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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
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BY: \_\_\_\_\_  


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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10  
11 Jose L. Pineda  
12 Plaintiff,

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14 v.

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16 GMAC Mortgage, LLC et. al.  
17 Defendants,

Case No.: CV-08-5341 AHM(PJWx)

PLAINTIFF'S OBJECTION TO AND  
NOTICE OF THE MAKING OF A FALSE  
RECORD OF MOTION FOR  
DISQUALIFICATION; DECLARATION OF  
Jose L. Pineda IN SUPPORT OF  
OBJECTION AND NOTICE

Date: October 26<sup>th</sup>, 2009  
Ctrm: 14  
Time: 10:00am

Judge: Hon. A. Howard Matz

18  
19 I reserve all rights. In general or specific I do not express or imply any  
20 waivers.

21 **NOTICE OF THE MAKING OF A FALSE RECORD**  
22 **OF MOTION FOR DISQUALIFICATION**

23 1. On July 21<sup>st</sup>, 2009, Plaintiff filed and served objections to the  
24 Court's biased and unfair actions, as well as evidentiary objections. The Court, on  
25 its own, refused to rule on the objections, as it has with every other objection  
26 Plaintiff has made. Plaintiff is informed that a failure to raise objections to

1 inadmissible evidence will be considered waived by the Court of Appeals should  
2 he need to appeal. Plaintiff is also informed that a failure on his part to insist on  
3 rulings of those objections, the Court of Appeals would consider them  
4 abandoned. Plaintiff has made it abundantly clear that his made objections were  
5 continuous. Plaintiff does not and has not abandoned those objections. They are  
6 continuous and ongoing and demands rulings on them so that should be  
7 necessary the Court of Appeals will be able to adjudicate them.

8 2. On or about September 14, 2009, Honorable Judge Matz, on his  
9 own, acted as legal counsel for Plaintiff and changed his Objections to a Motion  
10 to Disqualify and moved for disqualification of himself without Plaintiff's consent.  
11 A copy of the September 16, 2009 "Civil Minutes" is attached as Exhibit A and  
12 incorporated here by reference.

13 3. The so-called REFERRAL OF MOTION TO DISQUALIFY JUDGE /  
14 MAGISTRATE JUDGE was said to be referred to "Judge Valerie Baker  
15 Fairbanks. A copy of September 16, 2009 REFERRAL OF MOTION TO  
16 DISQUALIFY JUDGE / MAGISTRATE JUDGE is attached as Exhibit B and  
17 incorporated here by reference.

18 4. Judge Valerie Baker Fairbanks, *in camera*, summarily DENIED the  
19 non-existent motion to disqualify and mis-characterized Plaintiff's objections as  
20 "complaining," and misstating Plaintiff's objections and un rebutted statements of  
21 facts.

22 **Objection To Judge Valerie Baker Fairbanks' Ruling**

23 Judge Valerie Baker Fairbanks states the following:

24 Pineda argues that Judge Matz has exhibited favoritism  
25 in favor of the defendants and bias against Pineda by:  
26 denying Pineda's requests for judicial notice, while  
granting defendants' requests; overruling Pineda's  
evidentiary objections; ruling on the defendants' Motion

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to Dismiss the Complaint without a hearing, while holding a hearing on the defendants' Motion to Dismiss the First Amended Complaint; and delayed mailing of court notices to Pineda, while the defendants' counsel receives court notices immediately by electronic service.

a. First, Plaintiff made no Motion to Disqualify. Plaintiff made Objections to the Judge Matz's appearance of bias and unfairness. Which should have been ruled on, and docketed as such. The docket record #84 is false and misleading as can be seen by the title of Plaintiff's objections. A copy of the Plaintiff's Objections to Appearance of Bias and Unfairness attached as Exhibit C and incorporated here by reference.

Plaintiff made no "arguments" they were objections.

b. Plaintiff stated that Judge Matz exhibited favoritism in favor of the Defendants' and bias against him because Judge Matz disregarded and violated the rules of evidence for the Defendants over Plaintiff's objections. Clearly stated in Plaintiff's Objections and Response to Judge Matz's orders.

Furthermore Judge Matz has NEVER RULED ON ANY OF PLAINTIFF'S OBJECTIONS. See copy of Plaintiff's Declaration incorporated here by reference.

c. Judge Matz himself stated that Plaintiff had the right to be heard, but denied him this admitted right in the previous hearing, while relying on the very same denied hearing to Dismiss Plaintiff's case with prejudice in the subsequent hearing where he is admitting that Plaintiff has a right to be heard. This is contradictory and a clear example of unfairness. See copy of Plaintiff's Hearing Transcript

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(“HT”), p. 17, lines 8-13, of April 27, 2009, of Defendant’s Motion to Dismiss Plaintiff’s First Amended Complaint attached to Plaintiff’s Objection to Appearance of Bias and Unfairness as Exhibit 1a.

Anyone reading the face page of Plaintiff’s Objections clearly will see and read the title of the document it says in all capital letters: “OBJECTION TO APPEARANCE OF BIAS AND UNFAIRNESS” not a motion to disqualify. Anyone reading Plaintiff’s Objections clearly will see and read that Judge Valerie Fairbanks statements are false and misleading.

