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28IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BURT XAVIER,

Plaintiff,

v.

PHILIP MORRIS USA INC.,

Defendant.

No. C 10-02067 WHA (CRB)

**ORDER DENYING REQUEST FOR
RECUSAL**

In a recent hearing in this case, which involves allegations that Marlboro cigarettes are “unnecessarily dangerous,” Judge William Alsup disclosed that his mother smoked for many years and died of lung cancer. Defendant has now moved to recuse Judge Alsup from the case, pursuant to 28 U.S.C. § 455(a). See dkt. no. 91. Judge Alsup’s experiences, which are not altogether uncommon, are greatly distinguishable from those in the cases cited by Defendant. See, e.g., In re Nettles, 394 F.3d 1001, 1002-03 (7th Cir. 2005). The Court finds that a reasonable person with knowledge of all the facts would not conclude that Judge Alsup’s impartiality might reasonably be questioned. See Pesnell v. Arsenault, 543 F.3d 1038, 1043 (9th Cir. 2008). Accordingly, the motion is DENIED.

IT IS SO ORDERED.

Dated: April 15, 2011

CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE