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

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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 21<sup>st</sup> 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 <sup>st</sup> Ave Lewiston, ID 83501	<ul><li>☑ U.S. Mail</li><li>☐ Email/iCourt</li></ul>
Ken Nagy Idaho Legal Aid Services, Inc. kennagy@idaholegalaid.org Counsel for Dwayne Pike	☐ U.S. Mail

/s/ Lewis N. Stoddard

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

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[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's 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)

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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.
- 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 noer(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:
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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

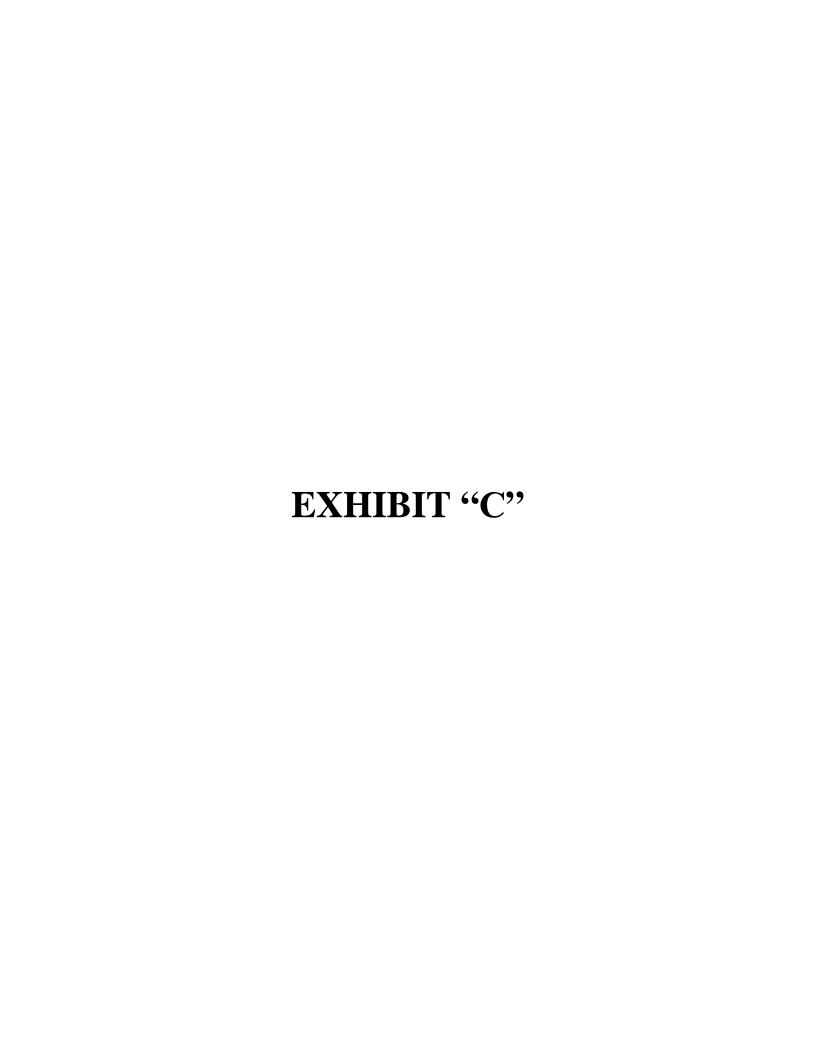
MATAN VILLENT

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	<sub>fornia</sub> <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:

0

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

0

Attachment: 0003314-01 000 0124WEB IDEA\_Law000787

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

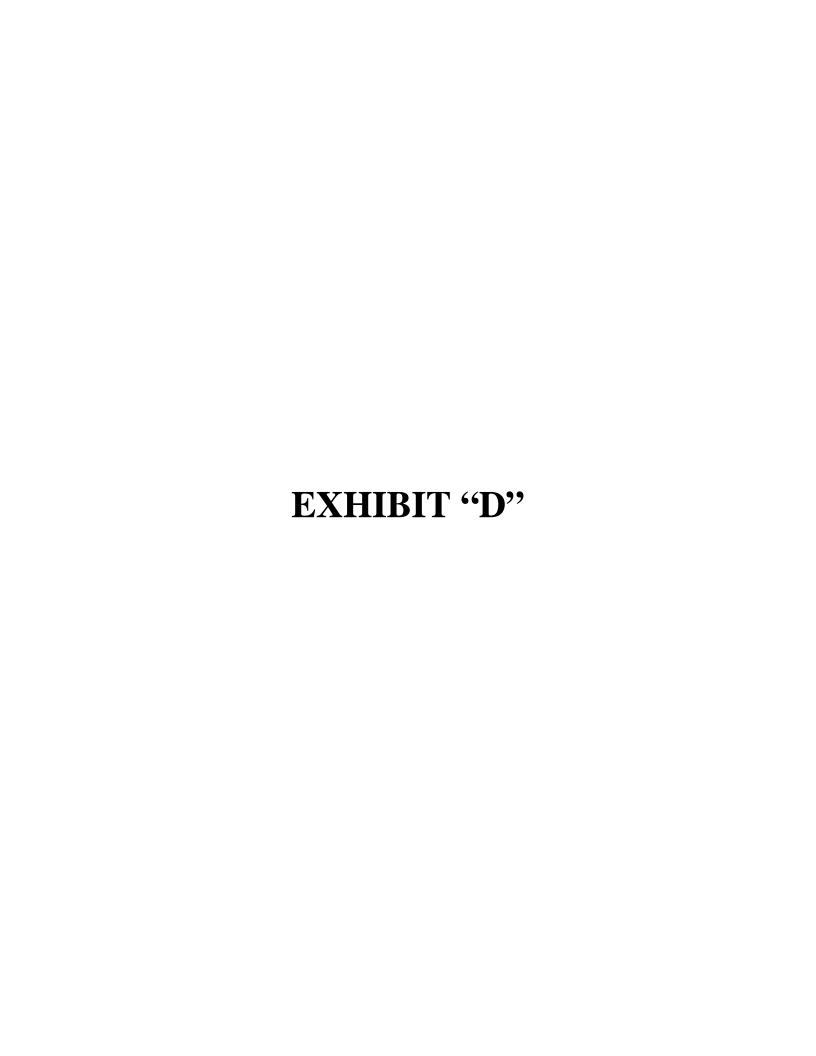
4 71969002484081749113

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*.<sup>1</sup> 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.<sup>2</sup> 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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<sup>&</sup>lt;sup>1</sup> Filed January 17, 2023.

<sup>&</sup>lt;sup>2</sup> 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.<sup>3</sup>

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.<sup>6</sup> 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.<sup>7</sup> 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 Newell<sup>8</sup> or either of the other named defendants Bank of America or Carrington Mortgage Services. On

.

<sup>&</sup>lt;sup>3</sup> 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.

<sup>&</sup>lt;sup>4</sup> Complaint, at 2.

<sup>&</sup>lt;sup>5</sup> Newell is the trustee appointed to effectuate the foreclosure

<sup>&</sup>lt;sup>6</sup> Opposition to Defendant's Motion to Dismiss on Statute of Limitations Grounds, Exhibit B.

<sup>&</sup>lt;sup>7</sup> It appears from the *Complaint* that the basis for these damages is the alleged forgery of loan documents.

<sup>&</sup>lt;sup>8</sup> 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

<sup>&</sup>lt;sup>9</sup> 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

<sup>&</sup>lt;sup>10</sup> 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

<sup>&</sup>lt;sup>11</sup> 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

