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October 27, 2021

Clerk of Court
United States District Court
515 Rusk St
Houston TX 77002

Dear Sirs

**Burke v. Ocwen Loan Servicing, LLC, Hopkins Law, PLLC, Mark D.
Hopkins & Shelley L. Hopkins, Case No. 4:21-CV-2591**

Filing Cover Sheet

Please find enclosed;

1. Reply to Defendant's Motion to Declare Plaintiffs as Vexatious Litigants with Proposed Order.
2. Plaintiffs Discovery/Case Management Plan Under Rule 26(f), Federal Rules of Civil Procedure

This filing has been submitted by USPS Express Mail and a second copy of these filings marked BENNETT should be provided to Judge Alfred Homer Bennett's chambers.

If you have any questions or comments about the enclosed filings, please do not hesitate to reach out via email to kajongwe@gmail.com, or fax to +1 (866) 705-0576 to expedite any questions or concerns.

We prefer written communication for the purposes of tracking.

Thank you very much in advance for your time and consideration.

Stay safe.

Sincerely,

Handwritten signatures of Joanna Burke and John Burke. Joanna's signature is in cursive and reads 'Joanna Burke'. John's signature is a stylized 'JB'.

Joanna Burke and John Burke

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Encls.

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

Civil Action No. 4:21-CV-2591

| | | |
|----------------------------------|---|-----------------------------------|
| Joanna Burke and John Burke |) | REPLY TO DEFENDANT'S MOTION TO |
| |) | DECLARE PLAINTIFFS AS VEXATIOUS |
| Plaintiffs, |) | LITIGANTS (WITH BRIEF IN SUPPORT) |
| |) | |
| vs. |) | |
| |) | |
| PHH Mortgage Corporation, |) | |
| Successor by Merger to Ocwen |) | |
| Loan Servicing, LLC, Mark Daniel |) | |
| Hopkins, Shelley Hopkins and |) | |
| Hopkins Law, PLLC. |) | |
| | | |
| Defendants. | | |

REPLY

TO THE HONORABLE JUDGE OF SAID COURT: See; *Lefebure v. D'Aquilla*, 19-30702, at *1 (5th Cir. Oct. 5, 2021) (“No benefit would be served by depriving the court of the opportunity to engage with critical analysis of its past work - to the contrary, that would contradict the whole point of our adversarial legal system, which relies on the robust exchange of competing views to ensure the discovery of truth and avoid error. Our adversarial system of justice is based on the same fundamental premise as our First Amendment - a firm belief in the robust and fearless exchange of ideas as the best mechanism for uncovering the truth.”).

Any ruling which would restrict access to courts for the law-abiding elder citizens of the State of Texas because they voice a competing view while providing good faith, meritorious claims and arguments - corroborated with irrefutable facts and/or documents - would be a travesty

of justice and tarnish an already publicly maligned judiciary¹ irreparably. The court should follow the Constitution² and judicial oath as truth seekers, not personal gatekeepers for preferred litigants and determine the

¹ See WSJ; 131 Federal Judges Broke the Law by Hearing Cases Where They Had a Financial Interest (published 28 Sept., 2021) <https://2dobermans.com/woof/51>

The Plaintiffs believe the WSJ report is understated, e.g., Plaintiffs determined from financial disclosure reports, Judge W. Eugene Davis held Deutsche Bank stock and failed to self-recuse in 2018 and appeared again in 2021 in the Plaintiffs Fifth Circuit appeal panel(s).

² See; *Newman v. State of Alabama*, 503 F.2d 1320, 1329 (5th Cir. 1975) ("At the same time, however, this court has been cognizant of the fact that deference which shields officials engaging in intemperate action and which excuses judicial myopia is incompatible with our role as arbiters of the Constitution and hence cannot be countenanced.")

Defendants motion is meritless. It fails the 'numerosity'³, 're-litigation'⁴ and 'previous determination' test deployed for such a motion. In summary, this motion should only be granted in exceptional (narrow) circumstances. Those narrow exceptions do not apply here. The frivolous 'vexatious litigant' motion should be denied.

SERVICE OF 'VEXATIOUS LITIGANT' MOTION

On Monday, 18 October, 2021, at around 4.33pm US Postal Service delivered several court filings from Defendants, comprising of an unlicensed, unbonded debt collector in the State of Texas, Hopkins Law,

³ See; *Hinrichsen v. Quality Loan Serv. Corp.*, (DEUTSCHE BANK NATIONAL TRUST COMPANY) No. 16-cv-0690 DMS (BLM), at *4 (S.D. Cal. Dec. 13, 2017)

⁴ See; *Texas Employers' Ins. Ass'n v. Jackson*, 862 F.2d 491 (5th Cir. 1988) - Refusing to apply re-litigation exception because res judicata and collateral estoppel were inapplicable.

PLLC, attorneys' Mark D. Hopkins, Shelley L. Hopkins, and Ocwen Loan Servicing, LLC now PHH Mortgage Corporation⁵ (herein referred to as "Hopkins"), and which included the above sanctionable and frivolous motion to which the Plaintiffs now respond.

STANDARD OF REVIEW WHEN CONSIDERING VEXATIOUS LITIGANT MOTIONS

Hopkins reference 28 U.S.C. § 1651(a), and the Plaintiffs rely in this reply on Hopkins case cite (p.12, No. 17) and the detailed analysis as provided in; *De Long v. Hennessey*, 912 F.2d 1144 (9th Cir. 1990); which concluded; "Orders restricting a person's access to the courts must be based

⁵ See; Violation Tracker for PHH and Ocwen, totaling billions of dollars in fines - <https://2dobermans.com/woof/50> ; Examples of current "PHH Harassment Federal Lawsuits (2021 in Tx); *Sydnor v. PHH Mortgage Corporation* (4:21-cv-00003), District Court, N.D. Texas (Jan 5, 2021); *Geiser v. PHH Mortgage Corporation* (4:21-cv-00041) District Court, E.D. Texas (15 Jan 2021), Doc. 1, p.1 <https://2dobermans.com/woof/4z>

on adequate justification supported in the record and narrowly tailored to address the abuse perceived. We find such care is demanded to protect access to the courts, which serves as the final safeguard for constitutional rights. We find that the district court abused its discretion in entering the vexatious litigant order.”

