

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

MARK CRUMPACKER, )  
 )  
 ) Case No. 1:16-cv-01053  
 )  
 Plaintiff, )  
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 )  
 v. )  
 )  
 )  
 )  
 CAROLINE CIRAOLO-KLEPPER; )  
 )  
 MICHAEL MARTINEAU; )  
 )  
 MARK J. LANGER; )  
 )  
 COMM'R., INTERNAL REVENUE; )  
 )  
 UNITED STATES ATTORNEY GENERAL; )  
 )  
 and )  
 )  
 2 UNKNOWN-NAMED IRS/DOJ )  
 )  
 ATTORNEYS, )  
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 )  
 Defendants. )  
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 UNITED STATES OF AMERICA )  
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 Counterclaim Plaintiff, )  
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 )  
 v. )  
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 )  
 MARK CRUMPACKER, )  
 )  
 MICHAEL B. ELLIS, and )  
 )  
 ROBERT A. MCNEIL )  
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 Counterclaim Defendants. )  
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**UNITED STATES' OPPOSITION TO COUNTERCLAIM  
DEFENDANTS' MOTION FOR RECUSAL**

Counterclaim Defendants Robert McNeil and Michael Ellis have moved pursuant to 28 U.S.C. § 455 for the Court to recuse itself from this action.<sup>1</sup> The current motion raises all of the same arguments that McNeil, Ellis, and Plaintiff Mark Crumpacker have raised in multiple filings in this case, and which are the subject of two other lawsuits naming this Court as a defendant, namely that this Court has “avoid[ed] adjudicating the ACTUAL allegations of victims’ cases, . . . [and] fabricated and attributed to victims allegations that they did NOT make, and relief they did NOT seek.” Motion for Recusal (“Mot.”) at 4. Plaintiff’s recusal motion – the second recusal motion in this case – is legally and factually meritless and should be denied.

Under 28 U.S.C. § 455(a), “[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” That legal standard is “an objective one that inquires whether a ‘reasonable and informed observer would question the judge’s impartiality.’” *United States v. Microsoft Corp.*, 253 F.3d 34, 114 (D.C. Circ. 2001) (per curiam). However, “it is well established . . . that ‘judicial rulings alone almost never constitute a valid basis for a bias or partiality motion’ and ‘opinions formed by a judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.’ Judicial rulings ‘[a]lmost invariably . . . are proper grounds for appeal, not for recusal.’” *United States v. Marin*, 662 F. Supp. 2d 155, 158 (D.D.C. 2009) (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)).

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<sup>1</sup> McNeil and Ellis filed this motion for recusal after the United States moved for an order to show cause why McNeil and Ellis should not be held in contempt for violating the injunction entered in this case.

McNeil and Ellis concede that their entire motion challenges the Court's judicial rulings alone, specifically (1) the Court's memorandum opinion dismissing the underlying action (Mot. at 4-5); (2) the Court's memorandum opinion in which it entered a permanent injunction against McNeil and Ellis (*id.* at 5); and (3) the Court's denial of McNeil and Ellis's motion to vacate the order of permanent injunction in this case (*id.* at 6 n. 12). They argue that those rulings include "fabrications" that would lead "a reasonable person to question [the Court's impartiality]." *Id.* at 6.

McNeil and Ellis's allegations do not come close to meeting the standard necessary for recusal. All McNeil and Ellis have argued is that they do not think that the Court's rulings in this case were correct, because they think the Court misstated, misunderstood, or "fabricated" their allegations. They have not shown any evidence that this Court has a bias or prejudice against them that "stem[s] from an extrajudicial source and result[ed] in an opinion on the merits on some basis other than what the judge learned from his participation in the case." *United States v. Barry*, 938 F.2d 1327, 1340 (D.C. Cir. 1991). That is fatal to their motion. *Marin*, 662 F. Supp. 2d at 166 (denying motion to recuse as "devoid of any basis in fact or law" because "the Court had no extrajudicial source for its ruling and the defendants' mere disagreement with the Court's interpretation of the facts is patently insufficient to meet the legal standard for disqualification pursuant to 28 U.S.C. § 455(a).").

**Conclusion**

For the foregoing reasons, the Court should deny counterclaim defendants' motion for recusal.

Dated: October 11, 2017

JESSIE K. LIU  
United States Attorney

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Acting Assistant Attorney General

/s/ Ryan O. McMonagle  
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**CERTIFICATE OF SERVICE**

I certify that on October 11, 2017 I filed the foregoing Opposition with the Clerk of Court using the CM/ECF system, and have caused a copy thereof to be served by U.S. mail, postage prepaid, to the following:

Michael B. Ellis  
5052 NE County Road 220  
Rice, Texas 75155  
*Counterclaim Defendant*

Robert A. McNeil  
729 Grapevine Highway #148  
Hurst, Texas 76054  
*Counterclaim Defendant*

*/s/ Ryan O. McMonagle*  
RYAN O. MCMONAGLE