

**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)

**DECLARATION OF GINA INTREPIDO-BOWDEN REGARDING SETTLEMENT  
ADMINISTRATION**

I, Gina M. Intrepido-Bowden, hereby declare as follows:

**INTRODUCTION**

1. I am a Vice President at JND Legal Administration LLC (“JND”). This Declaration is based on my personal knowledge, as well as upon information provided to me by experienced JND employees, Counsel for the Plaintiffs and the Class (“Class Counsel”) and Counsel for Defendant (collectively “Counsel”), and if called upon to do so, I could and would testify competently thereto.

2. JND is serving as the Settlement Administrator in the above-captioned matter (“Action”) for the purposes of administering the Joint Stipulation and Settlement Agreement (“Settlement Agreement”) as ordered by the Court in its Order Preliminarily Approving Class Action Settlement (“Order”) (Dkt. 705), dated June 22, 2023.

3. I previously submitted a declaration regarding the Proposed Settlement Notice Program in connection with Plaintiffs’ Motion for Preliminary Approval (Dkt. 702). I am

submitting this Declaration to provide an update on the implementation of the settlement notice plan.

#### **CLASS DATA RECEIVED**

4. From June 27, 2023 through July 25, 2023, JND received spreadsheets from Class Counsel containing the names, mailing addresses, and policy numbers of individuals identified as potential Class Members. The files contained a total of 1,472 total records.

5. Prior to mailing, JND updated the Class Member contact information using data from the National Change of Address (“NCOA”) database.<sup>1</sup> The Class Member data was promptly loaded into a database established for these Action.

#### **NOTICE MAILING**

6. On July 13, 2023, JND mailed the Court approved Postcard Settlement Notice to 656 unique individuals on the Class List, as well as the Court approved Special Notice to 64 unique individuals in the Substituted Illustration Class (collectively, the “Notices”). The Special Notice notified Substituted Illustration Class Members of their right to opt out of the Illustration Class during the Supplemental Opt-Out Period. Copies of the Postcard Settlement Notice and the Special Notice are attached hereto as **Exhibit A**.

7. On July 21, 2023, JND received contact information from Class Counsel for an additional entity to be included in the Illustration Class. JND mailed the Special Notice to the entity on July 21, 2023. On July 25, 2023, JND received contact information from Class Counsel for an additional entity (covering seven additional policies) to be included in the Illustration Class. JND mailed the Special Notice to the entity on July 25, 2023.

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<sup>1</sup> The NCOA database is the official United States Postal Service (“USPS”) technology product which makes changes of address information available to mailers to help reduce undeliverable mail pieces before mail enters the mail stream.

8. As of September 6, 2023, 38 Postcard Settlement Notices and eight (8) Special Notices were returned as undeliverable. The undeliverable Postcard Settlement Notices and Special Notices were not returned with updated address information from USPS. For the undeliverable Postcard Settlement Notices and Special Notices, JND conducted advanced address searches and received updated address information for one (1) Class Member and two (2) Illustration Class Members. JND re-mailed each respective notice to the updated addresses accordingly.

9. As of September 6, 2023, of the 722 Postcard Settlement Notices and Special Notices mailed (the 720 Notices mailed on July 13, 2023, in addition to the two supplemental Special Notices mailed on July 21 and July 25), 679 Notices were sent and not returned as undeliverable, representing nearly 94% of total Class Member records.

#### **SETTLEMENT WEBSITE**

10. On July 13, 2023, JND updated the dedicated website for the Action ([www.AXACOILitigation.com](http://www.AXACOILitigation.com)), to include information about the proposed Settlement. The website hosts copies of important case documents (including, but not limited to, downloadable copies of the Third Amended Class Action Complaint, Settlement Notice, Postcard Notice, Special Notice, Joint Stipulation and Settlement Agreement, and the Preliminary Approval Order), answers to frequently asked questions, and contact information for the Settlement Administrator.

11. On August 15, 2023, JND uploaded downloadable copies of the Notice of Class Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Award and supporting documents.

12. On August 16, 2023, JND updated the website to inform Class Members the Fairness Hearing (originally scheduled on October 12, 2023) was moved to October 17, 2023 at 2:30 p.m. Eastern Time.

13. As of September 6, 2023, the Settlement Website has tracked 781 unique users who registered 8,115 page views.

#### **TOLL-FREE TELEPHONE LINE**

14. On July 13, 2023, JND updated the dedicated toll-free telephone line (1-888-681-1196) with Interactive Voice Response (“IVR”) recordings to provide information about the proposed Settlement. The toll-free number is accessible 24 hours a day, 7 days a week.

