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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBERT HUNTER BIDEN,
Plaintiff,

vs.

GARRETT ZIEGLER, an individual,
ICU, LLC, a Wyoming limited liability
company d/b/a Marco Polo, and DOES 1
through 10, inclusive,
Defendants.

Case No. 2:23-cv-07593-HVD-KS

*Motion to be heard by the Honorable
Mónica Ramírez Almadani*

**PLAINTIFF’S OPPOSITION TO
DEFENDANTS’ MOTION FOR
RECUSAL**

Hearing Date: April 25, 2014
Time: 1:30 p.m.
Courtroom: 10B

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendants offer three reasons why recusal of the Honorable Hernan D. Vera is
4 “mandatory” under 28 U.S.C. § 455(a), none of which has any merit: (1) Judge Vera was
5 appointed to the federal bench by Plaintiff’s father, President Joseph R. Biden; (2) prior
6 to his appointment, Judge Vera made political contributions to the 2020 Biden
7 presidential campaign; and (3) this is a “unique” case with “facts and circumstances” that
8 somehow suggest that “Judge Vera may have a personal bias in favor of President Biden
9 that could affect the outcome of the litigation, calling into question Judge Vera’s
10 impartiality.” *See* Mot. at 4-5, 9.

11 None of Defendants’ arguments comes close to supporting the law’s standard for
12 establishing a basis for recusal in this case. There is no support whatsoever—in the Ninth
13 Circuit or anywhere else—for the contention that a judge can be disqualified based
14 simply on the identity of the President who appointed him.¹ This is particularly true
15 where, as here, the appointing President is not himself a party to the litigation and the
16 judge being challenged has no direct connection to any actual litigant. *See Trump v.*
17 *Clinton*, 599 F. Supp. 3d 1247, 1249-50 (S.D. Fla. 2022) (denying recusal because “the
18 law is well settled” that appointment to the bench by a litigant, let alone appointment by a
19 litigant’s spouse, does not create reasonable perception of impartiality). Similarly, the
20 courts uniformly have rejected motions to recuse based on pre-appointment political
21 donations. Thus, Defendants would have no grounds to recuse Judge Vera even if
22 President Biden himself was a party to this case—they certainly have no grounds for
23 recusal in a case involving President Biden’s son, with whom there is no allegation of any
24 connection to Judge Vera at all. Finally, there is nothing “unique” about this case that
25 somehow requires recusal or raises any reasonable questions about Judge Vera’s ability

26 _____
27 ¹ Indeed, recusal is not required even where a party before a judge is the person who
28 appointed that judge. *See United States v. Trump*, Case No. 9:23-cr-80101-AMC (filed
June 8, 2023) (S.D. Fla.).

1 to be fair. Ultimately, the crux of Defendants’ argument is that they do not like Judge
2 Vera’s biography, making them unduly suspicious of him, which has been expressly
3 rejected as a ground for recusal. *See Clemens v. United States Dist. Ct. for Cent. Dist. of*
4 *California*, 428 F.3d 1175, 1178 (9th Cir. 2005) (quoting *Matter of Mason*, 916 F.2d 384,
5 386 (7th Cir. 1990) (recognizing that a party being a “hypersensitive or unduly suspicious
6 person” is not ground for recusal of a judge)). Defendants’ arguments to the contrary are
7 invented, baseless speculation that provide no basis for the relief they seek.

8 **II. BACKGROUND**

9 Defendants’ summary of the “factual and procedural background” of this dispute is
10 inaccurate, incomplete, and misleading. Accordingly, Plaintiff provides below an
11 accurate and comprehensive description of the largely undisputed relevant facts based on
12 the factual allegations set forth in the operative complaint.

13 **A. The Parties**

14 Plaintiff is an attorney and businessman and is the second-born son of President
15 Joseph R. Biden, Jr. Although Plaintiff is and always has been a private citizen, political
16 opponents of President Biden have used him as a surrogate to attack his father. For the
17 past several years, Plaintiff has been the target of relentless personal attacks and the
18 subject of countless baseless conspiracy theories, particularly from extreme right-wing
19 members of Congress, right-wing media, and so-called right-wing activists.

20 Defendant Ziegler is a former Trump White House aide who worked from
21 February 2019 until January 2021 as a Policy Analyst and, later, as an Associate Director
22 of the Office of Trade and Manufacturing Policy under the supervision of Dr. Peter
23 Navarro. (Compl. ¶ 15.) Since having his White House credentials revoked in or around
24 January 2021, Ziegler, by his own admission, has devoted most of his waking time and
25 energy to accessing, tampering with, manipulating, altering, copying, and otherwise using
26 data contained on a copy of a hard drive that Defendants claim to be from Plaintiff’s
27 “laptop” computer. (*Id.* ¶ 16.)

