

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

Jeff Samuels	)	<b>CIVIL ACTION No.</b>
	)	<b>4:23-cv-4687</b>
Plaintiff	)	
	)	
vs.	)	
	)	
AVT Title Services, LLC, Deutsche Bank	)	
National Trust Co., PHH Mortgage Corp.,	)	
Power Default Services Inc.	)	
	)	
	)	
Defendants	)	
	)	
	)	

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**INTERVENOR-PLAINTIFF JOANNA BURKE’S REPLY TO DEFENDANTS  
RESPONSE TO JOANNA BURKE’S VERIFIED MOTIONS TO STRIKE**

TO THE HONORABLE JUDGE, AND ALL INTERESTED PARTIES:

Intervenor-Plaintiff Joanna Burke (“IP”) respectfully files this reply in support of IP’s Motion to Strike Defendants Reply in Support of their Motion for Summary Judgment Motion (**Dkt 45**) and refiled Motion for Summary Judgment (**Dkt 42**) on the following grounds: -

**I. ARGUMENT**

Defendants’ responses are answered as they are listed in their pleading:

**1. Defendants’ Motion for Summary Judgment Does Not Comply with the Court’s Procedures.**

Defendants claim the court has “accepted” the contested Motion. This is simply not true and without legal citation or authority in support. On the contrary IP cited two specific cases.

**(1)** *Rudman v. U.S. Bank Trust National Association, Not in its Individual Capacity*

*But Solely as Owner Trustee for VRMTG Asset Trust improperly named as U.S. Bank Trust, N.A.* (4:23-cv-00040), District Court, S.D. Texas, Judge Bennett's ORDER Striking Document re: 9 Motion for Summary Judgment, Dkt 10, Jun 7, 2023; Amended MOTION for Summary Judgment, Dkt 11, Jun 9, 2023 (Bank lawyer Michael Hord of Hirsch Westheimer removing all footnotes/authority/citations and placing them in the body of the document).

Upon revisiting the *Rudman* docket, IP provides the following docket screenshot where the time between filing the Motion by US Bank on May 26, 2023 would be stricken on Jun. 7, 2023, some 12 days after filing.

10	Jun 7, 2023	ORDER Striking Document re: 9 Motion for Summary Judgment, filed by U.S. Bank Trust National Association, Not in its Individual Capacity But Solely as Owner Trustee for VRMTG Asset Trust improperly named as U.S. Bank Trust, N.A. Failure to Comply with Rule B.5(a).(Signed by Judge Alfred H Bennett) Parties notified.(ledwards, 4) (Entered: 06/08/2023)
		<a href="#">Main Document</a> <a href="#">Striking Document (FORM)</a> <a href="#">Download PDF</a>
9	May 26, 2023	STRICKEN FROM THE RECORD per Order Doc # 10 Modified on 6/8/2023 (ledwards, 4). (Entered: 05/26/2023)
		<a href="#">Main Document</a> <a href="#">Summary Judgment</a> <a href="#">Buy on PACER</a> 0

(2) *Frank v. Wells Fargo Bank, N.A., as Trustee for the Mastr Asset Backed Securities Trust 2007-NCW Mortgage Pass-Through Certificates Series 2007-NCW* (4:22-cv-00065) District Court, S.D. Texas, ORDER Striking Document re: 10 Motion to Dismiss, Motion for Summary Judgment, filed by Wells Fargo Bank, N.A., Failure to comply with Rule B.5(a), Signed by Judge Alfred H Bennett, Dkt 11, 10/07/2022; MOTION for Leave to File Amended Motion to Dismiss and Motion for Summary Judgment, Dkt 14, 10/13/2022 (Bank lawyer Branch Sheppard of Galloway, now at McGlinchey, removing all footnotes/authority/citations and placing them in the body of the document).

Upon revisiting the *Frank* docket, IP provides the following docket screenshot where the time between filing the Motion by US Bank on Sep 26, 2022 would be stricken on Oct. 7, 2022, some 11 days after filing.

