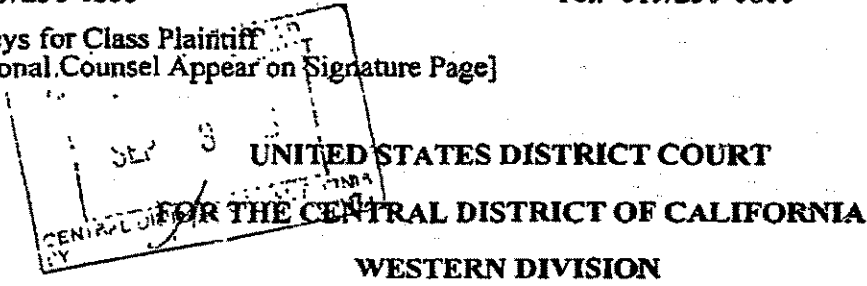


1 Michael D. Thamer, Esq. #101440
2 LAW OFFICES OF MICHAEL D. THAMER
3 12444 South Highway 3
4 P.O. Box 1568
5 Callahan, CA 96014-1568
6 Tel: 530/467-5307

7 Howard D. Finkelstein, Esq. #102934
8 Mark L. Knutson, Esq. #131770
9 FINKELSTEIN & KRINSK LLP
10 501 West Broadway, Suite 1250
11 San Diego, CA 92101
12 Tel: 619/238-1333

13 Stephen R. Basser, Esq. #121590
14 John L. Haeussler, Esq. #215044
15 BARRACK, RODOS & BACINE
16 402 West Broadway, Suite 850
17 San Diego, CA 92101
18 Tel: 619/230-0800

19 Attorneys for Class Plaintiff
20 [Additional Counsel Appear on Signature Page]



(SS)

21 VIDA F. NEGRETE, as Conservator for
22 EVERETT E. OW, an individual, and on behalf of
23 all other similarly situated persons,

24 Plaintiff,

25 v.

26 ALLIANZ LIFE INSURANCE COMPANY OF
27 NORTH AMERICA, a Minnesota corporation,

28 Defendant.

Case No.:

CLASS ACTION COMPLAINT FOR:

1. Civil RICO;
2. Elder Abuse;
3. Unlawful, Deceptive and Unfair Business Practices;
4. Unlawful, Deceptive and Misleading Advertising;
5. Breach of Fiduciary Duty;
6. Aiding and Abetting of Breach of Fiduciary Duty; and
7. Unjust Enrichment and Imposition of Constructive Trust

DEMAND FOR JURY TRIAL

NATURE OF ACTION

1
2 1. This class action seeks to halt and remedy the harm caused by Allianz Life Insurance
3 Company of North America's (hereinafter "Allianz") systematic unfair, fraudulent and unlawful
4 sales practices in connection with its solicitation, offering and sale of deferred annuity products
5 ("deferred annuities") to senior citizens (65 years of age or older) in California and elsewhere in the
6 United States where the date that distribution payments from the annuity commences, *i.e.*, the
7 annuity's maturity date, is beyond the annuitant's actuarial life expectancy. A prime example of the
8 insidious nature of Allianz's sales practices can be found in defendant's annuity sale to Everett E.
9 Ow. Specifically, Mr. Ow was 82 years old when Allianz sold him the first of a series of deferred
10 annuities in August 2002 with the last deferred annuity sale occurring in August 2004 when Mr. Ow
11 was 84 years of age. By their terms, the earliest that any of these annuities would mature, *i.e.*, Mr.
12 Ow would be entitled to received monthly payments -- but not could not withdraw the entire amount
13 of the annuity lest he be subject to a surrender charge -- was 10-12 years after their purchase date
14 which was well beyond Mr. Ow's actuarial life expectancy at the time he purchased the annuities.

15 2. Since 2000, Allianz has increasingly focused and targeted its deferred annuity sales
16 efforts towards senior citizens without complying with the insurance disclosure requirements and
17 consumer protection laws of California and other similar state's laws and Allianz's own internal
18 policies and procedures to ensure that these complex financial products are not sold to persons who
19 are not suitable candidates to purchase them. Because senior citizens cannot wait for a deferred
20 annuities long-term investment to mature and because such senior citizens often need access to their
21 money to pay for health and long term care, a deferred annuity that does not mature until after the
22 person's actuarial life expectancy is not an appropriate investment. During this same period, Allianz
23 has also repeatedly failed to include in its standard form annuity contracts, sales illustrations and
24 related marketing materials all material facts necessary to adequately inform prospective senior
25 citizen annuity purchasers of the true risks and unsuitability of these products and has similarly
26 failed to properly train and supervise its annuity sales force to adhere to said laws and its own
27 internal policies and procedures in connection with the sale of deferred annuities to senior citizens.

28

1 3. Deferred annuities are a different product than traditional annuities (also known in
2 the insurance industry as an “immediate annuity”). An annuity is the reverse of life insurance in that
3 life insurance pools the risk of a premature death, while annuities pool the risk of living beyond the
4 annuitant’s life expectancy. When a consumer purchases a traditional annuity, the consumer
5 typically acquires, in exchange for an up-front payment, the right to a stream of periodic payments
6 from the insurer that is guaranteed to continue for as long as the annuitant is alive. This type of
7 annuity can provide comfort and protection for persons who are afraid that they may outlive their
8 assets. To find the best deal, consumers can shop for an annuity that provides the highest benefits
9 in comparison with the premium paid in, also taking into consideration, the fact that the financial
10 strength of the issuing life insurance company is the sole basis of its payment guarantee. This
11 traditional fixed annuity is known as an “immediate annuity” because annuity payments to the
12 contract owner (or purchaser) begin immediately after tender of the premium to the insurer.

13 4. In contrast to an immediate annuity, a deferred annuity – the type of annuity at issue
14 in this complaint – is an accumulation product. As a leading authority has commented:

15 It is important to keep in mind that there are two different products called “annuities”
16 offered by the insurance industry, and they have very little in common. The first
17 such product, the deferred annuity, is basically an investment vehicle. Deferred
18 annuities . . . have settlement options which provide a periodic income, but the
19 settlement options are most often not elected and almost never play an important part
20 in the purchase or selection of a particular deferred annuity.

21 Albert E. Easton and Timothy F. Harris, Actuarial Aspects of Individual Life Insurance and Annuity
22 Contracts (ACTEX Publications 1999) at p. 20.

