

ROBERT S. GIANELLI, #82116  
JOSHUA S. DAVIS, #193187  
ADRIAN J. BARRIO, #219266  
GIANELLI & MORRIS, A Law Corporation  
550 South Hope Street, Suite 1645  
Los Angeles, CA 90071  
Tel: (213) 489-1600; Fax: (213) 489-1611

RONALD A. MARRON, #175650  
LAW OFFICES OF RONALD A. MARRON  
A Professional Law Corporation  
651 Arroyo Drive  
San Diego, CA 92103  
Tel: (619) 696-9006; Fax: (619) 564-6665

Attorneys for Plaintiff

Diane V. Sanchez, on behalf of herself  
and all others similarly situated

**FILED**  
LOS ANGELES SUPERIOR COURT

AUG 05 2019

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK  
BY Nancy Navarro Deputy  
NANCY NAVARRO

**RECEIVED**  
LOS ANGELES SUPERIOR COURT

JUL 29 2019

S. DREW

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE

DIANE V. SANCHEZ; on behalf of herself  
and all others similarly situated;

Plaintiffs,

v.

ALLIANZ LIFE INSURANCE COMPANY  
OF NORTH AMERICA; and DOES 1-100,  
Inclusive,

Defendants.

CASE NO.: CASE NO.: BC594715  
Assigned to Hon. Maren E. Nelson, D. 17

**CLASS ACTION**

**[PROPOSED] SECOND AMENDED  
COMPLAINT FOR:**

- 1. BREACH OF CONTRACT;**
- 2. DECLARATORY RELIEF**

Plaintiffs bring this action on behalf of themselves and all others similarly situated, and on  
behalf of the general public, against Allianz Life Insurance Company of North America, and Does  
1 through 100 as follows:

## NATURE OF THE ACTION

1. Allianz Life Insurance Company of North America (“Allianz”) captured a significant share of the lucrative deferred annuity market by developing and selling an unusual annuity product—a “two-tier” annuity. Allianz generated billions of dollars a year in sales by promising purchasers higher returns and greater value if they met the product’s unusual but key requirement: deferring “annuitization” (the taking of the money on account in periodic payments) for at least five years then taking the annuity payments over a period of at least ten years or life. Allianz broke this promise, however, by secretly applying a “haircut” to the monies on account when a policyholder annuitized in contract-years six through ten. For instance, if a policyholder annuitized for at least ten years or for life commencing in contract-year six—after the five-year deferral period Allianz said was necessary to receive all of the monies on account—Allianz applied a haircut of 6% resulting in lower annuity payments. Allianz knew that the majority of those who would meet its annuitization requirements would annuitize in contract years five through ten and would suffer a reduction of their monies on account and, therefore, receive lower annuity payments.

2. Allianz’s two-tier annuities also employed unusual and Draconian surrender penalties for those who do not meet the annuitization requirements. When a policyholder has withdrawn the monies on account or has annuitized during the first five contract-years or over a period of less than ten years, Allianz has stripped away a percentage of the deposited premiums and most gains. Due to the two-tier structure, these penalties *increase* over time and *never* go away resulting in penalties that can exceed 50%. Realizing that this significant forfeiture would frustrate sales, Allianz wrote the contracts in a fashion so as to obscure the consequences of surrender. Allianz knew that approximately 40% of policyholders would not be able to comply with its lengthy annuitization requirements and would incur the large and ever-increasing surrender penalties.

3. Allianz previously settled class actions that included certain of the acts alleged herein for persons who were age 65 and older at the time of purchase. What Allianz has not done is to provide redress for under age 65 purchasers of its two-tier annuities or for purchasers of those annuities who were age 65 and older after the end of the class period of those other lawsuits. This

1 case seeks redress for those individuals.

## 2 THE PARTIES

3 4. Plaintiff Diane V. Sanchez is and, at all times mentioned herein, was a resident and  
4 citizen of the State of California, County of Los Angeles. Plaintiffs Jules Confino and Doreen  
5 Confino are and, at all times mentioned herein, were residents and citizens of the State of  
6 California, County of Fresno.

7 5. Allianz is an insurance company licensed to do business in California.

## 8 SUBSTANTIVE ALLEGATIONS

### 9 A. Allianz's two-tier annuities.

10 6. In a deferred annuity, a purchaser deposits premiums and receives an annual amount  
11 of interest, the realization of which is deferred until the term of the annuity. Surrender charges,  
12 which decrease over time, are imposed for early withdrawal. After the end of the surrender period,  
13 all monies can be withdrawn without penalty. The policyholder also has the option to "annuitize"  
14 the monies on account, that is, receive a stream of payments for a set number of years or for life.

