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9
10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:)
13) SETTLEMENT AGREEMENT
14 THE COMMISSIONER OF FINANCIAL)
15 PROTECTION AND INNOVATION,)
16)
17 Complainant,)
18 v.)
19)
20 BAYSIERRA CAPITAL FUND, LLC, et. al.,)
21)
22 Respondents.)
23)
24)

25 This Settlement Agreement is entered into between Complainant, the Commissioner of
26 Financial Protection and Innovation (Commissioner), and Respondents, BaySierra Capital Fund,
27 LLC, BaySierra Mortgage Fund, LLC, and Robert Ritter (collectively the Parties), and is made with
28 respect to the following facts:

29
30 **I**
31 **RECITALS**

- 32 A. The Commissioner has jurisdiction over the offer and sale of securities in California
33 under the Corporate Securities Law of 1968 (CSL) (Corp. Code, § 25000 et seq.).
34 B. The Commissioner is authorized to administer and enforce the provisions of the CSL

1 pursuant to Corporations Code sections 25252, and 25254 and the rules and regulations promulgated
2 thereunder.¹

3 C. BaySierra Capital Fund, LLC (BCF) is a California limited liability company with a
4 registered place of business located at 1410 Neotomas Avenue, #106, Santa Rosa, California. BCF
5 originates or invests in loans secured by first-priority deeds of trust encumbering primarily California
6 real estate.

7 D. BaySierra Mortgage Fund, LLC (“Old Fund”) was a California limited liability
8 company with a registered place of business located at 1410 Neotomas Avenue, #106, Santa Rosa,
9 California from August 7, 2002, until September 26, 2022. Old Fund operated as a mortgage fund
10 that invested in loans secured by first and second deeds of trust on real property.

11 E. BaySierra Financial, Inc. (Fund Manager) is a real estate broker licensed by the
12 California Department of Real Estate and, in that capacity, periodically offers and sells fractional
13 interests in loans arranged between third party lenders and borrowers pursuant to Division 4 of the
14 Business & Professions Code and Corporations Code Section 25102.5. Fund Manager’s registered
15 place of business is located at 1410 Neotomas Avenue, #102, Santa Rosa, California. Fund Manager
16 currently is the manager of BCF and was the manager of Old Fund from about August 7, 2002, until
17 September 26, 2022.

18 F. According to the California Secretary of State records, Bobby Ritter (Ritter) has
19 served as president and director of Fund Manager since July 1, 2015. Ritter, as a shareholder, officer
20 and director of BCF’s manager, has also been a “control” person of BCF as that term is defined by
21 section 160 since that time.

22 G. Since July 1, 2015, Stacey Robles (Robles) has continually served as director of Fund
23 Manager and has served as its vice-president and secretary.

24 H. From July of 2003 to July 1, 2015, Ritter was an employee of Fund Manager and, in
25 that capacity, served as the Fund Administrator in connection with Fund Manager’s management of
26 Old Fund. Effective July 1, 2015, Ritter and Robles indirectly purchased 100% of the outstanding
27 _____

28 ¹ 1 Unless otherwise stated, all further references are to the Corporations Code.

1 shares of Fund Manager from Fund Manager’s former controlling shareholders, John Graziano and
2 Pamela Graziano.

3 I. On or about October 15, 2002, the Commissioner issued a permit (Application No.
4 341221), (Old Fund Permit) qualifying Old Fund to offer, sell and issue securities in the form of
5 membership interests in Old Fund pursuant to section 25113 (b)(1). In accordance with section
6 25114, every qualification is effective for 12 months from its effective date, unless the Commissioner
7 by order or rule specifies a different period, or a stop order revoking or suspending the permit issued
8 pursuant to sections 25140 (a) or 25143 is in effect.

9 J. On or about December 8, 2019, the Commissioner issued a permit (Application No.
10 16529) (BCF Permit) qualifying BCF to offer, sell and issue securities in the form of membership
11 interests in BCF pursuant to section 25113 (b)(1). The qualification was effective for 12 months from
12 December 8, 2019.

13 K. The Old Fund Permit and BCF Permit described herein were issued under a limited
14 offering qualification authorizing the offers and sales of the securities of Old Fund and BCF:

15 a. Only to investors with (i) a net worth (exclusive of home, furnishings, and
16 automobiles) of at least \$250,000 and an annual gross income of at least \$65,000; or (ii) a net worth
17 (exclusive of home, furnishings and automobiles) of at least \$500,000; and

18 b. Requiring the amount of each investor’s investment not to exceed ten percent
19 (10%) of such an investor’s net worth (exclusive of home, furnishings, and automobiles).

20 L. As part of the permit process, Old Fund and BCF submitted Offering Circulars to the
21 Commissioner describing their proposed plan of business and the terms and conditions upon which
22 the securities would be issued, offered and sold. The Offering Circulars demonstrated that the
23 proposed plan of business was fair, just and equitable, and that BCF did not intend to transact
24 business unfairly or dishonestly, that the securities proposed to be issued and the method to be used in
25 issuing them would not tend to work a fraud upon the purchaser in violation of section 25140(a)(1).

26 M. During February and March 2020, the Commissioner commenced a regulatory
27 examination of the books and records of BCF, Old Fund and Fund Manager (2020 Exam), which
28 disclosed that BCF and Old Fund violated the provisions in their respective Offering Circulars and

1 the terms of their permits, in the manner described below:

2 BCF's violations.

3 i Offering and selling unqualified nonexempt securities in the form of
4 membership interests in Old Fund by making untrue or misleading statements of material fact or
5 omitting to state material facts to investors, in violation of sections 25110 and 25401.

6 ii Engaging in misleading and prohibited practices, in violation of section 25166,
7 including making misleading statements or untrue statements of material fact in the Offering Circular,
8 Operating Agreement, and electronic mails filed with the Commissioner.

9 iii Failing to comply with either the presumptive suitability standard or the
10 suitability standard approved by the Commissioner, in violation of California Code of Regulations
11 260.140.01(a).

12 iv Failing to file a Post-Effective Amendment with the Commissioner, in
13 violation of section 25162.

14 v Failing to qualify the transaction and instead erroneously filing a Limited
15 Offering Exemption Notice, thereby offering, and selling securities in violation of section 25110.

16 vi Erroneously Filing a Limited Offering Exemption, in violation of section
17 25102(f).

18 vii Failing to file published advertisements with the Commissioner, in violation of
19 section 25300(a).

20 Old Fund's violations.

21 i. Offering and selling unqualified nonexempt securities in the form of stock in
22 Old Fund by making untrue or misleading statements of material fact or omitting to state material
23 facts to investors, in violation of sections 25110 and 25401.

24 ii. Failing to comply with either the presumptive suitability standard or the
25 suitability standard approved by the Commissioner, in violation of California Code of Regulations,
26 title 10, section 260.140.01(a).

27 iii. Making misleading statements or untrue statements of material fact in the
28 documents filed with the Commissioner, in violation of section 25166 by 1) failing to disclose

1 members' distributive share of profits and management fees on the periodic statement form utilized
2 by Old Fund and provided to existing Old Fund members, 2) recording members' rollover
3 subscriptions to BCF as disbursement of cash from payoff of loans or sales of real estate owned by
4 Old Fund, when in fact, they were sold shares; 3) recording withdrawals of investment as "sold
5 shares" on member statements, and 4) entering impaired loan losses as "fees" in member statements
6 and deducting excessive impaired loan losses from members' capital accounts; 5) failing to provide
7 audited financial statements for the fiscal years 2010, 2011 and 2019, in violation of California Code
8 of Regulations, title 10, section 260.613(c).

9 N. On November 27, 2023, the Commissioner issued a "Statement in Support of Order:
10 Order Levying Administrative Penalties Pursuant to Corporations Code Section 25252; And Claim
11 For Ancillary Relief And Costs Pursuant To Corporations Code Section 25254; Desist and Refrain
12 Order; Notice of Defense; Notice of Intention; Statement to Respondent; Request for Discovery;
13 Government Code sections 11507.5, 11507.6, and 11507.7" to BCF and Old Fund, and Fund
14 Manager (Enforcement Actions).

15 O. Respondents filed timely requests for a hearing to contest the Enforcement Actions
16 and waived the right to a hearing within 15 days.

17 P. Respondents, without admitting or denying the factual matters and alleged violations
18 set forth herein now desire to enter this Settlement Agreement which the Commissioner finds is in the
19 public interest and is consistent with the purposes fairly intended by the policies and provisions of the
20 CSL.

21 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set forth
22 herein, the Parties agree as follows:

23 **II**

24 **Terms and Conditions**

25 1. Purpose. This Settlement Agreement resolves the issues before the Commissioner, set
26 forth above in paragraphs A-Q, in a manner that avoids the expense of a hearing and other possible
27 court proceedings, protects consumers, is in the public interest, and is consistent with the purposes,
28 policies, and provisions of the CSL.

