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of themselves and all others similarly situated

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,

Plaintiff,

v.

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

Defendants.

CASE NO.: BC594715

Assigned to Hon. Maren E. Nelson, D. 17

**PLAINTIFFS' NOTICE OF MOTION  
AND MOTION FOR ORDER GRANTING  
CONDITIONAL FINAL APPROVAL OF  
CLASS-ACTION SETTLEMENT**

[Filed Concurrently with the Declarations of  
Terry Long, Alexander Thomas and Laurie  
Janssen]

Date: November 9, 2022

Time: 8:30 a.m.

Place: Department 17

1 **TO THE COURT, ALL PARTIES HEREIN AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on November 9, 2022 at 8:30 a.m., or as soon thereafter as  
3 the matter may be heard, before the Honorable Maren E. Nelson, presiding in Department 17 of the  
4 Superior Court of California for the County of Los Angeles, located at Spring Street Courthouse,  
5 312 North Spring Street, Los Angeles, CA 90012, Plaintiffs Diane V. Sanchez and Jules Confino,  
6 on behalf of themselves and the Class, will move the Court for an Order granting final approval of  
7 the settlement of this certified class action lawsuit against Defendant Allianz Life Insurance  
8 Company of North America.


9 The final approval will be conditioned that no additional objections or statements in dispute  
10 in response to the Supplemental Notice are submitted to the Administrator by Settlement Class  
11 Members to whom the Supplemental Notice is addressed by November 28, 2022. If any additional  
12 objections or statements in dispute are received by the Administrator by Settlement Class Members  
13 to whom the Supplemental Notice is addressed, the Court will set a further hearing to resolve the  
14 additional objections and statements in dispute.

15 This Motion is based on this Notice, the attached Memorandum of Points and Authorities;  
16 the Declarations of Thomas Alexander, Terry Long and Laurie Janssen, the Court's files and  
17 records in this action; and upon such other matters and additional evidence as may be presented at  
18 or before the hearing.

19  
20 DATED: October 18, 2022

GIANELLI & MORRIS  
OFFICES OF RONALD A. MARRON

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22  
23 By:

  
\_\_\_\_\_  
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Diane V. Sanchez  
Jules Confino

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## MEMORANDUM OF POINT AND AUTHORITIES

### I. INTRODUCTION

This case arises out of Defendant Allianz Life Insurance Company of North America's ("Allianz Life's") alleged practice of applying two types of charges to the Settlement Class Members' annuity benefits. Allianz Life applies an Expense Recovery Adjustment ("ERA") to the calculations of class members' annuity payouts when they qualify for the annuity's Annuitization Value,<sup>1</sup> an interest rate above the minimum rate is declared, and annuitization occurs before Policy Year 11. Allianz Life also applies surrender charges to an annuity's Cash Value when a policyholder makes a full surrender or partial surrender that includes the products' featured bonus. Allianz Life disputes these allegations.

On July 8, 2022, after more than six years of litigation, this Court granted preliminary approval of the \$19.85 million common fund class action settlement of this matter. This is a non-reversionary cash settlement and Settlement Class Members<sup>2</sup> need *not* submit a claim to receive a payment. As the Court noted in its preliminary approval order, the \$19.85 million settlement represent about 56% of Allianz Life's exposure and is an excellent result. In addition, Allianz Life has also agreed to provide a credit to the Cash Value to annuities in deferral that are surrendered within a year of the Settlement's effective date.

In granting preliminary approval, the Court found that the settlement falls within the "ballpark of reasonableness." The Court directed that notice of the settlement be provided to Settlement Class Members. Nothing has occurred since preliminary approval that mandates any variance from the Court's prior determinations that the settlement is "fair, reasonable, and adequate."

On August 8, 2022, the Settlement Administrator, KCC Class Action Services, LCC ("KCC") sent the Court-approved Class Notice to all 25,700 Class Members. The reaction of the Settlement Class has been overwhelmingly positive. KCC received only 24 exclusions and one

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<sup>1</sup> Unless otherwise specified, all capitalized terms are defined as in the Settlement Agreement.

<sup>2</sup> All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Preliminary Approval Order.