10	Sep 26, 2022	STRICKEN FROM THE RECORD PER ORDER (Doc # 11) Modified on 10/7/2022 (ledwards, 4). (Entered: 09/26/2022)
		Main Document Summary Judgment AND Dismiss Buy on PACER 0
11	Oct 7, 2022	ORDER Striking Document re: 10 Motion to Dismiss, Motion for Summary Judgment, filed by Wells Fargo Bank, N.A., Failure to comply with Rule B.5(a)(Signed by Judge Alfred H Bennett) Parties notified.(ledwards, 4) (Entered: 10/07/2022)
		Main Document Striking Document (FORM) Download PDF

In both these proceedings, the Motions were uncontested, and the Court acted on its own when striking the non-compliant Motions.

In support, in these proceedings it took 15 days for the court to strike the Defendants' first non-compliant Motion for Summary Judgment.

39	Apr 16, 2025	ORDER Striking Document re: 38 Motion for Summary Judgment, filed by PHH Mortgage Corporation, Deutsche Bank National Trust Company The Comi finds that the Motion does not comply with Rule B.5(a) of this Court's Procedures and Practices. Specifically, all authority must be cited within the body of the document and not footnoted. (Signed by Judge Alfred H Bennett) Parties notified. (glk4) (Entered: 04/17/2025)
		Main Document Striking Document (FORM) Download PDF
38	Apr 1, 2025	MOTION for Summary Judgment by Deutsche Bank National Trust Company, PHH Mortgage Corporation, filed. Motion Docket Date 4/22/2025. (Attachments: # 1 Exhibit A - Affidavit iso MSJ, # 2 Exhibit A-1 -Decision on the Request for Mortgage Assistance, # 3 Exhibit A-2 - Payoff Quote, # 4 Exhibit B - Assignment, # 5 Exhibit C - E-mail from Joanna Burke) (Stroope, Emily) (Entered: 04/01/2025)
		Main Document Summary Judgment Buy on PACER

Despite these facts, Defendants brazen and unfounded assertion that 'the court has already accepted the refiled motion'—without a shred of evidence of any ex-parte communication confirming its acceptance—only reinforces IP's argument that Defendants evade engagement with the indisputable facts and fail to support their position with relevant legal authority in response to IP's Motion to Strike.

## 2. Defendants' Motion for Summary Judgment is Untimely

Defendants "reply" to this section is impertinent and scandalous and warrants no response for the reasons provided in IP's Motion.

### **3. IP's Allegations of 'Gamesmanship' Are Supported by the Defendants Own Actions in these Proceedings**

Defendants assert that IP has failed to provide any support for her allegations—an inflammatory claim. As both the parties and the court are well aware, a reply brief should not merely repeat the arguments already presented.

If Defendants and their counsel believe that ignoring the irrefutable facts set forth by IP does not constitute 'gamesmanship,' they are mistaken. As defined, 'gamesmanship' is the act of pushing the rules to their limits without getting caught, employing whatever dubious methods necessary to achieve a desired outcome (Definitions.net). IP maintains that this very tactic has been employed by Defendants and their counsel throughout these proceedings.

## **II. REQUESTED RELIEF**

WHEREFORE, PREMISES CONSIDERED, Intervenor-Plaintiff Joanna Burke respectfully requests that this Court:

1. Strike Defendants' Motion for Summary Judgment as premature and procedurally improper;
2. Strike Defendants' Reply in Support of their Motion for Summary Judgment as impertinent and scandalous;
3. Defer any consideration of the merits until the contested subject-matter jurisdiction is fully resolved; and
4. Grant such further relief as the Court deems just and proper.

A proposed order has been filed previously.

## **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 stated above, this Court should GRANT Intervenor-Plaintiff’s requested relief and provide any additional relief to which Plaintiff is entitled.

RESPECTFULLY submitted this 1st day of June, 2025.

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Joanna Burke, Harris County  
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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served on June 1, 2025 as stated below on the following:

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