

RECEIVED
CIVIL DEPARTMENT
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ANDY LONG SHERIFF
TILLAMOOK COUNTY
TILLAMOOK OREGON

FILED
CIRCUIT COURT
TILLAMOOK COUNTY STATE COURTS
17 DEC 12 AM 9:50
TRIAL COURT ADMINISTRATOR

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

FEDERAL NATIONAL MORTGAGE
ASSOCIATION ("FANNIE MAE"), A
CORPORATION ORGANIZED AND
EXISTING UNDER THE LAWS OF THE
UNITED STATES OF AMERICA,

Plaintiff,

vs.

BRIAN D. BAILEY AKA BRIAN DONELL
BAILEY; REBECAH D. BAILEY AKA
REBECAH DEANNE BAILEY;
OCCUPANTS OF THE PROPERTY,

Defendants.

Case No.: 16CV19267

WRIT OF EXECUTION IN
FORECLOSURE

TO THE TILLAMOOK COUNTY SHERIFF:

A Judgment of Foreclosure was entered and docketed in this case on November 6, 2017.

A true copy of the Judgment is attached hereto. The Judgment was entered in favor of the
Plaintiff:

FEDERAL NATIONAL MORTGAGE ASSOCIATION ("FANNIE MAE"), A
CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE
UNITED STATES OF AMERICA
c/o John Thomas
Attorney for Plaintiff

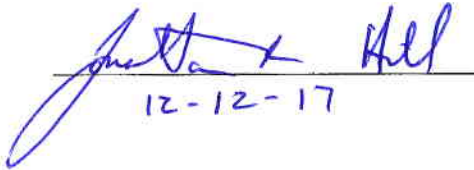
1 McCarthy & Holthus, LLP
2 920 SW 3rd Ave, 1st Floor
 Portland, OR 97204

3 With the adjudicated amount due of \$162,804.20, plus post judgment interest at the statutory rate
4 of 4.62500% per annum from November 6, 2017 to December 11, 2017 in the amount of
5 \$722.03, and continuing with a per diem of \$20.63, currently totaling \$163,526.23.

6 **NOW, THEREFORE, IN THE NAME OF THE STATE OF OREGON,** you are
7 hereby commanded to sell, in the manner prescribed by law for the sale of real property on
8 execution (subject to redemption of 180 days), all of the interest that the Defendant had on or
9 about August 19, 2008, the date of the Deed of Trust, and also the interest that the Defendant had
10 thereafter, in the real property described as follows in attached Exhibit 1, APN/Parcel #R3N10
11 24CB 01600, and commonly known as: 16435 McDonald Road, Nehalem, OR 97131.

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

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19
20 Dated: 12/4/17 and submitted by:


12-12-17

21 **McCarthy & Holthus, LLP**

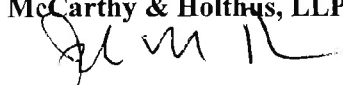
22 
23 _____
24 John Thomas OSB No. 024691
25 920 SW 3rd Ave, 1st Floor
26 Portland, OR 97204
27 Phone: (971) 201-3200
28 Fax: (971) 201-3202
 jthomas@mccarthyholthus.com
 Of Attorneys for Plaintiff

EXHIBIT 1

The South 50 feet of even width of the following described real property:

A portion of Lot 4, Section 24, Township 3 North, Range 10 West of the Willamette Meridian in Tillamook County, Oregon, more particularly described as follows: Beginning at a point on the West edge of the county road which is North 1325.6 feet and West 1355.4 feet from the quarter Section corner of Sections 24 and 25; thence North 11°18' West 244.7 feet along said county road; thence North 17°23' West 227.6 feet; thence North 28°37' West 130.2 feet; thence North 45°50' West 204.6 feet; thence North 50°27' West 365.9 feet; thence South 39°33' West 9.3 feet to a ½" by 30" iron pipe on the bank of the Nehalem River; thence Southeasterly along the Nehalem River 1125 feet, more or less, to a ½" by 30" iron pipe on its bank; thence North 82°42' East 101.0 feet to a ½" by 30" iron pipe; thence North 82°42' East 9.4 feet to the point of beginning, EXCLUDING county road right of way.

RECEIVED
CIVIL DEPARTMENT

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Certified True Copy of The Original
Dated This 11 Day of December 2011
Twenty-seventh Judicial District, State of Oregon
Trial Court Administrator
By Darcy Cheney

ANDY LONG SHERIFF
TILLAMOOK COUNTY
TILLAMOOK OREGON

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

FEDERAL NATIONAL MORTGAGE
ASSOCIATION ("FANNIE MAE"), A
CORPORATION ORGANIZED AND
EXISTING UNDER THE LAWS OF THE
UNITED STATES OF AMERICA,

Plaintiff,

v.