1 objection from the 25,700 Class Members. The objection did not pertain to the class settlement  
2 itself, but to the calculation of an estimated settlement check. Moreover, the calculation dispute is  
3 meritless because it relates to an annuity that is not part of the Settlement.

4 In an abundance of caution, on October 21, 2022, a Supplemental Class Notice will be sent to  
5 1,043 Settlement Class Members, whose original notice incorrectly did not include any estimated  
6 settlement check, or only included an estimated Settlement Check for one of their annuities.  
7 Plaintiffs request that the Court conditionally grant final approval pending a final report on the  
8 response from the Supplemental Notice.

## 9 **II. STATEMENT OF FACTS**

### 10 **A. Litigation History.**

11 For a detailed history of the litigation and a summary of the settlement negotiations, see  
12 Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and Motion for (1) Attorney  
13 Fees and Litigation Costs, (2) Incentive Awards and (3) Settlement Administrator Expenses ("Fee  
14 Motion"), and the supporting declarations of Class Counsel to both those motions, which are  
15 incorporated by reference into this Motion.

### 16 **B. The Settlement.**

17 The Settlement has two elements: (1) a common fund ("Gross Settlement Amount") of  
18 \$19.85 million for Settlement Class Members who annuitized prior to Policy Year 11 ("Annuitized  
19 Settlement Annuities"), surrendered fully ("Surrendered Settlement Annuities") or incurred penalties  
20 on a partial surrender ("Penalty-Incurring Partial Surrenders"); and (2) for Settlement Class  
21 Members who are in deferral and elect to surrender within a year of the Effective Date of the  
22 Settlement (and those entitled to "gap relief"), a credit to their Cash Value of approximately 35% of  
23 the bonus Plaintiffs claim was lost. (Settlement Agreement (Ex. A to Preliminary Approval Motion)  
24 at ¶¶ 17bb and 17dd, ¶¶ 18-36; Ex. 4 to Settlement.)

25 From the \$19.85 million Gross Settlement Amount, \$9,131,000 will pay claims for annuitizations  
26 that included an ERA and \$10,719,000 will pay claims based on the alleged loss of bonus on full or  
27 partial surrender. (Settlement Agreement at ¶ 26; Ex. 4 to Settlement Agreement.)  
28

1 The \$9,131,000 portion of the fund for ERA damages represents approximately 75%  
2 recovery of all ERA damages incurred. (Declaration of Terry (“Long Decl.”) in support of  
3 Preliminary Approval Motion, ¶¶ 10, 14.) The \$10,719,000 for the loss of bonus on full or partial  
4 surrenders represents approximately 46% of all such damages incurred. (Id., ¶¶ 11, 14.) As the  
5 Court noted in its preliminary approval order, this \$19.85 million in total represent 56% of  
6 Defendant's calculated maximum exposure. (Preliminary Approval Order, p. 25.)

7 The common fund includes the amounts that will be paid for notice and settlement  
8 administration costs, class representative service awards, attorneys’ fees, and litigation expenses.  
9 (See Settlement Agreement, ¶¶ 43, 44, 46 and 59.) There is no reversion to Allianz of any of the  
10 common fund monies and the distribution to Class Members will be made without the necessity of  
11 claim forms. (Id., ¶¶ , 19.) The Court granted preliminary approval of the Settlement on July 8, 2022.  
12 (Order Granting Motion for Preliminary Approval of Class Action Settlement.)

### 13 **C. Attorney Fees and Costs.**

14 In accordance with terms of the Settlement Agreement, Plaintiffs filed their Fee Motion on  
15 August 8, 2022. In the Fee Motion, Plaintiffs seek an attorney fees award of 33 and 1/3% of the  
16 \$19.85 million common fund in the amount of \$6,616,666.67, reimbursement of \$332,571.79 in  
17 litigation expenses. Plaintiffs also seek approval of service awards in the amount \$15,000 each for  
18 the Class Representatives Diane V. Sanchez and Jules Confino and \$120,000 for settlement  
19 administrative expenses for KCC.

### 20 **D. Distribution of the Settlement.**

21 From the \$19.85 million Gross Settlement Amount, the attorney fees and costs,  
22 administrative expenses and service awards to the Class Representatives will first be deducted, to  
23 result in a Net Settlement Fund. Assuming the Court awards the amounts sought in the Fee Motion  
24 set forth above, this Net Settlement Fund will be approximately \$12,750,762.04 (the “Net Settlement  
25 Fund”).

26 Settlement Class Members with an Annuitized Settlement Annuity will receive a pro rata  
27 distribution from the 46% of the Net Settlement Fund allocated to Annuitized Settlement Annuities  
28



1 based on their actual damages determined by Plaintiffs' expert, also called Individual Settlement  
2 Class Member's Alleged Annuitization Damage. Settlement Class Members with an Surrendered  
3 Settlement Annuity or Penalty Incurring Partial Surrender will receive a pro rata distribution from  
4 the 54% of the Net Settlement Fund allocated to loss of bonus damages, based on their actual  
5 damages determined by Plaintiffs' expert, also called Individual Class Member's Alleged Surrender  
6 Damage. (Settlement Agreement, ¶¶ 25-26.) The formula used to calculate each Settlement Class  
7 Member's Settlement Check is set forth in the Net Settlement Distribution Plan attached as Ex. 4 to  
8 Agreement.

9 The Parties have identified 25,700 Settlement Class Members. (Long Decl., ¶ 22;  
10 Declaration of Alexander Thomas ("Thomas Decl."), ¶¶ 2-3.)<sup>3</sup> Of these, 10,280 Settlement Class  
11 Members are entitled to receive a distribution from the Net Settlement Fund. (*Id.*) The remaining  
12 15,320 Settlement Class Members only have policies in deferral as of March 31, 2022, and will be  
13 entitled to receive a credit to their Cash Values on any surrender within a year of the Effective Date  
14 of the Settlement or the gap relief. (*Id.*) This is a non-claims made and no reversion settlement, and  
15 thus the entire Net Settlement Fund will be distributed. Settlement checks will be valid and  
16 negotiable for 180 days. (Ex. A, ¶¶ 25-30.) The amounts of the uncashed Settlement Checks will be  
17 sent to the State Controller's Office under the Unclaimed Property Law Statutes of California. (*Id.* ¶  
18 30.)

19 **E. How the distribution plan was determined.**

20 Plaintiffs retained an expert, Terry Long, an insurance actuary at the actuarial firm Lewis &  
21 Ellis, Inc., to independently analyze annuitization and surrender data for every Class Member to  
22 determine potential damages in this case for every single Settlement Class Member and the proposed  
23 Settlement Class as a whole. (Davis Declaration filed in support of motion for preliminary approval  
24 ("Davis Decl."), ¶ 24; Long Declaration in support of motion for preliminary approval ("Long Prel.

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25  
26 <sup>3</sup> At the time of filing of the preliminary approval motion, the Parties had identified 25,812 Settlement Class Members.  
27 Prior to sending out the Class Notice, Allianz provide Class Counsel's expert Terry Long and the Settlement  
28 Administrator with the mailing addresses and social security numbers of the Settlement Class Members. The  
Settlement Administrator conducted additional work to remove duplicates. This resulted in the slightly smaller list of  
Class Members. (Thomas Decl., ¶¶ 2-3.)

Decl.”), ¶¶ 1-5.). As part of this analysis, Mr. Long calculated for every annuitization any ERA damage for that Annuity, and did calculations to determine the loss of bonus on every full or partial surrender. (Long. Prel. Decl., ¶¶ 9-11.)

