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ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

Plaintiff,

vs.

ALLIANZ LIFE INSURANCE
COMPANY OF NORTH AMERICA, and
DOES 1-60, inclusive,

Defendants.

Case No.: BC594715

Assigned to Hon. Maren E. Nelson,
Dept. SS17

**DEFENDANT ALLIANZ LIFE
INSURANCE COMPANY OF NORTH
AMERICA'S ANSWER TO SECOND
AMENDED COMPLAINT**

Complaint filed: September 15, 2015
Trial Date: June 14, 2018

DEFENDANT ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA'S
ANSWER TO SECOND AMENDED COMPLAINT

1 Defendant Allianz Life Insurance Company Of North America (“Allianz”) hereby
2 answers Plaintiffs’ unverified Second Amended Complaint.

3 **GENERAL DENIAL**

4 Pursuant to California Code of Civil Procedure § 431.30 subdivision (d),
5 answering each and all of the allegations of the Second Amended Complaint, Allianz
6 denies, generally and specifically, each and every allegation in each and every paragraph
7 of the Second Amended Complaint and the whole thereof, and further denies that it has
8 engaged in any wrongful conduct, denies that Plaintiffs have been damaged and denies
9 that Plaintiffs are entitled to the relief sought in the Second Amended Complaint or to
10 any other relief whatsoever.

11 **AFFIRMATIVE DEFENSES**

12 Allianz asserts the following Affirmative Defenses to the Second Amended
13 Complaint without assuming the burden of proof for any matters for which such burden is
14 upon Plaintiffs. Allianz reserves the right to timely assert any additional defenses that
15 may become appropriate as this action progresses. Allianz will rely on all defenses
16 lawfully available to it at the time of trial and reserves the right to amend its Affirmative
17 Defenses to include additional defenses during the course of, and after completion of,
18 discovery.

19 **FIRST AFFIRMATIVE DEFENSE**

20 **(Failure to State a Claim – All Causes of Action)**

21 The Second Amended Complaint and each cause of action therein fail to state
22 facts sufficient to constitute any cause of action against Allianz.

23 **SECOND AFFIRMATIVE DEFENSE**

24 **(Statute of Limitations – All Causes of Action)**

25 All of the causes of action in the Second Amended Complaint are barred by the
26 applicable statutes of limitation, including but not limited to Cal. Civ. Proc. Code
27 §§ 337(1) and 338(a) and Cal. Bus. & Prof. Code § 17208.
28

1 **THIRD AFFIRMATIVE DEFENSE**

2 **(Estoppel – All Causes of Action)**

3 All of the causes of action asserted in the Second Amended Complaint are barred
4 by the doctrine of estoppel. Plaintiffs signed their Statements of Understanding
5 (“SOUs”), attesting that they read the consumer brochure and attesting that they read the
6 information contained in their SOUs, which explained the pertinent features of the
7 policies at issue, including, but not limited to, the surrender and death benefit provisions,
8 and that no future values (including nonguaranteed annuitization benefits) were
9 promised other than the guaranteed minimum values, and that they understood that they
10 could return the contracts “within the free look period” if they were “dissatisfied for any
11 reason.” Plaintiffs knew that Allianz would rely upon the signed SOUs to issue the
12 policies. Allianz relied upon those representations to its detriment by issuing the
13 annuities. Plaintiffs also had full disclosure of all policy provisions within the “free
14 look” period when they received copies of the policies themselves. If Allianz had
15 known that they did not understand the features of the policies, it could have taken steps
16 to make certain that they understood what they were purchasing or declined to issue the
17 contracts, and avoided the instant litigation.

