

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

IN RE:

AXA EQUITABLE LIFE INSURANCE  
COMPANY COI LITIGATION

[This document relates to *Brach Family Found,  
Inc., et al. v. AXA Equitable Life Ins. Co.*, No.  
16 Civ. 740 (JMF)]

**ECF CASE**

No. 1:16-cv-00740 (JMF)

**[PROPOSED] ORDER APPROVING CLASS ACTION SETTLEMENT**

WHEREAS, Plaintiffs Brach Family Foundation, Inc. and Mary McDonough, as Trustee for the Currie Children Trust (“Plaintiffs”), on behalf of themselves and the Classes, entered into a settlement (the “Settlement,” Dkt. 701-2) with Defendant AXA Equitable Life Insurance Company (“AXA”);

WHEREAS, on June 22, 2023, the Court entered its Order granting preliminary approval of the proposed Settlement. Dkt. 705 (“Preliminary Approval Order”). Among other things, the Preliminary Approval Order authorized Plaintiffs to disseminate notice of the Settlement, the fairness hearing, and related matters, as well as Special Notice to Substituted Illustration Class Members;

WHEREAS, on July 13, 2023, the approved short-form notice was mailed to Class Members, Special Notice was mailed to Substituted Illustration Class Members, and the dedicated website for this Action was updated to include the approved long-form notice and Special Notice;

WHEREAS, no Class Member objected to the Settlement by the deadline provided for in the Preliminary Approval Order, nor did any Substituted Illustration Class Member opt out of the Settlement;

WHEREAS, the Settlement requires, among other things, that all Released Claims against Released Parties be settled and compromised;

WHEREAS, this application is uncontested by Defendant; and

WHEREAS, this Court has considered Plaintiffs’ Motion for Final Approval of Class Action Settlement, supporting declarations, oral argument presented at the fairness hearing, and the complete records and files in this matter.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. The capitalized terms used herein shall have the meanings set forth in the Settlement Agreement (Dkt. 701-2).

2. The Preliminary Approval Order outlined the form and manner by which Plaintiffs would provide potential Settlement Class Members with notice of the Settlement, the fairness hearing, and related matters. Proof that Notice complied with the Preliminary Approval Order has been filed with the Court and is further detailed in the Plaintiffs' Motion for Final Approval of Class Action Settlement. The Notice given to potential Settlement Class Members complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

3. The Court finds that the Attorney General of the United States and the state attorneys general have received notice of the Settlement Agreement in accordance with the terms of the Class Action Fairness Act, 28 U.S.C. § 1715(b). *See* Dkt. 720.

4. The Settlement was attained following an extensive investigation of the facts. It resulted from vigorous arm's-length negotiations which were undertaken with the assistance of two mediators and in good faith by counsel with significant experience litigating class actions.

5. The Classes are the Nationwide Policy-Based Claims Class, Nationwide Illustration-Based Class, and New York Sub-Class certified by this Court on August 13, 2020 (Dkt. 403), as modified on January 17, 2023 (Dkt. 667 at 7), with the exclusion of the policies that timely and validly opted out during the Original Opt-Out Period.

6. The Settlement is fully and finally approved because its terms are fair, reasonable, and adequate within the meaning of Rule 23 of the Federal Rules of Civil Procedure and the Court directs its consummation pursuant to its terms and conditions. In reaching this conclusion, the

Court considered the four factors listed in Rule 23(e)(2) and the nine factors listed in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), abrogated on other grounds by *Goldberg v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000).

7. In reaching this conclusion, the Court considered the complexity, expense, and likely duration of the litigation, the Classes' reaction to the Settlement, and the result achieved. No objections to the Settlement or the plan of allocation were received or timely filed, nor did any Substituted Illustration Class Member opt out after the Settlement was announced.

8. The Court reserves continuing and exclusive jurisdiction over the Settlement, including all future proceedings concerning the administration and enforcement of the Settlement Agreement as well as any supplemental application for reimbursement of costs or expenses incurred by Class Counsel or the Settlement Administrator on behalf of the Classes.

9. AXA shall fund the Settlement Fund Account in accordance with the terms of the Settlement Agreement.

10. Neither the Settlement, nor any act performed or document executed pursuant to the Settlement, may be deemed or used as an admission of wrongdoing in any civil, criminal, administrative, or other proceeding in any jurisdiction.

11. The plan of allocation, as described in the Motion for Final Approval of Class Action Settlement and supporting documents, and previously preliminary approved by the Court, is approved because it is fair, reasonable, and adequate.

12. The parties shall submit a proposed final judgment consistent with the Settlement and this Order within seven (7) days of entry of this Order.

13. This Order shall become effective immediately.

SO ORDERED:

Entered this \_\_\_\_ day of \_\_\_\_\_ 2023.

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Jesse M. Furman  
UNITED STATES DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

I certify that on September 11, 2023, a true and correct copy of this document properly was served on counsel of record by email.

/s/ Mark Musico