Vexatious Litigant

“Under the power of 28 U.S.C. § 1651(a) (1988), enjoining litigants with **abusive** and lengthy histories is one such form of restriction that the district court may take. *Id.* See also *In re Oliver*, 682 F.2d 443, 445 (3d Cir. 1982) (...restricting **meritless** cases); *In re Hartford Textile Corp.*, 681 F.2d 895, 897 (2d Cir. 1982) (§ 1651(a) empowers court to give injunctive relief against vexatious litigant), cert. denied 459 U.S. 1206, 103 S.Ct. 1195, 75 L.Ed.2d 439 (1983). Nonetheless, we also recognize that **such pre-filing orders should rarely be filed**. See, e.g., *Oliver*, 682 F.2d at 445 (an order

imposing an injunction "is an extreme remedy, and should be used only in exigent circumstances"); *Pavilonis v. King*, 626 F.2d 1075, 1079 (1st Cir.) ("The use of such measures **against a pro se plaintiff** should be approached with particular caution."), cert. denied, 449 U.S. 829, 101 S.Ct. 96, 66 L.Ed.2d 34 (1980); *In re Powell*, 851 F.2d 427, 431 (D.C.Cir. 1988) (per curiam) (such orders should "remain very much the exception to the general rule of free access to the courts") (quoting *Pavilonis*, 626 F.2d at 1079).

Notice

"Due process requires notice and an opportunity to be heard." *Powell*, 851 F.2d at 431...." The Plaintiffs herein request proper notice and an opportunity to be heard.

Adequate Record for Review

"While the record may be complete ..., it is not sufficiently developed to show that De Long is abusing the judicial system." Hopkins motion is

deficient and is not sufficiently developed, for example, res judicata arguments cited but not developed or cross-referenced in any way to external motions, filings or answers (p.3., No. 5).

Substantive Filings of Frivolousness

“The record needs to show, in some manner, that the litigant's activities were **numerous** or **abusive**.” Hopkins does not and cannot prove either as the activities of Plaintiffs were not numerous nor abusive.

Decision to Deny Motion

Hopkins relies upon the writ as the federal legal standard. Upon review, where similar vexatious litigant and/or sanctions motions have been filed and contested, case law favors the Plaintiffs request to deny the motion as meritless; See foreclosure before Judge Hanks: *Mustapha v. HSBC Bank, USA*, CIVIL ACTION No. 4:12-cv-01924, at *15 (S.D. Tex. Feb. 20,

2013). Likewise, Plaintiffs cases have always been brought **in good faith** as confirmed by this response.

At the time of receipt of this motion, 18 October, 2021, and relying upon the standard for **numerosity**⁶ by referring to TEX. CIV. PRAC. & REM. CODE § 11.054, only a seven-year period is applicable, and this would start on October 18, 2014. During that period only **three civil actions** have been filed pro se by the Burkes as “**Plaintiffs**”; (1) *Burke v. Ocwen*; (2) *Burke v. Hopkins* and this current civil action.

⁶ In support, it should be noted the two cases listed above in 2018 were filed in Texas state court and removed to this federal court by Hopkins and as such the TEX. CIV. PRAC. & REM. CODE § 11.054 statute is appropriate in relation to the number of filings over a 7-year period re “**plaintiff**” filings.

The current civil action seeks to void the now consolidated appeal judgment and mandate and which is a question of law aimed at the 'judicial machinery itself' and not the actual parties to the lawsuit.

That stated, none of the Plaintiffs pro se civil actions have been deemed "frivolous or groundless" when disposed by the court. No judicial orders claimed harassment, multiplication, duplicity, bad faith, vexatiousness, or frivolousness, and no merit-based orders issued sanctions or warnings to the Plaintiffs, nor could they have.

Actual Notice Received

Certificate of Conference

Hopkins claims to have contacted the Plaintiffs via email on 12 October, 2021. No email was received by Plaintiffs from Shelley Hopkins advising them of their intent to file a 'vexatious litigant' motion.

CERTIFICATE OF CONFERENCE

This is to certify that on October 3, 8, and 23, 2019 counsel for Defendant JP Morgan Chase Bank, N.A. attempted to confer with Plaintiff regarding the relief sought in this motion by telephone and left messages with Plaintiff regarding the same. Additionally, although relief is not sought pursuant to Rule 11, counsel for Defendant sent Plaintiff, via certified mail return receipt requested, a copy of the Motion and Supporting brief on October 1, 2019 to allow him to withdraw the challenged filings and agree to the relief sought herein prior to filing. Plaintiff did not return the messages or respond to the correspondence and counsel for Defendant has been unable to reach Plaintiff to confer.

/s/ Eric G. Carlson
Eric G. Carlson

Compare to Vexatious Motion Certificate of Conference in *Crear v. Long Beach Bank Mortgage* (3:19-cv-02255) District Court, N.D. Texas, Doc. 16 (denied).

This is a continuation of the same unethical behavior at the Court of Appeals for the Fifth Circuit and wherein the Plaintiffs finally filed a Motion for non-monetary Sanctions⁷ after recording several times where Hopkins did not respond and/or conference.

⁷ See; 8 July, 2021; OPPOSED MOTION for sanctions against Mark Daniel Hopkins and Shelley Luan Hopkins. [19-20267, 20-20209] - <https://2dobermans.com/woof/55>

Indeed, in this case, the Plaintiffs submitted their proposed first draft of the Joint Case Management Plan by email over a month ago (Sep 21) and have subsequently emailed twice more for a reply (Oct 6 and Oct 18). To date, no reply has been received, which violates the local rules of this court.

