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

ROBERT HUNTER BIDEN,
Plaintiff,
v.
GARRETT ZIEGLER, et al.,
Defendants.

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

**ORDER DENYING DEFENDANTS’
MOTION FOR RECUSAL [ECF 35]**

Referred to the Hon. Mónica Ramírez Almadani pursuant to C.D. Cal., Gen. Order No. 23-15

Before the Court is Defendants’ Motion for Recusal of the Honorable Hernán D. Vera from the above-captioned civil action. ECF 35. The Court finds this matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; L.R. 7-15. For the reasons stated herein, the Court **DENIES** the Motion.

I. RELEVANT FACTUAL & PROCEDURAL BACKGROUND

On September 13, 2023, Plaintiff Hunter Biden filed an action against Defendants Garrett Ziegler and ICU, LLC, alleging that Defendants violated the Computer Fraud and Abuse Act, California Penal Code § 502(c)(1), and the California Business & Professions Code, by “accessing, tampering with, manipulating, altering, copying and damaging computer data that they do not own and that they claim to have obtained from hacking into

1 Plaintiff's iPhone and from scouring a copy of the hard drive of what they claim to be
2 Plaintiff's 'laptop' computer." ECF 1 at 2. For these claims, Plaintiff seeks damages,
3 disgorgement, prejudgment interest, attorneys' fees, and injunctive relief. *Id.* at 13.

4 On December 21, 2023, Defendants filed a Motion to Dismiss the Complaint
5 pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(2), 12(b)(3), and 12(b)(6) and
6 California Code of Civil Procedure Section 425.16. ECF 23. Plaintiff filed his Opposition
7 to the Motion to Dismiss on February 29, 2024. ECF 30. The hearing on the Motion to
8 Dismiss was set to take place on March 21, 2024, before Judge Vera. ECF 29. The hearing
9 was taken off calendar due to the pending Motion for Recusal (hereinafter the "Motion"),
10 which Defendants filed on March 7, 2024. ECF 35, 39.

11 Defendants maintain that "[t]his Motion is not intended to impugn the Court or to
12 assert that Judge Vera would not be able to be impartial." ECF 35 at 8. They argue that
13 "[r]ecusal is warranted because Judge Vera made donations to Joseph Biden's campaign
14 for president [during the 2020 presidential election]; because Judge Vera was appointed to
15 the Central District Court by President Joseph Biden just three months before this lawsuit
16 was filed by President Biden's son, Hunter Biden, and one day after [then] Speaker Kevin
17 McCarthy announced a presidential impeachment inquiry had commenced in Congress;
18 because the relief requested in the Complaint would prevent and inhibit the public, media
19 and Congress from accessing highly relevant evidence to the impeachment inquiry of
20 President Biden; and because the district court rulings in this case may affect the
21 impeachment inquiry along with the future presidency of Joseph Biden, toward which
22 Judge Vera made a financial investment and for which Judge Vera has an obvious interest
23 and affinity." *Id.* at 3. They therefore insist that, "[c]onsidering the magnitude of the relief
24 requested, a reasonable observer would call into question Judge Vera's impartiality
25 considering all the surrounding facts and circumstances." *Id.* at 10.

26 On March 14, 2024, pursuant to the General Orders of the District Court for the
27 Central District of California, the Motion was randomly referred to Judge Ramírez
28 Almadani for determination. ECF 38; C.D. Cal., Gen. Order No. 23-15 (Nov. 29, 2023)

1 (“If the assigned judge determines that the motion to disqualify should be referred to
2 another judge, the assigned judge may refer the motion to the Clerk for random assignment
3 to another district judge in the same division from a division-specific Motions to Disqualify
4 Deck.”).

5 Plaintiff filed an Opposition to the Motion on April 4, 2024, arguing that Defendants
6 “have no grounds to recuse Judge Vera . . . in a case involving President Biden’s son, with
7 whom there is no allegation of any connection to Judge Vera at all.” ECF 41 at 7. Plaintiff
8 explains that “[t]here is no support whatsoever—in the Ninth Circuit or anywhere else—
9 for the contention that a judge can be disqualified based simply on the identity of the
10 President who appointed him.” *Id.*

11 Defendants filed their Reply in Support of the Motion on April 11, 2024, clarifying
12 that “[they] do not bring this Motion on the mere fact that Judge Vera made a political
13 contribution to the sitting President, because he contributed to a political party, or because
14 [he] was merely appointed by President Biden.” ECF 43 at 3 (citing the Motion at 5)
15 (emphasis in original)). These facts are “not necessarily independent grounds alone,
16 supporting recusal.” *Id.* Instead, Defendants insist that the “Motion is brought because the
17 subject matter of the litigation, the relief sought, and the surrounding facts and
18 circumstances would cause a reasonable observer to question whether Judge Vera’s
19 decisions in this case will be impartial.” *Id.* at 2-3.

