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

GLEND A. JOHNSON,

Plaintiff,

vs.

INTERNAL REVENUE SERVICE,
DEPARTMENT OF JUSTICE, agencies of
the United States, and DAVID NUFFER,
an individual,

Defendants.

Civil No. 2:20-cv-00090-HCN-DAO

**UNITED STATES' NOTICE OF
SUPPLEMENTAL AUTHORITY**

Judge Howard C. Nielson, Jr.
Magistrate Judge Daphne A. Oberg

In further support of its motion to dismiss the complaint filed by Glenda Johnson against the Internal Revenue Service, the Department of Justice, and United States District Court Judge David Nuffer,¹ the United States submits this notice of supplemental authority regarding matters addressed in the briefing following the United States' motion to dismiss this action.

I. Background and procedural posture to date

On April 26, 2020, the United States moved to dismiss the complaint filed by Glenda Johnson against the Internal Revenue Service, the Department of Justice, and United States District Court Judge David Nuffer.² In the complaint, she seeks to stop further proceedings in *United States v. RaPower-3, LLC, et al.* (over which Judge Nuffer is presiding) and damages for alleged injuries suffered in that case. In its opening brief, the United States showed why lawsuit should be dismissed under [Fed. R. Civ. P. 12](#): this Court lacks subject matter jurisdiction over the claims she purports to bring, and she has failed to state a claim for which equitable relief can be granted.³

Glenda Johnson opposed the United States' motion on May 20, 2020.⁴ In its reply brief, the United States noted that Glenda Johnson did not directly address the United States' specific facts, authority, and legal arguments that favor of dismissing her complaint in this separate lawsuit.⁵ Instead, she – in combination with a Rule 60 motion filed in *RaPower-3* – amplified certain otherwise incomprehensible allegations in her complaint about a pending case in Tax

¹ [ECF No. 5](#).

² [ECF No. 1](#); [ECF No. 1-2](#). Because of a scanning error, [ECF No. 1-2](#) is the operative complaint in this matter. *See* [ECF No. 5](#).

³ The undersigned attorney does not represent Judge Nuffer.

⁴ [ECF No. 8](#).

⁵ *Compare* [ECF No. 7](#) with [ECF No. 8](#).

Court.⁶ She argued that Department of Justice attorneys in the *RaPower-3* litigation and IRS attorneys in separate Tax Court litigation advanced inconsistent positions about whether solar lenses at the heart of the tax scheme in *RaPower-3* qualified as “energy property” for purposes of a tax credit.⁷ She argued that, in *RaPower-3*, the United States took the position that the solar lenses at issue were *not* energy property,” and that that position resulted in the injunction (and subsequent orders that purportedly harmed her).⁸ She also claimed that, in a Tax Court trial in February 2020, the United States reversed position and “expressly conceded” that the lenses *are* “energy property.”⁹ According to Glenda Johnson, the United States’ “failure to alert [the *RaPower-3* court]” to the changed position was “fraud on the [*RaPower-3*] court.”¹⁰

Therefore, Glenda Johnson attempted to invoke the Court’s inherent authority to “entertain an independent action” to relieve her from the *RaPower-3* judgment, orders or proceedings or to “set aside [the *RaPower-3*] judgment for fraud on the court.”¹¹ “Independent actions must . . . be reserved for those cases of injustices which, in certain instances, are deemed

⁶ Compare ECF No. 1-2 ¶¶ 26-27 with ECF No. 8 and “Rule 60 Motion To Set Aside Judgment Against Defendants (Newly Discovered Evidence) (Fraud On The Court),” *United States v. RaPower-3, LLC, et al.*, No. 2:15-cv-00828-DN-EJF (D. Utah) (“*RaPower-3*”), available in that case at ECF No. 931. We ask that the Court take judicial notice of all publicly filed matters referenced herein. See Fed. R. Evid. 201(b), (c)(2). These matters may properly be considered on this motion to dismiss. Fed. R. Evid. 201(d); *S.E.C. v. Goldstone*, 952 F. Supp. 2d 1060, 1192 (D.N.M. 2013) (“[W]hen considering a motion to dismiss, the court may take judicial notice of its own files and records, matters of public record, as well as the passage of time.” (quotation and alteration omitted)). *St. Louis Baptist Temple, Inc. v. FDIC*, 605 F.2d 1169, 1172 (10th Cir. 1979) (“Judicial notice is particularly applicable to the court's own records of prior litigation closely related to the case before it.”).

⁷ See 26 U.S.C. §§ 46(2); 48(a)(1), (2)(A)(i)(II).

⁸ E.g., *United States v. RaPower-3, LLC*, 960 F.3d 1240, 1246 (10th Cir. 2020).

⁹ See ECF No. 8 at 1.

¹⁰ See ECF No. 8 at 2, 6.

¹¹ Fed. R. Civ. P. 60(d)(1) & (2).

sufficiently gross to demand a departure from rigid adherence to the doctrine of res judicata.”¹²

An independent action is “available only to prevent a grave miscarriage of justice.”¹³

As described in the United States’ reply, because of the factual and legal identity between the *RaPower-3* Rule 60 motion and Glenda Johnson’s opposition brief, and because of his thorough understanding of the *RaPower-3* case, Judge Nuffer was in the best position to rule on the issues raised.

II. Supplemental authority from *RaPower-3*

Judge Nuffer has ruled in favor of the United States on all matters relevant to the arguments Glenda Johnson has made in her opposition brief. Therefore, the United States files this notice respectfully referring this Court to Judge Nuffer’s opinions on these issues: the Memorandum Decision and Order Granting Turnover Motion and addressing other matters;¹⁴ the Memorandum Decision and Order Denying Motion for Rule 11 Sanctions;¹⁵ and the Memorandum Decision and Order Denying Motion to Set Aside Judgment.¹⁶

¹²*United States v. Beggerly*, 524 U.S. 38, 46 (1944).

¹³*Beggerly*, 524 U.S. at 47; accord *United States v. Buck*, 281 F.3d 1336, 1341 (2002).

¹⁴ ECF No. 1007 at 43-44.

¹⁵ ECF No. 1030.

¹⁶ ECF No. 1065; Further, to the extent it is required, the United States incorporates by reference the arguments it made in its Rule 11 motion, which identified the standard for a Rule 60 motion and the reasons that the Rule 60 motion filed in *RaPower-3* failed to meet that standard. United States’ Motion for Rule 11 Sanctions, *RaPower-3*, available in that case at ECF No. 964 at 8-20 (July 13, 2020); United States’ Reply on Its Motion for Rule 11 Sanctions, *RaPower-3*, available in that case at ECF No. 1004 (Sept. 4, 2020). The same arguments apply to Glenda Johnson’s assertions here. See also United States’ Brief in Opposition to Neldon Johnson’s Rule 60 Motion, *RaPower-3*, available in that case at ECF No. 1044 (Dec. 21, 2020).

Judge Nuffer's decisions are carefully grounded in fact and law. Glenda Johnson's asserted "independent action" has no merit. The United States' motion to dismiss this action should be granted on the grounds stated in that motion.

Dated: January 25, 2021

Respectfully submitted,

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**ATTORNEYS FOR THE
UNITED STATES**

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2021, the foregoing UNITED STATES' NOTICE OF SUPPLEMENTAL AUTHORITY was electronically filed with the Clerk of the Court through the CM/ECF system and I caused it to be served by first-class U.S. Mail, postage pre-paid, upon

Glenda E. Johnson
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/s/ Erin Healy Gallagher
ERIN HEALY GALLAGHER
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