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5 **CASTLE LAW: CALIFORNIA EMPLOYMENT COUNSEL, PC**

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9 Attorneys for Plaintiff HAMIT UTUSH

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF PLACER

12 HAMIT UTUSH,

13 Plaintiff,

14 v.

15 BANK OF THE SIERRA, a California
16 Corporation; and DOES 1-20.

17
18 Defendants.
19

Case No. Case No.: S-CV-0047143

20 **JOINT STIPULATION OF PAGA
21 SETTLEMENT AND RELEASE**

1 This Joint Stipulation of Settlement and Release (hereinafter “Stipulation of Settlement”) is is
2 made by and between Plaintiff Hamit Utush (“Plaintiff”) on behalf of the other aggrieved employees
3 (the “Aggrieved Employees” as described below), and as a private attorney general on behalf of the
4 State of California pursuant to Labor Code section 2699 et seq., the Private Attorneys General Act
5 (“PAGA”) on the one hand, and Defendant Sierra Bank Corp dba Bank of the Sierra, (“Defendant”),
6 on the other hand. Plaintiff and Defendant are collectively referred to herein as “the Parties.”
7 (Capitalized terms used herein shall have the meanings set forth in Article I.)

8 This Agreement, and the settlement embodied herein shall be binding on Plaintiff and the
9 Aggrieved Employees they represent and, on the Defendant, subject to the approval of the Court.

10 THE PARTIES STIPULATE AND AGREE as follows:

11 1. WHEREAS, on or about May 11, 2021, Plaintiff sent notice to the Labor and
12 Workforce Development Agency (“LWDA”) of his intent to pursue a representative action pursuant
13 to the Private Attorneys General Act of 2004, as codified in California Labor Code §2698 et seq.
14 (“PAGA”), on behalf of himself and the State of California as well as on behalf of a group of aggrieved
15 employees (the “PAGA Notice”). On or about May 11, 2021, Plaintiff filed a Private Attorneys General
16 Act (“PAGA”) letter with the Labor and Workforce Development Agency, asserting various California
17 Labor Code violations against Defendant (“LWDA Notice Letter”), including violations of Labor
18 Code sections 201, 202, 203, 1174, 226, 226.3, 510, 1194, 226.7, Sections 3, 4, 11, and 12 of Wage
19 Order No. 4-2001.

20 2. WHEREAS, on August 10, 2021, Plaintiff filed a representative action entitled Hamit
21 Utush v. Bank of the Sierra, Case No. S-CV-0047143, in the Superior Court of California, Placer
22 County (the “Lawsuit”), asserting a representative claim for civil penalties payable Plaintiff, other
23 aggrieved employees, and the State of California pursuant to the California Private Attorneys General
24 Act (“PAGA”) based on alleged violations of the Labor Code as to: (1) payment of minimum wage;
25 (2) payment of overtime wages; (3) providing meal periods and rest breaks; (4) providing accurate
26 wage statements; (5) timely paying final wages; and (6) reimbursement of business related expenses.
27 (“Representative PAGA Claims”). Plaintiff included in the Lawsuit individual claims for the above
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1 wage and hour issues, as well as, discrimination based on disability and failure to accommodate
2 disability under the Fair Employment and Housing Act and unfair competition under Business and
3 Professions Code section 17200 ("Individual Claims").

4 3. WHEREAS, on October 4, 2021, the Parties attended an all-day mediation with
5 experienced wage-and-hour mediator Michael J. Loeb. At the conclusion of mediation, the Parties
6 agreed to resolve the Lawsuit, which was negotiated in light of all known facts and circumstances—
7 including the difficulty of proving some of Plaintiff's claims, potential defenses asserted by Defendant,
8 the uncertainty associated with litigation, the risks of significant delay, and numerous potential
9 appellate issues.

10 4. WHEREAS, the Parties agree to dismiss the Lawsuit and all claims alleged therein with
11 prejudice.

12 5. WHEREAS, the Parties understand, acknowledge, and agree that this PAGA settlement
13 constitutes a compromise of Plaintiff's Representative PAGA Claims, and that it is the desire and
14 intention of the Parties to effect a final and complete resolution of the Representative PAGA Claims
15 that Plaintiff and the PAGA Members have against the Defendant as well as the Individual Claims and
16 all other claims and causes of action Plaintiff may have against Defendant, which are addressed by
17 way of a separate and distinct agreement. The Parties further acknowledge that this Agreement is a
18 compromise of disputed claims and that nothing in this Agreement shall be construed as an admission
19 by the Defendant of liability.

