

GEORGE BEAN LAW

George H. Bean (SBN 306016)

340 E. 1st Street, #1127

Tustin, CA 92781

Telephone: (714) 904-9338

george@georgebeanlaw.com

Attorney for Plaintiff, JEAN M. HERGER

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES – VAN NUYS COURTHOUSE EAST

JEAN M. HERGER, an individual, on behalf
of herself and other aggrieved employees,

Plaintiff,

v.

NVA SOUTH TEMECULA AND
MURRIETA OAKS, INC., a California
corporation, and DOES 1 through 50,
inclusive

Defendants.

CASE NO. 20VECV01283

Assigned for all purposes to:
Hon. Shirley K. Watkins
Department: T

**DECLARATION OF GEORGE H. BEAN
IN SUPPORT OF MOTION FOR
APPROVAL OF SETTLEMENT OF
ACTION FILED PURSUANT TO
PRIVATE ATTORNEYS GENERAL ACT**

RESERVATION # 256728732131

Hearing:

Date: August 9, 2021

Time: 8:30 a.m.

Dept.: T

I, George H. Bean, declare as follows:

1. I am an attorney duly licensed to practice law before all courts in the State of California. I am counsel of record in this matter for Plaintiff Jean M. Herger. The statements in this declaration are facts within my personal knowledge and if called as a witness to testify, I could and would competently testify to their truth.

2. I write this declaration in support of Plaintiff's Motion for Approval of Settlement of Action Filed Pursuant to Private Attorneys General Act ("Motion").

1 3. On or about March 2, 2021, Defendants executed the attached Private Attorneys
2 General Act Settlement Agreement and Release (“PAGA Agreement”) and on or about March 12,
3 2021, my client, Plaintiff Jean M. Herger, executed the PAGA Agreement. A true and correct
4 copy of the executed PAGA Agreement is attached hereto as **Exhibit A**.

5 4. On February 4, 2020, I filed the initial PAGA notice in this matter with the Labor
6 & Workforce Development Agency (“LWDA”) for the State of California. A true and correct copy
7 of that LWDA letter is attached hereto as **Exhibit B**.

8 5. On April 13, 2021, I filed the PAGA Agreement with the California Labor and
9 Workforce Development Agency as required through their online portal. A true and correct copy
10 of the submission confirmation is attached hereto as **Exhibit C**.

11 6. Upon filing of the Motion, I will concurrently upload it to the LWDA’s website, as
12 required by statute.
13

14 7. I will also file the Court’s judgment with the LWDA once entered.

15 8. The LWDA did not respond to my February 4, 2020, letter within sixty-five (65)
16 days, which then permits a plaintiff to file a civil matter with the Superior Court.

17 9. There are no cases related to this case. I have confirmed this through a docket
18 search and have also received such representation from Defendant’s counsel.
19

20 10. On August 27, 2020, I submitted an Amended LWDA Letter so that I could add a
21 claim for missed meal periods.

22 11. The LWDA has not responded to the amended letter since.

23 12. I contacted counsel for Defendant, Christopher Dengler early in the process. We
24 made initial contact on March 24, 2020, through email and a phone call. We have had extensive
25 correspondence and phone contact throughout this settlement and litigation process. We have
26 debated and discussed at length the merits of this case and the legal support for the claims made
27 by Plaintiff and the other Aggrieved Employees.
28

1 13. I requested informal production of documents to evaluate the case and additional
2 data to evaluate the scope of the potential civil penalties. Mr. Dengler forwarded such material to
3 me, outside of the formal discovery process.

4 14. I undertook significant effort to evaluate and prosecute this matter and reach the
5 settlement which is before the Court. My efforts included: (1) extensive intake and interview
6 conversations with multiple aggrieved employees and preparation of request for employee's files
7 and litigation hold; (2) preparation of a detailed PAGA Notice sent to the LWDA, and preparation
8 of an Amended PAGA Notice; (3) preparation of a PAGA damage chart of likely liability and
9 further analysis of the likelihood of success on those claims; (4) legal research into PAGA fines
10 and their applicability in the case; (5) legal research regarding "subsequent" violations and
11 knowing and intentional violations; (6) correspondences and phone calls with opposing counsel
12 throughout the course of the litigation and settlement process; (7) research of entity Defendant; (8)
13 drafting of PAGA Complaint for filing with Court; (9) review of documents produced by
14 Defendant in response to informal discovery requests; (10) review of documents produced in
15 response to employee request; (11) review of data produced by Defendant's data regarding the
16 aggrieved employee group, such as numbers, positions, dates of employment and rates of pay; (12)
17 negotiations with Defendant's counsel aimed toward settlement; (13) preparation, review and
18 revising of settlement documents; (14) preparation and review of pleading documents for
19 Stipulation for Approval of the PAGA settlement; (15) preparation of Motion for Court Approval
20 of PAGA Settlement and Declaration in support; (16) appearances at court hearings; and (17)
21 attendant activities.

22 15. The informal discovery I conducted consisted of: I requested, and Defendant's
23 counsel provided payroll documentation, company policy documentation, timekeeping
24 documentation, payroll documentation, witness declaration documents, employee/employer
25 agreements, meal and rest break policy documentation, employee notices documentation,
26 employee/employer correspondences, and company wide data regarding the numbers of
27 employees, positions held, timeframes and rates of pay. I developed facts by interviewing multiple
28 aggrieved employees regarding company policies and company conduct with regard to meal and

1 rest breaks and the violations that stemmed from those alleged violations. I researched and alleged
2 that failure to pay premiums for missed meal and rest breaks constituted a failure to pay all wages
3 earned and due, including at termination or voluntary quit, and constituted a violation of the
4 requirement to provide accurate wage statements.

5 16. After robust discussions with Mr. Dengler, and after significant legal research, and
6 factual research, we both recognized the risks to our clients litigating this matter to its end. We
7 instead opted to find a mutually agreeable resolution. We agreed to settle this matter for a total of
8 \$30,000.00, including a maximum of \$10,000 in attorney's fees and costs. We did not know each
9 other before this case and conducted a professional arm's length negotiation to reach this
10 reasonable settlement amount.

11 17. Both Defendant's counsel and I evaluated the merits of the case, and its legal
12 underpinning and have concluded that this is a fair and reasonable compromise. I have litigated
13 numerous wage-and-hour cases (over 100), including many PAGA cases.
14

15 18. The attorney's fees and costs exceed \$10,000, but I agreed to take only that amount
16 to facilitate settlement of the matter. This amount includes only work performed in furtherance of
17 this PAGA case and settlement thereof.

18 19. After receiving data from Defendant regarding the number of potentially aggrieved
19 employees, I estimated that the maximum amount of civil penalties could be \$469,000.00. These
20 could be the civil penalties if a Court found that all the Aggrieved Employees suffered all the
21 alleged violations and if a Court agreed that the "subsequent" penalties should be \$200 for knowing
22 and intentional violations, and not \$100. It also assumes that the Court would award maximum
23 civil penalties on all the alleged violations and all the derivative violations. For example, the claim
24 that the Aggrieved Employees did not get proper wage statements was derivative of the allegation
25 that Defendant did not pay one-hour premiums for missed meal and rest breaks. The low-end
26 range of recovery would be \$0.00. If the Court found that Defendant did not commit any meal
27 and rest break violations, the additive nature of the subsequent penalties, with the attendant failures
28

1 to pay all wages earned and due, including at termination or voluntary quit, and the attendant wage
2 statement violations, the civil penalties would be drastically reduced, possible to zero.

3 20. I spoke with my client whose interest in this matter is applying justice as against
4 her former employer for her coworkers' benefit. We agreed that the continued risk of litigation
5 and the possibility of adverse outcomes militated a reasonable settlement posture. Being aware of
6 the risks and the difficulty in establishing liability, my client and I believe that this settlement will
7 benefit the aggrieved employees and encourage compliance with the Labor Code.

