

**GEORGE BEAN LAW**

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Attorney for Plaintiff, JEAN M. HERGER

## SUPERIOR COURT OF CALIFORNIA

## COUNTY OF LOS ANGELES

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.

Assigned for all purposes to: Hon.  
Department:**COMPLAINT FOR VIOLATIONS OF  
THE CALIFORNIA PRIVATE  
ATTORNEY GENERAL ACT**

Comes now Plaintiff JEAN M. HERGER who states, alleges, and prays as follows:

**I. PARTIES**

1. PLAINTIFF JEAN M. HERGER ("Plaintiff" or "Herger") is, and at all times relevant hereto, was an individual working for an entity who is domiciled in the city of Agoura Hills, County of Los Angeles, State of California.

2. DEFENDANT NVA SOUTH TEMECULA AND MURRIETA OAKS, INC. ("NVA" or "Defendant") is, and at all times relevant hereto, was a California corporation authorized to do business in the State of California, domiciled in the County of Los Angeles.

1           3.       The “aggrieved employees” are defined as: All current and former hourly-paid or  
2 non-exempt employees who worked for NVA South Temecula and Murrieta Oaks, Inc. within the  
3 State of California at any time during the period from February 4, 2019 to the date of final approval  
4 of the PAGA Agreement by the Court.

5           4.       The “PAGA Period” is defined as February 4, 2019 to the date of final approval of  
6 any PAGA Agreement by the Court.

7           5.       Plaintiff does not presently know the true names and capacities of defendants  
8 named as DOES 1 THROUGH 200, INCLUSIVE. Plaintiff will amend this Complaint setting  
9 forth the true names and capacities of these fictitious defendants when they are ascertained.  
10 Plaintiff is informed and believes and, on that basis alleges, that each of the fictitious defendants  
11 has participated in the acts alleged in this Complaint to have been done by the named defendants.

12           6.       Unless otherwise indicated, each defendant herein sued is the agent, co-conspirator,  
13 joint-venturer, partner, and/or employee of every other defendant and, as alleged, has been acting  
14 within the course and scope of said agency, conspiracy, joint venture, partnership, employment  
15 and/or joint-employment, with the knowledge and/or consent of their co-defendants, and each of  
16 them. Plaintiff is informed and believes that each defendant has authorized and/or ratified the  
17 wrongful activities of each of the remaining co-defendants.

## 18       **II.    JURISDICTION AND VENUE**

19           7.       The Court has general jurisdiction over this action pursuant to California *Code of*  
20 *Civil Procedure* § 410.10.

21           8.       Venue is proper in this Court, pursuant to California *Code of Civil Procedure* §  
22 395, because Defendant is domiciled in the City of Agoura Hills, County of Los Angeles, State of  
23 California.

24           9.       Plaintiff has exhausted her administrative remedies by filing notice with the  
25 Department of Industrial Relations, Labor & Workforce Development Agency with regard to the  
26 Private Attorney General Act (“PAGA”) claims. Plaintiff filed an Initial PAGA Notice on  
27 February 4, 2020 and filed an Amended PAGA Notice on August 27, 2020. True and correct copies  
28 of the Initial PAGA Notice and the Amended PAGA Notice are attached hereto as **Exhibit A**.

1     **III. BACKGROUND**

2           10.     Ms. Herger worked for NVA at their South Temecula Veterinary Hospital/NVA  
3 location from May 2019 until October of 2019 as a non-exempt hourly employee.

4           11.     Her position was as a veterinary assistant, officially titled Room Technician.

5           12.     Veterinary services are covered by Industrial Welfare Commission Order No. 5-  
6 2001 regulating wages, hours and working conditions in the Public Housekeeping Industry (“Wage  
7 Order 5”).

8           13.     Wage Order 5 applies to all persons employed in the public housekeeping industry  
9 whether paid on a time, piece rate, commission, or other basis. See Wage Order 5 at section 1.

10          14.     Upon information and belief, the aggrieved employees are all covered by Wage  
11 Order 5 or another IWC Wage Order containing the same or substantially the same provisions.

12          15.     While Ms. Herger worked for them, Defendant deprived her of the legally  
13 mandated rest periods every day. They also failed to make uninterrupted 30-minute meal breaks  
14 available.

15          16.     Ms. Herger was a full-time employee, working forty (40) hours per week,  
16 sometimes more.

