

**STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCE AND CORPORATE SECURITIES
BEFORE THE DIRECTOR OF THE DEPARTMENT
OF CONSUMER AND BUSINESS SERVICES**

In the Matter of:

M-11-0125

**Rystadt & Escobar, Inc. dba Fresh Start
Solutions, NMLS # 259428**

**Final Order Revoking Mortgage
Banker/Broker License, Order to Cease
and Desist, Order Assessing Civil
Penalties Entered by Default**

Respondent.

On December 20, 2011, the Director of the Department of Consumer and Business Services for the State of Oregon (hereinafter “the Director”), acting pursuant to the authority contained in Oregon Revised Statutes (“ORS”) 86A.100 et seq. and Oregon Administrative Rules (“OAR”) 441-850-0005 through 441-885-0010 (hereinafter “the Oregon Mortgage Lender Law”) issued administrative order case no. M-11-0125 Order to Cease and Desist, Proposed Order Assessing Civil Penalties and Notice of Opportunity for a Hearing (hereinafter “the Order”) to Rystadt & Escobar Inc.

On January 3, 2012, Rystadt & Escobar Inc. requested a hearing.

On March 15, 2012, a prehearing telephone conference was held for this case in which Rystadt & Escobar Inc. appeared, and another prehearing conference date was scheduled.

On May 24, 2012, a pre-hearing telephone conference was held for this case in which Rystadt & Escobar Inc. appeared and was represented by counsel. An in-person hearing was scheduled for November 27 through November 30, 2012.

On November 27, 2012, neither Rystadt & Escobar Inc. nor counsel for Rystadt & Escobar Inc. appeared at the in-person hearing.

Rystadt & Escobar Inc. was aware that failure to appear at the hearing would result in the entry of a final order by default.

Page 1 of 15 – Rystadt & Escobar Inc. - M-11-0125 – Final Order Revoking Mortgage Banker/Broker License, Order to Cease and Desist, and Order Assessing Civil Penalties Entered by Default



1 **FINDINGS OF FACT**

2 The Director FINDS that:

3 1. Rystadt & Escobar, Inc. is an Oregon corporation first registered with the Oregon
4 Secretary of State on March 5, 2003.

5 2. Rystadt & Escobar, Inc. obtained an Oregon mortgage banker/broker license from
6 the Division of Finance and Corporate Securities (hereinafter the "Division") on May 7, 1998,
7 Nationwide Mortgage Licensing System (hereinafter "NMLS") # 259428.

8 3. Rystadt & Escobar, Inc.'s principal place of business is listed as 9900 SW Wildshire
9 Street, Suite 200, Portland, Oregon 97225.

10 4. Previously, from the time period of May 11, 2010 through April 19, 2011, Rystadt &
11 Escobar, Inc.'s principal place of business was listed with the Division as 12823 Southeast 93rd
12 Avenue, Clackamas, Oregon 97015.

13 5. The Director's records list Curtis Rystadt as an owner, control person, the
14 experienced person, and a loan originator for Rystadt & Escobar, Inc.

15 6. An inquiry was made to the Division on or about December 2, 2009 regarding
16 whether Fresh Start Solutions and Paul Rospotnyuk were authorized to complete residential
17 loan modifications in Oregon.

18 7. As Paul Rospotnyuk has never been registered or licensed with the Division as a
19 mortgage loan originator, the Division sent a letter to him at Fresh Start Solutions, 12823
20 Southeast 93rd Avenue, Clackamas, Oregon 97015, warning that registration as a debt
21 management service provider was required.

22 8. Edward Rospotnyuk responded to the letter on December 8, 2009 reporting that he,
23 not Paul, was the sole shareholder of Fresh Start Solutions, and that he had begun the education
24 required for loan originator licensing to become compliant with Oregon law.

25 9. On January 20, 2010, the Division's Manager of the Mortgage Lending Section sent
26 another letter to Paul Rospotnyuk warning him that if he originated loan modification





1 transactions he was violating the Oregon Mortgage Lender Law or the Oregon Debt
2 Management Service Provider’s Act, House Bill 2191.

3 10. On April 27, 2010, Rystadt & Escobar, Inc. added Fresh Start Solutions as an “other
4 trade name” associated with its license in NMLS. Rystadt & Escobar dba Fresh Start Solutions
5 (hereinafter “Rystadt”). This authorizes the company to do business as Fresh Start Solutions.
6 Accordingly, the name Fresh Start Solutions was added to Rystadt’s mortgage banker/broker
7 license and surety bond.

