

1 KATHLEEN A. KENEALY
 Acting Attorney General of California
 2 RICHARD T. WALDOW
 ELIZABETH S. ANGRES
 3 Supervising Deputy Attorneys General
 ELIZABETH G. O'DONNELL (SBN 162453)
 4 JONATHAN E. RICH (SBN 187386)
 JACQUELYN Y. YOUNG (SBN 306094)
 5 Deputy Attorneys General
 300 South Spring Street, Suite 1702
 6 Los Angeles, CA 90013
 Telephone: (213) 897-2000
 7 Fax: (213) 897-2805
 E-mail: Elizabeth.ODonnell@doj.ca.gov
 8 E-mail: Jonathan.Rich@doj.ca.gov
 E-mail: Jacquelyn.Young@doj.ca.gov

9 *Attorneys for Defendants*
 10 *Governor Edmund G. Brown, Jr.,*
 11 *Anne Gust, and the State of California*

12 IN THE UNITED STATES DISTRICT COURT
 13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

<p>15 Travis Middleton, et al., 16 Plaintiffs, 17 v. 18 Richard Pan, et al., 19 Defendants. 20 21 22 23 24 25 26 27 28</p>	<p>2:16-cv-05224-SVW-AGR DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO RECUSE THE HON. STEPHEN V. WILSON Courtroom: 10A, 350 W. 1st Street Judge: Hon. Stephen V. Wilson Trial Date: None Set Action Filed: July 15, 2016 <i>Motion to Recuse Referred to the Hon. Andre Birotte, Jr. for Determination (ECF No. 128)</i></p>
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 On December 15, 2016, the Magistrate Judge filed and served her Report and
4 Recommendation, detailing the various procedural and substantive defects in the
5 Plaintiffs’ First Amended Complaint (FAC) and recommending dismissal of the
6 FAC with leave to amend. Rather than attempt to cure these numerous defects,
7 Plaintiffs filed their unnoticed motion for the Honorable Stephen V. Wilson to
8 recuse himself “due to the obvious direction this case is headed in the district
9 court.” Pls.’ Mtn. 5, ECF No. 126. Plaintiffs offer scant and unsupported
10 allegations to justify this overt attempt at forum-shopping and waste of judicial
11 resources. Accordingly, the State Defendants respectfully request that the Court
12 deny Plaintiffs’ Motion to Recuse Judge Wilson.

13 **ARGUMENT**

14 The federal recusal statute, 28 U.S.C. § 455, prescribes specific
15 circumstances in which a judge shall be recused. 28 U.S.C. § 455 (2016). The
16 procedure in which a party shall move to recuse a judge is set forth in 28 U.S.C. §
17 144. 28 U.S.C. § 144 (2016).

18 Procedurally, the moving party shall file a “timely and sufficient affidavit ...
19 stat[ing] the facts and the reasons for the belief that bias or prejudice exists ... not
20 less than ten days before the beginning of the term at which the proceeding is to be
21 heard, or good cause shall be shown for failure to file it within such time.” 28
22 U.S.C. § 144 (2016). Plaintiffs have failed to file such an affidavit. Plaintiffs’
23 Motion to Recuse is also untimely, because the hearing on Defendants’ Motion to
24 Dismiss Plaintiffs’ FAC took place on December 13, 2016.

25 Even if the Court overlooks these procedural deficiencies and finds good
26 cause for the thirty-seven day delay in filing, Plaintiffs still fail to allege any facts
27 to support a motion to recuse Judge Wilson. “The standard for recusal is whether a
28 reasonable person with knowledge of all the facts would conclude that the judge's

1 impartiality might reasonably be questioned.” *Mayer v. Leipziger*, 729 F.2d 605,
2 607 (9th Cir. 1984). Plaintiffs contend that Judge Wilson has “a bias and prejudice
3 towards Middleton, a Pro Se litigation and the defendants who are city and or
4 county officials.” Pls.’ Mtn. 2, ECF No. 126.¹

5 The sole support that Plaintiffs offer is a conclusory, self-serving and
6 unsupported statement that Judge Wilson “applied the wrong legal standard for
7 dismissal of” Middleton’s three previous cases against Santa Barbara police officers
8 and prosecutors. Pls.’ Mtn. 2, ECF No. 126. Yet, no details or explanations are
9 given to verify or justify this statement. “The alleged prejudice must result from an
10 extrajudicial source; a judge’s prior adverse ruling is not sufficient cause for
11 recusal.” *United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986).