1 On or about July 8, 2021, Defendant Ziegler organized Defendant ICU and caused
2 Defendant ICU to begin doing business under the name “Marco Polo.” (*Id.* ¶ 20.)
3 Defendants claim to have spent at least 13 months—from September 2021 through
4 October 2022—“analyzing the voluminous material from the Biden Laptop,” and their
5 unlawful access, manipulation, and analysis of Plaintiff’s data continues to this day. (*Id.*
6 ¶ 21.)

7 **B. Plaintiff’s Allegations of Defendants’ Illegal Data Access**

8 Although the precise manner by which Defendants obtained Plaintiff’s data
9 remains unclear,² there is no dispute that once Plaintiff’s data was in their custody, they
10 accessed, tampered with, analyzed, and manipulated the data over an extended period of
11 time. (Compl. ¶¶ 17-18.) Defendant Ziegler admitted he used Plaintiff’s data to create a
12 voluminous report entitled “Report on the Biden Laptop” (“Report”), which Defendants
13 first published on or about October 19, 2022. (*Id.* ¶ 22.) Defendants have sold and sent
14 copies of the Report throughout the United States, including California. In addition, in or
15 around May 2022, Defendants used Plaintiff’s data to create what Defendant Ziegler has
16 described as “an online searchable database of 128,000 emails found on the Biden
17 Laptop.” (*Id.*) Plaintiff has never authorized or consented to any access of his data by
18 any Defendant or anyone working with any Defendant at any time or for any purpose. To
19 the contrary, Plaintiff notified Defendants that they are not authorized to access any of his
20 data, that they should cease doing so, and that they should return any of Plaintiff’s data to
21 Plaintiff immediately. (Compl. ¶ 30.)

22 Defendants regularly brag about their illegal access of Plaintiff’s data in interviews
23 with members of the media, on social media, and on right-wing podcasts. For example,
24

25 ² Defendants are vague on this point, having stated only that Ziegler “received a copy of
26 the hard drive . . . from an associate of former New York City mayor Rudy Giuliani.”
27 (12/21/23 Ziegler Decl. (Dkt. 23-1), ¶ 5.) In published reports, Ziegler has claimed to have
28 obtained one copy of a hard drive containing Plaintiff’s data from Jack Maxey, a former
co-host on convicted felon Steve Bannon’s War Room podcast, and another copy of a hard
drive containing Plaintiff’s data from another source. (Compl. ¶ 18.)

1 in December 2022, Ziegler described the activities of his team, which he said includes
2 “digital forensics folks,” as follows: “[I]t took us a year to go through [the data] . . .
3 Usually, when you have this much data to go through, it’s as if it’s after a presidential
4 library has been opened, right?” (Compl. ¶¶ 23-24.) In another interview published in or
5 around June 2023, Ziegler discussed his and his team’s efforts to create a website to
6 house “almost 10,000 photos” that he claims to have extracted from Plaintiff’s data. (*Id.*)

7 According to Ziegler, Defendants spent “a couple of months” going through photos
8 stored in Plaintiff’s data, organizing and modifying the photos (through what he
9 characterizes as “redactions”), and subjecting the data to a “photo viewing app” to allow
10 Defendants and others to “view the metadata in the photos.” (*Id.* ¶ 25.) Ziegler claims
11 these activities are designed to allow members of the public who log onto Defendants’
12 website and access Defendants’ servers “to be able to see where the photo was taken,
13 what time it was taken, if it has latitude and longitude coordinates attached to it. . .
14 They’re going to be able to see if it has metadata like aperture, lighting.” (*Id.*) Ziegler
15 further has stated that Defendants’ efforts to upload videos from Plaintiff’s data to
16 Defendants’ website required more time and effort than uploading photos from Plaintiff’s
17 data because Defendants needed “to use AI tools” on the data to “censor” portions of
18 videos that Defendants consider to be “pornographic.” (*Id.* ¶ 26.)

19 The data Defendants have unlawfully accessed, manipulated, and damaged
20 includes tens of thousands of emails, thousands of photos, and dozens of videos and
21 recordings. (*Id.* ¶ 27.) The data also includes Plaintiff’s credit card details, Plaintiff’s
22 financial and bank records, and information of the type contained in the files of a
23 consumer reporting agency. (*Id.*) At least some of the data originally was stored on
24 Plaintiff’s iPhone and backed up to Plaintiff’s iCloud storage. (*Id.* ¶ 28.) By their own
25 admission, Defendants gained unlawful access to Plaintiff’s iPhone data by
26 circumventing technical or code-based barriers that were specifically designed and
27 intended to prevent such access. (*Id.* ¶¶ 28-29.)