15. On August 16, 2023, JND updated the toll-free line to inform Class Members the Fairness Hearing (originally scheduled on October 12, 2023) was moved to October 17, 2023 at 2:30 p.m. Eastern Time.

16. As of September 6, 2023, JND has received 24 calls to the toll-free telephone line.

#### **EXCLUSION REQUESTS**

17. The Special Notice informed recipients that Class Members in the Illustration Classes may exclude themselves from the Settlement by sending an exclusion letter to the Settlement Administrator. The exclusion request must be timely postmarked by August 28, 2023. Class Members who were not included in the Illustration Classes were not able to request exclusion from the Settlement.

18. As of September 6, 2023, JND has not received any exclusion requests from the Illustration Classes.

**OBJECTIONS**

19. The Settlement Notice informed recipients that Class Members may object to the Settlement if they do not agree with the terms of the proposed Settlement. In order to do so, Class Members were required to file a written objection with the Clerk of the Court and serve copies of the objection to Defendant's Counsel and Class Counsel. The deadline to object to the Settlement was August 28, 2023.

20. As of September 6, 2023, JND has not received any objections to the proposed Settlement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 11, 2023, at Stone Harbor, New Jersey.



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Gina M. Intrepido-Bowden

# **EXHIBIT A**

COURT AUTHORIZED  
LEGAL NOTICE

**If you own or owned a Athena Universal Life II Policy issued by AXA Equitable Life Insurance Company that was subject to a COI rate increase announced in October 2015, you may be affected by a class action settlement**

[www.AXACOILitigation.com](http://www.AXACOILitigation.com)

**AXA Equitable COI Life Insurance Settlement**  
c/o JND Legal Administration  
P.O. Box 91238  
Seattle, WA 98111

«Barcode»

Postal Service: Please do not mark barcode

«Full Name»

«CF\_CARE\_OF\_NAME»

«CF\_ADDRESS\_1»

«CF\_ADDRESS\_2»

«CF\_CITY», «CF\_STATE» «CF\_ZIP»

«CF\_COUNTRY»

A proposed settlement has been reached in a class action lawsuit called *Brach Family Foundation, Inc., et al. v. AXA Equitable Life Ins. Co.*, No. 16 Civ. 740 (JMF) (S.D.N.Y.) (the “Settlement”). Records indicate you may be affected. This Notice summarizes your rights and options. More details are available at [www.AXACOILitigation.com](http://www.AXACOILitigation.com).

**What is this about?** Plaintiffs allege that Defendant AXA Equitable Life Insurance Company (“AXA Equitable”), now known as Equitable Life Insurance Company breached its contracts with certain policyowners of Athena Universal Life II (“AUL II”) policies and circulated illustrations with misrepresentations. On October 1, 2015, AXA Equitable announced that certain AUL II insurance policies would be subject to a cost of insurance (“COI”) rate scale increase. Plaintiffs assert the COI rate increase violated the terms of the policyowners’ contracts. Plaintiffs also allege that AXA Equitable planned to increase the COI rates of the AUL II policies as early as July 10, 2006, but concealed that fact in illustrations promulgated in connection with the issuance and maintenance of the policies until the COI Rate Increase was announced in October 2015. Plaintiffs and members of the Classes have been damaged as a result. AXA Equitable denies Plaintiffs’ claims and asserts multiple defenses. The Court has not decided who is right or wrong. Instead, both sides have agreed to the Settlement to avoid risks, costs, and delays of further litigation.

**Who is affected?** All registered owners of AUL II policies issued by AXA Equitable that were subject to the COI rate increase announced in October 2015 are affected by the lawsuit. Certain entitlement holders who own or owned AUL II policies through a securities intermediary are also affected by the lawsuit. Excluded from the Settlement Classes are registered owners who previously requested exclusion from the litigation; Defendant, its officers and directors, members of their immediate families, and the heirs, successors or assigns of any of the foregoing; and the plaintiffs in already pending related actions filed against AXA Equitable in federal and state courts.

**What does the Settlement provide?** A Settlement Fund of up to \$307.5 million will be established. After payments for settlement administration, attorneys’ fees (not to exceed 33 1/3% or \$102,500,000 of the Settlement Fund) and litigation expenses, and a Service Award (up to \$100,000) for each Class Representative; the remaining amount will be distributed to Class Members in proportion to their share of the overall COI overcharges collected from the Class through March 31, 2023.

