Lewis N. Stoddard, Bar No. 7766 Halliday, Watkins & Mann, P.C.

300 W. Main St., Ste. 150

Boise, ID 83702

Phone: 801-355-2886 Facsimile: 801-328-9714 lewis@hwmlawfirm.com

Attorney for Plaintiff | HWM File No. ID21698

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF NEZ PERCE

DPW Enterprises LLC and Mountain Prime 2018 LLC,

Plaintiffs,

v.

Jeremy L. Bass; Dwayne Pike; and Unknown Parties in Possession of the real property commonly known as:

1515 21st Ave., Lewiston, ID 83501,

Defendants.

SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO DEFENDANT'S JEREMY BASS'S MOTION FOR STAY AND MOTION TO WAIVE BOND

Case No.: CV35-24-1063

COMES NOW Plaintiffs by and through their counsel of record and do hereby submit the following brief Supplemental Memorandum in Opposition to Defendant Jeremy L. Bass's Motion for Stay and to Waive Bond. Plaintiffs would incorporate their previously filed Memorandum in Opposition to Defendant's Motion for Stay, filed on November 27, 2024 and Declaration of Counsel in Support of Plaintiffs' Opposition to Request for Stay field on November 27, 2024 as if fully set forth herein.

As set forth in Plaintiff's previous opposition as well as herein, Defendant's Request for Stay and Request to Waive Bond should be denied outright because beyond conclusory argument and mere speculation, Defendant presented the Court with no admissible evidence, nor Idaho law, which refuted the Trustee's Deed to Plaintiffs, the statutory consequences of the same, and

ultimately Plaintiffs' ownership of the real property. Moreover, Defendant Bass continues to occupy the real property commonly known as 1515 21st Ave., Lewiston, ID 83501, notwithstanding Plaintiffs' purchase at a non-judicial Trustee's Sale held on February 29, 2024. In the year since the sale, Defendant has refused to vacate the Property, and has, through various motions, and now appeal, sought to contest his removal at every turn. Defendant's maneuvering is to his own financial benefit, having already bought himself nearly a year of continued occupation of the Property without any mortgage payment or rent payment, and if his request for stay and waiver of bond is granted, likely another year of continued occupation free of charge.

The crux of Defendant Bass's new request for stay and to waive any form of bond is predicated on the assertion that because there is "equity" in the property and because he is paying for his own living expenses, a portion of which he admits to supplementing through charging Dwayne Pike rent to occupy the Property he no longer owns, that Plaintiffs suffer no harm or are unjustly enriched by "Defendant's financial contributions to maintaining the property, including ensuring tenant rights and property preservation..." (*See* Memorandum in Support of Motion to Waive Supersedeas Bond, pg. 3.) Defendant's arguments are misplaced.

For starters, Idaho law clearly provides that there is no unjust enrichment if the purported benefits are created incidentally by Defendant pursing his own financial advantage. *Hettinga v. Sybrandy*, 126 Idaho 467, 471 (Idaho 1994). With the foregoing in mind, Defendant's motions fail to acknowledge and/or appreciate is that nearly all of the purported expenses outlined are arguably everyday costs of living that Defendant would incur in any living situation, with the added benefit to Defendant that while he continues to litigate and appeal, he saves himself the costs of having to pay rent, or a mortgage payment of any form. Stated differently, any benefits to Plaintiff through Defendant's continued occupation or the property are merely incidental to Defendant pursuing his

own financial advantage. Couple Defendant's continued occupation of the Property free of charge

with his continued demand and collection of rent from Mr. Pike, to Mr. Pike's detriment, and Mr.

Bass benefits significantly the longer that this matter remains contested.

Lastly, the financial detriment cannot be overstated enough where Plaintiffs have expended

over \$150,000.00 to purchase the Property nearly a year ago, only to be denied possession through

Mr. Bass's legal maneuvering which has caused Plaintiffs' to incur thousands of dollars in legal

fees and costs, and thousands more as Mr. Bass's appeal is addressed. Additionally, as the owners

of the Property, it is Plaintiffs who are responsible for payment of local property taxes and

assessments, and to keep property insurance on the Property, not Mr. Bass.

Ultimately, the Court has found no merit to any of Defendant Bass's conclusory arguments

and issued Judgment entitling Plaintiffs to possession of the real property. While Defendant Bass

certainly has his right to appeal the District Court's decision, his request for a stay of the Judgment

and for the court to waive any type of bond as a condition of stay is a completely self-serving

request that should be denied outright. Should the stay request not be denied outright, the Court

should exercise its discretion by conditioning any stay upon the posting of a bond in an amount

sufficient to protect Plaintiffs. Such bond amount should include Plaintiff's purchase price which

they paid to buy the Property, attorney fees incurred, and reasonable rent for the property during

the pendency of the appeal.

DATED January 14, 2025.

HALLIDAY WATKINS & MANN, P.C.

By:

/s/ Lewis N. Stoddard

Lewis N. Stoddard

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this January 14, 2025, a true and correct copy of the above and foregoing document was served, which service was effectuated by the method indicated below and addressed as follows:

| Jeremy L. Bass | ☑ U.S. Mail |
|--------------------------------|----------------|
| 1515 21st Ave | ☐ Email/iCourt |
| Lewiston, ID 83501 | |
| | |
| Ken Nagy | U.S. Mail |
| Idaho Legal Aid Services, Inc. | ⊠ Email/iCourt |
| kennagy@idaholegalaid.org | |
| Counsel for Dwayne Pike | |
| | |

/s/ Lewis N. Stoddard

Lewis N. Stoddard

Lewis N. Stoddard, Bar No. 7766 Halliday, Watkins & Mann, P.C. 300 W. Main St., Ste. 150

Boise, ID 83702 Phone: 801-355-2886

Facsimile: 801-328-9714 lewis@hwmlawfirm.com

Attorney for Plaintiff | HWM File No. ID21698

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT, OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF NEZ PERCE

DPW Enterprises LLC and Mountain Prime 2018 LLC,

Plaintiffs,

v.

Jeremy L. Bass; Dwayne Pike; and Unknown Parties in Possession of the real property commonly known as:

1515 21st Ave., Lewiston, ID 83501,

Defendants.

NOTICE OF HEARING VIA ZOOM ON PLAINTIFFS' APPLICATION FOR ATTORNEY FEES AS PREVAILING PARTY

Case No.: CV35-24-1063

Date: January 21, 2025 Time: 10:00 a.m. PST

PLEASE TAKE NOTICE, that on January 21, 2025 at 10:00 AM PST, or as soon thereafter as counsel may be heard, Plaintiff will call up and present for hearing its request for Attorney Fees via ZOOM before the Honorable Michelle M. Evans at the Nez Perce County Courthouse, Lewiston, Idaho.

Zoom ID: 91915211768

Password: 123456

DATED This January 7, 2025.

HALLIDAY WATKINS & MANN, P.C.

By: /s/ Lewis N. Stoddard

Lewis N. Stoddard Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this January 7, 2024, a true and correct copy of the above and foregoing document was served, which service was effectuated by the method indicated below and addressed as follows:

| Jeremy L. Bass | U.S. Mail |
|--------------------------------|--------------|
| 1515 21 st Ave | Email/iCourt |
| Lewiston, ID 83501 | |
| | |
| Ken Nagy | U.S. Mail |
| Idaho Legal Aid Services, Inc. | Email/iCourt |
| kennagy@idaholegalaid.org | |
| Counsel for Dwayne Pike | |
| | |

/s/ Lewis N. Stoddard

Lewis N. Stoddard

Lewis N. Stoddard, Bar No. 7766 Halliday, Watkins & Mann, P.C. 300 W. Main St., Ste. 150 Boise, ID 83702

Phone: 801-355-2886 Facsimile: 801-328-9714 lewis@hwmlawfirm.com

Attorney for Plaintiff | HWM File No. ID21698

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT, OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF NEZ PERCE

| DPW Enterprises LLC and Mountain Prime 2018 LLC, | DECLARATION OF ATTORNEY FEES AND COSTS |
|--|---|
| Plaintiffs, v. | Case No.: CV35-24-1063 |
| Jeremy L. Bass; Dwayne Pike; and Unknown Parties in Possession of the real property commonly known as: | |
| 1515 21st Ave., Lewiston, ID 83501, | |
| Defendants. | |

STATE OF IDAHO) : ss.
County of Ada)

LEWIS N. STODDARD, being first duly sworn, on oath deposes and says:

- 1.) That I am one of the attorneys of record for plaintiff.
- 2.) I have been actively engaged in the practice of law in Idaho since 2007.
- 3.) The hourly rate for legal services provided to Plaintiffs in this matter is \$300 per hour, which is a reasonable rate compared to hourly rates of other attorneys in this area with similar experience of my own. By way of further explanation, I have spent the past decade specializing in the representation of creditors in secured transaction litigation including judicial foreclosures and

post-foreclosure actions for ejectment and possession. I am licensed to practice in Alaska, Idaho, Washington (Inactive), Wyoming, Montana, and Tennessee. I am admitted to the federal courts and bankruptcy courts of Alaska, Idaho, and Montana and before the 9th Circuit Court of Appeals and routinely appear on state court matters and federal bankruptcy court matters in Alaska, Idaho and Montana.

- 4.) Attached hereto as Exhibit A are true and correct copies of the billings for legal services provided to Plaintiffs in this matter necessary to secure Judgment in Plaintiff's favor as against Defendant Jeremy Bass. The basis for attorney fees is Idaho Code §§ 6-316, 12-121, and I.R.C.P. 54(e)(1) and (2). While a second Defendant, Dwayne Pike has also opposed this matter, billing entries for work performed in relation to Mr. Pike have been omitted and redacted from the attached billings.
- 5.) A Summary of those costs and attorney fees incurred by Plaintiffs thus far, with the exception of time spent on preparing an opposition to Defendant Bass' Motion for Stay, preparation of the present Affidavit as well as time to be spent at the hearing on Bass' present motions set for December 6, 2024 and review of any Reply Memorandums and preparation for the hearing are as follows:

ATTORNEY'S FEES:

| Attorney: | Rate: | Hours: | TOTAL FEES: |
|------------------------------|------------|----------|-------------|
| Lewis N. Stoddard | \$300.00 | 24.1 | \$7,230.00 |
| COSTS: | | | |
| Complaint Filing Fee: | | \$233.91 | |
| Service of Process on Defend | dant Bass: | \$45.00 | |
| Additional Filing Costs: | | \$18.00 | |

In addition to the foregoing, and not included in the billings are 3 hours to respond to Defendant

Bass' request for stay, 2 hours to prepare this Affidavit, and counsel would anticipate .5 hours to

review reply materials submitted by Mr. Bass, and 1.5 hours to prepare for and participate in the

hearings set for December 6, 2024 resulting in an additional 7 hours not reflected in the attached

billings. This would bring the total fees to \$9,330.00

6.) To the best of my knowledge and belief, the costs and fees claimed are correct and

are in compliance with I.R.C.P. 54(d)(5).

CERTIFICATION UNDER PENALTY OF PERJURY

I certify under penalty of perjury pursuant to the law of the state of Idaho that the foregoing

is true and correct.

DATED This November 27, 2024.

HALLIDAY WATKINS & MANN, P.C.

By: /s/ Lewis N. Stoddard

Lewis N. Stoddard Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this November 27, 2024, a true and correct copy of the above and foregoing document was served, which service was effectuated by the method indicated below and addressed as follows:

| Jeremy L. Bass | ☑ U.S. Mail |
|--------------------------------|----------------|
| 1515 21 st Ave | ☐ Email/iCourt |
| Lewiston, ID 83501 | |
| | |
| Ken Nagy | U.S. Mail |
| Idaho Legal Aid Services, Inc. | ⊠ Email/iCourt |
| kennagy@idaholegalaid.org | |
| Counsel for Dwayne Pike | |
| | |

/s/ Lewis N. Stoddard

Lewis N. Stoddard



Invoice Number 710867

HALLIDAY, WATKINS & MANN, P.C.
ATTORNEYS AT LAW
8851 SOUTH SANDY PARKWAY, SUITE 200
SANDY, UT 84070
801-355-2886

DPW Enterprises, LLC 10028 S. Morgan Grove Way Sandy, UT 84092

RE: DPW Enterprises, LLC, N/A

vs. Jeremy L. Bass, Current occupant and Dwayne Pike

Property Address: 1515 21st Ave., Lewiston, ID 83501

OURFILE: ID21698

BILLING SUMMARY:

| BILLING SUM | | RLY FEES | | and the state of t | |
|-------------|---|-------------|----------|--|----------|
| DATE | HOURLY DESCRIPTION | RECOVERABLE | RATE | HOURS | AMOUNT |
| 11/05/2024 | review and analyze order re: summary judgment and correspond with client re: same (.4): | No | \$300.00 | | |
| 11/07/2024 | (Stoddard, Lewis) BASS- begin preparing 54(b) Judgment re: Bass Non-Recoverable BASS- begin preparing 54(b) Judgment re: Bass. (Stoddard, Lewis) | No | \$300.00 | 0.40 | \$120.00 |
| 11/07/2024 | Review and analyze Defendant Bass Motion to Reconsider, Memorandum in Support and Motion for Stay - Non- Recoverable Review and analyze Defendant Bass Motion to Reconsider, Memorandum in Support and Motion for Stay (Stoddard, Lewis) | No | \$300.00 | 1.30 | \$390.00 |
| 11/19/2024 | | | | | |

| | | | · | |
|--|------------------|---|---|---|
| Attorney Fee ID - Eviction Hourly Non- | Nο | \$300.00 | 2.90 | \$870.00 |
| | | 4000.00 | 2.00 | 40.0.00 |
| 1 | | | | |
| Prepare opposition memorandum to | | | | |
| Defendant Bass Motion for | | | | |
| Reconsideration. | | | | |
| (Stoddard, Lewis) | | | | |
| | Reconsideration. | Recoverable Prepare opposition memorandum to Defendant Bass Motion for Reconsideration. | Recoverable Prepare opposition memorandum to Defendant Bass Motion for Reconsideration. | Recoverable Prepare opposition memorandum to Defendant Bass Motion for Reconsideration. |

| TOTALS | ulian area. |
|-----------------------------------|-------------|
| DESCRIPTION | AMOUNT |
| Total Hourly Fees on this invoice | \$1,710.00 |
| Total Amount Due | \$1,710.00 |

Thank you for the opportunity to be of service.



Invoice Number 707282

HALLIDAY, WATKINS & MANN, P.C.
ATTORNEYS AT LAW
8851 SOUTH SANDY PARKWAY, SUITE 200
SANDY, UT 84070
801-355-2886

DPW Enterprises, LLC 10028 S. Morgan Grove Way Sandy, UT 84092

RE: DPW Enterprises, LLC, N/A

vs. Jeremy L. Bass, Current occupant and Dwayne Pike

Property Address: 1515 21st Ave., Lewiston, ID 83501

OURFILE: ID21698

BILLING SUMMARY:

| | COSTS | | |
|------------|---|-------------|--------|
| DATE | COST DESCRIPTION | RECOVERABLE | AMOUNT |
| 10/01/2024 | Filing Cost ID - Eviction Complaint Non-Recoverable | No | \$6.00 |

| | HOUR | ILYFEES | | The Principle of the Pr | Day to the second of the secon |
|------------|---|-------------|----------|--|--|
| DATE | HOURLY DESCRIPTION | RECOVERABLE | RATE | HOURS | AMOUNT |
| 10/01/2024 | Review and prepare non-opposition to Bass | No | \$300.00 | | |
| | Motion to amend to add verification (.3) (Stoddard, Lewis) | | | | |
| 10/02/2024 | | | | | |
| 10/08/2024 | Attorney Fee ID - Eviction Hourly Non-Recoverable; Prepare for and participate in hearing on Jeremy Bass Motion to Dismiss. (Stoddard, Lewis) | No | \$300.00 | 1.30 | \$390.00 |
| 10/10/2024 | | | | | |

| 10/16/2024 | Attorney Fee ID - Eviction Hourly Non-Recoverable; correspond with Defendant Bass re: non-service of MSJ response (.3); review and analyze MSJ opposition and supporting affidavit by Bass (.9). (Stoddard, Lewis) | No | \$300.00 | 1.20 | \$360.00 |
|------------|--|----|----------|------|----------|
| 10/16/2024 | Attorney Fee ID - Eviction Hourly Non- Recoverable; prepare Reply Memo in Support of Motion for Summary Judgment re: Bass. (Stoddard, Lewis) | No | \$300.00 | 2.80 | \$840.00 |
| 10/22/2024 | Attorney Fee ID - Eviction Hourly Non- Recoverable; prepare for and participate in hearing on Plaintiff's Motion for Summary Judgment. (Stoddard, Lewis) | No | \$300.00 | 1.40 | \$420.00 |
| 10/22/2024 | Attorney Fee ID - Eviction Hourly Non- Recoverable; review and analyze three separate Sur Reply briefs filed by Defendant Bass. (Stoddard, Lewis) | No | \$300.00 | 0.70 | \$210.00 |

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|-----------------------------------|--------|
| DESCRIPTION | AMOUNT |
| Total Costs on this invoice | \$6.00 |
| Total Hourly Fees on this invoice | |
| Total Amount Due | |

Thank you for the opportunity to be of service.



Invoice Number 702731

HALLIDAY, WATKINS & MANN, P.C.
ATTORNEYS AT LAW
8851 SOUTH SANDY PARKWAY, SUITE 200
SANDY, UT 84070
801-355-2886

DPW Enterprises, LLC 10028 S. Morgan Grove Way Sandy, UT 84092

RE: DPW Enterprises, LLC, N/A

vs. Jeremy L. Bass, Current occupant and Dwayne Pike

Property Address: 1515 21st Ave., Lewiston, ID 83501

OURFILE: ID21698

BILLING SUMMARY:

| | COSTS | | |
|------------|---|-------------|--------|
| DATE | COST DESCRIPTION | RECOVERABLE | AMOUNT |
| 09/16/2024 | Filing Cost ID - Eviction Motion for Summary Judgment Non-Recoverable | No | \$6.00 |
| 09/17/2024 | Mailings - Other Eviction Mailings Non-Recoverable | No | \$3.15 |

| | HOUR | LYFEES | | Markett Comment of the Comment of th | |
|------------|--------------------|-------------|------|--|--------|
| DATE | HOURLY DESCRIPTION | RECOVERABLE | RATE | HOURS | AMOUNT |
| 09/10/2024 | | | | | |
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| 09/11/2024 | | | | | |
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| 09/12/2024 | | | | | |
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| 09/12/2024 | | | | | |
|------------|--|----|----------|------|----------|
| 09/16/2024 | Attorney Fee ID - Eviction Hourly Non-Recoverable - Correspond with clients re: execution of Declarations and further prepare Motion for Summary Judgment and Memorandum in support for filing (Stoddard, Lewis) | No | \$300.00 | 0.70 | \$210.00 |
| 09/17/2024 | Attorney Fee ID - Eviction Hourly Non- Recoverable - Prepare for and participate in Status Conference hearing (Stoddard, Lewis) | No | \$300.00 | 0.90 | \$270.00 |

| TOTALS | |
|-----------------------------------|------------|
| DESCRIPTION | AMOUNT |
| Total Costs on this invoice | \$9.15 |
| Total Hourly Fees on this invoice | \$1,710.00 |
| Total Amount Due | \$1,719.15 |

Thank you for the opportunity to be of service.



Invoice Number 701647

HALLIDAY, WATKINS & MANN, P.C. ATTORNEYS AT LAW 376 EAST 400 SOUTH, SUITE 300 SALT LAKE CITY, UTAH 84111 801-355-2886

DPW Enterprises, LLC 10028 S. Morgan Grove Way Sandy, UT 84092

RE: DPW Enterprises, LLC, N/A

vs. Jeremy L. Bass, Current occupant and Dwayne Pike

Property Address: 1515 21st Ave., Lewiston, ID 83501

OURFILE: ID21698

| BILLING SUMMARY: | | | | | |
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| | HOUR | RLY FEES | | | Constant Constant Constant |
| DATE | HOURLY DESCRIPTION | RECOVERABLE | RATE | HOURS | AMOUNT |
| 08/14/2024 | | | | | |
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| 08/15/2024 | | | | | |
| | | | | | |
| | | | | | |
| 08/15/2024 | | | | | |
| | | | | | |
| | | | | | |
| 08/19/2024 | | | | | |
| | | | | | |
| | | | | | |
| 08/22/2024 | Attorney Fee ID - Eviction Hourly Non- Recoverable | No | \$300.00 | 1.50 | \$450.00 |
| | Review Answer, motion to dismiss and Memorandum filed by former owner and | | | | |
| , | prepare email to client. (Stoddard, Lewis) | | | | |

| 08/23/2024 | Attorney Fee ID - Eviction Hourly Non- Recoverable Call with client re: litigation strategy re: former owner and negotiations with tenant. (Stoddard, Lewis) | No | \$300.00 | 0.20 | \$60.00 |
|------------|---|------|----------|------|------------|
| 08/27/2024 | | | | | |
| 08/27/2024 | Attorney Fee ID - Eviction Hourly Non-Recoverable Prepare Motion for Summary Judgment against Jeremy Bass and Notice of Hearing (.3); prepare memorandum in support of motion for summary judgment against Jeremy Bass and opposition to motion to dismiss (3.7). (Stoddard, Lewis) | No . | \$300.00 | 4.00 | \$1,200.00 |
| 09/09/2024 | Attorney Fee ID - Eviction Hourly Non-Recoverable Bass MSJ- Obtain hearing date and further prepare notice of hearing (.2); prepare Affidavit of Counsel in support of MSJ (.7) (Stoddard, Lewis) | No | \$300.00 | 0.90 | \$270.00 |

| TOTALS |
|-----------------------------------|
| DESCRIPTION |
| Total Hourly Fees on this invoice |
| Total Amount Due |

Thank you for the opportunity to be of service.

HALLIDAY, WATKINS & MANN, P.C.
ATTORNEYS AT LAW
376 EAST 400 SOUTH, SUITE 300
SALT LAKE CITY, UTAH 84111
_____801-355-2886

DPW Enterprises, LLC 10028 S. Morgan Grove Way Sandy, UT 84092

RE: DPW Enterprises, LLC, N/A

vs. Jeremy L. Bass, Current occupant and Dwayne Pike

Property Address: 1515 21st Ave., Lewiston, ID 83501

OURFILE: ID21698

BILLING SUMMARY:

| COSTS | | | | |
|------------|---|-------------|----------|--|
| DATE | COST DESCRIPTION | RECOVERABLE | AMOUNT | |
| 07/08/2024 | Filing Cost ID - Eviction Complaint Non-Recoverable | No | \$233.91 | |
| 08/02/2024 | Service ID - Eviction Summons and Complaint Non-Recoverable | No | \$45.00 | |
| 08/02/2024 | Service ID - Eviction Summons and Complaint Non-Recoverable | No | \$125.00 | |
| 08/02/2024 | Service ID - Eviction Summons and Complaint Non-Recoverable | No | \$45.00 | |
| 08/05/2024 | Filing Cost ID - Eviction Affidavit of Services Recoverable | No | \$6.00 | |

| | HOUI | RLYFEES | | | |
|------------|--|-------------|----------|-------|----------|
| DATE | HOURLY DESCRIPTION | RECOVERABLE | RATE | HOURS | AMOUNT |
| 07/08/2024 | Attorney Fee ID - Eviction Hourly Non-Recoverable Prepare Complaint for Ejectment to address 90 day PTFA extension (2.1); prepare summons for Defendants (.2); Prepare Non-Military Affidavit and run military checks (.5) (Stoddard, Lewis) | No | \$300.00 | 2.90 | \$870.00 |
| 07/16/2024 | Attorney Fee ID - Eviction Hourly Non- Recoverable Prepare update to client on status of ejectment action. (Stoddard, Lewis) | No | \$300.00 | 0.10 | \$30.00 |
| 08/05/2024 | Attorney Fee ID - Eviction Hourly Non-Recoverable Review status of service and service returns. (Stoddard, Lewis) | No | \$300.00 | 0.20 | \$60.00 |

TOTALS

| DESCRIPTION | AMOUNT |
|-----------------------------------|--------|
| Total Costs on this invoice | |
| Total Hourly Fees on this invoice | |
| Total Amount Due | |

Thank you for the opportunity to be of service.

Lewis N. Stoddard, Bar No. 7766 Halliday, Watkins & Mann, P.C. 300 W. Main St., Ste. 150

Boise, ID 83702

Phone: 801-355-2886 Facsimile: 801-328-9714 lewis@hwmlawfirm.com

Attorney for Plaintiff | HWM File No. ID21698

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT, OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF NEZ PERCE

DPW Enterprises LLC and Mountain Prime 2018 LLC,

Plaintiffs,

v.

