

KEN NAGY
Managing Attorney
Idaho Legal Aid Services, Inc.
2230 3rd Ave. North
Lewiston, Idaho 83501
Phone: (208) 413-9458
Fax: (208) 743-3261
Email: kennagy@idaholegalaid.org
Idaho State Bar #6176

ATTORNEY FOR DEFENDANT DWAYNE PIKE

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)	CASE NO. CV35-24-1063
Prime 2018 LLC,)	
)	AFFIDAVIT OF DWAYNE PIKE IN
Plaintiff,)	SUPPRT OF DEFENDANT PIKE'S
v.)	RESPONSE TO PLAINTIFF'S MOTION
)	FOR SUMMARY JUDGMENT
Jeremy L. Bass, Dwayne Pike, and Current)	
occupant, and Unknown Parties in)	
Possession of the real property commonly)	
known as 1515 21 st Avenue, Lewiston,)	
Idaho 83501,)	
)	
Defendants.)	
)	

DWAYNE PIKE, being first duly sworn on oath, deposes and says:

1. I am a named defendant in the above-entitled proceeding.
2. I currently reside at 1515 21st Avenue, Unit C, Lewiston, Idaho 83501, a portion of the real property that is the subject of this action.

AFFIDAVIT OF DWAYNE PIKE IN
SUPPORT OF DEFENDANT PIKE'S
RESPONSE TO PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

3. I hold possession of said real property pursuant to a Residential Lease Agreement (hereinafter “Lease”) that I entered into with the then-owner of said real property, Jeremy L. Bass (hereinafter “Defendant Bass”), on the 28th day of February, 2024, a copy of which is attached hereto as Exhibit “A”. The Lease expressly obligates me to pay rent to Defendant Bass in the amount of \$700.00 per month.

4. The Lease remains currently in effect and has not been terminated or modified by Defendant Bass or any other individual entity in any way.

5. I receive a Section 8 housing voucher subsidy from the Idaho Housing and Finance Association (hereinafter “IHFA”) for partial payment of the rent in the amount of \$423.00 per month. IHFA had been paying its portion of the rent to Defendant Bass and since the Plaintiff foreclosed upon the real property at issue herein, has been paying its portion of the rent to the Plaintiff. I have always and continue to pay the remaining rental amount owing under the Lease in the amount of \$277.00 per month to Defendant Bass.

6. I am current on my portion of the rental payment to Defendant Bass and IHFA is current on its portion of the rent. I have not violated any other provision of the Lease.

7. I have never received any notice from the above-named Plaintiff to send rental payments to anyone other than Defendant Bass. Instead, I received a Notice to Vacate from the Plaintiff which instructed me to “make [my] required monthly lease payments during the remainder of [my] lease agreement. . . .” I have complied with that directive from the Plaintiff by continuing to make my monthly rental payments to Defendant Bass.

8. I have received legal documents that the Plaintiff has filed with the Court alleging that it is the owner of the real property at issue herein. I am aware that issue is currently subject to

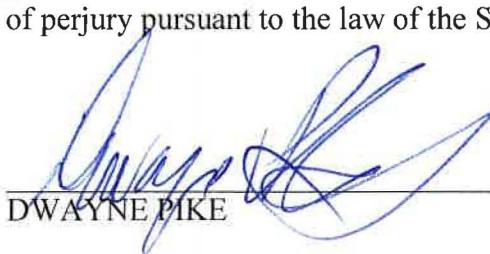
dispute and I have no knowledge who is in fact the current legal owner of the real property at issue herein. I have therefore complied with the provisions of the Lease and the directive contained in the Plaintiff's Notice to Vacate by remaining current on my rental payments to Defendant Bass.

9. I have never received any notice, written or verbal, from the Plaintiff or any other individual or entity which has stated that I am in default on the rent with regards to the real property at issue in this proceeding. Furthermore, I have never received any notice, written or verbal, from the Plaintiff or any other individual or entity which directed me to pay the rent to anyone other than Defendant Bass.

10. Further your affiant sayeth naught.

DATED this 26th day of August, 2024.

I HEREBY CERTIFY under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.



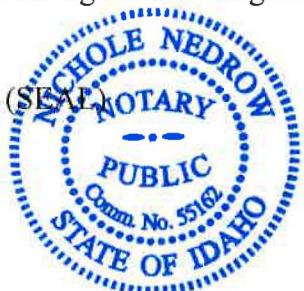
DWAYNE PIKE

STATE OF IDAHO)

: ss

County of Nez Perce)

I, Nicole Nedrow, a Notary Public do hereby certify that on this 26th day of August, 2024, personally appeared before me DWAYNE PIKE, being by me first duly sworn, declared that he is a Defendant in the above entitled matter and that he signed the foregoing document as such and that the statements therein contained are true.