8 21. Given all of the above, my client and I agree that the settlement is fair, adequate,
9 and reasonable. The aggrieved employees do not lose the right to bring their own individual wage
10 claims as a result of this settlement. The Notice of PAGA Settlement, which will be mailed to
11 each of the aggrieved employees, states that no claims for unpaid or underpaid wages have been
12 settled, and that this settlement is without prejudice to such claims. A true and correct copy of the
13 Notice of PAGA Settlement is attached hereto as the final page of **Exhibit A**.

14 22. Given all of the above, if we were only able to establish liability for a portion of the
15 aggrieved employees, and the Court denied "stacking" of penalties, and denied all or some of the
16 derivative claims, we would be looking at a very small assessment. I re-valued the case in the mid
17 five figures.

18 23. With reference to the attorney's fees and costs allocated in the PAGA Agreement,
19 I declare as follows:
20

21 24. Starting in December of 2015, I worked as an attorney for a mid-size firm, Ferruzzo
22 & Ferruzzo, LLP, specializing in civil litigation and contested probate. In January of 2017, I
23 opened my own solo practice, concentrating on employment law.

24 25. Prior to becoming an attorney, I worked as a paralegal for five (5) years for an
25 employment attorney firm, that only practiced employment law. The lead attorney knew that I
26 was going to sit for the bar, and he treated me as a young associate. I believe this experience turbo
27 charged by competence to handle wage and hour cases as an attorney.
28

1 26. I have handled over one-hundred matters as a solo practitioner including taking two
2 cases to verdict, one a bench trial and one a jury trial.

3 27. I am admitted to practice in all the courts in the state of California, and the Federal
4 Courts in California. I am member of the Orange County Bar Association (“OCBA”), the
5 California Bar Association, the appellate section, solo section and labor/employment section of
6 the OCBA.

7 28. I input my billing entries into my legal billing software on a daily basis at the time
8 of the performance of the activity. In preparing this declaration, I have reviewed the entries I billed
9 to the instant matter to verify that the time was correctly billed to the correct matter and correct
10 activity. My requested fees are only for work performed in relation to Plaintiff’s PAGA claim.

11 29. As of the date of preparing this declaration I have spent fifty-one and two tenths
12 (51.2) hours on this matter.

13 30. My hourly rate is \$400 per hour; therefore, I have accrued \$20,480.00 in billable
14 legal hours. I have also spent \$491.33 on costs, which is comprised of the filing fee for the
15 Complaint, the eFiling fees for various court filings such as the proofs of service, notice of case
16 reassignment, and postage to mail letters to the LWDA and the Defendant. My total fees and
17 expenses amount to \$20,971.33. I have agreed to take a discount from these amounts and will
18 only be asking this Court to approve \$10,000.00 in fees and costs to be payable to my firm, George
19 Bean Law.
20

21 31. I examined the Laffey Matrix¹ published by the U.S. Attorney’s Office for the
22 District of Columbia. These figures are tailored for the District of Columbia, which has a lower
23 cost of living than Los Angeles.² The 2019 Locality Pay Adjustment for Los Angeles is 31.47%.
24 The 2019 Locality Pay Adjustment for Washington D.C. is 29.32%³, therefore the Laffey rate
25

26 ¹ The Laffey Matrix is a United States Department of Justice billing matrix that provides billing rates for attorneys at
27 various experience levels in the Washington, D.C. area and can be adjusted to establish comparable billing rates in
28 other areas using data from the United States Bureau of Labor Statistics. Pasternack v. McCullough, 2021 Cal.App.
LEXIS 532, *9.

² See <https://www.federalpay.org/gs/locality/los-angeles#payTable>.

³ See <https://www.federalpay.org/gs/locality/washington-dc#payTable>.

1 should be adjusted upward by 2.15%. See In re HPLTechs, Inc., Secs. Litig. (2005) 366 F.Supp2d.
2 912, 921.

3 32. The most recently published Laffey Matrix indicates that an attorney with 4-7
4 years' experience would command \$465 per hour (\$475 adjusted for Los Angeles). A true and
5 correct copy of the Laffey Matrix is attached hereto as **Exhibit E**.

6 33. My requested rate of \$400 per hour is reasonable based upon the expertise and skill
7 demonstrated in this matter and the prevailing rates in the greater Los Angeles area of similarly
8 situated and accomplished attorneys.

9 34. The hours I have claimed are all hours spent in furtherance of this PAGA-only
10 litigation. Any hours I spent on other matters, whether related or not, have not been claimed. I
11 have attached a true and correct copy of my billing records to this declaration as **Exhibit F**.

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct. Executed on July 13, 2021 in Tustin, California.
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George H. Bean, Declarant

Exhibit *A*

Exhibit *A*

Exhibit *A*

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND RELEASE

This Private Attorneys General Act Settlement and Release Agreement (the “PAGA Agreement”) is made and entered into by Jean Herger (“Herger”), for herself and on behalf of the State of California and other aggrieved employees pursuant to the California Private Attorneys General Act (“PAGA”), and National Veterinary Associates, Inc. and its subsidiary NVA South Temecula and Murrieta Oaks Inc. (together “NVA”).

Herger and NVA (sometimes collectively referred to as the “Parties”) agree that this matter shall be, and hereby is, ended, settled, resolved, and concluded by this PAGA Agreement, which is intended to effect and complete settlement of this matter.

1. Definitions.

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

- a. “Action” means *Herger v. NVA South Temecula and Murrieta Oaks Inc.*, Los Angeles County Superior Court, Case No. 20VECV01283.
- b. “Agreement” or “PAGA Agreement” means this Private Attorney General Act (Labor Code §§ 2698, *et seq.*) Settlement Agreement and Release.
- c. “Aggrieved Employees” means any current and former hourly-paid or non-exempt employees who worked for NVA South Temecula and Murrieta Oaks Inc. within the State of California at any time during the period from February 4, 2019 to the date of final approval of the PAGA Agreement by the Court.
- d. “Amended LWDA Letter” means the notice Herger sent on August 27, 2020 to the LWDA and NVA under the PAGA that added meal period allegations and associated penalties to the claims asserted in the LWDA Letter.
- e. “Complaint” means Herger’s Complaint filed in Los Angeles County Superior Court, Case No. 20VECV01283, on November 6, 2020, which is the operative Complaint.
- f. “Court” means the Superior Court for the State of California, County of Los Angeles.
- g. “NVA’s Counsel” or “Counsel for NVA” is:
Chris Dengler, Esq.
James Payer, Esq.
Littler Mendelson P.C.
633 West Fifth Street, 63rd Floor
Los Angeles, CA 90071
- h. “Effective Date” means the date this Agreement is approved as provided herein and the Court’s order granting Settlement Approval and entry of Final Judgment becomes final and is no longer appealable. For purposes of this Agreement, “becomes final and is no longer appealable” shall mean the later of: (a) the day after the last date by which a notice of appeal to the applicable Court of Appeal of the

order and judgment approving this Agreement may be timely filed and none is filed (*i.e.*, 61 days from notice of entry of judgment); (b) if an appeal is filed, and the appeal is finally disposed of by ruling, dismissal, denial, or in any other manner that confirms the validity of the order and judgment, the day after the last date for filing a request for further review of the order and judgment approving this Agreement passes, and no further review is requested; or (c) if an appeal is filed and the order approving this Agreement is affirmed and further review of the order is requested, the day after the review is finally resolved and the order and judgment approving this Agreement is affirmed.

