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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

In re, LISA KAYE GOLDEN,
Debtor

LISA KAYE GOLDEN

Appellant,

v.

RICHARD KIPPERMAN, JEFFREY
ROGERS,

Appellees.

Case Nos.: 19-cv-2178 DMS (NLS)

Bankruptcy Proceeding No.: 17-06928
MM7

**ORDER DENYING APPELLANT’S
MOTION TO RECUSE**

On April 22, 2020, Appellant Lisa Golden, proceeding pro se, filed the present Motion to Recuse. (ECF No. 8.) Appellees filed a response, (ECF No. 10), and Appellant filed a reply. (ECF No. 14.) The motion is denied for the reasons set forth below.

I.

BACKGROUND

Appellant Lisa Golden (“Appellant” or “Golden”) has more than thirty active bankruptcy appeals pending in this Court. All of the appeals arise out of a single bankruptcy action presided over by Judge Margaret M. Mann of the United States Bankruptcy Court in the Southern District of California. With the exception of one appeal

1 decided by District Judge Gonzalo P. Curiel in 2018, (In re Golden, No. 18-cv-2359-GPC-
2 RBB, 2020 WL 6601615, at *1 (S.D. Cal. Dec. 17, 2018) (granting motion to dismiss
3 Appellant's appeal as untimely)), all of the appeals have been assigned to this Court as
4 related cases to the first-filed case, 18cv2089 DMS (NLS), pursuant to the Low Number
5 Rule. See Civ. L. R. 40.1(e) (all related pending civil actions and proceedings are assigned
6 to the district judge with the lowest numbered case).¹ Golden's appeals challenge a variety
7 of decisions by the bankruptcy court, including decisions on a motion to quash, motion to
8 change venue, motion to compel deposition attendance, motion to amend complaint, and
9 orders appointing receivers. Several of the appeals also appear to be duplicative.

10 During the pendency of these appeals, the Court has ruled on two substantive
11 matters. First, on September 5, 2019, the Court ruled in favor of Golden and affirmed the
12 bankruptcy court's judgment on an appeal filed by Jeffrey Rogers. (See 18-cv-2699-DMS-
13 NLS, ECF No. 16.) Next, the Court denied Golden's appeal of the bankruptcy court's
14 denial of her motion to recuse Judge Mann. (See 19-cv-2064, ECF No. 4.) In the latter
15 matter, Golden filed an ex parte motion to stay the bankruptcy trial pending a determination
16 on her appeal to recuse Judge Mann. Golden telephoned the Court after filing her ex parte
17 motion on Friday, November 15, 2019, and informed Chambers staff that the bankruptcy
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¹ See 18-cv-2089-DMS-NLS; 19-cv-00836-DMS-NLS; 19-cv-00843-DMS-NLS; 19-cv-00488-DMS-NLS; 19-cv-01417-DMS-NLS; 19-cv-02064-DMS-NLS; 19-cv-02463-DMS-NLS; 20-cv-00047-DMS-NLS; 20-cv-00052-DMS-NLS; 20-cv-00059-DMS-NLS; 20-cv-00061-DMS-NLS; 20-cv-00050-DMS-NLS; 20-cv-00057-DMS-NLS; 19-cv-02320-DMS-NLS; 19-cv-02462-DMS-NLS; 19-cv-02178-DMS-NLS; 20-cv-00206-DMS-NLS; 19-cv-00838-DMS-NLS; 19-cv-02065-DMS-NLS; 20-cv-01255-DMS-NLS; 20-cv-00051-DMS-NLS; 20-cv-00102-DMS-NLS; 20-cv-00207-DMS-NLS; 20-cv-00205-DMS-NLS; 20-cv-00305-DMS-NLS; 20-cv-00725-DMS-NLS; 20-cv-01004-DMS-NLS; 20-cv-00952-DMS-NLS; 20-cv-01005-DMS-NLS; 20-cv-00866-DMS-NLS; 20-cv-00999-DMS-NLS; 20-cv-00950-DMS-NLS; 20-cv-00951-DMS-NLS; 20-cv-01044-DMS-NLS; 20-cv-01087-DMS-NLS. Golden also has filed two civil cases against parties involved in her Bankruptcy Proceedings. See 20-cv-00856-DMS-NLS; 20-cv-00855-DMS-NLS.

