

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**JOANNA BURKE,**

*Plaintiffs,*

v.

**PHH MORTGAGE  
CORPORATION, et al.,**

*Defendants.*

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**Civil Action No. 4:24-cv-00897**

**PHH MORTGAGE CORPORATION’S SECOND MOTION  
TO DECLARE PLAINTIFF JOANNA BURKE AS A VEXATIOUS LITIGANT**

Defendant PHH Mortgage Corporation (“PHH”) files this Second<sup>1</sup> Motion to Declare Plaintiff Joanna Burke (“Plaintiff” or “Burke”) as a Vexatious Litigant pursuant to 28 U.S.C. §1651(a), and in support thereof, would respectfully show unto the Court as follows:

**I.  
SUMMARY**

1. 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<sup>2</sup> where she has lived for over fourteen years without paying her mortgage. Despite Deutsche Bank National Trust Company, as Trustee of the Residential Asset Securitization Trust 2007-A8, Mortgage Pass-Through Certificates, Series 2007-H Under the Pooling and Servicing Agreement dated June 1, 2007 (“DBNTC”), obtaining a judgment granting foreclosure in 2018 from this Court (the judgment being affirmed by the Fifth

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<sup>1</sup> In accordance with this Court’s Order of June 17, 2024, denying without prejudice PHH’s Motion to Declare Plaintiff as a Vexatious Litigant [Doc. 19], PHH now files this Second Motion simultaneously with its motion for summary judgment.

<sup>2</sup> 46 Kingwood Greens Drive, Kingwood, Texas 77339 (“Property”).

Circuit), Burke has continued her onslaught of frivolous filings with the courts. Burke’s filings are designed to abuse the judicial system by filing anything and everything in ‘any and every’ court that will accept her filings. As stated by the Fifth Circuit Court of Appeals in its ruling against Burke (almost six years ago), “*Given nearly a decade of free living by the Burkes, there is no injustice in allowing that foreclosure to proceed.*” *Deutsche Bank Nat. Trust Co. v. Burke*, 902 F.3d 548, 552 (5th Cir. 2018)(emp. added). Undeterred by the Fifth Circuit judgment, Burke has continued abusing the judicial process, the judiciary and counsel by utilizing every forum possible to contest the impending foreclosure, fabricate new claims and simply harass the bank and all of its attorneys. This abuse of the judicial process and harassment of PHH, DBNTC and all of its counsel must end.

## II. BACKGROUND

2. The underlying facts in this case remain essentially unchanged as previously analyzed by the Fifth Circuit and this Court. *See, Deutsche Bank v. Burke*, 902 F.3d 548, 552 (5th Cir. 2018); *Burke v. Ocwen*, 855 Fed. Appx. 180 (5th Cir. 2021); *Burke v. Ocwen Loan Servicing, LLC*, No. 21-cv-2591, 2022 U.S. Dist. LEXIS 180610 (S.D. Tex. Aug. 29, 2022). On May 21, 2007, Burke executed a \$615,000.00 Texas Home Equity Note (the “Note”), secured by a Texas Home Equity Security Instrument (“Deed of Trust”) encumbering the Property. Despite receiving the benefits of the Note, Burke stopped making payments on the loan in 2010. Since that time, Burke has not paid for taxes or insurance for the Property.

3. Burke has filed **seven lawsuits, four interventions, two bankruptcies and one adversary proceeding**, with the sole goal of remaining in the Property. Burke has abused the judicial system in pursuing her personal vendetta against the mortgagee, mortgage servicers, counsel and any judge she believes has committed alleged elder abuse or other imaginary offense

against her. Every single lawsuit has been resolved against Burke. Burke's baseless, repetitive and frivolous actions are summarized as follows.

4. **First Lawsuit.** In response to the expedited foreclosure application being filed, Burke filed suit in Harris County District Court on December 6, 2010 alleging breach of contract, violation of Texas Deceptive Trade Practices Act ("DTPA"), and violation of Real Estate Settlement Procedures Act ("RESPA"). *Burke v. Indymac Mortgage Services, et al.*, Cause No. 2010-79352. After Defendants removal to the Southern District of Texas (Case No. 4:11-cv-00341), the suit was dismissed without prejudice.

5. **Second Lawsuit – Foreclosure Lawsuit.** On April 29, 2011, the beneficiary of the deed of trust pursuant to assignment, DBNTC, filed suit seeking foreclosure of the deed of trust in this Court. *Deutsche Bank Nat. Trust Co. v. Burke*, Case No. 4:11-cv-01658. In response, Burke brought counterclaims asserting claims for (1) fraud, (2) breach of contract, and (3) contesting the validity of the deed of trust. After extended litigation, the Fifth Circuit rendered judgment in favor of DBNTC. *Deutsche Bank Nat. Trust Co. v. Burke*, 902 F.3d 548, 552 (5th Cir. 2018). The litigation involved two appeals to the Fifth Circuit due to an error of former Magistrate Smith in analyzing the validity of assignments involving MERS. The Fifth Circuit first reversed and remanded, but after Magistrate Smith reach his same conclusion, the Fifth Circuit reversed again and rendered judgment in favor of DBNTC.

6. On November 28, 2019, the trial court issued the Foreclosure Judgment. *See Deutsche Bank Nat. Trust Co. v. Burke*, Case No. 4:11-cv-01658 at Doc. 145. Thereafter, the United States Supreme Court denied Burke's petition for writ of certiorari. *Burke v. Deutsche Bank Nat. Trust Co.*, 139 S. Ct. 2660 (2019).

7. **Third Lawsuit.** Displeased with the Fifth Circuit and the foreclosure judgment, Burke filed suit against PHH's predecessor in state district court. *Burke v. Ocwen Loan Servicing, LLC*, Cause No. 2018-82450. Burke again asserted claims for breach of contract, breach of the duty of good faith and fair dealing, fraud, negligence, negligent misrepresentation, unfair competition, RESPA and "(o)ther Texas laws." Ocwen removed that case to this Court. On February 22, 2019, the Court dismissed Burke's claims as barred by res judicata. The Court gave Burke the opportunity to amend her RESPA claim, yet she failed to do so. Burke's claims were then dismissed. On Appeal, the Fifth Circuit affirmed the judgment(s) of the District Court in a consolidated appeal with Burke's suit against counsel. *See Burke v. Ocwen Loan Servicing, LLC*, 855 Fed. Appx. 180 (5th Cir. Mar. 30, 2021).

8. **Fourth Lawsuit.** On the same day, Burke sued the DBNT and Ocwen's counsel – Mark Hopkins, Shelley Hopkins and Hopkins Law, PLLC. In that suit, Burke brought claims for fraud, civil conspiracy, unjust enrichment, and alleged violations of both the Texas Debt Collection Act ("TDCA") and the FDCPA against the attorney defendants. Counsel removed that case to this Court. *Burke v. Hopkins Law, PLLC, et al.*, Case No. 4:18-cv-04543. In its dismissal, the Court found that Burke's claims for fraud, civil conspiracy, and unjust enrichment were frivolous and barred by attorney immunity, and that she failed to state a claim for violation of FDCPA or the TDCA. The Fifth Circuit affirmed. *See Burke v. Ocwen Loan Servicing, LLC*, 855 Fed. Appx. 180 (5th Cir. Mar. 30, 2021).

9. **First Attempted Intervention.** While the Third and Fourth Lawsuits remained pending, Burke filed a Motion to Intervene in a wholly unrelated case brought by the Consumer Financial Protection Bureau ("CFPB") against Ocwen, pending in the Southern District of Florida, Case No. 9:17-cv-80495, *Consumer Financial Protection Bureau v. Ocwen Financial Corp., et al.*

On May 30, 2019, the court denied Burke's Motion to Intervene and the court of appeals affirmed. *Burke v. Ocwen Financial Corporation*, 833 Fed. Appx. 288 (11th Cir. Nov. 2, 2020). On May 19, 2021, Burke renewed her request to intervene, the court again denied intervention and the court of appeals affirmed. *Burke v. Ocwen Financial Corporation*, No. 2022 WL 599156 (11th Cir. Mar. 1, 2022).

10. **Second Attempted Intervention.** While the Third Lawsuit, Fourth Lawsuit and First Attempted Intervention remained pending, Burke filed a Motion to Intervene in another unrelated lawsuit pending in the United States District Court for the Northern District of Illinois, *Jose L. Parra v. Ocwen Loan Servicing, LLC*, Case No. 1:18-cv-5936, based upon complaints about Ocwen's accounting on Burke's Texas loan. On February 27, 2019, the court denied Burke's request to intervene. *See Parra v. Ocwen Loan Servicing, LLC*, Case No. 1:18-cv-5936, [Doc. 31].

11. **Third Attempted Intervention.** On January 17, 2019, while the Third & Fourth Lawsuits and First and Second Attempted Interventions remained pending, Burke filed a Motion to Intervene in a lawsuit pending in federal court in Kansas, *In Re Syngenta AG MIR162 Corn Litigation, Kenneth P. Kellogg, et al. v. Watts Guerra, LLP, et al.*, Case No. 2:18-cv-2408 and 2:14-md-2591. This suit involved multidistrict corn class action litigation as well as the attorneys' representation of the class. Burke's asserted grounds for the intervention were due to lawyer fraud and malpractice, though Burke is not a farmer and had no specific relation to the litigation. The Court denied Burke's Motion to Intervene. *See Kellogg, et al. v. Watts Guerra, LLP, et al.*, Case No. 2:18-cv-2408, [Doc. 164].

12. **Fifth Lawsuit.** On August 9, 2021, Burke filed suit again, against the Ocwen Loan Servicing, LLC, Mark Daniel Hopkins, Shelley Hopkins and Hopkins Law, PLLC, attempting to attack the prior judgments against her. *See Burke v. Ocwen Loan Servicing, LLC*, 2022 U.S. Dist.

LEXIS 180610 (S.D. Tex. Aug. 29, 2022). The Court dismissed the suit with prejudice and in doing so warned Burke against future filings, stating:

“Plaintiffs are hereby warned that any additional litigation against Defendants related to the Property or its foreclosure proceedings will be clear and compelling evidence of bad faith, such that the imposition of sanctions and pre-filing injunctions would be just.”

*Id.* at \*15.

13. **Sixth Lawsuit.** In typical *Pro Se* forum-shopping style, Burke filed another lawsuit in Minnesota federal court seeking redress for the alleged wrongs committed by PHH, Mark Hopkin, Shelley Hopkins, Hopkins Law, PLLC and Christina Gardner (clerk at the Fifth Circuit Court of Appeals). The court dismissed Burke’s case for improper venue on October 30, 2023. *Burke v. PHH Mortg. Corp.*, Case No. 0:23-cv-01119 at Doc. 26. The Eighth Circuit Court of Appeals affirmed dismissal. *Burke v. PHH Mortgage Corp.*, 2024 U.S. App. LEXIS 12750 (8th Cir. Feb. 5, 2024, reh’g denied).

14. **Fourth Attempted Intervention.** On December 5, 2023, Burke filed a motion to intervene in a fourth unrelated lawsuit pending in Harris County, Texas. *Samuels v. PHH Mortg. Corp., et al.* On December 15, 2023, the case was removed to the Southern District of Texas, Case No. 4:23-cv-4687 and the case remains pending.

15. **Seventh (Present) Lawsuit.** Angered at the impending January 2, 2024 foreclosure of the Property, Burke filed this suit to stop the foreclosure sale, suing the mortgagee, mortgage servicer, substitute trustee and foreclosure counsel. Herein, Burke renews her lengthy crusade of filing repetitive claims, taking aim at anyone involved with the foreclosure of her home loan, including adding the judge who denied her request for Temporary Restraining Order (“TRO”) while the matter remained in state court.

16. **First Bankruptcy.** After denial of her TRO, Burke filed for bankruptcy protection, with the sole intent to stop the impending foreclosure. *In re Burke*, Case No. 23-35083 (Bankr. S.D. Tex). On January 17, 2024, Burke's Bankruptcy was dismissed for failing to file any schedules, statement of financial affairs, statement of income or a creditor matrix.

17. **Second Bankruptcy.** After learning that the Property was posted for the March foreclosure sale, Burke filed her second bankruptcy. *In re Burke*, Case No. 24-30885 (Bankr. S.D. Tex). Burke filed bankruptcy again without any schedules or other information. The court dismissed the bankruptcy for failure to file required documents on April 1, 2024.

18. **Bankruptcy Adversary Proceeding.** On March 29, 2024, Burke filed suit as an adversary proceeding in her (dismissed) bankruptcy, *In Re Joanna Burke, Joanna Burke v. Deutsche Bank National Trust Company, et al.*, Adversary No. 24-03056. The Court dismissed Burke's adversary proceeding on June 4, 2024.

19. **Harassment of Mortgagee, Mortgage Servicer, Counsel and Judiciary.** The background set above does not include the countless number of judicial complaints and/or complaints with the State Bar of Texas against almost all the judges or justices who ruled against Burke in some fashion and/or state bar complaints against attorneys who have represented any party adverse to Burke. Further, with the assistance of Burke's son, Mark Burke, Burke maintains a website, <https://lawsintexas.com>, wherein Burke continually posts mostly fabricated "articles" about Defendants, counsel for mortgagees and mortgage servicers, and the Judiciary, with the sole intent to harass. Burke then posts links to these fabricated articles on twitter and whatever other social media domain she can use. Many of her social media posts border on threatening, including the "last stand" vs. the U.S government and Texas that she intends to "livestream" and in her

comment “Watch Live: Join Me in my Last Stand. Chip in for Funeral Expenses.” See - <https://x.com/jcbrhodesia/status/1809287236552389103>



And - <https://x.com/jcbrhodesia/status/1817718595352150284> - where Burke indicates that she has “defeated” the “Nazi Deutsche Bank.”



20. Burke has also created spoofed websites where she posts links to these fabricated articles using unauthorized photos of attorneys and members of the judiciary.<sup>3</sup> Burke has also taken private photos from members of the judiciary as well as Counsel for Defendants, and has posted

<sup>3</sup> See the following: <https://judgeowen.com>, <https://cenliar.com>, <https://midfirst.mortgage>, with her and Mark Burke’s main website being <https://lawsintexas.com> including a sample of their articles at: (1) <https://lawsintexas.com/a-fifth-circuit-clerk-corruptly-impersonating-appellants-induces-finality-of-appeal/>; (2) <https://lawsintexas.com/impeach-judge-david-hittner-thats-the-request-before-the-fifth-circuits-chief-judge-priscilla-owen/>; (3) <https://lawsintexas.com/the-investigation-into-bdf-hopkins-the-foreclosure-mill-and-rambo-lawp-firms-in-texas-who-are-bounty-hunters-house-jackers/>, (4) <https://lawsintexas.com/why-the-chief-cant-judge-everything-even-with-judicial-immunity/>, (5) <https://lawsintexas.com/outlaws-in-robex-texas/>.



those photos to X and/or used them in their own personal pages, sometimes even going so far as to doctor the images or include threats. Due to Burke's unrelenting abuse of Defendants and the judiciary, Burke should be declared vexatious and enjoined from filing further suits against any Defendant or any party relating to the Property or foreclosure at issue in this suit without first obtaining this Court's permission.

### III. ARGUMENT AND AUTHORITIES

#### A. Request for Judicial Notice.

21. Pursuant to Fed. R. Evid. 201, PHH requests the Court take judicial notice of the other lawsuits, interventions, bankruptcies and adversary proceeding filed by Joanna Burke including:

- a. *John Burke and Joanna Burke v. Indymac Mortgage Services, A Division of OneWest Bank and Deutsche Bank National Trust Company, as Trustee and Mortgage Electronic Registration Systems*, Case No. 4:11-cv-00341; U.S. District Court for Southern District of Texas, Houston Division (“**First Lawsuit**”);
- b. *Deutsche Bank National Trust Company, As Trustee v. John Burke and Joanna Burke*, Case No. 4:11-cv-01658; U.S. District Court for Southern District of Texas, Houston Division (“**Second Lawsuit**”). Judgment rendered in *Deutsche Bank Nat. Trust Co. v. Burke*, 902 F.3d 548, 552 (5th Cir. 2018) and certiorari denied in *Burke v. Deutsche Bank Nat. Trust Co.*, 139 S. Ct. 2660 (2019);
- c. *Joanna Burke and John Burke v. Ocwen Loan Servicing, LLC*; Case No. 4:18-cv-4544 in the U.S. District Court for Southern District of Texas, Houston Division (“**Third Lawsuit**”), affirmed by *Burke v. Ocwen Loan Servicing, LLC*, 855 Fed. Appx. 180 (5th Cir. Mar. 30, 2021);
- d. *Joanna Burke and John Burke v. Hopkins Law, PLLC, Mark Daniel Hopkins, and Shelley L. Hopkins*, Case No. 4:18-cv-04543; in the U.S. District Court for Southern District of Texas, Houston Division (“**Fourth Lawsuit**”), affirmed by *Burke v. Ocwen Loan Servicing, LLC*, 855 Fed. Appx. 180 (5th Cir. Mar. 30, 2021);
- e. *Joanna Burke and John Burke v. Ocwen Loan Servicing, LLC, Hopkins Law, PLLC, Mark Daniel Hopkins, and Shelley L. Hopkins*, Case No. 4:21-cv-2591 in the United States District Court for the Southern District of Texas, Houston Division (“**Fifth Lawsuit**”) and *Burke v. Ocwen Loan Servicing, LLC*, No. 22-20504, 2023

WL 6374190 (5th Cir. Apr. 25, 2023), appeal dismissed;

- f. *Joanna Burke v. PHH Mortgage Corporation, Christina Gardner, Ocwen Loan Servicing, LLC, Hopkins Law, PLLC, Mark Daniel Hopkins, and Shelley L. Hopkins*, Case No. 0:23-cv-01119 in the United States District Court of Minnesota (“**Sixth Lawsuit**”) affirmed by *Joanna Burke v. PHH Mortgage Corporation, et al.*, Case No. 23-3593 (8th Cir. Feb. 5, 2024);
- g. *Consumer Financial Protection Bureau v. Ocwen Financial Corp., et al.*; Case No. 9:17-cv-80495 in the United States District Court for the Southern District of Florida, West Palm Beach Division, (“**First Attempted Intervention**”). Affirmed by the Eleventh Circuit in *Burke v. Ocwen Financial Corporation*, 833 Fed. Appx. 288 (11th Cir. Nov. 2, 2020) and again in *Burke v. Ocwen Financial Corporation*, NO. 2022 WL 599156 (11th Cir. Mar. 1, 2022);
- h. *Jose L. Parra v. Ocwen Loan Servicing, LLC*, Case No. 1:18-cv-5936 in the United States District Court for the Northern District of Illinois, Eastern Division (“**Second Attempted Intervention**”);
- i. *In Re Syngenta AG MIR162 Corn Litigation*, Case No. 2:18-cv-2408 and 2:14-md-2591 in the United States District Court for the District of Kansas, Multidistrict Litigation (“**Third Attempted Intervention**”);
- j. *Samuels v. PHH Mortgage Corporation, et al.*, Case No. 4:23-cv-4687 in the United States District Court for the Southern District of Texas, Houston Division (“**Fourth Attempted Intervention**”);
- k. *In Re Joanna Burke*, Bankruptcy Case No. 23-35083 in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (“**First Bankruptcy**”);
- l. *In Re Joanna Burke*, Bankruptcy Case No. 24-30885 in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (“**Second Bankruptcy**”);
- m. *In Re Joanna Burke, Joanna Burke v. Deutsche Bank National Trust Company, et al.*, Adversary No. 24-03056 (filed as adversary proceeding in Case No. 24-30885) in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (“**First Bankruptcy Adversary**”).

**B. Standard for a Pre-Filing Injunction.**

22. “No one, rich or poor, is entitled to abuse the judicial process. Flagrant abuse of the judicial process can enable one person to preempt the use of judicial time that properly could be

used to consider the meritorious claims of other litigants.” *Green v. Carlson*, 649 F.2d 285, 287 (5th Cir. 1981) (internal citation omitted). “While the legal system serves many functions, it is not a vehicle for harassing actions at the expense of others.” *Mustapha v. HSBC Bank, USA*, No. 4:12-CV-01924, 2013 WL 632856, at \*7 (S.D. Tex. Feb. 20, 2013).<sup>4</sup>

23. The District Court has the power under 28 U.S.C. §1651(a) to enjoin litigants who are abusing the court system by harassing their opponents. The Court may rely on its inherent powers, or it may enjoin vexatious litigants under the All Writs Act. *Matter of Carroll*, 850 F.3d 811, 815 (5th Cir. 2017) (citing *Newby v. Enron Corp.*, 302 F.3d 195, 302 (5th Cir. 2002)). The All Writs Act, codified at 28 U.S.C. §1651(a), authorizes federal courts “to enjoin litigants who are abusing the court system by harassing their opponents.” See *Harrelson v. United States*, 613 F.2d 114, 116 (5th Cir. 1980). “A district court has jurisdiction to impose a pre-filing injunction to deter vexatious, abusive, and harassing litigation.” *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 187 (5th Cir. 2008). In determining whether it should impose a pre-filing sanction, the Court considers: (1) the party’s history of litigation, particular, harassing or duplicative lawsuits; (2) whether the party had a good faith basis for pursuing the litigation or simply intended to harass, (3) the extent of the burden on the courts and other parties resulting from the party’s filings, and (4) the adequacy of alternative sanctions. *Id.* at 189; see also *Keculah v. Lloyds*, No. 4:23-cv-03499, 2024 WL 420906 (S.D. Tex. Feb. 5, 2024).

24. The Court’s inherent authority allows it to “protect the efficient and orderly administration of justice and... to command respect for [its] orders, judgment, procedures, and authority” and this authority includes ability to levy sanctions in response to abusive litigation practices. *In Re Stone*, 986 F.2d 898, 902 (5th Cir. 1993); also see *Nicholson v. Turner*, No. 4:24-

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<sup>4</sup> As quoted by United States Magistrate Judge Sam Sheldon in recommending vexatious declaration of a pro se litigant in *Ford v. American Homes 4 Rent*, No. 22-cv-2162, 2023 U.S. Dist. LEXIS 78351 (S.D. Tex. Apr. 24, 2023).

cv-00389-O, 2024 U.S. Dist. LEXIS 128479 (N.D. Tex. July 22, 2024)(declaring Nicholson a vexatious litigant under the Court’s inherent authority). When a litigant reaches a particular “level of vexatiousness,” a court may issue a pre-filing injunction that then “bar[s] the plaintiff from filing any additional actions without first obtaining leave to do so from the district court.” *Newson v. Chase Bank*, No. EP-24-cv-00073, 2024 U.S. Dist. LEXIS 121327 (W.D. Tex. July 10, 2024 citing *Day v. Allstate Ins. Co.*, 788 F.2d 1110, 1115 (5th Cir. 1986).

25. Burke’s *pro se* status does not give her a “license to harass others, clog the judicial machinery with meritless litigation, and abuse already overloaded court dockets.” *Ferguson v. MBank Houston, N.A.*, 808 F.2d 358, 359 (5th Cir.1986). As stated by Judge Rosenthal in March when declaring a *pro se* as a vexatious litigant, “the relaxed standard for interpreting the pleadings of *pro se* litigants does not allow for repeated meritless litigation.” *Montes v. Dibbs*, No. H-23-1352, 2024 WL 1119419 (S.D. Tex. Mar. 14, 2024). There is no constitutional right to prosecute frivolous actions, and preclusion orders are appropriate tools for deterring vexatious filings. *Kamietzky v. Frost Nat’l Bank of Houston*, 881 F. Supp. 276, 277–78 (S.D. Tex. 1995). “Before a district court issues a pre-filing injunction against a *pro-se* litigant, it must make substantive findings concerning the frivolous or harassing nature of the litigant’s actions based on the number and the content of the litigant’s filings.” *Franklin v. Laughlin*, No. SA-10-CV-1027XR, 2011 WL 598489, at \*8 (finding *pro se* plaintiff’s claims in six prior suits to be “patently without merit” because they sought “to litigate the same issues that this Court dismissed in [a prior suit]” and entering a pre-filing injunction pursuant to the All Writs Act) (citing *De Long v. Hennessey*, 912 F.2d 1144, 1148 (9th Cir. 1990)). Repeated attempts to litigate issues conclusively resolved is sufficient evidence of bad faith supporting sanctions. *Matter of Carrol*, 850 F.3d at 816.

26. The Fifth Circuit has repeatedly affirmed the district court’s ability to impose such restrictions again pro se parties, such as Joanna Burke, where monetary sanctions are ineffective in deterring vexatious filings and where the pre-suit injunction is narrowly tailored to protect the courts and innocent parties. *Areizaga v. ADW Corp.*, No. 3:14-cv-2899-B, 2016 WL 3511788, at \*9 (N.D. Tex. June 7, 2016) (citing *Thanedar*, 352 Fed. App’x at 900); *see also Babineaux v. Wells Fargo Bank, N.A.*, No. 4:23-cv-01563, 2023 WL 9508084 (S.D. Tex. Nov. 29, 2023). In the last year, the federal district courts of Texas have declared multiple litigants as vexatious under the inherent authority in Section 1915, with similar patterns as Burke. In *Nicholson v. Turner*, in recommending dismissal and declaration of Nicholson as a vexatious litigant, Magistrate Judge Jeffrey Cureton stated, “This case presents one of the most egregious abuses of the judicial system that the undersigned as ever seen.” *Nicholson v. Turner*, No. 4:24-cv-00389 [Doc. 57], report and recommendation adopted at *Nicholson v. Turner*, No. 4:24-cv-00389-O, 2024 U.S. Dist. LEXIS 128479 (N.D. Tex. July 22, 2024). Nicholson, like Burke, has filed lawsuit after lawsuit in her scheme to delay foreclosure of the property. In *Castaneda v. Frausto-Recio*, the Court declared Castaneda a vexatious litigant after “He filed five cases in a two-year time period that have either been dismissed for failure to state a claim or as frivolous under Section 1915(e).” *Castaneda v. Frausto-Recio*, No. SA-24-CV-00718, 2024 U.S. Dist. LEXIS 129812 (S.D. Tex. July 23, 2024).

**C. Joanna Burke Qualifies as a Vexatious Litigant.**

27. “In determining whether it should impose a pre-filing injunction...a court must weigh all the relevant circumstances, including the following four factors: (1) the party’s history of litigation, in particular whether he has filed vexatious, harassing, or duplicative lawsuits; (2) whether the party had a good faith basis for pursuing the litigation, or simply intended to harass;

(3) the extent of the burden on the courts and other parties resulting from the party's filings; and  
(4) the adequacy of alternative sanctions." *Baum*, 513 F.3d at 189.

**i. History of Repeated Litigation.**

28. Joanna Burke's litigation history is strikingly clear; she cannot accept the fact that her default in making payments on her mortgage has resulted in a foreclosure judgment, with the now pending foreclosure of the Property. In order to continually delay the foreclosure and her eventual eviction from the property, Burke has at all times challenged the relief requested by DBNTC, filed repetitive new lawsuits, sought to disqualify counsel and judges, sought to join entirely unrelated lawsuits involving unrelated plaintiffs, and has otherwise appealed at every turn.

29. While Burke's claims plainly have no chance of success, the mere act of filing repetitive claims works to harass Defendants and force them to incur substantial defense costs – costs they have no chance of recovering from Burke even if they were granted by a court. The issues upon which Burke's claims are based have already been litigated and decided against her in every forum available. Accordingly, this Court should enter a pre-filing injunction against Burke, preventing her from filing additional suits against PHH, Ocwen, DBNTC, or its predecessors or successors in interest and the counsel who have represented these parties, or will represent them in regard to Joanna Burke and the Property.

**ii. No Good Faith Basis.**

30. Burke remains undeterred in her relentless assault against the Defendants. Burke has even failed to heed the warning issued by the Honorable Alfred H. Bennet on August 29, 2022, when he stated, "**Plaintiffs are hereby warned that any additional litigation against Defendants related to the Property or its foreclosure proceedings will be clear and compelling evidence of bad faith, such that the imposition of sanctions and pre-filing**

**injunctions would be just.”** *Burke v. Ocwen Loan Servicing, LLC*, No. 4:21-cv-2591, 2022 WL 4597975 (S.D. Tex. Aug. 29, 2022), [Doc. 50](emp. added).

31. The present litigation is the second lawsuit Burke has filed *after* Judge Bennett issued this warning to Burke (the first being the frivolous litigation in Minnesota district court). It is clear that Burke lacks any good faith basis for pursuing this lawsuit. Within her rambling pleadings, it is apparent that all her complaints stem from her loan, the foreclosure judgment and all litigation surrounding the same. Though the issues have continually been decided against her, Burke’s Complaint (and all its various amendments) illustrates clearly that she has no good faith basis to pursue this suit. Her goal in filing repeated litigation is to: (1) continue delay of the foreclosure from the 2018 judgment; and (2) harass every mortgagee, mortgage servicer, attorney and/or judge who has taken part in any case against Burke. Every single prior case has been finally resolved in a manner adverse to Burke. Indeed, Burke’s track record alone suggests that her litigation is frivolous and simply intended to harass, while she remains in her property for free.

32. Since the Fifth Circuit held that there was no injustice in allowing that foreclosure to proceed, Burke has stalled the foreclosure through her vexatious ways. *Deutsche Bank v. Burke*, 902 F.3d 548 (5th Cir. 2018). The Fifth Circuit has cautioned borrowers, and their attorneys, against “gaming the system” by filing lawsuits or taking other actions to prolong occupancy of their residence while making little or no payment on their mortgage debt. *See Germain v. U.S. Bank Nat’l Ass’n*, 920 F.3d 269, 277-78 (5th Cir. 2019). Burke’s gamesmanship must be put to an end.

**iii. Burden on Courts and Other Parties.**

33. The burden imposed on the courts and other parties resulting from Burke’s litigiousness is self-evident. Burke has been embroiled in litigation regarding the Property for over

thirteen years due to her tactics at attempted re-litigation of already decided issues. The number of lawsuits, attempted interventions and the sheer volume of pleadings filed within those suits by Burke are indicative of the burden she has placed on the courts and all parties placed in her path of anger. Simply put, Burke has clogged the state, federal, appellate and bankruptcy court systems with her frivolous filings and, in the process, drains the courts and the parties of valuable resources.

34. Burke's burden upon the judiciary and the parties is further exemplified by her pattern of moving to recuse or disqualify the presiding judge(s) and/or all counsel involved in any case and/or by simply including the judges and counsel as defendants in an attempt to force defendants to hire new counsel. Burke's motions to disqualify or recuse exemplify the frivolous tactics of Burke and the burden that these tactics take on Defendants, their counsel, and the Court.<sup>5</sup>

**iv. No Adequate Alternatives.**

35. Burke's claims have already been dismissed with prejudice on multiple occasions as barred by res judicata. Yet Burke appears to have shown a brazen indifference to these dismissals. Without an injunction in place to prevent future filings, Burke will continue to file meritless lawsuits that harass PHH and DBNTC, and all attorneys and judges involved in any case

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<sup>5</sup> Burke has sought to remove Judges and counsel for DBNTC, Ocwen, and Attorney Defendants in the following instances:

In the **Second Lawsuit** – Burke filed the following: (a) Motion to Dismiss Opposing counsel [Doc. 32], which was struck by the Court [Doc. 33]; (b) Motion to Disqualify Counsel [Doc. 50], denied by the Court [Doc. 51]; (c) Objection to Notice of Appearance and Motion to Dismiss Counsel [Doc. 111 & 114], denied by the Court [Doc. 118];

In the **Appeal of the Second Lawsuit** (Fifth Circuit Case No. 18-200260 – Burke filed a Motion to Disqualify Opposing Counsel, Hopkins Law PLLC, & Dismiss Appeal, filed October 24, 2018, which was denied by the Court on October 29, 2018;

In the **Fourth Lawsuit** – Burke filed a Motion to Disqualify Judge David Hittner [Doc. 70], which was denied by the Court [Doc. 71];

In the **Appeal of the Fifth Lawsuit** – Burke filed (a) a Motion to Disqualify Chief Judge Priscilla Owen, filed July 3, 2021, which was denied by the Court on July 7, 2021; (b) Motion for Sanctions, filed July 8, 2021, in Case No. 19-20267, which was denied by the Court on August 4, 2021.



related to Burke. No other action is adequate to deter Burke from pursuing other frivolous litigation. Burke's harassment of Defendants, counsel, and court personnel and the judiciary clearly abuses the litigation process. Based on Burke's now 13-year litigation history, she will continue to abuse the court system unless this Court enjoins her from filing further vexatious litigation.

#### **IV. CONCLUSION**

Pursuant to the reasons set out herein, PHH requests that the Court grant this Motion and declare Plaintiff Joanna Burke as a Vexatious Litigant, enter an order enjoining Burke from filing any new litigation in any federal court in the United States and the state courts of Texas, without first obtaining the express permission of a district judge within the federal district upon which she attempts to file or with the presiding state administrative judge for any state court of Texas, and for any further relief, at law or in equity, to which PHH shows itself justly entitled.

Respectfully submitted,

By: /s/ Mark D. Hopkins  
Mark D. Hopkins – *Attorney in Charge*  
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Southern District ID No. 20322  
Shelley L. Hopkins  
State Bar No. 00793975  
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**COUNSEL FOR  
PHH MORTGAGE CORPORATION**

**CERTIFICATE OF CONFERENCE**

I hereby certify that on the 1<sup>st</sup> day of August, 2024, my office reached out to Plaintiff by email to inquire as to whether she was opposed to this Motion. As of filing of this Motion, no response was received.

/s/ Mark D. Hopkins

Mark D. Hopkins

**CERTIFICATE OF SERVICE**

I hereby certify that on the 5<sup>th</sup> day of August 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF filing system, and served a true and correct copy to the following:

VIA EMAIL

VIA REGULA MAIL

VIA CERTIFIED MAIL

Joanna Burke

46 Kingwood Greens Drive

Kingwood, Texas 77339

joanna@2dobermans.com

**PRO SE PLAINTIFF**

/s/ Mark D. Hopkins

Mark D. Hopkins



2007-H under the Pooling and Servicing Agreement dated June 1, 2007 (“Deutsche Bank as Trustee”), their attorneys, or any party in privity with PHH or Deutsche Bank as Trustee, unless Joanna Burke first obtains permission from the court where she wishes to file the suit. When seeking that permission, Joanna Burke must provide a copy of this Order.

IT IS SO ORDERED.

SIGNED this the \_\_\_\_ day of \_\_\_\_\_ 2024.

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UNITED STATES DISTRICT JUDGE