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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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M&I Marshall & Ilsley Bank, )

No. 10-CV-1436-PHX-ECV

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Plaintiff, )

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v. )

**ORDER**

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Gregory G. McGill and Jane Doe McGill, )

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Defendants. )

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Gregory G. McGill and Jane Doe McGill, )

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Counterclaimants, )

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v. )

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M&I Marshall & Ilsley Bank, )

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Counterdefendants. )

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In an order dated June 16, 2011, Magistrate Judge Voss denied Defendants’  
“Objection Re: (1) Lack of Consent to Magistrate Appointment after Magistrate Recusal, and  
(2) Judicial Cover Up Impairing a Fair Trial and Civil Rights.” (Doc. 174.) The order also  
referred the matter to a District Court Judge, and this Court was randomly assigned to  
consider the following issues:

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Defendants’ allegations of bias against Magistrate Judge Voss as set forth in  
Defendants’ Motion for Magistrate Recusal and Assignment to a District Court  
Judge in Phoenix (Doc. 143) and in their Objection Re: (1) Lack of Consent  
to Magistrate Appointment after Magistrate Recusal, and (2) Judicial Cover Up

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1 Impairing a Fair Trial and Civil Rights (Doc. 169); and whether Defendants’  
2 allegations show “extraordinary circumstances” under 28 U.S.C. § 636(c)(4)  
3 and Fed. R. Civ. P. 73(b)(3) such that the parties’ consent to magistrate judge  
4 jurisdiction should be vacated.

(*Id.* at 3.)

5 As set forth below, the Court agrees with the Magistrate Judge’s resolution of these  
6 issues.

7 **1. Judicial bias**

8 Magistrate Judge Voss referred the matter to this Court pursuant to 28 U.S.C. §144.  
9 Under §144 and 28 U.S.C. § 455, recusal is required if a judge’s “impartiality might  
10 reasonably be questioned.” Because issues regarding a judge’s impartiality must generally  
11 arise from “extrajudicial” factors, “judicial rulings alone almost never constitute a valid basis  
12 for a bias or partiality motion.” *Liteky v. United States*, 510 U.S. 540, 554 (1994). Similarly,  
13 “opinions formed by the judge on the basis of facts introduced or events occurring in the  
14 course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias  
15 or partiality motion unless they display a deep-seated favoritism or antagonism that would  
16 make fair judgment impossible.” *Id.* at 555. Defendants’ allegations of bias are based on the  
17 Magistrate Judge’s rulings and cite no extra-judicial factors. (*See* Doc. 143.) The allegations  
18 are also conclusory and offer no support for a finding of bias or partiality under § 455 and  
19 *Liteky*.

20 **2. “Extraordinary circumstances” under 28 U.S.C. § 636(c)(4) and Rule 73(b)(3)**

21 Once a civil case is referred to a magistrate judge under § 636(c), the reference can  
22 be withdrawn by the court only “for good cause shown on its own motion, or under  
23 extraordinary circumstances shown by any party.” 28 U.S.C. § 636(c)(4). “There is no  
24 absolute right, in a civil case, to withdraw consent to trial and other proceedings before a  
25 magistrate judge.” *Dixon v. Ylst*, 990 F.2d 478, 480 (9th Cir. 1993).

26 This case was originally assigned to a District Court Judge, John W. Sedwick. In  
27 November 2010, the parties consented “to have a United States magistrate judge conduct all  
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1 proceedings in this case including trial, the entry of final judgment, and all post-trial  
2 proceedings.” (Doc. 30.) Magistrate Judge Aspey was randomly assigned to the case but  
3 recused himself on April 11, 2011. The case was assigned to Magistrate Judge Voss.  
4 Defendants contended that they did not agree to have a magistrate judge replace Judge  
5 Aspey. They moved that Magistrate Judge Voss recuse himself and reassign the matter to a  
6 District Court Judge. Magistrate Judge Voss ruled that “Defendants’ consent to magistrate  
7 judge jurisdiction was not limited to Judge Aspey” and that “Defendants’ contention that  
8 reassignment is required based on a lack of consent is without merit.” (Doc. 150 at 1–2.)

9       The Court agrees. Defendants offer no authority for the proposition that their consent  
10 needed to be renewed when the matter was assigned to a second magistrate judge.  
11 Defendants never withdrew their consent, and may do so now only upon a showing of  
12 extraordinary circumstances, a showing they have failed to make.

13       Pertinent factors in considering a request to withdraw consent are the timeliness of the  
14 request, whether granting the request would unduly interfere with or delay the proceedings,  
15 particularly relative to the burdens and costs to the litigants, and whether the party’s consent  
16 was voluntary and uncoerced. *United States v. Neville*, 985 F.2d 992, 1000 (9th Cir. 1993).  
17 In *Carter v. Sea Land Services, Inc.*, 816 F.2d 1018, 1021 (5th Cir. 1987), the Fifth Circuit  
18 noted an additional factor in assessing a motion to withdraw consent: “whether the motion  
19 is made in good faith or is dilatory and contrived.”

20       Dissatisfaction with the magistrate judge’s rulings does not constitute an extraordinary  
21 circumstance. There is no suggestion that Defendants’ consent to have the matter heard by  
22 a magistrate judge was involuntary or coerced. Having considered the remaining factors,  
23 including whether the motion is made in good faith, this Court agrees with the ruling in  
24 *Neville*, which explained that there is:

25               nothing in the statute or the legislative history that requires continuing  
26 expressions of consent before a magistrate can exercise authority under a valid  
27 reference. Nor will we accept the slippery-slope invitation to read into the  
28 statute a rule that would allow a party to express conditional consent to a

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reference, thereby obtaining what amounts to a free shot at a favorable outcome or a veto of an unfavorable outcome. Any such rule would allow the party to hold the power of consent over the magistrate like a sword of Damocles, ready to strike the reference should the magistrate issue a ruling not quite to the party's liking. We will not countenance such fast and loose toying with the judicial system.

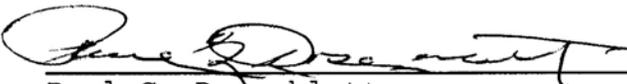
*Neville*, 985 F.2d at 999–1000 (9th Cir. 1993) (quoting *Carter* 816 F.2d at 1020).

Accordingly,

**IT IS ORDERED** finding that Defendants' allegations of bias against Magistrate Judge Voss (Docs. 143, 169) are without merit.

**IT IS FURTHER ORDERED** finding that Defendants have not shown extraordinary circumstances permitting withdrawal of their consent to have the matter heard by a magistrate judge.

DATED this 21<sup>st</sup> day of June, 2011.

  
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Paul G. Rosenblatt  
United States District Judge