Jeremy L. Bass; Dwayne Pike; and Unknown Parties in Possession of the real property commonly known as:

1515 21st Ave., Lewiston, ID 83501,

Defendants.

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT JEREMY L. BASS'S MOTION FOR RECONSIDERATION

Case No.: CV35-24-1063

COMES NOW, Plaintiffs by and through his counsel of record, Lewis N. Stoddard, and hereby submits their Response Memorandum in Opposition to Defendant's Motion for Reconsideration. As is set forth below, Defendant's Motion is without proper legal or factual support and should be denied.

I. INTRODUCTION

The undisputed facts of this case reflect that on February 29, 2024, Plaintiffs attended a Trustee's Sale of the real property commonly known as 1515 21st Ave., Lewiston, ID 83501 ("Property"), which took place on the front steps of the Nez Perce County Courthouse, wherein they were the successful purchaser of the Property paying \$165,346.71. A Trustee's Deed was

issued in favor of Plaintiffs which was recorded on March 2, 2024 and which pursuant to Idaho Code § 45-1508 terminated all interest of Defendant Jeremy Bass in the Property. Yet over 8 months later Defendant Jeremy Bass refuses to relinquish possession based upon a number of conclusory and speculative theories for which Mr. Bass presents no evidence. Ultimately, the Court granted summary judgment in favor of Plaintiffs and as against Defendant Bass noting that nothing in the record supported his various assertions.

Mr. Bass now seeks reconsideration of the Court's November 5, 2024 summary judgment ruling, but again, beyond setting forth conclusory assertions and a regurgitation of Idaho Case law pertaining to Trustee's Sales, Mr. Bass fails to present any evidence to support his speculative theories, or new facts or theories that bear on the correctness of the Court's Order. Specifically, while Mr. Bass continues to argue that the Trustee's Sale was improper because there was no default, there was collusion, or there was a violation of the statutory requirements for such a sale, he fails to present any evidence or new facts to support any of his arguments and the record is otherwise devoid of any evidence to support his positions. Accordingly, the request for reconsideration must be denied.

II. STANDARD OF REVIEW

"When considering a motion to reconsider under I.R.C.P. 11(a)(2) the district court should take into account any new facts or information presented by the moving party that bear on the correctness of the district court's order." *Coeur d'Alene Mining Co., v. First Nat'l Bank of N. Idaho,* 118 Idaho 812, 823, 800 P.2d 1026, 1037 (1990); *see also Agrisource, Inc., v. Johnson,* 332 P.3d 815, 156 Idaho 903 (2014). Reconsideration in the trial court "usually involves new or additional facts, and a more comprehensive presentation of both law and fact." *Id.* Indeed the chief virtue of a reconsideration is to obtain a full and complete presentation of all available facts. *Id.*

"The burden is on the moving party to bring the trial court's attention to the new facts..." the trial court is not required to "search the record to determine if there is any new information that might change the specification of facts deemed to be established." *Id*.

In submitting a motion for reconsideration pursuant to Rule 11(a)(2)(B) of the Idaho Rules of Civil Procedure, the moving party has the burden of bringing to the Court's attention through affidavit, depositions or admissions, new facts bearing on the correctness of an interlocutory order. *Devil Creek Ranch, Inc. v. Cedar Mesa Reservoir & Canal Co.*, 126 Idaho 202, 205, 879 P.2d 1135, 1138 (1994); *Coeur d'Alene Mining Co.*, 118 Idaho at 824, 800 P.2d at 1038 ("The burden is on the moving party to bring the trial court's attention to the new facts."). *Accord, Johnson v. N. Idaho Coll.*, 153 Idaho 58, 62, 278 P.3d 928, 932 (2012)("A motion for reconsideration is a motion which allows the court—when new law is applied to previously presented facts, when new facts are applied to previously presented law, or any combination thereof—to reconsider the correctness of an interlocutory order."). Even where a moving party does not present any new facts, it must still demonstrate "errors of law or fact in the initial decision." *Johnson v. Lambros*, 143 Idaho 468, 147 P.3d 100 (Ct. App. 2006).

III. ARGUMENT

Mr. Bass seeks to have this court reconsider its ruling granting summary judgment in favor of Plaintiffs and has submitted two separate briefs both in the form of his motion and a separate memorandum which do nothing more than present the same three conclusory, speculative, and factually unsupported grounds that the Court already previously considered and rejected. Mr. Bass otherwise presents no new facts or information that bears on the correctness of the Court's decision. Stated differently, Mr. Bass has not met his burden to support reconsideration, where his motion merely expresses his disagreement with the Court's ruling. Accordingly, the motion

should be denied.

First, Mr. Bass asserts there was no valid default, but he presents no evidence to support such contention or to contradict the recorded Notice of Default in the land records of Nez Perce County, Idaho on August 17, 2022 as Instrument No. 902262. In fact, Defendant has, on more than one occasion, taken completely opposite positions from arguing that he never took the subject loan or that it was forged, which he attempted to litigate unsuccessfully in a separate lawsuit before the Honorable Mark T. Monson in CV35-22-1875, to arguing some sort of agreement to allow him to pay off the loan which he contends somehow eliminated his default. Regardless of the position, completely lacking from Defendant's submissions to the Court, both in opposition to the motion for summary judgement or in support of his motion for reconsideration, is any evidence to support his conclusory assertion of no valid default or any purported verbal agreement, which, even if construed as true, would not be enforceable under Idaho's Statue of Frauds. See I.C. 9-505(1). Stated differently, Mr. Bass presents zero evidence, by way of proof of payment or otherwise, that he timely made all payments due and owing under the Note and Deed of Trust, such that he was not in default of his loan obligations at the time of the trustee's sale. Rather, the undisputed record before the Court was that Mr. Bass was in default for the monthly payment due on January 1, 2020 and each month thereafter which existed at the time of the Trustee's Sale. See Declaration of Counsel in Support of Plaintiff's Motion for Summary Judgment, Ex. B.

Second, Mr. Bass continues to assert that there was collusion, but again fails to provide any evidence to support such claim. In fact, beyond his own self-serving speculation, all of the evidence before the Court illustrates a proper Trustee's sale was held which was properly noticed,

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¹ It is also worth noting that while Mr. Bass has espoused numerous issues with his prior lender and Trustee, he's done nothing to pursue those claims against them, including any claim that the underlying foreclosure was wrongful.

properly advertised, held in a public forum (front steps of the Nez Perce County Courthouse), and open to anyone who wished to attend including the Defendant who attended. Mr. Bass presents no authority which makes it illegal for a Trustee conducting a sale to disclose the opening credit bid to interested parties, nor any legal support making it impermissible for an interested purchaser to attend a Trustee's sale with pre-printed cashier's checks in varying amounts to facilitate its purchase of a Property. In fact, Idaho law requires the same where a successful purchaser must pay the price bid forthwith. See I.C. § 45-1506(9). In fact, contrary to Defendant's contention that Breckenridge Property Fund 2016, LLC v. Wally Enterprises, Inc., 170 Idaho 649 (2022) is inapplicable to this case because the checks that Breckenridge brought to the sale "did not specify exact bid amounts, as they were to be filled in if Breckenridge won the bid," the facts of Breckenridge clearly note that Breckenridge had given its representative "cashier's checks in various amounts made payable to an affiliated entity which Breckenridge planned to simply endorse over and deliver to the Trustee as payment if they were the successful purchaser. (emphasis added). With the foregoing in mind, Defendant's continued assertions of collusion are without support and where mere speculation or a scintilla of evidence is insufficient to create a genuine issue of material fact, summary judgment was proper granted in favor of Plaintiff and Defendant's request for reconsideration is baseless.

Third, Defendant asserts that there was a failure to comply with the statutory requirements for non-judicial foreclosure. Again, beyond merely asserting a failure to comply, Defendant provides no specificity with respect to what he alleges was statutorily required but not followed. Ultimately, this omission is intentional because the facts of this case reflect that the statutory process for non-judicial foreclosure was complied with and the presumptions afforded under Idaho law make it unnecessary for the Court to comb the records to try to ferret out the basis of

Defendant's arguments.

For starters, Idaho law provides that the Trustee's Deed itself is prima facie evidence of the truth of the recitals and the affidavits identified therein and with respect to a purchaser in good faith for value the recitals and affidavits are conclusive. I.C. § 45-1510. While Defendant focuses on Plaintiffs' status as bona fide purchasers because he contends they knew or were on notice of his allegations against his prior lender and Trustee, Idaho law provides that "status as a bona fide purchaser in good faith, at least in the context of a non-judicial foreclosure sale, is generally not available where a purchaser is on inquiry notice of a potential defect of statutory notice provisions." See Federal Home Loan Mortg. Corp. v. Appel, 143 Idaho at 47. Numerous Idaho Cases including Breckenridge Property Fund 2016, LLC v. Wally Enterprises, Inc., 170 Idaho 649 (2022) have noted that "the sale is final once the trustee accepts the bid as payment in full unless there are issues surrounding the notice of the sale." Similar to the failure of Breckenridge to identify defects in the notice of sale and the Idaho Supreme Court's reiteration that Idaho Code § 45-1508 promotes finality, where Defendant Bass has failed to argue or presented the court with any evidence to support a defect in the statutory notices given in the underlying non-judicial foreclosure, the sale is final and the record establishes that Plaintiffs are bona fide purchasers in good faith rendering the recitals and affidavits identified in the Trustee's Deed conclusive in their favor.

Moreover, even if there were a statutory notice defect as generally alleged by Bass, Idaho law provides that such defect does not affect "the validity of the sale as to persons so notified nor as to any such persons having **actual notice of the sale.**" *See* I.C. 45-1508 (emphasis added). Here, the record contains video proof, submitted by Defendant himself, establishing that he had actual notice of the underlying sale, which he personally attended in order to protest. *See* Affidavit

of Jeremy L. Bass in Support of Defendant's Response to Plaintiffs' Motion for Summary Judgment, filed on October 15, 2024, ¶4(c). Accordingly, Defendant's attempt to challenge the validity of the Trustee's Deed given to Plaintiffs based upon assertions of notice defects fails as a matter of law where the undisputed facts of the case demonstrate that he had actual knowledge of the sale, and attended the same.

Lastly, Defendant's Motion takes issue with the Court's decision not to consider his multiple sur replies. Beyond merely disagreeing with the Court's decision, Defendant points to no authority which gives him the right to file anything more than an answering brief in opposition to Summary Judgment, nor can he where I.R.C.P. 56 is very clear that only an answering brief is allowed. Nevertheless, even if the court were to consider Defendant's various pleadings at this juncture, they still do not warrant reconsideration.

For instance, Defendant's Response to Plaintiff's Allegations in Section C sought to raise entirely new arguments not previously raised in any of Defendant's prior briefing including new claims of purported violations of federal law, and lack of jurisdiction which have never been pled by Defendant. Idaho law is clear that "[t] he only issues considered on summary judgment are those raised by the pleadings," and that if a party facing a motion for summary judgment decides it has alleged the wrong claim for relief or wants to raise another claim, it must amend *Mickelsen Constr.*, *Inc. v. Horrocks*, 299 P.3d 203, ___ Idaho ___, (2013); *citing to Nelson v. Big Lost River Irrigation Dist.*, 148 Idaho 157, 160 (2009); *see also Vanvooren v. Astin*, 141 Idaho 440, 443 (2005); *Gardner v. Evans*, 110 Idaho 925, 939, 719 P.2d 1185, 1199 (1986)(declining to address a new claim for defamation as it had not been raised in the pleadings and thus there was a failure

to give adequate notice of the claim.)² Under I.R.C.P. 8(c), any matter "constituting avoidance or affirmative defense" must be set forth affirmatively. Furthermore, Idaho law provides that "a nonmoving defendant has the burden of supporting a claimed affirmative defense on a motion for summary judgment." *Chandler v. Hayden*, 147 Idaho 765, 771, 215 P.3d 485, 491 (2009). Therefore, summary judgment is appropriate when the nonmoving party fails to establish the existence of an element essential to that party's case on which that party will bear the burden of proof at trial. *Badel v. Beeks*, 115 Idaho 101, 102, 765 P.2d 126, 127 (1988) (citing *Celotex v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548 (1986)).

In Defendant's Response to Plaintiff's Allegations in Section D, Defendant sought to argue for the first time that he was not given proper notice to vacate under Idaho law relying upon Idaho Code § 55-208; however, Defendant's argument is misplaced. For starters, there is no notice requirement as it pertains to an action for ejectment. Rather, Defendant was given a 3 day notice to vacate as a courtesy, but otherwise one is not required. Second, Defendant's reliance upon Idaho Code § 55-208 is misplaced as the notice requirements set forth therein only pertain to "a tenancy or other estate **at will**," which Defendant's tenancy is not. (emphasis added). Rather, Idaho Code § 45-1506(11) unambiguously notes that "the purchaser at the trustee's sale shall be entitled to possession of the property on the tenth day following the sale, and any person remaining in possession thereafter under any interest except one prior to the dee of trust shall be deemed to be **tenants at sufferance**." (emphasis added.) Accordingly, Defendant's argument contesting

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² Federal jurisprudence is in accord. *See Rodriguez v. Countrywide Homes*, 668 F. Supp. 2d 1239, *1245, 2009 U.S. Dist. LEXIS 105433, **14 (E.D. Cal. 2013)(noting that a plaintiff cannot oppose summary judgment based upon a new theory of liability because it would essentially blind side the defendant); *citing to Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1292-1293 (9th Cir. 2000)(where plaintiff did not include legal theory in complaint and did not identify the theory at any time prior to summary judgment, she could not rely on the theory for the first time in summary judgment.)

proper notice under Idaho Code § 55-208 fails.

In Defendant's Response to Plaintiff's Allegations in Section E, Defendant attempts to

justify his reliance and citation to fictitious cases which Defendant appears to have simply made

up in order to give the appearance of validity to his baseless arguments. Defendant admits his

various citations do not exist and asserts that their inclusion was a mere mistake, but conspicuously

fails to provide the correct citations to the authority upon which he was relying. Accordingly,

Defendant's additional brief has no bearing on the correctness of the Court's ruling granting

summary judgment.

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion for reconsideration should be denied.

Defendant fails to present the Court with any new or additional facts, or a more comprehensive

presentation of both law and fact which bears on the correctness of the Court's ruling granting

summary judgment in favor of Plaintiffs.

DATED This November 27, 2024.

HALLIDAY WATKINS & MANN, P.C.

By:

/s/ Lewis N. Stoddard

Lewis N. Stoddard

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this November 27, 2024, a true and correct copy of the above and foregoing document was served, which service was effectuated by the method indicated below and addressed as follows:

| Jeremy L. Bass | U.S. Mail |
|--------------------------------|----------------|
| 1515 21st Ave | ☐ Email/iCourt |
| Lewiston, ID 83501 | |
| | |
| Ken Nagy | U.S. Mail |
| Idaho Legal Aid Services, Inc. | ⊠ Email/iCourt |
| kennagy@idaholegalaid.org | |
| Counsel for Dwayne Pike | |
| | |

<u>/s/ Lewis N. Stoddard</u> Lewis N. Stoddard

Lewis N. Stoddard, Bar No. 7766 Halliday, Watkins & Mann, P.C. 300 W. Main St., Ste. 150 Boise, ID 83702

Phone: 801-355-2886 Facsimile: 801-328-9714 lewis@hwmlawfirm.com

Attorney for Plaintiff | HWM File No. ID21698

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT, OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF NEZ PERCE

| DPW Enterprises LLC and Mountain Prime 2018 LLC, Plaintiffs, | DECLARATION OF COUNSEL IN SUPPORT OF PLAINTIFFS' OPPOSITION TO REQUEST FOR STAY |
|--|---|
| | |
| v. | Case No.: CV35-24-1063 |
| Jeremy L. Bass; Dwayne Pike; and Unknown Parties in Possession of the real property commonly known as: | |
| 1515 21st Ave., Lewiston, ID 83501, | |
| Defendants. | |

STATE OF IDAHO) : ss.
County of Ada)

LEWIS N. STODDARD, being first duly sworn, on oath deposes and says:

- 1.) I am one of the attorneys of record for plaintiff.
- 2.) Attached hereto as Exhibit A is a true and correct copy of an Order RE: Motions issued by the Idaho Supreme Court in Docket No. 46509-2018/Madison County District Court Case No.: CV-2015-74.
- 3.) Attached hereto as Exhibit B is a true and correct copy of an Order Dismissing Stay on Appeal issued by the Honorable Judge Michael McLaughlin in Ada County Case No. CVOC

11-13288.

4.) Attached hereto as Exhibit C is a true and correct copy of a Decision and Order

Granting Stay Pending Appeal Upon Posting of Security issued by the Honorable Judge Patrick

Owen in Boise County Case No. CV-2012-0000072.

5.) Attached hereto as Exhibit D is a true and correct copy of a printout from the Nez

Perce County Assessor's Office of the value of the subject property, obtained from

www.gis.co.nezperce.id.us/npcmap/.

CERTIFICATION UNDER PENALTY OF PERJURY

I certify under penalty of perjury pursuant to the law of the state of Idaho that the foregoing

is true and correct.

DATED This November 27, 2024.

HALLIDAY WATKINS & MANN, P.C.

By: /s/ Lewis N. Stoddard

Lewis N. Stoddard Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this November 27, 2024, a true and correct copy of the above and foregoing document was served, which service was effectuated by the method indicated below and addressed as follows:

| Jeremy L. Bass | ☑ U.S. Mail |
|--------------------------------|----------------|
| 1515 21st Ave | ☐ Email/iCourt |
| Lewiston, ID 83501 | |
| | |
| Ken Nagy | U.S. Mail |
| Idaho Legal Aid Services, Inc. | ⊠ Email/iCourt |
| kennagy@idaholegalaid.org | |
| Counsel for Dwayne Pike | |
| | |

/s/ Lewis N. Stoddard

Lewis N. Stoddard



IN THE SUPREME COURT OF THE STATE OF IDAHO

BENEFICIAL FINANCIAL I, INC.,

Plaintiff-Respondent,

V.

MARILYNN T. THOMASON.

Defendant-Appellant,

and

The Unknown Heirs, Assigns and Devisees of BYRON T, MADISON COUNTY, IDAHO; JOHN BAGLEY, TERRENCE BAGLEY, BEARD ST. CLAIR GAFFNEY PA, GREG V. THOMASON, DIANA THOMASON, W. EAMES. LIBERTY **PARK** BRENT IRRIGATION COMPANY, RIGBY. ANDRUS & RIGBY CHARTERED, SECURITY FINANCIAL FUND. LLC. MERRILL & MERRILL CHARTERED, ABUNDANT LAND HOLDINGS, LLC, THOMAS C. LUTHY, LAURA B. LUTHY, FORSBERG LAW OFFICES, CHTD, R. SAM HOPKINS, and DOES 1 through 20,

Order Re: Motions

Docket No. 46509-2018

Madison County District Court CV-2015-74

Defendants.

- 1. THOMASON'S MOTION FOR DISQUALIFICATION, I.R.C.P. RULE 40(d), THOMASON'S MOTION FOR STAY I.A.R. 13 with THOMASON'S BRIEF & EXHIBITS FOR: MOTION FOR STAY I.A.R 13, and THOMASON'S NOTICE OF HEARING: MOTION FOR STAY I.A.R. 13 were filed by Appellant Marilynn Thomason on July 29, 2019.
- An OPPOSITION TO APPELLANT'S MOTION TO DISQUALIFY, an OPPOSITION TO APPELLANT'S REQUEST FOR STAY, and an AFFIDAVIT OF COUNSEL IN SUPPORT OF RESPONDENT'S OPPOSITION TO APPELLANT'S REQUEST FOR STAY with attachments, were filed by counsel for Respondents on August 6, 2019.

The Court is fully advised; therefore, good cause appearing,

ORDER RE: MOTIONS - Docket No. 46509

IT IS HEREBY ORDERED that THOMASON'S MOTION FOR DISQUALIFICATION be, and is hereby, DENIED. Justice Moeller has recused himself from this appeal, and Appellant has failed to state adequate grounds to support disqualification as to the remainder of the request.

IT IS FURTHER ORDERED that THOMASON'S MOTION FOR STAY be, and is hereby, DENIED, unless Appellant posts a bond in at least the amount of \$176,190.81.

Dated August 26, 2019.

By Order of the Supreme Court

Karel A. Lehrman ⁶ Clerk of the Courts

cc: Marilynn T. Thomason, pro se Appellant Counsel of Record

ORDER RE: MOTIONS - Docket No. 46509



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OCT 17 2013

OHDISTORAST B. MOH, CLAR SASSAMT FOLUTT DENNY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FEDERAL HOME LOAN MORTGAGE CORPORATION,

Plaintiff-Respondent,

VS.

MARGARET A. BUTCHER; DENNIS D. BUTCHER; and John Does 1 – 10, whose true identity is unknown, as Occupants of the Premises located at 10512 W. Achillea Street, Star, Idaho, 83669,

Defendant-Appellants.

Case No. CVOC 11-13288

ORDER DISMISSING STAY ON APPEAL

The court, upon review of the pleadings, will deny the Appellants' Motion for Stay Pending Appeal.

The court is satisfied from the record that there is little, if any, likelihood of prevailing on appeal.

As noted in Judge Sticklen's decision, "Defendant failed to comply with the Idaho Rules of Appellate Procedure. Her failure to identify issues on appeal and to direct the court's attention to error in the underlying decision was fatal to her appeal. Defendant should not be allowed to cure these deficiencies by simply filing another appeal, more than eighteen months after the initial magistrate decision."

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Furthermore, in denying the appeal, Judge Sticklen noted that "there is no genuine issue of material fact that Ms. Butcher was in default on her mortgage obligations, that she received proper notice of the non-judicial foreclosure sale, and that the sale was properly conducted." (Memorandum decision of Judge Sticklen filed May 23rd, 2013). As noted in the amended notice of appeal, Defendant fails to contest these findings.

IT IS SO ORDERED.

DATED this _____ day of October 2013.

MICHAEL McLAUGHLIN DISTRICT JUDGE

will MO.

ORDER - PAGE 2

CERTIFICATE OF MAILING

I hereby certify that on the day of October 2013 I mailed (served) a true and correct copy of the within instrument to:

Wesley W. Hoyt ATTORNEY AT LAW 165 Deerfield Dr Clearwater, ID 83552

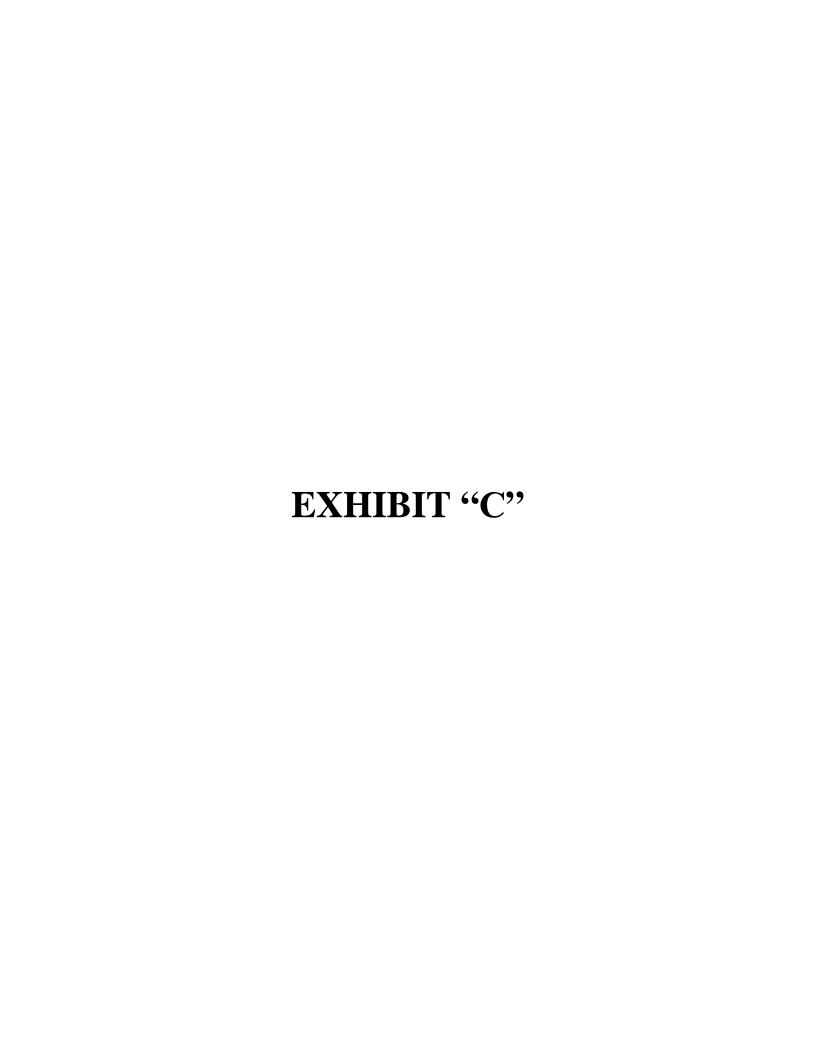
±

Derrick J. O'Neill ROUTH CRABTREE OLSEN, PS 300 Main St, Ste 150 Boise, ID 83702

CHRISTOPHER D. RICH Clerk of the District Court

Deputy Clerk

ORDER - PAGE 3



DISTRICT COURT BOISE COUNTY, IDAHO Recorded in Book_ JUN 1 9 2014 Filed JUN 2 0 2014 MARY PRISCO Clerk MGA JOHNSHK IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOXSE BANK OF AMERICA, N.A. successor by merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP, Plaintiff. Case No. CV-2012-0000072 DECISION AND ORDER GRANTING VS. STAY PENDING APPEAL UPON POSTING OF SECURITY MICHELLE F. MIMS, (deceased); Unknown Heirs, Assigns and Devisees of MICHELLE F. MIMS; GARY D. PETERSON; JAMES ROLAND RODES AND SHIRLEY LOIS RODES, husband and wife; PENSCO TRUST COMPANY, CUSTODIAN FBO TEENA R. LAWTON IRA, STATE OF IDAHO RECOVERY, DAVID A. LAWTON; THOMAS K. MOORE, JR. and Does 1-10 as individuals with an interest in the property legally described as: 18 The South half (S1/2) of the Northeast 19 Ouarter (NE1/4) of the Northeast Quarter (NE1/4) and North half (N1/2) of the 20 Southeast Quarter (SE1/4) of the Northeast Ouarter (NE1/4), of Section 16, Township 21 9, Range 4 East, Boise, Meridian, Boise 22 County, Idaho. 23 Excepting therefrom the following described parcel: 24

DECISION AND ORDER GRANTING STAY PENDING APPEAL UPON POSTING OF

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The East 30 feet of the South one half of

SECURITY-PAGE 1

the Northeast Quarter of the Northeast Quarter in Section 16, Township 9 North, Range 4 East, Boise Meridian

Which may commonly be known as: 126 West Castle Creek Road, Garden Valley, Idaho 83622

Defendants.

