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14 *Attorneys for Plaintiff*
15 *KIARA ROBLES*

16 **IN THE UNITED STATES DISTRICT COURT**
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

18 KIARA ROBLES,

19 Plaintiff,

20 v.

21 THE REGENTS OF THE UNIVERSITY OF
22 CALIFORNIA, BERKELEY, et al.

23 Defendants.

Case No.: 4:17-cv-04864-CW

**MOTION FOR LEAVE TO FILE
MOTION FOR RECONSIDERATION OF
THIS COURT’S ORDER REVOKING
LARRY KLAYMAN’S *PRO HAC VICE*
AND TO DISQUALIFY THE
HONORABLE CLAUDIA WILKEN
UNDER 28 U.S.C. § 144 AND
[PROPOSED] ORDER**

**Date: October 23, 2018
Time: 2:30 pm**

24 **NOTICE OF MOTION AND MOTION TO FOR RECONSIDERATION AND TO**
25 **DISQUALIFY**

26 PLEASE TAKE NOTICE that on October 23, 2018, at 2:30 p.m., or as soon thereafter as
27 counsel may be heard, in the Courtroom of the Honorable Claudia Wilken (“Judge Wilken”),
28 located at 1301 Clay Street, Oakland, CA., Plaintiff Kiara Robles (“Robles”) will and hereby

1 does move for an order granting leave to file a motion for reconsideration of this Court’s order of
2 August 31, 2018 revoking Larry Klayman’s *pro hac vice* admission pursuant to LCvR 7-9 and to
3 disqualify Judge Wilken under 28 U.S.C. § 144. This motion is made based on this Notice of
4 Motion and Motion, the Memorandum of Points and Authorities, all pleadings and papers before
5 this Court, and any oral argument that may be presented to this Court.

6 **STATEMENT OF RELIEF SOUGHT**

7 Robles seeks an order granting leave to file a motion for reconsideration of this Court’s
8 order of August 31, 2018 revoking Larry Klayman’s *pro hac vice* admission pursuant to LCvR 7-
9 9 and, alternatively, an order disqualifying Judge Wilken pursuant to 28 U.S.C. § 144.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. INTRODUCTION**

12 Robles hereby respectfully requests leave to file a motion for reconsideration of this
13 Court’s order of August 31, 2018 revoking the *pro hac vice* status of her counsel of choice, Mr.
14 Larry Klayman (“Mr. Klayman) on the grounds that there has been a “manifest failure by the
15 Court to consider material facts or dispositive legal arguments presented before entry of
16 judgment.” LCvR 7-9(3). On the same facts, as set forth below, Robles also seeks to disqualify
17 Judge Wilken under 28 U.S.C. § 144 based on demonstrable bias against herself and her chosen
18 counsel, Mr. Larry Klayman (“Mr. Klayman”) and Michael Kolodzi (“Mr. Kolodzi”), as Judge
19 Wilken has knowingly relied on false statements as set forth and manifest in her tentative ruling
20 and failed to correct them in order to find a way to revoke Mr. Klayman’s *pro hac vice*
21 admission, due to her personal political and other biases, which have severely prejudiced Robles
22 to the point where her constitutional due process rights have been effectively extinguished.

23 This bias and prejudice is demonstrated and thus manifest in Judge Wilken’s false
24 findings of fact set forth in both her tentative ruling and final order, which incorporated the
25 tentative ruling, despite these falsehoods having been pointed out in Robles’ pleadings and at
26 oral argument on July 17, 2018. *See* Exhibit 1. Judge Wilken has steadfastly refused to correct
27 the record, despite requests from Robles and her legal counsel. Judge Wilken has also ignored
28 sworn affidavits from Robles and Mr. Kolodzi, stating that this case cannot proceed without Mr.

1 Klayman. Lastly, Judge Wilken has falsely stated that Robles has, in the past, moved to
2 disqualify her, when Robles had actually filed a request for voluntary recusal in a previous case
3 that was voluntarily dismissed. Regrettably, however, many of the concerns about latent
4 extrajudicial bias and prejudice due to this Court's history attending and teaching at U.C.
5 Berkeley, and thus her apparent affinity to them, if not loyalty, voiced by Robles in the previous
6 request for voluntarily recusal have come to fruition, leaving Robles no choice but to file this
7 instant motion.

