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IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF UTAH, CENTRAL DIVISION

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC., LTB1, LLC, R. GREGORY SHEPARD, NELDON JOHNSON, and ROGER FREEBORN,</p> <p>Defendants.</p>	<p>Civil No. 2:15-cv-00828 DN</p> <p><b>BRIEF REGARDING THE LACK OF SUBJECT MATTER JURISDICTION FOR PERMISSIVE INTERVENTION</b></p> <p>Judge David Nuffer</p>
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Following the hearing held on November 15, 2021 on the Motion to Intervene (docket no. 1143), the United States submits this brief regarding the lack of subject matter jurisdiction over the proposed intervenors' claims. Because the Court lacks jurisdiction over the proposed intervenors' claims, the Court should deny their request for permissive intervention under Fed. R. Civ. P. 24(b).

“A party seeking permissive intervention under Fed. R. Civ. P. 24(b) must establish a basis for federal subject matter jurisdiction independent of the court's jurisdiction over the

underlying action.” *W & W Steel, LLC v. BSC Steel, Inc.*, 2013 WL 1858465, at \*3 (D. Kan. May 2, 2013) (citing Fed. R. Civ. P. 82 and *EEOC v. Nev. Resort Assoc.*, 792 F.2d 882, 885 (9th Cir. 1986)). *See also United States v. Martin*, 267 F.2d 764, 769 (10th Cir. 1959) (“the intervention is not of right or permissive if the relief sought is not within the jurisdiction or powers of the court. For neither forms of action nor modes of procedure operate to confer jurisdiction not otherwise extant. The Government does not ipso facto relax its traditional immunity from suit by becoming a suitor in the courts.”).

The proposed intervenors cite two Internal Revenue Code sections allegedly providing jurisdiction over their claims, 26 U.S.C. § 6304 and 26 U.S.C. § 7803(a)(3). Neither statute provides a cause of action or jurisdiction over the proposed intervenors’ claims.

Section 6304 pertains to “Fair tax collection practices” relating to communicating with taxpayers and harassing taxpayers. Section 6304(c) specifically provides: “For civil action for violations of this section, see section 7433.” Thus, a party alleging violations of section 6403 (which the proposed intervenors do not appear to do) must bring a suit for damages under 26 U.S.C. § 7433. *See Hodgson v. United States*, 2007 WL 3274183, at \*2 (E.D. Cal. Nov. 5, 2007), *aff’d*, 357 F. App’x 879 (9th Cir. 2009) (“Subsection (c) of § 6304 goes on to provide that civil actions based on violations of § 6304 be brought pursuant to 26 U.S.C. § 7433. In turn, § 7433 permits taxpayers to bring the civil action against the United States for actual, direct economic damages sustained as a proximate result of the IRS’s reckless, intentional, or negligent violation of § 6304.”). Thus, § 6304 does not provide jurisdiction over the proposed intervenors’ claims.

Section 7803(a)(3) pertains to the Commissioner of Internal Revenue and his role in “discharging his duties,” including ensuring “that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights as afforded by other provisions of this title.” The statute “does not contain an individual cause of action or a waiver of sovereign immunity.” *Dockens v. United States*, 2018 WL 3949707, at \*2 (N.D. Ga. Jan. 18, 2018). Thus, this statute also does not provide jurisdiction over the proposed intervenors’ claims.

Therefore, the proposed intervenors should not be granted permissive intervention in this suit under Fed. R. Civ. P. 24(b).

Dated: November 16, 2021

Respectfully submitted,

*s/ Daniel A. Applegate*

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 16, 2021, I served the foregoing BRIEF REGARDING THE LACK OF SUBJECT MATTER JURISDICTION FOR PERMISSIVE INTERVENTION through the Court's CM/ECF system, which sent notice of the electronic filing to all counsel of record, and by first-class mail upon:

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