8 11. Fresh Start Solutions is an associated business name first registered with the Oregon
9 Secretary of State on April 9, 2010 with a principal place of business located at 12823 Southeast
10 93rd Avenue, Clackamas, Oregon 97015.

11 12. Edward Rospotynuk also known as “Eddie Ross” (hereinafter “Rospotynuk”) is
12 listed as the registered agent of Fresh Start Solutions.

13 13. Rospotynuk has never been registered or licensed with the Division as a
14 mortgage loan originator or registered as a debt management service provider.

15 14. Keith Browne (hereinafter “Browne”) first became licensed with the Division as a
16 mortgage loan originator for Rystadt on December 14, 2010.

17 15. Nikki M, also known as Nicole Cummings (hereinafter “Cummings”), has never
18 been registered or licensed with the Division as a mortgage loan originator or debt management
19 service provider.

20 I. Examinations

21 16. On September 15, 2003, the Division completed an examination of the books and
22 records of Rystadt, and the company received a marginal score of 4 on a scale of 1 to 5, with 5
23 being poor. Among other things, the examination revealed that Rystadt failed to:

- 24 a. maintain proper personnel ledgers;
- 25 b. include an interest rate lock/float agreement in all loan files reviewed; and
- 26 c. complete and maintain copies of correct Truth in Lending Act disclosures.



1 17. On October 4, 2004, the Division completed an examination of Rystadt, and the
2 company received a score of 4. Among other things, the examination revealed that Rystadt
3 failed to:

- 4 a. again maintain proper personnel ledgers;
- 5 b. include an interest rate lock/float agreement in all loan files reviewed;
- 6 c. complete and maintain copies of correct Truth in Lending Act disclosures; and
- 7 d. complete criminal record checks prior to the hire of all loan originators.

8 18. On January 31, 2006, the Division completed an examination of Rystadt, and the
9 company received a poor score of 5. Among other things, the examination revealed that
10 Rystadt failed to:

- 11 a. again complete criminal records checks prior to the hire of all loan originators;
- 12 b. include an interest rate/lock float agreement in all loan files reviewed; and
- 13 c. complete and maintain copies of correct Truth in Lending Act disclosures.

14 19. Following the 2006 examination, on May 15, 2006, the Division issued a conditional
15 mortgage banker/broker license to Rystadt, administrative order case number M-06-0021.

16 20. The conditional license is subject to the following conditions such that if Rystadt
17 fails to comply with the conditions, Rystadt agrees that the license shall be immediately revoked
18 if the company failed to comply with the following requirements:

- 19 a. Respondent [Rystadt] will comply with ORS 59.840 through 59.996 [currently
20 ORS 86A.100 et seq.], OAR 441-850-0005 through 441-885-0010 and any rule,
21 order or policy issued by the Director, including but specifically not limited to:
 - 22 i. Respondent shall notify the Director within 30 days of the hire or
23 termination of a loan originator;
 - 24 ii. Respondent shall obtain a criminal records check prior to the hire of a
25 loan originator;
 - 26 iii. Respondent shall not employ any loan originator who has not completed



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the required entry-level or continuing education requirements in compliance with OAR 441-880-0020;

- iv. Respondent shall immediately terminate any loan originator who has not completed the required entry-level or continuing education in compliance with OAR 441-880-0020;
- v. Respondent shall maintain personnel records in compliance with OAR 441-865-0050;
- vi. Respondent shall provide each borrower all disclosures required by the Truth in Lending Act prior to the close of any mortgage; and
- vii. Respondent shall maintain a compliant rate lock or float agreement in each borrower file.
- viii. The Director shall conduct one or more examinations of Respondent on or after May 15, 2006 reviewing Respondent's compliance with ORS 59.840 through 59.996, OAR 441 850-005 through OAR 441-885-0010 and any rule, order or policy issued by the Director since May 11, 2006. If Respondent fails to achieve an examination score of at least a 3, or satisfactory rating, Respondent agrees to the revocation of the mortgage lender license by the Director.

