

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair**
 Noah Joshua Phillips
 Rebecca Kelly Slaughter
 Christine S. Wilson
 Alvaro M. Bedoya

In the Matter of)	
)	
)	
JAB Consumer Partners SCA SICAR,)	DECISION AND ORDER
a risk capital investment company,)	Docket No. C-4766
)	
National Veterinary Associates, Inc.,)	
a corporation, and)	
)	
SAGE Veterinary Partners, LLC,)	
a limited liability company.)	
)	

DECISION

The Federal Trade Commission initiated an investigation of the proposed acquisition by Respondent National Veterinary Associates, Inc., a wholly owned subsidiary of Respondent JAB Consumer Partners SCA SICAR, of Respondent SAGE Veterinary Partners, LLC (collectively “Respondents”). The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45 (collectively “Acts”).

Respondents and the Bureau of Competition executed an Agreement Containing Consent Orders (“Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same

time, it issued and served its Complaint and Order to Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent JAB Consumer Partners SCA SICAR is a risk capital investment company organized, existing, and doing business under and by virtue of the laws of Luxembourg, with its executive offices and principal place of business located at 14 Boulevard Royal, Luxembourg L-2449, and its United States address for service of process is 1701 Pennsylvania Avenue, NW, Suite 801, Washington, DC 20006.
2. Respondent National Veterinary Associates, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its executive offices and principal place of business located at 29229 Canwood Street, Suite 100, Agoura Hills, California 91301.
3. Respondent SAGE Veterinary Partners, LLC is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its executive offices and principal place of business located at 1390 Willow Pass Road, #470, Concord, California 95420.
4. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

ORDER

I. Definitions

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “JAB” means JAB Consumer Partners SCA SICAR, its directors, officers, employees, agents, representatives, partners, successors, and assigns; and the joint ventures, subsidiaries, including National Veterinary Associates, Inc., partnerships, divisions, groups, and affiliates controlled by JAB Consumer Partners SCA SICAR, and the respective directors, officers, general partners, employees, agents, representatives, successors, and assigns of each.
- B. “NVA” means National Veterinary Associates, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by National Veterinary Associates, Inc., and the respective directors, officers, general partners, employees, agents, representatives, successors, and assigns of each.
- C. “SAGE” means SAGE Veterinary Partners, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries,

partnerships, divisions, groups, and affiliates controlled by SAGE Veterinary Partners, LLC, and the respective directors, officers, general partners, employees, agents, representatives, successors, and assigns of each.

- D. “Nordic Capital” means Nordic Capital Epsilon SCA, SICAV-RAIF (acting in respect of its Compartment 1) (“Fund X”), a fund established and registered in Luxembourg, with its registered office at 8, rue Lou Hemmer L - 1748 Senningerberg, Luxembourg. Its overall management is vested in, and it acts through, its general partner, Nordic Capital Epsilon GP SARL (a company established in Luxembourg).
- E. “UVC” means United Veterinary Care, LLC, a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its executive offices and principal place of business located at 4360 Northlake Boulevard, Suite 214, Palm Beach Gardens, Florida 33410.
- F. “Commission” means the Federal Trade Commission.
- G. “Acquirer” means:
 - 1. UVC; or
 - 2. Any other Person that the Commission approves to acquire the Divestiture Clinics and Divestiture Clinic Assets pursuant to this Order.
- H. “Acquisition” means the proposed acquisition described in the Equity Purchase Agreement dated as of June 14, 2021, by and among National Veterinary Associates, Inc., Chicago Pacific Founders Fund A, L.P., Chicago Pacific Founders Fund B, L.P., and CPF-SAGE Holdings, LLC and certain other equity holders of SAGE Veterinary Partners, LLC.
- I. “Acquisition Date” means the date Respondents consummate the Acquisition.
- J. “Business Information” means books, records, data, and information, wherever located and however stored, including electronic medical records, documents, written information, graphic materials, and data and information in electronic format. Business Information includes records and information relating to sales, marketing, advertising, personnel, accounting, business strategy, information technology systems, customers, suppliers, research and development, registrations, licenses, permits (to the extent transferable), and operations relating to the Divestiture Clinics.
- K. “Confidential Business Information” means all Business Information not in the public domain, except for any information that was or becomes generally available to the public other than as a result of disclosure by Respondents.

