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UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

CITY OF STERLING HEIGHTS GENERAL EMPLOYEES' RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. PRUDENTIAL FINANCIAL, INC., et al., Defendants.	No. 2:12-cv-05275-MCA-LDW CLASS ACTION DECLARATION OF SHAWN A. WILLIAMS IN SUPPORT OF (1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT; (2) PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS; AND (3) AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND PLAINTIFFS' EXPENSES

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I, SHAWN A. WILLIAMS, declare as follows:

1. I am a member of Robbins Geller Rudman & Dowd LLP ("Robbins Geller" or "Lead Counsel"), the Court-appointed Lead Counsel for Plaintiffs in this action.[1] I was actively involved in the prosecution of this action (hereinafter, the "Litigation"), am familiar with its proceedings, and have personal knowledge of the matters set forth herein based upon my supervision of, and participation in, all material aspects of the Litigation.[2]

2. I submit this Declaration in support of Plaintiffs' application, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for final approval of: (i) the $33 million settlement on behalf of the Class (the "Settlement Amount"); (ii) the proposed Plan of Allocation of settlement proceeds; and (iii) the application for attorneys' fees and expenses.

I. PRELIMINARY STATEMENT

3. This Litigation against Prudential Financial, Inc. ("Prudential" or the "Company") and the Individual Defendants, Chief Executive Officer John R. Strangfeld, former Chief Financial Officer Richard J. Carbone and Vice Chairman of Financial Management Mark B. Grier (collectively, "Defendants"), was brought on behalf of the Class for violations of §§10(b) and 20(a) and 20(b) of the Securities

[1] Plaintiff and Class Representative National Shopmen Pension Fund ("National Shopmen"), Plaintiffs Heavy & General Laborers' Locals 472 &172 Pension and Annuity Funds ("Heavy & General") and Roofers Local No. 149 Pension Fund ("Roofers Local"), are collectively referred to herein as "Plaintiffs."

[2] Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in the Stipulation of Settlement dated April 18, 2016 and filed on April 19, 2016 (Dkt. No. 425-2) (the "Stipulation").

Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder (17 C.F.R. §240.10b-5).

4. As the Court is aware, this Litigation was vigorously litigated from commencement to resolution with strong advocacy from all sides at every stage, including on the motion to dismiss the Amended Complaint for Violations of Federal Securities Laws ("Amended Complaint") and discovery matters with Defendants and non-parties. Indeed, the Litigation has generated rulings by three United States District Judges and three United States Magistrate Judges.[3] In summary, the Settlement was only reached after the Plaintiffs and Lead Counsel, *inter alia*:

(a) Thoroughly investigated the facts and transactions giving rise to this Litigation and drafted a complaint sufficient to comply with the Private Securities Litigation Reform Act of 1995's ("PSLRA") heightened pleading standards;

(b) Successfully opposed Defendants' motion to dismiss the Amended Complaint;

(c) Secured an order certifying the case pursuant to Fed. R. Civ. P. 23, defeating Defendants' effort to rebut the *Basic Inc. v. Levinson*, 485 U.S. 224 (1988) presumption of reliance, defended the depositions of Plaintiffs' expert and class

[3] In addition to the Honorable Judge Madeline Cox Arleo, Judge Susan D. Wigenton issued the February 6, 2014 Order on the motion to dismiss, Magistrate Judge Steven C. Mannion oversaw certain discovery related matters as did Magistrate Judge Leda D. Wettre. United States District Court Judge William Alsup of the Northern District of California issued an order in connection with Plaintiffs' motion to compel discovery from the California Department of Insurance and Magistrate Judge Allison Claire of the Eastern District of California issued an order in connection with Plaintiffs' motion to compel discovery from the Controller of the State of California.

representative and successfully defended against Defendants' motion to exclude Plaintiffs' expert on market efficiency;

(d) Aggressively pursued discovery for more than two years, including the review and analysis of more than 3.7 million pages of documents produced by Defendants and third parties;

(e) Took 17 depositions,[4] noticed eight more and engaged in substantial motion practice to resolve discovery disputes between the parties and between Plaintiffs and certain nonparties;

(f) Opposed Defendants' motion for interlocutory appeal regarding class certification;

(g) Identified, retained and conferred with experts and consultants on issues of insurance practices and unclaimed property, market efficiency, reliance, loss causation and damages; and

(h) Prepared for and participated in a private mediation with the assistance of a former federal judge.

5. The cash settlement of $33,000,000 is the product of extensive and hard-fought litigation and negotiations and fully takes into consideration the risks specific to this case. At every stage of the Litigation, Defendants aggressively sought to defeat Plaintiffs' claims, challenging Plaintiffs' allegations with respect to the issues of falsity, materiality and loss causation, invoking the Supreme Court's recent authority in *Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*,

[4] Prudential put forth three deponents for a single Fed. R. Civ. P. 30(b)(6) deposition; therefore, Plaintiffs took 19 days of depositions.

___ U.S. ___, 135 S. Ct. 1318 (2015) and *Halliburton Co. v. Erica P. John Fund, Inc.*, ___ U.S. ___, 134 S. Ct. 2398 (2014) ("*Halliburton II*"). It was not until this Litigation was advancing to summary judgment after Plaintiffs obtained substantial discovery, took 17 depositions, engaged in extensive substantive motion practice and obtained class certification that meaningful settlement negotiations began.

6. Plaintiffs and their counsel believe that the claims alleged in the Litigation have merit and that the evidence uncovered to date supports these claims. Plaintiffs and their counsel also recognize, however, the challenges and risks associated with continuing litigation, including the complexity of calculating insurance reserve estimates and the difficulty of proving loss causation, damages and other elements of the claims most vigorously in dispute.

7. Moreover, there was the additional risk that Plaintiffs would not ultimately prevail. The Third Circuit, which granted Defendants' petition for leave to appeal this Court's August 31, 2015 class certification ruling pursuant to Fed. R. Civ. P. 23(f) on January 11, 2016, might have overturned the order granting class certification.

8. Throughout this Litigation, Defendants consistently maintained that Plaintiffs could not prevail at summary judgment or trial because the Amended Complaint merely alleged "fraud by hindsight." Defendants contended that the Regulatory Settlement Agreement that was implemented after the Class Period substantially changed the established legal framework by adding new protocols for the payment of death benefits which were not in place during the Class Period.

Defendants maintained that Prudential's unclaimed property practices were lawful and exceeded industry customs during the Class Period.

9. Defendants also challenged Plaintiffs' allegation that Prudential's charge to earnings announced on November 2, 2011 was an admission that the Company's prior financial statements were materially false and misleading. Rather, Defendants asserted that unrelated disclosures leading up to the November 2, 2011 earnings release and reserve charge, including non-fraud related announcements, were the cause of the decline of Prudential's stock price. Accordingly, Defendants asserted Plaintiffs could not establish loss causation or damages, all of which would be subject to complex and undoubtedly conflicting expert testimony.

10. Even with the most competent experts in the field, there could be no guarantee that Plaintiffs would prevail on liability or damages, as Defendants would present equally-qualified experts to counter Plaintiffs' expert. Finally, even if Plaintiffs prevailed on any or all of their claims at trial and were awarded damages, there was a substantial risk that Defendants would appeal any verdict or award, a process that could take years, during which time the Class would receive no distribution at all. *See, e.g.*, *In re Apollo Grp., Inc. Sec. Litig.*, No. CV 04-2147-PHX-JAT, 2008 U.S. Dist. LEXIS 61995 (D. Ariz. Aug. 4, 2008), *rev'd*, No. 08-16971, 2010 U.S. App. LEXIS 14478 (9th Cir. 2010). Of course, any appeal would include the risk of reversal, even after prevailing at trial. *See, e.g.*, *Glickenhaus v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (reversing trial jury verdict for failure to present adequate evidence of loss causation).

11. In short, Plaintiffs faced numerous obstacles in proving Defendants were liable and establishing causation and damages. Considering all the circumstances and risks both sides faced at trial, Plaintiffs believe that settlement on the agreed-upon terms is a very good result and in the best interest of the Class. The Settlement confers a substantial benefit on the Class now and eliminates the significant risks of summary judgment and trial, the outcome of which is uncertain. The Settlement was negotiated by experienced counsel for Plaintiffs and Defendants with a comprehensive understanding of both the strengths and weaknesses of their respective positions and with the assistance and oversight of a respected mediator, the Hon. Layn R. Phillips (Ret.), a former federal judge with substantial experience in mediating claims arising under the federal securities laws.

12. Plaintiffs' counsel have, as described below, aggressively prosecuted this Litigation on a wholly-contingent basis for three-and-a-half years and have advanced or incurred significant litigation expenses. Plaintiffs' counsel have long borne the risk of an unfavorable result, having not received any compensation for their substantial efforts or any payment for expenses. Specifically, Plaintiffs' counsel have incurred expenses to date of more than $798,000. This amount includes: (a) the substantial fees and expenses of consultants and experts whose services were required in the successful prosecution and resolution of this case; (b) travel, document management and court reporter expenses; (c) online factual and legal research expenses; and (d) mediation fees.

13. As set forth in more detail in the accompanying declarations in support of the fee and expense award, each of the requested expenses was reasonably and

necessarily incurred to plead Plaintiffs' claims with particularity, conduct discovery, certify the Class and prepare this case with an eye towards winning at trial.

14. The fee application for 30% of the Settlement Fund is fair both to the Class and Lead Counsel, has been approved by each of the Plaintiffs and warrants this Court's approval. This fee request is within the range of fees frequently awarded in these types of actions and is justified in light of the substantial benefits conferred on the Class, the risks undertaken, the quality of representation and the nature and extent of legal services performed.

15. Plaintiffs National Shopmen, Heavy & General and Roofers Local should also be awarded compensation for time spent pursuing recovery for the Class in the Litigation. As detailed in the accompanying Declarations of Timothy O'Connell, Charles B. O'Neill and Darris Garoufalis, submitted herewith on behalf of each of the Plaintiffs, each actively monitored and participated in the prosecution of this lawsuit. The requested awards of $10,500, $1,500 and $7,200, respectively, are reasonable given the time and attention expended which was necessary to the successful prosecution of the Litigation.

16. Accordingly, it is respectfully submitted that the Settlement and Plan of Allocation should be approved as fair, reasonable and adequate, and counsel for Plaintiffs should be awarded attorneys' fees in the amount of 30% of the Settlement Fund and expenses in the amount of $798,955.79.

II. RELEVANT PROCEDURAL HISTORY AND FACTUAL SUMMARY

17. On August 22, 2012, the City of Sterling Heights General Employees' Retirement System initiated this Litigation by filing a complaint against Defendants in

this District alleging claims under §§10(b), 20(a) and 20(b) of the Exchange Act and Rule 10b-5 promulgated thereunder by the U.S. Securities and Exchange Commission (the "SEC") (17 C.F.R. §240.10b-5). Dkt. No. 1.

