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RE: AVA-D-10-0014 (copy of Motion)

Number of pages including cover 23

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**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**BEFORE THE SECRETARY OF AGRICULTURE**

In re:

Pine Lake Enterprises, Inc.,

Petitioners.

AWA No. D-10-0014

**APHIS'S MOTION FOR SUMMARY JUDGMENT**

Respondent, the Administrator of the Animal and Plant Health Inspection Service ("APHIS"), respectfully submits this motion for summary judgment, pursuant to 7 C.F.R. § 1.143 and pursuant to the "hearing notice and deadlines," issued December 18, 2009. Based upon the pleadings and the evidence submitted in the above-captioned matter, summary judgment should be granted and a decision and order should be issued denying the application for an Animal Welfare Act license submitted by Allan R. Bauck on behalf of Pine Lake Enterprises, Inc. Additionally, a decision and order should be issued finding that Allan R. Bauck [hereinafter "Allan Bauck" or "Bauck"] is unfit to be licensed under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) (the "Act" or "AWA") and the Regulations and Standards issued pursuant to the Act (9 C.F.R. §§ 1.1-3.142) (the "regulations" or "AWA regulations"), and that allowing either Allan Bauck or petitioner Pine Lake Enterprises, Inc. [hereinafter "Pine Lake"] to obtain an AWA license would be contrary to the purposes of the Act. For the reasons stated herein, petitioner's application for an Animal Welfare Act license should be denied and

both petitioners Pine Lake and Allan Bauck, and any president, director, officer, agent and owner of any legal entity in which either or both may have a substantial interest, should be disqualified from obtaining, holding or using an Animal Welfare Act license, pursuant to sections 2133 and 2151 of the Act and sections 2.11 and 2.12 of the regulations. 7 U.S.C. §§ 2133, 2151; 9 C.F.R. §§ 2.11, 2.12.

Based upon the pleadings and the other evidence that has been submitted, the only issues to be resolved are questions of law. The material facts in this case are incapable of dispute, and summary judgment can be achieved by relying upon the pleadings, matters incorporated by reference in the pleadings, facts of which the Administrative Law Judge may take official notice, and the other evidence that has been submitted, such as declarations and admissions.

### **Background and Facts**

Application for License. On September 9, 2009, Allan Bauck submitted an APHIS Form 7103-A, Application for License. (See Exh. A.)<sup>1</sup> In Box 1 of this application for an AWA license, Bauck indicated that a license was being sought on behalf of "Pine Lake Enterprise[s], Inc., 51402 410<sup>th</sup> Ave., New York Mills, MN 56578" and that the applicant's telephone number was "218-346-6435". (Id. at p. 1.) In the materials that accompanied this application, Allan Bauck is listed as Pine Lake's owner. Thus, for instance, in the accompanying program of veterinary care ("PVC") the "licensee/registrant" is listed as Allan Bauck with Pine Lake as his business name and the PVC is signed by Allan Bauck. (Id. at p. 6.) Likewise, in the federal debt collection act form, the owner is listed as "Pine Lake Enterprise[s] Inc. Allan

<sup>1</sup> As used herein, "Exh. A" through "Exh. F" refer to the attachments to the declaration of Elizabeth Goldentyer, D.V.M., in support of APHIS's motion for summary judgment, which is attached hereto as Exhibit 1. As used herein, "Exh. H through Exh. M" refer to the attachments to the declaration of Leslie Vissage, which is being filed separately from this motion, and will be marked as Exhibit 8. For convenience, an abbreviated list of exhibits has been attached to this motion.

Bauck” and Allan Bauck provided his credit card number and signature in the credit card payment authorization form. (Id. at pp. 2, 5.) Finally, in the cover letter and notice of service attached to the request for hearing that initiated the above-captioned matter, the petitioner is identified as “Allan Bauck, Pine Lake Enterprises, Inc., Application for Animal Welfare Act License” (see “Demand for Fitness Hearing” and accompanying materials, filed October 16, 2009).