- i. “Fee Amount” is the amount in fees that Herger’s Counsel is free to request that the Court award them, not to exceed Ten Thousand Dollars (\$10,000), per Section 3(b), as compensation for their attorneys’ fees.
- j. “Herger’s Counsel” is:
George Bean, Esq.
George Bean Law
340 E. 1st Street, #1127
Tustin, CA 92781
- k. “Individual PAGA Payment” is the amount in Labor Code Section 2699 penalties to be paid to Aggrieved Employees, which will be 25% of the Net PAGA Payment, unless the Court determines otherwise.
- l. “LWDA” means the California Labor and Workforce Development Agency.
- m. “LWDA Letter” means the notice Herger sent on February 4, 2020 to the LWDA under the PAGA asserting the recovery of penalties for various alleged Labor Code and wage and hour violations.
- n. “LWDA Payment” is the amount in Labor Code Section 2699 penalties to be paid to the LWDA, which will be 75% of the Net PAGA Payment, unless the Court determines otherwise.
- o. “Net PAGA Payment” means the amount remaining from the PAGA Settlement Sum after the deduction of the Fee Amount.
- p. “Notice of PAGA Settlement” means the Notice of PAGA Settlement (attached here as **Exhibit A**) NVA shall mail, along with each Individual PAGA Payment, to all Aggrieved Employees by first-class United States mail, postage prepaid, to the last known address of each Aggrieved Employee with directions to the Postmaster to forward the Notice and return all undeliverable Notices to NVA.
- q. “NVA” means National Veterinary Associates, Inc. and its subsidiary NVA South Temecula and Murrieta Oaks Inc.
- r. “PAGA” means the California Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
- s. “PAGA Period” means the time period from February 4, 2019 to the date of final approval of the PAGA Agreement by the Court.

- t. “PAGA Settlement Sum” means the settlement amount of Thirty Thousand Dollars And Zero Cents (\$30,000.00) NVA has agreed to pay pursuant to Section 3(a), below.
- u. “Parties” refers to Herger and NVA.
- v. “Pay Period” means each biweekly period in which Aggrieved Employees received wages during their employment at NVA South Temecula and Murrieta Oaks Inc., during the PAGA Period.
- w. “Released Claims” means any and all claims for PAGA penalties based on the allegations contained in the LWDA Letter, the Amended LWDA Letter, and the Complaint against the Released Parties, for work performed during the PAGA Period, including any claims for penalties related to failure to provide meal periods, failure to provide rest periods, untimely wage payments both during and at the end of employment, and non-compliant wage statements, or claims which could have been alleged, and claims for interest, penalties or premiums in connection therewith.
- x. “Released Parties” means National Veterinary Associates, Inc. and its present and former parent companies, present owners, former owners, subsidiaries, including NVA South Temecula and Murrieta Oaks, Inc., shareholders, officers, directors, employees, agents, attorneys, insurers, successors, and assigns, and any individual or entity which could be jointly liable with NVA.

2. **Background.**

- a. Herger’s employment with NVA South Temecula and Murrieta Oaks Inc. ended on or about October 17, 2019.
- b. On February 4, 2020, Herger sent the LWDA Letter to the LWDA under the PAGA asserting various alleged Labor Code and wage and hour violations, which was also sent to NVA.
- c. On August 27, 2020, Herger sent an the Amended LWDA Letter to the LWDA under the PAGA that added meal period allegations and associated penalties to the claims asserted in the LWDA Letter, which was also sent to NVA.
- d. On November 6, 2020, Herger filed the Action against NVA South Temecula and Murrieta Oaks Inc. in the Superior Court for the County of Los Angeles, Case No. 20VECV01283, alleging a PAGA Cause of Action based on the alleged Labor Code violations set forth in the LWDA Letter and the Amended LWDA Letter. The alleged Labor Code violations include: (1) failure to timely pay final wages (Labor Code §§ 201, 202); (2) failure to timely pay all wages due (Labor Code § 204); (3) failure to provide compliant rest breaks (Labor Code § 226.7 and IWC Wage Order No. 5); (4) inaccurate wage statements (Labor Code § 226), and (5) failure to provide compliant meal breaks (Labor Code §§ 226.7, 512, and IWC Wage Order No. 5).
- e. This Agreement contemplates the (a) entry of an order by the Court approving the payment allocated for settlement of the Settlement Sum and the non-monetary relief provided herein; (b) an order entering PAGA Judgment in the Action; and (c) all

Parties bearing their respective fees and costs except as expressly provided in this Agreement. These terms are material provisions of this Agreement.

3. **Terms of the Agreement.**

- a. Settlement Sum: NVA agrees to pay **Thirty Thousand Dollars and Zero Cents (\$30,000.00)** as a full, complete, and final settlement of the Action. This sum includes the following: (i) the payment to the LWDA; (ii) the payments to Aggrieved Employees; and (iii) the payment of Herger's counsel's fees, as approved by the Court.
- b. Fee Amount: Herger's counsel is free to request the Fee Amount as compensation for their attorneys' fees incurred in this Action. NVA will not oppose any such request up to Ten Thousand Dollars (\$10,000). Any reduction in this payment by the Court is not grounds to void this Agreement and any funds requested but not awarded as attorneys' fees will be distributed to the State and the Aggrieved Employees pursuant to the distribution terms of the Agreement or any terms imposed by the Court.
- c. PAGA Payment – Allocation: The Net PAGA Payment shall be the Settlement Sum less the payment of Court-approved Herger's counsel's fees and shall represent Labor Code Section 2699 penalties, of which 75% of the payment will be paid to the LWDA as the LWDA Payment and 25% will be paid to Aggrieved Employees as Individual PAGA Payments, unless the Court determines otherwise. A reallocation of the settlement funds amongst PAGA claims directed by the Court shall not be a basis for either side to void the agreement. Aggrieved Employees will be issued Form 1099 for their share of the PAGA payments. The Individual PAGA Payment for each Aggrieved Employee shall be based on the number of biweekly pay periods each Aggrieved Employees worked during the PAGA Period as a percentage of the total pay periods worked by all Aggrieved Employees during the PAGA Period.

4. **Approval and Implementation of the Agreement.**

- a. Cooperation: The Parties will cooperate in obtaining through joint stipulation or joint motion, if a motion is required, an Order from the Court approving the terms of this Agreement at the earliest possible date. The Parties agree to use their best efforts to expedite the preparation and submission of the Agreement documents. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents reasonably necessary to be prepared or filed in order to obtain approval of this Agreement.
- b. Court Approval: The Parties will seek to obtain the Court's approval of this Agreement by way of a joint stipulation or joint motion or stipulation to be filed by Herger's counsel. The Court's approval of this Agreement shall be embodied in a written Order. Should the Court not grant approval of terms set forth in Section 3(a) of this Agreement, then the entirety of this Agreement shall be null and void.
- c. Notice to Aggrieved Employees: Notice shall be provided to the Aggrieved Employees in the following manner:

- i. No later than fourteen (14) days after the Effective Date, NVA shall mail the Notice of PAGA Settlement (attached here as **Exhibit A**) and each Individual PAGA Payment to all Aggrieved Employees by first-class United States mail postage prepaid, to the last known address of each Aggrieved Employee with directions to the Postmaster to forward the Notice and Individual PAGA Payment and return all undeliverable Notices and Individual PAGA Payments to NVA. For each Notice and Individual PAGA Payment that is returned as undeliverable, NVA shall promptly attempt to locate the Aggrieved Employee by using an address refresher database. Should NVA not be able to locate an individual or should an Individual PAGA Payment not be cashed within 120 days of the date of the check, said payment shall be forwarded to the State.
- ii. All costs in connection with the mailing of the Notices shall be borne by NVA.

d. Settlement Payment and Administration Procedures.

For purposes of distributing each Individual PAGA Payment, all distribution payments will be made according to the number of Pay Periods each Aggrieved Employee was employed by NVA South Temecula and Murrieta Oaks Inc. during the PAGA Period, with each Aggrieved Employee being entitled to a share of the Net PAGA Payment allocated to the Aggrieved Employees based upon the Aggrieved Employee's number of Pay Periods employed with NVA South Temecula and Murrieta Oaks Inc. during the specified period as a numerator and the total number of Pay Periods all Aggrieved Employees were employed with NVA South Temecula and Murrieta Oaks Inc. during the PAGA Period as the denominator.

