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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BARRY LOUIS LAMON,

Plaintiff,

vs.

Civ. No. S-06-0156 KJM CKD P

DIRECTOR, CALIFORNIA  
DEPARTMENT OF CORRECTIONS  
AND REHABILITATION, et al.,

ORDER

Defendants.

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Plaintiff is a state prison inmate proceeding pro se with a civil rights action under 42 U.S.C. § 1983. He has filed a motion to disqualify the undersigned, a motion for a temporary restraining order, and a motion for the appointment of expert witnesses.

I. Motion To Disqualify And Motion To Reconsider (ECF Nos. 239 & 247)

Plaintiff has filed a motion to disqualify the undersigned under 28 U.S.C. § 455(b)(1) and a motion for reconsideration of an earlier order denying plaintiff's request that the undersigned recuse herself. He says he has filed a motion to reconsider an order adopting findings and recommendations that the undersigned issued as a magistrate judge and argues that the undersigned has issued orders that conflict with the Federal Rules of Civil Procedure and

1 established federal practice, to defendants' benefit. He notes he has asked the Chief Judge of  
2 this district to investigate his allegations.

3 Under 28 U.S.C. § 455(a), a judge must disqualify herself if her impartiality  
4 might reasonably be questioned; under 28 U.S.C. § 455(b)(1), disqualification is appropriate if  
5 the judge has a personal bias or prejudice against a party. The judge whom a party seeks to  
6 disqualify rules on the request. *Bernard v. Coyne (In re Bernard)*, 31 F.3d 842, 843 (9th Cir.  
7 1994).

8 Plaintiff bases his claim on several rulings issued by the undersigned while she  
9 was a magistrate judge. However, “[j]udicial rulings alone almost never constitute a valid basis  
10 for a bias or partiality motion.” *Liteky v. United States*, 510 U.S. 540, 555 (1994). While rulings  
11 may be proper grounds for appeal, they are an insufficient basis for recusal unless, “in the rarest  
12 circumstances [they] evidence the degree of favoritism or antagonism required. . . .” *Id.*

13 A judge’s opinions, formed during the course of the proceedings, similarly rarely  
14 show deep seated antagonism or favoritism, even if those remarks are “critical or disapproving  
15 of, or even hostile to, . . . the parties, or their cases.” *Id.*

16 To the extent plaintiff seeks disqualification of the undersigned based on rulings,  
17 he has not demonstrated that those rulings show deep-seated antagonism or favoritism or  
18 otherwise shown that this court will be unable to rule fairly on any issues remaining in the case.  
19 Moreover, the undersigned is unaware of any reason she cannot continue to be impartial in  
20 exercising her duties relating to this case. *See United States v. Holland*, 519 F.3d 909, 915 (9th  
21 Cir. 2009).

22 To the extent plaintiff suggests recusal is necessary because he is seeking  
23 reconsideration of the findings and recommendations the undersigned issued, the court notes that  
24 plaintiff’s challenge to the findings and recommendations granting in part and denying in part  
25 defendants’ motion for summary judgment has been stricken. ECF No. 250. Even if the

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1 challenge had not been stricken, however, plaintiff's request for reconsideration would not be a  
2 sufficient basis for recusal. *See Dawson v. Marshall*, 561 F.3d 930, 933-34 (9th Cir. 2009).

3 Finally, to the extent plaintiff suggests that his request for an investigation is a  
4 ground for disqualification, he is mistaken. *M&I Marshall & Ilsley Bank v. McGill*, 2011 WL  
5 2652569, at \*1 (D. Ariz. June 30, 2011) (citing *In re Mann*, 229 F.3d 657, 658-59 (7th Cir. 2000)  
6 (judicial complaint is not sufficient basis for disqualification because of possibility of  
7 manipulation)).

8 II. Motion For A Temporary Restraining Order (ECF No. 257)

9 Plaintiff's motion for a temporary restraining order exceeds the twenty-five page  
10 limitation imposed on plaintiff's filings. (ECF No. 134). It is stricken.

11 III. Motion For The Appointment Of Expert Witnesses (ECF No. 254)

12 Plaintiff seeks the appointment of expert witnesses in the fields of psychiatry, use  
13 of pepper-spray, and photography. He cites to Rules 702 and 706(a) of the Federal Rules of  
14 Evidence, but asks for experts to "testify on my behalf at trial." ECF No. 254 at 2.

15 To the extent plaintiff seeks the appointment of his own experts, the request is  
16 denied. The expenditure of public funds on behalf of an indigent litigant is proper only when  
17 authorized by Congress. *Tedder v. Odel*, 890 F.2d 210 (9th Cir. 1989). The in forma pauperis  
18 statute does not authorize the expenditure of public funds for expert witnesses. *See* 28 U.S.C.  
19 § 1915.

20 Rule 706 of the Federal Rules of Evidence gives the court the discretion to  
21 appoint experts. *Walker v. American Home Shield Long Term Disability Plan*, 180 F.3d 1065,  
22 1071 (9th Cir. 1999). Appointment may be appropriate when "scientific, technical, or other  
23 specialized knowledge will assist the trier of fact to understand the evidence or decide a fact in  
24 issue. . . ." *Ledford v. Sullivan*, 105 F.3d 354, 358-59 (7th Cir. 1997). As defendants have not  
25 responded to this motion, the court will address it at the trial confirmation hearing.

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1 IT IS THEREFORE ORDERED:

2 1. Plaintiff's motion for disqualification (ECF No. 247) and motion for  
3 reconsideration of an earlier denial of disqualification (ECF No. 239) are denied.

4 2. Plaintiff's motion for a temporary restraining order (ECF No. 257) is stricken.

5 3. The court will consider the motion for the appointment of experts (ECF No.  
6 254) at the trial confirmation hearing.

7 DATED: November 8, 2011.

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10 UNITED STATES DISTRICT JUDGE  
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