18. On October 22, 2012, National Shopmen, Heavy & General and Roofers Local filed an unopposed motion, seeking to be appointed Lead Plaintiffs and to have Robbins Geller appointed as Lead Counsel and Cohn Lifland Pearlman Herrmann & Knopf LLP ("Cohn Lifland") as Liaison Counsel. Dkt. Nos. 9-11. On March 21, 2013, this Court issued an Order appointing National Shopmen, Heavy & General and Roofers Local as Lead Plaintiffs and approving its selection of Robbins Geller as Lead Counsel and Cohn Lifland as Liaison Counsel. Dkt. No. 21.

19. On May 6, 2013, Lead Counsel filed the Amended Complaint alleging that between May 5, 2010 through November 4, 2011, inclusive (the "Class Period"), Defendants issued materially false and misleading financial statements concerning the Company's true financial condition. Dkt. No. 22. Specifically, the Amended Complaint alleged that the Company, in violation of Generally Accepted Accounting Principles ("GAAP") and SEC rules, overstated reported income and understated expenses by failing to fully account for liabilities owed to the beneficiaries of policyholders listed as deceased on the Social Security Administration's Death Master File ("DMF"), or required to be escheated to regulatory state authorities.

20. In addition, the Amended Complaint alleged that statements regarding the Company's reported mortality experience and risk management processes (and internal controls associated therewith) were materially false and misleading because Prudential knowingly or recklessly ignored credible evidence of policyholder deaths

while failing to disclose that it retained unclaimed benefits. Dkt. No. 22, ¶¶49, 53-55, 57(d), 63, 71, 73-74, 95. These allegedly materially false and misleading statements caused Prudential's stock price to be artificially inflated.

21. On November 2, 2011, the Company reported its third quarter 2011 financial results and disclosed that it would take a charge to earnings of $99 million (constituting $0.15 per share negative for Prudential's third quarter 2011 financial results) to increase reserves related to expanded matching criteria to match its policies against the DMF. *Id.*, ¶¶91-92, 132-133. On November 4, 2011, the Company disclosed that it would increase reserves by another $40 million related to the DMF. *Id.*, ¶101.

22. When the market learned the true nature of the Company's financial condition in November 2011, Prudential's stock price suffered a statistically significant decline, resulting in economic loss, *i.e.*, damages, under the federal securities laws. *Id.*, ¶¶124-125.

23. On January 13, 2012, the Company filed a Form 8-K with the SEC announcing that it had reached an agreement with 20 state treasurers regarding the usage of new matching criteria to identify deceased policyholders on the SSA-DMF and the timely payment of death benefits to those policyholders' beneficiaries or escheatment of monies to the relevant states when beneficiaries could not be located.

24. On January 27, 2012, the Company entered into a Regulatory Settlement Agreement with State Departments of Insurance to resolve a multi-state investigation into Prudential's failure to pay death benefits to deceased policy-holders. *Id.*, ¶101.

25. Later, in a Form 10-Q filed with the SEC on November 8, 2012, Prudential acknowledged that its initial calculation of the November 2011 reserve charge was understated by an additional $61 million because it had excluded certain extended term life policies from the analysis used to identify potential claims. *Id.*, ¶109 n.11.

26. On June 28, 2013, Defendants filed a motion to dismiss contending, among other things, that the Amended Complaint failed to allege: (i) Defendants' statements were false or misleading when made; (ii) any alleged misrepresentation was material; and (iii) loss causation. Dkt. No. 27. Defendants also asserted that Prudential was under no legal obligation to use the DMF and that Prudential's reserve increase in November 2011 simply reflected new and expanded regulatory guidance, and as such, the November 2011 charge to earnings to increase reserves did not establish that the Company's prior reserves were inadequate, false or misleading. *Id*.

27. On August 15, 2013, Plaintiffs filed their opposition to Defendants' motion to dismiss, providing both legal and factual analysis demonstrating that the Amended Complaint had adequately alleged the facts and circumstances of Prudential's material misrepresentations with sufficient particularity to meet the heightened pleading standards under the PSLRA. Dkt. No. 29.

28. On February 6, 2014, Judge Susan D. Wigenton heard oral argument on Defendants' motion to dismiss and subsequently issued an Order granting in part and denying in part Defendants' motion to dismiss the Amended Complaint. *See* Dkt. Nos. 34, 38. Thereafter, as discussed below, discovery on the merits ensued.

III. FACT DISCOVERY

A. Discovery Overview

29. Immediately after the issuance of the Court's February 6, 2014 motion to dismiss Order, Plaintiffs began preparing an aggressive discovery plan for the case.

30. On February 21, 2014, the parties began their Fed. R. Civ. P. Rule 26(f) conference. Over the following weeks, the parties negotiated, among other matters, discovery and pre-trial scheduling, electronic discovery matters such as the form of production and proposed deadlines. On March 7, 2014, the parties filed their Rule 26(f) Conference Statement. Dkt. No. 40.

31. By mid-March 2014, the parties began meeting and conferring on a stipulation and proposed order on confidentiality. On April 11, 2014, after an April 7, 2014 status conference, the Court entered the Pretrial Scheduling Order. Dkt. No. 48. On May 27, 2014, the Court entered the Discovery Confidentiality Order. Dkt. No. 52.

32. Throughout the Litigation, Lead Counsel spent dozens of hours in meet-and-confer discussions concerning Plaintiffs' demands for the production of evidence necessary for the effective prosecution of this Litigation. As the Court is aware, many of the parties' disputes resulted in requests by the parties for court intervention, including but not limited to disputes concerning: (i) appropriate search terms and custodians whose files would be searched for relevant information; (ii) timing and scope of depositions; (iii) applicability of the work-product privilege to

communications, including those between Prudential and its outside auditors; and (iv) the applicability and scope of the insurance examination privilege. A timeline and overview of Plaintiffs' discovery efforts is set forth below.

B. Plaintiffs' Discovery Demanded from Defendants

1. Plaintiffs' Fed. R. Civ. P. 34 Requests for the Production of Documents

33. On March 12, 2014, following the Court's February 6, 2014 Order and the parties' Fed. R. Civ. P. 26(f) conference, Plaintiffs served Defendants with a First Set of Requests for Production of Documents Directed to All Defendants ("First Requests for Production"). The First Requests for Production contained 32 discrete requests for documents and information relating to the central claims and key issues in the case, including but not limited to Prudential's use (or non-use) of the DMF, Verus's audit of and state investigations into Prudential's unclaimed property and escheatment practices and charges to Prudential's reserves as a result of these payments.

34. On July 18, 2014, Plaintiffs served Defendants with a Second Set of Requests for Production of Documents Directed to All Defendants ("Second Requests for Production") relating to financial analyst reports, draft SEC filings, draft conference call scripts and accounting packages.

35. On November 5, 2014, Plaintiffs served Defendants with a Third Set of Requests for Production of Documents Directed to All Defendants ("Third Requests for Production"), seeking documents and information concerning Prudential's communications with third parties as they relate to the instant litigation.

36. On May 4, 2015, Plaintiffs served Defendants with a Fourth Set of Requests for Production of Documents Directed to All Defendants, concerning, among other things, Prudential's authorization to settle certain state investigations with Verus.

37. At the time the parties reached a settlement in the Litigation, Plaintiffs' counsel had received and reviewed more than 2.5 million pages of documents from Defendant Prudential. The following is a chart of Defendants' productions of documents in the case.

Date of Defendants' Production	Number of Pages in Production
May 2014	55
June 2014	325,624
July 2014	6,226
August 2014	13,429
September 2014	547,876
October 2014	7,977
November 2014	3,128
December 2014	19,988
January 2015	29,315
February 2015	38,887
March 2015	44,605
April 2015	105,322
May 2015	53,459
June 2015	135,252
July 2015	104,601
August 2015	72,404
September 2015	89,425
October 2015	260,253
November 2015	621,559
December 2015	14,190
TOTAL	**2,493,575**

2. Plaintiffs' Fed. R. Civ. P. 33 Interrogatories

38. On April 28, 2014, Plaintiffs served their First Set of Interrogatories to Defendant Prudential Financial, Inc. (the "First Interrogatories"), seeking information concerning payments made to state agencies and policyholder beneficiaries as a result of Prudential's use or non-use of the DMF, Verus's audit of Prudential's claim practices and the January 11, 2012 Global Resolution Agreement between Prudential and many of the state treasurers.

39. On May 4, 2015, Plaintiffs served their Second Set of Interrogatories to Defendant Prudential Financial, Inc., seeking the identification of all individuals, including inside and outside counsel, whose opinions Prudential considered or relied upon in considering potential settlements of the states' insurance regulatory investigations and other reviews, audits or examinations regarding Prudential's claims payment or escheatment of unclaimed property.

40. Plaintiffs met and conferred extensively with Defendants about Defendants' objections and responses to Plaintiffs' interrogatories, many of which called for specific information, such as the total dollar amount of all proceeds that were discovered as a result of Prudential's periodic checks or cross-checks of individual life insurance files with the DMF. Instead of providing Plaintiffs with the figures as requested, Prudential invoked Fed. R. Civ. P. 33(d) and directed Plaintiffs to analyze heavily redacted spreadsheets and calculate the requested information therefrom. Plaintiffs asserted that Defendants' responses were inadequate because they placed the burden on Plaintiffs to derive answers from a large volume of documents that were redacted beyond practical use.

41. Despite substantial efforts in several meet and confers, the parties could not resolve the dispute, and the matter was submitted to the Court at oral argument on October 9, 2014, and again by letter brief on May 29, 2015. Dkt. No. 242. As a result of a Court directive, Defendants provided additional responsive information.

3. Plaintiffs' Fed. R. Civ. P. 36 Requests for Admission

42. On April 28, 2014, Plaintiffs propounded their First Set of Requests for Admission to Defendant Prudential Financial, Inc., requesting that Defendants admit, among other things, that: (i) during the Class Period, Prudential did not cross-check the DMF against all of its life insurance policies; (ii) during the Class Period, the Company's limited cross-checks of certain policies against the DMF did result in the discovery of deceased policyholders; and (iii) prior to August 2011, Prudential had not disclosed Florida's January 2010 market conduct examination of Prudential's compliance with unclaimed property laws.

43. On June 2, 2014, Defendants served their Responses and Objections to the First Set of Requests for Admission. After several meet and confers regarding the adequacy of Defendants' initial responses to the First Set of Requests for Admission, Defendants served amended responses on August 22, 2014.

4. Plaintiffs' Fed. R. Civ. P. 30 Depositions

44. During the course of discovery, Lead Counsel deposed 12 Prudential witnesses. To prepare for and efficiently conduct these depositions, Lead Counsel spent an enormous amount of time reviewing, analyzing and categorizing pertinent documents, and engaged in and attempted to resolve disputes with Defendants to secure, prepare for and conduct depositions.

