

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/HCO
2022 FEB 23 4:21 PM

In re:)
)
Daniel Gingerich, an individual,) AWA Docket No. 21-J-0066
)
Respondent.)

**ORDER DENYING NON-PARTY MOTION TO INTERVENE AND RECONSIDER
CONSENT DECISION AND ORDER AND DENYING NON-PARTY REQUEST TO
VACATE ORDER GRANTING MOTION TO ABROGATE CIVIL PENALTY**

Appearances¹:

Ciarra Toomey, Esq. and Danielle Park, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington, DC, for the Complainant, the Administrator of the Animal and Plant Health Inspection Service (“APHIS”)

Michael G. Byrne, Esq., of Winston & Byrne, PC, Mason City, IA, for the Respondent, Daniel Gingerich

Preliminary Statement

This is an administrative proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131 *et seq.*) (“AWA”); the regulations promulgated thereunder (9 C.F.R. §§ 1.1 *et seq.*) (“Regulations”); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130 *et seq.*). The matter initiated with a complaint filed on September 24, 2021 by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (“Complainant”), against Daniel Gingerich (“Respondent”). The case was resolved by entry of a consent decision and order on October 29, 2021.

Before me is an “Emergency Motion to Intervene and Reconsider Consent Decision and

¹ The instant “Emergency Motion to Intervene and Reconsider Consent Decision and Order” was filed by Robert G. Hensley, Jr., Esq. and Tamara Y. Feliciano, Esq., counsel for the American Society for the Prevention of Cruelty to Animals (“ASPCA”), a non-party.

Order” filed on November 17, 2021 by the American Society for the Prevention of Cruelty to Animals (“ASPCA”), a non-party to this case. For the reasons set out herein below, I deny ASCPA’s Motion.

Procedural History

Complainant initiated this proceeding on September 24, 2021, by filing a complaint alleging Respondent willfully violated the AWA and Regulations.²

On October 29, 2021, the parties filed a proposed consent decision pursuant to section 1.138 of the Rules of Practice (7 C.F.R. § 1.138).³ Under the terms of the proposed decision, Respondent agreed to permanently relinquish any interest he had in the dogs listed in an attachment (“Attachment A”) to the federal consent decree filed in *United States v. Gingerich*, Case No. 4:21-cv-00283 (S.D. Iowa Oct. 29, 2021)⁴ (“Federal Consent”).⁵ On the same date, I signed and entered the consent decision and order (“Consent Decision”), as proposed, pursuant to section 1.138 (7 C.F.R. § 1.138). The Consent Decision revoked Respondent’s AWA license

² See Complaint at 1, 3-6 ¶¶ 6-49.

³ On the same date, Respondent and the United States filed a consent decree in *United States v. Gingerich*, No. 4:21-cv-00283 (S.D. Iowa Oct. 29, 2021) (“Federal Consent”). Under the terms of the Federal Consent, Respondent agreed to permanently relinquish any interest he had in the dogs listed in an “Attachment A” and allowed the Animal Rescue League of Iowa (“ARL”) to take physical possession of all dogs listed in Attachment A. On November 2, 2021, U.S. District Court Judge Stephanie M. Rose (“Judge Rose”) entered an order approving and entering the Federal Consent.

⁴ See *supra* note 3.

⁵ On November 9, 2021, the United States moved the district court to voluntarily dismiss its complaint on the basis that “the [Animal Rescue League of Iowa] ha[d] . . . taken possession of all of the dogs in Attachment A and their offspring” as provided for in paragraph 14 of the Federal Consent. *United States v. Gingerich*, No. 4:21-cv-00283 (S.D. Iowa Nov. 9, 2021). On November 10, 2021, U.S. District Court Judge Stephanie M. Rose dismissed the case. *United States vs. Gingerich*, Case No. 4:21-cv-00283 (S.D. Iowa Nov. 10, 2021).

and assessed Respondent a \$500,000 civil penalty. Regarding the civil penalty, however, paragraph 5 of the Order specified:

The civil penalty shall be held in abeyance until November 30, 2021. After that, the civil penalty shall be paid by certified check or money order . . . unless, before November 30, 2021, the Animal and Plant Health Inspection Service (APHIS) files a statement attesting to its receipt that Respondent has surrendered all of the dogs listed in the Federal Consent. Upon APHIS filing such a statement, the civil penalty shall be abrogated.

