

John Burke and Joanna Burke
46 Kingwood Greens Dr
Kingwood, Texas 77339
Tel: 281 812 9591

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

Civil Action No. 4:11-cv-04543

Joanna Burke and John Burke	}	OBJECTIONS TO THE
		MEMORANDUM AND
Plaintiffs,		RECOMMENDATION
vs.		BY UNITED STATES
		MAGISTRATE JUDGE
Hopkins Law, PLLC, Mark Daniel	}	PETER BRAY
Hopkins and Shelley Luan Hopkins,		
Defendants.		

OBJECTIONS TO MEMORANDUM AND RECOMMENDATION

Plaintiffs Joanna & John Burke (“Burkes”) object¹ to the entire Memorandum and Recommendation (“M&R”) of the Magistrate Judge (“MJ”) (Doc.65), pursuant to 28 U.S.C. § 636(b)(1)(A) and Rule 72 of the Federal Rules of Civil Procedure.

¹These objections should be reviewed *de novo*, in conjunction with Docs.1-65, and related cases, including judicially noticed and supplemented.

Shortly after the financial crisis, Craig Howland, chief of the Federal Bureau of Investigation's financial institutions fraud unit said:

*"An attorney is a key participant in a mortgage scheme. That's because being able to point to a lawyer, who is sworn to uphold the law, "adds legitimacy" to the scam and thus can help ensnare potential victims."*²

This mirrors the *pro-se*³ attorney-defendants herein.

THE M&R IS PREMATURE

This court is aware of the pending appeal at the Fifth Circuit in the *Burkes Ocwens' Note*⁴ case. Many of the arguments raised in this *Hopkins Conspiracy*⁵ case mirror the *Ocwens' Note* case, and in relation to the prior *Deutsche Bank Fraud*⁶ civil action. It is well documented since the entry of judgment in favor of *Deutsche Bank* in 2018, the *Burkes* stratagem is to flush out the real parties of interest by raising two civil actions, one against *Ocwens' Note* and the other against *Hopkins Law, PLLC* and their lawyers, Mark and Shelley Hopkins, who now claim to represent both *Deutsche Bank* and *Ocwen*.⁷ For the reasons stated herein, the M&R

²https://www.abajournal.com/news/article/huge_number_of_lawyers_accused_in_civil_and_criminal_mortgage-related_fraud

³*Chandler v. Phx. Servs.*, No. 7:19-cv-00014-O, at *5-6 (N.D. Tex. Jan. 30, 2020)

⁴*Burke, et al. v. Ocwen Loan Servicing, LLC*, No. 4:18-cv-4544 (S.D. Tex. 2018)

⁵*Burke, et al. v. Hopkins Law, PLLC, et al.*, No. 4:18-cv-4543 (S.D. Tex. 2018)

⁶*Deutsche Bank Nat'l Trust Co. v. Burke, et al.*, No. 4:11-cv-1658 (S.D. Tex. 2011)

⁷ Doc. 28, p.4, #5.

is premature.⁸ By recommending dismissal with prejudice, this court is guilty of discrimination and circumventing the rule of law.⁹

THE BURKES' ATTACHING AFFIDAVITS

The Burkes attach individual affidavits¹⁰ pointing out the MJ shouted at John Burke the following question; “Are you a CRIMINAL?” John Burke, calmly replied; “Do I look like a CRIMINAL, your honor?”.¹¹

M&R ANALYSIS

The MJ encapsulated the Burkes complaint as fraud, civil conspiracy, and unjust enrichment, and violated both the TDCA and the FDCPA. The Burkes now respond:

STANDARD OF REVIEW

The Burkes have met the required pleading standards in law to have this case proceed to discovery and a jury trial to prove their case. However, the MJ seemingly demands an evidentiary standard to defeat a motion to dismiss when all that is required per the Supreme Court is a ‘holistically’ sound presentation of the case. The Burkes judiciously obliged but the M&R’s disjointed ‘scouring and ferreting’ has resulted in a confused synopsis and an incomprehensible review.

⁸Doc.9, p.4,(d).

⁹ <https://www.uscourts.gov/educational-resources/educational-activities/overview-rule-law>

¹⁰ExhibitS A/B.

¹¹<https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges>

Hopkins ‘System of Fraud’

This is not “conclusory evidence” nor “merely labeling an attorneys’ conduct as fraudulent”.¹² No, this is incriminating¹³ evidence. The Burkes complaint surpasses the ‘standard of review’ (Doc.65, p.4-5). Despite the Burkes detailed filings¹⁴, judicial notices and supplemental authorities (Docs.45/1/2) which presented irrefutable evidence of [BDF] Hopkins *system of fraud*, none of these documents were deemed substantive. An ‘abuse of discretion’.