1 trial before Judge Mann would begin the following Monday, November 18, 2019, in the
2 absence of a stay. On the morning of trial, the Court’s law clerk called Judge Mann’s
3 Chambers for a status on the trial. Judge Mann informed the law clerk that the trial was
4 proceeding. The Court issued its order denying the appeal on November 22, 2019, which
5 rendered moot the motion to stay the proceedings. (Id.)

6 In addition to ruling on the substantive matters above, the Court has issued briefing
7 schedules for some of the pending appeals. The Court has also issued orders to show cause
8 in several of the appeals and dismissed two appeals without prejudice for Appellant’s
9 failure to respond to a scheduling order and an order to show cause. See 19-cv-838; 19-
10 cv-843. The Court has also ruled on motions for extension of time and for electronic
11 access. See 20-cv-102; 18-cv-2089. The bulk of the appeals remain pending with opening
12 briefs yet to filed. In some cases, motions to dismiss are pending, and will be addressed
13 following issuance of this Order.

14 II.

15 DISCUSSION

16 A. Legal Standard

17 Requests for recusal of district court judges are governed by 28 U.S.C. § 455 and 28
18 U.S.C. § 144. First, a judge may recuse sua sponte under 28 U.S.C. § 455(a), which
19 provides: “any justice, judge, or magistrate of the United States shall disqualify himself in
20 any proceeding in which his impartiality might reasonably be questioned.” Second, a
21 litigant may move to recuse a trial judge under 28 U.S.C. § 144:

22 Whenever a party to any proceeding in a district court makes and files a
23 timely and sufficient affidavit that the judge before whom the matter is
24 pending has a personal bias or prejudice either against him or in favor of any
25 adverse party, such judge shall proceed no further therein, but another judge
26 shall be assigned to hear such proceeding.

27 Appellant moves for recusal under both statutes. “The substantive standard for
28 recusal under 28 U.S.C. § 144 and 28 U.S.C. § 455 is the same: Whether a reasonable

1 person with knowledge of all the facts would conclude that the judge’s impartiality might
2 reasonably be questioned.” *United States v. McTiernan*, 695 F. 3d 882, 891 (9th Cir. 2012)
3 (quoting *United States v. Hernandez*, 109 F. 3d 1450, 1453 (9th Cir. 1997) (per curiam))
4 (internal quotation marks omitted). “Under § 455(a), impartiality must be ‘evaluated on
5 an objective basis, so that what matters is not the reality of bias or prejudice but its
6 appearance.’” *United States v. Carey*, 929 F.3d 1092, 1104 (9th Cir. 2019) (quoting *Liteky*
7 *v. United States*, 510 U.S. 540, 548 (1994)). Section 455(a) is “limited by the ‘extrajudicial
8 source’ factor which generally requires as the basis for recusal something other than
9 rulings, opinions formed or statements made by the judge during the course of trial.”
10 *United States v. Holland*, 519 F.3d 909, 913–14 (9th Cir. 2008). “Courts should take
11 special care in reviewing recusal claims so as to prevent parties from ‘abus[ing] § 455 for
12 a dilatory and litigious purpose based on little or no substantiated basis.” *Sensley v.*
13 *Albritton*, 385 F.3d 591, 598 (5th Cir. 2004) (quoting *Travelers Ins. Co. v. Liljeberg*
14 *Enters., Inc.*, 38 F.3d 1404, 1409 n.8 (5th Cir. 1994)) (alterations in original).

15 Though the standard for assessing motions to recuse is the same under both statutes,
16 the procedures differ. For a § 144 motion, the judge must first assess whether the affidavit
17 is timely before assessing the legal sufficiency of the affidavit. If the affidavit is timely
18 and legally sufficient, the duty of the judge is to “proceed no further” in the case and refer
19 the motion to another judge. *United States v. Azhocar*, 581 F.2d 735, 738 (9th Cir. 1978),
20 cert. denied, 440 U.S. 907 (1979). To be legally sufficient, the affidavit must meet three
21 requirements: “it must state facts which if true fairly support the allegation that bias or
22 prejudice stemming from (1) an extrajudicial source (2) may prevent a fair decision on the
23 merits ... [based] on ... (3) the [source of the facts and] substantiality of the support given
24 by these facts to the allegation of bias.” *Id.* at 739–40. A district court’s denial of a motion
25 to recuse is reviewed for abuse of discretion. See *Yagman v. Republic Ins.*, 987 F.2d 622,
26 626 (9th Cir. 1993).