Allan Bauck. Allan Bauck is the spouse and husband of Kathy Jo Bauck [hereinafter “Kathy Bauck”], whose AWA license APHIS has sought to terminate. See generally AWA No. D-09-0139, Kathy Jo Bauck, d/b/a Puppy’s On Wheels a/k/a “Puppies on Wheels” and “Pick of the Litter” (Order to Show cause filed June 22, 2009).<sup>2</sup> Thus, for example, the address provided for Allan Bauck and Pine Lake in the application for license that is at issue here, is the same address as for Kathy Bauck: 51402 410<sup>th</sup> Avenue, New York Mills, Minnesota 56567. Compare, e.g., Answer ¶ 10 filed in Kathy Bauck, AWA No. D-09-0139 (filed July 16, 2009) (“[Kathy] Bauck admits that her mailing address is 51402 410<sup>th</sup> Avenue, New York Mills, MN 56567.”) with, e.g., Exh. A at pp. 1, 5, 6.<sup>3</sup> In addition, in a letter to APHIS, dated July 21, 2009, Kathy Bauck identified Allan Bauck as her spouse:

“ Dear Dr. Goldeneyer [sic]:

I am writing to request to have a new application packet sent out in the name of Allan Bauck my spouse. I am requesting my name off all dog’s [sic] and USDA.

Thank you  
Kathy Bauck”

(Exh. D.)

<sup>2</sup> APHIS hereby incorporates by reference, as if attached hereto, the pleadings, exhibits, papers and orders submitted and/or issued in AWA No. D-09-0139.

<sup>3</sup> The same address also appears in Kathy Bauck’s application for license, license renewal. (See, e.g., Exh. C.).

Finally, in the documents that accompanied the order to show cause filed in AWA D-09-0139, Allan Bauck is identified as Kathy Bauck's "husband, who also works at the kennel". See Order to Show Cause Attach C, at pp. 3, 5, 6, filed in Kathy Bauck, AWA No. D-09-0139.

Kathy Bauck. On June 22, 2009, APHIS initiated a proceeding to terminate Animal Welfare Act license number 41-B-0159, issued to "KATHY BAUCK" and to obtain a judgment and order finding that Kathy Jo Bauck d/b/a Puppy's On Wheels, a/k/a "Puppies On Wheels" and "Pick of the Litter", who has violated State laws and regulations<sup>4</sup> pertaining to "animal cruelty" and to the "transportation, ownership, neglect, or welfare of animals," is unfit to be licensed under the AWA and the AWA regulations. On December 2, 2009, the Judicial Officer, issued decision and order in which AWA license number 41-B-0159 was terminated and Kathy Bauck was disqualified for 2 years from becoming licensed under the Act, or otherwise obtaining, holding or using an AWA license, directly or indirectly through any corporate or other device or person. See In re Kathy Jo Bauck, 68 Agric. Dec. \_\_\_\_\_, \_\_\_\_\_, 2009 WL 4838286, at \*7 (U.S.D.A. Dec. 2, 2009) (opinion of Judicial Officer).

It is undisputed that Kathy Jo Bauck has done business as "Pick of the Litter". (See Answer ¶ 12 filed in Kathy Bauck, AWA No. D-09-0139 (filed July 16, 2009) ("[Kathy] Bauck admits the allegations that she has done business as Pick of the Litter"); see also, e.g., Exh. C, Exh. E.)

Pick of the Litter; Puppies on Wheels; Puppy's on Wheels. On November 15, 1994, Kathy Bauck and Allan Bauck filed, with the Minnesota Secretary of State, a "Certificate

<sup>4</sup> Specifically, in State of Minnesota vs. Kathy Jo Bauck, 56-CR-08-1131 (the "1131 case"), Kathy Bauck pled guilty (in response to six charges against her) to one gross misdemeanor count of practicing veterinary medicine without having first secured a veterinary license or temporary permit, in violation of Minn. Stat. § 156.10. Additionally, in State of Minnesota vs. Kathy Jo Bauck, 56-CR-08-2271 (the "2271 case"), Kathy Bauck was convicted by a jury on four counts, all pertaining to animal cruelty or torture; specifically, one gross misdemeanor count of "Mistreatment of Animal—Torture" and three misdemeanor counts of "Mistreatment of Animal—cruelty" and "Mistreatment of Animal—Torture", all in violation of Minn. Stat. § 343.21. See Order to Show Cause ¶¶ 3, 4, 11-30; Resp. Ret. ¶¶ 6-7, 14-26 (admitting material allegations), AWA No. D-09-0139.