18 **FOURTH AFFIRMATIVE DEFENSE**

19 **(Waiver – All Causes of Action)**

20 All of the causes of action asserted in the Second Amended Complaint are barred
21 by the doctrine of waiver. Plaintiffs signed their SOUs, attesting that they read the
22 consumer brochure and attesting that they read the information contained in the SOUs,
23 which explained the pertinent features of the policies at issue, including, but not limited
24 to, the surrender and death benefit provisions, and that no future values (including
25 nonguaranteed annuitization benefits) were promised other than the guaranteed
26 minimum values, and that they understood that they could return the contracts “within
27 the free look period” if they were “dissatisfied for any reason.” Plaintiffs also had full
28 disclosure of all policy provisions within the “free look” period when they received

1 copies of the policies themselves. By signing the SOUs, accepting the policies, not
2 returning the policies during the free-look period and then waiting many years to initiate
3 a lawsuit against Allianz, Plaintiffs acted inconsistently with and waived any claims
4 based on inadequately disclosed surrender provisions, purported Senior Notice
5 Violations, or an assertion that they were was owed any annuitization benefits greater
6 than those guaranteed by the contract. In addition, the *Mooney* class notice, which
7 complained of the same conduct alleged in this lawsuit, was mailed to Plaintiffs. If they
8 wanted to pursue claims under other California laws, they could have opted out of the
9 *Mooney* class. Instead, they failed to exclude themselves from the *Mooney* class as
10 permitted by the notice and waited many years after dissemination of the notice to file
11 this lawsuit, thereby acting inconsistently with and waiving any claims based on the
12 same conduct alleged in *Mooney*.

13 **FIFTH AFFIRMATIVE DEFENSE**

14 **(Failure To Mitigate Damages – All Causes of Action)**

15 Plaintiffs are barred from asserting any claims in the Second Amended Complaint
16 because they failed to take reasonable and necessary steps to mitigate any alleged
17 damages. Although Allianz denies that Plaintiffs have suffered any harm as alleged in
18 the Second Amended Complaint, to the extent they have suffered harm, they are barred,
19 in whole or in part, from recovering the damages sought in the Second Amended
20 Complaint because Plaintiffs have failed to take reasonable steps to mitigate, alter, reduce
21 or otherwise diminish damages, if any, which they may have suffered. For example,
22 Plaintiffs failed to mitigate purported damages by not reading or returning the policies
23 during the “free look” period.

24 **SIXTH AFFIRMATIVE DEFENSE**

25 **(Res Judicata – All Causes Of Action)**

26 The final judgment entered in Allianz’s favor in a nationwide class action, *Mooney*
27 *v. Allianz Life Insurance Company of North America*, Civil No. 06-545 (ADM/FLN) (D.
28 Minn.) (“*Mooney*”), bars Plaintiffs’ claims under the doctrine of *res judicata*. “Res

1 judicata applies as an absolute bar to a subsequent claim when (1) the earlier claim
2 involved the same set of factual circumstances; (2) the earlier claim involved the same
3 parties or their privies; (3) there was a final judgment on the merits; and (4) the estopped
4 party had a full and fair opportunity to litigate the matter.” *Hauschildt v. Beckingham*,
5 686 N.W.2d 829, 840 (Minn. 2004) (citations omitted). All of the elements required for
6 *res judicata* (claim preclusion) are satisfied. First, the parties are the same. Plaintiffs are
7 *Mooney* class members who had proper notice of, and an opportunity to opt-out of, that
8 case. Second, the claims here and in *Mooney* arise out of the same factual circumstances.
9 Plaintiffs are seeking overlapping relief as to the same annuity contracts, based on alleged
10 practices, transactions and occurrences underlying the claims litigated and tried in
11 *Mooney*—specifically, Allianz’s use of a nonguaranteed benefits formula with a
12 component calculation referred to as the “expense recovery adjustment” and Allianz’s
13 representations and disclosures about the surrender terms of her policies. Third, the
14 *Mooney* judgment is final. And, fourth, there was a full and fair opportunity in *Mooney*
15 for litigation of Plaintiffs’ allegations.