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1 B. Timeliness of Affidavit Under § 144

2 Section 144 requires a “timely” affidavit. 28 U.S.C. § 144. Although § 455 does
3 not set out an explicit timeline, “[i]t is well established that a motion to disqualify or recuse
4 a judge under 28 U.S.C. § 144 [as well as] ... § 455 must be made in a timely fashion.”
5 *Preston v. United States*, 923 F.2d 731, 732–33 (9th Cir. 1991) (quoting *Molina v. Rison*,
6 886 F.2d 1124, 1131 (9th Cir. 1989)) (internal quotation marks omitted) (alterations in
7 original). The timeliness requirement protects the courts from “increased instances of
8 wasted judicial time and resources,” as well as the “heightened risk that litigants would use
9 recusal motions for strategic purposes.” *Id.* There is no “per se rule” regulating the time
10 frame, but “recusal motions should be filed with reasonable promptness after the ground
11 for such a motion is ascertained.” *Id.* “[A] party having information that raises a possible
12 ground for disqualification cannot wait until after an unfavorable judgment before bringing
13 the information to the court’s attention.” *Nordbrock v. United States*, 2 Fed. Appx. 779,
14 779–80 (9th Cir. 2001) (quoting *United States v. Rogers*, 119 F. 3d 1377, 1380 (9th Cir.
15 1997)) (internal quotation marks omitted).

16 Appellees contend Golden’s motion is untimely because she “never once indicated
17 [the Court] had ... exhibited ‘personal bias’ or ‘prejudice’ towards her or anyone else”
18 during the pendency of her first appeal. (Opp’n at 3.) Accordingly, Appellees contend
19 Golden filed the present motion “to distract the Court from the countless inflammatory and
20 meritless pleadings and appeals she has filed in bad faith in an effort to stall the
21 administration of her [bankruptcy] case.” (*Id.*)

22 In response, Golden argues the Court unfairly granted Appellee an extension for his
23 appeals and yet denied her appeal as untimely and “frivolous” when she “unknowingly
24 filed [the notice of appeal] a week late.” (Reply Br. at 2-3.) Golden’s argument appears to
25 address the case decided by Judge Curiel, which was appealed and subsequently dismissed
26 by the Ninth Circuit as frivolous under 28 U.S.C. § 1915(e)(2). See *In re Golden*, 2020
27 WL 6601615, at *1 (granting motion to dismiss because Appellant’s notice of appeal was

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1 untimely); *Golden v. Kipperman*, No. 19-55005, ECF No. 15 (9th Cir. Sept. 17, 2019)
2 (dismissing appeal as frivolous).

3 Nevertheless, the subject motion was filed within one month of Appellees' filing
4 their motions to dismiss. Under the circumstances, the Court declines to find the motion
5 is untimely.

6 C. Merits of Allegations

7 Federal judges are presumed to be impartial, thus there is a substantial burden on the
8 party claiming bias or prejudice to demonstrate lack of impartiality. *Toscano v. McLean*,
9 No. 16-cv-06800-EMC, 2018 WL 732341, at *2 (N.D. Cal. Feb. 6, 2018). “[O]pinions
10 formed by the judge on the basis of facts introduced or events occurring in the course of
11 the current proceedings, or of prior proceedings, do not constitute a basis for a bias or
12 partiality motion unless they display a deep-seated favoritism or antagonism that would
13 make fair judgment impossible.” *In re Marshall*, 721 F.3d 1031, 1041–42 (9th Cir. 2013).
14 “[T]he judge’s conduct during the proceedings should not, except in the ‘rarest of
15 circumstances’ form the sole basis for recusal under § 455(a).” *United States v. Holland*,
16 519 F.3d 909, 913–14 (9th Cir. 2008) (citations omitted). Similarly, “[a]dverse rulings do
17 not constitute the requisite bias or prejudice of § 144.” *Azhocar*, 581 F.2d at 739.