15 7. Allianz developed and sold an unusual deferred annuity product, a "two-tier"  
16 annuity. This product creates the fiction of two different accounts or tiers. One account is called the  
17 "Annuitization Value." It consists of the premium, a 10% premium bonus, and the interest credited  
18 each year ("returns")<sup>1</sup>. The other account is the "Cash Value." It consists of the premium minus a  
19 "load" (a reduction of the premium by 10% or 12.5% depending on the product), no premium bonus,  
20 and minimal returns.

21 8. To receive the Annuitization Value, a policyholder must defer annuitization at least  
22 five years then take the annuity payments over a period of at least ten years or for life. If a  
23 policyholder withdraws his or her money without annuitizing, annuitizes before the end of the fifth  
24 contract-year, or annuitizes for a period of less than ten years or life, he or she receives the Cash  
25 Value.

---

26  
27 <sup>1</sup> In equity-indexed deferred annuities, a policyholder can elect to place premium in accounts "linked" to certain  
28 stock indexes. While the formulae for the returns in these accounts are expressed in terms of increases in a stock index  
subject to certain caps, margins, etc., they nevertheless result in some percentage of increase in the account as does  
receipt of an interest rate return.

1           9.       Allianz purported to use the longer investment curve of the 15-year deferral and  
2 annuitization period as the means to provide higher returns and greater ultimate values to  
3 policyholders. But Allianz knew for those who were able to satisfy these lengthy periods it would  
4 reduce the monies on account if the annuitization occurred in contract-years six through ten. Allianz  
5 knew that the majority of those who would annuitize would do so during that time period. Allianz  
6 also knew that approximately 40% of all policyholders would be unable to sustain these lengthy  
7 periods without their money and would surrender and fall subject to the annuities' unusual and  
8 Draconian surrender penalties that actually increase the longer a policyholder remains on the policy.

9           10.       Allianz's promise of higher returns and greater ultimate values resulted in the sale of  
10 billions of dollars of the following two-tier annuities that are the subject of this action:  
11 BonusMaxxx, BonusMaxxx Elite, BonusDex, BonusDex Elite, 10% Bonus PowerDex, and  
12 MasterDex 10.

13           **B.       Allianz's use of the "haircut."**

14           11.       Allianz's two-tier annuities provide that "[p]remiums paid for this policy will  
15 accumulate to provide an income payable at the Annuity Date." The annuities further promise that,  
16 if the policyholder defers the pay out for at least five years and then annuitizes for at least ten years  
17 or for life, Allianz will pay out the "Annuitization Value." That value is defined to include the  
18 premium, the 10% premium bonus, and the accrued annual returns.

19           12.       For instance, Allianz's best-selling two-tier annuity, the MasterDex 10, states in  
20 relevant part:

21           The Annuitization Value is the amount used to calculate annuity payments if this policy has  
22 been in Deferral for at least five Policy Years and an Annuity Option which extends over a  
23 period of at least ten years or over the life of the Annuitant is paid.

24           The Annuitization Value on the first day of the initial Policy Year is equal to the Initial  
25 Premium plus any applicable Premium Bonus. The Annuitization Value at the end of the last day  
26 of a Policy Year is equal to 10 (a) plus (b) plus (c) plus (d) where:

- 27           (a) is the Annuitization Value Base;  
28           (b) is the Adjustment for each Allocation for the Policy Year;  
             (c) is the Partial Adjustment for each Allocation for the Policy Year; and  
             (d) is the Interim Interest Account.

             The Annuitization Value at the beginning of the first day of all subsequent Policy Years is  
equal to the Annuitization Value at the end of the last day of the previous Policy Year.

13. To boost the Annuitization Value, each of the two-tier annuities promises a 10% premium bonus: "Premium Bonus is equal to any Premium received in the first five Policy Years multiplied by the Premium Bonus Percentage shown on the Policy Schedule." Each of the annuities also promises an "Allocation" to the Annuitization Value in the form of annual returns on the monies on account.

14. The contracts further provide that a policyholder may choose among certain annuity payment options, some of which qualify for pay out of the Annuitization Value (annuitization of at least ten years or for life) and some that do not. The options state their applicable time periods and that the annuity payments will be based on interest rates "we declare" subject to a minimum rate. The interest rates Allianz has declared have been the rates in effect for a policyholder's contract at the time of annuitization and have been above the minimum rate.

15. Despite Allianz's promise to pay out the Annuitization Value if a policyholder meets the stated deferral and annuitization requirements, Allianz has surreptitiously applied an "Expense Recovery Adjustment" to the Annuitization Value when a policyholder has annuitized in contract-years five through ten. Referred to internally by Allianz as the "haircut," the Expense Recovery Adjustment is a reduction of a policyholder's Annuitization Value applied according to the following schedule:

Contract-Year of Annuitization	Reduction Percentage
1	10%
2	10%
3	9%
4	8%
5	7%
6	6%
7	5%
8	4%
9	3%
10	2%

1           16.     Thus, if a policyholder annuitized in contract-year six—after the five-year period  
2 Allianz said was necessary to receive the Annuitization Value—Allianz applied a 6% reduction in  
3 the Annuitization Value resulting in lower annuity payments. The majority of policyholders who  
4 have annuitized have done so in contract-years five through ten and have suffered a reduction of  
5 their Annuitization Values and, therefore, have received lower annuity payments.

6           17.     Allianz has also applied the haircut on death claims. To receive the Annuitization  
7 Value upon the death of the annuitant, a beneficiary must annuitize for at least five years. If a death  
8 occurred during the second contract-year and the beneficiary elected the five-year annuitization  
9 option, Allianz would apply a 10% reduction to the Accumulation Value.

10          18.     There is no provision in the two-tier annuities stating that Allianz will apply a  
11 reduction to the Annuitization Value at any time much less after the five-year deferral period  
12 Allianz said would result in payment of the Annuitization Value. Additionally, Allianz has not  
13 disclosed to policyholders the fact that it is applying a reduction to their Annuitization Values at the  
14 time they have annuitized. In processing an annuitization request, Allianz has not revealed how it  
15 calculates the annuity payments.

16           **C.     The unusual and Draconian surrender charges.**

17          19.     The typical deferred annuity applies surrender charges that start at 10% or less and  
18 graduate down to zero over a ten-year or less time period. In stark contrast, Allianz's two-tier  
19 annuities utilize large and ever-increasing surrender penalties. If a purchaser withdraws money  
20 without annuitizing or annuitizes without deferring for at least five years and annuitizing for at least  
21 ten years or life, Allianz applies a "load" to the initial premium (a 10% or 12.5% reduction  
22 depending on the product), eliminates the 10% premium bonus, and pays a minimal return. This  
23 structure means the penalties *increase* the longer a purchaser keeps the contract, they *never* go  
24 away. Surrender penalties can grow to exceed 50% of a policyholder's Annuitization Value.

25          20.     Allianz knew the specter of these unusual and Draconian surrender penalties would  
26 frustrate sales. So rather than state the nature and extent of these penalties in a plain, clear and  
27 conspicuous fashion in the contracts, Allianz buried them in obscure language that required the  
28 reader to piece together inconsistent information on different pages.

1           21. For instance, the cover page of Plaintiffs' MasterDex 10 contracts refers to a penalty  
2 that may be incurred on surrender but the word "penalty" or any similar word is not found  
3 anywhere within the contracts. Instead, the contracts state that full or partial surrenders are a  
4 withdrawal of the "Cash Value." That seemingly benign term is not defined on the same page.  
5 Rather, on another page, "Cash Value" is described via a formula ("a" plus "b" minus "c," etc.) that  
6 does not use the word penalty or any similar word. Nor does it state that there will be a loss of the  
7 bonus on surrender.

8           22. Surrender penalties are forfeitures and "must be stated in a plain, clear, and  
9 conspicuous manner to be enforceable." Croskey, Heeseman, et al., Cal. Practice Guide: Insurance  
10 Litigation (Rutter Group 2014) ¶ 6:563; Civil Code section 1442 (forfeitures are strictly construed  
11 against party for whose benefit they are created).

12           **D. Plaintiffs Diane V. Sanchez**

13           23. Plaintiff was born on August 13, 1943.

14           24. On July 5, 2005 Allianz issued Plaintiffs a MasterDex 10 annuity with Contract  
15 Number 70321804.

16           25. On July 13, 2006 Allianz issued Plaintiffs a MasterDex 10 annuity with Contract  
17 Number 70471029.

18           26. On October 4, 2011 Plaintiffs partially surrendered \$5,000 of her MasterDex 10  
19 annuity with Contract Number 70321804. Allianz assessed her with a surrender penalty of  
20 \$3,537.14.