The Individual PAGA Payments are considered penalties and will not be subject to local, state or federal tax withholdings. All Aggrieved Employees who cash their settlement check may receive an IRS Form 1099 reflecting this portion of the settlement.

The settlement checks issued to Aggrieved Employees shall remain valid for one hundred twenty (120) days. Thereafter, all uncashed checks shall be voided and the funds represented thereby shall be paid to the LWDA by NVA.

In no event will any payment of any portion of the PAGA Settlement Sum be due by NVA prior to the Effective Date of this Agreement.

- e. LWDA Notice: Pursuant to California Labor Code section 2699(l), Herger will provide a copy of this Agreement to the LWDA concurrently with the filing of the Joint Stipulation or Joint Motion for Settlement Approval. Herger or Herger's Counsel will also file a declaration in support of the Joint Stipulation or Joint Motion for Settlement Approval confirming that the Agreement was submitted to the LWDA in compliance with Labor Code section 2699(l). In addition, Herger shall submit to the LWDA a copy of the Court's judgment and order approving the Agreement within ten (10) days after entry of the judgment or order.

- f. Submission of Judgment: Upon payment and distribution of the PAGA Settlement Sum by NVA in accordance with this Agreement, Herger and NVA will jointly submit a Notice of Satisfaction of Judgment.

5. Limitations On Use Of This Agreement.

- a. No Admission: This Agreement and compliance with this Agreement shall not be construed as an admission by NVA of any liability whatsoever, or as admission by NVA of any violations of Herger's rights, violation of any order, law, statute, duty or contract whatsoever. NVA specifically disclaims any liability to Herger or any other Aggrieved Employee for any alleged violation of their rights, or for any alleged violation of any order, law, statute, duty or contract.
- b. Nullification:
 - i. If the Court should for any reason fail to approve this Agreement, then (a) this Agreement shall be considered null and void, (b) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect, and (c) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court.
 - ii. Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect. Material terms of this Agreement include: the definition of Aggrieved Employees (Section 1(c)); the definition of Effective Date (Section 1(h)); the definition of PAGA Period (Section 1(s)); the definition of Released Claims (Section 1(x)); the definition of Released Parties (Section 1(w)); the definition of PAGA Settlement Sum (Section 1(t)); the requirement for entry of an order by the Court approving this Agreement and entering PAGA Judgment as contemplated in Section 2(e). The following terms are not material to this Agreement: the allocation of Fee Amount (Sections 1(a) and 3(b)) and the allocation within the Net PAGA payment (Section 3(c)).

6. Release and Waiver of Claims.

- a. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge disputes and claims arising from or related to the Action. Upon entry of the Order and Final Judgment approving payment as described in this Agreement, Herger, the Aggrieved Employees, and the State of California shall be bound by this Agreement and shall have recourse exclusively to the benefits, rights, and remedies provided hereunder. Herger, the Aggrieved Employees and the State of California shall be deemed to have, and by operation of the Order and Final Judgment granting approval of this Agreement, shall have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from the Released Claims that arose during the PAGA Period.

7. Miscellaneous Provisions.

- a. Voluntariness: This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.
- b. Amendments: The terms and provisions of this Agreement, including the material provisions outlined in Section 5(b)(ii), may be amended only by a written agreement that is both (a) signed by Herger, Herger's Counsel, NVA, and NVA's Counsel who executed this Agreement and (b) approved by the Court. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.
- c. Assignment: None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, Herger's Counsel, or NVA's Counsel without the express written consent of each other Party and their respective counsel hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person. Herger expressly warrants that she has not transferred to any person or entity any right or cause of action, or claim released by this Agreement.
- d. Governing Law: This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, and shall in all cases be shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties hereto.
- e. Entire Agreement: This Agreement, including the Exhibits referred to herein, which form an integral part hereof, contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Released Claims.
- f. Counterparts: This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.
- g. Dispute(s): Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, the Parties agree to submit any such dispute(s) to the Court.
- h. Confidentiality: Herger, NVA, and their respective counsel will not make any public disclosure of the PAGA Agreement except with respect to the filing of the joint stipulation or joint motion for approval of the PAGA Agreement. Herger, NVA, and their respective counsel represent that they have not made any such disclosure. Notwithstanding the foregoing, the Parties agree that NVA may make such disclosures that in NVA's judgment are required in the ordinary course of

business. Herger's Counsel will take all steps necessary to ensure that Herger is aware of, and will encourage her to adhere to, the restriction against any public disclosure of the PAGA Agreement until after the Court approves the PAGA Agreement. Thereafter, Herger and her counsel agree not to publicize the terms of the Herger Agreement or the PAGA Agreement with the media, including but not limited to, any newspaper, journal, magazine, website and/or on-line reporter of settlements

Having read, understood, and agreed to the foregoing terms and conditions, the Parties hereby voluntarily execute this PAGA Agreement by placing their signatures below.

Date: _____

By: _____
JEAN HERGER

Date: 03/02/2021

By: _____

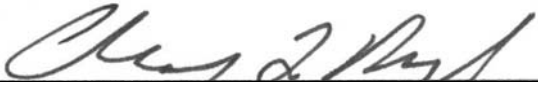
ANNETTE KIM
Associate General Counsel
On behalf of National Veterinary Associates, Inc. and
NVA South Temecula and Murrieta Oaks, Inc.

Approved as to form:

Date: _____

By: _____
GEORGE BEAN
Counsel for Jean Herger

Date: March 3, 2021

By: _____

CHRISTOPHER DENGLER
Counsel for National Veterinary Associates, Inc. and
NVA South Temecula and Murrieta Oaks, Inc.

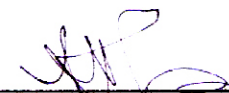
business. Herger's Counsel will take all steps necessary to ensure that Herger is aware of, and will encourage her to adhere to, the restriction against any public disclosure of the PAGA Agreement until after the Court approves the PAGA Agreement. Thereafter, Herger and her counsel agree not to publicize the terms of the Herger Agreement or the PAGA Agreement with the media, including but not limited to, any newspaper, journal, magazine, website and/or on-line reporter of settlements

Having read, understood, and agreed to the foregoing terms and conditions, the Parties hereby voluntarily execute this PAGA Agreement by placing their signatures below.

Date: 3/12/2021

By: 
JEAN HERGER

Date: 03/02/2021

By: 
ANNETTE KIM

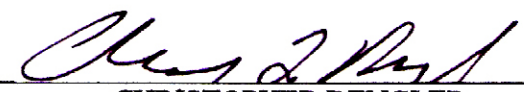
Associate General Counsel
On behalf of National Veterinary Associates, Inc. and
NVA South Temecula and Murrieta Oaks, Inc.

Approved as to form:

Date: _____

By: _____
GEORGE BEAN
Counsel for Jean Herger

Date: March 3, 2021

By: 
CHRISTOPHER DENGLER

Counsel for National Veterinary Associates, Inc. and
NVA South Temecula and Murrieta Oaks, Inc.

4837-0003-8355.3 087216.1042

EXHIBIT A

EXHIBIT A

EXHIBIT A

NOTICE OF PAGA SETTLEMENT

Herger v. NVA South Temecula and Murrieta Oaks Inc.
(Superior Court of the State of California for the County of Los Angeles)
Case No. 20VECV01283

«Barcode» «BarcodeString»
SIMID «SIMID»
«FirstName» «LastName»
«Address1» «Address2»
«City» «State» «Zip»

You are receiving this Notice because of a lawsuit brought by Plaintiff Jean Herger (“Plaintiff”) against Defendant NVA South Temecula and Murrieta Oaks Inc. (“Defendant”) for civil penalties pursuant to the Private Attorneys General Act, California Labor Code §§ 2698, *et seq.* (“PAGA”). Plaintiff claimed that Defendant violated California labor laws by failing to provide meal periods and rest periods in compliance with California law, failing to timely pay employees their wages both during and at the end of employment, and failing to provide accurate wage statements.

