

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

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Bonnie Berthiaume, Robert Berthiaume,  
Doris Burnham, Richard Burnham, Nancy  
Mayer-Gosz, Fletcher Lewis, and Carole  
Lewis,

Court File No.: 27-CV-17-15118  
Case Type: Other Contract / Other Civil  
Judge Laurie J. Miller

Plaintiffs,

vs.

Allianz Life Insurance Company of North  
America and Imeriti, Inc. d/b/a Imeriti  
Financial Network,

Defendants.

**FINDINGS AND ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS SETTLEMENT AND  
DIRECTING ISSUANCE OF CLASS  
SETTLEMENT NOTICE**

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This matter came before the Court on the Class Representatives' unopposed motion for the preliminary approval of a proposed class settlement (the "Motion"), the terms of which are set forth in a Stipulation of Settlement, including the Exhibits thereto (the "Settlement Stipulation" or "Stipulation"), which is attached to the Motion. All defined terms in this Order shall have the same meanings as in the Settlement Stipulation. This Court has reviewed the proposed Settlement, and based upon the Motion and the record of this matter, it is hereby ORDERED as follows:

**I. Background of this Action.**

1. Class Representatives served Allianz Life Insurance Company of North America and Imeriti, Inc. ("Defendants") with a Complaint on October 4, 2016. On October 3, 2017, Class Representatives filed an Amended Complaint.

2. The Amended Complaint asserts six causes of action against Allianz Life: (i) Count One – Minn. Stat. § 325F.69, Consumer Fraud Act; (ii) Count Two – Minn. Stat. § 325F.67, False Statement in Advertising Act; (iii) Count Three – Minn. Stat. § 325D.44, Uniform Deceptive Trade Practices Act; (iv) Count Four – Minn. Stat. § 325F.71, Deceptive Acts Perpetrated Against Senior Citizens and Disabled Persons; (v) Count Five – Negligence; and (vi) Count Six – Aiding and Abetting Fraud. It asserts two causes of Action against Imeriti, Count Seven – Negligence and Count Eight – Aiding and Abetting Fraud.

3. The allegations in the Amended Complaint focus on the actions of Sean M. Meadows, a former financial advisor previously associated with Defendants, who sold all of the Allianz Life annuities at issue in this matter. The Class Representatives purchased Allianz Life annuities through Meadows, and allege they were injured because Meadows “directed” them to buy and then to surrender the annuities in what the Amended Complaint characterizes as a pattern of churning, leading them to pay surrender charges, and to invest funds into Meadows’ fraudulent investment scheme (“Meadows’ Ponzi Scheme”). The Amended Complaint further alleges that Defendants allowed Meadows to operate with impunity.

4. Defendants deny any and all wrongdoing alleged in the Amended Complaint and do not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been or could have been alleged against either Defendant in the Action. Defendants further specifically deny, but without limitation, that they assumed a duty of care to persons who purchased Allianz

Life products from Meadows, encouraged Meadows to engage in unethical sales practices, knew that Meadows was churning his clients' annuity policies, or knew that he was stealing their investment funds. Defendants also contend that persons in the Settlement Class have not suffered any damage or loss as a result of the conduct alleged and attributed to Defendants in the Amended Complaint. Defendants further contend that the offers and sales of all Allianz Life annuities offered and/or issued by Allianz Life were and are legal and appropriate in all respects.

## **II. Background of the Proposed Settlement.**

5. Before serving the Complaint, Class Counsel conducted a thorough investigation of the facts relating to the claims asserted in the Action. Class Counsel interviewed numerous Class Members and collected and analyzed documents provided by the Class Representatives and other Class Members. Additionally, they worked with the Minnesota Department of Commerce and the United States Attorneys' Office to review and analyze documents collected as part of the criminal and civil investigations into Meadows' conduct. Finally, they interviewed Meadows himself in order to obtain details of his scheme.

