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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE

JERIANN KERNS, as an aggrieved employee
pursuant to the Private Attorneys General Act
("PAGA"), on behalf of the State of California
and other aggrieved employees,

Plaintiff,

vs.

BANK OF THE SIERRA, a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. 283185

PAGA SETTLEMENT AGREEMENT

PAGA SETTLEMENT AGREEMENT

Subject to Court approval by the Superior Court of the State of California for the County of Tulare (“Court”), Plaintiff Jeriann Kerns (“Plaintiff”), on behalf of herself and the other Aggrieved Employees (defined below) and as a private attorney general on behalf of the State of California pursuant to Labor Code section 2699 *et. seq.* (the Private Attorneys General Act – “PAGA”), and Defendant Sierra Bank Corp. dba Bank of the Sierra (“Defendant”) (jointly with Plaintiff, the “Parties”) hereby agree to the following binding settlement (“Settlement” or “Settlement Agreement”) of the action entitled *Jeriann Kerns v. Bank of the Sierra*, No. 283185 (Tulare County Superior Court) (the “Action”).

DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. “Action” means *Jeriann Kerns v. Bank of the Sierra*, No. 283185 (Tulare County Superior Court).

2. “Aggrieved Employees” means all persons employed as non-exempt, hourly paid employees of Defendant in the State of California at any time from April 9, 2019 to the date the Court enters the order approving the Settlement Agreement.

3. “Court” means the Superior Court for the State of California, County of Tulare.

4. “Attorneys’ Fees and Costs” means the amount agreed upon by the Parties intended to compensate Plaintiff’s Counsel for their fees and litigation costs. The Parties have agreed that Fifty-Five Thousand Dollars (\$55,000) of the Gross Settlement Amount will be considered Attorneys’ Fees and Costs.

5. “Gross Settlement Amount” means the Gross Settlement Amount of One Hundred and Thirty Thousand Dollars (\$130,000) to be paid by Defendant in full satisfaction of all Settled Claims arising from the Action, which includes all payments (Attorneys’ Fees and Costs, Aggrieved Employee allocation, Service Award, LWDA allocation, and the Settlement Administrator costs).

6. “LWDA” means the California Labor and Workforce Development Agency.

7. “PAGA Penalties Fund” means the Gross Settlement Amount less the Attorneys’ Fees and Costs, Service Award, and Settlement Administrator Costs.

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1 13(b) To determine each Aggrieved Employee's payment from the PAGA
2 Penalties Fund, the Settlement Administrator will then use the following
3 formula pursuant to the timing detailed within this Settlement Agreement:
4 Settlement Payment = 25% of PAGA Penalties Fund × [Pay Periods
5 Worked by Individual Aggrieved Employee During the Settlement Period ÷
6 Total Pay Periods Worked by All Aggrieved Employees during the
7 Settlement Period].

8 14. Service Award and Plaintiff's Complete and General Release. For a general release of
9 all claims Plaintiff may have against Defendant and Released Parties as defined in this section, including
10 but not limited to those arising out of her employment, and for her service on behalf of the LWDA and
11 Aggrieved Employees, Defendant agrees to pay Plaintiff the sum of Seven Thousand Five Hundred
12 Dollars (\$7,500) ("Service Award"). If Plaintiff's requested service award is not approved and is reduced
13 by the Court, the excess will revert to the PAGA Penalties Fund. In consideration for the promises set
14 forth in this Agreement, Plaintiff does hereby, for herself and her heirs, representatives, attorneys,
15 administrators, successors, and assigns, release, acquit, remise, and forever discharge Defendant,
16 including its owners, members, officers, directors, managers, servants, agents, employees, former
17 employees, representatives, insurers, attorneys, parent companies, sister companies, subsidiaries and any
18 related companies in any form whatsoever, past or present, and all persons acting under, by, through, or
19 in concert with any of them ("Released Parties"), from any and all actions, causes of action, obligations,
20 costs, expenses, damages, losses, claims, liabilities, suits, debts, civil or statutory penalties, demands, and
21 benefits (including attorneys' fees and costs), of whatever character, in law or in equity, known or
22 unknown, suspected or unsuspected, matured or unmatured, of any kind or nature whatsoever, based on
23 any act, omission, event, occurrence, or nonoccurrence from the beginning of time to the date of
24 execution hereof, including but not limited to any claims or causes of action arising out of or in any way
25 relating to Plaintiff's employment with Defendant.

26 This release is not intended to operate as, nor shall it be construed as, a release or waiver of any
27 rights and/or claims that cannot be released or waived as a matter of law, which includes claims for
28 unemployment insurance benefits, workers compensation benefits, health insurance benefits under the

Consolidated Omnibus Budget Reconciliation Act (COBRA), or claims with regard to vested benefits under a retirement plan governed by the Employee Retirement Income Security Act (ERISA).

