

## JUDGEMENTS AND ORDERS

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO

Faith Townsend                      Case No. 1:24cv00528  
Plaintiff,  
-vs-      JUDGE PAMELA A. BARKER  
Rockwell Automation Inc., et al.,

Pro se plaintiff Faith Townsend filed this action against her former employer, Rockwell Automation, Inc. ("Rockwell"), her former supervisor, Robert Rodriguez, and Rockwell's Human Resources representative, Stephen Ostrom. (Doc. No. 1). Defendants filed a motion to dismiss pursuant to Rule 12(b)(6) for failure to state a claim. (Doc. No. 6). Plaintiff opposes the motion. (Doc. No. 7). For the reasons that follow, the Court dismisses this action.

### **I. Background**

On November 28, 2018, Plaintiff filed a complaint against Rockwell and Rodriguez, asserting discrimination claims under 42 U.S.C. § 1983 and Title VII of the Civil Rights Act of 1964. See *Townsend v. Rockwell Automation, Inc., et al.*, No. 1:18CV2742 (N.D. Ohio Nov. 28, 2018) ("Townsend I"). Plaintiff alleged the defendants created a racially hostile work environment, retaliated against her, and constructively discharged her. The Court ultimately dismissed Plaintiff's claims, granting summary judgment against Plaintiff after the parties engaged in discovery. (Id.; Doc. Nos. 10, 66). Plaintiff appealed to the Sixth Circuit Court of Appeals, which affirmed this Court's decision. (Id.; Doc. No. 72). Plaintiff then filed a motion to vacate the Court's judgment on the basis of fraud under Federal Rules of Civil Procedure

60(b)(3), and she requested a new trial under Rule 59(a)(2). The Court denied Plaintiff's motion. (Id.; Doc. No. 75).

On November 22, 2021, Plaintiff filed a second lawsuit against Rockwell, alleging that Rockwell discriminated against her based on her sex and race in violation of Title VII. See *Townsend v. Rockwell Automation, Inc.*, No. 1:21CV2226 (N.D. Ohio Nov. 22, 2021) ("Townsend II"). The Court determined that Plaintiff's new claims were sufficiently related to the claims asserted in *Townsend I* and were therefore barred by res judicata. (Id.; Doc. No. 18). Plaintiff filed a motion for reconsideration, which the Court denied. (Id.; Doc. No. 20). And the Sixth Circuit affirmed the Court's decision in *Townsend II*, agreeing that the Court properly concluded that claim preclusion barred Plaintiff's claims alleged in *Townsend II*. (Id.; Doc. No. 22). More than one year later, Plaintiff moved to vacate the judgment on the basis of fraud under Rule 60(b)(3) and Rule "59(2)." The Court denied Plaintiff's motion, finding her motion untimely and without merit. (Id.; Doc. No. 30). Plaintiff then filed a "motion for reconsideration of motion to vacate on the basis of fraud [under Rule 60(d)(1)." (Id.; Doc. No. 31). The Court again denied Plaintiff's motion. (Id.; Doc. No. 32).

On December 29, 2021, Plaintiff filed an action against the United States of America "seeking a remedy for harm" caused by United States District Judge James S. Gwin when he granted Rockwell's motion for summary judgment in *Townsend I*. See *Townsend v. USA*, No. 1:21CV2425 (N.D. Ohio Dec. 29, 2021) (Doc. No. 1) ("Townsend III"). The Court dismissed the action, concluding that Plaintiff's claims concerning her employment dispute with Rockwell were barred by res judicata and the Court

“has no authority to conduct additional appellate review over [Townsend I].” (Id.; Doc. No. 4).

On March 29, 2023, Plaintiff filed a petition for a writ of certiorari with the United States Supreme Court, which was denied. See *Townsend v. Rockwell Automation, Inc.*, No. 23-303, 2023 U.S. LEXIS 4457 (2023). And the Supreme Court denied Plaintiff’s petition for rehearing. See *Townsend v. Rockwell Automation, Inc.*, No. 23-303, 2024 U.S. LEXIS 466 (2024).