45. Early in the Litigation, on March 24, 2014, Plaintiffs noticed, pursuant to Fed. R. Civ. P. 30(b)(6), Prudential's deposition for the following topics: (i) the Company's unclaimed property practices; (ii) risk management and the Board of Director's (the "Board") review and response to the State Investigations; (iii) the financial impact of the Company's unclaimed property practices; (iv) reserves affected by unreported deaths; and (v) electronically stored information.

46. Apart from the substantial effort Plaintiffs spent preparing for and taking these early depositions to help streamline discovery and map a pretrial plan, Plaintiffs expended substantial effort seeking additional testimony through motions to compel (and responding to Defendants' motion for a protective order) on the ground that Defendants' witnesses were inadequately prepared. *See* Dkt. Nos. 75, 363.

47. By the time a settlement in principle was reached on February 24, 2106, Lead Counsel had deposed 12 witnesses from Prudential (including the three Prudential corporate representatives designated under Fed. R. Civ. P. 30(b)(6)). The table below sets forth the depositions of Prudential employees:

Date	Deponent	Position
May 30, 2014	Michael Perelman	Director of High-Tech Investigations Unit
June 6, 2014	Eileen Geary	Director, Abandoned Property Operations
June 11, 2014	Elaine Green	Vice President, Finance, Controller, Group Insurance
September 16, 2014	Michael A. Kmiecik	Vice President, Compliance
September 26, 2014	Gilbert Casellas	Member of the Board and Audit Committee

Date	Deponent	Position
April 24, 2015	Robert E. Boyle	Deputy Controller
May 20, 2015	Robert DeFillippo	Chief Communications Officer
June 9, 2015	Helen Galt	Senior Vice President, Company Actuary, Chief Risk Officer
December 9, 2015	Robert House	Vice President, Policyholder Services
December 14, 2015	Natalie Schneidereit	Vice President, Claims
December 18, 2015	Sharon Brody	Vice President, Experience Analysis Group
December 21, 2015	Pauline Rossbauer	Vice President, Customer Service, Annuities

48. In addition to the depositions of Prudential current and former employees, taken before the February 24, 2016 agreement, Plaintiffs had noticed an additional eight Prudential depositions to be completed by the end of January 2016 and were reviewing, analyzing and designating documents to be used for such depositions:

Date (Tentative)	Deponent	Position
January 8, 2016	Kent Sluyter	Chief Executive Officer, Individual Life Insurance and Prudential Advisors
January 12, 2016	Maureen Adolf	Corporate Vice President, External Affairs Department
January 14, 2016	John R. Strangfeld	Chairman, Chief Executive Officer and President
January 14, 2016	Neal Stern	Vice President, Investor Relations
January 15, 2016	Robert Axel	Senior Vice President, Controller and Principal Accounting Officer
January 28, 2016	Mark B. Grier	Member of Prudential Office of the Chairman and of its Board
January 29, 2016	Eric Schwimmer	Chief Legal Officer, Human Resources

Date (Tentative)	Deponent	Position
TBD	Richard J. Carbone	Chief Financial Officer

5. Summary of Discovery Disputes Between Plaintiffs and Defendants

49. The parties litigated numerous complex discovery disputes. Due to the high number and the complexity of the parties' disputes, the parties filed more than a dozen discovery-related motions, the vast majority of which were fully briefed, argued and then submitted to the Court. Prior to filing or responding to motions to compel, as outlined below, Lead Counsel spent thousands of hours analyzing documents and participating in meet-and-confer conferences with counsel for Defendants and memorializing those negotiations in detailed correspondence.

50. On June 23, 2014, Plaintiffs raised various discovery issues to the Court asserting that Defendants had: (i) delayed producing relevant materials, having taken nine weeks to produce a single insurance policy and 12 weeks to produce organizational charts, without which Plaintiffs could not select custodians for Defendants' document production; (ii) not produced documents outside of the January 1, 2009 through January 31, 2012 period, even when they related to events in the Class Period; (iii) not produced documents already produced pursuant to state investigations into Prudential's unclaimed property practices; (iv) not identified the scope of their search of responsive documents; and (v) inadequately prepared Fed. R. Civ. P. 30(b)(6) witnesses. Dkt. No. 65.

51. On July 14, 2014, Plaintiffs filed letter briefs with the Court seeking the issuance of orders requiring Defendants to: (i) produce spreadsheets in native format, as opposed to unusable PDFs; (ii) provide a list of custodians whose files would be

searched for responsive information; and (iii) produce a privilege log of any documents withheld from PricewaterhouseCoopers LLP's ("PwC") production by August 31, 2014. Dkt. No. 75. In addition, the July 14, 2014 letter briefs requested that the Court require the parties to provide updates on the status of discovery every 30 days. *Id*.

52. Lead Counsel also responded to motions to compel filed by Defendants. For example, on July 14, 2014, Defendants filed a motion to compel seeking amended discovery responses, the production of additional documents and further responses to interrogatories. Dkt. No. 76. Plaintiffs responded to each of Defendants' arguments on July 25, 2014, distinguishing Defendants' authorities and detailing the adequacy of Plaintiffs' responses. Dkt. No. 88.

53. On August 11, 2014, Defendants notified the Court that they planned to file another motion to compel, this time seeking portfolio monitoring agreements withheld on the basis of privilege. Dkt. No. 92. On August 13, 2014, they filed a formal discovery letter on the issue, seeking the production of certain monitoring agreements between Plaintiffs and their counsel that had been withheld on the basis of privilege. Dkt. No. 94. Plaintiffs opposed Defendants' letter brief on August 18, 2014, on the basis of relevance and privilege (Dkt. No. 99), and the Court issued a ruling partially granting and partially denying Defendants' motion.

54. On August 14, 2014, Plaintiffs filed a letter brief demanding production of Unclaimed Property Reports ("UPRs"), asserting that Defendants had: (i) insisted on an overly restrictive time period that would operate to exclude the majority of

UPRs;[5] (ii) refused to provide substantive responses to Plaintiffs' First Interrogatories; and (iii) failed to satisfy their burden of showing which databases were searched for relevant information. Dkt. No. 96.

55. On August 15, 2014, Defendants sought to postpone their class certification opposition by 45 days, which request was granted on August 20, 2014. Dkt. Nos. 98, 100.

56. On September 23, 2014, Plaintiffs moved to compel Defendants' production of relevant financial press releases, quarterly investor calls, SEC filings, analyst reports and periodic accounting statements from January 1, 2010 through December 31, 2012, and their drafts, as well as communications (including e-mail) concerning those documents. Dkt. No. 111.

57. On October 9, 2014, the Court heard oral argument on eight material discovery disputes had resulted in motion practice set forth above. The Court resolved many of the foregoing disputes and ordered the parties to submit an agreed-upon order. In a series of letter briefs thereafter, the parties presented opposing views on the scope of the Court's October 9, 2014 Order. Dkt. Nos. 122-123, 129. On December 3, 2014, the Court issued an Order Relating to October 9, 2014 Hearing on Discovery Motions, setting forth its rulings with respect to the pending discovery disputes, which was entered on December 3, 2014 (the "December 3 Order"). Dkt. No. 130.

[5] UPRs were reports Prudential was required to file after it entered into the Regulatory Settlement Agreement with various states. The reports showed payments made to state regulators by using the DMF to identify deceased policyholders.

58. Plaintiffs' advocacy resulted in many favorable rulings for the Class. In the December 3 Order, the Court required that Defendants produce all relevant documents created after the Class Period that refer to information or conduct in the Class Period. *Id.*, ¶7. The Court further ordered Defendants to produce UPRs through December 31, 2012 without redacting dates of birth, dates of death, monetary amounts and status information relating to each policyholder contained in the UPRs. *Id.*, ¶8. The Court further ordered that Defendants could not redact an insured's personal identifying information (except Social Security Numbers) where a beneficiary or a family member has submitted a claim for death benefits and Prudential had not paid the claim. *Id.* The December 3 Order also invited Plaintiffs to seek the production of additional information in the UPRs after taking further discovery and conferring with experts. *Id.*, ¶9. Further, the Court ordered Defendants to produce documents concerning amounts escheated to each of the 50 states. *Id.*, ¶10.

59. The December 3 Order also directed Defendants to produce draft SEC filings, draft conference call scripts and draft financial press releases for each quarter of the Class Period, plus one quarter before and one quarter after, with proposed relevance redactions for review only by Plaintiffs' attorneys. *Id.*, ¶13. The Court further ordered Defendants to produce communications concerning the same. *Id.*

60. On January 21, 2015, the parties submitted a joint letter to the Court concerning Prudential's redactions of Prudential's Board meeting and audit committee meeting minutes. Dkt. Nos. 161-162. In this joint letter, Plaintiffs criticized Defendants' extensive relevance redactions including to meeting minutes of Prudential's Board and Board committee meetings and Defendants' failure to produce

all draft SEC filings, conference call scripts and financial press releases. Plaintiffs moved for such documents to be produced without redactions based on relevance. Dkt. No. 161.

61. On February 9, 2015, the parties filed a joint letter to compel regarding search terms and custodians. Dkt. Nos. 169-172, 272. Plaintiffs moved to compel Defendants to search the electronic files of 38 custodians based on Plaintiffs' review of documents and deposition testimony believed to possess relevant information concerning Prudential's unclaimed property and escheatment practices, the state investigations, reserve setting, actuarial reviews and financial disclosures. Dkt. No. 169.

62. On February 13, 2015, Plaintiffs filed a letter motion to compel production of purportedly privileged documents used in the Navigant Consulting, Inc. ("Navigant")[6] deposition. Dkt. Nos. 175-176, 272. At issue was a dispute over information Defendants clawed back during the deposition of Navigant's Fed. R. Civ. P. 30(b)(6) designee Jonathan Berry on the basis of attorney-client privilege. Dkt. No. 175. Plaintiffs contended attorney-client privilege did not apply because the information did not concern legal advice, was written by and sent to non-lawyers and was disclosed to third parties and non-attorney employees not shown to need access.

63. On March 24, 2015, Plaintiffs filed a letter motion to compel production of purportedly privileged documents from Prudential. Dkt. Nos. 202-203. In this

[6] Navigant is an entity that was hired by Prudential to perform an analysis cross-checking Prudential's records with the DMF to identify deceased policyholders and estimate Prudential's financial liability from the state investigations.

letter motion, Plaintiffs contended that Defendants' privilege logs contained multiple deficiencies and failed to establish that the attorney-client privilege and work-product protection applied. Furthermore, Plaintiffs were forced to bring a motion to compel Defendants to create a privilege log for hundreds of additional withheld documents not previously logged. Dkt. No. 202.