23 5. With a deferred annuity, the purchaser invests money and expects the value of the
24 account to grow (depending on the performance of the investment vehicle that is chosen) prior to
25 using the accumulated account assets during retirement. Additionally, within a deferred annuity,
26 there are usually a limited number of investment options. Specifically, when a fixed account funds
27 a deferred annuity, the purchaser receives from the insurer an interest rate on the amount of
28 premiums paid into the product by the purchaser. The insurer may contractually agree to a particular
rate for a period of time, but generally adjusts the rate at its discretion. In the case of Allianz’s
deferred annuities, the Company gives the annuitant two options: to invest in a fixed account

1 guaranteeing a minimal rate of interest return; or an account whose rate of return is dictated by a
2 specific stock market index, *e.g.*, Dow Jones Industrial Average, Standard & Poor's Composite
3 Stock Index, *etc.*¹

4 6. A deferred annuity imposes substantial surrender charges and/or penalties upon the
5 withdrawal of any portion of the initial investment or accrued interest within its first 10-15 years
6 which severely limits an annuitant's access to his or her funds. This inherent lack of flexibility,
7 coupled with the diminishing resources of the elderly, was one of the principal reasons for
8 California's 1990 enactment of the Senior Insurance provisions in California's Insurance Code's
9 General Regulations (Cal. Ins. Code §§ 785, *et seq.*). These provisions, as well as similar statutory
10 enactments in and common laws of Florida, Illinois, Ohio, Texas and the other states where Allianz
11 principally markets and sells its annuity products (the "Market States"), imposed upon an insurance
12 carrier a statutory duty of honesty, good faith and fair dealing when selling new or replacement
13 deferred annuity products to senior citizens. In addition, they prohibit "churning" and similar
14 unscrupulous sales practices, and also require an insurer to adhere to strict disclosure requirements
15 in connection with such sales to ensure the *suitability* of the proposed annuity to the senior citizen's
16 actual insurance and financial needs. (*See, e.g.*, Cal. Ins. Code §§ 785, 789.8 and 789.10; Fla. Stat.
17 § 627.4554(4); 215 Ill. Comp. Stat. 5/363a(5)(b); 31 Penn. Code §§ 82.62 and 89a.121).

18 7. Further, the solicitation, offering and sale of annuities in this State can only be
19 performed by licensed insurance agents in California and the Market States. *See, e.g.*, Cal. Ins. Code
20

21 _____
22 ¹This latter type of deferred annuities is referred to in the insurance industry as an "equity-
23 indexed" annuity. In 2004, equity-indexed annuities accounted for over ____% of Allianz's U.S.
24 annuity sales. However, all deferred annuity products underwritten by Allianz provide for the
25 repayment of the invested principal amount upon the annuity's maturity, together with any earned
26 accumulated interest – which amount is determined by the particular interest accrual vehicle selected
27 by the annuitant at the time of purchase, *e.g.*, fixed or equity-indexed. According to the National
28 Association of Securities Dealers ("NASD") and well recognized industry publications, equity-
indexed annuities are generally considered more risky in terms of their ability to ensure the annuitant
receives more than just the return of annuity's initial principal investment upon its maturity. This
is because the guaranteed minimum return for an equity-indexed annuity is typically only 90% of
the initial premiums paid, and these type of annuities also generally have higher surrender charges
and longer surrender and maturity periods than deferred annuities.

1 §1631; Mich. Comp. Laws § 500.1201a; 40 Pa. Cons. Stat. Ann. §310.31. The licensing
2 requirement is intended to guarantee that consumers receive appropriate guidance in their purchases
3 and a level of integrity and accountability by communicating with a person who is licensed to
4 transact insurance. The licensing requirement accordingly narrows those permitted to transact
5 insurance to professional agents and brokers – persons not only having the training and know-how
6 to counsel prospective insureds regarding the material aspects and complex details of coverages –
7 but who are required to refrain from misleading the vulnerable consumer. For example, insurance
8 agents are required to disclose all facts and information within the agent’s knowledge regarding a
9 marketed insurance product which may be “material” to a prospective annuitant’s decision to
10 purchase such product.² An agent’s neglect in disclosing or concealing such material facts entitles
11 the injured party to rescind the insurance contract. *See, e.g.,* Cal. Ins. Code §§ 330, 331.

12 8. In response to these insurance law requirements, in the mid 1990's Allianz developed
13 and implemented an internal policy and practice whereby senior citizen annuitant applicants over
14 a certain age were ineligible to purchase a single or flexible premium annuity absent the issuance
15 of an age exemption by management level supervisors. Such an exemption was not supposed to be
16 issued until after a comprehensive review of the senior citizen application and such ancillary
17 information as necessary to determine the suitability of the proposed deferred annuity. This
18 procedure would often entail an objective assessment of, *inter alia*, the applicant’s annual income,
19 tax status, source of funds for the proposed annuity, insurance objectives, investment liquidity and
20 savings, short and long term capital requirements, and such other information as may be pertinent
21 to determine if the proposed deferred annuity product was truly “suitable” for the applicant’s needs.

22 9. However, due to increased competitive pressures, in late 2000 Allianz was forced to
23 revamp the structuring of its sales efforts in order to boost annuity sales which concomitantly
24 resulted in the Company’s systematic failure to adhere to its statutory obligations and its own
25

26 _____
27 ²Under Cal. Ins. Code § 334, “Materiality is to be determined not by the event, but solely by
28 the probable and reasonable influence of the facts upon the party to whom the communication is due,
in forming his estimates of the disadvantages of the proposed contract, or in making his inquiries.”
Id., (emphasis added).

1 internal policies and practices when determining whether or not to issue an age exemption for a
2 proposed deferred annuity sale to a senior citizen. Indeed, as a result of the restructuring of its sale
3 force Allianz essentially disregarded its age exemption protocols and also severely curtailed its agent
4 training programs and the supervisory oversight of the Company's sales force. As a result, the
5 Company could no longer ensure that its annuity sales agents actually understood the workings and
6 nuances of Allianz's complex deferred annuity products and thus, by default, ensured that such
7 agents would not be able to fully communicate all material information regarding Allianz's annuity
8 products to prospective customers during sales presentations.

9 10. In 2000, Allianz began implementing structural changes to its marketing and sales
10 force by emphasizing the use of so-called field marketing organizations (FMOs) in an ever
11 increasing pace for the purpose of directing their respective sales agents to target seniors in the
12 domestic (U.S.) market for sales of deferred annuities. This was a strategic decision that was
13 implemented because of the declining growth rate in Allianz's domestic (U.S.) insurance sales
14 domestic sales. As a result, by year end 2004 Allianz claimed to have an annuities sales force that
15 exceeded 155,000 agents employed or associated with the Company's FMOs. This dramatic
16 increase in its sales force came at a high cost because Allianz was no longer able to properly train
17 or supervise its burgeoning annuity sales force about the characteristics and attributes of the products
18 they were selling and thus ensure that they were suitable investments for the senior citizens who
19 purchased them.

20 11. Instead, the agents were instructed not to deviate from the limited information
21 presented in the Company's standard form annuity contracts, and uniform pre-printed sales
22 illustrations and marketing materials when making a sales presentation to prospective customers.
23 Agents were also instructed not to conduct the level of in depth client interview necessary to gather
24 and obtain the types of information crucial for a management level supervisor to make an objectively
25 informed, good faith determination of whether to issue an age exemption for a proposed annuity sale
26 to a senior citizen. Rather, deferred annuity contracts with extended maturity dates and surrender
27 periods were systematically issued to senior citizens in nearly every instance and without regard to
28 their suitability for the senior applicant's insurance and financial needs.

1 12. Thus, Allianz currently conducts no objective review or otherwise makes a
2 reasonable good faith effort to verify the suitability of its deferred annuity products for a senior
3 citizen even those that should require an age exemption. Allianz does not even have a requirement
4 for its managerial level employees issuing age exemptions to speak to the potential policyholder
5 prior to issuing such an exemption. Allianz's conduct is unreasonable and there is an absence of any
6 due diligence by the Company that the sales agent disclosed all pertinent material information to the
7 senior about the annuity product.