6. After the Amended Complaint was filed, the parties engaged in extensive litigation, including motions to dismiss, the exchange of more than 16,000 documents, 18 fact depositions, expert discovery involving the exchange of seven expert reports and three expert depositions, a motion for class certification, two requests for review by the Minnesota Court of Appeals, and a Petition for Review by the Minnesota Supreme Court. Throughout the course of the litigation, the parties engaged in multiple rounds

of settlement talks, including four mediations with two retired federal magistrate judges. With the assistance of retired Magistrate Judge Arthur Boylan, the parties reached an agreement on class settlement relief on May 8, 2020.

7. Based upon their investigation, the extensive litigation, and their evaluation of the facts and the law concerning the matters alleged in and relating to the Action, the Class Representatives have agreed to settle the Action pursuant to the provisions of the Stipulation of Settlement, after considering, among other things: (a) the fairness, reasonableness, and adequacy of the Settlement; (b) the substantial risks and uncertainties of protracted litigation and trial, especially in complex actions such as this, as well as the difficulties, delays, and risks of adverse results inherent in such litigation; (c) the needs and interests of the Class Members; and (d) the desirability of consummating the Settlement promptly, in order to provide effective relief to the Class Members.

8. The proposed Settlement is the result of extensive negotiation and mediation conducted by the parties.

9. The Class Representatives and Class Counsel agree that the proposed Settlement is fair, reasonable, and adequate because it provides substantial benefits to the Class Members, is in the best interests of the Class Members, and fairly resolves the claims alleged in the Action.

10. The Parties consider it desirable for this Action to be settled and dismissed because this settlement will: (i) provide substantial benefits to Class Members; (ii) put the Class's claims and the underlying matters to rest; and (iii) avoid the substantial

expense, burdens, risks, and uncertainties associated with the continued litigation of the Action.

### **III. Findings Regarding Proposed Settlement.**

11. The Court finds that: (a) the proposed settlement resulted from extensive arm's-length negotiations and was concluded only after the parties engaged in extensive litigation; (b) Class Counsel have significant experience handling class actions and complex litigation; and (c) the proposed settlement evidenced by the Stipulation of Settlement (which includes all Exhibits thereto) is sufficient to warrant (i) preliminary approval of the proposed settlement, (ii) notice thereof to the members of the Settlement Class, and (iii) a full hearing on the settlement. Accordingly, the Court preliminarily approves the settlement and orders dissemination of notice of this proposed settlement.

### **IV. Fairness Hearing.**

12. A hearing (the "Fairness Hearing") will be held on December 4, 2020 at 3:00 p.m. in the 4th District Civil Court, in the courtroom of the Honorable Laurie J. Miller, Hennepin County Government Center, 300 South 6th Street, Minneapolis, Minnesota 55487, to determine (a) whether the Action should be finally certified as a class action for settlement purposes; (b) whether the Settlement of the Action should be approved as fair, reasonable, and adequate; (c) whether the Action should be dismissed with prejudice pursuant to the terms of the Stipulation of Settlement; (d) whether Class Members should be bound by the Release set forth in the Stipulation of Settlement; (e) whether Class Members should be subject to a permanent injunction that, inter alia, bars Class Members from filing, commencing, prosecuting, intervening in, participating

in (as class members or otherwise), or receiving any benefits from, any lawsuit, administrative, or regulatory proceeding or order in any jurisdiction based on, or relating to, the claims and causes of actions, or the facts and circumstances related thereto, in the Action and/or the Released Claims (as defined in the Stipulation of Settlement); (f) whether the application of Class Counsel for an award of attorneys' fees and costs should be approved; and (g) whether additional payments should be made to the Class Representatives. Class Counsel's submissions in support of their requests for attorneys' fees and Enhancement Awards will be filed within 15 days of the date of Class Settlement Notice mailing. The Parties' submissions in support of the motion for final approval of the settlement shall be filed with the Court at least seven days prior to the Fairness Hearing.

**V. Pre-Hearing Notice.**

13. The proposed Settlement is sufficient to warrant sending notice of the proposed Settlement to the Class. Notice shall be provided as follows.

14. **Notice by Mail.** The Settlement Claims Administrator shall mail, at Defendants' expense, the Class Settlement Notice substantially in the form filed with this Court as Exhibit A to the Settlement Stipulation (the "Class Settlement Notice"), by first-class mail, postage prepaid, no later than 21 days after the entry of this order preliminarily approving the proposed Settlement, to the last known address of each reasonably identifiable Class Member.

