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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF DESCHUTES

NATIONSTAR MORTGAGE LLC,

Plaintiff,

vs.

DANIEL PENA; LISA J PENA;
OCCUPANTS OF THE PROPERTY,

Defendants.

Case No.: 12CV1022

WRIT OF EXECUTION IN
FORECLOSURE

TO THE DESCHUTES COUNTY SHERIFF:

A Judgment of Foreclosure was entered and docketed in this case on 12/8/2016. A true copy of the Judgment is attached hereto. The Judgment was entered in favor of the Plaintiff:

NATIONSTAR MORTGAGE LLC
c/o Jeremy Clifford
Attorney for Plaintiff

McCarthy & Holthus, LLP
920 SW 3rd Ave, 1st Floor
Portland, OR 97204

With the adjudicated amount due of \$346,729.43, plus post judgment interest at the statutory rate of 9.0% per annum from 12/8/2016 to 12/4/2017 in the amount of \$30,863.67, and continuing with a per diem of \$85.49, currently totaling \$377,593.10.

1 **NOW, THEREFORE, IN THE NAME OF THE STATE OF OREGON**, you are
2 hereby commanded to sell, in the manner prescribed by law for the sale of real property on
3 execution (subject to redemption of 180 days), all of the interest that the Defendant had on or
4 about 5/9/2006, the date of the Deed of Trust, and also the interest that the Defendant had
5 thereafter, in the real property described as follows:

6 *See attached Exhibit 1*

7
8 Having APN 248195 and commonly known as: 2038 NE Cradle Mountain Way, Bend, OR
9 97701.

10
11 Sale of the property is to satisfy the sum listed above, plus the costs incurred in
12 performing this Writ. Pursuant to ORS 18.872, you are authorized to continue execution under
13 the writ and delay making a return on the writ to no later than 150 days from receipt of the writ.
14 You are to make the return within 60 days after you receive this Writ. Should the sale be
15 continued, the writ may be automatically extended for 30 days.

Signed: 12/4/2017 01:31 PM


Trial Court Administrator Jeffrey E. Hall



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19 Dated: November 30, 2017 and submitted by:

20 **McCarthy & Holthus, LLP**

21 s/ Jeremy Clifford

22 Jeremy Clifford OSB No. 142987
23 920 SW 3rd Ave, 1st Floor
24 Portland, OR 97204
25 Phone: (971) 201-3200
26 Fax: (971) 201-3202
27 jclifford@mccarthyholthus.com
28 Of Attorneys for Plaintiff

EXHIBIT 1

LOT THREE (3), JONAH'S LANDING, DESCHUTES COUNTY, OREGON

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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF DESCHUTES

6 NATIONSTAR MORTGAGE LLC,

7 Plaintiff,

8 vs.

9 DANIEL PENA; LISA J PENA;
10 OCCUPANTS OF THE PROPERTY,

11 Defendants.

Case No.: 12CV1022

GENERAL JUDGMENT OF FORECLOSURE

12 1.

13 THIS MATTER came before the Court on Plaintiff's motion.

- 14 a. Defendants OCCUPANTS OF THE PROPERTY ("Defaulted Defendants") were
15 duly served with process and failed to appear; the default has been entered against
16 Defaulted Defendants, and it appearing that Defaulted Defendants are not
17 incapacitated, protected persons, respondents as defined in ORS 125.005, minors, or
18 in the military service of the United States;
- 19 b. An Order granting Summary Judgment has been entered with regard to Defendants
20 DANIEL PENA and LISA J PENA, now therefore,

21 2.

22 IT IS HEREBY ADJUDGED that Plaintiff shall have judgment as follows:

- 23 a. The real property to which this judgment relates is located and situated in Deschutes County,
24 Oregon, and is commonly known as 2038 NE Cradle Mountain Way, Bend, OR 97701 (the
25 "Subject Property"), legally described as shown in the attached *Exhibit 1*, and having
26 APN/Parcel No. 248195.

1 b. Plaintiff is the owner and holder of the beneficial interest in a deed of trust and original note
2 dated 5/9/2006 and made, delivered, and executed by Daniel Pena and Lisa J Pena to Action
3 Mortgage Company in the amount of \$267,000.00 (the "Note"). The Note was transferred to
4 Plaintiff by delivery of possession and by indorsement set forth on the Note.