Defendant Gary D. Peterson ("Peterson) has made application for a stay pending appeal. The application is opposed by Plaintiff Bank of America, N.A. The Court conducted a hearing into this matter on June 17, 2014. Plaintiff was represented by its counsel, Lewis N. Stoddard, RCO Legal, PC., who was present by telephone. Peterson was present by telephone. The proceeding was on the record.

As an exercise of discretion, and pursuant to I.A.R. 13(b)(14), the Court will grant a stay pending appeal upon posting of sufficient security. Based upon the reasoning of the court in *Metz v. United States*, 130 F.R.D. 458 (D. Kan. 1990), the Court will require posting of security based upon the approximate rental value of the property. The Court will take 10% of the property's assessed value and multiply that amount by two years. Exhibit C to the June 5, 2014 affidavit of Lewis N. Stoddard shows that the 2012 assessed value was in the amount \$182,355.

Accordingly, the Court will grant of stay pending appeal upon the posting of security in the amount of \$36,471.00. Upon posting of security in this amount, the Court will grant a stay of the enforcement of the April 10, 2014 Order for Sale of Foreclosure, and the April 10, 2014 Judgment and Decree of Foreclosure. Security shall be posted with the Clerk of the Fourth

DECISION AND ORDER GRANTING STAY PENDING APPEAL UPON POSTING OF SECURITY-PAGE 2



Lail H. Quen

District Court for the County of Boise.

IT IS SO ORDERED.

Dated this ______ day of June, 2014.

Patrick H. Owen District Judge

DECISION AND ORDER GRANTING STAY PENDING APPEAL UPON POSTING OF SECURITY PAGE 3

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of June, 2014, I mailed (served) a true and correct

copy of the within instrument to:

LEWIS N. STODDARD RCO LEGAL. PC 300 MAIN ST, STE 150 BOISE, ID 83702

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GARY D. PETERSON 126 WEST CASTLE CREEK ROAD GARDEN VALLEY, ID 83622

IAN W. GEE ATTORNEY AT LAW 805 S. MIDDLE FORK ROAD GARDEN VALLEY, ID 83622

> MARY PRISCO Clerk of the District Court

y Deputy Clerk

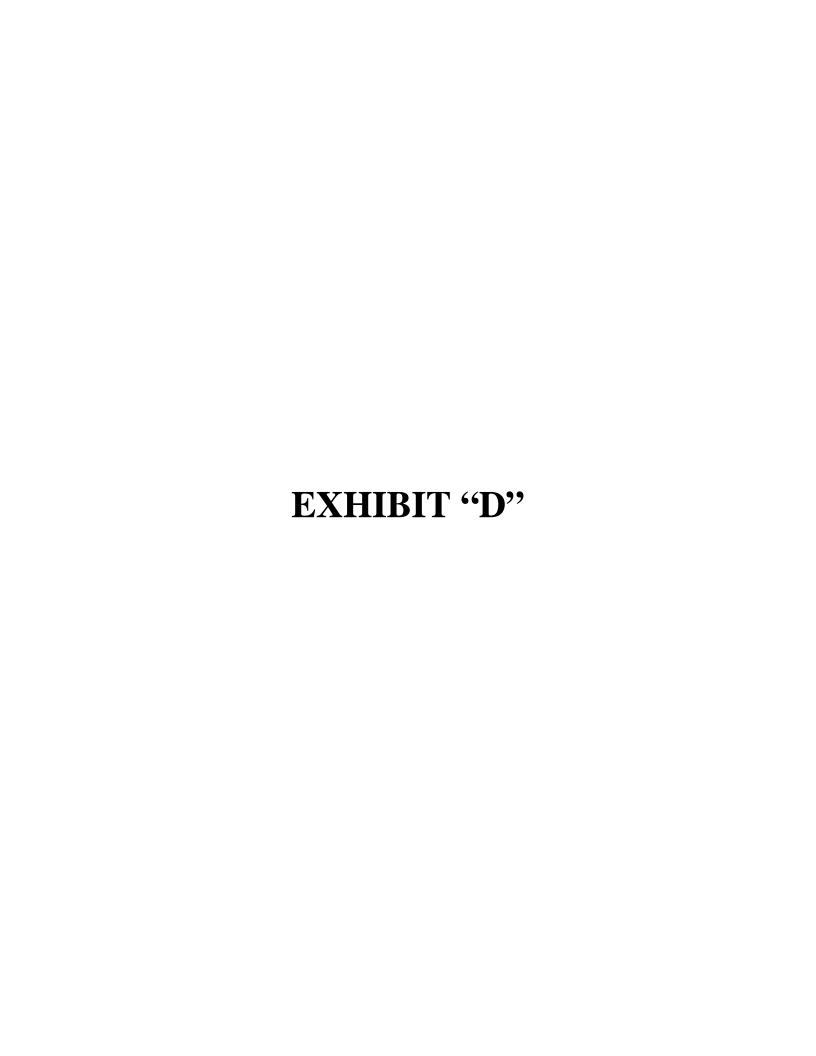
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DECISION AND ORDER GRANTING STAY PENDING APPEAL UPON POSTING OF SECURITY-PAGE 4



documents of record ple or any tax exemptions. application does not sho year and 3 years previo contact the Nez Perce For information on deed categories: Categories 3010 or email: Assesso concerns please call 208 If there are questions o current and correct info Efforts are made to disp that data. determine values; howe gives an overview of Nez Perce For information about a 799-3030 or email: <u>Tre</u> have questions please c provides a general over not display all aspects of **Property Information** County property appraisa mapping application. This page County Property Information web **Assessor & Treasurer** Tax information is for th information that is used information. The application does Welcome to the Nez Perce Introduction Nez Perce County, Idaho Selected Properties:1 ☑ RPL0880010010A Q Search Assessor & Treasurer Map Print Owner(s): DPW ENTERPRISES LLC MOUNTAIN PRIME 2018 LLC Assessor information for 2024 (values subject to change) 41 Totals: 20 Legal Category Buffer 丞 Identify Property Taxes 2020 0.244 Quantity 0.244 Assessor Residential About Zoom All 1 AC Units AC Help Identity Layers Contact Value \$49,750 \$256,795 Zoom Current \$306,545 Commercial ☐ Measure \$104,713 \$20,287 Exempt \$125,000 Photos \$152,082 \$29,463 Net 1508 \$181,545 Sketches

11/22/24, 11:57 AM

Lewis N. Stoddard, Bar No. 7766 Halliday, Watkins & Mann, P.C. 300 W. Main St., Ste. 150

Boise, ID 83702

Phone: 801-355-2886 Facsimile: 801-328-9714 lewis@hwmlawfirm.com

Attorney for Plaintiff | HWM File No. ID21698

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT, OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF NEZ PERCE

DPW Enterprises LLC and Mountain Prime 2018 LLC,

Plaintiffs,

v.

Jeremy L. Bass; Dwayne Pike; and Unknown Parties in Possession of the real property commonly known as:

1515 21st Ave., Lewiston, ID 83501,

Defendants.

MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR STAY

Case No.: CV35-24-1063

COMES NOW Plaintiffs by and through their counsel of record and do hereby submit the following Memorandum in Opposition to Defendant Jeremy L. Bass's Motion for Stay which is both pre-mature and unwarranted.

I. INTRODUCTION AND BACKGROUND.

On February 29, 2024 Plaintiffs purchased the real property commonly known as 1515 21st Ave., Lewiston, ID 83501 at a Trustee's Sale for \$165,346.71. Pursuant to Idaho Code § 45-1506(11) Plaintiffs were entitled to possession of the Property on the 10th day following the sale and yet 8 months later, Defendant Jeremy L. Bass continues to occupy the property, continues to refuse to relinquish possession while residing in the property for free.

On November 5, 2025, the Court issued its Memorandum Opinion and Order on Plaintiffs'

Motion for Summary Judgment granting summary judgment in favor of Plaintiffs and as against Defendant Bass. The following day, on November 6, 2024, Defendant Bass filed a Motion for Reconsideration as well as the present request for stay pursuant to I.R.C.P. 62(b). Final Judgment has not otherwise been entered at this point in time.

With the foregoing background and procedural posture in mind, Defendant's request for stay is improper. First, no judgment has yet been entered and as such, I.R.C.P. 62(b) which is the legal basis of Defendant's request does not apply. Second, Defendant has shown no basis for entry of stay and even if he had, I.R.C.P. 62 provides that the Court may impose such conditions for the security of the adverse part as are proper. Here, given that Defendant continues to occupy a property that he no longer owns and no longer pays for all to the harm of Plaintiff's who tendered \$\$165,346.71 and continue to be denied possession by Defendant's continued occupation, if a stay is granted by this Court, a significant bond should be required.

II. ARGUMENT.

Defendant's Request for Stay is meritless and should be denied.

For starters, Defendant's request is premature. Defendant filed for reconsideration and a stay the day after the Court granted summary judgment and before Plaintiff had even sought entry of final Judgment or the award of attorney fees and costs and a corresponding Writ. As it stands presently, Defendant is under no threat of removal from the premises and accordingly his request should be denied.

Second, Defendant's legal basis for seeking a stay is inapplicable. Specifically, Defendant cites to I.R.C.P. 62(b) which is does not apply where Rule 62(b) only applies to staying execution of a "judgment, or any proceedings to enforce it," pending disposition of a motion under Rule 50, Rule 52(b), Rule 59, or Rule 60. In the present case, there has been no entry of a final judgment,

or any form of writ to enforce it from which a stay of execution may be sought. Additionally, there are no motions under Rule 50, Rule 52(b), Rule 59, or Rule 60 pending. Accordingly, Rule 62(b) and any request for stay thereunder is improper and should be denied.

Even if Defendant's motion were to be construed as seeking a stay under I.R.C.P. 62(a), or construed as some form of advance request for stay after Judgment is entered or a motion that Defendant intends to renew upon entry of final judgment, whether to enter a stay under I.R.C.P. 62(a) or I.A.R. 13(b)(14) is discretionary and only upon "such conditions for the security of the adverse party as are proper" under Rule 62(a), or "upon posting of such security and upon such conditions as the district court shall determine" under I.A.R. 13(b).

In the case at hand, Defendant disingenuously asserts that a stay will help prevent him from significant harm through the loss of the Property and will cause minimal disruption to Plaintiffs who have other recourses and remedies, without identifying any. Defendant is mistaken.

First, Defendant had the opportunity to contest his underlying loan and the underlying foreclosure prior to it being completed through a Trustee's Sale and which he unsuccessfully attempted to litigate so on at least one occasion which was found to be meritless and dismissed. Since that time, Defendant allowed the underlying Trustee's sale to take place and he has taken no further action against either the Trustee or his lender to have the sale set aside, or to seek damages for wrongful foreclosure. Instead, Defendant has set idle, seeking to try to indirectly litigate purported issues he has with his lender and trustee who are both non-parties to this suit and then to use his disputes as a basis to deny Plaintiffs possession. Idaho law is clear that Plaintiffs are entitled to possession of the Property and that the sale is final where they are good faith purchasers for value and where Defendant had actual notice of the underlying sale. If Defendant has issues with that sale or believes it to be wrongful, his proper recourse is against the Trustee and Lender,

and not against Plaintiffs who merely purchased the Property at a public auction.

As for the harm to the Plaintiffs, they have paid \$165,346.71 to purchase the subject property which continues to be occupied by Defendant who is paying nothing, all while continuing to demand and/or require rent from a purported tenant Dwayne Pike, notwithstanding the fact he is no longer the owner of the same. In essence, Defendant has and is profiting from the present litigation. In addition, Plaintiffs have and will continue to incur attorney fees and costs as they are forced to respond to Defendant's baseless motions and arguments.

For the foregoing reasons, if and when the Court is asked to address a timely request for a stay, it should require a significant bond. *See Naylor & Norlin v. Lewiston & S.E. Elec. Ry. Co.*, 14 Idaho 722 (1908)(wherein, the court noted that the amount of the stay bond should cover waste and use and occupation of the premises); *see also Merrill v. Gibson*, 142 Idaho 692 (Ct. App. 2005)(wherein a bond that was set by the trial court as a condition of a stay of execution pending appeal of an order to vacate the premises in a quiet title action was challenged, and upheld and said bond was to be used in the event the appellant lost his appeal and did not remove his personal belongings from the property within a reasonable time.)

While it is Plaintiffs' position that no stay is warranted in this case where Defendant failed to present any evidence to support his speculative and conclusory arguments, if a stay is considered by the court, Defendant should not be allowed to profit from continued litigation, by seeking a stay to prevent ejectment from the Property for which payments were previously in default, which was purchased by Plaintiffs' who tendered \$165,346.71,¹ and which Defendant continues to occupy and collect rent from a tenant residing therein under a purported claim of ownership. Accordingly,

¹ Defendant has on multiple occasions argued that the \$165,346.71 purchase price that Plaintiffs paid for the Property as the highest bidders at the Trustee's Sale is well below the fair market value for the property.

any stay this Court may order should be conditioned upon the posting of security for the minimum amount of \$165,346.71, which is the price paid by Plaintiffs.

To help guide the court in its determination of a proper bond, attached are a number of decisions from other Idaho Courts which have denied a stay outright, required a bond in the amount of the total underlying debt, or used the taxed assessed value of the property to determine a proper bond amount.

For instance, attached as Exhibit A to the Declaration of Counsel is a decision by the Idaho Supreme Court in connection with Madison County Case No. CV-2015-74, wherein a property owner attempted to contest a judicial foreclosure of her real property, which was authorized by the District Court. On appeal, the property owner sought the entry of a stay to prevent the foreclosure from taking place during the pendency of the appeal, which the Idaho Supreme Court denied unless a bond was posted in the amount of the underlying amounts due and owing on the loan in the amount of \$176,190.81.

Attached as Exhibit B to the Declaration of Counsel is a decision by the Honorable Michael McLaughlin in Ada County Case No. CVOC 11-13288 which involved a post-foreclosure action for ejectment. The underlying Property was purchased by Federal Home Loan Mortgage Company ("FHLMC") which filed a post-foreclosure eviction complaint for ejectment and restitution of the property against the former borrower/occupant of the property. FHLMC prevailed and the borrower/occupant appealed and requested a stay, which was denied by the District Court which noted the findings of the lower court that found that the borrower/occupant failed to create an issue of material fact with respect to the default on the mortgage obligations, receipt of property notice of the non-judicial foreclosure sale, and proper conduct of the sale.

Lastly, attached as Exhibit C to the Declaration of Counsel is a true and correct copy of a

Decision and Order Granting Stay Pending Appeal upon Posting of Security issued by the

Honorable Judge Patrick Owen in Boise County Case No. CV-2012-0000072. In that case, Judge

Owen noted that the imposition of a stay is discretionary and elected to grant a stay pending appeal

upon posting of sufficient security and based upon the reasoning of Metz v. United States, 130

F.R.D. 458 (D.Kan. 1990), set a bond amount by taking 10% of the property's assessed value and

multiplying that amount by two years. Should the Court take a similar position, then Nez Perce

County assessor records indicate that the assessed value of the Property is \$306,545.00 which

would result in a bond amount under *Metz* of \$61,309.00.

III. CONCLUSION.

For the foregoing reasons, Defendant's Motion for Stay should be denied outright or

alternatively if the Court considers imposition of a stay, it should be conditioned upon the posting

of a bond in an amount sufficient for the security of Plaintiffs' which Plaintiffs request be in an

amount no less than what they paid to purchase the underlying Property.

DATED November 27, 2024.

HALLIDAY WATKINS & MANN, P.C.

By: /s/ Lev

/s/ Lewis N. Stoddard

Lewis N. Stoddard

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this November 27, 2024, a true and correct copy of the above and foregoing document was served, which service was effectuated by the method indicated below and addressed as follows:

| Jeremy L. Bass | ☑ U.S. Mail |
|--------------------------------|----------------|
| 1515 21st Ave | ☐ Email/iCourt |
| Lewiston, ID 83501 | |
| | |
| Ken Nagy | U.S. Mail |
| Idaho Legal Aid Services, Inc. | ⊠ Email/iCourt |
| kennagy@idaholegalaid.org | |
| Counsel for Dwayne Pike | |
| | |

/s/ Lewis N. Stoddard

Lewis N. Stoddard

Lewis N. Stoddard, Bar No. 7766 Halliday, Watkins & Mann, P.C. 300 W. Main St., Ste. 150

Boise, ID 83702

Phone: 801-355-2886 Facsimile: 801-328-9714 lewis@hwmlawfirm.com

Attorney for Plaintiff | HWM File No. ID21698

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT, OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF NEZ PERCE

DPW Enterprises LLC and Mountain Prime 2018 LLC,

Plaintiffs,

v.

Jeremy L. Bass; Dwayne Pike; and Unknown Parties in Possession of the real property commonly known as:

1515 21st Ave., Lewiston, ID 83501,

Defendants.

JUDGMENT RE: JEREMY L. BASS

Case No.: CV35-24-1063

JUDGMENT IS ENTERED AS FOLLOWS:

1.) Plaintiff is entitled to immediate possession of the real property commonly known as 1515 21st Ave., Lewison, ID 83501 as against any interests claimed by Jeremy L. Bass and a Writ of Ejectment/Restitution shall issue instructing the Nez Perce County Sheriff to remove Jeremy L. Bass from the real property and to return the premises to Plaintiff. Jeremy L. Bass shall have 72 hours from the date of this Judgment to remove his belongings from the premises. Should Jeremy L. Bass fail to vacate within 72 hours of the date of this Judgment, the Nez Perce County Sheriff shall execute the Writ and return possession to Plaintiff and Plaintiff shall be entitled to remove and dispose of all remaining property of Jeremy L. Bass, including any motor vehicle that

may be removed pursuant to section <u>49-1806</u>, Idaho Code, that remains on or about the premises without any further compensation or consideration to Jeremy L. Bass.

- 2.) Plaintiff is entitled to an award of its attorney fees and costs as against Defendant Jeremy L. Bass in the amount of \$9,330.00 in attorney fees and \$296.91 in costs for a total Judgment Amount of \$9,626.91. The Judgment amount shall bear interest from the date that Judgment is entered at the rate allowed by law on Judgments.
- 3.) Plaintiff is entitled to seek to recover post-judgment attorney's fees and costs incurred in attempting to collect on the judgment as allowed by Idaho Code § 12-120(5).

| DATED | , 2024. | |
|-------|---------------------------|--|
| | | |
| | | |
| | By: DISTRICT COURT HUDGE | |

RULE 54(b) CERTIFICATE

With respect to the issues determined by the judgment or order entered by the Honorable Judge Michelle M. Evans granting Plaintiff's Motion for Summary Judgment as against Defendant Jeremy L. Bass, it is hereby CERTIFIED, in accordance with Idaho Rule of Civil Procedure 54(b), that the Court has determined that there is no just reason for the delay of the entry of a final judgment and that the Court has and does hereby direct that the above judgment or order shall be a final judgment upon which an appeal may be taken.

| DATED | , 2024. | |
|-------|----------------------|---|
| | | |
| | | |
| | By: | _ |
| | DISTRICT COURT JUDGE | |

CLERK'S CERTIFICATE OF SERVICE

| I HEREBY CERTIFY that on thisabove and foregoing document was served, windicated below and addressed as follows: | , 2024, a true and correct copy of the which service was effectuated by the method |
|--|--|
| Jeremy L. Bass 1515 21 st Ave Lewiston, ID 83501 | ☑ U.S. Mail☑ Email/iCourt |
| Ken Nagy Idaho Legal Aid Services, Inc. kennagy@idaholegalaid.org Counsel for Dwayne Pike | ☐ U.S. Mail ☑ Email/iCourt |
| Lewis N. Stoddard HALLIDAY WATKINS & MANN, P.C. lewis@hwmlawfirm.com | ☐ U.S. Mail ☑ Email/iCourt |
| | Demote Clark |

Deputy Clerk

Lewis N. Stoddard, Bar No. 7766 Halliday, Watkins & Mann, P.C. 300 W. Main St., Ste. 150

Boise, ID 83702

Phone: 801-355-2886 Facsimile: 801-328-9714 lewis@hwmlawfirm.com

Attorney for Plaintiff | HWM File No. ID21698

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT, OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF NEZ PERCE

DPW Enterprises LLC and Mountain Prime 2018 LLC,

Plaintiffs,

v.

Jeremy L. Bass; Dwayne Pike; and Unknown Parties in Possession of the real property commonly known as:

1515 21st Ave., Lewiston, ID 83501,

Defendants.

SECOND DECLARATION OF DPW ENTERPRISES LLC

Case No.: CV35-24-1063

JEFF WANGSGARD, being first duly sworn, on oath deposes and says:

- 1.) I am one the managing member of DPW Enterprises LLC, a Utah limited liability company.
 - 2.) I am over the age of 18 and have personal knowledge of the facts set forth herein.
- 3.) In determining whether to attend the Trustee's Sale of the real property commonly known as 1515 21st Ave., Lewiston, ID 83501, my office contacted the Trustee in advance of the sale to determine 1.) whether the sale was still proceeding as noticed, 2.) to determine what the opening bid amount being submitted by the Lender was so that Plaintiffs could determine whether it was worth attending the sale to bid, and 3.) to determine any other requirements that the Trustee

may have in place in order to participate in the sale including the form of funds that would need to

be presented and who they would need to be made out too.

4.) After being informed of the opening bid and other bidding requirements, cashier's

checks were obtained in varying amounts and sent to Debbie Lawrence, a real estate agent in

Moscow Idaho, who agreed to attend the sale in order to bid on Plaintiffs' behalf. It is necessary

to obtain multiple checks for bidding purposes because depending on how well a sale is attended,

there is no way to know what the winning bid amount may be. Thus, having multiple checks in

varying denominations allows for payment to be more accurately tailored to the amount of any

winning bid.

5.) I am not familiar with Glenda Morlan, and she has never been retained or employed

by Plaintiffs in connection with this non-judicial foreclosure or any other.

CERTIFICATION UNDER PENALTY OF PERJURY

I certify under penalty of perjury pursuant to the law of the state of Idaho that the foregoing

is true and correct.

DATED This October 18, 2024.

