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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JOSEPH DANG, an individual doing  
business as LAW OFFICE OF JOSEPH  
DANG,  
  
Plaintiff / Counter-Defendant,  
  
v.  
  
DAVID PONTIER, et al.,  
  
Defendants / Counter-Claimant.

Case No.: 3:19-cv-01519-LL-AHG  
  
**ORDER DENYING DEFENDANT’S  
MOTION FOR RECUSAL**  
  
**[ECF No. 199]**

Before the Court is Defendant David Pontier’s (“Defendant”) Motion for Recusal.  
ECF No. 199. The Court finds the matter suitable for submission without oral argument  
pursuant to CivLR 7.1(d)(1). ECF No. 201.

**I. BACKGROUND**

In his motion, Defendant requests that the undersigned recuse from the instant  
interpleader case, as well as the related civil case. ECF No. 199 at 13; *see Pontier v.*  
*GEICO, et al.*, No. 21cv199-LL-AHG (S.D. Cal.). Defendant seeks this Court’s recusal  
because (1) the undersigned is a member of the State Bar of California, (2) the undersigned  
is biased regarding the merits of the interpleader case and has violated Defendant’s due

1 process rights by not ruling on his defenses, and (3) the undersigned has not afforded  
2 Defendant the same opportunities that she has other *pro se* litigants.

3 First, Defendant seeks the Court’s recusal because the undersigned<sup>1</sup> is a member of  
4 State Bar of California, who is also a defendant in the related case. ECF No. 199 at 1–2.  
5 Defendant contends that he sought to have the case heard in Nevada, where the judge  
6 assigned to the case was not a member of the California Bar. *Id.* at 11–13. As such,  
7 Defendant reiterates his arguments that venue is not proper in California and that the  
8 transfer from the District of Nevada to the Southern District of California was improper,  
9 because the California “judges[’] impartiality might reasonably be questioned.” *Id.* at 13.  
10 Defendant points to statements allegedly made by the undersigned during a status  
11 conference regarding the validity of Defendant’s claims against the State Bar of California.  
12 *Id.* at 2. Defendant then explains that “[t]his statement indicated that Magistrate Judge  
13 Allison Goddard ... had already made up her mind that any claim Defendant Pontier had  
14 brought in his complaint against [the State Bar of California] was meritless[.]” *Id.* at 2.  
15 Defendant also points to the fact that another defendant in this case, Joseph Dang, is also a  
16 member of the State Bar of California, and imputes a bias based on the shared membership.  
17 *Id.*

18 Second, Defendant points to statements allegedly made by the undersigned during a  
19 conference, and then infers that the undersigned was also biased in the interpleader case  
20 regarding his claims or affirmative defenses. *Id.* at 3. Defendant argues that the rulings  
21 made in the interpleader case regarding the statute of limitations were a violation of his due  
22 process rights. *Id.* at 3–5. Defendant also notes that the hearing on his motion to dismiss  
23 was rescheduled and thereafter terminated without ruling on the merits of his affirmative  
24 defenses, which was also a violation of his due process rights. *Id.* at 5. Defendant explains  
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27 <sup>1</sup> Defendant also notes that the previous district judge assigned to this matter, Judge  
28 Gonzalo P. Curiel, is a member of the State Bar of California and served on its Criminal  
Law Advisory Commission. ECF No. 199 at 11–12.

1 that “Magistrate Judge Allison Goddard was fully aware of several Motions,  
2 Counterclaims, Motion For Sanctions Defendant Pontier filed that were terminated  
3 with[out] ruling on merits, or rejected upon filing to avoid ruling” on the statute of  
4 limitations issue, and states that “Magistrate Judge Allison Goddard has been on the  
5 Interpleader case for 4 years and to date no ruling has been issued on Defendant Pontier[’s]  
6 3 main defenses[.]” *Id.* at 6. Defendant then reiterates the merits of his statute of limitations  
7 claim and his claim that the case lacks subject matter jurisdiction. *Id.* at 7–10.

8 Third, Defendant noted that “[i]n [an] interview[,] Magistrate Judge  
9 Allison Goddard states she gives all pro se litigants opportunity to present their case ...  
10 [but] Judge Allison Goddard has never afforded [] Pontier, [p]ro se[,] an opportunity to  
11 address his defenses” that the statute of limitations has expired, that there is no subject  
12 matter jurisdiction, and that venue is not proper in the Southern District of California. *Id.*  
13 at 8–9. Thus, Defendant argues that “Magistrate Judge Allison Goddard has not afforded  
14 Defendant Pontier[, proceeding] Pro Se[,] the opportunity under the fifth amendment of  
15 the United States Constitution to Due Process she affords to other Pro Se litigants[.]” *Id.*  
16 at 9.