Defendant denies these claims. Defendant contends they have satisfied all of their obligations to their employees and they have timely paid all wages and benefits, including overtime, minimum wages, and meal and rest period premiums, due and owing to Plaintiff and their other employees. However, to avoid further time and expense in litigation, Defendant and Plaintiff have agreed to settle the case. The settlement resolves the claims asserted in the lawsuit on behalf of the State of California and all California non-exempt employees of Defendant who worked at any time during the period from February 4, 2019 through and including [the Date of final approval of the PAGA Settlement] (“Affected Employees”). No claims for unpaid or underpaid wages have been settled, and this settlement is without prejudice to such claims.

According to Defendant’s records, you are an Affected Employee and are therefore entitled to a share of the settlement. Enclosed with this Notice is your settlement check. The settlement check shall remain valid for one hundred twenty (120) days from the date of issuance of the check. Checks remaining un-cashed for more than 120 days after issuance will be tendered to the California Labor and Workforce Development Agency within fourteen (14) calendar days from the date on which Affected Employees’ checks become void.

Any questions regarding the settlement can be directed to counsel for either Plaintiff or Defendant:

Counsel for Plaintiff
George Bean, Esq.
(George@georgebeanlaw.com)
George Bean Law
340 E. 1st Street, #1127
Tustin, CA 92781
Tel: (714) 904-9338

Counsel for Defendant
Christopher Dengler, Esq.
(cdengler@littler.com)
James Payer, Esq.
(jpayer@littler.com)
Littler Mendelson P.C.
633 West Fifth Street, 63rd Floor
Los Angeles, CA 90071
Tel: (213) 443-4300

Exhibit B

Exhibit B

Exhibit B



George Bean Law

340 E. 1ST STREET, #1127
TUSTIN, CA 92781

TELEPHONE: (714) 904-9338
EMAIL: GEORGE@GEORGEBEANLAW.COM

February 4, 2020

VIA LWDA'S ON-LINE SYSTEM

State of California
Department of Industrial Relations
Labor & Workforce Development Agency
Private Attorney General Act Administrator

Via Certified Mail, Return Receipt Requested

National Veterinary Associates, Inc.
29229 Canwood Street., Suite 100
Agoura Hills, CA 91301

Re: Initial PAGA Notice: Jean Herger v. National Veterinary Associates, Inc.

Dear Labor & Workforce Development Agency:

This office represents Ms. Jean Herger ("Herger") and a proposed group of current and former employees working, or who previously worked, for National Veterinary Associates, Inc. including all of its locations, affiliates and subsidiaries in California ("NVA"). Pursuant to the *Private Attorney General Act, Labor Code § 2698 et seq.* ("PAGA"), Ms. Herger hereby gives notice to the *Labor & Workforce Development Agency* ("LWDA") that NVA has committed unlawful acts and omissions, in violation of the laws of the State of California, with respect to Ms. Herger and other aggrieved employees of NVA.

Ms. Herger intends to bring a representative action on behalf of herself, State of California and on behalf of a group of aggrieved employees defined as: "All persons who are or were employed by NVA in California, who are or were paid on an hourly basis or otherwise subject to the provisions of the California *Labor Code* and/or the applicable Industrial Welfare Commission Wage Order pertaining to rest breaks, timely payment of wages and wage statements who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present."

NVA has violated sections 201, 202, 204, 226(a) and 226.7, of the California *Labor Code*, as more fully detailed below. *Labor Code § 226.7* incorporates the mandates of the Industrial Welfare Commission Orders specifically with regard to meal and rest periods. Veterinary services with overnight shelter or feeding are covered by Industrial Welfare Commission Order No. 5-2001 regulating wages, hours and working conditions in the Public Housekeeping Industry ("Wage Order 5"). Therefore, NVA is liable for civil penalties under PAGA, the applicable sections of the *Labor Code* and for violations of Wage Order 5 incorporated therein. We request that the LWDA investigate these claims. This letter will serve as notice of the specific provisions of the *Labor Code* and Wage Order 5 which NVA has violated, including the facts and theories which support the alleged violations.

California *Labor Code § 2699(f)* provides: "For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: (1) If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is five hundred dollars (\$500). (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars

(\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.” NVA will be liable for these default civil penalties for their violations where applicable because they committed the violations detailed in this PAGA Notice against Ms. Herger and the other aggrieved employees. Additionally, Ms. Herger will seek an award of reasonable attorney’s fees and costs as provided for by *Labor Code* § 2699(g)(1).

BACKGROUND

Ms. Herger worked for NVA at their South Temecula Veterinary Hospital/NVA location in Temecula from May 2019 until October of 2019 as a non-exempt hourly employee. Her position was as a veterinary assistant, officially title Room Technician. Wage Order 5 applies to all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis. See Wage Order 5 at section 1. “Employer” means any person as defined in Section 18 of the Labor Code [“Person” means any person, association, organization, partnership, business trust, limited liability company, or corporation.], who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person. See Wage Order 5 at section 2(H). NVA exercised control over Ms. Herger’s wages and working conditions and dictated her hours and days worked.

NVA did not provide complaint rest breaks. While Ms. Herger worked for them, NVA deprived her of the legally mandated rest periods every day. Ms. Herger was a full-time employee, working forty (40) hours per week, sometimes more. She asked NVA to permit her to take her breaks, numerous times, to which NVA responded, “you have work to do” or “you cannot leave the premises.” NVA harassed her whenever she asked for a 10-minute rest break. This discouraged her from asking for her breaks. Other employees also complained about not getting their 10-minute breaks, too. NVA managers retaliated against anyone who said they were taking a rest break. The NVA managers made the employees feel unwelcome if they took a break, which discouraged Ms. Herger, and the other aggrieved employees, from asking for and taking their rest breaks.

In September of 2019, NVA presented the employees with an employee handbook which discussed meal and rest breaks. The employees were forced to sign it before they could continue to work. Despite the lip service paid to breaks, NVA continued to discourage rest breaks and still required the aggrieved employees to stay on the premises during their rest breaks, if any. NVA did not pay Ms. Herger, or the other aggrieved employees, one additional hour of pay for these missed rest periods.

VIOLATIONS SUBJECT TO PAGA

I. FAILURE TO TIMELY PAY FINAL WAGES [LABOR CODE § 201, 202]

California *Labor Code* § 201(a) provides that “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” NVA owed wages to Ms. Herger and the other aggrieved employees who were terminated because NVA did not compensate them for their missed rest breaks throughout their employment with NVA during the applicable timeframe for this claim. Therefore, these outstanding wages were due, at the latest, on the day that any aggrieved employee was discharged. “If an employee is entitled to the additional hour of pay ‘immediately’ upon being forced to miss a rest or meal period, it appears inconsistent

to conclude that an employee is not also immediately entitled to have the additional hour of pay documented on their wage statements and timely paid upon termination or resignation.”¹ The required additional hour of pay at the employee’s regular rate of compensation for missed rest breaks is considered a wage and become due at the same time any other wage is due. “The statute’s [section 226.7] plain language, the administrative and legislative history, and the compensatory purpose of the remedy compel the conclusion that the ‘additional hour of pay’ [Citation] is a premium wage intended to compensate employees, not a penalty.” Murphy v. Kenneth Cole Productions, Inc. (2007) 40 Cal.4th 1094, 1114.

Therefore, all the wages for missed rest breaks of Ms. Herger and the other aggrieved employees became due immediately upon the day that a rest break was not provided. NVA’s failure to pay those wages, on the day any such aggrieved employee was discharged, constitutes a violation of *Labor Code* § 201.

