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2 UNITED STATES DISTRICT COURT  
3 NORTHERN DISTRICT OF CALIFORNIA  
4

5 WANGXIA LIAO,

6 Plaintiff,

No. C 08-2776 PJH

7 v.

**ORDER**

8 JOHN ASHCROFT, et al.,

9 Defendants.  
10 \_\_\_\_\_/

11 Before the court are four motions filed by plaintiff Wanxia Liao in the above-entitled  
12 action. Having read and considered plaintiff's papers, the court hereby rules as follows.

13 1. Plaintiff's motion for an order shortening time to hear the motion to stay  
14 proceedings is DENIED. The motion does not comply with Civil Local Rule 6-3. In  
15 addition, in light of the rulings below, plaintiff's motion to stay proceedings is DENIED as  
16 moot.

17 2. Plaintiff's motion for investigation of changes in the docket is DENIED. As the  
18 court explained in its Order of Dismissal, filed March 11, 2009, the notation on the docket  
19 that California Deputy Attorney General Kay Yu had filed a declination on behalf of John  
20 Ashcroft was a clerical error. In addition, it is the filed document that controls, not the  
21 docket entry, and the filed document makes no mention of John Ashcroft.

22 The court notes further that plaintiff named Ms. Yu as a defendant in the present  
23 action, asserting claims based on Ms. Yu's representation (as a Deputy California Attorney  
24 General) of California defendants in a prior lawsuit filed by plaintiff; and also named former  
25 Attorney General of the United States John Ashcroft as a defendant. Plaintiff is chargeable  
26 with the knowledge that Ms. Yu is a Deputy Attorney General of the State of California, who  
27 could not at any time have been representing a former United States Attorney General in  
28 an action based on actions taken while he held that position.

1           3.     Plaintiff’s Rule 60(b) motion for relief from the court’s orders of March 11,  
2 2009, is DENIED. The three orders at issue are the interlocutory orders – the order  
3 granting defendant CNN’s motion to dismiss, with leave to amend; the order dismissing 19  
4 defendants for failure to comply with court orders mandating the filing of proofs of service of  
5 the summons and complaint; and the order denying plaintiff’s request for relief from  
6 General Order 45.

7           Rule 60(b) does not provide relief from judgments, orders, or proceedings that are  
8 not final decisions within the meaning of 28 U.S.C. § 1291, which generally cannot be  
9 appealed immediately. See School Dist. No. 5 v. Lundgren, 259 F.2d 101, 104 (9th Cir.  
10 1958); see also United States v. Martin, 226 F.3d 1042, 1048 n.8 (9th Cir. 2000) (Rule  
11 60(b) . . . applies only to motions attacking final, appealable orders”).

12           The addition of the qualifying word ‘final’ emphasizes the character of the  
13 judgments, orders or proceedings from which Rule 60(b) affords relief; and  
14 hence interlocutory judgments are not brought within the restrictions of the  
15 rule, but rather they are left subject to the complete power of the court  
16 rendering them to afford such relief from them as justice requires.

17           Fed. R. Civ. P. 60(b), Advisory Committee Notes, 1946 Amendment.

18           Nevertheless, the trial court has the inherent power to reconsider, set aside, or  
19 amend interlocutory orders at any time prior to entry of a final judgment. Lundgren, 259  
20 F.2d at 104. In this judicial district, Civil Local Rule 7-9 provides a procedure whereby a  
21 litigant dissatisfied with an interlocutory ruling may seek leave to file a motion for  
22 reconsideration in this court. However, “[n]o party may notice a motion for reconsideration  
23 without first obtaining leave of Court to file the motion.” Civ. L.R. 7-9(a).

24           Accordingly, because plaintiff’s motion is not properly brought under Rule 60(b), and  
25 because plaintiff did not seek leave of court to file a motion for reconsideration, the motion  
26 must be DENIED.

27           4.     Plaintiff’s motion to recuse the undersigned is DENIED. Plaintiff bases her  
28 motion on 28 U.S.C. § 144, which provides:

Whenever a party to any proceeding in a district court makes and files a  
timely and sufficient affidavit that the judge before whom the matter is

1 pending has a personal bias or prejudice either against him or in favor of any  
2 adverse party, such judge shall proceed no further therein, but another judge  
shall be assigned to hear such proceeding.

3 28 U.S.C. § 144. The judge against whom a disqualification motion is brought may pass on  
4 its sufficiency. Berger v. United States, 255 U.S. 22, 32-33 (1921). To be sufficient, the  
5 motion must state facts which, if true, fairly support the allegation of bias or prejudice which  
6 stems from an extrajudicial source and which may prevent a fair decision. See United  
7 States v. Azhocar, 581 F.2d 735, 740-41 (1978).

8 The Court DENIES plaintiff's motion to disqualify, because she has not shown that  
9 the undersigned bears a a deep-seated favoritism or antagonism that would make fair  
10 judgment impossible. See Liteky v. United States, 510 U.S. 540, 555 (1994). Not every  
11 bias or prejudice against a party will support recusal under § 144, see id. at 550-52, as  
12 plaintiff was clearly advised in the December 19, 2008 order denying her previous motion to  
13 disqualify Judge Armstrong from presiding over this action.

14 Plaintiff's grievance relates generally to adverse rulings by this Court and her  
15 perception that she is being treated unfairly. In her affidavit, plaintiff asserts that the  
16 undesigned "directly participated in a conspiracy with Defendants of my case and Judge  
17 Saundra Brown Armstrong to create 'procedural defects' such as 'lack of service' through  
18 fraud, deceit, violations of due process and discriminatory treatment to my case to dismiss  
19 by Complaint with prejudice." Plaintiff makes three specific assertions of bias, but none of  
20 these provides grounds for which a request for recusal could be granted.

21 First, she claims that the "unlawful alteration" of the docket caused her failure to  
22 serve John Ashcroft, and that the purpose of the "conspiracy" among the undersigned and  
23 the defendants was "to create 'lack of service of process' on Ashcroft." The court has  
24 already addressed this issue, above, and in the March 11, 2009, Order of Dismissal.

25 Second, plaintiff asserts that the court's order conditioning the granting of plaintiff's  
26 request to file documents through the court's Electronic Case Filing ("ECF") system on  
27 plaintiff's agreeing in writing to comply with all rules and orders of the court constituted  
28 discrimination against her as a pro se plaintiff because the court does not require this same

1 assurance of attorneys who are provided access to ECF as a matter of right. This  
2 requirement – which is imposed on every pro se plaintiff who requests leave to file  
3 documents through the ECF system – does not provide evidence of bias. The court is fully  
4 within its rights to require compliance with court rules and orders.

5 Plaintiff's third argument is that the undersigned "fraudulently misrepresented the  
6 service rule of California Code of Civil Procedures [sic]" in the March 11, 2009 Order of  
7 Dismissal. Adverse judicial rulings alone almost never constitute a valid basis for a bias or  
8 partiality motion. Id. at 555-56; see also Berger, 255 U.S. at 34 (adverse rulings alone  
9 cannot constitute the necessary showing of bias or prejudice).

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11 **IT IS SO ORDERED.**

12 Dated: April 16, 2009



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PHYLLIS J. HAMILTON  
United States District Judge

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