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3 UNITED STATES DISTRICT COURT  
4 NORTHERN DISTRICT OF CALIFORNIA  
56  
7 ELSA MALDONADO, et al.,  
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9 Plaintiffs,

No. C 09-0470 PJH

10 v.

**ORDER DENYING PLAINTIFFS'  
MOTION TO DISQUALIFY**11 CITY OF SAN LEANDRO, et al.,  
12Defendants.  
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14 Before the court is pro se plaintiffs Elsa Maldonado's and Rene Maldonado's motion  
15 to disqualify the undersigned judge pursuant to 28 United States Code §§ 144 and 455. 28  
16 U.S.C. § 144 provides for recusal in situations where "the judge before whom [a] matter is  
17 pending has a personal bias or prejudice either [a party] or in favor of any adverse party."  
18 Section 455, by contrast, mandates that a judge "shall disqualify himself in any proceeding  
19 in which his impartiality might reasonably be questioned;" or "[w]here he has a personal  
20 bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts  
21 concerning the proceeding." See 28 U.S.C. § 455(a); id., at § 455(b)(1). The test for  
22 personal bias or prejudice in section 144 is identical to that in section 455. See United  
23 States v. Olander, 584 F.2d 876, 882 (9th Cir. 1978); see United States v. Carignan, 600  
24 F.2d 762, 764 (9th Cir. 1979).

25 Section 144 expressly conditions recusal upon the moving party's filing of a timely  
26 and sufficient affidavit stating that the judge before whom the matter is pending has a  
27 personal bias or prejudice against that party. Recusal is appropriate only if "a reasonable  
28 person with knowledge of all the facts would conclude that the judge's impartiality might  
reasonably be questioned." Yagman v. Republic Ins., 987 F.2d 622, 626 (9th Cir. 1993)

1 (quotation omitted). Because a federal judge is presumed to be impartial, the party  
2 claiming bias bears a substantial burden to show that the judge is not impartial. Reiffin v.  
3 Microsoft Corp., 158 F. Supp.2d 1016, 1021-22 (N.D. Cal. 2001).

4 Here, neither of the named plaintiffs has filed an affidavit detailing any alleged bias,  
5 which is enough to warrant dismissal of the motion as legally insufficient without even  
6 reaching the merits of plaintiffs' claim. Davis v. Fendler, 650 F.2d 1154, 1163 (9th Cir.  
7 1981). In addition, however, even if the court construes plaintiffs' motion as constituting the  
8 affidavit under the liberal pleading standards afforded to pro se litigants, plaintiffs' claims of  
9 bias are largely incomprehensible, and devoid of merit. Plaintiffs state: that the court's bias  
10 and prejudice against plaintiffs is evident by the court's "illegal and unconstitutional[]"  
11 treatment of plaintiffs; the violation of plaintiffs' constitutional rights; that the court "does not  
12 know not any of the truth from Oct. 13, 2004 to this present date" but "wants to protect a  
13 corrupt system"; that the court has discriminated against plaintiffs; and that the court is "in  
14 favor of the defendants to win knowingly that they commit perjury and worse crimes with  
15 the assistance of the lower state courts...". Interspersed with these broadly framed  
16 allegations are large swaths of plaintiffs' motion that are nonsensical, but which generally  
17 appear to charge that plaintiffs' children "have been kidnapped" and "enslaved" by the state  
18 of California and the government, and that charge the state with corruption and other  
19 unlawful conduct. Nowhere do plaintiffs provide any detail or factual recitations regarding  
20 the manner in which plaintiffs have had their legal rights purportedly violated, nor do they  
21 provide any supporting or detailed facts for any of their conclusions of bias.

22 Accordingly, plaintiffs fail to establish any basis for a determination that the court has  
23 a personal bias or prejudice against them, or that the court's impartiality might reasonably  
24 be questioned. See U.S. v. Sibla, 624 F.2d 864, 868 (9th Cir. 1980)(holding affidavit not  
25 legally sufficient unless it alleges facts demonstrating bias or prejudice that "stems from an  
26 extrajudicial source"). Consequently, plaintiffs' motion, even if construed as a properly filed  
27 affidavit, is insufficient as a matter of law, and plaintiffs' claim under 28 U.S.C. § § 144 and  
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1 455 is untenable. Furthermore, to the extent plaintiffs' claim of bias is based on prior  
2 rulings in the case (i.e., the prior grants of motions to dismiss by 2 of 3 groups of  
3 defendants), the court's rulings may be the basis of appeal to a higher court, but are not the  
4 basis for disqualification. See Liteky v. United States, 510 U.S. 540, 555-56 (1994); see  
5 also Berger v. U.S., 255 U.S. 22, 34 (1921)(adverse rulings alone cannot constitute the  
6 necessary showing of bias or prejudice). Plaintiffs' motion for recusal is therefore DENIED.

7 Finally, the court also notes that defendants' pending motion for summary judgment  
8 is set for hearing on September 15. To date, plaintiffs have failed to file an opposition brief  
9 (nor has a reply brief been filed). Having reviewed the motion papers on file, and the time  
10 for briefing on the matter now closed, the court finds the matter appropriate for decision  
11 without oral argument. The September 15 hearing date is VACATED, and the court takes  
12 the matter under submission.

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14 **IT IS SO ORDERED.**

15 Dated: September 3, 2010



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PHYLLIS J. HAMILTON  
United States District Judge

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