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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 CLAYTON DEL THIBODEAU, Pro Se,
11 Plaintiff,
12 v.
13 ADT SECURITY SERVICES, a/k/a/
14 ADT HOLDINGS, INC.,
15 Defendant.

Case No.: 3:16-cv-02680-GPC-AGS

**ORDER DENYING PLAINTIFF'S
REQUEST FOR THE RECUSAL OF
JUDGE CURIEL AND
MAGISTRATE JUDGE SCHOPLER**

[DKT. NO. 102.]

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17 On July 13, 2018, Plaintiff Clayton Del Thibodeau ("Plaintiff" or "Thibodeau")
18 filed a "Statement, Declaration & Affidavit of Clayton Del Thibodeau in Support of
19 Plaintiff's Request for the Recusal of Judge Curiel and Magistrate [Judge] Schopler."
20 Dkt. No. 102.

21 Pursuant to Civil Local Rule 7.1(d)(1), the Court finds the matter suitable for
22 adjudication without oral argument. For the reasons set forth below, the Court **DENIES**
23 Plaintiff's Request for the Recusal of Judge Curiel and Magistrate Judge Schopler.

24 **I. MOTION FOR JUDICIAL RECUSAL**

25 Plaintiff invokes 28 U.S.C. § 144 and 28 U.S.C. 455(a) as the basis of his motion for
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1 disqualification. Section 144 provides that “[w]henver a party to any proceeding in a
2 district court makes and files a timely and sufficient affidavit that the judge before whom
3 the matter is pending has a personal bias or prejudice either against him or in favor of any
4 adverse party, such judge shall proceed no further therein, but another judge shall be
5 assigned to hear such proceeding.” Section 455 provides that “[a]ny justice, judge, or
6 magistrate judge of the United States shall disqualify himself in any proceeding in which
7 his impartiality might reasonably be questioned.” 28 U.S.C. § 455(a). Moreover, under
8 Section 455(b)(1) a judge shall be disqualified “where he has a personal bias or prejudice
9 concerning a party, or personal knowledge of disputed evidentiary facts concerning the
10 proceeding.”

11 The same substantive standard applies to recusal based on Sections 144, 455(a) and
12 455(b)(1). *United States v. Sibla*, 624 F.2d 864, 867 (9th Cir. 1980). This standard asks
13 whether a “reasonable person with knowledge of all the facts would conclude that [his]
14 impartiality might be questioned.” *In re Focus Media, Inc.*, 378 F.3d 916, 929 (9th Cir.
15 2004). The “reasonable person” for this inquiry is not “someone who is ‘hypersensitive or
16 unduly suspicious,’ but rather is a ‘well-informed, thoughtful observer.’” *United States v.*
17 *Holland*, 519 F.3d 909, 913-914 (9th Cir. 2008). In evaluating recusal or disqualification,
18 a judge has “as strong a duty to sit when there is no legitimate reason to recuse as he does
19 to recuse when the law and facts require.” *Clemens v. U.S. Dist. Court for Central Dist. of*
20 *Cal.*, 428 F.3d 1175, 1179 (9th Cir. 2005).

21 An affidavit filed pursuant to 28 U.S.C. § 144 is not legally sufficient “unless it
22 specifically alleges facts that fairly supports the contention that the judge exhibits bias or
23 prejudice directed toward a party that stems from an extrajudicial source.” *Sibla*, 624 F.2d
24 at 868.

25 Here, Plaintiff has filed a request for the recusal of both Magistrate Judge Schopler
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1 and the undersigned Judge. Plaintiff has filed an affidavit pursuant to 28 U.S.C. § 144.
2 Plaintiff's affidavit alleges *inter alia* that (1) the undersigned Judge and Judge Schopler
3 have failed to timely serve notices and orders to Plaintiff; (2) the undersigned Judge has
4 failed to examine supporting citation materials regarding Plaintiff's summary judgment
5 motion; (3) various other issues related to this Court's rulings on Plaintiff's motion for
6 summary judgment (Dkt. No. 69) and motion for reconsideration (Dkt. No. 84).