‘Statutory Section’ Standards

The MJ cited specific statutory cases when setting the ‘standard’: *Iqbal*, *Southland and Stanton*. Doc.27, p.91-92 addressed *Twombly*, *Iqbal* and the ‘higher pleading standards’. It was ignored. There are many statutory cases in the Burkes complaint which repel the M&R’s standards, but there is none more detailed than by Senior Magistrate Judge Fitzwater in *Smith v. Moss Law Firm*, P.C., No. 3:18-CV-2449-D (N.D. Tex. Feb. 6, 2020). The Burkes meet the statutory standards.

¹²Doc.28, p.11 #19.

¹³*Kan. City S. Ry. Co. v. Chavez*, No. 14-10286-HCM, at *14 (Bankr. W.D. Tex. Jan. 31, 2020).

¹⁴Doc.’s 27/32/59 were in the majority, discounted.

The M&R itself is guilty of ‘mixing’ different standards of fact and law. Fraud has been discussed separately but the MJ brings a higher standard pleading *e.g.* Fed. R. Civ. P. 9(b) requirement into the statutory section. This is error.¹⁵

Whilst fraud¹⁶, civil conspiracy¹⁷ and unjust enrichment¹⁸ is a material part of the Burkes complaint, the Supreme Court has stated a complaint should be reviewed ‘holistically’ (Doc.65, p.5); *Tellabs v. Makor Issues Rights*, 551 U.S. 308, 14 (2007).

(III) Attorney Immunity

A; Litigation Context: Doc.65, p.8.

Short Response: Misconstrued interpretation. Hopkins voluntarily waived immunity, surrenders it due to fraud and/or withholding evidence, and/or attorney immunity does not reach the cited documents and statements.

B; "Bad Faith Admissions": Doc.65, p.8-9.

Short Response: Denied.

C; Attorney-Client Relationship: Doc.65, p.9-11.

Short Response: Denied.

¹⁵Smith v. Moss Law Firm, P.C., No. 3:18-CV-2449-D, at *23 (N.D. Tex. Feb. 6, 2020)

¹⁶Doc.32, p.25-27, Doc.27, ‘and generally per Burke filings’ (“generally”).

¹⁷Doc.32, p.28-29, Doc.27, generally.

¹⁸Doc.32, p.30-31, Doc.27, generally.

RESPONSE: ATTORNEY IMMUNITY

To prove their claims, the Burkes have stated Hopkins should **show authority**.¹⁹ Hopkins relies upon their legal status as lawyers²⁰ and ‘attorney immunity’ as their defense. The MJ rejects the Burkes request, even though attorney immunity does not apply in the areas which relate to the ‘mortgage file’ and ‘engagements letters.’²¹ The Burkes are being denied the right to discovery or in-camera review²² of the engagement letter(s). The courts assertions are unfounded in law.

The MJ suggests that the Burkes have failed to provide any non-conclusory facts which would require Hopkins to **show authority** (Doc.65, p.9-11) and, in any event, this court rejected the Burkes similar request in 2016 *e.g.* four long years ago. The Burkes emphatically reject this argument.²³ Hopkins has been deceptive, withheld evidence and lied in open court. Now the court is acting as a personal gatekeeper for Hopkins and that stance is mistaken, based on the facts presented.

¹⁹*Kan. City S. Ry. Co. v. Chavez*, No. 14-10286-HCM, at *60-66 (Bankr. W.D. Tex. Jan. 31, 2020)

²⁰*Wirsche v. Bank of Am., N.A.*, 7:13-CV-528, at *3 (S.D. Tex. 2013)

²¹*Doe v. Baylor University*, 320 F.R.D. 430 (W.D. Tex. 2017); Discussing attorney-client privilege v. work product doctrine and confirming that Hopkins waived immunity by his own voluntary disclosures and... " **Moreover, courts generally construe the privilege narrowly because 'assertion of privileges inhibits the search for truth.'**" Id. (citing *Navigant Consulting, Inc. v. Wilkinson*, 220 F.R.D. 467, 477 (N.D. Tex. 2004); “Waiver of work product immunity” *Securities & Exchange, Commission v. Gregory A. Brady*, 238 F.R.D. 429, 444 (N.D. Tex. 2006) and *Shields v. Boys Town La., Inc.*, #15-3243 SECTION "G"(2) (E.D. La., 2016).

²²*George v. Grayco Commc'ns, LP*, #18-8953 DIVISION: (1), at *8-9 (E.D. La., 2020)

²³Doc.65, Exhibit #Attorney-Immunity, P.14-24, Doc.27, P.28,29,52

The Burkes request fails to warrant such over-zealous judicial protection for the *pro se* attorney-defendants.

