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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA  
6 EUREKA DIVISION  
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8 ALICE BROWN,  
9 Plaintiff,

10 v.

11 NATIONAL PARK RANGER JOEL  
12 LEACHMAN, et al.,  
13 Defendants.

Case No. 16-cv-07235-RMI

**ORDER ON MOTION FOR  
DISQUALIFICATION**

Re: Dkt. No. 70

14 This case was remanded by the Court of Appeals for two purposes. First, the appellate  
15 court directed the undersigned to transfer the case such that a district judge could decide whether  
16 or not Plaintiff should have been permitted to withdraw her consent to proceed before a magistrate  
17 judge; and, second, if the district judge were to deny Plaintiff's motion to withdraw her consent,  
18 then the case would once again be assigned to the undersigned for the articulation of reasons for a  
19 prior denial of Plaintiff's disqualification motion. *See Mem. Op.* (dkt. 110) at 3. In December of  
20 2020, the undersigned entered an order directing the Clerk of Court to reassign the case to a  
21 district judge such as to effectuate the appellate court's mandate (dkt. 113). On February 10, 2021,  
22 Judge Illston denied Plaintiff's motion to withdraw her consent (dkt. 123), and the case was once  
23 again assigned to the undersigned for all further proceedings (dkt. 124). Pursuant to the mandate  
24 on remand, and for the following reasons, Plaintiff's motion seeking the disqualification of the  
25 undersigned is denied.

26 **PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

27 In December of 2016, Plaintiff filed suit against a number of federal and state law  
28 enforcement officials based on a series of events that culminated in Plaintiff's arrest and a search

1 of her van on National Park property. *See generally* Amend. Compl. (dkt. 45). After granting  
 2 Defendants’ summary judgment motions (see *Order of Dismissal* (dkt. 78) at 45), and the entry  
 3 judgment (dkt. 79), Plaintiff appealed (dkt. 84). Thereafter, the case was remanded for the above-  
 4 described reasons. *See Mem. Op.* (dkt. 110) at 3. Further, after remand, a comprehensive  
 5 settlement agreement resulted in the stipulated dismissal of the County of Del Norte, Robert  
 6 Clarkson, Neal Oilar, Adam Daniels, Grant Henderson, Dean Wilson and Erik Apperson (“the  
 7 County Defendants”). *See Order of December 16, 2020* (dkt. 118) at 3. The case remains pending  
 8 as to the four individually-named National Park Rangers, Joel Leachman, David Keltner, Robert  
 9 Toler, and Gregory Morse (“the Federal Defendants”). *See Order of Dismissal* (dkt. 78) at 3; *see*  
 10 *also* Amend. Compl. (dkt. 45) at 2-4.

11 On December 5, 2017, the undersigned conducted a case management conference at which  
 12 Plaintiff appeared *pro se*, and the County and Federal Defendants appeared through their  
 13 respective counsel (dkt. 51). In advance of the conference, the Parties had prepared and filed their  
 14 Joint Case Management Statement which included Plaintiff’s hand-written portion constituting her  
 15 statement of the case. *See* Joint CMC Statement (dkt. 50) at 3-4. Plaintiff’s portion of the joint  
 16 statement was replete with hyperbolic and inflammatory statements; by way of example, in  
 17 describing the fact that she was sleeping in her van in the parking lot of a visitors’ center for the  
 18 Redwoods State and National Park, Plaintiff described it as “a parking lot in an almost all white  
 19 racist county, Del Norte County [California].” *Id.* at 3. Further, Plaintiff’s commentary and  
 20 hyperbole had managed to transgress well beyond her portion of the joint statement and had  
 21 encroached into the Federal Defendants’ portion. *See id.* at 5. In essence, Plaintiff had decided that  
 22 she was not content with merely authoring her own portion of this joint statement, instead, she  
 23 chose to also annotate the Federal Defendants’ portion by using an ink pen to strike through  
 24 portions of the Federal Defendants’ typed text while adding several handwritten statements of a  
 25 vituperative and disparaging nature in labeling various statements as lies and frauds upon the  
 26 court. *Id.*

27 At the subsequent case management conference, the court addressed a number of ordinary  
 28 and unremarkable scheduling matters and case management issues. *See generally* Tr. (dkt. 108) at

