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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

James Lee Hess,)	
)	
Petitioner,)	No. CV-06-1639-PHX-PGR (JI)
vs.)	
)	
Charles L. Ryan, et al.,)	<u>ORDER</u>
)	
Respondents.)	

Having reviewed *de novo* the thorough Report and Recommendation of Magistrate Judge Irwin in light of the petitioner’s Objections to the Report and Recommendation Dated May 12, 2009 (doc. #76) and Respondents’ Response to Petitioner’s Objection to Report and Recommendation (doc. #77)¹, the Court finds that the petitioner’s objections should be overruled as being without merit and that the Magistrate Judge correctly determined that the petitioner’s petition for a writ of habeas corpus, filed pursuant to 28 U.S.C. § 2254, should be denied.

¹
While the petitioner has requested that he be allowed to file a reply to the respondent’s response to his objections, the Court will not permit him to do so because Fed.R.Civ.P. 72(b)(2) does not authorize the filing of such a reply, see Cannon Partners, Ltd. v. Cape Cod Biolab Corp., 225 F.R.D. 247, 250 (N.D.Cal.2003); Bradberry v. Schriro, 2009 WL 971298, at *1 (D.Ariz. April 8, 2009), and because the petitioner’s proposed reply does not add anything significant to the several memoranda the petitioner has already filed.

1 The Court concludes that the Magistrate Judge correctly determined
2 (1) that Grounds 3, 4, and 12 of the habeas petition are procedurally defaulted
3 inasmuch as the petitioner, by failing to fairly present them to the state courts as
4 federal issues, did not properly exhaust them and is now procedurally barred from
5 doing so, (2) that Ground 11 was properly found by the state courts to be
6 procedurally barred based on independent and adequate state law grounds, and
7 (3) that these four claims must be dismissed with prejudice because petitioner
8 has failed to demonstrate any cause or prejudice sufficient to excuse his defaults,
9 and has failed to show the existence of any actual innocence sufficient to
10 establish that a fundamental miscarriage of justice would result from the Court not
11 reaching the merits of these claims.

12 The Court further concludes that the Magistrate Judge properly analyzed
13 the merits of the petitioner's exhausted claims, Grounds 1, 2, 5, 6, 7, 8, 9, 10 and
14 13, and correctly determined that they must be dismissed as being factually
15 and/or legally meritless. Therefore,

16 IT IS ORDERED that the petitioner's Motion for Leave to File Reply to
17 Respondents' Response to Petitioner's Objection to Report and
18 Recommendation (doc. #78) is denied.

19 IT IS FURTHER ORDERED that the Magistrate Judge's Report and
20 Recommendation (doc. #71) is accepted and adopted by the Court.

21 IT IS FURTHER ORDERED that the petitioner's Petition for Writ of Habeas
22 Corpus by a Person in State Custody Pursuant to 28 U.S.C. § 2254 is denied and
23 that this action is dismissed in its entirety with prejudice. The Clerk of the Court

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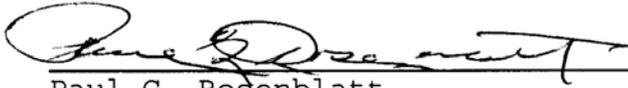
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shall enter judgment accordingly.

DATED this 24th day of August, 2009.



Paul G. Rosenblatt
United States District Judge