7 Here, Plaintiff's contentions against both Magistrate Judge Schopler and this Court
8 do not involve allegations of bias and prejudice stemming from *extrajudicial* proceedings.
9 Accordingly, the Court finds that Plaintiff's affidavit is not legally sufficient under 28
10 U.S.C. § 144 because it does not specifically allege facts that fairly support the contention
11 that the judge[s] exhibit[] bias or prejudice directed toward a party that stems from an
12 *extrajudicial source*." See *Sibla*, 624 F.2d at 867; *In re Focus Media, Inc.*, 378 F.3d 916,
13 930 (9th Cir. 2004) ("Judicial rulings alone almost never constitute a valid basis for a bias
14 or partiality motion."). Given the duty of a federal duty to sit in judgment in all cases
15 before him in the absence of a legitimate reason to recuse himself, the Court will **DENY**
16 Plaintiff's request to recuse both Judge Schopler and the Undersigned Judge. See *Harrison*
17 *v. Wheat*, No. 3:17CV01550AJBBLM, 2017 WL 4169765, at *1 (S.D. Cal. Sept. 20, 2017)
18 (denying motion to recuse all district judges and magistrate judges in the Southern District
19 of California); *Sibla*, 624 F.3d at 968 (rejecting Section 144 recusal motion where affidavit
20 was "devoid of specific fact allegations tending to show personal bias stemming from an
21 extrajudicial source."); *Chappell v. Pliler*, No. 2:04-CV-1183 LKK DAD, 2013 WL
22 552153, at *1 (E.D. Cal. Feb. 13, 2013) (denying motion to recuse magistrate judge where
23 allegations of bias stemmed from rulings made by magistrate judge that were unfavorable
24 to plaintiff).

1 **II. REQUEST TO CANCEL AND POSTPONE SETTLEMENT CONFERENCE**

2 Plaintiff also requests to cancel or postpone the settlement conference set for July
3 16, 2018. On July 13, 2018, Magistrate Judge Clinton Averitte¹ issued the following
4 minute order rescheduling the Settlement Conference for Friday, July 20, 2018:

5 MINUTE ENTRY and ORDER (CEA): On July 11, 2018, the Court called
6 plaintiff to request his settlement brief for the July 16, 2018 Settlement
7 Conference. At that time, plaintiff informed the Court that he had not
8 received the order setting the proceeding (see ECF No. 90), and that he was
9 unable to attend. The Court then contacted defense counsel on July 13, 2018,
10 to provide notice that the settlement conference would be continued.

11 Accordingly, the July 16 Settlement Conference is vacated and rescheduled
12 to Friday July 20, 2018, at 2:00 p.m. Plaintiff must submit a confidential
13 settlement statement to efile_schopler@casd.uscour.gov by July 16, 2018.

14 The Clerk is ordered to call plaintiff and defense counsel Lonnie Giamela to
15 notify them of this Order. Signed by Magistrate Judge Clinton Averitte on
16 7/13/18.(no document attached) (jrg) (Entered: 07/13/2018)

17 Dkt. No. 100. Based on the foregoing, there is no basis to delay this settlement conference
18 based on the recusal of Judge Curiel or Judge Schopler. Moreover, the Settlement
19 Conference is being conducted by Magistrate Judge Averitte. Accordingly, the Court will
20 **DENY** Plaintiff's request to cancel and postpone the Settlement Conference. Pursuant to
21 Magistrate Judge Averitte's Minute Order, the Settlement Conference shall go forward on
22 July 20, 2018.

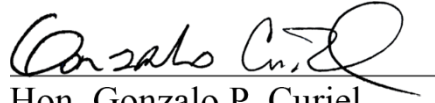
23 **CONCLUSION**

24 The Court **DENIES** Plaintiff's Request for the Recusal of Judge Curiel and Judge
25 Schopler. The Court **DENIES** Plaintiff's Request to Cancel or Reschedule the
26 Settlement Conference. The settlement conference set for July 20, 2018 shall go forward
27 pursuant to Magistrate Judge Averitte's Order (Dkt. No. 100).
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¹ Magistrate Judge Schopler is temporarily unavailable.

IT IS SO ORDERED.

Dated: July 17, 2018


Hon. Gonzalo P. Curiel
United States District Judge