## **II. NOTICE WAS ADEQUATE AND EFFECTIVE.**

### **A. Class Notice was provided to all Class Members.**

At the hearing on the preliminary approval motion, the Court Ordered the Parties to add to the Class Notice a bold faced reminder that Class Members should keep the Settlement Administrator apprised of changes of address. (Preliminary Approval Order, p. 29.) The Court also ordered the Parties to add to the Class Notice the full release language. (*Id.*) The Class Notice was revised to include the Court’s required changes. (See Ex. A to Thomas Decl.) Following the June 30, 2022 hearing on the preliminary approval motion. Allianz Life provided Class Counsel’s expert Terry Long with a list of the last known mailing addresses for Class Members. (Declaration of Terry Long filed in support of motion for final approval (“Long Decl.”), ¶ 4.) Mr. Long subsequently prepared two files, a mailing list for Class Members who had annuities in deferral and separate file containing a mailing list for Class Members who were entitled to distribution from the common fund, which he provided to the KCC, the Settlement Administrator. (*Id.*) After KCC removed duplicates and merged the files, they had a final master list of 25,700 Class Members. (Thomas Decl., ¶ 2.) KCC processed the mailing addresses through the National Change of Address database and obtained updated addresses. (Thomas Decl., ¶ 2.) KCC entered the data referenced above into a proprietary database to be used for mailing the notice to Class Members. (*Id.*)

On August 8, 2022, KCC caused the Class Notice, approved by the Court in the form attached as Exhibit A to the Thomas Decl. (the “Class Notice”), to be mailed via the United States Postal Service by first class mail, postage prepaid, to the last known addresses for all 25,700 Class Members. (Thomas Decl., ¶ 3.) KCC also posted information regarding the Settlement on the website [californiaannuityclass.com](http://californiaannuityclass.com), including the full Settlement Agreement. (*Id.*, ¶ 5.) KCC also established a telephone hotline to get information regarding the Settlement. (*Id.*, ¶ 6.)

///

1           **B. Supplemental Class Notice was provided to 1,043 Class Members whose**  
2           **original Class Notice did not include or understated their estimated Settlement**  
3           **Check.**

4           On or about October 14, 2022, KCC informed the Parties that 961 Settlement Class  
5           Members who owned both an annuity in deferral, as well as a Surrendered Annuity, Penalty-  
6           Incurring Partial Surrender or Annuitized Annuity, received a Class Notice that did not include their  
7           customized estimated Settlement Check. (Thomas Decl., ¶ 10.) In addition, another 82 Settlement  
8           Class Members, who owned more than one Surrendered Annuity, Penalty-Incurring Partial  
9           Surrender or Annuitized Annuity, received a Class Notice for the estimated Settlement Check  
10          amount for only one of their annuities. (*Id.*) None of these Settlement Class Members requested to be  
11          excluded from the Settlement, objected to the Settlement or served a statement of dispute as to the  
12          amount of their estimated Settlement Check in response to the Class Notice. (*Id.*)

13          Although the above Settlement Class Members received the Class Notice, in an abundance  
14          of caution, however, and in a form approved by the Court, KCC will send the 1,043 Settlement Class  
15          Members a Supplemental Class Notice on October 21, 2022 providing the estimated Settlement  
16          Check amount missing in the previous notice mailed to them, and providing an additional 35 days  
17          until November 28, 2022 to serve a request for exclusion, objection or statement of dispute.  
18          (Thomas Decl., ¶ 11.)

19           **III. THE COURT SHOULD ENTER AN ORDER GRANTING CONDITIONAL FINAL**  
20           **APPROVAL OF THE CLASS ACTION SETTLEMENT.**

21          The Court already determined, preliminarily, that the Settlement is fair, reasonable, and  
22          adequate; is free of collusion or other indicia of unfairness; and falls within the range of possible  
23          final judicial approval. The points and authorities, declarations, and documents submitted in support  
24          of the motion for preliminary approval and the Court's findings and conclusions remain equally  
25          applicable at this final approval stage and are incorporated into this motion by reference

26          The inquiry is essentially the same as on preliminary approval—the Court's final  
27          responsibility in reviewing a proposed class action settlement is to ensure that the settlement is fair,  
28          adequate, and reasonable. If so, it should be approved. *7-Eleven Owners for Fair Franchising v.*  
*Southland Corp.* (2000) 85 Cal.App.4th 1135, 1145, quoting *Dunk v. Ford Motor Co.* (1996) 48

1 Cal.App.4th 1794, 1801 (internal quotations and citations omitted). "Strong judicial policy ... favors  
2 settlements, particularly where complex class litigation is concerned," so long as there is no indicia  
3 of collusion or unfairness among the negotiating parties. *Class Plaintiffs v. City of Seattle* (9th Cir.  
4 1992) 955 F.2d 1268, 1276, *cert. den.*, (1992) 506 U.S. 953.