1 2. Final Desist and Refrain Order. Pursuant to Corporations Code section 25532, the
2 Parties are ordered to desist and refrain from the further offer or sale of securities in the State of
3 California, including but not limited to, the reinvested stock dividends of BCF and Old Fund as stated
4 above, unless and until qualification has been made under this law or unless exempt. Further,
5 BaySierra Capital Fund, LLC, BaySierra Mortgage Fund, LLC, and Robert Ritter are ordered to
6 desist and refrain from offering or selling or buying or offering to buy or sell any security in the State
7 of California by means of any written or oral communication which includes an untrue statement of a
8 material fact or omits to state a material fact necessary in order to make the statements made, in the
9 light of the circumstances under which they were made, not misleading. This Order is necessary, in
10 the public interest, for the protection of investors and consistent with the purposes, policies and
11 provisions of the CSL. This Desist and Refrain Order is final and effective from the Effective Date of
12 this Settlement Agreement, as defined in Paragraph 25 (Effective Date).

13 3. Penalty. Respondents shall pay to the Commissioner a penalty in the amount of
14 \$20,000 no later than 30 days after the Effective Date set forth in Paragraph 25. The penalty must be
15 made payable in the form of a cashier's check or Automated Clearing House deposit transmitted to
16 the attention of Accounting – Litigation, at the Department of Financial Protection and Innovation,
17 2101 Arena Boulevard, Sacramento, California 95834. Notice of the payment must be concurrently
18 sent to Uche Enenwali, Senior Counsel, Enforcement Division, by email at:
19 uche.enenwali@dfpi.ca.gov. In the event the payment due date falls on a weekend or holiday, the
20 payment shall be due the next business day.

21 4. Failure to Comply with Settlement Agreement or Desist and Refrain Order.
22 Respondents agree that if they fail to comply with this Settlement Agreement or the Desist and
23 Refrain Order set forth in this Settlement Agreement, the Commissioner may, in addition to all other
24 available remedies it may invoke under the CSL, summarily suspend and/or revoke the permit
25 qualifying Respondents to offer, sell and issue securities pursuant to section 25113 (b)(1) until
26 Respondents are in compliance, or deny the issuance of such permit. Respondents stipulate to the
27 finality of any such suspensions, revocations, or denials that the Commissioner may order.
28 Respondents waive any notice and hearing rights to contest such summary suspensions, revocations,

1 or denials which may be afforded under the CSL, the California Administrative Procedure Act, the
2 California Code of Civil Procedure, or any other provision of law in connection therewith.

3 5. Withdrawal of Hearing Request and Waiver of Hearing Rights. Respondents
4 acknowledge the Commissioner is ready, willing, and able to proceed with a hearing on the
5 Enforcement Actions and on the charges contained in this Settlement Agreement. Respondents
6 hereby withdraw their requests for hearing filed with the Commissioner. Further, Respondents waive
7 the right to any hearings, and to any reconsideration, appeal, or other right to review which may be
8 afforded pursuant to the CSL, the California Administrative Procedure Act, the California Code of
9 Civil Procedure, or any other provision of law. By waiving such rights, Respondents effectively
10 consent to the finality of this Settlement Agreement and the orders stipulated herein.

11 6. Full and Final Settlement. The Parties hereby acknowledge and agree that this
12 Settlement Agreement is intended to constitute a full and final resolution of the violations described
13 herein, and that no further proceedings or actions will be brought by the Commissioner in connection
14 with these matters under the CSL or any other provision of law except for proceeding to enforce
15 compliance with the terms of this Settlement Agreement.

16 7. Information Willfully Withheld or Misrepresented. This Settlement Agreement may be
17 revoked, and the Commissioner may pursue any and all remedies available under law against
18 Respondents if the Commissioner discovers that Respondents knowingly or willfully withheld or
19 misrepresented material information used for and relied upon in this Settlement Agreement.

20 8. Future Actions by Commissioner. If Respondents fail to comply with any terms of this
21 Settlement Agreement, the Commissioner may institute proceedings for any and all violations
22 otherwise resolved under this Settlement Agreement and bring any actions against Respondents, or
23 any of their partners, owners, officers, shareholders, directors, employees or successors for any and
24 all unknown violations of the CSL.

25 9. Assisting Other Agencies. Nothing in this Settlement Agreement limits the
26 Commissioner's ability to assist any other government agency (city, county, state, or federal) with
27 any prosecution, administrative, civil or criminal brought by that agency against Respondents or any
28 other person based upon any of the activities alleged in this matter or otherwise.

1 10. Headings. The headings to the paragraphs of this Settlement Agreement are inserted
2 for convenience only and will not be deemed a part hereof or affect the construction or interpretation
3 of the provisions hereof.

4 11. Binding. This Settlement Agreement is binding on all heirs, assigns, and/or successors
5 in interest.

