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

NATIONSTAR MORTGAGE LLC D/B/A  
CHAMPION MORTGAGE COMPANY,

Plaintiff,

vs.

DANIEL M. WENGER, THE UNKNOWN  
HEIRS AND DEVISEES OF MARIAN C.  
WENGER; UNITED STATES OF AMERICA;  
STATE OF OREGON; OCCUPANTS OF  
THE PROPERTY,

Defendants.

Case No.: 17CV21812

WRIT OF EXECUTION IN  
FORECLOSURE

**TO THE KLAMATH COUNTY SHERIFF:**

A Judgment of Foreclosure was entered and docketed in this case on February 27, 2018.

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

Plaintiff:

NATIONSTAR MORTGAGE LLC  
D/B/A CHAMPION MORTGAGE COMPANY  
c/o Andreanna Smith  
Attorney for Plaintiff  
McCarthy & Holthus, LLP  
920 SW 3rd Ave, 1st Floor  
Portland, OR 97204

1 With the adjudicated amount due of \$177,586.73, plus post judgment interest at the statutory rate  
2 of 9.0% per annum from February 27, 2018 to April 2, 2018 in the amount of \$1,488.86, and  
3 continuing with a per diem of \$43.79, currently totaling \$179,075.59.

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 February 13, 2006, the date of the Deed of Trust, and also the interest that the Defendant  
8 had thereafter, in the real property described as follows in attached Exhibit 1, APN/Parcel #  
9 R509587, and commonly known as 2850 Eastmount Street, Klamath Falls, OR 97603.

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.

16 April 2, 2018

16 John M Powell  
17 TRIAL COURT ADMINISTRATOR

18 Dated: 3/30/2018 and submitted by:

19 **McCarthy & Holthus, LLP**

20 s/ Andreanna C. Smith  
21 Andreanna Smith OSB No. 131336  
22 920 SW 3rd Ave, 1st Floor  
23 Portland, OR 97204  
24 Phone: (971) 201-3200  
25 Fax: (971) 201-3202  
26 [ansmith@mccarthyholthus.com](mailto:ansmith@mccarthyholthus.com)  
27 Of Attorneys for Plaintiff  
28



# Exhibit "1"

A PARCEL OF LAND SITUATE IN THE SE1/4 SW1/4 OF SECTION 1, TOWN-SHIP 39 SOUTH, RANGE 9 E.W.M., IN KLAMATH COUNTY, OREGON, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIN ON THE EASTERLY RIGHT-OF-WAY LINE OF PATTERSON STREET, AS THE SAME IS PRESENTLY LOCATED AND CONSTRUCTED, FROM WHICH AN IRON PIN MARKING THE NORTHWEST CORNER OF THE SE1/4 SW 1/4 OF SEC. 1 TWP. 39 S., R. 9 E.W.M., BEARS S. 89° 06' W. 30 FEET DISTANT; THENCE S. 0° 54' E. ALONG THE SAID EASTERLY RIGHT-OF-WAY LINE OF PATTERSON STREET 1000 FEET TO AN IRON PIN ON THE NORTHERLY RIGHT-OF-WAY LINE OF MARYLAND STREET; THENCE N. 89° 06' E. ALONG THE SAID NORTHERLY RIGHT-OF-WAY LINE OF MARYLAND STREET 420 FEET TO AN IRON PIN; THENCE N. 0° 54' W. 96.7 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING N. 0° 54' W. 96.7 FEET TO A POINT; THENCE N. 89° 06' E. 100 FEET TO A POINT; THENCE S. 0° 54' E. 96.7 FEET TO A POINT; THENCE S. 89° 06' W. 100 FEET MORE OR LESS TO THE TRUE POINT OF BEGINNING.

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

NATIONSTAR MORTGAGE LLC D/B/A  
CHAMPION MORTGAGE COMPANY,

Plaintiff.

vs.

DANIEL M. WENGER, THE UNKNOWN  
HEIRS AND DEVISEES OF MARIAN C.  
WENGER; UNITED STATES OF  
AMERICA; STATE OF OREGON;  
OCCUPANTS OF THE PROPERTY;

Defendants.

Case No.: 17CV21812

GENERAL JUDGMENT OF  
FORECLOSURE

1.

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

All Defendants ("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;

2.

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

- a. The real property to which this judgment relates is located and situated in Klamath County, Oregon, and is commonly known as 2850 Eastmount Street, Klamath Falls, OR 97603 (the "Subject Property"), legally described as shown in the attached *Exhibit 1*, and having APN/Parcel No. R509587.

1 b. Plaintiff is entitled to enforce the note dated February 13, 2006 and made, delivered, and  
2 executed by DANIEL M. WENGER and MARIAN C. WENGER to SEATTLE  
3 MORTGAGE COMPANY in the amount of \$270,000.00 (the "Note"). The Note was  
4 transferred to 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 M. WENGER  
6 and MARIAN C. WENGER on or about February 13, 2006 (the "Deed of Trust"). The Deed  
7 of Trust was recorded on February 17, 2006 as Instrument No. M06-03164 in the official  
8 records of Klamath County, Oregon. The Deed of Trust is a valid and perfected lien against  
9 all of the Property for and securing the Amount Due. The lien of the Plaintiff is superior to  
10 any interest, lien, or claim of the Defendants and shall remain in effect until issuance of a  
11 Sheriff's Deed.

12 d. Under the terms of the Loan all amounts due under the note, including principal, interest,  
13 fees, and costs, are due and owing if all borrowers vacate the property, and the property  
14 ceases to be the borrowers' primary residence. Plaintiff has accelerated the debt for  
15 abandonment of the property, and declared the whole balance of both principal and interest  
16 due and payable. The Borrower failed to make the payment that was due for November 30,  
17 2016 and has not cured the default. The amount of debt secured by the Deed of Trust that is  
18 now due and owing is comprised of the following amounts (the "Amount Due"):

19	a) Unpaid principal balance:	\$119,511.91
20	b) Prejudgment interest accruing	\$31,224.07
21	through 2/9/2018 and continuing	
22	until the entry of judgment at the	
	current Note rate of 6.10%:	
23	c) Additional amounts due under the	\$21,475.79
	terms of the loan:	
24	d) Attorney fees and costs:	\$5,289.96
25	e) Prevailing party fee (ORS 20.190	\$85.00
26	(1)(a)):	
27	<b>Total:</b>	<b>\$177,586.73</b>

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

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

7 f. The Deed of Trust recorded on the Subject Property on 2/17/2006 as Instrument No. M06-  
8 0316 in the official records of Klamath County, Oregon, is reformed to reflect the correct  
9 legal description, attached as *Exhibit 1*.

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 have a  
12 28 U.S.C. § 2410(c) one-year redemption right in this case.

13 h. The Defendants are not entitled to a homestead exception as against Plaintiff's judgment.

14 i. All right, title and interest in the Subject Property that Defendants DANIEL M. WENGER  
15 and MARIAN C. WENGER had as of the date of the Deed of Trust or thereafter acquired is  
16 hereby ordered to be sold by the Klamath County Sheriff's Office in accordance with the  
17 process for sale upon 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 to  
23 such party or parties as they may establish their right thereto.

24 j. Plaintiff may become purchaser at the sale of the Subject Property and, pursuant to ORS  
25 18.936 (2), may credit bid up to the Amount Due, plus post-judgment interest accruing from  
26 the date of entry of judgment through the date of the sale and any incurred costs of sale.

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

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

8 m. If, before the sale, the Amount Due is brought into court and paid to the clerk, the execution,  
9 if issued, shall be recalled and the effect of the judgment as to the Amount Due shall be  
10 terminated.

11 n. Pursuant to ORS 18.950 (4), the apparent priority of liens subsequent and inferior to the  
12 Deed of Trust are as follows:

13 1) Defendants with Junior Interests: As detailed herein, Defendants THE UNKNOWN  
14 HEIRS AND DEVISEES OF MARION C. WENGER; UNITED STATES OF  
15 AMERICA and STATE OF OREGON, (collectively the "Junior Interest Holders")  
16 may claim some interest in Subject Property that is subsequent, subject, and inferior  
17 to the interest held by Plaintiff. Plaintiff is seeking to foreclose upon a senior lien and  
18 the Junior Interest Holders are named in this complaint solely by virtue of said  
19 inferior interest in the Subject Property. Plaintiff is not seeking monetary damages,  
20 attorney fees, costs or disbursements against Junior Interest Holders that do not  
21 contest this action and have not inherited the Subject Property.

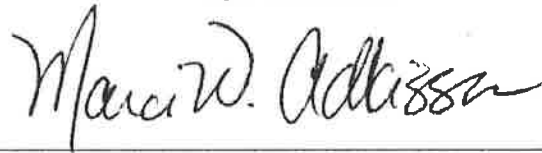
22 2) Junior Interests in the Subject Property: Specifically, the Junior Interest Holders may  
23 claim the following interests in the Subject Property that are subsequent, subject, and  
24 inferior to Plaintiff's interest:

25 (a) Defendant UNITED STATES OF AMERICA may claim an interest in the  
26 Subject Property under the terms of an additional, subordinate note and deed  
27 of trust, associated with this loan issues to the Secretary of Housing and Urban  
28

1 Development (the "HUD Loan") in the amount of \$270,000.00. The deed of  
2 trust associated with the HUD Loan is recorded in the official records of  
3 Klamath County as Instrument No. M06-03165 on 02/17/2006.

4 (b) Defendant STATE OF OREGON may claim an interest against the Property  
5 under the State of Oregon tax deferral program by virtue of a lien recorded on  
6 06/17/2015 as instrument number 2015-006348 in the official records of  
7 Klamath County, Oregon.

Signed: 2/23/2018 09:17 AM

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12  
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14 **Circuit Court Judge Marci W. Adkisson**

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

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

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

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

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

24  No objection has been served on me.

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

28  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.



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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: 2/21/2018 and submitted by:

**McCarthy & Holthus, LLP**

s/ Andreanna C. Smith

\_\_\_\_\_  
John Thomas OSB No. 024691  
X Andreanna Smith OSB No. 131336  
920 SW 3rd Ave, 1st Floor  
Portland, OR 97204  
Phone: (971) 201-3200  
Fax: (971) 201-3202  
ansmith@mccarthyholthus.com  
Of Attorneys for Plaintiff

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