In support, the Burkes ask; Is Hopkins honorable and trustworthy? The facts suggest that Hopkins is neither and as such the MJ should have granted the show authority request and denied the motion to dismiss, after reviewing the Burkes complaint ‘holistically’; (i) Hopkins fails to maintain a surety bond and **is** a debt collector (This despite decades of debt collection experience working exclusively in the creditor rights vertical ²⁴);

4		schedule.	
5		MR. HOPKINS: My concern is with the Burkes'	
6		social media postings where they are defaming my firm and my	
7		wife and suggesting that some members of the judicial should	
8		<u>be shot,</u> and I would like to see that come to an end sooner	
9		than later and I have sat on such a counterclaim, for hopes	
10		that the case would be resolved sooner.	

(ii) Mark Hopkins conduct was unbecoming a member of the bar²⁵ in front of the MJ at the last conference and where he repeated outrageous lies that the Burkes

²⁴Doc.65, p.12

²⁵*In re Ray*, No. 19-10875, at *5 (5th Cir. Mar. 3, 2020)

were guilty of making threats of violence against Judges²⁶, a lie Mark Hopkins would later admit.

14	and I would also think the Court would be interested to know
15	that the Burkes are posting that certain judges should be
16	shot.
17	THE COURT: Are you doing that?
18	MS. BURKE: What did he say?
19	THE COURT: That you're posting on social media
20	that certain judges should be shot?
21	MS. BURKE: That's nonsense.
22	MR. BURKE: Yes.
23	MR. HOPKINS: We can produce --
24	MS. BURKE: I'd like him to show me that.
25	THE COURT: Wait. So that's --

It was slander, deliberately schemed to inflame the court and materially malign the Burkes reputation. The MJ is complicit by his bias and inaction²⁷ post-conference against *pro-se* Mark Hopkins, (who does not benefit from attorney immunity in this case and should not have been allowed to proceed *pro se*²⁸) and

²⁶Doc.52, p.30 Hopkins: "... suggesting that some members of the judicial should be shot..." and "... and I would also think the Court would be interested to know that the Burkes are posting that certain judges should be shot...". And Doc.59,59-1.

²⁷ Doc.63.

²⁸*Chandler v. Phx. Servs.*, No. 7:19-cv-00014-O, at *5 (N.D. Tex. Jan. 30, 2020).

premature publication of this one-sided M&R which never addressed Hopkins conduct.²⁹;

4 THE COURT: I don't know if that's true or not, --
5 MS. BURKE: No, it isn't.
6 THE COURT: -- and I'm not your lawyer, but if
7 you're doing that, that's why more serious than any kind of
8 counterclaim.
9 MS. BURKE: That's evil.
10 THE COURT: Okay. Fine, don't break the law.
11 MS. BURKE: The things the judge --
12 THE COURT: I think I'm --
13 MR. BURKE: We're not breaking the law.
14 MS. BURKE: That's evil.
15 THE COURT: Okay. Fine. I hear the words you're
16 saying. I think I've not sat here and been in this kind of
17 position before, but you're not under my supervision and
18 you're free people, but --
19 MS. BURKE: But don't you see that? That's evil.
20 THE COURT: Okay. Okay. Okay, ma'am. I have no
21 idea what the facts are, but I think he's putting you on

(iii) Hopkins confessed on open record he withheld vital evidence from the Burkes which would help prove their case and also prevent him filing an appeal (the mortgage file)³⁰; (iv) Hopkins initially stated they represented *Deutsche Bank*, now

²⁹*In re Ray*, No. 19-10875, at *5 (5th Cir. Mar. 3, 2020).

³⁰Doc.27, 48-49, 67, 73-76, 93, 97.

it is *Deutsche Bank* and *Ocwen*, despite the conflicts and also the comments from the Texas Supreme Court Task Force³¹; (v) Due to securitization and RMBS resale marketplace, Banks and Non-Banks change attorneys as often as bedsheets in a motel. Hence, it is unproven and challenged whether straw man *Deutsche Bank* owns the debt or whether it was purchased by a non-bank like ***Ocwen***³², a REIT, private entity or Hopkins themselves, who, through Mark Hopkins spoke as if it was his firms' debt on the record (Doc.27, p.38, 48, 59, 69, 93) ; (vi) Shelley Hopkins' 15 month delay to replace the bench trial attorney, Jacocks of BDF, casts doubt on when/if she obtained authority (Doc.27, p.28-29, 53); (vii) Texas courts demand lawyers provide detailed billing statements when seeking attorney fees³³; (viii) Hopkins sent the Burkes a notice for \$1.1 million³⁴ when the judgment is \$615k (Doc.27, p.9) and refuses to change the statement of account to reflect the judgment of the court, despite the evidence that the \$615k is the full and final amount Hopkins requested repeatedly in the *Deutsche Bank II* case; (ix) The Texas Supreme Court has recently opined that an email is not a binding contract in law³⁵; (x) Hopkins engaged and still engages in fraud, misrepresentation, and misconduct in presentations, verbally and in writing, to the court in both post and pretrial matters,

³¹Doc.27, p.47,57,64,98,105.