Plaintiff now files this action, alleging “Fraud on the Court FRCP 60(d)(3),” and “Perjury 18 U.S.C. § 1623.” (Doc. No. 1). Plaintiff’s complaint, once again, concerns Plaintiff’s employment dispute with Rockwell. And once again, Plaintiff alleges fraud in connection with the discovery process initiated in *Townsend I*. Plaintiff requests the Court vacate the judgment entered in *Townsend I*.

## **II. Standard of Review**

Under Federal Rule of Civil Procedure 12(b)(6), a party may move for the dismissal of claims when the claimant has failed to “state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). When deciding a motion to dismiss under this rule, the function of the Court is to test the legal sufficiency of the complaint. See *Mayer v. Mylod*, 988 F.2d 635, 638 (6th Cir. 1993). And in reviewing the complaint, the Court must construe the pleading in the light most favorable to the plaintiff, accept all factual allegations as true, and determine whether the complaint contains “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 679, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). Legal conclusions and unwarranted factual inferences,

however, are not entitled to a presumption of truth. Twombly, 550 U.S. at 555; see also Papasan v. Allain, 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L. Ed. 2d 209 (1986) (The Court is “not bound to accept as true a legal conclusion couched as a factual allegation.”). Additionally, courts must read Rule 12(b)(6) in conjunction with Federal Civil Procedure Rule 8(a)(2)’s requirement that a plaintiff need offer “only ‘a short and plain statement of the claim showing that the pleader is entitled to relief.’” Erickson v. Pardus, 551 U.S. 89, 93, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (citing Twombly, 550 U.S. at 596). Although specific facts are not required to meet the basic minimum notice pleading requirements of Rule 8, Plaintiff’s complaint must give the defendants fair notice of what the plaintiff’s legal claims are and the factual grounds upon which they rest. Bassett v. National Collegiate Athletic Ass’n, 528 F.3d 426, 437 (6th Cir. 2008). The plaintiff’s obligation to provide the grounds for relief “requires more than labels and conclusions” or a “formulaic recitation of the elements of a cause of action.” Twombly, 550 U.S. at 555. Factual allegations “must be enough to raise a right to relief above the speculative level.” *Id.* Pro se pleadings are liberally construed. Boag v. MacDougall, 454 U.S. 364, 365, 102 S. Ct. 700, 70 L. Ed. 2d 551 (1982) (per curiam); Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972). And the Court holds a pro se complaint to a less stringent standard than one drafted by an attorney. Spotts v. United States, 429 F.3d 248, 250 (6th Cir. 2005) (citing Haines, 404 U.S. at 520). The Court is not required, however, to conjure unpleaded facts or construct claims on a plaintiff’s behalf. See Grinter v. Knight, 532 F.3d 567, 577 (6th Cir. 2008) (citation

omitted); *Beaudett v. City of Hampton*, 775 F.2d 1274, 1277-78 (4th Cir. 1985).

### III. Law and Analysis

Although Plaintiff adds a defendant to this complaint and alleges fraud under a different federal rule—Rule 60(d)(3), Plaintiff's new complaint is barred by *res judicata*.

"*Res judicata*," or claim preclusion, is the doctrine by which a final judgment on the merits in an action precludes a party from bringing a subsequent lawsuit on the same claim or cause of action or raising a new defense to defeat a prior judgment. *Gargallo v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 918 F.2d 658, 660 (6th Cir. 1990). This doctrine precludes relitigating a claim or cause of action previously adjudicated as well as litigating a claim or defense that should have been raised, but was not, in a claim or cause of action previously adjudicated. *Id.* "If a later suit advances the same claim as an earlier suit between the same parties, the earlier suit's judgment 'prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted in the prior proceeding.'" *Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc.*, 140 S. Ct. 1589, 1954 (2020) (quoting *Brown v. Felsen*, 442 U.S. 127, 131 (1979)). The purpose of *res judicata* is to "promote the finality of judgments and thereby increase certainty, discourage multiple litigation, and conserve judicial resources." *Stolmayer v. McCarthy*, 171 F. Supp. 3d 690, 694 (N.D. Ohio 2016).