## 17 **II. LEGAL STANDARD**

18 A judge “shall disqualify h[er]self in any proceeding in which h[er] impartiality  
19 might reasonably be questioned” or where “[s]he has a personal bias or prejudice  
20 concerning a party.” 28 U.S.C. § 455(a)–(b)(1); *see generally Liteky v. United States*, 510  
21 U.S. 540 (1994) (discussing 28 U.S.C. § 144). Under the two recusal statutes, 28 U.S.C. §  
22 144 and 28 U.S.C. § 455, the substantive question is “[w]hether a reasonable person with  
23 knowledge of all the facts would conclude that the judge’s impartiality might reasonably  
24 be questioned.” *United States v. McTiernan*, 695 F.3d 882, 891 (9th Cir. 2012) (quoting  
25 *United States v. Hernandez*, 109 F.3d 1450, 1453 (9th Cir. 1997) (per curiam)). A  
26 “reasonable person” is defined as a “well-informed, thoughtful observer,” as opposed to a  
27 “hypersensitive or unduly suspicious person.” *Clemens v. U.S. Dist. Ct. for the Cent. Dist.*  
28 *of Cal.*, 428 F.3d 1175, 1178 (9th Cir. 2005) (internal quotations and citation omitted).

1 “Rumor, speculation, beliefs, conclusions, innuendo, suspicion, opinion, and similar  
2 nonfactual matters” are not enough to require recusal. *Id.* (citing *Nichols v. Alley*, 71 F.3d  
3 347, 351 (10th Cir. 1993)).

4 “A motion under section 455 [or 144] is addressed to, and must be decided by, the  
5 very judge whose impartiality is being questioned.” *Spencer v. Jasso*, No. 20cv909-ADA-  
6 GSA-PC, 2023 WL 5021774, at \*2 (E.D. Cal. Aug. 7, 2023) (citing *Bernard v. Coyne*, 31  
7 F.3d 842, 843 (9th Cir. 1994)); *see United States v. Studley*, 783 F.2d 934, 940 (9th Cir.  
8 1986) (“We have held repeatedly that the challenged judge himself should rule on the legal  
9 sufficiency of a recusal motion in the first instance”). “Absent a factual showing of a  
10 reasonable basis for questioning his or her impartiality, or allegations of facts establishing  
11 other disqualifying circumstances, a judge should participate in cases assigned. Conclusory  
12 statements are of no effect. Nor are [a litigant’s] unsupported beliefs and assumptions.  
13 Frivolous and improperly based suggestions that a judge recuse should be firmly declined.”  
14 *Raiser v. San Diego County*, No. 19cv751-GPC-KSC, 2021 U.S. Dist. LEXIS 6791, at \*3  
15 (S.D. Cal. Jan. 13, 2021) (quoting *Maier v. Orr*, 758 F.2d 1578, 1583 (Fed. Cir. 1985)).  
16 Section 455(a) is also “limited by the ‘extrajudicial source’ factor which generally requires  
17 as the basis for recusal something other than rulings, opinions formed or statements made  
18 by the judge during the course of trial.” *United States v. Holland*, 519 F.3d 909, 913–14  
19 (9th Cir. 2008); *see Ryan v. County of Imperial*, No. 21cv1076-JO-LR, 2022 WL  
20 17744075, at \*2 (S.D. Cal. Dec. 7, 2022).

### 21 **III. DISCUSSION**

22 Many of Defendant’s arguments reflect a confusion about the distinctions between  
23 the duties of the assigned magistrate judge and district judge in Defendant’s cases, and  
24 other arguments reflect a frustration with the process that the undersigned cannot address  
25 or fix. The Court will address these in turn.