- L. “Contract” means an agreement, mutual understanding, arrangement, license agreement, lease, consensual obligation, commitment, promise, or undertaking, whether written or oral, express or implied, or legally binding or not.
- M. “Direct Cost” means the cost of labor, materials, travel, and other expenditures. The cost of any labor included in Direct Cost shall not exceed the then-current average hourly wage rate, including benefits, for the employee providing such labor.
- N. “Divestiture Agreement” means:
1. Asset Purchase Agreement dated as of November 3, 2021, by and among NVA North Peninsula Emergency Veterinary Management, LP, NVA SPEC Referral Veterinary Management, LP, NVA PETS Referral Veterinary Management, LP, National Veterinary Associates, Inc., United Veterinary Care, LLC, and United Veterinary Care Blocker, Inc., and all amendments, exhibits, attachments, agreements, and schedules thereto;
 2. Asset Purchase Agreement dated as of November 3, 2021, by and among Texas Veterinary Management, LLC, Texas Veterinary, PLLC, SAGE Veterinary Partners, LLC, United Veterinary Care, LLC, and United Veterinary Care Blocker, LLC, and all amendments, exhibits, attachments, agreements, and schedules thereto; or
 3. Any agreement between a Respondent (or a Divestiture Trustee) and an Acquirer to purchase the Divestiture Clinic Assets, and all amendments, exhibits, attachments, agreements, and schedules thereto.

The Divestiture Agreements are contained in Nonpublic Appendix A.

- O. “Divestiture Clinics” mean the following:
1. Respondent SAGE’s Central Texas Veterinary Specialty and Emergency Hospital – Round Rock, located at 301 Chisholm Trail, Round Rock, Texas 78681;
 2. Respondent SAGE’s Central Texas Veterinary Specialists and Emergency Hospital – North, located at 13301 1/2 North U.S. Highway 183, Austin, Texas 78750;
 3. Respondent SAGE’s Central Texas Veterinary Specialty and Emergency Hospital – South, located at 4434 Frontier Trail, Austin, Texas 78745;
 4. Respondent NVA’s North Peninsula Veterinary Emergency Clinic, located at 227 North Amphlett Boulevard, San Mateo, California 94401;
 5. Respondent NVA’s PETS Referral Center, located at 1048 University Avenue, Berkeley, California 94710; and

6. Respondent NVA's Solano-Napa Pet Emergency Clinic, located at 4437 Central Place, Suite B3, Fairfield, California 94534.

P. "Divestiture Clinic Assets" mean all of Respondents' rights, title, and interests in and to all tangible and intangible assets of every kind and description used in or relating to the Divestiture Clinics, including without limitation all:

1. Real Property;
2. Fixtures and Equipment;
3. Rights under any and all Contracts;
4. Inventory kept in the normal course of business, including, but not limited to, janitorial, office, and medical supplies, and pharmaceutical products;
5. Intellectual Property;
6. Business Information;
7. Accounts receivable relating to the Divestiture Clinics as of the Divestiture Date;
8. Cash deposits made by a client to Respondents prior to the Divestiture Date as prepayment for veterinary services yet to be performed at a Divestiture Clinic;
9. Governmental Permits, to the extent transferable; and
10. Any other assets that are used in, or necessary for, a Divestiture Clinic.

Provided, however, that "Divestiture Clinic Assets" do not include Excluded Assets.

Q. "Divestiture Clinic Employees" mean any and all full-time, part-time, or contract individuals employed at a Divestiture Clinic at any time since June 14, 2021. Divestiture Clinic Employees include veterinarians, veterinary technicians, and support staff.

R. "Divestiture Date" means the date on which Respondents (or a Divestiture Trustee appointed pursuant to Section IX of this Order) consummate the divestiture of the Divestiture Clinics as required by Section II of this Order.

S. "Divestiture Trustee" means the Person appointed by the Commission pursuant to Section IX of this Order.

T. "Employee Information" means for each Divestiture Clinic Employee, to the extent permitted by law, the following information summarizing the employment history of each employee that includes:

1. Name, job title or position, date of hire, and effective service date;
2. Specific description of the employee's responsibilities;
3. The base salary or current wages;
4. Most recent bonus paid, aggregate annual compensation for Respondent's last fiscal year, and current target or guaranteed bonus, if any;
5. Written performance reviews for the past three years, if any;
6. Employment status (*i.e.*, active or on leave or disability; full-time or part-time);
7. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
8. At the Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the employee.

U. "Excluded Assets" mean:

1. Tax and medical records related to the Divestiture Clinics to the extent they are nontransferable by law;
2. Cash generated by the Divestiture Clinics prior to the Divestiture Date;
3. Licenses required to be held individually by a licensed veterinary professional;
4. Intellectual Property owned or licensed by Respondents NVA or SAGE that, prior to the Acquisition, was used by Respondents solely or primarily for purposes other than the Divestiture Clinics;
5. Software, including any third party practice management software, to the extent they are not assignable;
6. Employee benefit plans; and
7. Employee records (a) for any Divestiture Clinic Employee that is not transferred to Acquirer, or (b) prohibited to be transferred by law.