5 In making this determination, the Court should consider all relevant factors,  
6 particularly:

7 (1) the strength of plaintiffs' case, (2) the risk, expense, complexity, and likely  
8 duration of further litigation, (3) the risk of maintaining class action status through  
9 trial, (4) the amount offered in settlement, (5) the extent of discovery completed and  
the stage of proceedings, (6) the experience and views of counsel, and (&) the  
reaction of the class members to the proposed settlement.

10 *7-Eleven Owners, supra*, 85 Cal.App.4th at 1146 (citing *Dunk, supra*, 48 Cal.App.4th at  
11 1801). Where a good-faith settlement is reached through arm's-length bargaining, after qualified  
12 opposing counsel have properly developed their claims and defenses, and the number of objectors is  
13 small, there is a presumption of fairness. *Id.*

14 Nothing has occurred since preliminary approval that mandates any variance from the  
15 Court's prior determinations that the Settlement was reached through arm's-length negotiation,  
16 without collusion, or other indicia of unfairness to the Class, after extensive discovery and litigation.  
17 Nor does any subsequent event affect the Court's preliminary assessments that the strength of the  
18 claims at issue; the risk, complexity, and likely duration of continued litigation; and Class Counsel's  
19 experience and views of the Settlement all support Settlement approval.

20 Independent of the foregoing, there can be no question that the Settlement is fair and  
21 reasonable. The Settlement provides very significant monetary relief to a class of 25,700 persons,  
22 none of whom have previously asserted their rights individually. Apart from a moderate service  
23 award, the named Plaintiffs are not seeking or receiving any relief other than what each Settlement  
24 Class Member is entitled to. Negotiations only occurred after extensive litigation, discovery, and  
25 investigation to meaningfully assess the case. Moreover, the Settlement was achieved only through  
26 extensive arm's length negotiations under the guidance of a highly respected mediator. Accordingly,  
27 the *Dunk* presumption of fairness (*supra*) applies.

1                   **I.       Strength of Plaintiffs’ case and the risks of litigation.**

2                   As indicated in the motion for preliminary approval, Plaintiffs believe that the class claims  
3 are legally meritorious, and present a reasonable probability of a favorable determination on behalf  
4 of the Class. Plaintiffs’ ability to secure an agreement from Allianz Life to pay 75% of the total  
5 amount of the ERA claims demonstrates the strength of that claim while acknowledging the risk  
6 posed by Allianz Life’s defenses.

7                   Allianz Life’s pending motion for summary judgment/summary adjudication, and the  
8 Court’s decision following a bifurcated trial on Allianz Life’s *res judicata* defense demonstrate the  
9 risks of litigation. If Plaintiffs were to prevail on summary judgment and trial, Allianz Life would  
10 likely appeal. Accordingly, Plaintiffs must take account of the risk of losing on summary judgment,  
11 at trial, and if victorious at both of those stages, losing on appeal on the ERA issue.  
12 The Court previously dismissed Sanchez’s declaratory relief and UCL claims based on Allianz  
13 Life’s *res judicata* defense, and Allianz Life would likely assert this defense on appeal on the breach  
14 of contract claim. If Allianz Life were to prevail on appeal on just the *res judicata* defense,  
15 approximately 76% of all claims would be eliminated. Moreover, the jury in *Mooney v.*  
16 *Allianz Life Insurance Company of North America*, Civil No. 06-545 (ADM/FLN) (D. Minn.)  
17 ("Mooney") returned a defense verdict for Allianz Life on claims that were based in part on  
18 allegations that the ERA calculation reduced annuitization payments of class members. (Davis Decl.,  
19 ¶ 46.)

