In the United States Court of Federal Claims

No. 10-274 T
(Filed: September 28, 2010)
NOT FOR PUBLICATION

HOWARD MILLER, a/k/a N.B. SALTY MILLER,	)
Plaintiff,	)
v.	)
THE UNITED STATES,	)
Defendant.	)

N.B. Salty Miller, Wake Forest, North Carolina, appearing *pro se*.

Joseph B. Syverson, Attorney of Record, G. Robson Stewart, Assistant Chief, Steven I. Frahm, Chief, Court of Federal Claims Section, Tax Division, John A. DiCicco, Acting Assistant Attorney General, United States Department of Justice, Washington, D.C., for defendant.

OPINION AND ORDER

GEORGE W. MILLER, Judge

Plaintiff N.B. Salty Miller, suing as Howard Miller, filed his fourth complaint with this court alleging that he is owed money by the IRS for "report[ing] tax violations involving a US individual doing business in Grand Cayman."[1] Compl. at 1 (docket entry 1, May 6, 2010, as amended by docket entry 5, May 28, 2010). Defendant has moved to dismiss this complaint, arguing that plaintiff is barred from relitigating this court's jurisdiction over plaintiff's purported

[1] Plaintiff's previous lawsuits were filed with plaintiff John DaCosta who is not a party to this action. *See DaCosta v. United States* (*DaCosta III*), No. 10-115, 2010 WL 3260168 (Fed. Cl. Aug. 13, 2010); *DaCosta v. United States* (*DaCosta II*), No. 09-558, 2010 U.S. Claims LEXIS 11 (Fed. Cl. Feb. 16, 2010), *aff'd per curiam*, No. 10-5097, 2010 U.S. App LEXIS 18906 (Fed. Cir. Sept. 9, 2010); *DaCosta v. United States* (*DaCosta I*), 82 Fed. Cl. 549 (2008). Curiously, plaintiff refers in his briefing to "plaintiffs" and "plaintiffs' allegations" in the complaint in this case. *See, e.g.*, Plaintiffs [sic] Response to Defendants [sic] Motion to Dismiss at 1, 3 (docket entry 17, Sept. 2, 2010) ("Pl.'s Resp."). Because Mr. Miller is the only plaintiff before the court in this case, the Court will refer to "plaintiff" in the singular when describing the allegations in this case and "plaintiffs" in the plural when discussing the prior cases.

implied-in-fact contract with the United States. Defendant's Motion to Dismiss Plaintiff's Complaint at 1 (docket entry 15, Aug. 19, 2010) ("Def.'s Mot."). Defendant also moves for an order prohibiting plaintiff from filing further complaints with this court without prior permission from a judge of the court. *Id.* at 27. For the reasons stated herein, both of defendant's motions are **GRANTED**.

I. Background[2]

As in his previous cases, plaintiff alleges that he and Mr. DaCosta reported information to the IRS regarding several taxpayers based out of the Cayman Islands.[3] Compl. at 5. The various cases brought by plaintiffs relate to information provided to the IRS regarding three individuals. In *DaCosta I* and *II*, plaintiffs alleged that they reported tax violations with respect to Taxpayer A, the owner of Bardi Ltd.[4] *DaCosta II*, 2010 U.S. Claims LEXIS 11, at *5-6; *DaCosta I*, 82 Fed. Cl. at 550; *see also DaCosta III*, 2010 WL 3260168, at *3. The Court found in *DaCosta I* that for information provided to the IRS before December 20, 2006—the effective date of Congress's 2006 amendments to the Whistleblower Program—the Tax Court possessed exclusive jurisdiction to adjudicate plaintiffs' claims. *DaCosta I*, 82 Fed. Cl. at 555. Regarding the information provided to the IRS before 2006, the Court found that plaintiffs "failed to meet their burden of alleging facts sufficient to establish jurisdiction based on . . . a contract implied in fact, even construing their allegations liberally." *Id.* at 557. Plaintiffs did not appeal this decision.