“Federal Rules of Civil Procedure (“FRCP”) rule 7(b) defines a “motion” as a request that a court issue an order. (See Schwarzer, Tashima, Wagstaffe, Fed. Rutter Group Practice Guide: Federal Civil Procedure Before Trial (The Rutter Group 2003) ¶ 12:2, p. 12-2) California Central District Local Court rules have three basic requirements for moving papers:

- Adequate *notice* to the court and the parties;
- The facts or *evidence* on which the motion is based (consisting of declarations, affidavits, depositions or other discovery documents, exhibits, judicially-noticed facts, etc.); and
- Points and authorities demonstrating how the law, when applied to the facts presented, authorizes the relief sought.

A notice of motion filed without supporting papers is treated as an “incomplete motion” and may be rejected or not calendared [See CD CA Rules 7-4, 7-12]” See Schwarzer, Tashima, Wagstaffe, Fed. Rutter Group Practice Guide: Federal Civil Procedure Before Trial (The Rutter Group 2003) ¶ 12:27, p. 12-12.

Plaintiff brought objections, none of which in their entirety, have been even acknowledged or mentions, to say nothing of ruled upon.

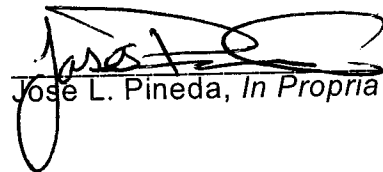
1 **CONCLUSION**

2 Again Plaintiff has been treated unfairly, it is clear that there are  
3 "requirements" that must be met when making a motion. Plaintiff tendered the  
4 fees require to bring this action and yet the Judge Matz and now Judge Valerie  
5 Baker Fairbanks, are obviously working together to deny Plaintiff his rights to  
6 have access to the judicial system and to be treated fairly and equally beside the  
7 law.

8 Plaintiff, maintains running objections on all objections made. And objects  
9 to the Judge Matz's own Motion to Disqualify himself and the subsequent ruling  
10 on Judge Matz's motion on the grounds that it mis-states the facts and mis-  
11 characterizes Plaintiff's Objections, as well as creates a false record and draws in  
12 the Clerk of the Court's participation by falsely docketing Plaintiff's Objections as  
13 a Motion.

14 The Defendants' attorney, has violated FRCP rule 11, committed fraud on  
15 the court, has been falsely reporting to Consumer Reporting Agencies about  
16 Plaintiff, knowingly, intentionally, and maliciously withheld information from  
17 Plaintiff before he filed this action with the court during this action with the court  
18 and has been rewarded every step of the way. The interest of justice demands  
19 that Defendants be enjoined from any alleged claims, Plaintiff's credit report  
20 corrected and Defendants and their attorney sanctioned.

21  
22 Dated: September 29, 2009

  
Jose L. Pineda, *In Propria Persona*

DECLARATION of Jose L. Pineda  
IN SUPPORT OF OBJECTIONS AND NOTICE OF  
THE MAKING OF A FALSE RECORD OF MOTION FOR DISQUALIFICATION

State of California            }  
County of Los Angeles        }ss.

I, Jose L. Pineda, hereby declare the following:

1. I am plaintiff in the civil action that I filed in the United States District Court, Central District of California and I have personal knowledge of the facts stated herein and the foregoing except those stated to be on information and belief and as to those I believe them to be true.

2. All exhibits attached to this objection and notice are true and correct copies of the originals.

3. On July 21<sup>st</sup>, 2009 I filed objections to what I believe to be bias and unfairness, as well as evidentiary objections;

4. I made these objections because it is my understanding that my failure to object to inadmissible evidence and misconduct will be considered by a higher court to be a waiver;

5. Judge Howard A. Matz has not acknowledged, addressed, or ruled on any of my objections since the initial filing of this action

6. I have made it clear that my objections were and are continuous. I do not abandon those objections. I preserve them for appeal purposes.

7. On or about September 14, 2009, I believe Judge Matz acted as my legal counsel when he changed my objections to a Motion to Disqualify and moved for disqualification himself without my consent. I did not and do not consent to his interference. A copy of the September 16, 2009 "Civil Minutes" is attached as Exhibit A and incorporated here by reference.

8. The so-called REFERRAL OF MOTION TO DISQUALIFY JUDGE / MAGISTRATE JUDGE was said to be referred to "Judge Valerie Baker Fairbanks. I did not file this a Motion to Disqualify. A copy of September 16, 2009 REFERRAL OF MOTION TO DISQUALIFY JUDGE / MAGISTRATE JUDGE is attached as Exhibit B and incorporated here by reference.

9. Judge Valerie Baker Fairbanks, *in camera*, summarily DENIED the non-existent motion to disqualify and mis-characterized my objections as "complaining," and misstated my objections and un rebutted statements of facts.

10. I am informed and believe that Docket record #84 is false and misleading as it reflects me as filing a motion to disqualify. The falsity of this can be seen by the title of my objections on the document that I filed.

