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DILLON M. FREYRE, on behalf of himself and all
6 others similarly situated
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**
10

11 DILLON M. FREYRE, on behalf of himself
and all other similarly situated,

12 **Plaintiffs,**
13

14 **v.**

15 DFA DAIRY BRANDS FLUID, LLC, a
Delaware limited liability company; and
DOES 1 through 100, Inclusive
16

17 **Defendants.**
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CASE NO.: 21STCV39070

[Assigned for all purposes to the Hon.
David S. Cunningham - Dept. 11]

**JOINT STIPULATION OF CLASS
ACTION AND PAGA SETTLEMENT**

1 **TO THE COURT:**

2 This Joint Stipulation of Class Action and PAGA Settlement ("Settlement Agreement")
3 is made and entered into by and between Dillon M. Freyre ("Plaintiff" or "Named Plaintiff"),
4 individually, and on behalf of all others similarly situated, and DFA Dairy Brands Fluid, LLC
5 ("Defendant") (Defendant and Plaintiff collectively will be referred to as "Parties"), and is
6 subject to the terms and conditions below, as well as the Court's approval. The Parties
7 expressly acknowledge that this Settlement Agreement is entered into solely for the purpose of
8 compromising significantly disputed claims and that nothing in this Settlement Agreement is an
9 admission of liability or wrongdoing by Defendant. If, for any reason, the Settlement
10 Agreement is not approved, it will be of no force or effect, and the Parties will be returned to
11 their respective positions immediately prior to, and as if they had never executed, this
12 Settlement Agreement as more fully set forth below.

13 **DEFINITIONS**

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

16 1. "Action" means *Dillon M. Freyre. v. DFA Dairy Brands Fluid, LLC, et al.*, Los
17 Angeles County Superior Court, Case No. 21STCV39070. As part of the Settlement, the
18 Parties will stipulate to a joint request for Plaintiff to seek leave to file a Second Amended
19 Class and Representative Action Compliant to add claims and/or theories for meal break
20 violations, rest break violations, failure to reimburse business expenses, and allegations related
21 to the regular rate of pay. Plaintiff also agrees to submit an amended PAGA Notice to the
22 LWDA to clarify that Plaintiff alleges Labor Code violations, on behalf of himself and the other
23 allegedly "aggrieved employees," based on the facts and theories for meal break violations, rest
24 break violations, failure to reimburse business expenses, and allegations related to the regular
25 rate of pay.

26 2. "Class Counsel" means Michael Nourmand and James A. De Sario of The
27 Nourmand Law Firm, APC.

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1 3. “Class Counsel Fees and Costs” means attorneys’ fees, costs, and expenses
2 approved by the Court for Class Counsel’s litigation and resolution of the Action, as well as all
3 costs incurred, and to be incurred, by Class Counsel in the Action, including, but not limited to,
4 costs associated with documenting the Settlement, providing any notices required as part of the
5 Settlement or Court order, securing the Court’s approval of the Settlement, administering the
6 Settlement, and obtaining entry of the Judgment terminating the Action. Class Counsel will
7 request attorneys’ fees that will not exceed thirty-five (35%) percent of the Gross Settlement
8 Amount, or Six Hundred Ninety-Eight Thousand Two Hundred and Fifty Dollars (\$698,250), as
9 well as litigation costs and expenses not to exceed Twenty-Five Thousand Dollars (\$25,000).

10 Defendant has agreed not to oppose Class Counsel’s request for Class Counsel Fees and Costs.

11 4. “Class List” means a complete list of all Class Members that Defendant will
12 diligently, and in good faith, compile from its records and provide on a confidential basis to the
13 Settlement Administrator within fourteen (14) calendar days after the Court’s entry of an order
14 granting preliminary approval of this Settlement. The Class List will be formatted in Microsoft
15 Office Excel and Defendant will include each Class Member’s full name; most recent mailing
16 address; last known telephone number (if readily available); dates of employment or number of
17 weeks the Class Member performed work for Defendant during the Class Period; and Social
18 Security number (or other taxpayer identification number, as applicable).

19 5. “Class Member(s)” or “Settlement Class” means Plaintiff and all current and
20 former hourly paid non-exempt employees who worked for Defendant in California during the
21 Class Period.

22 6. “Class Period” means the period from May 1, 2020 up to, and including,
23 February 9, 2023.

24 7. “Class Representative Enhancement Payment” means the amount to be paid from
25 the Gross Settlement Amount to the Named Plaintiff in exchange for executing a general
26 release of claims, and in recognition of his efforts in prosecuting the Action on behalf of Class
27 Members. Plaintiff will request up to Ten Thousand Dollars (\$10,000) for a Class
28 Representative Enhancement Payment, and Defendant will not oppose Plaintiff’s application to

1 the court for a Class Representative Enhancement Payment for his willingness to serve as Class
2 Representative.

3 8. "Court" means the Los Angeles County Superior Court, or any other court taking
4 jurisdiction of the Action.

5 9. "Effective Date" means the date when the Final Approval Order becomes final.
6 For purposes of this Paragraph, the Final Approval Order "becomes final" upon the last to occur
7 of the following: (a) if there are no objections to the Settlement, the date the Court enters an
8 order granting final approval of the Settlement; (b) if there are objections to the Settlement, and
9 if an appeal, review, or writ is not sought from the Final Approval Order, the day after the time
10 period to appeal the Settlement has expired, *i.e.*, 60 days from the date the Court enters an order
11 granting final approval of the Settlement; (c) if there are objections to the Settlement, and an
12 appeal, review, or writ is timely sought from the Final Approval Order, the day after the Final
13 Approval Order is affirmed or the appeal, review, or writ is dismissed or denied, and the Final
14 Approval Order is no longer subject to further judicial review.