Here, undeterred by the numerous judgments against her, Plaintiff continues to raise claims associated with her employment dispute with Rockwell nearly three years after the Sixth Circuit

affirmed the Court's decision in *Townsend I*, including alleging fraud in connection with the discovery process. She raised many of these same claims in her previous complaints, appeals, and motions to vacate. Specifically, Plaintiff alleges in this complaint fraud concerning her December 2009 paycheck, claiming that this document was not in her possession "despite repeated attempts to collect all pertinent documents." (Doc. No. 1 at 7). In her motion to vacate filed in *Townsend II*, Plaintiff claims "the fraud is perpetrated by the omission of data concerning her 2009 wages." (*Townsend II*; Doc. No. 28 at 7). The Court denied Plaintiff's motion to vacate and her motion to reconsider purportedly filed under Rule 60(d)(1). (*Townsend II*; Doc. Nos. 30, 32). And even if she did not raise these claims previously, res judicata bars Plaintiff from litigating matters in this action because they could have been brought in her prior actions. *Gargallo*, 918 F.2d at 660.

Additionally, Plaintiff's attempt to file this complaint under Rule 60(d)(3) fails. Rule 60(b) is "generally a party's exclusive avenue when seeking relief from a final judgment or order." *Marcelli v. Walker*, 313 F. App'x 839, 842 (6th Cir. 2009) (citing *United States v. Beggerly*, 524 U.S. 38, 46, 118 S. Ct. 1862, 141 L. Ed. 2d 32 (1998)). However, Rule 60(d), the "savings clause," provides a litigant "an escape from the one-year bar for fraud-based motions for relief from judgment" and allows litigants to bring an independent action challenging the validity of the judgment at any time. *Duncan v. Lourdes Univ.*, No. 3:24-cv-152, 2024 U.S. Dist. LEXIS 94825, \*7 (N.D. Ohio May 29, 2024). An independent action under Rule 60(d), however, is rare and only available "to prevent a grave miscarriage of justice." *Beggerly*, 524 U.S. at 47. A "grave miscarriage of justice" is a

“stringent” and “demanding” standard that is “available only in cases ‘of unusual and exceptional circumstances.’” *Mitchell v. Rees*, 651 F.3d 593, 595 (6th Cir. 2011) (citations and quotations marks omitted). Independent actions under Rule 60(d) are therefore “reserved for those cases of ‘injustice which . . . are sufficiently gross to demand a departure’ from rigid adherence to the doctrine of *res judicata*.”

*Beggerly*, 524 U.S. at 46 (quoting *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 244, 64 S. Ct. 997, 88 L. Ed. 1250, 1944 Dec. Comm’r Pat. 675 (1944)); *Duncan*, 2024 U.S. Dist. LEXIS 94825, at 8-9. Plaintiff has failed to demonstrate such grave injustice to warrant a departure from adherence to the principles of *res judicata*.

To the extent Plaintiff alleges the defendants committed perjury in violation of 18 U.S.C. § 1623, Plaintiff’s claim fails. Section 1623 provides protections against perjury in civil proceedings ancillary to a criminal case, but it does not provide a private cause of action where the civil testimony does not have a nexus to an underlying criminal case.

