

1 LERACH COUGHLIN STOIA GELLER
 2 RUDMAN & ROBBINS LLP
 3 JOHN J. STOIA, JR. (141757)
 4 THEODORE J. PINTAR (131372)
 5 HELEN I. ZELDES (220051)
 6 RACHEL L. JENSEN (211456)
 7 655 West Broadway, Suite 1900
 8 San Diego, CA 92101
 9 Telephone: 619/231-1058
 10 619/231-7423 (fax)
 11 jstoia@lerachlaw.com
 12 tpintar@lerachlaw.com
 13 hzeldes@lerachlaw.com
 14 rjensen@lerachlaw.com

Attorneys for Plaintiff

[Additional counsel appear on signature page.]

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12 WESTERN DIVISION

13 CAROLYN Y. HEALEY, on Behalf of
 14 Herself and All Others Similarly
 15 Situated,

Plaintiff,

vs.

17 ALLIANZ LIFE INSURANCE
 18 COMPANY OF NORTH AMERICA, a
 19 Minnesota corporation,

Defendant.

No. CV 05-8908-CAS (MANx)

CLASS ACTION

FIRST AMENDED COMPLAINT
FOR:

1. Violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO");
2. Breach of Fiduciary Duty;
3. Aiding and Abetting Breach of Fiduciary Duty;
4. Breach of the Duty of Good Faith and Fair Dealing; and
5. Unjust Enrichment and Imposition of Constructive Trust

DEMAND FOR JURY TRIAL

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 CLERK U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIF.
 LOS ANGELES

FILED

1 Plaintiff, Carolyn Y. Healey (“plaintiff” or “Mrs. Healey”), by and through her
2 attorneys, brings this action against Allianz Life Insurance Company of North
3 America (“Allianz” or “defendant”) on behalf of herself and all other similarly
4 situated senior citizens. Plaintiff alleges upon information and belief, as well as the
5 investigation of counsel, as follows:

6 JURISDICTION AND VENUE

7 1. This Court has original jurisdiction over the subject matter of this action
8 pursuant to 28 U.S.C. §§1331-32 and 18 U.S.C. §1964. This Court has personal
9 jurisdiction over defendant pursuant to 18 U.S.C. §1965(b) and (d). The Court has
10 supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. §1367. The
11 amount in controversy exceeds \$75,000 for plaintiff, exclusive of costs and interest.
12 Furthermore, the aggregate amount in controversy for this class action exceeds
13 \$5,000,000, and less than one-third of all class members reside in California. *See*
14 Class Action Fairness Act (“CAFA”), Pub. L. 109-2, 119 Stat. 4 (2005).

15 2. Venue is proper in this District pursuant to 28 U.S.C. §1391(a) and (b)
16 because Allianz maintains offices, has agents and is licensed to and does transact
17 business here. Venue is also proper under 18 U.S.C. §1965(a) because Allianz
18 transacts substantial business in this District.

19 INTRODUCTION

20 3. This class action challenges defendant’s unlawful and unethical scheme
21 to fraudulently solicit, market, sell and issue deferred annuity policies to senior
22 citizens (persons age 65 years and older) in California and nationwide. Defendant
23 targets the elderly, including the 82-year-old plaintiff, as prospective purchasers of
24 deferred annuities even though they are unlikely to receive any benefit from the
25 annuity because the maturity date, *i.e.*, the date on which income payments will begin,
26 exceeds their actuarial life expectancy. By and through its network of affiliated sales
27 and marketing agents, defendant turns a blind eye while elderly individuals are
28 persuaded into consolidating their savings and other investments into deferred

1 annuities that tie up their money for 10 or more years, carry exorbitant “surrender
2 charges,” create the likelihood of early withdrawal or surrender, thus subjecting the
3 owner to undisclosed tax penalties and create complicated estate problems for their
4 loved ones after their death.

5 4. Plaintiff brings this nationwide class action on behalf of herself and all
6 other senior citizens who have purchased a fixed or indexed deferred annuity solicited,
7 referred, marketed, sold and/or issued by Allianz and its network of Independent
8 Marketing Organizations (“IMO’s”) and individual sales agents (collectively referred
9 to herein as “Affiliated Agents”), and/or who have suffered or could suffer a penalty
10 and/or surrender charge, including those incurred on death, for accessing their money
11 before its maturity date (the “class” or “class members”).

12 5. Allianz markets and sells its deferred annuity products on a national basis
13 primarily through its Affiliated Agents. Allianz utilizes the IMO’s to target senior
14 citizens in the domestic sales of its deferred annuities. The IMO’s hire and manage
15 groups of independent sales agents, who are trained solely to sell Allianz annuity
16 products. The IMO’s also systematically solicit, market and sell deferred annuities to
17 seniors, using fraudulent and deceptive sales tactics and methods, such as offering
18 “free financial and estate planning advice,” including living trust mills, to induce their
19 trust, obtain personal financial information and persuade them to convert their savings
20 and other investments such as 401(k)’s, 403(b)’s, IRA’s, CD’s and life insurance
21 policies into deferred annuities. Defendant profits from this scheme by collecting
22 premiums, inadequately disclosed commissions and expensive surrender charges from
23 annuity sales that would not occur but for the deceptive, fraudulent and illegal conduct
24 of Allianz and its Affiliated Agents described herein.

25 6. To stimulate sales production, Allianz offers sales incentives,
26 commissions and other promotions to the Affiliated Agents for selling Allianz
27 deferred annuity products. Allianz does so even though it is aware of the unsavory
28 tactics used by the Affiliated Agents (*e.g.*, financial seminars, estate planning and

1 her home. In 2002, Mr. Smelser sold Mrs. Healey an “Accumulator Bonus Maxxx
2 Annuity,” a flexible deferred annuity issued by Allianz. Mrs. Healey made a premium
3 payment of \$30,000 for the annuity. This annuity would not have matured until 2012,
4 meaning that Mrs. Healey would need to live to be 88 years old before receiving
5 payments under the annuity. The maturity date far exceeds her life expectancy. Mrs.
6 Healey, however, could not wait until she was 88 years old to receive payments from
7 the annuity. She surrendered the policy several years later, receiving less than her
8 premium payment and giving up thousands of dollars in accrued interest.

9 11. Allianz is organized and existing under and by virtue of the laws of the
10 State of Maryland and is authorized to, and in fact does, transact business in the State
11 of California and within this Judicial District. Allianz maintains its executive offices
12 at 5701 Golden Hills Drive, Minneapolis, Minnesota, 55146.

13 **FACTUAL ALLEGATIONS**

14 **Deferred Annuity Policies**

15 12. An annuity is a contract between an annuitant and an insurance company
16 pursuant to which the annuitant makes an upfront lump-sum payment or a series of
17 payments to the insurance company.¹ The insurance company, in turn, agrees to make
18 payments to the annuitant over a period of time. With a standard or “immediate”
19 annuity, the annuitant has a right to a stream of income via payments from the
20 insurance company that is usually guaranteed to last for as long as he or she is alive.
21 This provides security to individuals, such as senior citizens, who are concerned they
22 may outlive their assets.

23 13. With a deferred annuity, the annuitant foregoes payment until some point
24 in the future – *i.e.* the maturity date – which is often many years later. A deferred
25

26 ¹ In this case, plaintiff purchased a flexible premium deferred annuity. Under a
27 flexible premium annuity, the owner may, within set limits, pay as much premium as
28 the owner wants, whenever the owner wants.

1 annuity has two periods: the accumulation period and the payout period. During the
2 accumulation period, the earnings on the annuitant's premium payments grow, tax-
3 deferred, for as long as the owner leaves the earnings in the annuity. During the
4 payout period, the annuity company pays income to the annuitant or designated
5 beneficiary of the annuity income. Thus, deferred annuities are very different from
6 immediate annuities and provide a long-term investment vehicle, not an up-front
7 income stream. The annuities at issue in this action are deferred annuities.

8 14. There are at least two kinds of deferred annuities: a "fixed" deferred
9 annuity and an "indexed" deferred annuity.

10 (a) A "fixed" annuity is an annuity for which the insurance company
11 offers a guaranteed interest rate for a set period of time on the annuitant's premium
12 payments.