#### 26 **1. Distinction between Magistrate Judges and District Judges**

27 A magistrate judge has the authority to “hear and determine” nondispositive matters.  
28 *See* 28 U.S.C. § 636(b)(1)(A); *see also S.E.C. v. CMKM Diamonds, Inc.*, 729 F.3d 1248,

1 1259 (9th Cir. 2013). A dispositive matter impacts the “ultimate relief sought,” i.e., the  
2 merits of the case. *See CMKM Diamonds*, 729 F.3d at 1260 (“where the denial of a motion  
3 [] is effectively a denial of the ultimate relief sought, such a motion is considered  
4 dispositive, and a magistrate judge lacks the authority to ‘determine’ the matter”). Section  
5 636, and this district’s corresponding Civil Local Rule 72.1, specifically enumerate eight  
6 different types of matters to be treated as dispositive, including motions to dismiss for  
7 failure to state a claim and motions for summary judgment. *See* 28 U.S.C. § 636(b)(1)(A);  
8 *see also* CivLR 72.1(b)–(c) (same). Other matters, such as those that fall outside of those  
9 expressly enumerated matters may also be considered dispositive. *United States v. Rivera-*  
10 *Guerrero*, 377 F.3d 1064, 1068 (9th Cir. 2004) (“we must look to the effect of the motion,  
11 in order to determine whether it is properly characterized as dispositive or non-  
12 dispositive”) (internal quotation marks omitted). Thus, magistrate judges may have candid  
13 discussions with the parties because they do not make any decisions on the merits of the  
14 case.

15 In addition to determining only nondispositive matters, magistrate judges in this  
16 district also conduct settlement conferences. CivLR 16.3(a) (“In each civil action, a  
17 mandatory settlement conference must be scheduled before the assigned magistrate  
18 judge”). The settlement conferences are “off the record, privileged and confidential.”  
19 CivLR 16.3(h). The local rules also state that “[t]he judge conducting the settlement  
20 conference will be disqualified from trying the case unless there is an agreement by all the  
21 parties to waive this restriction.” CivLR 16.3(c). As such, because the magistrate judge  
22 does not determine dispositive matters and will not try the case, the magistrate judge is able  
23 to have confidential communications in the context of settlement regarding the value and  
24 merits of the parties’ claims.

25 Here, in the instant motion, Defendant’s argument that the undersigned’s statements  
26 show bias is unpersuasive. Though the undersigned disputes Defendant’s representation of  
27 her statements (*see* ECF No. 199 at 2, 3), the outcome would remain the same even if the  
28 undersigned had said those things. As discussed above, the division between district judges

1 and magistrate judges exists so that such conflicts or bias do not arise—i.e., the magistrate  
2 judge can give the parties her candid assessment of the case in confidence, in order to foster  
3 a settlement, because her assessment is not binding and is never relayed to the district  
4 judge.

## 5 **2. Frustration with Previous Rulings**

6 The Court notes that much of Defendant’s motion asserted arguments relating to the  
7 merits of his claims and defenses. *See* ECF No. 199 at 4–5, 7–10. As discussed above, the  
8 undersigned did not and cannot make any of the rulings Defendant disputes. *Compare* ECF  
9 No. 199 at 3–4 (denial of motions “without ruling on the merits of Defendant Pontier[’s]  
10 defenses” violated his due process rights) *with* ECF No. 99 (District Judge Curiel, denying  
11 Mr. Pontier’s motion to dismiss as moot) *and* ECF No. 156 (District Judge Curiel, denying  
12 Mr. Pontier’s motion for summary judgment and granting in part Mr. Dang’s motion for  
13 summary judgment). The Court is cognizant that Defendant is frustrated with the outcomes  
14 of his cases, but the instant motion is not the proper vehicle for relief. *See, e.g.,* FED. R.  
15 CIV. P. 59(e) (amending a judgment); FED. R. CIV. P. 60 (relief from judgment); CivLR  
16 7.1(i) (motions for reconsideration). Further, even if the undersigned had issued those  
17 rulings, it still is not a valid reason for the undersigned to recuse. *See, e.g., Studley*, 783  
18 F.2d at 939 (“a judge’s prior adverse ruling is not sufficient cause for recusal. [] Studley’s  
19 first two allegations are not extrajudicial because they involve the judge’s performance  
20 while presiding over her case. [] Thus, these grounds do not provide a basis for recusal”)  
21 (internal citations omitted).

22 Defendant’s contention that the undersigned is biased due to membership in the State  
23 Bar of California is likewise unpersuasive. *See Denardo v. Municipality of Anchorage*, 974  
24 F.2d 1200, 1201 (9th Cir. 1992) (“The fact that a plaintiff sues a bar association does not  
25 require recusal of judges who are members of that bar association”); *Block v. Wash. State*  
26 *Bar Ass’n*, No. C15-2018-RSM, 2016 WL 11787683, at \*3, \*3 n.1 (W.D. Wash. Feb. 24,  
27 2016) (collecting cases and explaining that “[t]here are a string of cases holding that just  
28 belonging to a bar association is not the kind of relationship which gives rise to a reasonable

1 doubt about a judge’s ability to preside impartially over a case in which the bar association  
2 is a party. In fact, it is unreasonable to assume that a judge’s membership in a state bar  
3 association in any way foretells the kind of ‘deep-seated favoritism or antagonism’ that  
4 requires recusal.”) (internal citations omitted).

