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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NOTHERN DISTRICT OF CALIFORNIA

10
11 WANXIA LIAO,

12 Plaintiff,

13 vs.

14 JOHN ASHCROFT et al.

15
16 Defendants

Case No.: 08-cv-02776 PJH

DECLARATION UNDER § 144 of USC
TO DISQUALIFY JUDGE HAMILTON

17
18 I, Wanxia Liao, declare:

19
20 I am the Plaintiff of this case, and have personal knowledge of the matters set forth in this
21 declaration and could completely testify to them if called as a witness.

22
23 I have sufficient evidence to believe that Judge Phyllis Hamilton has strong personal prejudice
24 against me and in favor of the Defendants of my case. I shall then request her to recuse herself
25 from my case under Section 144 of the USC: Bias or prejudice of judge.

1
2 Section 144. Bias or prejudice of judge

3 Whenever a party to any proceeding in a district court makes and
4 files a timely and sufficient affidavit that the judge before whom
5 the matter is pending has a personal bias or prejudice either
6 against him or in favor of any adverse party, such judge shall
7 proceed no further therein, but another judge shall be assigned to
8 hear such proceeding.

9 My grounds are: Hamilton directly participated in a conspiracy with the Defendants of my case
10 and Judge Sandra Brown Armstrong to create “procedural defects” such as “lack of service”
11 through fraud, deceit, violations of due process and discriminatory treatment to my case to
12 dismiss my Complaint with prejudice.

13 This conspiracy was deployed since a denial on the merits of my complaint can only be a denial
14 of all the most fundamental legal principles that a “democratic society” is based on so that the
15 hypocrisy of the so called American democracy will be revealed. Therefore it is more favorable
16 for this “justice system” to dismiss my Complaint on “procedural defects” grounds, especially for
17 “lack of service”, that would enable the Defendants to completely avoid addressing the issues of
18 racism in American criminal justices system and so on raised in my Complaint, since they now do
19 not even need to file a motion to dismiss my Complaint on merits. And the dismissal is “with
20 prejudice”, so only with some trivial and frivolous “defects” caused solely by the conspired abuse
21 of process, the Defendants and the court conveniently barred me from seeking redress against the
22 racism in American criminal justice system for my human rights.

23
24 Hamilton, as the presiding judge to this case, plays a major role in this conspiracy.
25

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1 **I. The unlawful alternation of court filing causing my failure to serve Ashcroft**

2
3 *1). The docket and court records of Ashcroft's filing of the Declination*

4 On September 17, 2008, the docket of my case at ECF recorded an entry: "Declination to
5 Proceed Before a U.S. Magistrate Judge by John Ashcroft (Yu, Kay)", (Exhibit A: docket record
6 on October 28, 2008). Defendant former US Attorney General John Ashcroft then appeared
7 before this court, represented by Counsel Kay Yu. This appearance was a result of the Request
8 for Waiver of Service of Process that I sent to all Defendants sued in their individual capacities
9 of this case.
10

11
12 The document was filed by Yu on September 17, 2008. As shown on the original ECF filing
13 record, Yu chose the filer of this document as John Ashcroft, not Kay Yu, herself. On the hard
14 copy of the document - Declination to Proceed Before a U.S. Magistrate Judge (Exhibit B),
15 under her signature, Yu identified herself not as "pro se" for representing self, but as "Counsel
16 for Defendant". The notice of this entry was emailed to three people, including Yu herself. Every
17 one understood perfectly clear that the filer was Ashcroft. That was including the Presiding
18 Judge Armstrong who made a note on her ruling on December 19, 2008, on footnote 4: "Liao
19 also attempts to withdraw her declination to proceed before a magistrate judge. Mot. At 3.
20 Defendant Ashcroft, however, has declined to so proceed and Defendant CNN has not consented
21 to so proceed." Also, on the "Attorney" info page of the docket, it was clearly indicated that Yu
22 is attorney for Defendant Ashcroft. (Exhibit C)
23
24