8 13. The financial results of Allianz's restructuring of its sales force training and
9 supervision protocols and practices were staggering. Direct premiums derived from deferred annuity
10 sales jumped from \$2.1 billion in 2000 to over \$12.4 billion in 2004 with California generating the
11 largest number of deferred annuity sales. Lost in the Company's all consuming zeal to maximize
12 its profits were the interests of its senior citizen annuity purchasers who time after time were sold
13 overpriced deferred annuities which Allianz knew (or should have known) would not mature until
14 well beyond their actuarial life expectancy and, therefore, were not suitable for their financial and
15 insurance needs.

16 14. By this Complaint, plaintiff Negrete, on behalf of Mr. Ow and all other similarly
17 affected senior citizen purchasers of defendant's deferred annuity products, seek an order enjoining
18 Allianz from, among other things, selling a deferred annuity to senior citizens without first
19 determining its suitability for the prospective purchaser and/or from selling deferred annuities that
20 do not mature until after the prospective purchaser's actuarial life expectancy. Plaintiff also seeks
21 treble damages for violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C.,
22 §§ 1961, *et seq.*, as well as claims for violation of the elder abuse statutes and unfair competition
23 laws of California and the Market States in accordance with Business and Professions Code section
24 17200, *et seq.*, on behalf of all affected, together with such monetary and punitive damages,
25 statutory damages, restitution, injunctive and other equitable relief as may be appropriate to redress
26 the defendant's wrongful conduct in marketing and selling senior citizens annuity products that are
27 inappropriate, unsuitable and detrimental to persons in their age group, often by means of the
28 improper replacement of existing annuities and/or life insurance policies.

JURISDICTION AND VENUE

1
2 15. This Court has jurisdiction over this removed action pursuant to the Class Action
3 Fairness Act based upon defendant's claim of complete diversity of citizenship of the named parties.
4 28 U.S.C., §§ 1332, 1446 and 1453(b). In addition, pursuant to this Complaint, plaintiff asserted
5 a claim against the defendant for violation of RICO thereby also giving this Court federal question
6 jurisdiction. 18 U.S.C., § 1964; 28 U.S.C., § 1331.

7 16. The amount in controversy exceeds \$75,000 for plaintiff, exclusive of interest and
8 costs, and includes the combined loss of annuity benefits and accumulated cash value, the payment
9 of surrender charges, and plaintiff's pro rata share of punitive damages, injunctive and equitable
10 relief, and attorney fees, in which plaintiff and each class member have an undivided interest.
11 Plaintiff further alleges, upon information and belief, that less than one-third of all class members
12 reside in the State of California and the cumulative amount in controversy for the class exceeds
13 \$5,000,000.³

14 17. Venue is proper in this district pursuant to 28 U.S.C., § 1391 and 18 U.S.C., § 1965
15 of RICO in that many of the acts and transactions giving rise to the violations of federal and state
16 law complained of herein occurred in this district and because the defendant:

- 17 a. works or does business itself or through an agent in this district; and/or
18 b. is licensed or registered in this district.

19 17. In connection with the acts, conduct and other wrongs complained of herein,
20 defendant, directly or indirectly, used the means and instrumentalities of interstate commerce and
21 the United States mails.

22 **PARTIES**

23 18. Plaintiff Vida F. Negrete is, and at all times mentioned herein was, a resident and
24 citizen of the State of California, County of Los Angeles, and the lawfully appointed Conservator
25 over the person and estate of Everett E. Ow pursuant to Letters of Conservatorship issued by the Los
26

27 ³ According to Allianz's 2005 A.M. Best Co. Report, its geographic direct premium
28 distribution was: California (12.0%); Florida (11.4%); Texas (8.2%); Illinois (4.9%); Ohio (4.8%);
and other jurisdictions (58.7%).

1 Angeles Superior Court on August 19, 2005 in The Conservatorship of Everett E. Ow, Case No. GP
2 011324. Prior to the issuance of the conservatorship, on or about September 1, 2004, a duly
3 authorized Allianz sales agent solicited, offered and sold Mr. Ow approximately \$445,000 in
4 deferred equity-indexed annuities underwritten and issued by defendant Allianz which had maturity
5 dates ranging between 2012 and 2014. At the time of the first of these annuity purchases, Mr. Ow
6 was 82 years old.

7 19. Defendant Fidelity and Guaranty Life Insurance Company is, and at all relevant times
8 herein was, a privately held stock insurance corporation. Founded in 1959, Allianz is organized and
9 existing under and by virtue of the laws of the State of Maryland and is authorized to transact and,
10 in fact, transacting the business of insurance in this State and within this judicial district. Allianz
11 maintains its executive offices at 5701 Golden Hills Drive, Minneapolis, Minnesota, 55416.

12 20. Over 95% of Allianz's annual net premium revenues are derived from its domestic
13 (U.S.) sales of the Company's single and flexible deferred and equity-indexed annuity products.
14 Allianz markets and sells its deferred annuity products primarily through approximately 200 FMOs
15 representing over 155,000 sales agents, brokers and financial planners respectively employed and/or
16 associated with them. Some of the larger FMOs which have conducted business on behalf of
17 Allianz in California and other Market States include: AIP Marketing Alliance, Inc.; The Altium
18 Group; Asset Protections Consultants; Brokers' Choice of America, Inc.; *Efirstfinancial*; Estate
19 Preservation and Insurance Services; First Protective Insurance Group, Inc.; Markman Group, Inc.;
20 National Retirement Services, Inc.; Personalized Brokerage Services, Inc.; Pinnacle USA; Seniors
21 Advisors of Michigan, Inc.; Seniors Only Financial; and USA Financial Marketing Corp. According
22 to its most recent A.M. Best Company report, Allianz holds a 40% -100% ownership interest in
23 many of the FMOs through whom the Company markets and sells its deferred annuity products to
24 senior citizens.

25 21. While the FMOs recruit and hire individual sales agents and brokers, each agent and
26 broker enters into a separate written agency agreement with Allianz and the defendant is responsible
27 for their formal appointment as the Company's licensed insurance agents in California and other
28 states in which Allianz conducts business. Allianz nonetheless is ultimately is responsible for their

1 25. In or about the summer of 2002, plaintiff Ow attended an "investment seminar" for
2 senior investors staged by Mark Leon Lindsey, an authorized Allianz sales agent employed and/or
3 associated with Allianz-based FMOs, Seniors Only Financial and Asset Protection Consultants.
4 During this seminar Mr. Lindsey never inquired about or sought information concerning plaintiff's
5 financial or insurance advice necessary to determine whether Allianz's deferred annuity products
6 were suitable for Mr. Ow's needs. Instead, the agent's focus was ascertaining the degree and extent
7 of Mr. Ow's assets that could be used to purchase Allianz annuity products. At the conclusion
8 of the seminar, Lindsey recommended and encouraged Mr. Ow to purchase deferred annuities from
9 defendant Allianz.

10 26. Commencing in approximately August 2002 through November 2002, Allianz sold
11 Mr. Ow over \$400,000 in equity-indexed deferred annuities issued by defendant Allianz. In order
12 to purchase those annuities, Mr. Ow was forced to liquidate essentially all of his liquid retirement
13 holdings in several mutual funds. At the time of the purchase of the Allianz annuities, Mr. Ow was
14 82 years old. The Allianz annuities have maturity dates of 10-12 years, meaning that they are
15 deferred annuities that will not mature until Mr. Ow is between 92 and 94 years old. At the time of
16 these purchases, the annuity maturity dates were well after Mr. Ow's life expectancy.

17 27. Specifically, Mr. Ow was sold an Allianz "Power Seven" deferred annuity, policy
18 no. 8690870 which required an initial premium payment of \$278,844.31. Mr. Ow was also sold an
19 Allianz Flex Dex annuity, policy no. 8667528 which required an initial premium of \$39,463.67. Mr.
20 Ow was also sold another Allianz Flex Dex annuity, policy no. 8667621 which required an initial
21 premium payment of \$57,095.97. Additionally, Lindsey again approached Mr. Ow in August 2004
22 and persuaded him to yet a fourth Allianz deferred annuity, a Allianz MasterDex 10 annuity, policy
23 no 70149551 which required an initial premium payment of \$40,000.00.

24 28. Due to his age and other factors, including without limitation, the concealment and
25 other misconduct by defendants, plaintiff did not discover until late 2004 that the Allianz deferred
26 annuity products recommended and sold to him were wholly unsuitable for his insurance and
27 financial needs. Additionally, on or about May 13, 2005, the Superior Court in and for Los Angeles
28

1 County appointed plaintiff Vida F. Negrete as the conservator over the estate and personal affairs
2 of Mr. Ow.

3 29. On information and belief, Allianz paid its agent Lindsey substantial commissions
4 in connection with the sales of the Allianz annuities to Mr. Ow. Those commissions, which were
5 not disclosed to Mr. Ow, are substantially in excess of the commissions normally paid to brokers
6 or agents for regular annuities or other investment products.

7 30. Mr. Ow was harmed by his purchase of a Allianz deferred annuities because it was
8 an unsuitable financial product in light of the maturity date, as was known to Allianz at the time it
9 approved Mr. Ow's application. In addition to maturity dates that substantially exceeds Mr. Ow's
10 life expectancy, the annuities provided that Mr. Ow would only be permitted minimal access to his
11 principal investment for the first 13 years of the annuities unless he paid substantial surrender
12 charges. Aside from the interest on the annuity account balance, the only benefit from these
13 transactions accrued to defendants in the form of collected premiums, fees, and commissions from
14 the sale of the annuities to Mr. Ow.

15 **CLASS ACTION ALLEGATIONS**

16 31. Plaintiff Negrete, as the duly appointed conservator over the estate and person of
17 Everett E. Ow brings this action on behalf of Mr. Ow and all persons in the Market States, or such
18 states as the Court may determine to be appropriate for class certification treatment, pursuant to
19 Federal Rules of Civil Procedure 23(a) and 23(b). The class of persons which plaintiff seeks to
20 represent is defined as:

21 All persons who within the applicable statute of limitations of the date of the
22 commencement of this action, and while 65 years of age or older, purchased one or
23 more Allianz Life Insurance Company of North America deferred annuities either
24 directly, or through the surrender (in whole or part) of an existing permanent life
insurance policy or annuity, or by borrowing against an existing permanent life
insurance policy, which annuity had a maturity date beyond the annuitant's actuarial
life expectancy.

25 Excluded from the class are the defendant, any parent, subsidiary or affiliate of the defendant, any
26 entity in which the defendant has a controlling interest, and the respective officers, directors,
27 employees, agents, legal representatives, heirs, predecessors, successors, and assigns of such
28 excluded persons or entities.

1 32. This class seeks certification of claims for damages pursuant to 18 U.S.C. §1962(d).
2 The class also seeks certification of claims for injunctive relief, restitution, disgorgement and
3 monetary and exemplary damages under the consumer protection and elder abuse statutes of
4 California and similar statutory enactments of the Market States.

5 33. The class of annuitants is so numerous that joinder of all members individually, in
6 one action or otherwise, would be impractical. On information and belief, the number of persons
7 qualifying for class membership exceeds 100,000 persons and that the vast majority of those
8 annuitants can be readily identified through defendant's records. Therefore, class notice easily can
9 be mailed to all class members in the event the class is certified by this Court.

10 34. Judicial determination of the common legal and factual issues essential to this case
11 would be far more efficient and economical than piecemeal individual determinations.

12 35. This action involves questions of law and fact common to plaintiff and all members
13 of the class involving violations of RICO, state consumer protection and elder abuse statutory
14 enactments which predominate over any claims affecting individual members of the class. Such
15 common question of fact and law predominate over individual issues and include:

16 a. Whether defendant deployed a scheme or artifice to deceive and
17 engaged in a common course of business conduct which deceived or
18 misled Mr. Ow and members of the class into purchasing a deferred
19 annuity with a maturity date beyond their actuarial life expectancy at
20 the time of sale;

21 b. Whether defendant failed to disclose material information concerning
22 suitability, impact of and detriments from using some or all of the
23 cash value of an existing life insurance policy or annuity to purchase
24 a new Allianz deferred annuity by means of a lapse, surrender or
25 withdrawal/partial surrender of a life insurance policy or annuity, or
26 a life insurance policy loan;

27 c. Whether defendant churned or twisted members of the class in
28 connection with their purchase of the Company's annuities;

1 d. Whether defendant developed, encouraged and engaged in a scheme
2 designed to sell deferred annuities to its existing policyholders and
3 annuitants through the concealment of material facts;

4 f. Whether defendant utilized a common scheme employing common
5 standardized misleading marketing materials and other deceptive
6 sales practices in order to sell unsuitable deferred annuities to senior
7 citizens;

8 g. Whether defendant breached their implied duty of good faith and fair
9 dealing with Mr. Ow and members of the class or otherwise engaged
10 in unfair, fraudulent or wrongful business practices during the
11 relevant time period in connection with the marketing and sale of
12 their deferred annuity products to senior citizens;

13 h. Whether the Mr. Ow and members of the class are entitled to
14 damages, specific performance, injunctive relief, restitution,
15 disgorgement or other equitable relief from the defendant; and

16 i. Whether Mr. Ow and members of the class have sustained damages
17 as a result of defendant's wrongful conduct and, if so, what is the
18 proper measure of such damages.

19 36. The amount of restitution and damages awardable to Mr. Ow and each class member
20 can easily be determined from the computer records and the computer data possessed by the
21 defendant.

22 37. There is no need for any manual computation of these amounts because, among other
23 things, the precise amount of money unreasonably, unlawfully, unfairly and wrongfully taken from
24 Mr. Ow and each class member can be computed through the data processing system possessed by
25 defendant.

26 38. There is no plain, speedy or adequate remedy other than by maintenance of this class
27 action because each member of the class is a senior citizen and their respective damages are
28

1 relatively small making it economically infeasible for class members to pursue their remedies
2 individually.

3 39. Further, a class action is superior to other available methods for the fair and efficient
4 adjudication of the controversies herein in that: (a) individual claims by Mr. Ow or class members
5 are impractical as the costs of pursuit far exceed what Mr. Ow or any one class member has at stake;
6 (b) as a result, although some class actions have been filed, there has been very little individual
7 litigation over the controversies herein, and individual members of the class have no interest in
8 prosecuting and controlling separate actions; (c) it is desirable to concentrate litigation of the claims
9 herein in this forum; and (d) the proposed class action is manageable.

