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David W. Slayton,
Executive Officer/Clerk of Court,
By P. Muro, Deputy Clerk

6 Attorneys for Defendant
7 Allianz Life Insurance Company of North America

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

10
11 LAYNE KRAMER, an individual; and the
12 KRAMER FAMILY IRREVOCABLE
13 GRANT TRUST, by trustee LAYNE
14 KRAMER, a California trust,

14 Plaintiffs,

15 vs.

16 ALLIANZ LIFE INSURANCE
17 COMPANY OF NORTH AMERICA, a
18 Minnesota corporation; DAVID
19 NEUMAN, an individual; and DOES 1-10,
20 inclusive,

20 Defendants.

Case No.: 23STCV24250

Assigned to Hon. Douglas W. Stern, Dept.
68

**NOTICE OF DEMURRER AND
DEMURRER OF DEFENDANT
ALLIANZ LIFE INSURANCE
COMPANY OF NORTH AMERICA
TO COMPLAINT; MEMORANDUM
OF POINTS AND AUTHORITIES;
DECLARATION OF HARVEY W.
GELLER**

RESERVATION ID: 794482128004

Date: January 11, 2024
Time: 8:30 a.m.
Dept. 68
Stanley Mosk Courthouse
111 N. Hill Street
Los Angeles, CA 90012

Complaint filed: October 4, 2023
Pretrial Conference: Not Set
Trial Date: Not Set

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TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 11, 2024, at 8:30 a.m. or as soon thereafter as the matter may be heard in Department 68 of the above captioned court, Defendant Allianz Life Insurance Company Of North America (“Allianz Life”), will, and hereby does, demur to the Complaint filed by Plaintiffs Layne Kramer and The Kramer Family Irrevocable Grant Trust on the following grounds.

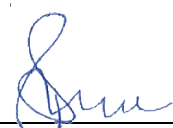
- 1. The Second Cause of Action for Breach of Fiduciary Duty Contract fails to state facts sufficient to constitute a cause of action. Cal. Civ. Proc. Code § 430.10(e).
- 2. The Third Cause of Action for Professional Negligence fails to state facts sufficient to constitute a cause of action. Cal. Civ. Proc. Code § 430.10(e).

This Demurrer is made following a detailed conference of counsel pursuant to Cal. Civ. Proc. Code § 430.41, which took place on November 30, 2023. *See* Declaration of Harvey W, Geller.

This Demurrer is based upon the Notice, the attached Demurrer, the attached Memorandum of Points and Authorities, the declaration of Harvey W. Geller, the pleadings and records on file in this action and the related action, such matters of which the Court may take judicial notice, and such evidence and arguments, both written and oral, as may be introduced at, or before, the hearing on this Demurrer.

Dated: December 13, 2023

CARLTON FIELDS, LLP

By: 
HARVEY W. GELLER
Attorneys for Defendant
Allianz Life Insurance Company of North America

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DEMURRER

Defendant Allianz Life Insurance Company of North America (“Allianz Life”) specially and generally demurrers to Plaintiffs’ Complaint on each of the following grounds:

DEMURRER TO SECOND CAUSE OF ACTION

1. The Second Cause of Action for Breach of Fiduciary Duty against Allianz Life fails to state facts sufficient to constitute a cause of action. Cal. Civ. Proc. Code § 430.10(e). Allianz Life is an insurance company and is not a fiduciary under California law. Further, Plaintiffs fail to state facts to support the imposition of a fiduciary duty on Allianz Life.

DEMURRER TO THIRD CAUSE OF ACTION


1. The Third Cause of Action for Professional Negligence against Allianz Life fails to state facts sufficient to constitute a cause of action. Cal. Civ. Proc. Code § 430.10(e). Under California law, there is no recognizable cause of action for professional negligence against an insurance company. Further, Plaintiffs fail to state facts to support a claim of professional negligence against Allianz Life.

WHEREFORE, Allianz Life prays for judgment as follows:

- 1. That the Demurrer be sustained without leave to amend;
- 2. That the Court enter an order dismissing the second and third causes of action against Allianz Life;
- 3. That Allianz Life be awarded its costs of this action; and
- 4. That the Court grant further relief as the Court may deem proper.

Dated: December 13, 2023

CARLTON FIELDS, LLP

By:  _____
HARVEY W. GELLER

Attorneys for Defendant
Allianz Life Insurance Company of North America

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 In 2014, defendant Allianz Life Insurance Company of North America (“Allianz
4 Life”) sold two annuities to the Kramer Family Irrevocable Grant Trust (the “Trust”).
5 Plaintiffs Layne Kramer and the Trust have now sued their insurance agent and co-trustee
6 of the Trust, David Neuman, for: (1) financial elder abuse, (2) breach of fiduciary duty,
7 (3) professional negligence, and (4) receipt and possession of stolen property. In
8 addition, Plaintiff named Allianz Life, the insurance company that issued the two
9 annuities, as a defendant to the first three causes of action.

10 The thrust of Plaintiffs’ complaint is that during the period of time that Mr.
11 Neuman was a co-trustee of the Trust and vested with a Power of Attorney from
12 Plaintiffs, he requested disbursements from Allianz Life without Ms. Kramer’s approval.
13 Plaintiffs seek to not only blame Mr. Neuman for those disbursements, but Allianz Life
14 too. However, California law is clear that Plaintiffs cannot sue Allianz Life for breach of
15 fiduciary duty or professional negligence. Indeed, Allianz Life is an insurer and not a
16 fiduciary, and professional negligence claim is not a proper claim against an insurance
17 company. Accordingly, Allianz Life’s demurrer should be sustained.¹

18 **II. STATEMENT OF FACTS.**²

19 Plaintiffs allege that in November 2012, Ms. Kramer’s father died and she moved
20 her mother into an assisted living facility. After doing so, Plaintiffs allege that a person
21

22 ¹ Because a demurer would not dispose of Plaintiffs’ entire claim for financial elder
23 abuse, Allianz Life filed a separate motion to strike the improper and irrelevant
24 allegations related to that claim, including Plaintiffs’ allegations of conduct that occurred
25 before Ms. Kramer was 65 years old and conduct that statutorily does not qualify as
financial elder abuse.

26 ² The statement of facts are taken from Plaintiffs’ Complaint and are assumed true for
27 purposes of Allianz Life’s demurrer and its motion to strike. *Blakemore v. Superior Ct.*,
28 129 Cal.App.4th 36, 53 (2005) (“A motion to strike, like a demurrer, challenges the legal
sufficiency of the complaint's allegations, which are assumed to be true.”) Allianz Life is
not waiving its rights to challenge the facts that Plaintiffs allege at the appropriate time.

1 (who is not identified in the Complaint) referred Ms. Kramer to defendant David
2 Neuman, a California-licensed insurance agent, and he assisted her in creating and
3 establishing the Trust. (Compl. ¶¶ 22-23, 27.) Plaintiffs further allege that Mr. Neuman
4 recommended and sold them two Allianz Life fixed index Annuities in 2014 (the
5 Annuities”). (Compl. ¶¶ 24, 27.)

6 Plaintiffs allege that the Annuities “were not in plaintiff’s best interest” and were
7 “an unsuitable investment because they had limited liquidity, were a substandard
8 performing product and needlessly tied up plaintiff’s assets needed for [her] mother’s
9 care...” (Compl. ¶ 25.) Plaintiffs further allege that “defendants misrepresented,
10 concealed, misstated, and omitted material information...regarding the Annuities,” and
11 that Ms. Kramer was “deprived her of the ability to make informed decisions.” (Compl. ¶
12 26.)

13 In addition to setting up the trust, Plaintiffs allege that Mr. Neuman helped Ms.
14 Kramer obtain “VA benefits” for her mother “in February 2015 until her death in
15 November 2017.” (Compl. ¶ 28.) Plaintiffs further allege that Mr. Neuman oversaw Ms.
16 Kramer’s “financial matters” and became her “personal aide, assisting in various aspects
17 of plaintiff’s daily life.” (Compl. ¶ 30.)

18 All of the foregoing conduct occurred before Ms. Kramer turned 65 years old on
19 June 25, 2018. (Compl. ¶¶ 31, 47.)

20 Thereafter, in October 2018, Plaintiffs allege that Mr. Neuman pled guilty to one
21 count of embezzlement and one count of false impersonation in relation to the theft of
22 veterans benefits, and his insurance license was revoked on November 13, 2018.
23 (Compl. ¶¶ 32, 33.) Plaintiffs allege that after the revocation of Mr. Neuman’s license,
24 Allianz Life assigned another agent to Plaintiffs’ account and did not notify them of the
25 reasons for terminating Mr. Neuman’s “appointment” or warn them about Mr. Neuman.
26 (Compl. ¶ 34.)

