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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LAL DEV,

Plaintiff,

v.

PATRICK R. DONAHOE,
POSTMASTER GENERAL OF THE
UNITED STATES POSTAL SERVICE,

Defendant.

No. 11-cv-2950 JAM-EFB-PS

**ORDER DENYING PLAINTIFF'S MOTION
FOR RECONSIDERATION**

This matter is before the Court on Plaintiff Lal Dev's ("Plaintiff") Motion for Reconsideration by the District Court of the Magistrate Judge's Ruling (Doc. #134).¹ Defendant did not file an opposition. For the reasons set forth below, Plaintiff's motion is DENIED.

I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

Plaintiff filed this action on November 7, 2011, against

¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 303(e). No hearing was scheduled.

1 Patrick R. Donahoe, Postmaster General of the United States
2 Postal Service ("Defendant"). Plaintiff moved to disqualify the
3 Magistrate Judge in this action and in Plaintiff's related
4 action, Dev v. Donahoe, 2:12-cv-03026 JAM-EFB (Doc. #124). The
5 Magistrate Judge denied Plaintiff's motion (Doc. #130).

6
7 II. OPINION

8 A. Legal Standard

9 The standard for a Motion for Reconsideration is governed by
10 28 U.S.C. § 636(b) and Local Rule 303. The district court "may
11 reconsider any pretrial matter . . . where it has been shown that
12 the magistrate judge's order is clearly erroneous or contrary to
13 law." 28 U.S.C. § 363(b)(1)(A); E.D. Cal. L. R. 303(f). The
14 standard of review under § 636(b)(1)(A) is highly deferential;
15 see United States v. Abonce-Barrera, 257 F.3d 959, 968-69 (9th
16 Cir. 2001), and does not permit the reviewing court to substitute
17 its own judgment for that of the magistrate judge's. Grimes v.
18 City & County of San Francisco, 951 F.2d 236, 241 (9th Cir.
19 1991).

20 B. Discussion

21 Plaintiff seeks reconsideration of the Magistrate Judge's
22 order denying Plaintiff's motion to disqualify the Magistrate
23 Judge.

24 The applicable recusal statute, 28 U.S.C. § 455, provides
25 that "[a]ny justice, judge, or magistrate judge of the United
26 States shall disqualify himself in any proceeding in which his
27 impartiality might reasonably be questioned." 28 U.S.C. §
28 455(a). He shall also disqualify himself when he has "a personal

1 bias or prejudice concerning a party..." or "[w]here he has
2 served in governmental employment and in such capacity
3 participated as counsel, adviser or material witness concerning
4 the proceeding or expressed an opinion concerning the merits of
5 the particular case in controversy." Id. § 455(b)(1) and b(3).
6 Furthermore, under § 455, the alleged bias must stem from an
7 "extrajudicial source." Liteky v. United States, 510 U.S. 540,
8 551 (1994). "[O]pinions formed by the judge on the basis of
9 facts introduced or events occurring in the course of the current
10 proceedings, or of prior proceedings, do not constitute a basis
11 for a bias or partiality motion unless they display a deep-seated
12 favoritism or antagonism that would make fair judgment
13 impossible." Id. at 555.

14 Generally, Plaintiff contends that several of the Magistrate
15 Judge's rulings in this case demonstrate a bias in favor of
16 Defendant because Defendant's counsel is an Assistant U.S.
17 Attorney and the Magistrate Judge was formerly employed at the
18 U.S. Attorney's Office and therefore, the Magistrate Judge should
19 have recused himself under § 455(a), § 455(b)(1), and §
20 455(b)(3). See Mot. at 12-13. However, Plaintiff does not
21 allege that the Magistrate Judge had any actual participation in
22 this particular case while employed at the U.S. Attorney's
23 Office. Therefore, recusal is not warranted. See United States
24 v. Ruzzano, 247 F.3d 688, 695 (7th Cir. 2001) ("As applied to
25 judges who were former AUSAs, § 455(b)(3) requires some level of
26 actual participation in a case to trigger disqualification.")
27 (citations omitted). In addition, to the extent Plaintiff's
28 motion is based on his disagreement with various rulings made by

1 the Magistrate Judge, rulings in an action alone are insufficient
2 for recusal. Liteky, 510 U.S. at 555. Accordingly, Plaintiff
3 has not demonstrated that the Magistrate Judge's ruling is
4 "clearly erroneous or contrary to law."

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III. ORDER

For the reasons set forth above, the Court DENIES Plaintiff's Motion for Reconsideration of the Magistrate Judge's Ruling.

IT IS SO ORDERED.

Dated: November 6, 2013



JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE