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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

18 MAGALY EAGAN and CAROL A.
SPINNER, individually and on behalf
19 of all other similarly situated,

20 Plaintiffs

21 v.

22 AXA EQUITABLE LIFE
INSURANCE COMPANY and Does
23 1-10,

24 Defendant.

CASE NO. CV 06-7637 DSF (JTLx)

CLASS ACTION

**ORDER CERTIFYING CLASS AS TO
SPECIFIC CLAIMS**

Judge: Hon. Dale S. Fischer

Complaint Filed: November 30, 2006

1 1. Pursuant to stipulation of the parties, and based upon the allegations of the
2 First Amended Complaint filed on July 17, 2007, 2008 (FAC) and Plaintiffs' Motion for
3 an Order Certifying the Case as a Class Action and Appointing Plaintiffs' Counsel as
4 Class Counsel filed on April 8, 2008, the Court hereby certifies certain claims and issues
5 in this action for class treatment under Federal Rule of Civil Procedure 23, as more fully
6 set forth below.

7 2. The claims that are the subject of the parties' Stipulation and of this Order
8 and that are certified for class treatment under Rule 23 by this Order include the
9 following claims:

- 10 • Plaintiffs' first claim for relief alleging that plan documents signed in 1993
11 (the "1993 Plan") were not properly adopted. (FAC ¶¶ 2, 21-26.);
- 12 • Plaintiffs' second claim for relief alleging that, even if the 1993 Plan was
13 properly adopted, AXA improperly applied the 200% Cap to current health
14 plan options despite the fact that the 1993 Plan limits its application to
15 specific enumerated health plan options that are no longer offered. (FAC at
16 ¶¶ 3, 30-42);
- 17 • Plaintiffs' third claim for relief alleging that, even if the 1993 Plan was
18 properly adopted, AXA improperly applied the 200% Cap to all employees
19 based upon a determination that the trigger for the cap had been reached in
20 the aggregate, despite the fact that the Plan specifies that it be applied on an
21 individually calculated basis. (FAC at ¶¶ 3, 45-49);
- 22 • Plaintiffs' fourth claim for relief alleging that, even if the 1993 Plan was
23 properly adopted, AXA has improperly applied the 200% Cap by imposing
24 the cap when the aggregate premium exceeds the cap rather than when its
25 portion of the total premium exceeds the cap. (FAC at ¶¶ 3, 52-58.)

26 3. Plaintiffs' fifth claim for relief alleging that AXA has breached its contract
27 with Employees by failing to continue to offer certain health care choices, known as
28 "Option 1" and "Option 2" ("Options"), under the 1993 Plan (FAC at ¶¶ 4, 61-67) is not

1 the subject of this Order. The issue of whether that claim is suitable for class treatment
2 and satisfies the requirements of Rule 23 is contested and is expressly reserved for a later
3 determination following the submission of evidence and briefing on the issue.

4 4. Although the parties have stipulated to certification of the claims that are the
5 subject of this Order, the Court independently has analyzed the evidence and arguments
6 supporting class certification to determine whether the applicable requirements of Rule
7 23(a) and (b) are satisfied. The Court has done so, and, finding that no hearing is
8 necessary due to the parties' stipulation and the sufficiency of the paper record, it makes
9 the following findings and conclusions of law.

10 **The Requirements of Rule 23(a)**

11 5. The Class of persons for which certification is granted with respect to the
12 claims that are the subject of this Order is comprised of the following persons:

13 All retired employees and independent contractor insurance agents
14 formerly employed by Equitable who received retiree health care
15 benefits from Equitable at any time after December 1, 2000, or who
16 will receive such benefits hereinafter, excluding any retired agents
17 who are held to have released their rights as members of the settling
18 class in *Fischel, et al. v. The Equitable Life Assurance Society of the*
19 *United States*, Case No. 96-04202 VRW, United States District Court,
20 Northern District of California.

21 6. Based upon the evidence presented on Plaintiffs' motion to certify the class,
22 the Court finds that this class is in excess of three thousand individuals and is so
23 numerous that joinder of the members thereof for the purpose of litigating the claims and
24 issues covered by the Stipulation and Order would be impracticable. Therefore, the
25 Court concludes that the "numerosity" requirement of Rule 239a)(1) is satisfied.

26 7. The Court finds that the class representatives' proofs as to the claims and
27 issues covered by this Stipulation and Order will present questions of law or fact common
28 to the proof of all class members with respect to the same claims and issues. Plaintiffs

1 allege that AXA implemented a cap on its contributions to the costs of medical benefits
2 for retirees, without properly amending its ERISA Health Benefit Plan. This allegation
3 applies to the class as a whole and raises factual and legal issues that are common to all
4 members of the class. As to the claims that are the subject of this order, there are no
5 significant differences among class members or the manner in which Defendant acted
6 toward them that would require the application of different legal theories or analyses.
7 The claims of all members of the putative class are based upon the identical legal theories
8 and are generally opposed by Defendant based upon many of the same denials and
9 affirmative defenses. Therefore, the Court concludes that the “commonality”
10 requirement of Rule 23(a)(2) is met.