13 (b) An "indexed" annuity is an annuity for which the rate of interest
14 the company provides to the policyholder fluctuates depending upon the performance
15 of a stock market index, such as the S&P 500. The amount of interest credited to an
16 equity-indexed annuity also depends on several other factors, including the term (the
17 period over which the annuity interest is calculated), participation rate (amount of the
18 increase in the index that will be used to calculate the interest), cap rate (an agreed-
19 upon rate which limits the maximum interest rate), floor rate (minimum interest rate),
20 whether the annuity utilizes averaging (determining the interest rate by averaging the
21 index's performance over the term of the annuity) and whether the annuity utilizes
22 compound or simple interest. In short, equity indexed annuities are complex
23 derivative products and consequently lend themselves to abusive sales practices
24 directed toward senior citizens who are unsophisticated investors.

25 15. With a deferred annuity, the annuitant cannot withdraw his or her
26 investment or the earned interest until the deferred annuity matures, which is usually
27 between 10 and 20 years after the initial payment of the premium.

28

1 16. The penalty for early withdrawal of either the principal or earnings is
2 called a “surrender charge.” The percentage of the surrender charge can start as high
3 as 20% or more, then declines after a period of 5 to 8 years, and diminishes further
4 with each passing year for a specified number of years. The surrender charge is often a
5 hefty penalty, discouraging early withdrawal of principal from an annuity. As a result,
6 the terms of deferred annuities severely limit senior citizens’ access to their funds for
7 emergencies or cash-flow purposes.

8 17. Defendant represents its deferred annuities are beneficial because the
9 principal and the interest they accrue is tax-deferred prior to withdrawal. After that
10 deferral period, it is taxed at ordinary income tax rates. This may be beneficial to an
11 annuitant who is currently working and, therefore, paying income tax. A deferred
12 annuity does not benefit a senior citizen, however, who is already retired and,
13 therefore, not paying as much in income taxes, if any at all.

14 18. Moreover, the deferred annuity is not appropriate for senior citizens who
15 often need access to the principal prior to the maturity date due to medical expenses,
16 assisted living costs and otherwise. Most importantly, deferred annuities are
17 inappropriate for senior citizens because the investment does not mature within the
18 senior citizen’s lifetime. Defendant knows this is the case and intentionally targets
19 plaintiff and the class in order to reap massive surrender charges prior to policy
20 maturity.

21 **State Law and Regulators Warn Against Selling Deferred**
22 **Annuities to the Elderly**

23 19. Governmental regulators, insurance regulations and internal corporate
24 training and sales policies all expressly recognize the unsuitability of deferred
25 annuities as investments for persons aged 65 and older.

26 20. For example, in California, the legislature has enacted senior citizen
27 protection statutes relating specifically to the types of policies at issue here, due to the
28 lack of flexibility inherent in deferred annuities, coupled with the diminishing

1 resources of the elderly. These provisions (codified at Cal. Ins. Code §785 *et seq.*)
2 impose a duty of honesty, good faith and fair dealing on insurers when selling
3 deferred annuity products to senior citizens, prohibit “churning” and similar sales
4 practices and dictate strict disclosure requirements to ensure the suitability of a
5 deferred annuity for the senior citizen’s needs. The Florida legislature has taken
6 similar actions to protect seniors by enacting legislation that imposes a duty on
7 insurance companies and agents offering annuity products to seniors over the age of
8 65 to clearly document the basis for selling the product. *See Fla. Stat. §627.4554.*

9 21. Further, under California Insurance Code §1631, only licensed insurance
10 agents may solicit, offer and sell deferred annuities. This licensing requirement
11 guarantees that consumers receive appropriate guidance when purchasing a deferred
12 annuity and a level of integrity and accountability. It also attempts to guarantee that
13 only agents, who are required to refrain from misleading the vulnerable consumer,
14 will sell these complex products to seniors because the agent is subject to regulations
15 and has legal duties requiring him or her to disclose all facts and information within
16 his or her knowledge regarding a marketed insurance product which may be
17 “material” to a prospective annuitant’s decision to purchase such products. *See, e.g.,*
18 *Cal. Ins. Code §§330, 331, 332, 334.*

19 22. Recently, California Insurance Commissioner John Garamendi
20 (“Commissioner Garamendi”) issued a notice to all insurers and insurance agents
21 regarding the use of “unfair marketing and sales tactics designed to accomplish the
22 sale of annuities principally to senior citizens.” As Commissioner Garamendi noted,
23 insurers and insurance agents often utilize misleading marketing and deceptive sales
24 schemes, such as portraying themselves as expert financial planners who are acting in
25 the senior’s best interests, to lure seniors into purchasing annuities that do not fulfill
26 the senior’s retirement needs. In reality (and unbeknownst to the senior), the opposite
27 is true. He explained:

28

1 Seniors characteristically perceive the agent as a legal advisor or estate
2 planner and not as an insurance agent because the representatives
3 misrepresent themselves as experts in the initial subject area. They gain
4 the trust and confidence of the senior. [sic] and then misuse that trust to
5 sell an annuity that is oftentimes unsuitable for the senior.

6 Because of this perception that the salesperson has their best
7 interests in mind, seniors may conclude that they need not totally
8 understand what the pros and cons of an annuity are for their specific
9 situation. They may not be told, or if told they may not understand, the
10 impact of surrender penalties on their net worth, or far-off annuitization
11 dates on their liquidity, or the sale of an annuity or other investment to
12 buy the annuity offered on the taxes they will owe.

13 Cal. Ins. Commissioner John Garamendi Notice (Nov. 18, 2005) at 3.

14 23. Even before this notice, in 2002, former California Insurance
15 Commissioner Harry Low issued a notice to all insurers and insurance agents about
16 using a ruse to “accomplish the sale of annuities that is principally used in the
17 solicitation of senior citizens.” The Department of Insurance (“DOI”) notice and
18 warning went unheeded by defendant. Because annuity sales are extremely lucrative
19 (to the tune of ***\$115.6 billion annually***), Allianz continues to use its Affiliated Agents
20 to do the dirty work of marketing and selling deferred annuities to senior citizens.

21 24. Florida has taken steps to curb such abuses. In 2004, Florida’s Chief
22 Financial Officer, Tom Gallagher (“CFO Gallagher”), drew attention to these deceitful
23 business practices by warning consumers about such practices. In doing so, CFO
24 Gallagher emphasized the inherent unsuitability of deferred annuities as investment
25 vehicles for seniors needing access to their retirement funds: “Annuities can be an
26 effective investment tool for many Floridians wanting a steady stream of income for
27 retirement. . . . But too many of our state’s seniors have been preyed upon by agents
28 who are motivated by commission payments, not consideration of a senior’s financial

1 circumstances.” Along with releasing this warning to seniors, CFO Gallagher took
2 action to protect seniors by pursuing a bill that required insurance companies and
3 agents offering annuity products to seniors over the age of 65 to clearly document the
4 basis for selling the product. Shortly thereafter, that legislation was passed.

5 25. In addition to warning seniors and insurers about sales of the deferred
6 annuity product, states have also recognized that the marketing methods utilized by
7 insurers and their agents are fraudulent and deceptive. In 2001, Pennsylvania Attorney
8 General Mike Fisher drew attention to living trust mill scams, saying:

9 Unfortunately, when it comes to living trusts, unscrupulous con
10 artists are ready to play on consumers’ fears of the unknown. In some cases,
11 consumers – mostly elderly – are solicited by phone or mail to attend
12 seminars or to set up in-home appointments to discuss living trusts.
13 Living trusts are then marketed through high-pressure sales pitches which
14 prey on the fear that assets will be tied up indefinitely or that estates are
15 prone to heavy taxes and fees if a living trust is not in place. Con artists
16 often rely on unfamiliar terms such as “probate” and “executor” to
17 convince consumers that a living trust is right for them even though
18 many of the complex rules and fees that can complicate estate
19 distributions do not exist in Pennsylvania.

20 Sometimes victims are sold worthless “kits”, costing several
21 thousand dollars, which are nothing more than standard forms that may or
22 may not be valid, as laws concerning living trusts vary from state to
23 state. In other cases, false promoters simply want to gain access to
24 consumers’ financial information so they can sell them other products
25 like insurance annuities.

1 **Defendant's Scheme to Sell Deferred Annuities to Senior Citizens**

2 26. Despite these warnings by regulators, defendant continues to solicit,
3 market, sell and underwrite deferred annuity policies targeting the elderly, including
4 plaintiff and the class.