*Nicole Energy Servs. v. McClatchey*, No. 2:08-CV-0463, 2010 U.S. Dist. LEXIS 6025, \*18 (S.D. Ohio Jan. 4, 2010) (citing *United States v. Kross*, 14 F.3d 751, 753 (2nd Cir. 1994)); see also *Kafele v. Frank & Wooldridge Co.*, No. 03-4205, 108 Fed. App’x. 307, 308 (6th Cir. Aug. 17, 2004) (holding that petitioner did not possess a private right of action against the defendants for alleged violation of Section 1623, a criminal statute); *Williams v. Finnegan*, No. 5:13 CV 2214, 2014 U.S. Dist. LEXIS 73192, \*5 (N.D. Ohio May 29, 2014). And “there is no authority to allow a private citizen to institute a criminal action in a federal court; that power is vested exclusively in the

executive branch." *United States v. Nixon*, 418 U.S. 683, 693, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974). Finally, the Court notes that this is the fourth cause of action Plaintiff has filed concerning her employment dispute with Rockwell. The Court dismissed the three prior actions. And Plaintiff has repeatedly moved to vacate the Court's judgment. In *Townsend I*, she filed a Rule 60(b)(3) motion to vacate the judgment based on fraud, which the Court denied. In *Townsend II*, she filed a motion for reconsideration of the Court's judgment before her appeal to the Sixth Circuit and a Rule 60(b)(3) motion to vacate based on fraud and a "motion for reconsideration of motion to vacate on the basis of fraud [under Rule] 60(d)(1)" following her appeal, all of which were denied. Plaintiff has also filed three appeals, including a petition for writ of certiorari in the United States Supreme Court, which was denied. At least three times, the courts have determined that Plaintiff's claims were barred by *res judicata*. The Court is very tolerant of legal filings from pro se litigants. However, the Court will not permit any litigant to use the Court's resources to address filings which are clearly designed to harass the Court or opposing counsel/parties. Federal courts have both the inherent power and constitutional obligation to protect their jurisdiction from conduct that impairs the ability to carry out Article III functions. *Procup v. Strickland*, 792 F.2d 1069, 1073 (11th Cir. 1986). The filing of frivolous lawsuits and motions strains an already burdened federal judiciary. "Every paper filed with the Clerk of ... Court, no matter how repetitious or frivolous, requires some portion of the [Court's] limited resources. A part of the Court's responsibility is to see that these resources are allocated in a way that promotes the interests of

justice.” In re McDonald, 489 U.S. 180, 184, 109 S. Ct. 993, 103 L. Ed. 2d 158 (1989). The Court’s ability to perform its duties is compromised when the Court is forced to devote limited resources to the processing of repetitious and frivolous filings. In re Sindram, 498 U.S. 177, 179-80, 111 S. Ct. 596, 112 L. Ed. 2d 599 (1991).

This court has the responsibility to prevent litigants from unnecessarily encroaching on judicial machinery needed by others. Procup, 792 F.2d at 1073. To achieve that end, the United States Court of Appeals for the Sixth Circuit has approved enjoining vexatious and harassing litigants by requiring them to obtain leave of court before submitting additional filings. Filipas v. Lemons, 835 F.2d 1145 (6th Cir. 1987); Wrenn v. Vanderbilt Univ. Hosp., Nos. 94-5453, 94-5593, 1995 WL 111480 (6th Cir. Mar. 15, 1995) (authorizing a court to enjoin harassing litigation under its inherent authority and the All Writs Act, 28 U.S.C. § 1651(a) (citations omitted)). Plaintiff’s new complaint appears to be filed for the sole purpose of obstructing the legal process. Plaintiff is therefore cautioned that continued efforts to file patently repetitive and frivolous documents or motions may result in sanctions being issued against her, including declaring her to be a vexatious litigant and enjoining her from filing new actions without first seeking and obtaining leave of court.

#### IV. Conclusion

For the foregoing reasons, the Court grants Defendants’ motion (Doc. No. 6) and dismisses this action.

IT IS SO ORDERED.

s/Pamela A. Barker

PAMELA A. BARKER

Date: July 18, 2024 U. S. DISTRICT JUDGE

NOT RECOMMENDED FOR PUBLICATION

No. 24-3680

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

FAITH TOWNSEND,  
Plaintiff-Appellant,

v.