8 **II. LEGAL STANDARD**

9 **A. Motion for Reconsideration**

10 Pursuant to Northern District Civil Local Rule 7-9, a party may seek leave to file a
11 motion for reconsideration any time before judgment. N.D. Civ. L.R. 7-9(a). A motion for
12 reconsideration may be made on one of three grounds: (1) a material difference in fact or law
13 exists from that which was presented to the Court, which, in the exercise of reasonable diligence,
14 the party applying for reconsideration did not know at the time of the order; (2) the emergence of
15 new material facts or a change of law; or (3) **a manifest failure by the Court to consider**
16 **material facts or dispositive legal arguments presented before entry of judgment.** N.D. Civ.
17 L.R. 7-9(b)(1)-(3) (emphasis added).

18 **B. 28 U.S.C. § 144**

19 An impartial judiciary is a fundamental component of the system of justice in the United
20 States. The right to a "neutral and detached judge" in any proceeding is protected by the U.S.
21 Constitution and is an integral part of maintaining the public's confidence in the judicial system.
22 *Ward v. City of Monroeville*, 409 U.S. 57, 61-62 (1972); *see also Marshall v. Jerrico, Inc.*, 446
23 U.S. 238, 243 (1980) (The U.S. Constitution guarantees a party an impartial and disinterested
24 tribunal in civil cases). To ensure that this right is protected, Congress has sought to secure the
25 impartiality of judges by requiring them to step aside, or in some circumstances, disqualify
26 themselves, in various circumstances.

27 Under 28 U.S.C. § 144:

28 Whenever a party to any proceeding in a district court makes and files a timely
and sufficient affidavit that the judge before whom the matter is pending has a

1 personal bias or prejudice either against him or in favor of any adverse party, such
2 judge shall proceed no further therein, but another judge shall be assigned to hear
such proceeding.

3 28 U.S.C. § 144. This statute is unambiguous – if the requirements are met, another judge must
4 be assigned to take over the matter.

5 The disqualification statute, 28 U.S.C. §144, is mandatory and automatic,
6 requiring only a timely and sufficient affidavit alleging personal bias or prejudice
of the judge. The judge is a silent defendant, unable to make findings on the truth
7 or falsity of the affiant's allegations, and truth must be presumed. *United States v.*
Hanrahan, 248 F. Supp. 471, 474 (D.D.C. 1965) (Emphasis added); and the
8 allegations may be based upon information and belief, *Berger v. United States*,
255 U.S. 22, 34, 65 L. Ed. 481, 41 S. Ct. 230 (1920).

9 *Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook Railroad Co.*, 380
10 F.2d 570, 576 (D.C. 1967) (emphasis added). **As evidence of the absolute requirement of**
11 **impartiality from judicial officers, the U.S. Courts of Appeals for the Fifth, First, Sixth,**
12 **Tenth, and Eleventh Circuits have said that close questions should be decided in favor of**
13 **recusal.** See *Republic of Pan. v. American Tobacco Co.*, 217 F.3d 343, 347 (5th Cir. 2000)
14 (citing *In re Chevron*, 121 F.3d 163, 165 (5th Cir. 1997)); *In re United States*, 158 F.3d 26, 30
15 (1st Cir. 1998); *Nichols v. Alley*, 71 F.3d 347, 352 (10th Cir. 1995); *United States v. Dandy*, 998
16 F.2d 1344, 1349 (6th Cir. 1993); *United States v. Kelly*, 888 F.2d 732, 744 (11th Cir. 1989).