25 *2) The unlawful alteration of the docket entry*

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1
2 On December 30, 2008, while Armstrong was still presiding to my case, a court clerk
3 (Armstrong's clerk) altered the docket entry to change the filer of this Declination from
4 Defendant Ashcroft to Defendant Kay Yu. (Exhibit D)

5
6 This change is unlawful because even if this alteration was consented by Yu and Ashcroft, I, the
7 Plaintiff of this case, was not notified with the "correction" as required by the rules of the court
8 for filing documents.
9

10
11 According to the court's ECF rules, if a party makes a filing error, except acquiring a court order
12 to correct it, the mistake can only be corrected by this filing party through re-filing of the
13 document, in notifying the ECF Help Desk, that will in turn make an official note of the
14 correction on the docket. (ECF Guide). And upon refilling the ECF system will notify all the
15 parties registered with ECF in the case by instant email just like any filing.
16

17 However, I was never informed of this alteration. Obviously the alteration was a covered
18 operation behind my back, and it was a conspiracy against me participated by the court and the
19 Defendants of this case. This is evidenced by that, as the filer of Ashcroft's Declination, Yu did
20 not make such correction for her "mistake", (as CNN did for its docket entry information
21 mistake), but the court did for her. Even if this change was what Ashcroft and Yu intended, how
22 did the court know their intention and would act on their behalf to do so for her? Obviously that
23 means the court is in fact an agent of the Defendants to this case and participated in a conspiracy
24

25 -

1 with these Defendants of my case to deploy a tactic of creating “procedural defect” to dismiss
2 my civil rights case.

3
4 3) *The conspiracy was to create “lack of service of process” on Ashcroft*

5
6 The purpose of this conspiracy was to mislead me into belief that Ashcroft had already appeared
7 before the court so I would skip the service of process on him.

8
9
10 As this is exactly what happened to me. Although Kay Yu indicated in her “Case Management
11 Statement” that “Defendant Kay Yu has declined appointment assignment of the case to a
12 Magistrate judge” on January 30, 2009, I thought that Yu indicated her intention to decline, but I
13 could not have ever expected or even suspected that Yu had filed a Declination, since I had the
14 knowledge that I would have been notified by email from ECF if Yu had filed a Declination, and
15 except an email notification on Ashcroft’s filing of a Declination, I never received any other such
16 notice. Needless to say would I ever have linked that with Ashcroft’s Declination, and doubt if
17 Ashcroft really filed the Declination.

18
19
20 My belief was further strengthened after Hamilton issued her order on February 10, 2009, since
21 Hamilton’s order indicated “To date, only one defendant (CNN) has appeared”, I then believed
22 that there were only some confusions caused by changing of presiding judges in this case,
23 (because even if the filer changed to be Yu, in stead of Ashcroft, there must have been still two
24 Defendants appeared before the court). Now it is clear that Hamilton purposely lied to cause
25 confusions on my part.

1
2 On February 27, 2009, when I arranged the service of process to be conducted, I did not attempt
3 to serve Ashcroft with the Summons and Complaint because of this deception.
4

5 On March 1, 2009, when I was drafting my Motion for Telephone Appearance, in order to
6 “describe the procedural history of the case” as required by motion rules, I printed out the most
7 recent docket record to do the description, and to my astonishment I found the #8 docket entry
8 had changed from previous Declination by Ashcroft to by Kay Yu. On March 6, 2009, I submitted
9 my Motion for Telephone Appearance together with a motion for investigation of this matter by
10 court.
11

12
13 On March 11, 2009, Hamilton dismissed my Complaint with prejudice against Ashcroft for
14 failure to serve him with the process. She never responded to the issue I raised in my motion that
15 whether this alteration of court document contradicted the law, and there was a conspiracy by the
16 court and Defendants Ashcroft and Yu. This is a violation of my due process right to be heard by
17 the court that further evidences her prejudice against me and in favor of the Defendants of my
18 case.
19

