

ALDRIDGE PITE, LLP

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

BANK OF AMERICA, N.A.,

Plaintiff,

v.

LIOR BLAS; LIOR BLAS, TRUSTEE; AND
ALL OTHER PERSONS OR PARTIES
UNKNOWN CLAIMING ANY RIGHT,
TITLE, LIEN, OR INTEREST IN THE
REAL PROPERTY COMMONLY KNOWN
AS 24245 TEMPLE DR, CHUGIAK, AK
99567,

Defendants.

Case No.

**COMPLAINT FOR JUDICIAL
FORECLOSURE AND
DECLARATORY RELIEF
WITHOUT DEFICIENCY
JUDGMENT DEMANDED**

Plaintiff BANK OF AMERICA, N.A. ("Plaintiff" or "Bank of America")
INDIVIDUALLY AND AS SUCCESSOR BY DE JURE MERGER WITH BAC HOME
LOANS SERVICING, LP, alleges as follows:

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I. DIVERSITY DISCLOSURE STATEMENT

1. Plaintiff is a National Association with its main office in Charlotte, NC.
2. Defendant LIOR BLAS A.K.A. LEO BLAS is a resident of Alaska.
3. The amount in controversy is initially estimated at \$504,468.72. The final amount to be determined at trial.

II. PROPERTY

4. The real property that is the subject of this action is commonly known as 24245 Temple Dr, Chugiak, AK 99567 ("Subject Property"), and legally described as follows:

LOT 3, BLOCK 1-B, WHALEY SUBDIVISION, ADDITION NO. 5, ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED UNDER PLAT NO. 74-257, RECORDS OF THE ANCHORAGE RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA

III. PARTIES

5. Plaintiff has the authority to exercise the interest in a deed of trust encumbering the Subject Property ("Deed of Trust"). The Deed of Trust was issued on February 22, 2008 and recorded on February 27, 2008 in the official records of the Anchorage recording district as instrument number 2008-010225-0. A true and correct copy of the Deed of Trust is attached hereto as **Exhibit A** and incorporated herein by reference.

6. On or about November 30, 2010 an Assignment of Deed of Trust/Mortgage was executed by Bank of America, N.A. assigning all beneficial interest in and under the Deed of Trust to BAC Home Loans Servicing, LP. The assignment was recorded on December 8, 2010 in the official records of the Anchorage recording district as instrument number 2010-065795-0. A true and correct copy of the Assignment of Deed of Trust/Mortgage is attached hereto as **Exhibit B** and incorporated herein by reference.

7. On or about July 1, 2011, BAC Home Loans Servicing, LP merged into Bank of America, N.A.

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8. Defendant LIOR BLAS (“Borrower”) is the owner of record and may claim an interest in the Subject Property. Borrower was the trustor of the Deed of Trust. Borrower is not a member of the United States Military as defined by the Servicemembers Civil Relief Act.

9. Defendant LIOR BLAS, TRUSTEE may claim an interest in the Subject Property via deeds recorded July 28, 2021 as Instrument No.: 2021-041843-0 and June 27, 2022 as Instrument No.: 2022-024046-0.

10. Defendant ALL OTHER PERSONS OR PARTIES UNKNOWN CLAIMING ANY RIGHT, TITLE, LIEN, OR INTEREST IN THE REAL PROPERTY COMMONLY KNOWN AS 24245 TEMPLE DR, CHUGIAK, AK 99567 may claim an interest in the Subject Property, which claim is subsequent and/or subject to the lien in favor of Plaintiff under its Deed of Trust. These unknown persons include all other persons claiming any legal right, title, estate, lien, interest in the property, or any occupant of the property described in this Complaint. Their interest is adverse to Plaintiff’s interest and constitutes a cloud on title to the Subject Property.

IV. STATEMENT OF FACTS

11. For valuable consideration, Borrower delivered a promissory note dated February 22, 2008 (“Note”) in the amount of \$ 300,000.00, plus interest at variable rate of 4.875% per annum. A true and correct copy of the Note is attached hereto as **Exhibit C** and incorporated herein by reference.