In *DaCosta II*, plaintiffs made several new allegations regarding the information they provided about Taxpayer A, specifically

> that the IRS promised rewards by sending them a copy of IRS Publication 733;
> that the IRS institutionally ratified the contract by accepting their information;
> that the IRS entered into an oral agreement by paying them each $139,321.01; and
> that the IRS purposely failed to collect the maximum possible taxes to avoid paying bigger rewards to [p]laintiffs.

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[2] Having described plaintiff's allegations in detail in its prior opinions, the Court assumes familiarity with these allegations and will recite only the factual allegations essential to the disposition of the pending motions. For further background, see *DaCosta III*, 2010 WL 3260168, at *1-5; *DaCosta II*, 2010 U.S. Claims LEXIS 11, at *2-8; and *DaCosta I*, 82 Fed. Cl. at 550-51. *See also DaCosta II*, 2010 U.S. App. LEXIS 18906, at *1-4.

[3] Plaintiff's purported right to relief stems from the IRS Whistleblower Program, which permits payment of money as a reward to an individual if the IRS collects tax revenues based on information provided by that individual. I.R.C. § 7623; *see also DaCosta I*, 82 Fed. Cl. at 552. In 2006, Congress revised the Whistleblower Program as part of the Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, Div. A. Title IV, § 406(a), 120 Stat. 2922, 2958 (2006). *See DaCosta I*, 82 Fed. Cl. at 552-53 (describing 2006 amendments).

[4] Plaintiffs have already received a payment of $139,321.01 each for the information they provided regarding Taxpayer A. *See DaCosta I*, 82 Fed. Cl. at 551.

DaCosta II, 2010 U.S. App. LEXIS 18906, at *3-4. The Court found that plaintiffs were "barred from relitigating this Court's finding that it did not possess subject matter jurisdiction over plaintiffs' claims based on an alleged contract implied in fact" because plaintiffs had a fair opportunity to litigate that issue in *DaCosta I*. *DaCosta II*, 2010 U.S. Claims LEXIS 11, at *20 (internal quotation omitted). Moreover, "the newly alleged facts all arose well before this Court dismissed *DaCosta I* on July 11, 2008." *Id.* at *18. Thus, plaintiffs could have raised these allegations in their complaint or in an amended complaint in that case, and plaintiffs' factual allegations were not "new" for purposes of the doctrine of issue preclusion. *Id.* at *19. Plaintiffs appealed this decision and the Federal Circuit affirmed on September 9, 2010, finding that the Court had properly dismissed plaintiffs' complaint based on issue preclusion. *DaCosta II*, 2010 U.S. App. LEXIS 18906, at *7-8.

In *DaCosta III*, plaintiffs alleged that they were entitled to a reward for information reported about Taxpayer B, the owner of a separate company, Bastion Holdings. *DaCosta III*, 2010 WL 3260168, at *3. Part of the information allegedly turned over about Taxpayer B involved the purported sale of stock from Taxpayer A's company, Bardi Ltd., to Taxpayer B's company, Bastion Holdings.[5] *Id.* The Court again found that plaintiffs were barred from relitigating the court's subject matter jurisdiction. *Id.* at *6. Moreover:

> While plaintiffs allege[d] in [*DaCosta III*] that they provided information about a different taxpayer, Taxpayer B, the contractual relationship that purportedly entitles them to compensation is identical to the contract alleged in both of their previous cases, which involved information relating to Taxpayer A. Thus, while the form of the complaints vary slightly, plaintiffs' jurisdictional claim in [*DaCosta III*] [was] based upon the same facts that plaintiffs alleged in *DaCosta I* and *DaCosta II*, and, therefore, raises the identical jurisdictional issue.

Id. (citing *Lowe v. United States*, 79 Fed. Cl. 218, 230 (2007)). Alternatively, the Court found that plaintiffs failed to adequately allege facts giving rise to a contract implied in fact with the IRS.[6] *Id.* at *7-10.

