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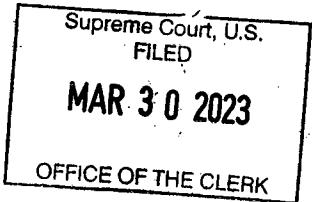
IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM PAUL BURCH,

APPELLANT

v.

NATIONSTAR MORTGAGE HOLDING, INC



RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF TEXAS

22-0770

PETITION FOR WRIT OF CERTIORARI

William Paul Burch
Pro se
5947 Waterford Drive
Grand Prairie, TX 75052
(817) 919-4853
billburch@worldcrestauctions.com
March 30, 2023

I. QUESTION(S) PRESENTED

William Paul Burch (“Burch”) filed his appeal to the Texas Second District Court of Appeals on March 19, 2022, to which no question raised by Appellant Juanita Burch (Burch) was addressed. The appeal was for an Order and Finale Judgment from the district court ruling of May 26, 2021, which did not address the issues.

The questions presented are:

1. The lien on this property was extinguished under the Texas Constitution because neither the loan nor the Deed of Trust was signed by Petitioner, William Paul Burch (Burch). Does the lack of a signature resulting in a legally voided lien also mean that Burch does not have standing in a community property state?
2. Can an Article I Federal Bankruptcy Court force Burch to get permission from the Bankruptcy Court to file a complaint in state court or to oversee state court by requiring that any motion filed in the state court get permission from the Bankruptcy Court first?
3. If summary judgment is granted for lack of standing and the standing issue is reversed then is the summary judgment reversed?

II PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

The parties to these proceedings include Petitioner William Paul Burch; and Respondent Nationstar Mortgage Holding, Inc. Pursuant to **SCOTUS Rule 29.6**, undersigned pro-se states that Nationstar Mortgage Holding, Inc is headquartered in Addison, Texas

Appellees:

NATIONSTAR MORTGAGE HOLDINGS, INC.

Counsel for Appellees:

Elizabeth Chandler
echandler@mcguirewoods.com 2000
McKinney Avenue, Suite 1400
Dallas, Texas 75201
214.932.6400

Appellant:

William Paul Burch

Appellant is Pro-Se

William Paul Burch-Pro-Se
Grand Prairie, TX

William Paul Burch (Pro-se)
5947 Waterford Drive
Grand Prairie, TX 75052
(817) 919-4853
billburch@worldcrestauctions.com

III STATEMENT OF RELATED PROCEEDINGS

There are no pending related proceedings in this case.

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VII. PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

VIII. OPINIONS

The opinion of the Court of Appeals for the Second District, Fort Worth, Texas to review the case appears at App. D in the appendix to this petition and is published.

The opinion of the 236th District Court Tarrant County, Texas appears at App. F and is published.

IX. JURISDICTION.

A timely petition for rehearing was denied by the Supreme Court of Texas December 30, 2022, and a copy of the order denying rehearing appears at Appendix A. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

X. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTIONAL PROVISIONS

Article I of the United States Constitution APPENDIX G

Fifth Amendment of the United States Constitution provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment of the United States Constitution **APPENDIX I**

Texas Constitution Art.1, Section 13 provides:

EXCESSIVE BAIL OR FINES; CRUEL AND UNUSUAL

PUNISHMENT; REMEDY BY DUE COURSE OF LAW. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law

Texas Constitution Art.16 Sec. 50 **APPENDIX J**

Texas Constitution Art.1, Section 19 provides:

DEPRIVATION OF LIFE, LIBERTY, ETC.; DUE COURSE OF LAW. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

STATUTES AND RULES

SCOTUS Rule 29.6 provides:

Every document, except a joint appendix or amicus curiae brief, filed by or on behalf of a nongovernmental corporation shall contain a corporate disclosure statement identi-

fying the parent corporations and listing any publicly held company that owns 10% or more of the corporation's stock. If there is no parent or publicly held company owning 10% or more of the corporation's stock, a notation to this effect shall be included in the document. If a statement has been included in a document filed earlier in the case, reference may be made to the earlier document (except when the earlier statement appeared in a document prepared under Rule 33.2), and only amendments to the statement to make it current need be included in the document being filed. In addition, whenever there is a material change in the identity of the parent corporation or publicly held companies that own 10% or more of the corporation's stock, counsel shall promptly inform the Clerk by letter and include, within that letter, any amendment needed to make the statement current.

Texas Family Code § 5.001 provides:

SALE, CONVEYANCE, OR ENCUMBRANCE OF HOMESTEAD. Whether the homestead is the separate property of either spouse or community property, neither spouse may sell, convey, or encumber the homestead without the joinder of the other spouse except as provided in this chapter or by other rules of law.

