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7 **UNITED STATES DISTRICT COURT**  
8 **EASTERN DISTRICT OF CALIFORNIA**  
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10 LYNALISA LAVENA STEVENS,

11 Plaintiff,

12 v.

13 JEFFREY A. BEARD, et al.,

14 Defendants.

Case No. 1:17-cv-01002-AWI-SAB (PC)

ORDER DENYING PLAINTIFF'S MOTION  
TO RECUSE MAGISTRATE JUDGE

(ECF No. 62)

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16 Plaintiff Lyralisa Lavena Stevens is proceeding pro se and in forma pauperis in this civil  
17 rights action filed pursuant to 42 U.S.C. § 1983.

18 Currently before the Court is Plaintiff's motion to recuse the undersigned Magistrate  
19 Judge pursuant to 28 U.S.C. § 455, filed March 8, 2023. Defendants did not file an opposition.

20 Federal law allows a judge to recuse from a matter based on a question of partiality:

21 Any justice, judge, or magistrate judge of the United States shall disqualify himself in  
22 any proceeding in which his impartiality might reasonably be questioned. He shall also  
23 disqualify himself ... [w]here he has a personal bias or prejudice concerning a party, or  
personal knowledge of disputed evidentiary facts concerning the proceeding....

24 28 U.S.C. 455(a), (b)(1).

25 A party may seek recusal of a judge based on bias or prejudice:

26 Whenever a party to any proceeding in a district court makes and files a timely and  
27 sufficient affidavit that the judge before whom the matter is pending has a personal bias  
or prejudice either against him or in favor of any adverse party, such judge shall proceed  
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1 no further therein, but another judge shall be assigned to hear such proceeding ... The  
2 affidavit shall state the facts and the reasons for the belief that bias or prejudice exists[.]

3 28 U.S.C. § 144.

4 Relief under Section 144 is conditioned upon the filing of a timely and legally sufficient  
5 affidavit. A judge who finds the affidavit legally sufficient must proceed no further  
6 under Section 144 and must assign a different judge to hear the matter. See 28 U.S.C. §  
7 144; United States v. Sibla, 624 F.2d 864, 867 (9th Cir. 1980). Nevertheless, where the affidavit  
8 lacks sufficiency, the judge at whom the motion is directed can determine the matter and  
9 deny recusal. See United States v. Scholl, 166 F.3d 964, 977 (9th Cir. 1999) (citing Toth v. Trans  
10 World Airlines, Inc., 862 F.2d 1381, 1388 (9th Cir. 1988) (holding that only after determining  
11 the legal sufficiency of a Section 144 affidavit is a judge obligated to reassign decision on merits  
12 to another judge)); United States v. \$292,888.04 in U.S. Currency, 54 F.3d 564, 566 (9th Cir.  
13 1995) (if the affidavit is legally insufficient, then recusal can be denied).

14 The standard for legal sufficiency under Sections 144 and 455 is “ ‘whether a reasonable  
15 person with knowledge of all the facts would conclude that the judge's impartiality might  
16 reasonably be questioned.’” Mayes v. Leipziger, 729 F.2d 605, 607 (9th Cir.  
17 1984) (quoting United States v. Nelson, 718 F.2d 315, 321 (9th Cir. 1983)); United States v.  
18 Studley, 783 F.2d 934, 939 (9th Cir. 1986). To provide adequate grounds for recusal, the  
19 prejudice must result from an extrajudicial source. Sibla, 624 F.2d 864, 869. A judge's previous  
20 adverse rulings alone are not sufficient for recusal. Nelson, 718 F.2d at 321.

21 Here, Plaintiff contends that the assigned Magistrate Judge “[r]efused to uphold the  
22 integrity and independence of the judiciary and that Magistrate Boone has refused to avoid  
23 impropriety and the appearance of impropriety in the authoring of his findings, which repeatedly  
24 contain Defamatory Libelous misgenderings [sic] of Plaintiff.” (ECF No. 62 at 1.) Plaintiff  
25 makes references a prior case in this Court in which Plaintiff was inadvertently referred twice as  
26 “he” instead of “she.” (ECF No. 62 at 2-3.) Plaintiff's motion for recusal in this case is  
27 substantively insufficient, as it alleges bias, prejudice and impartiality based on the  
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1 undersigned’s inadvertent typographical error in a prior case. Plaintiff’s motion for recusal fails  
2 to allege facts to support a contention that the undersigned has exhibited bias or prejudice  
3 directed towards Plaintiff from an extrajudicial source. Sibla, 624 F.2d at 868. Thus, Plaintiff  
4 does not provide a basis for recusal and the motion must be denied. See Liteky v. United States,  
5 510 U.S. 540, 555 (1994) (“[J]udicial rulings alone almost never constitute a valid basis for a  
6 bias or partiality motion.”); id. (“In and of themselves ... [judicial rulings] cannot possibly show  
7 reliance upon an extrajudicial source; and can only in the rarest circumstances evidence the  
8 degree of favoritism or antagonism required ... when no extrajudicial source is  
9 involved.”) Accordingly, Plaintiff’s motion for recusal (ECF No. 62) is denied.  
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11 IT IS SO ORDERED.

12 Dated: April 4, 2023

  
13 UNITED STATES MAGISTRATE JUDGE