V. "Fixtures and Equipment" mean all furniture, fixtures, furnishings, machinery, equipment, computer hardware, supplies, and other tangible personal property used or held for use in the operation of each Divestiture Clinic, or if leased, the leasehold interest therein.

- W. “Governmental Permit” means all consents, licenses, permits, approvals, registrations, certificates, rights, or other authorizations from any governmental entity necessary to effect the complete transfer and divestiture of the Divestiture Clinic Assets to the Acquirer for the operation of each of the Divestiture Clinics.
- X. “Intellectual Property” means intellectual property of any kind including patents, patent applications, mask words, trademarks, service marks, copyrights, trade dress, commercial names, internet web sites, internet domain names, inventions, discoveries, written and unwritten know-how, trade secrets, and proprietary information.
- Y. “Monitor” means any Person appointed by the Commission to serve as a monitor pursuant to the Orders.
- Z. “Orders” mean this Order and the Order to Maintain Assets entered in this action.
- AA. “Person” means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture, governmental body, or other entity.
- BB. “Real Property” means the real property on which, or in which, any Divestiture Clinic is located, including real property used for parking and for other functions related to the Divestiture Clinic. Real Property includes all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held.
- CC. “Specialty or Emergency Veterinary Clinic” means a veterinary clinic: (1) that offers 24-hour or overnight service with the primary function of receiving, treating, and monitoring emergency patients during its specified hours of operation and where a veterinarian is in attendance at all hours of operation, or (2) where one or more veterinarians, whether on a permanent or non-permanent basis, offer services on-site or adjacent to the site, on a regularly scheduled basis (i.e., daily or weekly), legally hold themselves out as specialists in veterinary medicine, and have board certifications in one or more specialty or specialties.
- Provided, however,* that “Specialty or Emergency Veterinary Clinic” does not include a general practice clinic unless the clinic: (1) offers 24-hour or overnight service with the primary function of receiving, treating, and monitoring emergency patients during its specified hours of operation and where a veterinarian is in attendance at all hours of operation, or (2) offers services on-site or adjacent to the site, whether on a permanent or non-permanent basis, on a regularly scheduled basis (i.e., daily or weekly), where one or more veterinarians legally hold themselves out as specialists in veterinary medicine, and have board certifications in one or more specialty or specialties.
- DD. “Transition Assistance” means technical services, personnel, assistance, training, and other logistical, administrative, and other transitional support as required by the Acquirer

to facilitate the transfer of the Divestiture Clinics to the Acquirer, including training, personnel, and support related to audits, finance and accounting, accounts receivable, accounts payable, employee benefits, payroll, pensions, human resources, general medical products supply, purchasing, quality control, transfer of information technology and related systems, maintenance and repair of facilities and Fixtures and Equipment, use of any name or brand used in the business of the respective Divestiture Clinic for transitional purposes, Governmental Permits, regulatory compliance, sales and marketing, patient services, and supply chain management and patient transfer logistics.

II. Divestiture

IT IS FURTHER ORDERED that:

- A. No later than 10 days after the Acquisition Date, Respondents shall divest the Divestiture Clinics, absolutely and in good faith, as ongoing businesses, to UVC;

Provided, however, that, if within 12 months after the date the Commission issues this Order, the Commission determines, in consultation with the Acquirer and the Monitor, the Acquirer needs one or more of the Excluded Assets to operate the Divestiture Clinics in a manner that achieves the purpose of this Order, Respondents shall divest or license, absolutely and in good faith, such needed Excluded Assets to the Acquirer.

- B. At the option of the Acquirer, Respondents shall grant the Acquirer a royalty-free, worldwide, non-exclusive license for the use, without any limitation, of any Intellectual Property necessary to operate the Divestiture Clinics, including but not limited to, any hospital management software, to use for a period of one year following the Divestiture Date.

- C. If Respondents have divested the Divestiture Clinics to UVC prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that:

1. UVC is not acceptable as the acquirer of the Divestiture Clinics, then Respondents shall immediately rescind the Divestiture Agreements, and shall divest the Divestiture Clinics no later than 120 days from the date this Order is issued, absolutely and in good faith, at no minimum price, to a Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission; or
2. The manner in which the divestiture of the Divestiture Clinics to UVC was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Divestiture Clinics as the Commission may determine are necessary to satisfy the requirements of this Order.

- D. Respondents shall assist the Acquirer to conduct a due diligence investigation of the Divestiture Clinics that the Acquirer seeks to purchase, including by providing sufficient and timely access to all information customarily provided as part of a due diligence process, and affording the Acquirer and its representatives (including prospective lenders and their representatives) full and free access, during regular business hours, to the personnel, assets, Contracts, and Business Information, with such rights of access to be exercised in a manner that does not unreasonably interfere with the operations of Respondents.
- E. Respondents shall not consummate the Acquisition until they have obtained for all the Divestiture Clinics:
 - 1. All approvals for the assignment to the Acquirer of the rights, title, and interest to each lease for Real Property of each Divestiture Clinic; and
 - 2. All Governmental Permits necessary for the Acquirer to operate each Divestiture Clinic, as of the Divestiture Date, in substantially the same manner as Respondents NVA or SAGE operated the Divestiture Clinic.
- F. Respondents shall place no restrictions on the use by the Acquirer of any of the Divestiture Clinics to be divested to such Acquirer, or interfere with or otherwise attempt to interfere with any Acquirer's use of any of the Divestiture Clinics to be divested to such Acquirer, including seeking or requesting the imposition of governmental restrictions on the Acquirer's business operations relating to the Divestiture Clinics.

III. Divestiture Agreements

IT IS FURTHER ORDERED that:

- A. Each Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof, and any failure by Respondents to comply with the terms of a Divestiture Agreement shall constitute a violation of this Order;

Provided, however, that no Divestiture Agreement shall limit, or be construed to limit, the terms of this Order. To the extent any provision in the Divestiture Agreements varies from or conflicts with any provision in the Order such that Respondents cannot fully comply with both, Respondents shall comply with the Order.
- B. Respondents shall not modify or amend the terms of the Divestiture Agreements after the Commission issues this Order without the prior approval of the Commission, except as otherwise provided in Commission Rule 2.41(f)(5), 16 C.F.R. § 2.41(f)(5).

IV. Transition Assistance

IT IS FURTHER ORDERED that:

- A. At the option of the Acquirer, Respondents shall provide the Acquirer with Transition Assistance sufficient to (1) efficiently transfer the Divestiture Clinics to the Acquirer, and (2) assist the Acquirer in operating the Divestiture Clinics in all material respects in the manner in which they were operated prior to the Acquisition.
- B. Respondents shall provide such Transition Assistance:
 - 1. As set forth in the Divestiture Agreements, or as otherwise reasonably requested by the Acquirer (whether before or after the Divestiture Date);
 - 2. At the price set forth in the Divestiture Agreements, or if no price is set forth, at Direct Cost; and
 - 3. For a period sufficient to meet the requirements of Section IV, which shall be, at the option of the Acquirer, for a period not to exceed one year after the Divestiture Date.
- C. Respondents shall allow the Acquirer to terminate, in whole or part, any Transition Assistance provisions of the Divestiture Agreements upon commercially reasonable notice and without cost or penalty.
- D. Respondents shall not cease providing Transition Assistance due to a breach by the Acquirer of the Divestiture Agreements, and shall not limit any damages (including indirect, special, and consequential damages) that the Acquirer would be entitled to receive in the event of Respondents' breach of any agreement relating to Transition Assistance.

V. Employees

IT IS FURTHER ORDERED that:

- A. Until 6 months after the Divestiture Date, Respondents shall cooperate with and assist the Acquirer of the Divestiture Clinics to evaluate independently and offer employment to the Divestiture Clinic Employees.
- B. Respondents shall:
 - 1. No later than 10 days after a request from the Acquirer, provide to the Acquirer a list of all Divestiture Clinic Employees and provide Employee Information for each;
 - 2. No later than 10 days after a request from the Acquirer, provide the Acquirer an opportunity to meet outside the presence or hearing of any employee or agent of

Respondents with any of the Divestiture Clinic Employees, and to make offers of employment to any of the Divestiture Clinic Employees;

3. Remove any impediments within the control of Respondents that may deter Divestiture Clinic Employees from accepting employment with the Acquirer, including removal of any noncompete or confidentiality provisions of employment or other Contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the Acquirer, and shall not make any counteroffer to a Divestiture Clinic Employee who receives an offer of employment from the Acquirer;

Provided, however, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;

4. Continue to provide Divestiture Clinic Employees compensation and benefits, including regularly scheduled raises and bonuses and the vesting of benefits while they are employed by Respondents; and
5. Not interfere, directly or indirectly, with the hiring or employing by the Acquirer of any Divestiture Clinic Employee, not offer any incentive to such employees to decline employment with the Acquirer, and not otherwise interfere with the recruitment of any Divestiture Clinic Employee by the Acquirer.

