

**FILED**  
LOS ANGELES SUPERIOR COURT

DEC 14 2022

~~ERRI~~ R. CARTER, EXECUTIVE OFFICER/CLERK  
BY N. Navarro Deputy  
NANCY NAVARRO

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

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

Case No.: BC594715

Plaintiff,

v.

ORDER GRANTING  
MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT

ALLIANZ LIFE INSURANCE COMPANY  
OF NORTH AMERICA; and DOES 1  
through 100, inclusive,

Defendants.

**I. BACKGROUND**

Plaintiffs Diane V. Sanchez and Jules Confino brought this action against Allianz Life Insurance Company of North America ("Allianz Life" or "Defendant") for breach of contract and declaratory relief with respect to annuities sold to Plaintiffs by Defendant. Plaintiffs seek to represent a class of annuity holders and beneficiaries.

1 The initial action was filed September 15, 2015 by Sanchez for breach of  
2 contract, declaratory relief, and violation of unfair competition law, Bus. & Prof. Code  
3 §17200 (“UCL”). On February 22, 2018, Sanchez filed a first amended class action  
4 complaint alleging the same causes of action and adding Jules Confino and Doreen  
5 Confino as named plaintiffs. Plaintiff Doreen Confino later withdrew from the action.

6 This is one of several class actions involving annuity products sold by Allianz  
7 Life, including *Mooney v. Allianz Life Insurance Company of North America*, Civil No.  
8 06-545 (ADM/FLN) (D. Minn.) (“*Mooney*”), *Iorio, et al. v. Allianz Life Insurance*  
9 *Company of North America*, U.S.D.C. (S.D. Cal.) Case No. 05- cv-0633 JLS (“*Iorio*”)  
10 and *Negrete v. Allianz Life Ins. Co. of No. Am.* (C.D. Cal.) Case Nos. CV 05– 06838  
11 CAS (MANx), CV 05-8908 CAS (MANx) (“*Negrete*”). Plaintiffs’ counsel in this  
12 action was counsel in *Iorio*.

13 Plaintiffs’ primary allegations related to: (1) Allianz Life’s use of a formula  
14 referred to as “the expense recovery adjustment” in calculating nonguaranteed  
15 annuitization payments under the annuity contracts, and (2) the annuity contracts’  
16 provisions governing full and partial surrender transactions. Plaintiffs allege that, when  
17 an annuitization occurred within ten years after the effective date of issuance of an  
18 annuity, Allianz Life’s use of the expense recovery adjustment calculation in its  
19 determination of annuitization payments greater than guaranteed under the annuity  
20 either reduced the annuitization value of the annuity or reduced the annuitization  
21 payments, in alleged violation of contractual promises. Plaintiffs also pursued other  
22 allegations of breach concerning annuitization, including that Allianz Life’s calculation  
23 of annuitization payments breached contractual promises concerning “purchase rates.”  
24 With respect to surrenders and partial surrenders of the annuities, Plaintiffs alleged: that  
25 the contractual language in the annuities at issue obscured or did not properly disclose

1 alleged penalties or other consequences associated with full surrenders or partial  
2 surrenders, including the alleged loss of a bonus that Plaintiffs asserted should have  
3 been included in the cash value of the annuity contracts; that the contracts did not  
4 comply with various provisions of California statutes, including Cal. Civ. Code §§ 1442  
5 and 1671 and Cal. Ins. Code § 10127.13; and that the alleged penalties and surrender  
6 provisions were onerous and constituted forfeitures or impermissible penalties and/or  
7 were unenforceable under other legal doctrines.

8 Allianz Life argued that a defense judgment in *Mooney*, entered after a contested  
9 jury trial, barred Sanchez's claims, as she was a member of that class. On February 28,  
10 2019, following a bifurcated trial, the Court determined that Sanchez's claims for  
11 declaratory relief and violation of the UCL were barred by the judgment in *Mooney* but  
12 that her breach of contract claim was not barred, having arisen after the *Mooney*  
13 judgment was entered.