18 The high bar for recusal under the foregoing authorities is not met here, and
19 accordingly the Court declines to refer the motion to another judge. See *Toth v. Trans*
20 *World Airlines, Inc.*, 862 F.2d 1381, 1387–88 (9th Cir. 1988) (district judge correctly
21 rejected disqualification motion as legally insufficient and thereafter had no further duty to
22 refer to another judge because the alleged bias or prejudice did not arise from an
23 extrajudicial source). Appellant contends the undersigned must recuse because he “has
24 expressed firmly held and unwarranted hostility to Golden as evidenced by his action in
25 this case and in other instances,” (Mot. at 3), and “hates pro se litigants and women, and
26 wants to provide for the rights for only those in his ‘fraternity[.]’” (Reply Br. at 5.) To
27 that end, Appellant makes eight allegations that she believes indicates bias warranting
28 recusal. These allegations are addressed in turn.

1 1. Judicial Rulings

2 Most of Appellant’s allegations involve judicial rulings, which are generally
3 insufficient to show the kind of bias required to justify recusal. In *Liteky*, the Supreme
4 Court explained:

5 First, judicial rulings alone almost never constitute a valid basis for a bias or
6 partiality motion. In and of themselves (i.e., apart from surrounding
7 comments or accompanying opinion), they cannot possibly show reliance
8 upon an extrajudicial source; and can only in the rarest circumstances
9 evidence the degree of favoritism or antagonism required ... when no
10 extrajudicial source is involved. Almost invariably, they are proper grounds
11 for appeal, not for recusal. Second, opinions formed by the judge on the
12 basis of facts introduced or events occurring in the course of the current
13 proceedings, or of prior proceedings, do not constitute a basis for a bias or
14 partiality motion unless they display a deep-seated favoritism or antagonism
15 that would make fair judgment impossible. Thus, judicial remarks during
16 the course of a trial that are critical or disapproving of, or even hostile to,
counsel, the parties, or their cases, ordinarily do not support a bias or
partiality challenge. ... Not establishing bias or partiality, however, are
expressions of impatience, dissatisfaction, annoyance, or even anger, that are
within the bounds of what imperfect men and women, even after having been
confirmed as federal judges, sometimes display.

17 510 U.S. at 550 (emphasis in original). Appellant contends a number of rulings discussed
18 below justify recusal because they are opinions “derived from an extrajudicial source” and
19 “reveal such a high degree of favoritism or antagonism as to make fair judgment
20 impossible.” (Mot. at 14) (citing *Liteky*, 510 U.S. at 555.) However, the facts alleged by
21 Appellant fall short of these standards.

22 First, Appellant contends the Court has “for the past 18 months, and now, during a
23 country wide pandemic, refused to allow Golden to file electronically as all other parties

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1 are allowed to file,”² (Mot. at 3), referring to the February 7, 2020 order,³ in which the
2 Court partially granted Appellant’s motion for electronic access, allowing her to receive
3 service, but not file, electronically. (No. 19-cv-2178-DMS-NLS, ECF No. 5.) Second,
4 Golden alleges the Court issued an order granting opposing counsel’s motion for an
5 extension of time to file an opening brief without affording Golden an opportunity to
6 oppose the motion, and thereafter the Court amended the order to allow Golden that
7 opportunity. (See 20-cv-102-DMS-NLS, ECF No. 9.) After Golden failed to respond, the
8 Court granted the motion. (See *id.*, ECF No. 10.) Notwithstanding Golden’s failure to
9 respond to the motion, she contends the Court granted the motion to punish her for being
10 “difficult.” (Mot. at 3.) Golden argues the foregoing orders demonstrate bias against pro
11 se litigants and women, but her allegations are neither supported by the record nor by any
12 extrajudicial source of bias. See *Johnson v. Altamirano*, No.:19-cv-1185-H-BLM, 2020
13 WL 4747677, at *2 (S.D. Cal. Sept. 30, 2019). Accordingly, the allegations do not “display
14 a deep-seated favoritism or antagonism that would make fair judgment impossible.”
15 (*Liteky*, 510 U.S. at 550.)