In addition, AXA Equitable agrees not to increase COI rate scales or policies covered by the Settlement until May 16, 2030. AXA Equitable also agrees that it will not take certain legal action or assert certain legal defenses challenging death claims for any Class Member as outlined in the Settlement Agreement available at [www.AXACOILitigation.com](http://www.AXACOILitigation.com).

**What are my options?** You can do nothing or object to the Settlement.

**Do nothing.** You will be part of the Classes and receive certain benefits from the Settlement. You will automatically receive a payment in the mail if you are entitled to one. You will be bound by the Settlement, and you will give up your right to sue or continue to sue AXA Equitable for the claims in this case.

**Object.** You may object or tell the Court what you do not like about the Settlement. The purpose of an objection to the Settlement is to persuade the Court not to approve the proposed Settlement. A successful objection to the Settlement may mean that the objector and other members of the Classes are not bound by the Settlement. Objections must be **filed and served by August 28, 2023**.

For more details about your rights and options and how to object, go to [www.AXACOILitigation.com](http://www.AXACOILitigation.com).

**What happens next?** The Court will hold a Fairness Hearing on **October 12, 2023 at 2:30 p.m. ET** at the United States District Court for the Southern District of New York, Thurgood Marshall United States Courthouse, Courtroom 1105, 40 Foley Square, New York, NY 10007, to consider whether the Settlement is fair, reasonable, adequate, and in the best interest of the Classes; and how much to pay and reimburse Class Counsel and Plaintiffs. The Court has appointed Susman Godfrey L.L.P. as Class Counsel. You or your attorney may ask to speak at the hearing at your own expense, but you do not have to.

**How can I get more information?** Go to [www.AXACOILitigation.com](http://www.AXACOILitigation.com), call toll-free 1-888-681-1196, or write to AXA Equitable COI Life Insurance Settlement, c/o JND Legal Administration, P.O. Box 91238, Seattle, WA 98111.

*Carefully separate this Address Change Form at the perforation*

Name: \_\_\_\_\_

Current Address: \_\_\_\_\_

\_\_\_\_\_

Unique ID: [JND Unique ID]

**Address Change Form**

To make sure your information remains up-to-date in our records, please confirm your address by filling in the above information and depositing this postcard in the U.S. Mail.



AXA Equitable COI Life Insurance Settlement  
c/o JND Legal Administration  
P.O. Box 91238  
Seattle, WA 98111



UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

**SPECIAL NOTICE OF RIGHT TO REMAIN A  
SETTLEMENT CLASS MEMBER OR REQUEST  
EXCLUSION FROM CLASS ACTION**

*A court authorized this notice. This is not a solicitation from a lawyer.*

- You have been identified as a potential member of the Nationwide Illustration-Based Claims Class and/or the New York Illustration-Based Claims Sub-Class included in the proposed Settlement Agreement reached by the parties in *Brach Family Found., Inc., et al. v. AXA Equitable Life Ins. Co.*, No. 16 Civ. 740 (JMF) (S.D.N.Y.) (the “Settlement”). The definitions of the Nationwide Illustration-Based Claims Class and the New York Illustration-Based Claims Sub-Class (together, the “Illustration Classes”), subject to certain exclusions described in the Notice of Class Action Settlement are:

Nationwide Illustration-Based Claims Class: All individuals who, on or after March 8, 2016, are or were registered owners of an AUL II policy unaccompanied by a Lapse Protection Rider that was issued by AXA after July 10, 2006 and subjected to the COI rate increase announced by AXA on or about October 1, 2015, unless the registered owner of such policy is a securities intermediary, in which case the securities intermediary is not a Class Member but the entitlement holder with respect to that policy is. Entitlement holders for policies that were previously opted out of the Illustration Class through a securities intermediary are excluded from the Illustration Class with respect to those policies.

New York Illustration-Based Claims Sub-Class: All members of the Nationwide Illustration-Based Claims Class who reside in New York.