Consent Decision at 3 ¶ 5. The Consent Decision became final upon issuance.⁶

On November 16, 2021, Complainant filed a Motion to Abrogate Civil Penalty Issued in Consent Decision “based upon the receipt of information from counsel for the United States in the district court case, as well as APHIS personnel on the ground during the surrender, that Respondent had surrendered all of the dogs listed in the Federal Consent.”⁷ On the same date, I issued an order granting Complainant’s Motion and abrogating Respondent’s \$500,000 civil penalty. The Order further confirmed that “all other terms and conditions of the October 29, 2021 Consent Decision and Order remain undisturbed and in full effect from the effective date of that decision and order.”⁸

On November 17, 2021, counsel for ASPCA, a non-party, filed an Emergency Motion to Intervene and Reconsider the Consent Decision and Order (“Motion to Intervene & Reconsider”) that was entered on October 29, 2021.

On December 7, 2021, Complainant filed a Response to ASPCA’s Motion to Intervene

⁶ See 7 C.F.R. § 1.138.

⁷ Complainant’s Response at 3.

⁸ Order Granting Complainant’s Motion to Abrogate Civil Penalty Issued in Consent Decision at 4.

and Reconsider (“Complainant Response”) opposing the Motion. On December 8, 2021, Respondent filed a Joinder of Respondent, Daniel Gingerich, in Complainant’s Response to Non-Party “Emergency Motion to Intervene and Reconsider Consent Decision and Order.”

On December 17, 2021, counsel for ASPCA filed a Motion for Leave to Reply to Complainant’s Response to ASPCA’s Emergency Motion to Intervene (“Motion for Leave”), wherein ASPCA set forth its proposed reply (“ASPCA Reply”). As stated herein below, ASPCA’s Motion for Leave to Reply is granted.⁹

On January 13, 2022, counsel for ASPCA filed a Supplement to ASPCA’s Reply (“ASPCA Supplement”) requesting I vacate the November 16, 2021 Order.¹⁰

On January 19, 2022, Complainant filed a Sur-Reply to ASPCA’s Supplement to ASPCA’s Reply (“Complainant’s Sur-Reply”).¹¹

On January 20, 2022, counsel for ASPCA filed a Reply to USDA’s Sur-Reply to ASPCA’s Supplement to ASPCA’s Reply (“ASPCA Sur-Reply”).

As of the date of this Order, no further filings have been made by either party. All filed documents have been considered.

⁹ See 7 C.F.R. § 1.143(d).

¹⁰ ASPCA submitted three exhibits with its Supplement: (A) January 7, 2022 letter from Tonya G. Woods, Director, Freedom of Information & Privacy Act, Legislative and Public Affairs, USDA, to ASCPA (“Re: Final Response to FOIA Request No. 2022-APHIS-00684-F”); (B) (records responsive to ASPCA’s FOIA request, including a printed list of dogs with handwritten notations); and C (copy of “Attachment A,” the inventory filed with the Federal Consent).

¹¹ Complainant submitted three exhibits with its Sur-Reply: (A) copy of email exchanges between counsel for ASPCA and counsel for Complainant dated November 30, 2021 and January 12 and 13, 2022; (B) Declaration of Kelly Maxwell; and (C) January 18, 2022 Notice of Clarification filed by the U.S. Department of Justice in *United States v. Gingerich* (No. 4:21-cv-00283) (S.D. Iowa). See Complainant’s Sur-Reply at 1-2.