16 Next, Appellant challenges two substantive rulings. Appellant’s first challenge
17 references a ruling not by this Court but by Judge Curiel in 18-cv-2359-GPC-RBB. Golden
18 notes the denial of her appeal in that case is an example of “vindictive unequal and unjust
19 adjudication.” (Reply Br. at 2.) Golden also takes issue with the characterization of her
20 appeal as “frivolous,” but it appears she is referring to the Ninth Circuit’s order on her

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24 ² Relatedly, Appellant contends she does not receive timely electronic service, but this is
not controlled by the undersigned and does not evidence bias or antagonism by the Court.

25 ³ Though Golden contends the Court sought to endanger her life by requiring her to file in
26 person or by mail during the Covid-19 pandemic, the Court’s order was issued more than
27 a month before California’s stay at home order began on March 19, 2020. See Governor
28 Gavin Newsom Issues Stay at Home Order, OFFICE OF GOVERNOR,
<https://www.gov.ca.gov/2020/03/19/governor-gavin-newsom-issues-stay-at-home-order>.

1 appeal of Judge Curiel’s order. See *Golden v. Kipperman*, No. 19-55005, ECF No. 15 (9th
2 Cir. Sept. 17, 2019) (dismissing appeal as frivolous pursuant to 28 U.S.C. § 1915(e)(2)).

3 The other ruling that Appellant highlights is this Court’s denial of her appeal to
4 recuse Judge Mann in 19-cv-2064-DMS-NLS, accusing the Court of denying the appeal
5 “without giving Golden any opportunity to be heard.” (Mot. at 4; see No: 19-CV-2064-
6 DMS-NLS, ECF No. 4.) However, the matter was carefully evaluated by the Court in a
7 written order based on Appellant’s briefs. (See *id.*) While Appellant does not agree with
8 the ruling, her challenges to the ruling are properly addressed on appeal and not on a recusal
9 motion. See *Liteky*, 510 U.S. at 550 (“Almost invariably, [judicial rulings] are proper
10 grounds for appeal, not for recusal.”) Notably, Golden appealed this Court’s ruling to the
11 Ninth Circuit, which dismissed the appeal for lack of jurisdiction. (ECF No. 9.)

12 Golden’s arguments focus on court rulings and fail to “identify any extrajudicial
13 source for the alleged bias.” See *Altamirano*, 2020 WL 4747677, at *2. Though Golden
14 contends these rulings are derived from gender bias and bias against pro se plaintiffs, there
15 is no factual basis for the allegations. See *United States v. \$292,888.04 in U.S. Currency*,
16 54 F.3d 564, 566–67 (9th Cir. 1995) (affidavit inadequate when based on conclusory
17 allegations of bias). Accordingly, these conclusory allegations are insufficient to warrant
18 recusal.

19 2. Ex Parte Communications

20 Next, Golden contends the Court engaged in ex parte communications with Judge
21 Mann while deciding her appeal to recuse Judge Mann. She argues this action
22 demonstrates the Court’s “deference to another judicial officer despite the factual evidence
23 in Goldens [sic] favor and this courts [sic] inability to make any judgment that are [sic] not
24 in the best interest of the opposing parties or to the detriment of Golden.” (Mot. at 5.)

25 “An ex parte communication is defined as a communication between counsel and
26 the court when opposing counsel is not present,” and is “generally thought to be one
27 between a person who is in a decision-making role and a person who is either a party or
28 counsel to a proceeding before him that takes place without notice and outside the record.”

1 North v. United States Dep’t of Justice, 17 F. Supp. 3d 1, 3 (D.D.C. 2013); see also Blixseth
2 v. Yellowstone Mountain Club, LLC., 742 F.3d 1215, 1219 (9th Cir. 2014) (“An ex parte
3 contact with a judicial officer is one where a party who has a right to be present is
4 excluded.”) “Ex parte communications are strongly disfavored,” but only warrant recusal
5 if the communications would prompt a reasonable person who is aware of all the facts to
6 reasonably question a judge’s impartiality. See *In re Mitan*, 579 Fed. App’x 67, 69–70 (3d
7 Cir. 2014).