Nicole Nedrow
Notary Public in and for the State of Idaho
Residing at: Lewiston, Idaho
My Commission Expires: 11/12/2027

AFFIDAVIT OF DWAYNE PIKE IN
SUPPORT OF DEFENDANT PIKE'S
RESPONSE TO PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

CERTIFICATE OF SERVICE

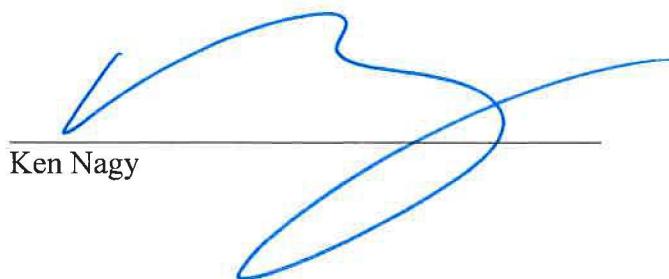
I HEREBY CERTIFY that on the 1st day of October, 2024, I caused to be served a full, true and accurate copy of the foregoing by the method indicated below, and addressed to the following:

Lewis N. Stoddard
Halliday, Watkins & Mann, P.C.
376 East 400 South, Suite 300
Salt Lake City, UT 84111
Phone: (801) 355-2886
Fax: (801) 328-9714
Email: lewis@wmlawfirm.com

- U.S. mail
 Hand delivered
 Overnight mail
 Facsimile transmission to #
 Email
 i-Court

Jeremy L. Bass
1515 21st Ave.
Lewiston, ID 83501-3926
Email: Quantum.J.L.Bass@RAWdeal.io

- U.S. mail
 Hand delivered
 Overnight mail
 Facsimile transmission to #
 Email
 i-Court



Ken Nagy

A handwritten signature in blue ink, appearing to read "Ken Nagy", is written over a horizontal line. The signature is fluid and cursive.

RESIDENTIAL LEASE AGREEMENT

28th 2024

February 2024

THIS LEASE (the "Lease") dated this 1st day of September, 2022

BETWEEN:

Jeremy Bass

(the "Landlord")

- AND -

Dwayne Pyle

(the "Tenant")

(individually the "Party" and collectively the "Parties")

IN CONSIDERATION OF the Landlord leasing certain premises to the Tenant and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, the Parties agree as follows:

1. Leased Property

1. The Landlord agrees to rent to the Tenant the room, municipally described as 1515 21st ave Unit C. (the "Property"), for use as residential premises only.
2. Subject to the provisions of this Lease, apart from the Tenant, no other persons will live in the Property without the prior written permission of the Landlord.
3. **No guests of the Tenants may occupy the Property for longer than one day without the prior written consent of the Landlord.**
4. No animals are allowed to be kept in or about the Property without the revocable written permission of the Landlord.
5. Subject to the provisions of this Lease, the Tenant is entitled to the use of parking on or about the Property, when available.
6. The Tenant and members of the Tenant's household **will not** smoke anywhere in the Property nor permit any guests or visitors to smoke in the Property, except in the outside sitting area away from openings to the units.
7. The Tenant and members of the Tenant's household **will not** vape anywhere in the Property nor permit any guests or visitors to vape in the Property, except in the outside sitting area away from openings to the units.
8. Term
8. The term of the Lease is a periodic tenancy commencing at 12:00 noon on February 28th, 2024 and continuing for a period of two years (the "Term"). The Tenant will receive a 1% discount on the Rent for the second year for signing the Lease early and for the 2 year agreement. After the initial Term, the Lease will continue on a month-to-month basis until the Landlord or the Tenant terminates the tenancy.

EXHIBIT "A"

9. Any notice to terminate this tenancy must comply with the applicable legislation of the State of Idaho (the "Act").
10. Rent
10. Subject to the provisions of this Lease, the rent for the Property is **\$700.00 per month (the "Rent")**.
11. The Tenant will pay the Rent on or before the first (1st) day of each and every month of the term of this Lease to the Landlord at 1515 21st ave. or at such other place as the Landlord may later designate by cash or Money order, Cashier's check.
12. The Landlord may increase the Rent for the Property upon providing to the Tenant such notice as required by the Act.
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.
14. Security Deposit
14. On execution of this Lease, the Tenant will pay the Landlord a security deposit of \$700.00 (the "Security Deposit") which is a non-refundable amount for the soul use of maintenance.
15. The Landlord will hold the Security Deposit at an interest bearing account solely devoted to security deposits to which will count towards a final maintenance bill if applicable.
- 16 During the term of this Lease or after its termination, the Landlord may charge the Tenant or make deductions from the Security Deposit for any or all of the following:
 1. repair of walls due to plugs, large nails or any unreasonable number of holes in the walls including the repainting of such damaged walls;
 2. repainting required to repair the results of any other improper use or excessive damage by the Tenant;
 3. unplugging toilets, sinks and drains;
 4. replacing damaged or missing doors, windows, screens, mirrors or light fixtures;
 5. repairing cuts, burns, or water damage to linoleum, rugs, and other areas;
 6. any other repairs or cleaning due to any damage beyond normal wear and tear caused or permitted by the Tenant or by any person whom the Tenant is responsible for;
 7. the cost of extermination where the Tenant or the Tenant's guests have brought or allowed insects into the Property or building;
 8. repairs and replacement required where windows are left open which have caused plumbing to freeze, or rain or water damage to floors or walls;

9. replacement of locks and/or lost keys to the Property and any administrative fees associated with the replacement as a result of the Tenant's misplacement of the keys; and

10. any other purpose allowed under this Lease or the Act.

For the purpose of this clause, the Landlord may charge the Tenant for professional cleaning and repairs if the Tenant has not made alternate arrangements with the Landlord.

17. The Tenant may not use the Security Deposit as payment for the Rent.

18. Pet Fee

18. On execution of this Lease, the Tenant will pay the Landlord a non-refundable pet fee of \$250.00 (the "Pet Fee").

19. Inspections

20. The Tenant acknowledges that the Tenant inspected the Property, including the grounds and all buildings and improvements, and that they are, at the time of the execution of this Lease, in good order, good repair, safe, clean, and tenantable condition.

21. At all reasonable times during the term of this Lease and any renewal of this Lease, the Landlord and its agents may enter the Property to make inspections or repairs, or to show the Property to prospective tenants or purchasers in compliance with the Act. The property again referring to the room, not the common areas in which the landlord co-habits.

22. Tenant Improvements

23. The Tenant will obtain written permission from the Landlord before doing any of the following:

1. applying adhesive materials, or inserting nails or hooks in walls or ceilings other than two small picture hooks per wall;

2. painting, wallpapering, redecorating or in any way significantly altering the appearance of the Property;

3. removing or adding walls, or performing any structural alterations;

4. installing a waterbed(s);

5. changing the amount of heat or power normally used on the Property as well as installing additional electrical wiring or heating units;

6. placing or exposing or allowing to be placed or exposed anywhere inside or outside the Property any placard, notice or sign for advertising or any other purpose; or

7. affixing to or erecting upon or near the Property any radio or TV antenna or tower.

24. Utilities and Other Charges

25. Insurance

26. The Tenant is hereby advised and understands that the personal property of the Tenant is not insured by the Landlord for either damage or loss, and the Landlord assumes no liability for any such loss.

27. 26 The Tenant is not responsible for insuring the Landlord's contents and furnishings in or about the Property for either damage or loss, and the Tenant assumes no liability for any such loss.

28. Attorney Fees

28. In the event that any action is filed in relation to this Lease, the unsuccessful Party in the action will pay to the successful Party, in addition to all the sums that either Party may be called on to pay, a reasonable sum for the successful Party's attorney fees.

29. Governing Law

27. This Lease will be construed in accordance with and exclusively governed by the laws of the State of Idaho.

28. Severability

28. If there is a conflict between any provision of this Lease and the Act, the Act will prevail and such provisions of the Lease will be amended or deleted as necessary in order to comply with the Act. Further, any provisions that are required by the Act are incorporated into this Lease.

29. The invalidity or unenforceability of any provisions of this Lease **will not** affect the validity or enforceability of any other provision of this Lease. Such other provisions remain in full force and effect.

30. Amendment of Lease

30. This Lease may only be amended or modified by a written document executed by the Parties.

31. Assignment and Subletting

31. The Tenant **will not** assign this Lease, or sublet or grant any concession or license to use the Property or any part of the Property. Any assignment, subletting, concession, or license, whether by operation of law or otherwise, will be void and will, at Landlord's option, terminate this Lease.

32. Additional Clause

32 Access to the common areas includes the basement kitchen, Bathroom, Laundry. There is no guest of the tenant that may be left unattended or stay overnight at any point without the landlord's written consent, and any guest must be introduced and known by the landlord due to the nature of the area and security reasons. Utilities (power, heating and cooling), Internet, and Water/Sewer/Garbage are all split and to be paid with rent. On average the utility services are \$200 a month per unit and any increase will be given in writing as this is included in the rental cost. The areas must be kept up with no trash or like items left about, and the common area must be kept clean. Room cleanliness is reason for ending the renting of the room if there are any health hazards created such as molding food or like scenarios. The landlord does work at night so reasonable accommodations will need to be worked out as time goes. Any issues need to be brought to the attention in writing and will be taken care of as soon as possible. Anything damaged in the common area by the tenant will be their responsibility to cover the replacement or work to fix which must be coordinated with the landlord.

32.2 If the Property is sold, the Lease will transfer with the Property, and the new owner will be bound by all the terms and conditions of this Lease.

32.3 The Landlord must pay out to the Tenant the sum of the Rent multiplied by the remainder of the months left in the Lease, unless specifically released from this requirement by the Tenant or Jeremy L. Bass.

33. Damage to Property

33. If the Property should be damaged other than by the Tenant's negligence or willful act or that of the Tenant's employee, family, agent, or visitor and the Landlord decides not to rebuild or repair the Property, the Landlord may end this Lease by giving appropriate notice.

34. Maintenance

34. The Tenant will, at its sole expense, keep and maintain the Property and appurtenances in good and sanitary condition and repair during the term of this Lease and any renewal of this Lease.

35. Major maintenance and repair of the Property involving anticipated or actual costs in excess of \$100.00 per incident not due to the Tenant's misuse, waste, or neglect or that of the Tenant's employee, family, agent, or visitor, will be the responsibility of the Landlord or the Landlord's assigns.

36. Where the Property has its own sidewalk, entrance, driveway or parking space which is for the use of the Tenant, the Tenant will keep the sidewalk, entrance, driveway or parking space clean, tidy and free of objectionable material including dirt, debris, snow and ice.

37. Where the Property has its own garden or grass area which is for the use of the Tenant, the Tenant will water, fertilize, weed, cut and otherwise maintain the garden or grass area in a reasonable condition including any trees or shrubs therein.

38. Care and Use of Property

38. The Tenant will promptly notify the Landlord of any damage, or of any situation that may significantly interfere with the normal use of the Property or to any furnishings supplied by the Landlord.

39. The Tenant **will not** engage in any illegal trade or activity on or about the Property.

40. The Parties will comply with standards of health, sanitation, fire, housing and safety as required by law.

41. The Parties will use reasonable efforts to maintain the Property in such a condition as to prevent the accumulation of moisture and the growth of mold. The Tenant will promptly notify the Landlord in writing of any moisture accumulation that occurs or of any visible evidence of mold discovered by the Tenant. The Landlord will promptly respond to any such written notices from the Tenant.

42. If the Tenant is absent from the Property and the Property is unoccupied for a period of 4 consecutive days or longer, the Tenant will arrange for regular inspection by the landlord or assigned agent of the landlord. The Landlord will be

notified in advance as to the name, address and phone number of the person doing the inspections.

43. At the expiration of the term of this Lease, the Tenant will quit and surrender the Property in as good a state and condition as they were at the commencement of this Lease, reasonable use and wear and tear excepted.

44. Rules and Regulations

44. The Tenant will obey all rules and regulations of the Landlord regarding the Property.

45. Lead Warning

45. Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not taken care of properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

46. Mediation and Arbitration

46. If any dispute relating to this Lease between the Parties is not resolved through informal discussion within 14 days from the date a dispute arises, the Parties agree to submit the issue first before a non-binding mediator and to an arbitrator in the event that mediation fails. The decision of the arbitrator will be binding on the Parties. Any mediator or arbitrator must be a neutral party acceptable to both Parties. The cost of any mediations or arbitrations will be paid by the Tenant.

47. Address for Notice

47 For any matter relating to this tenancy, the Tenant may be contacted at the Property or through the phone number below:

1. Name: See below

2. Phone: _____

48. For any matter relating to this tenancy, whether during or after this tenancy has been terminated, the Landlord's address for notice is:

1. Name: Jeremy Bass.

2. Address: 1515 21st ave.

The contact information for the Landlord is:

3. Phone: (208) 549-9584.

4. Email address: Quantum.J.L.Bass@RAWdeal.io.

49. General Provisions

49. All monetary amounts stated or referred to in this Lease are based in the United States dollar.

50. Any waiver by the Landlord of any failure by the Tenant to perform or observe the provisions of this Lease **will not** operate as a waiver of the Landlord's rights under this Lease in respect of any subsequent defaults, breaches or non-

performance and **will not** defeat or affect in any way the Landlord's rights in respect of any subsequent default or breach.

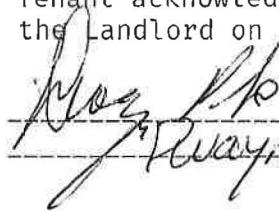
51. This Lease will extend to and be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors and assigns, as the case may be, of each Party. All covenants are to be construed as conditions of this Lease.
52. All sums payable by the Tenant to the Landlord pursuant to any provision of this Lease will be deemed to be additional rent and will be recovered by the Landlord as rental arrears.
53. Where there is more than one Tenant executing this Lease, all Tenants are jointly and severally liable for each other's acts, omissions and liabilities pursuant to this Lease.
54. Locks may not be added or changed without the prior written agreement of both Parties, or unless the changes are made in compliance with the Act.
55. The Tenant will be charged an additional amount of \$25.00 for each N.S.F. check or checks returned by the Tenant's financial institution.
56. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Lease. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.
57. This Lease may be executed in counterparts. Facsimile signatures are binding and are considered to be original signatures.
58. This Lease constitutes the entire agreement between the Parties.
59. During the last 30 days of this Lease, the Landlord or the Landlord's agents will have the privilege of displaying the usual 'For Sale' or 'For Rent' or 'Vacancy' signs on the Property.
60. Time is of the essence in this Lease.
61. The tenant is to have 1st & last month's rent, plus the security deposit and Pet deposit if applicable before moving in unless an agreement is already in writing with the landlord.

IN WITNESS WHEREOF Dwayne Pike and Jeremy Bass have duly affixed their signatures on this 20th day of February, 2024.

Jeremy Bass

(Tenant)

The Tenant acknowledges receiving a duplicate copy of this Lease signed by the Tenant and the Landlord on the 28 day of February, 2024.