of Assumed Name – State of Minnesota,” dated November 9, 1994, in which both Kathy Bauck and Allan Bauck certified that they intend or have conducted business under the assumed name “Pick of the Litter”. (Exh. 2.)<sup>5</sup> On March 4, 2003, Pick of the Litter, Inc., filed, with the Minnesota Secretary of State, articles of incorporation. The articles of incorporation list Pick of the Litter’s board of directors as “Allan Bauck [and] Kathy Bauck”. (Exh. 3 at p. 3.) In addition, the articles of incorporation are signed by Allan Bauck and Kathy Bauck, both of whom are identified as the incorporators (the only two) of Pick of the Litter. (Id. at pp. 2, 5.) On March 4, 2003, Pick of the Litter, Inc., obtained its certificate of incorporation from the state of Minnesota and was assigned corporate charter number 120-893. (Exh. 4.)<sup>6</sup>

On August 22, 2008, Pick of the Litter, Inc., filed an amendment to its articles of incorporation to reflect that its “[n]ew name is Puppies on Wheels Inc.” (Exh. 5.) Five days later, on August 27, 2008, Puppies on Wheels, which until that point had operated under the name “Pick of the Litter” since at least 1994, filed another amendment to its articles of incorporation to reflect that its “[n]ame [was] spelled incorrectly, new name is Puppy’s on Wheels Inc.” (Exh. 6.) Both amendments list Corinne Peters as the contact person. Notably, both amendments bare the same corporate charter number that the state assigned to Pick of the Litter in its original certificate of incorporation: 120-893. (See Exhs. 4-6.)<sup>7</sup> Corinne Peters is Kathy Bauck’s daughter and the two amendments list her as the contact person since she had been identified as Pick of the Litter’s Secretary. Specifically, in a “corporate authorization

<sup>5</sup> Exhibits 2 through 7 are official records from the State of Minnesota, Department of State, and are therefore self-authenticating. (See e.g., 7 C.F.R. §§ 1.141(h)(5), 1.141(h)(6).)

<sup>6</sup> A reference to the previously filed Assumed Name appears on the first page of the articles of incorporation. (Compare Exh. 3 p. 1 (handwritten, “Holds AN [Assumed Name] 152383”), with Exh. 2.)

<sup>7</sup> It is worth noting that Kathy Bauck, in the answer filed by her in AWA No. D-09-0139, expressly denies having done business as “Puppy’s on Wheels” (a/k/a “Puppies on Wheels”). See Answer ¶ 11 filed in Kathy Bauck, AWA No. D-09-0139 (filed July 16, 2009) (“[Kathy] Bauck denies the allegations contained in Paragraph Eight”). This assertion is wholly incorrect and entirely refuted by the corporate documents filed with the state of Minnesota (Exhs. 2-6), as well as by correspondence sent to APHIS signed by Kathy Bauck and Allan Bauck. See, e.g., Exh. E.

resolution” signed by Kathy Bauck, Allan Bauck and Corinne A. Peters, Pick of the Litter identified Ms. Peters as its Secretary -- and identified both Kathy Bauck and Allan Bauck as Pick of the Litter’s President and Vice-President, respectively, both with the power to “exercise all of the powers listed” in the resolution. (Exh. G.) Allan Bauck, Kathy Bauck and Corinne Peters are the only three individuals listed in this corporate authorization resolution, and, in the application for license that is at issue here, Corinne Peters is identified by Pine Lake Enterprises, in addition to Allan Bauck, as one of its owners, partners and officers. (Exh. A; cf. Exh. C (AWA license number 41-B-0159 license renewal).)

