

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

KERRY D. AUSTIN, on behalf of  
himself and all others  
similarly situated,

3:14-CV-00706-ST

ORDER

Plaintiff,

v.

UNION BOND & TRUST CO.,  
MORLEY CAPITAL MANAGEMENT,  
and PRINCIPAL LIFE INSURANCE  
COMPANY,

Defendants.

BROWN, Judge.

Magistrate Judge Janice M. Stewart issued Findings and Recommendation (#38) on November 10, 2014, in which she recommends the Court grant Defendants' Motion (#25) to Dismiss as follows: (1) dismiss all of Plaintiff's claims against Defendant Principal Life Insurance Company (Second Claim and portions of the Third and Fourth Claims) with prejudice; (2) dismiss the

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portions of Plaintiff's First, Third, and Fourth Claims against Defendants Union Bond & Trust Company and Morley Capital Management as to setting the Crediting Rates and retaining the spread in the Principal Synthetic Investment Contract (SIC) with prejudice; and (3) dismiss the remaining portions of Plaintiff's First, Third, and Fourth Claims against Union and Morley without prejudice and with leave to replead. Plaintiff filed timely Objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). *See also Dawson v. Marshall*, 561 F.3d 930, 932 (9<sup>th</sup> Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003) (*en banc*).

This Court has carefully considered Plaintiff's Objections and concludes they do not provide a basis to modify the Findings and Recommendation. The Court also has reviewed the pertinent portions of the record *de novo* and does not find any error in the Magistrate Judge's Findings and Recommendation.

#### CONCLUSION

The Court **ADOPTS** Magistrate Judge Stewart's Findings and

Recommendation (#38), **GRANTS** Defendants' Motion (#25) to Dismiss, and **DISMISSES** Plaintiff's claims as follows:

- (1) The Court dismisses all of Plaintiff's claims against Principal Life Insurance Company (Second Claim and portions of the Third and Fourth Claims) **with prejudice;**
- (2) The Court dismisses the portions of Plaintiff's First, Third, and Fourth Claims against Union and Morley as to setting the Crediting Rates and retaining the spread in the Principal Synthetic Investment Contract (SIC) **with prejudice;** and
- (3) The Court dismisses the remaining portions of Plaintiff's First, Third, and Fourth Claims against Union **without prejudice.**

The Court **GRANTS** Plaintiff leave to file an Amended Complaint to cure the deficiencies noted in the Findings and Recommendation with respect to Plaintiff's First, Third, and Fourth Claims against Union **no later than January 14, 2015.**

IT IS SO ORDERED.

DATED this 23<sup>rd</sup> day of December, 2014.



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ANNA J. BROWN  
United States District Judge