ROCKWELL AUTOMATION, INC., et al.,  
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE NORTHERN  
DISTRICT OF OHIO

O R D E R

Before: GILMAN, GIBBONS, and BLOOMEKATZ,  
Circuit Judges.

Pro se Ohio plaintiff Faith Townsend appeals the district court's judgment dismissing her complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. Townsend moves the court to strike the defendants' corrected brief. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. See Fed. R. App. P. 34(a).

In 2018, Townsend filed a pro se employment-discrimination complaint under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1983 against her former employer, Rockwell Automation, Inc., and her former supervisor, Robert Rodriguez. Townsend claimed that between 2007 and when she resigned in 2018, Rockwell and its employees discriminated against her on the basis of race, subjected her to a hostile work environment, and retaliated against her for complaining about discrimination. As set forth in her amended complaint, Townsend's discrimination

claims centered on allegedly unfair performance reviews, a demotion, the denial of training and professional certification opportunities, and being required to perform more work than similarly situated nonprotected employees.

That case proceeded through discovery, and Rockwell moved for summary judgment. In opposition to the summary judgment motion, Townsend argued that Rockwell had engaged in racial discrimination with respect to annual pay raises. The district court refused to consider this argument, however, because Townsend did not raise that claim in her complaint. The court then granted summary judgment to Rockwell on the claims that Townsend had properly raised. We affirmed. See *Townsend v. Rockwell Automation, Inc.*, 852 F. App'x 1011, 1017 (6th Cir. 2021) (Townsend I). Like the district court, we refused to consider Townsend's argument that she received disparate merit increases because she did not raise this issue in her original or amended complaint. See *id.* at 1012-13.

In 2021, Townsend filed another Title VII complaint against Rockwell. This time, Townsend claimed that Rockwell discriminated against her on the basis of race and sex with respect to her compensation. Townsend alleged that Rockwell paid similarly situated white men more than her, and that a 2009 decrease in her pay coincided with the initial discrimination complaint that she made during her employment. The district court dismissed Townsend's complaint for failure to state a claim under Rule 12(b)(6); the court explained that Townsend had not exhausted these claims by filing an administrative discrimination charge and that *res judicata* barred her claims because she raised or could have raised her claims in Townsend I. We again affirmed. See

Townsend v. Rockwell Automation, Inc., No. 22-3244, 2022 WL 19225413 (6th Cir. Oct. 25, 2022), cert. denied, 144 S. Ct. 394 (2023) (Townsend II). After we entered our judgment in Townsend II, Townsend filed a motion in the district court under Federal Rules of Civil Procedure 59 and 60(b)(3) to vacate the judgment dismissing her complaint. Townsend asserted that Rockwell had committed fraud on the court during discovery in Townsend I by failing to disclose records that she had requested concerning her pay and merit increase in 2009 and by producing fraudulent discovery. The district court denied the motion as improper under Rule 59 and as untimely under Rule 60(b)(3). Further, the court stated that the motion was meritless because Townsend had merely reasserted arguments that she had previously raised and lost in the earlier litigation. At about the same time, Townsend filed a substantially identical Rule 59 and Rule 60(b)(3) motion to vacate in Townsend I. The district court denied this motion as untimely under both rules. Townsend did not appeal the district court's denial of her motions in Townsend I and Townsend II. Instead, in March 2024, Townsend filed an independent action for fraud against Rockwell and two Rockwell employees under Federal Rule of Civil Procedure 60(d)(3). Once again, Townsend claimed that Rockwell committed fraud on the court in Townsend I and Townsend II by failing to disclose her 2009 salary information. Townsend also claimed that Rodriguez and Human Resources Director Stephen Ostrom committed perjury by submitting false affidavits in support of Rockwell's summary judgment motion in Townsend I. The district court reviewed Townsend's litigation history against Rockwell and concluded that res judicata

barred her claims. Accordingly, the court granted Rockwells' motion to dismiss for failure to state a claim.