14 On August 5, 2019, Plaintiffs filed the operative second amended class action  
15 complaint for breach of contract and declaratory relief (for annuities issued after the  
16 *Mooney* judgment) consistent with the Court's rulings.

17 On July 20, 2020, the Court granted Plaintiffs' motion for class certification  
18 certifying the following class:

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

1  
2 All California owners of the following annuities issued by Allianz Life Insurance  
3 Company of North America that are currently in deferral: BonusMaxxx,  
4 BonusMaxxx Elite, BonusDex, BonusDex Elite, 10% Bonus PowerDex, and  
5 MasterDex 10.

6  
7 Excluded from these classes are the annuities that were the subject of the  
8 settlements in *Iorio, et al. v. Allianz Life Insurance Company of North America*,  
9 U.S.D.C. (S.D. Cal.) Case No. 05- cv-0633 JLS and *Negrete v. Allianz Life Ins.*  
10 *Co. of No. Am.* (C.D. Cal.) Case Nos. CV 05– 06838 CAS (MANx), CV 05-8908  
11 CAS (MANx).

12  
13 On October 30, 2020, the appointed settlement administrator, KCC Class Action  
14 Services, LLC (“KCC”), mailed notice to 26,839 Class Members. On January 12,  
15 2021, KCC mailed notice to an additional 59 Class Members. 37 Class Members have  
16 excluded themselves from the Certified Class.

17 On September 28, 2021, the Parties attended a mediation before mediator Robert  
18 Kaplan, Esq., of Judicate West. The Parties ultimately reached an agreement on the  
19 principal terms of a settlement and finalized the terms in the *Settlement Agreement*  
20 (“Settlement Agreement”), a copy of which is attached to the Declaration of Joshua S.  
21 Davis filed June 1, 2022 (“Davis Decl. ISO Prelim”) as Exhibit A.

22 The settlement was preliminarily approved at the hearing on June 30, 2022 and  
23 in the Court’s Order of July 8, 2022.

24 On August 8, 2022, the settlement administrator, KCC Class Action Services,  
25 LLC (“KCC”), caused the Class Action Settlement Notice to be mailed to 25,700

1 Settlement Class Members (see Declaration of Alexander Thomas filed October 18,  
2 2022). As set forth in the Plaintiffs' motion for final approval, KCC subsequently  
3 informed the Parties that 961 Settlement Class Members who owned both an annuity in  
4 deferral, as well as a Surrendered Annuity, Penalty- Incurring Partial Surrender or  
5 Annuitized Annuity, received a Class Notice that did not inform them they were  
6 entitled to distribution and their estimated settlement check. In addition, another 82  
7 Settlement Class Members, who owned more than one Surrendered Annuity, Penalty-  
8 Incurring Partial Surrender or Annuitized Annuity, received a Class Notice for the  
9 estimated Settlement Check amount for only one of their annuities. (MFA at 6:1-17.)  
10 Although these Settlement Class Members received the Class Notice, the Parties  
11 proposed that these Class Members receive a Supplemental Class Notice providing the  
12 estimated Settlement Check amounts missing in the previous notice mailed to them, and  
13 providing an extension of the deadline to respond.

14 On October 19, 2022, the Court granted the parties' Stipulation and Order  
15 approving the form of the Supplemental Class Notice, and ordered that the mailing take  
16 place on October 21, 2022, and that the deadline to object or opt-out in response to the  
17 Supplemental Class Notice be November 25, 2022. On October 21, 2022, KCC caused  
18 the Supplemental Class Notice to be mailed to the 1,043 Class Members referenced  
19 above. (See Declaration of Alexander Thomas filed December 5, 2022.)

20 On November 9, 2022, the Court called the matter of Plaintiffs' final approval of  
21 settlement for hearing and ordered a final report and proposed judgment to be filed by  
22 December 5, 2022 to take into account any possible objections from class members  
23 who received supplemental notices.

24 For the reasons set forth below, the Court grants final approval of the  
25 settlement and sets attorneys' fees and incentive awards.

