

1 ANDREW L. PACKARD (State Bar No. 168690)
 WILLIAM N. CARLON (State Bar No. 305739)
 2 Law Offices of Andrew L. Packard
 245 Kentucky Street, Suite B3
 3 Petaluma, CA 94952
 Tel: (707) 763-7227
 4 Fax: (707) 763-9227
 E-mail: andrew@packardlawoffices.com

5 Attorneys for Plaintiff
 6 BATTLE CREEK ALLIANCE

7 **UNITED STATES DISTRICT COURT**
 8 **EASTERN DISTRICT OF CALIFORNIA**

9 BATTLE CREEK ALLIANCE,
 10
 Plaintiff,
 11
 vs.
 12
 SIERRA PACIFIC INDUSTRIES, INC.,
 13
 Defendant.

Case No. 2:16-CV-01503-JAM-CMK

**STIPULATION TO DISMISS
 PLAINTIFF’S CLAIMS WITH
 PREJUDICE; ORDER GRANTING
 DISMISSAL WITH PREJUDICE [FRCP
 41(a)(2)]**

15 Plaintiff Battle Creek Alliance (“BCA”) and Defendant in the above-captioned action,
 16 stipulate as follows:

17 WHEREAS, on or about April 29, 2016, BCA provided Defendant with a Notice of
 18 Violations and Intent to File Suit (“CWA 60-Day Notice Letter”) under Section 505 of the Federal
 19 Water Pollution Control Act (“Act” or “Clean Water Act”), 33 U.S.C. § 1365;

20 WHEREAS, on July 1, 2016, BCA filed its Complaint against Defendant in this Court and
 21 said Complaint incorporated by reference all of the allegations contained in BCA’s CWA 60-Day
 22 Notice Letter;

23 WHEREAS, BCA and Defendant, through their authorized representatives and without either
 24 adjudication of BCA’s claims or admission by Defendant of any alleged violation or other
 25 wrongdoing, have chosen to resolve in full by way of settlement the allegations of BCA as set forth
 26 in BCA’s 60-Day Notice Letter and Complaint, thereby avoiding the costs and uncertainties of
 27 further litigation. A copy of the Parties’ proposed settlement agreement (“Settlement Agreement”)
 28 entered into by and between BCA and Defendant is attached hereto as **Exhibit A** and incorporated

1 by reference;

2 WHEREAS, BCA has submitted the Settlement Agreement via certified mail, return receipt
3 requested, to the U.S. EPA and the U.S. Department of Justice (“the agencies”) and the 45-day
4 review period set forth at 40 C.F.R. § 135.5 has now expired;

5 NOW THEREFORE, IT IS HEREBY STIPULATED and agreed to by and between the
6 Parties that BCA’s claims, as set forth in its 60-Day Notice Letter and Complaint, be dismissed with
7 prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2). The Parties respectfully request an
8 order from this Court dismissing such claims with prejudice. In accordance with Paragraph 13 of the
9 Settlement Agreement, the Parties also request that this Court retain and have jurisdiction over the
10 Parties through January 31, 2019, for the sole purpose of resolving any disputes between the Parties
11 with respect to enforcement of any provision of the Settlement Agreement.

12 Dated: February 7, 2017

Respectfully submitted,

13 LAW OFFICES OF ANDREW L. PACKARD

14 By: /s/ William N. Carlon
15 William N. Carlon
16 Attorneys for Plaintiff

17 Dated: February 7, 2017

DOWNEY BRAND LLP

18 By: /s/ Nicole Granquist
19 Nicole Granquist
20 Attorneys for Defendant

1 **ORDER**

2 Good cause appearing, and the Parties having stipulated and agreed,

3 IT IS HEREBY ORDERED that Plaintiff Battle Creek Alliance's claims against Defendant
4 Sierra Pacific Industries, Inc., as set forth in BCA's 60-Day Notice Letter and Complaint, are hereby
5 dismissed with prejudice, each side to bear their own attorney fees and costs, except as provided for
6 by the terms of the accompanying Settlement Agreement.

7 IT IS FURTHER ORDERED that the Court shall retain and have jurisdiction over the Parties
8 with respect to disputes arising under the Settlement Agreement attached to the Parties' Stipulation
9 to Dismiss as Exhibit A until January 31, 2019.

10 IT IS SO ORDERED.

11 Dated: 2/7/2017

12 /s/ John A. Mendez
13 UNITED STATES DISTRICT COURT JUDGE