21. On July 3, 2007, the Division completed an examination of Rystadt, and the company received a score of 3. Among other things, the examination revealed that Rystadt:

- a. continued to employ loan originators who had failed to complete the required education;
- b. failed to complete and maintain correct copies of Truth in Lending Act disclosures; and
- c. failed to include a compliant lock agreement in all loan files.

22. On May 11, 2009, Rystadt's conditional license was continued until further order of



1 the Director in administrative order case number M-07-0029 that included the same conditions
2 as administrative order case number M-06-0021.

3 23. On January 3, 2011, the Division completed an examination of Rystadt, and the
4 company received a score of 5. Among other things, the examination revealed that Rystadt:

- 5 a. failed to make a timely notification to the Division of the hire of all loan
6 originators;
- 7 b. continued to employ loan originators, including Curtis Rystadt, who had not
8 completed the required education;
- 9 c. failed to complete criminal records checks prior to the hire of all loan
10 originators;
- 11 d. failed to maintain compliant interest rate lock/float agreements in all borrower
12 files reviewed;
- 13 e. failed to reconcile the Clients' Trust Account on a monthly basis; and
14 f. failed to maintain a subsidiary ledger for the Clients' Trust Account.

15 24. In administrative order case number M-07-0029, issued on May 11, 2009, Rystadt's
16 license was conditioned until further order of the Director, and there has been no further order
17 of the Director.

18 **II. Complaints**

19 **a. Borrower One**

20 25. At all times relevant to this matter, consumers "Borrower One," "Borrower Two,"
21 "Borrower Three," and "Borrower Four" were Oregon residents and were a party to a residential
22 mortgage loan secured by real estate located in Oregon.

23 26. On or about November 5, 2010, a consumer (hereinafter "Borrower One") filed a
24 complaint with the Oregon Department of Justice against Rystadt, and the complaint was
25 forwarded to the Division on or about November 10, 2010.

26 27. Borrower One applied for a loan modification through Rystadt, and a



1 company representative provided Borrower One with a contract offering loan modification
2 services that included assisting her in renegotiating the terms of her residential mortgage
3 program and/or loan structure.

4 28. Based on Rystadt's representations, Borrower One accepted Rystadt's offer and
5 signed the contract for loan modification services dated October 28, 2010.

6 29. Borrower One paid \$1,500 upfront and made two subsequent payments of \$300 for a
7 total of \$2,100 to Rystadt for loan modification services.

8 30. The contract provided that the borrower's funds would be placed in a Clients' Trust
9 Account and provided for a partial refund if the lender declined the loan modification, and no
10 other options are available for Rystadt to utilize.

11 31. Borrower One started working with a Rystadt employee but was quickly
12 transferred to Browne who informed her that he had taken over her loan modification
13 transaction, since the other employee had left the company.

14 32. In order to package her loan modification, Browne instructed Borrower One to
15 submit financial documents to Rystadt, and Borrower One sent correspondence by email on
16 October 29, 2010 and by fax on November 1, 2010.

17 33. Borrower One expressed frustration that she had not seen progress on her
18 transaction, and, on or about November 18, 2010, Browne gave her the option of continuing by
19 completing and submitting more paperwork, or closing out the transaction.

20 34. Borrower One choose to continue with the transaction.

21 35. Sometime after November 2010, Rospotunuk started to work on Borrower One's
22 transaction and gave her supplemental documents to complete.

23 36. A notation made by Rospotunuk on a case log obtained from Rystadt reports that on
24 March 10, 2011 Borrower One's loan modification was declined by the lender and noted "Will
25 send borrower refund."

26 37. To date, Borrower One has not received a loan modification or a refund from



1 Rystadt.

2 38. On April 27, 2011, the Division Compliance Specialist made a request to Curtis
3 Rystadt to provide copies of Rystadt's Clients' Trust Account statements along with account
4 subsidiary ledgers.

5 39. Curtis Rystadt provided the Clients' Trust Account statements, but replied that he
6 did not have a subsidiary ledger for the account.

7 **b. Borrower Two**

8 40. On or about January 1, 2011, a consumer (hereinafter "Borrower Two") filed a
9 complaint with the Oregon Department of Justice against Rystadt, and the complaint was
10 forwarded to the Division on or about January 25, 2011.

11 41. Borrower Two applied for a mortgage loan modification through Rystadt, and a
12 company representative provided Borrower Two with a contract offering loan modification
13 services including assisting them in renegotiating the terms of their residential mortgage
14 program and/or loan structure.