1 In an interview that occurred in or around December 2022, Defendant Ziegler
2 bragged that Defendants had hacked their way into data purportedly stored on or
3 originating from Plaintiff’s iPhone: “And we actually got into [Plaintiff’s] iPhone
4 backup, we were the first group to do it in June of 2022, we cracked the encrypted code
5 that was stored on his laptop.” (*Id.* ¶ 29.)³ After “cracking the encrypted code that was
6 stored on [Plaintiff’s] laptop,” Defendants illegally accessed the data and then uploaded it
7 to their website, where it remains accessible to this day. (*Id.*) It appears that data
8 Defendants uploaded to their website from Plaintiff’s encrypted “iPhone backup,” like
9 data Defendants uploaded from their copy of the hard drive of the purported “laptop,” has
10 been manipulated, tampered with, altered, and/or damaged by Defendants. (*Id.*)⁴

11 Defendants have refused to comply with Plaintiff’s demands to cease and desist.
12 As recently as September 2023, Defendant Ziegler declared on social media that efforts
13 by Plaintiff to serve him with legal process in the future would be met with violence: “If
14 the US pResident’s [sic] son sends a proxy [i.e., a process server] to illegally trespass on
15 my property I will blow their f---ing brains out.” (*Id.* ¶ 31.)

16 **C. Relevant Procedural History**

17 Plaintiff commenced this lawsuit on September 13, 2023. The Complaint alleges
18 one federal claim and two state claims: (1) Violation of the Computer Fraud and Abuse
19 Act (“CFAA”), 18 U.S.C. § 1030; (2) Violation of California’s Comprehensive Computer
20 Data Access and Fraud Act (“CCDAFA”), Cal. Penal Code § 502; and (3) Violation of

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23 ³ Defendant Ziegler has confirmed this improper access of Plaintiff’s iPhone backup under
24 oath in this litigation. In his declaration accompanying Defendants’ pending motion to
25 dismiss, Ziegler admits that he obtained “passcodes, which are essentially similar in
26 function to passwords,” and after “months of examination, we were able to locate the
27 passcode which allowed access to [Plaintiff’s] iPhone backup file.” (12/21/23 Ziegler
28 Decl. (Dkt. 23-1), ¶ 21.)

⁴ The nature and extent of Defendants’ manipulation, tampering, alteration, and damage to
Plaintiff’s data, either from their copy of the hard drive of the claimed “Biden laptop” or
from Plaintiff’s encrypted “iPhone backup” (or from some other source), is unknown to
Plaintiff due to Defendants’ continuing refusal to return the data to Plaintiff. (Compl. ¶
29.)

1 California’s Unfair Competition Law (“UCL”), Business & Professions Code §§ 17200 *et*
2 *seq.*

3 On December 21, 2023, Defendants filed a Motion to Dismiss Pursuant to Fed. R.
4 Civ. P. 12(b)(1), 12(b)(2), 12(b)(3) and 12(b)(6) and Section 425.16 of the California
5 Code of Civil Procedure (“Motion”), which Plaintiff opposed on February 29, 2024.
6 Defendants’ primary argument in support of dismissal—namely, their claim that they
7 cannot be held responsible for their actions because, according to them, they accessed,
8 tampered with, and manipulated a “copy” of Plaintiff’s data while it was stored on a
9 “hard drive” they obtained from a third party, rather than accessing Plaintiff’s data while
10 it was stored on a “computer” or “device” that was “owned” and “exclusively controlled”
11 by Plaintiff himself—is contrary to Ninth Circuit and California law. *See, e.g., Theofel v.*
12 *Farey-Jones*, 359 F.3d 1066, 1078 (9th Cir. 2004) (plaintiff may seek redress under
13 CFAA regardless of ownership or control where he is “proximately harmed by
14 unauthorized access, particularly if [he has] rights to the data stored on it”).⁵ None of
15 Defendants’ other arguments has any merit either. The Motion to Dismiss has been fully
16 briefed and is ready to be argued and decided after the present Motion has been resolved.

17 On March 7, 2024, Defendants filed the Motion. Defendants offer no explanation
18 for waiting nearly six months to raise their purported concerns about Judge Vera’s
19 impartiality. Although they claim to have “discovered that Judge Vera may have a
20 personal bias in favor of President Biden” after filing their Motion to Dismiss, they offer
21 nothing to support this explanation. *See* Mot. at 4, *citing* 3/7/24 Ziegler Decl. ¶ 11. The
22 purported “facts” upon which the Motion is based have been publicly available from the
23 outset. More importantly, none of the Defendants’ “facts” provides any basis whatsoever
24 for impugning Judge Vera or seeking recusal.

25
26 ⁵ In addition, while Defendants’ assertions have no merit, they are not ones that can be
27 decided on a motion to dismiss and would require fact discovery. *See, e.g., Lee v. City of*
28 *Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) (“As a general rule, ‘a district court may
not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion.’”) (internal citation omitted).

1 **III. ARGUMENT**

2 **A. Legal Standard on a Motion to Recuse**

3 Defendants seek to disqualify Judge Vera pursuant to 28 U.S.C. § 455(a), which
4 states that a judge “shall disqualify himself [or herself] in any proceeding in which his [or
5 her] impartiality might reasonably be questioned.” Defendants argue that the use of the
6 word “might” in the statute “constitutes a *de minimus* [sic] threshold for disqualification,”
7 citing no caselaw to support their argument, and ignoring the qualifier “reasonably” in the
8 statute. (Mot. at 6:6-7.) Defendants’ proposed standard is wrong.