15 10. "Gross Settlement Amount" means the maximum settlement amount of One
16 Million Nine Hundred Ninety-Five Thousand Dollars (\$1,995,000) ("Gross Settlement
17 Amount"), which has been, and/or will be, paid by Defendant in full satisfaction of all claims
18 arising from the Action. The Gross Settlement Amount includes all Individual Settlement
19 Payments to Participating Class Members, the Class Representative Enhancement Payment,
20 Settlement Administration Expenses, Class Counsel Fees and Costs, and PAGA penalties in the
21 amount of Fifty Thousand Dollars (\$50,000), of which seventy-five percent (75%), or Thirty-
22 Seven Thousand Five Hundred Dollars (\$37,500) will be paid to the Labor & Workforce
23 Development Agency ("LWDA"), and twenty-five percent (25%), or Twelve Thousand Five
24 Hundred Dollars (\$12,500), to PAGA Group Members. Defendant will pay the employer's
25 share of payroll taxes in addition to the Gross Settlement Amount.

26 11. "Individual Settlement Payment" means each Participating Class Member's share
27 of the Net Settlement Amount, to be distributed to Plaintiff and Class Members who do not
28 request exclusion from the Settlement.

1 12. “Net Settlement Amount” means the maximum amount available for distribution
2 to the Class Members, after deduction of Class Counsel Fees and Costs, the Class
3 Representative Enhancement Payment, Settlement Administration Expenses, and Eighteen
4 Thousand Seven Hundred Fifty Dollars (\$18,750) as PAGA penalties from the Gross
5 Settlement Amount.

6 13. “Notice of Objection” means a Class Member’s valid and timely written
7 objection to the Settlement Agreement. For the objection to be valid, it must include: (1) the
8 objector’s full name, signature, address, and telephone number; (2) a written statement of all
9 grounds for the objection accompanied by any legal support for such objection; (3) copies of
10 any papers, briefs, or other documents upon which the objection is based; and (4) a list of all
11 persons who will be called to testify in support of the objection. Further, an objector may
12 appear at the Final Approval hearing, either in person or through counsel, at his or her expense.
13 The Parties will be permitted to respond in writing to such objections at least seven calendar
14 days prior to the Final Approval hearing or within the time period set by the Court.

15 14. “Notice” means the Notice of Class Action Settlement, substantially in the form
16 attached as Exhibit A.

17 15. “PAGA” means the California Private Attorneys General Act of 2004, which is
18 codified in California Labor Code § 2698, *et seq.*

19 16. “PAGA Group Member(s)” means Plaintiff and all current and former hourly
20 paid non-exempt employees of Defendant in California during the PAGA Period.

21 17. “PAGA Period” means the period from October 22, 2020 up to, and including,
22 February 9, 2023.

23 18. “PAGA Settlement Amount” means the portion of the Gross Settlement Amount
24 allocated to the resolution of PAGA Group Members’ claims arising under PAGA. The Parties
25 have agreed that the PAGA Settlement Amount is Fifty Thousand Dollars (\$50,000), subject to
26 Court approval. Of the PAGA Settlement Amount, seventy-five percent (75%) or Thirty-Seven
27 Thousand Five Hundred Dollars (\$37,500) will be paid to the LWDA (“LWDA Payment”), and
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1 the remaining twenty-five percent (25%) or Twelve Thousand Five Hundred Dollars (\$12,500)
2 will be distributed to PAGA Group Members.

3 19. "Participating Class Members" means all Class Members who do not submit
4 valid Requests for Exclusion.

5 20. "Preliminary Approval" means the Court order granting preliminary approval of
6 the Settlement Agreement.

7 21. "Released PAGA Claims" means any and all claims for civil penalties under
8 PAGA based on the Labor Code violations alleged in the amended PAGA Notice Plaintiff
9 agrees to submit to the LWDA, as well as all facts, theories, or claims for civil penalties that
10 would be considered administratively exhausted under applicable law by Plaintiff's amended
11 PAGA Notice. PAGA Group Members shall receive their portion of the PAGA penalties
12 regardless of their decision to opt-out of the class settlement; therefore, the Released PAGA
13 Claims would apply to them.

14 22. "Released Claims" means all claims that were alleged in the operative
15 Complaint, or reasonably could have been alleged based on the facts alleged in the operative
16 Complaint, including all of the following claims for relief: (a) failure to pay overtime wages;
17 (b) failure to pay minimum wages; (c) meal and rest break violations; (d) failure to reimburse
18 business expenses; (e) failure to provide compliant and/or timely wage statements; (f) failure to
19 pay all wages owed at the regular rate of pay; (g) failure to timely pay all wages owed upon
20 termination of employment; (h) violations of the Unfair Competition Law based on the alleged
21 Labor Code violations; and (i) all damages, penalties, interest, and other amounts recoverable
22 under said causes of action or primary rights asserted, to the extent permissible, including, but
23 not limited to, the California Labor Code, the applicable Wage Orders, and the California
24 Unfair Competition Law based on the alleged Labor Code violations (collectively, the
25 "Released Claims"). Named Plaintiff agrees to file an amended Complaint in the Action, and to
26 submit an amended PAGA notice to the LWDA, to add causes of action for meal break
27 violations, rest break violations, failure to reimburse business expenses, and allegations related
28 to the regular rate of pay. The Release shall cover the period from May 1, 2020 up to, and

1 including, February 9, 2023. The *res judicata* effect of the Judgment will be the same as that of
2 the Release of Claims. This release will cover all Class Members who do not opt out.