20 6. WHEREAS, the Parties believe and agree that this Agreement provides for a fair,
21 adequate, and reasonable resolution of the Representative PAGA Claim, and have arrived at the
22 settlement in extensive, arms-length negotiations, taking into account all relevant factors, present and
23 potential.

24 7. WHEREAS, California Labor Code § 2699(k)(2) requires Court review and approval
25 of any settlement of a civil action filed pursuant to PAGA.

26 8. WHEREAS, based on their own independent investigations and evaluations, Defendant
27 and Plaintiff and their respective counsel are of the opinion that the settlement for the consideration
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1 and on the terms set forth in this Settlement is fair, reasonable, and adequate and is in the best interests
2 of the Plaintiff, the PAGA Members, and the Defendant in light of all known facts and circumstances
3 and the risks inherent in litigation, including the potential appellate issues. Further, PAGA Counsel
4 believes that the settlement amount entered into is in the best interests of the PAGA Members and that
5 the settlement for each PAGA Member is fair, reasonable, and adequate, given the inherent risk of
6 litigation.

7 9. WHEREAS, the Parties believe and agree that this Agreement provides for a fair,
8 adequate, and reasonable resolution of the Representative PAGA Claim, have investigated the facts
9 relevant to this settlement and this Agreement, and all matters pertaining thereto, to the full extent that
10 each Party deems necessary, and have arrived at the settlement in extensive, arms-length negotiations,
11 taking into account all relevant factors, present and potential.

12 10. WHEREAS, the Parties recognize that in accordance with Labor Code Section 2699(I),
13 Court approval is required in the event of a settlement of a PAGA action on a representative basis.

14 11. THEREFORE, in consideration of the promises and agreements contained herein, and
15 to avoid the uncertainty, risks, costs, and delays associated with further litigation, the Parties agree
16 and covenant as follows:

17 DEFINITIONS

18 12. Unless otherwise defined herein, the following terms used in this Agreement shall have
19 the meanings ascribed to them as set forth below:

20 13. "Lawsuit" shall refer to the lawsuit entitled *Hamit Utush v. Bank of the Sierra*, Case
21 No. S-CV-0047143, filed in the Superior Court of California, Placer County.

22 14. "Aggrieved Employees" is defined as: 28 individuals who worked as loan officers for
23 Defendant, in California, at any time from May 11, 2020 through October 4, 2021.

24 15. "Court" means the Superior Court for the State of California, County of Placer.

25 16. "Defense Counsel" or "Counsel for Defendant" is:

26
27 **Christina C. Tillman**
28 **Justin G. Donner**

MCCORMICK, BARSTOW, SHEPPARD, WAYTE & CARRUTH, LLP
7647 North Fresno Street Fresno, California 93720

17. "Effective Date" means the date the Court enters the order approving the settlement as described in this Agreement.

18. "Plaintiff's Counsel" is:

Timothy B. Del Castillo
Lisa L. Bradner
CASTLE LAW: CALIFORNIA EMPLOYMENT COUNSEL, PC
2999 Douglas Blvd, Suite 180
Roseville, CA 95661

19. "Release Period" means the time period from May 11, 2020 through the date the Court enters the order approving the settlement as described in the Agreement.

20. "Released Claims" means: Any and all facts and claims asserted in the Lawsuit as Representative PAGA Claims or any other claims, under PAGA, that could have been asserted in the Lawsuit based on the facts alleged therein.

21. "Released Parties" means Defendant Sierra Bank Corp. dba Bank of the Sierra and its officers, directors, representatives, agents and current and former employees.

22. "Settlement Administrator" refers to Simpluris.

23. "PAGA Settlement" refers to the settlement of the Representative PAGA Claims reached by the Parties.

24. Total PAGA Settlement Amount means: the amount Defendant agrees to pay, in accordance with the terms set forth herein in full settlement of the Representative PAGA Claims, which is the total sum of \$80,000.00 (Eighty Thousand Dollars and No Cents). The Total Settlement Amount includes payments to Plaintiff and the Aggrieved Employees, attorneys' fees, litigation costs, any enhancement to Plaintiff, administration fees, and PAGA civil penalties.

APPROVAL AND IMPLEMENTATION OF SETTLEMENT

1 25. The Parties will cooperate in obtaining through written stipulation, application, or
2 unopposed motion if a motion is required, an Order from the Court approving the payment of the Total
3 Settlement Amount as follows:

4 26. Plaintiff's Counsel shall request and be paid up to 35% of the Total PAGA Settlement
5 Amount or \$28,000.00 (Twenty-Eight Thousand Dollars and No Cents) for attorneys' fees ("Plaintiff's
6 Counsel's Fees"). If Plaintiff's Counsel's request is not approved and is reduced by the Court, any
7 amount not approved and/or reduced by the Court will revert to the Aggrieved Employees and LWDA.
8 Defendant agrees not to oppose a fee request by Plaintiff's counsel in the foregoing amount.