17          17.     She asked Defendant to permit her to take her breaks, numerous times, to which  
18 they responded, “you have work to do” or “you cannot leave the premises.” Defendant harassed  
19 her whenever she asked for a 10-minute rest break. This discouraged her from asking for her  
20 breaks.

21          18.     Other employees also complained about not getting their 10-minute breaks.  
22 Defendant’s managers retaliated against anyone who said they were taking a rest break, making  
23 the employees feel unwelcome if they took a break, which discouraged Ms. Herger, and the other  
24 aggrieved employees, from asking for and taking their rest breaks.

25          19.     In September of 2019, Defendant presented the employees with an employee  
26 handbook which discussed meal and rest breaks. The employees were forced to sign it before they  
27 could continue to work.

1           20.     Despite the lip service paid to meal and rest breaks, Defendant continued to  
2 discourage the breaks and still required the aggrieved employees to stay on the premises during  
3 their meal and rest breaks, if any.

4           21.     Defendant discouraged meal breaks and did not provide uninterrupted 30-minute  
5 meal breaks to the aggrieved employees.

6           22.     Defendant did not pay Ms. Herger, or the other aggrieved employees, one additional  
7 hour of pay for these missed rest periods.

8           23.     As a result of the unpaid meal and rest break premiums, Defendant failed to pay the  
9 aggrieved employees all wages due twice per month.

10          24.     As result of the unpaid meal and rest break premiums remaining unpaid, to present,  
11 Defendant failed to pay all aggrieved employees who were fired or who quit all wages due upon  
12 ending of employment.

13          25.     As a result of the unpaid meal and rest premiums, Defendant failed to provide the  
14 aggrieved employees with timely accurate wage statements.

15          26.     Ms. Herger brings this action on behalf of herself and the other aggrieved  
16 employees for the imposition of civil penalties, under the California *Private Attorney General Act*,  
17 as detailed in California *Labor Code* § 2698 *et seq.* (“PAGA”), and as further described in her  
18 Amended PAGA Notice, attached hereto as **Exhibit A**, incorporated herein by this reference.

19          27.     Ms. Herger will also be seeking an award of reasonable attorney’s fees and costs,  
20 pursuant to *Labor Code* § 2699(g)(1).

21                                   **FIRST CAUSE OF ACTION**

22                                   **Violations of the Private Attorneys General Act**

23                                   **(California Labor Code §§ 2698 et seq.)**

24          28.     Plaintiff incorporates in this cause of action each allegation of the preceding  
25 paragraphs, with the same force and effect as though fully set forth herein.

26          29.     Plaintiff seeks, as a representative of the State of California, to recover all penalties  
27 otherwise capable of being collected by the LWDA, or any of its departments, divisions,  
28 commissions, boards, agencies, or employees.

1           30.     This includes the civil fines provided for by and as applicable to Defendant's  
2 violations of California *Labor Code* §§ 201, 202, 203, 204, 226, and 226.7.

3           31.     PAGA provides that for all provisions of the California *Labor Code*, except for  
4 those for which a civil penalty is specifically provided, there is established a civil penalty of one  
5 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and  
6 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent  
7 violation. See *Labor Code* § 2699(f).

8           32.     Funds recovered under PAGA will be distributed as required by law, with 75% of  
9 the civil fines being paid to the LWDA and 25% to the aggrieved employees.

10 **Failure to Pay All Wages Upon Discharge or Voluntary Quit**

11           33.     Under *Labor Code* § 201, all wages earned and unpaid at the time of discharge must  
12 be paid immediately.

13           34.     NVA discharged Ms. Herger on or about October 15, 2019.

14           35.     NVA did not pay Ms. Herger all her back wages owed, specifically did not pay the  
15 premium wages still due for her missed meal and rest breaks.

16           36.     NVA has discharged other aggrieved employees during the PAGA Period without  
17 paying all wages earned and due.

18           37.     Under *Labor Code* § 202, all wages earned and unpaid at the time an employee  
19 voluntarily quits must be paid within 72 hours.

20           38.     Aggrieved employees have quit during the PAGA Period and NVA failed to pay  
21 them all wages earned and due by failing to pay the premium wages due for missed meal and rest  
22 breaks.

