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

Date: November 13, 2024

Burke v. PHH Mortgage Corporation (4:24-cv-00897)
District Court, S.D. Texas

Dear Sir or Madam,

JOANNA BURKE'S FILINGS IN THIS CASE

Please find enclosed the following documents:-

1. MOTION FOR LEAVE TO FILE VERIFIED SURREPLY TO PHH MORTGAGE CORPORATION'S MOTION TO DECLARE PLAINTIFF AS A VEXATIOUS LITIGANT.
2. VERIFIED SURREPLY TO PHH MORTGAGE CORPORATION'S MOTION TO DECLARE PLAINTIFF AS A VEXATIOUS LITIGANT.
3. PROPOSED ORDER.

If you have any questions, please contact me at the information below.

Thank you.

Sincerely,

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

Joanna Burke Plaintiff vs. Deutsche Bank National Trust Company, PHH Mortgage Corporation, AVT Title Services, LLC, Mackie Wolf Zientz & Mann, PC, Judge Tami Craft aka Judge Tamika Craft-Demming, Judge Elaine Palmer, Sashagaye Prince, Mark D Hopkins, Shelley L Hopkins, Hopkins Law, PLLC, John Doe, and/or Jane Doe Defendants	)	**CIVIL ACTION No. 4:24-cv-00897**

MOTION FOR LEAVE TO FILE VERIFIED SURREPLY TO PHH MORTGAGE CORPORATION'S MOTION TO DECLARE PLAINTIFF AS A VEXATIOUS LITIGANT

TO THE HONORABLE JUDGE, AND ALL INTERESTED PARTIES:

Plaintiff, appearing pro se, respectfully submits this Motion for Leave to File Verified Surreply to PHH Mortgage Corporation's Motion to Declare Plaintiff as a Vexatious Litigant. The Plaintiff asserts that this surreply is necessary to address critical legal issues raised by Defendants' motion, and to further clarify that:

(i) This Court Lacks Jurisdiction Over the Present Dispute

The matters in question were not conclusively resolved by any prior federal judgment;

(ii) This Court is Prohibited from Interfering with State Court Proceedings

Under the Anti-Injunction Act (28 U.S.C. § 2283) federal intervention is restricted unless a federal judgment explicitly bars state court jurisdiction;

(iii) Defendants Improperly Invokes the All Writs Act (28 U.S.C. § 1651)

This statute is inapplicable here as the Plaintiff has not engaged in any conduct similar to the criminal and fraudulent actions of the *Baum* family or *Babineaux*, nor has the Plaintiff shown a pattern of vexatious litigation that would justify such extreme relief, and;

(iv) Defendants' Improper Invocation of Removal Jurisdiction

(a) Bankruptcy Jurisdiction

District Courts, such as this Court, have original and exclusive jurisdiction over cases under Title 11. See 28 U.S.C. § 1334. Removal in this case was improper, particularly given that the Plaintiff was under bankruptcy protection at the time of the unlawful removal by Defendants. This argument is further briefed separately in Plaintiff's Motion to Dismiss for Lack of Jurisdiction.

(b) Federal Question Jurisdiction

Removal based on 28 U.S.C. § 1331 is also improper. As discussed herein, Plaintiff's claims do not raise a valid federal question, and thus cannot support removal under federal question jurisdiction.

(c) Diversity Jurisdiction

Removal based on diversity jurisdiction, pursuant to 28 U.S.C. § 1332(a)(1), was likewise improper, as there is no complete diversity of citizenship between the parties, and therefore no proper basis for federal jurisdiction under 28 U.S.C. § 1332.

(d) Improper Joinder of In-State Defendants

The Defendants' argument regarding the improper joinder of in-state defendants is

baseless. The state law claims against these defendants are valid and properly pled, however, this court erroneously disposed of these defendants for the reasons Plaintiff has argued in prior or related pleadings.

This motion provides sufficient legal grounds to grant the motion, dismiss the action, and return the case to the state court. Should the Magistrate Judge disagree, the surreply directly addresses the legally deficient and poisoned response filed by the Defendants and requests that the Court either strike or deny their frivolous motion.

FEDERAL COURT INTERVENTION IS PROHIBITED

I. The Anti-Injunction Act and Federal Intervention

The Anti-Injunction Act restricts federal courts from intervening in state court proceedings, except where a prior federal judgment clearly prohibits state courts from addressing the issue. This principle, as established in *Smith v. Bayer Corp*. and *Atlantic Coast Line*, dictates that federal intervention is only permissible if the federal court's prior judgment has definitively resolved the matter at hand—something that did not happen in this case.

II. Rivet v. Regions Bank and the Scope of Federal Court Intervention

Reversing the Fifth Circuit, in *Rivet v. Regions Bank,* 522 U.S. 470 (1998), the Supreme Court held that federal courts cannot intervene in state court proceedings simply because a federal defense or issue is raised. Federal intervention is only appropriate when a prior federal judgment has definitively resolved the issues at hand. In this case, no such judgment exists, and therefore, this Court lacks jurisdiction to interfere with state court proceedings.

