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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FREDERICK LEE JACKSON,)	CV 04-08017 RSWL (RZ)
)	
Plaintiff,	)	ORDER re: Plaintiff's
	)	Objections to the
v.	)	Magistrate Judge Order
	)	Denying Appointment of
	)	Counsel and Stay of
	)	Proceedings, construed
MICHAEL BARNES, et al.,	)	as Motion to Disqualify
	)	Magistrate Judge and
Defendants.	)	Modify or Set Aside
	)	Magistrate Judge Order
	)	[139]

INTRODUCTION

Currently before the Court¹ is pro se Plaintiff Frederick Lee Jackson's ("Plaintiff") "Objections to the Magistrate Judge Order Denying Appointment of Counsel and Stay of Proceedings" [139], which the Court construes as a Motion to Disqualify Magistrate Judge

¹ Local Rule 72-5 states that a motion to disqualify a Magistrate Judge pursuant to 28 U.S.C. §§ 144 or 145 "shall be made to the assigned District Judge." Cent. Dist. Cal. Civ. L.R. 72-5.

1 Ralph Zarefsky pursuant to 28 U.S.C. §§ 455, 144, and
2 to Modify or Set Aside the Magistrate Judge's Order
3 [124] pursuant to Fed. R. Civ. P. 72(a) ("Motion").

4 The Court, having reviewed all papers submitted and
5 pertaining to this Motion, **NOW FINDS AND RULES AS**
6 **FOLLOWS:** The Court **DENIES** Plaintiff's Motion [139].

7 **BACKGROUND**

8 A more thorough factual background of this Action
9 is provided in the Ninth Circuit opinion, Jackson v.
10 Barnes, 749 F.3d 755 (9th Cir. 2014), and in Magistrate
11 Judge Zarefsky's February 9, 2015 Order [124]. The
12 facts relevant to this Motion are as follows.

13 On December 5, 2014, Plaintiff filed a Motion for
14 Appointment of Counsel [115] to assist Plaintiff in the
15 prosecution of this civil Action,² which asserts civil
16 rights claims under 42 U.S.C. § 1983 for alleged
17 violations of various constitutional rights primarily
18 related to a Miranda violation. See Pl.'s Second
19 Amend. Compl. 5, ECF No. 132; Jackson v. Barnes, 749
20 F.3d 755, 758-59 (9th Cir. 2014).

21 On February 5, 2015, Plaintiff filed a Motion to
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23 ² Plaintiff initiated this Action in 2004 [1]. In 2009, the
24 Court issued summary judgment against Plaintiff [85, 86]. In
25 August 2014, the Ninth Circuit reversed and remanded [109]. In
26 January 2015, Magistrate Judge Zarefsky granted Plaintiff leave
27 to file a Second Amended Complaint within 30 days [122].
28 Plaintiff filed a Second Amended Complaint in February 2015
[132]. In March 2015, the Magistrate Judge dismissed Plaintiff's
Second Amended Complaint without prejudice, granting Plaintiff 30
days leave to amend [137].

1 Stay Proceedings Pending Resolution of Petition for a
2 Writ of Mandamus and Numerous Motions Pending [123].
3 Plaintiff's motions were set before Magistrate Judge
4 Zarefsky. Dckt. # 110.

5 On February 9, 2015, Magistrate Judge Zarefsky
6 issued an Order [124] denying without prejudice
7 Plaintiff's Motion for Appointment of Counsel [115] and
8 denying as moot Plaintiff's Motion to Stay [123].
9 Magistrate Judge Zarefsky denied without prejudice
10 Plaintiff's Motion for Appointment of Counsel because
11 Plaintiff's case "present[ed] no exceptional
12 circumstances requiring appointment of counsel." Feb.
13 9, 2015 Order 1, ECF No. 124. Plaintiff's Motion to
14 Stay was denied as moot because the petition for writ
15 of mandamus for which Plaintiff requested a stay had
16 become moot in light of the Court's January 29, 2015
17 Order [122] granting Plaintiff leave to file a Second
18 Amended Complaint. Id.

19 On March 11, 2015, Plaintiff filed the instant
20 Motion [139]. Plaintiff requests in his Motion that
21 the Court "'overrule'" Magistrate Judge Zarefsky's
22 February 9, 2014 Order [124] and that "another
23 Magistrate Judge be assigned to conduct pre-trial
24 proceedings" because the "current Magistrate Judge is
25 'highly bias[ed].'" Pl.'s Objections to the Magistrate
26 Judge Order ("Mot.") 1:21-2:18, ECF No. 139.