1 2-19. Initially, the court noted that Defendants intended to file motions for summary judgment  
2 following the scheduling of Plaintiff's deposition (which counsel for the County Defendants had  
3 scheduled for December 18, 2017); and, after a bit of discussion with Plaintiff and counsel for  
4 Defendants, the court modified the timetable for Plaintiff's deposition at her request such as to  
5 accommodate Plaintiff's birthday plans. *Id.* at 3-7. Next, the court addressed issues relating to the  
6 timetable and form of the forthcoming motions practice such as to address and accommodate the  
7 preferences and requests of all involved, including Plaintiff. *Id.* at 7-10. After which, the following  
8 exchange took place:

9 THE COURT: . . . Let's talk about other things within the Case  
10 Management Conference Statement. Ms. Brown, I wanted to say I  
11 appreciate you working with Defendants in getting this done, and for  
12 talking with Mr. Vrieze about getting depositions done, and for  
13 paying attention to the rules to know when to do things. I do  
14 appreciate that. I did want to caution you, in the joint case  
15 management conference [statement], you crossed through some  
16 things and said, lie, lie, this is a lie, fraud upon the court. I understand,  
17 you know, this is an emotional issue regarding the distress you allege  
18 in this case, but you need to just be careful of accusing officers of the  
19 court of fraud upon the court, okay? And, you know, this is a federal  
20 case, so we need to just be careful with our words regarding the other  
21 parties. I will make sure that they treat you with respect, and I want  
22 to make sure you give them respect, too, okay. Do you understand?

23 PLAINTIFF: Yes.

24 THE COURT: All right. Do you have any questions about that?

25 PLAINTIFF: Well, I just feel that the evidence that I had proves  
26 there's a fraud upon the court. That's why I confidently wrote the  
27 words, "FRAUD UPON THE COURT."

28 THE COURT: I understand. I understand. But you'll have an  
opportunity to present that to a jury who will make a decision about  
that evidence. But, in the meantime, even when attorneys are - -  
greatly disagree with each other, they still are required to treat each  
other with respect and not accuse each other of lying and fraud. And  
so you're acting as your own attorney here, so you have to act as  
though you, too, have the same decorum as the attorneys would  
towards each other. Okay? That's all.

PLAINTIFF: I understood I was going to sign this document, so I  
didn't want to sign a document full of lies and fraud upon the court.  
So, that's why I initialed it as well with my initials to make sure I'm  
not signing lies and fraud upon the court.

THE COURT: And I appreciate that, and I appreciate again the  
continued effort to work together with them. I just want to make sure

1 that as we move forward, we keep that spirit of cooperation going  
forward. That way the case will go more quickly and reach resolution.

2 *Id.* at 10-12.

3 With that, all involved moved on to the discussion of other subjects such as accommodating  
4 Plaintiff's request for access to the electronic docket of the case without the payment of fees, and  
5 the preparation of a joint statement of stipulated facts for the forthcoming motions for summary  
6 judgment. *Id.* at 12-17. Following this, Plaintiff made an oral motion to withdraw her consent to  
7 proceed before a magistrate judge due to her anecdotal description of an experience before a state  
8 court judge in another matter, which she considered to have constituted a bad experience. *Id.* at  
9 18-19. That request was denied. *Id.* at 19.

10 A little more than four months later, on April 9, 2018, Plaintiff filed a written motion  
11 seeking disqualification of the undersigned pursuant to 28 U.S.C. § 455(a). *See* Pl.'s Mot. (dkt. 70)  
12 at 1, 9. The motion was entirely based on the above-recited exchange that had taken place during  
13 the case management conference in December of 2017, and began with Plaintiff stating that "[o]n  
14 December 5, 2017, I, Alice Brown, Plaintiff in this matter[,] observed Magistrate Judge Robert M.  
15 Illman acting in a manner that showed bias and partiality that constituted serious improprieties."  
16 *Id.* at 3. The essence of the motion is embodied in Plaintiff's prefatory statement to the effect that:  
17 "Magistrate Judge Robert M. Illman, hereinafter referred to as 'you,' spent several minutes  
18 reprimanding me or rather scolding me for drawing a line through sentences and writing 'Lie!'  
19 'Lie!' and 'This is a Lie & Fraud Upon the Court!!!' on a document . . . that I didn't even file . . .  
20 [y]ou knew damn well that Defendants' attorney John Vrieze had filed that document . . . not me!"  
21 *Id.* Plaintiff went on to add that "the unjustified and unsolicited scolding that I received from you  
22 clearly shows that you are utterly intolerant of me . . . Your blatant disregard for the truth is  
23 alarming to me and [to] any reasonable person . . . I believe [that] your treatment of me was meant  
24 to intimidate me so that I would not be inclined to expose the false statements and fraud upon the  
25 court made by John Vrieze and other Defendants in the past, present, and future. But allowing lies,  
26 false statements, and fraud upon the court is against my religion in that I am directed by my God  
27 to actively oppose evil and God himself considers liars to be evil. Therefore, you are violating my  
28 constitutional rights to practice my religion, as a Christian, in everything I say and everything I do

