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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re  ANIBAL MESALA SILVA,  Debtor.	Bankruptcy No. 07-03740-M7  MEMORANDUM DECISION DENYING DEBTOR'S MOTIONS TO DISQUALIFY JUDGE JAMES MEYERS AND TO RECONSIDER ORDER TO SHOW CAUSE
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On March 27, 2008, this Court held a hearing on several motions in this case and a related adversary proceeding. Among the matters presented by Anibal Mesala Silva ("Debtor"), was a motion to enter discharge, a motion to void the § 341(a) meeting of creditors, and a motion to reconsider an amended minute order entered by Judge Hargrove and dated October 30, 2007. Rather than fulfill his responsibilities as set forth in § 521 and Fed.R.Bankr.P. 4002, the Debtor filed a series of Notices of appearance to invalid Section 341 Meeting of Creditors, which stated he would appear, but not submit to examination. By refusing to submit to examination, the Debtor was

1 preventing the entry of the discharge he requested, and creating the  
2 basis to extend the time for interested parties to file objections to  
3 discharge. In reviewing the Debtor's request to reconsider Judge  
4 Hargrove's ruling as reflected in the Amended Minute Order, the Court  
5 became aware of the precondition for not dismissing this case. The  
6 condition imposed by Judge Hargrove was a requirement that the Debtor  
7 file his tax returns by November 6, 2007.

8 This Court issued an order after the March 27, 2008 hearing,  
9 which included a requirement that the Debtor file a written  
10 explanation concerning the status of his tax returns. In addition,  
11 the order indicated the case could be dismissed for failure to  
12 cooperate with the Trustee as required under § 521, which includes  
13 the duty to surrender books and records and provide copies of tax  
14 returns.

15 Rather than file a statement concerning the tax returns that were  
16 to have been filed by November 6, 2007, the Debtor filed a motion to  
17 disqualify the undersigned Judge under 28 U.S.C. § 455, and a motion  
18 to reconsider the Order to Show Cause. The Court has reviewed those  
19 two motions and determined that further hearing would not be helpful.

20 Pursuant to § 105(a), the Court may issue any order that is  
21 necessary or appropriate to carry out the provisions of the Bankruptcy  
22 Code. Given the conditions imposed in Judge Hargrove's Amended Minute  
23 Order, and the Debtor's written statement of his intent to refuse to  
24 be examined by the Trustee until his claims in Adversary No. 07-90588  
25 were decided, it was both necessary and appropriate to enter the Order  
26 to Show Cause. Furthermore, the Debtor misconstrues the Order to Show  
27 Cause. It does not indicate this case will be automatically dismissed  
28 without further hearing. The Order to Show Cause is merely the first

1 step this Court takes in considering whether it would be appropriate  
2 to issue a notice of intent to dismiss the case. Before dismissal,  
3 a further notice and opportunity for hearing would be provided to  
4 interested parties. Therefore, the Court will deny the Debtor's  
5 motion to reconsider the Order to Show Cause.

6 The Court now turns to the Motion for Disqualification under 28  
7 U.S.C. §455. That section provides that:

8 (a) any justice, judge, or magistrate judge of the United  
9 States shall disqualify himself in any proceeding in which his  
10 impartiality might reasonably be questioned.

11 (b) He shall also disqualify himself in the following  
12 circumstances:

13 (1) Where he has a personal bias or prejudice  
14 concerning a party, or personal knowledge of disputed  
15 evidentiary facts concerning the proceeding...

16 Such a motion must initially be decided by the judge whose  
17 impartiality is being questioned. In re Bernard, 31 F.3d 842, 843  
18 (9<sup>th</sup> Cir. 1994).

19 The standard for disqualification is whether the charge of  
20 partiality is sufficiently grounded in facts to create in the mind of  
21 the fully informed objective disinterested observer a reasonable or  
22 significant doubt concerning the judge's impartiality. United States  
23 v. Studley, 783 F.2d 934, 939 (9<sup>th</sup> Cir. 1986). Judicial rulings alone  
24 almost never constitute a valid basis for a bias or partiality motion.  
25 Liteky v. United States, 510 U.S. 540, 555 (1994). Bias or prejudice  
26 connotes a favorable or unfavorable disposition or opinion that is  
27 somehow wrongful or inappropriate, either because it is undeserved,  
28 or because it rests on knowledge that the subject ought not to  
possess, or because it is excessive in degree. Id. at 550. If the  
circumstances do not establish a personal bias or prejudice under §  
455(b), they are not sufficient to raise a "reasonable question" as

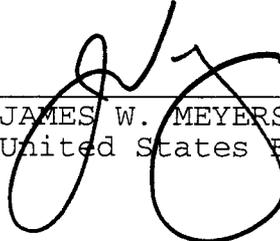
1 to the judge's impartiality for disqualification under § 455(a).  
2 United States v. Sibla, 624 F.2d 864, 865 (9<sup>th</sup> Cir. 1980).

3 Innuendo and unsupported allegations are not sufficient for  
4 disqualification. A judge is presumed qualified to hear a proceeding  
5 and the Debtor has the burden of proving otherwise. First Interstate  
6 Bank v. Murphy, Weir & Butler, 210 F.3d 983, 987 (9<sup>th</sup> Cir. 2000). The  
7 motion or affidavit must allege with particularity the facts that  
8 would convince a reasonable person that a bias exists of a personal,  
9 not judicial nature. Disqualification based on adverse rulings in a  
10 case is limited to only rare and extreme circumstances.

11 The only basis for disqualification provided by the Debtor is the  
12 issuance of the Order to Show Cause and the Debtor's musings about the  
13 possible reasons this Court would issue such an order. The Debtor has  
14 not asserted any facts to support his allegations of bias or  
15 prejudice. As discussed above, this Court issued the Order to Show  
16 Cause to determine whether the Debtor has complied with the October  
17 30 Amended Minute Order issued by Judge Hargrove before his  
18 retirement, and to ensure that the Debtor understood he must fulfill  
19 the statutory duties of a debtor or face the possibility that this  
20 case could be dismissed.

21 The Debtor's Motion to reconsider the Order to Show Cause and the  
22 Motion to Disqualify the undersigned are denied. This Memorandum  
23 Decision constitutes the Court's findings of fact and conclusions of  
24 law. The Court will enter a separate order this same date.

25 DATED **MAY 19 2008**

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JAMES W. MEYERS, Judge  
United States Bankruptcy Court