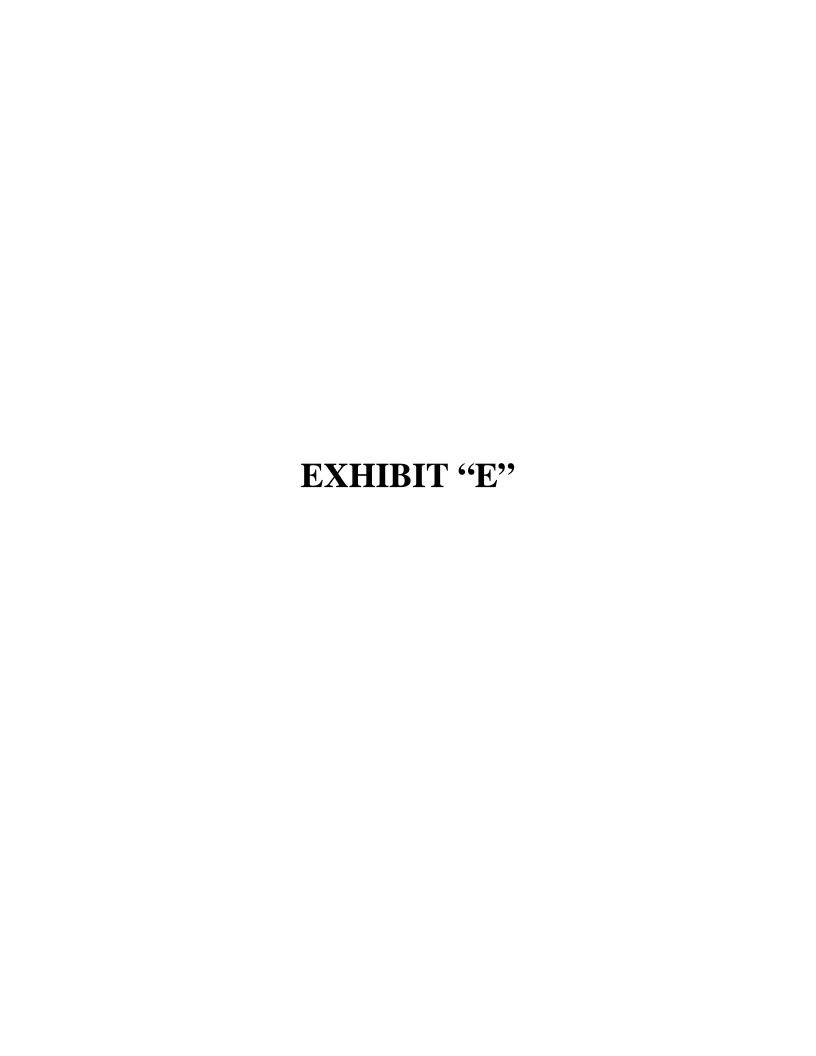
bbishop@idealawgroupllc.com

mnewell@idealawgroupllc.com

tscherenberg@idealawgroupllc.com

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

PATTY O. WEEKS Clerk of the Court





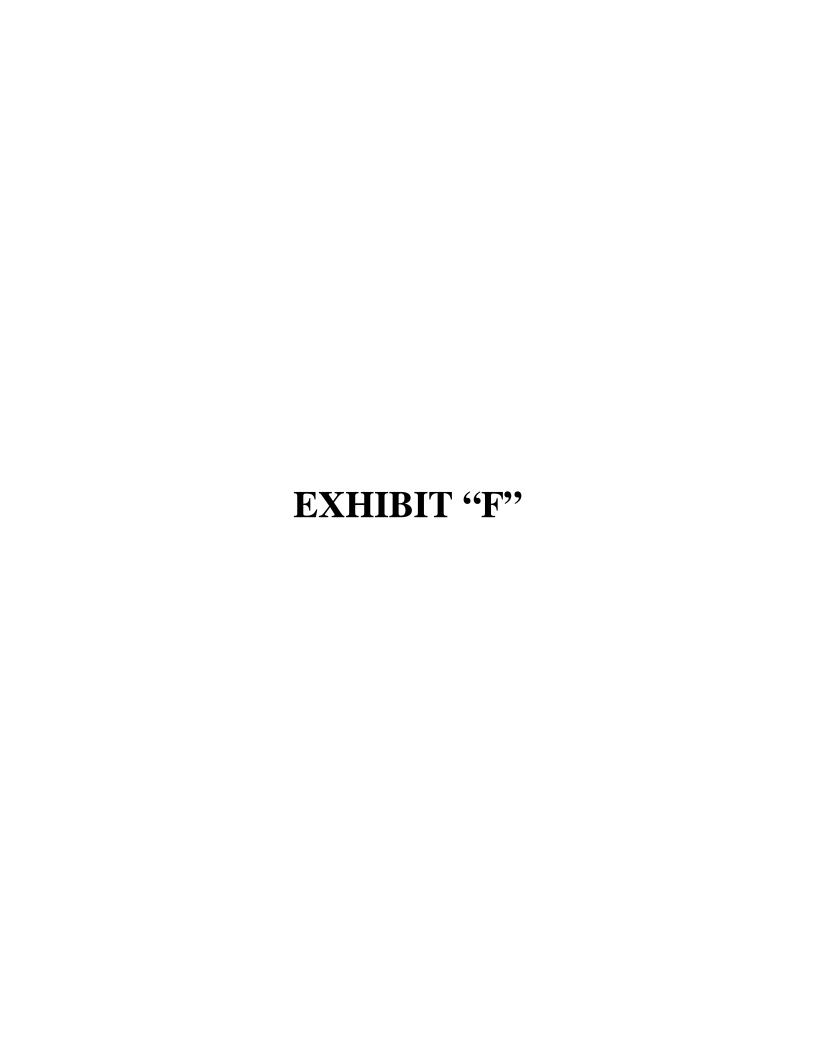
# Firm Mailing Book For Accountable Mail Check type of mail or service

		Check type of mail of service		
Name and Address of Sender		☐ Adult Signature Required	☐ Priority Mail Express	
Halliday Watkins & Mann BC		☐ 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		37.36		
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 Watkins & 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 8300 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...

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FAQs >

Tracking Number: Remove X

### 92148901940383000054063524

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

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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** 

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**FAQs** 

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

Defendants.

## 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,

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

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

Lewis N. Stoddard

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
<b>v.</b>	
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

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 21<sup>st</sup> 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

<sup>&</sup>lt;sup>1</sup> 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.*<sup>2</sup>

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

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<sup>&</sup>lt;sup>2</sup> 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' representative<sup>3</sup> 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. <sup>4</sup> 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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<sup>&</sup>lt;sup>3</sup> 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.

<sup>&</sup>lt;sup>4</sup> 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.<sup>5</sup> 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

<sup>&</sup>lt;sup>5</sup> 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;<sup>6</sup>

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

<sup>6</sup> 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 <sup>st</sup> 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.

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

/s/ Lewis N. Stoddard

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 21<sup>st</sup> 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.)

<sup>&</sup>lt;sup>1</sup> 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 (1<sup>st</sup>) day of each and every month of the term of this Lease to the Landlord at 1515 21<sup>st</sup> 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,<sup>2</sup> 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.

<sup>2</sup> 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 <sup>st</sup> Ave Lewiston, ID 83501	⊠ U.S. Mail ☐ Email/iCourt
Ken Nagy Idaho Legal Aid Services, Inc. <a href="mailto:kennagy@idaholegalaid.org">kennagy@idaholegalaid.org</a> Counsel for Dwayne Pike	☐ U.S. Mail ⊠ Email/iCourt

/s/ Lewis N. Stoddard

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

Lewis N. Stoddard