

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KIARA ROBLES,

No. C 17-cv-4864-CW

Plaintiff,

ORDER DENYING LEAVE TO  
FILE MOTION FOR  
RECONSIDERATION,  
REQUEST FOR RECUSAL  
AND REQUEST FOR  
CERTIFICATION TO NINTH  
CIRCUIT

v.

IN THE NAME OF HUMANITY, WE  
REFUSE TO ACCEPT A FASCIST  
AMERICA, et al.,  
Defendants.

(Docket Nos. 87 & 92)

\_\_\_\_\_/

United States District Court  
For the Northern District of California

Plaintiff Kiara Robles seeks leave to file her motion for reconsideration of the Court's order revoking Larry Klayman's pro hac vice status or, in the alternative, seeks recusal of the undersigned pursuant to 28 U.S.C. § 144. Plaintiff subsequently filed a motion for leave to supplement this motion and also seeks certification of these decisions to the U.S. Court of Appeals if the motions are denied here. The Court finds these motions suitable for disposition on the papers. Having reviewed the papers and the record, the Court DENIES Plaintiff's motions.

I. Background

On June 5, 2017, Plaintiff Robles filed her complaint in Robles v. The Regents of the University of California, Berkeley, 17-cv-3235-cw (Robles I). On July 17, 2017, Plaintiff filed a request for recusal in Robles I, arguing that the undersigned is an alumna of University of California Berkeley and was appointed by former president Bill Clinton. Robles I, Docket No. 50. The Court denied the request for recusal on July 25, 2017. Robles I, Docket No. 56 (Recusal Order). On the same day, Plaintiff filed a

1 notice of voluntary dismissal in Robles I. On August 22, 2017,  
2 Plaintiff filed the complaint here, alleging nearly identical  
3 facts and claims all alleged in Robles I. Docket No. 1. On  
4 September 28, 2017, the Court ordered the current case, Robles v.  
5 In the Name of Humanity, We Refuse to Accept a Fascist America et  
6 al, 17-cv-4864-cw, which had been randomly assigned to another  
7 judge, to be related to Robles I.

8 On October 2, 2017, Defendants filed a motion to revoke the  
9 pro hac vice status of Plaintiff's counsel, Larry Klayman. Docket  
10 No. 15. On May 23, 2018, the Court issued an eleven-page  
11 tentative ruling outlining its reasons for its intention to grant  
12 Defendants' motion. Docket No. 49 (Tentative Ruling). The Court  
13 also offered Mr. Klayman the opportunity to request a hearing  
14 before the final ruling. Docket Nos. 49, 56 & 66. In the  
15 Tentative Ruling, the Court noted the series of judicial  
16 reprimands and sanctions faced by Mr. Klayman, including the Ninth  
17 Circuit's affirmance of the District of Nevada's decision to deny  
18 Mr. Klayman's application for pro hac vice. Tentative Ruling at  
19 2-4. The Court also noted the disciplinary proceedings against  
20 Mr. Klayman in the jurisdictions in which he was licensed to  
21 practice, Florida and the District of Columbia. The Court relied  
22 on the June 19, 2017 District of Columbia Court of Appeals' Board  
23 of Professional Responsibility Report and Recommendation (D.C.  
24 Recommendation) which "found by 'clear and convincing evidence'  
25 that [Mr.] Klayman's conduct 'raises a serious doubt as to his  
26 ability to practice in conformance with the rules.'" Id. at 4-6  
27 (citing D.C. Recommendation).

28

1 The Court's Tentative Ruling also addressed Plaintiff's  
2 counsel's failure to follow the local rules and procedures of this  
3 District, including failing to comply with the Court's deadline to  
4 oppose a motion to dismiss. Id. at 10.

5 The parties subsequently submitted supplemental briefing and  
6 appeared for a hearing. Docket Nos. 66, 71, 72 & 73. On August  
7 31, 2018, the Court issued its final ruling. Docket No. 86 (Final  
8 PHV Order). The Court found that Mr. Klayman "present[ed] no new  
9 arguments or facts that would change the Court's tentative  
10 ruling." Id. at 1. The Court also noted that the D.C.  
11 Recommendation was on appeal, but that the "findings that Klayman  
12 violated Rules of Professional Responsibility were still  
13 instructive." Id.

