

**THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CIVIL CASE NO. 1:16-cv-00379-MR-DLH**

<b>BARBARA OATES,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b><u>ORDER</u></b>
	)	
<b>AXA EQUITABLE LIFE</b>	)	
<b>INSURANCE COMPANY,</b>	)	
	)	
<b>Defendant.</b>	)	
<hr/>	)	

**THIS MATTER** is before the Court on the Defendant’s Motion to Dismiss [Doc. 5] and the Magistrate Judge’s Memorandum and Recommendation [Doc. 14] regarding the disposition of that motion.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, the Honorable Dennis L. Howell, United States Magistrate Judge, was designated to consider the Defendant’s motion and to submit a recommendation for its disposition.

On July 5, 2017, the Magistrate Judge filed a Memorandum and Recommendation in this case containing conclusions of law in support of a recommendation regarding the Defendant’s motion. [Doc. 14]. The parties were advised that any objections to the Magistrate Judge’s Memorandum

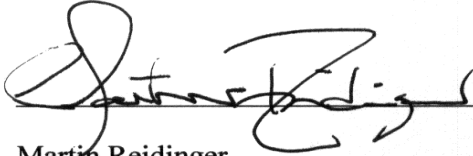
and Recommendation were to be filed in writing within fourteen (14) days of service. The period within which to file objections has expired, and no written objections to the Memorandum and Recommendation have been filed.

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's recommendation that the Defendant's Motion to Dismiss be granted in part and denied in part.

**IT IS, THEREFORE, ORDERED** that the Memorandum and Recommendation [Doc. 14] is **ACCEPTED**, and the Defendant's Motion to Dismiss [Doc. 5] is **GRANTED IN PART** and **DENIED IN PART**. Specifically, the Motion is **GRANTED** with respect to the Plaintiff's claims for negligent misrepresentation and breach of fiduciary duty as stated in Counts One and Four of the Complaint, and these claims are therefore **DISMISSED WITH PREJUDICE**. The Motion is **DENIED** with respect to the Plaintiff's claims for a declaratory judgment and breach of contract as stated in Counts Two and Three of the Complaint.

Signed: July 20, 2017

**IT IS SO ORDERED.**

  
Martin Reidinger  
United States District Judge