20 **II. DISCUSSION**

21 **A. Legal Standard for Recusal**

22 The general proposition is that, “in the absence of a legitimate reason to recuse
23 [oneself], a judge should participate in cases assigned,” because “[w]ithout this
24 proposition, we could recuse ourselves for any reason or no reason at all; we could pick
25 and choose our cases, abandoning those that we find difficult, distasteful, inconvenient or
26 just plain boring.” *United States v. Holland*, 519 F.3d 909, 912 (9th Cir. 2008) (citations
27 and internal quotations omitted). We as judges take an oath to “faithfully and impartially
28 discharge and perform [our] duties,” and to “administer justice without respect to persons,

1 and do equal right to the poor and to the rich.” 28 U.S.C. § 453. We therefore “are as
2 bound to recuse ourselves when the law and facts require as we are to hear cases when
3 there is no reasonable factual basis for recusal.” *Holland*, 519 F.3d at 912.

4 Under 28 U.S.C. § 455(a), “[a]ny justice, judge, or magistrate judge of the United
5 States shall disqualify [themselves] in any proceeding in which [their] impartiality might
6 reasonably be questioned.” This is a reasonable-person standard that evaluates impartiality
7 “on an *objective* basis, so that what matters is not the reality of bias or prejudice but its
8 appearance.” *United States v. Carey*, 929 F.3d 1092, 1104 (9th Cir. 2019) (quoting *Liteky*
9 *v. United States*, 510 U.S. 540, 548 (1994)). Specifically, “[s]ection 455(a) asks whether
10 a reasonable person perceives a significant risk that the judge will resolve the case on a
11 basis other than the merits.” *Holland*, 519 F.3d at 913 (citations omitted). To be clear,
12 “[t]he ‘reasonable person’ is not someone who is hypersensitive or unduly suspicious, but
13 rather is a well-informed, thoughtful observer.” *Miles v. Ryan*, 697 F.3d 1090, 1091 (9th
14 Cir. 2012) (quoting *Holland*, 519 F.3d at 913); *see also Yagman v. Republic Ins.*, 987 F.2d
15 622, 626 (9th Cir. 1993) (“[R]ecusal is appropriate where a reasonable person with
16 knowledge of all the facts would conclude that the judge’s impartiality might reasonably
17 be questioned.”) (citation omitted).

18 The Court is “mindful that section 455(a) claims are fact driven, and as a result, the
19 analysis of a particular section 455(a) claim must be guided, not by comparison to similar
20 situations addressed by prior jurisprudence, but rather by an independent examination of
21 the unique facts and circumstances of the particular claim at issue.” *Clemens v. U.S. Dist.*
22 *Ct. for Cent. Dist. of Cal.*, 428 F.3d 1175, 1178 (9th Cir. 2005) (per curiam) (citation
23 omitted).

24 **B. Recusal is Not Warranted**

25 Here, the Court is not persuaded that a “reasonable person,” with knowledge of all
26 the facts and circumstances of this case, “perceives a significant risk” that Judge Vera will
27 not resolve the case based solely on the merits. *Holland*, 519 F.3d at 913. First, Defendants
28 do not point to any evidence that Judge Vera has any connection to any litigant in this case.

1 Defendants do not claim, for example, that Judge Vera knows or has a relationship with
2 Plaintiff or his father, President Joseph Biden, who is not himself a party to the litigation.
3 They also do not claim that Judge Vera has made any public comment about the present
4 case or demonstrated any bias in any form. Nor is there any evidence to indicate that Judge
5 Vera has a financial stake or interest in the outcome of this case, and Defendants make no
6 such argument. The only connection between Judge Vera and Plaintiff is the fact that
7 Plaintiff's father appointed Judge Vera to the federal bench in 2023, ECF 36-8 (Ex. 8), and
8 that Judge Vera donated to the President's 2020 campaign, ECF 36-7 (Ex. 7).¹

