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LANE COUNTY S.O. CIVIL
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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LANE

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION,

Plaintiff,

vs.

SETH A. KIRKPATRICK; RHEA M.
FRENCH; STATE OF OREGON; HARRY
RICHIE'S JEWELERS; OCCUPANTS OF
THE PROPERTY,

Defendants.

Case No.: 16CV33307

WRIT OF EXECUTION IN
FORECLOSURE

TO THE LANE COUNTY SHERIFF:

A Judgment of Foreclosure was entered and docketed in this case on October 9, 2017. A true copy of the Judgment is attached hereto. The Judgment was entered in favor of the Plaintiff:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION
c/o Robert Hakari
Attorney for Plaintiff

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

1 With the adjudicated amount due of \$216,605.25, plus post judgment interest at the statutory rate
2 of 9.0% per annum from October 9, 2017 to November 15, 2017 in the amount of \$1,976.17, and
3 continuing with a per diem of \$53.41, currently totaling \$218,581.41.

4 **NOW, THEREFORE, IN THE NAME OF THE STATE OF OREGON**, you are
5 hereby commanded to sell, in the manner prescribed by law for the sale of real property on
6 execution (subject to redemption of 180 days), all of the interest that the Defendant had on or
7 about March 7, 2013, the date of the Deed of Trust, and also the interest that the Defendant had
8 thereafter, in the real property described as follows in attached Exhibit 1, APN/Parcel #1731080,
9 and commonly known as: 1265 North 1st Street, Creswell, OR 97426.

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

15
16 *November 17, 2017*

17
18 *By: Angie Jones
court clerk*

19 Dated: 11/10/2017 and submitted by:

20 **McCarthy & Holthus, LLP**

21 s/ Brady Godbout

22 Robert Hakari OSB No. 114082
23 [x] Brady Godbout, OSB No. 132708
24 920 SW 3rd Ave, 1st Floor
25 Portland, OR 97204
26 Phone: (971) 201-3200
27 Fax: (971) 201-3202
28 bgodbout@mccarthyholthus.com
Of Attorneys for Plaintiff



EXHIBIT 1

Lot 34, SIERRA ORCHARD, as platted and recorded August 31, 2004, Reception No. 2004-068422, Lane County Oregon Plat Records, in Lane County, Oregon.

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

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,

Plaintiff,

vs.

SETH A. KIRKPATRICK; RHEA M. FRENCH; STATE OF OREGON; HARRY RICHIE'S JEWELERS; OCCUPANTS OF THE PROPERTY,

Defendants.

Case No.: 16CV33307

GENERAL JUDGMENT OF FORECLOSURE

1.

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

- a. Defendants SETH A. KIRKPATRICK were served by publication in the Guard Publishing Company on which ran four consecutive weeks starting on February 26, March 05, March 12, March 19, 2017 with follow up on February 22, 2017, RHEA M. FRENCH was served personal service on November 3, 2016 at 8:49 am, HARRY RICHIE'S JEWELERS service on Registered Agent on October 14, 2016 at 12:45 pm, and OCCUPANTS OF THE PROPERTY were served by publication in the Guard Publishing Company on which ran four consecutive weeks starting on February 26, March 05, March 12, March 19, 2017 with follow up on February 22, 2017 ("Defaulted Defendants") were duly served with process and failed to appear; the default has been entered against Defaulted Defendants, and it appearing that Defaulted Defendants are not incapacitated, protected persons, respondents as defined in ORS 125.005, minors, or in the military service of the United States;
- b. A Stipulated Limited Judgment has been entered into with regard to Defendant STATE OF

1 OREGON (“Stipulating Defendant”) and is attached to the Judgment as *Exhibit 2*.

2 2.

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

4 a. The real property to which this judgment relates is located and situated in Lane County,
5 Oregon, and is commonly known as 1265 North 1st Street, Creswell, OR 97426 (the “Subject
6 Property”), legally described as shown in the attached *Exhibit 1*, and having APN/Parcel No.
7 1731080.