## II. THE TERMS OF THE SETTLEMENT

### A. SETTLEMENT CLASS DEFINITION

- "Certified Class" means the following persons and annuities the Plaintiffs defined as the Class in their Second Amended Complaint, which the Court certified pursuant to its July 20, 2020 Order and who did not submit a timely request to be excluded from the Class (§17.m):
  - All California owners (or their designated beneficiaries on death claims) of the following Allianz Life Insurance Company of North America annuities who at any time from September 15, 2011 to the present either (1) received an annuity (or death benefit) payment that was calculated with an expense recovery adjustment, or (2) incurred a surrender penalty or charge in connection with a full or partial surrender: BonusMaxxx, BonusMaxxx Elite, BonusDex, BonusDex Elite, 10% Bonus PowerDex, and MasterDex 10.
  - All California owners of the following annuities issued by Allianz Life Insurance Company of North America that are currently in deferral: BonusMaxxx, BonusMaxxx Elite, BonusDex, BonusDex Elite, 10% Bonus PowerDex, and MasterDex 10.
  - Excluded from these classes are the annuities that were the subject of the settlements in *Iorio, et al. v. Allianz Life Insurance Company of North America*, 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).
- "Class Member" means a member of the Certified Class. (§17.p)

- 1 • "Annuity Status Date" means March 31, 2022 at 11:59 p.m. Central Daylight  
2 Time. (§17.j)
- 3 • "Annuitized Settlement Annuity" means (§17.g):
  - 4 ○ An Annuity as to which the Current Owner(s) elected to annuitize the  
5 Annuitization Value between September 15, 2011 and the Annuity Status  
6 Date if such annuitization occurred within 10 years after the Settlement  
7 Annuity's effective date of issuance. An Annuity in which the Current  
8 Owner elected to take Annuity Option D, referred to in the Annuity as  
9 "Benefit Deposited With Interest," is not an Annuitized Settlement  
10 Annuity under this Agreement because the expense recovery adjustment  
11 calculation is not incorporated in the payout calculations for Option D.
  - 12 ○ A Death Benefit election by a Beneficiary that occurred between  
13 September 15, 2011 and the Annuity Status Date if and to the extent (a)  
14 the Beneficiary elected to take the Death Benefit as the Annuitization  
15 Value in equal periodic installments over 5 or more years and (b) such  
16 election was made within 10 years after the Settlement Annuity's  
17 effective date of issuance. For purposes of the Agreement, when there  
18 are multiple Beneficiaries of a Settlement Annuity, such a Death Benefit  
19 election shall be treated as an Annuitized Settlement Annuity only as to  
20 the portion of the Death Benefit to which the annuitizing Beneficiary  
21 was entitled under the Annuity.
- 22 • "Surrendered Settlement Annuity" means (§17.ww):
  - 23 ○ Settlement Annuity that was fully surrendered by the Current Owner(s)  
24 for the Cash Value of the Annuity between September 15, 2011 and the  
25 Annuity Status Date; or

1           ○ a Beneficiary's election to receive the Death Benefit in the form of the  
2           Cash Value if that election was made between September 15, 2011 and  
3           the Annuity Status Date. For purposes of this Agreement only, when  
4           there are multiple Beneficiaries, such an election of a Death Benefit shall  
5           be treated as a Surrendered Settlement Annuity only as to the portion of  
6           the Death Benefit to which the Beneficiary was entitled under the  
7           Settlement Annuity.

8           ● "Penalty-Incurring Partial Surrender" means a withdrawal from an Annuity that  
9           occurred between September 15, 2011 and the Annuity Status Date that did not  
10          meet the requirements of a penalty-free withdrawal under the terms of the  
11          Annuities but it does not mean a withdrawal required to be taken as a Required  
12          Minimum Distributions under the Internal Revenue Code. (§17.hh)

13          ● "Active Deferred Settlement Annuity" means a Settlement Annuity that, as of  
14          the Annuity Status Date, has (a) not been fully surrendered, (b) not been  
15          partially or completely Annuitized, and (c) not become eligible for death  
16          benefits, except if the Settlement Annuity was continued in effect by the  
17          surviving spouse. (§17.b)

