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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 JOSH THOMAS,

12 Plaintiff,

13 vs.

14 WILKINSON, et al.,

15 Defendants.
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1:15-cv-00527-LJO-GSA-PC

**ORDER DENYING MOTION FOR
DISQUALIFICATION OF DISTRICT
JUDGE LAWRENCE J. O'NEILL**

(ECF No. 68.)

18 **I. BACKGROUND**

19 Josh Thomas ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights action
20 pursuant to 42 U.S.C. § 1983.

21 On July 24, 2017, Plaintiff filed a motion to disqualify the undersigned District Judge
22 Lawrence J. O'Neill from further participation in this case. (ECF No. 68.)

23 **II. DISQUALIFICATION OF JUDGE - 28 U.S.C. § 455**

24 Plaintiff requests disqualification of District Judge Lawrence J. O'Neill from further
25 participation in this case, under 28 U.S.C. § 455. Plaintiff claims that Judge O'Neill's court
26 rulings in this action clearly show favoritism to Defendants and bias against Plaintiff. Plaintiff
27 also claims that Judge O'Neill deliberately misrepresents facts, ignores Plaintiff's cases on
28 point, intentionally denies all of Plaintiff's pleadings, and issues decisions contrary to law.

1 Federal law provides that “[a]ny justice, judge, or magistrate judge of the United States
2 shall disqualify himself in any proceeding in which his impartiality might reasonably be
3 questioned.” 28 U.S.C. § 455(a). Section (b) of that statute sets forth a number of additional
4 grounds for disqualification, including where the judge “has a personal bias or prejudice
5 concerning a party,” “personal knowledge of disputed evidentiary facts concerning the
6 proceeding,” where “in private practice he served as lawyer in the matter in controversy,” or
7 “has been a material witness concerning it.” *Id.* § 455(b); see *Pesnell v. Arsenault*, 543 F.3d
8 1038, 1043 (9th Cir. 2008); *U.S. v. Johnson*, 610 F.3d 1138, 1147 (9th Cir. 2010). A motion
9 under § 455 is addressed to, and must be decided by, the very judge whose impartiality is being
10 questioned.” *Bernard v. Coyne*, 31 F.3d 842, 843 (9th Cir. 1994).

11 Similarly, another federal statute provides that: “Whenever a party to any proceeding in
12 a district court makes and files a timely and sufficient affidavit that the judge before whom the
13 matter is pending has a personal bias or prejudice either against him or in favor of any adverse
14 party, such judge shall proceed no further therein, but another judge shall be assigned to hear
15 such proceeding.” 28 U.S.C. § 144. Section 144 also provides that “[t]he affidavit shall state
16 the facts and the reasons for the belief that bias and prejudice exists, . . . [and a] party may only
17 file one such affidavit in any case.” *United States v. Sibla*, 624 F.2d 864, 867 (9th Cir. 1980).
18 Section 144 expressly conditions relief upon the filing of a timely and legally sufficient
19 affidavit. *Id.* (citing *inter alia United States v. Azhocar*, 581 F.2d 735, 738-40 (9th Cir. 1978),
20 cert. denied 440 U.S. 907 (1979). “If the judge to whom a timely motion is directed determines
21 that the accompanying affidavit specifically alleges facts stating grounds for recusal under
22 section 144, the legal sufficiency of the affidavit has been established, and the motion must be
23 referred to another judge for a determination of its merits.” *Id.* (citing *Azhocar*, 581 F.2d at
24 738).

25 The substantive standard is “[W]hether a reasonable person with knowledge of all the
26 facts would conclude that the judge’s impartiality might reasonably be questioned.” *Pesnell*,
27 543 F.3d at 1043 (quoting *United States v. Hernandez*, 109 F.3d 1450, 1453 (9th Cir. 1997)).
28 However, the bias must arise from an extra-judicial source and cannot be based solely on

1 information gained in the course of the proceedings. Id. (citing Liteky v. United States, 510
2 U.S. 540, 554-56 (1994). “Judicial rulings alone almost never constitute a valid basis for a
3 bias or partiality motion.” In re Focus Media, Inc., 378 F.3d 916, 930 (9th Cir. 2004) (quoting
4 Liteky, 510 U.S. at 555). “In and of themselves . . . , they cannot possibly show reliance upon
5 an extrajudicial source; and can only in the rarest circumstances evidence the degree of
6 favoritism or antagonism required . . . when no extrajudicial source is involved.” Id.

7 Considering the allegations against Judge O’Neill, Plaintiff’s motion must be denied.
8 Plaintiff’s motion identifies no extra-judicial bias, prejudice, or favoritism toward any party.
9 Rather, Plaintiff takes issue with a series of rulings which largely, but not uniformly, deny him
10 the relief he has requested. Plaintiff’s disagreement with the court’s rulings is not a legitimate
11 ground for seeking disqualification. Those rulings are ordinary applications of the law.
12 Plaintiff’s motion falls well short of establishing any basis for disqualification.

13 **III. CONCLUSION**

14 Based on the foregoing, Plaintiff’s motion for disqualification of District Judge
15 Lawrence J. O’Neill from further participation in this case, filed on July 24, 2017, is DENIED.

16
17 IT IS SO ORDERED.

18 Dated: July 28, 2017

18 /s/ Lawrence J. O’Neill
19 UNITED STATES CHIEF DISTRICT JUDGE