California *Labor Code* § 202 (a) provides in relevant part: “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” NVA owed wages to any aggrieved employee who quit because NVA did not compensate them for their missed rest breaks. Therefore, these outstanding wages were due at the latest 72 hours after they quit. “If an employee is entitled to the additional hour of pay ‘immediately’ upon being forced to miss a rest or meal period, it appears inconsistent to conclude that an employee is not also immediately entitled to have the additional hour of pay documented on their wage statements and timely paid upon termination or resignation.”² The wages for missed rest breaks are considered wages and become due at the same time any other wage is due. “The statute’s [section 226.7] plain language, the administrative and legislative history, and the compensatory purpose of the remedy compel the conclusion that the ‘additional hour of pay’ [Citation] is a premium wage intended to compensate employees, not a penalty.” Murphy, *supra* 40 Cal.4th 1094 at 1114.

Therefore, all the wages for missed rest breaks of the aggrieved employees who quit became due at the latest 72 hours after they quit and NVA’s failure to pay those wages within that timeframe constitutes a violation of *Labor Code* § 202.

These violations of *Labor Code* §§ 201 and 202 subject NVA to civil penalties in a PAGA action brought by aggrieved employees.

II. FAILURE TO TIMELY PAY ALL WAGES DUE [LABOR CODE § 204]

California *Labor Code* § 204 (a) provides in relevant part: “ All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” NVA owed Ms. Herger and the other aggrieved employees one (1) hour of pay at the employee’s regular rate for each workday that NVA did not provide a rest break to the aggrieved employees. NVA did not provide rest breaks to the aggrieved employees on each day

¹ *Parson v. Golden State FC, LLC*, No. 16-cv-00405-JST, at *8 (N.D. Cal. May 2, 2016)

² *Ibid.*

that they worked during the timeframe applicable to this claim. Therefore, NVA should have paid the aggrieved employees, and each of them, the additional wages at the time their regular wages were due as provided under *Labor Code* § 204. “After reviewing the relevant case law, the Court concludes that the payments required by section 226.7 should be considered wages, and that Plaintiffs may therefore bring a derivative claim under section 204.”³ Thus, NVA did not pay all wages due twice per month to the aggrieved employees and have committed numerous violations under this section.

Although section 204 is listed in the PAGA statute as a violation under which a collective claim may be brought, *Labor Code* § 210 provides for a civil penalty similar to the default PAGA penalties, except that *Labor Code* § 210 (a)(2) also authorizes an additional 25 percent penalty of the amount unlawfully withheld. Therefore, the aggrieved employees will be seeking the full slate of civil penalties provided under § 210. In the alternative if for some reason this section is deemed inapplicable, the aggrieved employees will seek the civil penalties as set forth in *Labor Code* § 2699(f).

III. UNPAID REST BREAK PREMIUMS [LABOR CODE § 226.7]

Labor Code §§ 226.7 (b) and (c) provide:

“(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

Section 12 of Wage Order 5 states in relevant part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof...(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.”

NVA required Ms. Herger and the other aggrieved employees to work during their rest periods. NVA required them to be constantly present, working in the retail veterinary location. NVA actively discouraged rest breaks and retaliated against those who took them. Further, NVA did not compensate Ms. Herger or the aggrieved employees with one (1) hour of wages for each day that a rest period was missed, in violation of *Labor Code* § 226.7 and Wage Order 5. As a result,

³ *Parson v. Golden State FC, LLC*, No. 16-cv-00405-JST, at *7-8 (N.D. Cal. May 2, 2016)

NVA is liable for civil penalties pursuant to California *Labor Code* § 2698 *et seq.*

IV. INACCURATE WAGE STATEMENTS [LABOR CODE § 226]

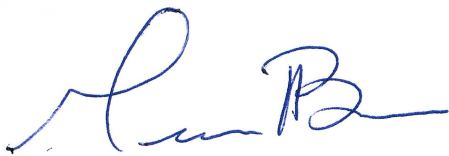
California *Labor Code* § 226(a) sets forth reporting requirements for employers when they pay wages, including the requirement that they furnish “an accurate itemized statement in writing.” The wage statements which NVA provided to Ms. Herger and the other aggrieved employees were not accurate because NVA failed to pay them for rest break premiums and failed to account for these wages on the wage statements. Therefore, this constituted a violation of subsections (1), (5) and (9) of Section 226, with respect to the wages earned by Ms. Herger and the other aggrieved employees.

Thus, NVA violated *Labor Code* § 226(a) by failing to provide accurate wage statements which included gross wages earned, net wages earned and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. As a result, NVA is liable for civil penalties pursuant to California *Labor Code* §§ 2698 *et seq.*

V. CONCLUSION

NVA has violated a number of California wage and hour laws. Ms. Herger requests that the LWDA investigate the above allegations against NVA and provide notice to the parties as appropriate. Alternatively, we request that the LWDA inform us, pursuant to California *Labor Code* § 2699.3(a)(2)(A), that it does not intend to investigate these violations so that we may include the violations and civil penalties addressed above in our upcoming civil lawsuit.

Thank you,

A handwritten signature in blue ink, appearing to read "George H. Bean", with a stylized flourish at the end.

George H. Bean, Esq.

2/4/2020

George Bean Law Mail - Thank you for submission of your PAGA Case.



George Bean <george@georgebeanlaw.com>

Thank you for submission of your PAGA Case.

1 message

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

Tue, Feb 4, 2020 at 1:22 PM

To: "george@georgebeanlaw.com" <george@georgebeanlaw.com>

2/4/2020

LWDA Case No. LWDA-CM-770555-20

Law Firm : George Bean Law

Plaintiff Name : Jean Herger

Employer: National Veterinary Associates, Inc.

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

Exhibit C

Exhibit C

Exhibit C



George Bean <george@georgebeanlaw.com>

Thank you for your Proposed Settlement Submission

1 message

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Reply-To: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
To: george@georgebeanlaw.com

Tue, Apr 13, 2021 at 12:12 PM

04/13/2021 12:12:44 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

Exhibit D

Exhibit D

Exhibit D



George Bean Law

340 E. 1ST STREET, #1127
TUSTIN, CA 92781

TELEPHONE: (714) 904-9338
EMAIL: GEORGE@GEORGEBEANLAW.COM

August 27, 2020

VIA LWDA'S ON-LINE SYSTEM

State of California
Department of Industrial Relations
Labor & Workforce Development Agency
Private Attorney General Act Administrator

Via Electronic Delivery

National Veterinary Associates, Inc.
c/o Littler Mendelson
Christopher Dengler
CDengler@littler.com

Re: Amended PAGA Notice: Jean Herger v. National Veterinary Associates, Inc.

LWDA Case No. LWDA-CM-770555-20

Dear Labor & Workforce Development Agency:

Please allow this letter to amend the Initial PAGA Notice filed by Ms. Jean Herger ("Herger") on February 4, 2020. This letter will be naming a new corporate defendant, NVA South Temecula and Murrieta Oaks, Inc. ("NVA South Temecula"), redefining the aggrieved employee group, and adding one additional claim.

Pursuant to the *Private Attorney General Act, Labor Code § 2698 et seq.* ("PAGA"), Ms. Herger hereby gives notice to the *Labor & Workforce Development Agency* ("LWDA") that NVA South Temecula has committed unlawful acts and omissions, in violation of the laws of the State of California, with respect to Ms. Herger and other aggrieved employees of NVA South Temecula. Ms. Herger intends to bring a representative action on behalf of herself, the State of California and on behalf of a group of aggrieved employees defined as:

"All current and former hourly-paid or non-exempt employees who worked for NVA South Temecula and Murrieta Oaks, Inc. within the State of California at any time during the period from February 4, 2019 to the date of final approval of the PAGA Agreement by the Court."

NVA South Temecula has violated sections 201, 202, 204, 226(a), 226.7, and 512 of the California *Labor Code*, as more fully detailed below. *Labor Code* § 226.7 incorporates the mandates of the Industrial Welfare Commission Orders specifically with regard to meal and rest periods. Veterinary services with overnight shelter or feeding are covered by Industrial Welfare Commission Order No. 5-2001 regulating wages, hours and working conditions in the Public Housekeeping Industry ("Wage Order 5"). Therefore, NVA South Temecula is liable for civil penalties under PAGA, the applicable sections of the *Labor Code* and for violations of Wage Order 5 incorporated therein. We request that the LWDA investigate these claims. This letter will serve as notice of the specific provisions of the *Labor Code* and Wage Order 5 which NVA South Temecula has violated, including the facts and theories which support the alleged violations.