18          ● "Owner" means any Person(s) having any legal or equitable ownership interest  
19          in a Settlement Annuity, including, where applicable, an annuitant, under the  
20          terms of the Settlement Annuity, agreement with Allianz Life, and/or applicable  
21          law. Initially, at the time of issuance of a Settlement Annuity, the Settlement  
22          Annuity purchaser is the Owner with respect to said Settlement Annuity. The  
23          Owner may change upon either the Owner's death or a transfer of ownership to  
24          another, in accordance with the terms of the Settlement Annuity. agreement  
25          with Allianz Life, and/or applicable law. There can be more than one concurrent



1 Owner of a Settlement Annuity. A Beneficiary has ownership rights only upon  
2 the death of the Owner. Without limiting the foregoing, "Owner" shall include a  
3 surviving spouse and non-spouse Beneficiary who continues a Settlement  
4 Annuity in deferral, if such a continuation was elected and was permitted by the  
5 terms of the Settlement Annuity (or Allianz Life has otherwise agreed to permit  
6 such a continuance). (§17.ee)

- 7 • "Current Owner" and "Current Owners" means the following (§17.u):
  - 8 ○ As to an Active Deferred Settlement Annuity, the person or persons
  - 9 listed in Allianz Life's corporate records as the Owner(s) of the
  - 10 Settlement Annuity as of the Annuity Status Date;
  - 11 ○ As to an Annuitized Settlement Annuity described in Paragraph 17.g.i,
  - 12 the person or persons listed in the Annuity Option Agreement as the
  - 13 annuitant (or if that annuitant is no longer living on the Annuity Status
  - 14 Date and the payments under the Annuity Option Agreement have not
  - 15 terminated as of the Annuity Status Date, the designated beneficiary
  - 16 under the Annuity Option Agreement);
  - 17 ○ As to a Surrendered Settlement Annuity described in Paragraph 17.ww.i,
  - 18 the person or persons listed in Allianz Life's business records as the
  - 19 Owner(s) as of the date of surrender.
- 20 • The "Settlement Class" is defined as follows, subject to the Settlement Class  
21 Exclusions (§17.tt):
  - 22 ○ an Owner of an Annuity that, as of the Annuity Status Date, has not (a)
  - 23 been fully surrendered, (b) not been partially or wholly annuitized, (c)
  - 24 and not become eligible for death benefits, except if the Settlement
  - 25 Annuity was continued in effect by a surviving spouse of the Owner;

- an Owner of an Annuity that was annuitized for the Annuitization Value between September 15, 2011 and the Annuity Status Date if such annuitization occurred within 10 years after the Settlement Annuity's effective date of issuance, unless the annuity option taken was Annuity Option D, referred to as "Benefit Deposited With Interest";
  - an Owner of an Annuity that was fully surrendered for the Cash Value of the Annuity between September 15, 2011 and the Annuity Status Date;
  - a Beneficiary of an Annuity who between September 15, 2011 and the Annuity Status Date elected to receive the Death Benefit either (a) in the form of a lump sum payment of the Cash Value or (b) in the form of equal periodic installments of the Annuitization Value over five or more years if such election was made within 10 years after the Annuity's effective date of issuance; and/or
  - an Owner of an Annuity that at any time from September 15, 2011 to the Annuity Status Date had a Penalty-Incurring Partial Surrender.
- "Settlement Class Exclusions" means the following persons and/or Annuities excluded from the Settlement Class and not eligible for benefits under this Settlement (§17.uu):
    - Annuities that were the subject of the settlements in *Iorio, et al. v. Allianz Life Insurance Company of North America*, 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);
    - Annuities that on the Annuity Status Date do not meet the criteria required for the Owner or Beneficiary to be part of the Class; and

- any person who, in response to the Class Notice, timely submitted a written request to be excluded from the Class with respect to any Annuity in which that person had an interest.