Finally, on September 2, 2008, soon after the August 2008 name changes, APHIS received a letter signed by both Kathy Bauck and Allan Bauck, on letterhead that reads “Pick of the Litter, Kathy & Allan Bauck, USDA #41-B-159” that “Pick of the Litter” had changed its name to “Puppy’s on Wheels Inc.”. (Exh. E.).

Pine Lake Enterprises. On October 9, 2009, 30 days after Pine Lake and Allan Bauck submitted to APHIS the application for license that is at issue here, Puppy’s On Wheels, a/k/a “Puppies On Wheels” and “Pick of the Litter”, filed yet another amendment to its articles of incorporation to reflect that its “[n]ew name is Pine Lake Enterprises, Inc.” (Exh. 7.). As before, this amendment bears the same corporate charter number that the state assigned to Pick of the Litter in its original certificate of incorporation: 120-893. (Id.; see also Exhs. 4-6.) Also, this amendment to change the name of “Puppy’s on Wheels Inc.” to “Pine Lake Enterprises Inc”, just like the amendment to change “Puppies on Wheels Inc” to “Puppy’s on Wheels Inc” and the amendment to change “Pick of the Litter Inc.” to “Puppies on Wheels Inc” lists Corinne Peters as the contact person. (Exh. 7.) Due to the fact that this corporate amendment to Puppy’s On Wheels, a/k/a “Puppies On Wheels” and “Pick of the Litter” was not made until well after

petitioner submitted the license application at issue here, APHIS, in responding to the application for license submitted by Pine Lake Enterprises a/k/a "Puppy's On Wheels" and a/k/a "Puppies On Wheels" and "Pick of the Litter", stated that one of its several bases for denying the application for license was "the fact that Pine Lake Enterprise Inc. does not appear to be authorized to transact business in Minnesota, among other things". (Exh. B.)<sup>8</sup> (APHIS also stated its belief that "Pine Lake Enterprises" was an attempt to circumvent the termination of AWA license number 41-B-0159. (Id.))

APHIS's denial of Petitioner's Application for AWA License. On September 9, 2009, APHIS received an application for an AWA license from Allan Bauck, on behalf of Pine Lake. As stated above, this application, along with five pages of materials that accompanied the application, are attached hereto as Exhibit A. After reviewing the application and accompanying materials, as well as the information APHIS had previously obtained and/or collected regarding and/or from Kathy Bauck, Puppy's On Wheels, Puppies On Wheels, Pick of the Litter, Pine Lake and other sources, APHIS denied this application for an AWA license. Specifically, in a letter from Elizabeth Gendryer, DVM, Director, Eastern Region, USDA APHIS Animal Care, to Allan Bauck, Pine Lake Enterprise, Inc., dated September 28, 2009, APHIS denied this application and returned to petitioner a copy of the application along with the accompanying credit card information, and informed Allan Bauck, Pine Lake Enterprise, Inc., that he may request a hearing in accordance with 9 C.F.R. § 2.11 for the purpose of showing why the application for license should not be denied. (Exh. B.) On October 16, 2009, a request for hearing was filed by Allan Bauck and Pine Lake, and on November 6, 2009, APHIS submitted its response to this request of hearing, indicating its belief that summary judgment is the

<sup>8</sup> It is also entirely possible that Pine Lake Enterprises, Inc., a/k/a "Puppy's On Wheels", "Puppies On Wheels" and "Pick of the Litter" did not file its October 9, 2009 corporate amendment under after it submitted to APHIS its application for license as to prevent APHIS from discovering the true identity of the applicant.



appropriate means for resolving the above-captioned matter. On December 17, 2009, the presiding administrative law judge conducted a telephone conference in regards to the request for hearing and subsequently, on December 18, 2009, issued a hearing notice and deadlines.