Moreover, for the purpose of implementing a full and complete release, Plaintiffs expressly acknowledges that the release she gives in this Settlement Agreement is intended to include in its effect, without limitation, claims that Plaintiff did not know or suspect to exist at the time of execution hereof, regardless of whether the knowledge of such claims, or the facts upon which they might be based, would materially have affected the settlement of this matter, and that the consideration given under this Settlement Agreement is also for the release of those claims and contemplates the extinguishment of any such unknown claims. In furtherance of this settlement, Plaintiff waives any rights she may have under California Civil Code Section 1542 (and other similar statutes and regulations). Section 1542 states:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.**

15. Settlement Administration Costs. The Parties will retain Simpluris, Inc. as the third-party settlement administrator ("Settlement Administrator"). The Settlement Administrator will be responsible for administration of the settlement, including but not limited to, sending out the letters described in this Settlement Agreement, establishing a qualified settlement fund ("QSF"), and issuing payments and appropriate tax forms to Aggrieved Employees, the LWDA, Plaintiff, and Plaintiff's Counsel. The Settlement Administration Costs will be paid from the Gross Settlement Amount. Settlement Administration Costs are estimated at Five Thousand Five Hundred Dollars (\$5,500). To the extent the costs exceed this amount, they shall be paid from the Gross Settlement Amount. To the extent the costs fall below this amount, they shall be added to the PAGA Penalties Fund. Plaintiff shall request this amount for the Settlement Administrator, under these terms, when seeking approval of the Settlement Agreement from the Court.

16. Attorneys' Fees and Costs. The Parties agree upon Fifty-Five Thousand Dollars

1 (\$55,000) as Attorneys' Fees and Costs to be paid from the Gross Settlement Amount, and Plaintiff's
2 Counsel shall request the same when seeking approval of this Settlement Agreement from the Court. If
3 Plaintiff's Counsel's request for reimbursement of costs and fees is not approved and is reduced by the
4 Court, the excess will revert to the PAGA Penalties Fund.

5 17. Court Approval of the Settlement and Distribution of Settlement Payments. The Parties
6 will present this Settlement Agreement to the Court and the LWDA. The Parties will request that the
7 Court issue an order approving and incorporating by reference the terms and conditions of the Settlement
8 Agreement and simultaneously dismissing the case with prejudice (the "Order"). This Order will be
9 submitted concurrently with the documents asking for the Court to approve the settlement.

10 18. List of Aggrieved Employees. No later than thirty (30) days after entry of the Order,
11 Defendant will provide the Settlement Administrator with a confidential and complete list of all
12 Aggrieved Employees ("Aggrieved Employee List"). In order to protect employee privacy, the
13 Settlement Administrator will not share the Aggrieved Employee List with anyone, including but not
14 limited to Plaintiff, Plaintiff's Counsel, or any one individual Aggrieved Employee. The Aggrieved
15 Employee List will be formatted in Microsoft Office Excel and will include each Aggrieved Employee's
16 full name; last known mailing address and telephone number; Social Security number; the respective
17 number of pay periods each Aggrieved Employee worked during the Settlement Period; and any other
18 relevant information needed to calculate settlement payments.

19 19. Funding of the Settlement. No later than thirty (30) days after entry of the Order,
20 Defendant will deposit the Gross Settlement Amount into the QSF to be established by the Settlement
21 Administrator. Within fourteen (14) calendar days of the funding of the Settlement, the Settlement
22 Administrator will issue payments to: (a) Aggrieved Employees; (b) the Labor and Workforce
23 Development Agency; (c) Plaintiff and Plaintiff's Counsel; and (d) itself. The Settlement Administrator,
24 and not Defendant, will issue the appropriate tax forms for all payments issued under this Settlement.

25 20. Settlement Payments to Aggrieved Employees. No later than sixty (60) days after entry
26 of the Order, the Settlement Administrator will issue each Aggrieved Employee one check for his or her
27 share of the PAGA Penalties Fund along with an explanatory letter which will be mutually approved by
28 the parties. Prior to mailing, the Settlement Administrator will perform a search based on the National

Change of Address Database for information to update and correct for any known or identifiable address changes. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address or Social Security number of the Aggrieved Employee involved, and will then perform a single re-mailing. Checks will remain negotiable for 180 days. Those funds represented by un-cashed checks which remain outstanding 180 days after the mailing of the Settlement checks by the Settlement Administrator will be tendered to the LWDA. All settlement payments to Aggrieved Employees will be treated as miscellaneous income for which a 1099 will be issued.

21. Settled Claims. Upon entry of the Order and Judgment, Plaintiff and all Aggrieved Employees will be forever barred from pursuing against Defendant any and all Settled Claims during the Settlement Period. Aggrieved Employees, other than Plaintiff, will not be deemed to have released any individual wage and hour claims by virtue of this Settlement.