27 In March 2020, almost eighteen months after Mr. Neuman ceased to be Plaintiffs’
28 insurance agent, Plaintiffs allege that Ms. Kramer followed Mr. Neuman’s advice and

1 amended the Trust to include him as a trustee. (Compl. ¶ 35.) Following this
2 amendment, Plaintiffs allege that Mr. Neuman was vested with a Power of Attorney
3 “because Mr. Neuman promised Kramer he would manage her assets and living
4 expenses, care and maintenance should the need arise.” (Compl. ¶ 35.)

5 When he was a trustee of the Trust vested with a Power of Attorney, Plaintiffs
6 allege that Mr. Neuman instructed Allianz Life to change the Trust’s mailing address, and
7 that between May 21, 2020 and June 22, 2021, Mr. Neuman submitted to Allianz Life
8 requests for disbursements totaling \$330,000. (Compl. ¶¶ 37-39.) Plaintiffs allege that
9 Allianz Life did not contact Ms. Kramer directly to authorize the disbursements, and that
10 Mr. Neuman’s acts should have triggered “warning signals” to Allianz Life. (Compl. ¶
11 41.)

12 On October 4, 2023, Plaintiffs filed this action against Mr. Neuman, Allianz Life,
13 and Does 1-10, alleging three causes of action against all of the defendants: (1) violation
14 of Welfare & Institutions Code § 15600 et seq. (financial elder abuse); (2) breach of
15 fiduciary duty; and (3) professional negligence. Plaintiff also alleged a fourth cause of
16 action against Mr. Neuman (but not Allianz Life) for receipt and possession of stolen
17 property.

18 **III. LEGAL STANDARD.**

19 The basic function of a demurrer is to test the sufficiency of the allegations of the
20 complaint. *See* Civ. Proc. Code §589; *Schmidt v. Foundation Health*, 35 Cal.App.4th
21 1702, 1706 (1995). A demurrer also tests whether the facts are pleaded with sufficient
22 certainty and particularity. *See Banerian v. O’Malley*, 42 Cal.App.3d 604, 610-11
23 (1974). Although pleadings are to be liberally construed, they must nonetheless set forth
24 essential facts with reasonable precision. *Semole v. Sansoucie*, 28 Cal.App.3d 714, 719
25 (1972). To that end, while the court treats a demurrer as admitting all material facts that
26 are properly pled, it does not have to accept conclusions, contentions or deductions of law
27 or fact. *Blank v. Kirwan*, 39 Cal.3d 311, 318 (1985). Thus, when, like here, a complaint
28

1 does not state properly plead facts sufficient to constitute a cause of action, a demurrer
2 should be granted. Civ. Proc. Code § 430.10(e).

3 **IV. PLAINTIFFS' SECOND CAUSE OF ACTION FOR BREACH OF**
4 **FIDUCIARY DUTY FAILS TO STATE A CAUSE OF ACTION.**

5 In the second cause of action, Plaintiffs seeks to allege breach of fiduciary duty,
6 but they do not allege a legally cognizable fiduciary relationship between them and
7 Allianz Life. That is fatal to the claim since the existence of a fiduciary relationship is an
8 essential element of a claim for breach of fiduciary duty. *Apollo Cap. Fund, LLC v.*
9 *Rother Cap. Partners, LLC*, 158 Cal.App.4th 226, 244 (2007). “Before a person can be
10 charged with a fiduciary obligation, he must either knowingly undertake to act on behalf
11 and for the benefit of another, or must enter into a relationship which imposes that
12 undertaking as a matter of law.” *City of Hop Nat’l Med. Ctr. v. Genentech, Inc.*, 43
13 Cal.4th 375, 386 (2008). Neither situation exists here.