³²*Ocwen Loan Servicing, LLC v. Hudson-Jones*, #4:18-cv-02463 (S.D. Tex. Oct. 2018); Doc.1, p.4,#13. (*Ocwen* owns debt).

³³*Funez v. Ebm*, #16-01922 SECTION: "H" (4), at *11 (E.D. La., 2018)

³⁴EXHIBIT #2018-HOPKINS-OCT-15-LETTER

³⁵ <https://www.jdsupra.com/legalnews/alert-texas-supreme-court-confirms-no-66950/>

conferences, and in his presentations to the Fifth Circuit in support of his two last appeals from this court's dismissal of *Deutsche Banks'* claims against the Burkes.³⁶

Here, the court is relying on Hopkins attorney signature(s)³⁷ from attorneys who cannot be trusted. Yet without any visible contract(s) or engagement letter(s) or even emails in hand, this court is willing to discard such a simple proof of authority request.³⁸ This is without justification, when a homestead is at risk.³⁹ The Texas constitution, state and federal government demand citizens and especially the susceptible and elderly are protected from predatory lending and fraudulent loans. Sister federal courts and judges agree with this sentiment.⁴⁰ Hopkins is a known unlicensed, unbonded debt collection law firm. The Burkes request is merited.

The other counts, the 'financial crimes'⁴¹ leveled at Hopkins in the civil proceedings include withholding evidence.⁴² This would have proven beyond a reasonable doubt and based on the preponderance of the (hidden) evidence (the 'mortgage file'), the original loan application income fraud by Indymac. Hopkins admitted as much on the record by stating he willfully and knowingly withheld the

³⁶ *In re Ray*, No. 19-10875, at *7 (5th Cir. Mar. 3, 2020).

³⁷ Fed. R. Civ. P.11

³⁸ Unlike State Court; *Sloan v. Rivers*, 693 S.W.2d 782, 783 (Tex. App. 1985).

³⁹ *Matter of McDaniel*, 70 F.3d 841 (5th Cir. 1995) "Stating that "[i]n Texas, homestead rights are sacrosanct".

⁴⁰ *Saccameno v. U.S. Bank N.A.*, No. 19-1569 (7th Cir. Nov. 27, 2019).

⁴¹ FBI; <https://www.fbi.gov/investigate/white-collar-crime/mortgage-fraud/financial-institutionmortgage-fraud-news>

⁴² *In re Ray*, No. 4:19-MC-015-A, at *8-9 (N.D. Tex. July 15, 2019) and *In re Ray*, No. 19-10875 (5th Cir. Mar. 3, 2020).

evidence (no ‘attorney immunity’ applies) from the Burkes. Furthermore, by Hopkins accepting and appealing the case with this knowledge, they were complicit by their acts (no ‘attorney immunity’ applies).⁴³ The Burkes complain about the introduction of fake documents, forgery⁴⁴, fraud, and a known *system of fraud* being perpetrated in Texas courts by these deceiving, dishonest and malicious lawyers who also attempt to use shell-sham companies to mask their relationship with BDF, who are lucidly and visibly complicit in these ignoble and *fraudulent business*⁴⁵ schemes to steal homes from citizens for financial avarice and leverage the courts to do so.

The Burkes complaint also reveals the serious crime⁴⁶ of moral turpitude resulting in theft of property, civil conspiracy, unjust enrichment, and debt collection violations. Hopkins premeditated acts have added five years of additional and unnecessary litigation. The pain, suffering and injury to the Burkes is unconscionable. The mental, physical and life-threatening illnesses will leave permanent and irreversible disabilities and emotional scars. The stress and duress⁴⁷ over the many years in courts has been ruinous.

Nevertheless, the M&R ‘mooted’ many motions and denied the Burkes a right to amend their complaint in the future. The Burkes specifically object to that

⁴³*Kelly v. Nichamoff*, 868 F.3d 371, 374-75 (5th Cir. 2017).

⁴⁴*Jones v. Hogan*, No. 3:15CV8-MPM-JMV, at *17 (N.D. Miss., 2018).

⁴⁵*NFTD, LLC v. Haynes & Boone, LLP*, No. 14-17-00999-CV (Tex. App. Dec. 17, 2019).

⁴⁶*Kan. City S. Ry. Co. v. Chavez*, No. 14-10286-HCM, at *14 (Bankr. W.D. Tex. Jan. 31, 2020).