9 27. Plaintiff's Counsel shall request up to \$10,000.00 (Ten Thousand Dollars and No
10 Cents) of the Total PAGA Settlement Amount as reimbursement of expenses incurred in the Lawsuit.
11 If Plaintiff's Counsel's request for reimbursement of litigation costs is not approved and is reduced by
12 the Court, any amount not approved and/or reduced by the Court will revert to the Aggrieved
13 Employees and LWDA. Defendant agrees not to oppose a request for reimbursement of litigation costs
14 in the foregoing amount.

15 28. Plaintiff's Counsel shall request up to \$5,000.00 (Five Thousand Dollars and No Cents)
16 of the Total PAGA Settlement Amount for Plaintiff ("Plaintiff's Enhancement"). If Plaintiff's
17 Counsel's request for the Enhancement is not approved and is reduced by the Court, any amount not
18 approved and/or reduced by the Court will revert to the Aggrieved Employees and the LWDA.

19 29. Plaintiff's counsel shall request \$2,995.00 of the Total PAGA Settlement Amount as
20 payment to the Settlement Administrator for costs incurred by the Settlement Administrator in
21 connection with the Settlement, including mailing of the Notice of PAGA Settlement described herein.
22 To the extent the costs exceed this amount, they shall be paid from the Total PAGA Settlement
23 Amount. To the extent they fall below this amount, they shall be added to the amount distributable to
24 the Aggrieved Employees and the LWDA.

25 30. The remainder of the Total PAGA Settlement Amount after deducting fees and costs
26 in paragraphs 26 through 29 above (the "Net Settlement Amount") shall be designated as PAGA
27 Penalties to be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code
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1 section 2699(i) with 75% paid to the LWDA (the "LWDA PAGA Portion") and 25% paid to the
2 Aggrieved Employees (the "Aggrieved Employees' PAGA Portion") on a pro-rata basis, based on the
3 amount of pay periods worked by each Aggrieved Employee.

4 31. The Parties agree to use their best efforts to expedite the preparation and submission of
5 the settlement documents so that the hearing occurs within 60 calendar days of the date upon which
6 the Parties executed the October 4, 2021, Memorandum of Agreement. The Parties further agree to
7 fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary
8 to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are
9 otherwise necessary to the approval and implementation of the payment of PAGA penalties as
10 described in this Agreement.

11 32. Plaintiff will seek to obtain the Court's approval of the payment of PAGA penalties as
12 described in this Agreement by way of a unopposed motion to be drafted and filed by Plaintiff's
13 Counsel. The Court's approval of the payment of the Total PAGA Settlement Amount as described in
14 this Agreement shall be embodied in a written Order.

15 33. Notice shall be provided to the Aggrieved Employees in the following manner:
16 (1) No later than 10 days after the Court approves this Agreement, Defendant shall provide the
17 Settlement Administrator with a list of all Aggrieved Employees ("Aggrieved Employees List"). The
18 Aggrieved Employees' List shall state the first name and last name in separate columns for each
19 Aggrieved Employee; the last known home address for each Aggrieved Employee; each Aggrieved
20 Employee's social security number, and the periods of time during the Release Period during which
21 each held the position of commercial loan officer during the Release Period, and each Aggrieved
22 Employee's respective number of pay periods worked for Defendant during the Release Period.

23 34. No later than 45 days after the Effective Date, the Settlement Administrator shall mail
24 the Notice of PAGA Settlement (attached hereto as "Exhibit A") together with a settlement payment
25 to all Aggrieved Employees by first-class United States mail, postage prepaid, to the last known
26 address of each recipient with directions to the Postmaster to forward the Notice of PAGA Settlement
27 and return all undeliverable Notices to the Settlement Administrator. For each Notice of PAGA
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1 Settlement that is returned as undeliverable, the Settlement Administrator shall promptly attempt to
2 locate the Aggrieved Employee by using an address refresher database.

3 35. No later than 30 days after the Effective Date, Defendant shall deposit the Total PAGA
4 Settlement Amount with the Settlement Administrator.