5 27. Allianz began aggressively targeting senior citizens, including plaintiff
6 and the class, with its deferred annuity sales in the late 1990's. Since then, Allianz
7 has ignored numerous state policy and regulatory warnings addressing improper
8 marketing and sales of deferred annuities to seniors. Defendant's common course of
9 conduct and scheme includes a number of players and shifty machinations calculated
10 to defraud or otherwise take advantage of the elderly. Defendant and its Affiliated
11 Agents garner the trust of seniors and their confidential and personal financial
12 information, to in turn manipulate them into buying a deferred annuity.

13 28. Allianz and its Affiliated Agents engage in various deceptive sales
14 techniques designed to mislead senior citizens regarding the purported benefits and
15 advantages of annuities compared to other forms of investments, and have concealed
16 or downplayed the disadvantages of purchasing a deferred annuity in later stages of
17 life. Defendant's marketing materials mislead seniors by not adequately disclosing
18 the hefty surrender charges that remain in effect for the first 10-15 years of the annuity
19 and by not adequately disclosing that the maturity date is beyond the actuarial life
20 expectancy of the annuitant.

21 29. Allianz's marketing materials also mislead seniors by disguising the fact
22 that purchasers of indexed deferred annuities can have 0% returns in a given year.
23 Instead, defendant's marketing materials falsely proclaim that indexed deferred
24 annuities are a risk-free investment because the deferred annuity contract provides for
25 a guaranteed minimum account value. Allianz's marketing materials do not disclose,
26 however, that the guaranteed minimum account value does not exceed the premiums
27 paid for many years, and that the policyholder must not surrender the annuity for a
28

1 significant period of time before the guaranteed minimum account value will protect
2 against the risk of losing money.

3 30. Senior citizens are an ideal target for defendant's scheme and are
4 particularly susceptible to these deceptive and misleading practices. Many seniors
5 have a diminished ability to understand complex investment transactions, harbor
6 concerns about risky investments and fear outliving their assets. Defendant, by and
7 through its sales agents, pursues senior citizens with sales tactics designed to scare,
8 deceive, coerce, harass and/or force them into converting their assets and investments
9 into deferred annuities.

10 31. Since the late 1990's, Allianz has increasingly relied upon IMO's to
11 market and sell its deferred annuity products to seniors. During that time, Allianz has
12 dramatically increased its independent sales and marketing forces in an effort to
13 stimulate growth. To date, Allianz markets and sells its deferred annuity products
14 through approximately 2,000 IMO's representing over 155,000 individual sales
15 agents. The IMO's enter into agreements with Allianz to sell its deferred annuities,
16 and they adhere to the sales procedures, protocols, and materials dictated, prepared
17 and/or approved by Allianz. Allianz also undertakes the obligation of training. In
18 turn, the IMO's recruit and hire individual sales agents and brokers to market and sell
19 Allianz annuity products. Once an individual sales agent has been recruited and hired
20 by an IMO, Allianz enters into an agency agreement with that individual whereby
21 Allianz agrees to formally appoint the sales agent as an Allianz licensed insurance
22 agent in California and elsewhere. As discussed further below, defendant has aided
23 and abetted and/or ratified all actions of the IMO's and their employees and agents.

24 32. Unbeknownst to plaintiff and the class, Allianz offers bonuses, unusually
25 high commissions and other promotions to its Affiliated Agents for targeting and
26 selling Allianz deferred annuity products to seniors, including Mrs. Healey and the
27 class. By doing so, Allianz induces, condones and encourages its Affiliated Agents to
28 engage in aggressive and predatory marketing tactics, including targeting and

1 exploiting the vulnerability and concerns of senior citizens. For example, with the
2 knowledge and at least tacit approval of Allianz, the Affiliated Agents persuade senior
3 citizens to convert or liquidate other annuities or retirement investments to purchase
4 Allianz policies, often resulting in surrender charges incurred for accessing the
5 senior's money after purchasing Allianz's products.

6 33. Allianz, in turn, receives immense profits and maintains or increases
7 market share from the sale of deferred annuities to seniors. According to an A.M.
8 Best Company report released in 2004, Allianz has collected over \$34 billion in
9 premiums from the marketing and sale of its deferred annuities during the past five
10 years, with a substantial amount of those premiums resulting from its sales to seniors.

11 34. Defendant and its Affiliated Agents train individual sales agents to target
12 senior citizens by offering such financial or estate planning as a community service
13 event for the elderly. Defendant and its Affiliated Agents train individual sales agents
14 to pose as "expert financial advisers," who create the false impression that they are
15 acting in the senior's best interest. Upon information and belief, defendant and its
16 Affiliated Agents also instruct sales agents to use these meetings to lure seniors into
17 providing confidential financial information. Defendant provides standardized or
18 approved forms to sales agents for eliciting information about the victims' assets
19 under the guise of gathering the requisite information for preparing other financial or
20 legal documents. Sales agents target seniors holding substantial retirement assets,
21 including 401(k)s, 403(b)s, IRAs, CDs and/or other annuities that can be transferred
22 into Allianz annuity products. Sales agents then use this information to determine
23 whether a given senior is a viable target for their deceptive sales scheme. Based upon
24 the training given to them by defendant, sales agents then focus additional marketing
25 efforts on those seniors they have identified as viable targets through this scam.

26 35. Pursuant to their agreements with Allianz, the Affiliated Agents agree to
27 adhere to the sales procedures, protocols and materials dictated, prepared and/or
28 approved by Allianz. These sales protocols and procedures include the use of

1 standard annuity marketing materials, illustrations and form contracts created and/or
2 authorized by Allianz. Allianz instructs its individual sales agents not to elaborate on
3 the information presented in its form annuity contracts, and uniform pre-printed sales
4 illustrations and marketing materials when making a sales presentation to prospective
5 customers.

6 36. Allianz and its Affiliated Agents collude in targeting the elderly and
7 coordinate the exchange of private financial and personal information of intended
8 victims. Allianz and its Affiliated Agents develop profiles of particular individuals
9 based on age, available assets and predicted vulnerability. Defendant and its
10 Affiliated Agents arrange to share information, documentation, advertising and
11 promotional materials to other co-conspirators so that they, in turn, could provide it to
12 targets for inducing reliance and trust based on the name and reputation of Allianz.

13 37. For example, defendant and its Affiliated Agents target seniors in
14 advertisements for financial, retirement, long-term care and estate planning seminars
15 and workshops that are publicized in mass mailings and an array of newspapers. The
16 seminars are hosted by the Affiliated Agents and held in seniors' homes, hotels, senior
17 centers and other locations. As part of their scheme, Affiliated Agents misrepresent
18 that they offer bona fide legal, accounting and other types of objective advice for
19 financial and/or estate planning, when, in fact, they merely seek to sell the senior a
20 deferred annuity.

21 38. Allianz's policies are intentionally drafted so that the average person, let
22 alone an elderly person, cannot readily understand the terms. The annuity policies, in
23 particular, obfuscate how index credits are calculated and fail to explain the annuity
24 could have 0% growth in a given year. In addition, Affiliated Agents attempt to
25 conceal the provisions that render the deferred annuity inherently unsuitable for
26 seniors, *e.g.*, harsh surrender penalties and limits on withdrawals.

27 39. Because the surrender charges are often misunderstood by consumers,
28 insurance companies are required under Cal. Ins. Code §10127.13 to disclose all the

1 terms of the surrender provisions in bold 12-point font on the cover page of the
2 annuity policy, or on a sticker affixed in conjunction with the cover page or policy
3 jacket. However, Allianz fails to comply.

4 40. At the same time that Allianz and its sales agents have aggressively
5 pursued seniors for the sale of deferred annuities through the use of misleading
6 marketing and deceitful sales practices, Allianz has virtually abandoned its agent
7 training protocols and agent supervision and reporting practices in recent years such
8 that it no longer adheres to statutory obligations in selling deferred annuities to
9 seniors. These protocols were designed to ensure that the sales agent, in compliance
10 with statutory requirements, disclosed all material information to the prospective
11 purchasers of the annuity. Even more important, these training and supervision
12 protocols were also designed to ensure that improper investment products, such as
13 deferred annuities, were only sold to purchasers for whom the deferred annuities are
14 suitable, not purchasers such as seniors who needed immediate access to their
15 retirement funds. However, due to its increased reliance on IMO's and independent
16 sales agents to market and sell its equity-indexed deferred annuities, Allianz's ability
17 to train its independent agents has been severely undercut and thus, it can no longer
18 ensure that its Affiliated Agents fully disclose all material information about its
19 complex annuity products to consumers at the point of sale. Furthermore, upon
20 information and belief, Allianz turns a blind eye to complaints about its Affiliated
21 Agents and fails to take appropriate corrective and/or disciplinary action.