BRIAN D. BAILEY AKA BRIAN DONELL
BAILEY; REBECAH D. BAILEY AKA
REBECAH DEANNE BAILEY;
OCCUPANTS OF THE PROPERTY,

Defendants.

Case No.: 16CV19267

STIPULATED GENERAL JUDGMENT OF
FORECLOSURE

1.

THIS MATTER came before the Court on Plaintiff's motion for Default Judgment and the stipulation of the parties herein. Defendants OCCUPANTS OF THE PROPERTY ("Defaulted Defendants") were duly served with process and failed to appear; the default has been entered against all Defaulted Defendants, and it appearing that Defaulted Defendants are not incapacitated, a protected persons, a respondent as defined in ORS 125.005, a minor, or in the military service of the United States. Plaintiff FEDERAL NATIONAL MORTGAGE ASSOCIATION ("FANNIE MAE"), A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA, through its loan servicing

1 agent Seterus, Inc. ("Plaintiff"), by and through its attorney of record John Thomas, and
2 Defendants BRIAN D. BAILEY AKA BRIAN DONELL BAILEY and REBECAH D. BAILEY
3 AKA REBECAH DEANNE BAILEY ("Borrowers") ("Stipulating Defendants"), by and through
4 their attorney of record David Richardson, (collectively the "Parties") have settled all matters
5 between themselves within this action and agreed to the entry of this Stipulated General
6 Judgment.

7 2.

8 The Parties acknowledge that a dispute has arisen concerning the subject matter of this
9 Complaint, and as a result, the Parties desire to fully resolve the dispute under the terms and
10 conditions of this Judgment of Foreclosure.

11 **STIPULATED FINDINGS OF FACT:**

12 3.

13 SUBJECT PROPERTY: The real property to which this judgment relates is located and
14 situated in Tillamook County, Oregon, and is commonly known as 16435 McDonald Road,
15 Nehalem, OR 97131, and legally described as shown in the attached *Exhibit 1*, and having
16 APN/Parcel No. R3N10 24CB 01600.

17 4.

18 THE NOTE: Plaintiff is entitled to enforce the original note dated 8/19/2008 and made,
19 delivered, and executed by Brian D. Bailey in the amount of \$121,450.00 (the "Note"). The
20 Note was transferred to Plaintiff by delivery of possession and by indorsement set forth on the
21 Note

22 5.

23 DEED OF TRUST: A deed of trust was made, executed, and delivered by Defendant)
24 Brian D. Bailey and Rebecah D. Bailey on or about 8/19/2008 (the "Deed of Trust"). The Deed
25 of Trust was recorded on 8/25/2008 as Instrument No. 2008-006142 in the official records of
26 Tillamook County, Oregon.

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6.

LOAN: Together the Deed of Trust and Note are herein referred to as the "Loan".

7.

BORROWER'S DEFAULT AND ACCELERATION: Borrowers failed to comply with the terms of the Loan, by failing to make payments as agreed. Under the provisions of the Loan, Plaintiff declared the entire balance of principal and interest due and payable.

8.

AMOUNTS DUE AND OWING: There is now due and owing the principal sum of \$140,848.86 together with accrued interest accruing at the rate of 4.62500% per annum thereafter, together with any other sums for expenses and fees due under the terms of the Loan or advanced for the protection of the Subject Property as provided in the Amount Due, *infra*.

9.

COSTS AND ATTORNEY FEES: The Note and Deed of Trust provide that Plaintiff is entitled to recover its reasonable attorney fees and all reasonable and necessary costs and expenses incurred in enforcing the Note and foreclosing the Deed of Trust.

10.

VALID FIRST LIEN: Plaintiff's lien is a valid first and prior lien against the Subject Property. Plaintiff is entitled to have its lien foreclosed and the Subject Property sold at a foreclosure sale by the Tillamook County Sheriff to satisfy any and all amounts due and owing upon the Deed of Trust and Note as adjudged below.

11.

RESIDENTIAL TRUST DEED: Pursuant to the Declarations of BRIAN D. BAILEY AKA BRIAN DONELL BAILEY and REBECAH D. BAILEY AKA REBECAH DEANNE BAILEY, the Deed of Trust is a residential trust deed pursuant to ORS 86.705(6).

12.

OCCUPANTS OF THE PROPERTY: Pursuant to the Declarations of BRIAN D. BAILEY AKA BRIAN DONELL BAILEY and REBECAH D. BAILEY AKA REBECAH

1 DEANNE BAILEY, Borrowers has authority to execute this Stipulated Judgment on behalf the
2 OCCUPANTS OF THE PROPERTY.

3 **OTHER TERMS**

4 13.