5 36. Seventy-five percent (75%) of the Net Settlement Amount shall be paid to the LWDA;
6 the remaining twenty-five percent (25%) of the Net Settlement Amount (the "Aggrieved Employees'
7 PAGA Portion") shall be paid to Aggrieved Employees based on the following formula:

8 a. The total Aggrieved Employees' portion of the Net Settlement Amount shall be divided
9 by the total pay periods worked by all Aggrieved Employees during the Release Period
10 to yield the "Employee Settlement Share Value." Each Aggrieved Employee shall be
11 paid their individual total pay periods worked for Defendant during the Release Period
12 multiplied by the Employee Settlement Share Value.

13 b. All Aggrieved Employees who cash their settlement check may receive an IRS Form
14 1099 for their portion of the settlement, if deemed required by the Settlement
15 Administrator (in compliance with IRS guidelines).

16 c. The settlement checks issued to Aggrieved Employees shall remain valid for one
17 hundred eighty (180) days. Any settlement checks remaining uncashed after one
18 hundred eighty (180) days shall cause that Aggrieved Employee's payment to be
19 distributed to Controller of the State of California to be held pursuant to the Unclaimed
20 Property Law, California Civil Code section 1500 et seq., for the benefit of that
21 Aggrieved Employee.

22
23 37. Within twenty-one (21) days of Defendant funding the Total PAGA Settlement
24 Amount, the Settlement Administrator shall pay the court approved attorneys' fees and costs to
25 Plaintiff's Counsel and the enhancement to Plaintiff.

26 38. Within twenty-one (21) days of the Defendant funding the Total Settlement Amount,
27 the Settlement Administrator shall pay itself up to the \$2,995.00 allocated to it for administration fees.
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1 39. Plaintiff will request an Order to be entered by the Court to enforce this Agreement,
2 granting approval of the Settlement, and dismissing this case with prejudice. The [PROPOSED] Final
3 Dismissal Order will be submitted concurrently with the documents asking the court to approve the
4 settlement.

5 LIMITATIONS ON USE OF THIS SETTLEMENT

6 40. Defendant denies liability or any wrongdoing to Plaintiff and to the Aggrieved
7 Employees upon any claim or cause of action. This Agreement does not constitute, and is not intended
8 to constitute, an admission by Defendant as to the merits, validity, or accuracy of any of the allegations
9 or claims made against it in the Action.

10 41. Nothing in this Agreement, nor any action taken in implementation thereof, nor any
11 statements, discussions or communications, nor any materials prepared, exchanged, issued or used
12 during the course of the negotiations leading to this Agreement, is intended by the Parties to constitute,
13 nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this
14 case or any other judicial, arbitral, administrative, investigative or other forum or proceeding as
15 evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or
16 executive order, or any obligation or duty at law or in equity. The Parties themselves agree not to
17 introduce, use, or admit this Agreement, directly or indirectly, in this case or any other judicial, arbitral,
18 administrative, investigative or other forum or proceeding, as purported evidence of any violation of
19 any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation
20 or duty at law or in equity, or for any other purpose. Notwithstanding the foregoing, this Agreement
21 may be used in any proceeding before the Court that has as its purpose the interpretation,
22 implementation, or enforcement of this Agreement or any orders or judgments of the Court entered in
23 connection with the Agreement.

24 42. None of the documents produced or created by Plaintiff or the Aggrieved Employees
25 in connection with the claims procedures or claims resolution procedures constitute, and they are not
26 intended to constitute, an admission by Defendant of any violation of any federal, state, or local law,
27 statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.
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1 43. Neither this Agreement nor any of its terms shall be offered or used as evidence by any
2 of the Parties, or their respective counsel in the Action or in any other action or proceeding; provided,
3 however, this shall not prevent this Agreement from being used, offered, or received in evidence in
4 any proceeding to enforce, construe, or finalize this Agreement.

5 44. If the Court should for any reason fail to approve the payment of PAGA penalties as
6 described in this Agreement, then (a) this Agreement shall be considered null and void, (b) neither this
7 Agreement nor any of the related negotiations or proceedings shall be of any force or effect, and (c)
8 all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement
9 had been neither entered into nor filed with the Court.

10 45. Invalidation of any material portion of this Agreement shall invalidate this Agreement
11 in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall
12 remain in full force and effect.

13 RELEASE AND WAIVER OF CLAIMS

14 46. Upon the approval by the Court of this Settlement, Plaintiff, and each Aggrieved
15 Employee, shall, for the Release Period, fully release and forever discharge Defendant and the
16 Released Parties of the Released Claims.

17 MISCELLANEOUS PROVISIONS

18 47. This Agreement is executed voluntarily and without duress or undue influence on the
19 part of or on behalf of any of the Parties, or of any other person, firm or other entity.