Wayne Pfe (Tenant)

Lead-Based Paint Disclosure

Property: 1515 21st ave.

Landlord: Jeremy Bass

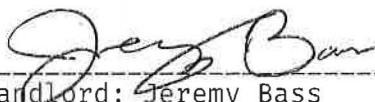
Tenant: Wayne Pfe

Landlord's Disclosure

The Landlord CERTIFIES THAT:

1. The Landlord has NO knowledge of any lead-based paint and/or lead-based paint hazards in or about the Property.
2. The Landlord has NO records or reports relating to lead-based paint and/or lead-based paint hazards in or about the Property.

Date: 28 day of
February, 2024



Landlord: Jeremy Bass

Tenant's Disclosure

The Tenant ACKNOWLEDGES receipt of:

1. the information contained in the above Landlord's Disclosure including the abovementioned reports and records; and
2. the pamphlet Protect Your Family from Lead in Your Home (EPA-747-K-99-001) or an equivalent pamphlet that has been approved for use in the state by the Environmental Protection Agency. The link is provided and what the tenant is receiving.

Date: 29 day of
February, 2024



Tenant: Wayne Pfe

The pamphlet Protect Your Family from Lead in Your Home can be ordered in hard copy or can be printed from the website <http://www2.epa.gov/lead/protect-your-family-lead-yourhome>.

Asbestos Disclosure

Property: 1515 21st ave.
Landlord: Jeremy Bass
Tenant: Dwayne Pike

Landlord's Disclosure

The Landlord CERTIFIES THAT:

1. The Landlord has investigated and there is no asbestos in or about the Property.
2. The Landlord has NO records or reports with respect to asbestos in or about the

Date: 28th day of
February, 2024

Property:

Landlord Jeremy Bass

Tenant's Disclosure

The Tenant ACKNOWLEDGES receipt of the information contained in the above Landlord's Disclosure including any reports and records.

Date: 28th day of
February, 2024

Tenant:

Dwayne Pike

KEN NAGY
Managing Attorney
Idaho Legal Aid Services, Inc.
2230 3rd Ave. North
Lewiston, Idaho 83501
Phone: (208) 413-9458
Fax: (208) 743-3261
Email: kennagy@idaholegalaid.org
Idaho State Bar #6176

ATTORNEY FOR DEFENDANT DWAYNE PIKE

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,)	CASE NO. CV35-24-1063
)	
Plaintiff,)	DEFENDANT PIKE'S RESPONSE TO
v.)	PLAINTIFF'S MOTION FOR SUMMARY
)	JUDGMENT
Jeremy L. Bass, Dwayne Pike, and Current)	
occupant, and Unknown Parties in)	
Possession of the real property commonly)	
known as 1515 21 st Avenue, Lewiston,)	
Idaho 83501,)	
)	
Defendants.)	
)	

COMES NOW the Defendant Dwayne Pike (hereinafter “Defendant Pike”), by and through his attorney of record Ken Nagy of Idaho Legal Aid Services, Inc., and hereby responds to the *Plaintiff's Motion for Summary Judgment* (hereinafter “Motion”), as well as *Plaintiff's Memorandum in Support of Motion for Summary Judgment and in Opposition to Motion to Dismiss and Strike Summons and Complaint* (hereinafter “Memorandum”), filed in this proceeding on the 16th day of September, 2024. This response is supported by the *Affidavit of*

DEFENDANT PIKE'S RESPONSE TO
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT

Dwayne Pike in Support of Defendant Pike’s Response to Plaintiff’s Motion for Summary

Judgment filed herewith.

Defendant Pike hereby responds to those issues and arguments contained in the Plaintiff’s Motion and Memorandum that pertain to him. Defendant Pike takes no position with regards to the issues and arguments contained in the Plaintiff’s Motion and Memorandum that pertain to Defendant Jeremy L. Bass (hereinafter “Defendant Bass”), other than as addressed below.

I. RELEVANT FACTS

Defendant Pike currently resides at 1515 21st Avenue, Unit C, Lewiston, Idaho 83501, a portion of the real property that is the subject of this action. *Pike Aff.* at ¶2. Defendant Pike holds possession of said real property pursuant to a Residential Lease Agreement (hereinafter “Lease”) that he entered into with Defendant Bass, the then-owner of said real property, on the 28th day of February, 2024. *Id.* at 3. The Lease obligates Defendant Pike to pay rent to Defendant Bass in the amount of \$700.00 per month. *Id.* Said Lease remains currently in effect and has not been terminated or modified by Defendant Bass or any other individual or entity in any way. *Id.* at ¶4

Defendant Pike receives a Section 8 housing voucher subsidy from the Idaho Housing and Finance Association (hereinafter “IHFA”) for partial payment of the rent in the amount of \$423.00 per month. IHFA had been paying its portion of the rent to Defendant Bass and since the Plaintiff foreclosed upon the real property at issue herein, has been paying its portion of the rent to the Plaintiff. Defendant Pike has always and continues to pay the remaining rental amount owing under the Lease in the amount of \$277.00 per month to Defendant Bass. *Id.* at ¶5. Defendant Pike is current on his portion of the rental payment to Defendant Bass and IHFA is

current on its portion of the rent. Defendant Pike has not violated any other provision of the Lease. *Id.* at ¶6.