16 **SEVENTH AFFIRMATIVE DEFENSE**

17 **(Collateral Estoppel – All Causes Of Action)**

18 The final judgment entered in Allianz’s favor in *Mooney* bars Plaintiffs under the
19 doctrine of collateral estoppel from relitigating the same issues in this lawsuit.
20 “Collateral estoppel applies when: (1) the issue was identical to one in a prior
21 adjudication; (2) there was a final judgment on the merits; (3) the estopped party was a
22 party or in privity with a party to the prior adjudication; and (4) the estopped party was
23 given a full and fair opportunity to be heard on the adjudicated issue.” *Mach v. Wells*
24 *Concrete Prods. Co.*, 866 N.W.2d 921, 927 (Minn. 2015) (quotations and citations
25 omitted). All of the elements required for collateral estoppel (issue preclusion) are
26 satisfied. First, in this case, Plaintiffs allege that they were injured by Allianz’s use of the
27 expense recovery adjustment factor in calculating nonguaranteed annuitization benefits
28 and because of the alleged inadequate disclosure of the terms of surrender. The expense

1 recovery adjustment calculation and the disclosure of the surrender terms were primary
2 allegations in the *Mooney* case and the *Mooney* plaintiffs sought to prove that the class
3 was injured by reason of this alleged behavior. Second, the *Mooney* judgment is final.
4 Third, the parties are the same. Plaintiff are *Mooney* class members who had proper
5 notice of, and an opportunity to opt-out of, that case. Fourth, there was a full and fair
6 opportunity in *Mooney* for litigation of Plaintiffs' allegations.

7 **EIGHTH AFFIRMATIVE DEFENSE**

8 **(Laches – All Causes Of Action)**

9 All of the causes of action in the Second Amended Complaint are barred by virtue
10 of Plaintiffs' unreasonable delay in taking action upon their claims sooner, which has
11 prejudiced Allianz in that Allianz relied on their consent, approval, or otherwise
12 acceptance of the annuity policies and acted accordingly, including but not limited to
13 incurring costs related to the inception and maintenance of the annuity policies. In
14 addition, the *Mooney* class notice, which complained of the same conduct alleged in this
15 lawsuit, was mailed to Plaintiffs. If they wanted to pursue claims under other California
16 laws, they could have opted out of the *Mooney* class. Instead, they failed to exclude
17 themselves from the *Mooney* class as permitted by the notice and waited many years after
18 dissemination of the notice to file this lawsuit.

19 **NINTH AFFIRMATIVE DEFENSE**

20 **(Consent – All Causes of Action)**

21 Plaintiffs are barred, in whole or in part, from any recovery they seek in their
22 Second Amended Complaint because by their conduct, acts and omissions, they
23 consented to the terms of her annuity policies. First, they purchased their policies and
24 failed to read or return them during the thirty day "free look" period. Second, they
25 consented to the terms of the policies by signing the SOUs, attesting that they read the
26 information contained in the SOUs, which explained the surrender and death benefit
27 provisions, and that no future values (including nonguaranteed annuitization benefits)
28 were promised other than the guaranteed minimum values.

1. **TENTH AFFIRMATIVE DEFENSE**

2. **(Filed Rate Doctrine – All Causes of Action)**

3. Plaintiff are barred from asserting any claims in the Second Amended Complaint
4. against Allianz with respect to the terms and contents of the annuity contracts that have
5. been reviewed and approved by the California Department of Insurance (“DOI”), such as
6. the values available to policy owners upon surrender, and annuitization payments, which
7. are equal to or greater than the payments guaranteed in the contracts. The DOI’s
8. approval is not subject to collateral attack in court.

9. **ELEVENTH AFFIRMATIVE DEFENSE**

10. **(Primary Jurisdiction – All Causes of Action)**

11. Plaintiffs are barred from asserting any claims in the Second Amended Complaint
12. against Allianz with respect to the terms and contents of the annuity contracts, including
13. the operation thereof, that have been reviewed and approved by the DOI. The
14. determination of the appropriateness of the annuity contract terms, and the operation
15. thereof, requires the resolution of issues that have been placed within the special
16. competence of the DOI, and this Court should stay consideration of all such claims
17. pending their resolution before the DOI.