⁴⁷*Kan. City S. Ry. Co. v. Chavez*, No. 14-10286-HCM, at *104 (Bankr. W.D. Tex. Jan. 31, 2020).

recommendation, considering the first amended complaint was written when Joanna Burke was in hospital with a life-threatening medical emergency and unable to participate in the amended complaints' construction.⁴⁸ They also object to the M&R in totality. As this court recognized, this is a lengthy dispute. However, the court failed to acknowledge five years of this litigation can be attributed to the attorney-defendants. Hopkins, who fatefully arrived in March 2015, after the bench trial and wherein this court had already ruled in favor of the Burkes, dismissing the no-witness, no-evidence Banks' civil action. The appeal(s) by the unlicensed debt law firm of Hopkins & Williams, PLLC/Hopkins Law, PLLC should never have been granted. The Burkes alerted this court, but they erred in allowing the conniving Hopkins to proceed, believing Hopkins to be trustworthy. That was error.

(IV) FDCPA, TDCA and Prohibited Conduct: Doc.65, p.11-16.

Short Response: Denied.

RESPONSE: HOPKINS IS A DEBT COLLECTOR

Contrary to the MJ's opinion, Hopkins is a debt collector according to Senior Judge Nancy Atlas; See *Jackson v. U.S. Bank*, Civil Action No. 4:17-CV-2516, at *17-18 (S.D. Tex. Aug. 14, 2018);

⁴⁸The judiciary and the legal profession are constantly marketing their code of conduct, ethics and civility. With the exception of former Magistrate Judge Stephen Wm. Smith, Steve Berman and his staff at Hagens Berman who represented the Burkes on appeal in *Deutsche II*, there has been no civility or empathy afforded to these elder citizens. In reality, quite the opposite has been true.

“...Shapiro responds further that even if it is a "third-party debt collector," its efforts in connection with the attempted foreclosure⁴⁹ of the Property are not "debt collections" within the meaning of the TDCPA. These responses lack merit.”

Hopkins has the ignominy of facing the fact that BDF does maintain a surety bond⁵⁰ as debt collectors. BDF are co-conspirators as shown in *PNC v Howard*⁵¹ and Mark Hopkins has worked on BDF appeal cases for many years and his wife is an ex-employee of BDF.⁵² Today, the BDF Hopkins relationship is extremely close and visible. They perform the same services, creditor rights foreclosure attorneys and more recently, two of BDF’s founding partners relocated, and reside in adjacent offices beside Hopkins. All of these facts were completely discounted in the M&R.

Three of the Burkes' allegations merit specific attention;

(1) The falsified loan application; Doc.65, p.16

RESPONSE: THERE IS NO VERIFIED LOAN APPLICATION

Doc.27, p.21-22, discusses the \$539k application, the mortgage file which was intentionally withheld from the Burkes (MJ refers as ‘his client’s files’). The law firm in the Indymac case before Judge Hughes was Ackerman. The attending lawyer is currently a Partner. He can be called as a witness to corroborate the facts. In the

⁴⁹*Collins v. Phelan Hallinan Diamond & Jones, LLP*, 17-3727, at *7-8 (E.D. Pa. 2018).

⁵⁰Doc.32, p.86

⁵¹*PNC Mortg. v. Howard*, No. 05-17-01484-CV (Tex. App., 2019), and Doc.45/1/2.

⁵²Doc.32, p.46-58.

alternative, the Burkes would seek to recover the in-chambers transcript as evidence. The allegations the MJ discusses above, is the Burkes contend Hopkins presented a ‘doctored’ loan application on appeal. Fact; the bank has never provided a correct and verified loan application into evidence prior to Hopkins self-appointment.

Taking a holistic view of the Burkes allegations and in conjunction with the newly discovered facts (See Docs.45/1/2); [BDF] Hopkins⁵³ operate a known system of fraud in Texas courts, specifically the two documented, published, high profile and high value foreclosure cases, namely *Deutsche Bank Fraud* and *PNC v. Howard*. In the *Deutsche Bank Fraud* case Hopkins arrived and immediately requested the court allow him to introduce the ‘wet ink original note’ **AFTER trial**. Hopkins along with BDF, tried the same scheme in the PNC case, in relation to ‘lost evidence’ (Doc.42, p.2) which ALSO miraculously appeared **AFTER trial**. This is a known *system of fraud* (Doc.42, p.4-5) and admitted tactic as highlighted by the Texas Supreme Court Foreclosure Task Force transcript, where members of the judiciary and BDF presided and admitted to these type of illegal acts performed by banks, non-banks, their agents and attorneys. Both lower court judges denied BDF Hopkins requests to submit fake documents. However, these lawyers and their law firms are not being held accountable for these crimes.⁵⁴

⁵³BDF Law Group (“BDF”) and Hopkins Law, PLLC (“Hopkins”).