Defendant Pike has never received any notice from the Plaintiff to send rental payments to anyone other than Defendant Bass. Instead, he received the Notice to Vacate that is attached as Exhibit “B” to the Plaintiff’s Post Foreclosure Complaint for Ejectment and Restitution of Property (hereinafter “Complaint”) from the Plaintiff which instructed him to “make your required monthly lease payments during the remainder of your lease agreement. . . .” Defendant Pike has complied with that directive from the Plaintiff by continuing to make his monthly rental payments to Defendant Bass. *Id.* at ¶7.

Defendant Pike has received legal documents that the Plaintiff has filed with the Court alleging that the Plaintiff is the owner of the real property at issue herein. Defendant Pike is aware that issue is currently subject to dispute and he has no knowledge who is in fact the current legal owner of the real property at issue herein. Defendant Pike has therefore complied with the provisions of the Lease and the directive contained in the Plaintiff’s Notice to Vacate by remaining current on his rental payments to Defendant Bass. *Id.* at ¶8.

Defendant Pike has never received any notice, written or verbal, from the Plaintiff or any other individual or entity which has stated that he is in default on the rent with regards to the real property at issue in this proceeding. *Id.* at ¶9. Furthermore, Defendant Pike has never received any notice, written or verbal, from the Plaintiff or any other individual or entity which directed him to pay the rent to anyone other than Defendant Bass. *Id.*

II. STANDARD OF REVIEW

The Idaho Rules of Civil Procedure provide that upon the filing of a motion for summary judgment, “[t]he court must grant summary judgment 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.” I.R.C.P. 56.

The Idaho Supreme Court has held that when considering a motion for summary judgment, “[a]ll disputed facts are to be construed liberally in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are to be drawn in favor of the non-moving party. Summary judgment is appropriate 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.” *Wright v. Parish*, 531 P.3d 1115, 1120 (Idaho 2023).

III. ARGUMENT

1. Defendant Pike’s Tenancy is Protected by the Protecting Tenants at Foreclosure Act of 2009.

As discussed in Defendant Pike’s *Verified Answer and Affirmative Defenses* (hereinafter “Answer”) filed in this proceeding, Defendant Pike entered into the Lease on the 28th day of February, 2024 with Defendant Bass prior to the notice of foreclosure issued by the Plaintiff. *Answer* at 3-4; *Pike Aff.* at ¶3. A copy of said Lease is attached to the Pike affidavit filed herewith as Exhibit “A”. The Plaintiff’s Notice to Vacate, which is dated the 21st day of March, 2024, is attached to the Plaintiff’s Complaint as Exhibit “B”.

As indicated by the Trustee’s Deed attached to the Plaintiff’s Complaint as Exhibit “A”, the real property that is the subject of the Lease was not deeded to the Plaintiff until the 1st day of March, 2024. Therefore, when Defendant Pike entered into said Lease on the 28th day of February, 2024, Defendant Bass was still the owner of the real property at issue in this

proceeding. In light of these facts, the Lease entered into between Defendant Pike and Defendant Bass is a bona fide lease.

The federal Protecting Tenants at Foreclosure Act of 2009 (hereinafter “Act”) provides that a tenant with a bona fide lease agreement entered into prior to the date of notice of foreclosure must be allowed to occupy the premises until the end of the remaining term of the lease. 12 U.S.C. §5220 note (Pub. L. 111-22, div. A, title VII, §702, May 20, 2009, 123 Stat. 1660, as amended by Pub L. 111-203, title XIV, §1484(1), July 21, 2010, 124 Stat. 2204). In light of this federal statute, since the Lease was entered into by and between Defendant Bass and Defendant Pike prior to the Notice to Vacate, the Lease is bona fide and effective, and the Defendant must be allowed to continue to occupy said real property until the end of the term of the Lease, which is the 28th day of February, 2026. *Id.*

It is significant that the Plaintiff never contends in its Motion or in its Memorandum that the Act does not apply to Defendant Pike. It is therefore clear that Defendant Pike enjoys the protections of the Act, which requires the Plaintiff to honor the Lease.

2. The Plaintiff Has Failed to Meet its Burden Showing That There is No Genuine Dispute of Material Fact That Defendant Pike is Out of Compliance with Lease.

The Plaintiff has filed three separate declarations in support of its Motion. All three of those declarations contain a similar statement alleging that the declarer has not received any rental payments from Defendant Pike. *Stoddard Dec.* at ¶11; *DPW Enterprises Dec.* at 8; *Mountain Prime Dec.* at 8. However, none of those declarations state whether the declarers have received any rental payments *on behalf of* Defendant Pike. As indicated by the Pike declaration filed herewith in support of this response, the Idaho Housing and Finance Association has

redirected the rental assistance payments it had been making to Defendant Bass on behalf of Defendant Pike to the Plaintiff. *Pike Aff.* at 5.