18. **TWELFTH AFFIRMATIVE DEFENSE**

19. **(Failure to Exhaust Remedies – All Causes of Action)**

20. Plaintiffs are barred from asserting any claims in the Second Amended Complaint
21. against Allianz with respect to the terms and contents of the annuity contracts, including
22. the operation thereof, that have been reviewed and approved by the DOI. The
23. determination of the appropriateness of the annuity contract terms, and the operation
24. thereof, requires the resolution of issues that are properly cognizable by the DOI, and a
25. court may not consider such claims until Plaintiffs have exhausted their remedies with the
26. DOI.

1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 **(Judicial Abstention – All Causes of Action)**

3 Plaintiffs are barred from asserting any claims in the Second Amended Complaint
4 against Allianz with respect to the terms and contents of the annuity contracts, including
5 the operation thereof, that have been reviewed and approved by the DOI. The
6 determination of the appropriateness of the annuity contract terms, and the operation
7 thereof, involves determining complex issues of economic policy that are best handled
8 by the legislature or the DOI. Further, granting the injunctive relief that Plaintiffs seeks
9 would be unnecessarily burdensome for the court to monitor and enforce.

10 **FOURTEENTH AFFIRMATIVE DEFENSE**

11 **(Setoff or Offset – All Causes of Action)**

12 Plaintiffs are barred, in whole or in part, from any recovery they seek in the
13 Second Amended Complaint or any recovery must be reduced because they owe monies
14 to and have received money and policy benefits from Allianz which are an off-set against
15 any purported damages that Plaintiff claims in the Second Amended Complaint. Should
16 Plaintiffs obtain any recovery, it must be setoff, or otherwise offset, by this and other
17 amounts Plaintiffs owe or will owe Allianz and the money and policy benefits they have
18 received from Allianz.

19 **FIFTEENTH AFFIRMATIVE DEFENSE**

20 **(Inequitable Windfall – All Causes of Action)**

21 Plaintiffs are barred, in whole or in part, from any recovery sought in the Second
22 Amended Complaint or any recovery must be reduced because the relief sought would
23 inequitably result in a windfall for Plaintiffs.

24 **SIXTEENTH AFFIRMATIVE DEFENSE**

25 **(Unjust Enrichment - All Causes of Action)**

26 Plaintiffs are barred, in whole or in part, from any recovery sought in the
27
28

1 Complaint or any recovery must be reduced because the relief sought would inequitably
2 result in the unjust enrichment of Plaintiffs at the expense of Allianz.

3
4 Dated: September 3, 2019

CARLTON FIELDS, LLP

5
6
7 By: 

HARVEY W. GELLER

8 Attorneys for Defendant

9 ALLIANZ LIFE INSURANCE COMPANY OF
10 NORTH AMERICA
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PROOF OF SERVICE

F.R.C.P. 5 / C.C.P. § 1013a(3)/ Cal. R. Ct. R. 2.260

I am a resident of, or employed in, the County of Los Angeles. I am over the age of 18 and not a party to this action. My business address is: Carlton Fields, LLP, 2000 Avenue of the Stars, Suite 530 North Tower, Los Angeles, CA 90067-4707.

On **September 3, 2019**, I served the following listed document(s), by method indicated below, on the parties in this action:

**DEFENDANT ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA'S
ANSWER TO SECOND AMENDED COMPLAINT**


SEE ATTACHED SERVICE LIST

☒ **BY ELECTRONIC SERVICE** via electronic filing service provider CaseAnywhere

By electronically transmitting the document(s) listed above to CaseAnywhere, an electronic service provider at www.caseanywhere.com, from the email address mlrodriguez@carltonfields.com. To my knowledge, the transmission was reported as complete and without error. See Cal. R. Ct. R. 2.253, 2.255, 2.260.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct. Executed on September 3, 2019 at Los Angeles, California.

Maria Rodriguez
Type or Print Name


Signature

SERVICE LIST

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