Lewis N. Stoddard, Bar No. 7766
Halliday, Watkins & Mann, P.C.
300 W. Main St., Ste. 150
Boise, ID 83702
Phone: 801-355-2886
Facsimile: 801-328-9714
lewis@hwmlawfirm.com
Attorney for Plaintiff | HWM File No. ID21698

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

DPW Enterprises LLC and Mountain Prime 2018 LLC, **Plaintiffs,** **v.** Jeremy L. Bass; Dwayne Pike; and Unknown Parties in Possession of the real property commonly known as: 1515 21st Ave., Lewiston, ID 83501, **Defendants.**	**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT JEREMY L. BASS'S MOTION FOR RECONSIDERATION** Case No.: CV35-24-1063

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

I. INTRODUCTION

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

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

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

II. STANDARD OF REVIEW

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

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

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

III. ARGUMENT

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

should be denied.

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

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

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

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

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

Defendant's arguments.

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

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

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

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

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

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

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

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

proper notice under Idaho Code § 55-208 fails.

In Defendant's Response to Plaintiff's Allegations in Section E, Defendant attempts to justify his reliance and citation to fictitious cases which Defendant appears to have simply made up in order to give the appearance of validity to his baseless arguments. Defendant admits his various citations do not exist and asserts that their inclusion was a mere mistake, but conspicuously fails to provide the correct citations to the authority upon which he was relying. Accordingly, Defendant's additional brief has no bearing on the correctness of the Court's ruling granting summary judgment.

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion for reconsideration should be denied. Defendant fails to present the Court with any new or additional facts, or a more comprehensive presentation of both law and fact which bears on the correctness of the Court's ruling granting summary judgment in favor of Plaintiffs.

DATED This November 27, 2024.

HALLIDAY WATKINS & MANN, P.C.

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

CERTIFICATE OF SERVICE

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

Jeremy L. Bass 1515 21st 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