12. The loan was made for the purchase price of the Subject Property or was made for the express purpose of enabling Borrower to purchase the Subject Property and was used for that purpose. The Note was secured by the Deed of Trust encumbering the Subject Property. The Deed of Trust granted and created a valid and subsisting first lien in and upon the Subject Property.

13. Effective July 1, 2011, Borrower entered into a Home Affordable Modification Agreement (“Loan Modification Agreement”) with Bank of America following a prior default under the Note and Deed of Trust.

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14. Borrower made payments consistent with the terms of the Loan Modification Agreement through May 2012, but missed the June 2012 payment.

15. Borrower resumed making payments in July 2012, but such payments were credited one month behind due to the missed June 2012 payment.

16. The last payment from Borrower was received by Plaintiff in October 2012 and credited for the September 2012 payment.

17. Borrower had made no payments under the Note and Deed of Trust since October 2012.

18. On July 5, 2013, Plaintiff sent Borrower a Notice of Intent to Accelerate. The Notice of Intent to Accelerate stated that, unless Borrower brought the account current by August 14, 2013, Plaintiff may choose to accelerate the balance of the loan and commence foreclosure proceedings.

19. Borrower failed to bring the account current and, on December 11, 2013, Plaintiff recorded in the official records of Anchorage recording district a Notice of Default and Election to Sell Under Deed of Trust ("2013 Notice of Default") to commence a non-judicial foreclosure sale process under Alaska Stat. § 34.20.070 and giving notice that the outstanding balance of the loan was accelerated and now owing.

20. On April 11, 2014, Borrower filed suit *pro se* in the Superior Court for Third Judicial District of Alaska against Plaintiff in a case captioned *Blas v. Bank of America, N.A.*, Case No. 3AN-14-4595CI ("First State Court Suit").

21. The controlling complaint in the First State Court Suit asserted at least 16 different claims by the Borrower, including that Plaintiff allegedly (1) had violated the Fair Debt Collection Practices Act, (2) lacked standing or the authority to pursue a foreclosure under the Note and Deed of Trust, (3) had violated the Real Estate Settlement Procedures Act, and (4) had violated the Truth in Lending Act.

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22. Eventually, all of Borrower's claims in the First State Court Suit were dismissed with prejudice for failure to state a claim or otherwise disposed of via summary judgment.

23. Borrower appealed the final dismissal of the First State Court Suit to the Supreme Court of Alaska ("Alaska Supreme Court").

24. On April 12, 2017, the Alaska Supreme Court affirmed the dismissal of the First State Court Suit in full at *Blas v. Bank of Am., N.A.*, No. S-16174, 2017 WL 1379317 (Alaska Apr. 12, 2017).

25. On April 28, 2017, Plaintiff entered into a Settlement Agreement and Release ("2017 Settlement Agreement") with Borrower.

26. The 2017 Settlement Agreement contains a confidentiality provision, so the full text will not be reproduced here, but the key points of that agreement for purposes of the instant litigation are:

- Borrower was paid monetary consideration for the settlement;
- In exchange, Borrower agreed to voluntarily vacate the Subject Property within a certain timeframe;
- Plaintiff agreed to delay foreclosure proceedings against the Subject Property until after the time the Borrower was required to leave the Subject Property;
- Borrower waived any defenses to foreclosure and released all claims relating to the origination or servicing of the loan or that Borrower could otherwise have brought in the First State Court Suit.

27. Borrower subsequently failed to vacate the Subject Property as required by the Settlement Agreement.

28. On August 31, 2017, Plaintiff recorded a Termination Notice ("2017 Termination Notice") in the official records of Anchorage recording district vacating the 2013 Notice of Default and decelerating the debt under the Note and Deed of Trust.

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29. The same day, Plaintiff subsequently recorded a Notice of Default and Election to Sell Under Deed of Trust ("2017 Notice of Default") in the official records of Anchorage recording district to re-commence a non-judicial foreclosure sale process under Alaska Stat. § 34.20.070 and re-accelerate the debt.

30. On September 12, 2017, Borrower filed a new *pro se* suit in the Superior Court for Third Judicial District of Alaska against Plaintiff in a case captioned *Blas v. Bank of America, N.A., et al.*, Case No. 3AN-17-09098CI ("Second State Court Suit").

31. The controlling complaint in the Second State Court Suit asserted at least 26 different claims by the Borrower, including that Plaintiff allegedly (1) lacked standing or the authority to pursue a foreclosure under the Note and Deed of Trust, (2) had violated the Fair Debt Collection Practices Act, (3) had violated the Real Estate Settlement Procedures Act, (4) had committed numerous acts of fraud, unfair trade practices, and other unlawful conduct in the making and servicing of the loan, and (5) failed to comply with numerous other state and federal laws and regulations relating to security interests, foreclosures, lending, and other mortgage and financial services issues.

32. All claims in the Second State Court Suit were eventually dismissed by the Superior Court with prejudice for failure to state a claim.

33. Borrower appealed the final dismissal of the Second State Court Suit to the Alaska Supreme Court.

34. On October 9, 2019, the Alaska Supreme Court affirmed the dismissal of the Second State Court Suit in full at *Blas v. Bank of Am., N.A.*, No. S-17253, 2019 WL 5061383 (Alaska Oct. 9, 2019).

35. While the Second State Court Suit was pending, Borrower filed what was originally styled as a Chapter 13 bankruptcy case under the caption *In re Leo Blas*, Case No. 17-00411 ("First Bankruptcy Case"), in the United States Bankruptcy Court for the District of Alaska ("Bankruptcy Court").

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36. The filing of the First Bankruptcy Case caused an automatic stay to enter under 11 U.S.C. § 362, preventing Plaintiff from proceeding with a foreclosure sale under the 2017 Notice of Default.

37. The First Bankruptcy Case was later converted to a Chapter 7 case and the Borrower received a discharge on May 31, 2019.

38. During the pendency of the First Bankruptcy Case, Plaintiff filed a secured proof of claim in the case (“2017 Proof of Claim”) concerning its status as a secured creditor of the Borrower under the Note and Deed of Trust, and also filed a motion for relief from the automatic stay to proceed with foreclosing on the Subject Property.

39. Borrower objected to the 2017 Proof of Claim on multiple grounds, including that Plaintiff (1) purportedly could not produce the original Note, (2) could not produce an assignment or other documents showing it had standing to enforce the Note and Deed of Trust, (3) had failed to comply with UCC requirements for notes, (4) allegedly violated the Truth in Lending Act (“TILA”), (5) failed to respond to a TILA rescission letter sent by the Borrower, (6) fabricated copies of the Note, (7) had unclean hands due to alleged violations of consent decrees or settlements agreements reached with other parties, and (8) was otherwise not lawfully able to foreclose on the Subject Property.

40. The Bankruptcy Court conducted an evidentiary hearing in which it heard argument on the foregoing points and during which the original Note was presented to the Bankruptcy Court for physical inspection.

41. Through a series of orders, the Bankruptcy Court disposed of **all** of Borrower’s grounds for objections to the 2017 Proof of Claim and upheld that Plaintiff had standing to enforce the Note and Deed of Trust and approved the full amount of the 2017 Proof of Claim.

42. Borrower never pursued an appeal of the order approving Plaintiff’s 2017 Proof of Claim.

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43. During the time that Borrower's objections to the 2017 Proof of Claim were pending before the Bankruptcy Court, Borrower filed an adversary case against Plaintiff in the Bankruptcy Court under the caption *Blas v. Bank of America, N.A.*, Adv. Case No. 18-90028 ("First Adversary Case").

44. The Chapter 7 Trustee assumed control of the First Adversary Case and, in exchange for monetary consideration and an express release of all claims by Plaintiff against Borrower "[e]xcept for collection of the Note and foreclosure of the Deed of Trust," entered into a stipulated settlement agreement ("Stipulated Settlement") with Plaintiff dated September 11, 2020.

45. The Stipulated Settlement, *inter alia*, acknowledged that the Note and Deed of Trust "are a valid obligation of the debtor that create a perfected lien against the real property described in the Deed of Trust that [Plaintiff] is entitled to enforce and collect through foreclosure of the Deed of Trust in accordance with the terms and provisions of the Deed of Trust and Alaska law."

46. The Bankruptcy Court reviewed and approved the Stipulated Settlement pursuant to Bankruptcy Rule 2019 on October 16, 2020, and the First Adversary Case was dismissed with prejudice pursuant to the terms of the Stipulated Settlement effective November 10, 2020. The dismissal of the First Adversary Case was affirmed in subsequent appeals.

47. While the First Adversary Case was pending, Plaintiff moved to be granted relief from the automatic stay in the First Bankruptcy Case to pursue foreclosure on the Subject Property.

48. The Bankruptcy Court granted Plaintiff relief from the automatic stay effective December 17, 2019, finding that there was no basis for denying Plaintiff the right to proceed with the foreclosure of its secured interest on the Subject Property.

49. However, before Plaintiff could complete a new non-judicial foreclosure, the COVID-19 pandemic struck. As part of the response to the pandemic, Congress passed

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legislation (ultimately codified at 15 U.S.C. § 9056(c)(2)) providing that “a servicer of a Federally backed mortgage loan may not initiate any judicial or non-judicial foreclosure process...or execute a...foreclosure sale for not less than the 60-day period beginning on March 18, 2020.” While the statute originally provided for only a 60-day moratorium, the U.S. Department of Housing and Urban Development repeatedly extended the moratorium until finally letting it expire on July 31, 2021. See U.S. Dep’t of Housing & Urban Dev., Mortgagee Letter 2021-19 (July 30, 2021) (“HUD’s foreclosure moratorium is set to expire on July 31, 2021”), available at <https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-19hsgml.pdf>.

50. As the mortgage here is a “Federally backed mortgage loan” as defined in 15 U.S.C. § 9056(a)(2)(G), Plaintiff was legally precluded from proceeding with any form of foreclosure action for approximately sixteen months despite having been granted relief from the automatic stay in Borrower’s First Bankruptcy Case to do so.

51. Following the lifting of the federal foreclosure moratorium, Plaintiff attempted to commence another Alaska non-judicial foreclosure.

52. On May 6, 2022, Plaintiff recorded a Termination Notice (“2022 Termination Notice”) in the official records of Anchorage recording district vacating the 2017 Notice of Default and decelerating the debt under the Note and Deed of Trust.

53. The same day, Plaintiff subsequently recorded a Notice of Default and Election to Sell Under Deed of Trust (“2022 Notice of Default”) in the official records of Anchorage recording district to re-commence a non-judicial foreclosure sale process under Alaska Stat. § 34.20.070 and re-accelerate the debt.

54. But, on August 15, 2022, the literal eve of the scheduled foreclosure sale, Borrower filed a new Chapter 13 bankruptcy case, *In re Lior Blas*, Case No. 22-00100 (“Second Bankruptcy Case”) with the Bankruptcy Court, which caused a new automatic stay to apply, again preventing Plaintiff from proceeding with the foreclosure.

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55. Plaintiff again sought relief from the automatic stay in the Second Bankruptcy Case to seek the right to proceed with a foreclosure on the Subject Property, which was granted on January 16, 2024.

56. Borrower's Second Bankruptcy Case was also dismissed by the Bankruptcy Court for having been filed in a bad faith effort to prevent Plaintiff from pursuing its foreclosure remedy. The Borrower appealed the dismissal of the Second Bankruptcy Case to the U.S. District Court for the District of Alaska, which affirmed the dismissal of the Second Bankruptcy Case on March 20, 2024 in an order entered in *Blas v. Jipping, U.S. Trustee*, Case No. 3:23-cv-00051-JMK.

57. During the pendency of the Second Bankruptcy Case, the 2022 Notice of Default expired pursuant to Alaska Stat. § 34.20.080(e).

58. As of this filing, Borrower has only the First Bankruptcy Case pending, for which Plaintiff has already been granted relief from the automatic stay to be able to pursue a foreclosure on the Subject Property.

59. Plaintiff's foreclosure action is brought timely for numerous and overlapping reasons.

60. The Note was only first accelerated on December 11, 2013, then decelerated and re-accelerated on August 31, 2017, and again decelerated and re-accelerated on May 6, 2022. The deceleration and re-acceleration of the Note causes a new accrual date for purposes of the right to foreclose.

61. Both bankruptcy cases, from the date of filing through the date relief from the automatic stay was granted, and the federal foreclosure moratorium operated to toll the running of any applicable limitations period pursuant to Alaska Stat. § 09.10.170 as Plaintiff was legally barred from pursuing its foreclosure remedy.