17 “The test for personal bias or prejudice in [S]ection 144 is identical to that in section
18 455(b)(1), and the decisions interpreting this language in [S]ection 144 are controlling in the
19 interpretation of section 455(b)(1).” *United States v. Sibla*, 624 F.2d 864, 867 (9th Cir. Cal.
20 1980). In *Litecky v. United States*, the U.S. Supreme Court held that if the judge succumbs to
21 extrajudicial influence, he is subject to such a motion. Even more, in the absence of an
22 extrajudicial influence, judicial rulings coupled with the requisite “degree of favoritism or
23 antagonism” can serve as the basis for such a motion even “when no extrajudicial source is
24 involved.” *Id.* Lastly, “opinions formed by the judge on the basis of facts introduced or events
25 occurring in the course of the current proceedings, or of prior proceedings” constitute a basis for
26 such a motion if “they display a deep-seated favoritism or antagonism that would make fair
27 judgment impossible.” *Id.*

28 **III. ARGUMENT**

1 Judge Wilken has exhibited a pattern and practice of manifestly exhibiting through
2 patently false or misleading factual findings extrajudicial bias and prejudice towards Robles and
3 her counsel of choice, Mr. Klayman and Mr. Kolodzi, that requires disqualification under the
4 express provisions of 28 U.S.C. § 144. This extrajudicial prejudice likely stems from her past
5 connection with and affinity to U.C. Berkeley, a Defendant in this case and where Judge Wilken
6 attended law school and taught as a professor for many years. This extrajudicial bias has
7 undoubtedly caused Judge Wilken to revoke the *pro hac vice* admission of Robles' counsel of
8 choice, Mr. Klayman, based on demonstrably false or misleading findings of fact that had
9 previously been clarified on the record, but which Judge Wilken nonetheless intentionally
10 adopted in her final ruling. This has effectively extinguished Robles' constitutional due process
11 rights by leaving her without counsel. This also biases and prejudices Mr. Kolodzi by putting
12 him in ethical jeopardy and could effectively bankrupt him.

13 Among many now intentionally false or misleading findings, egregious is Judge Wilken's
14 patently false finding that Robles had previously moved to disqualify her, as stated in her
15 tentative ruling on the Motion to Revoke Pro Hac Vice, ECF No. 49, when in fact Robles had
16 only previously filed a voluntary request for recusal the initial case that was subsequently
17 voluntarily dismissed by Plaintiff. *Robles v. The Regents of the University of California,*
18 *Berkeley, et al*, 4:17-cv-0325 (N.D. Ca.) (ECF No. 50). Even after any possible confusion was
19 clarified in Plaintiff's Supplement to Opposition to Motion to Revoke Pro Hac Vice Admission
20 of Larry Klayman, ECF No. 71, Judge Wilken intentionally still did not correct this finding,
21 among many other false or misleading findings. ECF No. 86. In fact, even when faced with the
22 correct facts set forth in Plaintiff's Supplement, she still adopted her tentative ruling, holding that
23 "the Court hereby makes its tentative ruling final...." This knowing and now intentional reliance
24 on incorrect facts, and refusal to correct the record, clearly and unequivocally warrants granting
25 of Robles' motion for reconsideration, as well as demonstrates the extrajudicial bias and
26 prejudice that mandates disqualification.

27 Next, Judge Wilken has consciously disregarded Robles' constitutional due process rights
28 by way of her order revoking Mr. Klayman's *pro hac vice* admission, insofar as there are sworn

1 affidavits on the record from both Robles and Mr. Michael Kolodzi (“Mr. Kolodzi”), ECF No.
2 71; Ex. 3-4, swearing that this case would not be able to proceed without Mr. Klayman. In her
3 declaration, Robles swears:

4 If Mr. Klayman is not permitted to represent me, I am certain, given my past
5 efforts, that I cannot find another attorney to represent me, since Mr. Klayman is
6 representing me pro bono and because of the risks involved with prosecuting this
7 case given Antifa’s very violent actions which harmed me physically and
8 emotionally. In this event, I will be unable to proceed with this case and I will
9 lose all of my rights.

10 In the same regard, Mr. Kolodzi swears, “[s]hould this Court revoke Mr. Klayman’s *pro hac*
11 *vice* status, I will be unable to continue representation of Plaintiff Kiara Robles on my own, due
12 to a lack of available time and resources. Yet, despite all of this, in her Order on Motion to
13 Revoke Pro Hac Vice, Judge Wilken completely ignores these sworn facts, simply incredibly
14 stating that “Robles’ remaining counsel, Michael Kolodzi, shall continue to represent her.” ECF
15 No. 86. It is evident that this Court has failed to consider material facts, which would warrant
16 reconsideration. Holding otherwise would mean that this Court has decided to *sua sponte* force
17 dismissal of Robles’ claims and make a case-determinative ruling in favor of Defendants. This
18 clearly demonstrates a strong extrajudicial bias against Robles and her legal counsel, Mr.
19 Klayman and Mr. Kolodzi, that mandates disqualification.