By: /s/ Jeff Wangsgard

Capacity: Managing Member of DPW Enterprises,

LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this October 18, 2024, a true and correct copy of the above and foregoing document was served, which service was effectuated by the method indicated below and addressed as follows:

| Jeremy L. Bass 1515 21 st Ave Lewiston, ID 83501 | ☐ U.S. Mail ⊠ Email/iCourt |
|--|-------------------------------|
| Ken Nagy Idaho Legal Aid Services, Inc. kennagy@idaholegalaid.org Counsel for Dwayne Pike | ☐ U.S. Mail ⊠ Email/iCourt |

/s/ Lewis N. Stoddard

Lewis N. Stoddard

Lewis N. Stoddard, Bar No. 7766 Halliday, Watkins & Mann, P.C. 300 W. Main St., Ste. 150

Boise, ID 83702

Phone: 801-355-2886 Facsimile: 801-328-9714 lewis@hwmlawfirm.com

Attorney for Plaintiff | HWM File No. ID21698

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT, OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF NEZ PERCE

DPW Enterprises LLC and Mountain Prime 2018 LLC,

Plaintiffs,

v.

Jeremy L. Bass; Dwayne Pike; and Unknown Parties in Possession of the real property commonly known as:

1515 21st Ave., Lewiston, ID 83501,

Defendants.

PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AS AGAINST DEFENDANT JEREMY L. BASS

Case No.: CV35-24-1063

COMES NOW, Plaintiffs by and through their counsel of record, Lewis N. Stoddard, and hereby submits this Reply Memorandum in Support of Motion for Summary Judgment against Defendant Jeremy L. Bass

I. INTRODUCTION

This is a straightforward action for ejectment of Jeremy L. Bass, the former owner of the property commonly known as 1515 21st Ave., Lewiston, ID 83501 ("Property") following a non-judicial foreclosure and resulting Trustee's Sale. Plaintiffs were the successful purchasers and were entitled to possession of the Property on the tenth day following the sale, yet nearly seven months later, Plaintiffs are being denied possession by Mr. Bass based upon a number of

conclusory and baseless accusations aimed at trying to invalidate the underlying sale so that he may continue to occupy the Property.

As is discussed in greater detail below when the undisputed land records of Nez Perce County are considered in conjunction with well-established Idaho case law, it is clear that summary judgment is appropriate and Mr. Bass should be ejected from the Property.

II. STANDARD OF REVIEW

While the standard of review applicable to motions for summary judgment is well known to the Court it bears repeating that in order to forestall summary judgment, a party "must do more than present a scintilla of evidence, and merely raising the 'slightest doubt' as to facts is not sufficient to create a genuine issue." *Petricevich v. Salmon River Canal Co.*, 92 Idaho 865, 871, 452 P.2d 362 (1969); *G&M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 517, 808 P.2d 851 (1991). A disputed fact will not be deemed "material" for summary judgment purposes unless it relates to an issue disclosed by the pleadings. *Argyle v. Slemaker*, 107 Idaho 668, 669-70, 691 P.2d 1283, 1284-85 (Ct. App. 1984)(emphasis added). Thus, any dispute of fact is not sufficient to create a genuine issue of material fact which would thereby preclude entry of summary judgment. *Id.* Rather, the particular fact in dispute must be of such significance so as to possibly render the outcome of the case different than if the fact did not exist. *Peterson v. Romine*, 131 Idaho 537, 540, 960 P.2d 1266, 1269 (1998); *See also Rife v. Long*, 127 Idaho 841, 849, 908 P.2d 143, 151

¹ In addition to the foregoing, it is well established that to survive summary judgment on the basis of a contested issue of fact, the factual dispute must be "genuine." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute about a material fact reaches the level of being a "genuine" dispute thereof if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Id.* Thus, "the mere existence of <u>some</u> alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of <u>material</u> fact." *Id.* at 247-48 (emphasis in original). To that end, neither a mere scintilla of evidence, slight doubt, nor conclusory assertion is sufficient to create a genuine issue of material fact. *Mendenahll v. Aldous*, 146 Idaho 434, 196 P.3d 352, 354 (2008).

(1995)("A material fact is one upon which the outcome of the case may be different").

III. ARGUMENT

In his opposition, Mr. Bass opposes Plaintiffs' Motion for Summary Judgment based upon the contention that Plaintiffs are not bona fide purchasers for value. In support of his contention, Mr. Bass submits an affidavit with conversations he purportedly had a year prior to the subject foreclosure sale with a prospective buyer who was attempting to purchase the property from Mr. Bass prior to any foreclosure sale, and video recording excerpts which Mr. Bass asserts reflects collusive behavior and a non-competitive bidding process. Beyond the foregoing, Mr. Bass submits conclusory arguments wherein he continues to assert: 1.) qualms he has with his prior bank, loan servicer, and Trustee; 2.) bid manipulation and/or sale manipulation; 3.) notice of foreclosure defects; and 4.)insufficient eviction notice. As is set forth more fully below, all of Defendant's arguments fail.

A. The Underlying Trustee's Sale is Valid and Terminated Defendant's interest in the Property.

Mr. Bass continues to assert, without any legal support, that he is the rightful owner of the Property and his opposition primarily focuses on the contention that Plaintiffs are not bona fide purchasers in good faith because Mr. Bass claims that they were on notice of his various property issues before the sale. Ultimately, Defendant's arguments are without legal support and directly refuted by Idaho law.

For starters, Idaho law supports the finality of a Trustee's Sale and affords a Trustee's Deed with a statutory presumption of compliance with the Idaho Trust Deeds Act. I.C. 45-1510(1).

Where a purchaser is one in good faith for value, the recitals and affidavits are considered conclusive. *Id.*²

With the foregoing in mind, Defendant argues that Plaintiffs are not purchasers in good faith because they had notice of issues with the property by virtue of postings that Mr. Bass made in the window of the Property and by virtue of a sign he held at the sale. Stated differently, Mr. Bass contends that because he believes that there are alleged wrongs with his underlying loan and because he posted those where others could see, no one could become a bona fide purchaser. What Mr. Bass fails to appreciate is that in order for such conclusory self-serving notices to have any bearing on this matter, his accusations would have to be true, which there is no evidence to support, nor is there any evidence as to what such postings disclosed, or whether they disclosed any irregularity in the underlying non-judicial foreclosure which would render the Trustee's Sale void, as opposed to merely expressing Defendant's various accusations of fraud. Thus, Defendant's conclusory assertions do not create an issue of material fact with respect to the conclusiveness of the Trustee's Deed in favor of Plaintiffs.

Additionally, Mr. Bass cites to *Federal Home Loan Mortg. Corp. v. Appel*, 143 Idaho 42 (2006) for the proposition that his public displays are sufficient notice to defeat bona-fide purchaser status and that notice of any potential defect is sufficient; however, *Appel*, does not support his proposition. Rather, the Idaho Supreme Court in *Appel*, noted that "status as a bona

² See I.C. 45-1510(1):

When a trustee's deed is recorded in the deed records of the county where the property described in the deed is located, the recitals contained in the deed and the affidavits required under § 45-1505(7), shall be prima facie evidence in any court of the truth of the recitals and the affidavits. However, the recitals and affidavits are conclusive in favor of a purchaser in good faith for value or any successor in interest thereof...

fide purchaser in good faith, at least in the context of a non-judicial foreclosure sale, is generally not available where a purchaser is on inquiry notice of a **potential defect of statutory notice provisions**." See Federal Home Loan Mortg. Corp. v. Appel, 143 Idaho at 47.

Here, no statutory notice defect has been alleged, let alone any evidence to support such defect presented to the Court by Mr. Bass, and thus Plaintiffs status as bona-fide purchasers for value is undisputed.

Even if Defendant's arguments were considered to raise some sort of issue, Plaintiff's would still be entitled to the presumption of compliance afforded to a Trustee's Deed which places the burden of proof on Mr. Bass to affirmatively prove defects in the prior proceedings as would overcome the trustee's deed. *See Bogart v. Bagley*, 64 Idaho 177 (1943)(wherein the court, construing identical statutory presumptions afforded to a tax deed, noted that the effect is to change the common-law order of proof and to cast the burden on the person attacking title to affirmatively prove irregularities or defects in prior proceedings as would overcome the prima facie case made by the tax deed.) Here, Mr. Bass, beyond challenging the actual sale which is addressed below, raises no challenges to, nor submits any proof of irregularities or defects in whether the Non-Judicial Foreclosure complied with the Idaho Trust Deed's Act.

A similar attempt to challenge a Trustee's Deed was raised in *Breckenridge Property Fund* 2016, *LLC v. Wally Enterprises, Inc.*, 170 Idaho 649 (2022), wherein an unsuccessful third-party purchaser tried to set aside a sale. In affirming the District Court's decision refusing to set aside the sale, the Idaho Supreme Court noted that the third-party purchaser claimed no defects in the notice of sale, but instead only claimed insufficient notice of payment restrictions by the Trustee and that because I.C. 45-1508 promotes finality, even if there were a defect in notice under I.C.

45-1506 the sale would still be valid and that because there was no violation of I.C. 45-1506, whether or not the successful purchase was one in good faith or not was immaterial.

Here, Mr. Bass has not pointed to, nor presented any evidence of non-compliance with the Idaho Trust Deed's Act. Rather, the only proof before the Court is contained within the Trustee's Deed itself which notes that a Notice of Default was issued and recorded, a Trustee's Sale set after various postponements, and those notices being given as statutorily required and a sale being held, a bid accepted, and a Trustee's Deed being issued to Plaintiffs. There being no evidence of non-compliance with the Idaho Trust Deed's Act, the statutory consequence of the Trustee's Sale was to terminates all interests of Mr. Bass in the property.

B. The Underlying Trustee's Sale Was Properly Held.

Mr. Bass has similarly presents no evidence to support his conclusory assertion that the Trustee's Sale was fixed or not open to the public. Rather, Mr. Bass speculates that because only one bidder attended the sale and arrived with pre-printed checks for the purchase of the property there must have been price collusion of some form, or that the sale was not otherwise a public auction. Ultimately, beyond speculation, Mr. Bass has presented the Court with no evidence to support his conclusory assertions.

Turning first to whether the auction was public, the undisputed facts of this case as well as Defendant's own admissions and evidence demonstrate that the time and date of the sale was properly noticed, the sale was held in a public forum at the scheduled date and time and that anyone was allowed to attend, including Mr. Bass, who apparently showed up merely to protest the sale and even film the same. Thus, there is nothing in the record before the Court demonstrating that interested parties, or even protestors such as Mr. Bass were turned away. Rather, the opposite is clear from the facts before the Court including Mr. Bass' own video submissions which reflect that

his own personal actions through the use of a sign giving the impression that bidding was punishable by prison time could be equally the cause for only one bidder showing up at the subject sale.

With respect to Defendant's contention that because Plaintiffs' representative³ showed up with a pre-printed check, there must have been collusion, again, such argument is without any legal or factual support. Specifically, in Breckenridge Property Fund 2016, LLC v. Wally Enterprises, Inc., 170 Idaho 649 (2022) the Idaho Supreme Court noted that Idaho Code § 451-1506(9) requires that payment be tendered at auction and that the Trustee is entitled to set the terms of the sale including acceptable forms of payment. 4 Here, Defendant presents no evidence to support any irregularity with the Trustee's Sale procedure. There's nothing in Idaho law that prevents a Trustee from disclosing the amount of the opening credit bid to be placed by the foreclosing lender to interested purchasers such that they can evaluate whether to participate in the sale, or to determine what they may wish to bid. There's similarly no evidence before the Court that Plaintiffs' bid was not the highest bid, or that the Trustee did not otherwise require the winning bidder to tender funds in the form of cashier's check(s) as was done here. Thus, Defendant's contention that because Plaintiffs had pre-printed checks ready to tender should they become the winning bidder is immaterial especially in light of Idaho's statutory requirement that funds be tendered "forthwith" and does not create an issue of material fact sufficient to withstand summary

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³ Defendant Bass also contends that Plaintiffs' representative who attended the Trustee's Sale to bid on their behalf is the same individual, Glenda Morlan, with whom he had chatted with and had calls with several months prior. It is unclear upon what Mr. Bass is basing his conclusory argument, which is otherwise utterly baseless. As noted in the Second Declaration of DPW Enterprises, LLC, Plaintiffs utilized the services of Debbie Lawrence, a real estate agent from Moscow, Idaho to attend the Trustee's Sale and bid on its behalf and have never been affiliated with "Glenda Morgan" nor ever worked with such person.

⁴ See Breckenridge Property Fund 2016, LLC v. Wally Enterprises, Inc., 170 Idaho 649 (2022)(noting that the plain meaning of "forthwith' is '[i]mmediately; without delay[.]"

judgment.

Lastly, in order to avoid summary judgment, it is incumbent upon Mr. Bass to set out facts that would be admissible in evidence, and any affidavit is to be based upon personal knowledge and show that the affiant is competent to testify to the matters stated. Here, Mr. Bass provides the Court with two types of purported evidence. The first is a printout of purported chats had and a transcription of a purported call with an interested purchaser identified as Glenda Morlan over 6 months prior to the actual Trustee's Sale for which Mr. Bass lays inadequate foundation for admission to this Court. Moreover, Mr. Bass appears to contend that statements made by a third party to him trying to convince him to sell his property is somehow proof that the non-judicial foreclosure and Trustee's sale being carried out by unrelated parties, somehow proves collusion, or that Ms. Morlan is the same representative that bid at the sale on Plaintiffs' behalf; however, Mr. Bass presents no evidence to support his speculation.

Second Mr. Bass presents video excerpts, which do not appear to be in their full and original format but appear to have been modified by Mr. Bass without any sufficient explanation as to how they were modified, how they have been stored, when they were taken, who has had possession etc... Stated differently, there is insufficient foundation laid for admission of these video clips before the Court.

Even if the clips are considered, they do little to establish collusion between the Trustee and Plaintiffs. In fact, the video clips presented by Mr. Bass reflect that a Trustee's Sale was held in front of the Nez Perce County Courthouse where anyone from the public was free to attend and the mere fact that only one bidder showed up to the sale is not enough to create an issue of fact based upon Defendant's conclusory accusation of collusion, especially when Defendant's own videos reflect his attempts to dissuade possible bidders through the use of a sign giving the

indication of jail time.

At the end of the day, Defendant's arguments in opposition to summary judgment are based upon nothing more than his own speculation. Defendant presents no evidence that Plaintiffs were in collusion with his lender or his trustee or that a price was agreed upon in advance of sale, but instead seeks to draw his own conclusions that because no one else showed up to participate in the auction it must have been fixed. As required by Idaho Code § 45-1506(8), the undisputed facts reflect that a sale was held on the date and time and place designated in the Notice of Postponed Trustee's Sale, and that the Trustee sold the property to the highest bidder. The undisputed facts similarly reflect that Plaintiffs' as the purchaser at the sale "forthwith" paid the price bid and that upon receipt a Trustee's Deed was issued consistent with the requirements of Idaho Code § 45-1506(9).

In the case at hand, the undisputed facts of this case prove all of the necessary elements to entitle Plaintiffs to possession of the Property pursuant to the Trustee's Deed. Summary Judgment in favor of Plaintiffs is proper.

C. Defendant's Purported Issues With his Prior Lender, Servicer or Trustee Does Not Create an Issue of Material Fact to Withstand Summary Judgment.

Defendant Bass continues to seek to litigate or co-mingle issues he has with the actions or inactions of his prior bank and/or servicer. In doing so, Defendant fails to appreciate that the present case is not the time nor place to litigate such issues. If Defendant has issues with various non-parties to the present suit, he can certainly litigate those issues against them, as he has attempted to do so previously; however, his qualms do not create an issue of material fact here.

Stated differently, none of Defendant's purported issues with his prior trustee, bank or servicer, evidence any non-compliance with the Idaho Trust Deeds' Act, which the Idaho Supreme Court has noted is "a comprehensive regulatory scheme for non-judicial foreclosure of deeds of

P.3d 106, 147 Idaho 497 (2009). Given the comprehensiveness of the Idaho Trust Deeds Act, "the legislature did not intend for a sale to be set aside once the trustee accepts the credit bid as payment in full." Rather, the legislature's interest was "in preserving the finality of title to real property." *Id.* Thus, "a sale is final once the trustee accepts a bid as payment in full unless there are issues surrounding the notice of the sale (which are admittedly not present in this case)." *Id.*

Here, Defendant Bass has not argued, nor submitted any proof of any statutory non-compliance with the Idaho Trust Deeds Act let alone any issues surrounding notice of the Trustee's Sale, which his own Affidavit acknowledges he personally attended.⁵ Even if there were issues surrounding notice of the Trustee's Sale, Idaho Code 45-1508 provides that the validity of the sale as to persons having actual knowledge shall be unaffected.

D. Defendant's Challenges to the Notice to Vacate are Meritless.

Mr. Bass, for the first time, also seeks to contest the entry of summary judgment because he contends that a "complete eviction notice has never been duly served;" however, Mr. Bass fails to provide a copy of the purported insufficient notices as part of his Affidavit for the court to review, and fails to cite to any law requiring that he be given notice and particular type of notice in order for the present ejectment action to be filed and pursued. Moreover, Mr. Bass makes his argument whilst acknowledging that he attended the subject Trustee's Sale, where he would have become aware that the Property was sold, and whilst acknowledging that he continues to remain in possession of the Property and refusing to relinquish possession notwithstanding being served with a copy of the Complaint in this matter which contains what he acknowledges to be a

⁵ See Defendant Bass' Response to Plaintiffs' Motion for Summary Judgment, pages 3-4 (noting "Mr. Bass was present at the auction with a sign stating the auction was fixed.")

"complete eviction notice."

Ultimately, Defendant's argument does not provide him with a legal basis from which to avoid ejectment from the Property. Mr. Bass admits he attended the sale where the Property was sold to Plaintiffs and thus he had knowledge of the loss of his ownership in early March 2024 and did not vacate. Mr. Bass acknowledges in his briefing that he received the Notice to Vacate sent by Plaintiffs' counsel in late March and yet he failed to vacate. Lastly, the record reflects that he was served with the Complaint for Ejectment in August and again he failed to vacate. In the intervening 7+ months, Mr. Bass continues to reside in the Property and continues to refuse to relinquish possession in contravention of Idaho Code §45-1506(11).

If Mr. Bass is entitled to any type of notice under Idaho law, he's clearly received it and as such Summary Judgment in favor of Plaintiff is proper.

E. Defendant's Response Continues to Miscite and Misrepresent Case Law in violation of I.R.C.P. 11

As was previously noted by this Court in ruling upon Defendant's Motion for appointment of counsel, Defendant's citation to case authority and the accuracy thereof is questionable, either because the cases being cited do not stand for the proposition asserted in the motion or do not exist at all. Defendant's Response here suffers from the same trustworthiness and is either an affirmative attempt to mislead the court, or an improper reliance on computer technology without verifying accuracy. I.R.C.P. 11 provides that every pleading, written motion, and other paper must be signed by a party personally if the party is unrepresented and that in presenting a pleading, motion or other paper to the court, they are certifying to the best of their knowledge, information

and belief, that the legal contentions are warranted by existing law and that the factual contentions

have evidentiary support.

Here, Defendant's Response is replete with mis-representations or erroneous citations as

follows:

1.) On page 7 Plaintiff cites to Pines Grazing Ass'n v. Flying Joseph Ranch, LLC, 151

Idaho 924 (2011) for the proposition that "courts can scrutinize a purchaser's status where there is evidence of collusion, fraud, or procedural irregularities in the foreclosure sale process." A review of the quoted case reflects that it has nothing to do

with a foreclosure sale process, or bona-fide purchaser status;

2.) On page 10 Plaintiff cites to Kane V. Union State Bank, 71 F. Supp. 225 (D. Idaho

1937), but Plaintiff can find no such case, nor case citation in Idaho; and

3.) On page 13, Plaintiff cites to Wells Fargo Bank, N.A. v. Renz, 124 Idaho 885 (1993),

but Plaintiff can find no such case, nor case citation in Idaho;⁶

IV. CONCLUSION

Plaintiffs are the legal owner of the Property pursuant to a final and valid trustee's deed

issued following a properly noticed and conducted Trustee's Sale. Plaintiffs were good faith

purchasers and as such, are entitled to judgment as prayed for in Plaintiff's Complaint requiring

that Defendant Jeremy Bass surrender the Property to Plaintiff and the Court should issue a Writ

of Ejectment to the County Sherriff ordering that Jermey Bass be removed from the Property and

that Plaintiff have immediate possession thereof.

DATED This October 18, 2024.

HALLIDAY WATKINS & MANN, P.C.

By: /s/ Lewis N. Stoddard

Lewis N. Stoddard

Attorneys for Plaintiff

⁶ The closest case that Plaintiff can locate is *Wells Fargo Bank*, *N.A. v. Renz*, 795 F.Supp.2d 898 (N.D. Cal, June 2011)

which dealt with a claim under the Comprehensive Environmental Response, Compensation and Liability Act and not

failure to comply with the procedural requirements of non-judicial foreclosure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this October 18, 2024, a true and correct copy of the above and foregoing document was served, which service was effectuated by the method indicated below and addressed as follows:

| Jeremy L. Bass 1515 21 st Ave Lewiston, ID 83501 | ☐ U.S. Mail ⊠ Email/iCourt |
|---|-------------------------------|
| Ken Nagy Idaho Legal Aid Services, Inc. kennagy@idaholegalaid.org Counsel for Dwayne Pike | ☐ U.S. Mail ⊠ Email/iCourt |

/s/ Lewis N. Stoddard

Electronically Filed 9/16/2024 3:19 PM Second Judicial District, Nez Perce County Patty Weeks, Clerk of the Court By: Amber Gurney, Deputy Clerk

Lewis N. Stoddard, Bar No. 7766 Halliday, Watkins & Mann, P.C. 300 W. Main St., Ste. 150 Boise, ID 83702

Phone: 801-355-2886 Facsimile: 801-328-9714 lewis@hwmlawfirm.com

Attorney for Plaintiff | HWM File No. ID21698

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT, OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF NEZ PERCE

DPW Enterprises LLC and Mountain Prime 2018 LLC,

Plaintiffs,

v.

Jeremy L. Bass; Dwayne Pike; and Unknown Parties in Possession of the real property commonly known as:

1515 21st Ave., Lewiston, ID 83501,

Defendants.

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO MOTION TO DISMISS AND STRIKE SUMMONS AND COMPLAINT

Case No.: CV35-24-1063

COMES NOW, Plaintiffs by and through their counsel of record, Lewis N. Stoddard, and hereby submits this Memorandum in Support of Motion for Summary Judgment against Defendants and in Opposition to Defendant Jeremy L. Bass's Motion to Dismiss and Strike Summons and Complaint.

I. INTRODUCTION

Pursuant to a Trustee's Deed recorded in the Nez Perce County land records on March 4, 2024 as Instrument No. 912874, Plaintiffs are the owners of the real property commonly known as 1515 21st Ave., Lewiston, ID 83501-3926 ("Property"). Under Idaho Code § 45-1506(11), Plaintiffs were entitled to possession of the Property on the tenth day following the sale; however,

as evidenced by the Answer filed in this matter by Defendant Jeremy L. Bass, who is the former owner of the property, and Dwayne Pike, who is a tenant residing in the Property, possession has been refused and both continue to occupy the Property.

As discussed in greater detail below, when the undisputed land records of Nez Perce County are considered in conjunction with well-established Idaho case law, it is clear that summary judgment is appropriate and Mr. Bass, as former owner of the Property, has no right to remain in the Property and his allegations against his prior lender and the Trustee under his Deed of Trust provide no defense as against Plaintiffs who are good-faith purchasers for value. With respect to the tenant of the Property, Mr. Pike, even accepting his contention that the Plaintiffs are required to honor his Lease, he is still subject to being ejected from the Property for non-compliance with the terms of the lease agreement due to non-payment of rent to Plaintiffs.

Accordingly, both should be ejected from the Property. For the same reasons that summary judgment in favor of Plaintiffs is proper, the Motion to Dismiss and Strike Summons and Complaint filed by Mr. Bass should also be denied.

II. STANDARD OF REVIEW

Idaho Rule of Civil Procedure 56(c) states, in pertinent part:

The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Id.

Pursuant to I.R.C.P. 56(c), summary judgment is appropriate where the pleadings, depositions, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Sewell v. Neilsen, Monroe, Inc., 109 Idaho 192, 707 P.2d 81 (Ct. App. 1985); Ambrose v. Buhl Joint School Dist. 412, 126 Idaho 581, 887 P.2d 1034 (1994).

