

## **APPENDICES**

# **APPENDIX A**

**FILED**

November 29, 2022

KAREN MITCHELL  
CLERK, U.S. DISTRICT  
COURT

**United States Court of Appeals  
for the Fifth Circuit**

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No. 22-10349

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IN THE MATTER OF WILLIAM PAUL BURCH,

*Debtor,*

JUANITA BURCH,

*Appellant,*

*versus*

RUSHMORE LOAN MANAGEMENT SERVICES, L.L.C.,

*Appellee.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:21-CV-503

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ON PETITION FOR REHEARING EN BANC

Before SMITH, DENNIS, and SOUTHWICK, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R.

APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is  
DENIED.

## **APPENDIX B**

United States Court of Appeals  
for the Fifth Circuit

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No. 22-10349  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

October 25, 2022

Lyle W. Cayce  
Clerk

IN THE MATTER OF WILLIAM PAUL BURCH,

*Debtor,*

JUANITA BURCH,

*Appellant,*

*versus*

RUSHMORE LOAN MANAGEMENT SERVICES, L.L.C.,

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Before SMITH, DENNIS, and SOUTHWICK, *Circuit Judges.*

PER CURIAM:\*

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 22-10349

Juanita Burch appeals from an order of the United States District Court for the Northern District of Texas that affirmed a bankruptcy court's summary judgment disposing of all of Burch's claims. Burch's claims were brought in an adversary proceeding against Rushmore Loan Management Services, LLC, in the bankruptcy of her husband, William Paul Burch.

Rushmore had foreclosed on a property owned by the Burches in Arlington, Texas. The bankruptcy court rejected arguments that it had no jurisdiction and concluded that the property and claims were the same as those already considered in prior proceedings. Thus, judgment was granted for Rushmore based on preclusion. The bankruptcy court also declared Burch a vexatious litigant.

After review of the briefs and record, we conclude the district court was correct to affirm the bankruptcy court's judgment. We AFFIRM. Appellant's motion to strike is DENIED.

## **APPENDIX C**

United States Court of Appeals  
for the Fifth Circuit

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No. 22-10349  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

October 25, 2022

Lyle W. Cayce  
Clerk

IN THE MATTER OF WILLIAM PAUL BURCH,

*Debtor,*

JUANITA BURCH,

*Appellant,*

*versus*

RUSHMORE LOAN MANAGEMENT SERVICES, L.L.C.,

*Appellee.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:21-CV-503

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Before SMITH, DENNIS, and SOUTHWICK, *Circuit Judges.*

PER CURIAM:\*

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No. 22-10349

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After review of the briefs and record, we conclude the district court was correct to affirm the bankruptcy court's judgment. We AFFIRM. Appellant's motion to strike is DENIED.

*United States Court of Appeals*

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
600 S. MAESTRI PLACE,  
Suite 115  
NEW ORLEANS, LA 70130

October 25, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing  
or Rehearing En Banc

No. 22-10349 Burch v. Rushmore Loan Mgmt  
USDC No. 4:21-CV-503

Enclosed is a copy of the court's decision. The court has entered judgment under **FED. R. APP. P. 36**. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

**FED. R. APP. P. 39** through 41, and **5TH CIR. R. 35, 39, and 41** govern costs, rehearings, and mandates. **5TH CIR. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following **FED. R. APP. P. 40** and **5TH CIR. R. 35** for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. **5TH CIR. R. 41** provides that a motion for a stay of mandate under **FED. R. APP. P. 41** will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under **FED. R. APP. P. 41**. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you **MUST** confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that appellant pay to appellee the costs on appeal. A bill of cost form is available on the court's website [www.ca5.uscourts.gov](http://www.ca5.uscourts.gov).

Sincerely,

LYLE W. CAYCE, Clerk

*Lisa E. Ferrara*

By:

Lisa E. Ferrara, Deputy Clerk

Enclosure(s)

Ms. Juanita Burch

Ms. Shelley Luan Hopkins

# **APPENDIX D**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

WILLIAM PAUL BURCH and  
JUANITA BURCH,

Debtors/Appellant,

v.

RUSHMORE LOAN MGMT., INC.,

Appellee.

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Civil Action No. 4:21-cv-0503-O

**ORDER**

Before the Court are Appellants' Brief (ECF No. 8), filed June 25, 2021; Appellee's Response Brief (ECF No. 11), filed July 9; Appellants' Reply Brief (ECF No. 12), filed July 17; and Appellants' Motion to Rule or Stay Related Rulings (ECF No. 16), filed October 5. The Court **AFFIRMS** the Bankruptcy Court's judgment.

**I. JURISDICTION**

In November 2020, Juanita Burch filed adversary proceedings against Rushmore Loan Mgmt., Inc. *See* Record 125–37, ECF No. 3. In March 2021, the Bankruptcy Court for the Northern District of Texas granted summary judgment in favor of Rushmore disposing of all claims. *Id.* at 779–90. The Bankruptcy Court issued a final judgment the same day. *Id.* at 791–92. The Bankruptcy Court then denied Burch's motions to reopen, vacate judgment, vacate vexatious litigant designation, and remand to state court. *Id.* at 793–838. Burch appealed the final judgment on April 5. *Id.* at 841–42. This Court has jurisdiction over the appeal under 28 U.S.C. § 158(a).

**II. BACKGROUND**

In 2006, the Burches mortgaged property in Arlington, agreeing to a loan payable to Freedom Mortgage Corporation. *See* Record 742–44, ECF No. 3. The parties agreed that if the

Burches default, the lender may accelerate the maturity date of the note and foreclose on the property. *Id.* at 745–66. Rushmore is the mortgage servicer for the agreement. *Id.* at 739–40.

The Burches defaulted, and litigation ensued. The history of the Burches’ “long line of frivolous lawsuits” has been well documented. *Id.* at 780–86. This case began in November 2020, when Juanita Burch filed adversary proceedings against Rushmore in Texas state court. *Id.* 125–37. Burch’s complaint asserts causes of action for breach of contract and to quiet title. *Id.* Rushmore removed the case to federal bankruptcy court. *Id.* at 115–20. Rushmore then moved for summary judgment, arguing that Burch’s claims were barred by res judicata and claim preclusion. *Id.* at 787–90. The Bankruptcy Court granted summary judgment in favor of Rushmore after finding that the complaint “merely rehashes arguments previously raised by the Burches and heard by this Court.” *Id.* at 789.

### **III. ISSUES ON APPEAL**

- A. Whether the Bankruptcy Court had jurisdiction over Burch and the federal and state law claims.
- B. Whether Burch waived claims regarding the validity of the note.

### **IV. STANDARD OF REVIEW**

When a district court reviews a bankruptcy court’s decision, it functions as an appellate court. *In re Webb*, 954 F.2d 1102, 1103–04 (5th Cir. 1992). The Court reviews legal conclusions de novo, and factual findings for clear error. *In re Young*, 995 F.2d 547, 548 (5th Cir. 1993).

### **V. ANALYSIS**

#### **A. The Bankruptcy Court had jurisdiction over Appellant and the federal and state law claims.**

Burch argues the Bankruptcy Court lacked jurisdiction over the case because (1) the case was not a core proceeding; (2) Rushmore was not a creditor in the bankruptcy plan; and (3) Burch was not a debtor in the bankruptcy case. App. Br. 6, 12, 14 ECF No. 8. The Bankruptcy Court

determined it had jurisdiction under 28 U.S.C. §§ 1334(b) and 157(a). *See* Record 780, ECF No. 3. The Bankruptcy Court also determined the matter was a core proceeding under 28 U.S.C. § 157(b). *Id.* The Bankruptcy Court did not err.

Under 28 U.S.C. § 1452, “[a] party may remove any claim or cause of action in a civil action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334.” District courts have jurisdiction over Chapter 11 bankruptcy cases, *id.* § 1334(e), and supplemental jurisdiction “over all other claims that are so related to claims in the action,” *id.* § 1367(a). A proceeding is “related” to the bankruptcy case if “the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.” *In re Wood*, 825 F.2d 90, 93 (5th Cir. 1987) (citation and internal quotation marks omitted). “It follows that district courts have supplemental jurisdiction over claims that form part of the same case or controversy with bankruptcy claims.” *In re TXNB Internal Case*, 483 F.3d 292, 300 (5th Cir. 2007). The district court may then refer a Chapter 11 case to a bankruptcy judge under § 157(a).

The Bankruptcy Court had jurisdiction over this case. The property at issue is undoubtedly “related” to the proceedings. 28 U.S.C. § 1452. The case concerns the same property and claims that the Bankruptcy Court had presided over in the Burches’ numerous prior cases. *See* Record 785–86, ECF No. 3. Indeed, that is why the Bankruptcy Court dismissed this case on preclusion grounds. *See id.* 788–90. “Bankruptcy courts have jurisdiction over such cases and may even reopen a closed case to ensure that the purpose of its discharge order is not undermined.” *In re Gervin*, 300 F. App’x 293, 298 (5th Cir. 2008). Burch’s arguments that the Bankruptcy Court lacked jurisdiction because the case was not a core proceeding and because Rushmore was not a

creditor are therefore meritless. The Bankruptcy Court also had jurisdiction to declare Burch a vexatious litigant. *See In re Terrebonne Fuel & Lube, Inc.*, 108 F.3d 609, 612–13 (5th Cir. 1997).

**B. Burch waived claims regarding validity of note.**

Burch also argues that the note is invalid because she did not sign it. *See* App. Br. 10, ECF No. 8. She raises this argument for the first time on appeal. “Except in cases of ‘extraordinary circumstances,’” the Court will “not consider issues raised for the first time on appeal.” *Vogel v. Veneman*, 276 F.3d 729, 733 (5th Cir. 2002). This case does not present extraordinary circumstances. In any event, Burch provides no valid support for her argument that Texas law requires both spouses to sign a note for a loan to be valid. Burch’s remaining arguments are frivolous.

**VI. CONCLUSION**

The Court **AFFIRMS** the Bankruptcy Court’s judgment. The Court also **DENIES** Burch’s Motion to Rule or Stay Related Rulings (ECF No. 16).

**SO ORDERED** on this **11th day of March, 2022**.

  
Reed O'Connor  
UNITED STATES DISTRICT JUDGE

# **APPENDIX E**



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed March 8, 2021

*Mark X. Mullin*  
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

IN RE:

WILLIAM PAUL BURCH,

DEBTOR.

§  
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CASE No. 12-46959-MXM-7

CHAPTER 7

JUANITA BURCH,

PLAINTIFF,

v.

RUSHMORE LOAN MANAGEMENT SERVICES,  
LLC,

DEFENDANT.

§  
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ADVERSARY No. 20-4084

**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

*[Relating to Adv. ECF No. 38]*

Before the Court is the *Defendant's Motion for Summary Judgment* (the “**Motion**”)<sup>1</sup> filed by Rushmore Loan Management Services, LLC (“**Rushmore**”) seeking dismissal of the claims asserted against it by Plaintiff, Juanita Burch, in her *Plaintiff's (sic) Original Petition* (“**Petition**”).<sup>2</sup> For the reasons detailed below, the Motion is **GRANTED**.

## I. JURISDICTION AND VENUE

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157(a). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. § 1409(a).

## II. PROCEDURAL BACKGROUND<sup>3</sup>

This Adversary Proceeding constitutes yet another in a long line of frivolous lawsuits<sup>4</sup> filed by William Paul Burch and/or Juanita Burch (together, the “**Burches**”) that relate to various real properties that were dealt with in one or both bankruptcy cases filed by one or both of the Burches. This Adversary Proceeding specifically relates to the real property located at 203 Hemlock, Arlington, Texas (the “**Hemlock Property**”).

### A. Bankruptcy filings

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<sup>1</sup> Adv. ECF No. 38.

<sup>2</sup> Adv. ECF No. 3-1, at 4/80.

<sup>3</sup> The documents cited in this section are matters of which this Court can take judicial notice. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2008) (directing courts to “consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice”); *Norris v. Hearst Trust*, 500 F.3d 454, 461 n.9 (5th Cir. 2007) (“[I]t is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record.”).

<sup>4</sup> See Adv. Nos. 18-4172; 18-4176; 19-4039; 19-4068; 19-4074; 19-4075; 19-4079; 19-4084; 19-4105; 19-4106; 19-4120; 20-4007; 20-4029; 20-4031; 20-4037; 20-4039; 20-4040; 20-4043; 20-4048; and 20-4063.

On December 1, 2008, the Burches filed for Chapter 11 bankruptcy (the “**2008 Bankruptcy Case**”) to prevent foreclosure on multiple properties, including the Hemlock Property.<sup>5</sup>

On January 21, 2009, Chase Home Finance, LLC filed proof of claim number 27-1 in the 2008 Bankruptcy Case, asserting a claim for \$87,000.09 secured by a mortgage on the Hemlock Property.<sup>6</sup> According to the proof of claim, Chase Home Finance, LLC was the servicer and holder of the note and mortgage (together, the “**Hemlock Loan Documents**”) and was authorized to file the proof of claim on behalf of Fannie Mae, “the owner of the loan.”<sup>7</sup>

On December 9, 2009, the Court entered an *Order Confirming Debtor’s Third Amended Plan of Reorganization* (the “**2008 Bankruptcy Case Confirmation Order**”),<sup>8</sup> which confirmed the Debtors’ *Fourth Amended Plan of Reorganization* (the “**2008 Bankruptcy Case Chapter 11 Plan**”)<sup>9</sup> that is attached as Exhibit A to the 2008 Bankruptcy Case Confirmation Order. Section 5.8 of the 2008 Bankruptcy Case Chapter 11 Plan provided for treatment of the claims of “Chase Bank,” which the plan listed as the “mortgage holder” on several properties.<sup>10</sup> The specific treatment as to the Hemlock Property was as follows:

Based upon the Debtors’ current value of the Hemlock property, the Debtors will enter into a New Hemlock Note in the original principal amount of \$84,950 (“New Hemlock Note”). The New Hemlock Note shall bear interest at the rate of 5.25% per annum. The Debtors shall pay the New Hemlock Note in 360 equal monthly payments of \$469.65 commencing on the Effective Date.<sup>11</sup>

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<sup>5</sup> See Case No. 08-45761-RFN-11.

<sup>6</sup> Attached as exhibits to the proof of claim are an “InterestFirst Note” dated December 4, 2006, payable to Freedom Mortgage Corporation in the amount of \$78,750, and a related deed of trust.

<sup>7</sup> Claim 27-1, at 2, Case No. 08-45761-RFN-11.

<sup>8</sup> ECF No. 246, Case No. 08-45761-RFN-11.

<sup>9</sup> *Fourth Amended Plan of Reorganization of William & Juanita Burch Pursuant to Section 1125 of the Bankruptcy Code Dated October 16, 2009*, ECF No. 244, Case No. 08-45761-RFN-11.

<sup>10</sup> 2008 Bankruptcy Case Chapter 11 Plan § 5.8.

<sup>11</sup> *Id.*

No party appealed the 2008 Bankruptcy Case Confirmation Order. The 2008 Bankruptcy Case was closed on September 11, 2012.

On December 28, 2012, William Paul Burch filed for Chapter 13 bankruptcy (the “**2012 Bankruptcy Case**”).<sup>12</sup> The 2012 Bankruptcy Case was converted to Chapter 11 on December 23, 2013.<sup>13</sup>

On November 18, 2015, Seterus, “as authorized subservicer” for Fannie Mae, filed proof of claim number 35-1 in the 2012 Bankruptcy Case, asserting a secured claim for \$104,027.36 and attaching the same Hemlock Loan Documents that were attached to proof of claim number 27-1 in the 2008 Bankruptcy Case.<sup>14</sup>

On January 5, 2016, William Paul Burch filed an amended Chapter 11 plan of reorganization (the “**2012 Bankruptcy Case Chapter 11 Plan**”),<sup>15</sup> and on February 1, 2016, the Court entered an order confirming that plan (the “**2012 Bankruptcy Case Confirmation Order**”).<sup>16</sup> The 2012 Bankruptcy Case Chapter 11 Plan provided the following treatment of Seterus’s secured claim:

| Class | Claim No. | Collateral     | Amount of claim |
|-------|-----------|----------------|-----------------|
| 9     | 35        | 203<br>Hemlock | \$104,027.36    |

The Class 9 Allowed Secured Claim of Seterus, Inc., as the Authorized Subservicer for Federal National Mortgage Association (“Fannie Mae”), Creditor c/o Seterus, Inc, on the Effective Date, the property located at 203 Hemlock Drive, Arlington, Texas 76018 (the “Hemlock Property”) shall be surrendered to the holder of the Allowed Class 9 Claim and the claim shall be deemed paid in

<sup>12</sup> ECF No. 1, Case No. 12-46959.

<sup>13</sup> *Order Converting Case from Chapter 13 to Chapter 11*, ECF No. 100, Case No. 12-46959.

<sup>14</sup> Claim 35-1, Case No. 12-46959.

<sup>15</sup> *William Paul Burch’s Amended Plan of Reorganization*, ECF No. 186, Case No. 12-46959.

<sup>16</sup> *Order Confirming Debtor’s Plan of Reorganization*, ECF No. 188, Case No. 12-46959.

full. Upon the Effective Date the automatic stay shall lift without further order of this Court to allow the Class 9 claimant, or its assigns or successors in interest, to take any and all steps necessary to exercise any and all rights it may have in the Hemlock Property.<sup>17</sup>

The 2012 Bankruptcy Case Confirmation Order contained the same language regarding the treatment of Seterus's claim.<sup>18</sup> Nothing in the 2012 Bankruptcy Case Chapter 11 Plan or Confirmation Order provided, or even suggested, that the secured claim against the Hemlock Property was void or disallowed because of language in the 2008 Bankruptcy Case Chapter 11 Plan or because of events that took place after confirmation of the 2008 Bankruptcy Case Chapter 11 Plan.

On October 20, 2016, William Paul Burch filed a motion to enforce the 2012 Bankruptcy Case Chapter 11 Plan (the "***Second Motion to Enforce***"), alleging that lenders on various of his properties were not complying with the plan.<sup>19</sup> With respect to the Hemlock Property, William Paul Burch alleged the following in the Second Motion to Enforce:

D. HEMLOCK-Rushmore 7600345210 888-504-6700

On the Amended Plan page 15, the Court approved release of the property back to the Secured Lender but the figures given by the Secured Lender's counsel included a large amount of insurance payments that were not required as the property was insured by the Debtor. Further, the counsel for the Secured Lender represented that after the Amended Plan was confirmed the Secured Lender would conduct an inspection of the property to place a true value on the property as-is. The Debtor requests that the property be inspected by a property inspector agreed to by both parties at the Secured Lender's expense and the property be returned to the Debtor for repair and sale at the value of the inspector. The Debtor also requests a no payment-sales period for six months following the entry on an order on this Motion.<sup>20</sup>

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<sup>17</sup> 2012 Bankruptcy Case Chapter 11 Plan, at 15.

<sup>18</sup> 2012 Bankruptcy Case Confirmation Order, at 9.

<sup>19</sup> *Debtor's Second Motion to Enforce Plan*, ECF No. 217, Case No. 12-46959. William Paul Burch's first motion to enforce the 2012 Bankruptcy Case Chapter 11 Plan did not deal with the Hemlock Property. *See Debtor's Motion to Enforce Plan* (dealing with property at 1713 Enchanted, Lancaster, TX 75146), ECF No. 196, Case No. 12-46959.

<sup>20</sup> *Second Motion to Enforce*, at 5.

In the Court's November 22, 2016 order (the "*Order Enforcing 2012 Bankruptcy Case Chapter 11 Plan*")<sup>21</sup> granting (in part) the Second Motion to Enforce, the Court granted the following relief with respect to the Hemlock Property:

[It is] ORDERED, ADJUDGED AND DECREED that regarding the property located at 203 Hemlock, Ft. Worth, Texas, the Debtor and the Secured Lender on such property shall work together to inspect the property to place a value on the property "as is", so that the Debtor can obtain a sale on the property for its value and that there be a no payment selling period for six months following the entry of this Order to allow the parties to effectuate the terms of this Order[.]<sup>22</sup>

Nothing in the Second Motion to Enforce or in the Order Enforcing 2012 Bankruptcy Case Chapter 11 Plan provided, or even suggested, that the secured claim against the Hemlock Property was void or disallowed because of language in the 2008 Bankruptcy Case Chapter 11 Plan or because of events that took place after confirmation of the 2008 Bankruptcy Case Chapter 11 Plan.

The 2012 Bankruptcy Case was converted to Chapter 7 on January 30, 2018 based in part on William Paul Burch's material defaults under the 2012 Bankruptcy Case Chapter 11 Plan.<sup>23</sup>

On May 23, 2018, the Chapter 7 trustee filed a notice of intent to abandon the Chapter 7 bankruptcy estate's interest in the Hemlock Property, alleging that offers received for its sale were insufficient to pay the outstanding principal balance of the first lien "held on the Property by Rushmore Loan Management Services ('Rushmore') in the amount of \$143,834.31."<sup>24</sup> Neither of the Burches filed a response to the abandonment notice to allege that the secured claim against the Hemlock Property was void or disallowed because of language in the 2008

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<sup>21</sup> *Order Granting Debtor's Second Motion to Enforce Plan*, ECF No. 232, Case No. 12-46959.

<sup>22</sup> *Order Enforcing 2012 Bankruptcy Case Chapter 11 Plan*, at 2.

<sup>23</sup> *Order Granting Specialized Loan Servicing LLC's Motion to Dismiss with Prejudice or to Convert to Chapter 7*, ECF No. 354, Case No. 12-46959; *see also* ECF No. 390, Transcript of 1/25/18 hearing on conversion, at 46-51.

<sup>24</sup> *Notice of Trustee's Intent to Abandon Property (Hemlock)*, at 2, ECF No. 466, Case No. 12-46959.

Bankruptcy Case Chapter 11 Plan or because of events that took place after confirmation of the 2008 Bankruptcy Case Chapter 11 Plan. On July 12, 2018, the Court entered an order authorizing the Chapter 7 trustee to abandon the Hemlock Property.<sup>25</sup>

**B. History of litigation related to Hemlock Property**

On November 2, 2020, Juanita Burch filed her Petition<sup>26</sup> in the County Court at Law No. 1 of Tarrant County, Texas, styled *Juanita Burch v. Rushmore Loan Management Services, LLC*, Cause Number 2020-006311-1. The Petition was removed to this Court, where it is currently pending in this Adversary Proceeding.<sup>27</sup>

The Petition (i) asserts claims against Rushmore related to the Hemlock Property; (ii) falls within the scope of the “Restricted Subject Matter” of the Vexatious-Litigant Order;<sup>28</sup> (iii) is substantially similar to the twenty adversary proceedings currently or formerly pending in this Court filed by Juanita Burch or her husband William Paul Burch; and (iv) is substantially similar to the First Hemlock Petition<sup>29</sup> filed by the Burches in the 141<sup>st</sup> District Court in Tarrant County, Texas styled *William Paul Burch and Juanita Burch, v. Rushmore Loan Management Services, LLC*, Cause No. 141-304606-18.<sup>30</sup>

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<sup>25</sup> *Order Authorizing the Trustee to Abandon Property (Hemlock)*, ECF No. 514, Case No. 12-46959.

<sup>26</sup> Adv. No. 20-4084, ECF No. 1-1, at 4.

<sup>27</sup> *Id.*

<sup>28</sup> *Order (A) Designating William Paul Burch as a Vexatious Litigant, and (B) Granting Related Relief (the “Vexatious-Litigant Order”)* [Bankr. ECF No. 824]. Pursuant to the Vexatious-Litigant Order, the Court designated William Paul Burch as a vexatious litigant and sanctioned Mr. Burch by restricting his ability to file future lawsuits, motions, pleadings, or other requests for affirmative relief in any federal trial court, or Texas state or local trial court, against any party involving personal or real property that was included in the bankruptcy cases of *In re William Paul Burch and Juanita Burch*, Case No. 08-45761-rfn-11, filed in the United States Bankruptcy Court for the Northern District of Texas and *In re William Paul Burch*, Case No. 12-46959-mxm-7 filed in the United States Bankruptcy Court for the Northern District of Texas (the “*Restricted Subject Matter*”) without first securing this Court’s prior written authorization to do so. The Hemlock Property falls within the Restricted Subject Matter.