23 **Failure to Pay All Wages Earned and Due Twice Per Month**

24           39.     *Labor Code* § 204(a) provides in relevant part: "All wages, other than those  
25 mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment  
26 are due and payable twice during each calendar month, on days designated in advance by the  
27 employer as the regular paydays."  
28

1           40. Each of the aggrieved employees' paychecks were deficient during the PAGA  
2 Period because they did not include the premiums owed for missed meal and rest breaks.

3 **Failure to Provide Accurate Wage Statements**

4           41. California *Labor Code* § 226(a) sets forth reporting requirements for employers  
5 when they pay wages as follows: "An employer, semimonthly or at the time of each payment of  
6 wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or  
7 voucher paying the employee's wages, or separately if wages are paid by personal check or cash,  
8 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked  
9 by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned  
10 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,  
11 provided that all deductions made on written orders of the employee may be aggregated and shown  
12 as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is  
13 paid, (7) the name of the employee and only the last four digits of his or her social security number  
14 or an employee identification number other than a social security number, (8) the name and address  
15 of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined  
16 in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services  
17 of the employer, and (9) all applicable hourly rates in effect during the pay period and the  
18 corresponding number of hours worked at each hourly rate by the employee and, beginning July  
19 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of  
20 pay and the total hours worked for each temporary services assignment. The deductions made from  
21 payment of wages shall be recorded in ink or other indelible form, properly dated, showing the  
22 month, day, and year, and a copy of the statement and the record of the deductions shall be kept  
23 on file by the employer for at least three years at the place of employment or at a central location  
24 within the State of California. For purposes of this subdivision, "copy" includes a duplicate of the  
25 itemized statement provided to an employee or a computer-generated record that accurately shows  
26 all of the information required by this subdivision."

27           42. Defendant failed to provide the aggrieved employees with accurate wage  
28 statements or pay stubs.

1           43.     NVA provided a paystub that did not include all categories of pay, specifically  
2 neglected to include premium wage pay for missed meal and rest breaks.

3           44.     *Labor Code* § 226.3 provides: “Any employer who violates subdivision (a) of  
4 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)  
5 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee  
6 for each violation in a subsequent citation, for which the employer fails to provide the employee a  
7 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.  
8 The civil penalties provided for in this section are in addition to any other penalty provided by law.  
9 In enforcing this section, the Labor Commissioner shall take into consideration whether the  
10 violation was inadvertent, and in his or her discretion, may decide not to penalize an employer for  
11 a first violation when that violation was due to a clerical error or inadvertent mistake.”

12     **Failure to Provide Meal and Rest Breaks**

13           45.     *Labor Code* § 226.7(b) provides that an employer shall not require an employee to  
14 work during a meal or rest period mandated by statute or regulation.

15           46.     *Labor Code* § 226.7(c), and Wage Order 5, section 12(B), provide that if an  
16 employer fails to provide a rest period in accordance with state law, including applicable statutes  
17 or provisions of the Wage Order, the employer shall pay the employee one additional hour of pay  
18 for each day that a rest period is not provided.

19           47.     NVA did not provide rest breaks to Ms. Herger, and the other aggrieved employees,  
20 on each day she worked during the timeframe applicable to this claim.

21           48.     NVA owed, and still owes, Ms. Herger and the other aggrieved employees one (1)  
22 hour of pay at their regular rate for each workday that they did not provide a meal or rest break to  
23 each of them.

24           49.     NVA, to be compliant with California law, should have paid Ms. Herger, and the  
25 other aggrieved employees, the additional wages at the time their regular wages were due as  
26 provided under *Labor Code* § 204.

27     ///

28     ///

1 **Summary**

2 50. Plaintiff and other current and former employees of NVA are “aggrieved  
3 employees” under PAGA, as they were employed on an hourly basis by NVA during the relevant  
4 PAGA Period and suffered one or more of the *Labor Code* violations set forth herein.

5 51. Accordingly, Plaintiff seeks to recover on her behalf and on behalf of other current  
6 and former employees of NVA, the civil penalties provided by the California *Labor Code*,  
7 including PAGA, in addition to attorney’s fees and costs for the prosecution of this action.

