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

11 ANTHONY JOHNSON, an individual, )

12 Plaintiff, )

13 vs. )

14 MANUEL ALTAMIRANO, an )  
individual, RICHARD TURNER, an )  
15 individual; DAVID KINNEY, an )  
individual, DAVID HUFFMAN, an )  
16 individual, PAUL TYRELL, an )  
individual, SEAN SULLIVAN, an )  
17 individual, STORIX, INC., a California )  
Corporation and DOES 1-5, inclusive, )

18 Defendants. )  
19

Case No. 19CV1185-H-BLM

**DEFENDANTS MANUEL  
ALTAMIRANO, RICHARD  
TURNER, DAVID KINNEY, AND  
DAVID HUFFMAN'S OPPOSITION  
TO PLAINTIFF'S MOTION TO  
RECUSE**

Judge: Hon. Marilyn L. Huff  
Dept.: Courtroom 15A

Complaint Filed: June 24, 2019  
Trial Date: Not Set

20  
21 Defendants Manuel Altamirano, Richard Turner, David Kinney, and David  
22 Huffman (collectively, "Defendants"), hereby submit their opposition to Plaintiff  
23 Anthony Johnson's ("Johnson") Motion to Recuse.

24 **I. INTRODUCTION**

25 Johnson moves to recuse assigned judge, Hon. Marilyn L. Huff, pursuant to 28  
26 U.S.C. §§ 144 and 455(a). Johnson's motion under these sections is deficient and  
27 must be denied because: 1) Johnson has not provided a legally sufficient affidavit  
28 (declaration) pursuant to 28 U.S.C. § 144; and 2) Johnson has not, and cannot,

1 establish the existence of a personal bias. Defendants respectfully request the Court  
2 deny Johnson's Motion.

3 **II. DISCUSSION**

4 28 U.S.C. §§ 144 and 455 govern the grounds for seeking disqualification of  
5 federal judges but entail different procedural requirements. 28 U.S.C. § 455 is  
6 fashioned as a self-enforcing obligation on the assigned judge but may be invoked by  
7 a party if the judge does not disqualify himself or herself. *In re Bernard*, 31 F.3d  
8 842, 843 (9<sup>th</sup> Cir. 1994). Thus, no motion is required and the initial decision to sit in  
9 a case rests with the assigned judge. *Ibid.* 28 U.S.C. § 144 differs from the self-  
10 imposed obligations of 28 U.S.C. § 455 in that any motion for recusal must include a  
11 legally sufficient affidavit or declaration that on its face establishes a personal, as  
12 opposed to judicial, bias or prejudice on the part of the assigned judge directed at the  
13 party. *United States v. Sibla*, 624 F.2d 864, 868 (9<sup>th</sup> Cir. 1980). Conclusory  
14 allegations, beliefs, and opinions will not support disqualification. *Hinman v.*  
15 *Rogers*, 831 F.2d 937, 939 (10<sup>th</sup> Cir. 1987). A legally sufficient affidavit or  
16 declaration therefore sets forth objective facts including "times, places, persons,  
17 occasions and circumstances with the particularity that would be reasonably expected  
18 in a bill of particulars. *United States v. Zagari*, 419 F.Supp. 494, 501 (ND CA 1976).

19 First, Johnson's declaration in support of his motion for recusal is woefully  
20 deficient and does not satisfy the "legally sufficient" standard. Johnson's declaration  
21 is completely devoid of specific fact allegations showing a personal bias directed at  
22 Johnson. Instead, Johnson rehashes the prior orders of this Court and the jury verdict  
23 in favor of Storix, Inc. as establishing grounds for his motion. But rulings and  
24 opinions based on facts and evidence introduced in a prior proceeding tried to jury  
25 verdict are insufficient to provide grounds for recusal. *See Liteky v. United States*,  
26 510 U.S. 540, 555 (1994). Because Johnson has not satisfied the procedural  
27 requirements of 28 U.S.C. § 144 and the particularity required, his motion for recusal  
28 should be denied.