<sup>29</sup> *Plaintiffs’ Original Petition and Application for Temporary Restraining Order and Temporary Injunction (the “First Hemlock Petition”)*, Case 4:18-cv-00987-O, Doc. 1-1, at 3-12.

<sup>30</sup> *Id.* at Doc. 1.

Rushmore removed the First Hemlock Petition to the United States District Court for the Northern District of Texas.<sup>31</sup> The District Court consolidated the First Hemlock Petition into Civil Action No. 4:18-cv-01015-O,<sup>32</sup> and thereafter, the District Court referred the entirety of Civil Action No. 4:18-cv-01015-O, including the First Hemlock Petition, to this Court.<sup>33</sup> Juanita Burch was a plaintiff in the First Hemlock Petition filed against Rushmore. This Court ultimately dismissed the First Hemlock Petition<sup>34</sup> and entered a Final Judgment<sup>35</sup> disposing of all the claims asserted by the Burches against Rushmore.

The Petition—the subject of this new Adversary Proceeding—asserts virtually identical claims to those the Burches previously filed against Rushmore in the First Hemlock Petition,<sup>36</sup> which were dismissed by the entry of a Final Judgment disposing of all claims asserted by the Burches against Rushmore.<sup>37</sup>

### III. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when there are no genuine issues as to any material facts, and the moving party is entitled to judgment as a matter of law.<sup>38</sup> Summary judgment is appropriate in any case where critical evidence is so weak or tenuous on an essential fact that it

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<sup>31</sup> See *Defendant's Notice of Removal*, Case 4:18-cv-00987-O, Doc. 1.

<sup>32</sup> See *Order Granting Motion to Consolidate Cases*, Case 4:18-cv-00987-O, Doc. 9.

<sup>33</sup> See *Order Accepting Findings, Conclusions, And Recommendation of the United States Magistrate Judge*, Case 4:18-cv-01015-O, Doc. 47.

<sup>34</sup> Adv. No. 19-4068, ECF No. 57.

<sup>35</sup> Adv. No. 19-4068, ECF No. 58.

<sup>36</sup> Hemlock Petition at 9-11.

<sup>37</sup> Adv. No. 19-4068, ECF No. 58.

<sup>38</sup> FED. R. CIV. P. 56(a); FED. R. BANKR. P. 7056.

could not support a judgment in favor of the nonmovant.<sup>39</sup> The moving party bears the burden of establishing that there are no genuine issues of material fact.<sup>40</sup>

If the dispositive issue is one on which the nonmoving party will bear the burden of proof at trial, the moving party may satisfy its burden by merely pointing out that the evidence in the record contains insufficient proof concerning an essential element of the nonmoving party's claim.<sup>41</sup> The burden then shifts to the nonmoving party, who must, by submitting or referring to evidence, set out specific facts showing that a genuine issue exists.<sup>42</sup> The nonmovant may not rest upon the pleadings, but must identify specific facts that establish a genuine issue exists for trial.<sup>43</sup>

#### **IV. ANALYSIS OF MOTION FOR SUMMARY JUDGMENT**

In the Petition, Burch asserts two causes of action: (1) breach of contract; and (2) quiet title.<sup>44</sup> As to each count in the Petition, summary judgment is appropriate because there are no genuine issues as to any material facts, and Rushmore is entitled to a judgment as a matter of law.

Foremost, the doctrines of res judicata and collateral estoppel bar re-litigation of these issues. Under Texas law, res judicata prevents causes of action from going forward that arise out of the same subject matter of issues already litigated.<sup>45</sup> A second action may not go forward on matters actually litigated, or on causes of action arising out of the same subject matter that might

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<sup>39</sup> *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994).

<sup>40</sup> *Norwegian Bulk Transp. A/S v. Int'l Marine Terminals P'ship*, 520 F.3d 409, 412 (5th Cir. 2008).

<sup>41</sup> *Id.* (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986)).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Complaint, at 9–10.

<sup>45</sup> *Cervantes v. Ocwen Loan Servicing, LLC*, 749 Fed. App'x 242, 245 (5th Cir. 2018).

have been litigated in the first action.<sup>46</sup> Similarly, collateral estoppel precludes re-litigation of issues actually litigated in a prior suit.<sup>47</sup>

In the current Adversary Proceeding, the counts levied in the Petition—breach of contract and quiet title—are identical to those issues previously litigated in the First Hemlock Petition in Adversary Proceeding No. 19-4068, which involved not only the same claims, but the same parties and the same subject property. Adversary Proceeding No. 19-4068 involved two consolidated actions that were filed in state court, removed to the United States District Court for the Northern District of Texas, and ultimately referred to this Court for disposition: District Court Civil Action No. 4:18-cv-01015-O (the “**1015 Action**”) and District Court Civil Action No. 4:18-cv-00987-O (the “**987 Action**”). In the 987 Action, the Burches filed a petition (the “**987 Petition**”)<sup>48</sup> against Rushmore involving the same Hemlock Property that was at issue in the 1015 Action (filed by William Paul Burch against other defendants) and that is now at issue in the Petition currently before the Court. The 987 Petition included claims against Rushmore for “Breach of Contract” and for “Suit to Quiet Title (Declaratory Judgment) and for Slander of Title.”<sup>49</sup> The Petition now before the Court includes virtually identical claims against Rushmore for breach of contract and quiet title.<sup>50</sup> On April 27, 2020, in connection with the orders dismissing all claims and counterclaims in Adversary Proceeding No. 19-4068,<sup>51</sup> the Court entered a *Final Judgment*<sup>52</sup> disposing of the entire Adversary Proceeding No. 19-4068.

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<sup>46</sup> *Texas Water Rights Comm v. Crow Iron Works*, 582 S.W.2d 768, 771–72 (Tex. 1979).

<sup>47</sup> *Bonniwell v. Beech Aircraft Corp.*, 663 S.W. 2d 816, 818 (Tex. 1984).

<sup>48</sup> *Plaintiff’s Original Petition and Application for Temporary Restraining Order and Temporary Injunction*, Case 4:18-cv-00987-O, Doc. 1-1, at. 3-12.

<sup>49</sup> 987 Petition at 7.

<sup>50</sup> Hemlock Petition at 9-11.

<sup>51</sup> Adv. No. 19-4068, ECF Nos. 33, 46, 56, 57.

<sup>52</sup> Adv. No. 19-4068, ECF No. 58.

Therefore, because Juanita Burch's Petition merely rehashes arguments previously raised by the Burches and heard by this Court, Rushmore is entitled to summary judgment.

Further, to address the merits of the Petition—as this Court has previously done—the claims levied still fail as a matter of law and Rushmore is entitled to summary judgment. Under Texas Law, to prevail on her breach of contract claim, Juanita Burch must prove that (1) she and Rushmore are parties to a valid contract; (2) she performed or tendered performance under the contract; (3) Rushmore breached the contract; and (4) Rushmore's breach caused Juanita Burch injury.<sup>53</sup> Rushmore points out that evidence in the record contains insufficient proof of (among other things) any breach by Rushmore, an essential element of a breach-of-contract claim. Juanita Burch bears the burden of proof at trial on this issue, so the burden has shifted to Juanita Burch, who must, by submitting or referring to evidence, set out specific facts showing that a genuine issue exists. Juanita Burch may not rest upon the pleadings but must identify specific facts that establish a genuine issue exists for trial regarding breach. Juanita Burch has failed to produce any evidence at all that a genuine issue exists as to any breach by Rushmore. Therefore, summary judgment should be granted in Rushmore's favor as to Juanita Burch's breach-of-contract claim.

Likewise, a suit to quiet title under Texas law requires Juanita Burch to prove (1) a valid equitable interest in a specific property; (2) title to the property is affected by a claim by the defendant; and (3) although facially valid, defendant's claim is invalid or unenforceable.<sup>54</sup> Rushmore points out that evidence in the record contains insufficient proof of (among other things) an invalid or unenforceable claim by Rushmore, an essential element of a suit-to-quiet-

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<sup>53</sup> *Hovorka v. Cmty. Health Sys., Inc.*, 262 S.W.3d 503, 508-09 (Tex. App.—El Paso 2008, no pet.); *Doss v. Homecoming Financial Network, Inc.*, 210 S.W.3d 706, 713 (Tex. App.—Corpus Christi 2006, pet. denied).

<sup>54</sup> *Van Duzer*, 995 F. Supp. 2d at 695.

title claim. Juanita Burch bears the burden of proof at trial on this issue, so the burden has shifted to Juanita Burch, who must, by submitting or referring to evidence, set out specific facts showing that a genuine issue exists. Juanita Burch may not rest upon the pleadings, but must identify specific facts that establish a genuine issue exists for trial regarding this element. Juanita Burch has failed to produce any evidence at all that a genuine issue exists as to any invalid or unenforceable claim by Rushmore. Therefore, summary judgment should be granted in Rushmore's favor as to Juanita Burch's suit-to-quiet-title claim.

Finally, the remaining requests in the Petition, i.e. pre-judgment and post-judgment interest, request for disclosure, and request for production of documents, are denied as without merit.

For the reasons stated above, it is **ORDERED** that the Motion is **GRANTED**.

**### End of Order ###**

## **APPENDIX F**



U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
**ENTERED**  
TAWANA C. MARSHALL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed December 9, 2009

  
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

|                         |   |                      |
|-------------------------|---|----------------------|
| IN RE                   | § |                      |
|                         | § |                      |
| WILLIAM & JUANITA BURCH | § | CASE 08-45761-RFN-11 |
|                         | § |                      |
| DEBTOR                  | § |                      |

ORDER CONFIRMING DEBTOR'S THIRD AMENDED PLAN OF REORGANIZATION

CAME ON FOR CONSIDERATION by the Court at the confirmation hearing held on December 8, 2009, the Debtor's Third Amended Plan of Reorganization filed October 16, 2009 ("Plan") as described by that certain Amended Disclosure Statement dated May 27, 2009, filed by William & Juanita Burch, Debtors in the above-styled and numbered case. The Plan having been transmitted to all creditors, equity interest holders and parties-in-interest and the Court having reviewed the Plan and the Court having been informed that no Objections to Confirmation have been

filed which have not been resolved by the modification announced in open Court on December 8, 2009,, and after hearing the evidence presented, testimony of witnesses, and argument of counsel, concludes as follows:

1. The majority of all creditors in all classes and the equity holders voting have voted to accept the Plan.

2. The Plan complies with the applicable provisions of Title 11, and the Debtor, as the plan proponent, has complied with the applicable provisions of Title 11.

3. The Plan has been proposed in good faith and not by any means forbidden by law.

4. The requisite number of impaired classes of claims or interests voting have voted to accept the Plan.

5. All payments made or promised to be made by the Debtor or any other person for services or for costs and expenses in, or in connection with, the Plan, and incident to the case, have been disclosed to the Court and are reasonable or, if to be fixed after Confirmation of the Plan, will be subject to the approval of the Court.

6. The identity, qualifications, and affiliations of the persons who are to serve the Debtor, after Confirmation of the Plan, have been fully disclosed, and the appointment of such persons to such offices, or their continuance therein, is equitable, and consistent with the interests of the creditors and equity security holders and with public policy.

7. The identity of any insider that will be employed or retained by the Debtor and his compensation has been fully disclosed.

8. The Plan does not affect any rate change of any regulatory commission with jurisdiction over the rights of the Debtor.

9. The Plan is not likely to be followed by further need for reorganization.

10. All Section 1930 fees shall be paid by the Debtor on or before the Effective Date of the Plan or as agreed to by the Debtor and the United States Trustee.

11. All creditors will receive more under the Plan than they would receive in a Chapter 7 liquidation.

12. The Plan does not affect any retiree benefits.

13. The Modifications announced in open Court on December 8, 2009 do not adversely affect any creditor who has previously voted to accept the Plan.

14. The Debtor reserves the right to object to the amount and allowance of all claims after Confirmation. All such objections shall be filed within sixty (60) days of the Effective Date, as defined in the Plan.

It is accordingly,

ORDERED, ADJUDGED AND DECREED that the Modifications announced in open Court on December 8, 2009, are approved. It is further

ORDERED ADJUDGED AND DECREED that the Debtor's Fourth Amended Plan of Reorganization, as attached hereto as Exhibit "A", is confirmed. It is further

ORDERED, ADJUDGED AND DECREED the Debtor is hereby required to file quarterly operating reports with the United States Trustee until such time as the case is closed. The Debtor is further required to pay the United States Trustee quarterly fees until such time as the clerk of the court closes the case.

Exhibit "A"

Eric A. Liepins  
ERIC A. LIEPINS, P.C.  
12770 Coit Road  
Suite 1100  
Dallas, Texas 75251  
Ph. (972) 991-5591  
Fax (972) 991-5788

ATTORNEY FOR DEBTOR

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

IN RE

WILLIAM & JUANITA BURCH

DEBTORS

§  
§  
§  
§  
§

Case No. 08-No. 08-45761-11

**FOURTH AMENDED PLAN OF REORGANIZATION OF WILLIAM & JUANITA  
BURCH PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE DATED  
OCTOBER 16, 2009**

**TO: ALL PARTIES-IN-INTEREST, THEIR ATTORNEYS OF RECORD AND TO THE  
HONORABLE UNITED STATES BANKRUPTCY JUDGE:**

COME NOW, William & Juanita Burch, Debtors and Debtors-in-Possession in the above-referenced bankruptcy cases, and proposes the following Plan of Reorganization ("Plan"). The Plan proposes segregation of the Creditors of the Debtor into 14 separate classes.

**ARTICLE I**

**DEFINITIONS**

Unless the context otherwise requires, the following capitalized terms shall have the meanings indicated when used in this Plan and in the accompanying Disclosure Statement, which meaning shall be equally applicable to both the singular and plural forms of such terms. Any term in this Plan that is not defined herein but that is used in title 11, United States Code ("Code") shall have the meaning assigned to such term in the Code.

1. **"Administrative Claim"** shall mean those Claims entitled to priority under the provisions of Section 507 of the Code, pursuant to a claimed and allowed administrative expense priority under Section 503(b) of the Code. However ad valorem tax authorities shall not be required to file and Administrative Expenses claim and request for payment in order for their Administrative Expenses Claims to be allowed.

2. **"Allowed Claim"** as to all Classes, hereinafter specified, shall mean a Claim against Debtor (a) for which a Proof of Claim has been timely filed with the Court by the Bar Date, or, with leave of the Court and without objection by any party-in-interest, late-filed and as to which neither the Debtor nor any party-in-interest files an objection or as to which the Claim is allowed by Final Order of the Court, or (b) scheduled in the list of creditors, as may be amended, prepared and filed with the Court pursuant to Rule 1007(b) and not listed as disputed, contingent or unliquidated as to amount, as to which no objection to the allowance thereof has been interposed through closing of this case, or as to which any such objection has been determined by an order or judgment which is no longer subject to appeal or certiorari proceeding and as to which no appeal or certiorari proceeding is pending. This category includes all Claims deemed unsecured pursuant to §506(a) of the Code. When "Allowed Claim" is used in the context of a Secured Claim, the provisions of §506(b) of the Code shall also apply.

3. **"Allowed Secured Claim"** shall mean an Allowed Claim secured by a lien, security interest, or other encumbrance on the properties owned by the Debtor, which lien, security interest, or other encumbrance has been properly perfected as required by law, to the extent of the value of the property encumbered thereby. That portion of such Claim exceeding the value of the security held therefor shall be an Unsecured Claim, as defined below and determined pursuant to 11 U.S.C. §506(a).

4. **"Allowed Unsecured Claim"** shall mean an unsecured Claim against Debtor (a) for which a Proof of Claim has been timely filed with the Court by the Bar Date, or, with leave of the Court and without objection by any party-in-interest, late-filed and as to which neither the Debtor nor any party-in-interest files an objection or as to which the Claim is allowed by Final Order of the Court, or (b) scheduled in the list of creditors, as may be amended, prepared and filed with the Court pursuant to Rule 1007(b) and not listed as disputed, contingent or unliquidated as to amount, as to which no objection to the allowance thereof has been interposed through closing of this case, or as to which any such objection has been determined by an order or judgment which is no longer subject to appeal or certiorari proceeding and as to which no appeal or certiorari proceeding is pending. This category includes all Claims deemed unsecured pursuant to §506(a) of the Code.

5. **"Bar Date"** shall mean the date fixed by the Court as the last date for filing all Claims in this case other than Administrative and Priority Claims or Rejection Claims.

6. **"Case"** shall mean this Chapter 11 case.

7. **"Claim"** shall mean any right to payment from the Debtor as of the date of entry of the Order Confirming Plan whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or can be asserted by way of set-off. Claim includes any right or cause of action based on a pre-petition monetary or non-monetary default.

8. **"Claimant"** shall mean the holder of a Claim.

9. **"Class"** shall refer to a category of holders of Claims or interests which are "substantially similar" as provided for in Section 1122 of the Code.

10. **"Code"** shall mean the United States Bankruptcy Code, being title 11 of the United States Code, as enacted in 1978 and thereafter amended.

11. **"Confirmation"** or **"Confirmation of this Plan"** shall mean entry by the Court of an Order confirming this Plan at or after a hearing pursuant to Section 1129 of the Code.

12. **"Confirmation Date"** shall mean the date on which the Court enters an Order confirming this Plan.

13. **"Court"** shall mean the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, presiding over this Chapter 11 reorganization case, or any successor court of competent jurisdiction.

14. **"Creditor"** shall mean any person having a Claim against Debtor.

15. **"Debt"** shall mean any obligation of Debtor, alone, and any obligation of Debtor and any other Person, to any Entity.

16. **"Debtor"** or **"Debtors"** shall mean William and Juanita Burch, individually and the Debtors in the above-styled and numbered case.

17. **"Disbursing Agent"** shall mean the Reorganized Debtor.

18. **"Effective Date"** shall mean thirty days after the Final Confirmation Date.

19. **"Entity"** shall include Person, estate trust, governmental unit and the United States Trustee.

20. **"Equity Interest Holders"** shall mean holders of the equity interests in the Debtors.

21. **"Final Confirmation"** shall mean that date which is eleven (11) days following the entry of the Order Confirming Plan, during which period of time no Notice of Appeal is filed, or if

a Notice of Appeal is filed, during which period of time no Motion for Stay Pending Appeal is granted or supersedeas bond is approved and filed.

22. **"Order Confirming Plan"** shall mean the Order of the Court determining that this Plan meets the requirements of Chapter 11 of the Code and is entitled to confirmation or filed for relief under Chapter 11 of the Code.

23. **"Petition Date"** shall mean the date on which the Debtor filed this proceeding, December 1, 2008.

24. **"Plan"** shall mean this Plan of Reorganization in its present form or as it may be amended, modified or supplemented.

25. **"Priority Claim"** shall mean any Claim entitled to priority pursuant to Section 507(a) of the Code except for Tax Claims and Claims incurred by the Debtor post-petition in the ordinary course of business.

26. **"Rejection Claim"** shall mean any Claim arising out of the rejection of a lease or executory contract pursuant to Section 365 of the Code, which Claim shall be treated as an Unsecured Claim.

27. **"Reorganized Debtor"** shall mean the entity which shall assume title to and control of the Debtors' assets and liabilities upon confirmation as provided herein.

28. **"Secured Claim"** shall mean an Allowed Claim secured by a lien, security interest, or other encumbrance on the properties owned by the Debtor, which lien, security interest, or other encumbrance has been properly perfected as required by law, to the extent of the value of the property encumbered thereby. That portion of such Claim exceeding the value of the security held therefor shall be an Unsecured Claim, as defined below and determined pursuant to 11 U.S.C. §506(a).

29. **"Substantial Consummation"** shall occur upon Debtor's commencement of payments to creditors as provided in this Plan.

30. **"Tax Claims"** shall mean any Claim entitled to priority under Section 507(a)(8) of the Code and shall include the claims of taxing authorities for taxes owed on the property retained by the Debtor under this Plan.

31. **"Unsecured Claim"** shall mean any Allowed Claim, whether or not liquidated or contingent other than a Priority Claim, a Tax Claim, or a Secured Claim.

## **ARTICLE 2**

### **CERTAIN GENERAL TERMS AND CONDITIONS**

The following general terms and conditions apply to this Plan:

2.1 **Claims and Debts:** Various types of Claims and Debts are defined in this Plan. This Plan is intended to deal with all Claims and Debts against the Debtors of whatever character whether or not contingent or liquidated and whether or not allowed by the Court pursuant to Section 502(a) of the Code and all Claims and Debts will receive the treatment afforded in Articles of this Plan. Claims and Debts incurred by the Debtors post-petition, including ad valorem taxes, in the ordinary course of business will be paid by the Debtors according to their terms as they come due.

2.2 **Securities Laws:** The issuance of any security in satisfaction of indebtedness under this Plan may be exempt from registration under certain State and Federal securities laws by virtue of Section 1145 of the Code and the exemption therein contained.

2.3 **Time for Filing Claims:** With respect to those Claims that have been identified in the Schedules filed pursuant to Section 521(1) of the Code and which have been scheduled as "disputed," "contingent," or "unliquidated," said Claimants must file a proof of claim bearing the case number of the above-styled and referenced proceeding with the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, on or before the Bar Date to participate under this Plan. Claims scheduled as disputed, contingent, or unliquidated filed after the Bar Date shall not be allowed, and shall not participate in the distributions contemplated by this Plan. Claims arising from rejection of a lease or executory contract and administrative claims shall be filed with the Court within thirty (30) days following the Confirmation Date of this Plan.

2.4 **Modifications to Plan:** In accordance with Bankruptcy Rule 3019, to the extent applicable, this Plan may be modified upon application of Debtors or corrected prior to Confirmation without notice and hearing and without additional disclosure pursuant to Section 1125 of the Code provided that, after hearing on and notice to the creditors, the Court finds that such modification does not materially or adversely affect any Creditor or Class of Creditor.

**ARTICLE 3**  
**TREATMENT OF UNCLASSIFIED CLAIMS**  
**(CERTAIN ADMINISTRATIVE CLAIMS AND PRIORITY CLAIMS)**

3.1 All trade and service debts and obligations, including ad valorem taxes for year 2009, incurred in the normal course of business by the Debtors on or after the Petition Date will be paid when due in the ordinary course of the Debtors' business unless a different time for payment is specified in this Plan.

3.2 Each governmental unit holding a post-petition Claim arising out of taxes assessed against property of the estate, also including "ad valorem property taxes," but limited as provided by Section 502(b)(3) of the Code, shall be paid in full when said Claims are due.

**ARTICLE 4**  
**DIVISION OF CREDITORS INTO CLASSES**

4.1 **Classification of Claims:** This Classification of Claims is made for purposes of voting on this Plan, making distributions thereunder, and for ease of administration thereof. Unless specifically provided otherwise herein, on the Confirmation Date this Plan discharges and extinguishes all Claims and Debts against the Debtor of whatever character, whether allowed by the Court or otherwise.

- Class 1:** Consists of **Allowed Administrative Claims Attorney fees and US Trustee Fees** (Not Impaired)
- Class 2:** Consists of **Allowed IRS Tax Claims** (Impaired)
- Class 3:** Consists of **Allowed Ad Valorem Tax Claims** (Impaired)
- Class 4:** Consists of **Allowed Secured Claim of America Home Mortgage Bank** (Impaired)
- Class 5:** Consists of **Allowed Secured Claim of America's Servicing Company** (Impaired)
- Class 6:** Consists of **Allowed Secured Claim of Aurora Loan Service** (Impaired)
- Class 7:** Consists of **Allowed Secured Claim of Chase Bank** (Impaired)
- Class 8:** Consists of **Allowed Secured Claim of Countrywide Home Loans** (Impaired)
- Class 9:** Consists of **Allowed Secured Claim of Freedom Mortgage** (Impaired)
- Class 10:** Consists of **Allowed Secured Claim of Litton Loan Servicing** (Impaired)
- Class 11:** Consists of **Allowed Secured Claim of Select Portfolio Services** (Impaired)
- Class 12:** Consists of **Allowed Secured Claim of Sprint Partners** (Impaired)
- Class 13:** Consists of **Allowed Secured Claim of Wells Fargo** (Impaired)
- Class 14:** Consists of **Allowed Unsecured Creditors** (Impaired)

**ARTICLE 5**  
**TREATMENT OF CLASSES**

5.1 **Satisfaction of Claims and Debts:** The treatment of and consideration to be received by holders of Allowed Claims or interests pursuant to this Article of this Plan shall be in full settlement, release and discharge of their respective Claims, Debts, or interests as against the Debtors subject to the provisions herein. On the Confirmation Date, the Reorganized Debtor shall assume all duties, responsibilities and obligations for the implementation of this Plan.

5.2 **Class 1 Claimants** (Allowed Administrative Claims of Professionals and US Trustee)

are unimpaired and will be paid in cash and in full on the Effective Date of this Plan. Professional fees are subject to approval by the Court as reasonable. Debtors' attorney's fees approved by the Court and payable to the law firm of Eric Liepins, P.C. will be paid immediately following the later of Confirmation or approval by the Court out of the available cash. This case will not be closed until all allowed Administrative Claims are paid in full. Aurora Loan Services shall have an Administrative Claim in the amount of \$1,500. This Claim shall be paid in twelve monthly installments commencing on the Effective Date. Class 1 Creditor Allowed Claims are estimated as of the date of the filing of this Plan to not exceed the amount of \$15,000 including Section 1930 fees. Section 1930 fees shall be paid in full prior to the Effective Date. The Debtors are required to continue to make quarterly payments to the U.S. Trustee and may be required to file post-confirmation operating reports until this case is closed. The Class 1 Claimants are not impaired under this Plan.

5.3      5.3      Class 2 Claimants (Allowed Secured Claim of IRS) is impaired and shall be satisfied as follows: The Allowed Secured Claim of the IRS shall will be satisfied by being paid in full with interest in monthly installments, out of revenue of the Reorganized Debtor's continued operation of business, with the total amount of that Allowed Secured Claim subject to being reduced during the term of the Plan through lump sum payments from distribution of proceeds in accordance with existing lien priorities from the sale of any real property assets of the Debtor. (a) This Class consists of the Allowed Secured Claim of the United States of America, Internal Revenue Service ("IRS"). That Claim is in the amount of \$116,584.13 as evidenced by the Proof of Claim filed herein by the IRS, being Claim 18-2, and is secured by liens on the real and personal property of the Debtors as identified in the attachments to the Proof of Claim. The Plan intends to treat the IRS claim as a secured Class 2 claim. The Class 2 claim will be paid in full over a 60 month period from the date of the petition, commencing on the Effective Date with interest at a rate of 4% per annum. The amount of the Class 2 Allowed Secured Claim of the IRS may be amended should the IRS file an amended proof of claim in this case. The IRS may file an amendment to its Proof of Claim at any time and said amendment will be deemed timely filed.

(b) The Class 2 Allowed Secured Claim of the IRS will be paid, together with interest at the rate of 4% per annum, in cash in equal monthly payments of \$2,489.57 each over a term not to exceed 51 months from the date of Confirmation, with the first payment to be due on the first day of the first month following the Effective Date, and with the subsequent payments being due on the first day of each month thereafter. The amount of the monthly payment may change in the event the Debtor's objects to the IRS Proof of Claim or in the event the IRS amends its Proof of Claim. The Debtor has filed amended returns to reflect changes in the amount owed.

(c) The Class 2 Claimant, the IRS, will, notwithstanding any other term or provision of this Plan, retain its liens until the Allowed Secured Claim is, together with interest, paid in full. However, as set forth in the Plan in the event the Debtor sell any of the Properties, the IRS shall release its lien on the Property sold once all proceeds from the sale are distributed in accordance with existing lien priorities.

(d) The IRS Secured Claim of \$116,584.13 is an Allowed Secured Claim unless the Debtor or Reorganized Debtor files an objection to the filed IRS Proof of Claim before the expiration of 30 days from the Effective Date. If such an objection is timely filed, then the IRS Secured Claim will become an Allowed Secured Claim upon final order of the Court resolving that objection and the amount of the IRS Secured Claim. If the IRS files an amended proof of claim changing the amount of the Secured Claim, then the amount of the amended proof of claim will become the Class 2

Allowed Secured Claim of the IRS unless an objection is filed thereto within 30 days of the filing of the amended proof of claim.

(e) Payments under the Plan to the IRS on its claims are to be made to: Internal Revenue Service, Insolvency, Attn: Nathan Villanueva, Bankruptcy Advisor, Insolvency Group 1, Room 937, MAIL Code 5029, 1100 Commerce Street, Dallas, Texas 75242, 214.413.5346, Facsimile 214.413.5208.

(f) Notwithstanding any other provision or term of this Plan or order of confirmation, the following Default Provision shall apply to the IRS and its claims and administrative expense claims in this case:

If the Debtor or the Reorganized Debtor fails to make all payments on federal taxes, claims of the IRS, and administrative expense claims of the IRS, which are provided for in this Plan or order of confirmation, or if any other event of default as provided in the Plan occurs, the IRS shall be entitled to give the Debtor and Reorganized Debtor notice of the default and if the default has not been cured within thirty (30) days from the mailing of the written notice, the IRS shall have the following rights and the following provisions shall apply to the IRS:

- (1) The IRS shall have the right to declare due and payable any interest or penalties which would have accrued on pre-petition tax liabilities of the Debtor but for the filing of the bankruptcy petition and if the Debtor fails to pay the interest and penalties then they may be assessed by the IRS;
- (2) The pre-petition tax claims shall be treated as taxes owed by a non-debtor as if no bankruptcy petition has been filed and as if no plan had been confirmed;
- (3) The IRS shall have the right to proceed to collect from the Debtor or the reorganized Debtor any of the pre-petition tax liabilities and related penalties and interest through administrative or judicial collection procedures available under the United States Code as if no bankruptcy petition had been filed and as if no plan had been confirmed, and, such procedure shall include, but not be limited to:
  - (i) the filing of notices of federal tax liens; and (ii) collection by levy as provided by I.R.C. §§ 6331 through 6344; and
- (4) The failure of the IRS to declare a default does not constitute a waiver by the IRS of the right to declare that the Debtor or Reorganized Debtor are in default of the Plan or order of confirmation.

5.4 Class 3 Claimants (The Allowed Property Taxes Claims). The Allowed Amount of all Priority Property Tax Creditor Claims shall be paid out of either the proceeds from the sale of any property for which a tax is owed or out of the revenues or employment income of the Debtor for any property which is to be retained under the Plan. The Priority Tax Creditor Claims which are to be paid under the Plan result from real property taxes on the following properties: 3007 Sunnybrook, Arlington, Texas, 2811 Galemeadow, Fort Worth, Texas and 511 Plainview, Mansfield, Texas (The "Tax Properties"). Various taxing authorities have filed Proofs of Claim, however, those Proofs of Claim include taxes which have now been paid. The Debtors believe the current amount of past due ad valorem taxes is \$18,645. The Monthly payment on these taxes will be approximately \$414 per month. The amounts owing on the Tax Properties are the ad valorem real property taxes for tax years 2007 and 2008. These taxes will be paid over a 60 month period commencing on the Effective Date. The Ad Valorem Taxes for real property taxes will receive post-petition pre-confirmation

interest at the state statutory rate of 1% per month and post-confirmation interest at the rate of 12% per annum. The ad valorem Taxing Authorities shall retain their liens, and their lien priority, to secure their Tax Claims until paid in full as called for by this Plan.

5.5 Class 4 Claimant (Allowed Secured Claim of America Home Mortgage) is impaired and shall be satisfied as follows: America Home Mortgage ("America") is the mortgage holder on the properties located at 426 Falling Leaves, Duncanville, Texas, 420 Georgetown, Everman, Texas and 3007 Sunnybrook, Arlington, Texas (the "America Properties"). The Debtor shall surrender the Falling Leaves property in full satisfaction of the debt pursuant to 11 U.S.C. 1129(b)(2)(A)(iii). Based upon the Debtors' current value of the Georgetown property, the Debtors will enter into a New Georgetown Note in the original principal amount of \$59,500 ("New Georgetown Note"). The New Georgetown Note shall bear interest at the rate of 4.5% per annum. The Debtors shall pay the New Georgetown Note in 360 equal monthly payments of \$302.29 commencing on the Effective Date. Based upon the Debtors' current value of the Sunnybrook property, the Debtors will enter into a New Sunnybrook Note in the original principal amount of \$81,432 ("New Sunnybrook Note"). The New Sunnybrook Note shall bear interest at the rate of 7% per annum. The Debtors shall pay the New Sunnybrook Note in 360 equal monthly payments of \$542 commencing on the Effective Date. Class 4 is impaired under this Plan.

5 Class 5 Claimant (Allowed Secured Claim of America's Servicing Company) is impaired and shall be satisfied as follows: America's Servicing Company ("Servicing") is the mortgage holder on the properties located at 1937 Bolingbroke, Fort Worth, Texas, 503 W. 8<sup>th</sup> Street, Lancaster, Texas, 2809 Harvest Lake Irving, Texas, and 707 Hunters Glen, Arlington, Texas (the "Servicing Properties"). The Debtors shall retain the Servicing Properties. Based upon the Debtors' current value of the Bolingbroke property, the Debtors will enter into a New Bolingbroke Note in the original principal amount of \$75,000 ("New Bolingbroke Note"). The Bolingbroke Note shall bear interest at the rate of 4.5% per annum. The Debtors shall pay the New Bolingbroke Note in 360 equal monthly payments of \$380 commencing on the Effective Date. Based upon the Debtors' current value of the 8<sup>th</sup> Street property, the Debtors will enter into a New 8<sup>th</sup> Street Note in the original principal amount of \$34,800 ("New 8<sup>th</sup> Street Note"). The New 8<sup>th</sup> Street Note shall bear interest at the rate of 4.5% per annum. The Debtors shall pay the New 8<sup>th</sup> Street Note in 360 equal monthly payments of \$173.09 commencing on the Effective Date. Based upon the Debtors' current value of the Harvest Lake property, the Debtors will enter into a New Harvest Lake Note in the original principal amount of \$89,620 ("New Harvest Lake Note"). The New Harvest Lake Note shall bear interest at the rate of 4.5% per annum. The Debtors shall pay the New Harvest Lake Note in 360 equal monthly payments of \$454 commencing on the Effective Date. Based upon the Debtors' current value of the Hunters Glen property, the Debtors will enter into a New Hunters Glen Note in the original principal amount of \$75,000 ("New Hunters Glen Note"). The New Hunters Glen Note shall bear interest at the rate of 4.5% per annum. The Debtors shall pay the New Hunters Glen Note in 360 equal monthly payments of \$380.83 commencing on the Effective Date. Class 5 is impaired under this Plan.

5.7 Class 6 Claimant (Allowed Secured Claims of Aurora Loan Services) is impaired and shall be satisfied as follows: Aurora Loan Services (“Aurora”) is a mortgage holder on property located at 213 Woodhaven, De Soto, Texas (the “Aurora Property”). The Debtor shall surrender the Woodhaven Property in full satisfaction of the debt pursuant to 11 U.S.C. 1129(b)(2)(A)(iii). Aurora is also the lienholder on the Debtors present home at 5947 Waterford, Grand Prairie, Texas (the “Waterford Property”). The Debtors shall retain the Waterford Property as their homestead and continue to make monthly payments in accordance with the terms of the existing loan documents. The Debtor’s shall pay any pre-petition arrearage on the property prior to the Effective Date. The payments to Aurora shall be principal and interest only on the Waterford property. The Debtors shall be responsible for maintaining and directly paying for adequate continuous insurance coverage on the Waterford property and directly paying all property taxes. Class 6 is impaired under this Plan.

5.8 Class 7 Claimant (Allowed Secured Claims of Chase) is impaired and shall be satisfied as follows: Chase Bank (“Chase”) is the mortgage holder on the following properties located at 1713 Enchanted, Lancaster, Texas, 203 Hemlock, Arlington, Texas, 4717 Ira, Haltom City, Texas and 2236 Shady Grove, Bedford, Texas (the “Chase Properties”). Based upon the Debtors’ current value of the Enchanted property, the Debtors will enter into a New Enchanted Note in the original principal amount of \$68,000 (“New Enchanted Note”). The New Enchanted Note shall bear interest at the rate of 5% per annum. The Debtors shall pay the New Enchanted Note in 360 equal monthly payments of \$365.04 commencing on the Effective Date. Based upon the Debtors’ current value of the Hemlock property, the Debtors will enter into a New Hemlock Note in the original principal amount of \$84,950 (“New Hemlock Note”). The New Hemlock Note shall bear interest at the rate of 5.25% per annum . The Debtors shall pay the New Hemlock Note in 360 equal monthly payments of \$469.65 commencing on the Effective Date. Based upon the Debtors’ current value of the Ira property, the Debtors will enter into a New Ira Note in the original principal amount of \$78,000 (“New Ira Note”). The New Ira Note shall bear interest at the rate of 4.5% per annum . The Debtors shall pay the New Ira Note in 360 equal monthly payments of \$365.63 commencing on the Effective Date. Based upon the Debtors’ current value of the Shady Grove property, the Debtors will enter into a New Shady Grove Note in the original principal amount of \$101,000 (“New Shady Grove Note”). The New Shady Grove Note shall bear interest at the rate of 4.5% per annum . The Debtors shall pay the New Shady Grove Note in 360 equal monthly payments of \$512.56 commencing on the Effective Date. Class 7 is impaired under this Plan.

5.9 Class 8 Claimant (Allowed Secured Claims of Countrywide Home Loans) is impaired and shall be satisfied as follows: Countrywide Home Loans (“Countrywide”) is the mortgage holder on the properties located at 1053 Briarwood, De Soto, Texas, 2811 Galemeadow, Fort Worth, Texas and 7613 Timberline, Kennedale, Texas (the “Countrywide Properties”). The Debtors shall retain the Countrywide Properties. Based upon the Debtors’ current value of the Briarwood property, the Debtors will enter into a New Briarwood Note in the original principal amount of \$82,000 (“New Briarwood Note”). The New Briarwood Note shall bear interest at the rate of 5% per annum . The Debtors shall pay the New Briarwood Note in 360 equal monthly payments of \$413.35 commencing on the Effective Date. Based upon the Debtors’ current value of the Galemeadow property, the Debtors will enter into a New Galemeadow Note in the original principal amount of \$61,600 (“New Galemeadow Note”). The New Galemeadow Note shall bear interest at the rate of 4.5% per annum.

The Debtors shall pay the New Galemeadow Note in 360 equal monthly payments of \$312.93 commencing on the Effective Date. Based upon the Debtors' current value of the Timberline property, the Debtors will enter into a New Timberline Note in the original principal amount of \$89,602 ("New Timberline Note"). The New Timberline Note shall bear interest at the rate of 5% per annum. The Debtors shall pay the New Timberline Note in 360 equal monthly payments of \$472.40 commencing on the Effective Date. Class 8 is impaired under this Plan.

5.10 Class 9 Claimant (Allowed Secured Claims of Freedom Mortgage) is impaired and shall be satisfied as follows: Freedom Mortgage ("Freedom") is the mortgage holder on the property located at 1006 Nancy, Lancaster, Texas (the "Freedom Property"). Based upon the Debtors' current value of the Nancy property, the Debtors will enter into a New Nancy Note in the original principal amount of \$67,000 ("New Nancy Note"). The New Nancy Note shall bear interest at the rate of 7% per annum. The Debtors shall pay the New Nancy Note in 360 equal monthly payments of \$412 commencing on the Effective Date. Class 9 is impaired under this Plan.

5.11 Class 10 Claimant (Allowed Secured Claims of Litton Loan Servicing) is impaired and shall be satisfied as follows: Litton Loan Servicing ("Litton") is the mortgage holder on the property located at 2531 Gerry Way, Lancaster, Texas (the "Litton Property"). Based upon the Debtors' current value of the Gerry Way property, the Debtors will enter into a New Gerry Way Note in the original principal amount of \$33,000 ("New Gerry Way Note"). The New Gerry Note shall bear interest at the rate of 5.1% per annum. The Debtors shall pay the New Gerry Way Note in 360 equal monthly payments of \$195.86 commencing on the Effective Date. Class 10 is impaired under this Plan.

5.12 Class 11 Claimant (Allowed Secured Claims of Select Portfolio Services) is impaired and shall be satisfied as follows: Select Portfolio Services ("Select") is the mortgage holder on the properties located at 1169 Meadow Creek, Lancaster, Texas and 3805 Wrentham, Arlington, Texas (the "Select Properties"). The Debtor shall surrender the Meadow Creek in full satisfaction of the debt pursuant to 11 U.S.C. 1129(b)(2)(A)(iii). Based upon the Debtors' current value of the Wrentham property, the Debtors will enter into a New Wrentham Note in the original principal amount of \$113,621.64 (or such amount as determined by the Court) ("New Wrentham Note"). The New Wrentham Note shall bear interest at the rate of 7% per annum. The Debtors shall pay the New Wrentham Note in 360 equal monthly payments of \$755 commencing on the Effective Date. The Class 11 Creditor is impaired under this Plan.

5.13 Class 12 Claimant (Allowed Secured Claims of Sprint Partners) is impaired and shall be satisfied as follows: Sprint Partners ("Sprint") is the mortgage holder on the property located at 511 Plainview, Mansfield, Texas (the "Plainview Property"). The Debtor shall surrender the Plainview property in full satisfaction of the indebtedness pursuant to 11 U.S.C. 1129(b)(2)(A)(iii). Class 12 is impaired under this Plan.

5.14 Class 13 Claimant (Allowed Secured Claims of Wells Fargo) is impaired and shall be satisfied as follows: Wells Fargo ("Wells") is the mortgage holder on the property located at 7188 Chambers Creek, Arlington, Texas (the "Chambers Creek Property"). Based upon the Debtors'

current value of the Chambers Creek property, the Debtors will enter into a New Chambers Creek Note in the original principal amount of \$120,000 ("New Chambers Creek Note"). The New Chambers Creek Note shall bear interest at the rate of 4.5% per annum. The Debtors shall pay the New Chambers Creek Note in 360 equal monthly payments of \$608.83 commencing on the Effective Date. Class 13 is impaired under this Plan.

5.15 Class 14 Claimants (Allowed Unsecured Creditors) are impaired and shall be satisfied as follows: All Allowed Unsecured Creditors, this will include any bifurcated secured and unsecured creditors from Classes 4 through 13, and any claims of junior lienholders on any of the Retained Properties, including the junior liens held by JPMorgan Chase on the properties located at 1937 Bolingbroke Ct, Fort Worth, Texas – claim #35; 426 Falling Leaves Dr., Duncanville, Texas – claim #36; 2809 Harvest Lake Dr., Irving, Texas – claim #32; and 707 N. Hunters Glen Circle, Arlington, Texas – claim #34, hereinafter referred to as the "JP Morgan Chase Junior Liens"), shall be paid out of the unsecured creditors pool. However, any Class 14 creditors whose claim arises as a result of the value of any of the properties being less than the amount of the lien claims on those properties, including the JPMorgan Chase Junior Liens described above, shall be entitled to retain their liens on the properties during the term of the Plan, and in the event any property is sold under the Plan to which these liens attach, the creditor holding such lien shall be entitled to assert the amount of its lien claim to the proceeds of any such sale, to the exclusion of other unsecured creditors, after payment of any priority lien claimants.

Otherwise, the Debtors shall make payments unto the unsecured creditors in the amount of \$300 per month for a period of 60 months. In the event the Debtors sell any of the Retained Properties in the first 12 months from the Confirmation Date, 30% of the Net Proceeds (which shall mean monies remaining after payment of taxes, existing liens, including the IRS lien and JPMorgan Chase Junior Liens, and closing costs) will be placed into the Unsecured Creditor's Pool and distributed at the next scheduled distribution date. In the event the Debtors sell any of the Retained Properties in months 13 to 24 from the Confirmation Date, 20% of the Net Proceeds will be placed into the Unsecured Creditor's Pool and distributed at the next scheduled distribution date. In the event the Debtors sell any of the Retained Properties in months 25 to 36 from the Confirmation Date, 10% of the Net Proceeds will be placed into the Unsecured Creditor's Pool and distributed at the next scheduled distribution date. Allowed Unsecured Creditors shall receive their pro rata share of the Unsecured Class 14 Creditors Pool on a quarterly basis commencing on the last day of the first full calendar quarter after the Effective Date. The Class 14 Claimants are impaired under this Plan.

## **ARTICLE 6**

### **MEANS FOR EXECUTION OF THE PLAN**

6.1 **Action to be taken:** Any actions required to be taken by the Debtors on the Effective Date may be taken by the Debtors before the Effective Date or immediately following the date of Final Confirmation.

6.2 **Ongoing Operations:** The Debtors' obligations under this Plan will be satisfied out of the ongoing operations of the Reorganized Debtors. The income projections of the Reorganized Debtors are attached to the Disclosure Statement. The Debtors believe the projections to be accurate based upon current revenues. The Debtors do not intent to dramatically alter the current expenses and has projected only moderate growth over the Plan term.

6.3 Notwithstanding anything contained herein, the Reorganized Debtors shall have the right to request the Court to disallow any claim of any Entity from which property is recoverable under Sections 542, 543, 550, and 553 of title 11, or that is a transferee of a transfer avoidable under Sections 544, 545, 548, or 549 of title 11 unless such Entity or transferee has paid the amount, or turned over any such property, for which such Entity or transferee is liable.

## **ARTICLE 7**

### **SECTION 1129(b)(2)**

7.1 The Court may confirm this Plan even though less than all of the Classes of Claims and interests accept it. The requirements for confirmation of a plan over the objection of one or more classes of claims or interests are set forth in Section 1129(b) of the Code. Accordingly, Debtors, as the plan proponent, requests the Court to determine that this Plan does not discriminate unfairly, and is fair and equitable with respect to the rejecting creditor.

## **ARTICLE 8**

### **STATUS OF EXECUTORY CONTRACTS**

8.1 All unexpired leases and executory contracts shall be assumed on or before the Effective Date. To the extent there are any unexpired leases or executory contracts, which have not been assumed or dealt with in this Plan prior to the Effective Date, they are rejected. Any existing leases with tenants in any of the Retained properties are specifically assumed.

## **ARTICLE 9**

### **EVENTS OF DEFAULT AND EFFECT THEREOF**

9.1 In the event that Substantial Consummation of this Plan does not occur on or before the earlier of the Effective Date or 71 days after the Confirmation Date, the Order of Confirmation may be vacated by any party in interest, other than the Debtors.

9.2 No Claimant shall have the right to enforce any rights under this Plan until the Reorganized Debtors fails to cure any default hereunder within thirty (30) days of receipt of written notice of such default to Reorganized Debtors.

9.3. Default shall occur if one scheduled Plan payment is not made by Debtors or if current taxes are not timely paid pursuant to state law. In the event of default, any party in interest who has not received their required payment, shall send written notice of default as set forth in

section 9.2 above. Any notice of default sent by ad valorem taxing authorities, under the Plan may be sent via facsimile to William Burch 817-919-4853. In the event the default of payment to the ad valorem taxing authorities is not cured within twenty (20) days of the date of the facsimile, ad valorem taxing authorities may proceed to collect all amounts owed pursuant to state law outside of the Bankruptcy Court. The ad valorem taxing authorities shall not be required to give more than two notices of default. Upon the third event of default, the ad valorem taxing authorities shall be able to collect all amounts pursuant to state law outside of the Bankruptcy Court. Notwithstanding anything in this Plan to the contrary, the Bankruptcy Court shall not retain jurisdiction with respect to any tax claims except for (i) resolving the amount of any such tax claim arising prior to confirmation, and (ii) enforcing the discharge provision of the Plan.

#### **ARTICLE 10** **DISCHARGE**

10.1 Upon Confirmation, to the extent that a Claim or Debt has not been dealt with under this Plan, such Claim or Debt will be released.

10.2 The automatic stay imposed by Section 362 of the Code or any preliminary injunction granted by the Court to allow for Substantial Consummation of this Plan shall remain in effect until the Effective Date.

#### **ARTICLE 11** **AMENDMENTS TO THE PLAN**

11.1 Debtors may modify this Plan following Confirmation and before Substantial Consummation to the extent consistent with the requirements of section 1122 and 1123 of Title 11. The Plan as modified becomes the Plan if circumstances warrant modification and the Court approves of such modifications.

11.2 In the event of modification of this Plan pursuant to Section 11.1, any holder of a Claim or interest that has accepted or rejected this Plan is deemed to have accepted or rejected, as the case may be, the Plan as modified, unless, within ten (10) days of service of the Plan modifications upon such holder, such holder changes its previous acceptance or rejection.

#### **ARTICLE 12** **EFFECT OF CONFIRMATION**

12.1 The provisions of this Plan bind Debtors, any Entity issuing securities under this Plan, any Entity acquiring property under this Plan, and any Creditor or Equity Interest Holder, whether or not the Claim or interest of such Creditor or Equity Interest Holder is impaired under the Plan and whether or not such Creditor or Equity Interest Holder has accepted this Plan.

12.2 All property of the estate is vested in the Reorganized Debtors.

In the event the case is converted to a proceeding under Chapter 7, all property of the estate will vest in the Chapter 7 trustee.

12.3 All property of the Reorganized Debtors is free and clear of all Claims and interests of Creditors and Equity Interest Holders, except as to claims, secured claims or secured debentures and interests specifically granted in this Plan.

12.4 All Debts that arose before the Confirmation Date and any Debt of a kind specified in Section 502(g), 502(h) or 502(i) of the Code, whether or not a proof of claim based on such Debt is filed or deemed filed under Section 501, whether or not such Claim is allowed under Section 502; and whether or not the holder of such Claim has accepted this Plan; are, fully and finally satisfied by this Plan.

### **ARTICLE 13**

### **MISCELLANEOUS PROVISIONS**

13.1 The obligations under this Plan to any particular Claim are governed by the laws of the State constituting the situs of the debt represented by that particular Claim described in this Plan.

13.2 Equity Interest Holders are relieved from all liability, obligation or duty to initiate or pursue any causes of action of Debtors against any Entity.

13.3 Any caption herein is for convenience only and does not affect the construction of the Plan.

13.4 Any distribution pursuant to this Plan which remains unclaimed for a period of six (6) months from the due date of such distribution is forfeited.

### **ARTICLE 14**

### **RETENTION OF JURISDICTION**

Until this case is closed, the Court retains jurisdiction of the following matters only:

14.1 To direct any necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a Transfer of property dealt with by the Plan and to perform any other act, including the satisfaction of any Lien, that is necessary for the consummation of this Plan.

14.2 To allow or disallow Claims.

14.3 To hear and determine all Claims arising from the rejection of executory contracts and unexpired leases which are included in Debtors' estate and to consummate rejection and termination thereof in connection with Debtors' estate and/or implementation of the Plan.

14.4 To liquidate damages or estimate Claims in connection with any disputed, contingent or unliquidated Claims.

14.5 To adjudicate all Claims to an ownership interest in any property of Debtors' estate.

14.6 To recover all assets and properties, including by lawsuit, of Debtors' estate wherever located.

14.7 To hear and determine Claims concerning Federal, State and local taxes pursuant to Section 346, 505, 525 and 1146 of the Code.

14.8 To hear and determine any action or proceeding brought by Debtors or the Reorganized Debtors under Section 510, 542, 543, 544, 545, 547, 548, 549, 550, 551 and 553 of the Code, whether such action or proceeding is brought before or after the Effective Date.

14.9 To hear and determine any core proceeding, whether such proceeding is brought before or after the Effective Date.

14.10 To determine the validity, extent and priority of all Liens and security interests against property of Debtors' estate.

14.11 To consider any modification of this Plan under Section 1127 of the Code or under Bankruptcy Rule 3020 and/or modification of this Plan after Substantial Consummation as defined herein.

14.12 To hear and determine all requests for compensation and/or reimbursement of expenses of professionals.

14.13 To hear and determine Reorganized Debtors' requests for orders as are consistent with this Plan as may be necessary or desirable to carry out the provisions thereof.

14.14 To enter an order closing this case.

Respectfully submitted,

Respectfully submitted,

William Burch

/s/ William Burch

Juanita Burch

    /s/ Juanita Burch      
Juanita Burch

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### End of Order ###

## **APPENDIX G**



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed February 1, 2016

*Mark X. Mullin*

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

|                    |   |                       |
|--------------------|---|-----------------------|
| IN RE:             | } | CASE NO. 12-46959-MXM |
|                    | } |                       |
| WILLIAM PAUL BURCH | } |                       |
|                    | } | CHAPTER 13            |
| DEBTOR             | } |                       |

**ORDER CONFIRMING DEBTORS PLAN OF REORGANIZATION**

CAME ON FOR HEARING the confirmation of the Plan (defined below) filed by William Paul Burch (the "Debtor"), the debtors-in-possession in the above styled and numbered bankruptcy case (the "Bankruptcy Case").

On January 5, 2016, the Debtor filed his Amended Plan of Reorganization , which the Court authorized to be solicited and voted on pursuant to prior order entered in the Bankruptcy Case. The remainder of this Order addresses said Plan.

With the foregoing explanatory background, and based on the evidence introduced at the confirmation hearing, the docket of the Bankruptcy Case, and the Court's familiarity with the

proceedings in this Bankruptcy Case, the Court enters this Order and makes the following findings of fact and conclusions of law in addition to all findings of fact and conclusions of law delivered orally at said hearing. Accordingly, the Court finds and concludes as follows, with capitalized terms used below and not defined in this Order having the definitions assigned to them in the Plan:

1. On December 28, 2012, the Debtor filed his voluntary petition for relief under Chapter 13 of the United States Bankruptcy Code, which was subsequently converted to a Chapter 11 on December 23, 2013, thereby creating a bankruptcy estate (the "Estate").

2. The Debtor has remained in possession of the Estate as debtor-in-possession. No trustee or examiner has been appointed in the Bankruptcy Case.

3. Due, sufficient, and appropriate service and notice of the Plan (including the Plan Supplements, Amended Plans and Revisions to Plans, if any), and of the accompanying, approved disclosure statement, have been provided by the Debtor to all creditors and parties-in-interest entitled to notice thereof, in compliance with all requirements imposed by the Bankruptcy Code and Bankruptcy Rules.

4. The Debtor has proposed the Plan in good faith and the Plan is by no means forbidden by any applicable bankruptcy or non-bankruptcy law. The Plan complies with all applicable provisions of the Bankruptcy Code, and the Debtor has complied with all applicable provisions of the Bankruptcy Code.

5. Any payment to any professional or other person under the Plan otherwise requiring approval by the Court under the Bankruptcy Code remains subject to such approval. There is no governmental regulatory commission with jurisdiction over any rate charged by the Debtor or the Reorganized Debtor, and any provision of the Bankruptcy Code governing the

same is not applicable to the Plan. The Reorganized Debtor is authorized and directed to pay the fees and expenses of holders of Secured Claims, as provided in the Plan, without need for further order of this Court.

6. Confirmation of the Plan is not likely to be followed by liquidation or by the need for any further financial reorganization. The payments required by the Plan are feasible.

7. All fees due by the Debtor or Reorganized Debtor to the U.S. Trustee will be paid by the Debtor and Reorganized Debtor and are not discharged by the Plan or by anything in this Order.

8. Each class under the Plan entitled to vote (that completed and returned a ballot) on the Plan, has voted to accept the Plan within the requisite amounts and percentages as required by the Bankruptcy Code.

9. All requirements for the confirmation of the Plan imposed by the Bankruptcy Code, including specifically sections 1129(a) and 1129(b) of the Bankruptcy Code, have been satisfied and met. All factual and legal requirements for the confirmation of the Plan have been satisfied and met.

10. The Court has jurisdiction over the Bankruptcy Case and the Plan pursuant to 28 U.S.C. § 1334. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Accordingly, based on the foregoing, it is hereby:

ORDERED that the Plan is CONFIRMED pursuant to section 1129 of the Bankruptcy Code; it is further

ORDERED that each objection to the Plan not otherwise resolved prior to the hearing on the confirmation of the Plan is OVERRULED; it is further

ORDERED that the Plan, and each and every provision thereof, is approved and shall

control and govern the substance thereof according to its terms; it is further

ORDERED that, except as otherwise provided in the Plan, upon completion of the Plan, the Debtor shall be DISCHARGED pursuant to section 1141(d)(1)(A)(5) of the Bankruptcy Code, including with respect to any claim arising at any time prior to the Effective Date of the Plan; it is further

ORDERED that, unless provided otherwise in the Plan, all assets, rights, claims, and property of the Debtor and the Estate vest in the Reorganized Debtor free and clear of all claims, liens, interests, and encumbrances, except for those claims, liens, interests, and encumbrances retained under, preserved by, or provided for, in the Plan; it is further

ORDERED that, in accordance with section 1141(a) of the Bankruptcy Code and the provisions of the Plan, each provision of the Plan shall be and is binding on the Debtor, the Reorganized Debtor (as defined in the Plan), all creditors of the Debtor, all parties-in-interest in the Bankruptcy Case, and all persons with an interest in any property of the Debtor or the Estate, whether or not they voted to accept the Plan, whether or not they had a right to vote on the Plan, whether or not they are impaired under the Plan, and whether or not they receive or retain anything under the Plan; it is further

ORDERED that each and every release and compromise provided for in the Plan is approved and shall be binding on all applicable persons; it is further

ORDERED that each and every injunction contained in the Plan is approved, and is hereby an injunction issued from this Court, to be enforced by this Court as is otherwise appropriate, but only to the extent actually provided for in the Plan and subject to any exclusions thereto in the Plan; it is further

ORDERED that the Debtor and Reorganized Debtor is authorized and directed to execute

all such documents and instruments as may be required by the Plan, or may be necessary or appropriate to effectuate the Plan and its provisions and purposes. The forms of agreements and consents part of the Plan Supplements are, to the extent necessary, approved as part of the Plan, subject to further revisions acceptable to the applicable secured creditor and the Debtor; it is further

ORDERED that, to the extent the Plan requires the release of any lien, security interest, or other interest, the holder thereof shall release the same as provided for in the Plan, and the Plan and this Order may be filed with any appropriate governmental or other authority to evidence the same; it is further

ORDERED that the Debtor or Reorganized Debtor shall file and serve a notice of the Effective Date of the Plan as required by the Plan as a condition precedent to the Plan's effectiveness; it is further

ORDERED that all deadlines provided for in the Plan are approved and shall constitute deadlines imposed by this Court, including, without limitation, the Administrative Claims Bar Date specified by the Plan and the Claims Objection Deadline as specified by the Plan; it is further

ORDERED that the Court's specific approval or incorporation of a specific provision of the Plan shall not be construed as a disapproval or lack of effectiveness of any provision of the Plan not specifically referenced in this Order; it is further

ORDERED that, for the avoidance of doubt, nothing in the Plan treating the liens of any Secured Creditor whose liens and interests are of a priority lower than the Tax Authorities shall be deemed to grant said creditors any higher lien priority with respect to the Tax Authorities than exists under applicable non-bankruptcy law, and nothing in the Plan primes or extinguishes any

such higher priority liens held by the Tax Authorities for prepetition or post-petition ad valorem taxes, including all applicable interest, fees, and penalties; it is further

ORDERED that, Dallas County is the holder of a prepetition claim in the amount of \$9,054.33 and Tarrant County is the holder of a prepetition claim in the amount of \$834.06. Notwithstanding any other provision in the Plan, in the event the Debtors sell any property that is subject to Dallas County's or Tarrant County's ad valorem property tax liens, Dallas County or Tarrant County shall receive payment in full of their prepetition claim for ad valorem property taxes in connection with the property at the sale closing with interest that has accrued from the petition date through the effective date with statutory interest of 1% per month pursuant to 11 U.S.C. Sections 506(b) and 511 and posteffective date interest at the statutory rate of 12 % per annum pursuant to 11 U.S.C. Sections 511 and 1129 as well as all amounts ultimately owed for postpetition ad valorem taxes which shall include all penalties and interest that have accrued through the date of payment. In the event the Debtors do not sell one or more properties and Dallas County and Tarrant County do not foreclose their liens, pursuant to the terms of the Plan, the Debtors shall make monthly payments to Dallas County or Tarrant County on their prepetition claims with interest that has accrued from the petition date through the effective date with statutory interest of 1% per month pursuant to 11 U.S.C. Sections 506(b) and 511 and posteffective date interest at the statutory rate of 12 % per annum pursuant to 11 U.S.C. Sections 511 and 1129 in monthly installments in an amount and duration calculated to pay all amounts owed in full no later than the fifth anniversary of the filing of their petition for relief and shall pay all amounts owed for postpetition ad valorem property taxes, including, but not limited to, all accrued penalties and interest. In the event a property that secures the claim of Dallas County or Tarrant County is surrendered to a secured creditor, that property shall also be surrendered to

Dallas County or Tarrant County and the automatic stay shall be considered to no longer be in effect as of the date of entry of the confirmation order on the docket.

ORDERED that the Reorganized Debtor shall pay the 2015 and 2016 ad valorem taxes timely pursuant to applicable non-bankruptcy law and, for the avoidance of doubt, it is not necessary for any of the Tax Authorities, or for any other ad valorem taxing authority, to file an administrative expense claim or request for payment in order for the 2015 and 2016 taxes to be deemed allowed administrative expenses of the estate, for the further avoidance of doubt, no such 2015 and 2016 taxes are discharged by the Plan or by this Order. A failure by the Debtor or Reorganized Debtor to timely pay post-petition taxes by the deadline provided in the Plan shall be a default under the Plan; it is further

ORDERED that, in the event of an objection to claim of any of the Tax Authorities, the Reorganized Debtor shall make the plan payments which will be applied to the undisputed amount of the claim; it is further

ORDERED the Tax Authorities shall retain their liens for pre- and post-petition taxes with the same validity, extent and priority until all taxes and related interest, penalties, and fees (if any) have been paid in full and that, in the event of the sale of any assets that are subject to the Tax Authorities' liens, the Tax Authorities shall receive payment from the gross proceeds of sale prior to the payment of any creditor whose liens are junior; it is further

ORDERED that, "Administrative Tax Claim" means a Claim of an ad valorem tax authority against the Debtors, Estate or property of either, solely on account of year 2013 or later taxes. The term excludes any claim for ad valorem taxes for any year prior to 2013.

ORDERED that Debtors are required to pay the 2013 and 2014 ad valorem ad valorem property taxes, plus all penalties and interest that have accrued, owed to Dallas County and

Tarrant County within sixty days of entry of the confirmation order. If the Debtors fail to comply with this provision they shall be entitled to one notice of default which must be cured within 15 days of the date of written notice from counsel for the tax authorities to counsel for the Debtors. If the Debtors fail to cure the default, Dallas County and Tarrant County shall be entitled to pursue collection of all amounts owed pursuant to state law outside of the Bankruptcy Court without further notice to the Debtors. Dallas County and Tarrant County shall retain the liens that secure all amounts owed until they receive payment in full. The 2013 and 2014 ad valorem property taxes plus all accrued penalties and interest owed to Dallas County and Tarrant County are not discharged.

ORDERED that, except as otherwise provided for in the Plan, that in the event of a default under the Plan, the holder of a claim therein may send notice of default to counsel for the Debtor/Reorganized Debtor via facsimile or electronic mail, and to the Debtor/Reorganized Debtor by U. S. Mail, and the Debtor/Reorganized Debtor shall have 15 days from the date of such notice to cure said default. Thereafter, in the event of a failure to cure the default timely, said holder shall be entitled to pursue collection of all amounts owed pursuant to applicable non-bankruptcy law without further recourse to the Bankruptcy Court; provided, however, that the holder of said claim shall only be required to send two notices of default and, upon a third event of default, said holder may proceed to collect all amounts owed pursuant to applicable non-bankruptcy law without further notice; it is further

ORDERED that if the United States declares the Debtor or the successor in interest to be in default of the Debtor's obligations under the Plan, then the automatic stay provided under 11 U.S.C. 362 shall lift without further notice by the Court and the entire imposed liability, together

with any unpaid current liabilities, may become due and payable immediately upon written demand to the Debtor or the successor in interest.

ORDERED that the Court shall retain jurisdiction to the maximum extent possible to enforce the Plan, interpret the Plan, and provide for all proceedings and matters for which jurisdiction is preserved by the Plan, and otherwise; it is further

ORDERED that this Order shall be immediately enforceable and effective upon its entry; it is further

ORDERED that regarding the Class 9 Allowed Secured Claim of Seterus, Inc., as the Authorized Subservicer for Federal National Mortgage Association ("Fannie Mae"), Creditor c/o Seterus, Inc, on the Effective Date, the property located at 203 Hemlock Drive, Arlington, Texas 76018 (the "Hemlock Property") shall be surrendered to the holder of the Allowed Class 9 Claim and the claim shall be deemed paid in full. Upon the Effective Date the automatic stay shall lift without further order of this Court to allow the Class 9 claimant, or its assigns or successors in interest, to take any and all steps necessary to exercise any and all rights it may have in the Hemlock Property; it is further

ORDERED that regarding the Class 4 Allowed Secured Claim of Specialized Loan Servicing LLC, as servicing agent for CSAB Mortgage-Backed Pass-Through Certificates, Series 2007-1, U.S. Bank Association, as Trustee (hereinafter "SLS"), on the Effective Date, the property located at 2811 Galemeadow Drive, Fort Worth, Texas 76123 (the "Galemeadow Property") shall be surrendered to the holder of the Class 4 Allowed Secured Claim and the claim shall be deemed paid in full. Upon the Effective Date the automatic stay shall lift without further order of this Court to allow SLS, or its assigns or successors in interest, to take any and

all steps necessary to exercise any and all rights it may have in the Galemeadow Property; it is further

ORDERED that regarding the Class 7 Allowed Secured Claim of Bosco Credit II Trust Series 2010-1 (hereinafter "Bosco"), on the Effective Date, the property located at 2811 Galemeadow Drive, Fort Worth, Texas 76123 (the "Galemeadow Property") shall be surrendered to the holder of the Class 7 Allowed Secured Claim . Upon the Effective Date the automatic stay shall lift without further order of this Court to allow SLS, or its assigns or successors in interest, to take any and all steps necessary to exercise any and all rights it may have in the Galemeadow Property in the event SLS or Bosco exercises its rights to sell or otherwise liquidate the Galemeadow Property after the Effective Date, Bosco shall have the right to file an amended Proof of Claim within 90 days after the sale of the Galemeadow Property for any deficiency balance remaining and such balance is to be treated as a Class 14 unsecured claim upon the filing of the amended Proof of Claim as set-forth herein; it is further

ORDERED that regarding the Class 2 Allowed Secured Claim of Specialized Loan Servicing LLC (hereinafter "SLS"), on the Effective Date, the property located at 2809 Harvest Lake Drive, Irving, Texas 75060 (the "Harvest Lake Property") shall be surrendered to the holder of the Class 2 Allowed Secured Claim and shall be deemed paid in full. Upon the Effective Date the automatic stay shall lift without further order of this Court to allow SLS, or its assigns or successors in interest, to take any and all steps necessary to exercise any and all rights it may have in the Harvest Lake Property; it is further

ORDERED that regarding the Class 3 Allowed Secured Claim of Deutsche Bank National Trust Company, as Trustee under the Pooling and Servicing Agreement Relating to Impac Secured Assets Corp., Mortgage Pass-Through Certificates, Series 2006-5 (hereinafter

“Deutsche”) shall retain its lien on the property located at 713 Timberline Drive, Kennedale, Texas 76060 (the “Timberline Property”). Debtor shall retain the Timberline Property by paying the sum of \$89,000.00 with four and one-half percent (4.5%) interest per annum in 360 equal monthly payments with the first being made on the first day of the month after the effective date of the Plan. Debtors shall resume making payment to Deutsche for escrow of taxes for the Timberline Property. The Debtor shall maintain physical damage insurance covering the Timberline Property with Deutsche as the loss payee. Deutsche shall retain the right to declare a default, accelerate payments and foreclose its lien should the Debtor fail to make any payment within thirty (30) days of its due date; it is further

ORDERED that regarding the Class 6 Allowed Secured Claim of Freedom Mortgage Corporation, Its Successors and Assigns (hereinafter “Freedom”) shall retain its lien on the property located at 1713 Enchanted Lane, Lancaster, Texas 75146 (the “Enchanted Property”). Debtor shall retain the Enchanted Property by paying the sum of \$77,547.51 with four and one-half percent (4.5%) interest per annum in 360 equal monthly payments with the first being made on the first day of the month after the effective date of the Plan. Debtors shall resume making payment to Freedom for escrow of taxes for the Enchanted Property. Freedom shall retain the right to declare a default, accelerate payments and foreclosure its lien should the Debtor fail to make any payment within thirty (30) days of its due date.

ORDERED that the Class 2 Allowed Secured Claim of Specialized Loan Servicing LLC (hereinafter “SLS”) shall retain its lien on the property located at 707 N. Hunters Glen Circle, Arlington, Texas 76015 (the “Hunters Glen Property”). Debtor shall retain the Hunters Glen Property by paying the sum of \$101,000.00 with four and one-half percent (4.5%) interest per annum in 360 equal monthly payments with the first being made on the first day of the month

after the effective date of the Plan. Debtor is required to pay the ad valorem property taxes on the Hunters Glen Property direct when they come due. Failure to pay the ad valorem taxes will result in a default under the plan if not cured within 15 days. Debtor shall also maintain insurance on the Hunters Glen Property with SLS listed as the loss payee. SLS shall retain the right to declare a default, accelerate payments and foreclosure its lien should the Debtor fail to make any payment within thirty (30) days of its due date; it is further

ORDERED that the Class 11 Allowed Secured Claim of Nationstar Mortgage LLC (hereinafter "Nationstar") shall retain its lien on the property located at 5947 Waterford Drive, Grand Prairie, Texas 75052 (the "Waterford Property"). Debtor shall retain the Waterford Property as his homestead by paying the full amount of their claim with the first payment being made on the first day of the month after the effective date of the Plan. Debtors shall cure the arrears on the Waterford Property by making sixty (60) equal monthly installments with the first payment being made on the first day of the month after the effective date of the Plan. Debtors shall resume making payment to Nationstar for escrow of taxes for the Waterford Property. Waterford shall retain the right to declare a default, accelerate payments and foreclosure its lien should the Debtor fail to make any payment within thirty (30) days of its due date; it is further

ORDERED that the final paragraph of Classes 2, 3, 8 and 10, shall be amended to read "If the mortgage company fails to accept the payments on the mortgage from the Debtor, the Debtor shall retain all applicable rights under State and Federal law to challenge the mortgage company's lien on the subject property." It is further

ORDERED that due to the Debtor amending his Chapter 13 Plan on January 5, 2016 which adversely affected the treatment of the Class 5 secured claim of Wells Fargo claimant

shall have thirty (30) days from the date of the entry of this order to file an objection with the Court regarding its treatment under the amended plan. If no objection is filed the treatment of Class 5 Wells Fargo claim will be as per the Debtor's amended Chapter 11 Plan filed by January 5, 2016; it is further

ORDERED that for clarification purposes the Allowed Class 7 claim of Franklin Credit Management, for the property located at 2811 Galemeadow Drive, Fort Worth, Texas 76123, has been assigned to Bosco Credit II Trust Series 2010-1. The Allowed Class 2 claim of America's Servicing Company, for the property located at 2809 Harvest Lake Drive, Irving, Texas 75060, has been assigned to Specialized Loan Servicing LLC. The Allowed Class 3 claim of Bank of America, for the property located at 713 Tiumberline Drive, Kennedale, Texas 76060, has been assigned to Deutsche Bank National Trust Company. The Allowed Class 2 claim of America's Servicing Company, for the property located at 707 N. Hunters Glen Circle, Arlington, Texas 76015, has been assigned to Specialized Loan Servicing LLC; it is further,

ORDERED that for clarification purposes the Allowed Class 2 claims of America's Servicing Company, for the properties located at 1937 Bolingbroke Court, Fort Worth, Texas and 503 W. 8<sup>th</sup> Street, Lancaster, Texas shall be re-classified as Class 2(a). The Allowed Class 3 claim of Bank of America, for the property located at 1053 Briarwood, DeSoto, Texas, shall be re-classified as Class 3(a).

### END OF ORDER ###

Agreed:

/s/ Steve Stasio  
Steve Stasio

Bar No. 19079950  
Stasio & Stasio, P.C.  
303 Main Street, Suite 302  
Fort Worth, TX 76102  
ATTORNEY FOR DEBTOR

/s/ Laurie Spindler Huffman  
Laurie Spindler Huffman  
Bar No. 24028720  
Linebarger Goggan Blair & Sampson, LLP  
2777 N. Stemmons Freeway, Suite 1000  
Dallas, TX 75207  
ATTORNEY FOR TARRANT COUNTY

/s/ Steve Turner  
Steve Turner  
Bar No. 20341700  
Barrett Daffin Frappier Turner & Engel, LLP  
610 West 5<sup>th</sup> Street, Suite 602  
Austin, TX 78701  
ATTORNEY FOR SETERUS, INC. AND  
DEUTSCHE BANK NATIONAL TRUST CO.

/s/ LynAlise K. Tannery  
LynAlise K. Tannery  
Bar No. 24083941  
Buckley Madole, PC  
14841 Dallas Parkway, Suite 300  
Dallas, TX 75254  
ATTORNEY FOR SPECIALIZED LOAN SERVICING, LLC,

## **APPENDIX H**



CLERK, U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS

**ENTERED**

THE DATE OF ENTRY IS ON  
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed March 8, 2021

*Mark X. Mullins*  
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

|                     |   |                         |
|---------------------|---|-------------------------|
| IN RE:              | § |                         |
|                     | § |                         |
| WILLIAM PAUL BURCH, | § | CASE No. 12-46959-MXM-7 |
|                     | § |                         |
| DEBTOR.             | § | CHAPTER 7               |
|                     | § |                         |

|                                    |   |                       |
|------------------------------------|---|-----------------------|
| JUANITA BURCH,                     | § |                       |
|                                    | § |                       |
| PLAINTIFF,                         | § |                       |
|                                    | § |                       |
| v.                                 | § | ADVERSARY No. 20-4084 |
|                                    | § |                       |
| RUSHMORE LOAN MANAGEMENT SERVICES, | § |                       |
| LLC,                               | § |                       |
|                                    | § |                       |
| DEFENDANT.                         | § |                       |

**ORDER DENYING MOTION FOR REMAND**

*[Relating to Adv. ECF No. 6]*

Before the Court is the *Motion for Remand* (the “**Motion**”)<sup>1</sup> filed by Juanita Burch, seeking remand of this proceeding against Rushmore Loan Management Services, LLC (“**Rushmore**”) to state court. For the reasons detailed below, the Motion is **DENIED**.

## I. JURISDICTION AND VENUE

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157(a). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. § 1409(a).

## II. PROCEDURAL BACKGROUND<sup>2</sup>

This Adversary Proceeding constitutes yet another in a long line of frivolous lawsuits<sup>3</sup> filed by William Paul Burch and/or Juanita Burch (together, the “**Burches**”) that relate to various real properties that were dealt with in one or both bankruptcy cases filed by one or both of the Burches. This Adversary Proceeding specifically relates to the real property located at 203 Hemlock, Arlington, Texas (the “**Hemlock Property**”).

### A. Bankruptcy filings

On December 1, 2008, the Burches filed for Chapter 11 bankruptcy (the “**2008 Bankruptcy Case**”).<sup>4</sup> On December 9, 2009, the Court entered an *Order Confirming Debtor’s Third Amended Plan of Reorganization* (the “**2008 Bankruptcy Case Confirmation Order**”),<sup>5</sup>

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<sup>1</sup> Adv. ECF No. 6.

<sup>2</sup> The documents cited in this section are matters of which this Court can take judicial notice. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2008) (directing courts to “consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice”); *Norris v. Hearst Trust*, 500 F.3d 454, 461 n.9 (5th Cir. 2007) (“[I]t is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record.”).

<sup>3</sup> See Adv. Nos. 18-4172; 18-4176; 19-4039; 19-4068; 19-4074; 19-4075; 19-4079; 19-4084; 19-4105; 19-4106; 19-4120; 20-4007; 20-4029; 20-4031; 20-4037; 20-4039; 20-4040; 20-4043; 20-4048; and 20-4063. <sup>4</sup> See Case No. 08-45761-RFN-11.

<sup>4</sup> See Case No. 08-45761-RFN-11.

<sup>5</sup> ECF No. 246, Case No. 08-45761-RFN-11.

which confirmed the Debtors' *Fourth Amended Plan of Reorganization* (the "**2008 Bankruptcy Case Chapter 11 Plan**")<sup>6</sup> that is attached as Exhibit A to the 2008 Bankruptcy Case Confirmation Order.

On December 28, 2012, William Paul Burch filed for Chapter 13 bankruptcy (the "**2012 Bankruptcy Case**").<sup>7</sup> The 2012 Bankruptcy Case was converted to Chapter 11 on December 23, 2013.<sup>8</sup>

On January 5, 2016, William Paul Burch filed an amended Chapter 11 plan of reorganization (the "**2012 Bankruptcy Case Chapter 11 Plan**"),<sup>9</sup> and on February 1, 2016, the Court entered an order confirming that plan (the "**2012 Bankruptcy Case Confirmation Order**").<sup>10</sup>

A detailed history of how the Hemlock Property and related secured claims were dealt with in the plans and confirmation orders for both bankruptcy cases is contained in the *Order Granting Motions to Dismiss* in Adversary No. 19-4068.<sup>11</sup>

## **B. History of litigation related to Hemlock Property**

On November 2, 2020, Juanita Burch filed her *Plaintiff's [sic] Original Petition* (the "**Second Hemlock Petition**")<sup>12</sup> in the County Court at Law No. 1 of Tarrant County, Texas, styled *Juanita Burch v. Rushmore Loan Management Services, LLC*, Cause Number 2020-

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<sup>6</sup> *Fourth Amended Plan of Reorganization of William & Juanita Burch Pursuant to Section 1125 of the Bankruptcy Code Dated October 16, 2009*, ECF No. 244, Case No. 08-45761-RFN-11.

<sup>7</sup> ECF No. 1, Case No. 12-46959.

<sup>8</sup> *Order Converting Case from Chapter 13 to Chapter 11*, ECF No. 100, Case No. 12-46959.

<sup>9</sup> *William Paul Burch's Amended Plan of Reorganization*, ECF No. 186, Case No. 12-46959.

<sup>10</sup> *Order Confirming Debtor's Plan of Reorganization*, ECF No. 188, Case No. 12-46959.

<sup>11</sup> Adv. No. 19-4068, ECF No. 33.<sup>12</sup> Adv. No. 20-4084, ECF No. 3-1, at 4.

<sup>12</sup> Adv. No. 20-4084, ECF No. 3-1, at 4.

006311-1. The Second Hemlock Petition was removed to this Court, where it is currently pending in this Adversary Proceeding and is the subject of the Motion.<sup>13</sup>

The Second Hemlock Petition (i) asserts claims against Rushmore related to the Hemlock Property; (ii) falls within the scope of the “Restricted Subject Matter” of the Vexatious-Litigant Order;<sup>14</sup> (iii) is substantially similar to the twenty adversary proceedings currently or formerly pending in this Court filed by Juanita Burch or her husband William Paul Burch; and (iv) is substantially similar to the First Hemlock Petition<sup>15</sup> filed by the Burches in the 141<sup>st</sup> District Court in Tarrant County, Texas styled *William Paul Burch and Juanita Burch, v. Rushmore Loan Management Services, LLC*, Cause No. 141-304606-18.<sup>16</sup>

Rushmore removed the First Hemlock Petition to the United States District Court for the Northern District of Texas.<sup>17</sup> The District Court consolidated the First Hemlock Petition into Civil Action No. 4:18-cv-01015-O,<sup>18</sup> and thereafter, the District Court referred the entirety of Civil Action No. 4:18-cv-01015-O, including the First Hemlock Petition, to this Court.<sup>19</sup> Juanita Burch was a plaintiff in the First Hemlock Petition filed against Rushmore. This Court

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<sup>13</sup> *Id.*

<sup>14</sup> *Order (A) Designating William Paul Burch as a Vexatious Litigant, and (B) Granting Related Relief* (the “*Vexatious-Litigant Order*”) [Bankr. ECF No. 824]. Pursuant to the Vexatious-Litigant Order, the Court designated William Paul Burch as a vexatious litigant and sanctioned Mr. Burch by restricting his ability to file future lawsuits, motions, pleadings, or other requests for affirmative relief in any federal trial court, or Texas state or local trial court, against any party involving personal or real property that was included in the bankruptcy cases of *In re William Paul Burch and Juanita Burch*, Case No. 08-45761-rfn-11, filed in the United States Bankruptcy Court for the Northern District of Texas and *In re William Paul Burch*, Case No. 12-46959-mxm-7 filed in the United States Bankruptcy Court for the Northern District of Texas (the “*Restricted Subject Matter*”) without first securing this Court’s prior written authorization to do so. The Hemlock Property falls within the Restricted Subject Matter.

<sup>15</sup> *Plaintiffs’ Original Petition and Application for Temporary Restraining Order and Temporary Injunction* (the “*First Hemlock Petition*”), Case 4:18-cv-00987-O, Doc. 1-1, at 3-12.

<sup>16</sup> *Id.* at Doc. 1.

<sup>17</sup> *See Defendant’s Notice of Removal*, Case 4:18-cv-00987-O, Doc. 1.

<sup>18</sup> *See Order Granting Motion to Consolidate Cases*, Case 4:18-cv-00987-O, Doc. 9.

<sup>19</sup> *See Order Accepting Findings, Conclusions, And Recommendation of the United States Magistrate Judge*, Case 4:18-cv-01015-O, Doc. 47.

ultimately dismissed the First Hemlock Petition<sup>20</sup> and entered a Final Judgment<sup>21</sup> disposing of all the claims asserted by the Burches against Rushmore.

The Second Hemlock Petition—the subject of this new Adversary Proceeding—asserts virtually identical claims to those the Burches previously filed against Rushmore,<sup>22</sup> which were dismissed by the entry of a Final Judgment disposing of all claims asserted by the Burches against Rushmore.<sup>23</sup>

### III. ANALYSIS OF MOTION FOR REMAND

The Motion seeks remand of this case to state court under what this Court construes as three grounds.<sup>24</sup> First, Juanita Burch alleges the case should be remanded due to perceived “irregularities” in the removal of her case. Second, Juanita Burch claims the notice of removal was insufficient to properly remove a case under Federal Rule of Bankruptcy Procedure 9027. Third, Juanita Burch argues that the amount in controversy does not arise to a level required to establish diversity jurisdiction in federal court. Addressing each argument in turn below, the Court finds that each of these grounds is without merit, so the Motion should be denied.

First, citing *Valencia v. Allstate Texas Lloyds*,<sup>25</sup> Juanita Burch contends that Rushmore had no authority to remove this case because she was not a party to the 2012 Bankruptcy Case and Rushmore was not a party to the 2008 Bankruptcy Case. In *Valencia*, a Texas resident filed suit in state court against his Texas-based insurance carrier, Allstate Texas. But Allstate Illinois—a non-party—answered the petition and removed the matter to federal court based on

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<sup>20</sup> Adv. No. 19-4068, ECF No. 57.

<sup>21</sup> Adv. No. 19-4068, ECF No. 58.

<sup>22</sup> Hemlock Petition at 9-11.

<sup>23</sup> Adv. No. 19-4068, ECF No. 58.

<sup>24</sup> Courts should construe the pleadings of pro se litigants liberally. *Coleman v. United States*, 912 F.3d 824, 828 (citing *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)).

<sup>25</sup> 976 F.3d 593 (5th Cir. 2020).

diversity of citizenship.<sup>26</sup> The Fifth Circuit ultimately found this removal to be improperly effectuated because “a case filed in state court may be removed to federal court only by ‘the defendant or the defendants.’”<sup>27</sup> Therefore, because Allstate Illinois was not a defendant when the case was filed and did not become a defendant through proper means, it lacked authority to remove the suit to federal court.<sup>28</sup>

Juanita Burch’s reliance on *Valencia* is misplaced. Rushmore is the named defendant in this suit, and the bankruptcy removal statute—28 U.S.C. § 1452—permits “[a] party” to remove a lawsuit based on bankruptcy jurisdiction.<sup>29</sup> Pursuant to 28 U.S.C. § 1334, this Court unquestionably has “core” bankruptcy jurisdiction over the Second Hemlock Petition, which is a collateral attack on the 2008 Bankruptcy Case Confirmation Order and the 2012 Bankruptcy Case Confirmation Order.

Second, Juanita Burch alleges that Rushmore’s *Amended Notice of Removal*<sup>30</sup> did not contain sufficient information and should not be sufficient to effectuate removal. Under Bankruptcy Rule 9027(a), a removing defendant must file a notice of removal with the court that contains: (1) a short and plain statement of the facts entitling the defendant to remove, (2) a statement that the party does or does not consent to the entry of final orders or judgment by the bankruptcy court, and (3) a copy of state court pleadings and process.<sup>31</sup> Upon review of the Notice of Removal filed in this Court, Rushmore’s Notice of Removal meets all of Rule 9027’s

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<sup>26</sup> *Valencia*, 976 F.3d at 594–95.

<sup>27</sup> *Id.* at 595 (quoting 28 U.S.C. § 1441(a)).

<sup>28</sup> *Id.* at 597. The Fifth Circuit also concluded that the district court did not have subject matter jurisdiction over the case when it denied Valencia’s motion to remand because the only parties to the case at the time of removal—Valencia and Allstate Texas—were both Texas residents. *Id.*

<sup>29</sup> 28 U.S.C. § 1452(a).

<sup>30</sup> Adv. ECF No. 3 (“*Notice of Removal*”).

<sup>31</sup> FED. R. BANKR. P. 9027(a)(1).

requirements. Although Rushmore did not include an express statement consenting to this Court's entry of a final order or judgment, the Court construes the Notice of Removal as a whole (including its reference to the final judgment dismissing the First Hemlock Petition)<sup>32</sup> to be a statement of consent.

Third, Juanita Burch claims the amount in controversy does not meet the requisite amount to vest federal courts with diversity jurisdiction. This argument is misplaced because Rushmore's removal of the case was not based on diversity jurisdiction, but rather, based on this Court's bankruptcy jurisdiction under 28 U.S.C. § 1452 and Juanita Burch's attempted collateral attack on the 2008 Bankruptcy Case Confirmation Order and 2012 Bankruptcy Case Confirmation Order.

The Court further finds and concludes that the equities substantially weigh in favor of maintaining this Adversary Proceeding in this Court rather than remanding the matter to the Texas state court.

Finally, the Court finds and concludes that the Motion fails to identify any meritorious factual or legal basis challenging the removal of this proceeding or justifying remand of this Adversary Proceeding to the Texas state Court.

For the reasons stated above, it is **ORDERED** that the Motion is **DENIED**.

**### End of Order ###**

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<sup>32</sup> See Notice of Removal ¶ 14.

# **APPENDIX I**

**IN THE BANKRUPTCY COURT  
OF THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**JUANITA BURCH**  
**Plaintiff,**

**VS.**

**RUSHMORE LOAN MGMT SVCS, LLC**  
**Defendant**

§  
§ **CASE NO. 12-46959-MXM**  
§  
§  
§ **ADV NO. 20-4084**  
§  
§ \_\_\_\_\_  
§

**MOTION FOR REMAND**

TO THE HONORABLE JUDGE MARK X. MULLIN

COMES NOW, JUANITA BURCH, Plaintiff, (Burch) and files his Motion for remand in and would respectively shows the Court the following:

**IRREGULARITIES OF DEFENDANTS REMOVAL**

1. This case was filed in the Tarrant County Court at Law Number 1 and styled Juanita Burch v. Rushmore Loan Mgmt. Svcs, LLC. It was removed as William Paul Burch, Debtor, Juanita Burch, Plaintiff, v. Rushmore Loan Management Services, LLC. Defendant. This was amended on November 10 but the amended removal erroneously maintained the connection. The Fifth Circuit Court of Appeals on October 2, 2020 in the case styled as Perfecto Valencia v. Allstate Texas Lloyds,<sup>1</sup>, reversed a trial court on a motion to remand because the remand was filed in the name of a non-party entity. Valencia filed a motion to remand the matter, contending that removal was improperly effectuated by a non-party to the case. The Fifth Circuit agreed with Valencia.

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<sup>1</sup> Perfecto Valencia v. Allstate Texas Lloyds, No. 20-20193, 2020 WL 5867526 (5th Cir., Oct. 2, 2020)

2. Neither defendant, Rushmore Loan Management Services, LLC., (Rushmore), or Burch are parties of the bankruptcy case number 12-45959. Burch was a party to the bankruptcy case number 08-45761, but Rushmore was not a party in that case. Therefore, this case fails for removal under the statutes cited by Rushmore for removal, 28 U.S.C. §1334 and 28 U.S.C. §1452. If a plaintiff is not a party to a bankruptcy, then a defendant cannot waive a magic wand and make the plaintiff a party to a discharged bankruptcy.
3. In the Federal Rules of Bankruptcy Procedure (FRBP) Rule 9027(a)(1) it is clearly written that “a notice of removal shall be filed with the clerk for the district and division within which is located the state or federal court where the civil action is pending. The notice shall be signed pursuant to Rule 9011 and contain a short and plain statement of the facts which entitle the party filing the notice to remove, contain a statement that upon removal of the claim or cause of action the party filing the notice does or does not consent to entry of final orders or judgment by the bankruptcy court, and be accompanied by a copy of all process and pleadings.” Rushmore’s removal did not contain a statement that upon removal of the claim or cause of action the party filing the notice does or does not consent to entry of final orders or judgment by the bankruptcy court, and it was not accompanied by a copy of all process and pleadings.
4. The case was filed in Tarrant County Court because the damages sought were above the limit placed on a Justice of the Peace Court and less than the amount of the Texas District Courts. Texas law requires categories for damages rather than specific amounts. In the relief sought portion of the brief filed in the County Court is the following:

#### XIX. RELIEF SOUGHT

- “39. Burch seeks removal of the lien from the property and any charges against the property. The relief from the lien removal is less than \$100,000. Because there should be no lien and therefore no charges against the property by Rushmore is valid. Therefore, the value to the suit of the lien removal is zero for diversity.
40. As a result of Rushmore’s delays there has been damage to the property that should be repaired.

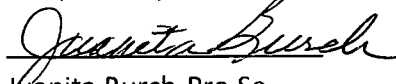
41. Any damages awarded should not exceed the \$75,000 limit. Therefore, the damage category is \$100,000 or less.”
5. From the standpoint of legal sufficiency, all the evidence supports remanding the case back to the Tarrant County Court at Law Number 2 to where it was moved.<sup>2</sup>

### **PRAYER**

6. Based on a preponderance of evidence that would withstand both legal sufficiency and factual sufficiency on appeal, Burch prays that the court will remand the case to the Tarrant County Court at Law number 2. Burch further prays that the court award any additional damages it sees as appropriate to Burch.

Dated: November 10, 2020

Respectfully submitted,



Juanita Burch-Pro Se

P. O. Box 201236

Arlington, Texas 76006

817-800-4493

[janeburch454@yahoo.com](mailto:janeburch454@yahoo.com)

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on November 10, 2020 a true and correct copy of the foregoing Appellant's Motion for remand was sent via email to the parties on the attached service list.

Abbey Ulsh Dreher

(972) 341-0560

[abbeyu@bdfgroup.com](mailto:abbeyu@bdfgroup.com)

Crystal Gee Gibson

(972) 340-7901

[CrystalR@bdfgroup.com](mailto:CrystalR@bdfgroup.com)

4004 Belt Line Rd., Ste. 100

Addison, Texas 75001

\_\_\_\_\_  
Juanita Burch-Pro Se

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<sup>2</sup> City of Keller v. Wilson, 168 SW 3d 802 - Tex: Supreme Court 2005

## **APPENDIX J**

**B1040 (FORM 1040) (12/15)**

|  |   |  |
|--|---|--|
| <b>ADVERSARY PROCEEDING COVER SHEET</b><br>(Instructions on Reverse)   |   | <b>ADVERSARY PROCEEDING NUMBER</b><br>(Court Use Only) |
| <b>PLAINTIFFS</b><br><br>RUSHMORE LOAN MANAGEMENT SERVICES, LLC  | <b>DEFENDANTS</b><br><br>Juanita Burch and William Paul Burch   |  |
| <b>ATTORNEYS</b> (Firm Name, Address, and Telephone No.)<br>Barrett Daffin Frappier Turner & Engel, LLP<br>4004 Belt Line Rd. Suite 100, Addison, TX 75001<br>972-341-0560   | <b>ATTORNEYS</b> (If Known)<br><br>Pro Se   |  |
| <b>PARTY</b> (Check One Box Only)<br><input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin<br><input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other<br><input type="checkbox"/> Trustee   | <b>PARTY</b> (Check One Box Only)<br><input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin<br><input type="checkbox"/> Creditor <input type="checkbox"/> Other<br><input type="checkbox"/> Trustee  |  |
| <b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)<br>Notice of Removal pursuant to 28 U.S.C. §§1334 and 1452   |   |  |
| <b>NATURE OF SUIT</b><br><br>(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)  |   |  |
| <b>FRBP 7001(1) – Recovery of Money/Property</b><br><input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property<br><input type="checkbox"/> 12-Recovery of money/property - §547 preference<br><input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer<br><input type="checkbox"/> 14-Recovery of money/property - other<br><br><b>FRBP 7001(2) – Validity, Priority or Extent of Lien</b><br><input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property<br><br><b>FRBP 7001(3) – Approval of Sale of Property</b><br><input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)<br><br><b>FRBP 7001(4) – Objection/Revocation of Discharge</b><br><input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)<br><br><b>FRBP 7001(5) – Revocation of Confirmation</b><br><input type="checkbox"/> 51-Revocation of confirmation<br><br><b>FRBP 7001(6) – Dischargeability</b><br><input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims<br><input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud<br><input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny<br><br>(continued next column) | <b>FRBP 7001(6) – Dischargeability (continued)</b><br><input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support<br><input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury<br><input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan<br><input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)<br><input type="checkbox"/> 65-Dischargeability - other<br><br><b>FRBP 7001(7) – Injunctive Relief</b><br><input type="checkbox"/> 71-Injunctive relief – imposition of stay<br><input type="checkbox"/> 72-Injunctive relief – other<br><br><b>FRBP 7001(8) Subordination of Claim or Interest</b><br><input type="checkbox"/> 81-Subordination of claim or interest<br><br><b>FRBP 7001(9) Declaratory Judgment</b><br><input type="checkbox"/> 91-Declaratory judgment<br><br><b>FRBP 7001(10) Determination of Removed Action</b><br><input type="checkbox"/> 01-Determination of removed claim or cause<br><br><b>Other</b><br><input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i><br><input checked="" type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case) |  |
| <input type="checkbox"/> Check if this case involves a substantive issue of state law  | <input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23   |  |
| <input type="checkbox"/> Check if a jury trial is demanded in complaint  | Demand \$   |  |
| Other Relief Sought  |   |  |

**B1040 (FORM 1040) (12/15)**

| <b>BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES</b>  |                               |  |
|---|-------------------------------|--|
| NAME OF DEBTOR<br>William Paul Burch                              |                               | BANKRUPTCY CASE NO.<br>12-46959                            |
| DISTRICT IN WHICH CASE IS PENDING<br>Northern District of Texas   | DIVISION OFFICE<br>Fort Worth | NAME OF JUDGE<br>Mullin                                    |
| <b>RELATED ADVERSARY PROCEEDING (IF ANY)</b>                      |                               |  |
| PLAINTIFF   | DEFENDANT                     | ADVERSARY PROCEEDING NO.                                   |
| DISTRICT IN WHICH ADVERSARY IS PENDING                            | DIVISION OFFICE               | NAME OF JUDGE  |
| SIGNATURE OF ATTORNEY (OR PLAINTIFF)<br><br>/s/ Abbey Ulsh Dreher |                               |  |
| DATE<br>11/6/2020   |                               | PRINT NAME OF ATTORNEY (OR PLAINTIFF)<br>Abbey Ulsh Dreher |

**INSTRUCTIONS**

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Plaintiffs and Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

**Attorneys.** Give the names and addresses of the attorneys, if known.

**Party.** Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

**Demand.** Enter the dollar amount being demanded in the complaint.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

|                                 |   |                          |
|---------------------------------|---|--------------------------|
| <b>In re</b>                    | § |                          |
|                                 | § |                          |
| <b>WILLIAM PAUL BURCH,</b>      | § | <b>Case No. 12-46959</b> |
| <b>Debtor,</b>                  | § |                          |
| <b>JUANITA BURCH,</b>           | § | <b>Chapter 7</b>         |
| <b>Plaintiff,</b>               | § |                          |
|                                 | § | <b>Adv. Proc. No.</b>    |
|                                 | § |                          |
| <b>v.</b>                       | § |                          |
|                                 | § |                          |
| <b>RUSHMORE LOAN MANAGEMENT</b> | § |                          |
| <b>SERVICES, LLC,</b>           | § |                          |
| <b>Defendant.</b>               | § |                          |

**DEFENDANT'S NOTICE OF REMOVAL**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Pursuant to 28 U.S.C. §§1334 and 1452, Defendant Rushmore Loan Management Services (hereinafter "Rushmore") gives notice and hereby removes this action from the County Court at Law No. 2 of Tarrant County, Texas, to the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, and in support thereof would show unto the Court the following:

**A. Introduction**

1. Plaintiff's claims relate to the property located at 203 Hemlock Dr., Arlington, Texas 76018. On November 2, 2020, Plaintiff Juanita Burch (hereinafter "Plaintiff") improperly filed yet another lawsuit (hereinafter "Petition") in the County Court at Law No. 1 of Tarrant County, Texas, styled *Juanita Burch v. Rushmore Loan Management Services, LLC* bearing Cause Number 2020-006311-1. On November 4, 2020, Judge Don Pierson, the presiding judge of County Court At Law No. 1 recused himself from the aforementioned case and the case was transferred to County Court At

Law No. 2 of Tarrant County, Texas. This is Juanita Burch's second lawsuit and the Burch's fourth lawsuit pertaining to the matters and property at issue. Notably, Plaintiff's husband, William Paul Burch, orchestrated this filing in an effort to circumvent this Court's July 10<sup>th</sup> Order Designating William Paul Burch as a Vexatious Litigant. *See* Doc. 824 in Bankruptcy Case 12-46959-mxm7.

2. Plaintiff's lawsuit concerns the foreclosure proceedings relating to the real property and improvements commonly known as 203 Hemlock Dr., Arlington, Texas 76018 (hereinafter the "Property").

3. Plaintiff sued Defendant seeking a temporary injunction preventing foreclosure of the Property. Specifically, the Property was set for the November 3<sup>rd</sup> foreclosure sale and Plaintiff filed suit along with a request for temporary restraining order on November 2<sup>nd</sup> in an effort to thwart sale of the Property. Plaintiff's claims are based on their erroneous belief that the lienholder's lien was stripped in Debtor's bankruptcy case and that the lienholder somehow owes him damages for his failure to maintain the property. *Petition* at ¶¶ 11-12, 20, and Prayer at 40.E. Plaintiff claims breach of contract, suit to quiet title/slander of title and seeks declaratory judgment. *Petition* at ¶¶ 27-29. Plaintiff seeks an injunction preventing Defendant from proceeding with foreclosure of the Property, attorney's fees, and an unspecified amount of damages. *Petition* at ¶ 40.

4. Rushmore has not yet been served. Thus, Defendant timely files this notice of removal.

#### **B. Procedural History**

5. On November 19, 2018, Plaintiff's husband, William Paul Burch (the "Vexatious Litigant"), filed his Original Petition, Request for Jury Trial and Request for Disclosure against Rushmore and five (5) other defendants in the 96<sup>th</sup> District Court of Tarrant County, Texas bearing

Cause Number 096-304437-18 (“First Lawsuit”) seeking to delay foreclosure of the Property. On November 28, 2018, Plaintiff and the Vexatious Litigant filed yet another lawsuit seeking to obtain a restraining order to stop foreclosure of the Property. Plaintiffs’ Original Petition and Application for Temporary Restraining Order and Temporary Injunction was filed in the 141st District Court of Tarrant County, Texas, bearing Cause Number 141-304606-18 (“Second Lawsuit”).

6. On December 12, 2018, Plaintiff’s Second Lawsuit was removed to Federal Court under Case No. 4:18-CV-00987-O. On December 28, 2018, Freedom Mortgage Corporation removed the First Lawsuit to Federal Court under Case No. 4:18-CV-01015-O-BP. Rushmore filed a Motion to Consolidate Case Nos. 4:18-CV-00987-O and 4:18-CV-01015-O-BP, which was granted on February 21, 2019. [Docs. 7 and 9 in Case 4:18-CV-00987-O].

7. Federal National Mortgage Association filed a Motion to Invoke the Bankruptcy Reference, which was granted on July 10, 2019 and the case was referred to this Court [Doc. 47 in Case 4:18-CV-01015-O].

8. On January 15, 2019, the Vexatious Litigant filed an Amended Complaint pursuant to Judge Hal R. Ray’s Order. [Doc 32] [Doc. 17 of Consolidated Case No. 4:18cv01015-0]. Unfortunately, somewhere in the consolidation and bankruptcy transfer process, it went unnoticed that Plaintiff Juanita Burch was also a party as she was a named Plaintiff in Case No. 4:18-CV-00987-O.

9. On March 30, 2020, the Court dismissed the claims asserted in the Vexatious Litigant’s Amended Complaint against Rushmore. However, that dismissal order did not resolve all of the claims against Rushmore. Specifically, there were claims still pending in Case No. 4:18-CV-00987-O. Rushmore filed its Motion for Summary Judgment seeking to dismiss the remaining

claims against Rushmore, which this Court granted on April 27, 2020. [Doc. 57 in Case No. 19-4068-mxm (formerly District Civil Action No. 4:18-cv-01015-O-BP).

### **C. Procedural Requirements**

10. Venue is proper in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, because the Court has jurisdiction of the civil proceeding arising under Title 11. *See* 28 U.S.C. §1334.

11. Pursuant to 28 U.S.C. §1446(a), attached hereto as **Exhibit A** and incorporated by reference is a true and correct copy of the entire file of record with the Court in the County Court at Law No. 2 of Tarrant County, Texas, including all process, pleadings, and orders served.

12. Simultaneously with the filing of this *Notice of Removal*, Defendant is filing notice of the removal in the County Court at Law No. 1 of Tarrant County, Texas pursuant to 28 U.S.C. §1446(a), which is attached hereto as **Exhibit B**, and will provide written notice of the filing of this *Notice of Removal* to all parties as required by 28 U.S.C. §1446(a). Defendant is filing its *Disclosure Statement and Certificate of Interested Parties* pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, a copy of which is attached hereto as **Exhibit C**.

### **D. Basis for Removal**

13. Removal in this case is proper because this Court has jurisdiction under 28 U.S.C. §§1334 and 1452. Plaintiff's claims relate to the treatment of the Property. Pursuant to 28 U.S.C. § 1452, "a party may remove any claim or cause of action in a civil action...to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title." *See* 28 U.S.C. § 1452. Section 1334 states (with a

few exceptions that do not apply here) that the district courts shall have original and exclusive jurisdiction of all cases under title 11. *See* 28 U.S.C. § 1334.

14. Plaintiff's claims in the instant suit are "core proceedings" under title 11 of the Bankruptcy Code. The Property and Rushmore's ability to foreclose the lien encumbering the Property were the subject of several of this Court's rulings. Moreover, Plaintiff's claims were resolved by this Court's April 27, 2020 judgment. [Doc. 57 in Case No. 19-4068-mxm (formerly District Civil Action No. 4:18-cv-01015-O-BP). Lastly, it is necessary for this Court to determine whether the Vexatious Litigant order was violated with the filing of this lawsuit.

**E. Prayer**

WHEREFORE, Defendant removes this action from the County Court at Law No. 2 of Tarrant County, Texas, to the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, so that this Court may assume jurisdiction over the cause as provided by law.

Respectfully submitted,

**BARRETT DAFFIN FRAPPIER TURNER  
& ENGEL, LLP**

/s/ Abbey Ulsh Dreher

Abbey Ulsh Dreher

State Bar No. 24051459

(972) 341-0560

(972) 661-7725 (facsimile)

[abbeyu@bdfgroup.com](mailto:abbeyu@bdfgroup.com)

Crystal Gee Gibson

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Addison, Texas 75001

(972) 340-7901

(972) 341-0734 (Facsimile)

[CrystalR@bdfgroup.com](mailto:CrystalR@bdfgroup.com)

ATTORNEY FOR DEFENDANT

RUSHMORE LOAN MANAGEMENT  
SERVICES, LLC

**CERTIFICATE OF SERVICE**

I certify that a copy of *Notice of Removal* has been served on all parties electronically via CM/ECF and / or by U.S. Certified Mail, return receipt delivery, the parties below on November 6, 2020.

**ViaEmail:**

**billburch@worldcrestauctions.com**

**janeburch454@yahoo.com**

Juanita Burch

William Paul Burch

5947 Waterford Dr.

Grand Prairie, Texas 75052

*Plaintiff Pro Se*

/s/ Abbey Ulsh Dreher

Abbey Ulsh Dreher

**LIST OF DOCUMENTS ATTACHED**

- A. Docket sheet from Case No. 2020-006311-1 and Plaintiff's Original Petition filed November 2, 2020, all pleadings and executed processes in the case, if any, all answers, if any, all orders, if any;
- B. Notice of Filing of Notice of Removal to Federal Court filed in the County Court at Law No. 2 of Tarrant County, Texas; and
- C. Disclosure Statement and Certificate of Interested Parties

# **APPENDIX K**

CAUSE NO. 2020-006311-1

JUANITA BURCH,  
Plaintiff,

v.

RUSHMORE LOAN MANAGEMENT  
SERVICES, LLC  
Defendant.

§  
§  
§  
§  
§  
§  
§  
§

IN THE COUNTY COURT AT LAW

NO. 1

TARRANT COUNTY, TEXAS

**DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES**

Defendant RUSHMORE LOAN MANAGEMENT SERVICES, LLC (hereinafter "Defendant" or "Rushmore") files this its Answer and Affirmative Defenses to Plaintiff's Original Petition and in support thereof, respectfully shows the Court the following:

**I. General Denial**

Pursuant to Rule 92, Texas Rules of Civil Procedure, Defendant denies each and every, all and singular, the material allegations contained in the Petition and says that the same are not true in whole or in part, and demands strict proof thereof.

**II. Affirmative Defenses**

1. Defendant pleads that Plaintiff's claim(s), are barred in whole or in part by the doctrine of judicial estoppel and/or equitable estoppel.

2. In addition to and/or alternatively, without waiving the foregoing, Plaintiff's claims are barred in whole or in part by the doctrine of res judicata, issue preclusion or claim preclusion.

3. In addition to and/or alternatively, without waiving the foregoing, Defendant asserts that all conditions precedent to Plaintiff's rights to recover, if any, have not been satisfied, have not occurred or have not been waived.

4. Plaintiff's claims are barred in whole or in part by Plaintiff's prior breach of the contract and, therefore, Plaintiff cannot maintain an action on contract.

5. In addition to and/or alternatively, without waiving the foregoing, Defendant asserts that Plaintiff's possession has been continuous and uninterrupted and, therefore, Plaintiff has no damages.

6. In addition to and/or alternatively, without waiving the foregoing, Plaintiff's damages, if any, which Defendant does not admit, were caused in whole or in part by Plaintiff's own acts, negligent or otherwise, and Defendant is thus not liable.

7. In addition to and/or alternatively, without waiving the foregoing, Plaintiff's claims are barred by the doctrine of unclean hands because Plaintiff failed to perform her contractual obligations, has failed to tender the sums due, and, therefore, is not entitled to any equitable relief.

8. In addition to and/or alternatively, without waiving the foregoing, Defendant asserts any and all limitations on exemplary damages, additional damages and/or punitive damages prescribed by the Texas Rules of Civil Procedure, Federal Rules of Civil Procedure and/or case law and/or Civil Practice and Remedies Code.

Respectfully submitted,

BARRETT DAFFIN FRAPPIER  
TURNER & ENGEL, LLP

/s/ Crystal Gee Gibson  
Crystal Gee Gibson  
State Bar No. 24027322  
4004 Belt Line Rd., Ste. 100  
Addison, Texas 75001  
(972) 340-7901  
(972) 341-0734 (Facsimile)  
CrystalR@BDFGroup.com

**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5<sup>th</sup> day of November 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF filing system, and will send a true and correct copy to the following:

PRO SE PLAINTIFF

VIA email janeburch454@yahoo.com

Juanita Burch

5947 Waterford Dr.

Grand Prairie, Texas 75052

/s/ Crystal Gee Gibson

Crystal Gee Gibson

# **APPENDIX L**

**IN THE TARRANT COUNTY, TEXAS COURT AT LAW**

**JUANITA BURCH**

**Plaintiffs,**

**VS.**

**Rushmore Loan Mgmt Svsc LLC.**

**Defendant**

§  
§  
§  
§  
§  
§  
§

**CASE NO. \_\_\_\_\_**

**PLANTIFF'S ORIGINAL PETITION**

**TO THE HONORABLE DISTRICT COURT JUDGE:**

COMES NOW, JUANITA BURCH, Plaintiff in the above-styled and numbered cause, and files his Original Petition and Request for Jury Trial, complaining of Rushmore Loan Management Services, LLC (Rushmore) and in support thereof would respectively show the Court the following matters and facts regarding the property located at 203 Hemlock Dr; Arlington, Texas 75018

**I. PARTIES**

1. Defendant Rushmore Loan Management Services, is a Limited Liability Corporation and has its principal place of business in 1755 Wittington Pl, Dallas, TX 75234 Its registered agent is Corporation Service Co, 115 SW 89th St, Oklahoma City, OK 73139
- 2 Plaintiff Juanita Burch (Jane) is a married woman residing in Tarrant County at 5947 Waterford Dr, Grand Prairie, Texas 75052.

**II. JURISDICTION AND VENUE**

3. The amount in controversy, exclusive of interest and costs, does not exceed the maximum jurisdictional limits of this court and complies to the requirements of 115.001 of the Texas Property Code. Jane is a resident of Tarrant County, Texas and the cause of action occurred in Tarrant County, Texas. Venue is therefore proper pursuant to the Texas Civil Practice & Remedies Code. Sec. 12.004. and 115.002 of the Texas Property Code. The amount of this claim is below the amount allowed for a removal to Federal District Court for Diversity under 28 USC § 1332 (b). Any attempt at removal to Federal Court, without a hearing of removal in the County Court. by Rushmore will be with Rushmore's knowledge that it would be improper to remove and costly for both Parties and would be subject to sanctions.

### **III. THE HISTORY OF THE FIRST PART OF THE CASE**

4. In 2006 the Plaintiff, Juanita Burch a/k/a Jane Burch (Burch) and her husband William (a/k/a Bill) took \$560,000 dollars and began investing in residential real estate. The Burch's were in the business of buying houses for cash, renovating them with their own money, and then selling the properties. This is currently known as house flipping. At the time, the Department of Housing and Urban Development (HUD), required the investor to hold the house for twelve months before selling it for a profit. To preserve cash, Burch would then get a short term, often interest only, loan using the new property as collateral. They acquired an inventory of twenty-two properties over a two-year period valued at over three million dollars with about \$2,000,000 in loans.

5. This is an extremely complicated legal case. There are about twenty defendants with about sixty attorneys against a pro-se husband and wife. The case has twenty-two properties with most of the properties having defendants at various levels of responsibility.
6. Bill twice attempted to bring multiple defendants in on just one property, but it was so confusing that even the judge did not know what was going on. That cases are still pending. To simplify the issues, the unfilled case was divided into many filed lawsuits based on the properties and the actions.

#### **IV. THE HISTORY OF THE BASIS OF THE CASE**

7. One mortgage company, American Home Mortgage had its financing pulled by the banks and went into bankruptcy. The company was divided in half with W. L. Ross loaning the remaining company fifty-million dollars. **(EXHIBIT A)** Thirty days later he took over American Home Mortgage and put the assets into a new company named AH Mortgage Acquisitions. Ross had a phone room call the borrowers and told them that, due to the recession, their properties had dropped in value and the borrowers would have to pay the difference, or have the property foreclosed on, or file for bankruptcy. Unknown to the Burch's or most of the other borrowers at the time, under the Texas Constitution a residential loan cannot be foreclosed on due to a loss of value even if the loss makes the property worth less than the loan. Article 16 Section 50(a) (J) of the Texas Constitution says that a loan, "may not be accelerated because of a decrease in the market value of the homestead". Burch did not know this nor was he informed about this law by any lawyer or judge. Burch was fraudulently tricked into filing bankruptcy by Homeward.

8. The borrowers contacted by Homeward were those with private mortgage insurance (PMI). The Homeward plan was to have the borrowers file for bankruptcy. So many filed for bankruptcy that Ross was given the nickname of the “Bankruptcy King”. After a borrower filed for bankruptcy, Ross would collect the remaining loan balance from the PMI, usually through American International Group (AIG).
9. AIG would hold the promissory note for a period of time. Then AIG would usually sell the note back to AH Mortgage Acquisitions for ten percent of the balance as part of a Mortgage loan laundering scheme. AH Mortgage hid their agenda by changing their name to Homeward Residential (Homeward). They would sell the notes for a profit to another mortgage company using the Homeward name without telling the buyer that they were originally AH Mortgage Company. In this way, Ross got his fifty million dollars back and was able to see a profit of almost one billion dollars. He then sold the company to Ocwen Loan Servicing for cash and stock forcing Ocwen to take the loss on any chargeback while Ross sat on his ill gained profits. By working this scheme, Ross bought American Home Mortgage for less than five cents on the dollar. So, on a \$100,000 loan the Bankruptcy King would be invested at about \$5,000. He collected on the \$100,000 from AIG for a profit of \$95,000. AIG would sell the laundered void note back to Ross, now as Homeward, for \$10,000. Homeward would then sell the note to another mortgage company for up to the \$100,000 giving him a profit of up to \$185,000 on a \$100,000 house. All within about one year.
10. One third of the houses owned by Burch had loans through American Home Mortgage with a value of over one million dollars. This was a tempting

target for the Bankruptcy King. During the negotiations for the Bankruptcy Plan, the lawyers for the other banks and mortgage companies learned of the Ross plan and advised their clients of it. Because the loan terms were changed so much, the loans were void. Homeward needed the loan as a house flipper, Burch did not want to wait a year because it would cost the Burch's too much money by holding the houses rather than selling them and buying more.

11. The Burch's attorney negotiated with the mortgage companies' attorneys and an agreement (**Exhibit B**) was reached that gave the mortgage companies six months to replace the mortgage notes. The notes were necessary so that Burch could sell the houses. However, because of the loss of money as a result of not flipping houses during this period, it was agreed that the mortgage companies would turn the house over to Burch where they didn't replace the note within the six month period. (**Exhibit C**) The Burch's made their payments to the mortgage company (**Exhibit D**) during this period, but they were returned by the mortgage company (**Exhibit E**) (Breach of contract). It was later learned that Homeward was not able to move fast enough. They needed to maintain their scam by keeping the payments at the old term on each note, which is why they returned the payments and demanded payment on the old note even though Burch told the mortgage company about the change in the bankruptcy plan. Burch notified the Chase attorney's that the lien was no longer valid (**Exhibit F**). The validity of the need to replace the note is seen in the Freedom replacement note (**Exhibit G**)

12. Who were the winners and losers in this scam and fraud scheme? The winners were those who held the notes at the time Burch filed for Bankruptcy. Those companies were American Home Mortgage (changed to Homeward-now Ocwen), America's Servicing Company (owned by Wells Fargo), Aurora (now absorbed by Nationstar d/b/a Mr. Cooper), Chase (now JPMorgan Chase), Countrywide Home Loans (bought by Bank of America), Freedom Mortgage, Litton Loan Servicing (owned by Ocwen), Select Portfolio Services, and Wells Fargo. The losers in this musical chair scheme were a long list. For example, just on this property the participants include Fannie Mae, Seterus, Freedom Mortgage, and Rushmore as well as other unidentified participants.

#### **V. RUSHMORE'S ACTIONS**

13. In this case Rushmore or whoever the actual holder of the void mortgage note is, deceived into believing that the note was valid. The lender who profited the most on the scheme for this property was JP Morgan Chase Bank. It is not Burch's obligation to turn over the house to Rushmore. Rather it is Rushmore's obligation to turn the house over to Burch, release any encumbrances on the property and pay whatever penalty that may be assessed against Rushmore. Rushmore should go against whoever sold the note to them and so on until everyone is covered.
14. Rushmore has been told what took place but have chosen or been told to ignore it. The essential part that they know about is that the mortgage note is void. As such, all their actions against Burch are harassment by a collection company (Rushmore). Rushmore is attempting to collect a fake debt backed by a void document that was fraudulently sold to Rushmore and holds no

validity. Rushmore wants to take an asset from the Burch's that does not belong to them. This is not a situation where a mortgage note is lost, this is a situation where there is no mortgage note.

## **VI. ADDITIONAL BACKGROUND**

15. On November 20, 2006 Plaintiff purchased the property located at 203 Hemlock, Arlington, Texas 76018 for cash in the amount of \$64,288.07 (**EXHIBIT H** Settlement Statement)
16. After renovating the property, on December 04, 2006 Plaintiff took out a mortgage note for \$78,750 from Freedom Mortgage Corporation. (**Exhibit I** Mortgage Note)
17. Two years later, on December 1, 2008 Plaintiff filed for Chapter 11 Bankruptcy. At the time of the filing, the alleged Mortgage Company was Chase Bank or Chase Properties (now JPMorgan Chase Bank N.A.) (hereafter referred to as Chase). Their attorneys worked with the Plaintiffs attorney's regarding the provisions for their portion of the Plan.
18. The Bankruptcy Plan was agreed to and confirmed on December 9, 2009. (**Exhibit B** 08-45761-RFN, Confirmed Plan) Provisions agreed to were:
  - A. Page 13, 5.8 Class 7 Claimant (Allowed secured Claims of Chase) is impaired and shall be satisfied as follows: Chase Bank ("Chase") is the mortgage holder on the following properties located at 203 Hemlock, Arlington, Texas (the "Chase Properties). Based upon the Debtors' current value of the Hemlock property, the Debtors will

enter a New Hemlock Note in the original principal amount of \$84,950 ("New Hemlock Note"). The New Hemlock Note shall bear interest at the rate of 5.25% per annum. The Debtors shall pay the New Hemlock Note in 360 equal monthly payments of \$469.65 commencing on the Effective Date. Class 7 is impaired under this Plan

- B. Page 18, 12.3 All property of the Reorganized Debtors is free and clear of all Claims and interests of Creditors and Equity Interest Holders, except as to claims, secured claims or secured debentures and interests specifically granted in this Plan (THIS RESTATES THE REMOVAL OF THE EXISTING MORTGAGE NOTE FROM ALL THE PROPERTIES)
- C. Page 18, 13.4 Any distribution pursuant to this Plan which remains unclaimed for a period of six (6) months from the due date of such distribution is forfeited. (This means that if the new Mortgage Note is not written within six months then there will be no Mortgage Note on the property
- D. Page 18, 14.1 To direct any necessary party to execute or deliver or to join in the execution in the execution or delivery of any instrument required to affect a Transfer of property dealt with by the Plan and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of this plan.

(THE OLD NOTE'S ARE NOT VALID. IF THERE IS NO REPLACEMENT NOTE THEN THE PROPERTY GOES TO THE

DEBTOR. THESE CHANGES AND AGREEMENTS WERE MADE BY THE MORTGAGE COMPANIES AND ACCEPTED BY ALL CREDITORS. THESE WERE NOT IMPOSED ON THE PROPERTY BY THE COURT WITHOUT THE CONSENT OF THE MORTGAGE COMPANIES)

19. During the negotiations, the attorneys for Chase wanted one year to prepare the New replacement for the voided Mortgage Note. Plaintiff wanted thirty days. They compromised at six months (12.B above) but with the provision that if the Mortgage Note was not provided by that date then there would be no future opportunity for a Mortgage Note (C above) to be issued.
20. The Plaintiff began making payments to the Chase beginning January 15, 2010. A letter accompanied each payment (**Exhibit D** One payment letter) giving the new payment amount and the bankruptcy information. The Check for October was returned with a letter not acknowledging the Bankruptcy Plan.
21. On January 31, 2011 Plaintiff sent a letter to Chase informing them that they no longer owned the property and that they should remove the lien from the records as they no longer had a Mortgage on the property. (**Exhibit F**)

## **VII CAUSE 1 BREACH OF CONTRACT**

22. Chase made an offer to Burch through Burch's Bankruptcy Attorney, to void the old note (**Exhibit B** page 13) and replace it with a new note within six months of the Court Order going into effect (**Exhibit B** page 18). Burch accepted the offer through her attorney. In return, both parties were given

consideration within the Bankruptcy Plan. A contract exists if the following elements are present:

- (1) an offer
- (2) an acceptance
- (3) a meeting of the minds
- (4) a communication that each party has consented to the terms of the agreement; and
- (5) execution and delivery of the contract with an intent that it become mutual and binding on both parties.<sup>1</sup>

23. Chase, by buying the voided Mortgage Note during the six-month period, re-assumed their responsibilities under the Court Order. Burch sent the mortgage payments to Chase as required by the contract.

24. By Chase not fulfilling its obligations under the contract, including not accepting the contractually correct payments from Burch, Chase breached the contract. Texas law recognizes a cause of action for breach of contract. The elements of a breach of contract claim are:

- 1) existence of a valid contract;
- 2) performance or tendered performance by the plaintiff;
- 3) material breach by the defendant; and
- 4) damages sustained by the plaintiff as a result of that breach.<sup>2</sup>

25. Material Breach/Excuse from Performance. When one party to a contract

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<sup>1</sup> Hallmark v. Hand, 885 S.W.2d 471, 476 (Tex. App.--El Paso 1994, writ denied).

<sup>2</sup> Paragon Gen. Contractors, Inc. v. Larco Constr., Inc., 227 S.W.3d 876, 882 (Tex. App.--Dallas 2007, no pet.)

commits a material breach of that contract, the other party is discharged or excused from further performance.<sup>3</sup> The covenant breached must be part of mutually dependent promises in order to excuse further performance by the non-breaching party.<sup>4</sup> Generally, the issue of whether a breach rises to the level of a material breach that will render the contract unenforceable presents a question of fact.<sup>5</sup> Whether a breach is a material breach necessarily turns on the facts of each case.<sup>6</sup> (Tex. Civ. App.--Dallas 1980, writ ref'd n.r.e.)<sup>7</sup> Citing the *Restatement (Second) of Contracts, section 241* (1981), the Texas Supreme Court noted five factors significant in determining whether a failure to perform is material, i.e., whether the breach is material:

- 1) the extent to which the injured party will be deprived of the benefit which he reasonably expected;
- 2) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived;
- 3) the extent to which the party failing to perform or to offer to perform will suffer forfeiture;
- 4) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of the circumstances including any reasonable assurances; and
- 5) the extent to which the behavior of the party failing to perform comports with standards of good faith and fair dealing.

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<sup>3</sup> Mustang Pipeline Co. v. Driver Pipeline Co., 134 S.W.3d 195, 196 (Tex. 2004).

<sup>4</sup> Hanks v. GAB Bus. Servs., Inc., 644 S.W.2d 707, 708 (Tex. 1982).

<sup>5</sup> Cont'l Dredging, Inc. v. De-Kaizerred, Inc., 120 S.W.3d 380, 394-95 (Tex. App.--Texarkana 2003, pet. denied).

<sup>6</sup> Advance Components, Inc. v. Goodstein, 608 S.W.2d 737, 739

<sup>7</sup> (citing Bowen v. Briscoe, 453 S.W.2d 287, 289 (Tex.1970)).

26. *Mustang Pipeline*,<sup>8</sup> Another factor relevant to assessing the materiality of the breach is the extent to which it reasonably appears to the injured party that delay may prevent or hinder him in making reasonable substitute arrangements.<sup>9</sup>
27. The plaintiff was damaged due to the breach in that he lost rental income and the value of the property that would be obtained by the sale of the property.

### **IIX CAUSE 2 QUITE TITLE**

28. To prevail in a suit to quiet title, a plaintiff must prove:
- (1) he has an interest in a specific property; (Proof-**EXHIBIT J-Deed of Trust**)
  - (2) title to the property is affected by a claim by the defendant (Proof-**EXHIBIT B- Bankruptcy Plan**); and
  - (3) the claim, although facially valid, is invalid or unenforceable. (Proof-**EXHIBITS B-bankruptcy plan for Enchanted and EXHIBIT C-6-month requirement**).<sup>10 11</sup>

### **IX PRE-JUDGMENT AND POST-JUDGMENT INTEREST**

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<sup>8</sup> *Mustang Pipeline*, 134 S.W.3d at 199.

<sup>9</sup> Id. (citing Restatement (Second) of Contracts § 242 (1981)).

<sup>10</sup> *Vernon v. Perrien*, 390 S.W.3d 47, 61 (Tex. App.-El Paso 2012, pet. denied);

<sup>11</sup> *U.S. Nat'l Bank Ass'n v. Johnson*, No. 01-10-00837-CV, 2011 WL 6938507, at \*3 (Tex. App.-Houston [1st Dist.] Dec. 30, 2011, no pet.) (mem. op.).

29. Burch herein claims interest in accordance with Texas Finance Code §304.001, et seq. and any other applicable law.

#### **X. CONDITIONS PRECEDENT**

30. All conditions precedent to Bills' claim for relief have been performed or have occurred.

#### **XI. DISCOVERY LEVEL**

31. Burch hereby designates this as a Level III discovery case pursuant to the Texas Rules of Civil Procedure.

#### **XII. REQUEST FOR DISCLOSURE**

32. Burch hereby requests Rushmore to disclose, within fifty (50) days from the date of service of this pleading, the matters identified in Texas Rule of Civil Procedure 194.2 (a)- (1) as stated therein.

#### **XIII. REQUEST FOR PRODUCTION OF DOCUMENTS**

33. Burch hereby requests Freedom to produce the following documents (in appropriate format as per the Texas Rules of Procedure) at the mailing address of Burch, P.O. Box 201236, Arlington, Texas 76006, within fifty (50) days of the date of the service of these Requests:

- a. Copies of any and all valid promissory notes relating to the Property;

- b. A copy of any note or document upon which Rushmore bases its claim to an interest in the Property subsequent to the confirmed Chapter 11 Plan;
- c. Copies of any and all deeds of trust, security agreements, or other agreement(s) that Rushmore contends establishes a security interest in the Property in favor of Rushmore;
- d. Copies of all communications between either Jane or Freedom and/or its agents and employees;
- e. Copies of all communications between either Jane or Freedom and/or its agents and employees relating specifically to the Enchanted property;
- f. All documents establishing or supporting any debt owed by Jane to Freedom regarding the Enchanted property.
- g. All documents establishing or supporting any defense upon which Freedom t relies in this matter.

#### **XIV. NO DELAY**

34. This petition and application have not been brought merely for delay, but so that justice maybe done.

#### **XV. DEMAND FOR JURY TRIAL**

35. Burch demands a jury trial and tenders the appropriate fee with this petition.

#### **XVI. REQUEST FOR DISCLOSURE**

36. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Freedom

disclose, within 50 days of service of this request, the information or material described in Rule 194.2 to be produced to Burch.

## **XVII. STATUTE OF LIMITATIONS TEX.CIV.PRAC. & REM.CODE ANN.**

### **§ 16.051**

37. Statute of limitations refers to the time within which a claim must be brought, or the claim will be barred as a matter of law.<sup>12</sup> Normally the limitations period begins when cause of action accrues. A cause of action accrues, and the statute of limitations begin to run, when facts come into existence that authorize a claimant to seek a judicial remedy.<sup>13</sup> There is a four-year statute of limitations for breach of contract claims.<sup>14</sup> Burch sold the property but could not get the deed removed for the closing and had to take an additional loss on the property directly caused by the sale of the voided mortgage note Chase. This did not occur until October 2016 therefore; the Statute of Limitations does not exist. Tolling would also render any statute of limitations argument moot.
38. By its very language, Texas's four-year residual limitations clause is inapplicable to suits such as this one for the "recovery of real property." While the statute of limitations for a voidable lien is four-years, "the rule is well established in Texas that where a deed is absolutely void, a suit in law in trespass to try title may be maintained to recover the land."<sup>15</sup> Accordingly, when a deed is invalid and void, a plaintiff's cause of action is not barred by

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<sup>12</sup> Cadle Co. v. Wilson, 136 S.W.3d 345, 350 (Tex. App.- Austin 2004, no pet.).

<sup>13</sup> Exxon Corp. v. Emerald Oil & Gas Co., 348 S.W.3d 194, 202 (Tex. 2011) (op. on reh'g).

<sup>14</sup> Pollard v. Hanschen, 315 S.W.3d 636, 641 (Tex. App.--Dallas 2010, no pet.).

<sup>15</sup> See id. (citing Slaughter v. Quails, 162 S.W.2d 671, 674 (Tex. 1942)).

the four-year statute of limitation.<sup>16</sup> In this case, taking Burch's allegations as true, as the Court must, the lien in question was void from its inception. Accordingly, this suit is not barred by limitations.

### **XIIX. RELIEF SOUGHT**

39. Burch seeks removal of the lien from the property and any charges against the property. The relief from the lien removal is less than \$100,000. Because there should be no lien and therefore no charges against the property by Rushmore is valid. Therefore, the value to the suit of the lien removal is zero for diversity.
40. As a result of Rushmore's delays there has been damage to the property that should be repaired.
41. Any damages awarded should not exceed the \$75,000 limit. Therefore, the damage category is \$100,000 or less.

### **XIX. PRAYER**

42. For these reasons, Burch asks that the Court issue citations for Rushmore to appear and answer, and that Burch be awarded a judgment against Rushmore, jointly and severally, for all damages described herein, including actual damages, compensatory damages, punitive damages, attorney's fees, cost of suit, interest as allowable by law and for such other relief, in law and in equity, to which Burch may be justly entitled plus the lien release and

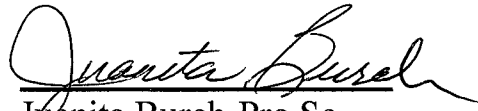
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<sup>16</sup> (Campsey v. Jack County Oil and Gass Ass'n, 328 S.W.2d 912, 915 (Tex.Civ.App. 1959).)

deed to the property described herein located at 203 Hemlock, Arlington,  
Texas.

Dated: November 2, 2020

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Juanita Burch". The signature is written in black ink and is positioned above the printed name.

Juanita Burch-Pro Se  
5947 Waterford Dr  
Grand Prairie, Texas 75052  
817-800-4493  
[janeburch454@yahoo.com](mailto:janeburch454@yahoo.com)

# **APPENDIX M**

IN THE TARRANT COUNTY, TEXAS COURT AT LAW

JUANITA BURCH  
Plaintiffs,

VS.

RUSHMORE LOAN MGMT SVCS LLC  
Defendant

§  
§  
§  
§  
§  
§  
§

CASE NO. 2020-006311-1

FILED  
2020 NOV -2 PM 2:02  
TARRANT COUNTY CLERK  
JANET L. NICHOLS

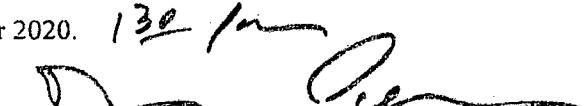
TEMPORARY RESTRAINING ORDER

Came on to be considered this day the Application for Temporary Restraining Order filed by Plaintiffs in the above styled and numbered cause. The Court having reviewed the application and heard argument of Plaintiff is of the opinion the Application is proper and that a restraining order should issue. This court finds there is evidence that harm is imminent to Plaintiff and if the court does not issue the TRO, Plaintiff will be irreparably harmed because he will lose procession and ownership of a unique piece of property. It is according.

ORDERED. ADJUDGED AND DECREED that Defendant is hereby restrained from foreclosing on the Plaintiffs' property located at 203 Hemlock; Arlington, Texas 75146 effective upon the entry of this Order. It is further,

ORDERED, ADJUDGED AND DECREED that this order shall be effective upon the posting of a Statement of Inability to Afford Payment of a TRO. This order expires at midnight on the 14<sup>th</sup> day after this order was signed. A hearing on Plaintiff's application for temporary injunction is set for November 13, 2020 at 10<sup>10</sup> am. The purpose of the hearing will be to determine whether this TRO should be a temporary injunction pending a full trial on the merits.

Signed this the 2nd day of November 2020.

  
Judge Presiding

Bond is \$100 cash.

## **APPENDIX N**

## **PRESENTATION TO COUNTY COURT**

Your honor, before you are the details of the case. Today I am seeking a Temporary Restraining Order with a Temporary Injunction Hearing as soon as possible. The defendants are attempting to foreclose on a property that they have no financial interest in. To prevail all they need to do is to show you a copy of a Mortgage note dated at anytime after January 1, 2010. I know that they do not have one. They are trying to foreclose on our house without a valid promissory note. If they have no valid mortgage or promissory note then they cannot legally foreclose on the property. Should they do so then the defendant would be in violation of Title 7 Chapter 32 subchapter D of the Texas Penal Code. Because I am over the age of 65 under the law the penalty would be moved from a class 2 to a class1 felony.

Think about it, how would you feel if you owned a home and someone foreclosed on your house without having a loan on it. Wouldn't you fight back. I pray that the TRO be issued and that would give Rushmore time to come up with a note.

# **APPENDIX O**

# EXHIBIT A

## Barrett Daffin Frappier Turner & Engel, LLP

A Partnership Including Professional Corporations  
ATTORNEYS AND COUNSELORS AT LAW

4004 Belt Line Road, Suite 100

Addison, Texas 75001

Telephone: (972) 419-1163

Telecopier: (972) 386-7673

November 06, 2020

Certified Mail 7160 9668 9670 8909 3709

JUANITA BURCH  
5947 WATERFORD DR  
GRAND PRAIRIE, TX 75052

RE: Mortgage Servicer: RUSHMORE LOAN MANAGEMENT SERVICES, LLC  
Loan No.: \*\*\*\*\*5210  
BDFTE No.: 00000006232110

### NOTICE OF ACCELERATION

This law firm represents RUSHMORE LOAN MANAGEMENT SERVICES, LLC, the Mortgage Servicer, in its mortgage banking activities in the State of Texas. We have been authorized by the Mortgage Servicer to initiate legal proceedings in connection with the foreclosure of a Deed of Trust associated with your real estate loan (the "Debt").

RUSHMORE LOAN MANAGEMENT SERVICES, LLC is acting as the Mortgage Servicer for U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR THE RMAC TRUST, SERIES 2016-CTT, who is the Mortgagee of the Note and Deed of Trust associated with the above referenced loan. RUSHMORE LOAN MANAGEMENT SERVICES, LLC, as Mortgage Servicer, is representing the Mortgagee, whose address is:

U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR  
THE RMAC TRUST, SERIES 2016-CTT  
c/o RUSHMORE LOAN MANAGEMENT SERVICES, LLC  
15480 LAGUNA CANYON RD.  
SUITE 100  
IRVINE, CA 92618

The Mortgage Servicer is authorized to represent the Mortgagee by virtue of a servicing agreement with the Mortgagee. Pursuant to the Servicing Agreement and Texas Property Code §51.0025, the Mortgage Servicer is authorized to collect the debt and to administer any resulting foreclosure of the property securing the above referenced loan.

**THIS FIRM IS A DEBT COLLECTOR ATTEMPTING TO COLLECT THE DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

This letter is formal notice of the following:

1. Payment of the past due balance on the Debt has not been received by the Mortgage Servicer. Because of this default, the Mortgagee has elected to ACCELERATE the maturity of the Debt.
2. On December 01, 2020, as designated on the enclosed Notice of Trustee's Sale, the Trustee, or the Substitute Trustee, will sell at the Courthouse of TARRANT County, Texas in the area designated by the Commissioner's Court of such County, or if no area is designated by the Commissioner's Court, in the usual and customary place in that County, to the highest bidder for cash, the Real Estate described in the enclosed Notice.
3. All of the obligors and guarantors (if any) of the Debt have the right to reinstate the loan as provided in the Deed of Trust and as provided by applicable Texas law. Payment must be made in certified funds, cashier's check or money order(s).
4. All of the obligors and guarantors (if any) have the right to bring a court action to assert the non-existence of a default or any other defense to acceleration and foreclosure which they may have.



November 06, 2020

Certified Mail 7160 9668 9670 8909 3709  
00000006232110  
JUANITA BURCH  
5947 WATERFORD DR  
GRAND PRAIRIE, TX 75052

**Assert and protect your rights as a member of the armed forces of the United States. If you are or your spouse is serving on active military duty, including active military duty as a member of the Texas National Guard or the National Guard of another state or as a member of a reserve component of the armed forces of the United States, please send written notice of the active duty military service to the sender of this notice immediately.**

If you are not obligated on the Debt, or if the Debt has been discharged in a bankruptcy proceeding, the Mortgage Servicer is not attempting to collect from you personally. You are being given this notice as a courtesy because your interest in the Real Estate may be affected.

Sincerely,



Ryan Bourgeois

Barrett Daffin Frappier Turner & Engel, LLP  
Enclosed: Notice of Trustee Sale

**NOTICE OF [SUBSTITUTE] TRUSTEE'S SALE**

Assert and protect your rights as a member of the armed forces of the United States. If you are or your spouse is serving on active military duty, including active military duty as a member of the Texas National Guard or the National Guard of another state or as a member of a reserve component of the armed forces of the United States, please send written notice of the active duty military service to the sender of this notice immediately.

**1. Date, Time, and Place of Sale.**

Date: December 01, 2020

Time: The sale will begin at 10:00 AM or not later than three hours after that time.

Place: WEST SIDE OF THE 1895 COURTHOUSE OR AS DESIGNATED BY THE COUNTY COMMISSIONERS  
or as designated by the county commissioners.

**2. Terms of Sale.** Cash.

**3. Instrument to be Foreclosed.** The Instrument to be foreclosed is the Deed of Trust or Contract Lien dated December 04, 2006 and recorded in Document INSTRUMENT NO. D206383060 real property records of TARRANT County, Texas, with JUANITA BURCH AND WILLIAM P BURCH, grantor(s) and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS") AS NOMINEE. mortgagee.

**4. Obligations Secured.** Deed of Trust or Contract Lien executed by JUANITA BURCH AND WILLIAM P BURCH, securing the payment of the indebtednesses in the original principal amount of \$78,750.00, and obligations therein described including but not limited to the promissory note and all modifications, renewals and extensions of the promissory note. U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR THE RMAC TRUST, SERIES 2016-CTT is the current mortgagee of the note and Deed of Trust or Contract Lien.

**5. Property to Be Sold.** The property to be sold is described in the attached Exhibit A.

**6. Mortgage Servicer Information.** The Mortgage Servicer is authorized to represent the Mortgagee by virtue of a servicing agreement with the Mortgagee. Pursuant to the Servicing Agreement and Texas Property Code § 51.0025, the Mortgage Servicer is authorized to collect the debt and to administer any resulting foreclosure of the lien securing the Property referenced above. RUSHMORE LOAN MANAGEMENT SERVICES, LLC, as Mortgage Servicer, is representing the current mortgagee, whose address is:

c/o RUSHMORE LOAN MANAGEMENT SERVICES, LLC  
15480 LAGUNA CANYON RD.  
SUITE 100  
IRVINE, CA 92618

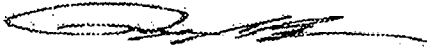


203 HEMLOCK DR  
ARLINGTON, TX 76018

00000006232110

**THIS INSTRUMENT APPOINTS THE SUBSTITUTE TRUSTEE(S) IDENTIFIED TO SELL THE PROPERTY DESCRIBED IN THE SECURITY INSTRUMENT IDENTIFIED IN THIS NOTICE OF SALE THE PERSON SIGNING THIS NOTICE IS THE ATTORNEY OR AUTHORIZED AGENT OF THE MORTGAGEE OR MORTGAGE SERVICER.**

The undersigned as attorney for the mortgagee or mortgage servicer does hereby remove the original trustee and all successor substitute trustees and appoints in their stead FELECIA CLARK, RYAN BOURGEOIS, ISRAEL SAUCEDO, ROBERT FORSTER, DUSTIN DREHER, DAVID STOCKMAN, DONNA STOCKMAN, BRENDA WIGGS, GUY WIGGS, MICHELLE SCHWARTZ, KATHY ARRINGTON, OR JANET PINDER whose address is c/o BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP, 4004 Belt Line Road, Suite 100, Addison, Texas 75001-4320 as Substitute Trustee, who shall hereafter exercise all powers and duties set aside to the said original trustee under the said Deed of Trust; and, further does hereby request, authorize, and instruct said Substitute Trustee to conduct and direct the execution of remedies set aside to the beneficiary therein.



Ryan Bourgeois

**Certificate of Posting**

My name is \_\_\_\_\_, and my address is c/o 4004 Belt Line Road, Suite 100, Addison, Texas 75001-4320. I declare under penalty of perjury that on \_\_\_\_\_ I filed at the office of the TARRANT County Clerk and caused to be posted at the TARRANT County courthouse this notice of sale.

\_\_\_\_\_

Declarants Name: \_\_\_\_\_

Date: \_\_\_\_\_

203 HEMLOCK DR  
ARLINGTON, TX 76018

00000006232110

00000006232110

TARRANT

**EXHIBIT "A"**

LOT 33, BLOCK 47 OF FAIRFIELD, SEVENTH INCREMENT, AN ADDITION TO THE CITY OF ARLINGTON, TARRANT COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 388-186, PAGE 43 OF THE PLAT RECORDS OF TARRANT COUNTY, TEXAS.

## **APPENDIX P**

**Barrett Daffin Frappier Turner & Engel, LLP**

A Partnership Including Professional Corporations  
ATTORNEYS AND COUNSELORS AT LAW

4004 Belt Line Road, Suite 100

Addison, Texas 75001

Telephone: (972) 419-1163

Telecopier: (972) 386-7673

September 22, 2020

Certified Mail 7160 9668 9670 8905 9040

JUANITA BURCH

P.O. BOX 201583

ARLINGTON, TX 76006

RE: Mortgage Servicer: RUSHMORE LOAN MANAGEMENT SERVICES, LLC

Loan No.: \*\*\*\*\*5210

BDFTE No.: 00000006232110

**NOTICE OF ACCELERATION**

This law firm represents RUSHMORE LOAN MANAGEMENT SERVICES, LLC, the Mortgage Servicer, in its mortgage banking activities in the State of Texas. We have been authorized by the Mortgage Servicer to initiate legal proceedings in connection with the foreclosure of a Deed of Trust associated with your real estate loan (the "Debt").

RUSHMORE LOAN MANAGEMENT SERVICES, LLC is acting as the Mortgage Servicer for U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR THE RMAC TRUST, SERIES 2016-CTT, who is the Mortgagee of the Note and Deed of Trust associated with the above referenced loan. RUSHMORE LOAN MANAGEMENT SERVICES, LLC, as Mortgage Servicer, is representing the Mortgagee, whose address is:

U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR  
THE RMAC TRUST, SERIES 2016-CTT  
c/o RUSHMORE LOAN MANAGEMENT SERVICES, LLC  
15480 LAGUNA CANYON RD.  
SUITE 100  
IRVINE, CA 92618

The Mortgage Servicer is authorized to represent the Mortgagee by virtue of a servicing agreement with the Mortgagee. Pursuant to the Servicing Agreement and Texas Property Code §51.0025, the Mortgage Servicer is authorized to collect the debt and to administer any resulting foreclosure of the property securing the above referenced loan.

**THIS FIRM IS A DEBT COLLECTOR ATTEMPTING TO COLLECT THE DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

This letter is formal notice of the following:

1. Payment of the past due balance on the Debt has not been received by the Mortgage Servicer. Because of this default, the Mortgagee has elected to ACCELERATE the maturity of the Debt.
2. On November 03, 2020, as designated on the enclosed Notice of Trustee's Sale, the Trustee, or the Substitute Trustee, will sell at the Courthouse of TARRANT County, Texas in the area designated by the Commissioner's Court of such County, or if no area is designated by the Commissioner's Court, in the usual and customary place in that County, to the highest bidder for cash, the Real Estate described in the enclosed Notice.
3. All of the obligors and guarantors (if any) of the Debt have the right to reinstate the loan as provided in the Deed of Trust and as provided by applicable Texas law. Payment must be made in certified funds, cashier's check or money order(s).
4. All of the obligors and guarantors (if any) have the right to bring a court action to assert the non-existence of a default or any other defense to acceleration and foreclosure which they may have.



September 22, 2020

Certified Mail 7160 9668 9670 8905 9019  
00000006232110  
WILLIAM P BURCH  
P.O. BOX 201583  
ARLINGTON, TX 76006

**Assert and protect your rights as a member of the armed forces of the United States. If you are or your spouse is serving on active military duty, including active military duty as a member of the Texas National Guard or the National Guard of another state or as a member of a reserve component of the armed forces of the United States, please send written notice of the active duty military service to the sender of this notice immediately.**

If you are not obligated on the Debt, or if the Debt has been discharged in a bankruptcy proceeding, the Mortgage Servicer is not attempting to collect from you personally. You are being given this notice as a courtesy because your interest in the Real Estate may be affected.

Sincerely,



Israel Saucedo

Barrett Daffin Frappier Turner & Engel, LLP  
Enclosed: Notice of Trustee Sale

**NOTICE OF [SUBSTITUTE] TRUSTEE'S SALE**

Assert and protect your rights as a member of the armed forces of the United States. If you are or your spouse is serving on active military duty, including active military duty as a member of the Texas National Guard or the National Guard of another state or as a member of a reserve component of the armed forces of the United States, please send written notice of the active duty military service to the sender of this notice immediately.

**1. Date, Time, and Place of Sale.**

Date: November 03, 2020

Time: The sale will begin at 10:00 AM or not later than three hours after that time.

Place: WEST SIDE OF THE 1895 COURTHOUSE OR AS DESIGNATED BY THE COUNTY COMMISSIONERS  
or as designated by the county commissioners.

**2. Terms of Sale.** Cash.

**3. Instrument to be Foreclosed.** The Instrument to be foreclosed is the Deed of Trust or Contract Lien dated December 04, 2006 and recorded in Document INSTRUMENT NO. D206383060 real property records of TARRANT County, Texas, with JUANITA BURCH AND WILLIAM P BURCH, grantor(s) and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS") AS NOMINEE, mortgagee.

**4. Obligations Secured.** Deed of Trust or Contract Lien executed by JUANITA BURCH AND WILLIAM P BURCH, securing the payment of the indebtednesses in the original principal amount of \$78,750.00, and obligations therein described including but not limited to the promissory note and all modifications, renewals and extensions of the promissory note. U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR THE RMAC TRUST, SERIES 2016-CTT is the current mortgagee of the note and Deed of Trust or Contract Lien.

**5. Property to Be Sold.** The property to be sold is described in the attached Exhibit A.

**6. Mortgage Servicer Information.** The Mortgage Servicer is authorized to represent the Mortgagee by virtue of a servicing agreement with the Mortgagee. Pursuant to the Servicing Agreement and Texas Property Code § 51.0025, the Mortgage Servicer is authorized to collect the debt and to administer any resulting foreclosure of the lien securing the Property referenced above. RUSHMORE LOAN MANAGEMENT SERVICES, LLC, as Mortgage Servicer, is representing the current mortgagee, whose address is:

c/o RUSHMORE LOAN MANAGEMENT SERVICES, LLC  
15480 LAGUNA CANYON RD.  
SUITE 100  
IRVINE, CA 92618



NTSS00000006232110

203 HEMLOCK DR  
ARLINGTON, TX 76018

00000006232110

**THIS INSTRUMENT APPOINTS THE SUBSTITUTE TRUSTEE(S) IDENTIFIED TO SELL THE PROPERTY DESCRIBED IN THE SECURITY INSTRUMENT IDENTIFIED IN THIS NOTICE OF SALE THE PERSON SIGNING THIS NOTICE IS THE ATTORNEY OR AUTHORIZED AGENT OF THE MORTGAGEE OR MORTGAGE SERVICER.**

The undersigned as attorney for the mortgagee or mortgage servicer does hereby remove the original trustee and all successor substitute trustees and appoints in their stead FELECIA CLARK, RYAN BOURGEOIS, ISRAEL SAUCEDO, ROBERT FORSTER, DUSTIN DREHER, DAVID STOCKMAN, DONNA STOCKMAN, BRENDA WIGGS, GUY WIGGS, MICHELLE SCHWARTZ, KATHY ARRINGTON, OR JANET PINDER whose address is c/o BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP, 4004 Belt Line Road, Suite 100, Addison, Texas 75001-4320 as Substitute Trustee, who shall hereafter exercise all powers and duties set aside to the said original trustee under the said Deed of Trust; and further does hereby request, authorize, and instruct said Substitute Trustee to conduct and direct the execution of remedies set aside to the beneficiary therein.



Israel Saucedo

**Certificate of Posting**

My name is \_\_\_\_\_, and my address is c/o 4004 Belt Line Road, Suite 100, Addison, Texas 75001-4320. I declare under penalty of perjury that on \_\_\_\_\_ I filed at the office of the TARRANT County Clerk and caused to be posted at the TARRANT County courthouse this notice of sale.

\_\_\_\_\_  
Declarants Name: \_\_\_\_\_

Date: \_\_\_\_\_

203 HEMLOCK DR  
ARLINGTON, TX 76018

00000006232110

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TARRANT

**EXHIBIT "A"**

LOT 33, BLOCK 47 OF FAIRFIELD, SEVENTH INCREMENT, AN ADDITION TO THE CITY OF ARLINGTON, TARRANT COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 388-186, PAGE 43 OF THE PLAT RECORDS OF TARRANT COUNTY, TEXAS.



## **APPENDIX Q**

## **Rule 7012. Defenses and Objections**

(a) When Presented. If a complaint is duly served, the defendant shall serve an answer within 30 days after the issuance of the summons, except when a different time is prescribed by the court. The court shall prescribe the time for service of the answer when service of a complaint is made by publication or upon a party in a foreign country. A party served with a pleading stating a cross-claim shall serve an answer thereto within 21 days after service. The plaintiff shall serve a reply to a counterclaim in the answer within 21 days after service of the answer or, if a reply is ordered by the court, within 21 days after service of the order, unless the order otherwise directs. The United States or an officer or agency thereof shall serve an answer to a complaint within 35 days after the issuance of the summons and shall serve an answer to a cross-claim, or a reply to a counterclaim, within 35 days after service upon the United States attorney of the pleading in which the claim is asserted. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 14 days after notice of the court's action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 14 days after the service of a more definite statement.

(b) Applicability of Rule 12(b)–(i) F. R.Civ.P. Rule 12(b)–(i) F.R.Civ.P. applies in adversary proceedings. A responsive pleading shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court.

### **Committee Notes on Rules—2016 Amendment**

Subdivision (b) is amended to remove the requirement that the pleader state whether the proceeding is core or non-core and to require in all proceedings that the pleader state whether the party does or does not consent to the entry of final orders or judgment by the bankruptcy court. The amended rule also removes the provision requiring express consent before the entry of final orders and judgments in non-core proceedings. Some proceedings that satisfy the statutory definition of core proceedings, 28 U.S.C. § 157(b)(2), may remain beyond the constitutional power of a bankruptcy judge to adjudicate finally. The amended rule calls for the pleader to

make a statement regarding consent, whether or not a proceeding is termed non-core. This amendment complements the requirements of amended Rule 7008(a). The bankruptcy judge's subsequent determination of the appropriate course of proceedings, including whether to enter final orders and judgments or to issue proposed findings of fact and conclusions of law, is a pretrial matter now provided for in amended **Rule 7016.**

## **APPENDIX R**

# FRBP Rule 9011

## Signing of Papers; Representations to the Court; Sanctions; Verification and Copies of Papers

(a) Signature. Every petition, pleading, written motion, and other paper, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign all papers. Each paper shall state the signer's address and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Representations to the Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,— 1

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law

firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b). If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of Sanction; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability To Discovery. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 7026 through 7037.

(e) Verification. Except as otherwise specifically provided by these rules, papers filed in a case under the Code need not be verified. Whenever verification is required by these rules, an unsworn declaration as provided in 28 U.S.C. §1746 satisfies the requirement of verification.

(f) Copies of Signed or Verified Papers. When these rules require copies of a signed or verified paper, it shall suffice if the original is signed or verified and the copies are conformed to the original.

#### Notes

(As amended Mar. 30, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 11, 1997, eff. Dec. 1, 1997.)

#### Notes of Advisory Committee on Rules—1983

Subdivision (a). Excepted from the papers which an attorney for a debtor must sign are lists, schedules, statements of financial affairs, statements of executory contracts, Chapter 13 Statements and amendments thereto. Rule 1008 requires that these documents be verified by the debtor. Although the petition must also be

verified, counsel for the debtor must sign the petition. See Official Form No. 1. An unrepresented party must sign all papers.

The last sentence of this subdivision authorizes a broad range of sanctions.

The word “document” is used in this subdivision to refer to all papers which the attorney or party is required to sign.

Subdivision (b) extends to all papers filed in cases under the Code the policy of minimizing reliance on the formalities of verification which is reflected in the third sentence of Rule 11 F.R.Civ.P. The second sentence of subdivision (b) permits the substitution of an unsworn declaration for the verification. See 28 U.S.C. §1746. Rules requiring verification or an affidavit are as follows: Rule 1008, petitions, schedules, statements of financial affairs, Chapter 13 Statements and amendments; Rule 2006(e), list of multiple proxies and statement of facts and circumstances regarding their acquisition; Rule 4001(c), motion for ex parte relief from stay; Rule 7065, incorporating Rule 65(b) F.R.Civ.P. governing issuance of temporary restraining order; Rule 8011(d), affidavit in support of emergency motion on appeal.

#### Notes of Advisory Committee on Rules—1987 Amendment

The statement of intention of the debtor under §521(2) of the Code is added to the documents which counsel is not required to sign.

#### Notes of Advisory Committee on Rules—1991 Amendment

Subdivision (a) is amended to conform to Rule 11 F.R.Civ.P. where appropriate, but also to clarify that it applies to the unnecessary delay or needless increase in the cost of the administration of the case. Deletion of the references to specific statements that are excluded from the scope of this subdivision is stylistic. As used in subdivision (a) of this rule, “statement” is limited to the statement of financial affairs and the statement of intention required to be filed under Rule 1007. Deletion of the reference to the Chapter 13 Statement is consistent with the amendment to Rule 1007(b).

## Notes of Advisory Committee on Rules—1997 Amendment

This rule is amended to conform to the 1993 changes to F.R.Civ.P. 11. For an explanation of these amendments, see the advisory committee note to the 1993 amendments to F.R.Civ.P. 11.

The “safe harbor” provision contained in subdivision (c)(1)(A), which prohibits the filing of a motion for sanctions unless the challenged paper is not withdrawn or corrected within a prescribed time after service of the motion, does not apply if the challenged paper is a petition. The filing of a petition has immediate serious consequences, including the imposition of the automatic stay under §362 of the Code, which may not be avoided by the subsequent withdrawal of the petition. In addition, a petition for relief under chapter 7 or chapter 11 may not be withdrawn unless the court orders dismissal of the case for cause after notice and a hearing.

GAP Report on Rule 9011. The proposed amendments to subdivision (a) were revised to clarify that a party not represented by an attorney must sign lists, schedules, and statements, as well as other papers that are filed.

<sup>1</sup> So in original. The comma probably should not appear.

## **APPENDIX S**

# Rule 9027. Removal

## (a) Notice of Removal.

(1) Where Filed; Form and Content. A notice of removal shall be filed with the clerk for the district and division within which is located the state or federal court where the civil action is pending. The notice shall be signed pursuant to Rule 9011 and contain a short and plain statement of the facts which entitle the party filing the notice to remove, contain a statement that upon removal of the claim or cause of action the party filing the notice does or does not consent to entry of final orders or judgment by the bankruptcy court, and be accompanied by a copy of all process and pleadings.

(2) Time for Filing; Civil Action Initiated Before Commencement of the Case Under the Code. If the claim or cause of action in a civil action is pending when a case under the Code is commenced, a notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under §362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

(3) Time for filing; civil action initiated after commencement of the case under the Code. If a claim or cause of action is asserted in another court after the commencement of a case under the Code, a notice of removal may be filed with the clerk only within the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed, or (B) 30 days after receipt of the summons if the initial pleading has been filed with the court but not served with the summons.

(b) Notice. Promptly after filing the notice of removal, the party filing the notice shall serve a copy of it on all parties to the removed claim or cause of action.

(c) Filing in Non-Bankruptcy Court. Promptly after filing the notice of removal, the party filing the notice shall file a copy of it with the clerk of the court from which the claim or cause of action is removed. Removal of the claim or cause of action is effected on such filing of a copy of the notice of removal. The parties shall proceed no further in that court unless and until the claim or cause of action is remanded.

(d) Remand. A motion for remand of the removed claim or cause of action shall be governed by Rule 9014 and served on the parties to the removed claim or cause of action.

(e) Procedure After Removal.

(1) After removal of a claim or cause of action to a district court the district court or, if the case under the Code has been referred to a bankruptcy judge of the district, the bankruptcy judge, may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the court from which the claim or cause of action was removed or otherwise.

(2) The district court or, if the case under the Code has been referred to a bankruptcy judge of the district, the bankruptcy judge, may require the party filing the notice of removal to file with the clerk copies of all records and proceedings relating to the claim or cause of action in the court from which the claim or cause of action was removed.

(3) Any party who has filed a pleading in connection with the removed claim or cause of action, other than the party filing the notice of removal, shall file a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court. A statement required by this paragraph shall be signed pursuant to Rule 9011 and shall be filed not later than 14 days after the filing of the notice of removal. Any party who files a statement pursuant to this paragraph shall mail a copy to every other party to the removed claim or cause of action.

(f) Process After Removal. If one or more of the defendants has not been served with process, the service has not been perfected prior to removal, or the process served proves to be defective, such process or service may be completed or new process issued pursuant to Part VII of these rules. This subdivision shall not deprive any defendant on whom process is served after removal of the defendant's right to move to remand the case.

(g) Applicability of Part VII. The rules of Part VII apply to a claim or cause of action removed to a district court from a federal or state court and govern procedure after removal. Repleading is not necessary unless the court so orders. In a removed action in which the defendant has not answered, the defendant shall answer or present the other defenses or objections available under the rules of Part VII within 21 days following the receipt through service or otherwise of a copy of the initial pleading setting forth the claim for relief on which the action or proceeding is based, or within 21 days following the service of summons on such initial pleading, or within seven days following the filing of the notice of removal, whichever period is longest.

(h) Record Supplied. When a party is entitled to copies of the records and proceedings in any civil action or proceeding in a federal or a state court, to be used in the removed civil action or proceeding, and the clerk of the federal or state court, on demand accompanied by payment or tender of the lawful fees, fails to deliver certified copies, the court may, on affidavit reciting the facts, direct such record to be supplied by affidavit or otherwise. Thereupon the proceedings, trial and judgment may be had in the court, and all process awarded, as if certified copies had been filed.

(i) Attachment or Sequestration; Securities. When a claim or cause of action is removed to a district court, any attachment or sequestration of property in the court from which the claim or cause of action was removed shall hold the property to answer the final judgment or decree in the same manner as the property would have been held to answer final judgment or decree had it been rendered by the court from which the claim or cause of action was removed. All bonds, undertakings, or security given by either party to the claim or cause of action prior to its removal shall remain valid and effectual notwithstanding such removal. All injunctions issued, orders entered, and other proceedings had prior to removal shall remain in full force and effect until dissolved or modified by the court.

## **COMMITTEE NOTES ON RULES—2016 AMENDMENT**

Subdivisions (a)(1) and (e)(3) are amended to delete the requirement for a statement that the proceeding is core or non-core and to require in all removed actions a statement that the party does or does not consent to the entry of final orders or judgment by the bankruptcy court. Some proceedings that satisfy the statutory definition of core proceedings, 28 U.S.C. § 157(b)(2), may remain beyond the constitutional power of a bankruptcy judge to adjudicate finally. The amended rule calls for a statement regarding consent at the time of removal, whether or not a proceeding is termed non-core.

The party filing the notice of removal must include a statement regarding consent in the notice, and the other parties who have filed pleadings must respond in a separate statement filed within 14 days after removal. If a party to the removed claim or cause of action has not filed a pleading prior to removal, however, there is no need to file a separate statement under subdivision (e)(3), because a statement regarding consent must be included in a responsive pleading filed pursuant to Rule 7012(b). Rule 7016 governs the bankruptcy court's decision whether to hear and determine the proceeding, issue proposed findings of fact and conclusions of law, or take some other action in the proceeding.

# **APPENDIX T**

## **TBCC 3.501**

### Sec. 3.501. PRESENTMENT.

(a) "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument to:

(1) pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank; or

(2) accept a draft made to the drawee.

(b) The following rules are subject to Chapter 4, agreement of the parties, and clearing-house rules and the like:

(1) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States. Presentment may be made by any commercially reasonable means, including an oral, written, or electronic communication. Presentment is effective:

(A) when the demand for payment or acceptance is received by the person to whom presentment is made; and

(B) if made to any one of two or more makers, acceptors, drawees, or other payors.

(2) On demand of the person to whom presentment is made, the person making presentment must:

(A) exhibit the instrument;

(B) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so; and

(C) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

(3) Without dishonoring the instrument, the party to whom presentment is made may:

(A) return the instrument for lack of a necessary indorsement; or

(B) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

(4) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cutoff hour not earlier than 2 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cutoff hour

## **APPENDIX U**

# **Texas Business and Commerce Code Title 3 Insolvency, Fraudulent Transfers, and Fraud, Chapter 26 Statute of frauds (TBCC)**

## **Sec. 26.01. PROMISE OR AGREEMENT MUST BE IN WRITING.**

(a) A promise or agreement described in Subsection (b) of this section is not enforceable unless the promise or agreement, or a memorandum of it, is

- (1) in writing; and
- (2) signed by the person to be charged with the promise or agreement or by someone lawfully authorized to sign for him.

(b) Subsection (a) of this section applies to:

- (1) a promise by an executor or administrator to answer out of his own estate for any debt or damage due from his testator or intestate;
- (2) a promise by one person to answer for the debt, default, or miscarriage of another person;
- (3) an agreement made on consideration of marriage or on consideration of nonmarital conjugal cohabitation;
- (4) a contract for the sale of real estate;
- (5) a lease of real estate for a term longer than one year;
- (6) an agreement which is not to be performed within one year from the date of making the agreement;
- (7) a promise or agreement to pay a commission for the sale or purchase of:
  - (A) an oil or gas mining lease;
  - (B) an oil or gas royalty;
  - (C) minerals; or
  - (D) a mineral interest; and
- (8) an agreement, promise, contract, or warranty of cure relating to medical care or results thereof made by a physician or health care

provider as defined in Section 74.001, Civil Practice and Remedies Code. This section shall not apply to pharmacists.

TBCC Section 26.02 provides:

**Sec. 26.02. LOAN AGREEMENT MUST BE IN WRITING.**

(a) In this section:

(1) "Financial institution" means a state or federally chartered bank, savings bank, savings and loan association, or credit union, a holding company, subsidiary, or affiliate of such an institution, or a lender approved by the United States Secretary of Housing and Urban Development for participation in a mortgage insurance program under the National Housing Act (12 U.S.C. Section 1701 et seq.).

(2) "Loan agreement" means one or more promises, promissory notes, agreements, undertakings, security agreements, deeds of trust or other documents, or commitments, or any combination of those actions or documents, pursuant to which a financial institution loans or delays repayment of or agrees to loan or delay repayment of money, goods, or another thing of value or to otherwise extend credit or make a financial accommodation. The term does not include a promise, promissory note, agreement, undertaking, document, or commitment relating to:

(A) a credit card or charge card; or

(B) an open-end account, as that term is defined by Section 301.002, Finance Code, intended or used primarily for personal, family, or household use.

(b) A loan agreement in which the amount involved in the loan agreement exceeds \$50,000 in value is not enforceable unless the agreement is in writing and signed by the party to be bound or by that party's authorized representative.

(c) The rights and obligations of the parties to an agreement subject to Subsection (b) of this section shall be determined solely from the written loan agreement, and any prior oral agreements between the parties are superseded by and merged into the loan agreement.

(d) An agreement subject to Subsection (b) of this section may not be varied by any oral agreements or discussions that occur before or contemporaneously with the execution of the agreement.

(e) In a loan agreement subject to Subsection (b) of this section, the financial institution shall give notice to the debtor or obligor of the provisions of Subsections (b) and (c) of this section. The notice must be in a separate document signed by the debtor or obligor or incorporated into one or more of the documents constituting the loan agreement. The notice must be in type that is boldface, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous. The notice must state substantially the following:

"This written loan agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.

"There are no unwritten oral agreements between the parties.

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"Debtor or Obligor      Financial Institution"

(f) If the notice required by Subsection (e) of this section is not given on or before execution of the loan agreement or is not conspicuous, this section does not apply to the loan agreement, but the validity and enforceability of the loan agreement and the rights and obligations of the parties are not impaired or affected.

(g) All financial institutions shall conspicuously post notices that inform borrowers of the provisions of this section. The notices shall be located in such a manner and in places in the institutions so as to fully inform borrowers of the provisions of this section. The Finance Commission of Texas shall prescribe the language of the notice.

## **APPENDIX V**

## 11 U.S. Code § 1141

(a) Except as provided in subsections (d)(2) and (d)(3) of this section, the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as provided in subsections (d)(2) and (d)(3) of this section and except as otherwise provided in the plan or in the order confirming the plan, after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors, equity security holders, and of general partners in the debtor.

(d)

(1) Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan—

(A) discharges the debtor from any debt that arose before the date of such confirmation, and any debt of a kind specified in section 502(g), 502(h), or 502(i) of this title, whether or not—

(i) a proof of the claim based on such debt is filed or deemed filed under section 501 of this title;

(ii) such claim is allowed under section 502 of this title; or

(iii) the holder of such claim has accepted the plan; and

(B) terminates all rights and interests of equity security holders and general partners provided for by the plan.

(2) A discharge under this chapter does not discharge a debtor who is an individual from any debt excepted from discharge under section 523 of this title.

(3) The confirmation of a plan does not discharge a debtor if—

(A) the plan provides for the liquidation of all or substantially all of the property of the estate;

(B) the debtor does not engage in business after consummation of the plan; and

(C) the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title.

(4) The court may approve a written waiver of discharge executed by the debtor after the order for relief under this chapter.

(5) In a case in which the debtor is an individual—

(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;

(B) at any time after the confirmation of the plan, and after notice and a hearing, the court may grant a discharge to the debtor who has not completed payments under the plan if—

(i) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date;

(ii) modification of the plan under section 1127 is not practicable; and

(iii) subparagraph (C) permits the court to grant a discharge; and

(C) the court may grant a discharge if, after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that—

(i) section 522(q)(1) may be applicable to the debtor; and

(ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section

522(q)(1)(B); and if the requirements of subparagraph (A) or (B) are met.

(6) Notwithstanding paragraph (1), the confirmation of a plan does not discharge a debtor that is a corporation from any debt—

(A) of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit, or owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute; or

(B) for a tax or customs duty with respect to which the debtor—

(i) made a fraudulent return; or

(ii) willfully attempted in any manner to evade or to defeat such tax or such customs duty.

## **APPENDIX W**

# 28 U.S. Code § 157

## Procedures

- (a)** Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.
- (b)**
  - (1)** Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.
  - (2)** Core proceedings include, but are not limited to—
    - (A)** matters concerning the administration of the estate;
    - (B)** allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;
    - (C)** counterclaims by the estate against persons filing claims against the estate;
    - (D)** orders in respect to obtaining credit;
    - (E)** orders to turn over property of the estate;
    - (F)** proceedings to determine, avoid, or recover preferences;
    - (G)** motions to terminate, annul, or modify the automatic stay;
    - (H)** proceedings to determine, avoid, or recover fraudulent conveyances;
    - (I)** determinations as to the dischargeability of particular debts;
    - (J)** objections to discharges;
    - (K)** determinations of the validity, extent, or priority of liens;
    - (L)** confirmations of plans;
    - (M)** orders approving the use or lease of property, including the use of cash collateral;
    - (N)** orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;

- (O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims; and
    - (P) recognition of foreign proceedings and other matters under chapter 15 of title 11.
  - (3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.
  - (4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).
  - (5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.
- (c)
- (1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.
  - (2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.
- (d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.
- (e) If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may

conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.

## **APPENDIX X**

## 28 U. S. C. § 1334

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)

(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

- (1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and
- (2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.