We review de novo a district court's dismissal of a complaint on res judicata grounds. See *Wesley v. Campbell*, 779 F.3d 421, 428 (6th Cir. 2015); *Bragg v. Flint Bd. of Educ.*, 570 F.3d 775, 776 (6th Cir. 2009).

"The doctrine of res judicata provides that a final judgment on the merits of an action precludes the parties or their privies from litigating issues that were or could have been raised in a prior action." In *re Alfes*, 709 F.3d 631, 638 (6th Cir. 2013) (quoting *Kane v. Magna Mixer Co.*, 71 F.3d 555, 560 (6th Cir. 1995)). A subsequent action is barred by the doctrine of res judicata when there is "(1) a final decision on the merits by a court of competent jurisdiction; (2) a subsequent action between the same parties or their privies; (3) an issue in the subsequent action which was litigated or which should have been litigated in the prior action; and (4) an identity of the causes of action." *Rawe v. Liberty Mut. Fire Ins.*, 462 F.3d 521, 528 (6th Cir. 2006) (quoting *Kane*, 71 F.3d at 560).

Townsend previously litigated her fraud claims against Rockwell in the motions to vacate that she filed in *Townsend I* and *Townsend II*. Indeed, the exhibits Townsend filed in support of her complaint in this case mirror those filed in support of her motions to vacate. The district court considered and denied Townsend's fraud claims in each of the prior cases. Townsend did not appeal those orders. Consequently, res judicata barred Townsend's independent action for fraud and perjury based on the same or similar allegations. See *Bragg*, 570 F.3d at 777.

For these reasons, we AFFIRM the district court's judgment. We also DENY Townsend's motion to strike the defendants' corrected appellee brief because it is substantively the same as the defendants' first, nonconforming brief

ENTERED BY ORDER OF THE COURT  
s/Kelly L. Stephens, Clerk 03/03/2025

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

Faith Townsend,  
Plaintiff,

CASE NO.  
1:18-cv-02742

v.

Rockwell Automation, et  
al  
Defendants

ORDER  
[Resolving Doc. 74]

**I. BACKGROUND**

On November 28, 2018, pro se Plaintiff Townsend sued her former employer, Defendant Rockwell Automation, and her former supervisor, Robert Rodriguez.<sup>1</sup> Townsend alleged that Rockwell Automation and Rodriguez created a racially hostile work environment, retaliated against her, and constructively discharged her.<sup>2</sup>

On April 4, 2019, the Court dismissed Townsend's 42 U.S.C. § 1983 claims against both defendants and Townsend's Title VII claims against Defendant Rodriguez.<sup>3</sup> On January 1, 2020, the Court granted Defendant Rockwell Automation's motion for summary judgment on the remaining Title VII claim.<sup>4</sup> The Court certified that an appeal of these orders could not be taken in good faith.<sup>5</sup> The Court then terminated the case.<sup>6</sup>

<sup>1</sup> Doc. 1.

<sup>2</sup> Id.

<sup>3</sup> Doc. 10, PageID #: 50.

<sup>4</sup> Doc. 66, PageID #: 780.

<sup>5</sup> See 28 U.S.C. § 1915(a)(3); Doc. 10, PageID #: 53; Doc. 67, PageID #: 794.

<sup>6</sup> Doc. 67, PageID #: 794.

Nevertheless, Plaintiff Townsend appealed the Court's January 1, 2020, order to the Sixth Circuit.<sup>7</sup> On April 27, 2021, the Sixth Circuit affirmed the Court's order granting summary judgment.<sup>8</sup> On December 13, 2023, Plaintiff Townsend filed the instant motion for emergency relief from the Court's January 1, 2020, order. Plaintiff Townsend relies on a claim of fraud for her Federal Rule of Civil Procedure 60(b)(3) motion.<sup>9</sup> Townsend also asks for a new trial under Rule 59(a)(2).<sup>10</sup> Defendant Rockwell Automation did not reply.