14 On September 13, 2018, Plaintiff filed the instant request  
15 for leave to file a motion for reconsideration of the order  
16 revoking Mr. Klayman's pro hac vice status and, in the  
17 alternative, again seeking recusal. Docket No. 87. On September  
18 14, 2018, the Court issued its order on Defendants' motion to  
19 dismiss, dismissing most of Plaintiff's claims against Defendants  
20 with prejudice. Docket No. 88. On October 2, 2018, Plaintiff  
21 filed her motion for leave to supplement her request for  
22 reconsideration, arguing that the Court's order on the motion to  
23 dismiss was improper given the pending motion for recusal. Docket  
24 No. 92.

1 II. Discussion

2 A. Plaintiff's Request for Leave to File Motion for  
3 Reconsideration of Order Revoking Pro Hac Vice Status is  
4 Denied

5 This District allows for leave to file a motion for  
6 reconsideration if there is a showing of the following:

7 The moving party must specifically show reasonable  
8 diligence in bringing the motion, and one of the  
9 following:

10 (1) That at the time of the motion for leave, a  
11 material difference in fact or law exists from that  
12 which was presented to the Court before entry of the  
13 interlocutory order for which reconsideration is sought.  
14 The party also must show that in the exercise of  
15 reasonable diligence the party applying for  
16 reconsideration did not know such fact or law at the  
17 time of the interlocutory order; or

18 (2) The emergence of new material facts or a change of  
19 law occurring after the time of such order; or

20 (3) A manifest failure by the Court to consider  
21 material facts or dispositive legal arguments which were  
22 presented to the Court before such interlocutory order.

23 Civil L.R. 7-9.

24 Plaintiff argues that reconsideration is appropriate here  
25 because the Court has "manifest[ly] fail[ed] . . . to consider"  
26 three purported "material facts." First, the Court made an  
27 incorrect finding that Plaintiff had moved to disqualify the  
28 undersigned previously when Plaintiff had only sought a recusal.  
Motion at 5. Second, the Court "consciously disregarded Robles'  
constitutional due process" because Plaintiff cannot proceed  
without Mr. Klayman. Specifically, she cannot find other  
representation and her local counsel Michael Kolodzi cannot  
represent Plaintiff by himself. Id. at 6. Third, the Court  
relied on the D.C. Recommendation as dispositive law and failed to  
consider the dissenting opinion in a Ninth Circuit case. Id. at

1 7. The Court does not find any of these reasons persuasive. They  
2 are insufficient for purposes of reconsideration.

3 First, Robles' argument that the Court made an erroneous  
4 finding that she made a motion for disqualification when she only  
5 requested recusal is meritless. As the Court noted in the Robles  
6 I order denying recusal, "The standards for disqualification or  
7 recusal under 28 U.S.C. §§ 144 and 455 are identical." Recusal  
8 Order at 1 (citing United States v. Sibla, 624 F.3d 864, 867 (9th  
9 Cir. 1980). Thus, the Court did not make an erroneous finding  
10 when it used the term disqualification instead recusal. Nor is  
11 this a material fact or dispositive legal argument sufficient for  
12 reconsideration purposes.

13 Second, revoking the pro hac vice application of Mr. Klayman  
14 has not deprived Plaintiff of any constitutional right to counsel.  
15 As the Court has addressed previously in its Final PHV Order,  
16 Plaintiff is still represented by Mr. Kolodzi.<sup>1</sup> Furthermore, a  
17 plaintiff in a civil case does not have a constitutional right to  
18 counsel nor does she have an absolute right to select the counsel  
19 she desires. Melendres v. Arpaio, 2015 WL 11071093, at \*2 (D. Az.  
20 July 10, 2015) (rejecting plaintiff's argument that the court's  
21 denial of plaintiff's counsel's pro hac vice application violated  
22 his constitutional right to counsel, holding there is no  
23 constitutional right to counsel in a civil action); Matter of  
24 Wynn, 889 F.2d 644, 646 (5th Cir. 1989) ("[A] litigant must be

25 \_\_\_\_\_  
26 <sup>1</sup> If Mr. Kolodzi is unable to continue representing Plaintiff for  
27 financial or other reasons, he may seek permission from this Court  
28 to withdraw as Plaintiff's attorney pursuant to the local rules.  
See Civil L.R. 11-5.