California *Labor Code* § 2699(f) provides: "For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: (1) If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is five hundred dollars (\$500). (2) If, at the time of the alleged

violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.” NVA South Temecula will be liable for these default civil penalties for their violations where applicable because they committed the violations detailed in this PAGA Notice against Ms. Herger and the other aggrieved employees. Additionally, Ms. Herger will seek an award of reasonable attorney’s fees and costs as provided for by *Labor Code* § 2699(g)(1).

BACKGROUND

Ms. Herger worked for NVA at their South Temecula Veterinary Hospital/NVA location in Temecula from May 2019 until October of 2019 as a non-exempt hourly employee. Her position was as a veterinary assistant, officially title Room Technician. Wage Order 5 applies to all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis. See Wage Order 5 at section 1. “Employer” means any person as defined in Section 18 of the Labor Code [“Person” means any person, association, organization, partnership, business trust, limited liability company, or corporation.], who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person. See Wage Order 5 at section 2(H). NVA South Temecula exercised control over Ms. Herger’s wages and working conditions and dictated her hours and days worked.

NVA South Temecula did not provide complaint rest breaks or meal breaks. While Ms. Herger worked for them, NVA South Temecula deprived her of the legally mandated rest periods every day, and meal periods on other occasions. Ms. Herger was a full-time employee, working forty (40) hours per week, sometimes more. She asked NVA South Temecula to permit her to take her breaks, numerous times, to which NVA South Temecula responded, “you have work to do” or “you cannot leave the premises.” NVA South Temecula harassed her whenever she asked for a 10-minute rest break. This discouraged her from asking for her breaks. Other employees also complained about not getting their 10-minute breaks, too. NVA South Temecula managers retaliated against anyone who said they were taking a rest break. The NVA South Temecula managers made the employees feel unwelcome if they took a break, which discouraged Ms. Herger, and the other aggrieved employees, from asking for and taking their rest breaks.

In September of 2019, NVA South Temecula presented the employees with an employee handbook which discussed meal and rest breaks. The employees were forced to sign it before they could continue to work. Despite the lip service paid to breaks, NVA South Temecula continued to discourage rest breaks and still required the aggrieved employees to stay on the premises during their rest breaks, if any. NVA South Temecula did not pay Ms. Herger, or the other aggrieved employees, one additional hour of pay for these missed rest periods.

VIOLATIONS SUBJECT TO PAGA

I. FAILURE TO TIMELY PAY FINAL WAGES [LABOR CODE § 201, 202]

California *Labor Code* § 201(a) provides that “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” NVA South Temecula owed wages to Ms. Herger and the other aggrieved employees who were terminated because NVA South Temecula did not compensate them for their missed breaks throughout their employment with NVA South Temecula during the applicable timeframe for this claim. Therefore, these outstanding wages were due, at the latest, on the day that any aggrieved employee was

discharged. “If an employee is entitled to the additional hour of pay ‘immediately’ upon being forced to miss a rest or meal period, it appears inconsistent to conclude that an employee is not also immediately entitled to have the additional hour of pay documented on their wage statements and timely paid upon termination or resignation.”¹ The required additional hour of pay at the employee’s regular rate of compensation for missed breaks is considered a wage and become due at the same time any other wage is due. “The statute’s [section 226.7] plain language, the administrative and legislative history, and the compensatory purpose of the remedy compel the conclusion that the ‘additional hour of pay’ [Citation] is a premium wage intended to compensate employees, not a penalty.” Murphy v. Kenneth Cole Productions, Inc. (2007) 40 Cal.4th 1094, 1114.

Therefore, all the wages for missed breaks of Ms. Herger and the other aggrieved employees became due immediately upon the day that a break was not provided. NVA South Temecula’s failure to pay those wages, on the day any such aggrieved employee was discharged, constitutes a violation of *Labor Code* § 201.

California *Labor Code* § 202 (a) provides in relevant part: “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” NVA South Temecula owed wages to any aggrieved employee who quit because NVA South Temecula did not compensate them for their missed breaks. Therefore, these outstanding wages were due at the latest 72 hours after they quit. “If an employee is entitled to the additional hour of pay ‘immediately’ upon being forced to miss a rest or meal period, it appears inconsistent to conclude that an employee is not also immediately entitled to have the additional hour of pay documented on their wage statements and timely paid upon termination or resignation.”² The wages for missed rest breaks are considered wages and become due at the same time any other wage is due. “The statute’s [section 226.7] plain language, the administrative and legislative history, and the compensatory purpose of the remedy compel the conclusion that the ‘additional hour of pay’ [Citation] is a premium wage intended to compensate employees, not a penalty.” Murphy, supra 40 Cal.4th 1094 at 1114.

Therefore, all the wages for missed breaks of the aggrieved employees who quit became due at the latest 72 hours after they quit and NVA South Temecula’s failure to pay those wages within that timeframe constitutes a violation of *Labor Code* § 202.

II. FAILURE TO TIMELY PAY ALL WAGES DUE [LABOR CODE § 204]

California *Labor Code* § 204 (a) provides in relevant part: “ All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” NVA South Temecula owed Ms. Herger and the other aggrieved employees one (1) hour of pay at the employee’s regular rate for each workday that NVA South Temecula did not provide a meal or rest break to the aggrieved employees. NVA South Temecula did not provide breaks to the aggrieved employees on each day that they worked during the timeframe applicable to this claim. Therefore, NVA South Temecula should have paid the aggrieved

¹ *Parson v. Golden State FC, LLC*, No. 16-cv-00405-JST, at *8 (N.D. Cal. May 2, 2016)

² *Ibid.*

employees, and each of them, the additional wages at the time their regular wages were due as provided under *Labor Code* § 204.

III. UNPAID REST BREAK PREMIUMS [LABOR CODE § 226.7]

Labor Code §§ 226.7 (b) and (c) provide:

“(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

Section 12 of Wage Order 5 states in relevant part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof...(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.”

NVA South Temecula required Ms. Herger and the other aggrieved employees to work during their rest periods. NVA South Temecula required them to be constantly present, working in the retail veterinary location. NVA South Temecula actively discouraged rest breaks and retaliated against those who took them. Further, NVA South Temecula did not compensate Ms. Herger or the aggrieved employees with one (1) hour of wages for each day that a rest period was missed, in violation of *Labor Code* § 226.7 and Wage Order 5. As a result, NVA South Temecula is liable for civil penalties pursuant to California *Labor Code* § 2698 *et seq.*

IV. INACCURATE WAGE STATEMENTS [LABOR CODE § 226]

California *Labor Code* § 226(a) sets forth reporting requirements for employers when they pay wages, including the requirement that they furnish “an accurate itemized statement in writing.” The wage statements which NVA South Temecula provided to Ms. Herger and the other aggrieved employees were not accurate because NVA South Temecula failed to pay them for rest break premiums and failed to account for these wages on the wage statements. Therefore, this constituted a violation of subsections (1), (5) and (9) of Section 226, with respect to the wages earned by Ms. Herger and the other aggrieved employees.

Thus, NVA South Temecula violated *Labor Code* § 226(a) by failing to provide accurate wage statements which included gross wages earned, net wages earned and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. As a result, NVA South Temecula is liable for civil penalties pursuant to California *Labor Code* §§ 2698 *et seq.*

V. UNPAID MEAL BREAK PREMIUMS

Labor Code § 226.7 provides that an employer shall not require an employee to work during a meal period and that if the employer fails to provide an employee a meal period, the employer shall pay the employee one (1) hour of regular wages for each work day that a meal period is missed. *Labor Code* § 512(a) provides in relevant part, “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes” and “An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.” These provisions are also found in the Industrial Welfare Commission Order No. 1-2001 Regulating Wages, Hours and Working Conditions in the Manufacturing Industry (“Wage Order #1”) at Section 11. Further, Wage Order #1, Section 7(A)(3) requires every employer to keep accurate records with respect to each employee including the recording of meal periods.