64. On July 13, 2015, the Court heard oral argument on the issue concerning additional search terms and custodians. On August 21, 2015, the Court granted, in part, Plaintiffs' requests, ordering that Defendants search the files of ten additional custodians of Plaintiffs' choice, and that Defendants include the additional search terms requested by Plaintiffs. Dkt. No. 327.

65. On September 21, 2015, Plaintiffs filed a letter motion to compel Defendants to produce documents responsive to Plaintiffs' Third Requests for Production, which contained a single request for communications between Defendants and non-parties concerning discovery in this action. Dkt. No. 358.

66. On December 31, 2015, Defendants completed their rolling production of privilege logs pursuant to the Court's directive. Defendants' privilege logs contained over 20,000 entries of documents withheld or redacted on the basis of privilege. Plaintiffs began an in-depth analysis of these entries in order to prepare a motion challenging Defendants' assertions of privilege before the fact discovery cutoff deadline.

C. Defendants' Discovery Directed at Plaintiffs

1. Defendants' Fed. R. Civ. P. 34 Requests for the Production of Documents Served on Plaintiffs

67. On April 11, 2014, Defendants propounded their First Set of Requests for the Production of Documents on Plaintiffs. Those requests sought, among other things, production of all documents pertaining to Plaintiffs': (i) purchase and sale of Prudential common stock; (ii) decision to purchase or to sell Prudential common stock; and (iii) investment in any security relating to Prudential.

68. On May 14, 2014, each of the three Lead Plaintiffs served written Responses and Objections to Defendants' discovery requests, including by providing the number of Prudential shares held by each Lead Plaintiff, and, among other things, actions in which each Lead Plaintiff served as a plaintiff, class representative or derivative plaintiff. After lengthy meet and confers regarding the requests, Defendants propounded an Amended First Set of Requests for the Production of Documents on May 23, 2014.

69. On June 25, 2014, Plaintiffs responded to Defendants' amended requests by incorporating their original responses. In addition, Plaintiffs collected, reviewed and produced documents and privilege logs in response to Defendants' requests. Plaintiffs also met and conferred with Defendants to discuss the amended responses. Subsequently, beginning in July 2014 and continuing through February 2015, Plaintiffs reviewed and produced thousands of pages of documents, including trading records, brokerage statements, and investment management agreements, among other items, and served objections in response to Defendants' requests.

70. On November 10, 2014, Defendants propounded their Second Set of Requests for the Production of Documents, demanding information relating to all Plaintiffs' Board of Trustees' consideration of the state inquiries into insurers' use of the DMF. And, on November 19, 2014, Defendants propounded their Third Set of Requests for the Production of Documents, which demanded documents relating to any expert testimony Plaintiffs intended to present in support of their motion for class certification.

71. In total, the following chart illustrates the total number of responsive documents Plaintiffs produced to Defendants pursuant to all three of their requests for Production:

Date of Plaintiffs' Production	**Number of Pages Produced**
July 11, 2014	7,879
July 25, 2014	990
August 14, 2014	51
October 15, 2014	10
November 7, 2014	419
December 4, 2014	3,217
December 23, 2014	4,464
December 31, 2014	6,161
January 6, 2015	22
January 20, 2015	955
February 17, 2015	15
July 8, 2015	351
August 4, 2015	6,002
November 20, 2015	5,116
TOTAL	35,652

2. Defendants' Fed. R. Civ. P. 33 Interrogatories Served on Plaintiffs

72. On April 11, 2014, Defendants propounded their First Set of Interrogatories on Plaintiffs, but following a meet and confer concerning certain definitional ambiguities in Defendants' interrogatories, which in large part mirrored Defendants' requests for production, Defendants propounded an Amended First Set of Interrogatories (as well as Amended Requests for Production) on May 23, 2014 to clarify those ambiguities. After serving Responses and Objections to the Interrogatories on June 25, 2014, which included substantive responses, Plaintiffs supplemented their responses on August 28, 2014 and September 5, 2014.

73. On November 11, 2014, Defendants propounded their Second Set of Interrogatories to Plaintiffs seeking identification of any relative or business associate of any plaintiff, Board of Trustees or Executive Board member who had ever been employed or had business dealings with Prudential. The Second Set of Interrogatories further requested a description of any discussion, research or consideration into insurers' use of the DMF, escheatment practices and abandoned property, by any plaintiff Board of Trustees member or Executive Board member of Plaintiffs. Plaintiffs served their Responses and Objections on December 17, 2014.

74. On November 30, 2015, Defendants served their Third Set of Interrogatories on Plaintiff National Shopmen, seeking, among other things, the following information: (i) the circumstances under which Plaintiffs contended that Prudential should have taken a reserve for the full amount of a death benefit based on the DMF; (ii) facts showing Prudential was holding funds which properly belonged to policyholder beneficiaries or state unclaimed property funds; (iii) the amount by

quarter that Prudential's reserves were understated; (iv) the date by which Defendants should have determined a liability would be incurred due to the Verus audit under Accounting Standards Codification ("ASC") 450; (v) facts and documents supporting the allegation that Prudential's November 2, 2011 announcement regarding the Verus charge contributed to Prudential's stock price decline; (vi) facts and documents showing Defendants knew or recklessly disregarded the alleged false and misleading statements/omissions; and (vii) facts and documents showing Defendants' false and misleading statements/omissions were material. National Shopmen served its Responses and Objections on December 30, 2015.

3. Defendants' Fed. R. Civ. P. 30 Depositions of Plaintiffs' Witnesses

75. In addition to Plaintiffs' examinations of Defendants' witnesses, Plaintiffs also expended substantial effort preparing for and defending depositions of Plaintiff National Shopmen's class representative Timothy O'Connell and Plaintiffs' economic and market efficiency expert Dr. Steven P. Feinstein in advance of Defendants' filing their opposition to the motion to certify the class.

D. Plaintiffs' Discovery Sought from Third Parties

76. During the course of the Litigation, Plaintiffs issued subpoenas and demanded documents and/or testimony from 33 non-parties including Prudential's outside auditor PwC, Verus Financial LLC ("Verus"), a third party unclaimed property audit firm which had been contracted by more than 30 states to conduct an unclaimed property investigation, various other state insurance agencies, and numerous Wall Street analysts.

1. Verus and Other Third Party Unclaimed Property Auditors

77. Between mid-March 2014 and early April 2014, Plaintiffs served third-party subpoenas on the following unclaimed property auditors: Verus; ACS Unclaimed Property Clearinghouse; Kelmar Associates, LLC; and Total Asset Recovery Services, LLC. The subpoenas sought, among other things, documents relating to: (i) the state investigations into the Company's unclaimed property practices; (ii) communications with Prudential; (iii) communication with regulatory entities including the SEC; and (iv) document retention policies.

78. Among the third party unclaimed property auditors, Verus had been retained by at least 38 states to audit insurance companies, including Prudential, to audit the life insurance industry's policies, practices and procedures regarding claims settlement and unclaimed property. Indeed, the January 12, 2012 Global Resolution Agreement and January 27, 2012 Regulatory Settlement Agreement were the culmination of the Verus multistate audit and examination of the unclaimed property practices of Prudential. Accordingly, Verus was a key witness with critical information relating to Prudential's use and non-use of the DMF.

79. Significant disputes with Verus arose immediately, resulting in motion practice and important rulings from the Court. For example, on June 5, 2014, Verus filed a letter brief with the Court seeking permission to file a motion for a protective order concerning Plaintiffs' subpoena and a motion to quash the Rule 30(b)(6) deposition. Dkt. No. 54. On June 6, 2014, Plaintiffs filed a motion to compel, challenging Verus's assertion of the official information privilege and the confidential communications privilege. Dkt. No. 56. This motion to compel detailed the

substantial efforts Plaintiffs expended in attempting to resolve the discovery dispute through numerous meet and confers with Verus. *Id.* at 8-9. On June 30, 2014, Verus opposed Plaintiffs' motion to compel and filed a cross-motion to quash Plaintiffs' Rule 30(b)(6) deposition subpoena of Verus. Dkt. Nos. 70, 71-1.

80. On July 16, 2014, the National Association of Insurance Commissioners sought leave to file an *amicus* brief in support of Verus's cross-motion to quash. Dkt. Nos. 77, 83. Plaintiffs filed an opposition on July 31, 2014. Dkt. No. 89.

81. On October 9, 2014, Judge Arleo held a hearing on, *inter alia*, the Verus discovery issues and flatly rejected Verus's privilege assertions and granted Plaintiffs' motion to compel Verus to appear for a Rule 30(b)(6) deposition so that Plaintiffs could identify relevant categories of documents for production. *Id.* at 14. The Court memorialized its ruling regarding Verus discovery issues in the December 3 Order. Dkt. No. 130.

82. After the Court ordered Verus to appear for a Rule 30(b)(6) deposition, on November 6, 2014, Plaintiffs took the deposition of Caroline Marshall, the corporate designee of Verus to, among other things, identify and narrow categories of documents to be produced by Verus.

83. On December 17, 2014, Verus filed an appeal of then Magistrate Judge Arleo's decision to District Court and also filed a motion to stay the December 3 Order as it pertained to Verus. *See also* Dkt. Nos. 138-140. The National Association of Insurance Commissioners filed an *amicus curiae* brief in support of Verus on December 22, 2014, as did the Insurance Departments of California, Florida, Illinois, New Hampshire, New Jersey, North Dakota and Pennsylvania. Dkt. Nos. 145-146.

Plaintiffs opposed Verus's motions and the *amicus* briefs on January 6, 2015. Dkt. Nos. 151-153.

84. On December 18, 2014, California State Controller John Chiang (the "Controller") filed motion to intervene in the Litigation. Dkt. No. 143. The Court granted the motion to intervene on April 30, 2015. Dkt. No. 227. After filing its motion to intervene, the Controller aligned himself with Verus, adopting the positions taken by Verus regarding discovery and privilege.

85. On April 30, 2015, the Court issued an Opinion and Order denying Verus's appeal of the Magistrate Judge's decision to reject the adoption of an insurance examination privilege as a matter of federal common law. *City of Sterling Heights Gen. Emps. Ret. Sys. v. Prudential Fin., Inc.*, No. 12-5275, 2015 U.S. Dist. LEXIS 57187 (D.N.J. Apr. 30, 2015); *see also* Dkt. Nos. 226 at 4, 227.

86. On May 15, 2015, Verus filed a motion to certify the Court's April 30, 2015 Order for immediate interlocutory appeal pursuant to 28 U.S.C. §1292(b), asserting that because the insurance examination privilege had not been recognized by any federal court, it was a novel question of law appropriate for consideration by the Third Circuit Court of Appeals. Dkt. No. 237.

87. On August 28, 2015, Plaintiffs filed a letter brief with the Court advising that Verus continued to withhold documents on the basis of the insurance examination privilege pending resolution of its 28 U.S.C. §1292(b) motion and that Verus and Plaintiffs could not agree on certain custodians and search terms. Dkt. No. 334.