12 Plaintiffs have failed to demonstrate that Judge Wilson has acted with bias or
13 prejudice against Plaintiffs.

14 **CONCLUSION**

15 Accordingly, Defendants respectfully request that Plaintiffs’ Motion to
16 Recuse Judge Wilson be denied.

17 Dated: January 19, 2017

Respectfully submitted,
KATHLEEN A. KENEALY
Acting Attorney General of California
RICHARD T. WALDOW
ELIZABETH S. ANGRES
Supervising Deputy Attorneys General
ELIZABETH G. O’DONNELL
JACQUELYN Y. YOUNG
Deputy Attorneys General

/s/ Jonathan E. Rich
JONATHAN E. RICH
Deputy Attorney General
Attorneys for Defendants
Governor Edmund G. Brown, Jr.,
Anne Gust, and the State of
California

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28 ¹ None of the named Defendants herein is a city or county official.

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CERTIFICATE OF SERVICE

Case Name: Middleton, et al. v. Pan et al. No. 2:16-cv-05224-SVW-AGR

I hereby certify that on January 19, 2017, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DEFENDANTS’ OPPOSITION TO PLAINTIFFS’ MOTION TO RECUSE THE HON. STEPHEN V. WILSON

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. On January 19, 2017, I caused to be delivered the foregoing document(s) by first class mail to the following non-CM/ECF participants:

SEE ATTACHED SERVICE LIST.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 19, 2017, at Los Angeles, California.

Jonathan E. Rich
Declarant

/s/ Jonathan E. Rich
Signature

SERVICE LIST

1		
2		
3	Travis Middleton 27 West Anapamu Street, No. 153 Santa Barbara, CA 93101	Paige Murphy 2230 Memory Lane West Lake Village, CA 91361
4		
5	Jade Baxter 207 West Victoria Street Santa Barbara, CA 93101	Bret Nielson 2230 Memory Lane West Lake Village, CA 91361
6		
7	Melissa Christou 1522 Knoll Circle Drive Santa Barbara, CA 93101	Lisa Ostendorf 5459 Place Court Santa Barbara, CA 93111
8		
9	Don Demanlevesde 618 West Ortega Santa Barbara, CA 93111	Julianna Pearce 28780 My Way Oneals, CA 93645
10		
11	Denise Michelle Derusha 7125 Santa Ysabel, Apt. 1 Atascadero, CA 93422	Murid Rosensweet 2230 Memory Lane West Lake Village, CA 91361
12		
13	Eric Durak 133 Campo Vista Drive Santa Barbara, CA 93111	Marina Read 322 Pebble Beach Drive Goleta, CA 93117
14		
15	Candyce Estave 430 East Rose Avenue Santa Maria, CA 93454	Lori Strantz 120 Barranca No. B Santa Barbara, CA 93109
16		
17	Anwanur Gielow 390 Park Street Buelton, CA 93427	Alice Trooper 1805 Mountain Avenue Santa Barbara, CA 93101
18		
19	Brent Haas 2715 Verde Vista Santa Barbara, CA 93105	Rachil Vincent 4320 Viua Presada Santa Barbara, CA 93110
20		
21	Jessica Haas 2715 Verde Vista Santa Barbara, CA 93105	JuliaAnne Whitney 55 Chrestview Lane Montecito, CA 93108
22		
23	Andrea Lewis 1331 Santa Barbara Street, No. 10 Santa Barbara, CA 93101	
24		
25		
26		
27		
28		