5 c. A deed of trust was made, executed, and delivered by Defendants Daniel Pena and Lisa J
6 Pena on or about 5/9/2006 (the "Deed of Trust"). The Deed of Trust was recorded on
7 5/12/2006 as Instrument No. 2006-33041 in the official records of Deschutes County,
8 Oregon. The Deed of Trust is a valid and perfected lien against all of the Property for and
9 securing the Amount Due. The lien of the Plaintiff is superior to any interest, lien, or claim
10 of the Defendants and shall remain in effect until issuance of a Sheriff's Deed.

11 d. The amount of debt secured by the Deed of Trust that is now due and owing is comprised of
12 the following amounts (the "Amount Due"):

13	a) Unpaid principal balance:	\$ 266,715.40
14	b) Prejudgment interest accruing from	\$45,516.66
15	4/1/2011 through 11/14/2016 and	
16	continuing until the entry of	
17	judgment at the current Note rate of	
	6.375%:	
18	c) Additional amounts due under the	\$31,654.66
	terms of the loan:	
19	d) Attorney fees and costs:	\$ 2,542.71
20	e) Prevailing party fee (ORS 20.190	\$ 300.00
21	(2)(a)):	
	Total:	\$346,729.43

22 Pursuant to ORS 82.010 (2), post-judgment interest shall accrue on the Amount Due from the
23 date of entry of this judgment through the sale of the Subject Property at the rate of 9.00%
24 per annum.

- 1 e. The interest of the Defendants and any successor in interest in the Subject Property is
2 foreclosed and terminated excepting only any statutory right of redemption as provided by
3 Oregon law.
- 4 f. Pursuant to 38 U.S.C. § 3720 (d), because the United States' lien is subordinate to the
5 Plaintiff's lien and is guaranteed/insured by the FHA, the federal government does not have a
6 28 U.S.C. § 2410(c) one-year redemption right in this case.
- 7 g. The Defendants are not entitled to a homestead exception as against Plaintiff's judgment.
- 8 h. All right, title and interest in the Subject Property that Defendants Daniel Pena, Lisa J Pena
9 had as of the date of the Deed of Trust or thereafter acquired is hereby ordered to be sold by
10 the Deschutes County Sheriff's Office in accordance with the process for sale upon
11 execution, and the proceeds of sale shall be applied:
- 12 1) First, to the costs of sale not incurred by Plaintiff;
 - 13 2) Second, to the Amount Due, plus post-judgment interest accruing from the date of
14 entry of judgment through the date of the sale and any incurred costs of sale;
 - 15 3) Third, the surplus, if any, to the Defendants in the priority as their interest may
16 appear, described *infra*, or to the clerk of the court to be distributed by the Court to
17 such party or parties as they may establish their right thereto.
- 18 i. Plaintiff may become purchaser at the sale of the Subject Property and, pursuant to ORS
19 18.936 (2), may credit bid up to the Amount Due, plus post-judgment interest accruing from
20 the date of entry of judgment through the date of the sale and any incurred costs of sale.
- 21 j. The purchaser at the sale is entitled to exclusive and immediate possession of the Subject
22 Property from and after the date of the sale and is entitled to such remedies as are available at
23 law or in equity to secure possession. The purchaser at the sale may apply to the Court for a
24 writ of assistance if any Defendant, other party, or other person shall refuse to surrender
25 possession to the purchaser immediately upon the purchaser's demand for possession.
- 26 k. In the event the proceeds of sale are insufficient to pay the Amount Due, Plaintiff shall not be
27 entitled to any further or other judgment, including a judgment for the deficiency.
- 28

1 I. If, before the sale, the Amount Due is brought into court and paid to the clerk, the execution,
2 if issued, shall be recalled and the effect of the judgment as to the Amount Due shall be
3 terminated.

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7 Signed: 12/7/2016 04:24 PM

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10 Circuit Court Judge A. Michael Adler

11 Presented by:
12 McCarthy & Holthus, LLP

13 s/Carrie A. Majors-Staab

14 Casey C. Pence, OSB No. 975271

15 Carrie A. Majors-Staab, OSB No. 980785

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20 cmajors-staab@mccarthyholthus.com

21 Of Attorneys for Plaintiff

Exhibit 1

Exhibit 1

LOT THREE (3), .IONAH'S LANDING, DESCHUTES COUNTY, OREGON
APN/Parcel# 248195