- On August 13, 2020, the United States District Court for the Southern District of New York (the “Court”) certified two nationwide Classes and a New York Sub-Class: the Nationwide Policy-Based Claims Class, the Nationwide Illustration-Based Claims Class, and the New York Illustration-Based Claims Sub-Class. In October 2020, Class Notice was mailed to Class Members based on the Court’s certification Order. On January 17, 2023, the Court revised the definition of the Nationwide Illustration-Based Claims Class, which also affected the membership of the New York Sub-Class. For the Illustration Classes, the Court substituted in entitlement holders as Class Members in place of their securities intermediaries who are the registered owners of their policies. The parties subsequently reached the Settlement, which provides for a cash Settlement Fund of up to \$307,500,000.00. Because this modification of the class definition occurred after the date on which the prior Class Notice about this lawsuit was mailed to Class Members, you have a special right to decide now whether to remain a Class Member or to request exclusion from the Illustration Classes.
- **Please read this Special Notice and the Settlement Notice carefully and in their entirety because your legal rights may be affected.** If you have any questions about this Special Notice, the Settlement Notice, or this class action lawsuit, you may contact the Settlement Administrator by calling, toll-free, 1-888-681-1196 or write to: AXA Equitable COI Life Insurance Settlement, c/o JND Legal Administration, P.O. Box 91238, Seattle, WA 98111. You can also view and download the Settlement and other key documents at [www.AXACOILitigation.com](http://www.AXACOILitigation.com).

Questions? Call 1-888-681-1196 or visit [www.AXACOILitigation.com](http://www.AXACOILitigation.com)

## **Your Right to Remain a Settlement Class Member OR Request Exclusion**

In addition to your rights described in the Notice of Class Action Settlement (“Settlement Notice”) available on the settlement website, [www.AXACOILitigation.com](http://www.AXACOILitigation.com), you have a special right to decide at this time whether you want to remain a Class Member or request exclusion from the Illustration Classes defined above. The consequences of and procedures for making this decision are described below. This Special Notice will not affect your rights, if any, with respect to the Nationwide Policy-Based Claims Class described in the Settlement Notice.

### **Your Right to Remain a Class Member.**

If you wish to remain a Class Member and be eligible to receive benefits under the proposed Settlement, you do not need to respond to this Special Notice, but you should review the Settlement Notice, which describes the benefits of the Settlement; how you can obtain more information; how you can object to the Settlement; and that you will be bound by the Settlement, and you will give up your right to sue or continue to sue AXA Equitable for claims in this lawsuit. The exact description of what you will give up and what you will not give up under the Settlement is known as the “release.” The full text of the release can be found in Section 4 of the Settlement Agreement. You can view and download a copy of the Settlement Agreement at [www.AXACOILitigation.com](http://www.AXACOILitigation.com) or request a copy by contacting the Settlement Administrator by calling, toll-free, 1-888-681-1196 or write to: AXA Equitable COI Life Insurance Settlement, c/o JND Legal Administration, P.O. Box 91238, Seattle, WA 98111.

### **Your Right to Request Exclusion from the Illustration Classes.**

If you exclude yourself (or “opt out”) from the Illustration Classes, you will not receive any payment from the Settlement of the illustration-based claims. If you exclude yourself, you will also not be legally bound by the Court’s orders and judgments for the illustration-based claims in this class action. You may sue or continue to sue AXA Equitable for the same illustration-based claims that are the subject of this lawsuit, now or in the future, subject to the applicable defenses that AXA Equitable may have to each legal claim. If you choose to pursue your own lawsuit against AXA Equitable, you may hire a lawyer at your own expense to prove your alleged claim(s).

To exclude yourself from the Illustration Classes, you must send a letter to the Settlement Administrator requesting exclusion from *In re: AXA Equitable Life Insurance Company COI Litigation* class action, with your name, address, telephone number, email address, AXA Equitable policy number(s) for the AUL II insurance policy or policies for which you are or were the entitlement holder, the time period you claim to have been the entitlement holder of such policy or policies, and your signature.

Your exclusion request **must be postmarked no later than August 28, 2023**. Send your exclusion request to: AXA Equitable COI Life Insurance Settlement, c/o JND Legal Administration, P.O. Box 91238, Seattle, WA 98111. For the avoidance of doubt, if you are or were the entitlement holder of multiple class policies on behalf of different principals, you may stay in or opt out of the Illustration Classes separately for each policy. If you qualify as a member of more than one of the Illustration Classes, you may exclude yourself from one of the Classes while participating in the Class with respect to the other Class.

**IF YOU DO NOT EXCLUDE YOURSELF BY AUGUST 28, 2023, YOU WILL REMAIN PART OF THE ILLUSTRATION CLASSES AND BE BOUND BY THE ORDERS AND JUDGMENTS OF THE COURT IN THIS LAWSUIT WITH RESPECT TO THE ILLUSTRATION CLASSES.**