6 12. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
7 Settlement Agreement it has relied solely on the statements set forth herein and the advice of its own
8 counsel, if represented. Each of the Parties further represents, warrants, and agrees that in executing
9 this Settlement Agreement it has placed no reliance on any statement, representation, or promise of
10 any other party, or any other person or entity not expressly set forth herein, or upon the failure of any
11 party or any other person or entity to make any statement, representation or disclosure of anything
12 whatsoever except as stated in paragraph 7 above. The Parties have included this clause: (1) to
13 preclude any claim that any party was in any way fraudulently induced to execute this Settlement
14 Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or
15 contradict the terms of this Settlement Agreement.

16 13. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
17 this Settlement Agreement will be valid or binding unless it is in writing and signed by each of the
18 Parties. The waiver of any provision of this Settlement Agreement will not be deemed a waiver of
19 any other provision. No waiver by either party of any breach of, or of compliance with, any condition
20 or provision of this Settlement Agreement by the other party will be considered a waiver of any other
21 condition or provision or of the same condition or provision at another time.

22 14. Full Integration. This Settlement Agreement is the final written expression and the
23 complete and exclusive statement of all the agreements, conditions, promises, representations, and
24 covenant between the Parties with respect to the subject matter hereof, and supersedes all prior or
25 contemporaneous agreements, negotiations, representations, understandings, and discussions between
26 and among the Parties, their respective representatives, and any other person or entity, with respect to
27 the subject matter covered hereby.

28 15. No Presumption Against Drafting Party. Each party acknowledges that s/he has had

1 the opportunity to draft, review, and edit the language of this Settlement Agreement. Accordingly, the
2 Parties intend that no presumption for or against the drafting party will apply in construing any part of
3 this Settlement Agreement. The Parties waive the benefit of Civil Code section 1654 as amended or
4 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
5 language of a contract should be interpreted most strongly against the party that caused the
6 uncertainty to exist.

7 16. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that
8 s/he has received, or had the opportunity to receive, independent advice from his or her attorney(s)
9 and/or representatives with respect to the advisability of executing this or Settlement Agreement.

10 17. Governing Law. This Settlement Agreement will be governed by and construed in
11 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such court,
12 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
13 forum to the maintenance of such action or proceeding in such court.

14 18. Effect Upon Future Proceedings. If any Respondent applies for any license, permit or
15 qualification under the Commissioner's current or future jurisdiction, or is the subject of any future
16 action by the Commissioner to enforce this Settlement Agreement, then the subject matter hereof
17 shall be admitted for the purpose of such application(s) or enforcement proceedings(s).

18 19. Third Parties. This Settlement Agreement does not create or give rise to any private
19 rights or remedies against Respondents, create any liability for Respondents, or limit the defenses of
20 Respondents for any person or entity not a party to this Settlement Agreement.

21 20. Voluntary Agreement. Respondents enter into this Settlement Agreement voluntarily
22 and without coercion and acknowledge that no promises, threats or assurances have been made by the
23 Commissioner or any officer, or agent thereof, about this Settlement Agreement. The Parties each
24 represent and acknowledge that they are executing this Settlement Agreement completely voluntarily
25 and without any duress or undue influence of any kind from any source.

26 21. Counterparts. This Settlement Agreement may be executed in one or more separate
27 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
28 together constitute a single document.

1 22. Notice. Any notice required under this Settlement Agreement shall be provided to each
2 party at the following addresses:

3 To Respondents: BaySierra Financial, Inc.
4 c/o Robert Ritter
5 1410 Neotomas Avenue, #102
6 Santa Rosa, California.

7 To the Commissioner: Uche L. Enewali, Senior Counsel
8 Department of Financial Protection and Innovation
9 320 West 4th Street, Suite 750
10 Los Angeles, California 90013
11 Email: Uche.enenwali@dfpi.ca.gov

12 23. Signatures. A fax or electronic mail signature shall be deemed the same as an original
13 signature.

14 24. Public Record. Respondents hereby acknowledge that this Settlement Agreement is a
15 matter of public record.

16 25. Effective Date. This Settlement Agreement shall become final and effective when
17 signed by all Parties and delivered by the Commissioner's agent via e-mail to: K. Bradley Rogerson,
18 brogerson@hansonbridgett.com.

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26. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Settlement Agreement and undertakes the obligations set forth herein.

DATED: June 10, 2024

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



By: _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: June 5, 2024

BAYSIERRA CAPITAL FUND, LLC
BAYSIERRA MORTGAGE FUND, LLC

By: _____
ROBERT RITTER
On behalf of Respondents,
BaySierra Capital Fund, LLC, and Bay Sierra Mortgage
Fund, LLC.

APPROVED AS TO FORM

By: _____
K. BRADLEY ROGERSON
Partner, Hanson Bridgett LLP
Attorneys for Respondents