20                   The surrender claims are also at risk, given Allianz Life’s position that the contracts clearly  
21 state that policyholders receive the lower Cash Value on surrender, which does not include a bonus,  
22 instead of the Annuitization Value on surrender. Further, Allianz Life asserts that both Plaintiffs  
23 signed Statement of Understanding Forms with various disclosures, including a section entitled:  
24 “How do I avoid contract penalties and get my contract’s full annuitization value?” (Mot for Prelim.  
25 App., Ex. E at pp. 11-14, 19-25.) Additionally, the Court previously granted Allianz Life’s motion to  
26 strike Plaintiffs’ allegations that a violation of Insurance Code section 10127.13 for purchasers age  
27 60 and older precluded application of the surrender charges. With respect to the issue of the loss of  
28 bonus on surrender, Allianz Life advanced similar arguments including that the Statement of

1 Understanding advises: “The Cash surrender value does not receive premium bonuses or indexed  
2 interest.” (Mot. for Prelim. App., Ex E at p. 13.). Further, the risk that Allianz Life could prevail on  
3 appeal on its *res judicata* defense, described above, applies to the surrender issue as well. Moreover,  
4 the jury in the *Mooney* trial returned a defense verdict on allegations that surrender penalties were  
5 not properly disclosed. (Mot. for Prelim. App., Ex. B, pp. 7-9; Davis Decl., ¶¶ 48-49.)

## 6 **II. The expense and duration of further litigation.**

7 Plaintiffs face further time and expense in pursuing this case through trial and appeal.  
8 There is always a risk that a class action may be decertified, and as evidenced by the verdict in  
9 *Mooney*, Plaintiffs are not guaranteed a judgment in this case. If the case were tried, it is a near  
10 certainty that the parties would appeal.

11 This complex case has been litigated fully and intensively by the parties for over six years.

12 The firms involved are sophisticated litigators, who are well acquainted with appellate  
13 proceedings. Accordingly, this Settlement is timely and appropriate. (Davis Decl., ¶¶ 2-4, 8-27.)

## 14 **III. The Settlement amount.**

15 A settlement is fair, adequate and reasonable so long as it falls within the “ballpark of  
16 reasonableness.” 4 *Newberg on Class Actions* § 13:51 (5<sup>th</sup> ed. 2019). Here, the \$9.131 million  
17 offered for the settlement of the ERA issue represents about 75% of the amount Settlement Class  
18 Members lost on the ERA issue. (Long Decl., ¶ 14.) The \$10.719 million offered on the surrender  
19 charge issue represents the 46% of the amount of the bonus lost when receiving the Cash Value. (*Id.*)  
20 Given the significant risks that Plaintiffs face in prevailing on summary judgment, trial, and on  
21 appeal, this represents an excellent result for the Settlement Class Members. These amounts are well  
22 within or exceeding the range of settlements commonly approved by California state and district  
23 courts. *See, e.g., In re Mego Fin. Corp. Litig.* (9th Cir. 2000) 213 F.3d 454, 459 (recovery of 16.67%  
24 of the potential recovery adequate in light of the plaintiffs’ risks); *Bellinghausen v. Tractor Supply*  
25 *Co.* (N.D. Cal. 2014) 303 F.R.D. 611, 623-624 (finding settlement of between 9% and 27% of total  
26 potential liability to be fair, adequate and reasonable); *Glass v. UBS Fin. Serv.* (N.D. Cal. 2007)  
27 2007 WL 221862, at \*4 (approving settlement that constituted only approximately 25 to 35% of  
28

1 estimated actual loss to the class); *Nichols v. Smithkline Beecham Corp.* (E.D. Pa. 2005) 2005 WL  
2 950616, \*16 (approving settlement of between 9.3% and 13.9% of claimed damages).

3 There is also a Cash Value Credit of 35% of the bonus percentage listed in the Policy  
4 Schedule multiplied by the Cash Value at the time of surrender for those who surrender within a year  
5 of the Effective Date. (Mot. for Prelim. App., Ex. A, ¶ 32. ) Added to this benefit is the gap relief for  
6 those who surrender between March 31, 2022 and 35 days after the original class settlement notice  
7 was mailed.

#### 8 **IV. Equitable distribution of Settlement benefits.**

9 At the final approval stage, “[a]n allocation formula need only have a reasonable, rational  
10 basis, particularly if recommended by experienced and competent class counsel.” *In re Am. Bank*  
11 *Note Holographics, Inc. Sec. Litig.* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-430.