⁵⁴This court has inherent power to prevent future fraudulent activity by BDF Hopkins; *Chandler v. Phx. Servs.*, No. 7:19-cv-00014-O, at *4 (N.D. Tex. Jan. 30, 2020).

(2) *The loan was \$615,000; Doc.65, p.16.*

\$615K IS THE VALUE OF THE JUDGMENT

This specific question was also raised in the *Ocwens' Note* case and is at the Fifth Circuit. However, see *Ocwens' Note* Doc.22. The MJ's arguments are not plausible, it's not the *loan* amount, it's the *judgment* amount that counts.

(3) *The Surety Bond; Doc.65, p.16-17.*

ROGUE BOUNTY HUNTERS & HOUSE JACKERS

Contrary to the MJ's opinion, the Burkes have proven Hopkins engaged in prohibited conduct. TFC; SUBCHAPTER B. SURETY BOND; Sec. 392.101

"...may not engage in debt collection unless the third-party debt collector or credit bureau has obtained a surety bond..."

Hopkins May Not Engage in Debt Collection in the State of Texas

Hopkins should not be operating while Hopkins Law, PLLC fails to maintain the required surety bond. In this case, Hopkins has injured the Burkes by filing appeals in the underlying *Deutsche Bank Fraud* case. Hopkins also represent *Ocwen* in the case currently pending at the 5th Cir. While this court may say Mark and Shelley Hopkins can trade as lawyers when their licenses are in good standing with

the Texas Bar, that may well be, however, there is a conflict which they cannot overcome.

Hopkins, as debt collectors, should not be communicating with the Burkes in relation to their alleged debt or responding to the Burkes direct letters to *Deutsche Bank*, nor *Ocwen*, while they are unauthorized to do business in the State.

Currently, Hopkins are in violation of all the above. All communications, including QWR's which the Burkes' sent to the servicers corporate address (QWR address)⁵⁵ are being redirected to Hopkins in violation of the law.

The MJ states even if Hopkins is a debt collector, the Burkes have not shown injury. That argument is frivolous. If Hopkins fails to maintain a surety bond with the State, they are refrained from doing business as a debt collector. Hopkins should not file any civil action, defend any civil proceedings, or appeal any ongoing legal disputes which involves the Burkes current cases, even if Hopkins are licensed Texas.

Injury; Since the *Deutsche Bank Fraud* bench trial (2015), Hopkins has been in violation and by deception⁵⁶, reversed on appeal the Burkes judgments in their favor twice, 2016 and 2018. Hopkins has caused at least five years of financial

⁵⁵*Wease v. Ocwen Loan Servicing, L.L.C.*, 915 F.3d 987, 995 (5th Cir. 2019)

⁵⁶"Both statutes prohibit debt collection methods that threaten, harass, abuse, or **deceive** a debtor." Hopkins **deceived** the Burkes and this court by not maintaining a Surety Bond and been allowed to harass, threaten and abuse the Burkes with foreclosure proceedings by the illegal appeals in this court and at the Fifth Circuit.

losses, distress, duress and substantively contributed to the Burkes life altering medical illnesses. The expert witness list (Doc.36) includes doctors and nurses who averred to have saved Joanna Burke from certain death and are available for any depositions, cross-examination and trial by jury to confirm these facts as true and not ‘conclusory’.

CONCLUSION

For the foregoing reasons, the Burkes object to the recommendations in the memorandum. The motion to dismiss should be DENIED and the case proceed to discovery and jury trial. In the alternative, the Burkes should be allowed to amend their complaint to address any perceived deficiencies.

RESPECTFULLY submitted this 6th day of March, 2020.

I declare under penalty of perjury that the foregoing and following is true and correct.
(28 U.S.C. § 1746 - U.S. Code.)

Joanna Burke / State of Texas
Pro Se

I declare under penalty of perjury that the foregoing and following is true and correct.
(28 U.S.C. § 1746 - U.S. Code.)