10 40. Judicial determination of the common legal and factual issues essential to this case
11 would be far more efficient and economical as a class action than in piecemeal individual
12 determinations. The prosecution of separate actions by individual class members, even if
13 theoretically possible, would create a risk of inconsistent or varying adjudications with respect to
14 individual class members against defendant and would establish impractical standards of conduct
15 for defendant.

16 41. The claims of the plaintiff as the appointed Conservator over Mr. Ow are typical
17 claims of the members of the class of deferred annuity policyholders. Mr. Ow is a member of the
18 class of victims described herein. Mr. Ow purchased and currently owns a Allianz deferred annuity
19 based upon the deceptive and wrongful sales practices described in this Complaint.

20 42. The named plaintiff in this action will fairly and adequately act to protect the interests
21 of all members of the class, the named plaintiff has retained experienced counsel in this area of the
22 law.

23 43. The prosecution of separate actions by individual members of the class would create
24 a risk of inconsistent or varying adjudications with respect to different class members, that would
25 establish incompatible standards of conduct for defendant.

26 44. Allianz has acted on grounds generally applicable to the class as stated above, thereby
27 making appropriate final injunctive relief or corresponding declaratory relief with respect to the
28 class as a whole.

CONSPIRACY/AIDING & ABETTING ALLEGATIONS

1
2 45. Allianz did not engaged in the above described wrongful acts and practices alone.
3 Instead, it acted as part of a common scheme and conspiracy with the FMOs it owns, operates and/or
4 controls, and unnamed co-conspirators including, but not limited to, those entities referred to in ¶
5 20, *supra*, and the current and former officers and sales agents of those FMOs who agreed to market
6 and sell Allianz's unsuitable deferred annuities to senior citizens.

7 46. Allianz and each member of the conspiracy, with knowledge and intent, agreed to the
8 overall objective of the conspiracy. They also agreed to, and actually committed, the above alleged
9 acts of fraud and unlawful conduct with the goal of depriving Mr. Ow and other class members of
10 their money and property in connection with the sale of unsuitable deferred annuities.

11 47. Indeed, for the fraudulent deferred annuity marketing and sales scheme described
12 above to be successful, Allianz and each of the other members of the conspiracy had to agree to
13 enact and utilize the same devices and fraudulent tactics against the Mr. Ow and other and class
14 members.

15 48. Numerous common facts and similar activities evidences the existence of a
16 conspiracy among the defendant, its FMOs and other sellers of the defendant's deferred annuities,
17 including, *inter alia*: (a) senior citizens are intentionally targeted for the marketing and sale of
18 deferred annuities with maturity dates beyond their actuarial life expectancy; (b) deferred annuity
19 sales presentations are commonly made by agents of the FMOs owned, operated and/or controlled
20 by Allianz, in conjunction with a so-called "estate planning services" and/or "financial planning
21 services" sales pitch (including but not limited to those referred to in ¶ 20, *supra*); (c) the
22 defendant's own internal deferred annuity senior citizen age exemption protocols and procedures
23 are deliberately disregarded; (d) existing policyholders with large accumulated cash values are
24 churned into defendant's deferred annuity products; and (e) the lavish incentives that the defendant
25 offers its annuity sales force.

26 49. Within the applicable statute(s) of limitations, the conspiracy was conducted through
27 and implemented by: (a) defendant's sharing of its policyholder lists with FMOs (including but not
28 limited to those referred to in ¶ 20, *supra*) for the purpose of generating churned annuity sales; (b)

1 the defendant's development of uniformly deceptive and misleading sales materials, illustrations and
2 scripted sales presentations which were disseminated through its sales force; (c) defendant's use of
3 agents to promote low-cost estate and financial planning services as means to facilitate deferred
4 annuity sales to senior citizens; (d) defendant's direction to their sales force to refrain from
5 collecting information concerning a prospective senior citizen's suitability for Allianz's deferred
6 annuity products; and (e) the defendant's utter disregard of the Company's internal deferred annuity
7 age exemption protocols and procedures.

8 **RICO ALLEGATIONS**

9 **A. The Allianz Annuity Enterprise**

10 50. Mr. Ow and class members are each "persons" within the meaning of 18 U.S.C.
11 1961(3), and each of them has sustained injury to their business or property as a result of the acts
12 and the conduct of the defendant described herein.

13 51. Based upon plaintiff's current knowledge, the following group of individuals
14 associated in fact (which plaintiff refer to as the "Allianz Annuity Enterprise" ("AAE")) is
15 responsible for the marketing, solicitation and sale of various types of immediate and deferred
16 Allianz annuity products to members of the general public which include, as a subpart thereof,
17 senior citizens — and constitutes an "enterprise" as that term is defined in 18 U.S.C. §1961(4): (a)
18 Allianz who underwrites and issues the annuities; and (b) the FMOs, and their respective officers
19 and sales agents, that Allianz has contractually engaged for the purpose of assisting, perfecting and
20 furthering its wrongful scheme to market and sell the Company's unsuitable deferred annuity
21 products to senior citizens.

22 52. The AAE is an ongoing organization which engages in, and whose activities affect,
23 interstate commerce.

24 53. While the defendant participates in, and its FMOs are members and part of the AAE,
25 they also have an existence separate and distinct from the enterprise, and each of these entities are
26 "persons" as defined by 18 U.S.C. 1961(3).

27 54. To successfully market and sell unsuitable deferred annuities to senior citizens in the
28 manner set forth above, Allianz required a systematic means to control the substantive information

1 provided to prospective purchasers at the point of sale, including concealing the inherent
2 unsuitability of an investment vehicle that in all likelihood will not mature until long after the senior
3 citizen purchaser has died. The AAE provides Allianz with a system and the ability, and their
4 control of and participation in it is necessary for the successful operation of its scheme. The
5 defendant controls and operates the AAE by:

6 a. Designing and issuing deferred annuity products with
7 extended maturity dates, high surrender charges and steep
8 commissions for sale to senior citizens;

9 b. Developing itself, and through its FMOs owned, operated
10 and/or controlled by Allianz, programs for "low-cost" senior citizen
11 estate and/or financial planning services to be performed by its FMOs
12 (including those referred to in ¶ 20, *supra*), as a means to facilitate
13 the sale of defendant's unsuitable deferred annuity products to senior
14 citizens, often including misrepresenting themselves as "paralegals,"
15 "estate planners" or "financial planners or advisors" to gain entry to
16 seniors' homes and to learn their confidential financial information
17 otherwise unavailable to them as "insurance agents;"

18 c. Developing uniform marketing materials, standardized
19 annuity contracts and scripted sales presentations including but not
20 limited to those materials developed at annual conventions and in
21 agent training programs which focus on how to target seniors and
22 other high pressure sales techniques, all of which extol the purported
23 safety of deferred annuities for purchase by senior citizens while
24 concealing their true unsuitability for use by the Company's sales
25 force;

26 d. Developing by themselves, and through the FMOs owned
27 and/or controlled by Allianz, uniform sales techniques to "churn"
28 senior citizens into purchasing deferred annuities from the defendant,

1 for example by recommending that instead of receiving low returns
2 on CDs, the senior may wish to transfer their money into an annuity
3 without disclosing its associated penalties;

4 e. Directing and controlling the Company's sales force's strict
5 adherence to and use of uniform and standardized sales materials,
6 techniques and presentations developed and authorized by Allianz to
7 market and sell unsuitable deferred annuities to senior citizens,
8 frequently within 90 days of the date of the trust sold via the "estate
9 planning" services;

10 f. Developing and implementing a comprehensive sales
11 incentive program whereby the defendant tracked and measured the
12 success of its FMO sales force's deferred annuity sales and lavishly
13 rewarded top sales producers with cash bonuses, exotic vacations and
14 other substantial sales perks, and by paying high commission costs to
15 independent agents for steering business to Allianz, costs passed on
16 to the annuitant and factored into the underwriting criteria;

17 g. Accepting applications for, and issuing deferred annuity
18 products to, senior citizens even though the maturity dates for such
19 products were beyond the actuarial life expectancy of the annuitant
20 and, thus, were inherently unsuitable investments; and

21 h. Imposing, causing to be imposed and/or collecting improper
22 annuity charges from Mr. Ow and other class members upon their
23 surrender of all or part of their annuity and/or in the event the
24 annuitant dies within the annuity's surrender period.