1 Second, under either 28 U.S.C. §§ 144 or 455, Johnson has not established a  
2 personal bias or prejudice requiring recusal. Bias or prejudice warranting recusal  
3 must somehow be based on a disposition or opinion that is wrongful or inappropriate  
4 because it is undeserved or is based on knowledge that should not be possessed or is  
5 excessive in degree. *Liteky*, 510 U.S. at 550. A judge's rulings and remarks on  
6 evidence do not, however, constitute personal bias or prejudice. *United States v.*  
7 *Grinnell Corp.*, 384 U.S. 563, 583 (1966). As discussed above, Johnson has not  
8 identified specific factual allegations establishing a personal bias or prejudice. More  
9 accurately, however, Johnson has merely identified facts establishing an adverse  
10 ruling against him in a prior proceeding as grounds for recusal. But these  
11 conclusions and Johnson's opinion that his prior proceeding was unfavorable, is  
12 insufficient to satisfy the standard under either 28 U.S.C. §§ 144 or 455. No  
13 reasonable person would view the previous proceedings as establishing the existence  
14 of bias or prejudice because the trier of fact and sitting Judge simply performed that  
15 which they were ethically obligated to do.

16 **III. CONCLUSION**

17 For all the reasons stated above, Johnson's motion for recusal should be  
18 denied. Johnson has failed to satisfy the standard for seeking recusal under 28 U.S.C.  
19 §§ 144 and 455, and Defendants respectfully request his motion be denied.

20  
21 Dated: September 16, 2019

**WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER LLP**

22  
23  
24 By: /s/ Marty B. Ready, Esq.  
25 Michael P. McCloskey, Esq.  
26 Marty B. Ready, Esq.  
27 Attorneys for Defendant  
28 Manuel Altamirano, Richard Turner,  
David Kinnev and David Huffman

2  
3 **CERTIFICATE OF SERVICE**

4 I, the undersigned, am employed in the county of San Diego, State of California. I am over  
the age of 18 and not a party to the within action; my business address is 401 West A Street, Suite  
5 1900, San Diego, California, 92101.

6 On September 16, 2019, I caused to be served the following document(s) described as  
follows:

7  
8 **DEFENDANTS MANUEL ALTAMIRANO, RICHARD TURNER, DAVID  
KINNEY, AND DAVID HUFFMAN'S OPPOSITION TO PLAINTIFF'S  
MOTION TO RECUSE**

9 on the following parties in this action:

10 ***Plaintiff, Pro Se***

11 Anthony J. Johnson  
1728 Griffith Avenue  
12 Las Vegas, NV 89104  
Telephone: (619) 246-6549  
13 Email: flydiversd@gmail.com

14 By the following method of service:

15  **BY MAIL** - As follows: I am "readily familiar" with the firm's practice of collection and  
16 processing correspondence for mailing. Under that practice it would be deposited with the  
U.S. Postal Service on that same day with postage thereon fully prepaid at San Diego,  
17 California in the ordinary course of business. The envelope was sealed and placed for  
collection and mailing on this date following our ordinary practices. I am aware that on  
18 motion of the party served, service is presumed invalid if postal cancellation date or postage  
meter date is more than one day after date of deposit for mailing in affidavit.

19  **BY E-MAIL OR ELECTRONIC TRANSMISSION** - Based on a court order or an  
20 agreement of the parties to accept service by e-mail or electronic transmission, I caused the  
documents to be sent to the persons at the e-mail addresses listed below. I did not receive,  
21 within a reasonable time after the transmission, any electronic message or other indication  
that the transmission was unsuccessful.

22 Executed on September 16, 2019, at San Diego, California. I declare under penalty of  
23 perjury under the laws of the State of California, that the above is true and correct.

24  
25   
26 Irene Gonzales