Discussion

The instant matter involves an enforcement action brought by the Secretary of Agriculture to determine whether Respondent violated the AWA and, if so, what sanctions should be imposed. As referenced above, the two then-existing and current parties—Complainant and Respondent—engaged in settlement discussions and agreed to the terms of a proposed consent decision and order, which Complainant filed on behalf of both parties for my approval under section 1.138 of the Rules of Practice (7 C.F.R. § 1.138). I approved that Consent Decision and Order on October 29, 2021. The Consent Decision became final and effective upon issuance with “the same force and effect as a decision issued after full hearing.”¹²

It should be noted at the outset that my authority to review a consent decision proposed by the parties is very limited under Rule 1.138. So long as the agreement is “in the form of a decision signed by the parties with appropriate space for signature by the Judge” and “contain[s] an admission of at least the jurisdictional facts, consent[s] to the issuance of the agreed decision without further procedure and such other admissions or statements as may be agreed between the parties,” I am unequivocally required to “enter such decision without further procedure, unless an error is apparent on the face of the document.”¹³ The Judicial Officer has explained:

A Consent Decision entered in accordance with section 1.138 of the Rules of Practice (7 C.F.R. § 1.138), mirrors the agreement between parties previously engaged in litigation with one another. An ALJ, presented with the parties’ agreement in the form of a decision that contains no error on its face, is required to enter the agreement as the ALJ’s Consent Decision. The ALJ has no jurisdiction either to modify the terms of the agreement before its entry as a Consent Decision, or refuse to enter the agreement as a Consent Decision, for any reason, including the ALJ’s well-founded belief that the terms are unjust or that one or more of the parties cannot possibly comply. An ALJ’s attempted

¹² 7 C.F.R. § 1.138.

¹³ *Id.*

modification of the parties' agreement and entry of that modified agreement as a purported Consent Decision would not constitute the entry of a Consent Decision, but rather, would constitute a nullity.

Far West Meats, 55 Agric. Dec. 1033, 1038 (U.S.D.A. 1996) (Ruling on Certified Question).

In signing the proposed Consent Decision and Order, I necessarily implicitly determined then and expressly determine now that it clearly met each of the Rule 1.138 requirements that it contain an admission of at least the jurisdictional facts, consent to the issuance of the decision without further procedure and other admissions and statements agreed to by the parties. I also implicitly determined then and expressly determine now that no error is or was “apparent on the face of the” proposed Consent Decision. Indeed, ASPCA does not contend that the proposed Consent Decision and Order did not meet each of these Rule 1.138 requirements.¹⁴ Thus, ASPCA for current purposes necessarily concedes, as I have determined, that at the time of my approval of it the proposed Consent Decision and Order met each of the Rule 1.138 requirements. Therefore, under Rule 1.138, I was required to “enter such decision without further procedure.”¹⁵

As the Proposed Consent Decision and Order—rendered my issued Consent Decision by my signing of it on October 29, 2021, as opposed to my November 16, 2021 grant of Complainant's Motion to Abrogate Civil Penalty Issued in Consent Decision¹⁶—ASPCA's contention is, despite the fact that the proposed, now final and issued, Consent Decision and

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See *Far West Meats*, 55 Agric. Dec. 1038, 1039 (U.S.D.A. 1996) (Ruling on Certified Question) (“Once the written agreement of the parties is entered by the ALJ, it becomes the ALJ's decision, and it is no longer an agreement between the parties.”).