**THE GOOD FAITH, MERITORIOUS LITIGATION HISTORY BY
PLAINTIFFS**

Hopkins emotionally and enormously magnifies the history and length of dispute between the parties and litters the motion with repetitive contrived adverbs in an attempt to find 'something' to substantiate their frivolous motion. Plaintiffs now provide a concise overview of the past litigation to which Hopkins refers; *Deutsche Bank v. Burke*, (2011-2018); *Burke v. Hopkins* (2018-2021); *Burke v. Ocwen* (2018-2021) and the current civil action; *Burke v. Ocwen and Hopkins* (2021).

Deutsche Bank National Trust Co. v. Burke

Burkes Defeat Deutsche Bank after Bench Trial

Hopkins lists the Deutsche Bank National Trust Company ("Deutsche") case which the bank filed as plaintiffs in April, 2011 seeking (wrongful) foreclosure based on a predatory loan and without the necessary evidence to support its claims. For example, counsel for Deutsche presented a fabricated mortgage loan file application for the wrong amount, incomplete/unsigned and where there was lender application fraud (adding a false income to the loan application).

7 THE COURT: Yeah. So I think you may have
8 mentioned that there was a false income statement
9 included in the document that was provided to the
10 Burkee and I recall Mr. Burke testifying to that. Is
11 that one of your -- one of the contentions? Does that
12 violate the Texas Constitution in your view?
13 MS. FREIFFER: I don't think that violates
14 the Constitution. I think it could be potentially a
15 fact that would be relevant to the fraud claim.
16 THE COURT: All right. And of course, we
17 don't -- you know, we're not trying a fraud case at
18 this point.

Unsigned loan application, False Income, Fraud Claim...
Jan 27, 2017 Status Conference Transcript, NO. H-11-CV-1658

Furthermore, during the period until the 'no evidence, no witness, Bench Trial' in March 2015, the sanctionable, perjurious and vexatious conduct was by counsel for Deutsche, namely BDF Law Group and the staff under their control, who submitted questionable backdated foreclosure documents, failed to present a legally valid, completed or signed loan

application, submitted false and perjured affidavits which the court did not believe, and where counsel⁸ was removed from the case for unethical and derogatory Facebook posts about homeowners in foreclosure.

As a result, it was no surprise that the Plaintiffs prevailed, and the bank's wrongful foreclosure was rejected by this court.

Unannounced Attorney Mark Hopkins Appears Post Trial

What happened next was critical. Lawyer Mark D. Hopkins appeared for the Bank via BDF Law Group ("BDF") without proper notice, in the name of a recently dissolved law firm and partnership (Hopkins & Williams PLLC).

It would ultimately come to light that Mark Hopkins was in a blossoming personal relationship during this period with the Director of

⁸ Damian Abreo, who still works in the creditor rights vertical to this day, See; <https://2dobermans.com/woof/54>.

Foreclosure at BDF. That person is now his wife, Shelley Luan Hopkins and she left BDF and transitioned at some point during the litigation to working at Hopkins Law, PLLC as an attorney.

Mark Hopkins first act was to berate and harass the Hon. Stephen Wm. Smith into changing his opinion and order(s). Smith listened, considered and then correctly denied Hopkins meritless demands. Hopkins appealed to the Court of Appeals for the Fifth Circuit. He did so against the wishes of the Plaintiffs who formally questioned this unannounced lawyer's standing.

Secondly, Plaintiffs formally requested a copy of Hopkins engagement letter with Deutsche Bank, which would be denied. The Plaintiffs also uncovered that Hopkins Law PLLC was not bonded nor insured, a requirement to operate as a debt collector in the State of Texas. BDF Law Group on the other hand, was bonded and insured.

Hopkins unconvincingly claimed they did not require a license to operate as a debt collector and the Plaintiffs have pursued the indicted Texas Attorney General⁹ ("TAG") with formal questions to clarify Hopkins requires a license in the State of Texas and is a debt collector, which have been intentionally blanked, in violation of Texas law and statutes.

Recently, the Plaintiffs have followed the latest allegations of corruption and fraud against Paxton and his Office by the four 'whistleblowers' who are currently litigating in Texas state court and doing so successfully, so far.

The allegations lend support to the fact the Plaintiffs along with many other concerned citizens have reached out to the TAG with similar requests,

⁹ AG Ken Paxton was indicted on July 28, 2015; 6 years, 2 months and 29 days ago and the case is not even close to trial.

but have been mistreated by the Texas Attorney General's Office. This is relevant to this case because of the overall public's perception of the integrity of the State of Texas, the government and its federal colleagues, especially when there's a 'whiff of home cooking' - Citing Judge Gregg Costa discussing the appeal by celebrity friend and financial supporter of Gov. Greg Abbott, namely John Paul DeJoria see; *DeJoria v. Maghreb Petroleum Expl., S.A.*, 935 F.3d 381, 389 (5th Cir. 2019) ("We are mindful that the whiff of home cooking also pervades the Texas side of this case. There is a deep irony in allowing DeJoria to contend he was denied due process in Morocco when it was his lobbying efforts that changed the rules of the game midway through the proceedings in the United States.")

Returning to the case at hand, one of the reasons the request was made to the TAG was because the Plaintiffs believe the alleged aged debt was sold

by Deutsche Bank to a debt collector, as nobody from either a lender, trustee or servicer had (or has) ever appeared in court during this litigation.

On appeal, the Fifth Circuit controversially reversed and remanded.

See; *Deutsche Bank Nat'l Tr. Co. v. Burke*, 655 F. App'x 251 (5th Cir. 2016).

On Remand Plaintiffs were Represented by Titan Lawyers

On remand, and after the initial conference before Hon. Smith throughout the subsequent **second appeal by Hopkins for Deutsche Bank**, the Plaintiffs were represented by counsel.