22 41. Not only has Allianz abandoned its training protocols and affiliated agent
23 supervision practices, it has abandoned its established sales protocols that were
24 created in the mid-1990s to protect seniors from the purchase of inappropriate
25 investment vehicles such as the complex annuity products sold by Allianz. Allianz
26 had developed and implemented age exemption protocols under which senior citizens
27 seeking to purchase annuities were deemed ineligible unless Allianz's management
28 issued an age exemption. An Allianz manager could not issue an age exemption until

1 they performed a comprehensive evaluation of the senior's needs to determine
2 whether the annuity product fulfilled those needs. This determination included an
3 evaluation of a number of factors, including the applicant-senior citizen's annual
4 income, tax status, source of the funds for the annuity's premiums, investment
5 liquidity and savings, short and long term capital requirements, insurance objectives
6 and any other information that would be pertinent to management's determination of
7 whether the proposed annuity was a suitable investment for the senior in light of the
8 applicant's needs. However, Allianz no longer adheres to these protocols, routinely
9 issuing age exemptions for seniors seeking to purchase deferred annuities without ever
10 determining whether such annuities are an appropriate investment for them.

11 42. Thus, neither Allianz nor its Affiliated Agents make any review or good
12 faith effort to ascertain or verify the suitability of its deferred annuity products for
13 senior citizens. Allianz fails to require its Affiliated Agents to issue a proper age
14 exemption prior to issuing an annuity to senior citizens, and thus systematically issues
15 deferred annuities to seniors even though such investments are clearly unsuited to
16 seniors' retirement needs. Furthermore, Allianz fails to do its due diligence to prevent
17 misleading or incomplete sales presentations to seniors about the deferred annuity
18 products.

19 **Mrs. Healey Purchases an Allianz Deferred Annuity**

20 43. In late 1997, Carolyn Y. Healey saw an advertisement for a financial
21 planning seminar, which had been posted on a bulletin board in her community. This
22 financial planning seminar was being conducted in the clubhouse in Mrs. Healey's
23 community and was sponsored by Gregg Thompson and Harry Leroy Smelser, both
24 duly-appointed sales agents of Allianz. At the seminar, Mr. Thompson instructed the
25 seniors on how to manage their money for retirement.

26 44. After attending the financial planning seminar, Mr. Smelser visited with
27 Mrs. Healey at her home to review her financial situation and investment history, as
28 well as offer her so-called "expert investment" advice. During that meeting,

1 Mr. Smelser stressed the advantages of deferred annuities. At no time, however, did
2 Mr. Smelser explain the disadvantages of deferred annuities, nor did he explain the
3 difference between immediate and deferred annuities. In fact, when Mrs. Healey
4 questioned Mr. Smelser regarding possible penalties and/or surrender charges often
5 associated with such investments, Mr. Smelser assured Mrs. Healey that the surrender
6 fee was “just a scare tactic” and not to worry about it because he would take care of
7 them. He further noted that, even if Allianz did impose surrender charges, the bonus
8 money received at the purchase of the annuity would easily offset any surrender
9 charges.

10 45. Over the next four years, Mr. Smelser continued to visit Mrs. Healey in
11 order to sell her deferred annuities and/or churn her from one annuity to another.
12 Each time Mrs. Healey bought another policy, Mr. Smelser received lucrative
13 commissions and bonuses. Mrs. Healey was not aware of these commissions and
14 bonuses. Furthermore, each time Mr. Smelser churned Mrs. Healey into another
15 policy, she unwittingly incurred massive surrender charges. Since Mrs. Healey would
16 simply reinvest the proceeds in another annuity recommended by Mr. Smelser, she
17 was not aware that she was incurring such charges.

18 46. In 2002, Mrs. Healey, 78-years old, purchased an “Accumulator Bonus
19 Maxxx Annuity.” The “Accumulator Bonus Maxxx Annuity” is a flexible premium
20 deferred annuity that is underwritten by Allianz. The annuity number is 776XXXX.²
21 Mrs. Healey’s initial premium payment was \$30,000. The policy will not mature until
22 February 4, 2012, which requires Mrs. Healey to live to be 88-years old before she is
23 eligible to receive payments from the annuity. Should Mrs. Healey need access to her
24 funds during the first several years of the accumulation period, she will be subject to
25 massive surrender charges. In fact, Mrs. Healey did need access to those funds and
26

27 ² “X’s” are inserted for privacy purposes.
28

1 was forced to surrender the policy several years later, receiving less than her premium
2 payment and giving up thousands of dollars in accrued interest.

3 47. In offering and selling the Allianz deferred annuity policies to
4 Mrs. Healey, Mr. Smelser utilized the misleading standardized marketing forms and
5 policies, and deceptive sales tactics provided by Allianz and its Independent
6 Marketing Offices. For instance, like numerous other annuities issued by Allianz, the
7 brochure attached to the “Accumulator Bonus Maxxx Annuity” creates the impression
8 that the policy provides an ideal investment for seniors by focusing on its so-called
9 attractive features, including an up-front 10% bonus, tax-deferred growth, the lack of
10 hidden or costly charges and the policy’s ability to ensure financial stability and
11 steady income. Mrs. Healey’s policy assured her that the annuity she purchased
12 “provides peace of mind that comes with knowing your money is safe and will be
13 there when you need it more.” To the contrary, this policy undermines the financial
14 safety and well-being of Mrs. Healey because it restricts her access to much-needed
15 funds through the imposition of massive surrender charges. In fact, the “Accumulator
16 Bonus Maxxx Annuity” sold to Mrs. Healey failed to disclose the applicable surrender
17 percentages or length of the surrender period.

18 48. According to the National Center for Health Statistics, the average life
19 expectancy of a woman is approximately 80 years. Thus, Mrs. Healey had nearly
20 lived out her life expectancy when she purchased the Allianz annuity.

21 **RICO ALLEGATIONS**

22 49. Allianz and its Affiliated Agents have engaged in a fraudulent scheme,
23 common course of conduct and conspiracy, to increase or maintain market share and
24 premium revenue for Allianz and revenues for the Affiliated Agents from extremely
25 lucrative commissions.

26 50. To achieve these goals, defendant entered into agreements to sell deferred
27 annuity policies to senior citizens, used and disseminated virtually uniform marketing
28 materials to solicit and sell such policies and paid commissions and other fees for

1 accomplishing a sale. As a direct result of its conspiracy and fraudulent scheme,
2 defendant was able to extract premiums, fees, early withdrawal penalties and other
3 revenues from Mrs. Healey and the class.

4 **Elder Abuse Annuity Enterprise**

5 51. Based upon plaintiff's current knowledge, the following constitute one or
6 more groups of persons and entities associated in fact, hereinafter referred to in this
7 Complaint as the "Elder Abuse Annuity Enterprise" or "the EAA Enterprise":
8 defendant and defendant's Affiliated Agents, including, but not limited to,
9 Mr. Smelser.

10 52. EAA Enterprise is an ongoing and continuing organization consisting of
11 both corporations and individuals associated for the common or shared purpose of
12 selling, promoting and/or marketing deferred annuity policies to plaintiff and the class
13 through deceptive and misleading sales tactics or materials, and deriving profits from
14 those activities.

15 53. EAA Enterprise functions by providing financial, long-term care, estate
16 planning, consultation, advice and related services, as well as insurance products.
17 Many of these services and products are legitimate and non-fraudulent. However,
18 Allianz and its Affiliated Agents, through the EAA Enterprise, have engaged in a
19 pattern of racketeering activity which also involves a fraudulent scheme to increase
20 premium revenue for Allianz, and additional revenue for the Affiliated Agents from
21 commissions, through the sale of deferred annuities to senior citizens.

22 54. The EAA Enterprise engages in and affects interstate commerce because
23 it involves activities across state boundaries, such as the marketing, promotion,
24 advertisement and sale of inappropriate deferred annuity products to seniors, and the
25 receipt of premiums, commissions and surrender charges from the sale of
26 inappropriate deferred annuity products to senior citizens.

