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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Peter Pototsky,

Plaintiff,

vs.

Atlas Air, Inc., et al.,

Defendants.

) No. CV 06-225-TUC-FRZ (CRP)

) **ORDER**

_____)
Pending before the Court is a Report and Recommendation issued by United States Magistrate Judge Charles R. Pyle.¹ The Report and Recommendation recommends granting Defendant Atlas Air’s motion for summary judgment whereby all claims against Atlas Air are dismissed with prejudice. The Report and Recommendation finds that: (1) Atlas Air’s health benefit plan is governed by ERISA such that Plaintiff’s claims for extra-contractual damages pertaining to benefits are prohibited; (2) Plaintiff has not properly presented any admissible evidence supporting any health benefit claims such that a rational trier of fact could find in his favor; (3) all claims associated with Harvey Watts’ loss of license insurance issues are subject to dismissal; (4) there is no evidence of retaliation such that Plaintiff’s

_____)
¹The Court reviews de novo the objected-to portions of the Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The Court reviews for clear error the unobjected-to portions of the Report and Recommendation. *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999); *see also Conley v. Crabtree*, 14 F. Supp. 2d 1203, 1204 (D. Or. 1998).

1 retaliation claims must be dismissed. *See* Report and Recommendation at 10-18. Plaintiff's
2 objections primarily raise issues that were already considered and appropriately addressed
3 by Magistrate Judge Pyle. Plaintiff's objections in this case are denied.

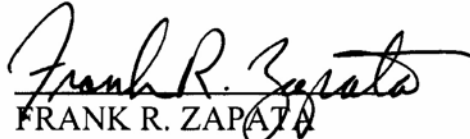
4 Accordingly, IT IS HEREBY ORDERED as follows:

5 (1) United States Magistrate Judge Pyle's Report and Recommendation is accepted and
6 adopted.

7 (2) Atlas Air Inc.'s motion for summary judgment is granted. All claims against Atlas Air,
8 Inc. are dismissed with prejudice. The Clerk of the Court shall enter judgment accordingly.

9 (3) This case is referred back to Magistrate Judge Pyle for all pretrial proceedings and report
10 and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1),
11 FED.R.CIV.P. 72, and LRCiv 72.1, 72.2, and 72.3 of the Rules of Practice of the United States
12 District Court for the District of Arizona. Any future filings in this case shall be designated:
13 CV 06-225-TUC-FRZ (CRP).

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15 DATED this 2nd day of December, 2009.

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19 FRANK R. ZAPATA
20 United States District Judge
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