Constance Pfeiffer and Beck Redden Agrees; The Fifth Cir. Erred

For the District court case, then partner at Beck Redden, Constance 'Connie' Pfeiffer, who "Led the charge in the Texas Supreme Court to

overturn an erroneous Fifth Circuit decision¹⁰ and restore a correct interpretation of the Texas Constitution. The victory is a landmark decision for Texas homeowners who face foreclosure on constitutionally defective home equity loans. See *Wood v. HSBC Bank USA NA*, 505 S.W.3d 542 (Tex. 2016)." is on the record with Mark Hopkins present, stating she agreed with Hon. Smith that the Fifth Circuit opinion was erroneous and should not have been reversed, but affirmed in favor of Plaintiffs.

16 MR. PFEIFFER: That's correct, Your Honor.
17 And I do want to make an important clarification, which
18 is we don't necessarily agree that the Fifth Circuit
19 was correct in reversing this Court's judgment.

**Connie Pfeiffer Statement rejecting Fifth Circuit's Reversal
Jan 27, 2017 Status Conference Transcript, NO. H-11-CV-1658**

¹⁰ Extracted directly from Pfeiffer's Yetter Coleman bio;
<https://2dobermans.com/woof/52>

The Alarming Disclosures and False Statements by Mark Hopkins

As well documented, Mark Hopkins admitted to willfully holding the mortgage loan file from the Plaintiffs and at the same hearing, he falsely claimed Plaintiffs were guilty of perjury by hiding income and assets. This lawyer and his law firm(s) have never been sanctioned for all their vexatious acts which would later include criminally accusing the Plaintiffs of **“wanting judges shot”**, to which the response by the Magistrate Judge was to become angry and then shout at elder and disabled John Burke **“This is way more serious than a counterclaim....Are you a Criminal?”**. Hopkins would later admit this was another heinous lie, yet nothing was done by the court despite the Plaintiffs formal filings seeking protection from Hopkins by the court. As documented, the court(s) have never acted on the elder abuse.

This can only be perceived negatively when combined with the fact Hopkins has posted on social media that they are the selected law firm who provides sample briefs for display on the Court of Appeals for the Fifth Circuit website.

Steve Berman, Hagens Berman Sobol Shapiro LLP Agrees Too

On appeal once more by Deutsche Bank, Hagens represented the Plaintiffs who agreed with Pfeiffer, Hon. Smith and Plaintiffs - the Fifth Circuit erred and that Hon. Smith's **second decision in favor of the Burkes** should stand, in law. After briefing was complete, Hagens were expecting a notice regarding oral argument scheduling, but instead, received a rapid order from the Fifth Circuit reversing and this time rendering. See; *Deutsche Bank Nat'l Tr. Co. v. Burke*, 902 F.3d 548 (5th Cir. 2018).

The final judgment/mandate issued by the Fifth Circuit did not include an amount and hence it is not a final judgment, See; *Residential Mortgage v.*

Kamenik, C., 1747 EDA 2019 (Pa. Super. Ct. 2020) ("We agree with the Kameniks that the summary judgment order, **which did not establish the amount of the judgment**, remained interlocutory until a judgment was entered resolving the outstanding issues.")

Hopkins Repetitive Poisoned Speech is Unavailing

Hopkins laments about the length of litigation but that is poisoned speech. The case should have ended in 2015, however, Deutsche Bank decided to appeal not once, but twice. Hopkins wishes to hold the Plaintiffs as vexatious for vigorously defending judgments in their favor. That is absurd.

In any event, and as court records confirm, lengthy litigation is not unusual in federal or state courts. See; "This unrelenting battle between the Brownings and the Holloways, which began in 1979, is a familiar fray to this court. It has been marched up the hill to us several times before. We march

it back down once again.” *Browning v. Navarro*, 826 F.2d 335, 337 (5th Cir. 1987); *United States ex rel. Rigsby v. State Farm Fire & Cas. Co.*, 794 F.3d 457, 467 (5th Cir. 2015) (“State Farm in this case is all too aware of the nature of the Rigsbys’ allegations. **It has litigated this case for nearly a decade .**”).

That stated, Plaintiffs don’t need to dwell on the constant exaggerations by Hopkins. Texas law is distinct about the timeline which is relevant to Hopkins frivolous motion. What is relevant here is the seven-year window, from 2014-2021.

Burke v Ocwen and Hopkins (2018-2021)

The Plaintiffs explain the reasons for ‘splitting’ the lawsuits which were filed simultaneously below. The full details of these civil actions are provided in the Plaintiffs operative complaint and supporting exhibits.

The 2018 Civil Actions Both End Up Back with Judge Hittner

The Plaintiffs only actions prior to this current lawsuit were the two simultaneously filed civil actions in Harris County, Texas in November 2018, which were removed by Hopkins to this federal court in early December of 2018. The reason was three-fold.

First, it would separate the parties so there would be no confusion. Remember, at no time has there ever been an independent witness presented who worked for either Deutsche Bank, Indymac, Ocwen or PHH. Indeed, Hon. Stephen Wm. Smith advised counsel for Deutsche Bank the affidavits presented during that case by the Bank were not credible. These affidavits were submitted by BDF Law Group's foreclosure staff.

All cases in this court have proceeded without a single independent witness for the Bank/Non-Bank parties and been decided on a no-evidence basis as this court decided the Plaintiffs 2018 cases prematurely, **without**

even minimal discovery, including the mortgage loan file which Hopkins admitted he maliciously withheld from the Plaintiffs in the Deutsche proceedings.

21 | and time. I've had the benefit of reviewing that attorney
22 | file, which wasn't put in evidence before the court
23 | because the allegations were raised by the Buckles. But

**Hopkins Admits Withholding Evidence, Jan 27, 2017 Status Conference
(NO. H-11-CV-1658)**

Second, the Fifth Circuit had only recently issued a new precedential case *Christiana Tr. v. Riddle*, 911 F.3d 799, 802 (5th Cir. 2018) (“as a matter of law, Bank of America cannot be held vicariously liable for the alleged RESPA violations of its loan servicer—regardless of whether the servicer is Bank of America’s agent.”). As such, this required the Plaintiffs to sue, in part, to obtain the mortgage loan file from the mortgage servicer which Mark D. Hopkins admitted to withholding while on remand from the Fifth Circuit.