TRCP 11 APPENDIX H

TRCP 166a(c) provides:

The motion for summary judgment shall state the specific grounds therefore. Except on leave of court, with notice to opposing counsel, the motion and any supporting affidavits shall be filed and served at least twenty-one days before the time specified for hearing. Except on leave of court, the adverse party, not later than seven days prior to the day

of hearing may file and serve opposing affidavits or other written response. No oral testimony shall be received at the hearing. The judgment sought shall be rendered forthwith if (i) the deposition transcripts, interrogatory answers, and other discovery responses referenced or set forth in the motion or response, and (ii) the pleadings, admissions, affidavits, stipulations of the parties, and authenticated or certified public records, if any, on file at the time of the hearing, or filed thereafter and before judgment with permission of the court, show that, except as to the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion or in an answer or any other response. Issues not expressly presented to the trial court by written motion, answer or other response shall not be considered on appeal as grounds for reversal. A summary judgment may be based on uncontested testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the trier of fact must be guided solely by the opinion testimony of experts, if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted.

TRCP 296 provides:

In any case tried in the district or county court without a jury, any party may request the court to state in writing its findings of fact and conclusions of law. Such request shall be entitled "Request for Findings of Fact and Conclusions of Law" and shall be filed within twenty days after judgment is signed with the clerk of the court, who shall immediately call such request to the attention of the judge who tried the case. The party making the request shall serve it on all other parties in accordance with Rule 21a.

28 U. S. C. § 1254(1) provides:

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

- (1)By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
- (2)By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired,

and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

28 U.S.C. § 2283 provides:

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

42 U.S.C. § 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

XI. STATEMENT OF THE CASE

The issues in the case were the result of inadequate actions by the lenders who made major mistakes that brought harm to the entire nation. The original loan was from Lehman Brothers who moved the loan to their subsidiary, Aurora Bank, prior to being declared insolvent, thus causing the 2008 "Great Recession". Rather than go into receivership, Aurora Bank was

absorbed by Nationstar Mortgage Holdings. Because of the actions of Nationstar they changed their name and began doing business as Mr. Cooper. Washington Mutual Bank moved their real estate assets to Washington Mutual Mortgage Acquisitions. Washington Mutual Mortgage acquired the failing Nationstar Mortgage Holdings and then Washington Mutual Mortgage Acquisitions changed their name to Mr. Cooper Mortgage Acquisitions.

Quoting the Opinion (**Appendix D**) of the Texas Second District Court of Appeals for not granting the Petitioner, William Paul Burch (Burch), his appeal (**Page 10**) was:

“Because only the Chapter 7 trustee could pursue the claims against Nationstar, the trial court properly granted Nationstar’s motion to dismiss Burch’s lack of standing, and we overrule what we construe as Burch’s appellate issue attacking that result. Our disposition obviates the need for us to analyze the trial court’s alternative holding dismissing Burch’s claims because his name was not on the Waterford Drive note or deed of trust and granting Nationstar’s summary-judgment motion based on res judicata and lack of capacity.”

The District Court declined Burch’s request for findings of fact and conclusions of law under **Texas Rules of Civil Procedure 296 (TRCP 296)**. The ruling that moved forward (**Appendix F**) was:

“**ORDERED** that Defendant’s Motion to Dismiss is GRANTED and Plaintiff’s claims are dismissed for lack of subject matter jurisdiction based on Plaintiffs lack of standing.

IT IS FURTHER ORDERED that, in the alternative, Defendant's Motion for Summary Judgment is GRANTED on the grounds that Plaintiffs claims are barred by *res judicata* and further alternatively, Plaintiff's claims are barred by Plaintiff's lack of legal capacity to assert them."

To get the explanation we must go to the Nationstar's Motion To Dismiss where they write:

"The Claims are the same as the Claims in the prior Action. (This was referring to the 2008 and 2012 bankruptcies) The bankruptcy court's final order designated Plaintiff a vexatious litigant pursuant to Tex. Civ. Prac. & Rem. Code § 11 (TRCP 11). The Property that is the subject of Plaintiff's claims in this action was also the subject of Plaintiff's 2012 bankruptcy case (which converted to a Chapter 7 case), and thus, is subject to the bankruptcy court's final order.

Consequently, the claims asserted in this action were previously resolved on the merits in the Plaintiff's 2012 bankruptcy case. For the foregoing reasons, Nationstar requests an order granting it summary judgment on the ground that *res judicata* bars Plaintiff from attempting to re-litigate his claims against Nationstar again in this action."