8 Here, Golden alleges the undersigned contacted Judge Mann “and asked her to
9 respond [in camera]” to Golden’s appeal of the motion to recuse, and “Golden was never
10 noticed or served with the response.” (Mot. at 4.) Notably, Golden does not provide any
11 evidence to support this version of events, which version is mistaken. To be clear, at no
12 time did the undersigned contact Judge Mann about this case. Rather, the Court’s law clerk
13 called Judge Mann’s chambers to inquire about the status of the trial, specifically, whether
14 the trial was proceeding in light of Golden’s ex parte motion to stay. Rather than
15 responding to that question, the person who answered the call transferred the Court’s law
16 clerk directly to Judge Mann, who simply informed the law clerk that the trial was
17 proceeding as scheduled. At no time did this Court or its law clerk solicit a response from
18 Judge Mann to Golden’s appeal of the motion to recuse, nor did Judge Mann offer one.
19 The conversation involved a simple inquiry from the Court’s law clerk about whether the
20 trial was going forward, and nothing more.

21 “Ex parte communications with judicial staff concerning routine administrative
22 matters do not raise any inference of bias.” Blixseth, 742 F.3d at 1220. And ex parte
23 contacts do not require recusal when they are “not... substantively related to [the]
24 proceedings.” See *In re Brooks*, 383 F.3d 1036, 1038, 1041–43 (D.C. Cir. 2004). Because
25 the conversation at issue here did not involve the merits of the pending appeal and only
26 touched on administrative matters regarding the timing of the bankruptcy trial, no ex parte
27 communication occurred, let alone one justifying recusal.

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1 3. Orders to Show Cause

2 Finally, Golden’s remaining grievances involve the Court’s issuance of orders to
3 show cause and related dismissals. To that end, Golden alleges the Court gave her only
4 one week to respond to an Order to Show Cause (“OSC”) and in the instances when she
5 did not respond, summarily dismissed motions and appeals “using illegitimate legal
6 authority to deny due process.” (Mot. at 5.)

7 Though Golden does not identify the case numbers, the Court has dismissed two of
8 her cases without prejudice for failure to respond to orders to show cause. See 19-cv-838;
9 19-cv-843. In these orders, the Court warned Appellant if she did not respond to the OSCs,
10 the Court would dismiss the action pursuant to Civil Local Rule 83.1(a), which provides
11 the following options for sanctions for noncompliance with local rules:

12 Failure of counsel, or of any party, to comply with these rules, with the
13 Federal Rules of Civil or Criminal Procedure, or with any order of the court
14 may be grounds for imposition by the court of any and all sanctions
15 authorized by statute or rule or within the inherent power of the court,
16 including, without limitation, dismissal of any actions, entry of default,
17 finding of contempt, imposition of monetary sanctions or attorneys’ fees and
18 costs, and other lesser sanctions.

18 While the Court is sympathetic to the demands placed on litigants who appear before
19 the Court, it must ensure compliance with the local rules to properly administer cases and
20 dismissal of cases is an appropriate sanction for failure to comply. See *id.* All of the factual
21 allegations presented by Golden derive from judicial rulings in her cases pending before
22 the Court. Although Golden contends that the Court displays a deep-seated bias against
23 her and a preference for her opponents, the Court has ruled in Golden’s favor, granted
24 extensions for her, permitted late-filed pleadings, permitted pleadings that fail to comply
25 with the Federal Rules of Civil Procedure and other local rules, and allowed many appeals
26 to remain open despite her failure to comply with scheduling orders and orders to show
27 cause. See *Leslie v. Grupo ICA*, 198 F.3d 1152, 1160 (9th Cir. 1999) (affirming district
28 court’s denial of motion to recuse and noting that “the procedural history of [the] case

1 reveals that the district court has been extremely indulgent of [plaintiff], repeatedly
2 granting extensions of time, accepting late-filed pleadings, granting an untimely motion to
3 amend [plaintiff's] complaint, and reinstating [plaintiff's] action after its initial dismissal").
4 In addition, the Court has delayed adjudicating Appellees' motions to dismiss in order to
5 address the allegations raised by the subject motion. The Court finds there are no
6 allegations that would lead a reasonable observer "with knowledge of all the facts [to]
7 conclude that the judge's impartiality might reasonably be questioned." McTiernan, 695
8 F. 3d at 891.

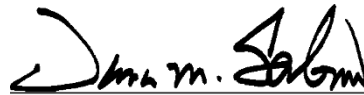
9 **III.**

10 **CONCLUSION**

11 For these reasons, Appellant's motion is denied.

12 **IT IS SO ORDERED.**

13 Dated: July 24, 2020

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16 Hon. Dana M. Sabraw
17 United States District Judge
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