27 55. Within the EAA Enterprise, there is a common communication network
28 by which co-conspirators share information on a regular basis. The EAA Enterprise

1 use this common communication network for the purpose of marketing, soliciting and
2 selling annuity products to the general public, including senior citizens.

3 56. The EAA Enterprise has a systematic linkage because there are
4 contractual relationships, financial ties and continuing coordination of activities.
5 Through the EAA Enterprise, defendant and its Affiliated Agents engage in
6 consensual decision making to implement their fraudulent scheme and to function as a
7 continuing unit for the common purpose of exacting payments, surrender charges and
8 premium dollars. Furthermore, the EAA Enterprise functions as a continuing unit
9 with the purpose of assisting with perfecting and furthering their wrongful scheme to
10 market and sell Allianz's deferred annuity products to senior citizens.

11 57. While defendant and its Affiliated Agents participate in and are members
12 of the Elder Abuse Annuity Enterprise, they also have a separate and distinct
13 existence.

14 58. Defendant and its Affiliated Agents must conceal the inherent properties
15 of deferred annuities to market and sell this inappropriate investment to senior
16 citizens, who are highly unlikely to survive until the annuity matures. To limit the
17 substantive information that prospective purchasers receive, defendant and its
18 Affiliated Agents have to maintain control over information prospective purchasers
19 get at the point of sale. Defendant exercises substantial control over the direction of
20 the Elder Abuse Annuity Enterprise by:

21 (a) Designing and issuing deferred annuity products with extended
22 maturity dates, high surrender charges and other similar provisions to senior citizens;

23 (b) Developing uniform sales and marketing materials, standardized
24 annuity contracts, high-pressure sales techniques and scripted sales presentations,
25 including, but not limited to, those materials developed by defendant for use by the
26 Affiliated Agents;

27 (c) Developing uniform sales techniques to "churn" senior citizens
28 into purchasing deferred annuities from defendant by baiting them to convert current

1 investments to deferred annuities by extolling the high interest rate without disclosing
2 the associated penalties;

3 (d) Instructing and requiring sales agents to use standardized sales
4 materials, uniform sales techniques and presentations developed and/or authorized by
5 defendant to market and sell unsuitable deferred annuities to senior citizens;

6 (e) Rewarding sales agents with perks and high commissions for
7 selling a deferred annuity product to a senior citizen;

8 (f) Accepting applications for, and issuing deferred annuities that
9 mature after the actuarial life expectancy of the annuitant; and

10 (g) Imposing and/or collecting charges from the class for withdrawing
11 some or all of the annuity and/or dying prior to the maturity date.

12 59. Although defendant sells immediate annuities or other policies
13 appropriate for senior citizens, the EAA Enterprise has targeted senior citizens
14 specifically for deferred annuity products.

15 60. At all relevant times, each participant in the EAA Enterprise was aware
16 of the scheme to induce seniors to purchase inappropriate deferred annuity products,
17 was a knowing and willing participant in the scheme and reaped profits there from.

18 61. The EAA Enterprise has an ascertainable structure separate and apart
19 from the pattern of racketeering activity in which defendant has engaged.

20 62. Defendant has directed and controlled the ongoing organization
21 necessary to implement its scheme and illicit business practices at meetings and
22 through communications of which plaintiff cannot now know because all such
23 information lies in defendant's hands.

24 **RICO Conspiracy**

25 63. Defendant and its Affiliated Agents have not undertaken the practices
26 described herein in isolation but as part of a common scheme and conspiracy.

27 64. Defendant and its Affiliated Agents have engaged in a conspiracy to
28 increase or maintain market share and premium revenue for Allianz and to generate

1 additional revenue for Affiliated Agents through high commissions and incentives
2 paid by Allianz for selling deferred annuities to senior citizens.

3 65. The objects of the conspiracy are: (a) to induce senior citizens to
4 purchase Allianz's deferred annuity policies; (b) to maximize annuity sales for
5 Allianz; (c) to maximize commissions for Affiliated Agents; and (d) to maximize the
6 revenues of defendant and its Affiliated Agents.

7 66. To achieve these goals, Allianz has issued age exemptions for deferred
8 annuities, issued virtually uniform information to the Affiliated Agents for marketing
9 and selling such policies, and paid high commissions for the sale of deferred annuities
10 to seniors by any means. The Affiliated Agents have agreed to sell deferred annuities
11 to seniors, even though they are inappropriate investments for them, and they have
12 used deceptive and unconscionable methods to secure such sales and commissions.
13 Defendant and its Affiliated Agents have also agreed to participate in other illicit and
14 fraudulent practices, all in exchange for agreement and participation in the conspiracy.

15 67. Defendant, Affiliated Agents and each member of the conspiracy, with
16 knowledge and intent, have agreed to the overall objectives of the conspiracy and
17 participated in the common course of conduct: to commit acts of fraud and indecency
18 in inducing the trust of elderly citizens; persuading them to consolidate their assets in
19 deferred annuity; and to solicit, market and sell such policies to persons for whom the
20 investment will provide no benefit but rather cause them harm through steep penalties,
21 complications for loved ones upon their death, tax liability and other costs and
22 expenses.

23 68. Indeed for the conspiracy to succeed, defendant and each co-conspirator
24 had to agree to implement and use the similar devices and fraudulent tactics against
25 their intended targets.

26 69. Many instances of common conduct, activity and similar facts evidence
27 the presence of a conspiracy and exist among defendant, Affiliated Agents and co-
28 conspirators, including, but not limited to:

1 (a) Similar advertisements and marketing materials with vague,
2 misleading and incomplete language about the inappropriateness of deferred annuity
3 policies for seniors;

4 (b) Similar plans and methods for sales agents to solicit, market, refer
5 and sell Allianz's deferred annuities under the guise of providing financial and estate
6 planning for seniors;

7 (c) Similar tactics for steering the class to Allianz deferred annuity
8 policies; and

9 (d) Similar agreements between and among defendant, Affiliated
10 Agents and co-conspirators to sell deferred annuity products to seniors, despite
11 industry standards and governmental warnings.

12 70. As a result of the conspiracy, Mrs. Healey and the class made payments
13 for deferred annuity products and other "services" beyond what they would have
14 otherwise.

15 **Use of the Mails and Wires**

16 71. Defendant and its Affiliated Agents used thousands of mail and interstate
17 wire communications to create and manage their fraudulent scheme through virtually
18 uniform misrepresentations, concealments and material omissions. Defendant and its
19 Affiliated Agents' scheme includes, but is not limited to: false and misleading
20 marketing materials, mass mailings, phone calls, advertisements, agreements,
21 insurance contracts, correspondence, annuity materials, websites and commission
22 payments to Affiliated Agents.

23 72. Defendant and its Affiliated Agents' fraudulent use of the mails and
24 wires included the following communications sent between defendant and each
25 Affiliated Agent, plaintiff and third party via U.S. Mail, commercial carrier, wire or
26 other interstate electronic media throughout the relevant period:

27 (a) False or misleading representations that Affiliated Agents provide
28 objective financial advice to assist the class in crafting their financial and estate plan;

1 (b) Misrepresentations and omissions about the inappropriateness of
2 deferred annuity policies for seniors, as well as the drawbacks of such policies, such
3 as steep penalties for withdrawal prior to the maturity date;

4 (c) Materials failing to disclose the existence and effect of
5 commissions paid to Affiliated Agents by Allianz, including the conflicts of interest
6 created by the payments and as part of the conspiracy;

7 (d) Misrepresentations and omissions aimed at inducing plaintiff and
8 the class to purchase Allianz deferred annuities; and

9 (e) Invoices and payments related to defendant's improper scheme.

10 73. Defendant's corporate headquarters have communicated by U.S. Mail
11 and by facsimile with various regional offices and subsidiaries, divisions and other
12 insurance entities in furtherance of their schemes.

13 74. Defendant's virtually uniform misrepresentations, acts of concealment
14 and omissions were knowing and intentional and made for the purpose of deceiving
15 the class, selling lucrative deferred annuity policies and entitling Affiliated Agents to
16 high commissions from Allianz.