1 on a daily basis. And that’s wrong!” *Id.* at 4-5. Beyond this, Plaintiff’s motion contains little, if  
2 any, substance. *See id.* at 6-12. For example, Plaintiff exerts significant energy in faulting the court  
3 for attempting to accommodate her birthday plans in the scheduling of her deposition due to her  
4 irrelevant contention to the effect that no such “sua sponte order in open court” to schedule her  
5 deposition was necessary because she had never refused to be deposed (characterizing that as yet  
6 another lie by counsel for the County Defendants), which was described by Plaintiff as such: “He  
7 lied and you chose to believe him!” *Id.* at 6. In this vein, Plaintiff’s motion pontificated that “[y]ou  
8 had no business involving yourself as ‘the court’ in the discovery process between me and my  
9 Defendants. You had no business issuing a sua sponte order because there was no dispute  
10 regarding deposition.” *Id.* Plaintiff also complains that she was subjected to “unfair scheduling  
11 orders and requirement,” noting that “you failed to or refused to set a trial date or refer to ADR.”  
12 *Id.* at 7-8. Lastly, Plaintiff attached a declaration to her motion, which simply repeated a handful  
13 of the above-described contentions, and which concluded with the following profanity-laced  
14 statement: “With me being black race, I truly believed that you showed prejudice that day and you  
15 made me believe that you have the same thought process regarding black people that Mark  
16 Fuhrman does, ‘First thing out of a, any [\*]’s mouth for the first five or six sentences is a [\*] lie.”  
17 *Id.* at 15 (profanity omitted).

### 18 DISCUSSION

19 There are two deferral statutes that address standards for recusal: 28 U.S.C. §§ 144 and  
20 455. Generally speaking, a judge is required to recuse if he or she has a personal bias or prejudice  
21 against a party. *Gonzales v. Parks*, 830 F.2d 1033, 1037 (9th Cir. 1987). A motion to disqualify  
22 under § 144 requires the party to file a legally sufficient affidavit alleging facts supporting the  
23 claim that the judge is biased or prejudiced against that party. *See United States v. Sibra*, 624 F.2d  
24 864, 867 (9th Cir. 1980). If the affidavit is legally insufficient or unsupported by a factual basis,  
25 the court must deny the motion. *Id.* at 868. In this case, Plaintiff did not reference § 144 or submit  
26 a § 144 affidavit, Plaintiff’s motion seeking disqualification is expressly based on § 455(a). *See*  
27 Pl.’s Mot. (dkt. 70) at 1, 9. Accordingly, the court will address Plaintiff’s contentions under § 455.