15 42. Based on Rystadt's representations, Borrower Two accepted Rystadt's offer and
16 signed the contract for loan modification services dated August 13, 2010.

17 43. Borrower Two paid \$1,450 to Rystadt for loan modification services.

18 44. The contract provided that the borrower's funds would be placed in a Clients' Trust
19 Account and provided for a partial refund if the lender declined the loan modification, and no
20 other options are available for Rystadt to utilize.

21 45. Borrower Two started working with one Rystadt employee but their transaction
22 was transferred to Browne in October 2010.

23 46. A Rystadt case log reports that "Nikki M", by information and belief
24 also known as Nicole Cummings, spoke with Borrower Two to let them know that the lender
25 declined their loan modification due to the fact that their loan was not delinquent. Cummings
26 explained to Borrower Two that they had the option of a "special forbearance" that would affect



1 their credit, and there would be no guarantee that the loan would be modified after the
2 forbearance.

3 47. Borrower Two chose not to enter into a special forbearance.

4 48. Borrower Two received a refund from Rystadt of \$558.

5 **c. Borrower Three**

6 49. On or about March 28, 2011, a consumer (hereinafter “Borrower Three”) filed a
7 complaint with the Oregon Department of Justice against Rystadt, and the complaint was
8 forwarded to the Division on or about April 7, 2011.

9 50. Borrower Three applied for a mortgage loan modification through Rystadt, and a
10 company representative provided Borrower Three with a contract offering loan modification
11 services including assisting him in renegotiating the terms of his residential mortgage program
12 and/or loan structure.

13 51. Based on Rystadt’ representations, Borrower Three accepted this offer
14 and signed the contract for loan modification services dated August 11, 2010.

15 52. Borrower Three paid \$3,650 upfront to Rystadt for loan modification services.

16 53. The contract provided that the borrower’s funds would be placed in a Clients’ Trust
17 Account and provided for a partial refund if the lender declined the loan modification, and no
18 other options are available for Rystadt to utilize.

19 54. Borrower Three contacted the Rystadt employee he had been working with to
20 check on the status of his transaction, and the employee told him that he believed that Eddie
21 Rospotnyuk, his boss, was working on Borrower Three’s transaction.

22 55. In December or 2010 or January 2011, Borrower Three started working with
23 Rospotnyuk on this transaction.

24 56. A Rystadt case log dated May 5, 2011 reports that Rospotnyuk left the lender a
25 voice message requesting a return call to discuss the status of the transaction.

26 57. A Rystadt case log dated May 7, 2011 reports that Rospotnyuk left Borrower



1 Three a voice message to call to discuss his current options for the transaction.

2 58. Borrower Three did not receive a loan modification and received a \$900 refund from
3 Rystadt.

4 **d. Borrower Four**

5 59. On or about July 18, 2011, a former Rystadt employee contacted the Division to
6 report that a consumer couple (hereinafter “Borrower Four”) who had applied for a loan
7 modification through Rystadt had been taken advantage of by Rystadt.

8 60. On August 9, 2011, Borrower Four filed a complaint against Rystadt
9 with the Divison.

10 61. Borrower Four applied for a mortgage loan modification through Rystadt, and a
11 company representative provided Borrower Four with a contract offering loan modification
12 services including assisting them in renegotiating the terms of their residential mortgage
13 program and/or loan structure.

14 62. Based on Rystadt’s representations, Borrower Four accepted Rystadt’s offer and
15 signed the contract for loan modification services dated July 12, 2010.

16 63. Borrower Four paid \$2,500 in several installments to Rystadt for loan
17 modification services.

18 64. The contract provided that the borrower’s funds would be placed in a Clients’ Trust
19 Account and provided for a partial refund if the lender declined the loan modification, and no
20 other options are available for Rystadt to utilize.

21 65. Borrower Four started working with a Rystadt employee. This employee then
22 reportedly went to meet with Rospotnyuk who indicated that Borrower Four was a “very good
23 candidate for a modification.”

24 66. In January 2011, Borrower Four came to Rystadt to make a payment
25 and was told by Rospotnyuk not to make the monthly payment.

26 67. Again in February 2011, Rospotnyuk told Borrower Four not to make a payment



1 because things “were not going well at Rystadt.”

