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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

AARON LAMONT STRIBLING,  
Plaintiff,  
v.  
R. MOTT, et al.,  
Defendants.

No. 2:16-cv-0400 MCE CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Currently before the court is plaintiff’s motion for an extension of time and to disqualify the undersigned magistrate judge. (ECF No. 83.)

I. Motion for Extension of Time

By order filed August 29, 2018, the undersigned granted defendant Mott’s motion to compel and ordered plaintiff to provide supplemental responses to Mott’s Interrogatory Nos. 1-3 and Requests for Production Nos. 1-5 within thirty days of service of the order. (ECF No. 75 at 10.) Defendant Salz’ motion to compel was also granted, and plaintiff was ordered to fully respond to Salz’ requests for production and interrogatories without objection within thirty days. (Id. at 11.) Plaintiff then filed a motion for reconsideration (ECF No. 77), which the District Judge denied in an order filed October 16, 2018 (ECF No. 80).

Defendants Mott, Andrichuk, Bell-Sprinkle, Glenn, Johnson, Molina, Morrow, Murillo,

1 Schneider, and Terry<sup>1</sup> subsequently moved to modify the scheduling order to extend the  
2 dispositive motion deadline after plaintiff failed to provide supplemental responses. (ECF No.  
3 81.) Because of plaintiff's pro se status, the court assumed that he had believed that his  
4 obligation to provide discovery as ordered was stayed pending resolution of his motion for  
5 reconsideration. (ECF No. 82 at 2.) The court then extended plaintiff's deadline to provide  
6 discovery responses to thirty days after the service of the order denying his motion for  
7 reconsideration. (Id. at 2.) Defendants, including defendant Salz, were then given additional time  
8 to file any motions for sanctions based on plaintiff's continued failure to comply with the August  
9 29, 2018 order. (Id.)

10 Shortly before his deadline to submit supplemental discovery responses expired, plaintiff  
11 filed a motion for an extension of time in which he sought an additional ninety days to provide  
12 supplemental responses to defendants' discovery requests. (ECF No. 83.) In the motion, plaintiff  
13 claims that on June 21, 2018, he was transferred to California State Prison (CSP), Corcoran, and  
14 has been without access to all of his property since that time because it is still at CSP,  
15 Sacramento. (Id.) It appears that the transfer is intended to be temporary and that plaintiff will be  
16 sent back to CSP, Sacramento after his court proceedings are complete. (Id. at 4.) Defendants  
17 did not respond to the motion and instead filed motions for sanctions, neither of which address  
18 plaintiff's claim that he has been separated from his legal property since June 21, 2018. (ECF  
19 Nos. 84, 85.)

20 While plaintiff's claim that he has been separated from his property does not excuse him  
21 from timely responding to discovery requests to the best of his ability, it does raise serious  
22 concerns about his ability to fully respond to the requests, particularly those for documents.  
23 Accordingly, defendants will be required to address this claim.

## 24 II. Motion to Disqualify

25 Plaintiff's motion for an extension of time also included a motion to disqualify the  
26 undersigned. (ECF No. 83.) Said motion is properly before the undersigned, as the Ninth Circuit

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28 <sup>1</sup> Defendant Salz is represented by separate counsel and did not join in the motion.

1 has “held repeatedly that the challenged judge h[er]self should rule on the legal sufficiency of a  
2 recusal motion in the first instance.” United States v. Studley, 783 F.2d 934, 940 (9th Cir. 1986)  
3 (citing United States v. Azhocar, 581 F.2d 735, 738 (9th Cir. 1978)). If the affidavit is legally  
4 insufficient, then recusal can be denied. United States v. \$292,888.04 in U.S. Currency, 54 F.3d  
5 564, 566 (9th Cir. 1995).

6 “Whenever a party to any proceeding in a district court makes and files a timely and  
7 sufficient affidavit that the judge before whom the matter is pending has a personal bias or  
8 prejudice either against him or in favor of any adverse party, such judge shall proceed no further  
9 therein.” 28 U.S.C. § 144. “Any justice, judge, or magistrate judge of the United States shall  
10 disqualify himself in any proceeding in which his impartiality might reasonably be questioned.”  
11 28 U.S.C. § 455(a). Under both recusal statutes, the substantive standard is “whether a  
12 reasonable person with knowledge of all the facts would conclude that the judge’s impartiality  
13 might reasonably be questioned.” Studley, 783 F.2d at 939 (quoting Mayes v. Leipziger, 729  
14 F.2d 605, 607 (9th Cir. 1984) (internal quotations omitted)).

15 Plaintiff argues that the undersigned should be disqualified because the order granting  
16 defendants’ motion to modify the scheduling order (ECF No. 82), “bla[ta]ntly and bluntly showed  
17 prejudice against [him] insomuch to effect the whole outcome of this case. By persuading  
18 defendant on what legal action to take.” (Id. at 1.) He appears to believe that the undersigned’s  
19 extension of the time for defendants to file a motion for sanctions was a directive to defendants to  
20 file such a motion. (Id.)

21 Plaintiff’s allegation of bias is misplaced. Contrary to his assertion, the motion granting  
22 the order to amend the scheduling order did not direct or recommend that defendants file a motion  
23 for sanctions. (ECF No. 82.) Rather, the motion extended a deadline that was already in  
24 existence. (Id. at 2.) Furthermore, recusal “is required ‘only if the bias or prejudice stems from  
25 an extrajudicial source and not from conduct or rulings made during the course of the  
26 proceeding.’” Pau v. Yosemite Park & Curry Co., 928 F.2d 880, 885 (9th Cir. 1991) (quoting  
27 Toth v. TransWorld Airlines, 862 F.2d 1381, 1388 (9th Cir. 1988)).

28 Plaintiff’s allegation of bias is based on his misunderstanding of the undersigned’s

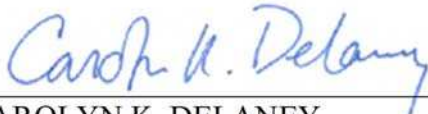
1 previous order and is legally insufficient to establish a reasonable question as to the undersigned's  
2 impartiality or that a bias or prejudice exists. The request for recusal will therefore be denied.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. Within fourteen days of the filing of this order, defendants shall respond to plaintiff's  
5 allegation that he has been separated from his property since June 21, 2018, thereby leaving him  
6 unable to respond to their discovery requests as ordered.

7 2. Plaintiff's motion for disqualification (ECF No. 83) is denied.

8 Dated: January 22, 2019

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11 CAROLYN K. DELANEY  
12 UNITED STATES MAGISTRATE JUDGE

13 13:stri0400.36.recuse

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