III. The 2018 Judgment and New Issues Raised by the Plaintiff

The 2018 federal court judgment allowed the foreclosure to proceed but did not resolve

critical issues that the Plaintiff has raised, specifically the validity of the court order and whether the foreclosure is time-barred. The Plaintiff argues that DBNTCO failed to initiate foreclosure within the required four-year period after the 2018 order, which was itself deficient. These issues—whether the 2018 order is void and whether the statute of limitations has expired—were not addressed in the earlier ruling. Therefore, they are open for the state court to decide, and the federal court cannot preempt this decision unless it clearly bars the state court from acting.

IV. The Statute of Limitations and State Law Issues

The Plaintiff's statute of limitations defense is rooted in state law and was not part of the 2018 ruling. As the Supreme Court stated in See; *Smith v. Bayer Corp.*, 564 U.S. 299, 302 (2011), federal courts should not interfere unless the federal judgment explicitly precludes the state court from addressing a new legal issue. Since the statute of limitations was never addressed by the federal court, the state court retains full authority to resolve this matter. Similarly, *Atlantic C. L. R. Co. v. Engineers,* 398 U.S. 281, 296-97 (1970) underscores that federal courts should only intervene in state matters when a prior federal decision has unmistakably preempted the state court's jurisdiction.

V. The Relitigation Exception Does Not Apply

The relitigation exception to the Anti-Injunction Act only applies when a federal ruling explicitly bars the state court from hearing a case. In this case, because the 2018 judgment did not resolve the timeliness of the foreclosure or the validity of the order, these issues are not precluded and are squarely within the state court's jurisdiction. The federal court must respect the state court's authority to address matters of state law that were not definitively settled by a prior federal judgment. See; *Smith v. Bayer Corp.*, 564 U.S. 299, 302 (2011).

VI. Federal Court's Role and State Court Jurisdiction

Since the key issues—statute of limitations and validity of the 2018 order—were not resolved by the 2018 federal judgment, the state court must be allowed to resolve them without interference. If the state court makes an error, the appropriate recourse would be through state appellate review, not federal intervention. The federal court has no role in preventing the state court from deciding state law issues that were not conclusively addressed in federal court.

VII. Conclusion

The Anti-Injunction Act prohibits federal court intervention because the issues raised by the Plaintiff—the statute of limitations and the validity of the 2018 federal order—were not definitively resolved by the prior federal judgment. As *Smith v. Bayer* and *Atlantic Coast Line* make clear, federal courts cannot intervene unless a federal judgment has explicitly barred state court jurisdiction. Since these issues were not decided by the 2018 ruling, they are properly for the state court to resolve. The federal court has no basis to enjoin state court proceedings, and the Plaintiff's case should be allowed to proceed in state court.

THE COURT LACKS AUTHORITY TO ACT

I. Jurisdictional Arguments: Defendants' Overreach

Plaintiff begins by addressing certain preliminary matters, particularly Defendants' continued assertion that this District Court has jurisdiction over the present dispute. This argument is expressly rejected by Plaintiff, as set forth herein, and in related motions, including the motion for summary judgment surreply. Simply put, Plaintiff denies that jurisdiction is proper in this case and reiterates that the doctrines of res judicata and claim preclusion do not apply to the present proceedings.

II. Res Judicata Is Inapplicable

Defendants' persistent reliance on res judicata to bar Plaintiff's claims is also without merit. The issues in this case—namely, the validity of a post-judgment foreclosure sale and the statute of limitations on such a sale—were not litigated in prior actions and are not precluded by any prior litigation. Defendants' invocation of res judicata is directly contradicted by their own cited case law, *Maluski v. Rushmore Loan Mgmt. Servs., LLC*, No. 14-17-00233-CV (Tex. App. Oct. 4, 2018), which explicitly rejected the application of res judicata to claims concerning the statute of limitations on foreclosure when such claims were not addressed in prior cases. Moreover, the judgment upon which Defendants rely for their res judicata argument is void, further undermining their claim that Plaintiff's current suit is barred.

III. Smith v. Bayer Corp. and Federal Court Jurisdiction

The issues raised in this case are well-supported by the U.S. Supreme Court's opinion in *Smith v. Bayer Corp.*, 564 U.S. 299 (2011), which recognizes that federal courts must respect state courts' jurisdiction. The Court emphasized that "the statute [the Anti-Injunction Act] is a necessary concomitant of the Framers' decision to authorize, and Congress' decision to implement, a dual system of federal and state courts." Federal intervention is only appropriate when there is a clear and compelling reason, which is not present in this case. As Justice Kagan noted in *Smith v. Bayer*, "The Act's core message is one of respect for state courts. The Act broadly commands that those tribunals 'shall remain free from interference by federal courts.'"

IV. The All Writs Act Cannot Be Invoked to Interfere with State Proceedings

Defendants incorrectly argue that Plaintiff is mistaken in asserting that Section 11.054 of the Texas Civil Practice and Remedies Code provides the standard for evaluating vexatious

litigation. Defendants' motion does not seek relief under Tex. Civ. Prac. & Rem. Code § 11.054, but instead, relies on the All Writs Act (28 U.S.C. § 1651) and the Court's inherent authority to enjoin litigants allegedly abusing the court system.