II. Order to compel

On April 16, 2021, this Court held a teleconference to consider a letter request from Plaintiff for an order to compel the production of servicing notes related to Plaintiff's account with Defendants after April 28, 2016 and a letter from Defendants opposing this relief. After considering the letters and argument of counsel, this Court finds that an order to compel is appropriate.


IT IS, THEREFORE, ORDERED that Defendants shall produce their servicing notes related to Plaintiff's account after April 28, 2016 to Plaintiff within 2 weeks from the date of this order.

IT IS FURTHER ORDERED that Defendants are hereby authorized to redact all attorney-client communications in the servicing notes to be produced under this order.

It is so ORDERED.

APR 26 2021

Date



The Honorable Alfred H. Bennett
United States District Judge

Compare this courts' denial of discovery and Plaintiffs requests for full mortgage loan file with *Halliburton v. PHH*, Case 4:20-cv-00919 Document 19 Filed on 04/26/21 in TXSD Page 7, Order Granting OPPOSED motion related to obtaining servicing notes by Lone Star Legal Aid Lawyers for Halliburton.

Furthermore, as the remand order prohibited Hon. Stephen Wm. Smith from considering lender application fraud, and despite Hopkins

alarming admissions in court and while the case was on remand, the Plaintiffs would have to sue separately at the first opportunity, if necessary. That proved to be the case and res judicata does not apply. See; *Welsh v. Fort Bend ISD*, No. 16-20538 (June 22, 2017).

Third, the Plaintiffs separated the civil actions, anticipating two separate judges and courts to decide the merits of the Plaintiffs cases in Texas state court. That is exactly what happened. The cases were randomly assigned to two separate judges in Harris County. However, that would not last. Instead, on snap removal and after intentionally ignoring the Plaintiffs emails to waive service on the Friday morning, by Monday, Hopkins had removed both cases to federal court in Houston. And remarkably, unlike the State court, both cases would be reassigned to Senior Judge David Hittner's chambers. This raised monumental concerns.

A Lengthy Delay By the Court of Appeals for the Fifth Circuit

The record shows the cases were unlawfully disposed of without due process in law and before discovery¹¹ by this court as outlined in the Fifth Circuit appeal briefs and petition(s). The first appeal (*Burke v. Ocwen*) was appealed on 22 April 2019 and remained without an opinion for one year, 11 months and 9 days on appeal, a decision made solely by the Court of

¹¹ Hopkins submitted premature motions to dismiss in both 2018 cases despite this court's continued warnings, see; *Vu v. Bank of Am., N.A.*, CIVIL ACTION No. H-14-3397, at *13 (S.D. Tex. Apr. 9, 2015) ("Over the last few years a large number of mortgage foreclosure cases have been filed in this district. Many dispositive motions are filed in such cases, and the court endeavors to rule promptly on those motions. In this case both defendants chose to file motions to dismiss, which have proven premature. Had Defendants waited, **some discovery** might have shown that Plaintiff's claims lacked merit, and the court could have ruled on fully briefed motions for summary judgment supported by evidence. ").

In the Plaintiffs cases, they would be denied **any discovery**, for example, obtaining a copy of the full mortgage loan file which Mark D. Hopkins admitted to withholding from the Plaintiffs – and which would unequivocally prove lender application fraud.

Appeals for the Fifth Circuit. The second appeal (*Burke v. Hopkins*) was appealed on 17 April 2020 and remained without an opinion for 11 months and 14 days on appeal.

The Chief Judge and Her Hand-Picked Panel

Eventually, the Appeal was decided after the Chief Judge disbanded the two appeal panels, after disposing of the Plaintiffs' judicial complaint and where she had to review the merits of both the percolating appeals. What happened next was extraordinary. The Chief Judge hand-selected herself and two Judges to decide the now consolidated appeals for both *Burke v. Ocwen* and *Burke v. Hopkins*, including one who unethically failed to recuse in the 2018 appeal and while holding stock in Deutsche Bank. Judge W. Eugene Davis would appear once again in 2021 at the behest of Chief Judge Priscilla R. Owen. The new, hand-picked panel affirmed the lower court. See; *Burke v. Ocwen Loan Servicing, L.L.C.*, No. 19-20267 (5th Cir. Mar. 30, 2021).

The Current Lawsuit Relies Upon Post Judgment Actions

Key timeline: The Plaintiffs timely filed a petition for rehearing, the details of which are provided at great length in the operative complaint (Doc. 12) and do not require repeating here.

The conclusive effect - the acts by the judiciary and the clerks at the Fifth Circuit **after** the unpublished opinion was issued at the end of March 2021, resulted in this civil action. Plaintiffs are entitled to raise a new civil action when fraud and a void judgment is the result of damaging post-judgment actions beyond the Plaintiffs control.

Hopkins attempts to reject the Plaintiffs legal rights to sue when the judicial machinery has caused injury and impersonated the Plaintiffs to do so is without legal merit.

See operative complaint citations; *Wilson v. Johns-Manville Sales Corp.*, 873 F.2d 869, 872 (5th Cir. 1989); “ *Cadle Co. v. Moore (In re Moore)*, 739 F.3d

724, 733 n.15 (5th Cir. 2014); *Gleason v. Jandrucko*, 860 F.2d 556, 558 (2nd Cir. 1988); *Chewning v. Ford Motor Co.*, 35 F. Supp. 2d 487, 491 (D.S.C. 1998); *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1337-38 (5th Cir. 1978).

In conclusion, any delay which materially extended the length of the litigation - as Hopkins keeps complaining about the timelines - is not attributable to the Plaintiffs, but rather the judiciary itself, and as such granting Hopkins frivolous motion could only be viewed as retaliation based on the true facts provided herein.