9 Under Ninth Circuit law, the recusal analysis “begin[s] with the general
10 proposition that, in the absence of a legitimate reason to recuse himself, ‘a judge should
11 participate in cases assigned.’” *United States v. Holland* (cited by Defendants), 519 F.3d
12 909, 912 (9th Cir. 2008) (quoting *Maier v. Orr*, 758 F.2d 1578, 1583 (Fed. Cir. 1985)).
13 Importantly, federal judges are *presumed* to be impartial. *See, e.g., Konarski v City of*
14 *Tucson*, 716 F. App’x 609, 611 (9th Cir. 2017). Thus, far from imposing only a *de*
15 *minimis* standard for recusal, under Section 455(a), “the party seeking disqualification
16 bears a *substantial burden* to show that the judge is biased.” *Perry v. Schwarzenegger*
17 (*“Perry I”*), 790 F. Supp. 2d 1119, 1129 (N.D. Cal. 2011 (emphasis added) (internal
18 quotations and citation omitted); *United States v. Bell*, 79 F. Supp. 2d 1169, 1171 (E.D.
19 Cal. 1999); *cf. United States v. Trump*, --F. Supp. 3d--, 2023 WL 6284898, at *3 (D.D.C.
20 2023) (party seeking recusal bears burden by clear and convincing evidence).

21 Under Section 455(a), courts examine “whether a reasonable person with
22 knowledge of all the facts would conclude that the judge’s impartiality might reasonably
23 be questioned.” *Holland*, 519 F.3d at 913 (internal quotations and citation omitted); *see*
24 *also, e.g., Yagman v. Republic Ins. Co*, 987 F.2d 622, 626 (9th Cir. 1993) (same) (cited
25 by Defendants). A reasonable person in this context “is not a ‘partly informed man-in-
26 the-street,’ but rather someone who ‘understand[s] all the relevant facts’ and has
27 examined the record and the law.” *Holland*, 519 F.3d at 914 (quoting *LoCascio v. United*

1 *States*, 473 F.3d 493, 496 (2d Cir. 2007)). The “‘reasonable person’ in this context
2 means a ‘well-informed, thoughtful observer,’ as opposed to a ‘hypersensitive or unduly
3 suspicious person.’” *Clemens*, 428 F.3d at 1178 (quoting *Matter of Mason*, 916 F.2d at
4 386); *United States v. Cerceda*, 188 F.3d 1291, 1293 (11th Cir. 1999) (“Recusal cannot
5 be based on unsupported, irrational or highly tenuous speculation.”) (internal quotations
6 and citation omitted). “The standard must not be so broadly construed that it becomes, in
7 effect, presumptive, so that recusal is mandated upon the merest unsubstantiated
8 suggestion of personal bias or prejudice.” *Cano v. Biden*, 2022 WL 1239861, at *2 (S.D.
9 Cal. 2022) (internal quotations and citation omitted); *cf. United States v. Nixon*, 267 F.
10 Supp. 3d 140, 148 (D.D.C. 2017) (noting that courts are “not” to use “the standard of
11 mere suspicion” on recusal motions) (emphasis in original) (internal quotations and
12 citation omitted).

13 Moreover, a judge “must not simply recuse out of an abundance of caution when
14 the facts do not warrant recusal.” *Garity v. Donahoe*, 2014 WL 4354115, at *2 (D. Nev.
15 2014). Otherwise, “it would be too easy for those who seek judges favorable to their case
16 to disqualify those that they perceive to be unsympathetic merely by publicly questioning
17 their impartiality.” *Perry v. Schwarzenegger*, 630 F.3d 909, 916 (9th Cir. 2011) (“*Perry*
18 *II*”) (Reinhardt, J.) (denying motion to recuse). *See also Matter of Mason*, 916 F.2d at
19 386 (noting that “putting disqualification in the hands of a party, whose real fear may be
20 that the judge will *apply* rather than disregard the law, could introduce a bias into
21 adjudication.”) (emphasis in original); *Trump*, 2023 WL 6284898, at *4 (noting that in
22 the wrong hands, “a disqualification motion is a procedural weapon” raising multiple
23 risks, including that of “judge shopping”) (internal quotations and citations omitted);
24 *Trump v. Clinton*, 599 F. Supp. 3d at 1249 (“[i]n the real world, recusal motions are
25 sometimes driven more by litigation strategies than by ethical concerns.”) (internal
26 quotations and citation omitted). Indeed, a judge “has ‘as strong a duty to sit when there
27 is no legitimate reason to recuse as he does to recuse when the law and facts require.’”
28

1 *Clemens*, 428 F.3d at 1179 (quoting *Nichols v. Alley*, 71 F.3d 347, 351 (10th Cir. 1995));
2 *see also Cano*, 2022 WL 1239861, at *2.

3 A court’s decision on a motion to recuse is reviewed for abuse of discretion. *See*
4 *Yagman*, 987 F.2d at 626; *United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986).

5 **B. Defendants Present Nothing to Suggest That a Reasonable Person**
6 **Would Question Judge Vera’s Partiality.**

7 **1. Judge Vera’s Appointment by President Biden Has No Weight in the**
8 **Recusal Analysis.**

9 “There is no support whatsoever for the contention that a judge can be disqualified
10 simply on the identity of the President who appointed him.” *Straw v. United States*, 4
11 F.4th 1358, 1363 (Fed. Cir. 2021) (citing multiple authorities). This is true even where
12 the president who appointed the judge is a party to the proceeding. *See In re Executive*
13 *Office of the President*, 215 F.3d 25, 25 (D.C. Cir. 2000). “Even in cases (unlike this
14 one) in which the appointing President is a party, neither the recusal statute nor the Code
15 of Conduct for United States Judges requires a judge’s recusal from the case on that
16 basis.” *McKee v. United States Dept. of Justice*, 253 F. Supp. 3d 78, 81 (D.D.C. 2017);
17 *see also United States v. Trump et al.*, Case No. 9:23-cr-80101-AMC (S.D. Fla.) (filed
18 June 8, 2023) (pending criminal case against former President Trump, presided over by
19 appointee of former President Trump).

20 The identity of an appointing president is also irrelevant even where a party is
21 known to be a staunch political opponent of that president. In *Klayman v. Judicial*
22 *Watch*, the plaintiff sought recusal on the ground that the judge was appointed by
23 President Clinton, “against whom ‘Plaintiff was a strong and controversial advocate.’”
24 628 F. Supp. 2d 98, 110 (S.D. Cal. 2009). The court noted that the plaintiff provided no
25 legal authority to support his position, “and for good reason—the case law is clear that
26 recusal is not warranted in this circumstance.” *Id.* Rather, “in the federal system, judges
27
28

1 separate themselves from politics when going on the bench, and their life tenure reduces
2 any felt reliance on political patrons.” *Id.* at 111 (internal citation omitted).

3 Defendants themselves concede that the identity of the appointing president is an
4 insufficient basis to disqualify Judge Vera. (Mot. at 9:7-8) (“Nor do Defendants contend
5 that Judge Vera’s appointment by President Biden alone serves as a basis for recusal”);
6 *see also id.* at 5 (same). The fact that President Biden appointed Judge Vera cannot
7 support recusal.⁶

8 **2. Judge Vera’s Pre-Appointment Political Contributions Do Not**
9 **Support Recusal.**

10 In *Matter of Mason*—a case Defendants rely upon (Mot. at 5)—the Seventh Circuit
11 directly addressed the issue of whether a judge’s pre-appointment campaign contributions
12 warranted recusal, and squarely held that recusal was *improper*. There, the district judge
13 made campaign contributions to two of the named defendants in the case, and the
14 plaintiff’s counsel ran against one of the named defendants while the case was pending.
15 916 F.2d at 385. The district court denied plaintiffs’ motion to disqualify the judge, and
16 the Seventh Circuit denied the plaintiff’s request for a writ of mandamus. *Id.* at 388. The
17 Seventh Circuit noted that “[c]ourts that have considered whether pre-judicial political
18 activity is also prejudicial regularly conclude that it is not.” *Id.* at 386. The court
19 observed that “[t]here are not enough political eunuchs on the federal bench to resolve all
20 cases with political implications.” *Id.* at 387. More importantly, the court explained that
21 even politically connected federal judges “regularly cast partisan interests aside and
22 resolve cases on the facts and law. *Judges with tenure need not toady, and don’t.*” *Id.*
23 (emphasis added).

24 _____
25 ⁶ Defendants also argue that an “appearance of bias is heightened” because Judge Vera was
26 assigned this case three months after his appointment. (Mot. at 8.) But as this Court knows,
27 civil cases in this District are randomly assigned to judges, except for a small subset of
28 directly assigned cases that do not cover the present action. *See* General Order No. 23-05
(superseded after the present case was filed), at 9-15. Defendants present no evidence that
this case deviated in any way from the normal random assignment process set forth in
General Order 23-05.