John Burke / State of Texas
Pro Se

46 Kingwood Greens Dr
Kingwood, Texas 77339
Phone Number: (281) 812-9591
Fax: (866) 705-0576
Email: kajongwe@gmail.com

CERTIFICATE OF SERVICE

We, Joanna Burke and John Burke hereby certify that on March 6, 2020, we posted the attached document via USPS Priority Mail to the US District Court;

Clerk of Court
United States District Court
515 Rusk St
Courtroom 703, 7th Floor
Houston TX 77002

And also served copies to the following parties, by U.S. first class mail:

Mr. Mark Hopkins, Mrs. Shelley Hopkins & Hopkins Law PLLC
Hopkins Law PLLC
3809 Juniper Trce, Suite 101
Austin, TX 78738

John Burke and Joanna Burke
46 Kingwood Greens Dr
Kingwood, Texas 77339
Tel: 281 812 9591

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

Civil Action No. 4:18-cv-4543

**AFFIDAVIT (DECLARATION) OF
JOHN BURKE**

INDEX

AFFIDAVIT (DECLARATION) OF JOHN BURKE.....	1
INDEX.....	2
LEGAL DISCLOSURE	3
OBJECTIONS TO M&R	3
SECOND RESPONSE TO MTD (DOCS. 59 and 59-1)	3
PLAINTIFFS MOTION TO CLARIFY ORDER DOC. 50 (DOC. 54).....	4
AFFIDAVIT OF JOHN BURKE.....	4
CERTIFICATE OF SERVICE	7

LEGAL DISCLOSURE

In lieu of an affidavit sworn under oath, federal law allows an “unsworn declaration, certificate, verification, or statement, in writing, of [a] person which is subscribed by him, as true under penalty of perjury, and dated” to have the same force and effect as an affidavit or other sworn statement. See 28 U.S.C. § 1746; see also *Peters v. Lincoln Elec. Co.*, 285 F.3d 456, 475 (6th Cir. 2002) (while an affidavit is required to be sworn to by the affiant in front of an officer authorized to administer oaths, 28 U.S.C. § 1746 allows for “unsworn declarations under penalty of perjury” to support any matter that legally requires an affidavit to support it).

OBJECTIONS TO M&R

I, John Burke, wish to confirm via this unsworn statement that the OBJECTIONS TO MEMORANDUM AND RECOMMENDATION BY UNITED STATES MAGISTRATE JUDGE PETER BRAY are true.

SECOND RESPONSE TO MTD (DOCS. 59 and 59-1)

I, John Burke, wish to confirm via this unsworn statement that as well as relying on the entire docket *de novo*, I would specifically like to point the court to

Doc.'s 59, PLAINTIFFS SECOND RESPONSE TO SECOND MOTION TO DISMISS AS INSTRUCTED BY MAGISTRATE JUDGE PETER BRAY and Doc. 59-1, THE COVERING LETTER FOR DOC. 59 which should be read in conjunction with the Burkes' OBJECTIONS TO THE M&R and when reading my following affidavit.

PLAINTIFFS MOTION TO CLARIFY ORDER DOC. 50 (DOC. 54)

I, John Burke wish to confirm via this unsworn statement that as well as relying on the entire docket *de novo*, I would specifically like to point the court to Doc. 54, PLAINTIFFS MOTION TO CLARIFY ORDER (DOC. 50) which should also be read in conjunction with the Burkes' OBJECTIONS TO THE M&R and when reading my following affidavit.

AFFIDAVIT OF JOHN BURKE

- This is a declaration, under the penalty of perjury of
John Burke.

- On the afternoon of 10 September 2019, I attended a scheduled court conference with my wife, Joanna Burke at Rusk St., Houston, Texas.
- In attendance were United States Magistrate Judge Peter Bray, clerk Jason Marchand, the court reporter and Mark Hopkins of Hopkins Law, PLLC.
- During the conference Mark Hopkins lied and slandered myself and my wife during the hearing.
- Relying on Doc 52, p.30 along with Doc. 59 and relying on the disclaimers as to the authenticity of the transcript/audio per Doc. 59-1, Hopkins said: “... suggesting that some members of the judicial should be shot...” and “... and I would also think the Court would be interested to know that the Burkes are posting that certain judges should be shot...”.
- In direct response to me, the Magistrate Judge shouted at me the following question; Are you a CRIMINAL?
- I replied; Do I look like a CRIMINAL, your honor?

- This is **not** documented in the transcript or audio.
- I wish to ensure this is formally documented and as such becomes part of the courts' formal record.

I, John Burke, declare under penalty of perjury that the foregoing is true and correct.
March 6th, 2020, Kingwood, Texas.