As with the long history of poor practices and a failure to accurately state the facts that led to the downfall of Lehman Brothers, Aurora, Washington Mutual, and Nationstar d/b/a/Mr. Cooper, Nationstar has made numerous errors in their assertions. Addressing them in order we begin with the vexatious litigant sanction.

1. The vexatious litigant sanction was not under Tex. Civ. Prac. & Rem. Code § 11.and the Court specifically refused to list the sanction with the State of Texas. Additionally, it did not meet the criteria for § 11 because there were no cases filed by Burch in the

bankruptcy court, they were all advisory cases removed by the defendants. Burch did not have the required file cases filed against one defendant on the same issue. Burch owned twenty-two (22) houses, thus 22 lawsuits. The only reason the judge made his ruling was because he had earlier warned Burch that if he didn't stop filing cases against the banks that he would sanction him because it was tying up his court. Due to the pending expiration of the statute of limitations, the warning, if followed would have cost Burch to lose over one million dollars' worth of property. The bankruptcy court had ruled against a defendant (Freedom Mortgage) for their motion for vexatious litigant and then, in the same hearing, sua sponte sanctioned Burch. In an extraordinary move, the bankruptcy court included an expansion of his jurisdiction where he took over the determination of whether or not Burch could file a case in state court or file a motion in state court. Texas courts are "obligated to follow only higher Texas courts and the United States Supreme Court. **Penrod Drilling Corp. v. Williams, 868 SW 2d 294, 296 (Tex. 1993).** The court must understand that no Federal court other than the Supreme Court of the United States has any jurisdiction in the way things are conducted in a Texas court.

Federal Restraint of State Courts by Injunctions. —Even where the federal anti-injunction law is inapplicable, or where the

question of application is not reached, (28 U.S.C. § 2283 may be inapplicable because no state court proceeding is pending or because the action is brought under 42 U.S.C. § 1983. Its application may never be reached because a court may decide that equitable principles do not justify injunctive relief. Younger v.

Harris, 401 U.S. 37, 54 (1971)) those seeking to enjoin state court proceedings must overcome substantial prudential barriers, among them the abstention doctrine (*See* “Abstention,” *supra*.) and more important than that the equity doctrine that suits in equity “shall not be sustained in . . . the courts of the United States, in any case where plain, adequate and complete remedy may be had at law.”

(The quoted phrase setting out the general principle is from the Judiciary Act of 1789, § 16, 1 Stat. 82) The application of this latter principle has been most pronounced in the reluctance of federal courts to interfere with a state’s good faith enforcement of its criminal law. Here, the Court has required of a litigant seeking to bar threatened state prosecution not only a showing of irreparable injury that is both great and immediate, but also an inability to defend his constitutional rights in the state proceeding.

Certain types of injury, such as the cost, anxiety, and inconvenience of having to defend against a single criminal prosecution, are insufficient to be considered irreparable in this sense. Even if a

state criminal statute is unconstitutional, a person charged under it usually has an adequate remedy at law by raising his constitutional defense in the state trial. (The older cases are Fenner v. Boykin, 271 U.S. 240 (1926); Spielman Motor Sales Co. v. Dodge, 295 U.S. 89 (1935); Beal v. Missouri Pac. R.R., 312 U.S. 45 (1941); Watson v. Buck, 313 U.S. 387 (1941); Williams v. Miller, 317 U.S. 599 (1942); Douglas v. City of Jeannette, 319 U.S. 157 (1943). There is a stricter rule against federal restraint of the use of evidence in state criminal trials. Stefanelli v. Minard, 342 U.S. 117 (1951); Pugach v. Dollinger, 365 U.S. 458 (1961). The Court reaffirmed the rule in Perez v. Ledesma, 401 U.S. 82 (1971). State officers may not be enjoined from testifying or using evidence gathered in violation of federal constitutional restrictions, Cleary v. Bolger, 371 U.S. 392 (1963), but the rule is unclear with regard to federal officers and state trials. Compare Rea v. United States, 350 U.S. 214 (1956), with Wilson v. Schnettler, 365 U.S. 381 (1961). The policy has never been stated as an absolute, in recognition of the fact that a federal court injunction could properly issue in exceptional and limited circumstances, such as the existence of factors making it impossible for a litigant to protect his federal constitutional rights through a defense of the state criminal charges or the bringing of multiple criminal charges. (E.g.,

Douglas v. City of Jeannette, 319 U.S. 157, 163–164 (1943);
Stefanelli v. Minard, 342 U.S. 117, 122 (1951). See also Terrace
v. Thompson, 263 U.S. 197, 214 (1923), Future criminal
proceedings were sometimes enjoined. E.g., Hague v. CIO, 307
U.S. 496 (1939).)

2. It is true that this property was part of both the 2008 and the 2012 bankruptcies. However, neither the loan nor the Deed of Trust were signed by Burch. Under the Texas Constitution Art.16 Sec. 50(c) (Page 8) (APPENDIX J) that means that the loan is void therefore the lien is void as neither part of the loan was signed. What it does not mean is the Burch has no standing. Further, this lien was void at its inception, not during the bankruptcy. This alone removes the issue away from the federal bankruptcy court and puts it into the state courts.

From the first colonization of Texas in 1821 with the land grant to Stephen F. Austin, the security of property was an essential part of the real estate laws in Texas. So much so that Article 16 section 50, (APPENDIX J) Protection of homestead from forced or unauthorized sale; exceptions; requirements for mortgage loans and other obligations secured by is one of the most important parts of the Texas Constitution.

In this case **Section 50(a)(1) (Page 1) (APPENDIX J)**

identifies a purchase money contract as being part of this article.

The property in question is a purchase money loan secured by the deed of trust which, combined, make up the lien. In **Section 50(c) (Page 8) (APPENDIX J)** it is written, “No mortgage, trust deed, or other lien on the homestead shall ever be valid unless it secures a debt described by this section, whether such mortgage, trust deed, or other lien, shall have been created by the owner alone, or together with his or her spouse, in case the owner is married. All pretended sales of the homestead involving any condition of defeasance shall be void.” Burch did not sign the Promissory Note or the Deed of Trust. **Section 50(c) (Page 8) (APPENDIX J)**

applies to “all debt described by this section”. This section means all the categories of debt on the homestead listed in **Section 50(a) (1-8) (Page 1) (APPENDIX J)**. Therefore, without a signature from Burch on either the loan or the deed of trust the lien is void. In

Wood v. HSBC BANK USA, NA, 505 SW 3d 542 - Tex: Supreme Court 2016 Article XVI, section 50 (APPENDIX J) of the Texas Constitution has long protected the homestead, strictly limiting the types of loans that may be secured by a homestead lien.

Historically, constitutionally noncompliant homestead liens were absolutely void. **See, e.g., Tex. Land & Loan Co. v. Blalock, 76**

Tex. 85, 13 S.W. 12, 13 (1890) (holding that borrowers' misrepresentation of homestead status of land securing debt did not "enable parties to evade the law, and incumber [sic] homesteads with liens forbidden by the constitution"); **Inge v. Cain, 65 Tex. 75, 79 (1885)**; see also **LaSalle Bank Nat'l Ass'n v. White, 246 S.W.3d 616, 620 (Tex. 2007)** (acknowledging invalidation of noncompliant lien, but recognizing right to equitable subrogation). What the Constitution forbids cannot be evaded even by agreement of the parties, **Tex. Land & Loan Co., 13 S.W. at 13**, and what is "never valid is always void," **Inge, 65 Tex. at 80**; see also **Laster v. First Huntsville Props. Co., 826 S.W.2d 125, 130 (Tex. 1991)** ("A mortgage or lien that is void because it was illegally levied against homestead property can never have any effect, even after the property is no longer impressed with the homestead character."). The lack of a signature by Burch does not mean that he loses standing as an owner of this community property homestead. It simply means that the mortgage company has, at best, an unsecured debt but the homestead is free and clear of lien. All unsecured debt was vanquished in the bankruptcy.

In the **Texas Family Code § 5.001** if either spouse occupies the property as his or her homestead the joinder of the other spouse is

required to encumber that homestead, whether separate or community property.

The other issue on standing is the claim that Burch is barred from standing because he filed for bankruptcy the second time.

Burch's spouse, Juanita "Jane" Burch did not file in the second bankruptcy. "A plaintiff has standing when it is personally aggrieved, regardless of whether it is acting with legal authority; a party has capacity when it has the legal authority to act, regardless of whether it has a justiciable interest in the controversy". See

Hunt v. Bass, 664 S.W.2d 323, 324 (Tex.1984); Pledger v. Schoellkopf, 762 S.W.2d 145, 146 (Tex. 1988).

In a recently decided case from the Fifth District Court of Appeals that is very similar to this case standing was granted to the plaintiff even though she had not listed her property in the bankruptcy claims allowance page. *Moser v. DILLON INVESTMENTS, LLC, Tex: Court of Appeals, 5th Dist. 2022.*

The trial court dismissed the case on summary judgment due to their ruling on standing exactly as it was done on this case. However, "The movant has the burden of showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law." *TEX. R. CIV. P. 166a(c).(TRCP 166a(c))* In deciding whether a disputed material fact issue exists precluding

summary judgment, the court considers evidence favorable to the nonmovant to be true. *In re Estate of Berry, 280 S.W.3d 478, 480 (Tex. App.-Dallas 2009, no pet.).* Every reasonable inference must be indulged in favor of the nonmovant, and any doubts resolved in its favor. *City of Keller v. Wilson, 168 S.W.3d 802, 824 (Tex. 2005)*. Based on these rulings, summary judgement should not have been granted and the case should be heard on the merits on the issues regarding the millions of dollars taken from Burch as well as the lien release.

The Respondent, Nationstar Mortgage Holdings (Nationstar), acknowledged the absence of the signature but twisted the ramifications to mean that Burch had no ownership rights in the property and therefore had no standing to pursue the lawsuit. This is obviously wrong because Texas is a community property state so, because the property was obtained after marriage it is part of the marriage estate. Therefore, it meets the standard for standing on this issue.

If standing is established, then the summary judgment must be reversed, and the case heard on the merits in the trial court.

XII. REASONS FOR GRANTING THE PETITION

The *Fifth Amendment of the United States Constitution* says, "No person shall....be deprived of life, liberty, or property, without the due

process of law". These words have as their central promise an assurance that all levels of American government must operate within the law ("legality") and provide fair procedures. It does not say that only people who have not been in bankruptcy can receive due process. Article 1, Sec 19 of the Texas Constitution basically is a repeat of the Fifth Amendment

The question of standing is a fundamental right granted to our citizens. In this case you have two Texas Courts of Appeal, the Second District and the Fifth District, who ruled exactly opposite of each other at almost the same time. One ruled in favor of constitutional standing (the Fifth District) while the other ruled against standing based on res judicata (Second District). Both cases having been published leaves a gap in the rule of law because you cannot have two opposite rulings on the same issue. This throws the proverbial monkey wrench into the process. Which should the courts follow? That is what brings this case to the Supreme Court of the United States.

As a further encroachment on the rights of states in matters of their own citizens is the issue brought up by the Second District Court of Burch having been declared a vexatious litigant. It is inherently wrong for a federal bankruptcy court judge to declare a debtor a vexatious litigant and order him to not file any cases in state court. It is at best an odd order considering that Burch never filed a case in the bankruptcy court. Rather, with twenty-two properties, Burch filed cases on each property that were assigned to various

state courts. An extreme example of judicial bias and of judicial over-reach and prevention of due process as required under the **Fifth And Fourteenth Amendments of the United States Constitution** as well as **Article 1, sections 13 and 19 of the Texas Constitution**. The result was to create a prejudice against Burch as evidence by the Second District bringing the issue into the Second Districts Order.

Following the Rule of Law as opposed to a gut feeling is important if our country is to avoid anarchy. As is evidenced here, when a Federal Court overreaches into a state area and produces a *sus sponte* order in an effort to prevent valid filings simply to reduce the Federal Courts workload then there is a problem of our judicial system. Although more than sixty percent of the cases brought forth in federal courts are in bankruptcy courts where a little more than one tenth of one percent are appealed. In the twelve months ending June 30, 2022, there were 380,634 bankruptcies of which almost all of them had property as the main issue. In fact, during this same period there were only 570 bankruptcy cases appealed to the court of appeals out of 40,403 appeals. The reasons vary but lack of money and ability to file pro-se are the main reasons. So those who have lost everything including their personal dignity are usually further harmed by the courts neglecting those rare cases where a pro-se brings forth a case like this one.

The Supreme Court should rule on this case so as to not only right a wrong but to send a message to bankruptcy court across the nation that they

must rule based on the law and not their calendar load. Property cases do matter. Due process does matter. A government of and by the people does matter. The rule of law does matter. A ruling by this Supreme Court does matter.

The Supreme Court should rule on the issue of related to standing. There is a conflict between District Courts of Appeal on this issue which must be clarified.

XIII. CONCLUSION

For the foregoing reasons, Burch respectfully requests that this Court issue a writ of certiorari to review the Order of the Court of Appeals for the Fifth Circuit.

DATED this 30th day of March 2023

Respectfully submitted,



William Paul Burch-Pro se
5947 Waterford Dr.
Grand Prairie, Texas 75052
(817) 919-4853