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, a risk capital investment company,	)	**Docket No. C-4766**
National Veterinary Associates, Inc., a corporation, and	)	
SAGE Veterinary Partners, LLC, a limited liability company.	)	

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission ("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.

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 having therefore considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for

a period of 30 days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues this Order to Maintain Assets:

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 the definitions used in the Consent Agreement and the Decision and Order shall be incorporated in this Order to Maintain Assets by reference and made a part hereof.

II. 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 this 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 II.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.

III. 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 III, 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.

IV. 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 the Orders 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 this Section IV.

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.

V. 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 V, 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 V.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 V 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.

VI. 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 this Section VI or Section VIII of the Decision and Order ("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 of the Decision and Order, 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 VI.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.

VII. 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 the Decision and 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 the Decision and 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 this Section VII 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 the Orders.

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 Decision and Order.

E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Section VII, 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 the Decision and 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 the Decision and 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 this Section VII 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 the Decision and 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 the Decision and 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 the Decision and 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 this Section VII, and who will have the same authority and responsibilities of the original Divestiture Trustee pursuant to Section VII.

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 the Decision and Order.

VIII. 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 VIII.A. and VIII.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 the Commission issues this Order to Maintain Assets.

IX. 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.

X. 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. Compliance reports 30 days after this Order to Maintain Assets is issued and every 30 days thereafter until the Commission issues a Decision and Order in this matter; and

   b. 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 the Orders. Conclusory statements that Respondents have complied with their obligations under the Orders 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.

XI. 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 the Orders.

XII. Access

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with the Orders, 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 the Orders, 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.

XIII. Purpose

IT IS FURTHER ORDERED that the purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability, and competitiveness of each Divestiture Clinic through its full transfer and delivery to the Acquirer; to minimize any risk of loss of competitive potential for the Divestiture Clinics; and to prevent the destruction, removal,

wasting, deterioration, or impairment of any of the Divestiture Clinics except for ordinary wear and tear.

XIV. Term

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate the day after the Decision and Order in this matter becomes final or the Commission withdraws acceptance of the Consent Agreement pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34.

By the Commission.

April J. Tabor
Secretary

SEAL:
ISSUED: June 2, 2022