Additionally, the moving party is entitled to judgment when the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to that party's case on which that party will bear the burden of proof at trial. *Badell v. Beeks*, 115 Idaho 101, 765 P.2d 126 (1988); *Celotex v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

Idaho courts have held that in order to forestall summary judgment, a party "must do more than present a scintilla of evidence, and merely raising the 'slightest doubt' as to facts is not sufficient to create a genuine issue." *Petricevich v. Salmon River Canal Co.*, 92 Idaho 865, 871, 452 P.2d 362 (1969); *G&M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 517, 808 P.2d 851 (1991). The Idaho court has similarly held that summary judgment should be granted if the evidence in opposition to the motion "is merely colorable" or "is not significantly probative", relying in part upon *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50, 106 S. Ct. 255, 91 L.Ed.2d 202 (1986). To withstand a motion for summary judgment, "the [non-moving party's] case must be anchored in something more solid than speculation; a mere scintilla of evidence is not enough to create a genuine issue." *Edwards v. Conchemco, Inc.*, 111 Idaho 851, 727 P.2d 1279 (Ct. App. 1986). Further, with respect to a claimed affirmative defense, it is the obligation and burden of the non-moving defendant to support a claimed affirmative defense on a motion for summary judgment. *Chandler v. Hayden*, 215 P.3d 485, 147 Idaho 765 (Idaho 2009).

III. STATEMENT OF UNDISPUTED FACTS

Based upon the pleadings in this case, public land records of Nez Perce County, and the statutory presumptions afforded to a trustee's deed, the following facts are undisputed.

- 1.) Jeremy L. Bass was the fee simple owner of the Property and pledge the property as security under a Deed of Trust which was recorded on October 30, 2009 as Instrument No. 774964 in the land records of Nez Perce County, Idaho. (Complaint, Ex. A.; Affidavit of Counsel, Ex. A.)
- 2.) A Notice of Default was recorded on August 17, 2022 as Instrument No. 902262 in the land records of Nez Perce County, Idaho, which default still existed at the time of sale. (*Id.*, Ex. A, (a); *See* Affidavit of Counsel, Ex. B.)
- 3.) Notice of the time and place of a Trustee's Sale was given via registered/certified mail, personal service upon all occupants of the Property and/or by posting on said premises, and by publication as more fully set forth in Affidavits recorded as Instrument Nos. 904186, 904187, 904188, 904189, and 904190. (Complaint, Ex. A, (b).)
- 4.) Following various postponements of the original Trustee's Sale, a sale was reset for February 29, 2024 at 11:00 a.m. as evidenced by an Affidavit of Mailing recorded in the Nez Perce County land records on January 29, 2024 as Instrument No. 912340. (See Affidavit of Counsel, Ex. C.)
- 5.) Plaintiffs were the highest bidders at the Trustee's Sale, purchasing the Property for \$165,346.71, and a Trustee's Deed was executed on March 1, 2024 and recorded on March 2, 2024 as Instrument No. 912874 in the Nez Perce County land records. (Complaint, Ex. A.)
- 6.) Following the Trustee's Sale, on or about March 21, 2024, a Notice of Vacate was sent to Defendants informing them of the new owners of the Property and demanding that the Property be vacated. (Complaint, Ex. B.)

¹ Nez Perce County Court records indicate that Mr. Bass sought to stop the foreclosure by filing a Complaint for Injunctive and Declaratory Relief and Damages and seeking a Temporary Restraining Order in CV35-22-1875. An Opinion and Order on Motion to Dismiss and Strike Summons and Complaint was issued by the Honorable Mark T. Monson, on February 17, 2023. (Affidavit of Counsel, Ex. D.)

- 7.) With respect to any tenants of the Property, the Notice to Vacate specifically informed them of protections under the Protecting Tenants at Foreclosure Act and requested a copy of any written lease agreement and proof that all monthly rental payments due under the lease had been made, amongst other things. (*Id.*)
- 8.) The Notice to Vacate also informed any tenants that if they were a bona fide tenant with an expired lease, they had 90 days to vacate and that if they were a bona fide tenant they were required to make monthly lease payments during the remainder of the lease agreement. (*Id.*)
- 9.) The Notice to Vacate was sent via certified mail to the Defendants and records reflect was received on March 25, 2024. (*Id.*, Ex. E and F.)
- 10.) Records indicate that on March 26, 2024, Dwayne Pike called Plaintiffs' counsel in response to receipt of the Notice to Vacate advising that he couldn't find new housing on 3 days notice, asserting that his landlord believed the foreclosure to be illegal, requesting 90 days to vacate under the PTFA, and advising that he was on a month to month lease, and was requested to send a copy of the lease to Plaintiff's counsel so it could be reviewed, which Mr. Pike never provided. (Id., \P 8.)
- 11.) Records indicate that on March 28, 2024, Jeremy Bass called Plaintiffs' counsel in response to receipt of the Notice to Vacate advising that he could not vacate within 3 days as set forth in the Notice to Vacate and that his tenant in the basement was entitled to 90 days to vacate. Mr. Bass was asked for a copy of the lease agreement, which has never been provided. (*Id.*, ¶ 9.)
- 12.) Mr. Pike's Answer in this matter was the first time that a copy of the purported Lease entered on February 28, 2024 has ever been provided to Plaintiffs. (*Id.*, ¶ 10; Declaration of Mountain Prime 2018 LLC, ¶ 7; Declaration of DPW Enterprises LLC, ¶ 7.)

- 13.) To date, neither Plaintiffs nor Plaintiffs' counsel has received any rental payments under any purported lease agreement from Mr. Pike. (Counsel Aff., ¶11; Declaration of Mountain Prime 2018 LLC, ¶ 8; Declaration of DPW Enterprises LLC, ¶ 8.)
- 14.) Both Mr. Bass and Mr. Pike remain in possession of the Property and both are refusing to relinquish possession. (Response to Summons and Complaint, *generally; See also* Verified Answer and Affirmative Defenses, ¶ 5.)

IV. ARGUMENT

Summary Judgment is appropriate as the undisputed facts prove each of the elements necessary to support a claim for ejectment as against Mr. Bass as the former owner of the Property, and as against Mr. Pike as a tenant of the Property.

A. Summary Judgment is Appropriate as The Undisputed Facts Prove Each of the Necessary Elements for Ejectment from The Property.

In an action for ejectment, Plaintiff must only prove "(1) ownership, (2) possession by the defendants, and (3) refusal of the defendants to surrender possession." *Pro Indiviso, Inc. v. Mid-Mile Holding Trust*, 131 Idaho 741, 745, 963 P.2d 1178, 1182 (1998)(citation omitted).

Here, the Answer filed by Jeremy Bass and Dwayne Pike establish the last two elements. Specifically, Mr. Bass admits that he is in possession and, as demonstrated by the Answer generally, is refusing to surrender the Property to Plaintiff based upon a number of baseless assertions of wrongful foreclosure against his prior lender and the Trustee which have no bearing on Plaintiffs' rights to the Property as a good faith purchaser. Mr. Pike, as a tenant has taken a different approach admitting that he is in possession of the Property, denying that Plaintiffs are entitled to passion and otherwise asserting that he is entitled to remain in the Property pursuant to the Protecting Tenants at Foreclosure Act of 2009 ("PTFA") which is an affirmative defense which is addressed in further detail below.

With respect to the element of ownership, it is undisputed that Plaintiffs are the owners of the Property by virtue of the trustee's sale of the Property and the issuance and recording of a trustee's deed. Pursuant to Idaho Code § 45-1506(11), "The purchaser at the trustee's sale shall be entitled to possession of the property on the tenth day following the sale, and any persons remaining in possession thereafter under any interest except one prior to the deed of trust shall be deemed to be tenants at sufferance."

The effect of a trustee's sale is set forth in Idaho Code § 45-1508, which states:

A sale made by a trustee under this act shall foreclose and terminate all interest in the property covered by the deed of trust if all persons to whom notice is given under § 45-1506, Idaho Code, and any other persons claiming by, through or under such persons and such persons shall have no right to redeem the property from the purchaser at the trustee's sale. The failure to give notice to any such persons by mailing, personal service, posting or publication in accordance with § 45-1506, Idaho Code, shall not affect the validity of the sale as to persons so notified nor as to any persons having actual knowledge of the sale.

See I.C. § 45-1508. In interpreting I.C. § 45-1508, the Idaho Supreme Court recently reiterated that the "provision makes clear that a trustee's sale to a good-faith purchaser for value is final, despite a violation of Idaho Code section 45-1506," ie... the manner of foreclosure including notice of the sale. See Breckenridge Property Fund 2016, LLC, v. Wally Enterprises, Inc., 170 Idaho 649 (Idaho 2022).

Similarly, Idaho Code § 45-1510 provides that the recitals and affidavits in a Trustee's Deed are "**conclusive** in **favor** of a purchaser in good faith for value or any successor in interests thereof." (emphasis added). The Idaho Supreme Court has acknowledged and upheld the finality of trustee's sales noting that the Idaho Trust Deeds Act is "a comprehensive regulatory scheme for non-judicial foreclosure of deeds of trust, which includes the exclusive remedies for a statutory violation." *Spencer v. Jameson*, 211 P.3d 106, 147 Idaho 497 (Idaho 2009). Given the comprehensiveness of the Idaho Trust Deeds Act, the Court noted that "the legislature did not intend for a sale to be set

aside once the trustee accepts the credit bid as payment in full." Rather, the legislature's interest was "in preserving the finality of title to real property." *Id.* Thus, "a sale is final once the trustee accepts a bid as payment in full unless there are issues surrounding the notice of the sale (which are admittedly not present in this case)." *Id.*

Based upon the foregoing, the recitals and affidavits in the Trustee's Deed for the Property confirm that Mr. Bass defaulted on his payment obligations, a Notice of Default was issued and recorded, a Notice of Trustee's Sale was issued, notice was provided in multiple methods as required by Idaho Code, and a Trustee's Sale held where Plaintiffs were the highest bidders at the sale, paying \$165,346.71 to purchase the Property.

These facts are ultimately conclusive as to Plaintiffs and cannot be challenged by Mr. Bass or Mr. Pike in an effort to retain title to the Property. Moreover, all of Mr. Bass's allegations deal with his interaction with his prior lender and stem from conclusory allegations about the Trustee, neither of whom are parties to this suit, nor has he sought to bring into this action. While it certainly appears that Mr. Bass has a number of disputes with his previous lender or that he believes the actions of the Trustee and his lender were wrongful, those disputes do not allow him to retain title or possession of the Property. Rather, title to the property has passed to Plaintiff pursuant to the valid and recorded Trustee's Deed leaving Defendant with no legal avenue to recover title.

As such, Mr. Bass has no option but to vacate the Property, which he has failed to do and as such, Judgment against him authorizing the Nez Perce County Sheriff to remove him from the Property is required. Mr. Pike similarly has no basis to remain in the Property pursuant to the PTFA where he is not in compliance with his purported lease because he has failed to pay his lease payments in a timely manner to Plaintiffs.

B. The Motion to Dismiss and Strike Summons and Complaint is Meritless and Should be Denied.

In connection with his Answer in this matter, Mr. Bass also filed what is titled as a Motion to Dismiss and Strike Summons and Complaint, through which he alleges 5 arguments, each of which appear to be defenses to the present action as opposed to valid grounds for dismissal of the Complaint outright. Mr. Bass fails to cite any rule or grounds upon which he is seeking dismissal which if considered under I.R.C.P. 12(b)(6) should be denied outright where all factual allegations must be construed in favor of the non-moving party, and when viewed through that lens clearly plead an entitlement to possession of the Property in this case. Even if Mr. Bass were moving for dismissal based upon some other uncited authority, his stated grounds are meritless for the following reasons.

First, Mr. Bass asserts that the underlying foreclosure is invalid because it's based upon an alleged "fraudulent instrument" which he contends is detailed in his Response; however, no such explanation is given in any of Defendant's filings. Mr. Bass makes reference to the Trustee's Deed being unrecorded; however, such a statement is false as evidenced by the recording stamp located on the top of the Trustee's Deed which is attached to Plaintiffs' complaint as Exhibit A. The omission of any other basis for claiming there is a fraudulent instrument is likely intentional where Mr. Bass asserted similar baseless allegations in his prior lawsuit where the court found it "inconceivable...that Mr. Bass would [make payments on a loan] that he did not actually enter into..." (Counsel Aff., Ex. D, pg. 5.) Accordingly, without support, Defendant presents no valid basis for dismissal.

Second, Mr. Bass asserts that the foreclosure action was somehow rigged, again without providing any evidence or explanation as to how it was rigged. In some parts of his pleadings he appears to contend that the sale was not openly held while in other parts he appears to claim that bidding should have been started at the fair market value of the Property. Ultimately, Mr. Bass

has not and cannot point to any legal or factual support for his position, and clearly fails to account for the fact that foreclosing lender can only bid what it is owed and what may be paid to purchase the Property beyond that is up to those interested purchasers in attendance. Moreover, the facts of the case refute Defendant's conclusory assertion and reflect that the Property was sold at a public sale to Plaintiffs who were third-party purchasers at the sale and who paid \$165,346.71 to purchase the Property. That Mr. Bass believed he had more equity is clearly refuted by the results of an open sale and he identifies no other basis upon which he believes the sale was improper.

Third, Mr. Bass contends that Plaintiffs have failed to join indispensable parties including both Carrington and the prior trustee because they played a role in the underlying non-judicial foreclosure. Again, Defendant's arguments are misplaced. In seeking possession of the premises, pursuant to a issued and recorded Trustee's Deed, Plaintiffs need only name those parties interfering with its possession which has been done. That Mr. Bass has issues with his prior lender and Trustee does not involve Plaintiffs who are good faith purchasers and thus they are not necessary parties to Plaintiffs' claim for ejectment.

Fourth, Mr. Bass claims that the Trustee had a conflict of interest. Again, if Mr. Bass has qualms with his prior lender or Trustee, he's free to litigate those claims, and in fact the record shows that he is fully aware of how to do so; however, his qualms do not involve Plaintiffs as good faith purchasers of the Property, nor do they create a basis for dismissal of a valid claim for possession.

Lastly, Mr. Bass claims that Plaintiffs' Complaint should be dismissed because he has not been served with a notice of any hearing concerning the eviction. Again his arguments are without merit as no such hearings have been set, and thus he has not been deprived of due process. Rather, the present motion is being set as is required by the Idaho Rules of Civil Procedure and a proper

hearing held.

For the forgoing reasons, the Motion to Dismiss is without merit.

C. Mr. Pike is Not Entitled to Remain in Possession Pursuant to a Lease which he is in Breach of for Non-payment of Rent.

In response to the Complaint for Ejectment, Mr. Pike has raised one affirmative defense which seeks to invoke the protections of the PTFA and to force Plaintiffs to honor a renewed Lease agreement that was allegedly entered into on February 28, 2024 one day prior to the non-judicial foreclosure sale of the Property, and which was never provided to Plaintiffs or their counsel until it was attached to Mr. Pike's Verified Answer and Affirmative Defenses. While Idaho law makes clear that it is Mr. Pike's burden to support his claimed affirmative defense on a motion for summary judgment, meaning it is his burden to show that the PTFA applies, for the following reasons, Mr. Pike cannot meet his burden. *See Chandler v. Hayden*, 215 P.3d 485, 147 Idaho 765 (Idaho 2009).

For purposes of the present motion for summary judgment, even if the Court were to accept Mr. Pike's assertions that he is a Tenant under a bona fide lease and that Plaintiffs are required to honor his lease agreement under the Protecting Tenants at Foreclosure Act of 2009, Mr. Pike is still subject to being ejected from the Property for breach of his lease agreement due to non-payment of rent to Plaintiffs. Specifically, the Lease that Mr. Pike attaches to his Verified Answer in this matter provides in salient part as follows:

- 10. Rent
- 10. Subject to the provisions of this Lease, the rent for the Property is \$700 per month (the "Rent").
- 11. The Tenant will pay the Rent on or before the first (1st) day of each and every month of the term of this Lease to the Landlord at 1515 21st Ave. or at such other place as the Landlord may later designate by cash or Money order, Cashier's Check.
- 13. The Tenant will be charged an additional amount of \$75.00 per infraction for any Rent that is received after the greater of 5 days after the due date and any mandatory grace period required under the Act, if any...

See Verified Answer and Affirmative Defenses, pgs. 7-15.

With the foregoing in mind, the undisputed facts establish that Mr. Pike has not paid rent to Plaintiffs since they took ownership of the Property. Stated differently, under the terms of Lease that Mr. Pike seeks to enforce and seeks to have Plaintiffs' honor, Mr. Pike cannot show that he has timely paid all rent that has become due to Plaintiffs since Plaintiffs took ownership of the Property.

It is anticipated that Mr. Pike may assert two arguments in response. First, it is anticipated that Mr. Pike will assert that he has kept current with his rent obligations because he has continued to pay his rent directly to Mr. Bass, the former owner of the Property and second, that Plaintiffs have never demanded rent nor provided him with an address to tender rent to; however, both arguments fail where the Notice to Vacate served upon Mr. Pike informed him of both who the new owners of the Property were, the address for Plaintiffs' attorney of record and informed him of his obligation to continuing making all rent payments. Specifically, the Notice to Vacate that was sent and received by Mr. Pike at the end of March 2004 informed him as follows:

YOU ARE HEREBY NOTIFIED that the premises you are occupying was sold at a foreclosure sale on February 29, 2024 and was purchased by DPW Enterprises LLC and Mountain Prime 2018 LLC ("Property Owner"). A copy of the Trustee's/Sheriff's Deed is attached to this Notice. Pursuant to Idaho Code § 45-1506(11) the Property Owner is entitled to possession of the below referenced property after 10 days of the foreclosure sale...

If you are a tenant of the former owner of the property, and not a child, spouse, or parent of the former owner of the property, you may be entitled to additional rights as provided in the Protecting Tenants at Foreclosure Act of 2009. In order for us to determine on behalf of the Property Owner what rights you may have under the Protecting Tenants at Foreclosure Act of 2009, you must immediately forward to us the following:

(a) a copy of your written lease (if an oral lease you must provide us a summary of the terms of your oral lease, including: the terms of the lease, monthly rental amount, and all other relevant least terms);

- (b) proof of your alleged monthly rental amount (proof may be in the form of a copy of you lease showing the rent amount, or, if an oral lease, copies of cancelled checks or money orders);
- (c) proof that all monthly rental payments due under the lease have been paid to date (proof may be in the form of copies of cancelled checks, money orders, or a signed statement from your landlord stating that you have paid your rent in full as required by your lease);
- (d) the names of all occupants of the Property who are over 18 years of age; and
- (e) indicate whether you are a Section 8 tenant.

If you are determined to be a bona fide tenant with an expired lease, the Property Owner hereby provides notice that your right to remain at the property expires no later than 90 calendar days after the service of this Notice. If you are still in possession of the property at that time, the Property Owner will immediately begin eviction proceedings against you.

If you believe you are a bona fide tenant with a unexpired lease or a bona fide tenant with an expired lease, you are required to make your required monthly lease payments during the remainder of your lease agreement if your lease is unexpired and/or during the 90 day notice of eviction period if your lease is expired.

See Complaint, Ex. B.

In the case at hand, and in response to the Notice to Vacate, Mr. Pike complied with none of the foregoing including failing to provide a copy of the Lease which was only recently attached to his Answer, failing to provide proof of all monthly rental payments due under the lease that had been paid and most importantly, failure to make his required monthly lease payments during the remainder of his lease agreement. According to the terms of the lease agreement, the following amounts would have had to have been paid to Plaintiffs to be in compliance with the Lease he now seeks to enforce:

| April Rent: | \$700 |
|-------------|-------|
| Late Fee: | \$75 |
| May Rent: | \$700 |
| Late Fee: | \$75 |
| June Rent: | \$700 |
| Late Fee: | \$75 |
| July Rent: | \$700 |
| Late Fee: | \$75 |
| | |

August Rent:\$700Late Fee:\$75September Rent:\$700Late Fee:\$75

TOTAL DUE: \$4,650.00

See Verified Answer and Affirmative Defenses, pgs. 7-15.)

Here, Mr. Pike cannot support his affirmative defense that he is protected from eviction under the PTFA, where even assuming he were a bona fide tenant under a bona fide lease and Plaintiffs were entitled to honor his lease, he cannot prove that he is compliance with the terms of the Lease having failed to pay each monthly rent payment to Plaintiffs who became owners of the Property on March 2, 2024,² which Mr. Pike was clearly made aware of at the end of March 2024.

Accordingly, summary judgment is proper with respect to Mr. Pike and he should be ejected from the Property.

V. CONCLUSION

Plaintiffs are the legal owners of the Property pursuant to a final and valid trustee's deed issued following a properly noticed and conducted Trustee's Sale. Plaintiffs were good faith purchasers and as such, are entitled to judgment as prayed for in Plaintiff's Complaint requiring that Defendant Jeremy Bass surrender the Property to Plaintiff and the Court should issue a Writ of Ejectment to the County Sherriff ordering that Jermey Bass be removed from the Property and that Plaintiff have immediate possession thereof.

Plaintiffs are similarly entitled to a Writ of Ejectment ordering that Mr. Pike be removed from the Property and that Plaintiff have immediate possession thereof due to non-payment of rent under the terms of his Lease agreement dated February 29, 2024.

² I.C. § 6-303(2) provides that a tenant of real property is guilty of unlawful detainer "where he continues in possession, in person or by subtenant, without permission of his landlord, or successor in estate of his landlord, if any there be, after default in the payment of rent, pursuant to the lease or agreement under which the property is held...

_

HALLIDAY WATKINS & MANN, P.C.

By: /s/ Lewis N. Stoddard
Lewis N. Stoddard
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this September 16, 2024, a true and correct copy of the above and foregoing document was served, which service was effectuated by the method indicated below and addressed as follows:

| Jeremy L. Bass 1515 21 st Ave Lewiston, ID 83501 | ⊠ U.S. Mail ☐ Email/iCourt |
|--|-------------------------------|
| Ken Nagy Idaho Legal Aid Services, Inc. kennagy@idaholegalaid.org Counsel for Dwayne Pike | ☐ U.S. Mail ⊠ Email/iCourt |

/s/ Lewis N. Stoddard

Electronically Filed 9/16/2024 3:19 PM Second Judicial District, Nez Perce County Patty Weeks, Clerk of the Court By: Amber Gurney, Deputy Clerk

Lewis N. Stoddard, Bar No. 7766 Halliday, Watkins & Mann, P.C. 300 W. Main St., Ste. 150 Boise, ID 83702

Phone: 801-355-2886 Facsimile: 801-328-9714 lewis@hwmlawfirm.com

Attorney for Plaintiff | HWM File No. ID21698

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT, OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF NEZ PERCE

DPW Enterprises LLC and Mountain Prime 2018 LLC,

Plaintiffs,

v.

Jeremy L. Bass; Dwayne Pike; and Unknown Parties in Possession of the real property commonly known as:

1515 21st Ave., Lewiston, ID 83501,

Defendants.

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Case No.: CV35-24-1063

COMES NOW, Plaintiffs by and through his counsel of record, Lewis N. Stoddard, and pursuant to I.R.C.P. 56 asks the Court for Judgment in their favor on their Complaint for Ejectment as against Defendants. This Motion is supported by the Idaho Rules of Civil Procedure, applicable Idaho case law, and the record in this matter which includes Plaintiff's Verified Complaint and exhibits thereto.

DATED This September 16, 2024.

HALLIDAY WATKINS & MANN, P.C.

By: /s/ Lewis N. Stoddard

Lewis N. Stoddard Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this September 16, 2024, a true and correct copy of the above and foregoing document was served, which service was effectuated by the method indicated below and addressed as follows:

| Jeremy L. Bass | ☑ U.S. Mail |
|--------------------------------|----------------|
| 1515 21st Ave | ☐ Email/iCourt |
| Lewiston, ID 83501 | |
| | |
| Ken Nagy | U.S. Mail |
| Idaho Legal Aid Services, Inc. | Email/iCourt |
| kennagy@idaholegalaid.org | |
| Counsel for Dwayne Pike | |
| | |

/s/ Lewis N. Stoddard

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Phone: 801-355-2886 Facsimile: 801-328-9714 lewis@hwmlawfirm.com

Attorney for Plaintiff | HWM File No. ID21698

Defendants.

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Jeremy L. Bass; Dwayne Pike; and Unknown Parties in Possession of the real property commonly known as:

1515 21st Ave., Lewiston, ID 83501,

JEFF WANGSGARD, being first duly sworn, on oath deposes and says:

- 1.) I am one the managing member of DPW Enterprises LLC, a Utah limited liability company.
 - 2.) I am over the age of 18 and have personal knowledge of the facts set forth herein.
- 3.) DPW Enterprises LLC is a Utah limited liability company which purchases real property at foreclosure sales across the mountain west.
- 4.) DPW Enterprises LLC partnered with Mountain Prime 2018 LLC, a Utah limited liability company for the purchase of the real property commonly known as 1515 21st Ave., Lewiston, ID 83501.

5.) On February 29, 2024, DPW Enterprises LLC and Mountain Prime 2018 LLC,

submitted a bid to purchase the real property commonly known as 1515 21st Ave., Lewiston, ID

83501 ("Property") for the sum of \$165,346.71, and were the highest bidders at the Trustee's

sale of the subject Property.

