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2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4 OAKLAND DIVISION
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6 FRESENIUS MEDICAL CARE HOLDINGS,
7 INC., a New York corporation; and FRESENIUS
8 USA, INC., a Massachusetts corporation,

9 Plaintiffs and Counter-Defendants,

10 v.

11 BAXTER INTERNATIONAL, INC., a
12 Delaware corporation; and BAXTER
13 HEALTHCARE CORPORATION, a
14 Delaware corporation,

15 Defendants and Counterclaimants.

Case No: C 03-1431 SBA

ORDER OF RECUSAL

16 A district court judge has the authority to *sua sponte* recuse him or herself from an action
17 under 28 U.S.C. § 455. See United States v. Holland, 519 F.3d 909, 913 (9th Cir. 2008). Section
18 455(a) provides that: “Any justice, judge, or magistrate judge of the United States shall disqualify
19 himself in any proceeding in which his impartiality might reasonably be questioned.” 28 U.S.C.
20 § 455(a). The potential for the appearance of impartiality may be based on facts germane to the
21 judge’s staff, including her law clerks. See Hamid v. Price Waterhouse, 51 F.3d 1411, 1416 (9th
22 Cir. 1995) (“Even if the judge has no reason to recuse herself based upon her own circumstances, a
23 law clerk’s relationships might cause the impartiality of decisions from that judge’s chambers in
24 which the clerk participates reasonably to be questioned.”).

25 In the instant case, an attorney previously involved in this case has joined the Court’s
26 chambers as a law clerk. Although his involvement in the case has ended, he is still listed in ECF
27 as counsel of record. The law clerk has had no involvement in the action since his arrival, and
28 while his prior employment has no bearing on this Court’s ability to preside over the case in a fair
and impartial manner, the law clerk’s prior role could create the *appearance* of impartiality.

1 Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 860 (1988) (“The goal of section
2 455(a) is to avoid even the appearance of partiality.”) (internal quotation marks omitted). For these
3 reasons, the undersigned RECUSES herself from the instant proceedings and directs the Clerk of
4 the Court to reassign this case to another judge for all further proceedings forthwith.

5 IT IS SO ORDERED.

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7 Dated: February 16, 2010


SAUNDRA BROWN ARMSTRONG
United States District Judge

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