NVA South Temecula actively discouraged meal breaks and did not provide uninterrupted 30-minute meal breaks to the aggrieved employees. Further, NVA South Temecula did not compensate Ms. Herger or the aggrieved employees with one (1) hour of wages for each day that a rest period was missed, in violation of *Labor Code* § 226.7 and Wage Order 5. As a result, NVA South Temecula is liable for civil penalties pursuant to California *Labor Code* § 2698 *et seq.*

VI. CONCLUSION

NVA South Temecula has violated a number of California wage and hour laws. Ms. Herger requests that the LWDA investigate the above allegations against NVA South Temecula and provide notice to the parties as appropriate. Alternatively, we request that the LWDA inform us, pursuant to California *Labor Code* § 2699.3(a)(2)(A), that it does not intend to investigate these violations so that we may include the violations and civil penalties addressed above in our upcoming civil lawsuit.

Thank you,

A handwritten signature in blue ink, appearing to read "George H. Bean", with a stylized flourish at the end.

George H. Bean, Esq.

Exhibit E

Exhibit E

Exhibit E

LAFFEY MATRIX

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			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406

6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *McDowell v. District of Columbia*, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001); *Salazar v. Dist. of Col.*, 123 F.Supp.2d 8 (D.D.C. 2000).

* “Years Out of Law School” is calculated from June 1 of each year, when most law students graduate. “1-3” includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). “4-7” applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier “1-3” from June 1, 1996 until May 31, 1999, would move into tier “4-7” on June 1, 1999, and tier “8-10” on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

Exhibit F

Exhibit F

Exhibit F

Date	Description	hrs.	Billed By
2/2/2020	Client interview regarding Labor Code wage and-hour violations at her employer, NVA.	1.4	GHB
2/3/2020	Draft Initial PAGA Notice, legal research regarding 226.7 claim supports 201, 204 claims	2.9	GHB
2/3/2020	Prepare Authorization to Release Personnel File and Payroll Records; prepare correspondence to client.	0.4	GHB
2/4/2020	Continue preparation of Initial PAGA Notice including legal research into 201, 202, 204 and 226 claims derivative of 226.7 claim (Labor Code).	3.2	GHB
2/7/2020	Prepare Litigation Hold letter and Request for Employee Records	0.7	GHB
3/5/2020	Interviews of other aggrieved employees at NVA	1.2	GHB
3/11/2020	Prepare correspondence to follow up on records request and PAGA Notice.	0.3	GHB
3/24/2020	Phone call with opposing counsel; follow up email to client and to OPC	0.6	GHB
3/25/2020	Review correspondence, respond with request for employee estimate.	0.3	GHB
3/26/2020	Review client's written description of events at NVA	0.6	GHB
3/27/2020	Receive and review settlement offer correspondence from opposing counsel, prepare damage chart, prepare counter-offer letter to OPC.	1.6	GHB
3/28/2020	Review documents provided by Defendant	0.7	GHB
3/30/2020	Revise letter with counter-offer, prepare email to OPC.	0.8	GHB
4/2/2020	Review correspondence from OPC	0.3	GHB
4/6/2020	Review correspondence from OPC, legal research into applicable civil penalties under PAGA and California Labor Code.	2.2	GHB
4/7/2020	Legal research regarding subsequent violations, knowing and intentional.	1.1	GHB
4/7/2020	Begin preparation of correspondence to OPC, responding to legal arguments and counter-offer. Legal PAGA arguments.	0.6	GHB
4/9/2020	Finalize research, draft response letter to OPC.	1.1	GHB

4/14/2020	Review payroll, timekeeping, documentation, NVA policies and procedures for meal and rest breaks.	1.8	GHB
4/23/2020	Receive and review response from OPC, prepare counter-offer, check court filing status in	0.6	GHB
5/4/2020	Telephone call with opposing counsel regarding settlement.	0.2	GHB
5/8/2020	Receive and review settlement correspondence from OPC; prepare responsive settlement correspondence.	0.7	GHB
6/8/2020	Receive and review correspondence from opposing counsel, respond.	0.4	GHB
6/9/2020	Begin draft of Complaint, legal research elements of violations of Labor Code, draft parties language and begin causes of action.	2.5	GHB
6/9/2020	Research NVA and it's California entities.	1.9	GHB
6/11/2020	Continue draft of Complaint, review Arbitration Agreement.	1.8	GHB
6/18/2020	Review and revise, continue drafting of Complaint	0.3	GHB
6/19/2020	Phone calls with OPC and client discussing terms of settlement, email to OPC regarding same.	1.3	GHB
6/23/2020	Summarize meeting notes	0.3	GHB
6/24/2020	Email correspondences with opposing counsel regarding terms of settlement.	0.3	GHB
8/25/2020	Prepare Amended PAGA Notice, prepare email to opposing attorney.	0.7	GHB
8/27/2020	Finalize, serve and file Amended PAGA Notice	0.5	GHB
11/4/2020	Prepare Complaint (PAGA only)	0.3	GHB
11/5/2020	Continue preparation of PAGA Complaint, phone call with OPC, Christopher Dengler, regarding naming of Defendants (parent company, subsidiary)	1.3	GHB
11/5/2020	Prepare Civil Case Cove Sheet and Addendum required by L.A. Superior, prepare Summons	0.3	GHB
11/6/2020	Revise and finalize Complaint	1.2	GHB

11/6/2020	Finalize Summons, Civil Case Cover Sheet, Addendum to Civil Case Cover Sheet, Exhibit to Complaint, file with Court.	0.5	GHB
11/6/2020	Receive and review court returned documents, prepare Notice & Acknowledgment, serve on Defendant's attorney. Prepare Proof of Service	1.1	GHB
11/12/2020	Receive and review Notice of CMC Conference, prepare and serve notice for Defendant regarding same.	0.4	GHB
11/16/2020	Finalize and file Proof of Service of Summons	0.3	GHB
11/30/2020	Receive and review Notice of Case Reassignment and Order, prepare Notice and serve on Defendant, file Proof of Service with Court	0.8	GHB
2/1/2021	Review PAGA Settlement, revise and return to Defendant's counsel	0.8	GHB
2/16/2021	Receive, review and respond to email from opposing counsel regarding CMC hearing and report, and PAGA settlement	0.3	GHB
2/16/2021	Review and revise Joint CMC Statement, correspondence with opposing counsel.	0.6	GHB
3/5/2021	Review final PAGA Settlement Agreement, prepare correspondence to client with same.	0.7	GHB
4/13/2021	Review Stipulation for PAGA Settlement Approval, prepare revisions, prepare Declaration of GHB in support of Stipulation	1.6	GHB
4/14/2021	Finalize red-line of Stipulation for Approval of PAGA Settlement and Dec. of GHB in support thereof	0.3	GHB
4/26/2021	Finalize Stipulation and Declaration of GHB for Approval of PAGA Settlement	0.3	GHB
5/3/2021	Receive and review court's Minute Order and opposing counsel's analysis. Prepare response for opposing counsel.	0.8	GHB

5/4/2021	Appear at Case Management Conference, discussion regarding Stipulation for PAGA Settlement, follow up phone call with Defendant's counsel regarding Noticed Motion and supporting declaration.	0.6	GHB
7/7/2021	Draft Motion for Approval of PAGA Settlement	2.3	GHB
7/7/2021	Continue drafting, revisions to Motion for Approval of PAGA Settlement	1.3	GHB
7/7/2021	Draft Declaration of George H. Bean, prepare exhibits and time records in support.	2.1	GHB
		51.20	