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

<p>DPW Enterprises LLC and Mountain Prime 2018 LLC,</p> <p style="text-align: center;"><b>Plaintiffs,</b></p> <p style="text-align: center;"><b>v.</b></p> <p>Jeremy L. Bass; Dwayne Pike; and Unknown Parties in Possession of the real property commonly known as:</p> <p>1515 21st Ave., Lewiston, ID 83501,</p> <p style="text-align: center;"><b>Defendants.</b></p>	<p><b>MEMORANDUM IN OPPOSITION TO DEFENDANTS’ MOTION FOR STAY</b></p> <p>Case No.: CV35-24-1063</p>
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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 21<sup>st</sup> 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 10<sup>th</sup> 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,<sup>1</sup> and which Defendant continues to occupy and collect rent from a tenant residing therein under a purported claim of ownership. Accordingly,

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<sup>1</sup> 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/ 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 1515 21 <sup>st</sup> Ave Lewiston, ID 83501	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Email/iCourt
Ken Nagy Idaho Legal Aid Services, Inc. <a href="mailto:kennagy@idaholegalaid.org">kennagy@idaholegalaid.org</a> <i>Counsel for Dwayne Pike</i>	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email/iCourt

/s/ Lewis N. Stoddard  
Lewis N. Stoddard