Order met all of the Rule 1.138 requirements for approval, I should have disobeyed that Rule and contrary to its terms have not “enter[ed that] decision” and should have conducted “further procedure[.]s,” which it contends I should now conduct.¹⁷

I find that, in the circumstances of this proceeding under Rule 1.138, I had no authority to do other than sign and thereby issue the proposed Consent Decision and Order without further procedure, and I have no authority, and ASPCA provides no citation to any authority, under which I could abrogate my approval of that order and further procedures on the proposed Consent Decision.¹⁸

Long-settled, invariable USDA jurisprudence holds that that Judges may not review the provisions of a proposed consent decision that was agreed to by the parties and satisfies Rule 1.138.¹⁹ Notice of such agreements is not provided to the public. Public comments are not solicited. Comments from the parties who agreed to the proposed consent decision are not

¹⁷ 7 C.F.R. § 1.138; *see Far West Meats*, 55 Agric. Dec. 1033, 1039 (U.S.D.A. 1996) (Ruling on Certified Question) (“[M]odification of a previously-entered Consent Decision would result in the creation of a document that would not reflect the agreement of the parties, and, therefore, would not be a Consent Decision under section 1.138 of the Rules of Practice, (7 C.F.R. § 1.138).”).

¹⁸ *See Far West Meats*, 55 Agric. Dec. 1033, 1053, 1055 (U.S.D.A. 1996) (Clarification of Ruling on Certified Question) (“Once the Consent Decision is issued, the administrative proceeding is closed and the ALJ has no jurisdiction over the proceeding, except to vacate the Consent Decision in extraordinary circumstances. . . . A change in circumstances subsequent to the entry of the Consent Decision does not provide a basis upon which an ALJ may vacate a Consent Decision.”).

¹⁹ *See, e.g., Far West Meats*, 55 Agric. Dec. 1033, 1038-41 (U.S.D.A. 1996) (Ruling on Certified Question); *Fobber*, 50 Agric. Dec. 60, 71 (U.S.D.A. 1996); *Harris*, 50 Agric. Dec. 683, 703-06 (U.S.D.A. 1991) (Ruling on Certified Question); *cf. Far West Meats*, 55 Agric. Dec. 1045, 1053 n.6 (Clarification of Ruling on Certified Question) (“The parties may agree upon modification to a Consent Decision and move that the ALJ modify the Consent Decision by entry of those modifications. Only when the ALJ finds that the parties have agreed to and requested the entry of a modification my an ALJ enter a modification of the Consent Decision.”).

requested and, generally, are not provided. There is simply no vehicle, other than the Rule 1.138 requirements, by which a presiding Judge has the authority to consider the terms of a proposed consent decision before approving it. The filing of a proposed consent decision is not an occasion to accept interventions into the proceedings by other parties. If a proposed consent decision meets the Rule 1.138 requirements, the presiding Judge must approve that consent decision without further procedure.

Under the terms of the Consent Decision, Respondent had his AWA license revoked and was assessed a \$500,000 civil penalty. The civil penalty was to be held in abeyance until November 30, 2021, unless Complainant “file[d] a statement attesting to its receipt that Respondent ha[d] surrendered all of the dogs listed in the Federal Consent” before that date.²⁰ Upon Complainant’s motion—which reported that the Animal Rescue League of Iowa had taken physical possession of all the dogs—I issued an order abrogating the \$500,000 civil penalty on November 16, 2021.²¹

ASPCA is not a party to this closed administrative action. Nonetheless, ASPCA argues it “should be permitted to intervene in this matter” and “the Consent Decision and Order should be reconsidered”²² because:

The ASPCA has provided, and will continue to provide, significant resources for the care of the dogs removed from [Respondent’s] facilities under the terms of the federal Consent Decree. As a result of this work, the ASPCA is in possession of critical information directly relevant to this proceeding. This information includes inventories prepared by ASPCA personnel on the ground at [Respondent’s] facilities during the removal operation that indicate [Respondent]

²⁰ Consent Decision at 3 ¶ 5.

²¹ See Order Granting Complainant’s Motion to Abrogate Civil Penalty Issued in Consent Decision at 2-3.

²² Motion to Intervene & Reconsider at 2.

did not surrender all of the dogs identified in the federal Consent Decree, as well as information concerning the condition of animals removed from these facilities which indicates additional violations of the AWA should have been considered.

Motion to Intervene & Reconsider at 2.