However, as demonstrated herein, the federal court cannot invoke the All Writs Act to interfere in state court matters unless there is a clear, compelling justification, which does not exist in this case. Defendants' reliance on the All Writs Act is improper and must be rejected. Further, Plaintiff has already addressed the misuse of this statute in her surreply.

VI. The Misuse of Babineaux & Baum Family Cases to Justify Federal Intervention

The Defendants' continued reliance on *Babineaux v. Wells Fargo* is not only misplaced but entirely inappropriate for the case at hand. Babineaux involved a context rooted in criminal conduct and fraudulent actions, entirely different from the Plaintiff's legitimate legal proceedings. The circumstances in *Babineaux* do not remotely resemble those present here, where the Plaintiff is merely exercising her rights to challenge the validity of foreclosure proceedings in state court.

Moreover, Defendants have selectively chosen certain legal authorities—such as *Babineaux* and others tied to the scandalous *Baum* family—to bolster their argument. This cherry-picking of cases distorts the application of the All Writs Act and improperly extends its reach beyond the exceptional circumstances in which it is meant to be invoked. *Babineaux* specifically dealt with patterns of criminal conduct and fraudulent legal practices, which have no bearing on the Plaintiff's case, and should not be misapplied to support an unjust pre-filing injunction.

Plaintiff emphasizes that the Babineaux case is inapposite and its reliance by the Defendants is legally unsound. It represents a troubling attempt to generalize extreme measures against pro se litigants based on isolated and wholly unrelated incidents. This type of reasoning, akin to something one might expect from an inexperienced law student attempting to set a "new standard" for litigating against pro se plaintiffs, is both dangerous and inappropriate.

Additionally, as noted by U.S. District Judge Sam Lindsey in *Campbell Harrison & Dagley LLP v. Hill*, No. 3:10-cv-02269, Doc. 662 (N.D. Tex. 2020), federal courts must exercise great caution before invoking the All Writs Act, especially in matters that do not involve broad public interest or institutional reform. Judge Lindsey observed:

> "At some juncture, the exercise of continuing jurisdiction becomes intrusive and implicates important concerns regarding federalism. Continuing jurisdiction has a place and time, and it is best reserved for cases in which prolonged federal oversight is needed, such as those cases necessary to accomplish large-scale institutional reform and desegregation; to protect the fundamental right to vote; to oversee mass torts litigation; and to oversee class actions or consent decrees. Unlike these weighty matters requiring continued federal supervision for the greater public good, this case is an acrimonious, private dispute."

This reasoning directly undermines the Defendants' attempt to invoke federal jurisdiction in the absence of exceptional circumstances. *Campbell Harrison & Dagley LLP v. Hill* illustrates the court's reluctance to invoke the All Writs Act outside the context of such extraordinary cases. In the present matter, the Plaintiff's case involves a private dispute, one that is not of the sort warranting the extreme measures Defendants advocate.

Therefore, the Defendants' misapplication of the All Writs Act and the continued reliance on *Babineaux* and the *Baum* family cases must be rejected. These cases, rooted in fraud and criminality, bear no resemblance to the Plaintiff's legitimate state court actions and should not be used to justify an unjust pre-filing injunction..

VI. The Inappropriateness of Federal Court Interference

Federal courts have historically been reluctant to apply the All Writs Act in the manner Defendants propose, particularly when it comes to interfering with state court proceedings. The decision in *Smith v. Bayer Corp.* provides strong guidance on this matter, emphasizing that "any doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed."

This principle reinforces the idea that federal court intervention should be an exception, not the rule, especially in private disputes where the state court has competent authority. This reasoning is directly supported by *Smith v. Bayer* and *Atlantic Coast Line* in the context of this case, where federal courts should not interfere with the state court's jurisdiction unless there is a compelling reason to do so.

VII. Learned Precedent Against Pre-Filing Injunctions

As stated, in *Campbell Harrison & Dagley LLP v. Hill*, U.S. District Judge Sam Lindsey rejected a motion for broad federal jurisdiction, emphasizing the importance of federalism and the limited role of federal courts in private disputes. As Judge Lindsey noted, the federal courts should only intervene in matters of national importance or institutional reform, not in private disputes that do not implicate the public good. This reasoning is particularly relevant here, where the Plaintiff's case involves an acrimonious, private dispute rather than a matter requiring broad federal oversight.

Learned Judge Lindsey's reasoning directly challenges Defendants' request for a pre-filing injunction under the All Writs Act, further supporting the argument that the federal court cannot override state court processes in this case.

VIII. Procedural Impropriety and Notice Requirements

The Defendants have also failed to comply with procedural requirements for seeking relief under the All Writs Act. Specifically, as held by the Third Circuit in *Brow v. Farrelly*, 994 F.2d 1027, 1038 (3d Cir. 1993), and reiterated in other cases such as *Gagliardi v. McWilliams*, 834 F.2d 81, 83 (3d Cir. 1987), and *In re Oliver*, 682 F.2d 443, 446 (3d Cir. 1982), if the circumstances warrant an injunction, the District Court must give notice to the litigant and allow them an opportunity to oppose the proposed relief. At this point, *Oliver* had filed over 50 cases.

