

1 **I. FACTUAL AND PROCEDURAL BACKGROUND**

2 Plaintiff, a state prisoner proceeding *pro se*, filed this civil rights action seeking relief
3 under 42 U.S.C. § 1983 on July 22, 2016. (ECF No. 1.)

4 On December 16, 2020, Plaintiff wrote a letter directed to the District Judge assigned to
5 this case, in which he argues the magistrate judge is biased against him and requests the
6 magistrate judge be recused/disqualified. (ECF No. 118.) The Court construes Plaintiff’s letter
7 as a Motion to Recuse/Disqualify. Additionally, because Plaintiff’s letter was directed to the
8 District Judge assigned to this case, the undersigned addresses Plaintiff’s filing rather than the
9 magistrate judge.

10 **II. STANDARD OF LAW**

11 Federal law provides that a party may seek recusal/disqualification of a judge based on
12 bias or prejudice.

13 Whenever a party to any proceeding in a district court makes and
14 files a timely and sufficient affidavit that the judge before whom the
15 matter is pending has a personal bias or prejudice either against him
or in favor of any adverse party, such judge shall proceed no further
therein, but another judge shall be assigned to hear such proceeding.

16 The affidavit shall state the facts and the reasons for the belief that
17 bias or prejudice exists, and shall be filed not less than ten days
18 before the beginning of the term at which the proceeding is to be
19 heard, or good cause shall be shown for failure to file it within such
time. A party may file only one such affidavit in any case. It shall be
accompanied by a certificate of counsel of record stating that it is
made in good faith.

20 28 U.S.C. § 144.

21 The standard for recusal under 28 U.S.C. § 144 (“§ 144”) is “whether a reasonable person
22 with knowledge of all the facts would conclude that the judge’s impartiality might reasonably be
23 questioned.” *Mayes v. Leipziger*, 729 F.2d 605, 607 (9th Cir. 1984) (quoting *United States v.*
24 *Nelson*, 718 F.2d 315, 321 (9th Cir. 1983)). To provide adequate grounds for recusal, the
25 prejudice must result from an extrajudicial source. *See id.* “[J]udicial rulings alone almost never
26 constitute a valid basis for a bias or partiality motion.” *Liteky v. United States*, 510 U.S. 540, 555
27 (1994). Instead, the judicial rulings are a basis for appeal, not recusal. *See id.* (“In and of
28 themselves . . . [judicial rulings] cannot possibly show reliance upon an extrajudicial source; and

1 can only in the rarest circumstances evidence the degree of favoritism or antagonism required . . .
2 when no extrajudicial source is involved. Almost invariably, they are proper grounds for appeal,
3 not for recusal.”); *Leslie v. Grupo ICA*, 198 F.3d 1152, 1160 (9th Cir. 1999) (“Leslie’s allegations
4 stem entirely from the district judge’s adverse rulings. That is not an adequate basis for recusal.”)
5 (citations omitted). Further, § 144 expressly conditions relief upon the filing of a timely and
6 legally sufficient affidavit. *See* 28 U.S.C. § 144. If the affidavit is legally insufficient, then
7 recusal can be denied. *See United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 566 (9th
8 Cir. 1995).

9 III. ANALYSIS

10 Plaintiff did not file a formal affidavit as required under § 144. However, even if the
11 Court construes Plaintiff’s letter as an affidavit, Plaintiff’s letter is substantively insufficient
12 under § 144 because it fails to allege facts that would support the contention that the assigned
13 magistrate judge has exhibited bias or prejudice directed towards Plaintiff from an extrajudicial
14 source. *See Sibla*, 624 F.2d at 868 (“An affidavit filed pursuant to [§ 144] is not legally sufficient
15 unless it specifically alleges facts that fairly support the contention that the judge exhibits bias or
16 prejudice directed toward a party that stems from an extrajudicial source.”).

17 Plaintiff’s letter/motion alleges bias by the magistrate judge based on the magistrate
18 judge’s adverse rulings against Plaintiff as well as the purported manner in which the magistrate
19 judge has handled Plaintiff’s case. (ECF No. 118.) More specifically, Plaintiff claims — without
20 any examples — the magistrate judge exhibited bias against him because he has denied motions
21 filed by Plaintiff in which Plaintiff filed no reply and the magistrate judge has never ordered
22 Plaintiff to respond or reply to any defense pleading. (*See id.*) However, the Court finds
23 Plaintiff’s argument is unavailing.

24 Local Rule 230(l) provides:

25 **Motions in Prisoner Actions.** All motions, except motions to
26 dismiss for lack of prosecution, filed in actions wherein one party is
27 incarcerated and proceeding in propria persona, shall be submitted
28 upon the record without oral argument unless otherwise ordered by
the Court. Such motions need not be noticed on the motion calendar.
Opposition, if any, to the granting of the motion shall be served and
filed by the responding party not more than twenty-one (21) days

1 after the date of service of the motion. A responding party who has
2 no opposition to the granting of the motion shall serve and file a
3 statement to that effect, specifically designating the motion in
4 question. Failure of the responding party to file an opposition or to
5 file a statement of no opposition may be deemed a waiver of any
6 opposition to the granting of the motion and may result in the
7 imposition of sanctions. The moving party may, not more than seven
8 (7) days after the opposition has been filed in CM/ECF, serve and
9 file a reply to the opposition. All such motions will be deemed
10 submitted when the time to reply has expired.

11 E.D. Cal. L.R. 230(l). On February 21, 2018, at the inception of this litigation, the magistrate
12 judge ordered that:

13 Unless otherwise ordered, all motions to dismiss, motions for
14 summary judgment, motions concerning discovery, motions
15 pursuant to Fed. R. Civ. P. 7, 11, 12, 15, 41, 55, 56, 59 and 60, and
16 E.D. Cal. R. 110, shall be briefed pursuant to L.R. 230(l). Failure to
17 timely oppose such a motion may be deemed a waiver of opposition
18 to the motion. See L.R. 230(l). Opposition to all other motions need
19 be filed only as directed by the court.

20 (ECF No. 28 at 3.) Based on this Court's Local Rules, Plaintiff may file a reply to any
21 opposition; no order of the Court is required. (*See id.*); *see also* E.D. Cal. L.R. 230(l). Further, as
22 explained in the February 21, 2018 Order, some motions and requests are addressed by the Court
23 *sua sponte*, without the need for oppositional briefing. (ECF No. 28 at 2.) In light of the Local
24 Rules, which are plainly available to Plaintiff, as well as the magistrate judge's additional
25 instructions to Plaintiff regarding Local Rule 230, the Court finds Plaintiff's generalized
26 complaint about the process for filing oppositional and reply briefings does not demonstrate bias
27 on the part of the magistrate judge. Furthermore, none of the issues raised by Plaintiff in his letter
28 identify any "extrajudicial source" from which the alleged bias might result. *Liteky*, 510 U.S. at
555. Accordingly, Plaintiff fails to raise any proper grounds for recusal/disqualification of the
magistrate judge.

24 IV. CONCLUSION

25 For the foregoing reasons, Plaintiff's Motion to Recuse/Disqualify the Magistrate Judge
26 (ECF No. 118) is hereby DENIED.

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IT IS SO ORDERED.

DATED: February 15, 2021



Troy L. Nunley
United States District Judge