11 8. The Court finds that the claims of the class representatives covered by this
12 Stipulation and Order and the claims of class members all arise from the same general
13 course of conduct on the part of the defendants, and that in attempting to prove the claims
14 and issues covered by the Stipulation and Order on their own behalves, the class
15 representatives will at the same time and on that basis of the same evidence be attempting
16 to prove the claims of all class members. The claims that are the subject of the
17 Stipulation and this Order are the same for Plaintiffs as for each member of the putative
18 class, as are many of the affirmative defenses asserted in response to these claims.
19 Plaintiffs are members of the proposed class and allege that they have been and continue
20 to be subject to the same conduct as that which gives rise to the claims of the class as a
21 whole and that they have suffered the same type of injury as that suffered by other
22 members of the class, *i.e.*, an increase in their share of the cost of health care benefits.
23 Therefore, the Court concludes that as to the claims and issues in question, the
24 “typicality” requirement of Rule 23(a)(3) is met.

25 9. The Court finds that the class representatives are able and willing to protect
26 the interests of the class, understand what their duties will be as class representatives, and
27 intend to prosecute this action, through their counsel, in the best interests of the class.
28 The Court finds that Plaintiffs have no interests antagonistic to or in conflict with those of

1 the class and that no conflict exists for the purposes of the claims and issues covered by
2 the Stipulation and this Order between the class representatives and class counsel on the
3 one hand and class members on the other. The Court further finds that class counsel
4 (Mark T. Johnson, Paul Adelman and James C. Sturdevant) and their respective firms are
5 able and experienced and qualified to prosecute this action on behalf of the proposed
6 class. Therefore, the Court concludes on the basis of the record before it that the
7 “adequacy of representation” requirement of Rule 23(a)(4) is met.

8 **The Requirements of Rule 23(b)**

9 10 The Court finds that, with respect to the claims that are the subject of the
10 Stipulation and this Order, this action satisfies the criteria set forth in Fed. R. Civ. P.
11 23(b)(1)(A) because it seeks injunctive relief preventing AXA from continuing to impose
12 its “cap” on company contributions to the cost of medical benefits for members of the
13 class and to cease collecting from class members those amounts paid by them that are
14 attributable to the implementation of the cap on company contributions. If these claims
15 were not litigated on a class basis, potential inconsistent adjudications in separately
16 prosecuted actions could require that AXA apply the same ERISA Plan inconsistently to
17 similarly situated retirees.

18 11. The Court finds that with respect to the claims that are the subject of the
19 Stipulation and this Order, Defendant is alleged to have acted on grounds generally
20 applicable to the class, that any declaratory, injunctive or other appropriate equitable
21 relief would apply to the class as a whole, and that class members have a cohesive
22 interest in the claims at issue and the relief sought. Therefore, the /Court concludes that
23 as to such claims, the requirements of Rule 23(b)(2) are met.

24 12. The Court further finds that the primary relief sought on the claims that are
25 the subject of this Order is equitable relief, in the form of a permanent injunction,
26 notwithstanding the fact that Plaintiffs also seek restitution and damages. The Court
27 finds that Plaintiffs’ primary goal in bringing this putative class action to enjoin the
28 alleged unlawful conduct and that the damages sought on these claims are incidental to

1 the equitable relief because they flow naturally from the claim for such relief.
2 Accordingly, the Court finds that certification of the proposed class under Rule 23(b)(2)
3 is appropriate.

4 13. The Court also finds that the requirements of Rule 23(b)(3), are satisfied
5 with respect to the claims that are the subject of the Stipulation and this Order. Issues of
6 law and fact that are common to the members of the class, including the core allegations
7 on which Defendant's alleged liability is based, predominate over any individual issues.
8 Class treatment of these claims is superior to other available methods for the fair and
9 efficient adjudication of the controversy.

10 **Limitations of This Order**

11 14. Nothing herein shall be regarded as a determination of the merits of the
12 claims or issues to be resolved on behalf of the class, or any of the defenses that
13 Defendant may raise. Nor shall anything in this Order be regarded as a determination of
14 whether the remaining claim in this action that is not the subject of this Order should be
15 certified for class treatment. This Order in no way limits Defendant's ability to oppose
16 certification of that claim.

17 **Notice to the Class**

18 15. The Court reserves any ruling on whether notice to the class is required
19 under this order and, if so, the nature of such notice, until after the Court has ruled on
20 Plaintiffs motion to certify for class treatment the remaining Fifth Cause of Action
21 relating to the "Options" Claim as alleged in the First Amended Complaint.

22 It is so ordered.

23 Dated: 3/9/09 _____



Dale S. Fischer, Judge
United States District Court