62. Borrower further is both contractually and equitably estopped from contesting the timeliness of the foreclosure.

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63. Borrower has been advised of the default under the Note and Deed of Trust and provided the opportunity to cure the default, and informed that failure to cure the default within the time provided may result in the exercising of the option to accelerate the entire balance outstanding under the terms of the Note and Deed of Trust (the “Notice of Acceleration”). A true and correct copy of the Notice of Acceleration is attached herewith as **Exhibit D** and incorporated herein by reference.

64. Borrower failed to cure the default and as a result Plaintiff hereby affirms acceleration or in the alternative accelerates; and demands the entire the unpaid outstanding balance.

65. As a result of the above facts, and pursuant to the terms of the Deed of Trust, Plaintiff may pursue foreclosure of the Deed of Trust. Plaintiff has previously instituted multiple non-judicial foreclosure proceedings under the laws of the State of Alaska to attempt to foreclose the Deed of Trust, but has not completed any of those foreclosure attempts due to actions of the Borrower. Plaintiff knows of no other suit or action that is now pending upon the Note or to foreclose the Deed of Trust.

V. FIRST CAUSE OF ACTION

Judicial Foreclosure

Plaintiff incorporates by reference its allegations contained in the foregoing paragraphs as though fully set forth herein.

(AGAINST LIOR BLAS)

66. Payments due under the terms of the Deed of Trust are in default beginning with the payment due in October 2012 and all payments thereafter. The unpaid principal balance due under the terms of the Note and Deed of Trust as of the date of this Complaint is \$291,095.86.

67. Payments on the principal balance, interest and other fees necessary for the preservation of Plaintiff’s security interest will continue to accrue on the loan for each month after the date of this Complaint. In addition, pursuant to the terms of the Deed of Trust, when

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Plaintiff is required to advance sums for taxes or insurance, said sums shall be charged to the principal due under the Note and shall likewise bear interest at the rate designated in the Note. The Deed of Trust provides that Borrower shall pay for all additional sums as Plaintiff may expend to protect its interest in the Subject Property. These unknown amounts shall be determined by the Court at the time of final hearing in this matter.

68. Based upon the aforementioned default, Plaintiff has exercised its option and elected to declare the whole sum of principal and interest immediately due; the total amount of principal and interest due consists of the principal sum as specified above, including additional fees pursuant to the Deed of Trust, plus interest from October 29, 2012 to the present as provided in the Note, at variable rate of 4.875% per annum; interest on the principal amount accrues for each additional day to the date of judgment. Total estimated amount due as of the date of this Complaint is approximately \$504,468.72. Final amount to be determined at trial.

69. By the terms of the Deed of Trust, Borrower promised that in any action instituted on the Note or Deed of Trust, Borrower would pay such sum as the Court might fix as reasonable attorney fees, and that these charges would also become a lien on the Subject Property. By reason of the Due and Payable status of the loan, it has become necessary for Plaintiff to engage Aldridge Pite, LLP to commence and prosecute this action. The reasonable value of services of counsel herein shall be determined by the Court at the final hearing in this matter.

70. Although notice has been given for payment of the aforesaid amounts as required by the Deed of Trust, the loan remains in default to Plaintiff's damage in an amount to be determined at trial.

71. Plaintiff seek a declaration of this Court that the entire balance of principal, accrued interest, late charges, advances, expenses and attorney fees and costs remain unpaid and are due and owing on said Note and Deed of Trust.

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(Against All Defendants)

72. Plaintiff further seeks an order and judgment foreclosing the Deed of Trust and all junior interests, and authorizing the sale of the Subject Property, pursuant to the Deed of Trust, with the proceeds of sale being paid first to Plaintiff in an amount equal to the entire indebtedness secured by the Deed of Trust and then to the party or parties that establish a right thereto.

73. Additionally, Plaintiff seeks a declaration that its Deed of Trust has first priority over any other claims made by any of the Defendants regarding the Subject Property.

VI. CAUSE OF ACTION

**Declaratory Relief
(Against All Defendants)**

Plaintiff incorporates by reference its allegations contained in the foregoing paragraphs as though fully set forth herein.