THE TIMELINE ARGUMENT FAILS AND SO SHOULD DEFENDANTS MOTION

After reviewing the 25 points raised by Hopkins, these false and repetitive narratives provided by Hopkins do not require an in-depth response. It's all smoke, mirrors and stupefying exaggerations based on untruths and baseless arguments.

The Burkes Defeated Deutsche Bank Twice

The core of the issues raised is whether it is unreasonable to stop a wrongful foreclosure for your 'protected' Texas homestead when Plaintiffs defeated the bank not once, but twice in this court in March 2015 and again in December 2017 and where titans from the legal profession disagree with the Fifth Circuit.

The answer: No, it is not.

Hopkins Appealed Twice, That's Vexatious Litigation

Hopkins appealed both favorable judgments the Plaintiffs were awarded in 2015 and again in 2017, extending the litigation by years. Yet, the first opportunity the Plaintiffs are able to contest a controversial judgment, because of new facts discovered *e.g.*, Mark Hopkins withholding evidence, the mortgage loan file and the change in precedential laws by the

Fifth Circuit (*Christiana Tr. v. Riddle*, 911 F.3d 799, 802 (5th Cir. 2018)), that somehow becomes vexatious and duplicative behavior?

That's absurd.

You Can File a New Lawsuit for Judicial Fraud

Hopkins attacks the Plaintiffs for filing this current lawsuit when the law is very clear, namely, fraud on/by the court is not voidable but void. This, combined with the fact that the court did not dispose of the motion to stay correctly, also provides further proof the Plaintiffs brought this civil action in good faith.

It is a meritorious civil action.

This Civil Action is not Barred by Res Judicata or Duplication

The Plaintiffs wish to restate what Hopkins refuses to acknowledge. Res judicata or re-litigation is not applicable and there is nothing 'duplicative' either. It is a void judgment and as this court will note, it was

clearly defined a 'question of law' in the complaint. As such, the Plaintiffs recognized the facts as described in the complaint with relevant case citations and thus waived a jury trial. The operative complaint should be reviewed as part of this response, including the facts, exhibits and cases cited therein.

In short form, it is a case about a law clerk impersonating the Plaintiffs to their injury. The clerks' actions and subsequent events at the Fifth Circuit, as detailed in the operative complaint, were irrefutably illegal:-

(i) Is the Fifth Circuit clerk in 'privity' with the Burkes?

No.

(ii) Have the Plaintiffs sued the Fifth Circuit Clerk(s) as stated in the complaint before?

No.

(iii) Are the illegal actions of the Clerk(s), as condoned by the Fifth Circuit, embarrassing to the judiciary and the federal court system?

(a) On June 29, 2021, Clerk Rebecca L. Leto sent a letter and made a court docket entry, which has been 'backdated' by the Court to April 13, 2021.

(b) On July 9, 2021, Clerk Christina Gardner called John Burke re Motion to Clarify (8 July) and later that day entered an "Opposed Motion for Reconsideration" herself, (Exhibit D) which is incontestably void. Note: Gardner's unlawful entry on 9 July is 'backdated' to 8 July, the date of the Burkes Motion to Clarify. Filing this 'textual (docket entry only) Motion for the Burkes is not only bizarre, but also corruptly unlawful.

(c) The court did not correctly dispose of the pending motions, namely the Plaintiffs never filed a motion to stay for the reasons denied.

Yes.

- (iv) Does that allow for retaliation by the court or an officer of the court by denying access to the courts?

No.

- (v) Does it appear that retaliation is the purpose driving this motion because the Plaintiffs have previously uncovered a troubling relationship between counsel for Defendants and the Court of Appeals for the Fifth Circuit?

Yes.

In conclusion, there is no sound legal argument, nor could there be on the facts presented, why this court should or could allow this case to be mislabeled by Hopkins. The 're-litigating' or 'qualifies as res judicata' or similar arguments by Hopkins are false and without legal merit. This motion is frivolous and brought in bad faith and with the purpose of harassment. Clearly, the law sides with the Plaintiffs. The case should proceed.

There is No Res Judicata Arguments in the Motion

Furthermore, Hopkins states **res judicata** 'will be addressed by Defendants in separate motions (p.3., No. 5). One cannot claim res judicata in such a serious motion without properly citing the reasoning or referring to the specific 'separate motions' to which they refer. That leaves Plaintiffs without the opportunity to respond accurately to the false allegation that somehow 'res judicata' applies in this, the only "live and qualifying civil action commenced as the plaintiffs in any state or federal court this year. See; TEX. CIV. PRAC. & REM. CODE § 11.054. The Plaintiffs object to form and wish to reserve their rights accordingly. Hopkins argument lacks the necessary detail; it is obscure and without legal merit.

In short form, there is absolutely no legal grounds for a pre-filing injunction.¹²

Hopkins Case Citations Can Be Disregarded

The cases Hopkins cite are inapposite. For example, several references are made to *Carroll v. Abide (In re Carroll)*, 850 F.3d 811 (5th Cir. 2017). This is a bankruptcy case where, for example, the bankruptcy court discussed the Carroll Daughters' conduct in the Movables Adversary, in which the district court had to hold the Carroll Daughters in contempt and order them to make Abide whole as to all costs involved in filing her motions to compel.

The only bad faith actions in the prior case(s) as documented on the record includes (but is not exhaustive) Mark D. Hopkins scandalous and

¹² See Denying vexatious litigant/pre-filing injunction; *Crear v. JPMorgan Chase Bank*, No. 3:19-cv-2255-M-BT, at *18 (N.D. Tex. Sep. 3, 2020) ("This is Plaintiff's sixth lawsuit challenging foreclosure proceedings related to the Property.")

admitted false claims that 'the Burkes wanted judges shot' in an attempt to get the Magistrate Judge to react, which he did, asking John Burke "Are You a Criminal?"; admittedly withholding evidence, namely the mortgage loan file; maliciously inferred, without any evidence (again), that the Burkes were withholding assets and income; constant derogatory remarks in court filings; and consistently violating the conference rulings in the last appeal at the Fifth Circuit. This court has never held the Burkes in contempt, sanctioned or even warned them - nor could they, unlike the reprehensible conduct of Hopkins. Hence, *In re Carroll* is completely inappropriate.

