

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BANK OF AMERICA, N.A.,

Plaintiff,

v.

MARY C. RICHARDS and GREGORY DAVID
FRANCESCO GIORGI,

Defendants.

No. C 10-01062 CW

ORDER DENYING
DEFENDANTS' MOTION
FOR RECUSAL AND
MOTION TO VACATE
ORDER RELATING CASES
(Docket Nos. 9 and
12)

On March 17, 2010, Defendants Mary C. Richards and Gregory David Francesco Giorgi filed a Motion for Recusal of a Judicial Officer, pursuant to 28 U.S.C. § 455(b)(4). Thereafter, Defendants moved to vacate the Court's order relating this action to their prior cases, asserting the same arguments contained in their motion for recusal.

Under 28 U.S.C. § 455(b)(4), judges must recuse themselves if they have "a financial interest in the subject matter in controversy or in a party to the proceeding." The judge to whom a motion under § 455 is addressed decides whether recusal is necessary. Bernard v. Coyne, 31 F.3d 842, 843 (9th Cir. 1994). Judges need not take allegations as true. See United States v. Balistrieri, 779 F.2d 1191, 1202 (7th Cir. 1985); cf. United States

1 v. Azhocar, 581 F.2d 735, 740 (9th Cir. 1978) (finding bare
2 allegation insufficient to sustain disqualification under 28 U.S.C.
3 § 144).

4 Defendants allege that the undersigned owns "private
5 investments in the banking industry." Mot. at 1. However, they
6 present no evidence explaining why they believe this to be true.
7 Even if it were, it would not support a claim of a financial
8 interest in the subject matter of the proceeding or a party, such
9 as Bank of America. Accordingly, Defendants' motion for recusal
10 (Docket No. 9) and motion to vacate the related case order (Docket
11 No. 12) are DENIED.

12 IT IS SO ORDERED.

13
14 Dated: April 15, 2010



15
16
17
18
19
20
21
22
23
24
25
26
27
28

CLAUDIA WILKEN
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

BANK OF AMERICA, NA,
Plaintiff,

Case Number: CV10-01062 CW

CERTIFICATE OF SERVICE

v.

RICHARDS, et al.,
Defendants.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 15, 2010, I SERVED a true and correct copy of the attached, by placing said copy in a postage paid envelope addressed to the persons hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy into an inter-office delivery receptacle located in the Clerk's office.

Mary C. Richards
Gregory David Francesco Giorgi
126 Stadium Avenue
Mill Valley, CA 94941-3593

Dated: April 15, 2010

Richard W. Wieking, Clerk
By: M. Pilotin, Deputy Clerk