14 **First**, under California law, “[a]n insurer is not a fiduciary, and owes no obligation
15 to consider the interests of its insured above its own.” *Village Northridge Homeowners*
16 *Assn. v. State Farm Fire & Cas. Co.*, 50 Cal.4th 913, 929 (2010)(citing *Morris v. Paul*
17 *Revere Life Ins. Co.*, 109 Cal.App.4th 966, 973 (2003)). Indeed, courts routinely hold
18 that because an insurer is not a fiduciary for its insured, it cannot be held liable for breach
19 of fiduciary duties. *See Garcia-Mijangos v. Voya & Reliastar Life Ins.*, 2020 WL
20 7000186, at *4 (C.D. Cal. Nov. 12, 2020) (dismissing breach of fiduciary duty claim
21 against life insurer because Plaintiff could not state a separate claim for breach of
22 fiduciary duty); *Casey v. Metro. Life Ins. Co.*, 688 F.Supp.2d 1086, 1100-01 (E.D. Cal.
23 2010) (same); *Petrus v. New York Life Ins. Co.*, 2015 WL 3796221, at *2 (S.D. Cal. June
24 18, 2015) (same). The relationship between Plaintiffs and Allianz Life is an arms-length
25 relationship between insured/policy owner and insurer, and is not fiduciary in nature.
26 *Henry v. Associated Indemn. Corp.*, 217 Cal.App.3d 1405, 1419 (1990).

27 **Second**, Plaintiffs do not allege any facts, much less well pleaded facts, showing
28 that Allianz Life knowingly undertook to act on their behalf, or that the relationship

1 between Allianz Life and Plaintiffs imposed that undertaking. *Genentech, Inc.*, 43
2 Cal.4th at 386. Because these facts do not exist, Plaintiffs try to obscure that shortcoming
3 by lumping all of the defendants together (Mr. Neuman and Allianz Life) rather than
4 alleging what each defendant did or did not do.

5 For example, Plaintiffs broadly allege that “Defendants are Plaintiff’s fiduciaries,”
6 but then do not allege any specific undertaking or affirmative act by *Allianz Life* to
7 undertake such a role. (Compl. ¶ 58). Instead, Plaintiffs repeatedly use the word
8 “defendants” to create the false impression that Allianz Life and Mr. Neuman are one and
9 the same. They are not. At all times, Allianz Life was an insurance company whose role
10 here was limited to issuing two annuities to the Trust. On the other hand, Mr. Neuman
11 was an independent insurance agent who later ceased to be an Allianz Life agent (and the
12 agent for the Annuities) in November 2018, when his license was revoked by the
13 California Department of Insurance. (Compl. ¶¶ 33, 34.) Thereafter, in March 2020, *Ms.*
14 *Kramer* appointed Mr. Neuman as co-trustee of the Trust and vested him with a Power of
15 Attorney. (Compl. ¶ 35.) In other words, by Plaintiffs’ own admission, Mr. Neuman had
16 no relationship with Allianz Life (Compl. ¶ 34) during the period of time in 2020 and
17 2021 that he was acting as co-trustee of the Trust and making the withdrawals from the
18 Annuities that Plaintiffs now claim were improper. (Compl. ¶ 39)

19 Plaintiffs attempt to blur the legally critical distinction between Allianz Life and
20 Mr. Neuman by repeatedly using the word “defendants” is ultimately not even supported
21 by Plaintiffs’ own factual allegations. For example, Plaintiffs initially allege that “the
22 trusted fiduciary relationship was formed when Defendants helped her establish that
23 Trust” (Compl. ¶ 2), and that “Defendants recommended and assisted Plaintiff create and
24 establish the Trust...[and] recommended and helped Plaintiff establish the bank account
25 to facilitate the Allianz Life Annuities and estate plan.” (Compl. ¶ 58.) However,
26 Plaintiffs then allege facts showing that Allianz Life had nothing to do with the formation
27 of the Trust or the bank account. (Compl. ¶¶ 27, 29.)
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1 Plaintiffs do not improve their pleading by making the bizarre and conclusory
2 statement that “Defendants are Plaintiff’s fiduciaries both as financial/investment advisor,
3 as estate planning expert and in promising to provide for Plaintiff’s care, maintenance
4 and needs as she aged to elderly status and to prepare for her upcoming surgeries and
5 ongoing needs.” (Compl. ¶ 58, lines 4-6.) With respect to Allianz Life, Plaintiffs do not
6 allege a single well pleaded fact supporting that allegation, nor could they given that
7 Allianz Life is an insurance company that merely issued two annuities to the Trust.