Defendants failed to provide Plaintiff with the required notice before seeking the injunction, making their motion procedurally improper. Had Defendants properly filed a motion under Federal Rule of Civil Procedure 11, the Court might have been able to treat that as sufficient notice. However, in the absence of proper notice, Defendants cannot act as judge in this matter, and Plaintiff's right to due process must be respected.

DECLARATION

Pursuant to Texas Civil Practice and Remedies Code Section 132.001 and "In lieu of a sworn affidavit, a litigant may submit an unsworn declaration as evidence against summary judgment. See 28 U.S.C. §1746.", I hereby provide my unsworn declaration. My name is Joanna Burke, my date of birth is Nov. 25, 1938, my address is 46 Kingwood Greens Dr, Kingwood, Texas, 77339, and I declare under penalty of perjury that all information herein is true and correct.

CONCLUSION

The All Writs Act is a residual source of authority to issue writs not covered by statute. However, when a statute specifically governs the issue at hand, that statute, not the All Writs Act, is controlling. See *Pennsylvania Bureau of Corrections v. U.S. Marshals Service,* 474 U.S. 34, 43 (1985).

Moreover, as the Ninth Circuit has stated, "[t]he mere fact that the actions of a state court might have some effect on the federal proceedings does not justify interference." *Negrete v. Allianz Life Ins. Co. of North America*, 523 F.3d 1091, 1101-1102 (9th Cir. 2008).

In light of the arguments presented in this surreply, including the Anti-Injunction Act and Plaintiff's lack of jurisdiction over this dispute, Plaintiff respectfully requests that this Court:

1. Grant leave to file the attached verified surreply and, if necessary, allow for the excess pages.
2. Deny Defendant's Motion to Declare Plaintiff a Vexatious Litigant and request a pre-filing injunction, as such relief is prohibited under the Anti-Injunction Act and lacks a valid jurisdictional basis.

As detailed above, the federal court is prohibited from interfering in state court proceedings under the Anti-Injunction Act, and the Defendants' attempt to invoke the All Writs Act is without merit, as it does not satisfy the exceptional circumstances required for such intervention.

A proposed order is enclosed for the Court's consideration.

RESPECTFULLY submitted this 13th day of November, 2024.

_____

Joanna Burke, Harris County
State of Texas / Pro Se

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CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 7.1, I attest to conferring by emailing counsel for all the parties in these proceedings on Tuesday, Nov. 10, 2024. At the time of preparing for print and posting on Wednesday, November 13, 2024, no response has been received. It is assumed that Defendants are opposed.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on November 13, 2024 as stated below on the following:

VIA U.S. Mail:

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

VIA e-Mail:

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PHH MORTGAGE CORPORATION

_____

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

Joanna Burke Plaintiff vs. Deutsche Bank National Trust Company, PHH Mortgage Corporation, AVT Title Services, LLC, Mackie Wolf Zientz & Mann, PC, Judge Tami Craft aka Judge Tamika Craft-Demming, Judge Elaine Palmer, Sashagaye Prince, Mark D Hopkins, Shelley L Hopkins, Hopkins Law, PLLC, John Doe, and/or Jane Doe Defendants	)	**CIVIL ACTION No. 4:24-cv-00897**

VERIFIED SURREPLY TO PHH MORTGAGE CORPORATION'S MOTION TO DECLARE PLAINTIFF AS A VEXATIOUS LITIGANT

TO THE HONORABLE JUDGE, AND ALL INTERESTED PARTIES:

Plaintiff, appearing pro se, respectfully submits this Verified Surreply to PHH Mortgage Corporation's Motion to Declare Her a Vexatious Litigant. Defendants, in their response, resort to new insults and falsehoods, attempting to distract from the substantive legal arguments raised by Plaintiff in her previous response. Yet, these tactics fail to address the core issues at hand.

Plaintiff categorizes the key points raised by Defendants as follows:

A. The Court's Authority to Act

B. The Appropriateness of a Pre-Suit Injunction Under 28 U.S.C. §1651(a)

In response, Plaintiff relies upon well-established legal precedents that decisively reject

both arguments for the following reasons: -

RESPONSE TO DEFENDANTS' FRIVOLOUS VEXATIOUS LITIGANT MOTION

Defendants, PHH Mortgage Corporation and their counsel Mark and Shelley Hopkins, seek to falsely label Plaintiff as a vexatious litigant and impose a pre-suit injunction under the All Writs Act (28 U.S.C. §1651(a)). They rely on inapposite precedents, including *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 189 (5th Cir. 2008), and the related *Clark v. Mortenson*, 93 F. App'x 643, 654 (5th Cir. 2004) (per curiam), which involve the notorious Baum family, who were sanctioned for engaging in fraudulent practices. In the *Baum* case, the Baums were admonished by the court for wrongfully interfering in legal proceedings, misrepresenting themselves as licensed attorneys, lying to the court, and generally abusing the judicial system. As a result, they were sentenced to ten days in jail and ordered to pay $100,000 in attorney's fees. Additionally, the court issued a permanent pre-filing injunction against the Baums, barring them from filing further cases without court approval.