Plaintiff's complaint in this action relates to information allegedly provided about Taxpayer C. Plaintiff alleges that Taxpayer A fraudulently conveyed certain property to Taxpayer C for $10.5 million. E-mail from N.B. Salty Miller to Jonn Cann (Apr. 29, 2005, 11:20:06 CDT), *attached as* Ex. to Compl. Plaintiff's allegations again relate to the same underlying alleged contractual relationship that purportedly entitled plaintiff to compensation in

[5] Plaintiffs alleged that they had not received any payment from the IRS regarding the information provided about Taxpayer B. *DaCosta III*, 2010 WL 3260168, at *3.

[6] As of this writing, plaintiffs have not appealed the judgment in *DaCosta III*. However, once a judgment is final, the pendency of an appeal does not alter the preclusive effect of that judgment. RESTATEMENT (SECOND) OF JUDGMENTS § 13 cmt. f (1982) ("[A] judgment otherwise final for purposes of the law of res judicata is not deprived of such finality . . . when proceedings have been taken to reverse or modify it by appeal."); *see also Huron Holding Corp. v. Lincoln Mine Operating Co.*, 312 U.S. 183, 189 (1941); *DaCosta III*, 2010 WL 3260168, at *7 n.7.

DaCosta I, *II*, and *III*. Specifically, plaintiff alleges that he told several IRS agents that he had information about a number of purportedly delinquent taxpayers. Compl. at 3. The IRS then allegedly sent plaintiff a copy of IRS Publication 733, and an agent told plaintiff that he would be entitled to "15% of all tax deficiencies collected using Plaintiff's direct information." *Id.* "Plaintiff then supplied the IRS with information" regarding the various taxpayers. *Id.* at 4. Plaintiff alleges that the IRS used the "information furnished by Plaintiff . . . to initiate an audit and collect the tax deficiencies" from Taxpayer C. *Id.* at 6. Plaintiff has not received any money for the information about Taxpayer C. *Id.* Defendant filed its motion to dismiss on August 19, 2010, Def.'s Mot., and plaintiff responded on September 2, 2010.[7] Pl.'s Resp. at 1.

[7] On August 6, 2010, with the Court's leave, plaintiff filed a document that had previously been lodged with the Clerk's Office alleging fraudulent misconduct on the part of the Clerk's office in assigning this case to the undersigned (docket entry 11). Plaintiff alleged that the complaint included a "Notice of Related Case," which referred to a case decided by Judge Susan Braden. *Id.* at 1. Plaintiff also moved for recusal. *Id.* The Court denied plaintiff's motion for recusal, observing that prior judicial rulings "almost never constitute a valid basis for a bias or partiality motion. . . . Almost invariably they are proper grounds for appeal, not for recusal." Order at 2 (docket entry 12, Aug. 6, 2010) (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)). The Court also referred the allegations regarding the Clerk's Office to Chief Judge Emily C. Hewitt for investigation. *Id.* at 1.

On August 10, 2010, Chief Judge Hewitt filed an order documenting her investigation, and finding "that there was no wrongful conduct regarding the assignment" of plaintiff's case. Order at 1 (docket entry 14). First, Chief Judge Hewitt observed that "a reconstruction of the case assignments that preceded and followed the assignment of *Miller* . . . make[s] clear that the Clerk's Office staff followed standard case assignment procedure." *Id.* at 3. Second, Chief Judge Hewitt found that the Clerk's Office properly disregarded plaintiff's purported "Notice of Related Case" because that document did not conform to the requirements of Rule 40.2(a)(3) of the Rules of the Court of Federal Claims ("RCFC"). *Id.* at 4. Furthermore:

> the plaintiffs in *Abraham* were Richard and Jacqueline Abraham, not John DaCosta and N.B. Salty Miller. RCFC 40.2(a)(2) defines related cases as cases that 'involve the same parties' or the 'same contract.' Because *Abraham* involved parties who were not parties to the contract at issue in . . . *Miller*, *Abraham* was not a 'related case' under the RCFC. Therefore, even if the documents that plaintiffs describe as Notices of Related Cases had been complete, the Clerk's Office could not have found the cases to be related.

Id. at 4-5.