20
21 In the order, Hamilton only tried to put the matter off as a “mistake” made by Yu when filing the
22 Declination in a footnote of her order. However, even if it were a “mistake”, the facts that the
23 court acted on Yu and Ashcroft’ behalf to “correct” it and I was kept uninformed of the
24 “correction” still constituted a conspiracy and violations of the court rules that Hamilton as a
25 judge could not have been unaware of.
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1
2 Now even if aware of all these illegal actions, Hamilton continued consciously to participate in
3 this conspiracy, using her power as presiding judge to bring about the planned result of this
4 conspiracy – dismissing my Complaint against Ashcroft with prejudice for lack of service of
5 process, so the conspiracy was finally accomplished.
6

7
8 **II. The attempt over ECF to set a trap to cause “procedural defects”**
9

10 In her first order, Hamilton already began to engage herself in the conspiracy to create and cause
11 “procedural defects” to me, since she attempted to set me up for a “must fail” trap in the e-filing
12 procedures of the case, taking the advantage of my foreign country resident and my indigence
13 status.
14

15 She stated:

16 It is the practice of the undersigned to permit a pro se plaintiff to participate in the ECF
17 program only if the plaintiff files a declaration stating that he or she has read General
18 Order No. 45 and the Northern District of California’s instructions regarding ECF
19 registration and use found on the court's website at <http://ecf.cand.uscourts.gov>; that
20 he/she understands the requirements of the ECF program, and that he/she agrees to
21 comply with all the rules and orders of the court, subject to termination of his/her
22 participation for failing to comply with said rules and orders.

23 In order to continue as a participant in the ECF program, plaintiff must file a declaration
24 that comports with the above requirements. If no declaration is filed by March 2, 2009,
25 the court will rescind the order allowing plaintiff to participate in the ECF program.

26 At first I only felt prejudice and malice towards me from Hamilton in that she would even care
27 not to let me enjoy some trivial advantages in filing convenience, and in saving little postage
28 while perfectly legal, that other judges would never be bothered to care. I did realize it was a

1 discrimination against me from the court. Since Hamilton appears not a very active judge with
2 heavy case load, I did not try to verify whether it is really her “practice”, but I understand that it
3 is not a practice of the federal district court to require pro se litigants to file such a declaration to
4 be qualified to use ECF and subject to termination for any failure while not requiring the
5 counsels to do the same (it will be a discrimination against the pro se parties, because counsels
6 also make mistakes in using ECF, there is no justifiable reason to only subject the pro se litigant
7 to termination upon mistakes). However, since I did not realize Hamilton’s conspiracy purpose
8 and so the seriousness of this matter, I filed the declaration, although I made certain limits in
9 “incorporate” what Hamilton demanded to reduce the discrimination. In the meanwhile, I
10 requested in my motion of March 6, 2009 that I was exempted from the ECF requirement on the
11 courtesy paper copy that all parties are supposed to lodge with the chambers of the judge “no
12 later than noon on the business day following the day that the papers are filed electronically”. I
13 stated the reason as “I reside in a foreign country so that it is impossible for me to lodge a paper
14 copy of each document no later than noon on the business day after the e-filing.”
15
16

17 On March 10, 2009, when dismissing my Complaint with prejudice as against most of the
18 Defendants for “procedural defects” reasons, Hamilton also issued a separate order requiring me
19 to send the courtesy copy via “overnight” mail service to the chambers. This requirement is one
20 that no any foreign resident litigant to this court can meet, and has been required to meet.
21

22 Because even the overnight delivery often would fail to reach the destiny, and I cannot afford to
23 always send expensive overnight delivery mails.
24
25

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1 Now I realized that this impossibility for me to conduct ECF is just what Hamilton wants for the
2 conspiracy that she is leading: without ECF participation I will be situated in a filing process
3 much easier for her to create or pick up a “procedural defect” to dismiss my case against the
4 remaining 4 Defendants “with prejudice”, since post office mails are easy to be lost or delayed,
5 etc. This is why Hamilton would bother to make the trivial e-filing thing so big, (it is the subject
6 of her two orders and I was required to make a declaration for it). And this is why Hamilton
7 would not care to at least appear fair and dignified – she is too desperate to find a way no matter
8 how trivial it could be to create or cause any “procedural defect” to happen to care, because to
9 dismiss my case on its merits will have to appear even far less legally justifiable than dismissing
10 my case on such trivial “procedural defects”. That would be a complete exposure of the
11 hypocrisy of American “justice and democracy”.
12

13 14 **III. Overt discriminatory treatment of me and the Defendants**

15
16 Hamilton’s discrimination against me is not only just to single me out than other pro se litigants to
17 this court, but also, she openly sets two totally opposite standards in applying same procedural
18 rules to me the plaintiff and the Defendants. For example, while demanding me to swear to accept
19 that I will be terminated from ECF upon any “failure” to follow all the ECF rules, for Defendants’
20 failure to do the same she merely ignored it. When I brought motion and complained to the court
21 about Defendant Yu and Ashcroft’s violation of the ECF rule in the Declination matter, Hamilton
22 did not even respond to the issue, pretending nothing ever happened.
23
24

25 **IV. The fraudulent misrepresentation of California service rules**

1
2 In order to achieve the conspiracy, Hamilton deployed means of deceit and fraudulent
3 misrepresentation to me.
4

5
6 Aside from the examples mentioned in the previous paragraphs, she also fraudulently
7 misrepresented the service rule of California Code of Civil Procedures. In dismissing my
8 Complaint, she stated in her Order of Dismissal on March 10, 2009 that “service on persons
9 outside the state by certified or registered mail with return receipt requested, id. § 415.40;” then
10 found that “As to Mr. Gonzales, service by ordinary mail does not satisfy the requirements of
11 Rule 4(i)(3). Accordingly, the court finds that John Ashcroft and Alberto Gonzales must be
12 dismissed from the action for lack of service” and the dismissed with prejudice. Yet § 415.40.
13 does not require certified or registered mail but only “first-class mail, postage prepaid, requiring
14 a return receipt”. It was clearly indicated in my Proof of Service that Gonzales was served with
15 “first class mail”, (I did attempt to buy a “return receipt”, but in Canada, the first class mail has
16 no feature of “return receipt”. It is only a surprise due to factors beyond my control, but
17 Hamilton dismissed my Complaint as against all other Defendants with prejudice for lack of an
18 acknowledgement receipt for the mailing service.)
19

20
21 Because of all the above, I claim that Judge Phyllis Hamilton’s prejudice against me is so strong
22 that she acted out in a crude persecution and tyrannizing manner. I have never had any personal
23 contact with her. Her prejudice is obviously against my civil rights case that solely challenges the
24 racism in US government’s administrating criminal justice. I claim that Hamilton and
25 Armstrong’s ethnic status as African American does not immunize them from perpetrating the
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1 White racism in their role as judges of the US District Court. As proven in my case, in any given
2 ethnic minority group, there are always some individuals who when promoted by the White
3 establishment, will oppress their same kind even more furiously and more nakedly than the
4 Whites would do. Perhaps they consider that because of their color, they would appear the least
5 suspicious of racism. So they willfully and boldly act as the cover of the White racism for their
6 personal gains. However, it is despicable that as members of the group being grieved by the racist
7 criminal justice themselves, they would abuse their power to oppress people of another minority
8 group for the same racism. I shall not accept such an openly prejudiced judge to preside in my
9 civil rights case. I therefore make this Declaration to disqualify Phyllis Hamilton from presiding
10 my case.
11

12
13 I declare under penalty of perjury under the laws of the United States of America the foregoing is
14 true and correct. Executed this 29th day of March, 2009 at Toronto, Ontario, Canada.
15
16
17

18 Dated this 29th day of March, 2009

19 Wanxia Liao
20 Plaintiff
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