3 23. "Released Parties" means Defendant, as well as Defendant's former and present
4 parents, subsidiaries and affiliated companies and entities, franchisors and franchisees, and their
5 current, former, and future owners, officers, shareholders, directors, members, managers,
6 operators, employees, consultants, vendors, partners, affiliates, subsidiaries, shareholders,
7 attorneys, insurers, payroll providers, joint venturers and agents, and any successors, assigns, or
8 legal representatives.

9 24. "Request for Exclusion" means a timely letter submitted by a Class Member
10 indicating a request to be excluded from the Settlement. The Request for Exclusion must: (a)
11 set forth the name, address, telephone number, and last four digits of the Social Security
12 Number (or, as applicable, other taxpayer identification number) of the Class Member
13 requesting exclusion; (b) be signed by the Class Member; (c) be returned by mail or fax to the
14 Settlement Administrator at the specified address or fax number indicated in the Notice; (d)
15 clearly state that the Class Member does not wish to be included in the Settlement; and (e) be
16 faxed or postmarked on or before the Response Deadline.

17 25. "Response Deadline" means the deadline by which Class Members must fax or
18 postmark to the Settlement Administrator a valid Request for Exclusion, submit objections to
19 the Settlement, or dispute workweeks. The Response Deadline will be forty-five (45) calendar
20 days from the initial mailing of the Notice by the Settlement Administrator. The Response
21 Deadline for a Request for Exclusion, objection, or dispute of workweeks will be extended
22 fifteen (15) calendar days for any Class Member who is re-mailed a Notice by the Settlement
23 Administrator in accordance with the notice procedure described herein. The Response
24 Deadline may also be extended by express agreement between Class Counsel and Defendant's
25 counsel.

26 26. "Settlement Administrator" means Simpluris, Inc., or any other third-party class
27 action settlement claims administrator agreed to by the Parties and approved by the Court for
28 the purposes of administering this Settlement. The Parties each represent that they do not have

1 any financial interest in the Settlement Administrator or otherwise have a relationship with the
2 Settlement Administrator that could create a conflict of interest.

3 27. "Settlement Administration Expenses" means the costs payable to the Settlement
4 Administrator for administering this Settlement, including, but not limited to, printing;
5 translating into Spanish; conducting a National Change of Address ("NCOA") search;
6 distributing (including with appropriate postage) and tracking documents for this Settlement in
7 English and Spanish; any searches to locate any Class Members and PAGA Group Members;
8 tax reporting; distributing the Individual Settlement Payments, Class Representative
9 Enhancement Payment, and Class Counsel Fees and Costs; providing necessary certification of
10 completion of notice, reports, and declarations; establishing and administering a Qualified
11 Settlement Fund account; required tax reporting on the Individual Settlement Payments; the
12 issuing of 1099 and W-2 IRS forms; calculating the employer's share of payroll taxes on the
13 wage portion of the Individual Settlement Payments and coordinating related reporting; and
14 other responsibilities set forth in this Settlement Agreement and as requested by the Parties.
15 The Settlement Administration Expenses are currently estimated to be not more than Ten
16 Thousand Dollars (\$10,000).

17 TERMS OF AGREEMENT

18 Plaintiff, on behalf of himself and the Settlement Class, and Defendant agree as follows:

19 28. Impact of Any Court Determination Not to Enter Final Approval Order. If the
20 Court does not enter a Final Approval Order, and this Settlement Agreement does not become
21 effective, on the date final approval is denied, the status of the Action will be deemed to return
22 to its status at the time immediately prior to, and as if the Parties had never executed, this
23 Settlement Agreement. During the approval process, the parties agree that the Action is tolled
24 in determining the five-year rule under CCP § 583.310.

25 29. Settlement Funding. Within five (5) calendar days of the Effective Date, the
26 Settlement Administrator will: (1) provide the Parties with an accounting of the amounts to be
27 paid by Defendant pursuant to the terms of the Settlement, including a calculation of the
28 employer's share of the payroll taxes to be funded by Defendant; and (2) provide Defendant

1 with all required IRS forms W-9, and all wire instructions, that are necessary for Defendant to
2 fund the Settlement. Within fourteen (14) calendar days of the Effective Date, Defendant will
3 deposit the Gross Settlement Amount, as well as the employer's share of payroll taxes, with the
4 Settlement Administrator. The Settlement Administrator will deposit the funds into an interest-
5 bearing trust account, referred to as the "Qualified Settlement Fund" account, from which the
6 Settlement Administrator will have authority to distribute money in accordance with the terms
7 of this Settlement Agreement. The employer's share of the payroll taxes shall be paid in
8 addition to the Gross Settlement Amount, with the assistance of the Settlement Administrator,
9 which shall calculate the appropriate amount of the employer's share of the payroll taxes to
10 funded by Defendant.

11 30. Class Counsel Fees and Costs. Defendant agrees not to oppose or impede any
12 application or motion by Class Counsel for Class Counsel Fees in the amount of up to Six
13 Hundred Ninety-Eight Thousand Two Hundred Fifty Dollars (\$698,250), plus the
14 reimbursement of the actual costs and expenses associated with Class Counsel's litigation and
15 settlement of the Action, not to exceed Twenty-Five Thousand Dollars (\$25,000).

16 31. Class Representative Enhancement Payment. In exchange for Named Plaintiff's
17 executing a general release, and in recognition of his efforts in prosecuting the Action on behalf
18 of Class Members, Defendant agrees not to oppose, or impede, any application or motion for a
19 Class Representative Enhancement Payment up to Ten Thousand Dollars (\$10,000). The Class
20 Representative Enhancement Payment, which will be paid from the Gross Settlement Amount,
21 will be in addition to Plaintiff's Individual Settlement Payment paid pursuant to the Settlement.
22 Plaintiff will be solely and legally responsible to pay any and all applicable taxes, penalties, and
23 interest on the payment made pursuant to this Paragraph, and will hold Defendant harmless
24 from any claim or liability for taxes, penalties, or interest arising as a result of the payment.

25 32. Settlement Administration Expenses. The Settlement Administrator will be paid
26 for the reasonable fees and costs of administration of the Settlement, which are estimated not to
27 exceed Ten Thousand Dollars (\$10,000). These will include, *inter alia*, fees and costs payable
28 to the Settlement Administrator for printing, translating into Spanish, distributing (including

1 with appropriate postage), and tracking documents for this Settlement in English and Spanish,
2 any searches to locate any Class Members and PAGA Group Members, calculating estimated
3 amounts per Class Member and PAGA Group Member, tax reporting, distributing the
4 Individual Settlement Payments, Class Representative Enhancement Payment, Class Counsel
5 Fees and Costs, payment to LWDA and PAGA Group Members for PAGA penalties, and
6 providing necessary certification of completion of notice, reports and declarations, establishing
7 and administering a Qualified Settlement Fund account, required tax reporting on the Individual
8 Settlement Payments, the issuing of 1099 and W-2 IRS forms, calculating the employer's share
9 of payroll taxes on the wage portion of the Individual Settlement Payments and coordinating
10 related reporting, and other responsibilities as requested by the Parties. The Settlement
11 Administration Expenses will be paid from the Gross Settlement Amount.

12 33. Net Settlement Amount. The Net Settlement Amount will be used to satisfy
13 Individual Settlement Payments to Participating Class Members from the Settlement Class in
14 accordance with the terms of this Agreement.

15 34. Individual Settlement Payment Calculations.

- 16 a. Defendant will provide the Settlement Administrator with the total number of
17 workweeks for each Class Member during the Class Period, as well as the total
18 number of workweeks for each PAGA Group Member during the PAGA Period.
19 The Settlement Administrator will divide the Net Settlement Amount, less
20 Twelve Thousand Five Hundred Dollars (\$12,500) (or the Court approved
21 amount from the PAGA Settlement Amount allocated for PAGA penalties to
22 PAGA Group Members), by the total number of workweeks ("Work Week Rate
23 Amount"), and then multiply this sum by each Class Member's total number of
24 workweeks to yield that employee's Net Settlement Payment. If a Class Member
25 submits a timely Request for Exclusion from the Settlement, his/her share of the
26 Settlement will be added to the Net Settlement Amount.

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Net Settlement Amount	
<u>Total Number of Workweeks for All Class Members</u>	X Participating Class Member's Workweeks

b. In addition, each Class Member who is a PAGA Group Member will be paid a pro-rata share of the Twelve Thousand Five Hundred Dollars (\$12,500) allocated for PAGA penalties to PAGA Group Members, as calculated by the Settlement Administrator, with a formula similar to payments to Participating Class Members.

\$12,500 for PAGA Penalties to PAGA Group Members	
<u>Total Number of Workweeks For All PAGA Group Members During PAGA Period</u>	X Individual PAGA Group Member's Workweeks During PAGA Period

c. The Individual Settlement Payment for any Participating Class Member who is also a PAGA Group Member shall include the Participating Class Member's share of the PAGA Settlement Amount allocated for PAGA penalties to PAGA Group Members.

d. Class Members who are PAGA Group Members will not be permitted to exclude themselves from the PAGA claim portion of the Settlement. PAGA penalty settlement payments in the appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA Group Members including to those Class Members who are PAGA Group Members who submitted a request for exclusion.

35. No Credit Toward Benefit Plans. All Settlement Awards to Class Members shall be deemed to be income to such Class Members solely in the year in which such awards actually are received by the Class Members. It is expressly understood and agreed that the receipt of such Settlement Awards will not entitle any Class Member to compensation or

1 benefits under any company bonus, paid time off (including vacation and sick leave), or other
2 compensation or benefit plan or agreement in place during the period covered by the
3 Settlement, nor will it entitle any Class Member to any increased retirement, 401(k) benefits or
4 matching benefits, or deferred compensation benefits. It is the intent of this Settlement that the
5 Settlement Awards provided for in this Agreement are the sole payments to be made by
6 Defendant to the Class Members in connection with this Settlement, and that the Class
7 Members are not entitled to any new or additional compensation or benefits as a result of
8 having received the Settlement Awards (notwithstanding any contrary language or agreement in
9 any benefit or compensation plan document that might have been in effect during the period
10 covered by this Settlement).

11 36. Settlement Administration Process. The Parties agree fully to cooperate with
12 each other to accomplish the terms of this Agreement, including, but not limited to, the
13 execution of such documents, and the taking of such other action, as may reasonably be
14 necessary to implement the terms of this Agreement. The Parties to this Agreement shall use
15 their best efforts to effectuate and implement this Agreement and its terms. If the Parties are
16 unable to reach an agreement about the form or content of any document needed to implement
17 the Settlement, or on any supplemental provisions that may become necessary to effectuate the
18 terms of the Settlement, the Parties agree to seek the assistance of the Court.

19 37. Delivery of the Class List. Within fourteen (14) calendar days of Preliminary
20 Approval, Defendant will provide the Class List to the Settlement Administrator.

21 38. Notice by First-Class U.S. Mail. Within five (5) calendar days after receiving
22 the Class List from Defendant, the Settlement Administrator will mail the Notice to all Class
23 Members via regular First-Class U.S. Mail.

24 39. Confirmation of Contact Information in the Class Lists. Prior to mailing, the
25 Settlement Administrator will perform a search based on the National Change of Address
26 Database for information to update, and correct, for any known or identifiable address changes.
27 Any Notice returned to the Settlement Administrator as non-deliverable on, or before, the
28 Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding

1 address, and the Settlement Administrator will indicate the date of such re-mailing on the
2 Notice. If no forwarding address is provided, the Settlement Administrator will promptly
3 attempt to determine the correct address using a skip-trace, or other search using the name,
4 address and/or Social Security number of the Class Member involved, and will then perform a
5 single re-mailing. If a Class Member's notice is re-mailed, the Class Member shall have fifteen
6 (15) calendar days from the re-mailing, or forty-five (45) calendar days from the date of the
7 initial mailing, whichever is later, in which to fax or postmark a Request for Exclusion, submit
8 an objection to the Settlement, or dispute workweeks.

9 40. Notice. All Class Members will be mailed the Notice. The Notice will provide:
10 (1) information regarding the nature of the Action, (2) a summary of the Settlement's principal
11 terms, (3) the Settlement Class definition, (4) each Class Member's number of workweeks/pay
12 periods worked during the Class Period, (5) each Class Member's estimated Individual
13 Settlement Payment, (6) the dates which comprise the Class Period, (7) instructions about how
14 to submit valid Requests for Exclusion, objections, or dispute workweeks, (8) the deadlines by
15 which the Class Member must fax or postmark Request for Exclusions, submit objections to the
16 Settlement, or dispute workweeks, and (9) the claims to be released, as set forth in this
17 Settlement Agreement.

18 41. Request for Exclusion Procedures. Any Class Member wanting to opt out of the
19 Settlement must sign and fax, or postmark, a written Request for Exclusion to the Settlement
20 Administrator within the Response Deadline. The date of the fax or postmark on the return
21 mailing envelope will be the exclusive means to determine if a Request for Exclusion has been
22 timely submitted. The Parties to this Agreement, and their counsel, agree that they will not
23 solicit or encourage Class Members to opt-out of, or object to, the Settlement. If the Court
24 approves the compromise of the PAGA claim, all PAGA Group Members are bound by the
25 Court's resolution of that claim. Class Members who are also PAGA Group Members
26 submitting a request for exclusion will nevertheless receive their pro-rata share of the twenty-
27 five percent (25%) of the PAGA Settlement Amount allocated for PAGA penalties to PAGA
28 Group Members. If the number of Class Members who submit valid requests for exclusion

1 exceeds five percent (5%) of the Settlement Class Members, Defendant shall have the unilateral
2 right to void the Settlement. If Defendant exercises the right to void the Settlement, Defendant
3 shall be responsible for the Settlement Administrator's costs incurred to date.

4 42. Defective Submissions. If a Class Member's Request for Exclusion is defective
5 as to the requirements listed in this Settlement Agreement, that Class Member will be given an
6 opportunity to cure the defect(s). The Settlement Administrator will mail the Class Member a
7 cure letter within three (3) calendar days of receiving the defective submission to advise the
8 Class Member that his or her submission is defective, and that the defect must be cured to
9 render the Request for Exclusion valid. The Class Member will have until the later of (1) the
10 Response Deadline or (2) fifteen (15) calendar days from the date of the cure letter to fax or
11 postmark a revised Request for Exclusion.

12 43. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
13 Member who does not affirmatively opt out of the Settlement Agreement by submitting a
14 timely and valid Request for Exclusion will be bound by all of its terms, including those
15 pertaining to the Released Claims (other than as it applies to the PAGA claims with respect to
16 the PAGA Group Members), as well as any Judgment that may be entered by the Court if it
17 grants final approval to the Settlement. If the Court approves the compromise of the PAGA
18 claim, Class Members who are also PAGA Group Members submitting a request for exclusion
19 will nevertheless be bound by the Court's resolution of that claim and receive their pro-rata
20 share of the twenty-five percent (25%) of the PAGA Payment allocated to the PAGA Group
21 Members.

22 44. Objection Procedures. To object to the Settlement Agreement, a Class Member
23 may not submit a Request for Exclusion and must mail a valid Notice of Objection to the
24 Settlement Administrator by the Response Deadline. The Settlement Administrator will notify
25 counsel for the Parties forthwith *via* email. Class Counsel will lodge the objection with the
26 Court. The Notice of Objection must be signed by the Class Member and contain all
27 information required by this Settlement Agreement. The postmark date of the mailing will be
28 deemed the exclusive means for determining if the Notice of Objection is timely. Class

1 Members who want to object will have a right to appear at the Final Approval Hearing, with, or
2 without, counsel at his/her own expense, so their objections may be heard by the Court. At no
3 time will any of the Parties or their counsel seek to solicit or otherwise encourage Class
4 Members to submit written objections to the Settlement Agreement or appeal from the Final
5 Approval Order and Judgment.

6 45. Certification Reports Regarding Individual Settlement Payment Calculations.

7 The Settlement Administrator will provide Defendant's counsel and Class Counsel a weekly
8 report which certifies: (1) the number of Class Members who have submitted valid Request for
9 Exclusion and objections; and (2) the number of any deficient Request for Exclusion.

10 Additionally, the Settlement Administrator will provide to counsel for both Parties any updated
11 reports regarding the administration of the Settlement Agreement as needed or requested.

12 46. Timing of Distribution of Individual Settlement Payments. Within three (3)
13 calendar days of Defendant depositing the Gross Settlement Amount as set forth above, the
14 Settlement Administrator will issue payments to (1) Participating Class Members and PAGA
15 Group Members; (2) Plaintiff; (3) Class Counsel; and (4) the LWDA. The Settlement
16 Administrator will also issue a payment to itself for Court-approved services performed in
17 connection with the Settlement.

18 47. Uncashed or Undeliverable Settlement Checks. Individual settlement checks
19 paid to participating Class Members and PAGA Group Members will be valid for 180 days.
20 Participating Class Members and PAGA Group Members will have one hundred eighty (180)
21 calendar days from the date of issuance of the check to cash their check. For any check not
22 cashed after 180 calendar days, the Settlement Administrator will send the amount represented
23 by the check to the California State Controller Unclaimed Property, with the identity of the
24 Participating Class Member and PAGA Group Member to whom the funds belong, to be held
25 for the participating Class Member and PAGA Group Member per California Unclaimed
26 Property Law, in the interest of justice. The money paid to the California State Controller
27 Unclaimed Property will remain the Participating Class Member and PAGA Group Member's
28 property. This will allow Participating Class Members and PAGA Group Member who did not

1 cash their checks to collect their Individual Settlement Amounts at any time in the future.
2 Therefore, there will be no unpaid residue or unclaimed or abandoned class member funds, and
3 the California Code of Civil Procedure section 384 shall not apply. The funds will be held by
4 the State until claimed by the employee and the uncashed check never ceases to be the
5 employee's property.

6 48. Increase in Workweeks. Defendant represented there are 83,566 total weeks in
7 which Class Members recorded performing work for Defendant between May 1, 2020 and
8 November 11, 2022. Defendant may exclude weeks when a Class Member did not record any
9 time worked in Defendant's timekeeping system, including vacation and leave weeks. If the
10 total number of weeks in which Class Members recorded performing work for Defendant
11 increases by more than five percent (5%) (*i.e.*, to 87,744 or greater) by the end of the Class
12 Period, Defendant agrees to increase the Net Settlement Amount in proportion to the increase in
13 the number of workweeks above 87,744. For example, if the total workweeks is 88,000 and the
14 Settlement value is \$10.00 per workweek, Defendant would have to increase the Net Settlement
15 Amount by \$2,560 ($88,000 - 87,744 = 256 \times \$10.00 = \$2,560$).

16 49. Certification of Completion. Upon completion of administration of the
17 Settlement, the Settlement Administrator will provide a written declaration under oath to certify
18 such completion to the Court and counsel for all Parties.

19 50. Treatment of Individual Settlement Payments. All Individual Settlement
20 Payments will be allocated as follows: one hundred percent (100%) of each PAGA Group
21 Member's pro-rate share of the Twelve Thousand Five Hundred dollars (\$12,500) allocated for
22 PAGA penalties shall be allocated as penalties; twenty percent (20%) of each Individual
23 Settlement Payment will be allocated for the settlement of wage claims; and the remaining
24 eighty percent (80%) will be allocated to the settlement of claims for interest and statutory
25 penalties. The portion allocated to wages in each Individual Settlement Payment will be
26 reported on an IRS Form W-2, and the portion allocated to interest and penalties will be
27 reported on an IRS Form-1099 by the Settlement Administrator.

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1 51. Administration of Taxes by the Settlement Administrator. The Settlement
2 Administrator will be responsible for issuing to Plaintiff, Participating Class Members, PAGA
3 Group Members, Class Counsel, and Defendant any W-2, 1099, or other tax forms as may be
4 required by law for all amounts paid pursuant to this Settlement Agreement. The Settlement
5 Administrator will also be responsible for forwarding all payroll taxes and other legally
6 required withholdings, and related reporting, to the appropriate government authorities.

7 52. Defendant's Responsibility for Employer Taxes. For any portion of the Class
8 Members' Individual Settlement Payments that are designated as "wages" for purposes of tax
9 reporting, the employer's taxes and employer contributions of all federal, state, and local taxes
10 (including, but not limited to, FICA, FUTA, and SDI), will be paid in addition to the Gross
11 Settlement Amount, *via*, and with the Settlement Administrator's assistance.

12 53. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
13 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
14 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
15 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
16 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN,
17 OR AMONG, THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISORS, IS, OR
18 WAS, INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR
19 DISCLOSURE CONSTITUTE, BE CONSTRUED, OR BE RELIED UPON AS, TAX
20 ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
21 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY
22 (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT
23 LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN
24 CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
25 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR
26 ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED
27 TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR
28 ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE

1 IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER
2 TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE
3 CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES
4 (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
5 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR
6 TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
7 CONTEMPLATED BY THIS AGREEMENT.

8 54. No Prior Assignments. The Parties and their counsel represent, covenant, and
9 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
10 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
11 demand, action, cause of action or right released and discharged in this Settlement Agreement.

12 55. Release by Plaintiff. Upon the date the Court enters an order granting final
13 approval of the Settlement, and after Defendant fully funds the Gross Settlement Amount and
14 the employer's share of payroll taxes, Plaintiff will provide the following additional general
15 release ("General Release"), in addition to the claims being released by all Class Members:
16 Plaintiff, on his own behalf and on behalf of his heirs, spouses, executors, administrators,
17 attorneys, agents and assigns, fully and finally releases the Released Parties from all claims,
18 demands, rights, liabilities and causes of action of every nature and description whatsoever,
19 known or unknown, asserted or that might have been asserted, whether in tort, contract, or for
20 violation of any state or federal statute, rule or regulation arising out of, relating to, or in
21 connection with any act or omission by or on the part of any of the Released Parties committed
22 or omitted prior to the execution of this Agreement. This General Release includes any
23 unknown claims Plaintiff does not know or suspect to exist in his favor at the time of this
24 General Release, which, if known by him, might have affected his settlement with, and release
25 of, the Released Parties or might have affected his decision not to object to this Settlement or
26 this Release. To the extent the foregoing releases are releases to which Section 1542 of the
27 California Civil Code or similar provisions of other applicable law may apply, Plaintiff
28 expressly waives any and all rights and benefits conferred upon him by the provisions of

1 Section 1542 of the California Civil Code or similar provisions of applicable law which are as
2 follows:

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

10 The significance of this release and waiver of Civil Code Section 1542 has been
11 explained to Plaintiff by his counsel. Release by Plaintiff expressly excludes any claims for
12 workers compensation against Defendant.

13 56. Neutral Reference. Defendant agrees that it will only provide a neutral reference
14 for Plaintiff should any prospective employers or anyone contact them regarding Plaintiff's
15 employment. Defendant shall only provide the dates of employment and Plaintiff's last job title
16 held with Defendant.

17 57. Nullification of Settlement Agreement. If: (1) the Court does not finally approve
18 the Settlement as provided in this Settlement Agreement; or (2) the Settlement does not become
19 final for any other reason, then this Settlement Agreement and any documents generated to
20 bring it into effect will be null and void. Any order or judgment entered by the Court in
21 furtherance of this Settlement Agreement will likewise be treated as void from the beginning. In
22 such case, the Settlement shall not be used or be admissible in any subsequent proceedings,
23 either in this Action, this Court, or any other Court or forum.

24 58. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to
25 request the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary
26 Approval Order for: (1) conditional certification of the Settlement Class for settlement purposes
27 only, (2) preliminary approval of the proposed Settlement Agreement, and (3) setting a date for
28 a Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order will provide

1 for the Notice to be sent to all Class Members as specified in this Settlement Agreement. In
2 conjunction with the Preliminary Approval motion, Plaintiff will submit this Settlement
3 Agreement, which sets forth the terms of this Settlement and will include the proposed Notice.

4 59. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of
5 the deadlines to fax or postmark Request for Exclusion or submit objections to the Settlement
6 Agreement, and with the Court's permission, a Final Approval/Settlement Fairness Hearing will
7 be conducted to determine the Final Approval of the Settlement Agreement along with the
8 amounts properly payable for (1) Individual Settlement Payments; (2) the Class Counsel Fees
9 and Costs; (3) the Class Representative Enhancement Payment; (4) payment to LWDA for
10 PAGA penalties; and (5) all Settlement Administration Expenses. Class Counsel will be
11 responsible for drafting all documents necessary to obtain final approval. Class Counsel will
12 also be responsible for drafting the attorneys' fees and costs application to be heard at the Final
13 Approval/Settlement Fairness Hearing.

14 60. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by
15 the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present a
16 proposed Judgment to the Court for its approval. Pursuant to California Rules of Court, Rule
17 3.771(b), the Settlement Administrator shall post on its website a copy of the Judgment for a
18 period of thirty days from the date the Court signs the Judgment. After entry of the Judgment,
19 the Court will have continuing jurisdiction solely for purposes of addressing: (1) the
20 interpretation and enforcement of the terms of the Settlement Agreement, (2) settlement
21 administration matters, and (3) such post-Judgment matters as may be appropriate under court
22 rules or as set forth in this Settlement Agreement.

23 61. Exhibits Incorporated by Reference. The terms of this Settlement Agreement
24 include the terms set forth in any attached Exhibits, which are incorporated by this reference as
25 though fully set forth in this Settlement Agreement. Any Exhibits to this Agreement are an
26 integral part of the Settlement.

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1 62. Entire Agreement. This Settlement Agreement and any attached Exhibits
2 constitute the entirety of the Parties' settlement terms. No other prior, or contemporaneous,
3 written or oral agreements may be deemed binding on the Parties. The Parties expressly
4 recognize California Civil Code Section 1625 and California Code of Civil Procedure Section
5 1856(a), which provide that a written agreement is to be construed according to its terms and
6 may not be varied or contradicted by extrinsic evidence, and the Parties agree that no such
7 extrinsic oral or written representations or terms will modify, vary or contradict the terms of
8 this Agreement.

9 63. Amendment or Modification. This Settlement Agreement may be amended, or
10 modified, only by a written instrument signed by counsel for all Parties or their successors-in-
11 interest.

12 64. Authorization to Enter Into Settlement Agreement. Counsel for all Parties
13 warrant and represent they are expressly authorized by the Parties whom they represent to
14 negotiate this Settlement Agreement and take all appropriate action required or permitted to be
15 taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to
16 execute any other documents required to effectuate the terms of this Settlement Agreement.

17 65. Binding on Successors and Assigns. This Settlement Agreement will be binding
18 upon, and inure to the benefit of, the successors or assigns of the Parties to this Settlement
19 Agreement, as previously defined.

20 66. Execution and Counterparts. This Settlement Agreement is subject only to the
21 execution of all Parties. However, the Settlement Agreement may be executed in one or more
22 counterparts. All executed counterparts and each of them, including facsimile, scanned copies
23 of the signature page, and electronic signature will be deemed to be one and the same
24 instrument.

25 67. Acknowledgement that the Settlement is Fair and Reasonable. The Parties
26 believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action,
27 and they have arrived at this Settlement Agreement after arm's-length negotiations and in the
28 context of adversarial litigation, taking into account all relevant factors, present and potential.

1 The Parties further acknowledge that they are each represented by competent counsel and that
2 they have had an opportunity to consult with their counsel regarding the fairness and
3 reasonableness of this Settlement Agreement.

4 68. Invalidity of Any Provision. Before declaring any provision of this Settlement
5 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
6 extent possible consistent with applicable precedents so as to define all provisions of this
7 Settlement Agreement valid and enforceable.

