

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: _____

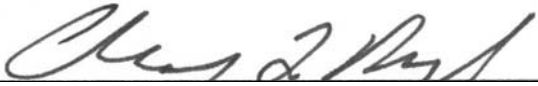
ANNETTE KIM
Associate General Counsel
On behalf of National Veterinary Associates, Inc. and
NVA South Temecula and Murrieta Oaks, Inc.

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.

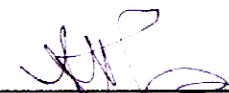
business. Herger's Counsel will take all steps necessary to ensure that Herger is aware of, and will encourage her to adhere to, the restriction against any public disclosure of the PAGA Agreement until after the Court approves the PAGA Agreement. Thereafter, Herger and her counsel agree not to publicize 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

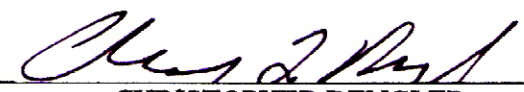
Associate General Counsel
On behalf of National Veterinary Associates, Inc. and
NVA South Temecula and Murrieta Oaks, Inc.

Approved as to form:

Date: 3/12/2021

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