12 Here, no portion of this relief will be subject to any claims process. Instead, cash  
13 benefits will be automatically distributed to the Settlement Class Members who have suffered an  
14 ERA or loss of bonus on surrender. (Mot. for Prelim. App., Ex. A, ¶¶ 25-30; Davis Decl., ¶ 37.) The  
15 administrative mailing and payment procedures are designed to maximize the likelihood of *actual*  
16 *receipt* of benefits by each of the Settlement Class Members. (*Id.*)

#### 17 **V. The extent of discovery and proceedings completed.**

18 As summarized in the motion for preliminary approval, and detailed in the concurrently  
19 filed declarations of Class Counsel, this case was actively litigated for over six years before this  
20 Settlement was reached, right before trial was about to commence. Counsel engaged in extensive  
21 pretrial proceedings and discovery, including multiple sets of production requests, form  
22 interrogatories, special interrogatories and requests for admission, eight depositions, and discovery  
23 conferences with the Court. (Davis Decl., ¶¶ 19-21.) Among other things, Class Counsel obtained  
24 and analyzed, with assistance of an experienced insurance actuary, the annuitization and surrender  
25 data for every single Class Member. Class Counsel, with this expert assistance, did calculations to  
26 determine each Class Member’s actual damages from penalties due the ERA and/or loss of bonus on  
27 surrender. (Davis Decl., ¶ 24; Long Prelim. Decl., ¶¶ 9-12.)  
28

1                   **VI.      Absence of “obvious defects” or indicia of unfairness.**

2                   As the Court stated in its order granting preliminary approval, this Settlement “was reached  
3 through arm’s length bargaining.” (Order on Preliminary Approval at 22.) The litigation in this case  
4 was fully adversarial, with counsel for each side vigorously advocating clients’ respective positions,  
5 as reflected in the Court’s docket. As the Court noted, “[t]he Court has handled this matter for  
6 several years and has observed the relationship of counsel to be professional but adversarial at all  
7 times.” (*Id.*) The Settlement was reached only after near total pre-trial litigation, with the assistance  
8 of a highly respected mediator, Robert Kaplan, who guided negotiations, ensuring the absence of  
9 collusion among the parties. (Davis Decl., ¶¶ 18, 26 .)

10                   **VII.     Experience and views of counsel.**

11                   Class Counsel is experienced in prosecuting insurance class actions, including class actions  
12 against health plans over the denial of health benefits. (Davis Decl., ¶¶ 2-4; 8-27.) Class Counsel are  
13 well suited to realistically assess the fair and reasonable value of the claims at issue. (*Id.*) Class  
14 Counsel believe the Settlement represents a fair and reasonable resolution to this matter in light of  
15 the various risks and costs to the respective parties of continued litigation. (*Id.*, ¶ 6.)

16                   **VIII.    Reaction of the Class Members.**

17                   A positive reaction of the class members creates a strong presumption that the Settlement  
18 is fundamentally fair, adequate and reasonable. *See 7-Eleven Owners for Fair Franchising v.*  
19 *Southland Corp.*, *supra*, 85 Cal.App.4th at 1046 (finding that reaction of class was  
20 “overwhelmingly positive” where only 80 of 5,454 class members opted out of settlement and nine  
21 members objected to the settlement).

22                   Here, the reaction of the Settlement Class Members has been overwhelmingly positive  
23 creating a strong presumption that the Settlement is fair, adequate and reasonable. Of the 25,700  
24 Settlement Class Members, only 24 have requested to opt-out of the Settlement. (Thomas Decl., ¶ 7.)  
25 KCC has received only one objection to the Settlement (Thomas Decl., ¶ 8; Exh. C to Thomas Decl.)  
26 A review of the objection, however, indicates that the Class Member did not object to the Settlement  
27 as whole, but to the calculation of her estimated Settlement Check of \$97.85. She requests \$15,000.  
28



1 Her statement of dispute stems from a misunderstanding regarding which of her annuities is part of  
2 the Settlement.

3 The objector asserted that she was included in the Class in relation to her annuitization of  
4 Policy No. \*\*\*\*3156, which she purchased in 2008, and annuitized in 2020. (Ex. C.) She is  
5 incorrect. Policy No. \*\*\*\*3156 is not part of the Settlement because she annuitized it in year 12.  
6 (Janssen Decl., ¶ 3.) As explained in Plaintiffs' preliminary approval motion, Allianz imposed the  
7 ERA only on annuitizations occurring prior to Policy Year 11. Accordingly, she did not suffer an  
8 ERA under this annuity and is not entitled to any distribution from the common fund for any alleged  
9 loss under it.