Next, Hopkins upgrades when citing *Baum v. Blue Moon Ventures*, 513 F.3d 181 (5th Cir. 2008); where the district court sanctioned both Brian and Sheldon Baum to ten days in jail and ordered them to pay \$100,000 in attorney's fees to the defendants.... However, as with *In re Carroll*, Hopkins cite is completely inapposite and inappropriate. Unquestionably, that

behavior is more in keeping with Mark Daniel Hopkins of Hopkins Law, PLLC.

Hopkins Judicial Complaints Review Can Be Disregarded

Recusals and Complaints against a Federal Judge are currently under the public spotlight, and it has been proven and admitted that federal judges have not been following the rules in both recusals and complaints. That stated, Complaints are dealt with separately by the Judiciary and should be disregarded.

Hopkins Interventions Data Can Be Disregarded

Motions to Intervene can be disregarded. They are not applicable when considering the standards for applying the label of vexatious litigant as you are not a 'party' or a 'plaintiff'.

Hopkins Distractions: Libelous False Claims

Re: Hopkins No.'s 7, 8 and 9. The Plaintiffs do not own or operate the website 'lawsintexas.com' nor the social media twitter account lawsintexasusa. All allegations contained in Hopkins motion in this regard are denied. They are made in bad faith and is another example of elder abuse and harassment. It's another scandalous scheme by Hopkins to distract and hence should be discarded as derisive hyperbole.

The Preposterous and Erroneous SCOTUS Claim

Re: Hopkins No. 6: The Plaintiffs did not '**miss a deadline**' to file a Petition for Writ of Certiorari at the US Supreme Court' as Hopkins absurdly suggests. The mandate issued 4 August, 2021 and the Plaintiffs case was efiled on Monday 9 August, 2021 and docketed on 10 August, 2021 by this court. If the Burkes had elected to file such a petition, they have 90 days to do so per Rule 13. Instead, they chose to file this civil action because of the

fraudulent impersonation of the Burkes by an officer of the court and in accordance with the law.

CONCLUSION

The Plaintiffs civil actions are brought in good faith and meritorious.

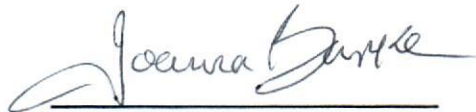
Fifth Circuit Judge Jennifer Walker Elrod provided written testimony¹³ to Congress only yesterday, 26 October, 2021:

“The fair and impartial adjudication of cases, in a transparent environment, is a fundamental duty of the federal Judiciary. An independent federal Judiciary is essential to the rule of law in our nation... I assure you the federal Judiciary takes these obligations seriously.”

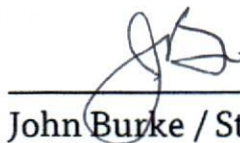
¹³ See; “Judiciary Takes Action to Ensure High Ethical Standards and Transparency” - <https://2dobermans.com/woof/53>

If this is a new dawn for the Third Branch, as Judge Walker pledges, and based on the response provided herein, the Defendants Motion which has been presented in bad faith for the sole purpose of further harassment against elder, law-abiding Texas citizens should be DENIED and the case allowed to proceed without further unnecessary distraction.

RESPECTFULLY submitted this 27th day of October, 2021.

A handwritten signature in cursive script, appearing to read "Joanna Burke", written over a horizontal line.

Joanna Burke / State of Texas
Pro Se

A handwritten signature in cursive script, appearing to read "John Burke", written over a horizontal line.

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 **October 27, 2021**, a true and correct copy of the foregoing Motion has been posted **by**

USPS Priority Mail to:

Clerk of Court
P. O. Box 61010
Houston, TX 77208

And:


USPS Priority Mail to the opposing parties listed:-

Mr. Mark Hopkins;
Mrs. Shelley Hopkins,
Attorneys/Defendants
Hopkins Law PLLC
3 Lakeway Centre Ct.,

Suite 110, Austin,
Texas 78734

A handwritten signature in cursive script that reads "Joanna Burke".

Joanna Burke / State of Texas
Pro Se

A handwritten signature in cursive script that reads "John Burke".

John Burke / State of Texas
Pro Se

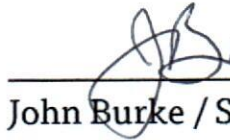
46 Kingwood Greens Dr
Kingwood, Texas 77339
Phone Number: (281) 812-9591
Fax: (866) 705-0576
Email: kajongwe@gmail.com

CERTIFICATE OF COMPLIANCE

The undersigned certify that this reply motion complies with the type-volume limitation of Rule 27(a)(2)(B) because this motion contains 5,148 words according to Microsoft Word's word count, excluding the parts of the motion exempted.



Joanna Burke / State of Texas
Pro Se



John Burke / State of Texas
Pro Se

46 Kingwood Greens Dr
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Fax: (866) 705-0576
Email: kajongwe@gmail.com

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

| | | |
|----------------------------|---|-------------------------------|
| John Burke, et al. |) | Civil Action No. 4:21-cv-2591 |
| |) | |
| vs. |) | |
| |) | |
| Ocwen Loan Servicing, LLC, |) | |
| et al. |) | |
| |) | |
| Defendants. |) | |
| |) | |
| |) | |

ORDER

Pending before the Court is DEFENDANTS motion to Declare Plaintiffs as Vexatious Litigants (Dkt. No. 17). After reviewing the Motion, the Response, the record and the applicable law, the Court is of the opinion that it should be DENIED.

It is SO ORDERED.

Signed this _____ of _____, 2021.