5 NO LEASE OR TENANCY: Any lease or other tenancy shall be terminated by
6 Stipulating Defendants in accordance with the law upon execution of this stipulation and
7 supporting declaration and upon entry on this judgment. Stipulating Defendants shall not enter
8 into any new leases or renew any existing lease of the Subject Property and shall not allow any
9 other party to occupy the Subject Property following termination of the existing lease. Any
10 tenancy or rights of occupants is hereby adjudged terminated, foreclosed, and extinguished.

11 14.

12 COMPLETE AGREEMENT: The terms of this Stipulated Judgment and
13 contemporaneously executed Settlement Agreement contain the entire agreement between the
14 Parties and supersede any and all other agreements, either oral or written, between the Parties.

15
16 **STIPULATED GENERAL JUDGMENT:**

17 15.

18 Premised upon Plaintiff's motion for Default Judgment and the records and files herein,
19 which reveal that an order of default was entered, and upon the above stipulations of the Plaintiff
20 and Stipulating Defendants, the Court being fully advised and finding good cause exists so that
21 this General Judgment may be entered in this matter, IT IS HEREBY ORDERED AND
22 ADJUDGED that Plaintiff shall have judgment as follows:

23 a. The amount of debt secured by the Deed of Trust that is now due and owing is comprised
24 of the amounts below (the "Amount Due");

25 **Total:** **\$162,804.20**

26 Unpaid principal balance: \$140,848.86

27

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1	Prejudgment interest accruing from	\$12,080.35
2	10/01/2015 through 8/9/2017 and	
3	continuing until the entry of judgment at	
4	the current Note rate of 4.625%:	
5	Additional amounts due under the terms of	\$4,067.81 ¹
6	the loan:	
7	Attorney fees and costs:	\$5,722.18
8	Prevailing party fee (ORS 20.190 (1)(a)):	\$85.00

9 Pursuant to ORS 82.010 (2), post-judgment interest shall accrue on the Amount Due from
10 the date of entry of this judgment through the sale of the Subject Property at the rate of
11 9.00% per annum.

12 b. Plaintiff's lien is a valid first lien upon the Subject Property and that lien is superior to
13 any interest, lien or claim of the Defendants.

14 c. All right, title and interest in the Subject Property that the Stipulating Defendant(s) had as
15 of the date of the Deed of Trust or thereafter acquired is hereby ordered to be sold by the
16 Tillamook County Sheriff's Office in accordance with the process for sale upon
17 execution, and the proceeds of sale shall be applied:

- 18 1) First, to the costs of sale not incurred by Plaintiff;
- 19 2) Second, to the Amount Due, plus post-judgment interest accruing from the date of
20 entry of judgment through the date of the sale and any incurred costs of sale;
- 21 3) Third, the surplus, if any, to the Defendants in the priority as their interest may
22 appear, described *infra*, or to the clerk of the court to be distributed by the Court
23 to such party or parties as they may establish their right thereto.

24 d. Plaintiff's lien is foreclosed and the Property shall be sold at a foreclosure sale by the
25 Tillamook County Sheriff in the manner provided by law, and the proceeds thereof are to

26 ¹ The additional amounts due under the terms of the loan have increased by \$1,245.87 in Escrow and Property
27 Inspection fees since Plaintiff's Declaration of Amounts Due and Owing was executed.

1 be applied first toward the costs of sale, then toward the satisfaction of Plaintiff's
2 judgment awarded herein, and the surplus, if any, to such party or parties as may establish
3 their right thereto.

4 e. Stipulating Defendants are not entitled to a homestead exemption.

5 f. Defendants, and all persons claiming by, through, or under them, as purchasers,
6 encumbrancers, or otherwise, are adjudged inferior and subordinate to Plaintiff and are
7 forever foreclosed of all interest, lien, or claim in the real property described above and
8 every portion thereof, excepting only any statutory right of redemption as Defendants
9 may have therein.

10 g. Pursuant to 38 U.S.C. § 3720 (d), because the United States' lien is subordinate to the
11 Plaintiff's lien and is guaranteed/insured by the FHA, the federal government does not
12 have a 28 U.S.C. § 2410(c) one-year redemption right in this case.

13 h. Plaintiff may become purchaser at the sale of the Subject Property and, pursuant to ORS
14 18.936 (2), may credit bid up to the Amount Due, plus post-judgment interest accruing
15 from the date of entry of judgment through the date of the sale and any incurred costs of
16 sale.

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

23 j. In accordance with ORS 86.797(2), Plaintiff shall not be entitled to further execute upon
24 any amounts of the money judgment remaining unsatisfied by the proceeds of the
25 foreclosure sale nor be entitled to a deficiency judgment against the Borrowers for such
26 deficient amounts.

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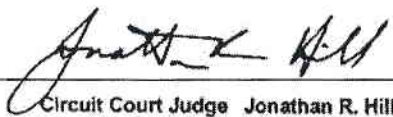
1 k. This Stipulated Judgment shall inure to the benefit of Plaintiff and Stipulating
2 Defendants, their successors and/or assigns.