27 Plaintiff asserts that Magistrate Judge Zarefsky is
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1 “‘highly bias[ed]’” for the following reasons: the
2 Magistrate Judge (2) “will adopt and agree with
3 absolutely any frivolous position that the defendants
4 make against plaintiff,” (2) is “incompetent” for
5 refusing to stay the proceedings even though Plaintiff
6 gave the Court and defendants notice that a Petition
7 for Writ of Mandamus had been filed, and (3) has a
8 “personal relationship” with the Ventura County
9 District Attorney’s Office. Id. at 1:21-2:15.

10 **LEGAL STANDARD**

11 **A. Rule 72(a)**

12 Rule 72(a) of the Federal Rules of Civil Procedure
13 states that “[w]hen a pretrial matter not dispositive
14 of a party’s claim or defense is referred to a
15 magistrate judge to hear and decide, . . . a party may
16 serve and file objections to the order within 14 days
17 after being served with a copy,” and “[t]he district
18 judge in the case must consider timely objections and
19 modify or set aside any part of the order that is
20 clearly erroneous or is contrary to law.” Fed. R. Civ.
21 P. 72(a); see Waters v. Hollywood Tow Serv., Inc., No.
22 CV 07-7568 CAS (AJWx), 2009 WL 1916606, at *3 (C.D.
23 Cal. June 30, 2009).

24 **B. 28 U.S.C. §§ 455, 144**

25 Federal law requires that “[a]ny justice, judge, or
26 magistrate judge of the United States shall disqualify
27 himself in any proceeding in which his impartiality
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1 might reasonably be questioned." 28 U.S.C. § 455(a).
2 Relatedly, 28 U.S.C. § 144 states that if a party
3 "files a timely and sufficient affidavit that the judge
4 before whom the matter is pending has a personal bias
5 or prejudice either against him or in favor of any
6 adverse party, such judge shall proceed no further
7 therein, but another judge shall be assigned to hear
8 such proceeding." 28 U.S.C. § 144. Because Plaintiff
9 is pro se, the Court will consider Plaintiff's Motion
10 under both Sections 455 and 144. See Navarrete v.
11 Sheriff's Dep't of City of Monterey Park, No.
12 2:14-cv-01179-GAF (Ex), 2014 WL 2608068, at *1 (C.D.
13 Cal. June 10, 2014). The substantive standard for
14 disqualification under Sections 455 and 144 is the
15 same. United States v. Hernandez, 109 F.3d 1450, 1453
16 (9th Cir. 1997); Muhammad v. Rubia, No. C 08-3209 MMC
17 (PR), 2009 WL 281947, at *1 (N.D. Cal. Feb. 5, 2009).

18 When analyzing a motion for disqualification, the
19 Ninth Circuit asks "'whether a reasonable person with
20 knowledge of all the facts would conclude that the
21 judge's impartiality might reasonably be questioned.'" United States v. Holland, 519 F.3d 909, 913 (2008). In
22 other words, disqualification is appropriate if a
23 reasonable person³ "perceives a significant risk that
24 the judge will resolve the case on a basis other than
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27 ³ The "reasonable person" is not a "hypersensitive or
unduly suspicious" person, but, rather, a "well-informed,
28 thoughtful observer." Holland, 519 F.3d at 913.

1 the merits.'" Id. Mere unsubstantiated claims of bias
2 or prejudice do not support disqualification under
3 Section 455. See id.

4 Section 455(a) disqualification is "fact-driven"
5 and should be determined "by an independent examination
6 of the unique facts and circumstances of the particular
7 [disqualification] claim at issue." Id. Additionally,
8 Section 455(a) "is limited by the 'extrajudicial
9 source' factor[,] which generally requires as the basis
10 for recusal something other than rulings, opinions
11 formed or statements made by the judge during the
12 course of trial." Id. at 913-14 (citing Liteky v.
13 United States, 510 U.S. 540, 554-56 (1994)). A mere
14 adverse ruling will not, on its own, compel
15 disqualification under Section 455. Azam v. Bank of
16 Am., N.A., No. SA CV 12-1732-JLS (MLGx), 2014 WL
17 2803961, at *2 (C.D. Cal. June 19, 2014); see also
18 Liteky, 510 U.S. at 555.