6.) Payment has been made and a Trustee's Deed issued in favor of DPW Enterprises

LLC and Mountain Prime 2018 LLC, which was recorded in the Nez Perce County land records

on March 2, 2024 as Instrument No. 912874.

7.) Since becoming the owner of the Property, DPW Enterprises LLC has never been

provided with a copy of the February 28, 2024 Lease entered into between the former owner

Jeremy Bass and tenant Dwayne Pike until Mr. Pike filed his Answer in this matter.

8.) Since becoming owner of the Property DPW Enterprises LLC has received no

rental payments from Mr. Pike as called for in the February 28, 2024 Lease.

CERTIFICATION UNDER PENALTY OF PERJURY

I certify under penalty of perjury pursuant to the law of the state of Idaho that the foregoing

is true and correct.

DATED This September 16, 2024.

By: /s/ Jeff Wangsgard

Capacity: Managing Member of DPW Enterprises,

LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this September 16, 2024, a true and correct copy of the above and foregoing document was served, which service was effectuated by the method indicated below and addressed as follows:

| Jeremy L. Bass | ☑ U.S. Mail |
|--------------------------------|----------------|
| 1515 21st Ave | ☐ Email/iCourt |
| Lewiston, ID 83501 | |
| | |
| Ken Nagy | U.S. Mail |
| Idaho Legal Aid Services, Inc. | Email/iCourt |
| kennagy@idaholegalaid.org | |
| Counsel for Dwayne Pike | |
| | |

/s/ Lewis N. Stoddard

Electronically Filed 9/16/2024 3:19 PM Second Judicial District, Nez Perce County Patty Weeks, Clerk of the Court By: Amber Gurney, Deputy Clerk

Lewis N. Stoddard, Bar No. 7766 Halliday, Watkins & Mann, P.C. 300 W. Main St., Ste. 150 Boise, ID 83702

Phone: 801-355-2886 Facsimile: 801-328-9714 lewis@hwmlawfirm.com

Attorney for Plaintiff | HWM File No. ID21698

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT, OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF NEZ PERCE

DPW Enterprises LLC and Mountain Prime 2018 LLC,

Plaintiffs,

v.

Jeremy L. Bass; Dwayne Pike; and Unknown Parties in Possession of the real property commonly known as:

1515 21st Ave., Lewiston, ID 83501,

Defendants.

DECLARATION OF MOUNTAIN PRIME 2018 LLC

Case No.: CV35-24-1063

NATHAN MUELLER, being first duly sworn, on oath deposes and says:

- 1.) I am the managing member of Mountain Prime 2018, LLC, a Utah limited liability company.
 - 2.) I am over the age of 18 and have personal knowledge of the facts set forth herein.
- 3.) Mountain Prime 2018, LLC is a Utah limited liability company which purchases real property at foreclosure sales across the mountain west.
- 4.) Mountain Prime 2018, LLC partnered with DPW Enterprises LLC for the purchase of the real property commonly known as 1515 21st Ave., Lewiston, ID 83501.
 - 5.) On February 29, 2024, DPW Enterprises LLC and Mountain Prime 2018 LLC,

submitted a bid to purchase the real property commonly known as 1515 21st Ave., Lewiston, ID

83501 ("Property") for the sum of \$165,346.71, and were the highest bidders at the Trustee's

sale of the subject Property.

6.) Payment has been made and a Trustee's Deed issued in favor of DPW Enterprises

LLC and Mountain Prime 2018 LLC, which was recorded in the Nez Perce County land records

on March 2, 2024 as Instrument No. 912874.

7.) Since becoming the owner of the Property, Mountain Prime 2018, LLC has never

been provided with a copy of the February 28, 2024 Lease entered into between the former owner

Jeremy Bass and tenant Dwayne Pike until Mr. Pike filed his Answer in this matter.

8.) Since becoming owner of the Property Mountain Prime 2018, LLC has received no

rental payments from Mr. Pike as called for in the February 28, 2024 Lease.

CERTIFICATION UNDER PENALTY OF PERJURY

I certify under penalty of perjury pursuant to the law of the state of Idaho that the foregoing

is true and correct.

DATED This September 16, 2024.

By: /s/ Nathan Mueller

Capacity: Managing Member of Mountain Prime

2018, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this September 16, 2024, a true and correct copy of the above and foregoing document was served, which service was effectuated by the method indicated below and addressed as follows:

| Jeremy L. Bass | ☑ U.S. Mail |
|--------------------------------|----------------|
| 1515 21st Ave | ☐ Email/iCourt |
| Lewiston, ID 83501 | |
| | |
| Ken Nagy | U.S. Mail |
| Idaho Legal Aid Services, Inc. | Email/iCourt |
| kennagy@idaholegalaid.org | |
| Counsel for Dwayne Pike | |
| | |

/s/ Lewis N. Stoddard

Electronically Filed 9/16/2024 3:19 PM Second Judicial District, Nez Perce County Patty Weeks, Clerk of the Court By: Amber Gurney, Deputy Clerk

Lewis N. Stoddard, Bar No. 7766 Halliday, Watkins & Mann, P.C. 300 W. Main St., Ste. 150 Boise, ID 83702

Phone: 801-355-2886 Facsimile: 801-328-9714 lewis@hwmlawfirm.com

Attorney for Plaintiff | HWM File No. ID21698

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT, OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF NEZ PERCE

DPW Enterprises LLC and Mountain Prime 2018 LLC,

Plaintiffs,

v.

Jeremy L. Bass; Dwayne Pike; and Unknown Parties in Possession of the real property commonly known as:

1515 21st Ave., Lewiston, ID 83501,

Defendants.

NOTICE OF HEARING VIA ZOOM ON PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Case No.: CV35-24-1063

Date: October 15, 2024 Time: 9:00 a.m. PST

PLEASE TAKE NOTICE, that on October 15, 2024 at 9:00 AM PST, or as soon thereafter as counsel may be heard, Plaintiff will call up and present for hearing its Motion for Summary Judgment via ZOOM before the Honorable Michelle M. Evans at the Nez Perce County Courthouse, Lewiston, Idaho.

Zoom ID: 91915211768

Password: 123456

DATED This September 16, 2024.

HALLIDAY WATKINS & MANN, P.C.

By: /s/ Lewis N. Stoddard

Lewis N. Stoddard Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this September 16, 2024, a true and correct copy of the above and foregoing document was served, which service was effectuated by the method indicated below and addressed as follows:

| Jeremy L. Bass | ☑ U.S. Mail |
|--------------------------------|----------------|
| 1515 21st Ave | ☐ Email/iCourt |
| Lewiston, ID 83501 | |
| | |
| Ken Nagy | U.S. Mail |
| Idaho Legal Aid Services, Inc. | Email/iCourt |
| kennagy@idaholegalaid.org | |
| Counsel for Dwayne Pike | |
| | |

/s/ Lewis N. Stoddard

Lewis N. Stoddard, Bar No. 7766 Halliday, Watkins & Mann, P.C. 300 W. Main St., Ste. 150

Boise, ID 83702

Phone: 801-355-2886 Facsimile: 801-328-9714 lewis@hwmlawfirm.com

Attorney for Plaintiff | HWM File No. ID21698

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT, OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF NEZ PERCE

DPW Enterprises LLC and Mountain Prime 2018 LLC,

Plaintiffs,

v.

Jeremy L. Bass; Dwayne Pike; and Unknown Parties in Possession of the real property commonly known as:

1515 21st Ave., Lewiston, ID 83501,

Defendants.

AMENDED NOTICE OF HEARING VIA ZOOM ON PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Case No.: CV35-24-1063

Date: October 15, 2024 Time: 10:00 a.m. PST

PLEASE TAKE NOTICE, that on October 15, 2024 at 10:00 AM PST, or as soon thereafter as counsel may be heard, Plaintiff will call up and present for hearing its Motion for Summary Judgment via ZOOM before the Honorable Michelle M. Evans at the Nez Perce County Courthouse, Lewiston, Idaho.

Zoom ID: 91915211768

Password: 123456

DATED This September 17, 2024.

HALLIDAY WATKINS & MANN, P.C.

By: /s/ Lewis N. Stoddard

Lewis N. Stoddard Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this September 17, 2024, a true and correct copy of the above and foregoing document was served, which service was effectuated by the method indicated below and addressed as follows:

| Jeremy L. Bass | ☑ U.S. Mail |
|--------------------------------|-----------------------------|
| 1515 21st Ave | ⊠ Email/iCourt: |
| Lewiston, ID 83501 | Quantum.J.L.Bass@RAWdeal.io |
| | |
| Ken Nagy | U.S. Mail |
| Idaho Legal Aid Services, Inc. | ⊠ Email/iCourt |
| kennagy@idaholegalaid.org | |
| Counsel for Dwayne Pike | |
| | |

/s/ Lewis N. Stoddard

Electronically Filed 9/16/2024 3:19 PM Second Judicial District, Nez Perce County Patty Weeks, Clerk of the Court By: Amber Gurney, Deputy Clerk

Lewis N. Stoddard, Bar No. 7766 Halliday, Watkins & Mann, P.C. 300 W. Main St., Ste. 150 Boise, ID 83702

Phone: 801-355-2886 Facsimile: 801-328-9714 lewis@hwmlawfirm.com

Attorney for Plaintiff | HWM File No. ID21698

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT, OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF NEZ PERCE

| DPW Enterprises LLC and Mountain Prime 2018 LLC, | DECLARATION OF COUNSEL IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT |
|--|--|
| Plaintiffs, | |
| v. | Case No.: CV35-24-1063 |
| Jeremy L. Bass; Dwayne Pike; and Unknown Parties in Possession of the real property commonly known as: | |
| 1515 21st Ave., Lewiston, ID 83501, | |
| Defendants. | |

STATE OF IDAHO) : ss.
County of Ada)

LEWIS N. STODDARD, being first duly sworn, on oath deposes and says:

- 1.) I am one of the attorneys of record for plaintiff.
- 2.) Attached hereto as Exhibit A is a true and correct copy of the Deed of Trust that encumbered the real property commonly known as 1515 21st Ave., Lewiston, ID 83501 and was recorded on October 30, 2009 as Instrument No. 774964 and which was foreclosed upon.
- 3.) Attached hereto as Exhibit B is a true and correct copy of the Notice of Default recorded on August 17, 2022 as Instrument No. 902262 in the land records of Nez Perce County,

Idaho.

- 4.) Attached hereto as Exhibit C is a true and correct copy of the Affidavit of Mailing pertaining to a Notice of Postponed Trustee's Sale, recorded on January 29, 2024 as Instrument No. 912340 in the land records of Nez Perce County, Idaho.
- 5.) Attached hereto as Exhibit D is a true and correct copy of an Opinion and Order on Motion to Dismiss and Strike the Summons and Complaint issued by the Honorable Mark T. Monson in Nez Perce County Case No. CV35-22-1875.
- 6.) On or about March 21, 2024, a Notice to Vacate was sent to Defendants a true and correct copy of which is attached as Exhibit B to the Complaint in this matter.
- 7.) Certified tracking numbers indicate that the Notice to Vacate was received by Defendants on or about March 25, 2024. Attached hereto as Exhibit E are true and correct copies of the certified mail tracking numbers, and attached hereto as Exhibit F are true and correct copies of the electronic results of each.
- 8.) On March 26, 2024, I received a call from Mr. Pike in response to the Notice to Vacate advising that he could not find new housing in 3 days, asserting that his landlord believed the foreclosure to be illegal, requesting 90 days to vacate under the PTFA, and advising that he was on a month to month lease, and was requested to send a copy of the lease to Plaintiff's counsel so it could be reviewed, which Mr. Pike never provided.
- 9.) On March 28, 2024, I received a call from Mr. Bass in response to the Notice to Vacate advising that he could not vacate within 3 days as set forth in the Notice to Vacate and that his tenant in the basement was entitled to 90 days to vacate. Mr. Bass was asked for a copy of the lease agreement, which was never provided.
 - 10.) Mr. Pike's Answer was the first time that a copy of the purported Lease entered

into on February 28, 2024 was ever provided.

11.) To date, I've not received any rental payments under the February 28, 2024 Lease.

CERTIFICATION UNDER PENALTY OF PERJURY

I certify under penalty of perjury pursuant to the law of the state of Idaho that the foregoing is true and correct.

DATED This September 16, 2024.

HALLIDAY WATKINS & MANN, P.C.

By: /s/ Lewis N. Stoddard

Lewis N. Stoddard Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this September 16, 2024, a true and correct copy of the above and foregoing document was served, which service was effectuated by the method indicated below and addressed as follows:

| Jeremy L. Bass 1515 21 st Ave Lewiston, ID 83501 | ☑ U.S. Mail☐ Email/iCourt |
|---|--|
| Ken Nagy Idaho Legal Aid Services, Inc. kennagy@idaholegalaid.org Counsel for Dwayne Pike | ☐ U.S. Mail |

/s/ Lewis N. Stoddard



Return To: BANK OF AMERICA, N.A. CA6-914-01-42 DOC PROCESSING P.O.Box 10423 Van Nuys, CA 91410-0423

Prepared By:

ELIZABETH WILLIAMS

774964 INST. NO.

FILED FOR RECORD FEE 2/9 REC. BY ALLIANCE TITLE

2009 OCT 30 PM 3 15

PATTY O. WEEKS RECORDER, NEZ PERCE CO. ID.

DEPUTY

[Space Above This Line For Recording Data]

[Case #]

State of Idaho

DEED OF TRUST

THIS DEED OF TRUST ("Security Instrument") is made on OCTOBER 16, 2009

. The Grantor is

JEREMY L BASS, A MARRIED MAN AS HIS SOLE & SEPARATE PROPERTY

("Borrower"). The trustee is FIDELITY NATIONAL TITLE INSURANCE CO. P.O. BOX 32695, PHOENIX, AZ 85064

("Trustee"). The beneficiary is Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns). MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS. BANK OF AMERICA, N.A.

("Lender") is organized and existing under the laws of THE UNITED STATES 101 South Tryon Street, Charlotte, NC 28255

, and has an address of

Borrower owes Lender the principal sum of

ONE HUNDRED FORTY EIGHT THOUSAND SIX HUNDRED FOURTEEN and 00/100

). This debt is evidenced by Borrower's note dated the same date as this Security: Dollars (U.S. \$148,614.00 Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on . This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by NOVEMBER 01, 2039 the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to the Trustee, in trust, with power of sale, the following described property located in NEZ PERCE County, Idaho:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number: RPL0880010010AA

MERS FHA Deed of Trust-ID 2004N-ID (06/08).02(d/i)

Page 1 of 6



which has the address of

1515 21ST AVE, LEWISTON [Street, City]

Idaho 83501-3926 ("Property Address");

[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument; but if necessary to comply with law or custom, MERS, (as nominee for Lender and Lender's successors and assigns), has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing or canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

- 1. Payment of Principal, Interest and Late Charge. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.
- 2. Monthly Payment of Taxes, Insurance and Other Charges. Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 et seq. and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow Items exceed the amounts permitted to be held by RESPA, Lender shall account to Borrower for the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow Items when due, Lender may notify the Borrower and require Borrower to make up the shortage as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

3. Application of Payments. All payments under paragraphs 1 and 2 shall be applied by Lender as follows:

<u>First</u>, to the mortgage insurance premium to be paid by Lender to the Secretary or to the monthly charge by the Secretary instead of the monthly mortgage insurance premium;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and

Fifth, to late charges due under the Note.

4. Fire, Flood and Other Hazard Insurance. Borrower shall insure all improvements on the Property, whether now in existence or subsequently erected, against any hazards, casualties, and contingencies, including fire, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. Borrower shall also insure all improvements on the Property, whether now in existence or subsequently erected, against loss by floods to the extent required by the Secretary. All insurance shall be carried with companies approved by Lender. The insurance policies and any renewals shall be held by Lender and shall include loss payable clauses in favor of, and in a form acceptable to, Lender.

In the event of loss, Borrower shall give Lender immediate notice by mail. Lender may make proof of loss if not made promptly by Borrower. Each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Lender, instead of to Borrower and to Lender jointly. All or any part of the insurance proceeds may be applied by Lender, at its option, either (a) to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order in paragraph 3, and then to prepayment of principal, or (b) to the restoration or repair of the damaged Property. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments which are referred to in paragraph 2, or change the amount of such

payments. Any excess insurance proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.

In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.

- 5. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument (or within sixty days of a later sale or transfer of the Property) and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that requirement will cause undue hardship for Borrower, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall notify Lender of any extenuating circumstances. Borrower shall not commit waste or destroy, damage or substantially change the Property or allow the Property to deteriorate, reasonable wear and tear excepted. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing.
- 6. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in place of condemnation, are hereby assigned and shall be paid to Lender to the extent of the full amount of the indebtedness that remains unpaid under the Note and this Security Instrument. Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts applied in the order provided in paragraph 3, and then to prepayment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments, which are referred to in paragraph 2, or change the amount of such payments. Any excess proceeds over an amount required to pay all outstanding indebtedness under the Note and this Security Instrument shall be paid to the entity legally entitled thereto.
- 7. Charges to Borrower and Protection of Lender's Rights in the Property. Borrower shall pay all governmental or municipal charges, fines and impositions that are not included in paragraph 2. Borrower shall pay these obligations on time directly to the entity which is owed the payment. If failure to pay would adversely affect Lender's interest in the Property, upon Lender's request Borrower shall promptly furnish to Lender receipts evidencing these payments.

If Borrower fails to make these payments or the payments required by paragraph 2, or fails to perform any other covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property and Lender's rights in the Property, including payment of taxes, hazard insurance and other items mentioned in paragraph 2.

Any amounts disbursed by Lender under this paragraph shall become an additional debt of Borrower and be secured by this Security Instrument. These amounts shall bear interest from the date of disbursement, at the Note rate, and at the option of Lender, shall be immediately due and payable.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

- 8. Fees. Lender may collect fees and charges authorized by the Secretary.
- 9. Grounds for Acceleration of Debt.
 - (a) Default. Lender may, except as limited by regulations issued by the Secretary, in the case of payment defaults, require immediate payment in full of all sums secured by this Security Instrument if:
 - (i) Borrower defaults by failing to pay in full any monthly payment required by this Security Instrument prior to or on the due date of the next monthly payment, or
 - (ii) Borrower defaults by failing, for a period of thirty days, to perform any other obligations contained in this Security Instrument.
 - (b) Sale Without Credit Approval. Lender shall, if permitted by applicable law (including Section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:
 - (i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and
 - (ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property but his or her credit has not been approved in accordance with the requirements of the Secretary.
 - (c) No Waiver. If circumstances occur that would permit Lender to require immediate payment in full, but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.
 - (d) Regulations of HUD Secretary. In many circumstances regulations issued by the Secretary will limit Lender's rights, in the case of payment defaults, to require immediate payment in full and foreclose if not paid. This Security Instrument does not authorize acceleration or foreclosure if not permitted by regulations of the Secretary.
 - (e) Mortgage Not Insured. Borrower agrees that if this Security Instrument and the Note are not determined to be eligible for insurance under the National Housing Act within 60 days from the date hereof, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument.

A written statement of any authorized agent of the Secretary dated subsequent to 60 days from the date hereof, declining to insure this Security Instrument and the Note, shall be deemed conclusive proof of such ineligibility. Notwithstanding the foregoing, this option may not be exercised by Lender when the unavailability of insurance is solely due to Lender's failure to remit a mortgage insurance premium to the Secretary.

- 10. Reinstatement. Borrower has a right to be reinstated if Lender has required immediate payment in full because of Borrower's failure to pay an amount due under the Note or this Security Instrument. This right applies even after foreclosure proceedings are instituted. To reinstate the Security Instrument, Borrower shall tender in a lump sum all amounts required to bring Borrower's account current including, to the extent they are obligations of Borrower under this Security Instrument, foreclosure costs and reasonable and customary attorneys' fees and expenses properly associated with the foreclosure proceeding. Upon reinstatement by Borrower, this Security Instrument and the obligations that it secures shall remain in effect as if Lender had not required immediate payment in full. However, Lender is not required to permit reinstatement if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceeding, (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument.
- 11. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time of payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.
- 12. Successors and Assigns Bound; Joint and Several Liability; Co-Signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 9(b). Borrower's covenants and agreements shall be joint and several. Any Borrower who cosigns this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.
- 13. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.
- 14. Governing Law; Severability. This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.
 - 15. Borrower's Copy. Borrower shall be given one conformed copy of the Note and of this Security Instrument.
- 16. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substances affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 16, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 16, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

17. Assignment of Rents. To the extent permitted by applicable law, Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the Property. Borrower authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender or Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of breach to Borrower: (a) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (b) Lender shall be entitled to collect and receive all of the rents of the Property; and (c) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent on Lender's written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph 17.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

18. Foreclosure Procedure. If Lender requires immediate payment in full under paragraph 9, Lender may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Trustee shall mail copies of the notice as prescribed by applicable law to Borrower and to other persons prescribed by applicable law. Trustee shall give public notice of sale to the persons and in the manner prescribed by applicable law. After the time required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

If the Lender's interest in this Security Instrument is held by the Secretary and the Secretary requires immediate payment in full under Paragraph 9, the Secretary may invoke the nonjudicial power of sale provided in the Single Family Mortgage Foreclosure Act of 1994 ("Act") (12 U.S.C. 3751 et seq.) by requesting a foreclosure commissioner designated under the Act to commence foreclosure and to sell the Property as provided in the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to a Lender under this Paragraph 18 or applicable law.

- 19. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs.
- 20. Substitute Trustee. Lender may, for any reason or cause, from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by applicable law.
- 21. Area and Location of Property. The Property is (a) located within an incorporated city or village; (b) not more than 80 acres, regardless of its location, provided it is not principally used for the agricultural production of crops, livestock, dairy or aquatic goods; or (c) not more than 40 acres, regardless of its use or location.
- 22. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

 [Check applicable box(es)]

| [Check applicable box(es)]. | curry insumment as it the nuci(s) | were a part of this security histitudent, |
|--|--|--|
| Condominium Rider Planned Unit Development Rider | Growing Equity Rider Graduated Payment Rider | Other [specify] |
| BY SIGNING BELOW, Borrower rider(s) executed by Borrower and recor | | contained in this Security Instrument and in any |
| | VEREMY L. BASS | (Scal) - Borrower |
| | Aine U.Bc | (Scal) - Borrower |
| | | (Seal) - Borrower |
| | | (Scal) |

| | | カ | 2009 _, a Notary Public | | | |
|--------------------------|-----------------|--|---------------------------|----------------|------------------|--|
| STATE OF IDAHO, | | | | | County ss: | |
| On this | 23 | day of Oct. | 2009 | | • | before me: |
| O. D. D. | Lisann | e Binomali | a Notary Public | in and for the | e said county | and state |
| personally appeared _ | - Autorial III | <u> </u> | _ , u riolaly rubile . | | to said county | and dutte, |
| personany appeared _ | | ······································ | | | | |
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| | | person(s) who exe | cuted the foregoing ins | trument, and | acknowledged | to me that |
| _he/she/they executed th | e same. | | | | | |
| In witness whereco | of I have hereu | nto set my hand an | d affixed my official sea | d the day and | year in this cer | tificate first |
| above written. | | • | • | • | • | |
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| LISANNE BI | INGMAN | * | My Commission Ev | niran: | -10-14 | |
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LEGAL DESCRIPTION EXHIBIT A

The East 25 feet of Lot 9 and all of Lot 10, Block 10 of Maplewood Addition to the City of Lewiston, according to the recorded plat thereof. Records of Nez Perce County, Idaho

Legal Description Exhibit A 2C404-XX (06/08).01(d/i)

Page 1 of 1







AFTER RECORDING RETURN TO: IDEA Law Group, LLC 4100 E. Mississippi Avenue, Suite 420 Denver, CO 80246

Instrument # 902262
NEZ PERCE COUNTY, IDAHO
08-17-2022 08:14:59 AM No. of Pages: 2
Recorded for: IDEA LAW GROUP, LLC
PATTY WEEKS Fee: \$13.00
Ex-Officio Recorder Deputy Raqual Lewis
Index to: NOTICE/DEFAULT (211)
Electronically Recorded by Simplifile

NOTICE: YOU ARE HEREBY NOTIFIED THAT THE AMOUNT OF YOUR INDEBTEDNESS TO THE BENEFICIARY, THEIR SUCCESSORS IN INTEREST AND/OR ASSIGNEES AS RECITED BELOW, AS OF AUGUST 1, 2022, IS \$139,529.94. INTEREST (PRESENTLY AT THE RATE OF 4.3750% PER ANNUM), AND FEES AND COSTS WILL CONTINUE TO ACCRUE AFTER THE DATE OF THIS NOTICE/LETTER. UNLESS YOU DISPUTE THE VALIDITY OF THE DEBT, OR ANY PORTION THEREOF WITHIN 35 DAYS AFTER RECEIVING NOTICE OF THIS DOCUMENT, THIS OFFICE WILL ASSUME THE DEBT TO BE VALID. IF YOU NOTIFY THIS OFFICE IN WRITING WITHIN THE 35-DAY PERIOD THAT THE DEBT OR ANY PORTION THEREOF IS DISPUTED, VERIFICATION OF THE DEBT WILL BE OBTAINED AND MAILED TO YOU. UPON WRITTEN REQUEST WITHIN 35 DAYS, THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR, IF DIFFERENT FROM THE CURRENT CREDITOR, WILL BE PROVIDED.