Furthermore, as further indicated by the Pike declaration, Defendant Pike has continued to pay his portion of the rent that is due and owing under the Lease to Defendant Bass. *Id.* Defendant Pike is legally obligated to stay current on the rent under the provisions of the Lease by making those payments to Defendant Bass. *Id.* at Exh. "A".

The Plaintiff contends in its unpaged Memorandum that Defendant Pike failed to comply with the instructions contained in its Notice to Vacate sent to Defendant Pike. *Memo.* at 11-14. In support of this argument, the Plaintiff quotes the following provision contained in said Notice to Vacate: "[i]f you believe you are a bona fide tenant with a [sic] 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." *Memo.* at 13. The Notice to Vacate expressly directed Defendant Pike to continue to make his lease payments and it did not direct Defendant Pike to send those rental payments to the Plaintiff. *Id.* Defendant Pike therefore continued to make his rental payments to Defendant Bass in compliance with the plain wording of the Notice to Vacate. It is therefore unfounded that the Plaintiff now contends that Defendant Pike has failed to comply with the Lease or with the plain wording of the Notice to Vacate. In light of these considerations, the Plaintiff has failed to meet its burden to show that there is no genuine dispute as to any material fact regarding whether Defendant Pike is out of compliance with the Lease. The Plaintiff should therefore be denied judgment as a matter of law.

3. The Plaintiff Seeks Relief That it Did Not Properly Plead In Its Complaint.

In initiating this proceeding, the Plaintiff filed its Complaint seeking “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.” *Cmplt.* at 2. The Plaintiff has not expressly stated who it is seeking to have ejected from the premises. The most it alleges with regards to Defendant Pike is that he was issued the Notice to Vacate, that he indicated that he has a lease to the property, that he was provided with 90 days within which to vacate and that he has failed to vacate. *Id.* The Plaintiff has not alleged anywhere in its Complaint that Defendant Pike has failed to comply with the terms of the Lease or that he failed to pay the monthly rent, as it now contends in its Memorandum for the first time. Furthermore, nowhere in its Complaint does the Plaintiff expressly pray for an order ejecting Defendant Pike from the premises. Therefore, Defendant Pike has not been properly put on notice as to the relief that the Plaintiff is seeking, as required by the Idaho Rules of Civil Procedure. I.R.C.P. 8.

Even if the Complaint can be liberally construed to put Defendant Pike on proper notice as to the Plaintiff’s claim for ejectment as applying to him, according to the argument set forth in its Memorandum, the Plaintiff is no longer seeking to eject Defendant Pike for failing to timely vacate but instead for allegedly failing to pay the rent due under the Lease. As contended above, there is no evidence that Defendant has in fact failed to remain current on the rent. However, even if Defendant can be faulted for failing to pay the rent to the Plaintiff, which is legally unfounded, the Plaintiff has failed to serve Defendant Pike with the three-day notice requiring payment of the rent that is expressly required by Idaho law. I.C. §6-303. Furthermore, Idaho law expressly requires a party seeking possession of real property for nonpayment of rent to properly plead in its complaint that the above-described three-day notice was served upon the

defendant. I.C. §6-310. The Plaintiff has failed to issue and serve upon Defendant Pike the required three-day notice, and it has failed to properly allege such facts in its Complaint for possession, as expressly required by Idaho law. I.C. §§6-303 and 310. In light of these flaws in the Plaintiff's pleadings, the Plaintiff cannot now seek to eject Defendant Pike from the real property at issue in this proceeding for nonpayment of rent, as it is apparently attempting to do.

As an additional matter, Defendant Pike attached the Lease to his Answer. *Answer* at Exh. "A". Upon receipt of the Lease, if the Plaintiff believed that Defendant Pike had failed to pay the rent required under said Lease, the Plaintiff was required to issue and serve the required three-day notice as a condition-precedent to seeking the ejectment of Defendant Pike. It took no such action. Had the Plaintiff issued and served the required three-day notice, and had Defendant Pike failed to pay the required rent, it would have been incumbent upon the Plaintiff to seek to amend its Complaint to seek ejectment of Defendant Pike for nonpayment of the rent, as it now improperly seeks for the first time in its Memorandum. Presumably, the Plaintiff failed to take such action because it was unwilling to acknowledge that Defendant Pike held the premises pursuant to a valid lease agreement. As a result of the Plaintiff's tactical decision to forego the required three-day notice, it must now be denied the newly-stated relief that it is seeking in its Memorandum.

IV. CONCLUSION

The Plaintiff has failed to meet its burden to show that there is no genuine dispute as to any material fact regarding whether Defendant Pike is out of compliance with the Lease or that an order of ejectment should be issued with regards to Defendant Pike. The Plaintiff should therefore be denied judgment as a matter of law and the Plaintiff's Motion for Summary Judgment should be denied.

DATED this 1st day of October, 2024.