20 48. The terms and provisions of this Agreement may be amended only by a written
21 agreement that is both (a) signed by the Plaintiff, Plaintiff's Counsel, Defendant and Defense Counsel
22 who executed this Agreement and (b) approved by the Court. Any waiver of any provision of this
23 Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so
24 indicated otherwise.

25 49. None of the rights, commitments, or obligations recognized under this Agreement may
26 be assigned by any Party, Aggrieved Employee, Plaintiff's Counsel, or Defense Counsel without the
27 express written consent of each other Party and their respective counsel hereto. The representations,
28

1 warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the
2 Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to
3 any other person. Plaintiff expressly warrants that he has not transferred to any person or entity any
4 right or cause of action, or claim released by this Agreement.

5 50. This Agreement shall be governed, construed, and interpreted, and the rights of the
6 Parties shall be determined, in accordance with the laws of the State of California.

7 51. This Agreement contains the entire understanding of the Parties hereto in respect of the
8 subject matter contained herein. This Agreement supersedes all prior agreements and understandings
9 among the Parties hereto with respect to the settlement of the Lawsuit.

10 52. Any failure of any Party, Defense Counsel, and/or Plaintiff's Counsel hereto to comply
11 with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to
12 the extent permitted under applicable law, by the Party or Parties and their respective counsel hereto
13 entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to
14 insist upon strict compliance with any representation, warranty, covenant, agreement, or condition
15 shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

16 53. This Agreement, and any amendments hereto, may be executed in any number of
17 counterparts and any Party and/or their respective counsel hereto may execute any such counterpart,
18 each of which when executed and delivered shall be deemed to be an original and all of which
19 counterparts taken together shall constitute but one and the same instrument. It shall not be necessary
20 in making proof of this Agreement or any counterpart hereof to produce or account for any of the other
21 counterparts.

22 54. Except as expressly provided herein, Defendant and Plaintiff shall each bear their own
23 attorney's fees and costs as to the Representative PAGA Claims.

24 55. Should any dispute(s) arise among the Parties or their respective counsel regarding the
25 implementation or interpretation of this Agreement, the Parties agree to submit any such dispute(s) to
26 the Court. To the extent any Party seeks to enforce any of the terms of this Agreement in Court or
27 before the Court, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.
28

1 56. This Agreement shall bind and inure to the benefit of the Parties hereto and to their
2 respective successors, assigns, legatees, heirs, and personal representatives.

3 57. The Parties agree that upon the occurrence of the dismissal of this case pursuant to the
4 terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code of Civil
5 Procedure Section 664.6 and the Court shall retain exclusive and continuing equity jurisdiction of this
6 Action over all Parties and Aggrieved Employees to interpret and enforce the terms, conditions and
7 obligation of the Agreement.

8 58. All communications to be provided concerning this Settlement Agreement shall be in
9 writing and delivered by receipted delivery and by e-mail at the addresses set forth above, or such
10 other addresses as either Party may designate in writing from time to time, to Plaintiff's Counsel or
11 Defense Counsel.

12 59. IN WITNESS WHEREOF, the Parties have executed this Private Attorneys General
13 Act Settlement Agreement on the date set forth below.

14 **PLAINTIFF AND PAGA REPRESENTATIVE**

15 Dated: Nov 3, 2021

PLAINTIFF HAMIT UTUSH

16 Hamit Utush
17 By Hamit Utush (Nov 3, 2021 09:19 PDT)
18 HAMIT UTUSH

19
20 **PAGA COUNSEL**

21 Dated: 11/04/2021

CASTLE LAW: CALIFORNIA
EMPLOYMENT COUNSEL, PC

22
23 Timothy B. Del Castillo
24 By TIMOTHY B. DEL CASTILLO
25 Attorneys for Plaintiff and PAGA Counsel
26
27
28

1 **DEFENDANT**

2 Dated: _____

DEFENDANT SIERRA BANK
CORP. DBA BANK OF THE SIERRA

3 By **Deanna Spitzer** Digitally signed by Deanna
Spitzer
Date: 2021.10.28 16:30:11 -07'00'
4 Authorized Representative of the
5 Sierra Bank Corp dba Bank of the
6 Sierra

7
8 Deanna Spitzer
9 Print Name

10 **DEFENDANT'S COUNSEL**

11 Dated: October 27, 2021

McCORMICK BARSTOW LLP

12 By 
13 CHRISTINA C. TILLMAN

EXHIBIT A

NOTICE

Enclosed please find a supplemental payment under the Private Attorneys General Act of 2004 for the period July 13, 2019, to [REDACTED].

The enclosed check shall remain valid for ninety (90) days, and will thereafter become void.

Should you have any questions, please contact [REDACTED] at the following number: [telephone number]. Thank you.