1 afforded a fair opportunity to secure counsel of his choice, not  
2 that he has an absolute right to select any counsel he desires.");  
3 Bass v. Perrin, 170 F.3d 1312, 1320 (11th Cir. 1999); see also  
4 United States v. Ries, 100 F.3d 1469, 1471 (9th Cir. 1996)  
5 (upholding district court's denial of litigant's counsel's pro hac  
6 vice application because there was a "compelling purpose" for the  
7 court to "orderly administ[er]" justice). Thus, the Court's  
8 revocation of Mr. Klayman's pro hac vice status did not impinge on  
9 any constitutional rights.

10 Plaintiff's remaining arguments merely rehash her prior  
11 arguments raised in her papers and at the hearing. Plaintiff has  
12 not established that the Court "manifestly fail[ed]" to address  
13 any of these arguments pursuant to Local Rules. See Final PHV  
14 Order at 1-2.

15 Plaintiff has failed to identify any material facts or  
16 dispositive legal arguments that the Court had not previously  
17 considered. Thus, the Court DENIES Plaintiff's motion for leave  
18 to file a motion for reconsideration.

19 B. Plaintiff's Request for Recusal Is Denied

20 Plaintiff also seeks recusal a second time under 28 U.S.C. §  
21 144, based again on the alma mater and appointing president of the  
22 undersigned. She also complains of the Court's rulings against  
23 her. Under § 144, "[w]henever a party . . . makes and files a  
24 timely and sufficient affidavit that the judge before whom the  
25 matter is pending has a personal bias or prejudice[,] . . . such  
26 judge shall proceed no further therein, but another judge shall be  
27 assigned to hear such proceeding." 28 U.S.C. § 144. "The  
28 affidavit shall state the facts and the reasons for the belief

1 that bias or prejudice exists." Id. This affidavit must be  
2 legally sufficient to establish bias or prejudice, and "must state  
3 facts which if true fairly support the allegation that bias or  
4 prejudice stemming from (1) an extrajudicial source (2) may  
5 prevent a fair decision on the merits . . . [and] (3) the  
6 substantiality of the support given by these facts to the  
7 allegation of bias." United States v. Azhocar, 581 F.2d 735, 739-  
8 40 (9th Cir. 1978). Plaintiff's request is denied because she has  
9 failed to submit affidavits identifying any purported bias or  
10 prejudice and has failed to identify any appropriate basis for  
11 recusal. 28 U.S.C. § 144. Plaintiff's affidavits merely state  
12 that she cannot find another attorney, and that Mr. Kolodzi will  
13 be unable to represent Plaintiff by himself. Docket No. 87-2 &  
14 87-3 (Motion, Exs. 2 & 3). These do not speak to any purported  
15 bias or prejudice. United States v. Sibla, 624 F.2d 864, 868 (9th  
16 Cir. 1980). Plaintiff's request for recusal under § 144 is denied  
17 for this reason alone.

18 Nor has Plaintiff identified a valid basis for recusal. She  
19 repeats the arguments in her first recusal motion. However, as  
20 stated in the Court's order denying Plaintiff's request for  
21 recusal in the first instance, Plaintiff's argument is meritless.  
22 Recusal Order at 1-2. A judge's alma mater and appointing  
23 president do not create the appearance of a conflict of interest.  
24 Larson v. C.I.A., No. 1:10-cv-01774 OWW JL, 2010 WL 4623923, at \*1  
25 (E.D. Cal. Nov. 5, 2010). Plaintiff's only new point -- that the  
26 undersigned has demonstrated bias or prejudice based on rulings  
27 against Plaintiff -- also fails under clearly established law.  
28 Liteky v. United States, 510 U.S. 540, 541 (1994) ("[J]udicial

1 rulings alone almost never constitute [a] valid basis for a bias  
2 or partiality recusal motion."); United States v. Studley, 783  
3 F.3d 934, 939-40 (9th Cir. 1986) ("[A] judge's prior adverse  
4 ruling is not a sufficient cause for recusal" and is not an  
5 extrajudicial source). Plaintiff's request for recusal is DENIED.