8 69. Captions. The captions and section numbers in this Agreement are inserted for
9 the reader's convenience, and in no way define, limit, construe, or describe the scope or intent
10 of the provisions of this Agreement.

11 70. Waiver. No waiver of any condition or covenant contained in this Agreement or
12 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
13 constitute a further waiver by such party of the same or any other condition, covenant, right or
14 remedy.

15 71. Enforcement Actions. If one or more of the Parties institutes any legal action or
16 other proceeding against any other Party to enforce the provisions of this Settlement Agreement
17 or to declare rights and/or obligations under this Settlement Agreement, the successful Party
18 will be entitled to recover from the unsuccessful Party reasonable attorneys' fees and costs,
19 including expert witness fees incurred in connection with any enforcement actions.

20 72. Mutual Preparation. The Parties have had a full opportunity to negotiate the
21 terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement
22 will not be construed more strictly against one party than another merely by virtue of the fact
23 that it may have been prepared by counsel for one of the Parties, it being recognized that,
24 because of the arms-length negotiations between the Parties, all Parties have contributed to the
25 preparation of this Agreement.

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1 73. Representation By Counsel. The Parties acknowledge that they have been
2 represented by counsel throughout all negotiations that preceded the execution of this
3 Settlement Agreement, and that this Settlement Agreement has been executed with the consent
4 and advice of counsel.

5 74. All Terms Subject to Final Court Approval. All amounts and procedures
6 described in this Settlement Agreement will be subject to final Court approval.

7 75. Binding Agreement. The Parties warrant that they understand and have full
8 authority to enter into this Agreement, and further intend that this Agreement will be fully
9 enforceable and binding on all Parties and agree that it will be admissible and subject to
10 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
11 provisions that otherwise might apply under federal or state law.

12 76. Named Plaintiff's and Class Counsel's Representation. Except with respect to
13 the matters released by this Settlement, Named Plaintiff and Class Counsel represent that they:
14 (a) are not currently (*i.e.*, as of the date of execution of this Agreement) aware of any unalleged
15 facts or claims that would support a legal action against any of the Released Parties; and (b) do
16 not currently represent except with respect to the matters released by this Settlement, any
17 current or former employees of Defendant or any of them with respect to any legal claims
18 against any of the Released Parties. However, the Parties also agree that nothing in this
19 paragraph limits or restrains Class Counsel from representing any individuals of their choosing
20 or their ability to bring claims of their choosing, except to the extent such individuals or claims
21 are covered by the release negotiated in this Agreement.

22 77. Confidentiality. Named Plaintiff agrees, prior to Class Counsel filing a motion
23 for preliminary approval, not to disclose or publicize this Agreement, its terms or contents, and
24 the negotiations underlying the Agreement, in any manner or form, directly or indirectly, to any
25 person or entity, except his attorneys, accounts, significant other, in response to a subpoena,
26 court order, and required to effectuate the terms of the Agreement.

27 78. Class Counsel Marketing and Adequacy Declarations. Class Counsel agrees not
28 to use Defendant's name in marketing materials. Class Counsel and Named Plaintiff will not

1 make any posting on any website, instant message site, blog, or social networking site that uses
2 Defendant's name, and will not list or refer to the Action in any website, mailings, publicity, or
3 other similar fora or materials. However, for the limited purpose of allowing Class Counsel to
4 prove adequacy as class counsel in other actions, Class Counsel may disclose the name of the
5 Parties in this action and the venue/case number of this action (but not any other details of the
6 Settlement) for such purposes.

7 79. No Admission of Liability. Nothing contained in this Settlement Agreement
8 shall be construed or deemed an admission of liability, culpability, negligence, or wrongdoing
9 on the part of Defendants. Each of the Parties has entered into this Settlement Agreement with
10 the intention to avoid further disputes and litigation, and the attendant inconvenience and
11 expense, and to fully and forever buy their respective peace. This Settlement Agreement shall
12 be inadmissible in evidence in any action or proceeding, by any party, except an action or
13 proceeding by one of the Parties to approve, interpret, or enforce the Settlement Agreement's
14 terms.

15 80. Disputes. Any dispute between the Parties concerning the interpretation or
16 implementation of this Settlement Agreement will be resolved by the Court. Prior to any such
17 resort to the Court, counsel for the Parties will confer in good faith to resolve the dispute. If the
18 Parties are unable to resolve the dispute themselves, the dispute will be submitted to Michael
19 Russell, Esq. for mediation before being submitted to the Court, unless the Parties agree
20 otherwise.

21 81. Applicable Law. All terms and conditions of this Stipulation and its exhibits will
22 be governed by and interpreted according to the laws of the State of California, without giving
23 effect to any conflict of law or choice of law principles.

24 **SIGNATURES**

25 **READ CAREFULLY BEFORE SIGNING**

26
27 Dated: 02/12/2024

28 PLAINTIFF



Dillon M. Freyre

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Dated: 2-13-2024

DEFENDANT

Terry Dava
DFA Dairy Brands Fluid, LLC

[Signature]
By:
Its: Group Vice President
Mountain West

APPROVED AS TO FORM

Dated: 2/13, 2024

THE NOURMAND LAW FIRM, APC

By: [Signature]
Michael Nourmand
James A. De Sario

Attorneys for Plaintiff, DILLON M. FREYRE
on behalf of himself and all others similarly
situated

Dated: February 13, 2024

OGLETREE DEAKINS NASH SMOAK &
STEWART, P.C.

By: [Signature]
Alexander M. Chemers
Catherine L. Brackett

Attorneys for Defendant, DFA DAIRY
BRANDS FLUID, LLC