

FILED

FOR PUBLICATION

JUN 04 2012

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

AGNES SUEVER, deceased; MADONNA SUEVER; STEVE TUCKER; ALEXANDER VONDJIDIS; RICHARD W. SEITZINGER; JO-ANN SEITZINGER, individually and as trustees for the Seitzinger Family Trust; JOHNSTONE WHITLEY; TONY LEE; LYNN KEITH, on behalf of themselves as individuals and as taxpayers on behalf of other persons similarly situated,

Plaintiffs - Appellants,

v.

KATHLEEN CONNELL, in her individually capacity as former State Controller of the State of California; RICHARD CHIVARO, in his individual and official capacity; GEORGE DELEON, in his individual and official capacity; STEVE WESTLY, in his individual and official capacity as Controller of the State of California, and its custodial capacity as administrator for the Unclaimed Property Fund; JOHN CHIANG,

Defendants - Appellees.

No. 10-17127

D.C. No. 5:03-CV-00156-RS
Northern District of California,
San Jose

ORDER

D.W. NELSON, Circuit Judge:

After this matter was assigned to me, I determined in the course of pre-argument preparation that I appear to be a member of the putative plaintiff class, though it is as yet uncertified, as I own property that appears in the California State Controller's database of unclaimed property.

A fellow judge of this Court recently confronted a similar situation, though in that case the judge appeared to be a member of the certified class. At any rate, the judge concluded that her "decision not to recuse is authorized by [28 U.S.C.] § 455(f), strikes the appropriate balance between securing the interests of impartiality and its appearance and reducing the practical costs that unnecessary recusal entails, and does not diminish public respect for the judiciary." *Stern v. Gambello*, 2012 WL 1583305 (9th Cir. May 4, 2012) (quoting *In re Literary Works in Elec. Databases Copyright Litig.*, 509 F.3d 136, 144 (2d Cir. 2007)). In accordance with § 455(f), the judge announced that she would forego any financial interest in the class settlement or in any future settlement or adjudication. *Id.*

I have considered whether I should recuse myself from this case because of the possibility of class membership. However, after reviewing the analysis in *Stern* and *In re Literary Works*, I believe recusal in this case would be inappropriate, especially given that the class is not yet certified. I therefore will not recuse, but rather announce that I will forego any financial interest in this putative class and will not accept any payments due myself as a member of the putative class.