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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CAROLINA CASUALTY
INSURANCE COMPANY,

Plaintiff,

v.

JONES HELSLEY, PC, et al.,

Defendants.

CASE NO. 1:10-cv-916-LJO-MJS

ORDER DENYING MOTION TO DISQUALIFY
THE UNDERSIGNED AND DENYING
REQUEST TO VOLUNTARILY RECUSE

(ECF No. 40)

DECEMBER 20, 2010 HEARING ON
MOTION VACATED

_____ /

At the Initial Scheduling Conference in this case, the undersigned informed the parties of his connections with members of the family of Christopher Wanger (one of the defense counsel). In response, Plaintiff filed the instant Motion to Disqualify or Request to Voluntarily Recuse. (ECF No. 40.) For the reasons discussed below, Plaintiff's Motion is DENIED.

I. MAGISTRATE JUDGE'S DISCLOSURE

The undersigned practiced civil litigation in the Fresno, California area for almost thirty years. Although he recalls having encountered one or more of the Defendants here (as non-co-counsel for parties) in litigation over the years, he has no ongoing relationship with any of them.

In the manner and to the extent described below, the undersigned is a very casual social acquaintance of Chris Wanger, one of four named attorneys of record for Defendants.

1 Chris Wanger is the brother of Andrew Wanger. The undersigned has known
2 Andrew Wanger since approximately 1992 when, first as a summer clerk and later as a
3 new lawyer, Andrew Wanger took employment with the Fresno, California law firm in which
4 the undersigned was a partner. The undersigned and Andrew Wanger worked on cases
5 together from December 1993 to February 1995, at which time Andrew Wanger took
6 employment with the Fresno District Attorney's office. In 1996, Andrew Wanger left Fresno
7 to accept employment in San Francisco, California. Andrew Wanger resumed residence
8 in Fresno, California in 2008, but continues to practice for a San Francisco law firm.

9 The undersigned has kept in touch with Andrew Wanger, and on a handful of
10 occasions (perhaps three to five) over the past eighteen years, each has visited the other's
11 home generally as one of a large group of social and professional acquaintances. Over
12 those eighteen years, the undersigned has met and talked with Andrew Wanger's brother,
13 Chris Wanger, at approximately three social events to which the undersigned had been
14 invited, along with many others, by Andrew Wanger. These social events all occurred
15 before the undersigned was a Magistrate Judge and before the instant action was filed.

16 Additionally, Chris Wanger is the son of Oliver Wanger, a District Judge in this
17 Court. The undersigned has not discussed, and has no future plans to discuss, this case
18 with Judge Wanger.

19 **II. LEGAL STANDARD AND ANALYSIS**

20 Plaintiff moves to recuse and/or disqualify under two federal statutes. Section 455
21 of Title 28 of the United States Code provides in pertinent part: "Any justice, judge, or
22 magistrate judge of the United States shall disqualify himself in any proceeding in which
23 his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). Section 144 of Title
24 28 of the United States Code provides in pertinent part: "Whenever a party to any
25 proceeding in a district court makes and files a timely and sufficient affidavit that the judge
26 before whom the matter is pending has a personal bias or prejudice either against him or
27 in favor of any adverse party, such judge shall proceed no further therein, but another
28 judge shall be assigned to hear such proceeding." 28 U.S.C. § 144.

1 Motions to disqualify are fact-driven and the Court’s analysis must be guided by the
2 unique facts and circumstances of this case rather than by comparison to similar situations
3 in prior jurisprudence. Clemens v. United States District Court for Central District of
4 California, 428 F.3d 1175 (9th Cir. 2005). “Judicial impartiality is presumed,” First
5 Interstate Bank of Arizona, N.A. v. Murphy, Weir & Butler, 210 F.3d 983, 987 (9th Cir.
6 2000), and the party seeking recusal carries a “heavy burden” to overcome the
7 presumption of impartiality. See Fletcher v. Conoco Pipe Line Co., 323 F.3d 661, 664 (8th
8 Cir. 2003); Denardo v. Municipality of Anchorage, 974 F.2d 1200, 1201 (9th Cir. 1992).
9 “[A] federal judge has a duty to sit where not disqualified which is equally as strong as the
10 duty to not sit where disqualified.” Laird v. Tatum, 409 U.S. 824, 837 (1972); see also
11 Clemens v. U.S. Dist. Court for Central Dist. of California, 428 F.3d 1175, 1179 (9th Cir.
12 2005) (a judge has “as strong a duty to sit when there is no legitimate reason to recuse as
13 he does to recuse when the law and facts require.”). Ultimately, a judge should recuse
14 “where ‘a reasonable person with knowledge of all the facts would conclude that the
15 judge’s impartiality might reasonably be questioned.” Voigt v. Savell, 70F.3d 1552, 1566
16 (9th Cir. 1995).

17 The Court has set forth in detail above the entire relationship between the
18 undersigned and Chris Wanger. Having made such disclosure, the Court finds that no
19 reasonable person with knowledge of all the facts would reasonably question the
20 undersigned’s impartiality. As the Ninth Circuit Court previously observed, a federal judge
21 is not a “sterile creature who dons judicial robes without any prior contacts in the
22 community but rather is very likely to be a man or woman with a broad exposure to all kinds
23 of citizens of all shades of persuasion and background. A judge is not required to forsake
24 established friendships and professional relationships with members of the bar just
25 because he has taken a seat on the bench.” United States v. Mosesian, 972 F.2d 1346,
26 *6 (9th Cir. 1992) (unpublished).

27 The Court is confident that a reasonable person would not reasonably question a
28 judge’s impartiality toward a party simply because one of four attorneys representing that

1 party was the brother of an acquaintance of the judge. See Clay v. Doherty, 608 F.Supp.
2 295, 300 (N.D.Ill. 1985) (judge's acquaintance with witness who shared mutual and close
3 friends did not require recusal where encounters between the two had been sporadic such
4 that a reasonable observer would not doubt judge's ability to remain impartial).

5 Similarly, the undersigned's working relationship with Judge Wanger does not merit
6 recusal. Although the undersigned regularly hears cases at the United States District
7 Courthouse in Fresno where Judge Wanger has his chambers, the undersigned's primary
8 chambers are in Yosemite National Park. The undersigned does not typically discuss cases
9 with Judge Wanger. The undersigned has not discussed and does not intend to discuss
10 the instant action with Judge Wanger. The Court finds that no reasonable person would
11 believe that the undersigned's impartiality was put in question because of this professional
12 relationship between him and Judge Wanger.

13 **III. CONCLUSION**

14 For the reasons stated above, Plaintiff's Motion to Disqualify/ Request to Voluntarily
15 Recuse is DENIED.

16
17 IT IS SO ORDERED.

18 Dated: November 23, 2010

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE