

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

**JOANNA BURKE,**

*Plaintiffs,*

**V.**

**PHH MORTGAGE CORPORATION,  
DEUTSCHE BANK NATIONAL  
TRUST COMPANY, AVT TITLE  
SERVICES, LLC, MACKIE WOLF  
ZIENTZ & MANN, PC, JUDGE TAMI  
CRAFT-DEMMING, JUDGE ELAINE  
PALMER, MARK DANIEL HOPKINS,  
SHELLEY HOPKINS, and HOPKINS  
LAW, PLLC, JOHN DOE AND/OR  
JANE DOE,**

***Defendants.***



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

**PHH MORTGAGE CORPORATION'S RESPONSE IN OPPOSITION  
TO PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT**

Defendant PHH Mortgage Corporation (“PHH”) files this Response in Opposition to Plaintiff’s Motion to Alter or Amend Judgment Under Rule 59(e) (the “Motion”). [Doc. 76]. In response thereto, PHH respectfully shows the Court as follows:

## I. INTRODUCTION

1. As the Court is well aware, the procedural history of this matter dates back almost 20 years, to 2007 when Plaintiff obtained a home equity loan. Shortly thereafter, Plaintiff ceased making payments on the loan. When the mortgagee initiated foreclosure proceedings, Plaintiff filed her first lawsuit (on December 6, 2010). After an extended litigation history, the mortgagee obtained foreclosure judgment on November 29, 2018. Since that time, Plaintiff has filed lawsuit after lawsuit to prevent the mortgagee from enforcing its judgment and completing the foreclosure.

The Court correctly issued Final Judgment in this case dismissing Plaintiff's claims with prejudice and a Preclusion Order preventing Plaintiff from future filings. [Docs. 73, 74, 75]. Nonetheless, Plaintiff filed the Motion, which offers 24 pages of hyperbole but – relevant to the actual legal standard – does not present any manifest errors of law or fact or any newly discovered evidence that should alter the Final Judgment or the Preclusion Order, and her Motion must be denied.

## II. BACKGROUND

2. On January 23, 2025, United States Magistrate Christina A. Bryan (the “Magistrate”) issued the Memorandum and Recommendation, recommending the Court grant PHH's Motion for Summary Judgment. [Doc. 58]. On the same day, the Magistrate issued a Memorandum and Recommendation recommending the Court grant PHH's Second Motion to Declare Plaintiff Joanna Burke as a Vexatious Litigant. [Doc. 59]. Thereafter, in addition to the multiple motions or requests for random relief filed by Plaintiff, she also filed nine (9) additional motions/ pleadings/objections in an attempt to object to the Magistrate's recommendations and stay the case. [Docs. 61-69]. The Magistrate denied all of Burkes' outstanding motions [Doc. 70].

3. On March 14, 2025, this Court entered its Order Adopting the Memoranda and Recommendations and Orders [Doc. 73], Imposing Pre-filing Injunction [Doc. 74], and the Final Judgment [Doc. 75]. On April 11, 2025, Plaintiff filed her Verified Motion to Alter or Amend Judgment Under Rule 59(e). [Doc. 76].

4. Plaintiff's most recent motion under Rule 59(e) takes issue with the Court's Final Judgment and Preclusion order, rehashing her several-decade vendetta about violations of due process and her disagreement with the court's application of the law on res judicata, jurisdiction, validity of the foreclosure judgment and the time allotted to conduct foreclosure under a judgment.

[Doc. 76]. Plaintiff's arguments are not new and are not based upon manifest errors of law or fact or newly-discovered evidence.

### III. ARGUMENT

5. A Rule 59(e) motion "calls into question the correctness of a judgment." *In re Transtexas Gas Corp.*, 303 F.3d 571, 581 (5th Cir.2002); Fed. R. Civ. P. 59(e). The Fifth Circuit has held that a Rule 59(e) motion is ***not the proper vehicle for rehashing evidence, legal theories, or arguments*** that could have been offered or raised before the entry of judgment. *Simon v. United States*, 891 F.2d 1154, 1159 (5th Cir.1990) (emp. added). A Rule 59(e) motion "serve[s] the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence." *Waltman v. Int'l Paper Co.*, 875 F.2d 468, 473 (5th Cir.1989) (internal quotations omitted). For certain, the reconsideration of a judgment after its entry is an extraordinary remedy that should be used sparingly. *See Templet v. HydroChem Inc.*, 367 F.3d, 473, 479 (5th Cir.2004).

6. "A manifest error of law or fact must be one 'that is plain and indisputable, and that amounts to a complete disregard of the controlling law or the credible evidence in the record.'" *Walker v. HongHua America, LLC*, No. 4:12-CV- 00134, 2012 WL 1898892 (S.D. Tex., May 23, 2012). No manifest error of law or fact exists within the Court's grant of PHH's Motion for Summary Judgment, or its issuance of a Preclusion Order finding Plaintiff a vexatious litigant and barring future litigation in the U.S. District Court for the Southern District of Texas. Burke's claims asserted in this lawsuit were dismissed with prejudice by the Court in granting PHH's Motion for Summary Judgment.

7. As with all her prior lawsuits, Plaintiff's current lawsuit sought to prevent the foreclosure of the Property even though PHH has a valid judgment for foreclosure and all of Burke's prior litigation (stemming from the Note, Deed of Trust and her default) has been resolved

against her. The Court herein properly adopted the Magistrate's findings that PHH's foreclosure efforts are timely under Tex. Civ. Prac. & Rem. Code § 16.035. *See Slay v. Nationstar Mortg., L.L.C.*, No. 2-09-052-CV, 2010 WL 670095, at \*3 (Tex. App.—Fort Worth Feb. 25, 2010, pet. denied); *Holcomb v. Specialized Loan Servicing, LLC*, No. 3:21-CV-00210, 2024 WL 4124698, at \*3 (S.D. Tex. Sept. 9, 2024). Plaintiff's motion presents no new evidence or error of law or fact that has not been addressed by this Court.

8. Finally, the Preclusion Order in this case is warranted, as explained in detail by the Magistrate. Plaintiff presents no new evidence supporting her argument that the Court was overreaching and there was no error of law or fact. There is no manifest injustice in restricting Plaintiff's access to the Courts when she has proven herself to be vexatious.

#### IV. CONCLUSION

Pursuant the reasons set out herein, PHH respectfully requests that the Court deny Plaintiff's Motions to Vacate and/or Alter the Judgment. [Doc. 76]. PHH further requests that the Court grant PHH any and all additional relief, whether at law or in equity, to which they may be justly entitled.

Respectfully submitted,

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**COUNSEL FOR  
 PHH MORTGAGE CORPORATION**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2<sup>nd</sup> day of May 2025, 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:

Joanna Burke  
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**PRO SE PLAINTIFF**

/s/ Mark D. Hopkins  
Mark D. Hopkins