exercise their right under this Agreement to exclude themselves from the Settlement Class exceeds the number set forth in a separate confidential agreement (“Confidential Termination Agreement”). In the event that Prudential wishes to exercise its right to terminate the Settlement Agreement, Prudential must notify Lead Counsel of its intention to withdraw from the Settlement Agreement and terminate this Agreement in writing, within seven

(7) business days after receipt of the Settlement Administrator's report identifying all timely Requests for Exclusion.

XII. ADDITIONAL PROVISIONS

The Parties acknowledge that it is their intent to consummate a settlement of all claims asserted in the Litigation, and they agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Agreement.

The Parties intend the Agreement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Agreement compromises claims that are contested and will not be deemed an admission by any Party as to the merits of any claim, defense, or the certifiability of any class. The Parties agree that the consideration provided to the Settlement Class and the other terms of the Agreement were negotiated in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

This Agreement shall be binding upon, and inure to the benefit of, Prudential and its successors and assigns. Upon the Effective Date, the Agreement shall be binding upon, and inure to the benefit of, Representative Plaintiffs and all other Class Members who have not timely exercised the right to opt out as provided in the Class Notice, and their heirs and assigns.

Neither this Agreement, nor any act performed or document executed pursuant to or in furtherance of this Agreement, is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, or of any fault, omission, wrongdoing or liability of Prudential in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. The Released Persons or Releasing Persons may file

this Agreement and/or the Judgment in any action that may be brought against them in order to support any defense or counterclaim, including without limitation those based on principles of *res judicata*, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information will survive this Agreement unless later modified by agreement of the Parties or order of the Court.

All of the exhibits to this Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

This Agreement and the exhibits attached to it constitute the entire agreement among the Parties, and no representations, warranties, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, and covenants covered and memorialized herein. Except as otherwise provided herein, the Parties will bear their own respective costs.

This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

Class Counsel, on behalf of the Settlement Class, are expressly authorized by Representative Plaintiffs to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to this Agreement to effectuate its terms, and are expressly authorized by Plaintiff Representatives to enter into any non-material modifications or amendments to this Agreement on behalf of the Settlement Class that Class Counsel deem appropriate, subject to agreement by Prudential and the approval by the Court.

Each counsel or other person executing this Agreement or any of its exhibits on behalf of any Party hereby warrants that such person has the full authority to do so.

This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. A complete set of original counterparts will be filed with the Court.

The Court will retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and Prudential and its counsel, Representative Plaintiffs and their counsel, and each Class Member, hereby irrevocably submits to the exclusive jurisdiction of the Court for any suit, action, proceeding, case, controversy, or dispute relating to this Agreement, and performance or breach of same. All controversies or disputes relating to this Agreement, and performance or breach of same, will be heard exclusively in the United States District Court for the District of Massachusetts.

None of the Parties, or their respective counsel, will be deemed the drafter of this Agreement or its exhibits for purposes of construing the provisions thereof. The language in all parts of this Agreement and its exhibits will be interpreted according to its fair meaning, and will not be interpreted for or against any of the Parties as the drafter thereof.

This Agreement and the exhibits hereto will be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Massachusetts without giving effect to that State's choice-of-law principles.

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IN WITNESS WHEREOF, the Parties have executed this Agreement and have caused this Agreement to be executed by their duly authorized attorneys.

Dated: July 30, 2014

Counsel for Defendant:

Counsel for Plaintiffs:

By: /s Edwin G. Schallert

By: /s Daniel D. King

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CERTIFICATE OF SERVICE AND PERMISSION TO SIGN

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and e-mail copies will be sent to all counsel of record.

I further certify that I have permission of each of the other signatories to this document to sign their names electronically and file this document on their behalves.

Dated: August 1, 2014

/s/ Michael von Loewenfeldt

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