

1 Shortly after this Court denied Petitioner’s request for further briefing, Petitioner filed an
2 Affidavit of Prejudice in which he requests the recusal of Magistrate Judge Theresa L. Fricke.
3 Petitioner contends that the undersigned is prejudiced in favor of the government and thus unable
4 to render a fair judgment and alleges that “there is no proof anywhere that Judge Fricke
5 considered any of his claims ever.” Dkt. 31 at 2. Petitioner alleges that Judge Theresa L. Fricke
6 should recuse herself under 28 U.S.C. § 144.

7 A judge of the United States shall disqualify herself from a proceeding in which her
8 impartiality “might reasonably be questioned.” 28 U.S.C. § 455(a). In addition, a judge of the
9 United States shall disqualify herself under circumstances where she has a personal bias or
10 prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the
11 proceeding. 28 U.S.C. § 455(b)(1). Normally, a judge should not be recused when the only basis
12 for the motion to recuse is that the judge made adverse rulings in the case where the party seeks
13 disqualification of the judge. *Liteky v. U.S.*, 510 U.S. 540, 555 (1994); *In re Marshall*, 721 F.3d
14 1032 (9th Cir. 2013).

15 Pursuant to 28 U.S.C. § 144, a judge shall proceed no further “whenever a party to any
16 proceeding in a district court files a timely and sufficient affidavit that the judge before whom
17 the matter is pending has a personal bias or prejudice either against [the filing party] or in favor
18 of any adverse party.” In addition, 28 U.S.C. § 455 reiterates the “grounds for recusal set forth
19 in § 144 . . . [and] (1) made them applicable to *all* justices, judges, and magistrates (and not just
20 district judges), and (2) placed the obligation to identify the existence of those grounds upon the
21 judge himself, rather than requiring recusal only in response to a party affidavit.” *Liteky*, 510
22 U.S. at 548 (emphasis in original). Under both § 144 and § 455, recusal of a federal judge is
23 appropriate for either actual bias or appearance of bias, if “a reasonable person with knowledge
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1 of all the facts would conclude that the judge’s impartiality might reasonably be questioned.”
2 *Yagman v. Republic Insurance*, 987 F.2d 622, 626 (9th Cir.1993). This is an objective test.
3 *Preston v. United States*, 923 F.2d 731, 734 (9th Cir. 1992).

4 United States District Court for the Western District of Washington Local Civil Rule,
5 LCR 3(f) additionally provides that:

6 **(f) Motions to Recuse**

7 Whenever a motion to recuse directed at a judge of this court is filed pursuant to
8 28 U.S.C. § 144 or 28 U.S.C. § 455, the challenged judge will review the motion
9 papers and decide whether to recuse voluntarily. If the challenged judge decides
10 not to voluntarily recuse, he or she will direct the clerk to refer the motion to the
11 chief judge, or the chief judge’s designee. If the motion is directed at the chief
12 judge, or if the chief judge or the chief judge’s designee is unavailable, the clerk
13 shall refer it to the active judge with the highest seniority.

14 Courts have held that, generally, personal bias or prejudice under § 144 or § 455 must
15 stem from an extrajudicial source. *Liteky*, 510 U.S. at 544 (1994); *U.S. v. Hernandez*, 109 F.3d
16 1450, 1454 (9th Cir. 1997). Thus “judicial rulings alone almost never constitute a valid basis for
17 a bias or partiality motion” because they cannot show reliance upon an extrajudicial source.

18 *Liteky*, 510 U.S. at 555. Further, “opinions formed by the judge on the basis of facts introduced
19 or events occurring in the course of the current proceedings, or of prior proceedings, do not
20 constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or
21 antagonism that would make fair judgment impossible.” *Id.*

22 Thus, Petitioner would need to demonstrate bias stemming from an extrajudicial source
23 or a deep-seated favoritism to provide grounds for recusal under § 144 or § 455. *See U.S. v.*
24 *Sibla*, 624 F.2d 864, 868-869 (9th Cir. 1980) (court should initially determine whether the facts
25 alleged in the affidavit submitted by the party seeking recusal are legally sufficient to support the
motion, and refer the motion to another judge to determine the merits).

1 stay is lifted. Any motion filed while the matter is stayed shall not be considered and shall be
2 dismissed. The Clerk of the Court shall send a copy of this Order to Plaintiff.

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4 Dated this 29th day of January, 2018.

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8 Theresa L. Fricke
9 United States Magistrate Judge
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