88. On December 17, 2015, the Court denied Verus's motion to certify the April 30, 2015 Order for immediate interlocutory appeal, ending an 18 month dispute with Verus over discovery critical to the case. Dkt. No. 403.

2. PwC

89. On March 26, 2014, Plaintiffs served a third-party subpoena for the production of documents on Prudential's auditor, PwC. The subpoena sought, among other things, documents relating to: (i) PwC's audit of Prudential and Prudential's accounting for reserves; (ii) Prudential's unclaimed property practices and state investigations into those practices; (iii) mortality experience; (iv) disclosure assessments and loss contingencies; and (v) communications with regulators. Lead Counsel and its forensic accountants met and conferred extensively with PwC on numerous occasions, again memorializing disputes and agreements in many detailed letters.

90. On August 8, 2014, PwC produced 353 documents and a privilege log prepared by counsel for Prudential, consisting of 41 total entries, which withheld 36 and redacted five documents as protected work product under Fed. R. Civ. P. 26(b)(3)(A). After many meet and confers with both Defendants and PwC regarding the adequacy of the privilege log, Defendants produced revised privilege logs on September 25, 2014 and November 6, 2014, which were still insufficient as they failed to satisfy the requirements of Fed. R. Civ. P. 26(b)(5). Moreover, Plaintiffs asserted that the documents redacted and withheld by Defendants and PwC were not protected work product, as they were not prepared in anticipation of litigation, or primarily for

the purpose of litigation, but appeared to have been created in the ordinary course of business, *i.e.*, to prepare Prudential's financial statements.

91. On November 17, 2014, the parties submitted a joint letter containing their respective positions on Defendants' assertion of work-product protection over documents responsive to Plaintiffs' subpoena in PwC's custody and control. Dkt. No. 125; *see also* Dkt. No. 158.

92. On October 30, 2014, Plaintiffs noticed the Rule 30(b)(6) deposition of PwC, which tentatively set the deposition date for November 21, 2014. PwC then asserted that the privilege issues must be resolved before Plaintiffs could take the deposition, which Plaintiffs had already extended to March 26, 2015, nearly five months after the notice was served, at PwC's request.

93. On March 16, 2015, PwC filed a motion for protective order, which Plaintiffs opposed on March 20, 2015. Dkt. Nos. 195, 200. PwC refused to discuss rescheduling the deposition until the Court ruled upon its motion for protective order.

94. On July 13, 2015, Judge Wettre held a status conference to address Defendants' claim of privilege over certain PwC documents, among other issues. Judge Wettre conducted an *in camera* review of the disputed documents and on November 17, 2015 issued an order denying Plaintiffs' motion to compel. Dkt. No. 393.

95. PwC ultimately produced 13,774 documents constituting almost half a million pages concerning Prudential's reserves, unclaimed property practices and internal controls, among other matters. This production enabled Plaintiffs to develop substantial evidence supporting Plaintiffs' claims generally as well as Plaintiffs'

accounting allegations under ASC 944, ASC 450 and Financial Accounting Standards Statement 5.

3. State Regulatory Agencies

96. On March 13, 2014, Plaintiffs also began serving subpoenas on various state insurance agencies, controllers and regulators, including: (i) the California Office of the Controller; (ii) Florida Office of Insurance Regulation; (iii) New York State Department of Financial Services; (iv) the New York State Attorney General; (v) the Pennsylvania Insurance Department; (vi) the Minnesota Department of Commerce; and (vii) the California Department of Insurance. The subpoenas sought, among other things, documents relating to: (i) Prudential's unclaimed property practices; and (ii) Prudential's use or nonuse of the DMF.

97. Because the applicability of certain state laws governing the confidentiality and potentially privileged nature of the information collected during market conduct examinations, discussed above, remained an issue throughout Verus's appeal, the state regulatory entities refused to produce documents until that issue was ultimately resolved. For example, Plaintiffs served a subpoena for the production of documents on March 13, 2014, on the Pennsylvania Insurance Department ("PID"). But the PID refused to produce documents pending Verus's appeal, asserting that the insurance examination privilege was applicable.

98. The California Department of Insurance ("CA DOI") moved to quash Plaintiffs' subpoena for the production of documents and Rule 30(b)(6) deposition on June 4, 2014 in the Northern District of California, arguing that California's insurance examination statute applied, the McCarran-Ferguson Act applied and Plaintiffs should

obtain the information from Prudential first. *City of Sterling Heights Gen. Emps.' Ret. Sys. v. Prudential Fin. Inc.*, No. 3:14-mc-80161-WHA (N.D. Cal.) (Dkt. No. 1). After oral argument, held on June 19, 2014, Judge William Alsup of the Northern District of California granted the CA DOI's motion to quash, ruling that Plaintiffs could revisit the issue in the event they were unable to procure the requested information from Prudential itself, noting "[i]f Judge Wigenton finds in the underlying action that plaintiffs are entitled to evidence but Prudential no longer has the evidence or stonewalls production of the evidence, then the court may consider enforcing a fresh subpoena." *Id*. at Dkt. No. 17 at 3-4.

99. As part of Plaintiffs' discovery efforts with state regulatory agencies, in addition to serving subpoenas for the production of documents, Plaintiffs took the following depositions pursuant to Fed. R. Civ. P. 30(b)(6):

Date	Deponent	State Regulatory Agency
June 5, 2014	James Pafford	Florida Office of Insurance Regulation
June 9, 2014	Elizabeth Gonzalez	California Office of the Controller
December 22, 2015	Jacqueline Tucker	New York Department of Financial Services

100. On November 12, 2015, Plaintiffs subpoenaed John Chiang, the California State Controller, and David E. Jones, California Insurance Commissioner ("Commissioner Jones") for depositions. Both subpoenas were designed to obtain the deponents' personal knowledge regarding the highly relevant public statements they made concerning investigations into Prudential's unclaimed property practices. Both subpoenas resulted in extensive motion practice.

101. On December 1, 2015, Commissioner Jones filed a motion to quash the deposition subpoena in the Eastern District of California. *City of Sterling Heights Gen. Emps.' Ret. Sys. v. Prudential Fin. Inc.*, No. 2:15-mc-00146-WBS-AC (E.D. Cal.) (Dkt. No. 1). On December 16, 2016, Plaintiffs and Commissioner Jones filed a Joint Statement Regarding Subpoena to California Insurance Commissioner David E. Jones, in accordance with the Local Rules. *Id.* at Dkt. No. 12. Commissioner Jones argued that he was an "apex deponent," and was therefore immune from deposition as the California State Insurance Commissioner. *Id.* Plaintiffs asserted that the apex doctrine did not apply as Commissioner Jones had made personal statements regarding settlements with Prudential over its use of the DMF. *Id.* Magistrate Judge Allison Claire of the Eastern District of California heard oral argument on December 23, 2015 and ruled in favor of Commissioner Jones. *Id*. at Dkt. No. 17. On February 12, 2016, Plaintiffs filed a Request for Reconsideration by the District Court of Magistrate Judge's Ruling, but later withdrew the Request after the parties agreed to settle this Litigation. *Id.* at Dkt. Nos. 24, 29.

102. On December 8, 2015, the Controller filed a motion to quash in the Central District of California. *City of Sterling Heights Gen. Emps.' Ret. Sys. v. Prudential Financial, Inc.*, No. 2:15-mc-00295-ODW-AJW (C.D. Cal.) (Dkt. Nos. 1, 7). The Controller also argued the apex doctrine, but further asserted the information sought by Plaintiffs during the deposition was subject to the attorney-client, work-product and deliberative process privileges. *Id.* at Dkt. No. 1-1. In their December 21, 2015 opposition, Plaintiffs argued that the Controller could not assert such privileges before the deposition took place. *Id.* at Dkt. Nos. 8-9. After the parties

agreed to mediate, the Controller and Plaintiffs agreed to continue the hearing set for January 11, 2016 to an unspecified date after the mediation. *See id.* at Dkt. No. 16. Finally, after the parent case resolved, the Central District of California denied the Controller's motion to quash as moot on March 24, 2016. *Id.* at Dkt. No. 21.

4. Navigant

103. On June 18, 2014, Plaintiffs served Navigant with a subpoena for the production of documents. Navigant was inextricably involved in assessing Prudential's potential liability from the state investigations and with the escheatment of monies and the corresponding estimation of reserves, issues at the core of the allegations in this case. Dkt. No. 22, ¶¶57(a)-(c), (f)-(g), 68, 77. Prudential retained Navigant to implement procedures used in the John Hancock settlement, including fuzzy matching logic, and to estimate Prudential's potential exposure therefrom. The Navigant subpoena sought, among other things, documents relating to: (i) the state investigations into Prudential's unclaimed property practices; (ii) reserve setting and the DMF; and (iii) document retention. On August 1, 2014, Navigant untimely served its responses and objections to the subpoena and for months there was no meaningful production of documents from Navigant. On October 30, 2014, Plaintiffs served Navigant with a subpoena for deposition testimony pursuant to Rule 30(b)(6).

104. On November 19, 2014, Plaintiffs took Navigant's deposition pursuant to Fed. R. Civ. P. 30(b)(6), which confirmed that Navigant was in possession of highly relevant information to Plaintiffs' claims. Ultimately Plaintiffs and Navigant were able to agree to the production of custodial documents without further Court

intervention, and Navigant made the majority of its productions in late 2014 and late 2015.

5. Financial Analysts

105. During the Litigation, Plaintiffs served third-party subpoenas for the production of documents upon 12 securities analysts and a rating agency: (1) Barclays Capital, Inc; (2) Credit Suisse Securities (USA) LLC; (3) Deutsche Bank Securities Inc.; (4) Morgan Stanley Research; (5) Scotia Capital (USA) Inc.; (6) Dowling & Partners, LLC; (7) Evercore Partners, LLC; (8) FBR Capital Markets & Co.; (9) The Goldman Sachs Group, Inc.; (10) J.P. Morgan Securities LLC; (11) Raymond James Financial, Inc.; and (12) Moody's Investor Service, Inc. The subpoenas requested, among other things: (i) documents related to the preparation of analyst reports on Prudential and documents relied on in issuing such reports; (ii) documents related to Prudential from the files of the analysts who followed the Company; (iii) communications with or regarding Prudential; and (iv) documents concerning the State Investigations, Verus or the DMF.

106. The analysis of these documents was relevant to uncovering important evidence relevant to materiality, market efficiency, loss causation and damages, and provided additional evidentiary support for the opinions of Plaintiffs' economic experts. Indeed, both parties' economic experts at class certification relied heavily on published reports from financial analysts.

107. As a result of Plaintiffs' subpoenas and diligent negotiations in meet-and-confers, Plaintiffs obtained and reviewed over 53,000 documents from Prudential's financial analysts, constituting over 633,000 pages of documents.