### Argument

Summary judgment should be granted and a judgment and order issued denying the application for an AWA license submitted by Pine Lake Enterprises, Inc., Allan R. Bauck a/k/a "Puppy's on Wheels" and a/k/a "Puppies On Wheels" and "Pick of the Litter". Additionally, a judgment and order should be issued finding that Allan R. Bauck is unfit to be licensed under the AWA and the AWA regulations and that allowing either Allan Bauck or Pine Lake to obtain an AWA license would be contrary to the purposes of the Act. Both petitioner Pine Lake and Allan Bauck should be disqualified from obtaining an AWA license, as a result of, among other things, their chicanery, as described herein.

Summary judgment should be granted because the facts here cannot be disputed and clearly show that the application for license submitted by Pine Lake, Allan Bauck, is little more than an impermissible attempt to circumvent Kathy Bauck's license termination, in contravention of 9 C.F.R. § 2.11(d). In addition, as the materials herein unequivocally demonstrate, Allan Bauck is either one in the same as Kathy Bauck or has been engaging in activities for which an AWA license is required, without having first obtained a license from the Secretary of Agriculture, and thus, for either reason, unfit to be licensed under the Act.

#### **I. Summary Judgment Is the Appropriate Means for Denying Petitioner's Application for an AWA License**

The Judicial Officer has "repeatedly found summary judgment appropriate in cases involving the termination and denial of Animal Welfare Act licenses based upon prior criminal convictions" and in other circumstances. In re Animals of Montana, Inc., 68 Agric.

Dec. \_\_\_\_, \_\_\_\_, 2009 WL 624354, at \*7 (U.S.D.A. March 10, 2009) (opinion of Judicial Officer) (collecting cases); see also In re Kathy Jo Bauck, 68 Agric. Dec. \_\_\_\_, \_\_\_\_, 2009 WL 4838286 (U.S.D.A. Dec. 2, 2009) (opinion of Judicial Officer) (same). Here, there is no issue of material fact and a summary judgment denying petitioner's application for an AWA license and disqualifying petitioner and Allan R. Bauck from obtaining an AWA license is warranted in law and justified by the evidence. As the Judicial Officer has stated, "[h]earings are futile where, as in the instant proceeding, there is no factual dispute of substance." Id. (citing Animals of Montana, 68 Agric. Dec. at \_\_\_\_, 2009 WL 624354, at \*7; Veg-Mix, Inc. v. United States Dep't of Agric., 832 F.2d 601, 607 (D.C. Cir. 1987)). Indeed, "[c]ommon sense suggests the futility of hearings where there is no factual dispute of substance." Veg-Mix, 832 F.2d at 607.

Here, as in any of these prior cases, summary judgment is the appropriate means for denying Allan Bauck's application for license based on his undisputed involvement in the operation by Kathy Jo Bauck d/b/a Puppy's on Wheels, a/k/a "Puppies on Wheels" and "Pick of the Litter", the undisputed criminal manner in which Kathy Jo Bauck was convicted of running her AWA-licensed kennel,<sup>9</sup> the undisputed trickery and bad faith demonstrated by petitioner's application for an AWA license; and the undisputed evidence that Allan Bauck has been selling dogs under his own name and, as such, has been engaging in the unlicensed sale of dogs to various pet store and AWA dealers and exhibitors, a serious violation of the Act and regulations.

<sup>9</sup> The Secretary is required to give comity and apply res judicata to these criminal convictions. See 28 U.S.C. § 1738. As the Fourth Circuit has stated, "Title 28 U.S.C. § 1738 requires that full faith and credit be given by the federal courts to the judicial proceedings of every state, territory or possession. The purpose for this clause is to establish, throughout the federal system the salutary principle of the common law that once litigation is pursued to judgment, that judgment shall be as conclusive of the rights of the parties in every other court as in the court where the judgment was rendered." Robert Wood & Wire Products Corp. v. Namaco Industries, Inc., 797 F.2d 176, 178 (4th Cir. 1986) (observing that appellee must attack the New York judgment against it in New York, not in the Southern District of West Virginia); see also, e.g., M.S. Thigpen Produce Co., Inc. v. Park River Growers, Inc., 48 Agric. Dec. 695, 698 (1989 WL 265451, at \*3 (U.S.D.A. Feb. 27, 1989) (opinion of Judicial Officer) (acknowledging application of 28 U.S.C. § 1738 to administrative proceedings)

The Act provides that the "Secretary shall issue licenses to dealers and exhibitors . . . in such form and manner as he may prescribe." 7 U.S.C. § 2133. As the Judicial Officer has repeatedly held, this statutory "power to require and issue licenses under the Animal Welfare Act includes the power to terminate a license and to disqualify a person from becoming licensed." Animals of Montana, Inc., 68 Agric. Dec. at \_\_\_\_, 2009 WL 624354, at \*2 (collecting cases). Section 2.11 of the AWA regulations identifies the bases for denying an application for AWA license and disqualifying a person from becoming licensed. 9 C.F.R. § 2.11. Specifically, section 2.11 of the regulations authorizes the denial of a AWA license application under several circumstances, including where the applicant (1) is in violation of any AWA regulation; or has (2) pled nolo contendere (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to animal cruelty within the past year; (3) pled nolo contendere (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to animal cruelty outside of the past year, if the Administrator of APHIS determines that the circumstances render the licensee unfit to be licensed; (4) pled nolo contendere (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals; or (5) is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act; or (6) where the issuance of a license would circumvent any order suspending, revoking, terminating or denying an AWA license. See 9 C.F.R. §§ 2.11. Here, all of these grounds authorize and justify the denial of petitioner's application for an AWA license.

As discussed and explained below, there can be no material dispute that: (1) Pine Lake is nothing more than the new fictitious name for Kathy Bauck's kennel; (2) Allan Bauck

has been an officer, agent and/or employee of Kathy Bauck's kennel; and (3) Kathy Bauck d/b/a Puppy's On Wheels, a/k/a "Puppies On Wheels" and "Pick of the Litter" (and now a/k/a "Pine Lake Enterprises") has violated State laws and regulations pertaining to "animal cruelty" and to the "transportation, ownership, neglect, or welfare of animals," and has been found by the Secretary of Agriculture as unfit to be licensed under the Animal Welfare Act; and/or (4) Allan Bauck has, in his own name and separate from Kathy Bauck, engaged in activities for which an AWA license is required, without having first obtained a license from the Secretary of Agriculture.

**II. The Secretary of Agriculture has terminated Kathy Bauck's AWA license and Pine Lake Enterprises is nothing more than the new name for the Kathy Bauck's business enterprise, which has operated under the name of "Puppy's On Wheels", "Puppies On Wheels" and "Pick of the Litter", of which Allan Bauck has been an officer, agent and/or employee.**

Pine Lake is Kathy Bauck. On December 2, 2009, the Secretary of Agriculture terminated AWA license 41-B-0159, issued to "KATHY BAUCK". See In re Kathy Jo Bauck, an individual, doing business as Puppy's on Wheels, also known as "Puppies on Wheels" and "Pick of the Litter", AWA No. D-09-0139. The Judicial Officer, to whom the Secretary has delegated final decision making authority (7 C.F.R. § 2.35), stated that "[b]ased on the Findings of Fact [in the Decision and Order, dated December 2, 2009], I conclude Ms. Bauck is unfit to be licensed under the Animal Welfare Act . . . [and] the Administrator's determination that Ms. Bauck's retention of an Animal Welfare Act license is contrary to the purposes of the Animal Welfare Act, is reasonable." 68 Agric. Dec. at \_\_\_; 2009 WL 4838286, at \*7 (Decision and Order at 17). Thus, to allow Kathy Bauck d/b/a "Puppy's On Wheels" a/k/a "Puppies On Wheels" and "Pick of the Litter", to obtain a new AWA license under the pretext of a new fictitious name ("Pine Lake Enterprises") would circumvent the license termination order by the

Secretary in AWA No. D-09-0139, in violation of 9 C.F.R. § 2.11, and would also violate established USDA precedent, not to mention common sense and logic.