74. Defendants, and each of them, claim some interest in the Subject Property adverse to Plaintiffs, and a determination of the Court is necessary to ascertain the rights, obligations and duties of the various parties herein. Plaintiff disputes the contentions of said Defendants.

75. Plaintiff seeks a judicial declaration stating the Plaintiff's security interest in the Subject Property is viable; that Plaintiff holds the encumbrance with the first priority position encumbering the Subject Property; that Plaintiff may foreclose judicially on the Subject Property as legally described in the Deed of Trust; and that Plaintiff is entitled to payment in full of the total current payoff due under the Subject Loan.

76. In the alternative, Plaintiff seek a judicial declaration that Plaintiff is entitled to an equitable lien of first priority on the Subject Property, in the amount of the total current payoff due to Plaintiff.

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VII. PRAYER

WHEREFORE, Plaintiff pray for judgment against Defendants, and each of them, as follows:

a) That Plaintiff have judgment in the amount of the entire accelerated outstanding principal balance, accrued interest, late charges, advances, expenses or other charges, plus other recoverable amounts due under the terms of the Loan or advanced for escrow, taxes, assessments, municipal charges, prior foreclosure expenses, property preservation or valuation expenses, insurance and repairs necessary to prevent impairment of the security, and other items which may constitute liens on the Subject Property, and reasonable attorney fees and costs, together with the costs of title search as provided by the terms in the Note and Deed of Trust;

b) To the extent Borrower is subject to an active bankruptcy case or has previously received a discharge in a bankruptcy, this is not an attempt to collect a debt or an act to collect, assess, or recover all or any portion of the debt against Borrower personally, rather this is an attempt to execute upon Plaintiff's lien interest in the Subject Property;

c) That said foreclosure sale be declared to be on non-exempt property or be enforceable against exempt property.

d) Declaring that Plaintiff will not be entitled to monetary damages, attorney fees, costs, or disbursements against any Junior Interest Holder that do not contest this action;

e) Plaintiff's security interest in the Subject Property, as evidenced by the Note and Deed of Trust, is viable and is senior, having first priority and is superior to the interests of all Defendants;

f) That each of the Defendants and all persons claiming under any of them, after execution of the Deed of Trust, whether lien claimants, judgment creditors, claimants arising under junior mortgages or deeds of trust, purchasers, encumbrances or otherwise, be barred and foreclosed from all rights, claims, interest or equity of redemption in the Subject Property and every part of the Subject Property when the time for redemption has elapsed;

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g) That a licensed civilian process server be authorized and ordered to sell the Subject Property in the manner prescribed by law;

h) That the Court permit Plaintiff or any other party to this action to become a bidder and purchaser at the foreclosure sale and that any such purchaser be entitled to immediate possession of the Subject Property following the sale, and is entitled to such remedies as are available at law to secure possession, including a writ of assistance, if Borrower or any other party or person shall refuse to surrender possession to the purchaser immediately on the purchaser's demand for possession, until a redemption of the property, if any;

i) The sale proceeds be deposited with the court clerk to be disbursed first toward the costs of sale, then toward satisfaction of Plaintiff's judgment, and any surplus proceeds, if any, to be disbursed to the party or parties who establish the right thereto;

j) That the Court direct the Clerk, after the time for redemption has elapsed, to execute a deed to the holder of the certificate of sale, issued by the process server to the purchaser at the foreclosure sale;

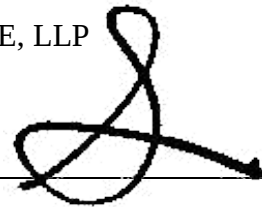
k) That the Court determine the official redemption periods to be until confirmation for any successor of Borrower; 60 days after confirmation for any junior interest holder; 12 months if there is a judgment debtor; and if there is no judgment debtor that there is no 12 month redemption period because there is no judgment debtor;

l) In the alternative, Plaintiff seeks a judicial declaration that Plaintiff is entitled to an equitable lien of first priority on the Subject Property, in the amount of the total due to Plaintiff; and,

m) For such other and further relief as the Court may deem just and proper.

ALDRIDGE PITE, LLP

Dated: August 19, 2024



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