20 Furthermore, Judge Wilken based her tentative ruling on numerous other false or
21 misleading findings of facts, and despite being presented with the correct facts, still chose to
22 adopt these falsities in her final ruling. The hard fact remains that Mr. Klayman has never been
23 sanctioned by the District of Columbia Bar and has continuously been a member in good
24 standing for 36 years. Robles addressed any confusion on the record, stating:

25 the recommendation of the hearing committee in the Judicial Watch matter before
26 the District of Columbia Bar (“DC Bar”), which is referenced in the Bundy
27 orders, is just that – a recommendation. When the matter went up on appeal to the
28 Board of Professional Responsibility of the DC Bar (the “Board”), the Board in its
recommendation found that Mr. Klayman had not testified falsely during the prior
hearing. In fact, Berkeley has also failed to tell the Court that even the Board’s
recommendation is not final, as the matter is on appeal to the District of Columbia
Court of Appeals. Even more egregiously, when Mr. Klayman pointed this out on
the court record, Berkeley failed to withdraw its misstatements and today these

1 misrepresentations remain uncorrected, even after the recent hearing of July 17,
2 2018 before this Court.

3 Similar argument by Robles was presented to this Court during the previously hearing on July
4 17, 2018; *See* Exhibit 1, incorporated herein by reference. Yet, despite this, Judge Wilken, while
5 acknowledging the appeal of the simple recommendation of the hearing committee, still adopted
6 the simple recommendations to the District of Columbia Board of Professional Responsibility as
7 dispositive law, despite the absence of any final ruling. In doing so, she has inserted herself as
8 the “judge, jury, and executioner” and usurped the role of the District of Columbia Court of
9 Appeals to presume Mr. Klayman guilty until proven innocent. This contravenes the most basic
10 and fundamental principle of the legal system, which mandates an order granting
11 reconsideration, and is also clear evidence of extrajudicial bias and animus that requires
12 disqualification.

13 This falsity is exacerbated by this same U.S. Court of Appeals for the Ninth Circuit,
14 which has used the District of Columbia proceedings to deny Mr. Klayman’s *pro hac vice* in a
15 separate matter. This was also addressed in by Judge Wilken’s final ruling, where she held that
16 she “found the reasoning of the majority opinion to be more persuasive.” ECF No. 86. However,
17 this cannot change the simple fact that the Honorable Ronald M. Gould (“Judge Gould”), in his
18 forceful dissent, made incontrovertible findings of fact that Judge Wilken had no choice but to
19 accept. The most crucial of which was that “[t]here is a disciplinary proceeding pending before
20 the District of Columbia Board of Professional Responsibility that was filed almost 8 years
21 ago....” *Bundy v. United States Dist. Court (In re Bundy)*, 840 F.3d 1034, 1054 (9th Cir. Oct. 28,
22 2016. Mr. Klayman legitimately simply opined at the time that “[t]he matter is likely to be
23 resolved in my favor” and points out that “...there has been no disciplinary action.”). Judge
24 Gould further made the clear finding that ‘Klayman properly disclosed the ongoing disciplinary
25 proceeding in his initial application for pro hac vice admission, saying that the proceeding had
26 not yet been resolved. **This disclosure was accurate.**” *Id.* (emphasis added). This factual
27 determination that Mr. Klayman had not made any misrepresentations, made by an esteemed
28 member of the Ninth Circuit, was apparently summarily ignored by Judge Wilken. This again

1 warrants reconsideration and also shows strong extrajudicial bias and prejudice that mandates
2 recusal.