8 52. Plaintiff seeks to recover civil penalties for violations of the following *Labor Code*  
9 provisions, as more detailed throughout this Complaint, including in the Amended PAGA Notice  
10 attached hereto as **Exhibit A**. To summarize:

- 11 a. *Labor Code* § 201: NVA failed to pay Plaintiff, and other aggrieved employees  
12 all wages due upon discharge. Wages for missed meal and rest breaks remained  
13 due at the time of discharge, and remain due and unpaid as of the date of the  
14 filing of this Complaint;
- 15 b. *Labor Code* § 202: NVA failed to pay Plaintiff, and other aggrieved employees  
16 all wages due upon their voluntary termination. Wages for missed meal and  
17 rest breaks remained due at the time of termination of employment, and remain  
18 due and unpaid as of the date of the filing of this Complaint;
- 19 c. *Labor Code* § 203: Defendant willfully failed to pay the wages of Ms. Herger,  
20 and the other aggrieved employees, upon discharge, or who quit. The wages of  
21 each of the aggrieved employees shall continue as a penalty from the due date  
22 until paid, up to 30 days;
- 23 d. *Labor Code* § 226(a): By failing to the aggrieved employees, in violation of  
24 *Labor Code* provisions for meal and rest break premiums and wages upon  
25 discharge or voluntary quit; and by not providing a compliant wage statements,  
26 Defendant has violated *Labor Code* § 226’s requirement to provide accurate  
27 wage statements;
- 28 e. *Labor Code* § 226.7: Defendant did not provide compliant rest breaks to

1 Plaintiff, and other aggrieved employees. NVA forced the aggrieved  
2 employees to work through their rest breaks and failed to pay the one-hour  
3 premium required by law.

4 f. *Labor Code* § 226.7: NVA actively discouraged meal breaks and did not  
5 provide uninterrupted 30-minute meal breaks to the aggrieved employees.

6  
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 9 1. For civil penalties under PAGA;  
10 2. For civil penalties under any section of the *Labor Code* as applicable;  
11 3. For costs of suit;  
12 4. For attorney's fees and costs under *Labor Code* § 2699(g)(1);  
13 5. For attorney's fees and costs on all causes of action where available by law; and  
14 6. Any such other and further relief as this Court may deem appropriate and just.

15  
16 RESPECTFULLY SUBMITTED.

17  
18 November 6, 2020

**GEORGE BEAN LAW**

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21 \_\_\_\_\_  
22 George H. Bean, Attorney for  
23 Plaintiff, JEAN M. HERGER  
24  
25  
26  
27  
28

EXHIBIT A

EXHIBIT A

EXHIBIT A



## George Bean Law

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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](mailto: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.”<sup>1</sup> 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.”<sup>2</sup> 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.4<sup>th</sup> 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

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

<sup>2</sup> *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.



George Bean <[george@georgebeanlaw.com](mailto:george@georgebeanlaw.com)>

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## Thank you for your Amended PAGA Claim Notice Submission

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**DIR PAGA Unit** <[lwdadonotreply@dir.ca.gov](mailto:lwdadonotreply@dir.ca.gov)>  
Reply-To: DIR PAGA Unit <[lwdadonotreply@dir.ca.gov](mailto:lwdadonotreply@dir.ca.gov)>  
To: [george@georgebeanlaw.com](mailto:george@georgebeanlaw.com)

Thu, Aug 27, 2020 at 11:57 AM

08/27/2020 11:56:55 AM

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

Item submitted: Amended PAGA Claim Notice

If you have questions or concerns regarding this submission or your case, please send an email to [pagainfo@dir.ca.gov](mailto: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](http://labor.ca.gov/Private_Attorneys_General_Act.htm)



## George Bean Law

340 E. 1<sup>ST</sup> STREET, #1127  
TUSTIN, CA 92781

TELEPHONE: (714) 904-9338  
EMAIL: [GEORGE@GEORGEBEANLAW.COM](mailto: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.”<sup>1</sup> 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.”<sup>2</sup> 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.4<sup>th</sup> 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

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

<sup>2</sup> *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.”<sup>3</sup> 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,

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<sup>3</sup> *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.*

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#### **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.

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George H. Bean, Esq.

2/4/2020

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



George Bean <[george@georgebeanlaw.com](mailto:george@georgebeanlaw.com)>

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## Thank you for submission of your PAGA Case.

1 message

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**LWDA DO NOT REPLY** <[lwdadonotreply@dir.ca.gov](mailto:lwdadonotreply@dir.ca.gov)>

Tue, Feb 4, 2020 at 1:22 PM

To: "george@georgebeanlaw.com" <[george@georgebeanlaw.com](mailto: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](mailto: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](http://labor.ca.gov/Private_Attorneys_General_Act.htm)