17 75. Defendant and its Affiliated Agents either knew or recklessly disregarded
18 that their misrepresentations and omissions were material, and that they were relied
19 upon by plaintiff and the class, as shown by their payment for deferred annuity
20 policies placed with Allianz, as well as other fees for financial planning advice.

21 **FRAUDULENT CONCEALMENT AND EQUITABLE TOLLING**

22 76. Allianz has affirmatively and fraudulently concealed its unlawful scheme,
23 conspiracy and course of conduct from plaintiff. Plaintiff and other class members did
24 not know and could not reasonably have known of defendant's and its Affiliated
25 Agents' fraudulent scheme and could not have reasonably discovered the falsity of
26 their representations, advertising and similar documents, nor could plaintiff and the
27 class reasonably have known the concealed information until shortly before the filing
28 of this Complaint.

1 marketed, sold and/or issued by Allianz, and/or who have suffered or could suffer a
2 penalty and/or surrender charge, including those incurred on death, for withdrawing
3 funds before its maturity date.

4 83. Excluded from the class is defendant and its directors, officers,
5 predecessors, successors, affiliates, agents, co-conspirators and employees, as well as
6 the immediate family members of such persons.

7 84. All class members have suffered injury to their property by reason of
8 defendant's scheme and unlawful course of conduct, in that they paid for an annuity
9 that was inappropriate given their age, and that they have or could suffer early
10 withdrawal penalties.

11 85. The class is reasonably estimated to be in the thousands or tens of
12 thousands and is thus so numerous that joinder of all its members is impracticable.
13 The precise number of class members and their addresses are unknown to plaintiff, but
14 can be ascertained through appropriate discovery of defendant's and Affiliated
15 Agents' records. Class members may be notified of the pendency of this action by
16 publication and/or other notice.

17 86. There is a well-defined community of interest in the relevant questions of
18 law and fact affecting putative class members. Common questions of law and fact
19 predominate over any individual questions affecting class members, including, but not
20 limited to the following:

21 (a) Whether defendant improperly solicited, referred, marketed, issued
22 or sold deferred annuities to senior citizens, including plaintiff and the class;

23 (b) Whether defendant engaged in mail and/or wire fraud;

24 (c) Whether defendant engaged in a pattern of racketeering activity;

25 (d) Whether the Elder Abuse Annuity Enterprise is an "enterprise"
26 within the meaning of 18 U.S.C. §1961(4);

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1 (e) Whether defendant conducted or participated in the affairs of the
2 EAA Enterprise through a pattern of racketeering activity in violation of 18 U.S.C.
3 §1962(c);

4 (f) Whether defendant and its Affiliated Agents conspired to commit
5 violations of the racketeering laws in violation of 18 U.S.C. §1962(d);

6 (g) Whether defendant breached its fiduciary duty to plaintiff and the
7 class;

8 (h) Whether defendant breached its obligation of good faith to plaintiff
9 and the class;

10 (i) Whether defendant aided and abetted or ratified the wrongful acts
11 of its Affiliated Agents;

12 (j) Whether defendant has been unjustly enriched at the expense of the
13 class;

14 (k) Whether plaintiff and the class are entitled to damages; and

15 (l) Whether the class is entitled to injunctive, declaratory and/or other
16 relief.

17 87. The claims of plaintiff and the other class members have a common
18 origin and share a common basis. The claims originate from the same illegal,
19 fraudulent conspiracy on the part of defendant and its acts in furtherance thereof, as
20 well as the conduct of its co-conspirators.

21 88. Plaintiff's claims are typical of those of the absent class members. If
22 brought and prosecuted individually, the claims of each class member would require
23 proof of many of the same material and substantive facts, rely upon the same remedial
24 theories and seek the same relief.

25 89. Plaintiff will fairly and adequately protect the interests of the class and
26 has no interests adverse to, or that directly and irrevocably conflict with, the interests
27 of other class members. Plaintiff is willing and prepared to serve the Court and the
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1 putative class in a representative capacity with all of the obligations and duties
2 material thereto.

3 90. Plaintiff has retained the services of counsel, identified below, who are
4 experienced in complex class-action litigation and in particular class actions involving
5 insurance matters. Plaintiff's counsel will adequately prosecute this action, and will
6 otherwise assert, protect and fairly and adequately represent plaintiff and all absent
7 class members.

8 91. The prosecution of separate actions by individual class members would
9 create a risk of inconsistent or varying adjudications which would establish
10 incompatible standards of conduct for the parties opposing the class. Such
11 incompatible standards of conduct and varying adjudications on the same essential
12 facts, proof and legal theories would also create and allow the existence of
13 inconsistent and incompatible rights within the class.

14 92. Class certification is appropriate under Rule 23(b)(2) in that defendant
15 has acted or refused to act on grounds generally applicable to the class, making final
16 declaratory or injunctive relief appropriate.

17 93. Class certification is appropriate under Rule 23(b)(3) in that common
18 questions of law and fact predominate over any questions affecting only individual
19 class members.

20 94. Moreover, a class action is superior to other methods for the fair and
21 efficient adjudication of the controversies raised in this Complaint because:

22 (a) individual claims by the class members would be impracticable as
23 the costs of pursuit would far exceed what any one class member has at stake;

24 (b) little individual litigation has been commenced over the
25 controversies alleged in this Complaint, and individual class members are unlikely to
26 have an interest in separately prosecuting and controlling individual actions;

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1 (c) the concentration of litigation of these claims in one forum will
2 achieve efficiency and promote judicial economy; and

3 (d) the proposed class action is manageable.

4 **FIRST CLAIM FOR RELIEF**

5 **Violations of the Racketeer Influenced and Corrupt
6 Organizations Act (“RICO”), 18 U.S.C. §1962(c)-(d)**

7 95. Plaintiff and the class repeat and reallege all allegations contained in the
8 Complaint as if set forth separately in this Claim for Relief.

9 96. This claim arises under 18 U.S.C. §§1962(c) and (d), which provides in
10 relevant part:

11 (c) It shall be unlawful for any person employed by or
12 associated with any enterprise engaged in, or the activities of which
13 affect, interstate or foreign commerce, to conduct or participate, directly
14 or indirectly, in the conduct of such enterprise’s affairs through a pattern
15 of racketeering activity

16 (d) It shall be unlawful for any person to conspire to violate any
17 of the provisions of subsection . . . (c) of this section.

18 97. In violation of 18 U.S.C. §1962(c), defendant has conducted or
19 participated, directly or indirectly, in the conduct of the affairs of the Elder Abuse
20 Annuity Enterprise through a “pattern of racketeering activity,” as defined by
21 18 U.S.C. §1961(5).

22 98. At all relevant times, defendant was a “person” within the meaning of
23 18 U.S.C. §1961(3), because it was “capable of holding a legal or beneficial interest in
24 property.”

25 99. The Elder Abuse Annuity Enterprise constituted a single “enterprise” or
26 multiple enterprises within the meaning of 18 U.S.C. §1961(4), as individuals and
27 other entities associated-in-fact for the common purpose of engaging in defendant’s
28 and Affiliated Agents’ profit-making scheme.

1 100. The Elder Abuse Annuity Enterprise was created and/or used as a tool to
2 carry out the elements of defendant’s illicit scheme and pattern of racketeering
3 activity. The EAA Enterprise has ascertainable structures and purposes beyond the
4 scope and commission of defendant’s predicate acts and conspiracy to commit such
5 acts. The EAA Enterprise is separate and distinct from defendant and its Affiliated
6 Agents.

7 101. The Elder Abuse Annuity Enterprise has engaged in, and its activities
8 affected, interstate and foreign commerce by soliciting, marketing, referring, selling
9 and issuing deferred annuity policies to thousands, if not tens of thousands, of persons
10 within the United States.

11 102. The Elder Abuse Annuity Enterprise actively disguised the nature of
12 defendant’s wrongdoing and concealed or misrepresented defendant’s participation in
13 the conduct of the EAA Enterprise to maximize profits while minimizing their
14 exposure to criminal and civil penalties.

15 103. Defendant exerted substantial control over the Elder Abuse Annuity
16 Enterprise, participated in the operation and managed the affairs of the EAA
17 Enterprise as described herein.

18 104. Defendant has committed or aided and abetted the commission of at least
19 two acts of racketeering activity, *i.e.*, indictable violations of 18 U.S.C. §§1341 and
20 1343, within the past 10 years. The multiple acts of racketeering activity which
21 defendant committed and/or conspired to, or aided and abetted in the commission of,
22 were related to each other, pose a threat of continued racketeering activity, and
23 therefore constitute a “pattern of racketeering activity.”