In his response to defendant's motion, plaintiff reiterates his contentions regarding the assignment process and asks that this Court "consider this [response] a Motion for Recusal Based [upon] the above fraudulent misconduct circumstances." Pl.'s Resp. at 1. That motion is **DENIED** for the reasons set forth in the Court's August 6, 2010 Order. Plaintiff's disagreement with the Court's prior decisions is not a basis for recusal, *Liteky*, 510 U.S. at 555, nor is plaintiff's belief that staff in the Clerk's Office acted inappropriately.

II. Discussion

On a motion pursuant to RCFC 12(b)(1), the Court assumes the truth of plaintiff's allegations and construes those allegations in a manner most favorable to plaintiff. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974); *Holley v. United States*, 124 F.3d 1462, 1465 (Fed. Cir. 1997). When defendant challenges plaintiff's jurisdictional allegations, plaintiff bears the burden of establishing the court's subject matter jurisdiction by a preponderance of the evidence. *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988). "It is beyond cavil that the issue of collateral estoppel [*i.e.*, issue preclusion] goes to subject matter jurisdiction, and may be pleaded as a 12(b)(1) motion." *Lowe*, 79 Fed. Cl. at 228. Thus, plaintiff bears the burden of establishing that he is not precluded from litigating the jurisdictional issue in this action. The Court is, however, mindful of its obligation to construe Mr. Miller's pleadings liberally because he is proceeding *pro se*. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972). Despite this leeway, the *pro se* plaintiff must still meet jurisdictional requirements. *Kelley v. Sec'y, U.S. Dep't of Labor*, 812 F.2d 1378, 1380 (Fed. Cir. 1987); *see also Liu v. United States*, 93 Fed. Cl. 184, 188 (2010).

A. Plaintiff Is Barred from Relitigating This Court's Jurisdiction Because That Issue Was Litigated and Decided in DaCosta I, II, and III

As this Court has twice previously stated, issue preclusion bars a party from relitigating an issue in a subsequent lawsuit if the Court finds that: (1) the issue is identical to that in a previous proceeding; (2) the issue was actually litigated; (3) the determination of the issue was necessary to the resulting judgment; and (4) the party defending against preclusion had a full and fair opportunity to litigate the issue.[8] *Banner v. United States*¸ 238 F.3d 1348, 1354 (Fed. Cir. 2001). "Jurisdictional determinations are one such class of matters that typically have a preclusive effect." *Lowe*, 79 Fed. Cl. at 229 (citing *Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 n.9 (1982) and *Entergris, Inc. v. Pall Corp.*, 490 F.3d 1340, 1346 (Fed. Cir. 2007)); *see also People of Bikini v. United States*, 77 Fed. Cl. 744, 776 (2007).

The jurisdictional issue in this case turns on whether plaintiff's factual allegations are sufficient to demonstrate an implied-in-fact contract with the Government. As the Court explained in *DaCosta III*, that plaintiff's allegations relate to information concerning a different taxpayer—Taxpayer C as opposed to Taxpayer A or B—is of no consequence. *See DaCosta III*, 2010 WL 3260168, at *6. The alleged contractual relationship formed regarding Taxpayer C involves the same underlying circumstances described and re-described by plaintiff in *DaCosta I, II,* and *III*. Specifically, plaintiff has repeatedly alleged that IRS agents orally and through IRS Publication 733 promised plaintiffs 15% of any money collected from taxpayers as a result of information provided by plaintiffs. Consequently, plaintiffs allege, they provided information regarding several taxpayers, which they claim the IRS has used to collect tax revenues.

[8] Plaintiff has not provided any argument in opposition to defendant's motion on issue preclusion grounds. *See* Defendant's Reply to Plaintiff's Response to Defendant's Motion to Dismiss Plaintiff's Complaint at 1, 2 (docket entry 18, Sept. 20, 2010) ("Def.'s Reply").