9 However, Defendants concede, as they must, that Judge Vera's appointment and past
10 campaign contributions alone and together do not warrant disqualification. ECF 35 at 3.
11 *See also* Richard E. Flamm, *Judicial Disqualification: Recusal and Disqualification of*
12 *Judges* 555 (3d ed. 2017) ("As the Second Circuit Court of Appeals has pointed out,
13 moreover, even though judges generally have political backgrounds, to one degree or
14 another, they must be presumed, absent evidence to the contrary, to be impartial. For this
15 reason, and because many judges were involved in politics before taking the bench, and
16 either held political office themselves or helped others to do so, many courts—including
17 panels of the Fifth, Tenth and District of Columbia Circuit Court of Appeal—have made it
18 clear that a judge's past political activity alone, or the views she expressed as a political
19 figure prior to becoming a judge, will rarely require the judge to recuse herself from
20 presiding over a pending proceeding, or provide the basis for a well-founded
21 disqualification motion."); Charles Gardner Geyh, *FED. JUD. CTR., Judicial*
22 *Disqualification: An Analysis of Federal Law* 26 (Kris Markarian ed., 3d ed. 2020)
23 ("[S]hared political affiliation is not enough, by itself, to require disqualification.").

24
25 ¹ Defendants also argue that "Judge Vera's appearance of bias is heightened" given
26 that he was assigned to this case "just three months after he was appointed." ECF 35 at 10.
27 This information is of no consequence. As Plaintiff points out in his Opposition, cases in
28 this District are randomly assigned to judges, and "Defendants present no evidence that
this case deviated in any way from the normal random assignment process set forth in
General Order 23-05." ECF 41 at 16.

1 As a way around this legal barrier, Defendants attempt to steer the Court in a
2 different direction, arguing in effect that Judge Vera’s rulings would be seriously
3 questioned in *this* case, unlike in other cases, because of the subject matter of the litigation
4 and the remedies sought by Plaintiff. Specifically, they argue that the case “implicate[s]
5 matters of national and international concern—the potential foreign compromise and
6 criminal wrongdoing of the First Family of the United States,” and “might substantially
7 impede the impeachment inquiry as well.” ECF 35 at 10. They insist that, “if Judge Vera
8 enjoins Defendants from maintaining their websites including the Biden Laptop Report and
9 supporting data (the subject of this litigation),” he would prevent Congress, the media, and
10 the public from accessing the same data which is relevant to the impeachment inquiry.
11 ECF 43 at 3. Defendants argue that outcome—considering Judge Vera’s appointment and
12 past political contributions to President Biden’s presidential campaign—would be
13 questioned.

14 It is not reasonable, however, to suspect that Judge Vera’s ability to preside
15 impartially would be affected by the subject matter of the litigation or the remedies sought.
16 Defendants do not point to any rulings by Judge Vera in this case that display bias,
17 favoritism, or antagonism that would make a reasonable observer question Judge Vera’s
18 impartiality. As the Supreme Court explained in *Liteky v. United States*, 510 U.S. 540, 555
19 (1994), “judicial rulings alone almost never constitute a valid basis for a bias or partiality
20 motion,” and “opinions formed by the judge on the basis of facts introduced or events
21 occurring in the course of the current proceedings, or of prior proceedings, do not constitute
22 a basis for a bias or partiality motion unless they display a deep-seated favoritism or
23 antagonism that would make fair judgement impossible.”

24 Moreover, as the Ninth Circuit explained in *Clemens*, “[i]n determining whether
25 disqualification is warranted under § 455(a), we also apply the general rule that questions
26 about a judge’s impartiality must stem from ‘extrajudicial’ factors, [] that is, from sources
27 other than the judicial proceeding at hand.” 428 F.3d at 1178 (citing *Liteky*, 510 U.S. at
28 554, and *Pau v. Yosemite Park and Curry Co.*, 928 F.2d 880, 885 (9th Cir.1991)). Here,

1 Defendants do not provide any evidence of bias stemming from extrajudicial factors. In
2 fact, they concede that President Biden’s appointment of Judge Vera and Judge Vera’s past
3 political contributions—which do not concern the judicial proceeding at hand—are not
4 disqualifying factors.

5 Finally, without explanation or legal support, Defendants claim that “in light of the
6 politically charged rematch between President Biden and President Trump, another
7 consideration is that Defendant Ziegler previously worked for President Trump, Biden’s
8 two-time political opponent, and the Complaint contains allegations that Defendants only
9 rendered the Biden Laptop to advance a right-wing agenda.” ECF 35 at 8. That a case
10 may be “politically charged” or sensitive and, for the sake of analysis, arguably involve the
11 President who appointed the presiding judge, is insufficient to mandate recusal.