6 C. The Court Did Not Improperly Issue an Order While  
7 Plaintiff's Motion for Reconsideration was Pending

8 Plaintiff argues in her supplemental motion that the Court  
9 improperly issued an order on Defendants' motion to dismiss when  
10 her recusal motion was pending. Supp. Motion at 4-5. When a  
11 party files a timely and sufficient affidavit of bias or prejudice  
12 on the part of the judge before whom the party's case is pending,  
13 it is upon the judge to pass on the affidavit's legal sufficiency.  
14 28 U.S.C. § 144; Berger v. United States, 255 U.S. 22, 35-36  
15 (1922). "Only after the judge determines that the affidavit of  
16 bias or prejudice is legally sufficient does it become the duty of  
17 the judge to 'proceed no further' in the case." Azhocar, 581 F.2d  
18 at 738. As stated above, Plaintiff's affidavits were not legally  
19 sufficient. Thus, a stay of the current proceedings was not  
20 warranted, nor would it have been appropriate to assign the case  
21 to another a judge. Issuing an order while the current recusal  
22 motion was pending was not improper.

23 D. Plaintiff Is Not Entitled to Interlocutory Appeal

24 Plaintiff lastly seeks permission to certify for  
25 interlocutory appeal under 28 U.S.C. § 1292(b) any order denying  
26 recusal and the order revoking Mr. Klayman's pro hac vice status  
27 if reconsideration is denied in this Order. Supp. Motion at 6-8.  
28 Pursuant to 28 U.S.C. § 1292(b), the district court may certify an

1 appeal of an interlocutory order if (1) the order involves a  
2 controlling question of law, (2) appealing the order may  
3 materially advance the ultimate termination of the litigation and  
4 (3) there is substantial ground for difference of opinion as to  
5 the question of law. See Reese v. BP Exploration (Alaska) Inc.,  
6 643 F.3d 681, 687-88 (9th Cir. 2011). "Section 1292(b) is a  
7 departure from the normal rule that only final judgments are  
8 appealable and therefore must be construed narrowly." James v.  
9 Price Stern Sloan, Inc., 283 F.3d 1064, 1068 n.6 (9th Cir. 2002).  
10 Thus, the court should apply the statute's requirements strictly,  
11 and should grant a motion for certification only when exceptional  
12 circumstances warrant it. Coopers & Lybrand v. Livesay, 437 U.S.  
13 463, 475 (1978), superseded on unrelated grounds in Microsoft  
14 Corp. v. Baker, 437 U.S. 463 (2017). The party seeking  
15 certification to appeal an interlocutory order has the burden of  
16 establishing the existence of such exceptional circumstances. Id.  
17 A court has substantial discretion in deciding whether to grant a  
18 party's motion for certification. Brown v. Oneonta, 916 F. Supp.  
19 176, 180 (N.D.N.Y. 1996).

20 Here, Plaintiff again merely repeats her arguments asserted  
21 in her motions for reconsideration and for recusal. Supp. Motion  
22 at 6-11. Plaintiff only offers a formulaic recitation of the  
23 standard for interlocutory appeal. She does not identify a  
24 controlling question of law, establish how granting certification  
25 would materially advance the termination of the litigation, or  
26 point to a substantial difference of opinion. Plaintiff has not  
27 met her burden to show exceptional circumstances that would merit  
28 interlocutory appeal on either issue. Zepeda v. PayPal, Inc.,

1 C10-2500 SBA, 2014 WL 588066, at \*2 (N.D. Cal. Feb. 14, 2014)  
2 (finding plaintiff's motion to be frivolous and filed in bad faith  
3 and denying plaintiff's request for interlocutory appeal of  
4 plaintiff's § 144 recusal motion); Brooks v. Motsenbocker Advanced  
5 Devs., Inc., 07-cv-0773-MMA, 2009 WL 10671993, at \*4 (S.D. Cal. May  
6 15, 2009) (denying interlocutory appeal of an attorney  
7 disqualification order).

8 III. Conclusion

9 For the foregoing reasons, Plaintiff's motion for  
10 reconsideration and, in the alternative, for recusal is DENIED.  
11 Plaintiff's supplemental motion seeking interlocutory appeal of  
12 these two decisions is also DENIED.

13 IT IS SO ORDERED.

14  
15 Dated: October 24, 2018



16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  

---

CLAUDIA WILKEN  
United States District Judge