21           27. On September 15, 2014 Plaintiffs annuitized her MasterDex 10 annuity with  
22 Contract Number 70471029 under the installments for life option. Because this annuitization  
23 occurred in contract-year eight, Allianz applied a 4% reduction to her Annuitization Value thereby  
24 reducing the amount of money that was annuitized over her lifetime.

25           28. On March 26, 2015 Plaintiffs annuitized her MasterDex 10 annuity with Contract  
26 Number 70321804 under the installments for life option. Because this annuitization occurred in  
27 contract-year ten, Allianz applied a 2% reduction to her Annuitization Value thereby reducing the  
28 amount of money that was annuitized over her lifetime.

1           **E.       Plaintiffs Jules Confino and Doreen Confino.**

2           29.       Allianz issued Jules Confino four MasterDex 10 two-tier annuities: Policy Number  
3       70527362 issued on February 20, 2007, Policy Number 700527226 issued on February 26, 2007,  
4       Policy Number 705688892 issued on July 26, 2007, and Policy Number 70568685 issued on  
5       August 6, 2007. He was 57 years old at the time these policies were issued.

6           30.       Allianz issued Doreen Confino three MasterDex 10 two-tier annuities: Policy  
7       Number 70527244 issued on February 15, 2007, Policy Number 70527282 issued on February 15,  
8       2007, and Policy Number 70558707 issued on May 16, 2007. She was 61 years old at the time these  
9       policies were issued.

10          31.       On or about July 19, 2018, Jules Confino surrendered his MasterDex 10 annuity with  
11       Contract Number 70527226. Allianz paid \$172,607.13, and assessed Jules Confino a surrender  
12       penalty. On or about October 23, 2018, Jules Confino surrendered his MasterDex 10 annuity with  
13       Contract Number 70568892. Allianz paid \$50,272.16, and assessed Jules Confino a surrender  
14       penalty. The remainder of the Confinos' annuities issued to Jules Confino and Doreen Confino are  
15       currently in deferral.

16                           **CLASS ACTION ALLEGATIONS**

17          32.       Pursuant to California Code of Civil Procedure section 382 and California Rules of  
18       Court, Rule 3.765, Plaintiffs seek class certification of the following classes:

19               All California owners (or their designated beneficiaries on death claims) of the  
20       following Allianz Life Insurance Company annuities who at any time from  
21       September 15, 2011 to the present either (1) received an annuity (or death benefit)  
22       payment that was calculated with an expense recovery adjustment, or (2) incurred a  
23       surrender penalty or charge in connection with a full or partial surrender:  
24       BonusMaxxx, BonusMaxxx Elite, BonusDex, BonusDex Elite, 10% Bonus  
25       PowerDex, and MasterDex 10.

26               All California owners of the following annuities issued by Allianz Life Insurance  
27       Company of North America that are currently in deferral: BonusMaxxx,  
28       BonusMaxxx Elite, BonusDex, BonusDex Elite, 10% Bonus PowerDex, and  
29       MasterDex 10.

30               Excluded from these classes are the annuities that were the subject of the  
31       settlements in *Iorio, et al. v. Allianz Life Insurance Company of North America*,  
32       U.S.D.C. (S.D. Cal.) Case No. 05-cv-0633 JLS and *Negrete v. Allianz Life Ins. Co.*



of No. Am. (C.D. Cal.) Case Nos. CV 05-06838 CAS (MANx), CV 05-8908 CAS (MANx).

33. The members of the classes are so numerous that a joinder of all members is impracticable. While the exact number of class members is unknown to Plaintiffs at this time, there are thousands of class members.

34. Plaintiffs' claims are typical of the claims of the class members and are similarly affected by Allianz's wrongful conduct.

35. Plaintiffs will fairly and adequately protect the interests of the class members and have retained counsel competent and experienced in class and insurance litigation.

36. Common questions of law and fact exist as to all class members and predominate over any questions solely affecting individual members of the Class and Subclass.

37. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since a joinder of all members is impracticable. Furthermore, as damages suffered by class members may be relatively small, the expense and burden of individual litigation make it impossible for class members to individually redress the wrongs done to them.

**FIRST CAUSE OF ACTION**  
**(Breach of Contract - Plaintiffs Diane V. Sanchez and Jules Confino)**

38. Plaintiffs and the class members hereby repeat and reallege paragraphs 1 through 40 and incorporate the same as though fully set forth herein.