22. No Right to Exclusion or Objections by Representative Action Members. Because this settlement resolves claims and actions brought pursuant to PAGA by Plaintiff acting as a proxy and as a Private Attorney General of, and for, the State of California and the LWDA, the Parties agree that no Aggrieved Employee has the right to exclude himself or herself from the Settlement. Aggrieved Employees will be bound by the terms of the Settlement Agreement, upon its approval by the Court, regardless of whether he or she cashes any payment received as a result of this Settlement. The Parties also agree that no Aggrieved Employee has the right to object to the terms of the Settlement Agreement.

23. No Credit Toward Benefit Plans. Payments to Aggrieved Employees as referenced herein will not be utilized to calculate any additional benefits under any benefit plans to which any Aggrieved Employee may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Aggrieved Employee may be entitled under any benefit plans.

24. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant

1 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
2 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
3 action or right herein released and discharged.

4 25. Nullification of Settlement Agreement. In the event that: (i) the Court does not approve
5 the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then
6 this Settlement Agreement, and any documents generated to bring it into effect, will be null and void,
7 and the Parties will be returned to their original respective positions.

8 26. Continued Jurisdiction. The Parties agree that upon the occurrence of the dismissal of
9 this case pursuant to the terms of this Agreement, this Agreement shall be enforceable by the Court
10 pursuant to Code of Civil Procedure Section 664.6 and the Court shall retain exclusive and continuing
11 equity jurisdiction of this Action over all Parties and Aggrieved Employees to interpret and enforce the
12 terms, conditions and obligation of the Agreement.

13 27. Entire Agreement. This Settlement Agreement constitutes the entirety of the Parties'
14 settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding
15 on the Parties.

16 28. Amendment or Modification. This Settlement Agreement may be amended or modified
17 only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all
18 Parties.

19 29. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
20 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
21 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
22 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
23 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each
24 other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to
25 reach agreement on the form or content of any document needed to implement the Settlement, or on any
26 supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties
27 may seek the assistance of the Court to resolve such disagreement.

28 30. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,

1 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

2 31. California Law Governs. All terms of this Settlement Agreement will be governed by
3 and interpreted according to the laws of the State of California.

4 32. Execution and Counterparts. This Settlement Agreement is subject only to the execution
5 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
6 executed counterparts and each of them, including electronic signatures (e.g., DocuSign), facsimiles, and
7 scanned copies of the signature pages, will be deemed to be one and the same instrument.

8 33. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
9 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this
10 Settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that
11 they are each represented by competent counsel and that they have had an opportunity to consult with
12 their counsel regarding the fairness and reasonableness of this Settlement.

13 34. Invalidity of Any Provision. Before declaring any provision of this Settlement
14 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
15 possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement
16 valid and enforceable.

17 35. Captions. The captions and section numbers in this Settlement Agreement are inserted
18 for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
19 provisions of this Settlement Agreement.

20 36. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement
21 or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
22 constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

23 37. Enforcement Action. In the event that one or more of the Parties institutes any legal
24 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement
25 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be
26 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including
27 expert witness fees incurred in connection with any enforcement actions.

28 38. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and

1 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed
2 more strictly against one party merely by virtue of the fact that it may have been prepared by counsel for
3 one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties,
4 all Parties have contributed to the preparation of this Settlement Agreement.

5 39. Representation By Counsel. The Parties acknowledge that they have been represented
6 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
7 that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed
8 in full.

9 40. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good
10 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
11 Settlement Agreement.

12 41. Binding Agreement. The Parties warrant that they understand and have full authority to
13 enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and
14 binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to
15 enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply
16 under federal or state law.

17 42. Denial of Liability. The Parties expressly recognize that the making of this agreement
18 does not in any way constitute an admission or concession of wrongdoing on the part of Defendant.
19 Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements,
20 discussions or communications, nor any materials prepared, exchanged, issued or used during the
21 pendency of the Action, is intended by the Parties to, nor will any of the foregoing constitute, be
22 introduced, be used or be admissible in any way in any other judicial, arbitral, administrative,
23 investigative or other forum or proceeding, as evidence of any violation of any federal, state, or local law,
24 statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.
25 Notwithstanding the foregoing, this agreement may be used in any proceeding in the Court that has as its
26 purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments
27 of the Court entered into in connection therewith.
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READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: 12/8/2021

DocuSigned by:
Jeriann Kerns
7625AF977F58465
Jeriann Kerns

DEFENDANT

Dated: 12/21/2021

Deanna Spitzer
Name of Authorized Signatory for Sierra Bank Corp.
dba Bank of the Sierra

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: 12/8/2021

Robert J. Drexler, Jr.
Robert J. Drexler, Jr.
Attorneys for Plaintiff Jeriann Kerns

MCCORMICK BARSTOW LLP

Dated: December 22, 2021

Christina Tillman
Christina Tillman
Attorneys for Defendant Sierra Bank Corp. dba Bank
of the Sierra