1 More recently, in *Arkansas State Conference NAACP v. Arkansas Board of*
 2 *Apportionment*, the district court ruled that a recusal argument based on campaign
 3 contributions analogous to those here “borders on the frivolous.” 578 F. Supp. 3d 1011,
 4 1017 (E.D. Ark. 2022). In *Arkansas State Conference*, the district judge made a
 5 campaign contribution to a named defendant in January 2018, four years before the
 6 motion was decided and nearly two years before the judge took the bench in November
 7 2019. *Id.* The district court ruled that the contribution did not “trigger recusal under the
 8 objective reasonable-person standard.” *Id.* Here, Judge Vera did not make a campaign
 9 contribution to a party to the case. He made his last contribution in September 2020,
 10 nearly three years before taking the federal bench in June 2023, and one year longer than
 11 the parallel time frame in *Arkansas State Conference*. (See RJN Ex. 7; Ellis Decl., Ex. A
 12 (noting that Judge Vera received his commission on June 15, 2023).)⁷ Similarly, in
 13 *Burton v. Arkansas Sec’y of State*, before being appointed to the bench, the district judge
 14 co-hosted a fundraising reception for a political opponent of one of the named
 15 defendants. 2015 WL 11090414, at *1 (E.D. Ark. 2015). Citing *Klayman* and *Matter of*
 16 *Mason* among other authorities, the court concluded that recusal was not warranted, and
 17 that “[t]he fact of past political activity alone will rarely require recusal.” *Id.* at *6-7
 18 (internal quotations and citation omitted); see also *United States v. State of Alabama*, 574
 19 F. Supp. 762, 764 & n.2 (N.D. Ala. 1983) (concluding that motion to recuse was “devoid
 20 of legal merit” when based on judge’s past campaign contributions to former United
 21 States Senator who recommended his appointment).

22 As with their “appointment” argument, Defendants admit the “contribution”
 23 argument is flimsy at best, admitting that there would be no basis for recusal if Judge
 24 Vera made donations to Presidents Obama or Clinton. (Mot. at 9:11-13.) *Matter of*
 25 *Mason*, *Arkansas State Conference*, and *Burton* all make clear that political contributions
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27 ⁷ Defendants’ Request for Judicial Notice erroneously asserts that Judge Vera took the
 28 bench on June 13, 2023, the day he was confirmed by the Senate, rather than the day he
 received his commission. (RJN ¶¶ 21, 23, 25, 28 & Exs. 8, 9.)

1 to a party to the case (or a party’s political opponent) are insufficient to warrant recusal.
2 At most, Defendants could argue that the contributions here are larger than the \$100
3 contributions at issue in *Matter of Mason* or the \$500 contribution in *Arkansas State*
4 *Conference* (the amounts at issue in *Burton* are unclear). But Judge Vera’s \$1,600
5 contributions are a drop in the bucket compared to the over one billion dollars President
6 Biden raised in his 2020 presidential campaign. See Ellis Decl., Ex. B. Thus, Judge
7 Vera’s contributions to the President’s election campaign do not support recusal.

8 **3. The “Surrounding Facts and Circumstances” Are Not “Unique”**
9 **and Do Not Support Recusal.**

10 Although none of the facts Defendants identify with respect to Judge Vera warrant
11 recusal, Defendants attempt the legal equivalent of multiplying by zero, and argue that
12 when *taken together* under the circumstances, their deficient facts somehow *mandate* that
13 Judge Vera be recused. The “surrounding facts and circumstances” Defendants point to
14 include Plaintiff’s purported motive “to avenge his family” via this lawsuit (Mot. at 7);
15 and the “magnitude of the relief requested”—*i.e.*, an injunction preventing Defendants
16 from further accessing or tampering with Plaintiffs’ data, which Defendants claim could
17 affect the pending impeachment inquiry of President Biden and impede public access to
18 the data. (Mot. at 8.) Defendants’ arguments are imaginary and baseless—and in many
19 respects counterfactual—and they are based on inapposite caselaw.

20 First, the attributed motive behind this suit is false and irrelevant. The sole basis
21 Defendants point to for “motive” is paragraph 1 of the Complaint, which notes that
22 *Ziegler* has pursued Plaintiff and his family for years—a point which *Ziegler* himself
23 regularly trumpets on social media and expressly confirms in his own court filings. See,
24 *e.g.*, 3/7/24 *Ziegler* Decl. (Dkt. 35-3), ¶ 10 (*Ziegler* admits that Defendants collaborated
25 with Congressional staff and members supporting impeachment by providing them with
26 data at issue in this case.). The *substance* of the Complaint has nothing to do with
27 “aveng[ing Plaintiff’s] family,” but is limited to seeking legal redress for specific and
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1 pervasive misconduct that Defendants committed directly against Plaintiff, by wrongfully
2 accessing and tampering with his personal data. (*See* Compl.) In any event, Plaintiff’s
3 motive for bringing the suit, and his relationship to President Biden, have nothing to do
4 with *Judge Vera*’s partiality in presiding over the case, and Defendants’ argument is
5 simply a recasting of their failed argument that the identity of an appointing president
6 requires recusal. *Trump v. Clinton* is instructive. There, former President Trump sued
7 former Secretary of State Hillary Clinton, then moved to recuse the district judge on the
8 ground that he was appointed by President Bill Clinton. 599 F. Supp. 3d at 1248. The
9 judge “equate[d] the interests of the Clintons for the sake of analysis here,” and
10 concluded that there was no basis for recusal, citing *In re Executive Office of the*
11 *President and Straw*. *Id.* at 1249.