Compare, e.g., Compl. at 3 ("The agent said the IRS would pay Plaintiff 15% of all tax deficiencies collected using Plaintiff's direct information.") *with DaCosta I*, 82 Fed. Cl. at 550-51 (discussing plaintiffs' allegations that they provided information regarding Taxpayer A and that a "document was submitted by IRS Special Agent Garrett . . . indicating the appropriate amount of reward due plaintiffs and that Agent Evan Garrett told plaintiffs the appropriate amount of reward was 15 per cent each of the total amount collected by the IRS in the [Taxpayer A] case.") (internal quotations omitted); *DaCosta II*, 2010 U.S. Claims LEXIS 11, at *6 (examining plaintiffs' allegations that "IRS agents sent [them] a copy of IRS Publication 733, and referring to this publication, an IRS agent told them that they would receive 15% EACH of amounts collected by the IRS, if their direct information was responsible for the collection of tax deficiencies.") (internal quotations omitted); *and DaCosta III*, 2010 WL 3260168, at *3 ("[P]laintiffs also allege that this contractual relationship was created when the Government accepted their information after IRS agents had 'promised' plaintiffs that their reward would be calculated according to IRS Publication 733.").

Furthermore, plaintiff pleads no "new" factual allegations that would "cure" the jurisdictional defect in the previous cases and thus permit litigation on the merits. "[T]he general rule [is] that a jurisdictional issue cannot be revisited unless new, previously unavailable facts can cure the original jurisdictional defects." *DaCosta II*, 2010 U.S. App. LEXIS 18906, at *6-7; *see also Park Lake Res. Ltd. Liab. Co. v. U.S. Dep't of Agric.*, 378 F.3d 1132, 1137 (10th Cir. 2004) ("But the change in circumstances that cures the jurisdictional defect must occur subsequent to the prior litigation.") (citing *Dozier v. Ford Motor Co.*, 702 F.2d 1189, 1192 & n.4 (D.C. Cir. 1983)). All of plaintiff's allegations "involve facts that arose before [the Court] decided *DaCosta I*, . . . [p]laintiffs should have been aware of those facts, and . . . [they] should have amended their original complaint or sought reconsideration at that time." *DaCosta II*, 2010 U.S. App. LEXIS 18906, at *7. In other words, plaintiffs could have pleaded facts relating to the information provided about Taxpayers A, B, and C—as well as any other taxpayers they purport to have provided information about—in the complaint in *DaCosta I*, in an amended complaint in that action, or in a motion for reconsideration or for relief from judgment if the information was discovered after the dismissal of *DaCosta I*. *See Dozier*, 702 F.2d at 1192-93; *DaCosta II*, 2010 U.S. Claims LEXIS 11, at *14-20. Plaintiff's failure to take any of these available courses of action bars relitigation of the jurisdictional issue in this case.

The remaining issue preclusion criteria are clearly satisfied here. Plaintiff had a full and fair opportunity to litigate the court's subject matter jurisdiction and in fact did so. *See DaCosta II*, 2010 U.S. Claims LEXIS 11, at *13-14; *see also DaCosta II*, 2010 U.S. App. LEXIS 18906, at *6. Moreover, the jurisdictional issue was necessary to the Court's dismissal of plaintiff's complaints for lack of jurisdiction. *DaCosta II*, 2010 U.S. App. LEXIS 18906, at *8. Accordingly, plaintiff is barred from relitigating the court's subject matter jurisdiction and his complaint is **DISMISSED** without prejudice.[9]

[9] Even if the Court were to find that plaintiff should be permitted to relitigate the jurisdictional issue, plaintiff's allegations remain inadequate to establish a contract implied in fact. First, plaintiff has failed to identify an individual within the IRS with authority to bind that agency. *See DaCosta III*, 2010 WL 3260168, at *8. Plaintiff's claim that Agent John Cann was an "acting district director" with authority to bind the IRS is belied by the documents plaintiff

B. Plaintiff Is Enjoined from Filing Further Complaints in This Court without Prior Leave of a Judge of the Court

Defendant also requests "that this Court exercise its power to control the proceedings before it, and enter an order requiring plaintiff to seek leave of this Court before filling any new complaints with this Court."[10] Def.'s Mot. at 25. This court has the inherent authority to sanction conduct that is abusive of the judicial process. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-45, 46 (1991); *O'Connor v. United States*, No. 09-116, 2009 WL 2612490, at *4 (Fed. Cl. Aug. 7, 2009), *appeal dismissed*, No. 10-5013, 2010 WL 3035134 (Fed. Cir. Aug. 2, 2010); *Pac. Gas & Elec. Co. v. United States*, 82 Fed. Cl. 474, 480 (2008).[11] A plaintiff's *pro se* status does

