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**United States District Court
Central District of California**

RUSSELL T. MCADAMS,
Plaintiff,

v.

JNJW ENTERPRISES INC., BEAVEX
INCORPORATED,
Defendants.

Case No. 2:13-cv-08226-DSF(SHx)

**ORDER DENYING REQUEST FOR
RECUSAL OF JUDGE DALE S.
FISCHER [24]**

I. INTRODUCTION

After Plaintiff Russell T. McAdams failed to keep the Court apprised of his mailing address, he did not receive notice of Defendants' Motion to Dismiss. United States District Judge Dale S. Fischer then granted Defendants' Motion for non-opposition and entered judgment in their favor. After Judge Fischer denied McAdam's Motion for Reconsideration, he filed this Request to Recuse her. But since McAdams has presented no evidence or other indication that any valid basis for recusal exists, the Court **DENIES** McAdams's Request. (ECF No. 24.)

II. FACTUAL BACKGROUND

On October 7, 2013, McAdams filed suit against Defendants JNJW Enterprises Inc. and BeavEx Inc. in Ventura County Superior Court for allegedly wrongfully withholding Plaintiff's earnings. (Not. of Removal Ex. A.) Defendants subsequently

1 removed the case to the United States District Court for the Central District of
2 California. (ECF No. 1.) The matter was randomly assigned to Judge Fischer.

3 Defendants then moved to dismiss McAdams's Complaint, alleging that 26
4 U.S.C. § 6332(e) absolutely immunized them from any claim arising out of their
5 compliance with the Internal Revenue Service's Notice of Levy. Apparently the IRS
6 had issued the Notice of Levy to JNJW, a wholly owned subsidiary of BeavEx,
7 because it discovered that JNJW owed McAdams \$1,066.45. The IRS sought to
8 obtain that money to partially satisfy the IRS's \$133,275.75 levy against McAdams.
9 JNJW complied with the Notice of Levy and remitted the \$1,066.45 to the IRS.

10 After McAdams did not receive the money JNJW previously owed him,
11 McAdams filed suit. McAdams did not oppose Defendants' Motion to Dismiss.
12 (ECF No. 9.) It turns out that McAdams failed to keep the Court apprised of his
13 current address as required by Local Rule 41-6, so he did not receive notice of the
14 Motion. Judge Fischer granted Defendants' Motion to Dismiss for non-opposition
15 and entered judgment in favor of Defendants. (ECF Nos. 10, 11.) McAdams
16 subsequently filed a Motion for Reconsideration (ECF No. 18), which Judge Fischer
17 also denied, finding that McAdams had not demonstrated excusable neglect. (ECF
18 No. 23.)

19 **III. LEGAL STANDARD**

20 The standard for disqualification of a federal judge is established by 28 U.S.C.
21 §§ 144 and 455. In giving McAdams the benefit of the doubt as a pro se movant, the
22 Court construes his request under both statutes. Section 144 permits a party seeking
23 disqualification to file an affidavit setting forth facts and reasons for his belief that the
24 judge "has a personal bias or prejudice either against him or in favor of any adverse
25 party." 28 U.S.C. § 144. When determining the affidavit's legal sufficiency, "the
26 factual allegations in the affidavit must be accepted as true," although "general or
27 conclusory allegations will not support disqualification." *United States v. Zagari*, 419
28 F. Supp. 494, 500-01 (N.D. Cal. 1976). Further, the alleged bias must be from an

1 extrajudicial source and “result in an opinion on the merits on some basis other than
2 what the judge learned from his participation in the case.” *United States v. Grinnell*
3 *Corp.*, 384 U.S. 563, 583 (1966).

4 Under 28 U.S.C. § 455, a judge must disqualify herself in any proceeding in
5 which one might reasonably question her impartiality. 28 U.S.C. § 455(a). But the
6 substantive standard for recusal under §§ 144 and 455 is the same: whether a
7 reasonable person with knowledge of all the facts would conclude that the judge’s
8 impartiality might reasonably be questioned. *United States v. Hernandez*, 109 F.3d
9 1450, 1453–54 (9th Cir. 1997).

10 **IV. DISCUSSION**

11 McAdams does not specifically address why he believes that the Court should
12 recuse Judge Fischer under either §§ 144 or 455. But in any event, the Court finds
13 that neither section compels Judge Fischer’s recusal. The Court therefore denies
14 McAdam’s Motion.

15 **A. 28 U.S.C. § 144**

16 Section 144 requires the movant to file an affidavit stating “the facts and the
17 reasons for the belief that bias or prejudice exists.” § 144. McAdams has filed no
18 such affidavit, thereby rendering his Motion procedurally defective. That failure is
19 alone enough to deny his recusal Motion.

20 But even if McAdams had properly filed an affidavit, he has not demonstrated
21 that Judge Fischer exhibited any “personal bias or prejudice either against him or in
22 favor any adverse party.” *See* § 144. Rather, McAdams only alleges that Judge
23 Fischer did not read the papers at issue or the Internal Revenue Code—the operative
24 law governing Defendants’ immunity and the IRS’s levy.

25 McAdams’s allegations are belied by Judge Fischer’s Orders. McAdams failed
26 to keep the Court apprised of his current address, thereby rendering it impossible for
27 him to receive notice of Defendants’ Motion to Dismiss. Local Rule 41-6 fully
28 authorized Judge Fischer to “dismiss the action with or without prejudice for want of

1 prosecution.” She therefore acted within her authority—and not as a result of any
2 personal bias or prejudice—when she granted Defendants’ Motion and entered
3 judgment in their favor. No reasonable person knowing of the Local Rules and this
4 case’s particular circumstances would reasonably question Judge Fischer’s
5 impartiality. Instead, her Orders make clear that she followed the law that McAdams
6 alleges she ignored.

7 **B. 28 U.S.C. § 455**

8 Section 455 governs mandatory self-recusal. It largely overlaps with § 144.
9 McAdams likewise has not presented any evidence that Judge Fischer failed to recuse
10 herself based on any of the factors enumerated in § 455. There is no indication that
11 Judge Fischer has any bias or prejudice concerning any party to this action, she
12 previously practiced as a lawyer in the matter, or has any financial interest in the
13 outcome of McAdams’s case. § 455(a), (b).

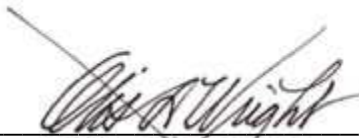
14 As discussed above, no reasonable person could reasonably question Judge
15 Fischer’s impartiality considering this case’s particular circumstances and the absolute
16 immunity Defendants have under 26 U.S.C. § 6332(e). Rather, her Orders reflect her
17 application of the applicable law to the facts and procedural issues of McAdams’s
18 case.

19 **V. CONCLUSION**

20 For the reasons discussed above, the Court **DENIES** McAdams’s Motion to
21 Recuse Judge Fischer. (ECF No. 24.)

22 **IT IS SO ORDERED.**

23
24 March 12, 2014

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27 **OTIS D. WRIGHT, II**
28 **UNITED STATES DISTRICT JUDGE**