For the following reasons, ASPCA's Motion to Intervene and Reconsider Consent Decision is denied.

1. Motion to Intervene

ASPCA seeks to intervene pursuant to section 555(b) of the Administrative Procedure Act (5 U.S.C. § 555(b)).²³ Section 555(b) provides that “[s]o far as the orderly conduct of public business permits, an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, in connection with an agency function.”²⁴ It “is universally understood to establish the right of an interested person to participate in an *on-going* agency proceeding.”²⁵

This proceeding, however, is not on-going. All of the necessary decisionmaking—*i.e.*, approval of the parties' Consent Decision and ruling on Complainant's Motion to Abrogate Civil Penalty—has been made. The proceeding is concluded.

Moreover, I agree with Complainant that ASPCA's Motion “represents a non-party challenge to a final consent decision issued by the Chief Administrative Law Judge (CALJ) and

²³ The Rules of Practice do not provide for third-party intervention; however, “a third party can still participate under sections 554(c) and 555(b) [of the Administrative Procedure Act] so long as the would-be intervenor meets the requirements of those provisions.” *Animal Legal Defense Fund v. Vilsack*, 237 F. Supp. 3d 15, 25 (D.D.C. 2017).

²⁴ 5 U.S.C. § 555(b) (emphasis added).

²⁵ *Block v. SEC*, 50 F.3d 1078, 1085 (D.C. Cir. 1995).

is therefore moot.”²⁶ Pursuant to the Rules of Practice, the Consent Decision became final and effective upon issuance.²⁷ Clearly, a party who has agreed to the terms of a consent decision and order and has sought a presiding judge’s approval thereof would not allow and would not have grounds to challenge it in the normal course, as here. “Once the written agreement of the parties is entered by the ALJ, it becomes the ALJ’s decision, and it is no longer an agreement between the parties.”²⁸

2. Motion to Reconsider

Although ASPCA titled its filing a motion to intervene *and* reconsider, ASPCA fails to set forth any grounds for reconsideration.²⁹ As the Judicial Officer has explained: “In all administrative proceedings before this Department (as in the case of judicial proceedings), settlement agreements are enforced in the absence of extraordinary circumstances, such as fraud, duress or a unilateral mistake of fact.”³⁰ There is no such circumstance here.

When I entered the Consent Decision, it was given the same force and effect as a decision issued after a full hearing and became effective upon issuance.³¹ Even if I were to consider reopening the case, I would have no authority to change the terms of the parties’ settlement

²⁶ Complainant’s Response at 1.

²⁷ See 7 C.F.R. § 1.138; Consent Decision at 6.

²⁸ *Far West Meats*, 55 Agric. Dec. 1038, 1039 (U.S.D.A. 1996) (Ruling on Certified Question).

²⁹ I also note that the Rules of Practice do not provide for reconsideration of an Administrative Law Judge’s decision; they provide only for “reconsideration of the decision of *the Judicial Officer*.” 7 C.F.R. § 1.146(a) (emphasis added).

³⁰ *Neb. Beef Packers, Inc.*, 43 Agric. Dec. 1783, 1803 (U.S.D.A. 1984). See also 7 C.F.R. § 1.138 (“The Judge shall enter such [consent] decision without further procedure, unless an error is apparent on the face of the document.”).

³¹ 7 C.F.R. § 1.138.

agreement. Rule 1.138 states that “[t]he Judge shall enter such decision without further procedure, unless an error is apparent on the face of the document.”³² The proposed Consent Decision contained no apparent errors. To to consider additional allegations claimed by a non-party—when only the Administrator of APHIS, the Complainant, has the authority to cite a respondent for AWA violations—would exceed my duties as Judge.³³