24 105. Defendant’s predicate acts of racketeering within the meaning of
25 18 U.S.C. §1961(1) include, but are not limited to:

26 (a) **Mail Fraud**: Defendant and its co-conspirators have violated
27 18 U.S.C. §1341 by sending or receiving materials via U.S. Mail or commercial
28 interstate carriers for the purpose of executing their scheme to market and sell

1 deferred annuities to seniors by means of false pretenses, misrepresentations, promises
2 and/or omissions. The materials include, but are not limited to: advertisements,
3 deferred annuity marketing brochures, performance illustrations, applications,
4 contracts, sales presentation scripts, training manuals, videotapes, correspondence,
5 annuitant lead lists, premium and commission payments, reports, data, summaries,
6 statements and other materials relating to the marketing and sale of Allianz's deferred
7 annuities.

8 (b) **Wire Fraud**: Defendant and its co-conspirators have violated
9 18 U.S.C. §1343 by transmitting and receiving materials by wire for the purpose of
10 executing its scheme to defraud and obtain money on false pretenses,
11 misrepresentations, promises and/or omissions. The materials transmitted and/or
12 received include, but are not limited to, those mentioned in subsection (a) above.

13 106. Many of the precise dates of defendant's fraudulent uses of the U.S. Mail
14 and wire facilities have been deliberately hidden and cannot be alleged without access
15 defendant's books and records. Indeed, essential to the success of defendant's scheme
16 is secrecy, and defendant has withheld details of the scheme from plaintiff and class
17 members. Generally, however, plaintiff can describe the occasions on which the
18 predicate acts of mail and wire fraud would have occurred, and how those acts were in
19 furtherance of a scheme. They include thousands of communications between and
20 among defendant and its Affiliated Agents to perpetuate and maintain the scheme,
21 including, among other things:

22 (a) Processing applications for deferred annuity products;

23 (b) Issuing age waivers for applicants over the age of 65, or
24 alternatively, issuing policies to applicants over the age of 65 without an age waiver;

25 (c) Processing premium payments from senior citizens;

26 (d) Paying and receiving commissions for the marketing, referral and
27 sale of deferred annuity products to a senior;

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1 (e) Transmitting and receiving materials about defendant's and its
2 Affiliated Agents' financial, long-term care and estate planning seminars, workshops
3 and other similar events for senior citizens;

4 (f) Disseminating training materials for selling deferred annuities;

5 (g) Sharing information about prospective purchasers of deferred
6 annuities; and

7 (h) Imposing and processing penalties and surrender charges for early
8 access to funds trapped in the deferred annuity products.

9 107. The materials sent or received by defendant via the U.S. Mail,
10 commercial carrier, wire or other interstate electronic media, contained, *inter alia*:

11 (a) Misrepresentations that deferred annuity products are suitable for
12 seniors;

13 (b) Misrepresentations or omissions about defendant's unlawful sales
14 techniques, misleading sales materials and annuity contracts to induce the class to
15 purchase deferred annuities;

16 (c) Misrepresentations about the nature of the relationship between
17 Affiliated Agents and Allianz; and

18 (d) Omissions that Affiliated Agents are not "independent" estate and
19 financial planning services or insurance advisors because they are paid extremely high
20 commissions from Allianz for selling deferred annuities.

21 108. Defendant knowingly and intentionally made these misrepresentations,
22 acts of concealment and failures to disclose so as to deceive plaintiff and the class.
23 Defendant either knew or recklessly disregarded that these were material
24 misrepresentations and omissions, and plaintiff and the class relied on the
25 misrepresentations and omissions as set forth herein.

26 109. Defendant has obtained money and property belonging to plaintiff and
27 the class as a result of these statutory violations. Plaintiff and other class members
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1 have been injured in their business or property by defendant's overt acts or mail and
2 wire fraud, and by their aiding and abetting each others' acts of mail and wire fraud.

3 110. In violation of 18 U.S.C. §1962(d), defendant and its Affiliated Agents
4 conspired to violate 18 U.S.C. §1962(c) as described herein. Various other persons,
5 including Affiliated Agents, firms and corporations, not named as defendant in this
6 Complaint, have participated as co-conspirators with defendant in these offenses and
7 have performed acts in furtherance of the conspiracy.

8 111. Defendant aided and abetted violations of the above laws, thereby
9 rendering it indictable as a principal in the 18 U.S.C. §§1341 and 1343 offenses
10 pursuant to 18 U.S.C. §2.

11 112. Plaintiff and the class have been injured in their property by reason of
12 defendant's violations of 18 U.S.C. §1962(c) and (d), including lost access to needed
13 funds, unnecessary and concealed fees, charges and penalties that they would not have
14 otherwise incurred, expenses to hire a financial planner and/or attorney, and lost value
15 in previous investments that they would not have otherwise incurred. In the absence
16 of defendant's violations of 18 U.S.C. §1962(c) and (d), they would not have incurred
17 these costs and expenses, or they would have incurred less.

18 113. Plaintiff and the class relied, to their detriment, on defendant's fraudulent
19 misrepresentations and omissions, which were made by means of websites, mass
20 mailings, newspaper advertisements, telephone calls, marketing materials and
21 virtually uniform representations or omissions. Plaintiff's and the class' reliance is
22 evidenced by their payments made for services and for insurance products to
23 defendant.

24 114. Plaintiff's and the class' injuries were directly and proximately caused by
25 defendant's racketeering activity.

26 115. Defendant knew plaintiff and the class relied on its representations and
27 omissions about the pricing and advantages or disadvantages about certain insurance
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1 policies and/or insurance carriers. Defendant knew that policyholders would incur
2 substantial costs as a result.

3 116. Under the provisions of 18 U.S.C. §1964(c), plaintiff is entitled to bring
4 this action and to recover treble damages, the costs of bringing this suit and reasonable
5 attorneys' fees.

6 117. Defendant is accordingly liable to plaintiff for three times its actual
7 damages as proved at trial plus interest and attorneys' fees.

8 **SECOND CLAIM FOR RELIEF**

9 **Breach of Fiduciary Duty**

10 118. Plaintiff and the class repeat and reallege all allegations contained in the
11 Complaint as if set forth separately in this Claim for Relief.

12 119. By virtue of their purported positions as financial advisors, estate
13 planning specialists, and because of their superior knowledge and ability to
14 manipulate and control senior citizens' finances and legal status, the IMO's, owned,
15 operated and/or controlled by defendant who marketed and sold Allianz deferred
16 annuities to senior citizens assumed fiduciary duties to plaintiff and the class.

17 120. These entities and defendant owed to plaintiff and members of the class
18 the highest duties of loyalty, honesty, fidelity, trust and due care in their fiduciary
19 obligations, and were and are required to use their utmost ability to provide estate
20 planning and investment advice in a fair, just and equitable manner and to act in
21 furtherance of the best interests of plaintiff and the class so as to benefit their clients,
22 and not themselves.

23 121. As set forth above, defendant and its IMO's each breached their
24 obligations and fiduciary duties of care, loyalty, reasonable inquiry, oversight, good
25 faith and supervision by, *inter alia*:

26 (a) Unreasonably and in bad faith refusing to give sufficient
27 consideration to plaintiff's welfare rather than their own financial interests;
28

1 (b) Unreasonably and in bad faith issuing an age exemption without
2 performing a full and complete investigation of whether or not such an exception
3 would be suitable for their customer;

4 (c) Ignoring Allianz's protocols and standards in order to further their
5 own financial interests;

6 (d) Churning existing senior citizen life insurance and/or annuity
7 policyholders, using deceptive and misleading standardized marketing materials;

8 (e) Failing to competently supervise and monitor their employees;

9 (f) Failing to disclose the true characteristics of the deferred annuities
10 sold to senior citizens, instead making false and fraudulent representations that
11 defendant's deferred annuities are safe and suitable for purchase by seniors citizens;

12 (g) Making material omissions of fact that the IMO's marketing and
13 selling defendant's annuities were "independent;" and

14 (h) Maintaining an illegal marketing scheme and conspiracy in
15 violation of §1962(c) of RICO to sell annuity insurance to senior citizens.