NOTICE: WE ARE A DEBT COLLECTOR. THIS COMMUNICATION IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR PURPOSES OF DEBT COLLECTION.

NOTICE OF DEFAULT

BANK OF AMERICA, N.A., holder of the beneficial interest under the Deed of or transfer in trust executed by Jeremy L Bass, a married man as his sole and separate property, as Grantor(s), to Fidelity National Title Insurance Co. as successor Trustee and Mortgage Electronic Registration Systems, Inc., as beneficiary, as nominee for Bank of America, N.A., its successors and assigns as beneficiary, and recorded October 30, 2009 as Instrument No. 774964, Mortgage Records of Nez Perce County, Idaho. An Appointment of Successor Trustee was recorded on August 9, 2022 under Instrument No. 902078. Said Deed of Trust was assigned on March 20, 2012 to Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP by an instrument recorded under Instrument No. 799540, on March 30, 2012.

The beneficiary hereby gives notice that a breach of obligation for which such transfer is security has occurred, the nature of such breach being the failure to pay when due, under Deed of Trust Note:

The monthly payments for Principal and Interest Due from July 1, 2020 through August 1, 2022: and all subsequent payments until the date of sale or reinstatement

These payments include interest at the current rate of 4.375%.

The sum owing on the obligation secured by said Deed of Trust consists of the principal balance of \$112,136.62, together with interest and any advances plus foreclosure fees and costs. All delinquent amounts are now due, together with accruing late charges and interest, unpaid and accruing taxes, assessments, trustee's fees, attorney's fees, and any amounts advanced to protect the security associated with this foreclosure.

On the following-described real property in said County:

The East 25 feet of Lot 9 and all of Lot 10, Block 10 of Maplewood Addition to the City of Lewiston, according to the recorded plat thereof. Records of Nez Perce County, Idaho

The beneficiary elects to sell or cause the trust property to be sold to satisfy said obligation.

| DATED: | 8/16/2022 | | | J | S |
|----------------|-----------|------------|--|-----|---|
| | | | TRUSTEE: | | |
| | | | MIT |) / | |
| | | | Michael J. Newell, 19 Attorney at Law | 53 | |
| STATE OF |) |) | | | |
| COUNTY OF King | County) |) SS:) | | | |

On this 16th day of August, 2022, personally appeared Michael J. Newell, who acknowledged that he signed the within foregoing instrument as his free and voluntary act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

RATHANA C VANNARATH Notary Public State of Washington

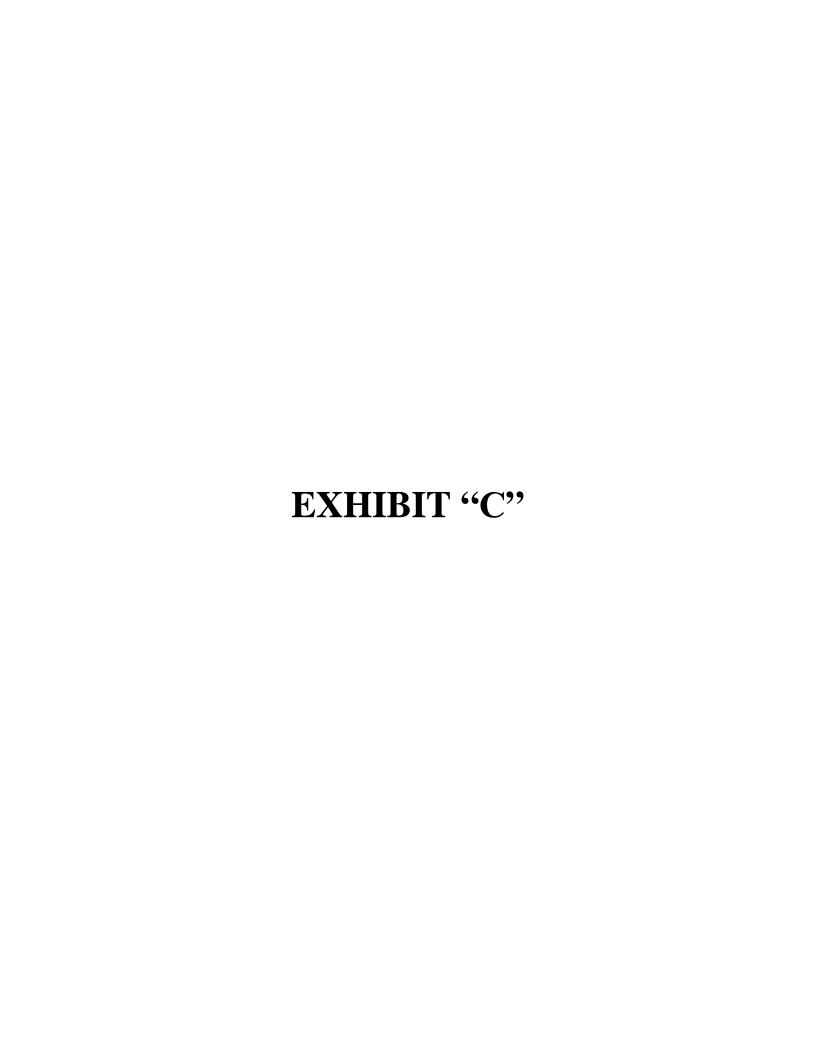
MATAN VILLENT

Notary Public: Name: Rathana Vannarath

Residing at: King Coul My Appt. Expires:01/03/2024

This Notarization was conducted using online audio/video technology.

> For Information Call: 800-561-4567 Bank of America, N.A. c/o Carrington Mortgage Services, LLC 1600 S Douglass Rd Anaheim, CA 92806 Ref: 48043908



Instrument # 912340
NEZ PERCE COUNTY, IDAHO
01-29-2024 10:24:36 AM No. of Pages: 4
Recorded for: IDEA LAW GROUP, LLC
PATTY WEEKS Fee: \$19.00
Ex-Officio Recorder Deputy Mykayla Flores
Index to: AFF/MAILING (212)
Electronically Recorded by Simplifile

AFFIDAVIT OF MAILING

| Reference No Mailing Number: 0003 | 314-01 | | | | - |
|---|---|---|--|---------------------------------------|---|
| STATE OF CALIFORNIA | } | }SS | | | |
| COUNTY OF SAN DIEGO |) | ,55 | | | |
| l, | Aaron Ayala | ······ | , declare as follow | /S: | |
| I am and at all times he resident of San Diego (| | citizen of the Unit | ed States, over the a | age of eighteen y | years and a |
| That at the request of attached document, in postage prepaid, to the | separate sealed en | velopes, in accord | lance with the check | ked mailing class | |
| ⊠Ce | st Class rtified Return st Class with Certifi | □Certified □ Registered cate of Mailing | | ed Electronic Re ered Internation | |
| Additional Services pro | ovided during the pr | oduction of this n | nail order (if any): | | |
| None | | | | | |
| I declare under penalty | of perjury under tl | he laws of the Sta | te of California that | the foregoing is | true and correct. |
| January 25 2024 | San Diego, Calif | _{fornia} <u>U</u> | · Challe | | |
| Date and Place | | | Affiant) | | |
| A notary public or othe the document to which document. | | | | | 1 |
| STATE OF CALIFORNIA COUNTY OF SAN DIEGO | D | | | | |
| OnJanuary 25 personally appeared A whose name(s) is/are s the same in his/her/th person(s), or the entity | aron Ayala, who pro subscribed to the w eir authorized capa | ithin instrument a city(ies), and that | basis of satisfactory nd acknowledged to by his/her/their sign | o me that he/she nature(s) on this | the person(s) e/they executed |
| I certify under PENALT and correct. | Y OF PERJURY unde | r the laws of the S | State of California th | at the foregoing | paragraph is true |
| WITNESS my hand and | official seal. | 0.1 | | | |
| Signature | | M | (Seal) | | ADELINA R. LARSON Notary Public - California San Diego County |

WE MAY BE ACTING AS A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED MAY BE USED FOR THAT PURPOSE.

NOTICE OF POSTPONED TRUSTEE'S SALE

Pursuant to IC 45-1506 (8), you are hereby notified that the undersigned Trustee will on February 29, 2024, at 11:00 a.m. sell at public auction to the highest and best bidder, payable at the time of the sale, the following described real property, situated in Nez Perce County, State of Idaho.

The East 25 feet of Lot 9 and all of Lot 10, Block 10 of Maplewood Addition to the City of Lewiston, according to the recorded plat thereof. Records of Nez Perce County, Idaho

Which is subject to that certain Deed of Trust recorded under Instrument Number 774964, in the Official Records of Nez Perce County.

Said Trustee's Sale was originally scheduled for December 30, 2022 pursuant to the Notice of Trustee's Sale recorded in the Official Records Nez Perce County, Idaho, under Instrument No. 904186, and was continued by public proclamation to January 27, 2023, and further continued to February 21, 2023, and further continued to March 17, 2023, and further continued to March 31, 2023, and further continued to April 27, 2023; and further continued to May 25, 2023, and further continued to July 20, 2023, and further continued to August 17, 2023, and further continued to September 14, 2023, and further continued to October 12, 2023; and further continued to November 9, 2023, and further continued to December 7, 2023, and further continued to January 4, 2024, and further continued to February 1, 2024, and further continued to the date, time and place specified above.

| DATED:1/24/24 | | |
|---------------|-------------------------------|--|
| | TRUSTEE | |
| | By | |
| | Janaya L. Carter, #8226 | |
| | 4530 S. Eastern Ave., Ste. 10 | |
| | Las Vegas, NV 89119 | |
| | Phone: (877) 353-2146 | |

Postal Class: First Class Mail Date: 01/24/2024 Type of Mailing: Letter Attachment:

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0003314-01 000 0124WEB IDEA_Law000787

(11)9690024868389803 Jeremy L. Bass 1515 21st Ave.

Lewiston, ID 835013926

(11)9690024868389834 1

Àimee M. Taylor 1515 21st Avenue Lewiston, ID 83501

(11)9690024868389865 2

Àimee M. Taylor 42338 Waha Rd

Lewiston, ID 83501-7812

3 (11)9690024868389896

Aimee Marissa Taylor 1515 21st Avenue Lewiston, ID 83501

(11)9690024868389940 4

Aimee Marissa Taylor 42338 Waha Rd Lewiston, ID 83501-7812

5 (11)9690024868389988

Occupants 1515 21st Avenue

Lewiston, ID 83501

Sender: IDEA Law Group LLC 4530 S. Eastern Ave., Suite 10

Las Vegas NV 89119

Postal Class: Certified - Ret
Mail Date: 01/24/2024
Type of Mailing: Letter

Attachment: 0003314-01 000 0124WEB IDEA_Law000787

0 71969002484081749038

Jeremy L. Bass 1515 21st Ave.

Lewiston, ID 835013926

1 71969002484081749052

Aimee M. Taylor 1515 21st Avenue Lewiston, ID 83501

2 71969002484081749069

Aimee M. Taylor 42338 Waha Rd

Lewiston, ID 83501-7812

3 71969002484081749090

Aimee Marissa Taylor 1515 21st Avenue Lewiston, ID 83501

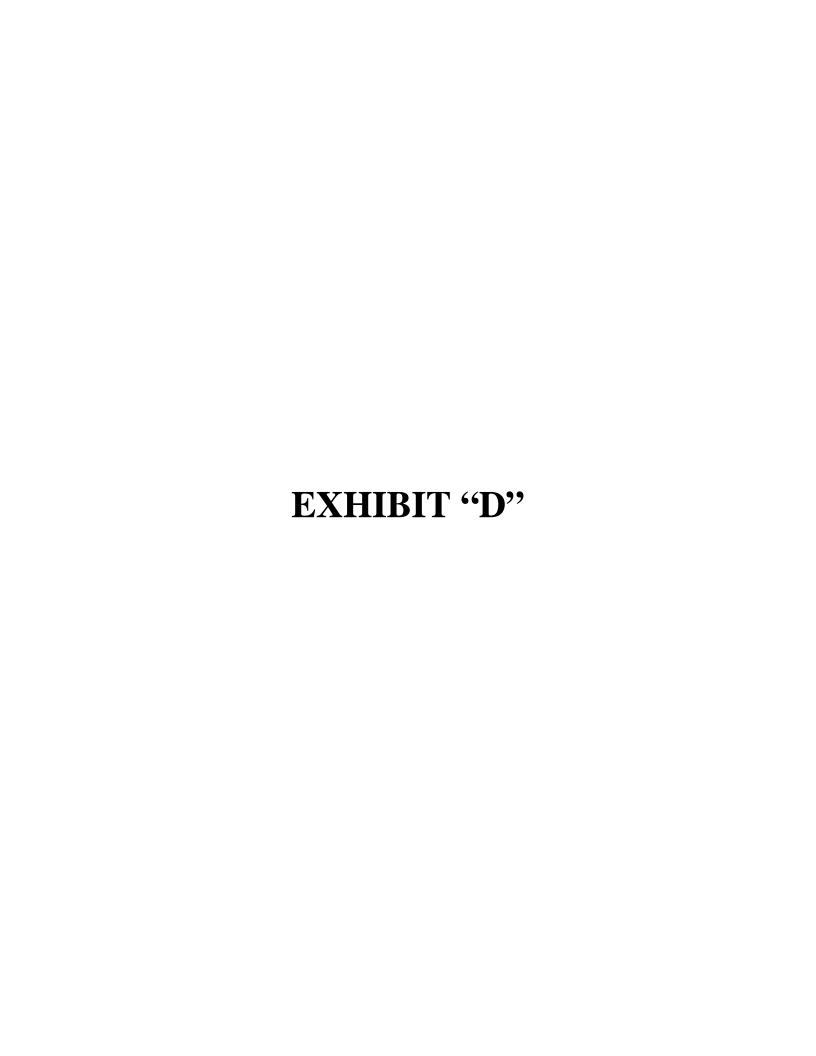
4 71969002484081749113

Aimee Marissa Taylor 42338 Waha Rd Lewiston, ID 83501-7812

5 71969002484081749137

Occupants 1515 21st Avenue Lewiston, ID 83501 Sender: IDEA Law Group LLC 4530 S. Eastern Ave., Suite 10

Las Vegas NV 89119



Filed: 02/17/2023 15:03:47 Second Judicial District, Nez Perce County Patty O. Weeks, Clerk of the Court By: Deputy Clerk - Davenport, Brittany

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

JEREMY L. BASS,

Plaintiff,

v.

MICHAEL NEWELL, Esq. at IDEA LAW GROUP LLC, CARRINGTON MORTGAGE SERVICES, and BANK OF AMERICA,

Defendants.

Case No. CV35-22-1875

OPINION AND ORDER ON MOTION TO DISMISS AND STRIKE THE SUMMONS AND COMPLAINT

THIS MATTER is before the Court on Defendant's *Motion to Dismiss and Strike the Summons and Complaint*.¹ The Court heard oral arguments on the matter on January 26, 2023.

The Plaintiff Jeremy Bass appeared pro se. The Defendant Michael Newell appeared pro se.² The Court, having reviewed the briefs submitted by the parties, having heard arguments of counsel, and being fully advised in the matter, hereby renders its decision.

FACTUAL BACKGROUND

In September of 2008, the Plaintiff Jeremy Bass entered into a loan agreement with Zion's Bank for the purchase of property located in Lewiston, Idaho. Shortly after entering into

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¹ Filed January 17, 2023.

² The other named defendants did not appear in this matter as it appears they have not been served with a summons.

OPINION AND ORDER ON MOTION TO DISMISS AND STRIKE THE SUMMONS AND COMPLAINT

the agreement Bass's loan was sold by Zion's to Bank of America. Bass asserts that he made payments on the promissory note until 2019 when he went into forbearance on the loan.³

It was during this forbearance period that Bass alleges he received a notice from Carrington Mortgage, the servicer of the deed of trust, attempting to "trick" him into signing a new promissory note. Bass asserts that he did not sign the new note but instead sought clarification from Land Title which then provided him with a letter of full reconveyance showing that his debt had been satisfied. Bass has asserted that despite the existence of the letter of full reconveyance, the Defendant Michael Newell, brought forth a new deed of trust which Bass alleges exhibits his forged signature.

On August 16, 2022, Newell sent Bass a Notice of Default and a sale of the property was set for December 30, 2022. On December 12, 2022, Bass sent Newell a cease and desist letter asserting that the loan had been paid in full and that there is no outstanding debt with Bank of America. Bass also demanded that the scheduled sale of the property be halted.⁶ On December 27, 2022, Bass filed a *Complaint* against Newell, Bank of America, and Carrington Mortgage Services, seeking injunctive and declaratory relief, as well as damages for breach of contract and breach of the duty of good faith and fair dealing.⁷ Additionally, Bass issued a request for a temporary restraining order. These documents, as well as a Summons, were served upon Idea Law Group, LLC on December 29, 2022. However, in the Summons, Bass only listed Bank of America as the named Defendant. Bass did not serve the above documents on Michael Newell⁸ or either of the other named defendants Bank of America or Carrington Mortgage Services. On

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³ It is asserted by the Defendant that Bass continued to make payments into 2020. *Affidavit in Support of Motion to Dismiss and Strike the Summons and Complaint*, Exhibit C.

⁴ Complaint, at 2.

⁵ Newell is the trustee appointed to effectuate the foreclosure

⁶ Opposition to Defendant's Motion to Dismiss on Statute of Limitations Grounds, Exhibit B.

⁷ It appears from the *Complaint* that the basis for these damages is the alleged forgery of loan documents.

⁸ Affidavit in Support of Motion to Dismiss and Strike the Summons and Complaint, pg. 2, paragraph 11.

January 17, 2023, Newell filed a Notice of Limited Appearance and a Motion to Dismiss and Strike Summons and Complaint.

ANALYSIS

The Defendant Michael Newell has moved to dismiss the complaint and strike the summons issued by the Plaintiff asserting numerous errors in both the Complaint and the summons.

1. Objections concerning the temporary restraining order

Newell asserts that the Plaintiff may not seek a temporary restraining order without an affidavit or a verification of the facts in his complaint. Further, Newell asserts that a temporary restraining order may not be issued by this Court as: 1) Bass failed to serve the other named defendants; 2) no hearing has been set on the matter; 3) and no bond has been issued. At the January 26, 2022 hearing on this matter this Court denied Bass's request for a temporary restraining order on the record. Therefore these issues are now moot and need not be further address in this written opinion.

2. Indispensable parties

Newell argues that – due to the Plaintiff's allegations of forgery – the title company, closing agent, and notary are all indispensable parties who must be named in this suit. Newell asserts that there are no allegations in the complaint that the named Defendants knew of the alleged forgery and therefore the action cannot be maintained and the matter must be dismissed. Bass acknowledges that indispensable parties are not currently named in the complaint but requests more time to name and serve all necessary parties.

I.R.C.P. 21, captioned "Misjoinder and nonjoinder of parties," provides that misjoinder, and inferentially nonjoinder, "is not ground for dismissal of an action." It further provides that "(p)arties may be dropped or added by order of

⁹ Opposition to Defendant's Motion to Dismiss and Strike Summons and Complaint, at 1.

the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just."

Holmes v. Henderson Oil Co., 102 Idaho 214, 216, 628 P.2d 1048, 1050 (1981). While the Court agrees with Newell's assertion that the above mentioned parties are necessary to be joined, this issue can be remedied by an order from the Court, pursuant to Idaho Rule of Civil Procedure 19(a)(2), joining the parties. The failure of Bass to name these parties is not grounds for dismissal of his action.

3. Statute of Limitations

Newell asserts that there has never been an amendment to the contract signed by Bass. Further Newell argues that, as Bass entered into the mortgage in 2009, Bass's asserted causes of action are barred by the Statute of Limitations. While not expressly stated by Newell, this Court finds this argument to be a motion to dismiss pursuant to I.R.C.P. 12(b)(6). Additionally, this Court has been presented with matters outside of the pleadings by both parties and therefore it must treat the motion to dismiss as a motion for summary judgment. *See Paslay v. A&B Irrigation Dist.*, 162 Idaho 866, 869, 406 P.3d 878, 881 (2017).

Summary judgment is proper if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. When considering whether the evidence in the record shows that there is no genuine issue of material fact, the trial court must liberally construe the facts, and draw all reasonable inferences, in favor of the nonmoving party. The moving party has the burden of establishing there is no genuine issue of material fact.

If the moving party has demonstrated the absence of a question of material fact, the burden shifts to the nonmoving party to demonstrate an issue of material fact that will preclude summary judgment. The nonmoving party must present evidence contradicting that submitted by the movant, and which demonstrates a question of material fact. However, a mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue of material fact for the purposes of summary judgment.

Johnson v. Wal-mart Stores, Inc., 164 Idaho 53, 56, 423 P.3d 1005, 1008 (2018) (internal citations omitted).

A party asserting that a fact ... is genuinely disputed must support the assertion by ... citing to particular parts of materials in the record, ... or by showing that the materials cited do not establish the absence ... of a genuine dispute. Thus, the party opposing summary judgment must bring to the trial court's attention evidence that may create a genuine issue of material fact. Mere conclusory allegations will not raise a genuine issue of material fact.

Gordon v. U.S. Bank Nat'l Ass'n, 166 Idaho 105, 119, 455 P.3d 374, 388 (2019) (internal citations omitted).

The trial court is not required to search the record looking for evidence that may create a genuine issue of material fact; the party opposing the summary judgment is required to bring the evidence to the court's attention.

Silicon Int'l Ore, LLC v. Monsanto Co., 155 Idaho 538, 552, 314 P.3d 593, 607 (2013).

Here, Bass asserts that the Statute of Limitations has not yet run on his claims for fraud or breach of contract as he only recently discovered the fraud that is the basis for these claims. 10 While Bass asserts that his signature was forged as a basis for these claims, it does not appear to this Court that this assertion is supported in the record by any more than Bass's conclusory allegations. However, Newell has submitted copies of the Note and Deed of Trust, signed by Bass in 2009, to which Newell asserts no amendments were ever made. Based on the record presented this Court is constrained to find the only evidence of a signature by Bass which could have been forged dates back to 2009. Bass began to make payments to Zion's that year and continued to make payments on the Note until late 2020. It is inconceivable to this Court that Bass would do so believing that he did not actually enter into that agreement. Had he not entered

¹⁰ While Bass has not explicitly made a claim of fraud, he has raised allegations of forgery. Newell's motion to dismiss asserts that the statute of limitations has run on Bass's breach of contract and fraud claims.

into that agreement he would at least known or should have known of this alleged forged signature at that time. Bass's claims for both breach of contract and fraud are clearly barred by the statute of limitations. Summary Judgment is appropriate and Bass's claims against Newell are dismissed.

4. Improper Summons and Service

Newell asserts that the summons issued by the Clerk of the Court is improper under the Idaho Rules of Civil Procedure. Newell asserts that the Summons should be stricken as it was not directed to him as a defendant and was not in the form provided in Idaho Rule of Civil Procedure 4(3)(b). The Summons served upon Idea Law Group listed only Bank of America as a named defendant. Therefore it failed to comply with Idaho Rule of Civil Procedure 4(a)(1)(G). Further, the summons issued appears to have been in the form required by Idaho Rules of Family Law Procedure 204 for use in family law proceedings rather than the proper form required pursuant to Idaho Rule of Civil Procedure 4(a)(3)(B). The Court finds that as to Defendant Michael Newell, the Summons as issued is improper and insufficient under the Idaho Rules of Civil Procedure and therefore it shall be stricken. The Court further finds that under Idaho Rule of Civil Procedure 4(c) service of process on Michael Newell is insufficient.

ORDER

IT IS HEREBY ORDERED that the Motion to Dismiss and Strike Summons and Complaint is GRANTED in part and DENIED in part, consistent with the above opinion.

DATED: February 17, 2023

MARK T. MONSON

District Judge

¹¹ The relevant Statute of Limitations are: 5 years for breach of contract, I.C.§5-216, and 3 years from the time of discovery by the aggrieved party, I.C. §5-218.