C. Respondents shall provide financial incentives for Divestiture Clinic Employees to continue in their positions. Such incentives may include, but are not limited to, guaranteeing a retention bonus for the veterinarians at the Divestiture Clinics to assure their continued employment at such clinic, a continuation of all employee benefits, including the funding of regularly scheduled raises and bonuses, and the vesting of pension benefits (as permitted by law and for those Divestiture Clinic Employees covered by a pension plan) offered by Respondents.

D. Respondents shall not, for a period of one year for veterinarians, and for a period of 90 days for all other Divestiture Clinic Employees, solicit or otherwise attempt to induce, directly or indirectly, any of the Divestiture Clinic Employees who have accepted offers of employment with the Acquirer to terminate his or her employment with the Acquirer;

Provided, however, Respondents may:

1. Hire an employee whose employment has been terminated by the Acquirer;
2. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at one or more Divestiture Clinic Employees; or
3. Hire an employee who has applied for employment with Respondents, as long as

such application was not solicited or induced in violation of Section V.

- E. For one year following the Divestiture Date, Respondents shall not solicit the business of any patient who received any goods or services from the Divestiture Clinics between June 14, 2021, and the Divestiture Date.

Provided, however, Respondents may (1) make general advertisements for the business of such patients including in newspapers, trade publications, websites, or other media not targeted specifically at such patients, and (2) provide advertising and promotions directly to any patient that initiates discussions with, or makes a request to, any employee of Respondents.

- F. Respondents shall not enter into any agreement with the Acquirer that restricts the Acquirer from soliciting Respondents' employees for employment at the Acquirer.

VI. Asset Maintenance

IT IS FURTHER ORDERED that until the Respondents fully transfer each of the Divestiture Clinics to the Acquirer, Respondents shall, subject to their obligations under the Order to Maintain Assets:

- A. Operate the Divestiture Clinics in the ordinary course of business consistent with past practices and take all actions necessary to maintain the full economic viability, marketability, and competitiveness of each Divestiture Clinic;
- B. Prevent the destruction, removal, wasting, deterioration, closing, or impairment (other than as a result of ordinary wear and tear) of the Divestiture Clinics, including:
1. Maintaining, repairing, and replacing any equipment and other tangible personal property to the extent and in a manner consistent with past practices;
 2. Maintaining inventory levels in a manner consistent with past practices;
 3. Not terminating, canceling, renewing, or amending any Contract, except as consistent with past practices; and
 4. Not entering any Contract that would restrain or restrict the ability of the Acquirer to compete against Respondents;
- C. Make any payment required to be paid under any Contract when due, and otherwise satisfy all liabilities and obligations associated with the Divestiture Clinics;
- D. Provide the Divestiture Clinics with sufficient funds to operate at least at current rates of operation, to meet all capital calls, to perform routine or necessary maintenance, to repair or replace facilities and equipment, and to carry on at least at their scheduled pace all capital projects, business plans, research and development projects, promotional activities, and sales and marketing activities;

- E. Provide resources as may be necessary to respond to competition against the Divestiture Clinics, prevent diminution in sales, and maintain the competitive strength of each Divestiture Clinic;
- F. Not reduce operating hours for the Divestiture Clinics;
- G. Not reduce, change, or modify in any material respect, the level of sales, marketing, promotion, pricing, or advertising practices, programs, and policies for the Divestiture Clinics, other than changes in the ordinary course of business consistent with changes made at Respondents' other businesses that Respondents will not divest;
- H. Not target, encourage, or convert customers of the Divestiture Clinics to become customers of Respondents' other businesses that will not be divested;

Provided, however, that nothing in this Paragraph VI.H shall prevent Respondents from engaging in advertising, marketing, and promotional activities: (1) generally applicable to all of Respondents' businesses, or (2) in the ordinary course of business and in accordance with past practices;

- I. Provide support services at levels customarily provided by Respondents;
- J. Maintain all licenses, permits, approvals, authorizations, or certifications related to or necessary for the operation of the Divestiture Clinics, and otherwise operate each Divestiture Clinic in accordance and compliance with all regulatory obligations and requirements;
- K. Not sell, transfer, encumber, or otherwise impair the Divestiture Clinics (other than in the manner prescribed in the Orders);
- L. Not take any action that lessens the full economic viability, marketability, or competitiveness of the Divestiture Clinics;
- M. Not terminate the operations of the Divestiture Clinics;
- N. Preserve the existing relationships with suppliers, customers, employees, governmental authorities, vendors, landlords, site operators, and others having business relationships with the Divestiture Clinics;
- O. Maintain the working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with the Divestiture Clinics, including:
 - 1. When vacancies occur, replacing the employees in the regular and ordinary course of business, in accordance with past practice; and

2. Not transferring any employees from the Divestiture Clinics to any of Respondents' assets or businesses that Respondents will not divest.