## II. DISCUSSION

In brief, Plaintiff Townsend says that the Court's January 1, 2020, order relied on fraudulent salary data evidence in determining that Defendant Rockwell Automation was not liable for Title VII discrimination.<sup>11</sup> Townsend points to a missing term in Defendant Rockwell's 2010 salary table,<sup>12</sup> as well as extensive mathematical calculations.<sup>13</sup> Townsend says that were Defendant Rockwell Automation to have provided the correct salary table, the Court would have found that Townsend received a 4.6 percent decrease in wages for 2010.<sup>14</sup> Townsend says that that decrease indicates structural disparate pay, which would have allowed her to bring discrimination claims for actions prior to 2017.<sup>15</sup>

<sup>7</sup> Doc. 70, PageID #: 815.

<sup>8</sup> Doc. 72, PageID #: 820.

<sup>9</sup> See Fed. R. Civ. P. 60(b)(3).

<sup>10</sup> Fed. R. Civ. P. 59(a)(2). Townsend also appears to have included materials for a petition of certiorari.

Doc. 74, PageID #:856.

<sup>11</sup> Doc. 74, PageID #: 837, 841.

<sup>12</sup> Doc. 52-2, PageID #: 652.

13 Doc. 74, PageID 3: 841-47.

14 Id., PageID #: 839.

15 Id.

#### A. Motion to Vacate

Rule 60(b) establishes that, upon a party's motion, "the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding" in six specific situations.<sup>16</sup> Relevant here is Rule 60(b)(3), which grants a court the authority to relieve a party from judgment where "fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party exists."<sup>17</sup>

However, a party must make a Rule 60(b)(3) motion "no more than a year after the entry of the judgment or order on the date of the proceeding."<sup>18</sup>

Plaintiff Townsend filed the present motion over three years after the Court's January 1, 2020, order granting Defendant Rockwell Automation's motion for summary judgment.<sup>19</sup> Thus, she cannot be given relief under Rule 60(b)(3) since she filed her motion more than a year after the entry of judgment.

#### B. Motion for a New Trial

Plaintiff Townsend also moves for relief under Rule 59. Rule 59(a)(2) allows the Court, upon motion, to "open the judgment . . . and direct the entry of a new judgment" after a nonjury trial.<sup>20</sup>

However, such a motion "must be filed no later than 28 days after the entry of judgment."<sup>21</sup> As discussed, well over 28 days have passed between the Court's January 1, 2020, order, and the present motion. And, there was no trial in this case, jury or otherwise. Plaintiff Townsend is not entitled to relief under Rule 59 either.

<sup>16</sup> Fed. R. Civ. P. 60(b).

<sup>17</sup> Fed. R. Civ. P. 60(b)(3).

18 Fed. R. Civ. P. 60(c)(1).

19 See Docs. 66, 74.

20 Fed. R. Civ. P. 59(a)(2).

21 Fed. R. Civ. P. 59(b).

Plaintiff Townsend does not otherwise show grounds to vacate the Court's judgment. Plaintiff does not provide evidence to support her allegations of fraudulent salary data, nor does she provide reasons for the Court to believe that Defendant Rockwell Automation purposefully provided false evidence of salary data with its briefings for summary judgment.

### **III. CONCLUSION**

For the foregoing reasons, the Court DENIES Plaintiff Townsend's emergency motion to vacate the January 1, 2020, judgment.

IT IS SO ORDERED.

Dated: February 20, 2024

s/ James S. Gwin

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE

### **RELAVENT CONSTITUTIONAL PROVISIONS AND STATUTES**

#### **U.S. Const. amend. XIV, § 1 Due Process**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any

person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Additional material  
from this filing is  
available in the  
Clerk's Office.**