25 55. As set forth above, the AAE has an ascertainable structure separate and apart from
26 the pattern of racketeering activity in which the defendant engages. For example, the AAE
27 operations include the marketing, solicitation and sale of various types of Allianz annuity products
28 to persons under age 65, as well as senior citizens. In addition to the unsuitable deferred annuities

1 at issue, the products include immediate annuities that enable the annuitant to receive income
2 distributions immediately upon purchase, as well as deferred annuities with maturity dates within
3 the actuarial life expectancy of the annuitant. Notwithstanding the availability of annuity products
4 that are suitable for purchase by senior citizens, defendant has exerted control and dominance over
5 the operations of AAE for the purpose of furthering its unlawful scheme of targeting senior citizens
6 specifically for the marketing and sale of unsuitable deferred annuity products.

7 **B. Predicate Acts**

8 56. Section 1961(1)(B) of RICO provides that "racketeering activity" includes any act
9 indictable under 18 U.S.C. §1341 (relating to mail fraud) and 18 U.S.C. §1343 (relating to wire
10 fraud). As set forth below, Allianz has and continues to engage in conduct violating each of these
11 laws to effectuate its scheme.

12 57. In addition, to effectuate their scheme, defendant and each of its FMOs sought to and
13 did aid and abet the others in violating the above laws within the meaning of 18 U.S.C. §2. As a
14 result, their conduct is indictable under 18 U.S.C. §§1341 and 1343 on this additional basis.

15 **C. Violations of 18 U.S.C. 1341 and 1343**

16 58. For the purpose of executing and/or attempting to execute the above-described
17 scheme to market and sell unsuitable deferred annuities to senior citizens by means of false
18 pretenses, representations or promises, the defendant, in violation of 18 U.S.C. §1341, placed in post
19 offices and/or in authorized repositories matter and things to be sent or delivered by the Postal
20 Service, caused matter and things to be delivered by commercial interstate carriers, and received
21 matter and things from the United States Postal Service or commercial interstate carriers, including,
22 but not limited to, deferred annuity marketing brochures, performance illustrations, applications,
23 contracts, sales presentation scripts, training manuals and video tapes, correspondence, annuitant
24 leads lists, premium and commission payments, reports, data, summaries, statements, and other
25 materials relating to the marketing and sale of Allianz's deferred annuity products.

26 59. For the purpose of executing and/or attempting to execute the above-described
27 scheme to defraud or obtain money by means of false pretenses, representations or promises, the
28 defendant, also in violation of 18 U.S.C. § 1343, transmitted and received by wire, matter and things,

1 which include, but are not limited to, annuitant applications, sales presentation scripts,
2 correspondence, annuitant leads lists, premium and commission payments, reports, data, summaries,
3 oral and written statements, faxes, and other deferred annuity materials.

4 60. The matters and things sent by defendant via the Postal Service, commercial carrier,
5 wire or other interstate electronic media as identified above include, *inter alia*

6 a. False and fraudulent representations that defendant's deferred
7 annuity products are safe and suitable for purchase by senior citizens;

8 b. Material omissions of fact concealing that defendant would
9 and did use the fraudulent and unlawful sales techniques and
10 presentations and the deceptive and misleading sales materials and
11 annuity contracts described above to solicit and induce Mr. Ow and
12 other members of the class into purchasing defendant's unsuitable
13 deferred annuities, either as new stand alone purchases or through the
14 surrender (in whole or part) of an existing permanent life insurance
15 policy or annuity, or by borrowing against an existing permanent life
16 insurance policy;

17 c. False and deceptive representations concerning the purported
18 "independence" of the FMOs marketing and selling the defendant's
19 deferred annuities to senior citizens when, in fact, many of those
20 entities, are secretly owned, operated and controlled by Allianz; and

21 d. Material omissions of fact that the sales agents employed by
22 the defendant's FMOs are required (and highly incentivized) to
23 adhere to Allianz's scripted sales materials and thus are not providing
24 prospective annuitants with "independent" estate and financial
25 planning services or insurance advice as represented.

26 61. The defendant's misrepresentations, acts of concealment and failures to disclose were
27 knowing and intentional, and made for the purpose of deceiving Mr. Ow and the class and
28 wrongfully obtaining their monies and property for defendant's gain.

1 62. The defendant either knew or recklessly disregarded the fact that the
2 misrepresentations and omissions described above and incorporated herein were material, and Mr.
3 Ow and the members of the class reasonably relied on the misrepresentations and omissions as set
4 forth above.

5 63. As a result, defendant has obtained money and property belonging to Mr. Ow and
6 class members, and they have been respectively injured in their business or property by the
7 defendant's overt acts of mail and wire fraud, and by Allianz's and its FMOs' aiding and abetting
8 each other's acts of mail and wire fraud.

9 **D. Pattern of Racketeering Activity**

10 64. The defendant has engaged in a "pattern of racketeering activity," as defined by 18
11 U.S.C. §1961(5), by committing or aiding and abetting in the commission of at least 2 acts of
12 racketeering activity, *i.e.*, indictable violations of 18 U.S.C. §§1341 and 1343 as described above,
13 within the past 10 years. In fact, defendant and its FMOs each have committed or aided and abetted
14 each other in the commission of thousands of acts of racketeering activity. Each racketeering act
15 was related, had a similar purpose, involved the same or similar participants and method of
16 commission, had similar results and impacted similar victims, including Mr. Ow and other members
17 of the class.

18 65. The multiple acts of racketeering activity which defendant committed and/or
19 conspired to, or aided and abetted in the commission of, were related to each other and amount to
20 and pose a threat of continued racketeering activity, and therefore constitute a "pattern of
21 racketeering activity" as defined in 18 U.S.C. §1961(5).

22 **E. RICO Violations**

23 66. Defendant, through the conduct described above, acquired, maintained and exercised
24 control over the AAE enterprise, which was engaged in or affected interstate or foreign commerce.
25 Therefore, Allianz has violated 18 U.S.C. §1961(1)(B).

26 67. As a direct and indirect result of defendant's conduct as described above, substantial
27 income was generated and received by and came under the control of defendant. Defendant used
28

1 that income to establish and/or operate the AAE enterprise described herein, which was engaged in
2 interstate or foreign commerce. Therefore, defendant has violated 18 U.S.C. §1962(a).