12 Second, although Defendants claim that a ruling in Plaintiff’s favor “might
13 substantially impede the impeachment inquiry,” (Mot. at 8:4), they never explain *how*
14 this might occur (or whether there is even an impeachment inquiry still remaining to
15 impede). Nor can they possibly do so. Defendants’ own evidence establishes that they
16 already provided the “Report” and other stolen “research data” to Congressional staff
17 supporting the impeachment inquiry, and that the proponents of impeachment have
18 already “used” the data (to the extent it is “useful” to them) in their purported (and
19 frivolous) investigation. (Mot. at 3-4, 7.) The impeachment inquiry appears to be
20 approaching its ignominious end, while this case is still in its infancy. More importantly,
21 there is nothing to suggest that a finding of liability against Defendants here would have
22 any impact whatsoever on the impeachment activities of President Biden’s opponents in
23 Congress. Nor is Plaintiff seeking relief in this case that would have any bearing on the
24 impeachment investigation. Thus, a reasonable person—who “understand[s] all the
25 relevant facts” (*Holland*, 519 F.3d at 914)—would know that Plaintiff’s efforts to seek
26 redress in this litigation for the unlawful hacking activities of Defendants have nothing to
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1 do with the so-called “impeachment investigation” of President Biden by right-wing
2 House Republicans.

3 Third, Defendants claim that an injunction, if entered in this case, would inhibit the
4 public from accessing relevant data. (Mot. at 1, 7-8.) This argument is a red herring; the
5 contention of lack of merit to the claims or the made-up concerns about public access
6 have no bearing on a recusal motion. The issue in this case is whether Defendants’
7 ongoing access of Plaintiff’s data violates applicable state and federal anti-hacking laws.
8 The relief that Plaintiff seeks—including but not limited to injunctive relief—is directed
9 at Defendants, not anyone else. Thus, while Defendants may well be enjoined from
10 continuing to engage in their unlawful data-related activities, there would be no
11 “injunction” against the “public” or the “media” at large. More importantly, Defendants’
12 purported concerns about the “magnitude of the relief” sought against them has
13 absolutely nothing to do with Judge Vera’s ability to be fair or about whether Judge
14 Vera’s partiality could be reasonably questioned. Indeed, even if Judge Vera were to
15 enter the injunction sought in this case, that ruling could not serve as grounds for recusal,
16 because the “extrajudicial source” rule “generally requires as the basis for recusal
17 something *other than* rulings, opinions formed or statements made by the judge during
18 the course of trial.” *Holland*, 519 F.3d at 913-14 (emphasis added) (internal quotations
19 and citation omitted). Ultimately, Defendants’ arguments about the possible entry of an
20 injunction against them amount to “rumor, speculation, beliefs. . . and similar non-factual
21 matters” that cannot form the basis of recusal. *Id.* at 914 n.5 (internal quotations and
22 citation omitted).

23 Defendants close their “surrounding facts and circumstances” argument by
24 referring dramatically to the need to protect the public’s trust in all three branches of
25 government, and by citing to a single case to support their position: *United States v.*
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1 *Bobo*, 323 F. Supp. 2d 1238 (N.D. Ala. 2004).⁸ In *Bobo*, a former governor of Alabama
 2 was a criminal defendant; the district judge was related to the current governor, who
 3 defeated the defendant in a previous election. 323 F. Supp. 2d at 1239. The judge made
 4 no contributions to his relative’s campaign. *Id.* at 1240. Moreover, the judge concluded
 5 that he “has not said or done anything that requires recusal” and that no relevant facts
 6 “would impair this judge from a fair, thorough, and impartial review of the facts and law
 7 pertinent to this case.” *Id.* at 1241. Curiously, the court proceeded to a “Part II” of its
 8 discussion, where it ruminated that “we live in a ‘cynical world,’” and that recent
 9 “spurious suggestions for recusal” reflected “an unstated lack of confidence in the
 10 impartiality and capacity” of the judiciary. *Id.* at 1242-1243 (internal citation omitted).
 11 The judge then recused himself *sua sponte* “[f]or all of the reasons stated in Part II of this
 12 opinion.” *Id.* at 1243.