John Burke / State of Texas
Pro Se
46 Kingwood Greens Dr
Kingwood, Texas 77339
Phone Number: (281) 812-9591
Fax: (866) 705-0576
Email: alsation123@gmail.com

CERTIFICATE OF SERVICE

We, Joanna Burke and John Burke hereby certify that on March 6, 2020, we posted the attached document via USPS Priority Mail to the US District Court;

Clerk of Court
United States District Court
515 Rusk St
Courtroom 703, 7th Floor
Houston TX 77002

And also served copies to the following parties, by USPS Priority Mail:

Mr. Mark Hopkins, Mrs. Shelley Hopkins & Hopkins Law PLLC
Hopkins Law PLLC
3809 Juniper Trce, Suite 101
Austin, TX 78738

Defendant-Attorneys and counsel of record in Burke v Hopkins Law, PLLC

John Burke and Joanna Burke
46 Kingwood Greens Dr
Kingwood, Texas 77339
Tel: 281 812 9591

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

Civil Action No. 4:18-cv-4543

**AFFIDAVIT (DECLARATION) OF
JOANNA BURKE**

INDEX

AFFIDAVIT (DECLARATION) OF JOANNA BURKE	1
INDEX.....	2
LEGAL DISCLOSURE	3
OBJECTIONS TO M&R	3
SECOND RESPONSE TO MTD (DOCS. 59 and 59-1)	3
PLAINTIFFS MOTION TO CLARIFY ORDER DOC. 50 (DOC. 54).....	4
AFFIDAVIT OF JOANNA BURKE	4
CERTIFICATE OF SERVICE	7

LEGAL DISCLOSURE

In lieu of an affidavit sworn under oath, federal law allows an “unsworn declaration, certificate, verification, or statement, in writing, of [a] person which is subscribed by him, as true under penalty of perjury, and dated” to have the same force and effect as an affidavit or other sworn statement. See 28 U.S.C. § 1746; see also *Peters v. Lincoln Elec. Co.*, 285 F.3d 456, 475 (6th Cir. 2002) (while an affidavit is required to be sworn to by the affiant in front of an officer authorized to administer oaths, 28 U.S.C. § 1746 allows for “unsworn declarations under penalty of perjury” to support any matter that legally requires an affidavit to support it).

OBJECTIONS TO M&R

I, Joanna Burke, wish to confirm via this unsworn statement that the OBJECTIONS TO MEMORANDUM AND RECOMMENDATION BY UNITED STATES MAGISTRATE JUDGE PETER BRAY are true.

SECOND RESPONSE TO MTD (DOCS. 59 and 59-1)

I, Joanna Burke wish to confirm via this unsworn statement that as well as relying on the entire docket *de novo*, I would specifically like to point the court to

Doc.'s 59, PLAINTIFFS SECOND RESPONSE TO SECOND MOTION TO DISMISS AS INSTRUCTED BY MAGISTRATE JUDGE PETER BRAY and Doc. 59-1, THE COVERING LETTER FOR DOC. 59 which should be read in conjunction with the Burkes' OBJECTIONS TO THE M&R and when reading my following affidavit.

PLAINTIFFS MOTION TO CLARIFY ORDER DOC. 50 (DOC. 54)

I, Joanna Burke wish to confirm via this unsworn statement that as well as relying on the entire docket *de novo*, I would specifically like to point the court to Doc. 54, PLAINTIFFS MOTION TO CLARIFY ORDER (DOC. 50) which should also be read in conjunction with the Burkes' OBJECTIONS TO THE M&R and when reading my following affidavit.

AFFIDAVIT OF JOANNA BURKE

- This is a declaration, under the penalty of perjury of
Joanna Burke.

- On the afternoon of 10 September 2019, I attended a scheduled court conference with my husband, John Burke at Rusk St., Houston, Texas.
- In attendance were United States Magistrate Judge Peter Bray, clerk Jason Marchand, the court reporter and Mark Hopkins of Hopkins Law, PLLC.
- During the conference Mark Hopkins lied and slandered myself and my husband during the hearing.
- Relying on Doc 52, p.30 along with Doc. 59 and relying on the disclaimers as to the authenticity of the transcript/audio per Doc. 59-1, Hopkins said: "... suggesting that some members of the judicial should be shot..." and "... and I would also think the Court would be interested to know that the Burkes are posting that certain judges should be shot...".
- In response to my husband, John Burke, the Magistrate Judge shouted at him the following question; Are you a CRIMINAL?

- The Magistrate Judge's eyes were popping and his hands were gesticulating wildly.
- My husband, John Burke, calmly replied; Do I look like a CRIMINAL, your honor?
- I personally witnessed that exchange.
- This is **not** documented in the transcript or audio.
- I wish to ensure this is formally documented and as such becomes part of the courts' formal record.

I, Joanna Burke, declare under penalty of perjury that the foregoing is true and correct.
March 6th, 2020, Kingwood, Texas.

Joanna Burke / State of Texas
Pro Se
46 Kingwood Greens Dr
Kingwood, Texas 77339
Phone Number: (281) 812-9591
Fax: (866) 705-0576
Email: kajongwe@gmail.com

CERTIFICATE OF SERVICE

We, Joanna Burke and John Burke hereby certify that on March 6, 2020, we posted the attached document via USPS Priority Mail to the US District Court;

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