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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 Gerlando Curreri,

No. CV09-630-PHX-JAT

10 Plaintiff,

ORDER

11 vs.

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13 Paul Babeu, et al.,

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Defendant.

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16 Plaintiff filed a Motion for Leave to File Second Amended Complaint (Doc. 49) on
17 October 22, 2010. Defendants filed their Response (Doc. 50) on November 4, 2010. The
18 Magistrate Judge entered a Report and Recommendation (Doc. 57) on December 10, 2010,
19 recommending that the undersigned deny Plaintiff’s Motion for Leave to file Second
20 Amended Complaint and deny a certificate of appealability if sought by Plaintiff.

21 Neither party filed an objection to the Report and Recommendation. The Court
22 therefore hereby accepts the R&R to the extent it recommends denying leave to file a Second
23 Amended Complaint. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985)(finding that district
24 courts are not required to conduct “any review at all . . . of any issue that is not the subject
25 of an objection” (emphasis added)); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th
26 Cir. 2003)(*en banc*)(“statute makes it clear that the district judge must review the magistrate
27 judge’s findings and recommendations de novo if objection is made, but not otherwise”
28 (emphasis in original)); *see also Schmidt v. Johnstone*, 263 F.Supp.2d 1219, 1226 (D. Ariz.

1 2003). The Court modifies the Report and Recommendation to eliminate the suggestion that
2 the undersigned deny a certificate of appealability should Plaintiff seek one because a
3 certificate of appealability pursuant to 28 U.S.C. §2254 does not apply outside of certain
4 habeas writs.

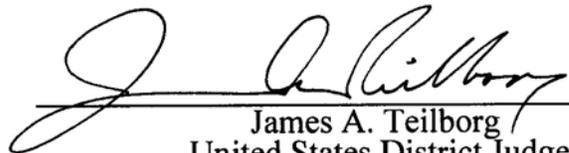
5 Accordingly,

6 **IT IS ORDERED** Accepting and adopting the Magistrate's Report and
7 Recommendation (Doc. 57) with the slight modification noted above.

8 **IT IS FURTHER ORDERED** Denying Plaintiff's Motion for Leave to File Second
9 Amended Complaint (Doc. 49).

10 DATED this 16th day of March, 2011.

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James A. Teilborg
United States District Judge