12 The Court agrees with Plaintiff that *Trump v. Clinton*, 599 F. Supp. 3d 1247 (S.D.
13 Fla. 2022), is instructive here. There, former President Donald Trump sued former
14 Secretary Hillary Clinton, alleging that she violated several federal laws, including the
15 Computer Fraud and Abuse Act, the Stored Communications Act, and the Racketeer
16 Influenced and Corrupt Organizations Act. Former President Trump argued that former
17 Secretary Clinton conspired to “disseminate patently false and injurious information about
18 Donald J. Trump and his campaign, all in the hopes of destroying his life, his political
19 career and rigging the 2016 Presidential Election in favor of Hillary Clinton.” *Id.* at 1248.
20 President Trump moved to recuse the district judge on the ground that he was appointed
21 by President Bill Clinton, the defendant’s husband. The district court “equate[d] the
22 interests of the Clintons for the sake of analysis,” but denied the recusal motion despite the
23 “acutely politically charged” nature of the lawsuit. *Id.* at 1249-50. Relying on *In re*
24 *Executive Office of the President*, 215 F.3d 25 (D.C. Cir. 2000), *Straw v. United States*, 4
25 F.4th 1358, 1362 (Fed. Cir. 2021), and *MacDraw, Inc. v. CIT Grp. Equip. Fin., Inc.*, 138
26 F.3d 33, 38 (2d Cir. 1998), the court aptly explained that “[e]very federal judge is appointed
27 by a president who is affiliated with a major political party, and therefore every federal
28 judge could *theoretically* be viewed as beholden, to some extent or another. As judges, we

1 must all transcend politics.” 599 F. Supp. 3d at 1250. *See In re Executive Office of the*
2 *President*, 215 F.3d at 25 (explaining that hearing a case involving the President who
3 appointed the Circuit Judge would not create “in reasonable minds . . . a perception that
4 [his] ability to carry out judicial responsibilities with integrity, impartiality, and
5 competence would be impaired” in part because of his life-tenured position) (citations
6 omitted); *MacDraw*, 138 F.3d at 38 (explaining that, in the federal system, “judges separate
7 themselves from politics when going to the bench, and their life tenure reduces any felt
8 reliance on political patrons”).

9 To rule in favor of recusal here would require that any federal judge appointed by
10 President Biden who made political contributions to his presidential campaign in the past
11 would need to recuse themselves from this case despite random assignment. That is, under
12 Defendants’ reasoning, no judge under these circumstances could be reasonably perceived
13 as impartial given the nature of the litigation. As already explained, and Defendants accept,
14 “[t]here is no support whatsoever for the contention that a judge can be disqualified simply
15 on the identity of the President who appointed [them].” *Straw*, 4 F.4th at 1363 (Fed. Cir.
16 2021) (citing *MacDraw*, 138 F.3d at 38; *McKee v. U.S. Dep’t of Just.*, 253 F. Supp. 3d 78,
17 81 (D.D.C. 2017); *Armenian Assembly of Am., Inc. v. Cafesjian*, 783 F. Supp. 2d 78, 93
18 (D.D.C. 2011)); *see also United States v. Gordon*, 974 F.2d 1110, 1114 (9th Cir. 1992)
19 (finding it “not reasonable to suspect that [the judge’s] ability to preside impartially would
20 be affected by the fact that President Reagan appointed him” in a case where President
21 Reagan was the victim and a potential witness), *overruled on other grounds by United*
22 *States v. Bagdasarian*, 652 F.3d 1113 (9th Cir. 2011); *Klayman v. Jud. Watch, Inc.*, 744 F.
23 Supp. 2d 264, 277 (D.D.C. 2010) (finding recusal not supported where the judge was
24 appointed by President Clinton and movant claimed that judge had connection to the
25 Democratic party); *Larson v. C.I.A.*, No. 1:10-CV-01774 OWW JLT, 2010 WL 4623923,
26 at *1 (E.D. Cal. Nov. 5, 2010) (“As a matter of law, there is no ‘personal bias or prejudice’
27 created when a federal judge presides over a matter involving the President who appointed
28 that judge. Neither a judge’s political affiliation nor his or her appointment by a particular

1 President are grounds for recusal.”). Moreover, such a result would have damaging
2 consequences, including, for example, parties readily filing recusal motions to wrongly
3 forum-shop their cases.

4 “Even in cases (unlike this one) in which the appointing President *is* a party, neither
5 the recusal statute nor the Code of Conduct for United States Judges requires a judge’s
6 recusal from the case on that basis.” *McKee*, 253 F. Supp. 3d at 81 (emphasis added); *see*
7 *also In re Executive Office of the President*, 215 F.3d at 25-26 (recalling that Justices
8 Ginsburg and Breyer participated in a case where President Clinton who appointed them
9 to the Supreme Court was a named party, and that Chief Justice Burger and Justices
10 Blackmun and Powell, among other judges, participated in cases where President Nixon
11 who appointed them was a named party). For all these reasons, there is no reasonable
12 factual basis for recusal of Judge Vera from this case.