- "Settlement Class Member" means a member of the Settlement Class but only with respect to an Annuity that is not subject to a Settlement Class Exclusion. (¶17.vv)

#### B. THE MONETARY TERMS OF SETTLEMENT

The essential monetary terms are as follows:

- The Gross Settlement Amount ("GSA") is \$19,850,000 (¶17.bb).
- The Net Settlement Amount ("Net") (\$12,745,981.59) is the GSA less:
  - Up to \$6,616,666.67 (33 1/3%) for attorney fees (¶43);
  - Up to \$337,351.74 for attorney costs (¶44);
  - Up to \$30,000 total [\$15,000 each] for service awards to the two proposed class representatives (¶46); and
  - Estimated \$120,000 for settlement administration costs (¶59).
- Assuming the Court approves all maximum requested deductions, approximately \$12,745,981.59 will be available for distribution to participating class members. KCC represents that the average estimated Settlement Check identified in the notices for Class Members entitled to a distribution sent out above is \$1,284. The lowest estimated Settlement Check identified in the notices is \$.23 and the highest estimated Settlement Check is \$62,700.89. See Supp. Dec. of Thomas filed December 13, 2022.
- There is no Claim Requirement (Notice pg. ii).
- The settlement is not reversionary (¶30)

- 1     • Active Deferred Settlement Annuities Calculation: Any Active Deferred  
2     Settlement Annuity shall be entitled to a credit to the current Cash Value if  
3     within 365 days after the Effective Date of the Settlement Allianz Life receives a  
4     Surrender Form signed by all of the Current Owners of the Settlement Annuity  
5     requesting a full and complete surrender of the Settlement Annuity. The Cash  
6     Value Credit, the calculation of which is described in Paragraph 32, will be  
7     applied on and as of the date that the surrender is processed by Defendant. (§31)
- 8         ○ The amount of the Cash Value Credit will be equal to (a) .35 multiplied  
9         by (b) the Premium Bonus Percentage or Annuitization Bonus percentage  
10        shown in the Settlement Annuity's Policy Schedule (the maximum of  
11        which was .12) multiplied by (c) the Cash Value as of the effective date  
12        of surrender. (§32)
- 13        ○ For the purposes of the Agreement, and for purposes of calculating the  
14        Cash Value Credit hereunder, a surrender made pursuant to this provision  
15        shall be deemed effective on the date that a contractually compliant  
16        Surrender Form for a full surrender is processed by Allianz Life in  
17        accordance with Allianz Life's corporate policies (which require  
18        submission of the original Annuity contract or a statement of lost  
19        contract). Settlement Class members will be given fourteen (14) days to  
20        cure any deficiencies in any Surrender Forms that were submitted on or  
21        before the expiration of 365 days after the Effective Date. (§33)
- 22     • Gap Relief for Active Deferred Annuities Surrendered After the Annuity Status  
23     Date: The settlement recognizes that some owners of Active Deferred Annuities  
24     may fully surrender such Annuities after the Annuity Status Date but before they  
25     have had an opportunity to review the Class Settlement Notice describing the

1 benefits available under the Settlement. Defendant has agreed to provide a cash  
2 payment applicable to policies that are surrendered between (i) the day after the  
3 Annuity Status Date and (ii) 35 calendar days after the date of the mailing of the  
4 Class Action Settlement Notice (“the Gap Relief Period”)) on the terms and  
5 conditions in Paragraphs 35 and 36. (§34)

- 6 ○ If the Court enters the Preliminary Approval Order on or before July 31,  
7 2022, a Settlement Class Member who fully surrenders an Active  
8 Deferred Settlement Annuity during the Gap Relief Period will be entitled  
9 to a retroactive application of the Cash Value Credit to such Annuity as  
10 described in Paragraphs 31-33, with checks mailed by Allianz Life within  
11 90 days after the Effective Date of the Settlement. (§35)
- 12 ○ If the Court enters the Preliminary Approval Order after July 31, 2022,  
13 the cash value credits provided as gap relief will be subject to a  
14 \$400,000.00 aggregate cap. If the aggregate amount of retroactive cash  
15 value credits applicable to Settlement Annuities fully surrendered during  
16 the Gap Period using the calculations described in Paragraph 32 is equal  
17 to or lower than \$400,000.00, the same Cash Value Credit described in  
18 Paragraphs 31-33, will be retroactively applied to each Active Deferred  
19 Settlement Annuity fully surrendered during the Gap Period, with checks  
20 mailed by Allianz Life within 90 days after the Effective Date of the  
21 Settlement. However, if the aggregate amount of retroactive cash value  
22 credits applicable to Settlement Annuities fully surrendered during the  
23 Gap Period using the calculations described in Paragraph 32 is greater  
24 than \$400,000.00, the payment for each Annuity surrendered during the  
25 Gap Relief Period shall be reduced proportionally, such that the total