ALFRED H. BENNETT
UNITED STATES DISTRICT JUDGE

Civil Action No. 4:21-CV-2591

| | | |
|----------------------------------|---|-------------------------------|
| Joanna Burke and John Burke |) | PLAINTIFFS' DISCOVERY/CASE |
| |) | MANAGEMENT PLAN UNDER RULE |
| Plaintiffs, |) | 26(F), FEDERAL RULES OF CIVIL |
| |) | PROCEDURE |
| vs. |) | |
| |) | |
| PHH Mortgage Corporation, |) | |
| Successor by Merger to Ocwen |) | |
| Loan Servicing, LLC, Mark Daniel |) | |
| Hopkins, Shelley Hopkins and |) | |
| Hopkins Law, PLLC. |) | |
| | | |
| Defendants. | | |

-
1. State where and when the meeting of the parties required by Rule 26(f) was held and identify the counsel who attended for each party.

The Plaintiffs sent their proposed case management plan to Defendant's counsel, Hopkins Law, PLLC ("Hopkins"), on September 21, 2021 via Hopkins preferred method of communication, email, for review and comment and followed

up on October 6 and third and final reminder on October 18, 2021. No response has been received.

2. List the cases related to this one that are pending in any state or federal court with the casenumber and court.

There are no pending cases in state or federal court.

3. Specify the allegation of federal jurisdiction.

All parties agree there is federal jurisdiction to hear this case.

4. Name the parties who disagree and the reasons.

Not applicable.

5. List anticipated additional parties that should be included, when they can be added, and bywhom they are wanted.

Plaintiffs are not adding any parties to the lawsuit. They have amended the case style, based on the Defendants responses as per the docket on Sept. 1, 2021.

6. List anticipated interventions.

None.

7. Describe class-action issues.

Not applicable.

8. State whether each party represents that it has made the initial disclosures required by Rule 26(a). If not, describe the arrangements that have been made to complete the disclosures.

The parties have not exchanged initial disclosures.

9. Describe the proposed agreed discovery plan, including:

Plaintiffs requested Defendants initial response in order to answer 9 below but no response was received. Recently, the Defendants have moved for a Motion to Declare Plaintiffs as Vexatious Litigants (Oct. 18) and followed that up with a Motion for Judgment on the Pleadings (Oct. 26). One can only assume, Defendants pray the Plaintiffs case will be dismissed before it starts.

- A. Responses to all the matters raised in Rule 26(f).
None from Defendants.
- B. When and to whom the plaintiff anticipates it may send interrogatories.
See 21. Date to be determined.
- C. When and to whom the defendant anticipates it may send interrogatories.
- D. Of whom and by when the plaintiff anticipates taking oral depositions.
Who, where and when to be determined.

- E. Of whom and by when the defendant anticipates taking oral depositions.
- F. When the plaintiff (or the party with the burden of proof on an issue) will be able to designate experts and provide the reports required by Rule 26(a)(2)(B) and when the opposing party will be able to designate responsive experts and provide their reports.

To be determined due to pending motions and non-responsive Defendants.

- G. List expert depositions the plaintiff (or the party with the burden of proof on an issue) anticipates taking and their anticipated completion date. *See* Rule 26(a)(2)(B) (expert report).
- See F.**
- H. List expert depositions the opposing party anticipates taking and their anticipated completion date. *See* Rule 26(a)(2)(B) (expert report).
10. If the parties are not agreed on a part of the discovery plan, describe the separate views and proposals of each party.

Plaintiffs request Defendants initial response in order to answer 10.

11. Specify the discovery beyond initial disclosures that has been

undertaken to date.

Plaintiffs request Defendants input in order to answer 11.

12. State the date the planned discovery can reasonably be completed.

Plaintiffs request Defendants input to answer 12.

13. Describe the possibilities for a prompt settlement or resolution of the case that were discussed in your Rule 26(f) meeting.

Defendants and counsel, as officers of the court, admit this is clearly a void judgment based on the unlawful actions of Fifth Circuit Clerk Christina A. Gardner entering a motion by impersonating the Plaintiffs, in defiance of the laws and rules.

14. Describe what each party has done or agreed to do to bring about a prompt resolution.

Plaintiffs have timely submitted this proposed Case Management Plan at the earliest opportunity and requested Denial of Defendants 'vexatious litigant' Motion. The Court can anticipate a request to Deny Defendants Motion for Judgment on the Pleadings as well.

15. From the attorneys' discussion with the client, state the alternative dispute resolution techniques that are reasonably suitable and state when such a technique may be effectively used in this case.

ADR would not assist in this lawsuit.

16. Magistrate judges may now hear jury and non-jury trials. Indicate the parties' joint position on a trial before a magistrate judge.

The Plaintiffs do not object to a trial before a Magistrate Judge.

17. State whether a jury demand has been made and if it was made on time.

A jury trial was not requested as this is a question of law, easily disposed as a void judgment, based on the actions of the Clerk at the Fifth Circuit.

18. Specify the number of hours it will take to present the evidence in this case.

To be determined after response from Defendants and/or ruling on pending motions.

19. List pending motions that could be ruled on at the initial pretrial and scheduling conference.

Plaintiffs Emergency Motion and relief (Doc. 5), entered August 31, 2021, Defendants Motion to Declare Plaintiffs as Vexatious Litigants (Doc. 17) and Reply Motion by Plaintiffs to request Denial of said Motion filed by Defendants. Same in relation to Motion for Judgement on the Pleadings (Doc. 18).

20. List other motions pending.

None.

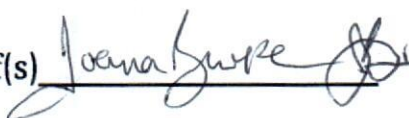
21. Indicate other matters peculiar to this case, including discovery, that deserve the special attention of the court at the conference.

Most likely the Plaintiffs planned deposition of the Clerks and final 3-panel of Fifth Circuit Judges as detailed in the complaint.

22. List the names, bar numbers, addresses and telephone numbers of all counsel.

Defendants to complete this section as Plaintiffs are Pro Se.

Pro se for Plaintiff(s)



Date 27 Oct., 2021

JOHN BURKE

JOANNA BURKE

Counsel for Defendant(s)_____ Date_____