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attaches to his complaint, which list Agent Cann as an "Informant Claim Examiner" and "Agent." *See, e.g.*, E-mail from John Cann to N.B. Salty Miller (Apr. 6, 2006, 11:26:24 CDT), *attached as* Ex. 4 to Compl.; Def.'s Reply at 2; *see also Ace Prop. & Cas. Ins. Co. v. United States*, 60 Fed. Cl. 175, 180 (2004) ("[T]he court will not accept as true allegations that are contradicted by facts or by other allegations or exhibits attached to or incorporated in the pleading.") (quotation and citation omitted). Second, plaintiff's reliance on the doctrine of "institutional ratification" is misplaced. That doctrine requires that plaintiff identify an official with the appropriate authority who ratified the contract on behalf of the agency. *Digicon Corp. v. United States*, 56 Fed. Cl. 425, 426 (2003). None of the agents identified by plaintiff possessed the authority to "ratify" the purported contract between plaintiff and the IRS. Third, plaintiff's argument that any "indefiniteness [in the purported contract] . . . was immediately removed by the subsequent conduct of the parties" is merely a restatement of the requirements for finding a contract implied in fact. *See* Pl.'s Resp. at 7-8 (citing RESTATEMENT (SECOND) OF CONTRACTS § 49 cmt. c (1981)). The curing of indefiniteness by subsequent actions is an example of the Court finding sufficient facts to imply a contractual relationship. *See Cambridge v. United States*, 558 F.3d 1331, 1335 (Fed. Cir. 2009); *DaCosta III*, 2010 WL 3260168, at *8-9. Plaintiff's description of this requirement does not relieve him of the requirement of pleading such facts, which he has not done. Plaintiff's tortious breach of contract and breach of the implied duty of good faith and fair dealing claims both fail because plaintiff has not shown the existence of an underlying contract. *Phang v. United States*, No. 09-51, 2010 WL 2788291, at *2 (Fed. Cir. July 13, 2010). Finally, plaintiff's "racketeering" claim sounds in tort and therefore falls outside of this court's jurisdiction. *Garrett v. United States*, 78 Fed. Cl. 668, 670-71 (2007); *cf. Rondeau v. United States*, No. 05-561, 2005 WL 6112660, at *2 (Fed. Cl. July 8, 2005) (observing that the district courts have exclusive jurisdiction over civil RICO claims).

[10] Plaintiff has not provided any argument in opposition to this aspect of defendant's motion. *See* Def.'s Reply at 1.

[11] Courts have also imposed sanctions similar to the one requested by defendant pursuant to RCFC 11. *See, e.g.*, *Tinsley v. United States*, 72 Fed. Cl. 326, 333-34 (2006); *Aldridge v. United States*, 67 Fed. Cl. 113, 123 (2005); *Hornback v. United States*, 62 Fed. Cl. 1, 6 (2004), *aff'd*, 405 F.3d 999 (Fed. Cir. 2005). Defendant appears to rely exclusively on the Court's inherent authority, but also refers to the Court's authority pursuant to Rule 11. *See, e.g.*, Def.'s Mot. at 27 & n.10. However, any differences between the two sources of authority are immaterial in this case because both the Court's inherent authority and its Rule 11 authority

not preclude the Court from issuing such sanctions. *Constant v. United States*, 929 F.2d 654, 658 (Fed. Cir. 1991) (Michel, J.) ("Constant's pro se status certainly does not prohibit us from sanctioning him for a frivolously filed appeal."). But as the Federal Circuit has cautioned, sanctions should "never [be] impose[d] . . . lightly," especially "in the case of a pro se litigant, 'whose improper conduct may be attributed to ignorance of the law and proper procedures.'" *Id.* (quoting *Finch v. Hughes Aircraft Co.*, 926 F.2d 1574, 1582 (Fed. Cir. 1991)); *see also Chambers*, 501 U.S. at 44-45 ("Because of their very potency, inherent powers must be exercised with restraint and discretion. A primary aspect of that discretion is the ability to fashion an appropriate sanction for conduct which abuses the judicial process.") (internal citation omitted).

