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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

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Marty Cortez, a single woman, on her own behalf
and as Guardian and Conservator for Philip
Cortez, an incapacitated person,

Plaintiffs,

v.

Brian Hawthorne (first name unknown); State of
Arizona, a body politic, Bill Skol, Todd
Springsteen (first name unknown),

Defendants,

CV 09-526 TUC DCB

ORDER

Report and Recommendation

On January 28, 2010, the Honorable Charles R. Pyle, United States Magistrate Judge, filed a Report and Recommendation (R&R) in this action. The R&R advises the Court to grant, pursuant to the Plaintiffs' concession, that Defendants' Motion to Dismiss Counts 4 and 6, with prejudice. The Magistrate Judge advises that Count 7 be dismissed with prejudice and Count 3 be dismissed with leave to amend the pleadings. The Magistrate Judge further advises that the Motion to Dismiss be denied as to Counts 1, 2, and 5.

The Defendants' Motion to Dismiss relies in large part on *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009), and the Magistrate Judge criticizes this reliance in large part as gamesmanship, reaching beyond the interests of justice envisioned by the Supreme Court's ruling in *Iqbal*. The Court agrees.

The parties were sent copies of the R&R and instructed that, pursuant to 28 U.S.C. § 636(b), they had 14 days to file written objections to the R&R. *See also*, Federal Rule of Civil

1 Procedure 72(b) (party objecting to the recommended disposition has fourteen (14) days to file
2 specific, written objections). No objections have been filed.

3 Pursuant to 28 U.S.C. § 636(b), this Court makes a *de novo* determination as to those
4 portions of the R&R to which there are objections. 28 U.S.C. § 636(b)(1)(C) ("A judge of the
5 court shall make a de novo determination of those portions of the report or specified proposed
6 findings and recommendations to which objection is made.") To the extent that no objection has
7 been made, arguments to the contrary have been waived. *McCall v. Andrus*, 628 F.2d 1185,
8 1187 (9th Cir. 1980) (failure to object to Magistrate's report waives right to do so on appeal); *see*
9 *also*, Advisory Committee Notes to Fed. R. Civ. P. 72 (citing *Campbell v. United States Dist.*
10 *Court*, 501 F.2d 196, 206 (9th Cir. 1974) (when no timely objection is filed, the court need only
11 satisfy itself that there is no clear error on the face of the record in order to accept the
12 recommendation).

13 The Court has reviewed the R&R and considers it to be thorough and well-reasoned; it
14 is neither clearly erroneous nor contrary to law. *United States v. Remsing*, 874 F.2d 614, 617-
15 618 (9th Cir. 1989). The R&R shall, therefore, be accepted pursuant to 28 U.S.C. § 636(b)(1).
16 The Court adopts the recommendation of the Magistrate Judge. For the reasons stated in the
17 R&R, the Court grants in part and denies in part the Motion to Dismiss.

18 **Accordingly,**

19 **IT IS ORDERED** that the Report and Recommendation [Doc. # 44] is adopted as the
20 opinion of the Court.

21 **IT IS FURTHER ORDERED** that Motion to Dismiss [Doc. # 21] is GRANTED IN
22 PART as follows: 1) dismissing Counts 4, 6, and 7 with prejudice, and dismissing Count 3, with
23 leave to amend.

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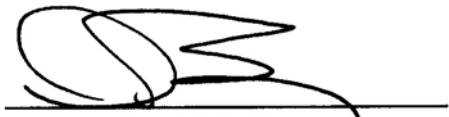
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IT IS FURTHER ORDERED that the Motion to Dismiss [Doc. #21] is DENIED IN PART as to Counts 1, 2 and 5.

DATED this 2nd day of June, 2010.



David C. Bury
United States District Judge