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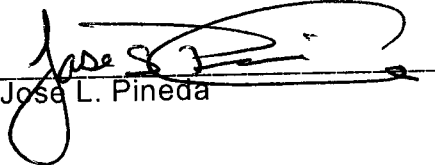
11. The Defendants' attorney, has signed and certified as true the assertions of GMAC Mortgage, LLC, and ETS Services, LLC and claimed themselves [attorneys] to have personal knowledge of what they filed with the court. The records they filed into court show that they all their claims and representations to the court were false. Judge Howard A. Matz has allowed this to continue even over my objections.

12. I reserve the right to amend or supplement this declaration in any manner I see necessary.

13. I reserve all rights. No waivers are expressed or implied at any time.

I certify under penalty of perjury under the laws of the united States of America that the foregoing is true and correct.

Date: September 29, 2009



Jose L. Pineda



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Jose L. Pineda

CASE NUMBER

CV 08-05341 AHM (PJWx)

PLAINTIFF(S)

v.  
GMAC Mortgage, LLC et al

REFERRAL OF MOTION TO DISQUALIFY  
JUDGE / MAGISTRATE JUDGE

DEFENDANT(S).

A Motion to Disqualify Judge / Magistrate Judge A. Howard Matz was  
filed on 9/14/09. Pursuant to General Order 08-05 and Local Rule 72-5, this motion is  
referred to Judge Valerie Baker Fairbank for determination.

Clerk, U. S. District Court

9/16/09  
Date

By Robert R. Nadres  
Deputy Clerk

FOR COURT USE ONLY

Ruling on prior motion(s):  No  Yes. Refer to document number(s) \_\_\_\_\_

cc: *Judge Assigned to Case*  
*Judge Assigned to Determine Motion*  
*Counsel of Record*

Case  
Jose L. Pineda v. GMAC  
Mortgage, LLC et. al.  
CV-08-5351 AHM (PJWx)  
**Exhibit**  
**B**

Pineda argues that Judge Matz has exhibited favoritism in favor of the defendants and bias against Pineda by: denying Pineda's requests for judicial notice, while granting defendants' requests; overruling Pineda's evidentiary objections; ruling on the defendants' Motion to Dismiss the complaint without a hearing, while holding a hearing on the defendants' Motion to Dismiss the First Amended Complaint; and delayed mailing of court notices to Pineda, while the defendants' counsel receives court notices immediately by electronic service.

The party seeking disqualification bears a "substantial burden" of showing that the judge's impartiality might reasonably be questioned. 28 U.S.C. §§ 144, 455(a); *First Interstate Bank v. Murphy, Weir & Butler*, 210 F.3d 983, 987 (9th Cir. 2000); *United States v. Zagari*, 419 F. Supp. 494, 501 (N.D. Cal. 1976). Judicial impartiality is presumed. *Id.* The standard for disqualification is "whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." *United States v. Hernandez*, 109 F.3d 1450, 1453 (1997).

The burden of showing the requisite bias cannot be met by simply complaining about the judge's rulings. *Liteky v. United States*, 510 U.S. 540, 555 (1994). When a litigant claims the existence of judicial bias, "[t]he alleged bias and prejudice...must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." *United States v. Grinnel Corp.*, 384 U.S. 563, 583 (1966).

Here, Pineda has not offered any facts which might lead a reasonable person to question the impartiality of Judge Matz. Pineda merely complains about Judge Matz's rulings and has not pointed to any extrajudicial sources from which the alleged bias and partiality arose. Accordingly, disqualification is not warranted.

For the foregoing reasons, the Court DENIES Plaintiff's Motion to Disqualify.

cc: mrpinedaluis@gmail.com

MINUTES FORM 90  
CIVIL - GEN

Initials of Deputy Clerk rs

1 State of California }  
2 Los Angeles County } ss. **Certificate of Service By Mail**

3 I Lance Francis-Bey declare:

4 I am over the age of 18 years, and not a party to this action. My domicile location  
5 is 200 W. 84th Pl L A CA, which is located in the county where the  
mailing described below occurred.

6 On September 29, 2009 I deposited in the mail at Los Angeles County, California,  
7 this eight (8) page document (including a signed copy of this declaration  
8 **Certificate of Service By Mail): "PLAINTIFF'S OBJECTION TO AND NOTICE  
9 OF THE MAKING OF A FALSE RECORD OF MOTION FOR  
10 DISQUALIFICATION,"** in a sealed envelope, with postage fully prepaid,  
addressed to:

11 Attn: Eric M Schiffer  
12 Leslie F. Vandale  
13 Wolfe & Wyman LLP  
14 5 Park Plaza, Suit 1100  
15 Irvine, CA 92614 5979  
16 Tel: 949 475-9200  
17 Fax: 949 475-9203  
18 (Counsel of Record for GMAC Mortgage, LLC & ETS Services, LLC)

19 I certify and declare under penalty of perjury under the laws of the land of the  
20 State of California that the foregoing is true and correct.

21 Dated: September 29, 2009