10 The objector received the Class Notice in regard to a different annuity that she also owned,  
11 Policy No. XXXX4329, which was issued to her on May 10, 2010 for \$3,974.46 in premium.  
12 (Janssen Decl., ¶ 6.) On December 2, 2018, during the 9th year of the policy, she annuitized this  
13 small annuity, which then had an annuitization value of \$6,584.84. (*Id.*, ¶ 7.) She elected to annuitize  
14 it over a 10-year period in 11 annual payments of \$636.83. (*Id.*) As set forth the concurrently filed  
15 declaration of Terry Long, Allianz imposed a 3% ERA on the annuitization value for Policy No.  
16 \*\*\*\*4329 for total damages of \$197.55. (Long Decl., ¶ 6.) In accordance with the distribution plan  
17 preliminary approved by the Court, her estimated Settlement Check was properly calculated by  
18 Lewis & Ellis in the amount of \$98.75. (*Id.*, ¶ 7.) A \$15,000 settlement check would be 75 times  
19 her actual damages! Her actual estimated settlement amount of 98.75 is about 50% of her actual  
20 damages, which is more than reasonable.

21 In sum, the objection is meritless and the overwhelmingly positive reaction of the Class  
22 strongly favors a finding that the Settlement is fair, adequate and reasonable

23 **IV. The Court should conditionally grant final approval pending a final report from the**  
24 **Parties on the Supplemental Class Notice.**

25 As explained above, 1,043 of the 25,700 Settlement Class Members received a Class Notice  
26 that did not include their specific estimated Settlement Check or understated their estimated  
27 Settlement Check. In an abundance of caution, the Court, at the Parties' request, approved a  
28 Supplemental Class Notice to be sent these 1,043 Class Members on October 21, 2022, that provided  
them with a corrected Estimated Settlement Check. These Class Members will be afforded an

1 additional 35 days to opt-out, objection or submit a statement of dispute, up to November 28, 2022.  
2 (Thomas Decl., ¶ 11.)

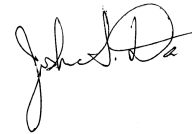
3 Accordingly, Plaintiffs request that the Court only conditionally grant final approval  
4 pending the final results from the Supplemental Notice. On December 8, 2022, Plaintiffs will file a  
5 final report on these results. Given the overwhelming positive response to the Class Notice,  
6 including from the same Class Members that will receive the Supplemental Notice, the Parties do not  
7 anticipate any objections. If as anticipated, there are none, the Court should enter judgment after  
8 December 8, 2022. If any objections, however, are received, the Court should set a further  
9 supplemental hearing to address these additional objections.

10 **V. CONCLUSION**

11 For all the above reasons, Plaintiffs respectfully request that the Court grant conditional  
12 final approval of the Settlement as sought herein.

13  
14 DATED: October 18, 2022

GIANELLI & MORRIS  
OFFICES OF RONALD A. MARRON



15  
16  
17 By:

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**PROOF OF SERVICE**

*Diane V. Sanchez v. Allianz Life Insurance Company of North America*  
*Case No. BC594715*

**STATE OF CALIFORNIA,  
COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 550 South Hope Street, Suite 1645, Los Angeles, CA 90071.

On October 18, 2022, I served the foregoing document described as **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR ORDER GRANTING CONDITIONAL FINAL APPROVAL OF CLASS-ACTION SETTLEMENT** on the interested parties in this action by placing a true copy of the original thereof enclosed in a sealed envelope addressed as follows:

**SEE ATTACHED**

**X** By Electronic Service via CASE ANYWHERE, I caused a true and correct copy of the above-entitled documents to be electronically transferred onto **CASE ANYWHERE** via the Internet, which constitutes service, pursuant to Order Authorizing Electronic Service dated 3/10/16.

**X** (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 18, 2022 at Los Angeles, California.

  
\_\_\_\_\_  
**Leticia Shaw**

**SERVICE LIST**

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