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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BRICK S. HOUSTON, JR.,

Plaintiff(s),

v.

WEIR, et al.,

Defendant(s).

Case No.: 2:18-cv-00033-GMN-NJK

ORDER

[Docket Nos. 21, 22]

16 Pending before the Court are Plaintiff Brick Shalako Houston, Jr's motions to compel
17 discovery and for sanctions. Docket Nos. 21, 22. The motions are properly resolved without a
18 hearing. *See* Local Rule 78-1. For the reasons discussed below, Plaintiff's motions are **DENIED**
19 without prejudice. Docket Nos. 21, 22.

20 **I. Background**

21 On January 8, 2018, Plaintiff filed an application to proceed *in forma pauperis* and attached
22 his complaint. Docket No. 1. Plaintiff's complaint alleges five counts of civil rights violations
23 under 42 U.S.C. 1983. Docket No 1-1 at 3-10. On November 8, 2018, the Court granted Plaintiff's
24 application to proceed *in forma pauperis* and screened his complaint. Docket No. 4 at 1. The
25 Court ordered that portions of Plaintiff's claims could proceed, but ordered that some Defendants
26 were dismissed without prejudice because the complaint did not allege colorable claims against
27 them. *Id.* at 12-14. The Court further ordered the Clerk's Office to issue summons for Defendants
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1 Deas, Kincade, Kelsey, and Snyder. *Id.* at 13. The Court’s order included instructions regarding
2 service on these Defendants. *Id.* at 13-14.

3 On December 19, 2018, Plaintiff filed a motion to attempt service on all unserved
4 Defendants. Docket No. 12. The Court denied Plaintiff’s motion on January 8, 2019, because he
5 failed to identify the appropriate information required to effectuate service. Docket Nos. 12, 17.
6 On January 2, 2019, Plaintiff filed a motion to waive service of summons on the unserved
7 Defendants. Docket No. 15. The Court denied this request, pursuant to Federal Rule of Criminal
8 Procedure 4. Docket No. 18. On February 12, 2019, Plaintiff filed a motion to compel discovery,
9 which the Court denied on February 28, 2019. Docket Nos. 19, 20.

10 Plaintiff now asks the Court to compel Defendants to produce their phone numbers and
11 badge numbers, and to impose a sanction of \$300 against Defendants for “intentionally not
12 allowing discovery.” Docket No. 21 at 1-2. Plaintiff submits that the Court’s denial of his earlier
13 motion constitutes “bias” against him and demonstrates a plan to prevent or delay the U.S.
14 Marshals from completing service. *Id.* at 2. Plaintiff further submits that, because of this bias, the
15 Court should waive service and appoint a mediator to settle this case. *Id.*

16 **II. Analysis**

17 *A. Recusal*

18 Without explanation or elaboration, Plaintiff submits that the undersigned exhibits bias by
19 denying Plaintiff’s previous motions, at least in part, because of his ethnic background and
20 incarcerated status. Docket No 21 at 1-2.

21 The Court construes Plaintiff’s motion as seeking recusal pursuant to 28 U.S.C. § 144 and
22 28 U.S.C. § 455. *See Blaisdell v. Frappiea*, 729 F.3d 1237, 1241 (9th Cir. 2013) (courts construe
23 *pro se* filings liberally). The substantive standard for recusal under both sections is the same:
24 “whether a reasonable person with knowledge of all the facts would conclude that the judge’s
25 impartiality might reasonably be questioned.” *United States v. Hernandez*, 109 F.3d 1450, 1453
26 (9th Cir. 1997) (quoting *United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986)). Ordinarily,
27 any alleged bias must stem from an “extrajudicial source.” *Liteky v. United States*, 510 U.S. 540,
28 554-56 (1994). “[O]pinions formed by the judge on the basis of facts introduced or events

1 occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis
2 for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that
3 would make fair judgment impossible.” *Id.* at 555.

4 The undersigned has no personal feelings of bias toward Plaintiff on any basis, let alone
5 his ethnic background or incarcerated status. Plaintiff has not pointed to any basis on which a
6 reasonable observer could question whether such impartiality exists. The underlying motivation
7 for Plaintiff’s request seems to be that he is unhappy with the undersigned’s earlier rulings. Docket
8 No. 21 at 1-2; *see also* Docket Nos. 18, 20. Unhappiness with a judge’s rulings is not ground for
9 recusal. *See United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986) (“a judge’s prior adverse
10 ruling is not sufficient cause for recusal”).

11 Accordingly, Plaintiff’s motion for the undersigned to recuse, Docket No. 21, is **DENIED**.

12 *B. Motion to Compel and for Sanctions*

13 In prisoner civil rights cases, such as the instant case, the Court enters a scheduling order
14 governing discovery after defendants file an answer, a motion to dismiss, or otherwise appear.
15 Local Rule 16-1(b); *see also Vontress v. Nevada*, 2019 WL 1767887, at *2-3 (D. Nev. April 22,
16 2019). Once the court enters a scheduling order, the parties are permitted to engage in discovery.
17 *See Fed. R. Civ. P. 16*; *see also Vontress*, 2019 WL 1767887, at *2. In discovery, parties are
18 entitled to discover non-privileged information that is relevant to a party’s claim or defense and is
19 proportional to the needs of the case, including consideration of the importance of the issues at
20 stake in the action, the parties’ relative access to relevant information, the parties’ resources, the
21 importance of the discovery in resolving the issues, and whether the burden or expense of the
22 proposed discovery outweighs its likely benefit. Fed. R. Civ. P. 26(b)(1).

23 In this case, Defendants have not been served and, thus, have not yet appeared in any
24 manner. *See* Docket. Therefore, the Court has not yet entered a scheduling order and the time
25 period for discovery has not started.¹ As a result, no discovery can be compelled at this time and
26 sanctions are not appropriate.

27 ¹ Even if a scheduling order had been entered, Plaintiff did not engage in a proper meet and
28 confer. Docket No. 21 at 3-4.

1 Accordingly, Plaintiff's motion to compel, Docket No. 21, is **DENIED** without prejudice.
2 Further, Plaintiff's motion for sanctions is **DENIED**.

3 IT IS SO ORDERED.

4 Dated: May 10, 2019

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8 Nancy J. Koppe
9 United States Magistrate Judge
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