



1 denied Plaintiff's requests for continuances for medical reasons, and taken a hearing on a motion  
2 to compel off the Court's calendar.

### 3 1. Applicable Law

4 Plaintiff seeks recusal under 28 U.S.C. § 455(a) and (b)(1). 28 U.S.C. § 455 pertains to  
5 the disqualification of any justice, judge or magistrate judge of the United States. § 455(a)  
6 requires a judge to disqualify himself "in any proceeding in which his impartiality might  
7 reasonably be questioned." § 455(b)(1) further requires the disqualification of a judge "[w]here  
8 he has a personal bias or prejudice concerning a party, or personal knowledge of disputed  
9 evidentiary facts concerning the proceeding." Accordingly, recusal is warranted either by actual  
10 bias or the appearance of bias. *Yagman v. Republic Ins.*, 987 F.2d 622, 626 (9th Cir. 1993). On  
11 the other hand, "in the absence of a legitimate reason to recuse himself, a judge should  
12 participate in cases assigned." *United States v. Holland*, 519 F.3d 909, 912 (9th Cir. 2008)  
13 (internal quotation marks omitted).

14 The Ninth Circuit addressed the scope of §455(a) and (b) in *Herrington v. Sonoma*  
15 *County*, 834 F.2d 1488, 1502 (9th Cir. 1987):

16 Section 455(a) covers circumstances that *appear* to create a conflict of interest,  
17 whether or not there is actual bias. *Davis v. Xerox*, 811 F.2d 1293, 1295 (9th Cir.  
18 1987). Section 455(b) covers situations in which an *actual* conflict of interest  
19 exists, even if there is no appearance of one. *Id.* Section 455(b) also describes  
20 situations that create an *apparent* conflict, because it provides examples of  
situations in which a judge's 'impartiality might reasonably be questioned'  
pursuant to section 455(a). See *United States v. Conforte*, 624 F.2d 869, 880–81  
(9th Cir.), cert. denied, 449 U.S. 1012, 101 S. Ct. 568, 66 L. Ed.2d 470 (1980).

21 Bias is defined "to consist of an attitude or state of mind that belies an aversion or hostility of a  
22 kind or degree that a fair-minded person could not entirely set aside when judging certain persons  
23 or causes." *Herrington*, 834 F.2d at 1502 (internal quotation marks omitted). Actual bias, under  
24 § 455(b)(1), is a *per se* ground for disqualification and must be subjectively assessed by the judge  
25 considering disqualification. *Herrington*, 834 F.2d at 1502; also see *Yagman v. Republic Ins.*,  
26 987 F.2d 622, 626 (9th Cir. 1993). In contrast, the test for the existence of apparent bias  
27 sufficient to require disqualification under §§ 455(a) and 455(b) is an objective one: "whether a  
28 reasonable person with knowledge of all the facts would conclude that the judge's impartiality

1 might reasonably be questioned.”<sup>1</sup> *Id.*; also see *United States v. Studley*, 783 F.2d 934, 939 (9th  
2 Cir. 1986). In sum, “Section 455 requires not only that a judge be subjectively confident of his  
3 ability to be evenhanded, but also that an informed, rational, objective observer would not doubt  
4 his impartiality.” *In re Bernard*, 31 F.3d 842, 844 (9<sup>th</sup> Cir. 1994).

5 Furthermore, under § 455, the alleged bias ordinarily must stem from an “extrajudicial  
6 source.” *Liteky v. United States*, 510 U.S. 540, 554-567 (1994). “[J]udicial rulings alone almost  
7 never constitute a valid basis for a bias or partiality motion.” *Id.* [O]pinions formed by the judge  
8 on the basis of facts introduced or events occurring in the course of the current proceedings, or of  
9 prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a  
10 deep-seated favoritism or antagonism that would make fair judgment impossible. *Id.*; also see  
11 *Studley*, 783 F.2d at 940 (“[t]he alleged prejudice must result from an extrajudicial source; a  
12 judge's prior adverse ruling is not sufficient cause for recusal”).

13 § 455 is self-enforcing on the part of the judge; however any party may file a motion for  
14 disqualification, which is addressed to and decided by the judge whose impartiality is being  
15 questioned. *In re Bernard*, 31 F.3d 842, 843 (9<sup>th</sup> Cir. 1994); *United States v. Sibla*, 624 F.2d 864,  
16 867-868 (9th Cir. 1980).

## 17 **2. Disqualification is not Warranted in This Matter on Any Basis**

18 Plaintiff has not alleged specific facts demonstrating actual bias or any extrajudicial  
19 source for the claimed bias. Having considered Plaintiff’s motion, the undersigned is confident  
20 that he does not feel any bias for or against any of the parties to this action. There are no grounds  
21 for recusal on the basis of actual bias.

22 Plaintiff’s motion is similarly devoid of specific fact allegations tending to show the  
23 appearance of bias. The motion contains merely conclusory statements that do not raise a  
24 reasonable question as to the judge’s impartiality. See *Yagman v. Republic Ins.*, 987 F.2d 622,  
25 626 (9th Cir. 1993) (speculative assertions of invidious motive do not support recusal); *Studley*,

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27 <sup>1</sup>The same objective standard also applies to 28 U.S.C. § 144, a recusal statute that applies only to district  
28 court judges; hence, when both 28 U.S.C. § 144 and 28 U.S.C. § 455 are applicable, they are generally construed  
together. *United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986).

1 783 F.2d at 939 (the bare, conclusory allegation that judge “hated me without any cause” does  
2 not objectively cast doubt on judge’s impartiality). Plaintiff’s conclusory allegations would not  
3 lead a reasonable person to conclude that the Judge's impartiality might reasonably be  
4 questioned. Accordingly, there is no appearance of bias warranting recusal in this case.

5 Plaintiff also fails to establish—indeed he does not even allege—that the claimed  
6 appearance of bias on the part of the judge is related to an extrajudicial source. Nor does  
7 Plaintiff allege that the judge has personal knowledge, from an extrajudicial source, of disputed  
8 evidentiary facts concerning the proceeding, thereby creating the appearance of bias. 28 U.S.C. §  
9 455(b)(1); *see Cordoza v. Pacific States Steel Corp.*, 320 F.3d 989, 999-1000 (9th Cir. 2003)  
10 (recusal not required on claim of bias based on judge’s “personal knowledge of disputed  
11 evidentiary facts concerning the proceeding,” because the judge obtained the information in  
12 question in a “judicial” capacity as opposed to a “personal” capacity). On the contrary,  
13 Plaintiff’s allegations of bias or prejudice involve judicial acts which the judge either performed  
14 or failed to perform while presiding over proceedings in his case. *See United States v. Sibla*, 624  
15 F.2d 864, 869 (9th Cir. 1980) (“the provisions of section 455(a) & (b)(1) require recusal only if  
16 the bias or prejudice is directed against a party and stems from an extrajudicial source”). Recusal  
17 is, therefore, foreclosed in this case.

18 **ORDER**

19 As there is no actual bias on the part of the undersigned judge, or any appearance of bias  
20 with regard to the undersigned judge’s role in this matter, Plaintiff’s instant motion for  
21 disqualification is DENIED.

22 IT IS SO ORDERED.

23 **Dated: May 7, 2013**

24 **/s/ Gary S. Austin**  
25 UNITED STATES MAGISTRATE JUDGE  
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