15. Prior to the mailing of the Class Settlement Notice, Allianz Life shall update the list of Class Members' last known names and addresses previously provided

to the Settlement Claims Administrator to facilitate mailing the class notice, as reflected in Allianz Life's electronic records. In the case of Class Settlement Notices undelivered and returned by the U.S. Postal Service, the Settlement Claims Administrator will make reasonable efforts to determine a current address for the Class Member and resend the returned Class Settlement Notice to the more current address.

16. **Proof of Mailing.** At or before the Fairness Hearing, the Settlement Claims Administrator shall file with the Court a proof of mailing of the Class Settlement Notice.

#### **VI. Findings Concerning Notice.**

17. Having considered, among other factors, (a) the cost of giving notice by various methods, (b) the resources of the Parties, (c) the stake of each Class Member, (d) the likelihood that publication notice would not be seen by Class Members and (e) the possibility that Class Members might desire to object to the Settlement, the Court finds that the Settlement Class Settlement Notice given in the form and manner provided in Paragraphs 14-15 of this Order is the best practicable notice and is reasonably calculated, under the circumstances, to apprise the Class Members: (i) of the pendency of this action; (ii) that any judgment, whether favorable or not, will include all Class Members; and (iii) that any Class Member may object to the settlement and, if he or she desires, may request to enter an appearance either personally or through counsel.

18. The Court further notes that the Settlement Class Settlement Notice materials required by the Settlement Stipulation are written in simple English and readily understandable by the Class Members.

19. In sum, the Court finds that such notice is reasonable, that it constitutes due, adequate, and sufficient notice to all persons entitled to be provided with notice, and that it meets all requirements of the United States and Minnesota Constitutions and applicable law.

## **VII. Communications with Class Members.**

20. Defendants may not be privy to communications between Class Members and their counsel (including Class Counsel). However, Defendants may communicate with, and respond to inquiries directed to them from Class Members or their representatives, orally or in writing, regarding their contract values or surrender charge amounts, and general Settlement matters, such as the general process for obtaining Settlement Relief, deadlines and hearing dates, the class definition, and other routine Settlement inquiries.

21. In addition, Defendants may communicate with, and respond to inquiries directed to them from Class Members or their representatives, regarding matters in the normal course of administering Allianz Life policies or otherwise in the ordinary course of business, and may do so through any appropriate agents or agencies.

22. If, however, Defendants receive any inquiry from a Class Member seeking legal advice, Defendants shall refer the Class Member to Class Counsel.

23. Prior to the Claim Deadline (and except for the mailing of the Settlement Class Settlement Notice Package), Defendants, Defendants' Counsel, or anyone acting on their respective behalf, shall not directly or indirectly initiate contact with any Class Member regarding the Settlement. Nothing in this paragraph, however, shall preclude

Defendants' Counsel or Defendants from responding to inquiries from Class Members as contemplated by and in accordance with this Order or preclude Class Members from communicating with Class Counsel.

### **VIII. Objections and Appearances.**

24. **Written Objections.** Any person in the Class that wishes to object to the fairness, reasonableness, or adequacy of the Settlement Stipulation or the proposed Settlement, or to the Stipulated Fees and Costs, must file with the Court and mail to Parties' Counsel a statement of objection, postmarked no later than 45 days after the date of the Class Settlement Notice. Each such statement of objection must: (1) set forth the Class Member's full name, current address, telephone number, and applicable Contract number(s); (2) state that the Class Member objects to the settlement, in whole or in part; (3) set forth a statement of the legal and factual basis for the objection; and (4) be accompanied by copies of any documents that the objecting Class Member has and will submit in support of his/her position. A Class Member who does not submit a timely objection in accordance with the Settlement Stipulation, the Class Settlement Notice, and this Order, shall not be treated as having filed a valid objection to the Settlement. The Class Settlement Notice shall inform the Class of this requirement. Class Counsel will ensure that copies of all objections are filed with the Clerk of the Court prior to the Fairness Hearing so that the Court may appropriately consider them. Class Members may so object either on their own or through an attorney hired at their own expense. If a Class Member hires an attorney to represent him or her, the attorney must (i) file an entry of appearance with the Clerk of the Court no later than 45 days