### 5 **3. Difficulties Proceeding Pro Se**

6 The Court does not doubt that Defendant, like most *pro se* litigants, finds it difficult  
7 to articulate his claims without the assistance of counsel. It is for this reason that in the  
8 absence of counsel, federal courts employ procedures that are highly protective of a *pro se*  
9 litigant’s rights. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972) (holding that the pleadings  
10 of a *pro se* litigant must be held to less stringent standards than formal pleadings drafted  
11 by lawyers). As such, courts construe the pleadings liberally and afford the *pro se* party  
12 any benefit of the doubt. *See Karim-Panahi v. Los Angeles Police Dep’t*, 839 F.2d 621,  
13 623 (9th Cir. 1988).

14 As such, the undersigned endeavors to assist *pro se* litigants in navigating litigation.  
15 Defendant notes that the undersigned employs a chart and spends extra time in conferences  
16 to mediate discovery disputes to assist *pro se* litigants. ECF No. 199 at 8–9. Though  
17 Defendant argues that the undersigned “has never afforded [] Pontier ... an opportunity[,]”  
18 the Court notes that it did, in fact, employ those same procedures with Defendant. *Compare*  
19 ECF No. 199 at 8–9 (“In a case with *pro se* litigants, or a case where people are really at  
20 odds with each other, I will have the litigants send me a chart with the exact language of  
21 the request, the exact language of the response or objection, and then a third column. Then  
22 we’ll pull the chart up on Zoom and we will take three or four hours. We’ll just go through  
23 each disputed request and I will say, ‘this is what I think is reasonable. That is what I think  
24 is not reasonable.’ And we will put in that a third column with a compromise”) *with* ECF  
25 No. 124 (“Minute Entry for proceedings held before Magistrate Judge Allison H. Goddard:  
26 Telephonic Discovery Conference, re: various discovery disputes regarding interrogatories  
27 and requests for production propounded by Defendant Pontier, held on 9/24/2020. Plaintiff  
28 will email the Court his responses to the discovery requests in Word format. The Court will

1 create a chart, email it to the parties, and Plaintiff will have 14 days to fill in his portion.  
2 The Court will thereafter engage in further discovery conferences”) *and* ECF No. 128  
3 (“Minute entry for proceedings held before Magistrate Judge Allison H. Goddard:  
4 Discovery Conference, regarding many discovery requests, held on 10/14/2020.”).

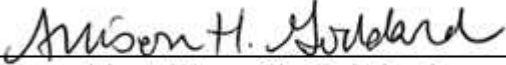
5 **IV. CONCLUSION**

6 The Court finds that Defendant has failed to show any adequate basis for recusal. As  
7 such, and in light of the facts and evidence presented, no reasonable person would question  
8 this Court’s impartiality. *See, e.g., Denardo*, 974 F.2d at 1200–01 (affirming denial of  
9 motion for recusal because no evidence was presented that the judge “should have a special  
10 interest in the case” where he was a member of the bar association sued by a plaintiff);  
11 *Raiser*, 2021 U.S. Dist. LEXIS 6791, at \*3 (denying motion for recusal because “the  
12 Court’s prior rulings that plaintiff considers unfair or unfavorable to him are not a valid  
13 basis to disqualify a judge from a case.”). “Because ‘a judge has as strong a duty to sit  
14 when there is no legitimate reason to recuse as he does to recuse when the law and facts  
15 require, the undersigned Magistrate Judge declines to recuse in this matter.” *Ewing v.*  
16 *Aliera Healthcare*, No. 19cv845-CAB-LL, 2019 U.S. Dist. LEXIS 128071, at \*4–\*5 (S.D.  
17 Cal. July 31, 2019) (quoting *Clemens*, 428 F.3d at 1179).

18 For the reasons set forth above, the Court **DENIES** Defendant’s motion for recusal.  
19 ECF No. 199.

20 **IT IS SO ORDERED.**

21 Dated: April 5, 2024

22   
23 \_\_\_\_\_  
24 Honorable Allison H. Goddard  
25 United States Magistrate Judge  
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