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

David Russell Avenetti,

Petitioner,

v.

Charles Ryan,

Respondents.

No. CV 09-116-PHX-NVW (MHB)

**ORDER
and
CERTIFICATE OF APPEALABILITY
AND IN FORMA PAUPERIS STATUS**

Pending before the court is the Report and Recommendation (“R&R”) of Magistrate Judge Burns (Doc. # 24) regarding petitioner’s Second Amended Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 (Docs. # 12 and 13). The R&R recommends that the Petition be denied and dismissed with prejudice¹. The Magistrate Judge advised the parties that they had fourteen days to file objections to the R&R. (R&R at 12 (citing 28 U.S.C. § 636(b)). No objections were filed.

Because the parties did not file objections, the court need not review any of the Magistrate Judge’s determinations on dispositive matters. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); *Thomas v. Arn*, 474 U.S. 140, 149 (1985) (“[Section 636(b)(1)] does not . . . require any review at all . . . of any issue that is not the subject of an objection.”). The absence of a

¹The R&R on page 12 incorrectly refers to Document 1 as the Petition. As reflected on page 1 of the R&R, Defendant filed a Second Amended Petition [docs. 12 and 13] and the Court has made its determination based on that document.

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1 timely objection also means that error may not be assigned on appeal to any defect in the
2 rulings of the Magistrate Judge on any non-dispositive matters. Fed. R. Civ. P. 72(a) (“A
3 party may serve and file objections to the order within 14 days after being served with a copy
4 [of the magistrate’s order]. A party may not assign as error a defect in the order not timely
5 objected to.”); *Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174 (9th Cir. 1996); *Philipps*
6 *v. GMC*, 289 F.3d 1117, 1120-21 (9th Cir. 2002).

7 Notwithstanding the absence of an objection, the court has reviewed the R&R and
8 finds that it is well taken. The court will accept the R&R and dismiss the Petition. *See* 28
9 U.S.C. § 636(b)(1) (stating that the district court “may accept, reject, or modify, in whole or
10 in part, the findings or recommendations made by the magistrate”).

11 IT IS THEREFORE ORDERED that Report and Recommendation of the Magistrate
12 Judge (Doc. #24) is accepted.

13 IT IS FURTHER ORDERED that the Clerk of the Court enter judgment denying and
14 dismissing petitioner's Second Amended Petition for Writ of Habeas Corpus filed pursuant
15 to 28 U.S.C. § 2254 (Doc. #12) with prejudice. The Clerk shall terminate this action.

16 Having considered the issuance of a Certificate of Appealability from the order
17 denying Petitioner’s Petition for a Writ of Habeas Corpus, the Court FINDS: Certificate of
18 Appealability and leave to proceed *in forma pauperis* on appeal are **Denied**. Petitioner has
19 not made a substantial showing of the denial of a constitutional right.

20 DATED this 20th day of May, 2010.

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Neil V. Wake
United States District Judge