Provided, however, that Respondents may take actions that the Acquirer has requested or agreed to in writing and that have been approved in advance by Commission staff, in all cases to facilitate the Acquirer's acquisition of the Divestiture Clinics and consistent with the purposes of the Orders.

VII. Confidentiality

IT IS FURTHER ORDERED that:

- A. Respondents shall not disclose (including as to Respondents' employees), and not use, for any reason or purpose, any Confidential Business Information received or maintained by Respondents,

Provided, however, that Respondents may disclose or use such Confidential Business Information in the course of:

1. Performing their obligations or as permitted under the Orders or any Divestiture Agreement; or
 2. Complying with financial reporting requirements, historical record-keeping for audit purposes, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Divestiture Clinic Assets or Divestiture Clinics, or as required by law, rule or regulation.
- B. If disclosure or use of any Confidential Business Information is permitted to Respondents' employees or to any other Person under Section VII, Respondents shall limit such disclosure or use (1) only to the extent such information is required, (2) only to those employees or Persons who require such information for the purposes permitted under Paragraph VII.A, and (3) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
 - C. Respondents shall enforce the terms of Section VII and take necessary actions to ensure that their employees or other Persons comply with its terms, including implementing access and data controls, training of employees, and taking other actions that Respondents would take to protect their own trade secrets and proprietary information.

VIII. Monitor

IT IS FURTHER ORDERED that:

- A. The Commission appoints Dr. Michael Cavanaugh as the Monitor to observe and report on Respondents' compliance with their obligations as set forth in the Orders.

B. The Respondents and the Monitor may enter into an agreement relating to the Monitor's services. Any such agreement:

1. Shall be subject to the approval of the Commission;
2. Shall not limit, and the signatories shall not construe it to limit, the terms of Section VIII or the Section relating to the Monitor in the Order to Maintain Assets ("Monitor Sections"), and to the extent any provision in the agreement varies from or conflicts with any provision in the Monitor Sections, Respondents and the Monitor shall comply with the Monitor Sections; and
3. Shall include a provision stating that the agreement does not limit, and the signatories shall not construe it to limit, the terms of the Orders in this matter, and to the extent any provision in the agreement varies from or conflicts with any provision in the Orders, Respondents and the Monitor shall comply with the Orders.

C. The Monitor shall:

1. Have the authority to monitor Respondents' compliance with the obligations set forth in the Orders;
2. Act in consultation with the Commission or its staff;
3. Serve as an independent third party and not as an employee or agent of Respondents or of the Commission;
4. Serve without bond or other security;
5. At the Monitor's option, employ such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
6. Enter into a non-disclosure or other confidentiality agreement with the Commission related to Commission materials and information received in connection with the performance of the Monitor's duties and require that each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants shall also enter into a non-disclosure or other confidentiality agreement with the Commission;
7. Notify staff of the Commission, in writing, no later than 5 days in advance of entering into any arrangement that creates a conflict of interest, or the appearance of a conflict of interest, including a financial, professional, or personal conflict. If the Monitor becomes aware of a such a conflict only after it has arisen, the

Monitor shall notify the Commission as soon as the Monitor becomes aware of the conflict;

8. Report in writing to the Commission concerning Respondents' compliance with the Orders on a schedule set by Commission staff and at any other time requested by Commission staff; and
9. Unless the Commission or its staff determine otherwise, the Monitor shall serve until Commission staff determines that Respondents have satisfied all obligations under Sections II, IV, and VI, and files a final report.

D. Respondents shall:

1. Cooperate with and assist the Monitor in performing his or her duties for the purpose of reviewing Respondents' compliance with their obligations under the Orders, including as requested by the Monitor, (a) providing the Monitor full and complete access to personnel, information, and facilities; and (b) making such arrangements with third parties to facilitate access by the Monitor;
2. Not interfere with the ability of the Monitor to perform his or her duties pursuant to the Orders;
3. Pay the Monitor's fees and expenses as set forth in an agreement approved by the Commission, or if such agreement has not been approved, pay the Monitor's customary fees, as well as expenses the Monitor incurs performing his or her duties under the Orders, including expenses of any consultants, accountants, attorneys, and other representatives and assistants that are reasonably necessary to assist the Monitor in carrying out his or her duties and responsibilities;
4. Not require the Monitor to disclose to Respondents the substance of the Monitor's communications with the Commission or any other Person or the substance of written reports submitted to the Commission pursuant to the Orders; and
5. Indemnify and hold the Monitor harmless against any loss, claim, damage, liability, and expense (including attorneys' fees and out of pocket costs) that arises out of, or is connected with, a claim concerning the performance of the Monitor's duties under the Orders, unless the loss, claim, damage, liability, or expense results from gross negligence or willful misconduct by the Monitor.

E. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to enter into a customary confidentiality agreement, so long as the agreement does not restrict the Monitor's ability to access personnel, information, and facilities or provide information to the Commission, or otherwise observe and report on the Respondents' compliance with the Orders.

- F. If the Monitor resigns or the Commission determines that the Monitor has ceased to act, has failed to act diligently, or is otherwise unable to continue serving as a Monitor due to the existence of a conflict or other reasons, the Commission may appoint a substitute Monitor. The substitute Monitor shall be afforded all rights, powers, and authorities and shall be subject to all obligations of the Monitor Sections of the Orders. The Commission shall select the substitute Monitor, subject to the consent of the Respondents.
- Respondents:
1. Shall not unreasonably withhold consent to the appointment of the selected substitute Monitor;
 2. Shall be deemed to have consented to the selection of the proposed substitute Monitor if, within 10 days of notice by staff of the Commission of the identity of the proposed substitute Monitor, Respondents have not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Monitor; and
 3. May enter into an agreement with the substitute Monitor relating to the substitute Monitor's services that either (a) contains substantially the same terms as the Commission-approved agreement referenced in Paragraph VIII.B; or (b) receives Commission approval.
- G. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

IX. Divestiture Trustee

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver, or otherwise convey the Divestiture Clinics as required by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets in a manner that satisfies the requirements of this Order.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under Section IX shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within 10 days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- D. Not later than 10 days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or other action required by the Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to Section IX, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed;
 2. The Divestiture Trustee shall have one year from the date the Commission approves the trustee trust agreement described herein to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestitures can be achieved within a reasonable time, the divestiture period may be extended by the Commission,

Provided, however, the Commission may extend the divestiture period only 2 times;
 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestitures. Any delays in divestitures caused by Respondents shall extend the time for divestitures under Section IX in an amount equal to the delay, as

determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each Contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestitures shall be made in the manner and to an Acquirer that receives the prior approval of the Commission as required by this Order,

Provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring person for a divestiture, and if the Commission determines to approve more than one such acquiring person for the divestiture, the Divestiture Trustee shall divest to the acquiring person selected by Respondents from among those approved by the Commission,

Provided further, however, that Respondents shall select such person within 5 days of receiving notification of the Commission's approval;

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order;
6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee;
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Divestiture Clinics required to be divested by this Order;

8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every 30 days concerning the Divestiture Trustee's efforts to accomplish the divestiture; and
9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement,

Provided, however, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

- F. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- G. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in Section IX, and who will have the same authority and responsibilities of the original Divestiture Trustee pursuant to Section IX.
- H. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures and other obligations or action required by this Order.

X. Respondents Prior Approval

IT IS FURTHER ORDERED that Respondents shall not, directly or indirectly, through subsidiaries, partnerships, or otherwise, without the prior approval of the Commission, acquire any ownership or leasehold interest in any veterinary practice, clinic, or facility within the states of California or Texas if the acquired practice, clinic, or facility does, or within the 6 months prior to the date of such acquisition, did or had plans to:

- A. Offer 24-hour or overnight service with the primary function of receiving, treating, and monitoring emergency patients during its specified hours of operation, has one or more employed veterinarians in attendance at all hours of operation, and that is located within 25 miles of any then-existing NVA Specialty or Emergency Veterinary Clinics in California or Texas offering the same service; or
- B. Employ one or more veterinarians who legally hold themselves out as specialists in veterinary medicine, and have board certifications in one or more veterinary specialty or specialties, and that is located within 25 miles of any then-existing NVA Specialty or Emergency Veterinary Clinic in California or Texas that employs one or more veterinarians who legally hold themselves out as specialists in veterinary medicine, and

have board certification in the same specialty or specialties.

Provided, however, that Respondents are not required to obtain the prior approval of the Commission for the Respondents' construction or opening of new facilities.

Provided further, however, that if Respondents propose to acquire any ownership interest in any veterinary practice, described in X.A. and X.B, above, that owns any interest in or operates within the states of California or Texas and other states, including if such an acquisition requires a Hart-Scott-Rodino premerger notification, this Section applies only to the veterinary practices within the states of California and Texas, except that prior approval shall not be required if such proposed acquisition has already been notified under the Hart-Scott-Rodino Premerger Notification Act at the time this Order is put on the public record for comment.