3 l. Based on the undersigned parties' stipulation, Defendants BRIAN D. BAILEY AKA
4 BRIAN DONELL BAILEY and REBECAH D. BAILEY AKA REBECAH DEANNE
5 BAILEY's Counterclaims and Affirmative Defenses, if any, are dismissed with prejudice
6 and without an award of costs, fees, or disbursements.

7 **IT IS SO STIPULATED:**

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Signed: 11/8/2017 11:56 AM



Circuit Court Judge Jonathan R. Hill

Stipulated to by:

By: s/ John Thomas

By: _____

Dated: 2nd day of November, 2017
John Thomas OSB No. 024691
920 SW 3rd Ave, 1st Floor
Portland, OR 97204
Phone: (971) 201-3200
Fax: (971) 201-3202
jthomas@mccarthyholthus.com
Of Attorneys for Plaintiff

Dated: ____ day of _____, 2017
David Richardson, OSB No. 051370
121 SW Morrison, Suite 1520
Portland, OR 97204
Phone: 971-271-7450
Fax: 503-536-6843
Email: david@pdxlawgroup.com
Attorney for Stipulating Defendants Brian D.
Bailey and Rebecah D. Bailey

- 1 k. This Stipulated Judgment shall inure to the benefit of Plaintiff and Stipulating
2 Defendants, their successors and/or assigns.
- 3 l. Based on the undersigned parties' stipulation, Defendants BRIAN D. BAILEY AKA
4 BRIAN DONELL BAILEY and REBECAH D. BAILEY AKA REBECAH DEANNE
5 BAILEY's Counterclaims and Affirmative Defenses, if any, are dismissed with prejudice
6 and without an award of costs, fees, or disbursements.

7 **IT IS SO STIPULATED:**

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14 **Stipulated to by:**

15 By: _____
16 Dated: ____ day of _____, 2017
17 John Thomas OSB No. 024691
18 920 SW 3rd Ave, 1st Floor
19 Portland, OR 97204
20 Phone: (971) 201-3200
21 Fax: (971) 201-3202
22 jthomas@mccarthyholthus.com
23 Of Attorneys for Plaintiff


By: 
Dated: 16th day of October, 2017
David Richardson, OSB No. 051370
121 SW Morrison, Suite 1520
Portland, OR 97204
Phone: 971-271-7450
Fax: 503-536-6843
Email: david@pdxlawgroup.com
Attorney for Stipulating Defendants Brian D.
Bailey and Rebecah D. Bailey

EXHIBIT 1

The South 50 feet of even width of the following described real property:
A portion of Lot 4, Section 24, Township 3 North, Range 10 West of the Willamette Meridian in Tillamook County, Oregon, more particularly described as follows: Beginning at a point on the West edge of the county road which is North 1325.6 feet and West 1355.4 feet from the quarter Section corner of Sections 24 and 25; thence North 11°18' West 244.7 feet along said county road; thence North 17°23' West 227.6 feet; thence North 28°37' West 130.2 feet; thence North 45°50' West 204.6 feet; thence North 50°27' West 365.9 feet; thence South 39°33' West 9.3 feet to a ½" by 30" iron pipe on the bank of the Nehalem River; thence Southeasterly along the Nehalem River 1125 feet, more or less, to a ½" by 30" iron pipe on its bank; thence North 82°42' East 101.0 feet to a ½" by 30" iron pipe; thence North 82°42' East 9.4 feet to the point of beginning, EXCLUDING county road right of way.

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
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FEDERAL NATIONAL MORTGAGE
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BRIAN D. BAILEY AKA BRIAN DONELL
BAILEY; REBECAH D. BAILEY AKA
REBECAH DEANNE BAILEY;
OCCUPANTS OF THE PROPERTY,

Defendants.

Case No.: 16CV19267

CERTIFICATE OF READINESS

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

On n/a a copy of the Motion For Entry Of Stipulated Judgment, Declaration
Of Attorney Fees And Costs For Plaintiff, Declaration Of Amounts Due, Proposed Stipulated
Judgment Of Foreclosure was:

Served on:

David Richardson
121 SW Morrison, Suite 1520
Portland, OR 97204

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

Accompanied by a stipulation by Opposing Attorney: David Richardson and Firm:
PDX Law Group P.C. stipulated to the judgment.

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Mailed to:

not less than 7 days prior to submission to the court with a notice of the time period to object.

This proposed Stipulated Judgment Of Foreclosure is ready for judicial signature because:

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

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

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

No objection has been served on me.

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

After conferring about objections, _____ agreed to independently file any remaining objection.

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

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

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

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

Other: _____

DATED: November 3, 2017

McCarthy & Holthus, LLP

By: s/ John Thomas

John Thomas, Attorney