3 **IV. CONCLUSION**

4 Based on the foregoing, Robles respectfully requests that this Court grant Robles leave to
5 file a motion for reconsideration and disqualification pursuant to 28 U.S.C. § 144 and vacate all
6 of its previous orders. Regrettably, based on her apparent desire to effectively end this case,
7 thereby protecting U.C. Berkeley, where this Court attended law school and taught as a professor
8 for many years, this Court has demonstrated a strong extrajudicial bias and prejudice towards
9 Robles, Mr. Klayman, and Mr. Kolodzi that makes fair adjudication impossible.

10 Not only has this Court effectively stripped Robles of her constitutional due process
11 rights by depriving her of counsel, so as to effectively hand Defendants the “win,” it has done so
12 under numerous false findings of fact that were corrected by Robles but were ultimately adopted
13 and relied upon regardless. This contravenes Robles’ right to a “neutral and detached judge,” as
14 protected by the Constitution. *Ward*, 409 U.S. at 61-62. This Court therefore now must be
15 disqualified and all of its prior orders vacated as a result.

16 DATED: September 13, 2018

Respectfully submitted,

17
18 /s/ Larry Klayman

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Attorneys for Plaintiff
KIARA ROBLES

CERTIFICATE OF COUNSEL

I, Larry Klayman, Esq., am counsel for Plaintiffs in this matter. I hereby certify that this Motion and the accompanying affidavit and facts contained therein, made pursuant to 28 U.S.C. § 144, is being made in good faith.

/s/ Larry Klayman

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Case No.: 4:17-cv-04864-CW

**[PROPOSED] ORDER GRANTING
MOTION FOR LEAVE TO FILE
MOTION FOR RECONSIDERATION OF
THIS COURT’S ORDER REVOKING
LARRY KLAYMAN’S *PRO HAC VICE*
AND TO DISQUALIFY THE
HONORABLE CLAUDIA WILKEN
UNDER 28 U.S.C. § 144**

24 The Court, upon consideration of the motion and arguments of the parties, finding good
25 cause, hereby GRANTS Plaintiff Kiara Robles’ Motion for Leave to File Motion for
26 Reconsideration and Motion to Disqualify under 28 U.S.C. § 144.

27 Dated: _____

HON. CLAUDIA WILKEN

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AFFIDAVIT OF KIARA ROBLES

25 1. I, Kiara Robles, hereby being sworn deposes and says that the following is true
26 and correct and based on my personal knowledge and belief.

27 2. I am over the age of 18 and mentally and legally competent to make this affidavit,
28 sworn under oath.

3. I am the Plaintiff in the matter of *Robles v. Regents of the University of
California*, 4:17-cv-04864.

4. The Honorable Claudia Wilken (“Judge Wilken”) has exhibited extrajudicial bias
and prejudice against me that has rendered fair adjudication impossible.

5. Notably, Judge Wilken has revoked the *pro hac vice* admission of Mr. Larry

1 Klayman (“Mr. Klayman”), whom I had retained to represent me and serve as lead counsel in
2 this matter.

3 6. Judge Wilken has revoked Mr. Klayman’s *pro hac vice* admission despite my
4 sworn declaration that I would not be able to proceed with my case without him, given my past
5 extreme difficulty finding counsel to represent me pro bono, especially considering the extreme
6 violence exhibited by the ANTIFA Defendants. *Exhibit 2*.

7 7. Judge Wilken has revoked Mr. Klayman’s *pro hac vice* admission despite
8 Michael Kolodzi’s (“Mr. Kolodzi”) sworn declaration that he would not be able to represent me
9 in this case without Mr. Klayman because he lacks the time and resources to do so alone. *Exhibit*
10 3.

11 8. Judge Wilken has therefore stripped me of counsel in this case, violating my
12 constitutional due process rights, and exhibited prejudice and bias against me and both of my
13 legal counsel

14 9. Without an order disqualifying Judge Wilken and vacating all of her orders,
15 including but not limited to the order revoking Mr. Klayman’s *pro hac vice*, I will no longer be
16 able to pursue my causes of action against Defendants, who have severely harmed me both
17 physically and emotionally.

18 I hereby swear under oath and penalty of perjury that the foregoing facts are true and
19 correct to the best of my knowledge and belief.

20 DATED: September 13, 2018



21 _____
22 Kiara Robles
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