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

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Gregory McCaughey,

No. CV-15-00045-TUC-RCC

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Petitioner,

ORDER

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v.

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Louis Winn,

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Respondent.

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Currently pending before the Court is Petitioner's Gregory McCaughey's Motion to Find Respondent in Default [Judgement] Pursuant to Rule 55(a) Fed. R. Civ. P. (Doc. 10), Magistrate Judge Bruce G. Macdonald's Report and Recommendation ("R&R") regarding this motion (Doc. 12), Petitioner's objections to the R&R (Doc. 13) and Respondent's Response to these objections (Doc. 14). For the following reasons, this Court will adopt the findings and conclusions of R & R and deny Petitioner's Motion for Default (Doc. 10).

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I. Background

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Pursuant to Rules 72.1 and 72.2 of the Local Rules of Civil Procedure, this matter was referred to Magistrate Judge Macdonald for Report and Recommendation. Together with his Reply to Respondent's Response to Petitioner's Habeas Petition, Petitioner moved for the Court to find Respondent in default. Doc. 10. On January 14, 2016 Magistrate Judge Macdonald recommended this Court (1) substitute J.T. Shartle as

1 respondent in place of Louis W. Winn Jr. and (2) deny Petitioner’s Motion to Find
2 Respondent in Default (Doc. 10). Doc. 12 at 2:23-27. Petitioner filed timely objections to
3 Magistrate Judge Macdonald’s R&R (Doc. 13), to which Respondent filed a Response
4 (Doc. 14).

5 **II. Legal Standard**

6 The duties of the district court in connection with a R & R are set forth in Rule 72
7 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). The district court may
8 “accept, reject, or modify the recommended disposition; receive further evidence; or
9 return the matter to the magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3); 28
10 U.S.C. § 636(b)(1).

11 The Court will not disturb a magistrate judge’s order unless his factual findings
12 are clearly erroneous or his legal conclusions are contrary to law. 28 U.S.C. §
13 636(b)(1)(A). “[T]he magistrate judge’s decision...is entitled to great deference by the
14 district court.” *U.S. v. Abonce-Barrera*, 257 F.3d 959, 969 (9th Cir. 2001). Where the
15 parties object to an R & R, “[a] judge of the [district] court shall make a *de novo*
16 determination of those portions of the [R & R] to which objection is made.” 28 U.S.C. §
17 636(b)(1); *see Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

18 **III. Issues Presented**

19 A. Substitution of Respondent J.T. Shartle as Respondent

20 As an initial matter, Magistrate Judge Macdonald took judicial notice that the
21 listed Respondent Louis W. Winn, Jr. is no longer the warden of United States
22 Penitentiary–Tucson (“USP–Tucson”) and recommended that the new Warden of USP–
23 Tucson, J. T. Shartle, be substituted as Respondent in place of Winn. This Court finds
24 Magistrate Judge Macdonald’s findings on this issue to be thorough and well-reasoned,
25 and, there being no objection, adopts the recommendation that J.T. Shartle be substituted
26 as Respondent for Louis W. Winn.

27 B. Default Judgment

28 Petitioner seeks default judgment because Respondent’s Return and Answer to his

1 Petition for a Writ of Habeas Corpus and Motion to Dismiss [were] allegedly untimely.
2 Doc. 10.

3 In considering this issue Magistrate Judge Macdonald reviewed the Order
4 requiring Respondent to answer the Petition (Doc. 6), the certified mail receipt
5 documenting the date that Order was served on Respondent (Doc. 7), and the date
6 Respondent filed his Answer (Doc. 9). Magistrate Judge MacDonald concluded that
7 Respondent's April 1, 2015 Answer was timely based upon the language of the March 9,
8 2015 Order (directing Respondent to answer the Petition within 20 days of the date of
9 service) and a 20 day date calculation (commencing on March, 12, 2015, the date of
10 service on Respondent, as memorialized in the certified mail receipt).

11 Petitioner objects that Magistrate Judge MacDonald has misread the language in
12 the Court's March 9, 2015. Petitioner is incorrect. The March 9, 2015 Order does state:
13 "Respondent Louis Winn must answer the Petition within 20 days of the date of service."
14 Doc. 6 at 3:9-10. Moreover, Magistrate Judge Macdonald's date calculation is accurate
15 and Respondent's April 1, 2015 Answer was timely.

16 Petitioner also objects that the Magistrate Judge's warning regarding Local Rule
17 7.2 of the Federal Rules of Civil Procedure does not apply and that he may seek new
18 relief in a reply memorandum. This objection is, however, moot as the Magistrate Judge
19 considered and addressed Respondent's new, requested relief in the R&R at issue.
20 Accordingly,

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26 **IT IS HEREBY ORDERED** that Magistrate Judge Macdonald's Report and
27 Recommendation (**Doc. 12**) is hereby **ACCEPTED** and **ADOPTED** as the findings of
28 fact and conclusions of law by this Court.

1 **IT IS FURTHER ORDERED SUBSTITUTING** J.T. Shartle, Warden as Respondent
2 for Louis W. Winn, Jr. pursuant to Rule 25(d) of the Federal Rules of Civil Procedure
3 and Rule 43(c)(2) of the Federal Rules of Appellate Procedure; and
4 **IT IS FURTHER ORDERED** Petitioner’s Motion to Find Respondent in Default (**Doc.**
5 **10**) is **denied**.

6 Dated this 22nd day of February, 2016.

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12 Raner C. Collins
13 Chief United States District Judge
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