2 68. At the end of March 2011, Borrower Four began leaving voice messages requesting
3 an update on his loan modification transaction.

4 69. On July 27, 2011, Borrower Four spoke with Curtis Rystadt and asked about the
5 status of his transaction. Rystadt replied that he would contact Rospotnyuk in California to find
6 out of the status of the transaction and agreed to contact Borrower Four again on August 4,
7 2011.

8 70. On August 4, 2011, Borrower Four contacted Curtis Rystadt who told him that he
9 would send Borrower Four an email and then ended the call.

10 71. Borrower Four reported that he did not receive an email or a return call from Curtis
11 Rystadt.

12 72. On May 3, 2010, the Division Compliance Specialist spoke with the former Rystadt
13 employee who originally contacted the Division regarding Rystadt’s handling of Borrower
14 Four’s loan modification.

15 73. The former employee told the compliance specialist that Rospotnyuk was working
16 on Borrower Four’s loan modification transaction. He reported that Rospotnyuk works on all
17 the loan modification transactions, and that he ran everything at Rystadt. He further reported
18 that Rospotnyuk directed all paperwork and did all of the negotiation with the lender or the
19 servicer for the Rystadt loan modifications.

20 74. On August 9, 2011, after receiving Borrower Four’s complaint, the Division
21 requested a copy of the Rystadt transaction file from Curtis Rystadt.

22 75. On September 15, 2011, Curtis Rystadt replied that he could not find the file, and
23 that Rospotnyuk had taken the file with him in California.

24 76. Borrower Four reported that he received a \$1,400 refund from Rystadt on September
25 23, 2011.

26 77. Curtis Rystadt submitted a portion of Borrower Four’s transaction file to the



1 Division. A Division Compliance Specialist sent an email request and left a phone message
2 requesting the entire transaction file.

3 78. To date, Rystadt has not submitted Borrower Four’s complete transaction file to the
4 Division.

5 **e. Inquiry**

6 79. On or about August 12, 2010, the Division received a call from HomeStreet Bank’s
7 attorney reporting that Rystadt was using the bank’s name in connection with advertisements
8 offering loan modifications services that implied a relationship existed between Rystadt and the
9 bank.

10 80. The Rystadt advertisement including a notice on the front “Re:
11 HOMESTREET BANK-Loan Modification.”

12 81. No affiliation exists between HomeStreet Bank and Rystadt. The
13 Division warned Rystadt that this advertisement violated the Oregon Mortgage Lender Law,
14 and Rystadt responded that he would stop using the bank’s name in connection with
15 solicitations for loan modifications.

16 **CONCLUSIONS OF LAW**

17 The Director CONCLUDES that:

18 1. Rystadt’s failure to receive a satisfactory score of 3 on the January 2011
19 examination, while instead receiving a poor score of 5, constitutes a violation of conditions
20 placed on Rystadt’s license by order of the Director administrative case number M-06-0021 and
21 M-07-0029 which is grounds to revoke Rystadt’s mortgage banker/broker license under ORS
22 86A.115(9).

23 2. Continuing to employ loan originators who had not completed the required
24 education in violation of OAR 441-880-0030(6) is a violation of the conditions placed on
25 Rystadt’s license by order of the Director administrative case number M-06-0021 and M-07-
26 0029. This violation of Rystadt’s conditional license is grounds to revoke Rystadt’s mortgage



1 banker/broker license under ORS 86A.115(9).

2 3. Failing to complete criminal records checks before the hire of loan originators, in
3 violation OAR 441-860-0045(1), is a violation of the conditions placed on Rystadt's license by
4 order of the Director administrative case number M-06-0021 and M-07-0029. This violation of
5 Rystadt's conditional license is grounds to revoke Rystadt's mortgage banker/broker license
6 under ORS 86A.115(9).

7 4. By failing to include compliant interest rate lock/float agreements in all borrower
8 files, in violation of OAR 441-865-0060(1)(c), Rystadt violated the conditions placed on its
9 license by the Director administrative case number M-06-0021 and M-07-0029. This violation
10 of Rystadt's conditional license is grounds to revoke Rystadt's mortgage banker/broker license
11 under ORS 86A.115(9).

12 5. By failing to set up and maintain a subsidiary ledger for the Clients' Trust Account
13 showing the receipts and disbursements and maintaining a running total of every transaction
14 pertaining to the trust account, Rystadt violated OAR 441-875-0040(1)(b).