Despite the Baums' documented pattern of criminal behavior and fraudulent legal practices, Defendants now seek to invoke this case to justify extreme measures against Plaintiff. The irony and hypocrisy of their position is stark, especially considering Defendants' own documented history of fraud, concealment, and ethical violations. Unlike the Baums, Plaintiff Joanna Burke is a law-abiding, retired elderly citizen, engaged in a legitimate legal battle to protect her home and rights, not to manipulate or abuse the judicial system.

DEFENDANTS' TRACK RECORD OF FRAUD AND MISCONDUCT

For example, Mark Hopkins has been directly involved in document fabrication, such as submitting late or altered evidence, and in cases where critical evidence was deliberately withheld—such as in the *Deutsche Bank v. Burke* case. This pattern of misconduct mirrors that

of the discredited Baum family, whose repeated abuses of the legal system resulted in court sanctions and disbarments.

In fact, Hopkins Law, PLLC's role in representing both PHH and Deutsche Bank— that has been fined billions of dollars for fraud and systematic predatory lending and mortgage abuse—raises serious concerns about Mark and Shelley Hopkins credibility. The Defendants have faced billions in fines and penalties, alongside sanctions involving the foreclosure mill BDF (*Thomas v. Prof'l Law Firm & Corp. of Barret, Daffin, Frappier, Turner & Engel L.P.*, CIVIL ACTION No. 4:13-cv-2481, at *4 (S.D. Tex. Aug. 19, 2014)). BDF represented DBNTCO from 2011-2015, where Shelley Hopkins was employed. Since their unannounced arrival in 2015/2016, Defendants' counsel Mark Hopkins (Hopkins & Williams, PLLC) and Shelley Hopkins (of counsel for BDF, now with Hopkins Law, PLLC) have repeatedly violated numerous laws, especially after the Burkes defeated DBNTCO twice, first in a 2015 bench trial before Hon. Stephen Wm. Smith, where the bank failed to present reliable evidence. Additionally, Hopkins and his firm admitted in open court to concealing critical documents and withholding the mortgage loan file from the Burkes'—a serious ethical violation.

HYPOCRISY OF RELYING ON BAUM PRECEDENTS

The Defendants, who have themselves engaged in fraud, document concealment, and ethical violations, now have the audacity to invoke the discredited precedents set by the *Baum* family—an infamous example of legal abuse—while accusing Plaintiff of vexatious litigation. This contradiction is staggering. Defendants are using fraudulent precedents to justify silencing a litigant, when their own history is one of repeated violations of the law and ethical standards.

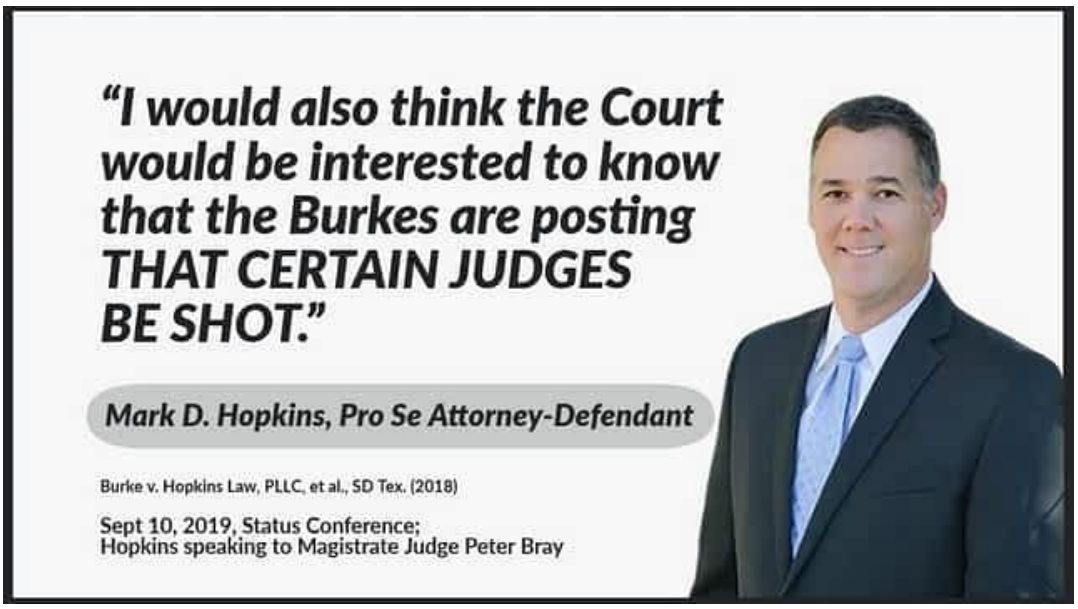
DEFENDANTS' DECEITFUL CLAIMS OF FOUL PLAY

The hypocrisy of Defendants' position is further compounded by their counsel's continuing

bad faith and involvement in fraudulent actions, such as misrepresenting facts and concealing evidence in multiple cases. See; *Payne v. C.I.R*, 224 F.3d 415, 420 (5th Cir. 2000).

For instance, in *Hicks v. Cenlar FSB* (4:20-cv-01661, SDTX, Doc. 25-9, 07/28/21), Shelley Hopkins submitted a doctored affidavit. In the landmark case of *PNC Mortg. v. Howard*, 616 S.W.3d 581, 583 (Tex. 2021), Mark Hopkins' introduction of new evidence was specifically rejected by the court due to its untimely submission.