IDAHO LEGAL AID SERVICES, INC.

KEN NAGY
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of October, 2024, I caused to be served a full, true and accurate copy of the foregoing by the method indicated below, and addressed to the following:

Lewis N. Stoddard
Halliday, Watkins & Mann, P.C.
376 East 400 South, Suite 300
Salt Lake City, UT 84111
Phone: (801) 355-2886
Fax: (801) 328-9714
Email: lewis@wmlawfirm.com

U.S. mail
 Hand delivered
 Overnight mail
 Facsimile transmission to #
 Email
 i-Court

Jeremy L. Bass
1515 21st Ave.
Lewiston, ID 83501-3926
Email: Quantum.J.L.Bass@RAWdeal.io

U.S. mail
 Hand delivered
 Overnight mail
 Facsimile transmission to #
 Email
 i-Court

Ken Nagy

KEN NAGY
Managing Attorney
Idaho Legal Aid Services, Inc.
2230 3rd Ave. North
Lewiston, Idaho 83501
Phone: (208) 413-9458
Fax: (208) 743-3261
Email: kennagy@idaholegalaid.org
Idaho State Bar #6176

ATTORNEY FOR DEFENDANT DWAYNE PIKE

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,)	CASE NO. CV35-24-1063
)	
Plaintiff,)	RESPONSE TO MOTIONS
v.)	OF CO-DEFENDANT
)	
Jeremy L. Bass, Dwayne Pike, and Current)	
occupant, and Unknown Parties in)	
Possession of the real property commonly)	
known as 1515 21 st Avenue, Lewiston,)	
Idaho 83501,)	
)	
Defendants.)	
)	

COMES NOW the Defendant Dwayne Pike (hereinafter "Defendant Pike"), by and through his attorney of record, Ken Nagy, of Idaho Legal Aid Services, Inc., and hereby responds to the following motions filed by Co-Defendant Jeremy L. Bass (hereinafter "Defendant Bass") in the above-entitled proceeding:

1. Motion for Appointment of Co-Counsel filed on August 14, 2024;

KEN NAGY
Idaho Legal Aid Services, Inc.
Lewiston, Idaho

**RESPONSE TO MOTIONS
OF CO-DEFENDANT**

2. Motion to Dismiss and Strike Summons and Complaint filed on August 14, 2024;

and

3. Motion to Amend Filings to Include Verification filed on August 19, 2024.

With regards to Defendant Bass' Motion for Appointment of Co-Counsel, it appears that said Motion repeatedly contains the same typographical error in that Defendant Bass has moved the Court to appoint "co-counsel" . . . for the Plaintiff". *Mtn.* at 1-3. However, it appears that Defendant Bass is seeking the appointment of an attorney to assist him with the proceeding, not the appointment of an attorney to assist the Plaintiff DPW Enterprises LLC and Prime 2018 LLC. If that is the case, Defendant Pike does not object to said Motion. However, in the event that Defendant Bass is seeking the appointment of an attorney to assist the Plaintiff with the proceeding, Defendant Pike objects as there is no legal authority upon which the Court may accomplish such an appointment.

With regards to Defendant Bass' Motion to Dismiss and Strike Summons and Complaint, Defendant Pike does not object to said Motion.

With regards to Defendant Bass' Motion to Amend Filings to Include Verification, Defendant Pike does not object to said Motion.

DATED this 17th day of September, 2024.

IDAHO LEGAL AID SERVICES, INC.

Ken Nagy
Attorney for Defendant Dwayne Pike

KEN NAGY
Idaho Legal Aid Services, Inc.
Lewiston, Idaho

CERTIFICATE OF SERVICE

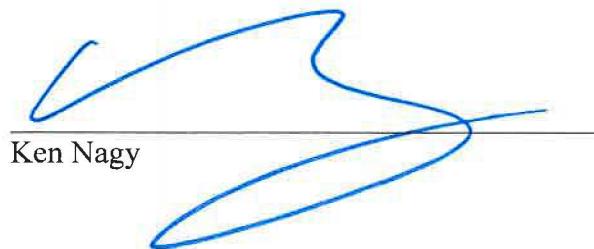
I HEREBY CERTIFY that on the 17th day of September, 2024, I caused to be served a full, true and accurate copy of the foregoing by the method indicated below, and addressed to the following:

Lewis N. Stoddard
Halliday, Watkins & Mann, P.C.
376 East 400 South, Suite 300
Salt Lake City, UT 84111
Phone: (801) 355-2886
Fax: (801) 328-9714
Email: lewis@wmlawfirm.com

- U.S. mail
 Hand delivered
 Overnight mail
 Facsimile transmission to #
 Email
 i-Court

Jeremy L. Bass
1515 21st Ave.
Lewiston, ID 83501-3926
Email: Quantum.J.L.Bass@RAWdeal.io

- U.S. mail
 Hand delivered
 Overnight mail
 Facsimile transmission to #
 Email
 i-Court



Ken Nagy

KEN NAGY
Idaho Legal Aid Services, Inc.
Lewiston, Idaho