Plaintiff in this case has filed four separate complaints raising the same claims. The instant case "is founded solely upon legal theories which have been explicitly rejected by this court" on three prior occasions. *Constant*, 929 F.2d at 658. Moreover, while plaintiff is pursuing this action *pro se*, "[g]iven his long history of litigation and relitigation of the same issues, . . . 'by this time [he] is certainly not without some practical experience with the law.'" *Id.* (quoting *Ruderer v. Fines*, 614 F.2d 1128, 1133 (7th Cir. 1980)). Nonetheless, despite his experience in this court, plaintiff has repeatedly resorted to sending e-mail and telephone messages to members of the staff of the Clerk's Office that contain abusive and profane (indeed, obscene) language and make reckless and unsubstantiated charges against members of the staff of the Clerk's Office.[12] Plaintiff has also continued to express his displeasure with this Court's prior decisions.[13] Plaintiff appears to have lost sight of the fact that litigation "is serious business. This and other federal courts are funded by the taxpayers of this country to adjudicate

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grant the Court discretion to sanction a litigant's abusive conduct. *See Chambers*, 501 U.S. at 44-45, 46.

[12] At the milder end of the spectrum, for example, plaintiff has accused a staff member of the Clerk's Office of being a "corrupt moron" and has stated: "You guys think you're smart but if you were really smart you'd be in private practice instead if [sic] some bureaucratic cubicle." E-mail from John DaCosta and N.B. Salty Miller to Members of the Clerk's Office (Aug. 20, 2010, 10:40 EDT). In deference to those readers with more refined sensibilities, the Court will refrain from quoting some of the more obscene turns of phrase employed by plaintiffs.

[13] In the same e-mail, plaintiff also characterized the Court as "completely senile" and having "set out to give new meaning to the definition of corruption." E-mail from John DaCosta and N.B. Salty Miller to Members of the Clerk's Office (Aug. 20, 2010, 10:40 EDT). The Court reiterates that if plaintiff is correct on the merits of his underlying position, the

> proper course is to appeal the error in the judge's decision. This is the very reason why our system has appellate as well as trial courts. It is contrary to the most basic principles of our legal system to challenge a judge's legal conclusions or findings of fact by impugning his or her character. Judicial error is human, equating error with misconduct would require judges to be divine.

In re Complaint of Judicial Misconduct, 12 Cl. Ct. 763, 764 (1987); *see also Liteky*, 510 U.S. at 555.

genuine disputes, not to function as playgrounds for would-be lawyers or provide an emotional release for frustrated litigants." *Id.* at 659; *see also Tinsley*, 72 Fed. Cl. at 334.

The Court concludes that the sanction requested by defendant is clearly warranted in view of plaintiff's conduct. Therefore, defendant's motion requesting that sanction is **GRANTED**. The Court hereby **ENJOINS** plaintiff from filing any additional complaints in this court without first obtaining an order of a judge of this court approving such a filing. *See O'Connor*, 2009 WL 2612490, at *4; *Tinsley*, 72 Fed. Cl. at 334; *Aldridge*, 67 Fed. Cl. at 123; *Hornback*, 62 Fed. Cl. at 6.

CONCLUSION

In view of the foregoing, defendant's motion to dismiss for lack of subject matter jurisdiction is **GRANTED**. The Clerk is directed to enter judgment dismissing plaintiff's compliant without prejudice.

The Clerk is further directed to accept no further filings from plaintiff unless plaintiff has first obtained an order of a judge of this court approving the proposed filing.

Plaintiff may appeal the Court's judgment to the Court of Appeals for the Federal Circuit within sixty (60) days of the date of entry of judgment. Failure to file a timely notice of appeal will waive the right to an appeal, and the Court's order will be final.

IT IS SO ORDERED.

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GEORGE W. MILLER
Judge