In Plaintiff's personal experience, she witnessed Mark Hopkins falsely accuse her and her now-deceased husband of wanting "certain judges be shot"—a malicious lie he later tried to retract, claiming it was a mistake. However, it was no mistake. It was a deliberate attempt to damage Plaintiff's unblemished reputation as an upstanding and law-abiding citizen.



See; *Burke v. Hopkins Law, PLLC*, et al., Case No. 4:18-cv-04543, Sep. 10, 2019 Status Conference before Magistrate Judge Peter Bray, who went red in the face and angrily confronted John Burke (deceased) by shouting: "Are You a Criminal?", to which John Burke calmly replied as a former Military Policeman and British Paratrooper who proudly served his country and was

also an upstanding and law-abiding citizen, “No, Your Honor”.

This hypocrisy is further compounded by Defendants' latest malicious reply, in which they falsely accuse Joanna Burke of harboring “hatred” toward DBNTC (her mortgagee), its mortgage servicers, legal counsel for DBNTC and its servicers, as well as members of the judiciary (and their staff) who have ruled against her. Once again, they seek refuge in the judiciary, weaving a web of untruths and lies, fully aware that they are shielded from accountability by the overreaching immunity laws that protect attorneys from prosecution or consequences for their unscrupulous actions. As previously stated, sanctions and a referral to the State Bar are warranted due to the mandatory ethical duties of judges (*Warrilow v. Norrell*, 791 S.W.2d 515, 523 (Tex. App. 1990); *Comm’n for Lawyer Discipline v. Cantu*, 587 S.W.3d 779, 784 (Tex. 2019)).

Despite these documented instances of egregious misconduct, Defendants now attempt to portray themselves as victims of “foul play,” falsely accusing Plaintiff of behaviors they themselves have repeatedly exhibited in their own legal practices. This conduct is both pathetic and unconscionable. Upon examining Defendants' response, it is patently obvious that there is nothing within it worthy of serious consideration. Having failed to secure a private settlement offer from the Plaintiff a year ago, the sanctioned Defendants and their counsel now resort to underhanded tactics, seeking relief and support from the federal court and government agencies to which they are not entitled – the unlawful theft of Plaintiff’s home of over two decades.

In fact, very recently the Texas Supreme Court vehemently rejected Mark Hopkins' and his client PNC’s malicious prosecution in another case involving homeowners, the Howards in *PNC Mortg. v. Howard*, 668 S.W.3d 644 (Tex. 2023). The Howards, like Plaintiff, have fought for well-over a decade for justice, enduring years of litigation abuse and legal battles—including two appearances before the Texas Supreme Court, forced upon them by Mark Hopkins and his

co-conspirators. During 2022's Oral Argument, Justice Blacklock stated:

> "It seems to me that if someone came the court in the year 2022 and said, "Look, we have a contract with the other party and we didn't follow the terms of it but it would be really unfair if you let them out and enforced our contract as it is written so you need to give us some equitable rights to make sure that we're covered", I mean...you couldn't make that argument with a straight face." - Justice Jimmy Blacklock.
>
> Available at Texas Bar CLE website (last visited Nov. 13, 2024): https://www.texasbarcle.com/cle/SCPlayer5.asp?sCaseNo=21-0941

For the same legal reasoning, this court should embrace the integrity of the Texas Supreme Court and repel the illegal advances by the sanctioned and criminally corrupt Defendants in these proceedings who have presented the same facts with a straight face, but "this argument does not even pass the "red face" test." *In re Pilgrim's Pride Corp.,* 439 B.R. 661, 668 n.11 (Bankr. N.D. Tex. 2010) (rejecting statutory construction that was "so patently absurd as to not pass the 'red face' test").

JUDICIAL OVERREACH AND THE THREAT OF PRE-FILING INJUNCTIONS

It is deeply troubling that the court and Defendants are now seeking to impose a pre-filing injunction against Plaintiff—a law abiding 85-year-old disabled widow—who is fighting to protect her home of over two decades and expose the fraudulent lending practices that have been used against her. This is not a matter of frivolous litigation; it is a battle for justice in the face of overwhelming corporate and legal malfeasance, compounded by oppressive elder abuse. It's a relentless assault by Defendants with deep pockets and a gruesome struggle for the medically challenged Plaintiff who's been slowly recovering from extreme heat-stroke.

Notably, DBNTCO and PHH were recently eviscerated by a Texas judge, who found their actions criminal and awarded treble damages in the *Jones* case (*Ocwen Loan Servicing, LLC v. Jones*, No. 13-22-00425-CV, Tex. App., filed Sep. 19, 2019) (MSJ, p.14: EXHIBIT DBJONES-

MSJ), resulting in approximately a $4 million judgment.

The circumstances of that case are no different from Joanna Burke's prolonged and heart-wrenching battle for justice against a predatory lender and their deceitful and abhorrent counsel in federal court—a struggle that has already cost her 14 years of her life, the loss of her beloved husband, retirement dreams, and the destruction of her home which now sits precariously at risk of an unlawful taking.

In each of these 3 example wrongful foreclosure cases involving Defendants or their counsel, the Jones, the Howards and widow Joanna Burke, they have opened each argument in a similar vein as Defendants here:

> "The present lawsuit represents the most recent filing in an extended line of lawsuits, appeals, attempted interventions and frivolous bankruptcies filed by Joanna Burke in her continued effort at stalling the foreclosure of the real property where she has lived for over fourteen years without paying her mortgage."

In the now settled $4 Million Dollar judgment – the *Jones* case (Deutsche Bank and PHH);

> "TO THE HONORABLE JUSTICES OF THE COURT:
>
> Houses aren't free, and neither is money. These are two of the few certainties in life. Yet the Joneses received both—and then some—in the trial court.
>
> Despite the Joneses defaulting for many years on a home equity loan they used to pay off their mortgage, the trial court ultimately rescinded a lawful foreclosure on the home, transferred title of the home back to the Joneses free and clear of any loan obligations, and refused the home equity lender's request for subrogation of the mortgage loan paid off with the proceeds of the home equity loan.
>
> On top of that, the trial court also awarded money damages to the Joneses, essentially forcing Appellants to pay the Joneses to take title to a house for which the Joneses had admittedly failed to pay. This was, by any measure, a remarkable outcome in the trial court.
>
> In the final measure, Appellants have paid for this property ten-times over, while the Joneses, who continue to live at the property, have not made a payment on the home since 2009.
>
> Yet under the trial court's judgment it is the Joneses who now live in the house free-and-clear of any loan obligations, while also being entitled to substantial

damages from Appellants. This world-turned-upside down result is inequitable, unjust, and improper under Texas law. The trial court's judgment should be reversed."

- *Ocwen Loan Servicing, LLC, Homeward Residential, Inc.(f/k/a American Home Mortgage Servicing, Inc.), and Deutsche Bank National Trust Company, as trustee for Ameriquest Mortgage Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2004-R8 v. Consuelo Jones, Gabriela Jones, and MARCC* - 13-22-00425-CV, Brief of Appellants, prepared by Dykema Gossett PLLC, submitted, Sep. 13, 2023, 13th Judicial District, Corpus Christi, Texas.

At oral argument in the 2022 PNC Case against the Howards':

"When you have had people live in a home for over a decade and not paid a dime in taxes or mortgage payments, it's unjust enrichment."

Texas Supreme Court Justice Blacklock responded:

"If the original mortgage holder does not follow the rules, they don't get to foreclose…"

The imposition of a pre-filing injunction would not only strip Plaintiff of her constitutional right to access the courts, but would also have catastrophic consequences, including the unlawful theft of her home. This attempt to silence Plaintiff through legal chicanery, despite the legitimate nature of her claims, is an affront to the justice system and a grave overreach by both the Defendants and the court.

THE "JONES ROMANCE SCANDAL" AND ONGOING JUDICIAL CORRUPTION

The scandal involving Chief Judge David Jones and his improper relationships with former clerk Elizabeth Freeman exposes a deep-seated corruption within the Texas legal community—corruption that, if not for a brave whistleblower, would have remained hidden, allowing Judge Jones and Freeman to divert millions of dollars under extremely questionable circumstances. Chief Judge Jones' resignation, rather than impeachment amid these allegations, is indicative of the long-standing culture of impunity that pervades certain sectors of the judicial system. This

scandal highlights the systemic issues that are too often ignored, with judges such as Jones, and now those involved in the present case, acting with personal bias to maintain control over legal outcomes. In fact, as cited in *Van Deelen v. Jones*, 4:23-CV-03729-AM, at *35-36 (S.D. Tex. Aug. 16, 2024), the court specifically acknowledged the systemic corruption and biases at play:

> "Although the Plaintiff fails to state a valid cause of action, his allegations, if true, show that he suffered injustice in Jones's courtroom. The Court will not punish the Plaintiff for seeking to redress his grievances in a forum in which, for once, the deck is not stacked against him. True, the Plaintiff has a history of filing meritless claims about supposed public corruption. But this time, he was right."

The Plaintiff in this case, like the Plaintiff in *Van Deelen*, has been victimized by a corrupt and biased legal system, which has consistently worked to undermine her legitimate claims and deprive her of her constitutional right to seek redress for fraudulent actions by Defendants.

ELDER ABUSE AND THE UNLAWFUL ACTIONS OF THE FEDERAL COURT

This case has been marred by a series of unlawful rulings and improper judicial actions by Judges like Werlein and Bryan. Specifically:

Judge Werlein's dismissal of motions without proper consideration of the facts or jurisdiction shows a blatant disregard for due process. His actions were not only unfounded but severely undermined the Plaintiff's legal position by retaining jurisdiction this court knowingly does not hold. Plaintiff previously referenced; *Ex parte Eastland*, 811 S.W.2d 571, 572 (Tex. 1991) (exceeding authority); *Sotelo v. Scherr,* 242 S.W.3d 823, 830 (Tex. App. 2007) and *Browning v. Prostok,* 165 S.W.3d 336, 346 (void for lack of jurisdiction); *In re Abbott,* 954 F.3d 772, 782 (5th Cir. 2020) (judicial usurpation). In short, all of his orders are void. *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 343 (1872); a nullity, *Schmidt v. Rodriguez*, CASE NO: 12-07018 (Bankr. S.D. Tex. June 15, 2013).

Magistrate Judge Bryan's initial order on September 18, 2024, described this case as part

of an ongoing series of attempts to thwart foreclosure proceedings, mischaracterizing the Plaintiff's actions as frivolous, despite the legitimate legal challenges she has raised. This mislabels her pursuit of justice, constitutes a deliberate attempt to suppress the truth, and demonstrates clear prejudgment of the issues at hand.

Recently, in further support of Defendants' position, the court granted them an extension of time—an extension that was denied to Plaintiff, not once, but twice. While this may seem like a minor procedural matter, its implications are far from trivial. As a pro se litigant, Plaintiff is already disadvantaged by the lack of access to electronic filing, which typically shortens filing deadlines by several days. Moreover, known delays in mail delivery and the court's processing of documents further compound this disadvantage, creating a situation where Plaintiff is unable to effectively participate in the proceedings. These institutional delays and barriers disproportionately burden Plaintiff, impacting her ability to meet deadlines and hindering her right to due process.

This unequal treatment is not just a procedural inconvenience; it threatens to undermine Plaintiff's fundamental civil rights. Denying pro se litigants' access to timely and equal treatment before the court severely compromises the integrity of the legal process and diminishes the Plaintiff's ability to pursue justice in a meaningful way.

> "Recusal is required when, objectively speaking, "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable...The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias" - *Rippo v. Baker*, 137 S. Ct. 905, 907 (2017).

The court's failure to consider all evidence presented, as well as its hostility towards the Plaintiff, illustrates judicial activism in its most harmful form—a form that actively perpetuates

injustice by targeting Joanna Burke, a law-abiding, elderly, disabled citizen, in violation of her First Amendment rights and related constitutional protections, including due process and equal protection, unreasonable searches and seizures, and unlawful takings.

A CALL FOR JUDICIAL ACCOUNTABILITY

Given the unjust actions of the Defendants and the court's biased handling of this case, it is clear and obvious that Joanna Burke has been the victim of institutional and judicial corruption, resulting in the continued fraudulent actions of the Defendants. The imposition of a pre-suit injunction or any further sanctions against the Plaintiff would represent not only an affront to justice but also an attack on her fundamental rights.

The court has a duty to uphold justice without bias or improper influence. Given the fraudulent practices and judicial misconduct surrounding this case, Plaintiff respectfully requests that the court consider the full scope of these actions. Only by doing so can the court restore its integrity and ensure that justice is truly served. Therefore, the motion to declare Plaintiff vexatious and pre-suit injunction must be denied, as it represents a grave miscarriage of justice.

DECLARATION

Pursuant to Texas Civil Practice and Remedies Code Section 132.001 and "In lieu of a sworn affidavit, a litigant may submit an unsworn declaration as evidence against summary judgment. See 28 U.S.C. §1746.", I hereby provide my unsworn declaration. My name is Joanna Burke, my date of birth is Nov. 25, 1938, my address is 46 Kingwood Greens Dr, Kingwood, Texas, 77339, and I declare under penalty of perjury that all information herein is true and correct.

CONCLUSION

For the reasons outlined above as well as the arguments presented in the motion for leave itself, the Plaintiff respectfully requests that the Court reject Defendants' argument in its entirety

as legally baseless. To the extent this court maintains the opinion it has jurisdiction in these proceedings, this frivolous Motion to Declare Plaintiff a Vexatious Litigant and for a Pre-filing Injunction should be DENIED. A proposed order is attached.

RESPECTFULLY submitted this 13th day of November, 2024.

_____

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on November 13, 2024 as stated below on the following:

VIA U.S. Mail:

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

VIA e-Mail:

Shelley L. Hopkins
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IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

Joanna Burke Plaintiff vs. Deutsche Bank National Trust Company, PHH Mortgage Corporation, AVT Title Services, LLC, Mackie Wolf Zientz & Mann, PC, Judge Tami Craft aka Judge Tamika Craft-Demming, Judge Elaine Palmer, Sashagaye Prince, Mark D Hopkins, Shelley L Hopkins, Hopkins Law, PLLC, John Doe and/or Jane Doe Defendants	)	**CIVIL ACTION No. 4:24-cv-00897** **ORDER**

ORDER

Plaintiff Joanna Burke's MOTION FOR LEAVE TO FILE VERIFIED SURREPLY TO PHH MORTGAGE CORPORATION'S MOTION TO DECLARE PLAINTIFF AS A VEXATIOUS LITIGANT and VERIFIED SURREPLY TO PHH MORTGAGE CORPORATION'S MOTION TO DECLARE PLAINTIFF AS A VEXATIOUS LITIGANT came on for hearing before this Court on _____.

After considering the Motion and all supporting and opposing documents, and having heard oral argument of counsel, and otherwise being duly advised on all matters presented on this cause, IT IS HEREBY ORDERED that PLAINTIFF'S Motion should be GRANTED and the VERIFIED SURREPLY TO PHH MORTGAGE CORPORATION'S MOTION TO DECLARE PLAINTIFF AS A VEXATIOUS LITIGANT be filed on the court docket.

IT IS SO ORDERED

Dated this____ day of_____, 2024

_____

United States District/Magistrate Judge