8 As against Allianz Life, the only thing that Plaintiffs have pled is a contractual
9 relationship. That is not enough to create a fiduciary relationship. Indeed, a fiduciary
10 relationship does not exist merely because one party alleges a contractual relationship
11 pursuant to which they reposed trust and confidence in another party to perform their
12 contractual obligations. *Wolf v. Superior Ct.*, 107 Cal.App.4th 25, 31, (2003), as
13 modified on denial of reh’g (Mar. 20, 2003); *see also Zumbrun v. Univ. of S. California*,
14 25 Cal.App.3d 1, 13 (1972) (“The mere placing of a trust in another person does not
15 create a fiduciary relationship.”); *Worldvision Enterprises, Inc. v. Am. Broad.*
16 *Companies, Inc.*, 142 Cal.App.3d 589, 595 (1983) (“The mere fact that in the course of
17 their business relationships the parties reposed trust and confidence in each other does not
18 impose any corresponding fiduciary duty in the absence of an act creating or establishing
19 a fiduciary relationship known to law.”)

20 Under established law, there is not and never was a fiduciary relationship between
21 Plaintiffs and Allianz Life. Plaintiffs do not overcome this deficiency by alleging that
22 Allianz Life never “expressly disavow[ed] the fiduciary relationship after it received,
23 processed and approved Neuman, the writing agent on the Allianz Life Annuities, as
24 Plaintiff’s power of attorney and trustee.” (Compl. ¶ 59, lines 17-19.) The law does not
25 impose on Allianz Life the obligation to disavow a relationship that never existed.
26 Moreover, Plaintiffs’ allegation is based on a false premise since, as Plaintiffs admit, it
27 was Ms. Kramer, not Allianz Life, that made Mr. Neuman a co-trustee of the Trust and
28 gave him a Power of Attorney. (Compl. ¶ 35.) And Plaintiff did this almost eighteen

1 months *after* Mr. Neuman had ceased to be an insurance agent and ceased to have a
2 relationship with Allianz Life. (Compl. ¶¶ 34-35, 39.)

3 **V. PLAINTIFFS’ THIRD CAUSE OF ACTION FOR PROFESSIONAL**
4 **NEGLIGENCE FAILS TO STATE A CAUSE OF ACTION.**

5 As with the second cause of action for breach of fiduciary duty, Plaintiffs’ third
6 cause of action for professional negligence fails because there is no such duty imposed on
7 Allianz Life, nor do Plaintiffs even allege what professional standard applies to Allianz
8 Life. Plaintiffs simply allege that “Defendants owed Plaintiff a duty of care applicable to
9 similar professionals and professional entities.” (Compl. ¶ 70.) According to Plaintiffs,
10 “[t]he standard of care applicable was heightened because *Defendants* held themselves out
11 as experts in insurance, estate planning, financial affairs and recommending, servicing
12 and managing her affairs.” *Id.* (emphasis added)

13 Once again, Plaintiffs try to conflate Allianz Life (an insurance company that
14 issued two annuities to the Trust) with Mr. Neuman (an independent insurance agent, co-
15 trustee of the Trust, and holder of a Power of Attorney). That is improper, particularly
16 since a cause of action for professional negligence is not maintainable against an
17 insurance company. In *Diamond v. State Farm Mut. Auto. Ins. Co.*, the Court found that
18 “[u]nder California law the general rule is that an insured may not proceed on a separate
19 negligence claim against an insurer.” *Diamond v. State Farm Mut. Auto. Ins. Co.*, 2010
20 WL 2904640, at *8 (E.D. Cal. July 26, 2010), *report and recommendation adopted*, 2010
21 WL 3371213 (E.D. Cal. Aug. 26, 2010). Indeed, “[p]rofessional negligence in the
22 insurance realm refers to ‘broker’ negligence or ‘agent’ negligence.” *Brandon v.*
23 *Progressive Cas. Co.*, 2019 WL 6330679, at *2 (C.D. Cal. July 1, 2019). Therefore,
24 because Allianz Life is an insurer, the third cause of action for professional negligence is
25 without merit against it.