15 6. By discussing the loan modification transaction options with Borrower One,
16 including offering the options of continuing with the loan modification transaction with Rystadt
17 by completing and submitting the paperwork, or closing out the transaction, Browne acted as a
18 loan originator for Rystadt under ORS 86A.200(4)(a).

19 7. By failing to refund the upfront fees owed to Borrower One after the lender declined
20 her loan modification and after Rospotnyuk noted in the case log that a refund would be made,
21 Rystadt failed to account to persons for monies received in violation ORS 86A.115(7) which
22 constitutes grounds to revoke's Rystadt's mortgage banker/broker license.

23 8. By discussing their loan modification transaction options with Borrower Two
24 including that that they had the option of a "special forbearance" that would affect their credit,
25 and there would be no guarantee that the loan would be modified after the forbearance,
26 Cummings acted a loan originator for Rystadt under ORS 86A.200(4)(a).



1 9. By taking over Borrower Three’s loan modification transaction from another Rystadt
2 employee, by discussing Borrower Three’s transaction options for continuing with his Rystadt
3 loan modification transaction with him, by offering a favorable evaluation of Borrower Four’s
4 chances for a loan modification, and by negotiating with the lender on behalf of Borrower Four,
5 Rospotnyuk acted as a loan originator under ORS 86A.200(4)(a).

6 10. By failing to notify the Division of the employment of Browne, Cummings, and
7 Rospotnyuk within 30 days of employment, Rystadt violated ORS 86A.179(1). This violation
8 of Rystadt’s conditional license is grounds to revoke Rystadt’s mortgage banker/broker license
9 under ORS 86A.115(9).

10 11. Rystadt’s failure to maintain Borrower Four’s loan modification transaction file and
11 by failing to produce the complete file after the Division requested a copy of the file
12 demonstrates negligence or incompetence in performing act for which the licensee is required to
13 hold a license in violation of ORS 86A.112(1). Rystadt’s violation of ORS 86A.112(1)
14 constitutes grounds to revoke Rystadt’s mortgage banker/broker license under ORS
15 86A.115(15).

16 12. The ad that Rystadt used or caused to be published that included “Re:
17 HOMESTREET BANK-Loan Modification,” implying there is a relationship between Rystadt
18 and Homestreet Bank when no relationship exists, constitutes a false, misleading, deceptive
19 statement or representation in violation of ORS 86A.163(1).

20 **ORDERS**

21 **NOW, THEREFORE, THE DIRECTOR ISSUES THE FOLLOWING ORDERS:**

22 The Director, pursuant to ORS 86A.115, hereby **ORDERS** that Rystadt’s mortgage
23 banker/broker license is **REVOKED** as of the date of this order.

24 The Director, pursuant to ORS 86A.127, hereby **ORDERS** Rystadt to Cease and Desist
25 from violating Oregon’s Mortgage Lender Law.

26 The Director, pursuant to ORS 86A.992, hereby proposes to order Rystadt to pay a civil



1 penalty of \$35,000. The civil penalty is based upon \$5,000 for the violation of OAR 441-875-
2 0040(1)(b) (failure to maintain supplementary ledger for the Clients' Trust Account), \$15,000
3 for three violations of ORS 86A.179(1) (failure to notify of the employment of loan originator),
4 \$5,000 for the violation of ORS 86A.115(7) (failure to account to persons for monies received),
5 \$5,000 for the violation of ORS 86A.115(12) (negligence or incompetence), and \$5,000 for the
6 violation of ORS 86A.163(1) (misleading ad).

7 The entry of this Order in no way further limits remedies that may be available to the
8 Director under Oregon law.

9 Dated this 30th day of November, 2012.

10 PATRICK M. ALLEN, Director
11 Department of Consumer and Business Services

12 /s/ David Tatman
13 David C. Tatman, Administrator
14 Division of Finance and Corporate Securities

15 Nunc Pro Tunc December 19, 2011.

16 NOTICE: You may be entitled to judicial review of this Order. Judicial review may be
17 obtained by filing a petition with the Court of Appeals in Salem, Oregon within 60 days from
18 the service of this Order. Judicial review is pursuant to the provisions of ORS 183.482 to the
19 Oregon Court of Appeals.