39. Plaintiffs and the class members entered into written contracts with Allianz, as alleged herein.

40. As alleged above, Allianz agreed that it would credit policyholders' Annuitization Values with the premium they deposited, a "Premium Bonus" of an additional 10% of premium, and annual returns on these monies. Allianz agreed it would pay the Annuitization Value amount to purchasers if they deferred annuitization for at least five years and annuitized for a period of at least ten years or for life. Allianz also stated that it would declare an interest rate at the time of annuitization subject to a minimum rate. Those rates have been the rates Allianz has credited to policyholders' contracts at the time of annuitization and have been above the minimum rates.

1           41. For policyholders who have met the annuitization requirements for receipt of the  
2           Annuitization Value and who have annuitized in contract-years 6 through 10, and for beneficiaries  
3           who complied with the death benefit requirements for receipt of the Annuitization Value, and who  
4           annuitized before contract-year 11, Allianz has breached the two-tier contracts by applying an  
5           Expense Recovery Adjustment, a "haircut," to the Annuitization Values. Those policyholders and  
6           beneficiaries have suffered a reduction in the Accumulation Value and, therefore, reduced annuity  
7           payments.

8           42. On September 15, 2014 Plaintiff Diane V. Sanchez annuitized her MasterDex 10  
9           annuity with Contract Number 70471029 in contract-year eight and suffered a reduction of her  
10          Accumulation Value of 4% and, therefore, a reduction in her annuity payments. On March 26, 2015  
11          she annuitized her MasterDex 10 annuity with Contract Number 70321804 in contract-year ten and  
12          suffered a reduction of her Accumulation Value of 2% and, therefore, a reduction in her annuity  
13          payments.

14          43. Prior to annuitizing Contract Number 70321804, Plaintiff made a partial surrender  
15          on October 4, 2011 of \$5,000 under that annuity and Allianz assessed her with a surrender penalty  
16          of an additional \$3,537.14. For policyholders who made partial surrenders, Allianz has breached the  
17          contracts by applying unenforceable surrender penalties.

18          44. On or about July 19, 2018, Jules Confino surrendered his MasterDex 10 annuity with  
19          Contract Number 70527226. Allianz paid \$172,607.13, and assessed Jules Confino a surrender  
20          penalty. On or about October 23, 2018, Jules Confino surrendered his MasterDex 10 annuity with  
21          Contract Number 70568892. Allianz paid \$50,272.16, and assessed Jules Confino a surrender  
22          penalty. For policyholders who made full surrenders, Allianz has breached the contracts by  
23          applying unenforceable surrender penalties

24          45. As a proximate result of the aforementioned breaches of the contracts by Allianz,  
25          Plaintiffs Diane V. Sanchez, Jules Confino, and the class members have suffered a loss of the  
26          monies and interest thereon in an amount to be proven at the time of trial.

27          46. Plaintiffs and the class members request attorney fees under Code of Civil Procedure  
28          section 1021.5 and the common fund and substantial benefit doctrines.

**SECOND CAUSE OF ACTION  
(Declaratory Relief – Jules and Doreen Confino)**

47. Plaintiffs and the class members hereby repeat and reallege paragraphs 1 through 46 and incorporate the same as though fully set forth herein.

48. Plaintiff Jules Confino's MasterDex 10 annuity Policy Number 70568685 and Plaintiff Doreen Confino's MasterDex 10 annuities are currently in deferral.

49. As alleged above, an actual controversy exists between the parties regarding their rights and liabilities under the contracts and the cited statutes. Allianz continues to perform the acts alleged herein, resulting in an ongoing controversy with ongoing damage to Plaintiffs and the class members.

50. For policyholders whose annuity contracts are in deferral, Plaintiffs and the class members request a declaration of the parties' rights and liabilities under the annuities.

51. Plaintiffs and the class members request attorney fees under Code of Civil Procedure section 1021.5 and the common fund and substantial benefit doctrines.

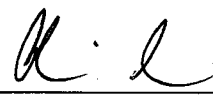
**WHEREFORE, Plaintiffs and the class members pray for judgment against Allianz as follows:**

1. Special damages in a sum to be determined at the time of trial;
2. A declaration of the rights and liabilities of the parties under the Allianz deferred annuities;
3. Reasonable attorney fees;
4. Costs of suit incurred herein; and
5. For such other and further relief as the Court deems just and proper.

DATED: July 29, 2019

GIANELLI & MORRIS  
LAW OFFICES OF RONALD A. MARRON

By: \_\_\_\_\_

  
ROBERT S. GIANELLI  
JOSHUA S. DAVIS  
ADRIAN J. BARRIO  
Attorneys for Plaintiffs