26 But even if a professional negligence cause of action were maintainable against
27 Allianz Life, Plaintiffs have failed to state facts to it. As to *Allianz Life*, Plaintiff must
28 allege: “(1) the duty of the professional to use such skill, prudence and diligence as other

1 members of the profession commonly possess and exercise; (2) breach of that duty; (3) a
2 causal connection between the negligent conduct and the resulting injury; and (4) actual
3 loss or damage resulting from the professional negligence.” *Giacometti v. Aulla, Inc.*,
4 187 Cal.App.4th 1133, 1137 (2010) (internal citation omitted).

5 Instead of doing this, Plaintiffs simply lump Mr. Neuman and Allianz Life
6 together and state in a conclusory fashion that “defendants” owed Plaintiffs a duty of
7 care. (Compl. ¶ 70). Plaintiff does not establish any facts establishing that any duty was
8 owed by Allianz Life or that Allianz Life is subject to a professional standard of care.
9 “Where there is no legal duty, the issue of professional negligence cannot be pled
10 because with the absence of a breach of duty, an essential element of the cause of action
11 for professional negligence is missing.” *Giacometti*, 187 Cal.App.4th at 1137 (internal
12 citation omitted).

13 Plaintiff also fails to allege a breach of any duty. In their allegations, Plaintiffs
14 contend that “[w]hen Allianz termed Neuman, Allianz did not disclose or explain the
15 risks and warnings about continuing to trust Neuman.” (Compl. ¶70, lines 12-13.) But
16 the law does not impose a duty to do that. It bears repeating that Allianz Life is an
17 insurance company, which is not obligated under the law to tell Plaintiffs who to trust or
18 not. And Plaintiffs cannot impose that obligation by falsely contending that “Allianz Life
19 processed and approved the written request for Neuman, Allianz’s writing agent, to serve
20 as trustee and power of attorney for Plaintiff’s Annuities and Trust...” (Compl. ¶70,
21 lines 14-17.) Almost eighteen months after the State of California revoked Mr.
22 Neuman’s insurance agent’s license and Allianz Life ceased its relationship with Mr.
23 Neuman (Compl. ¶¶ 32-34), it was *Ms. Kramer* that decided to amend the Trust and
24 make Mr. Neuman a co-trustee and vest him with a Power of Attorney, and she did that
25 “because Neuman promised Kramer he would manage her assets and living expenses,
26 care and maintenance should the need arise.” (Compl. ¶ 35.) Mr. Neuman’s promise has
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1 nothing to do with Allianz Life, nor does the law impose any obligation on Allianz Life
2 to tell Plaintiffs how to structure their personal affairs.³

3 Finally, even if Plaintiffs were able to allege a claim for professional negligence, it
4 would be time barred. A cause of action for professional negligence is governed by the
5 two-year statute of limitations under Code of Civil Procedure section 339. *Thomson v.*
6 *Canyon*, 198 Cal.App.4th 594, 606 (2011). Here, Plaintiffs’ allege conduct dating back
7 to 2014, and they base their claim for \$330,000 in damages on transactions that occurred
8 between May 21, 2020 and January 22, 2021. (Compl. ¶¶ 39, 72.) However, Plaintiffs
9 did not file their lawsuit until October 4, 2023, nine years after the Annuities were issued
10 and more than two years after the last disbursement that Plaintiffs now claim were
11 improper.

12 Plaintiffs do not allege any conduct that occurred within the limitations period, nor
13 can Plaintiffs rely on the discovery rule to claim that the statute of limitations did not
14 commence until some later date. In order to rely on the discovery rule, Plaintiffs “must
15 specifically plead facts showing (1) the time and manner of discovery; and (2) the
16 inability to have made earlier discovery despite reasonable diligence.” *Fox v. Ethicon*
17 *Endo-Surgery, Inc.*, 35 Cal.4th 797, 808 (2005); *Jolly v. Eli Lilly & Co.*, 44 Cal.3d 1103,
18 1110–1111 (1988). Plaintiffs did not plead any of those facts, nor do Plaintiffs plead the
19 specific actions taken by Allianz Life to hide evidence, mislead the Plaintiffs, or
20 otherwise prevent them from discovering the alleged wrongdoing. *See Hobart v. Hobart*
21 *Est. Co.*, 26 Cal.2d 412, 437 (1945).