8 b. Plaintiff is entitled to enforce the note dated March 7, 2013 and made, delivered, and
9 executed by Seth A. Kirkpatrick (“Borrower”) to Pinnacle Capital Mortgage Corporation, in
10 the amount of \$191,836.00 (the “Note”). The Note was transferred to Plaintiff by delivery of
11 possession and by indorsement set forth on the Note.

12 c. A deed of trust was made, executed, and delivered by Borrower on or about March 7, 2013
13 (the “Deed of Trust”). The Deed of Trust was recorded on March 12, 2013 as Instrument No.
14 2013-013631 in the official records of Lane County, Oregon. The Deed of Trust is a valid
15 and perfected lien against all of the Property for and securing the Amount Due. The lien of
16 the Plaintiff is superior to any interest, lien, or claim of the Defendants and shall remain in
17 effect until issuance of a Sheriff’s Deed.

18 d. The Borrower failed to make the payment that was due for December 1, 2015 and has not
19 cured the default. The amount of debt secured by the Deed of Trust that is now due and
20 owing is comprised of the following amounts (the “Amount Due”):

21 a) Unpaid principal balance: \$ 192,755.88

22 b) Prejudgment interest accruing from \$ 11,855.54
23 11/1/2015 through 9/21/2017 and
24 continuing until the entry of
judgment at the current Note rate of
3.250%;

25 c) Additional amounts due under the \$ 6,883.85
26 terms of the loan:

27 d) Attorney fees and costs: \$ 5,024.98

28

1 e) Prevailing party fee (ORS 20.190 (1)(a)): \$ 85.00

2 **Total: \$ 216,605.25**

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

6 e. The interest of the Defendants and any successor in interest in the Subject Property is
7 foreclosed and terminated excepting only any statutory right of redemption as provided by
8 Oregon law.

9 f. The Defendant is not entitled to a homestead exception as against Plaintiff's judgment.

10 g. All right, title and interest in the Subject Property that Borrower had as of the date of the
11 Deed of Trust or thereafter acquired is hereby ordered to be sold by the Lane County
12 Sheriff's Office in accordance with the process for sale upon execution, and the proceeds of
13 sale shall be applied:

14 1) First, to the costs of sale not incurred by Plaintiff;

15 2) Second, to the Amount Due, plus post-judgment interest accruing from the date of
16 entry of judgment through the date of the sale and any incurred costs of sale;

17 3) Third, the surplus, if any, to the Defendants in the priority as their interest may
18 appear, described *infra*, or to the clerk of the court to be distributed by the Court to
19 such party or parties as they may establish their right thereto.

20 h. Plaintiff may become purchaser at the sale of the Subject Property and, pursuant to ORS
21 18.936 (2), may credit bid up to the Amount Due, plus post-judgment interest accruing from
22 the date of entry of judgment through the date of the sale and any incurred costs of sale.

23 i. The purchaser at the sale is entitled to exclusive and immediate possession of the Subject
24 Property from and after the date of the sale and is entitled to such remedies as are available at
25 law or in equity to secure possession. The purchaser at the sale may apply to the Court for a
26 writ of assistance if any Defendant, other party, or other person shall refuse to surrender
27 possession to the purchaser immediately upon the purchaser's demand for possession.

1 j. In the event the proceeds of sale are insufficient to pay the Amount Due, Plaintiff shall not be
2 entitled to any further or other judgment, including a judgment for the deficiency.

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

6 l. Pursuant to ORS 18.950 (4), the apparent priority of liens subsequent and inferior to the
7 Deed of Trust are as follows:

8
9 1) Defendants RHEA M. FRENCH and STATE OF OREGON may claim an interest in
10 Subject Property by virtue of a judgment entered on 9/11/2012 in the Circuit Court of
11 Lane County, Case No. 171218540, in the amount of \$124.00 and any subsequent
12 installments.

13 2) Defendants RHEA M. FRENCH and STATE OF OREGON may claim an interest in
14 Subject Property by virtue of a judgment entered on 6/19/2014 in the Circuit Court of
15 Lane County, Case No. 151401243, in the amount of \$311.00 and any subsequent
16 installments.

17 3) Defendant HARRY RICHIE'S JEWELERS may claim an interest in Subject Property
18 by virtue of a judgment entered on 5/20/2016 in the Circuit Court of Lane County,
19 Case No. 16SC14481, in the amount of \$760.88.
20

21
22 Signed 10/5/2017 03:38 PM

23 

24 R.Curtis Conover, Circuit Court Judge

25 I hereby certify that the requirements of UTCR 5.100 have been satisfied.

26 On 9/21/2017, a copy of the **Motion for Entry of Judgment, Declaration of Attorney**
27 **Fees and Costs for Plaintiff, Declaration of Amounts Due, Proposed Judgment of**
28 **Foreclosure** was:

1 [x] Served on:

2 Byron Hadley
3 Department of Justice
4 1162 Court Street NE
5 Salem, OR 97301
6 Attorney for State of Oregon

7 not less than 3 days prior to submission to the court.

8 This proposed Judgment of Foreclosure is ready for judicial signature because:

9 [] Each opposing party affected by this order or judgment has stipulated to the order or
10 judgment, as shown by each opposing party's signature on the document being
11 submitted.

12 [] Each opposing party affected by this order or judgment has approved the order or
13 judgment, as shown by signature on the document being submitted or by written
14 confirmation of approval sent to me.

15 [x] I have served a copy of this order or judgment on all parties entitled to service and:

16 [x] No objection has been served on me.

17 [] I received objections that I could not resolve with the opposing party despite
18 reasonable efforts to do so. I have filed a copy of the objections I received and
19 indicated which objections remain unresolved.

20 [] After conferring about objections, _____ agreed to independently file
21 any remaining objection.

22 [] The relief sought is against an opposing party who has been found in default.

23 [] An order of default is being requested with this proposed judgment.

24 [] Service is not required pursuant to subsection (3) of this rule, or by statute, rule, or
25 otherwise.

26 [] This is a proposed judgment that includes an award of punitive damages and notice
27 has been served on the Director of the Crime Victims' Assistance Section as required
28 by subsection (4) of this rule.

[] Other: _____

22 **McCarthy & Holthus, LLP**

23 s/ Robert B. Hakari 9/28/2017

24 _____
25 John Thomas OSB No. 024691
26 x Robert Hakari OSB No. 114082
27 920 SW 3rd Ave, 1st Floor
28 Portland, OR 97204
Phone: (971) 201-3200 Fax: (971) 201-3202
rhakari@mccarthyholthus.com
Of Attorneys for Plaintiff

EXHIBIT 1

Lot 34, SIERRA ORCHARD, as platted and recorded August 31, 2004, Reception No. 2004-068422, Lane County Oregon Plat Records, in Lane County, Oregon.

Exhibit 2

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

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,

Plaintiff,

v.

SETH A. KIRKPATRICK; RHEA M. FRENCH;
STATE OF OREGON; HARRY RICHIE'S
JEWELERS; OCCUPANTS OF THE
PROPERTY,

Defendants.

Case No.: 16CV33307

STIPULATED SETTLEMENT OF
FORECLOSURE AS TO DEFENDANT
STATE OF OREGON

1.

Based upon the stipulation of JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, ("Plaintiff"), by and through its attorney of record, and Defendant STATE OF OREGON ("Defendant"), the COURT FINDS AS FOLLOWS:

STIPULATED FINDINGS OF FACT:

2.

PROMISSORY NOTE: Plaintiff is the holder of a certain promissory note (the "Note") which is secured by a deed of trust (the "Deed of Trust") encumbering real property commonly known as 1265 North 1st Street, Creswell, OR 97426, in Lane County, Oregon (the "Property" or "Subject Property").

3.

SUBJECT PROPERTY: The Property is legally described as attached in *Exhibit 1* and having APN/Parcel #: 1731080.

Stipulated Settlement - 1
MH OR-16-735930-JUD

McCarthy & Holthus, LLP
920 SW 3rd Ave, 1st Floor
Portland, OR 97204
PH: (855) 809-3977
FX: (971) 201-3202

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4.

SENIOR DEED OF TRUST: The Deed of Trust was recorded in the official records of LANE County, Oregon on 3/12/2013 as Instrument No. 2013-013631.

5.

JUNIOR LIEN: Defendant holds a valid and subsisting lien against the Subject Property by virtue of a judgment entered on 06/24/2014 in the Circuit Court of Lane County, Case No. 151401243, in the amount of \$311.00 and any subsequent installments. ("Defendant's Lien").

6.

Plaintiff, by its Complaint for Judicial Foreclosure of Real Property, seeks *inter alia* a judgment for foreclosure of its Deed of Trust and declaring its Deed of Trust to be superior to Defendant's Liens.

7.

There is no just reason for delay of the entry of a Judgment as to Defendant. Now, therefore,

STIPULATED SETTLEMENT:

8.

IT IS HEREBY AGREED that Plaintiff shall apply for an unopposed general judgment as follows:

1. Adjudging Plaintiff's Deed of Trust is a valid lien upon the Subject Property and that lien is superior to Defendant's Lien.
2. Adjudging Defendant's Lien is a valid and subsisting lien against the Subject Property.
3. In the event a General Judgment of Foreclosure is entered herein, Defendant's interest in the Subject Property shall be foreclosed in the manner provided by law, excepting any statutory right of redemption upon Sheriff's sale. Defendant shall be permitted to be a bidder at any Sheriff's sale of the Subject Property and shall retain any rights to surplus funds from such a Sheriff's sale which are in excess of those distributed to senior liens.

- 1 4. Defendant shall be bound by any General Judgment entered by the Court herein that does
2 not contravene this Stipulated Settlement.
3 5. No money award of any form shall be awarded to either Plaintiff or Defendant as against
4 each other as a result of the entry of this Stipulated Settlement.
5 6. This Stipulated Settlement shall inure to the benefit of Plaintiff and Defendant, their
6 successors and/or assigns.

7
8 **IT IS SO STIPULATED:**

9
10 **Stipulated to by:**

11 By: s/ Robert B. Hakari
12 Dated: 14th day of August 2017
13 Robert B. Hakari, OSB# 114082
14 920 SW 3rd Ave, 1st Floor
15 Portland, OR 97204
16 Phone: (855) 809-3977
17 Fax: (971) 201-3202
18 rhakari@mccarthyholthus.com
19 Of Attorneys for Plaintiff

By: _____
Dated: ____ day of _____, 2017
Byron Hadley, OSB # 040653
1162 Court Street NE
Salem, OR 97301
Phone: (503) 934-4400
Fax: (503) 378-5017
Email: byron.d.hadley@doj.state.or.us
Attorney for Stipulating Defendant State of
Oregon

- 1 4. Defendant shall be bound by any General Judgment entered by the Court herein that does
2 not contravene this Stipulated Settlement.
3 5. No money award of any form shall be awarded to either Plaintiff or Defendant as against
4 each other as a result of the entry of this Stipulated Settlement.
5 6. This Stipulated Settlement shall inure to the benefit of Plaintiff and Defendant, their
6 successors and/or assigns.

7
8 **IT IS SO STIPULATED:**

9
10 **Stipulated to by:**

11 By: _____

12 Dated: ___ day of _____, 2017
13 Robert B. Hakari, OSB# 114082
14 920 SW 3rd Ave, 1st Floor
15 Portland, OR 97204
16 Phone: (855) 809-3977
17 Fax: (971) 201-3202
18 rhakari@mccarthyholthus.com
19 Of Attorneys for Plaintiff

By: Byron D. Hadley

Dated: 2 day of August, 2017
Byron Hadley, OSB # 040653
1162 Court Street NE
Salem, OR 97301
Phone: (503) 934-4400
Fax: (503) 378-5017
Email: byron.d.hadley@doj.state.or.us
Attorney for Stipulating Defendant State of
Oregon

EXHIBIT 1

Lot 34, SIERRA ORCHARD, as platted and recorded August 31, 2004, Reception No. 2004-068422, Lane County Oregon Plat Records, in Lane County, Oregon.

Exhibit 1
Page 1 of 1

Exhibit 2
Page 5 of 5