1 amount paid by Allianz Life with respect to Active Deferred Settlement  
2 Annuities that are fully surrendered during the Gap Relief Period is no  
3 greater than \$400,000.00. (§36)

- 4 • Funding of the Settlement: Within 30 days after the Court's entry of the  
5 Preliminary Approval Order, Defendant shall pay \$120,000.00 of the Gross  
6 Settlement Amount into the Settlement Fund to pay the costs and fees for the  
7 Settlement Administrator to effectuate the Class Action Settlement Notice  
8 mailing and the administration of the Settlement. (§23.) Within 30 days after the  
9 Effective Date, Defendant shall pay by wire transfer the remainder of the Gross  
10 Settlement Amount (the Gross Settlement Amount less the \$120,000.00  
11 Defendant previously paid to the Settlement Administrator) into the Settlement  
12 Fund. (§24)

- 13 • Distribution of Settlement: The Net Settlement Fund will be distributed to  
14 Settlement Class Members according to the proposed Net Settlement Fund  
15 Distribution Plan, to be approved by the Court, which is attached as Exhibit 4 to  
16 the Settlement Agreement. (§25)

- 17 ○ As set forth in the Plan of Distribution, fifty-four percent (54%) of the  
18 Net Settlement Fund will be allocated to relief applicable to Surrendered  
19 Settlement Annuities and for Penalty-Incurring Partial Surrenders. Forty-  
20 six percent (46%) of the Net Settlement Fund will be allocated to relief  
21 applicable to Annuitized Settlement Annuities. (§26)
- 22 ○ Within forty (40) days of the Effective Date, the Settlement Administrator  
23 shall mail Settlement Checks from the Net Settlement Fund, in  
24 accordance with the Distribution Plan of the Net Settlement Fund, as  
25 approved by the Court, to the Settlement Class Members. (§27)

- 1 • **Uncashed Settlement Payment Checks:** Settlement Checks that are not cashed  
2 within 180 days after mailing of the initial check (or 60 days after mailing of a  
3 replacement check) will be void and a stop payment will be placed on the  
4 Settlement Checks. Settlement Class Members who fail to timely cash their  
5 Settlement Checks will still be bound by the Agreement. (§29) The amounts of  
6 the uncashed Settlement Checks will be sent to the California State Controller's  
7 Office (or other government entity designated under the California's unclaimed  
8 property law statutes). (§30)
- 9 • **Amendments:** The Agreement authorizes the Parties, without further approval  
10 from the Court, to agree to and adopt such amendments, modifications, or  
11 expansions of this Agreement and all exhibits attached hereto which (a) are  
12 consistent with the Judgment, and (b) do not limit the rights of Settlement Class  
13 Members and any Person entitled to Settlement Relief under the Agreement.  
14 (§70.j)

#### 15 C. TERMS OF RELEASES

- 17 • **Release by Participating Class Members.** The obligations incurred under this  
18 Settlement will be in full and final disposition of the Action against Defendant  
19 and will fully, finally, and forever compromise, settle, release, resolve,  
20 relinquish, waive, and discharge any and all Released Claims against Defendant  
21 and its Related Parties. (§37) The Class Representatives will have, and each of  
22 the Settlement Class Members will be deemed to have, and by operation of law  
23 and of the Judgment will have, on behalf of themselves and their Related Parties,  
24 fully, finally and forever compromised, settled, released, resolved, relinquished,  
25 waived, and discharged the Released Parties from the Released Claims without