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26 ³ Plaintiffs also nonsensically contend that because Mr. Neuman was at one point
27 authorized to sell Allianz Life annuities, that means that Allianz Life was
28 “endors[ing]..Neuman as a professional that the Plaintiff could trust with her financial,
inheritance, and estate planning affairs.” (Compl. ¶ 70, lines 16-19.) That is not the law,
and if it was, that would come as a shock to every independent life insurance company
that does business in California.


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VI. CONCLUSION.

For all the foregoing reasons, Allianz Life’s demurrer to the second and third causes of action should be sustained, and those causes of action should be dismissed with prejudice.

Dated: December 13, 2023

CARLTON FIELDS, LLP

By:  _____
HARVEY W. GELLER
Attorneys for Defendant
Allianz Life Insurance Company of North
America

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DECLARATION OF HARVEY W. GELLER

I, Harvey W. Geller, declare:


1. At all times herein mentioned, I am and have been an attorney at law, duly admitted to practice before all the Courts of the State of California. I am a Shareholder in the law firm of Carlton Fields, LLP, and counsel for defendant Allianz Life Insurance Company of North America (“Allianz Life”).

2. I have personal knowledge of the facts set forth below and, if called and sworn as a witness, would and could testify as set forth in this Declaration. I make this declaration in support Allianz Life’s Demurrer to the Complaint filed by Plaintiffs Layne Kramer and the Kramer Family Irrevocable Grant Trust (the “Trust”).

3. On November 30, 2023, I had a telephone conference with counsel for Plaintiffs (specifically, Jon Furgison) to meet and confer concerning Allianz Life’s planned Demurrer and Motion to Strike. In that telephone conference, I explained the basis of Allianz Life’s Demurrer and Motion to Strike in detail. In response, Mr. Furgison rejected each of Allianz Life’s grounds and specifically confirmed that Plaintiffs would not amend their Complaint to correct any of the deficiencies raised by me.

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

Executed on December 13, 2023 at Los Angeles, California.



HARVEY W. GELLER

PROOF OF SERVICE

F.R.C.P. 5 / C.C.P. §§ 1010.6. and 1013/ Cal. R. Ct. R. 2.251

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, 2029 Century Park East, Suite 1200, Los Angeles, CA 90067-2913.

On **December 13, 2023**, I served the following listed document(s), by method indicated below, on the parties in this action:


NOTICE OF DEMURRER AND DEMURRER OF DEFENDANT ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA TO COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF HARVEY W. GELLER

SEE ATTACHED SERVICE LIST

BY ELECTRONIC SERVICE by uploading the document listed above to the Court’s Electronic Filing Service Provider (First Legal <https://www.firstlegal.com>) for e-service to the email address(es) set forth on the attached service list. To my knowledge, the e-service was reported as complete and without error. See Cal. R. Ct. R. 2.251 and CCP § 1010.6.

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 December 13, 2023 at Los Angeles, California.

Maria Rodriguez
Type or Print Name


Signature

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SERVICE LIST

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Make a Reservation

LAYNE KRAMER, et al. vs ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA, et al.

Case Number: 23STCV24250 Case Type: Civil Unlimited Category: Other Commercial/Business Tort (not fraud/breach of contract)

Date Filed: 2023-10-04 Location: Stanley Mosk Courthouse - Department 68

Reservation

Case Name:

LAYNE KRAMER, et al. vs ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA, et al.

Case Number:

23STCV24250

Type:

Demurrer - with Motion to Strike (CCP 430.10)

Status:

RESERVED

Filing Party:

Allianz Life Insurance Company Of North America (Defendant)

Location:

Stanley Mosk Courthouse - Department 68

Date/Time:

01/11/2024 8:30 AM

Number of Motions:

1

Reservation ID:

794482128004

Confirmation Code:

CR-VQD3AEGROQWUI3DDY

Fees

Description	Fee	Qty	Amount
Demurrer - with Motion to Strike (CCP 430.10)	120.00	1	120.00
Credit Card Percentage Fee (2.75%)	3.30	1	3.30
TOTAL			\$123.30

Payment

Amount:

\$123.30

Type:

Visa

Account Number:

XXXX1854

Authorization:

218093

Payment Date:

1969-12-31

Print Receipt

Reserve Another Hearing

Chat