XI. Respondents Prior Notice

IT IS FURTHER ORDERED that:

- A. Respondents shall not, directly or indirectly, through subsidiaries, partnerships or otherwise, without providing advance written notification to the Commission, acquire any ownership or leasehold interest in any veterinary practice, clinic, or facility within the United States and its territories if the acquired practice, clinic, or facility does, or within the 6 months prior to the date of such acquisition, did or had plans to:
1. Offer 24-hour or overnight service with the primary function of receiving, treating, and monitoring emergency patients during its specified hours of operation, has one or more veterinarians in attendance at all hours of operation, and is located within 25 miles of any then-existing NVA Specialty or Emergency Veterinary Clinic offering the same services; or
 2. Offer services on-site or adjacent to the site, on a regularly scheduled basis (i.e., daily or weekly), whether permanent or on a non-permanent basis, provided by one or more veterinarians who legally hold themselves out as specialists in veterinary medicine, and have board certifications in one or more specialty or specialties, and is located within 25 miles of any then-existing NVA Specialty or Emergency Veterinary Clinic offering services, on-site or adjacent to the site, whether permanent or on a non-permanent basis provided by one or more veterinarians with the same board certification;

Provided, however, that advance written notification shall not apply to Respondents' construction or opening of new facilities.

- B. Notification under this Paragraph shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, and shall be prepared and transmitted in accordance with the requirements of

that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until thirty (30) days after substantially complying with such request. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Provided, however, that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

XII. Acquirer Prior Approval

IT IS FURTHER ORDERED that, for a period of 10 years after the Divestiture Date, neither Nordic Capital, UVC, nor any other Acquirer shall sell or otherwise convey to any Person, through subsidiaries or otherwise, without the prior approval of the Commission, any of the Divestiture Clinics that were divested pursuant to Section II;

Provided, however, Nordic Capital and UVC are not required to obtain prior approval of the Commission under this Section XII for a change of control, merger, reorganization, or sale of all or substantially all of UVC’s business.

XIII. Compliance Reports

IT IS FURTHER ORDERED that:

- A. Respondents shall:
 - 1. Notify Commission staff via email at bccompliance@ftc.gov of the Acquisition Date and each Divestiture Date no later than 5 days after the occurrence of each; and
 - 2. Submit the complete Divestiture Agreements to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after the relevant Divestiture Date.
- B. Respondents shall submit verified written reports (“compliance reports”) in accordance with the following:
 - 1. Respondents shall submit:

- a. Interim compliance reports 30 days after the Order is issued, and every 60 days thereafter until Respondents have fully complied with the provisions of Sections II and IV;
 - b. Annual compliance reports one year after the date this Order is issued, and annually for the next 9 years on the anniversary of that date; and
 - c. Additional compliance reports as the Commission or its staff may request.
2. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with this Order. Conclusory statements that Respondents have complied with their obligations under this Order are insufficient. Respondents shall include in their reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondents have implemented and plan to implement to comply with each paragraph of the Orders.
 3. For a period of 5 years after filing a Compliance Report, each Respondent shall retain all material written communications with each party identified in the compliance report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondents' obligations under the Orders and provide copies of these documents to Commission staff upon request.
- C. Respondents shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall file their compliance reports with the Secretary of the Commission at ElectronicFilings@ftc.gov and the Compliance Division at bccompliance@ftc.gov, as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a). In addition, Respondents shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

XIV. Change in Respondents

IT IS FURTHER ORDERED that Respondents JAB and NVA shall notify the Commission at least 30 days prior to:

- A. The proposed dissolution of JAB Consumer Partners SCA SICAR or National Veterinary Associates, Inc., respectively;
- B. The proposed acquisition, merger, or consolidation of JAB Consumer Partners SCA SICAR or National Veterinary Associates, Inc., respectively; or
- C. Any other change in Respondents JAB and NVA, including assignment and the creation, sale, or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

XV. Access

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon 5 days' notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession, or under the control, of the Respondents related to compliance with this Order, which copying services shall be provided by the Respondents at their expense; and
- B. To interview officers, directors, or employees of the Respondents, who may have counsel present, regarding such matters.

XVI. Purpose

IT IS FURTHER ORDERED that the purpose of this Order is to remedy the harm to competition the Commission alleged in its Complaint and ensure the Acquirer can operate the Divestiture Clinics at least equivalent in all material respects to the manner in which Respondents NVA and SAGE operated the Divestiture Clinics prior to the Acquisition.

XVII. Term

IT IS FURTHER ORDERED that this Order shall terminate 10 years from the date it is issued.

By the Commission.

April J. Tabor
Secretary

SEAL:
ISSUED:

Nonpublic Appendix A

Divestiture Agreements

[Redacted From the Public Record Version, But Incorporated By Reference]