13 **C. Requests for Judicial Notice**

14 Defendants filed a Request for Judicial Notice in Support of the Motion, ECF 36,
15 which Plaintiff opposes in part, ECF 42. Defendants request judicial notice of 11 exhibits,
16 including excerpts from Defendants’ “Biden Laptop Report” (Ex. 1); screenshots from
17 Defendants’ website purporting to identify online articles (Ex. 2); Congressional
18 committee interview transcripts (Ex. 3-6); documents showing Judge Vera’s 2020
19 campaign contributions and discussing his confirmation (Ex. 7-9); and other materials
20 pertaining to the impeachment inquiry of President Biden (Ex. 10-11).

21 Federal Rule of Evidence 201 “permits a court to notice an adjudicative fact if it is
22 ‘not subject to reasonable dispute.’” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988,
23 999 (9th Cir. 2018) (quoting Fed. R. Evid. 201(b)). “A fact is ‘not subject to reasonable
24 dispute’ if it is ‘generally known,’ or ‘can be accurately and readily determined from
25 sources whose accuracy cannot reasonably be questioned.’” *Id.* (quoting Fed. R. Evid.
26 201(b)(1)-(2)). Even if not subject to reasonable dispute, “an irrelevant fact cannot be
27 classified as an adjudicative fact for purposes of Rule 201.” *Waterkeeper v. Clay*, No. CV
28 8:18-00333 DOC (DFM), 2023 WL 6787811, at *2 (C.D. Cal. Aug. 25, 2023). Under

1 Federal Rule of Evidence 401(b), evidence is relevant if “the fact is of consequence in
2 determining the action.” *See also Taleff v. Sw. Airlines Co.*, 554 F. App’x 598, n.1 (9th
3 Cir. 2014) (declining to take judicial notice of materials that were “either inappropriate for
4 judicial notice under Federal Rule of Evidence 201 and/or irrelevant under Rule 401”).

5 The Court declines to take judicial notice of most of Defendants’ exhibits because
6 they were of no consequence to resolving the pending Motion. Specifically, Exhibits 1 and
7 2 do not bear upon Judge Vera’s impartiality, nor do Exhibits 3-6 or 11. The Court takes
8 judicial notice of Exhibits 7 and 8 as evidence of Judge Vera’s political contributions and
9 confirmation and appointment to this Court, but not of Exhibit 9, which contains irrelevant
10 information about Judge Vera’s career and confirmation process.

11 Defendants also filed Objections to Evidence attached to Plaintiff’s Opposition to
12 the Motion. ECF 44. Plaintiff submitted a declaration and exhibits containing Judge
13 Vera’s biographic information, President Biden’s 2020 presidential campaign fundraising
14 data, and an interview transcript of Defendant Ziegler discussing Judge Vera and this case.
15 *Id.* The Court denies Defendants’ Objection as moot because the evidence objected to was
16 immaterial in deciding the Motion. *See Nat’l Funding, Inc. v. Com. Credit Counseling*
17 *Servs., Inc.*, 817 F. App’x 380, n.1 (9th Cir. 2020) (“Because we would reach the same
18 conclusions regardless of whether we considered such documents, the request for judicial
19 notice on appeal is denied as moot.”); *Habelt v. iRhythm Techs., Inc.*, No. 21-CV-00776-
20 EMC, 2022 WL 971580, at *6 (N.D. Cal. Mar. 31, 2022) (denying requests for judicial
21 notice as moot when it was unnecessary to refer to those documents), *appeal dismissed*, 83
22 F.4th 1162 (9th Cir. 2023).

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1 **III. CONCLUSION**

2 For the foregoing reasons, the Motion for Recusal (ECF 35) is **DENIED**.
3 Defendants' Request for Judicial Notice, ECF 36, is DENIED as to Exhibits 1-6 and 9-11,
4 and GRANTED as to Exhibits 7 and 8. Defendants' Objections to Plaintiff's Evidence
5 Filed in Support of Plaintiff's Opposition to Motion for Recusal, ECF 44, are DENIED as
6 moot.

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8 **IT IS SO ORDERED.**

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10 Dated: April 26, 2024


HON. MÓNICA RAMÍREZ ALMADANI
UNITED STATES DISTRICT JUDGE

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