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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Ammon M. Sprau, II,
Plaintiff,
vs.
City of Surprise; Surprise Police
Department,
Defendants.

No. CV-12-437-PHX-GMS

ORDER

Pending before the Court are Plaintiff Ammon M. Sprau II’s Motion for New and Different Judge (Doc. 22) and Motion to Supplement Pleadings. (Doc. 23). The Court construes Plaintiff’s Motion for New and Different Judge as a motion to recuse pursuant to 28 U.S.C. § 455. The Court also construes Plaintiff’s Motion to Supplement as a motion to amend pursuant to Rule 15(a). For the reasons discussed below, the Court denies both motions.

BACKGROUND

On January 31, 2012, Plaintiff filed his amended complaint against Defendants in the Maricopa County Superior Court alleging violations of his constitutional rights. (Doc. 1, Ex. 2). On March 1, 2012, Defendants filed a Notice of Removal invoking Plaintiff’s claim for damages pursuant to 42 U.S.C. § 1983 as the basis for removal.

1 (Doc. 1, Ex. 5). On March 5, 2012, Plaintiff filed an Emergency Motion to Amend
2 Caption in Superior Court, which the court granted, changing the caption from “2nd
3 Amendment Rights, 4th Amendment Rights” to “Replevin, Refusal to Return Personal
4 Property, Punitive & Exemplary Damages.” (Doc. 3, Ex. 1). On March 19, 2012,
5 Plaintiff filed a Motion to Remand. (Doc. 19). The Court denied his motion to remand
6 because the Court’s determination of subject matter jurisdiction is based on “the
7 pleadings at the time of removal without reference to subsequent amendments.” *Sparta*
8 *Surgical Corp. v. Nat’l Ass’n of Sec. Dealers, Inc.*, 159 F.3d 1209, 1213 (9th Cir. 1998)
9 (See Doc. 21 at 2). The Court further held that, on its face, Plaintiff’s complaint invokes
10 federal law by seeking damages for alleged violations of his constitutional rights. (Doc.
11 1, Ex. 2). Plaintiff then filed the instant Motion to Recuse and Motion to Amend.
12 (Docs. 22, 23). Defendants did not file a response to either motion.

13 DISCUSSION

14 I. Motion to Recuse

15 A. Legal Standard

16 28 U.S.C. § 455 governs whether a federal judge must recuse in a particular case.

17 It states in relevant part:

18 (a) Any justice, judge, or magistrate of the United States shall
19 disqualify himself in any proceeding in which his impartiality
20 might reasonably be questioned.

21 (b) He shall also disqualify himself in the following
22 circumstances:

23 (1) Where he has a personal bias or prejudice concerning a
24 party, or personal knowledge of disputed evidentiary facts
25 concerning the proceeding.

26 In interpreting these statutory provisions the Supreme Court has determined that a
27 court’s “judicial rulings alone almost never constitute a valid basis” for a motion to
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1 recuse. *United States v. Liteky*, 510 U.S. 540, 555 (1994). This is because “opinions
2 formed by the judge on the basis of facts introduced or events occurring in the course of
3 the current proceedings, or of prior proceedings do not constitute a basis for a bias or
4 partiality motion unless they display a deep-seated favoritism or antagonism that would
5 make fair judgment impossible.” *Id.* Thus, statements made in ruling on particular
6 motions establish bias only in extremely rare circumstances.

7 The moving party bears the burden of proving facts sufficient to justify recusal.
8 Pursuant to the terms of the statute, the Court must determine whether the claims of bias
9 are legally sufficient before determining that the Court “shall proceed no further” on the
10 movant’s case. The statute “must be given the utmost strict construction to safeguard the
11 judiciary from frivolous attacks upon its integrity and to prevent abuse and insure the
12 orderly functioning of the judicial system.” *Rademacher v. City of Phoenix*, 442 F. Supp.
13 27, 29 (D. Ariz. 1977) (citations omitted).

14 Allegations that are merely conclusory are not legally sufficient. *United States v.*
15 *\$292,888.04 U.S. Currency*, 54 F.3d 564, 566 (9th Cir. 1995).

16 **B. Analysis**

17 In Plaintiff’s Motion to Recuse, he essentially makes two assertions. First, he
18 alleges that the Court is prejudiced against *pro se* plaintiffs. Second, he avers that the
19 Court has “refused to read or rule on” any of Plaintiff’s motions or Plaintiff’s “true
20 complaint.” (Doc. 22 at 1–2). The Court finds that neither of these assertions provides
21 an appropriate basis for recusal. Each allegation of prejudice will be addressed in turn.

22 **1. Allegations of actual or apparent prejudice against *pro se* plaintiffs**

23 In Plaintiff’s Motion to Recuse, he appears to infer bias from the Court’s decision
24 to permit the removal of his case to federal court, stating “[t]his lawsuit was illegally
25 removed from [] Superior Court.” (Doc. 22 at 2). Plaintiff also avers the Court “is
26 prejudice against *pro se* plaintiff’s and . . . intends to find for [D]efendants no matter
27 what [P]laintiff can prove in court.” *Id.* In the order denying Plaintiff’s Motion to
28 Remand, the Court held his allegations of violations of his constitutional rights and

1 damages incurred therefrom constitute sufficient bases for federal subject matter
2 jurisdiction. (Doc. 21 at 2). Nevertheless, the Supreme Court has made clear that
3 “opinions formed by the judge on the basis of . . . events occurring in the course of the
4 current proceedings . . . do not constitute a basis for a bias or partiality motion unless they
5 display a deep-seated favoritism or antagonism that would make fair judgment
6 impossible.” *Liteky*, 510 U.S. at 555.

7 Plaintiff fails to allege or show any deep-seated favoritism or antagonism. Rather,
8 he simply complains of this Court’s rulings, or the perceived failure to rule, on Plaintiff’s
9 motions. As discussed above, that is not a basis upon which the Court’s impartiality
10 might reasonably be questioned for purposes of § 455(a).

11 **2. Allegations of failing to read the pleadings**

12 Plaintiff alleges the Court has failed to read Plaintiff’s pleadings or his “true
13 complaint.” (Doc. 22 at 1–2). Nevertheless, Plaintiff provides no basis or circumstance
14 that would support this assertion. Allegations that are merely conclusory are not a legally
15 sufficient basis on which recusal could be granted. *\$292,888.04 U.S. Currency*, 54 F.3d at
16 566; *United States v. Vespe*, 868 F.2d 1328, 1340 (3d Cir. 1989). The Court therefore
17 finds that recusal is not warranted and Plaintiff’s Motion for New and Different Judge
18 will be denied.

19 **II. Motion to Amend**

20 Plaintiff also filed a Motion to Supplement, pursuant to Rule 15(d), in which he
21 seeks to amend his punitive damages claim from eight-million dollars to sixteen-million
22 dollars. (Doc. 23). Rule 15(d) provides that a court may permit a party to file “a
23 supplemental pleading setting out any transaction, occurrence, or event that happened
24 after the date of the pleading to be supplemented.” FED. R. CIV. P. 15(d). “Rule 15(d)
25 permits the filing of a supplemental pleading which introduces a cause of action not
26 alleged in the original complaint and not in existence when the original complaint was
27 filed.” *Cabrera v. City of Huntington Park*, 159 F.3d 374, 382 (9th Cir. 1998) (citation
28 omitted). Because Plaintiff has not established a new cause of action or alleged an

1 occurrence or event that happened after the date of his complaint, the Court denies this
2 motion.

3 Moreover, even were the Court to construe Plaintiff's pleading broadly as a
4 motion to amend, such motion would be denied. "The court should freely give leave [to
5 amend] when justice so requires." FED. R. CIV. P. 15(a)(2). However, the Court may
6 deny a motion to amend if the proposed amendment would be futile. *See Foman v.*
7 *Davis*, 371 U.S. 178, 182 (1962). When bringing a claim pursuant to 42 U.S.C. § 1983
8 for alleged violations of constitutional rights, punitive damages are not recoverable
9 against a municipality or a state official sued in his or her official capacity. *See City of*
10 *Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981); *Smith v. Wade*, 461 U.S. 30
11 (1983). Any amendment of Plaintiff's punitive damages claim would therefore be futile.

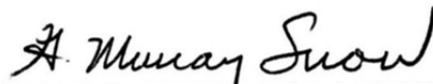
12 CONCLUSION

13 For the reasons stated above, the Court denies Plaintiff's Motion to Recuse and
14 Plaintiff's Motion to Amend.

15 **IT IS THEREFORE ORDERED** that Plaintiff's Motion for New and Different
16 Judge (Doc. 22) is **DENIED**.

17 **IT IS FURTHER ORDERED** that Plaintiff's Motion to Amend (Doc. 23) is
18 **DENIED**.

19 Dated this 9th day of July, 2012.

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22 G. Murray Snow
23 United States District Judge
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