E. Plaintiffs' Motion for Class Certification

108. On June 23, 2014, the United States Supreme Court issued an opinion in *Halliburton II*, 134 S. Ct. 2398. The Supreme Court addressed the judicially created fraud-on-the-market presumption of reliance, holding that the presumption could be invoked by a plaintiff with evidence that a material false statement was publicly made in an efficient market. *Id*. at 2414-15. But the Court also held that a defendant could rebut that presumption at the class certification stage with evidence that the alleged misrepresentations did not affect or impact the market price of the relevant security. *Id.* at 2415. The Supreme Court noted in passing that without the presumption of reliance, a class action could not be maintained because individual issues would predominate over common issues. *Id*. This ruling sharply changed the dynamic of class certification proceedings in securities cases as prior to *Halliburton II*, such rebuttal evidence would typically await summary judgment or trial.

109. On July 11, 2014, Plaintiffs filed a Motion to Certify Class, Appoint Class Representative and Appoint Class Counsel ("Motion to Certify Class"), seeking to certify a class comprised of all persons who purchased Prudential common stock with certain exceptions during the Class Period. Dkt. Nos. 74, 74-1. On October 9, 2014, the Court vacated the briefing schedule on Plaintiffs' class certification motion and set a new date for its filing.

110. On December 8, 2014, pursuant to Court order, Plaintiffs filed their Renewed Motion to Certify the Class. In support of the motion, Plaintiffs submitted the report of Dr. Steven P. Feinstein, Ph.D., CFA, an economist who conducted an event study of all publicly available information concerning Prudential and analyzed

that information in connection with Prudential's stock price movements during the relevant period. Dr. Feinstein ultimately provided an opinion and report based on his analysis and findings that Prudential common stock traded in an efficient market during the Class Period and that damages could be calculated on a class-wide basis. Plaintiffs' Motion for Class Certification additionally asserted that notwithstanding the Supreme Court's decision in *Halliburton II*, the facts alleged and the evidence presented, including Dr. Feinstein's expert report, any attempt to rebut the presumption would fail.

111. On January 8, 2015, Defendants took the deposition of Dr. Feinstein in Boston, Massachusetts to examine his analysis and conclusions reported in his declaration in support of class certification.

112. On February 17, 2015, also in connection with Plaintiffs' Motion for Class Certification, Defendants took the deposition of class representative Mr. O'Connell. Defendants' questioning centered on National Shopmen's transactions in Prudential stock and its participation in the Litigation.

113. On February 27, 2015, Defendants filed their opposition to the Motion to Certify Class (Dkt. No. 184), together with the expert Declaration of Daniel R. Fischel, the Declaration of Robert E. Boyle, Deputy Controller and former Vice President of Financial Reporting at Prudential (Dkt. Nos. 184-1, 184-2). Defendants also filed a Motion to Exclude the Expert Report and Opinions of Steven P. Feinstein (the "Motion to Exclude"). Dkt. No. 185-1. In their opposition, Defendants argued that Prudential's contemporaneous non-fraud related announcements on November 2, 2011 accounted for the November 3, 2011 price decline and that Plaintiffs could not

satisfy Fed. R. Civ. P. 23(b)(3) because Prudential had rebutted the presumption of reliance with evidence that the alleged misrepresentations did not affect the Company's stock price. Dkt. No. 184. Defendants further asserted that Plaintiffs failed to provide a viable damages model, and that Plaintiffs failed to demonstrate National Shopmen is an adequate Class Representative.

114. Defendants' Motion to Exclude attacked the reliability of Dr. Feinstein's testimony, arguing: (1) his testimony failed to prove that the DMF charge on November 2, 2011 affected the price of Prudential stock because he did not account for other disclosures on the same day, and (2) his damages model was "barebones" and "unimplemented" and therefore did not satisfy *Daubert v. Merrell Dow Pharms. Inc.*, 509 U.S. 579 (1993).

115. Following the filing of their class certification opposition papers but prior to Mr. Boyle's deposition, Defendants produced 23,369 pages of documents from Mr. Boyle's files and 7,806 pages of documents from Dr. Fischel's files. Plaintiffs reviewed the documents from Mr. Boyle prior to his deposition and those from Dr. Fischel in connection with their Reply in Support of the Motion to Certify Class.

116. Following the filing of their class certification opposition papers, Defendants produced 18,636 pages of documents from Mr. Boyle's files and six pages of documents from Dr. Fischel's files.

117. On April 10, 2015, Plaintiffs filed their opposition to the Motion to Exclude Dr. Feinstein's report and opinion. Dkt. Nos. 215-216. Plaintiffs argued that Defendants' *Daubert* motion attacked an opinion that Dr. Feinstein did not offer. *Id.* Moreover, Plaintiffs' opposition demonstrated that Dr. Feinstein applied a reliable and

accepted methodology in opining that Prudential's common shares traded in an efficient market and that damages could be determined on a class-wide basis. *Id*.

118. On April 24, 2015, Plaintiffs took the deposition of Mr. Boyle in Newark, New Jersey to explore the bases of Mr. Boyle's conclusions set forth in his February 27, 2015 declaration.

119. On May 11, 2015, Plaintiffs filed their reply in support of their Motion to Certify Class, asserting they had met their burden under Rule 23(a) and satisfied the predominance requirement of Rule 23(b)(3); first, because Plaintiffs had proven their entitlement to the presumption of reliance, and, second, because Defendants had failed to rebut the fraud-on-the-market presumption with evidence of the absence of price impact. Dkt. No. 234.

120. On August 31, 2015, the Court issued an order granting Plaintiffs' Motion to Certify Class, defining the class as all persons or entities (with certain exceptions) who purchased or otherwise acquired the publicly traded common stock of Prudential between May 5, 2010 and November 4, 2011, and who were damaged by Defendants' alleged violations of §§10(b) and 20(a) of the Exchange Act. Dkt. No. 336; *see also* Dkt. No. 335. The Court also denied Defendants' Motion to Exclude Dr. Feinstein. *Id*.

121. On September 14, 2015, Defendants filed a petition for leave to appeal the Court's ruling on the Motion to Certify Class under Fed. R. Civ. P. 23(f) with the U.S. Court of Appeals for the Third Circuit. *Prudential Fin., Inc. v. City of Sterling Heights Gen. Emps.' Ret. Sys.*, No. 15-8090, Defendants' Fed. R. Civ. P. 23(f) Petition for Permission to Appeal (3d Cir. Sept. 14, 2015).

122. On September 29, 2015, Plaintiffs filed their opposition to Defendants' petition. *Prudential Financial, Inc. v. City of Sterling Heights Gen. Emps.' Ret. Sys.*, No. 15-8090, Plaintiffs' Answer to Defendants' Fed. R. Civ. P. 23(f) Petition for Permission to Appeal (3d Cir. Sept. 29, 2015). Defendants sought leave to file a reply, which the Third Circuit granted on November 18, 2015.

123. On January 11, 2016, the Third Circuit granted Defendants' Fed. R. Civ. P. 23(f) petition.

124. On May 25, 2016, the Third Circuit vacated the briefing schedule for the appeal, and ordered the parties to update the Third Circuit every 60 days from May 25, 2016, in writing.

IV. EXPERT WITNESSES AND CONSULTANTS

125. As part of the Litigation, Plaintiffs retained experts and consultants, including economists, forensic accountants (independent and in-house) and insurance experts to assist Lead Counsel in refining Plaintiffs' claims and developing evidence, obtaining discovery and preparing for summary judgment and trial. This work provided valuable insight to Plaintiffs and Lead Counsel in evaluating the costs and benefits of settlement.

1. Crowninshield Financial Research and Dr. Stephen P. Feinstein

126. Plaintiffs retained the services of the highly-regarded economic consulting firm, Crowninshield Financial Research ("CFR"), to analyze market efficiency during the Class Period, analyze whether damages could be measured on a classwide basis and calculate the amount of damages the Class suffered.

127. Dr. Feinstein is the founder and President of CFR. He received a Ph.D. in Economics from Yale University, an M.A. in Economics from Yale University and a B.A. in Economics from Pomona College. He is an Associate Professor of Finance at Babson College in Massachusetts, where he held the Chair in Applied Investments and served as the Director of the Stephen D. Cutler Investment Management Center.

128. Dr. Feinstein also served as an economist at the Federal Reserve Bank of Atlanta and holds a Chartered Financial Analyst designation from the CFA Institute. His report provided evidence critical to obtaining class certification. *See, e.g.*, Dkt. No. 335 at 18, 21-22.

129. Dr. Feinstein proffered an expert report in support of Plaintiffs' motion for class certification. Dkt. No. 74-8. Additionally, Dr. Feinstein prepared for and provided deposition testimony, assisted Lead Counsel in analyzing Defendants' expert report and *Daubert* motion and analyzed damages to help Lead Counsel prepare for mediation and settlement discussions.

2. Hemming Morse, LLP

130. Plaintiffs retained the services of Hemming Morse, LLP ("Hemming Morse"), a highly respected firm of Certified Public Accountants ("CPA") and forensic accountants providing financial, economic and accounting expertise in complex business disputes, litigation and financial fraud litigation in the United States and internationally. Hemming Morse assisted in examining the Company's financial

disclosures and documents obtained in discovery to help Lead Counsel prepare for the continued litigation with an eye toward prevailing at summary judgment and trial. Hemming Morse's analysis was focused on the specifics of Prudential's reserve practices, disclosures and compliance with GAAP and the Company's internal controls.

3. Financial Markets Analysis, LLC

131. As part of Plaintiffs' initial investigation into the claims and economic issues in this action, Plaintiffs retained the services of Bjorn I. Steinholt ("Steinholt") of Financial Markets Analysis, LLC ("FMA"), an economic consulting firm, to assist in their analysis of materiality, loss causation, market efficiency and damages. FMA specializes in financial analyses and related economic consulting services regarding expert testimony and economic issues that typically arise in securities class actions. In this case, Mr. Steinholt was retained to provide consulting services in connection with materiality, loss causation and potential damages. Mr. Steinholt's services in these proceedings were necessary and contributed materially to the benefits achieved by the proposed Class. Mr. Steinholt provided Plaintiffs with substantial assistance in their factual and economic analysis in the initial investigation phase of the Litigation.

4. DeVito Consulting Inc.

132. DeVito Consulting Inc. is an independent consulting firm providing advisory services related to the insurance and reinsurance industry. Joseph DeVito, the firm's Chief Executive Officer, is a CPA with over 40 years of experience in the accounting field, in particular accounting for the insurance industry, and served as a

partner at the accounting firm, KPMG. Mr. DeVito reviewed documents related to Prudential's risk management policies, internal controls and reports related to Prudential's actuarial analyses and accounting for reserves.