Moreover, I reject ASPCA’s assertion that Complainant “failed to satisfy the Consent Decision’s condition for abrogation” because it “never filed any statement ‘attesting’ to the surrender of all dogs listed in the Federal Consent.”³⁴ Contrary to what ASPCA contends, relying largely on its contended meaning of the word “attesting,” the Consent Decision did not require an “agency official” to “provide[] a sworn statement attesting to the surrender of each and every dog identified on Attachment A.”³⁵ According to the dictionary definition, “attest” means simply “to show, prove, or state that something is true or real.”³⁶ The Consent Decision provided for abrogation of the civil penalty if, before November 30, 2021, Complainant “file[d] a statement attesting to its receipt that Respondent ha[d] surrendered all of the dogs listed in the Federal Consent.”³⁷ Complainant’s Motion to Abrogate Civil Penalty—which was signed by

³² *Id.*

³³ *See Far West Meats*, 55 Agric. Dec. 1033, 1039 (U.S.D.A. 1996) (Ruling on Certified Question) (“I find that the entry of a Consent Decision in accordance with section 1.138 of the Rules of Practice, (7 C.F.R. § 1.138), does not so enlarge the ALJ’s jurisdiction that he or she may . . . modify the Consent Decision when a party to the Consent Decision opposes the modification.”).

³⁴ ASPCA Reply at 2.

³⁵ *Id.* at 4 (emphasis omitted).

³⁶ *Attest*, MERRIAM-WEBSTER.COM (last visited Dec. 22, 2021).

³⁷ Consent Decision at 3 ¶ 5.

counsel and filed with the Hearing Clerk—did just that.³⁸ I find no basis on which to add a requirement to the Consent Decision that an agency official provide a sworn statement attesting to the surrender of each and every dog identified on Attachment A before the penalty would be abrogated.

3. Request to Vacate Order

In its Supplement to Reply, ASPCA argues that the Order Granting Complainant’s Motion to Abrogate Civil Penalty “should be vacated because it was obtained based on the USDA’s false and material statement.”³⁹ In support thereof, ASPCA submits copies of the records it received in response to a FOIA request for inventories concerning dogs removed from Respondent’s properties.⁴⁰ Among these are pages of inventory with handwritten notations, apparently by an Animal Care Inspector, “including more than a dozen instances where a dog or puppy’s entry has been crossed out with the words ‘*not located*.’”⁴¹ According to ASPCA, “these records demonstrate that the USDA’s representation that ‘[t]he ARL has now taken physical possession of all of the dogs in Attachment A and their offspring,’ in its November 16, 2021 Motion to Abrogate Civil Penalty Issued in Consent Decision, was false.”⁴²

In objection to this argument, Complainant has submitted several exhibits to “clarify the

³⁸ See Motion to Abrogate Civil Penalty at 1 (“The [Animal Rescue League of Iowa] has now taken possession of all the dogs in Attachment A and their offspring.”); *Attest*, MERRIAM-WEBSTER.COM (last visited Dec. 22, 2021) (intransitive verb meaning “to show, prove, or state that something is true or real”).

³⁹ ASPCA Supplement at 1.

⁴⁰ *Id.*

⁴¹ *Id.* at 2.

⁴² *Id.* at 1.

record.”⁴³ In Exhibit B, Animal Care Inspector Kelly Maxwell explains the “not located” notations that appear on the dog inventory.

On November 1, 2021 I facilitated the removal of Gingerich’s dogs from Site 001 per his agreement to surrender dogs listed in Attachment A of the Federal Consent and the consent decision CALJ Channing D. Strother entered on October 29, 2021 in the administrative proceeding AWA Docket 21-J-0066. Among my roles in facilitating the removal of Gingerich’s dogs with non-profit organizations including the Animal Rescue League of Iowa (ARL) and the American Society for the Prevention of Cruelty to Animals (ASPCA), I was responsible for ensuring that all dogs from Site 001 were surrendered and documented. . .