3 68. Section 1962(c) of RICO provides that it "shall be unlawful for any person employed
4 by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign
5 commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs
6 through a pattern of racketeering activity...." Through the patterns of racketeering activities
7 outlined above, the defendant has conducted and participated in the affairs of the AAE.

8 69. Defendant and each of the FMOs owned, operated and/or controlled by it, willfully
9 agreed to, and did, materially participate, directly or indirectly, in the conduct of the affairs of the
10 AAE through a pattern of racketeering activity comprised of numerous acts of mail fraud and wire
11 fraud, and defendant and each FMO so participated in violation of 18 U.S.C. §1962(c).

12 70. Additionally, Section 1962(d) of RICO makes it unlawful "for any person to conspire
13 to violate any of the provisions of subsection (a), (b), or (c) of this section." Defendant's conspiracy
14 with its FMOs to defraud the plaintiff and other class members of their money and property from
15 the sale of unsuitable deferred annuities pursuant to the scheme described above violates 18 U.S.C.
16 §1962(d).

17 **COUNT ONE**

18 **(Civil RICO)**

19 71. Plaintiff refers to each and realleges every preceding paragraph and incorporates
20 those paragraphs as though set forth at length in this cause of action.

21 72. This claim for relief arises under 18 U.S.C. §1964(c).

22 73. In violation of 18 U.S.C. §1962(c), defendant has, as set forth above, conspired to
23 violate 18 U.S.C. §1962(c) by conducting or participating in the conduct of, the affairs of the AAE
24 through a pattern of racketeering.

25 74. As a result and by reason of the foregoing, the plaintiff and class members have been
26 injured, suffered irreparable harm and sustained damage to their business and property, and are
27 therefore entitled to recover actual and treble damages, and their costs of suit, including reasonable
28 attorney fees, pursuant to 18 U.S.C. §1964(c).

1 87. Accordingly, defendant has violated Cal. Bus. & Prof. Code §17200's proscription
2 against engaging in unfair and unlawful business practices, and similar statutory enactments in the
3 other Market States, and Mr. Ow and class members are entitled to injunctive and equitable relief
4 in the form of restitution and disgorgement of all earnings, profits, compensation and benefits
5 defendant obtained as a result of such unfair and unlawful business practices.

6 88. As a result of the conduct described above, defendant has been and will be unjustly
7 enriched at the expense of Mr. Ow and class members. Specifically, defendant has been unjustly
8 enriched by receiving substantial monies and profits from the sale of its deferred annuity products
9 which were promoted and sold through advertisements which affirmatively misrepresent, either
10 directly or by implication, the true suitability of such products for purchase by senior citizen class
11 Members. Further, both Mr. Ow and other class members have been deprived of money or property
12 as a result of defendant's wrongful conduct and unlawful acts and practices and, therefore, have
13 sustained injury in fact.

14 89. Pursuant to Cal. Bus. & Prof. Code §17203, and the similar relief provided for under
15 the statutory enactments in other Market States, plaintiff seeks a Court Order requiring defendant
16 to immediately cease such acts of unfair competition and enjoining them from continuing to
17 deceptively advertise or conduct business via the unlawful or unfair business acts and practices and
18 deceptive and misleading advertising complained of herein and for failing to disclose fully the
19 unsuitability of defendant's annuity products. Plaintiff also requests an order requiring defendant
20 to engage in a corrective advertising campaign.

21 90. Plaintiff additionally requests an Order requiring defendant to disgorge its ill-gotten
22 gains as described above and awarding Mr. Ow and class members full restitution of all monies and
23 property wrongfully acquired by defendant by means of such unlawful business practices, acts of
24 unfair competition and false advertising, plus interest and attorneys' fees, so as to restore any and
25 all monies to Mr. Ow and class members which were acquired and obtained by means of such
26 deceptive, unfair or unlawful business practices. Plaintiff further requests an award of monetary and
27 exemplary damages as may permitted by law under California law and similar statutory enactments
28 in the other Market States.

COUNT FOUR

(Unfair, Deceptive and Misleading Advertising)

1
2
3 91. Plaintiff refers to each and realleges every preceding paragraph and incorporates
4 those paragraphs as though set forth at length in this Count.

5 92. Cal. Bus. & Prof. Code §§17500, *et seq.*, and similar statutory enactments in other
6 Market States, prohibit unfair, deceptive and misleading advertising. *See, e.g.*, 73 Pa. Cons. Stat.
7 Ann. §§201-1, *et seq.*

8 93. Defendant's uniform sales materials and standardized annuity contract forms
9 deceived and misled Mr. Ow and other members of the class as to the suitability of the deferred
10 annuities they purchased from Allianz and thus also constitute deceptive or misleading advertising
11 in violation of, *inter alia*, Cal. Bus. & Prof. Code §§17500, *et seq.*, and similar statutory enactments
12 prohibiting unfair, deceptive and misleading advertising in other Market States.

13 94. Defendant used various forms of media to advertise, call attention to, and otherwise
14 publicize its deferred annuities by, *inter alia*, misleadingly and deceptively representing that its
15 annuity products are suitable for purchase by senior citizens even when the annuity's maturity date
16 is beyond the purchaser's actuarial life expectancy. Such promotions and advertisements constitute
17 unfair competition and unfair, untrue or misleading advertising within the meaning of Cal. Bus. &
18 Prof. Code §§17500, *et seq.*, and similar statutory enactments in other Market States, which
19 advertisements are likely to have deceived and continue to deceive the consuming public. Defendant
20 either knew or recklessly disregarded that such advertising was deceptive, misleading or otherwise
21 inadequate. Such conduct also constitutes a violation of Cal. Bus. & Prof. Code §§17200, *et seq.*,
22 and similar statutory enactments in other Market States.

23 95. The above-described unfair, unlawful, deceptive and misleading advertising and
24 business acts conducted by the defendant still continue to this day and present a threat to class
25 members and the general public in that Allianz has failed to publicly acknowledge its wrongdoing
26 or publicly issue adequate corrective notices and advertising to purchasers of defendant's annuity
27 products and to the public generally.

28

1 96. The advertising/marketing brochures, along with the sales techniques utilized by
2 defendant are, in fact, false and misleading in that defendant made repeated express representations
3 that:

4 a. The Allianz deferred annuity products were a smart choice for
5 the plaintiff and other class members' financial future;

6 b. The defendant's deferred annuity products offered access to
7 money, including free withdrawals;

8 c. The defendant's deferred annuity products offered special
9 access to money for emergencies;

10 d. The defendant's deferred annuity products are appropriate and
11 suitable for senior citizens;

12 e. The defendant's deferred annuity products satisfy estate and
13 financial planning requirements; and

14 f. The defendant's deferred annuity products will provide
15 financial security and peace of mind.

16 97. These representations were made by defendant with the intent to induce and did, in
17 fact, reasonably induce Mr. Ow and other class members to purchase the defendant's annuity
18 products and thus deprived them of monies and property as a result of defendant's acts and practices.
19 Had Mr Ow and the class members known the actual facts, they would not have purchased the
20 annuities.