16 122. As described herein, defendant and the IMO's owned, operated and/or
17 controlled by Allianz recklessly or knowingly breached their fiduciary duties by
18 orchestrating, devising, carrying out, participating in and/or failing to prevent,
19 terminate or timely correct the wrongdoing alleged herein.

20 123. Each of these violations was achieved because defendant willingly,
21 knowingly and/or recklessness sought to gain its own financial advantage to the
22 disadvantage of plaintiff and the class.

23 124. As a direct and proximate result of defendant's violations of its fiduciary
24 duties, plaintiff and the class have been injured, and suffered and continue to suffer
25 economic and non-economic losses, all in an amount to be determined according to
26 proof at trial.

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1 131. As alleged above, the relationship of insurer and insured exists between
2 Allianz and plaintiff and the other members of the class. The relationship of insurer
3 and insured creates a duty, implied in law, extending from Allianz to plaintiff and the
4 class to deal fairly with them and in good faith. As a result, there is an implied
5 obligation of good faith and fair dealing in each insurance policy. The insurance
6 company must not do anything to injure the right of the insured to receive the full
7 benefits of the agreement.

8 132. To fulfill its duty of good faith and fair dealing, Allianz must give at least
9 as much consideration to the interests of the insured as they give to their own interests.
10 Defendant breached that duty of good faith and fair dealing in several ways, including
11 but not limited to:

12 (a) using deceptive and misleading materials, which failed to
13 adequately disclose the disadvantages of buying a deferred annuity, including tax
14 consequences and penalties, and lack of access to their annuity investments within
15 their lifetime;

16 (b) failing to disclose the significant commissions that Affiliated
17 Agents earn from the sale of annuities to plaintiff;

18 (c) obscuring and hiding references to the surrender charges, penalties
19 and/or other fees incurred upon early withdrawal or death;

20 (d) drafting and using form annuity contracts that fail to properly
21 apprise seniors of required information and in the required format about the surrender
22 period and associated surrender penalties;

23 (e) failing to consider plaintiff's and the class' welfare above its own;

24 (f) failing to comply with state law, industry standards and/or internal
25 policies and by selling deferred annuities to seniors issuing age exceptions without
26 performing full and complete investigations as to appropriateness of the annuities sold
27 to plaintiff;

28 (g) failing to fully and accurately perform its underwriting duties; and

1 (h) failing to competently train and supervise its Affiliated Agents
2 and/or employees.

3 133. As a proximate result of the aforementioned acts and omissions of
4 defendant, plaintiff and the class have suffered damages in a sum to be proven at the
5 time of trial. It has also become reasonably necessary for plaintiff to retain counsel to
6 recover amounts due under the contracts.

7 134. The aforementioned acts were performed maliciously, fraudulently and
8 oppressively, thereby entitling plaintiff and the class Members to punitive damages in
9 an amount appropriate to punish defendant.

10 **FIFTH CLAIM FOR RELIEF**

11 **Unjust Enrichment and Imposition of Constructive Trust**

12 135. Plaintiff and the class repeat and reallege all allegations contained in the
13 Complaint as if set forth separately in this claim for relief.

14 136. Defendant owed various duties to plaintiff and the class as a result of its
15 insurer/insured and/or fiduciary relationship.

16 137. By engaging in the elder deferred annuity scheme, defendant extracted
17 payments from plaintiff and class members, including, but not limited to, annuity
18 premiums, commissions, service charges, surrender charges and other fees, expenses
19 and charges based upon misleading and fraudulent uniform sales presentations,
20 marketing materials and annuity illustrations.

21 138. As a result of the relationships between and among the parties and the
22 facts stated above, defendant will be unjustly enriched if it is permitted to retain such
23 funds; therefore, a constructive trust should be established over the monies that
24 plaintiff and the class members paid to defendant. These monies are traceable to
25 defendant.

26 139. The victims of the unsuitable deferred annuity sales scheme described
27 above have no adequate remedy at law and have been damaged in an amount to be
28 determined at trial.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, plaintiff, on behalf of herself and the class prays for judgment
3 against defendant as follows:

4 A. For a temporary, preliminary and permanent order for injunctive relief
5 enjoining defendant from pursuing the practices complained of above;

6 B. For a temporary, preliminary and permanent order for injunctive relief
7 requiring defendant to undertake an immediate public information campaign to inform
8 members of the general public as to their prior practices and notifying the members of
9 the putative class of the potential for restitutionary relief;

10 C. For an order requiring disgorgement and restitution of defendant's ill-
11 gotten gains and to pay restitution to plaintiff and the class all funds acquired by
12 means of any practice declared by this Court to be unlawful, fraudulent or unfair;

13 D. An order certifying the class as defined herein;

14 E. Distribution of any moneys recovered on behalf of plaintiff or the class,
15 via fluid recovery or *cy pres* recovery where necessary to prevent defendant from
16 retaining any of the profits or benefits of their wrongful conduct;

17 F. Imposition of a constructive trust;

18 G. For reasonable attorneys' fees and costs of investigation and litigation
19 under 18 U.S.C. §1964(c) and the common fund doctrine;

20 H. For compensatory, special and general damages according to proof;

21 I. For punitive and exemplary damages;

22 J. For treble damages and penalties pursuant to 18 U.S.C. §1964(c);

23 K. For costs of suit, pre-judgment and post-judgment interest; and

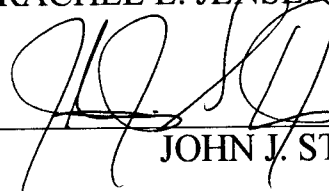
24 L. Such other and further relief as the Court may deem necessary or
25 appropriate.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: February 21, 2006

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
JOHN J. STOIA, JR.
THEODORE J. PINTAR
HELEN I. ZELDES
RACHEL L. JENSEN



JOHN J. STOIA, JR.

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

RENNE SLOAN HOLTZMAN
& SAKAI, LLP
LOUISE H. RENNE
INGRID M. EVANS
50 California Street, Suite 2100
San Francisco, CA 94111-4624
Telephone: 415/678-3800
415/678-3838 (fax)

JAMES, HOYER, NEWCOMER
& SMILJANICH, P.A.
CHRISTA L. COLLINS
JOHN YANCHUNIS
J. ANDREW MEYER
4830 West Kennedy Blvd.
Urban Centre One, Suite 550
Tampa, FL 33609
Telephone: 813/286-4100
813/286-4174 (fax)

Attorneys for Plaintiff

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DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 West Broadway, Suite 1900, San Diego, California 92101.

2. That on March 1, 2006, declarant served the FIRST AMENDED COMPLAINT FOR: 1. VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT ('RICO'); 2. BREACH OF FIDUCIARY DUTY; 3. AIDING AND ABETTING BREACH OF FIDUCIARY DUTY; 4. BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING; AND 5. UNJUST ENRICHMENT AND IMPOSITION OF CONSTRUCTIVE TRUST by depositing a true copy thereof in a United States mailbox at San Diego, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 1st day of March, 2006, at San Diego, California.


PAMELA A. MARTINI

ALLIANZ ANNUITY

Service List - 3/1/2006 (05-0246)

Page 1 of 1

Counsel For Defendant(s)

Elizabeth Wiet Reutter
Krista D. Barrie
Lawrence J. Field
Leonard, Street & Deinard, P.A.
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
612/335-1500
612/335-1657 (Fax)

Robert D. Phillips, Jr.
Linda B. Oliver
Reed Smith LLP
1999 Harrison Street, Suite 2400
Oakland, CA 94612-3572
510/763-2000
510/273-8832 (Fax)

Counsel For Plaintiff(s)

Christa L. Collins
John A. Yanchunis
J. Andrew Meyer
James, Hoyer, Newcomer & Smiljanich, P.A.
4830 W. Kennedy Blvd., Suite 550
Tampa, FL 33609-2589
813/286-4100
813/286-4174 (Fax)

John J. Stoia, Jr.
Theodore J. Pintar
Helen I. Zeldes
Lerach Coughlin Stoia Geller Rudman &
Robbins LLP
655 West Broadway, Suite 1900
San Diego, CA 92101
619/231-1058
619/231-7423 (Fax)

Louise H. Renne
Ingrid M. Evans
Renne Sloan Holtzman & Sakai, LLP
50 California Street, Suite 2100
San Francisco, CA 94111
415/678-3800
415/678-3838 (Fax)