The inventory list I used to document the surrender of the dogs and record any relevant notes was an inventory list titled “Attachment 1.” I used the “not located” notation in Attachment 1 in four main instances: (1) a dog was double-counted on Attachment 1; (2) a dog had missing collar and identification tag; (3) a dog had missing tab number and/or cage card, and (4) a dog’s breed was mislabeled. During the surrender of Gingerich’s dogs from Site 001, I checked if each dog presented to me for surrender matched the identification and description for the corresponding dog listed on Attachment 1.

. . . .

Based on my recollection and my experience at this facility and all of the information I have about this site, *I believe we took possession of all of the dogs that I expected to be present at the site.*

Complainant’s Sur-Reply Exhibit B at 2-3 (emphasis added). Exhibit C, a “Notice of Clarification” filed by the U.S. Department of Justice in *United States v. Gingerich*,⁴⁴ further explains:

The U.S. Department of Agriculture recently has brought to the government counsel’s attention that these documents may have created some confusion because the final inventory of dogs removed and placed with ARL is not identical to the list of dogs set forth in Attachment A. After reviewing the documents, *the government has determined that all of the dogs intended to be removed from Defendant’s possession and placed with ARL have been surrendered and removed.* Attachment A as filed was based on the best information then available to the government and was intended to be overinclusive to ensure that all the dogs

⁴³ Complainant’s Sur-Reply at 1; *see supra* note 11.

⁴⁴ No. 4:21-cv-00283 (S.D. Iowa) (filed Jan. 18, 2022).

in Defendant's possession were removed. After all dogs were removed from Defendant's sites, government counsel conferred with the Animal and Plant Health Inspection Service (APHIS) inspection team, who confirmed that, based on the APHIS inspection team's history of experience at Defendant's sites and their visits up to the surrender of Defendant's dogs that all dogs were expected to be at the sites were in fact surrendered. Any discrepancy between the final inventory of dogs seized and Attachment A as filed was due to the imprecise and/or evolving nature of information available at the time Attachment A was compiled, and not because all dogs were not removed and placed with ARL as intended.

Complainant's Sur-Reply Exhibit C at 1-2 (emphasis added).

Having reviewed the documents submitted by both ASPCA and Complainant, I find that Complainant did not make a materially false statement in its Motion to Abrogate Civil Penalty. That "the final inventory of dogs removed and placed with ARL [was] not identical to the list of dogs set forth in Attachment A" is inconsequential as "all of the dogs intended to be removed from [Respondent's] possession and placed with ARL have been surrendered and removed."⁴⁵

Pursuant to the Consent Decision, abrogation of Respondent's civil penalty was conditioned upon Complainant filing a statement "attesting to its receipt that Respondent ha[d] surrendered all of the dogs listed in the Federal Consent."⁴⁶ Both Complainant and Respondent—the only two parties to this proceeding—maintain compliance has been achieved. Accordingly, I find that the condition has been met.⁴⁷

Based on the foregoing, the following Order shall be entered.

ORDER

1. ASPCA's Motion for Leave to Reply to Complainant's Response to ASPCA's Motion to

⁴⁵ Complainant's Sur-Reply Attachment C at 1-2.

⁴⁶ Consent Decision at 3 ¶ 5.

⁴⁷ See *supra* notes 30-33 and accompanying text.

Intervene is GRANTED.

2. ASPCA's Motion to Intervene in Docket No. 21-J-0066, regarding Respondent Daniel Gingerich, is DENIED.
3. ASPCA's Motion to Reconsider Consent Decision and Order issued in Docket No. 21-J-0066, regarding Respondent Daniel Gingerich, is DENIED.
4. ASPCA's Request to Vacate the November 16, 2021 Order Granting Complainant's Motion to Abrogate Civil Penalty Issued in Consent Decision is DENIED.

Copies of this Order shall be served upon the parties and counsel by the Hearing Clerk.

Done at Washington, D.C.,
this 23rd day of February 2022

**CHANNING
STROTHER**

 Digitally signed by CHANNING
STROTHER
Date: 2022.02.23 16:15:51
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Channing D. Strother
Chief Administrative Law Judge

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