19 ANALYSIS

20 **A. Rule 72(a)**

21 Rule 72(a) requires a party seeking to modify or
22 set aside a Magistrate Judge's non-dispositive order to
23 file an objection to the order "within 14 days after
24 being served with a copy" of the challenged order.
25 Fed. R. Civ. P. 72(a). Here, Plaintiff does not
26 indicate when he was served with a copy of the Order
27 [124], and thus the Court cannot determine if

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1 Plaintiff's Motion, filed on March 11, 2015, was timely
2 under Rule 72(a). But even if Plaintiff's Motion was
3 timely, the Court **DENIES** Plaintiff's request to
4 "overrule" Magistrate Judge Zarefsky's Order [124]
5 because the Order [124] is not "clearly erroneous or
6 contrary to law."⁴ Fed. R. Civ. P. 72(a).

7 **B. 28 U.S.C. §§ 455, 144**

8 Plaintiff's Motion asserts that Magistrate Judge
9 Zarefsky is "'highly bias[ed].'" Mot. 1:21-2:15. One
10 way a judge's "impartiality might reasonably be
11 questioned" is if the judge "has a personal bias or
12 prejudice concerning a party, or personal knowledge of
13 disputed evidentiary facts concerning the proceeding."⁵
14 28 U.S.C. § 455(b)(1). A judge's ruling that is
15 adverse to the movant "almost never constitute[s] a
16 valid basis for bias" unless the judge's order shows a
17 "a deep-seated favoritism or antagonism that would make
18 fair judgment impossible." Liteky, 510 U.S. at 555;
19 see also id. (noting that mere adverse judicial rulings
20 are "proper grounds for appeal, not for recusal").

21 Here, Plaintiff's assertion of bias is based, in
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23 ⁴ Plaintiff's request to "overrule" Magistrate Judge
24 Zarefsky's denial of Plaintiff's Motion to Stay "Pending
25 Resolution of Petition for Writ of Mandamus" is also moot because
the Ninth Circuit denied [135] Plaintiff's Petition for Writ of
Mandamus on February 27, 2015. See Mot. 1-2.

26 ⁵ United States v. Sibla, 624 F.2d 864, 867 (9th Cir. 1980)
27 ("[W]e have ruled that section (b)(1) simply provides a specific
28 example of a situation in which a judge's 'impartiality might
reasonably be questioned' pursuant to section 455(a).").

1 part, on Magistrate Judge Zarefsky's prior rulings
2 adverse to Plaintiff. See Mot. 1:21-2:15 (claiming
3 Magistrate Judge Zarefsky is biased because he "will
4 adopt and agree with absolutely any frivolous position
5 that the defendants make against plaintiff" and because
6 Magistrate Judge Zarefsky refused to grant Plaintiff's
7 Motion to Stay). Plaintiff's disagreement with such
8 rulings is not sufficient to show that a "reasonable
9 person with knowledge of all the facts would conclude"
10 that Magistrate Judge Zarefsky's "impartiality might
11 reasonably be questioned." Robinson v. Pflingst, No.
12 10CV1703 WQH (JMA), 2011 WL 1212237, at *1 (S.D. Cal.
13 Mar. 30, 2011). Further, Plaintiff has not provided
14 any evidence that Magistrate Judge Zarefsky's rulings
15 involved bias, favoritism, or antagonism "that would
16 make fair judgment impossible." Liteky, 510 U.S. at
17 555; see Mot. 1:21-2:15.

18 Plaintiff also asserts that Magistrate Judge
19 Zarefsky is biased because he has a "personal
20 relationship" with the Ventura County District
21 Attorney's Office. Id. at 1:21-2:15. Plaintiff does
22 not provide any further explanation or evidence
23 regarding the alleged "personal relationship" or how it
24 impacts Magistrate Judge Zarefsky's rulings. A mere
25 "personal relationship" with the Ventura County
26 District Attorney's Office does not, on its own,
27 mandate recusal. See, e.g., Arnell v. McAdam, No.

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1 07cv0743-LAB (RBB), 2007 WL 2021826, at *1-*2 (S.D.
2 Cal. July 10, 2007).⁶

3 Because Plaintiff's allegations would not cause a
4 reasonable person to reasonably question Magistrate
5 Judge Zarefsky's impartiality or perceive a
6 "significant risk that the judge will resolve the case
7 on a basis other than the merits," the Court **DENIES**
8 Plaintiff's request to disqualify Magistrate Judge
9 Zarefsky. Holland, 519 F.3d at 913.

10 **CONCLUSION**

11 Based on the foregoing analysis, Plaintiff's Motion
12 [139] is **HEREBY DENIED**.

13 **IT IS SO ORDERED.**

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15 DATED: March 17, 2015

RONALD S.W. LEW
HONORABLE RONALD S.W. LEW
Senior U.S. District Judge

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28 ⁶ Cf. Miles v. Ryan, 697 F.3d 1090, 1091 (9th Cir. 2012).