21 98. As a result of the conduct described above, defendant has been and will be unjustly
22 enriched at the expense of Mr. Ow and class members. Specifically, Allianz has been unjustly
23 enriched by receiving substantial monies and profits from the sale of its deferred annuity products
24 which were promoted and sold through advertisements which affirmatively misrepresent, either
25 directly or by implication, the true suitability of such products for purchase by senior citizens.
26 Pursuant to Cal. Bus. & Prof. Code §17535, and all similar statutory enactments in other Market
27 States, plaintiff seeks a Court Order requiring defendant to immediately cease such acts of unfair
28 competition and enjoining them and/or their affiliates from continuing to deceptively advertise and

1 market their deferred annuity products. Plaintiff also requests an Order requiring defendant to
2 engage in a corrective advertising campaign. Plaintiff further requests an Order requiring defendant
3 to disgorge their ill-gotten gains as described above and awarding Mr. Ow and class members full
4 restitution of all monies wrongfully acquired by defendant through such acts of unfair competition
5 and deceptive and misleading advertising, plus interest and attorney fees so as to restore any and all
6 monies and property to Mr. Ow and class members which were acquired and obtained by means of
7 such deceptive and misleading advertising.

8 **COUNT FIVE**

9 **(Breach of Fiduciary Duty)**

10 99. Plaintiff refers to each and realleges every preceding paragraph and incorporates
11 those paragraphs as though set forth at length in this Count.

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

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

22 102. As set forth above, defendant and its FMOs each breached their obligations and
23 fiduciary duties of care, loyalty, reasonable inquiry, oversight, good faith and supervision by, *inter*
24 *alia*:

- 25 a. Unreasonably and in bad faith, refusing to give sufficient
26 consideration to Mr. Ow's welfare rather than their own financial interests;
27
28

- 1 b. Unreasonably and in bad faith issuing an age exception
2 without performing a full and complete investigation of whether or
3 not such an exception would be suitable for their customer;
- 4 c. Ignoring Allianz's protocols and standards in order to further
5 their own financial interests;
- 6 d. Churning existing senior citizen life insurance and/or annuity
7 policyholders using deceptive and misleading standardized marketing
8 materials in violation of Cal. Ins. Code §§781 and 10509.8 and the
9 similar statutory enactments of all the other Market States (*see, e.g.*,
10 Fla. Stat. §626.9541(1)(1) and (aa);
- 11 e. Failing to competently supervise and monitor their employees;
- 12 f. Failing to fully disclose the true characteristics of the deferred
13 annuities sold to senior citizens, instead making false and fraudulent
14 representations that defendant's deferred annuities are safe and
15 suitable for purchase by senior citizens;
- 16 g. Making material omissions of fact that the FMOs marketing
17 and selling defendant's deferred annuities were "independent;" and
- 18 h. Maintaining an illegal marketing scheme and conspiracy in
19 violation of §1961(1)(B) of RICO to sell annuity insurance to senior
20 citizens.

21 103. As described herein, defendant and the FMOs owned, operated and/or controlled by
22 Allianz recklessly or knowingly breached their fiduciary duties by orchestrating, devising, carrying
23 out, participating in, and/or failing to prevent, terminate, or timely correct the wrongdoing alleged
24 herein.

25 104. Each of these violations was achieved because defendant willingly, knowingly,
26 and/or with recklessness sought to gain its own financial advantage to the disadvantage of Mr. Ow
27 and the class.

28

1 class are entitled to punitive and exemplary damages to be ascertained according to proof, which is
2 appropriate to punish and set an example of defendant, pursuant to Cal. Civ. Code §3294, *et. seq.*,
3 and the similar statutory enactments of the other Market States.

4 **COUNT SEVEN**

5 **(Unjust Enrichment and Imposition of Constructive Trust)**

6 112. Plaintiff refers to each and realleges every preceding paragraph and incorporates
7 those paragraphs as though set forth at length in this Count.

8 113. By engaging in the unsuitable deferred annuity sales scheme, Allianz and the FMOs
9 owned, operated and/or controlled by the defendant obtained payments from Mr. Ow and class
10 members in the form of annuity premiums, commissions, service charges, surrender charges, and
11 other fees, expenses and charges based upon misleading and fraudulent uniform sales presentations,
12 marketing materials, and annuity illustrations, all as detailed more fully above.

13 114. As a result of the relationships between the parties and the facts stated above,
14 defendant will be unjustly enriched if they are permitted to retain such funds and therefore a
15 constructive trust should be established over the monies Mr. Ow and the class members paid to
16 Allianz, including annuity premiums, commissions, service charges and other fees, expenses and
17 charges imposed by the defendant and its agents. These monies are traceable to Allianz and its
18 FMOs owned, operated and/or controlled by Allianz.

19 115. The victims of the unsuitable deferred annuity sales scheme described above have
20 no adequate remedy at law and have been damaged in an amount to be determined at the trial of this
21 action.

22 **PRAYER**

23 WHEREFORE, plaintiff Vida F. Negrete prays for judgment against defendant Allianz Life
24 Insurance Company of North America as appropriate to each cause of action alleged, as follows:

- 25 1. For an Order certifying this action as a plaintiff class action under Fed. R. Civ. Proc.
26 23 as set forth herein;
- 27 2. Compensatory damages in such amount as the Court deems just and proper;

- 1 3. Statutory, treble and/or punitive damages as to Counts for which they are available
2 under the applicable law in such amount as the Court deems just and proper;
- 3 4. Imposition of a constructive trust, an Order granting rescissionary and injunctive
4 relief, or such other equitable relief, including restitution and an order for disgorgement of ill-gotten
5 profits, and an Order requiring defendant to provide corrective notice to class members as set forth
6 herein and as the Court deems just as the Court deems just and proper;
- 7 5. An appropriate claims resolution facility to administer the relief in this case;
- 8 6. Attorney fees;
- 9 7. Costs of litigation;
- 10 8. Prejudgment interest; and
- 11 9. Such other relief as this Court deems equitable and just.

12 Dated: September 9, 2005

FINKELSTEIN & KRINSK LLP

13
14 By: 
Howard D. Finkelstein


15 Mark L. Knutson (#131770)
16 501 West Broadway, Suite 1250
17 San Diego, CA 92101-3579
18 Tel: 619/ 238-1333
19 Fax: 619/238-5425
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22
23
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27
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DEMAND FOR JURY TRIAL

Plaintiff and the class hereby demand an expedited trial by jury due to their age.

Dated: September 9, 2005

FINKELSTEIN & KRINSK LLP

By: 
Howard D. Finkelstein

Mark L. Knutson (#131770)
501 West Broadway, Suite 1250
San Diego, CA 92101-3579
Tel: 619/238-1333
Fax: 619/238-5425

Michael D. Thamer, Esq. #101440
LAW OFFICES OF MICHAEL D. THAMER
12444 South Highway 3
P.O. Box 1568
Callahan, CA 96014-1568
Tel: 530/467-5307
Fax: 530/467-5437

William M. Shernoff (#38856)
Evangeline F. Garris (#176014)
SHERNOFF BIDART & DARRAS
600 South Indian Hill Blvd.
Claremont, CA 91711
Tel: 909/621-4935
Fax: 909/625-6915

Stephen R. Basser (#121590)
Marisa C. Livesay (#223247)
BARRACK, RODOS & BACINE
402 West Broadway, Suite 850
San Diego, CA 92101
Tel: 619/230-0800
Tel: 619/230-1874

Andrew S. Friedman
Elaine Ryan
BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
2901 North Central Avenue
Suite 1000
Phoenix, Arizona 85012-3311
Telephone: 602-274-1100

Attorneys for Class Plaintiff