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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Ernie Pete Ortega,
Plaintiff,
vs.
Dora Schriro, et. al.,
Defendants.

CV 07-2451-PHX-MHM (JCG)
REPORT & RECOMMENDATION

Pending before the Court is Plaintiff’s “Motion to Request Leave for 3rd Amended Complaint” filed on October 4, 2010. (Doc. 141.) Defendants filed a response to the Motion on October 8, 2010. (Doc. 143.) Plaintiff replied. (Doc. 146.)

LR Civ 15.1 requires a party seeking to amend a pleading to attach a copy of the proposed amended pleading as an exhibit to the motion which indicates in what respect it differs from the pleading which it amends, by bracketing or striking through the text to be deleted and underlining the text to be added. Plaintiff failed to comply with this requirement. Instead, Plaintiff lodged a proposed third amended complaint with the Court. (Doc. 142.) In his Reply to his Motion to Amend, Plaintiff states that he seeks to amend his Complaint by adding a new Count 1. (Doc. 146, pg. 2.)

Count 1 of the Proposed Third Amended Complaint is a claim for “denial of access to the Court” arising from the alleged loss of Plaintiff’s legal materials on July 17, 2007. This same claim was raised as Count 1 in Plaintiff’s Second Amended Complaint. (Doc. 78.) Count 1 was dismissed from Plaintiff’s Second Amended Complaint on December 23, 2009

1 for failure to exhaust administrative remedies. (Doc. 107.) Neither Plaintiff's Proposed
2 Third Amended Complaint nor his Motion to Amend contains any new information
3 suggesting that Plaintiff has exhausted his administrative remedies with respect to Count 1
4 since it was dismissed on December 23, 2009.

5 In addition, the Magistrate notes that on August 20, 2009, the Court agreed with the
6 Magistrate's recommendation that Plaintiff not be permitted any further amendment of his
7 Complaint, given that this case has been pending since December 3, 2007. (Doc. 77.)

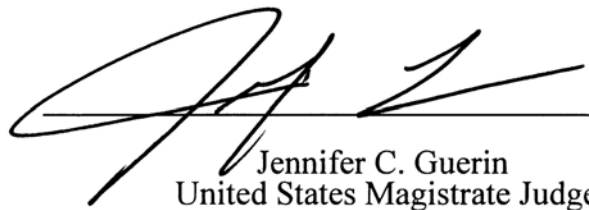
8 **CONCLUSION**

9 **THEREFORE**, the Magistrate recommends that Plaintiff's "Motion to Request
10 Leave for 3rd Amended Complaint" filed on October 4, 2010 (Doc. 141) be DENIED.

11 Pursuant to 28 U.S.C. § 636(b), any party may file and serve written objections within
12 fourteen (14) days after being served with a copy of this Report and Recommendation. If
13 objections are not timely filed, the party's right to *de novo* review may be waived. *See*
14 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir.2003) (en banc), *cert. denied*, 540
15 U.S. 900 (2003). If objections are filed, the parties should direct them to the District Court
16 by using the following case number: **CV 07-2451-PHX-MHM**.

17 The Clerk of the Court is directed to send a copy of this Report and Recommendation
18 to all parties.

19 DATED this 16th day of November, 2010.

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23 Jennifer C. Guerin
24 United States Magistrate Judge
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