13 *Bobo* is an out-of-circuit district court case at odds with governing Ninth Circuit
 14 law. In particular, “Part II” of the court’s discussion does not mention the objective
 15 reasonable person standard at all. By recusing *sua sponte*, even where no specific facts
 16 warranted recusal, the *Bobo* court engaged in a textbook recusal “out of an abundance of
 17 caution” that is improper under Ninth Circuit law. *See Garity*, 2014 WL 4354115, at *2;

19 ⁸ Elsewhere in their motion, Defendants identify, but do not analyze, other cases holding
 20 that recusal was warranted. All these cases are out-of-circuit and distinguishable. In *In*
 21 *re Boston Children First*, the district judge wrote a letter to the editor and gave an
 22 interview about her rulings in a pending case, which could have been misinterpreted as a
 23 preview of her ultimate ruling on the merits. *See* 244 F.3d 164, 165-166, 168-170 (1st
 24 Cir. 2001). In *Liljeberg v. Health Services Acquisition Corp.*, the judge in a bench trial
 25 was the trustee of a university with a substantial personal stake in the case. *See* 486 U.S.
 26 847, 852-855 (1988). Similarly, the judge in *Potashnick v. Port City Construction Co.*
 27 did business with the plaintiff’s counsel and was the son of a partner at the firm
 28 representing the plaintiff. *See* 609 F.2d 1101, 1104, 1110, 1112 (5th Cir. 1980). *In re Al-*
Nashiri involved a military judge who applied for a job with the Department of Justice
 while presiding over a criminal case prosecuted by the Department. *See* 921 F.3d 224,
 226-227 (D.C. Cir. 2019). Finally, in *Parker v. Connors Steel Co.*, the court held that a
 failure to recuse was *harmless* error, where the judge’s law clerk was the son of the
 partner in a firm representing a party. 855 F.2d 1510, 1523, 1525-1526 (11th Cir. 1988).
 In contrast to these cases, Judge Vera has not made any public comment about the present
 case, nor does he have business or familial connections with parties or counsel that
 warrant recusal.

1 *Perry II*, 630 F.3d at 916. More recent cases have distinguished and questioned *Bobo*. In
2 *Burton*, the court noted that *Bobo* involved a criminal case rather than a civil case. 2105
3 WL 11090414, at *8. The court in *Arkansas State Conference* noted the same distinction,
4 and went further, explaining that by recusing even though no facts compelled him to do
5 so, the *Bobo* judge “seems to ignore the concomitant duty a judge has to sit in cases
6 where recusal is not *required*.” 578 F. Supp. 3d at 1023 (emphasis in original). The duty
7 to sit applies equally in the Ninth Circuit, *see Clemens*, 428 F.3d at 1179, and *Bobo*’s
8 failure to recognize that duty is a further flaw in its reasoning. In any event, the *Bobo*
9 judge’s decision to recuse is not binding here, as each recusal motion is driven by the
10 particular facts at issue. *See Holland*, 519 F.3d at 913. Under these circumstances, the
11 better approach to recusal is illustrated by *Trump v. Clinton*. After disposing of the
12 arguments (paralleling Defendants’ here) relating to the appointing president’s
13 relationship to the parties, the court explained:

14 I have considered whether the nature of this lawsuit—acutely politically
15 charged as it is—might provide some additional cause to question my
16 qualification to preside, but I see no impediment there either. Every federal
17 judge is appointed by a president who is affiliated with a major political
18 party, and therefore every federal judge could *theoretically* be viewed as
19 beholden, to some extent or another. As judges, we must all transcend
20 politics.

18 599 F. Supp. 3d at 1250 (italics in original, underlined emphasis added). Here,
19 Defendants have not presented evidence to show that a reasonable person would have any
20 legitimate reason to think Judge Vera will be unable to transcend politics.

21 Finally, Defendants’ admissions that their stated grounds for recusal are
22 insufficient on their own and their hyperbolic arguments about the purported
23 “importance” of their unlawful activities to the impeachment investigation suggest that
24 this Motion was brought for strategic rather than substantive purposes, as many courts
25 have cautioned may be the case when ruling against recusal. *See, e.g., Perry II*, 630 F.3d
26 at 916; *Trump*, 2023 WL 6284898 at *4. The Motion does not evidence any appearance
27 of bias on Judge Vera’s part, but instead demonstrates Defendants’ “real fear. . . that the
28

1 judge will *apply* rather than disregard the law.” *Matter of Mason*, 916 F.2d at 386
2 (emphasis in original). It also appears to have been filed as a means of providing “red
3 meat” to Defendants’ social media base. *See* Ellis Decl., Ex. C at 6-7 (January 2024
4 interview with Ziegler, noting intent to seek recusal and asserting, among other things,
5 that Judge Vera “is not a disinterested guy” based on his pre-appointment work for “left
6 wing” organizations, including Public Counsel and La Raza).

7 **IV. CONCLUSION**

8 Defendants’ reliance on hollow platitudes like “fortifying the public’s faith in all
9 three branches of government,” and their insinuation that recusal “is essential to the
10 welfare of our country” (Mot. at 9:14-15) are insufficient to carry their burden on this
11 motion. Rather, Defendants needed to present facts showing that a *reasonable person*
12 would doubt Judge Vera’s partiality. Defendants have failed to do so, and accordingly,
13 the Motion must be denied.

14
15 Dated: April 4, 2024

Respectfully submitted,

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L.R. 11-6.2 CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiff Robert Hunter Biden, certifies that this brief contains 6,000 words which complies with the word limit of L.R. 11-6.1.

Dated: April 4, 2024

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