after the date of the Settlement Class Settlement Notice, and (ii) send a copy of same to the Parties' Counsel, postmarked no later than 45 days after the date of the Settlement Class Settlement Notice. The Parties may serve and file responses to written objections prior to the Fairness Hearing. A Class Member's objection to the Settlement shall not affect his or her rights to Settlement Relief.

25. **Appearance at Fairness Hearing.** Any Class Member who files and serves a written objection, as described in the Stipulation of Settlement, the Class Settlement Notice, and the preceding paragraph of this Order, may appear at the Fairness Hearing, either in person or through personal counsel hired at the Class Member's expense, to object to the fairness, reasonableness, or adequacy of the Stipulation of Settlement or the proposed Settlement, or to the Unopposed Fees and Costs. Class Members or their attorneys who intend to make an appearance at the Fairness Hearing must file a notice of intention to appear with the Clerk of the Court no later than 45 days after the date of the Class Settlement Notice, and send a copy of such notice of intention to appear to the Parties' Counsel, postmarked no later than 45 days after the date of the Class Settlement Notice. A Class Member who appears at the Fairness Hearing will be permitted to argue only those matters that were set forth in a written objection filed by such Class Member in accordance with the Stipulation of Settlement, the Class Settlement Notice, and this Order. No Class Member shall be permitted to raise matters at the Fairness Hearing that the Settlement Class Member could have raised in such a written objection, but failed to do so, and all objections to the Settlement that are not set forth in such a written objection are deemed waived. Any Class Member who fails to comply

with the applicable provisions of the Settlement Stipulation and the Settlement Class Settlement Notice, and as otherwise ordered by the Court, shall be barred from appearing at the Fairness Hearing.

26. **Failure to Comply.** Any Class Member who fails to comply with the provisions of the preceding paragraphs of this Section VIII shall waive and forfeit any and all rights he or she may have to appear separately or object, and shall be bound by all the terms of the Stipulation of Settlement and by all proceedings, orders, and judgments in the Action.

**IX. Service of Papers.**

27. Class Counsel and Defendants' counsel shall serve on each other and on all other parties who have filed a notice of intention to appear, at or before the Fairness Hearing, any further documents in support of the proposed Settlement, including responses to any papers filed by Class Members. Class Counsel and Defendants' counsel shall promptly furnish to each other any and all objections that may come into their possession and shall file such objections with the Court on or before the date of the Fairness Hearing.

**X. Termination of Settlement.**

28. This Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if: (i) the proposed Settlement is not finally approved by the Court, or does not become final, pursuant to the terms of the Stipulation of Settlement; or (ii) the proposed Settlement is terminated

in accordance with the Stipulation of Settlement or does not become effective as required by the terms of the Stipulation of Settlement for any other reason.

29. In such event, the proposed Settlement and Stipulation of Settlement shall become null and void and be of no further force and effect, and neither the Stipulation of Settlement nor the Court's orders, including this Order, shall be used or referred to for any purpose whatsoever.

**XI. Use of Order.**

30. This Order shall be of no force or effect if the Settlement does not become final and shall not be construed or used as an admission, concession or declaration by or against Defendants of any fault, wrongdoing, breach or liability, or by or against Class Representatives or the Class Members that their claims lack merit or that the relief requested in the Amended Complaint is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims it or they may have.

**XII. Continuance of Hearing.**

31. The Court reserves the right to continue the Fairness Hearing without further written notice to the Class, but will notify counsel for the parties (including objectors who have timely filed a notice of intention to appear in these proceedings pursuant to paragraph 25, above). Unless the Court specifically orders otherwise, any such continuance shall not be interpreted to expand or change any deadlines contained in this Order or the Stipulation of Settlement.

IT IS SO ORDERED.

Dated: September 21, 2020

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Laurie J. Miller  
District Court Judge