28 In any event, “[t]he substantive standard for recusal under 28 U.S.C. § 144 and 28 U.S.C. §

1 455 is the same: Whether a reasonable person with knowledge of all the facts would conclude that  
 2 the judge’s impartiality might reasonably be questioned.” *United States v. McTiernan*, 695 F.3d  
 3 882, 891 (9th Cir. 2012) (quoting *United States v. Hernandez*, 109 F.3d 1450, 1453 (9th Cir. 1997)  
 4 (*per curiam*)); *see also Sibla*, 624 F.2d at 867 (“The test for personal bias or prejudice in section  
 5 144 is identical to that in section 455(b)(1), and the decisions interpreting this language in section  
 6 144 are controlling in the interpretation of section 455(b)(1)”). For present purposes, it is  
 7 important to note that, “[t]he ‘reasonable person’ in this context means a ‘well-informed,  
 8 thoughtful observer,’ as opposed to a ‘hypersensitive or unduly suspicious person.’” *Clemens v.*  
 9 *United States Dist. Court*, 428 F.3d 1175, 1178 (9th Cir. 2005) (quoting *In re Mason*, 916 F.2d  
 10 384, 385 (7th Cir. 1990)). Further, as explained by the Supreme Court in *Liteky v. United States*,  
 11 510 U.S. 540 (1994), “judicial rulings alone almost never constitute a valid basis for a bias or  
 12 partiality motion.” *Id.* at 555. The *Litekey* Court explained that, “[i]n and of themselves (i.e., apart  
 13 from surrounding comments or accompanying opinion), [judicial rulings alone] cannot possibly  
 14 show reliance upon an extrajudicial source; and can only in the rarest circumstances evidence the  
 15 degree of favoritism or antagonism required (as discussed below) when no extrajudicial source is  
 16 involved.” *Id.* Thus, while judicial rulings are almost invariably proper grounds for an appeal, they  
 17 rarely constitute, by themselves, a proper basis for recusal. *Id.* Additionally, the opinions formed  
 18 by a judge on the basis of events occurring in the course of the proceedings likewise do not  
 19 constitute a basis for a bias or partiality motion except when they display “a deep-seated  
 20 favoritism or antagonism that would make fair judgment impossible.” *Id.*

21 Accordingly, “judicial remarks during the course of a trial that are critical or disapproving  
 22 of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or  
 23 partiality challenge.” *Id.* However, such remarks may support such a motion “if they reveal an  
 24 opinion that derives from an extrajudicial source; and they will do so if they reveal such a high  
 25 degree of favoritism or antagonism as to make fair judgment impossible.” *Id.* By way of example,  
 26 the *Litekey* Court cited to *Berger v. United States*, 255 U.S. 22 (1921), a World War I espionage  
 27 case against German-American defendants wherein the trial judge had remarked to the following  
 28 effect: ““One must have a very judicial mind, indeed, not [to be] prejudiced against the German

1 Americans’ because their ‘hearts are reeking with disloyalty.’” *Liteky*, 510 U.S. at 555 (quoting  
2 *Berger*, 255 U.S. at 28). In this regard, the Court elaborated further that “expressions of  
3 impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what  
4 imperfect men and women, even after having been confirmed as federal judges, sometimes  
5 display,” are not suitable bases for recusal or disqualification motions. *Liteky*, 510 U.S. at 555-56.  
6 Lastly, it should not go without mention that “[a] judge’s ordinary efforts at courtroom  
7 administration – even a stern and short-tempered judge’s ordinary efforts at courtroom  
8 administration – remain immune.” *Id.* at 556.

9 Under these standards, Plaintiff’s motion is baseless. Indeed, the motion is patently  
10 frivolous. Plaintiff’s unwarranted dissatisfaction with this court’s “ordinary efforts at courtroom  
11 administration” is not a suitable basis for a disqualification motion. The mundane and  
12 unremarkable exchange that took place on the record at the case management conference in  
13 December of 2017 (quoted above) was nothing more than an even-tempered and gentle approach  
14 to explaining the court’s interest in maintaining a measure of decorum. The fact that the exchange  
15 was nothing more than an ordinary effort at courtroom administration is objectively manifest in  
16 the fact that Plaintiff voiced none of the protestations or displeasure expressed in her motion at the  
17 hearing itself. Indeed, when she was asked if she understood the court’s desire to maintain a  
18 measure of decorum, Plaintiff answered in the affirmative. While Plaintiff made an oral motion to  
19 withdraw her consent to proceed before a magistrate judge during the case management  
20 conference, she did not make any mention whatsoever along the lines of any of the contentions  
21 presented in her disqualification motion. Neither did Plaintiff express any such objection or  
22 displeasure in the immediate aftermath of the case management conference. Instead, more than  
23 four months later (that is, *after* the court denied her motion to appoint counsel (dkt. 55), and *after*  
24 the dismissal of her unsuccessful attempt at an interlocutory appeal (dkt. 67) of that order),  
25 Plaintiff appears to have worked herself up to an unfounded and perplexing degree of anger such  
26 that her memory of the case management conference itself appears to have become profoundly  
27 confused to the point where the contentions in her disqualification motion are totally unrelated to  
28 and untethered from the events of the case management conference. In short, because the

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contentions in Plaintiff’s disqualification motion appear to have been fabricated from whole cloth and because they have no basis in reality, her motion for disqualification is **DENIED**.

**IT IS SO ORDERED.**

Dated: March 4, 2021



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ROBERT M. ILLMAN  
United States Magistrate Judge