5. Insurance Signals, Inc.

133. To gain insight into insurance industry jargon, reserve setting processes, unclaimed property practices and actuarial analyses, Plaintiffs worked with Philip J. Bieluch, managing member of Insurance Signals, Inc., an insurance industry expert with over 35 years of actuarial experience. Mr. Bieluch is a Member of the American Academy of Actuaries, a Fellow of the Conference of Consulting Actuaries, and a Chartered Life Underwriter and a Chartered Financial Consultant. Mr. Bieluch helped analyze Prudential's reserve setting and actuarial analysis and his expertise helped Plaintiffs gain a better understanding of core insurance industry concepts, including reserve setting, actuarial analyses and mortality ratios, among other matters, and crafting targeted discovery.

6. In-House Forensic Accountants

134. In order to properly analyze the financial and accounting issues and conduct effective discovery, Lead Counsel used specialized in-house forensic accounting professionals to provide investigative accounting, auditing and financial expertise throughout the Litigation. Chris Yurcek, CPA, Brad Sader, CPA and Terry Koelbl, CPA (collectively, the "Forensic Accountants"), provided forensic accounting assessments in this case. They worked side-by-side with Lead Counsel in investigating, evaluating and prosecuting this matter.

135. Mr. Yurcek is a Director of the Forensic Accounting Department at Robbins Geller. He is a CPA and has been designated by the American Institute of Certified Public Accountants as Certified in Financial Forensics ("CFF"). Mr. Yurcek has over 30 years of public accounting and consulting experience, including extensive experience in forensic accounting and fraud investigations, auditing at both national and local CPA firms, complex business litigation and bankruptcy fraud consulting.

136. Mr. Sader is a forensic accountant at Robbins Geller, has a CPA, is a Certified Fraud Examiner ("CFE") and also holds the CFF (certified in financial forensics) credential. Mr. Sader has 13 years of professional experience including forensic accounting consulting in numerous complex litigation matters and auditing and internal control compliance experience at a national CPA firm.

137. Mr. Koelbl is a forensic accountant at Robbins Geller. Mr. Koelbl is a CPA, a CFE and holds the CFF credential. Mr. Koelbl has 14 years of public accounting, auditing and forensic accounting experience including over ten years of experience investigating securities fraud.

138. The accounting issues in this case were technical and complex. The Forensic Accountants helped assess and analyze the accounting issues, including Prudential's requirement under GAAP to adequately record liabilities for its life insurance claims and its disclosure requirements under GAAP and SEC rules for loss contingencies and legal proceedings. The Forensic Accountants assisted counsel in understanding and interpreting complicated financial and accounting documents, concepts and testimony throughout the pendency of the Litigation. The Forensic Accountants, among other matters, assisted in the following respects:

(a) Initial case investigation, including helping counsel investigate, analyze and evaluate the complex financial, accounting and disclosure issues in the case.

(b) Document discovery, including targeting discovery necessary to investigate and prosecute accounting and disclosure claims, as well as evaluating and negotiating document productions.

(c) Compiling and analyzing the documentary evidence to support Lead Counsel's accounting allegations and preparing for depositions of key executive, finance and accounting personnel. To this end, the Forensic Accountants reviewed, analyzed and cataloged thousands of complex financial documents and auditor workpapers. The Forensic Accountants performed extensive research of authoritative literature and industry trends and practices relating to insurance claim liabilities and loss contingencies.

V. THE SETTLEMENT

139. The proposed Settlement was the product of vigorous, arm's-length negotiations between the parties and reflects the strengths and weakness of the case. Settlement on the terms proposed would not have been achieved absent the extensive efforts to plead and obtain the evidence necessary to prosecute Plaintiffs' claims, as described above. Nor would settlement have been achieved without the substantial participation and assistance of a strong mediator with extensive experience in negotiating resolution of complex actions of this type.

140. On February 24, 2016 in New York City, the parties participated in a full day mediation overseen by United States District Court Judge Layn R. Phillips (Ret.). Shawn Williams, Aelish Baig and Armen Zohrabian of Robbins Geller and Peter Pearlman of Cohn Lifland participated in the mediation on behalf of Plaintiffs and the Class. On behalf of Prudential, the mediation was attended by Prudential's Chief Litigation Officer, Eric Schwimmer, as well as outside counsel Edwin Schallert, Erica Weisgerber and Susan Reagan Gittes of Debevoise and Plimpton LLP. During the mediation, counsel for all parties engaged in a detailed exchange of the perceived strengths and weaknesses of their respective cases and addressed challenges presented by Judge Phillips. After multiple exchanges and proposals by Judge Phillips, the parties reached an agreement in principle to settle the claims for $33,000,000.

141. Following agreement upon settlement terms, the parties worked diligently to document the Settlement and prepare preliminary settlement approval papers, negotiating the details of a stipulation of settlement, plan of allocation and notice to the Class. The Stipulation resolves the claims of the Class against all Defendants and settles this Litigation for $33,000,000.

A. The Strengths and Weaknesses of the Case Favor Settlement

142. Based on three-and-a-half years of litigation, including extensive fact and expert discovery, motion practice and detailed analyses of the factual and legal issues underlying the Litigation, Lead Counsel and Plaintiffs have a thorough understanding of the issues and risks present in this case.

143. Plaintiffs believe they could have ultimately prevailed on the merits of the case. Indeed, Plaintiffs' perseverance throughout the Litigation resulted in the

discovery of substantial evidence in support of the alleged claims, including evidence Plaintiffs believe would be sufficient to sustain a favorable jury verdict that: (i) Defendants knowingly or recklessly misrepresented material facts concerning state regulatory investigations into the Company's unclaimed property practices; (ii) Defendants knew or recklessly disregarded that Prudential had failed to account for material liabilities from policyholders identified as deceased on the DMF and that Defendants knew that the Company's financial results, including revenues and income, were materially overstated and corresponding liabilities, including reserves, were understated; and (iii) Prudential's November 2, 2011 disclosure regarding the DMF, which quantified the impact of Prudential's unclaimed property practices, caused Prudential's stock price decline, thereby injuring Class Members.

144. Despite the strength of the evidence developed in discovery, Defendants were equally confident they would defeat Plaintiffs' claims. Indeed, Defendants vigorously contested each of Plaintiffs' allegations, and planned to marshal evidence at trial they hoped would convince the jury that: (i) Plaintiffs ignored settled insurance and unclaimed property law; (ii) Prudential's unclaimed property practices exceeded legal requirements; (iii) Prudential's reserves were appropriate; (iv) Plaintiffs' Amended Complaint alleged fraud by hindsight using new and novel protocols from a regulatory settlement that was agreed to and implemented after the Class Period to critique Prudential's historical unclaimed property practices, even though those practices were lawful and went beyond industry customs, and because the Amended Complaint impermissibly used revised reserve estimates associated with the new

business practices to claim that prior reserves were fraudulent; and (v) even if the fraud had occurred, it did not cause any recoverable damages to the Class.

145. Moreover, because the Third Circuit granted Defendants' petition for leave to appeal class certification pursuant to Fed. R. Civ. P. 23(f) on January 11, 2016, Plaintiffs faced the risk that the appellate court would overturn the Court's favorable ruling on the Motion for Class Certification. Although Plaintiffs were confident that the Third Circuit would affirm the District Court's well-reasoned Order certifying the Class, Plaintiffs considered the risk of the Third Circuit reversing the Court's class certification Order. Without the benefit of the Third Circuit's decision on class certification, Plaintiffs faced these significant uncertainties.

146. Even if the Third Circuit affirmed the District Court's class certification Order, Plaintiffs would have to overcome Defendants' forthcoming motion for summary judgment which Defendants had sought leave to file on July 9, 2015. Dkt. No. 261. The potentially dispositive issues Defendants sought to raise on summary judgment included: (i) challenging materiality by comparing the DMF reserve charge increase announced in the third quarter of 2011 to Prudential's future policy reserves; (ii) challenging falsity by claiming the alleged misrepresentations concerning Prudential's reserves constituted inactionable opinions under *Omnicare*, 135 S. Ct. 1318; (iii) challenging falsity by arguing that although Prudential was not obligated by unclaimed property laws to use the DMF, the Company exceeded industry custom by using the database; (iv) challenging loss causation, arguing that Prudential's DMF related disclosures did not correct any alleged misrepresentation but instead resulted from Prudential's decision to settle with state regulators, which imposed new and

expanded "fuzzy match" requirements and proof of death requirements; and (v) further, challenging loss causation and damages by arguing that non-fraud related disclosures announced on November 2, 2011 caused the decline in Prudential's stock price. *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376 (9th Cir. 2010) (finding reasonable jury could not find material misrepresentations or loss causation and affirming grant of summary judgment and dismissal of securities fraud action).

147. Assuming Plaintiffs overcame Defendants' motion for summary judgment, and the case proceeded to trial, Plaintiffs faced the real risk that the jury might not be convinced by the evidence presented in support of their complex financial fraud allegations. *See, e.g., In re JDS Uniphase Corp. Sec. Litig.*, No. 02-cv-01486, Corrected Final Judgment (N.D. Cal. Mar. 28, 2008) (Dkt. No. 1422) (case dismissed and judgment entered in favor of Defendants after jury trial rejecting plaintiffs' federal securities laws violations). Plaintiffs thus faced the risk of failing to convince jurors at trial that: (i) Defendants failed to reserve for liabilities resulting from Prudential's retention of unclaimed benefits for deceased policyholders, and omitted material details concerning state regulatory investigations into Prudential's unclaimed property practices; (ii) Defendants did so knowingly or recklessly; (iii) Defendants' misrepresentations were material; (iv) the November 2, 2011 DMF disclosure (which quantified the financial impact of Prudential's unclaimed property practices) caused Prudential's stock price decline; and (v) the alleged fraud damaged Class Members.

148. Even if Plaintiffs succeeded in establishing Defendants' liability, Plaintiffs faced serious risks that could reduce the amount of damages if Plaintiffs

prevailed on some, but not all, of their alleged claims. For example, if jurors found that some of the Class Period statements were not proven to be false or were not made with requisite scienter, the Class Period could be shortened, eliminating claims for some Class Members and reducing the overall amount of damages recoverable in this Litigation.

149. In addition, there was a substantial risk that Plaintiffs might not be able to prove loss causation and damages at trial. A private plaintiff who claims securities fraud must prove that the defendants' fraud caused an economic loss. Loss causation can be proved with evidence of a stock price decline when the facts revealing the company's true financial condition are disclosed. To establish loss causation, the plaintiff must demonstrate a causal connection between the deceptive acts that form the basis for the claim of securities fraud and the loss suffered by plaintiffs. *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 345-36 (2005); *McCabe v. Ernst & Young, LLP*, 494 F.3d 418, 425-26 (3d Cir. 2007).

150. There was also the risk that even if Plaintiffs prevailed at trial, Defendants would seek to set aside the verdict or appeal it. For example, in *In re BankAtlantic Bancorp Sec. Litig.*, No. 07 61542-CIV-UINGARO (S.D. Fla.), the plaintiff convinced the jury at trial that defendants' misrepresentations caused BankAtlantic's stock price to be artificially inflated and obtained a jury award for damages. Thereafter, defendants filed a motion for judgment as a matter of law arguing that plaintiffs failed to include sufficient proof of loss causation and damages. The court, agreeing with BankAtlantic, granted BankAtlantic's motion for judgment as a matter of law and entered judgment. *In re BankAtlantic Bancorp, Sec. Litig.*, No.

07-61542-CV-UNGARO, 2011 U.S. Dist. LEXIS 48057, at *69-*72, *125-*126 (S.D. Fla. Apr. 25, 2011). Therefore Plaintiffs considered the risk of no recovery a real possibility.

151. If Plaintiffs prevailed, there was a substantial risk that Defendants would appeal any verdict achieved in Plaintiffs' favor. *See, e.g.*, *Apollo*, 2008 U.S. Dist. LEXIS 61995. The appeals process could span years, during which time the Class would receive no recovery. Any appeal would also create the risk of reversal, in which case the Class would receive nothing even after having prevailed on the claims at trial. In *Glickenhaus v. Household International*, a securities class action filed in 2002, plaintiffs won a verdict after trial in 2009. After post-trial proceedings, the District Court entered a $2.4 billion judgment in 2013. Defendants appealed to the United States Court of Appeals for the Seventh Circuit arguing, among other things, that plaintiffs' proof of loss causation at trial was insufficient to support the jury verdict. Six years after the jury verdict and 13 years after the case was initially filed, the Seventh Circuit vacated the judgment, finding that plaintiffs' expert on loss causation failed to account for firm-specific non-fraud factors that may have influenced the company's stock price and, reversed granting defendants a new trial on loss causation and whether certain defendants "made" the actionable statements. *Glickenhaus*, 787 F.3d 408 (7th Cir. 2015).

152. Here, Defendants and their expert testified that Prudential's stock price declined not because of fraud-related disclosures, but instead because of firm-specific information unrelated to the alleged fraud including, among other factors, the announcement of an increase in guaranteed minimum income benefit and guaranteed

minimum death benefit reserves by $435 million and 2012 earnings guidance below analyst expectations. Dkt. No. 184-1. While Plaintiffs believed they had compelling responses to this evidence, including the testimony of Dr. Feinstein who would have sought to disaggregate information from the confounding non-fraud-related disclosures and other arguments Defendants would make at trial, the damages recoverable at trial could have been significantly reduced or eliminated altogether if the jury credited Defendants' arguments.

153. Plaintiffs anticipated a battle of the experts on these issues at trial. Plaintiffs and Defendants retained experts who would offer contradictory testimony regarding the information that was available to and relied upon by market analysts and investors, the reasons for the price movement in Prudential's securities and the existence and amount of damages suffered by members of the Class. Even having retained an expert who is among the most respected in the field, Plaintiffs were not guaranteed a victory on the issues of damages and loss causation, as Defendants had also hired a respected expert to refute Plaintiffs' position. Indeed, a trial in this case could hinge on expert testimony. Therefore, a substantial risk existed of a party prevailing not on the merits, but instead on the jury's impression of the experts.

154. Having considered the foregoing, and evaluated Defendants' likely defenses at summary judgment and trial, it was the informed judgment of Plaintiffs and Lead Counsel, based upon all proceedings to date and their extensive experience in litigating shareholder class actions, that the proposed Settlement of this matter for $33 million in exchange for a mutual release of all claims, and including the other

terms set forth in the Stipulation, provides fair, reasonable and adequate consideration, and is in the best interests of the Class.

B. The Plan of Allocation

155. Upon approval of the Stipulation by the Court and entry of a judgment, and upon satisfaction of the other conditions to the Settlement, the Settlement Fund will cover certain administrative expenses, including the cost of providing notice to the Class; the cost of publishing notice; payment of taxes assessed against the Settlement Fund; costs associated with the processing of claims submitted; and Lead Counsel's approved fees and expenses. The balance of the Settlement Fund (the "Net Settlement Fund") plus accumulated interest will be distributed to Class Members who submit valid and timely Proofs of Claim.

156. Pursuant to the Notice Order and as set forth in the Notice, all Class Members who wish to participate in the distribution of the Net Settlement Fund must submit a valid Proof of Claim postmarked on or before November 2, 2016. The Net Settlement Fund shall be distributed according to the Plan of Allocation, which is set forth in detail in the Notice.

157. If approved, the Plan of Allocation will govern how the proceeds of the Net Settlement Fund will be distributed among Class Members who submit timely and valid Proofs of Claim. As explained in the Notice, the Plan of Allocation apportions the recovery among eligible Class Members based on the timing of purchases and sales of Prudential's common stock and options.

158. The Plan of Allocation was tailored to account for the litigation risks specific to this action and reflects an assessment of the damages that may have been

recovered had liability been successfully established at trial and withstood attack on appeal.

159. Specifically, the Plan of Allocation calls for the Net Settlement Fund to be distributed to Class Members who submit valid, timely Proof of Claim and Release forms ("Authorized Claimants") under the Plan of Allocation, which was fully set forth in the Notice distributed to potential Class Members pursuant to the Preliminary Approval Order. The Plan of Allocation provides that a Class Member will be eligible to participate in the distribution of the Net Settlement Fund only if that Class Member has a net loss on all transactions in Prudential common stock, after all profits from transactions in Prudential common stock during the Class Period are taken into account. In the event a Class Member has more than one purchase, acquisition or sale of Prudential common stock during the Class Period, all purchases, acquisitions and sales within the Class Period shall be matched on a First-In, First-Out ("FIFO") basis.

160. Under the FIFO method, sales of Prudential common stock during the Class Period will be matched, in chronological order, first against Prudential common stock held at the beginning of the Class Period. The remaining sales of Prudential common stock during the Class Period will then be matched, in chronological order, against Prudential common stock purchased or acquired during the Class Period.

161. The purpose of the plan is to estimate the impact of the alleged misrepresentations on the price of Prudential common stock during the Class Period, and the plan reflects an assessment of the damages that could have been recovered as well as Plaintiffs' assessment of the likelihood of establishing liability.

162. The plan provides for the calculation of each claimant's "Recognized Claim," which will be calculated for each purchase or acquisition of Prudential common stock, and for which adequate documentation is provided.

163. The Plan of Allocation provides that each Authorized Claimant shall be allocated a *pro rata* share of the Net Settlement Fund based on his, her or its Recognized Claim as compared to the total Recognized Claims of all Authorized Claimants. No distribution will be made to Class Members who would otherwise receive a distribution of less than $10.00.

164. The Notice informed Class Members that the Court will oversee the claims administration process and that they can write to the Court in the event they are unsatisfied with application of the Plan of Allocation by the Claims Administrator.

165. To date, no written objections have been filed by any potential Class Member to the Plan of Allocation.

C. Plaintiffs' Counsel's Motion for Attorney's Fees and Expenses is Reasonable

166. The successful prosecution of this Litigation required Lead Counsel and their para-professionals to perform 25,359.52 hours of work valued at $12,055,647.00 and incur $794,321.81 in expenses, as detailed in my accompanying declaration. As detailed in the Declaration of Peter Pearlman in support of the application for an award of fees and expenses, Liaison Counsel expended a total of 586.20 hours in attorney and para-professional time valued at $424,570.00 and incurred $4,633.98 in expenses assisting in the Litigation of this action and in obtaining the Settlement.

167. Based on the extensive efforts on behalf of the Class, as described above, Lead Counsel is applying for compensation from the Settlement Fund on a percentage basis, and has requested a fee in the amount of 30% of the Settlement Fund. In light of the nature and extent of the Litigation, the diligent prosecution of the Litigation, the complexity of the factual and legal issues presented and the other factors described above and in the accompanying motion for approval of the fee award, Plaintiffs and Lead Counsel believe that the requested fee of 30% of the Settlement Fund is fair and reasonable.

168. A 30% fee award is justified by the specific facts and circumstances in this case and the substantial risks that Plaintiffs had to overcome at the pleading, class certification, discovery and summary judgment phases of the Litigation, all with an eye to winning at trial, as set forth herein. The $33 million cash Settlement was achieved as a result of extensive and vigorous prosecution of this Litigation, contentious and complicated motions practice, years of hard-fought discovery, analysis of voluminous evidence and ultimately preparing to overcome Defendants' arguments at summary judgment and at trial.

169. The Settlement Amount, $33 million, represents approximately 13.2% of the maximum damages that Plaintiffs could reasonably expect to be recovered at trial, and represents approximately 165% of the amount that could be recovered under Defendants' assessment of potential damges. If the jury were to reject some of Plaintiffs' allegations of fraud for reasons described above, or if the Court were to

reject the proffered damages methodology, the amount of damages recovered would have been significantly less, and the percentage recovery under the Settlement proportionally higher.

170. This Litigation was prosecuted by Lead Counsel on an "at-risk" contingent-fee basis. Lead Counsel fully assumed the risk of an unsuccessful result and has received no compensation for services rendered or the significant expenses incurred in litigating this action for the benefit of the Class. Any fees or expenses awarded to Lead Counsel have always been at risk and completely contingent on the result achieved. Because the fee to be awarded in this matter is entirely contingent, the only certainty from the outset was that there would be no fee without a successful result and that such a result would be realized only after a lengthy and difficult effort.

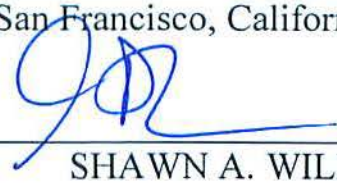
171. This Litigation could not have been successfully prosecuted without the substantial participation and assistance of the Class Representative and Lead Plaintiffs, who spent significant time monitoring the Litigation, consulting with Lead Counsel regarding case developments and prospects for settlement and participating in discovery to demonstrate the typicality of their claims, the adequacy of its representation and the suitability of this case for litigation on a Class-wide basis. The time spent by the Class Representative and Lead Plaintiffs in doing so, as reflected in the accompanying Declarations of Timothy O'Connell, Charles B. O'Neill and Darris

Garoufalis submitted contemporaneously herewith, were both reasonable and necessary to the prosecution of this case.

VI. CONCLUSION

172. For all of the foregoing reasons, Lead Counsel respectfully requests the Court to approve the Settlement and Plan of Allocation of settlement proceeds and to approve the fee and expense application and award Plaintiffs' counsel 30% of the Settlement Fund plus $798,955.79 in expenses, and to approve the expenses requested by Plaintiffs.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 24th day of August, 2016, at San Francisco, California.



SHAWN A. WILLIAMS