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing document was delivered via e-mail to:

Jeremy L. Bass

- via first class mail

1515 21st Ave

- via email

Lewiston, ID 83501

Quantum.j.l.bass@rawdeal.io

William L. Bishop

- via email

Michael J. Newell

- via email

Teresa Scherenberg

- via email

IDEA Law Group, LLC

4530 S. Eastern Ave., Ste. 10

Las Vegas, NV 89119

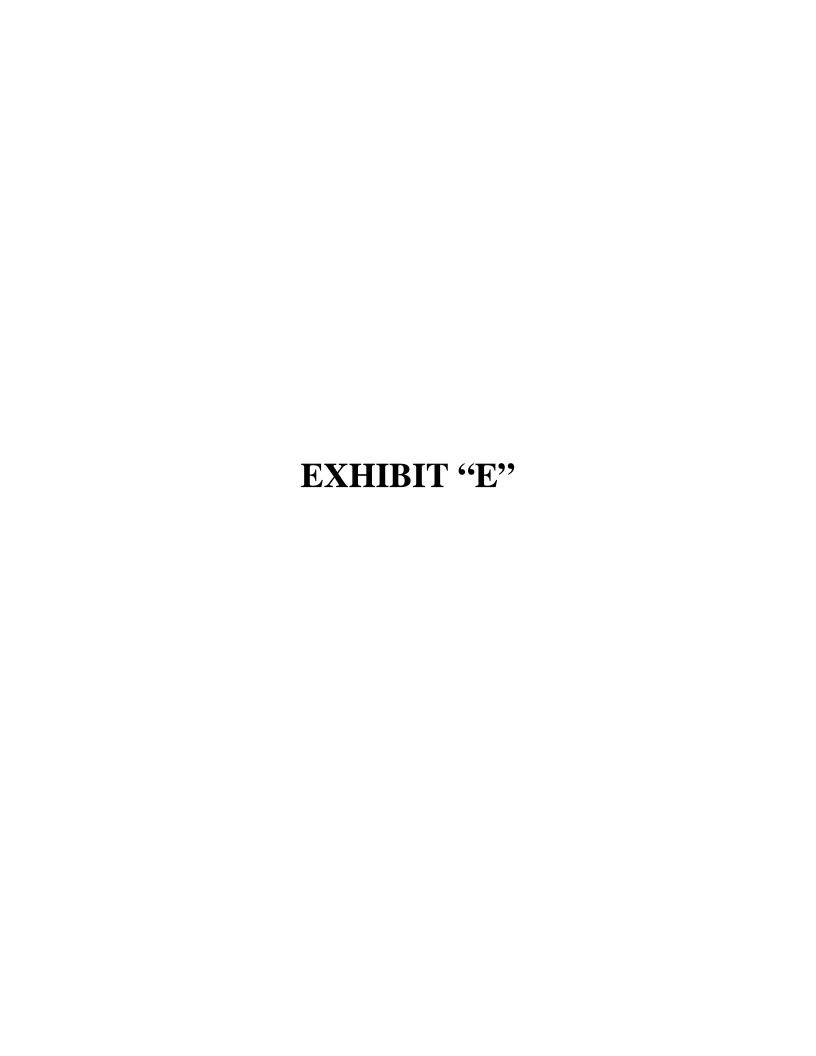
bbishop@idealawgroupllc.com

mnewell@idealawgroupllc.com

tscherenberg@idealawgroupllc.com

Dated: 2/17/2023 3:03:52 PM

PATTY O. WEEKS Clerk of the Court





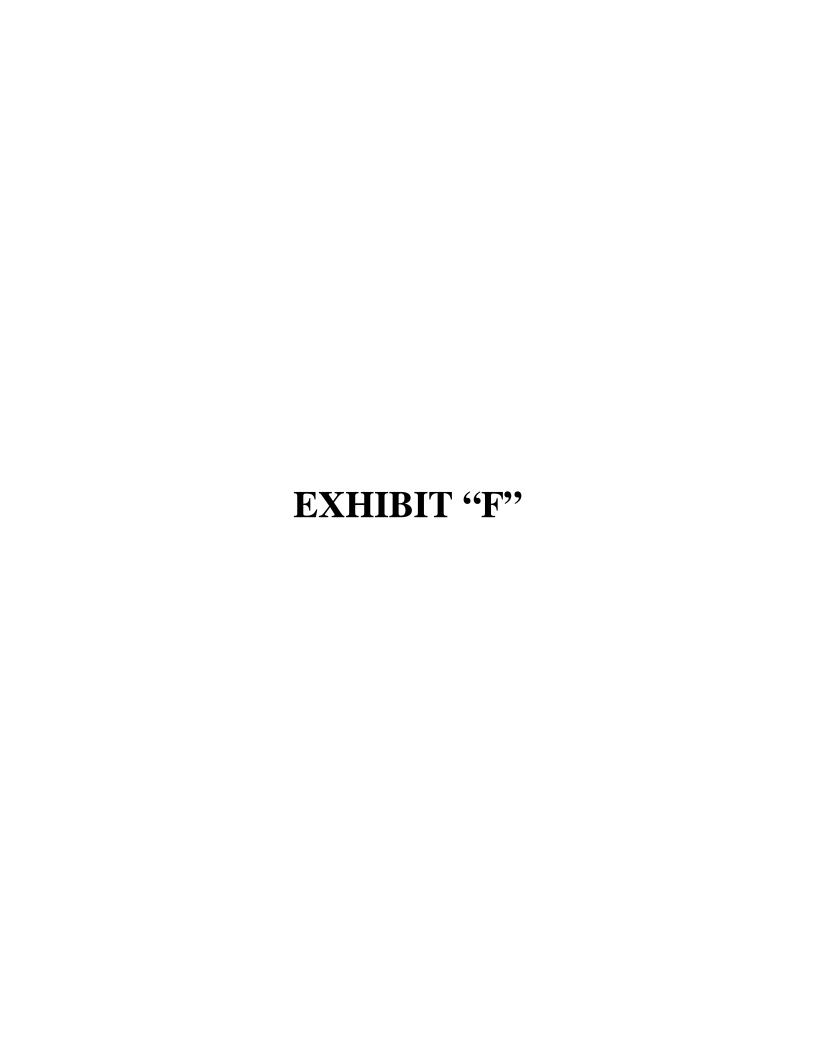
Firm Mailing Book For Accountable Mail Check type of mail or service

| | | Check type of mail of service | | |
|---|----------------------------|---------------------------------------|--------------------------|--|
| Name and Address of Sender | lame and Address of Sender | | ☐ Priority Mail Express | |
| Halliday Watking & Mann DC | | ☐ Adult Signature Restricted Delivery | ☐ Registered Mail | |
| Halliday, Watkins & Mann PC 376 E 400 S STE 300 | | X Certified Mail | ☐ Return Receipt for | |
| Salt Lake City UT 84111 | | ☐ Certified Mail Restricted Delivery | Merchandise | |
| , , | | ☐ Collect on Delivery (COD) | ☐ Signature Confirmation | |
| | | ☐ Insured Mail | ☐ Signature Confirmation | |
| | | ☐ Priority Mail | Restricted Delivery | |
| Mailing Date | USPS Tracking/Article Nu | ımber | | |
| 3/21/2024 3:34:30 PM | 9214 8901 9403 830 | 00 0054 0635 24 | | |
| First Class Mail Postage | | Certified Mail Postage | | |
| \$0.64 | | \$7.36 | | |
| Sent To | | | | |
| JEREMY L. BASS | | | | |
| 1515 21ST AVE. LEWISTON, | ID 83501 | | | |
| , | | | | |
| | | | | |
| | | | | |
| Reference Information | | | | |
| ID21698 | | | | |
| Notice to Vacate | | | | |
| | | | | |
| | | | | |



Firm Mailing Book For Accountable Mail Check type of mail or service

| | | Check type of mail of service | | | |
|--|--------------------------|---------------------------------------|--|------------------------|--|
| Name and Address of Sender | | ☐ Adult Signature Required | | Priority Mail Express | |
| Halliday Watking & Mann DC | | ☐ Adult Signature Restricted Delivery | | ☐ Registered Mail | |
| Halliday, Watkins & Mann PC 376 E 400 S STE 300 | | ▼ Certified Mail | | Return Receipt for | |
| Salt Lake City UT 84111 | | ☐ Certified Mail Restricted Delivery | | Merchandise | |
| | | ☐ Collect on Delivery (COD) | | Signature Confirmation | |
| | | ☐ Insured Mail | | Signature Confirmation | |
| | | ☐ Priority Mail | | Restricted Delivery | |
| Mailing Date | USPS Tracking/Article Nu | ımber | | | |
| 3/21/2024 3:34:39 PM | 9214 8901 9403 830 | 0 0054 0636 85 | | | |
| First Class Mail Postage | | Certified Mail Postage | | | |
| \$0.64 | | \$7.36 | | | |
| Sent To | | | | | |
| CURRENT OCCUPANT | | | | | |
| 1515 21ST AVE. LEWISTON, | ID 93501 | | | | |
| 1313 Z 131 AVL. LLVVISTOIN, | ID 0000 I | | | | |
| 1313 2131 AVE. LEWISTON, | ID 6330 I | | | | |
| | ID 6330 I | | | | |
| , | | | | | |
| | ID 63301 | | | | |
| Reference Information | | | | | |
| , Reference Information | | | | | |
| Reference Information | ID 63301 | | | | |



ALERT: TROPICAL STORM FRANCINE, FLOODING, AND SEVERE WEATHER IN THE SOUTHER...

USPS Tracking[®]

FAQs >

Tracking Number: Remove X

92148901940383000054063524

Copy Add to Informed Delivery (https://informeddelivery.usps.com/)

Latest Update

Your item was delivered to an individual at the address at 9:42 am on March 25, 2024 in LEWISTON, ID 83501.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Delivered

Delivered, Left with Individual

LEWISTON, ID 83501 March 25, 2024, 9:42 am

See All Tracking History

What Do USPS Tracking Statuses Mean? (https://faq.usps.com/s/article/Where-is-my-package)

| Text & Email Updates | ~ |
|---------------------------|---|
| Return Receipt Electronic | ~ |
| USPS Tracking Plus® | ~ |
| Product Information | ~ |

See Less ^

Tracking Number: Remove X

92148901940383000054063685

Copy Add to Informed Delivery (https://informeddelivery.usps.com/)

Latest Update

Your item was delivered to an individual at the address at 9:42 am on March 25, 2024 in LEWISTON, ID 83501.

Get More Out of USPS Tracking:

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Delivered

Delivered, Left with Individual

LEWISTON, ID 83501 March 25, 2024, 9:42 am

See All Tracking History

What Do USPS Tracking Statuses Mean? (https://faq.usps.com/s/article/Where-is-my-package)

See More ✓

Track Another Package

Enter tracking or barcode numbers

Need More Help?

Contact USPS Tracking support for further assistance.

FAQs

Electronically Filed
7/9/2024 11:13 AM
Second Judicial District, Nez Perce County
Patty Weeks, Clerk of the Court
By: Amber Gurney, Deputy Clerk

Lewis N. Stoddard, Bar No. 7766 Halliday, Watkins & Mann, P.C. 376 East 400 South, Suite 300 Salt Lake City, UT 84111 Phone: 801-355-2886

Facsimile: 801-328-9714 lewis@hwmlawfirm.com

Attorney for Plaintiff | HWM File No. ID21698

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF NEZ PERCE

| DPW Enterprises LLC and Mountain Prime 2018 LLC, | CV35-24-1063 |
|---|--|
| Plaintiff, v. | POST FORECLOSURE COMPLAINT FOR EJECTMENT AND RESTITUTION OF PROPERTY |
| Jeremy L. Bass, Dwayne Pike, and Current occupant; and Unknown Parties in Possession of the real property commonly known as 1515 21st Ave., Lewiston, ID 83501, | Fee Category A Filing Fee \$221 |
| Defendants. | 1 |

The plaintiff, by and through its attorneys of record, hereby complains and alleges as follows:

I.

By virtue of a foreclosure sale, plaintiff is the owner of real property located at 1515 21st Ave., Lewiston, ID 83501, ("The Property") and currently occupied by the defendants.

II.

Plaintiff is authorized to bring this lawsuit as it owns the above named property which is located in Nez Perce County, Idaho.

III.

Defendants are individuals currently residing in Nez Perce County, Idaho and residing in and occupying The Property who have otherwise refused to surrender possession of The Property.

Summons and Complaint HWM File No. ID21698

Following a default under the terms of a Note and Deed of Trust encumbering the real property located at 1515 21st Ave., Lewiston, ID 83501, pursuant to notice and Idaho Code 45-1506, a Trustee's Sale of the property was conducted and a Trustee's Deed was issued to plaintiff. A true and correct copy of the Trustee's Deed is attached hereto, and incorporated herein, as "Exhibit A."

V.

Plaintiff was entitled to possession of the property on the tenth day following the sale.

Defendants have failed and refused to surrender The Property.

VI.

A Notice to Vacate was issued and served on or about March 21, 2024, in response to which on March 26, 2024 Dwayne Pike indicated he was occupying the Property pursuant to a lease agreement presently under a month to month term. Accordingly, Mr. Pike was provided with 90 additional days to vacate, which he has failed to do. Attached hereto as Exhibit "B" is a true and correct copy of the Notice to Vacate.

VII.

Because of 's failure to surrender The Property, plaintiff has been required to retain the law firm of HALLIDAY WATKINS & MANN, P.C. to represent it in this action and is entitled to an award of attorney's fees pursuant to Idaho Code 12-120, 12-121, and other applicable Idaho statutes. Plaintiff request fees in the amount of \$1,000.00 if this matter is not contested and reserves the right to request additional fees or other further relief if this matter is contested.

WHEREFORE, plaintiff prays for the following relief:

1. For an Order and Writ of Ejectment authorizing the County Sheriff to return possession of the premises located at 1515 21st Ave., Lewiston, ID 83501 to Plaintiff;

- 2. For attorney fees and cost in the amount of \$1,000.00 if judgment is entered in this matter by default; and
- 3. For costs and expenses incurred in removal of any personal property not otherwise removed by the Defendants after entry of Judgment in this matter and other relief as outlined in Idaho Code § 6-316(2); and
- 4. For such further and reasonable sums as the court may deem just if this matter is contested.

 DATED on July 8, 2024.

HALLIDAY WATKINS & MANN, P.C.

By:/s/ Lewis N. Stoddard

□ Lewis N. Stoddard, ISB #7766

Attorneys for Plaintiff

VERIFICATION

State of Idaho)
)ss.
County of Ada)

Lewis N. Stoddard, states:

That I am one of the attorneys for the Plaintiff herein; that I certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the facts in the foregoing Complaint are true and correct as more fully set forth in the recorded deed attached hereto.

/s/ Lewis N. Stoddard Lewis N. Stoddard Lewis N. Stoddard, Bar No. 7766 Halliday, Watkins & Mann, P.C. 300 W. Main St., Ste. 150 Boise, ID 83702

Phone: 801-355-2886 Facsimile: 801-328-9714 lewis@hwmlawfirm.com

Attorney for Plaintiff | HWM File No. ID21698

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT, OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF NEZ PERCE

| DPW Enterprises LLC and Mountain Prime 2018 LLC, | SUMMONS |
|--|--------------|
| Plaintiffs, | CV35-24-1063 |
| v. | |
| Jeremy L. Bass; Dwayne Pike; and Unknown Parties in Possession of the real property commonly known as: | |
| 1515 21st Ave., Lewiston, ID 83501, | |
| Defendants. | |

TO: Unknown Parties in Possession of the real property commonly known as:

1515 21st Ave., Lewiston, ID 83501

NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PLAINTIFF. THE COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE UNLESS YOU RESPOND WITHIN TWENTY (21) DAYS. READ THE INFORMATION BELOW.

You are hereby notified that in order to defend this lawsuit, an appropriate written response must be filed with the above designated Court, 1230 Main St., PO Box 896, Lewiston, ID 83501, 208-799-3040 within twenty-one (21) days after service of this Summons on you. If you fail to so respond, the Court may enter judgment against you as demanded by the plaintiff in the Complaint.

The nature of the claim against you is for, among other things, restitution of the premises located at: 1515 21st Ave., Lewiston, ID 83501.

A copy of the Complaint is served with this Summons. If you wish to seek the advice or representation by an attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time and other legal rights protected.

An appropriate written response requires compliance with Rule 2 and other Idaho Rules of Civil Procedure and must also include:

- 1. The title and number of this case.
- 2. If your response is an Answer to the Complaint, it must contain admissions or denials of the separate allegations of the Complaint and other defenses you may claim.
- 3. Your signature, mailing address and telephone number, or the signature, mailing address and telephone number of your attorney.
- 4. Proof of mailing or delivery of a copy of your response to plaintiff's attorney, as designated above.

To determine whether you must pay a filing fee with your response, contact the Clerk of the abovenamed court.

7/9/2024 11:13 AM WITNESS my hand and the seal of this District Court, and dated ______.

CLERK OF THE DISTRICT COURT

SECOND JUDICINI OF

AUDITOR

RECORDER

Deputy Clerk

EXHIBIT "A"

Instrument # 912874
NEZ PERCE COUNTY IDAHO
03-04-2024 0121 10 PM No of Pages 2
Recorded for IDEA LAW GROUP, LLC
PATTY WEEKS Fee \$15.00
EX-Officio Recorder Deputy Mykayla Flores
Index Io. TRUSTEE DEED (105)
Etectronically Recorded by Simplifie

AFTER RECORDING RETURN TO:

IDEA Law Group, LLC 4530 S. Eastern Ave., Ste. 10 Las Vegas, NV 89119

Jeremy L. Bass, 48043908

TRUSTEE'S DEED

The GRANTOR, Janaya L. Carter, as present Trustee under that Deed of Trust, as hereinafter particularly described, in consideration of the premises and payments, recited below, hereby grants and conveys without warranty to <u>DPW Enterprises LLC and Mountain Prime 2018 LLC</u>, 10028 S. Morgan Grove Way, Sandy, UT 84092, GRANTEES, that real property, situated in Nez Perce County, State of <u>Idaho</u>, described as follows

The East 25 feet of Lot 9 and all of Lot 10, Block 10 of Maplewood Addition to the City of Lewiston, according to the recorded plat thereof Records of Nez Perce County, Idaho

Also known as: 1515 21st Ave., Lewiston, ID 83501-3926

Assessor's Property Tax Parcel/Account Number(s): RPL0880010010A

This conveyance is made pursuant to the powers conferred upon Trustee by that certain Deed of Trust between Jeremy L Bass, a married man as his sole and separate property as Grantor, for the benefit and security of Mortgage Electronic Registration Systems, Inc., as beneficiary, as nominee for Bank of America, N.A., its successors and assigns as Beneficiary, dated October 16, 2009 recorded on October 30, 2009 as Instrument No 774964 in the mortgage records of Nez Perce County, Idaho, and after the fulfillment of the conditions specified in said Deed of Trust authorizing this conveyance as follows:

(a) Default occurred in the obligations for which said Deed of Trust was given as security and the Beneficiary made demand upon the said Trustee to sell said property pursuant to the terms of said Deed of Trust.

Notice of Default was recorded as Instrument No 902262, Mortgage Records of Nez Perce County, Idaho, and in the Office of the Recorder of each county in which the property described in said Deed of Trust, or any part thereof, is situated, the nature of such default being as set forth in said Notice of Default Such default still existed at the time of sale

- (b) After recordation of said Notice of Default, Trustee gave notice of the time and place of the sale of said property by registered/certified mail, return receipt requested, by personal service upon the occupants of said real property and/or by posting in a conspicuous place on said premises and by publishing in a newspaper of general circulation in each of the counties in which the property is situated as more fully appears in Affidavits recorded at least 20 days prior to date of sale as Instrument Nos. 904186, 904187, 904188, 904189, and 904190, Mortgage Records of Nez Perce County, Idaho.
- (c) The provisions, recitals and contents of the Notice of Default referred to in paragraph (a) supra and of the Affidavits referred to in paragraph (b) supra shall be and there are hereby incorporated herein and made an integral part hereof for all purposes as though set forth herein at length.
- (d) All requirements of law regarding the mailing, personal service, posting, publication and recording of Notice of Default, and Notice of Sale and all other notices have been complied with.
- (e) Not less than 120 days elapsed between the giving of Notice of Sale by registered or certified mail and the sale of said property

TRUSTEE'S DEED - 1

Bass, 48043908 ID-Triske's Deed Lender (f) Trustee, at the time and place of sale fixed by said notice, at public auction, in one parcel, struck off to Grantee, being the highest bidder therefore, the property herein described for the sum of \$165,346,71 subject however to all prior liens and encumbrances. No person or corporation offered to take any part of said property less than the whole thereof for the amount of principal, interest, advances and costs

IN WITNESS WHEREOF, The Trustee, has caused his/her name to be hereunto subscribed to this 1st_day of March, 2024

| | | By |
|-------------|------------|--|
| | Florida | Janaya L. Carter, #8226 Attorney and Successor Trustee |
| State of | |) |
| County of _ | Lee County |) ss:) |

On this 1st day of March, 2024, personally appeared Janaya L. Carter, who acknowledged that she signed the within foregoing instrument as her free and voluntary act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written. Type of ID: Washington Drivers License



Name Janice R Cash-Lyons Notary Public for Florida

Residing at: Washington Drivers License

Commission expires 02/22/2027

Document ID: 08f3fd29-2170-4f67-994c-e2ebaf5a531c Session ID: 85e97080-25da-4f82-ba51-f9ad6feb81f1

This Notarization was conducted using audio/video technology provided by eNotaryLog, LLC

EXHIBIT "B"

NOTICE OF EVICTION AND THREE DAY DEMAND TO VACATE THE PROPERTY

Jeremy L. Bass AND ALL OTHER OCCUPANTS 1515 21st Ave. Lewiston, ID 83501

YOU ARE HEREBY NOTIFIED that the premises you are occupying was sold at a foreclosure sale on February 29, 2024 and was purchased by DPW Enterprises LLC and Mountain Prime 2018 LLC ("Property Owner"). A copy of the Trustee's/Sheriff's Deed is attached to this Notice. Pursuant to Idaho Code § 45-1506(11) the Property Owner is entitled to possession of the below referenced property after 10 days of the foreclosure sale.

The real property to which the Notice of Eviction pertains is commonly known as 1515 21st Ave., Lewiston, ID 83501, and is more particularly described as follows:

The East 25 feet of Lot 9 and all of Lot 10, Block 10 of Maplewood Addition to the City of Lewiston, according to the plat thereof. Records of Nez Perce County, Idaho.

Demand is hereby made upon you to move out and vacate these premises within three (3) calendar days from the date of the service of this Notice upon you. At the time of moving out, you should remove all of your personal property and leave the premises clean. If you fail to move out within said three (3) calendar days, an eviction action will immediately be filed against you requesting immediate possession of the Property and damages for your detainer.

If you are a tenant of the former owner of the property, and not a child, spouse, or parent of the former owner of the property, you may be entitled to additional rights as provided in the Protecting Tenants at Foreclosure Act of 2009. In order for us to determine on behalf of the Property Owner what rights you may have under the Protecting Tenants at Foreclosure Act of 2009, you must immediately forward to us the following:

- (a) a copy of your written lease (if an oral lease you must provide us a summary of the terms of your oral lease, including: the terms of the lease, monthly rental amount, and all other relevant least terms);
- (b) proof of your alleged monthly rental amount (proof may be in the form of a copy of you lease showing the rent amount, or, if an oral lease, copies of cancelled checks or money orders);
- (c) proof that all monthly rental payments due under the lease have been paid to date (proof may be in the form of copies of cancelled checks, money orders, or a signed statement from your landlord stating that you have paid your rent in full as required by your lease);
- (d) the names of all occupants of the Property who are over 18 years of age; and
- (e) indicate whether you are a Section 8 tenant.

If you are determined to be a bona fide tenant with an expired lease, the Property Owner hereby provides notice that your right to remain at the property expires no later than 90 calendar days after the service of this Notice. If you are still in possession of the property at that time, the Property Owner will immediately begin eviction proceedings against you.

If you believe you are a bona fide tenant with a unexpired lease or a bona fide tenant with

an expired lease, you are required to make your required monthly lease payments during the remainder of your lease agreement if your lease is unexpired and/or during the 90 day notice of eviction period if your lease is expired.

If you are an active service member, or a dependent of an active service member of the United States Armed Forces, you may be entitled to rights as provided in the Servicemembers Civil Relief Act. In such case, you or your attorney should immediately provide proof of military service to this law firm to determine eligibility and verify if you fall under the protection of this Act.

Please govern yourselves accordingly.

Dated this 215th day of March, 2024.

Lewis Stoddard

Attorney for Property Owner Halliday, Watkins & Mann, P.C.

300 W. Main St., Ste. 150

Boise, ID 83702

Telephone: 801-355-2886

File No. ID21698