Section 2.11(d) of the regulations provides that “[n]o license will be issued under circumstances that the Administrator determines would circumvent any order suspending, revoking, terminating, or denying a license under the Act.” 9 C.F.R. § 2.11(d). Here, there is no dispute that the Secretary has terminated Kathy Bauck’s AWA license and the issuance of a license to Pine Lake and/or to Allan Bauck would circumvent entirely that termination. Specifically, it is neither disputed, nor can it be disputed, that the Secretary has terminated AWA License number 41-B-0159, issued to “KATHY BAUCK”. See Kathy Bauck, 68 Agric. Dec. \_\_\_, 2009 WL 838286. In that proceeding, the license that had been issued to Kathy Bauck was terminated due to the criminal manner in which she operated her animal kennel. It is likewise not disputed that:

“f. On May 19, 2008, Ms. Bauck was found guilty, pursuant to an Alford plea, by the Otter Tail County District Court, Criminal Division, Seventh Judicial District of the State of Minnesota, of practicing veterinary medicine without a veterinary license or temporary permit, in violation of Minn. Stat. § 156.10. State of Minnesota v. Bauck, 56-CR-08-1131 (Order to Show Cause Attach. B).

“g. On March 24, 2009, Ms. Bauck was found guilty by a jury verdict in Otter Tail County District Court, Criminal Division, Seventh Judicial District of the State of Minnesota, of animal torture and animal cruelty, in violation of Minn. Stat. § 343.21 subdvs. 1 and 7. State of Minnesota v. Bauck, 56-CR-08-2271 (Order to Show Cause Attach. D).

“h. On May 1, 2009, Ms. Bauck was sentenced in State of Minnesota v. Bauck, 56-CR-08-2271, to be confined in the county jail for a period of 90 days (with 70 days suspended for a period of 1 year with specified conditions), to pay a fine of \$1,000 (of which \$500 was suspended), to be placed on formal supervised probation, to complete 80 hours of community service, and to allow inspections of her property as long as she was continuing to work with animals (Order to Show Cause Attach. E).

7. On May 1, 2009, three of the four counts for which Ms. Bauck was found guilty in State of Minnesota v. Bauck, 56-CR-08-2271, were vacated, leaving only Count 5, which involved Ms. Bauck's torture of a Mastiff on or between May 14, 2008, and May 24, 2008, in Otter Tail County, Minnesota, in violation of Minn. Stat. § 343.21 subdiv. 1 (Order of Show Cause Attach. E)."

8 Agric. Dec. at \_\_\_, 2009 WL 4838286, at \*7 (Decision and Order at 6-17).

In the prior proceeding to terminate AWA 41-B-0159, Kathy Bauck admitted (1) that she was the defendant in these two criminal prosecutions by the state of Minnesota and (2) that she does business as "Pick of the Litter". (Answer ¶¶ 4, 12, filed in Kathy Bauck, AWA No. D-09-0139 (filed July 16, 2009)).<sup>10</sup>

As the documents from the Minnesota Secretary of State clearly demonstrate, Allan Bauck was an incorporator and officer of Pick of the Litter (a/k/a "Puppies on Wheels" and "Puppy's on Wheels") and, moreover, that Pine Lake Enterprises is nothing more than the new name for the entity previously known as Puppy's on Wheels, Inc. (Exhs. 2-7; Exhs. C, E, G.) Thus, petitioner can hardly dispute that Allan Bauck, Kathy Bauck, Pine Lake Enterprises, Pick of the Litter, Puppies on Wheels and Puppy's on Wheels are all one in the same. These (as well as other monikers) are all fungible names for the same enterprise that the state of Minnesota determined to be operating in a criminal matter and, as such, issuing an AWA license to any one of these individuals or entities is no different than issuing a license to any and all of them. In addition, even if somehow today Kathy Bauck were to be completely removed from and have no part in Pine Lake a/k/a "Pick of the Litter", "Puppies on Wheels" and "Puppy's on Wheels", the termination of AWA 41-B-0159 extends to Pine Lake's other directors, officers, and agents, and is in no way limited to just Kathy Bauck. See generally In re Amarillo Wildlife Refuge, Inc., 68

<sup>10</sup> See supra, at p. 5 r. 7.

Agric. Dec. \_\_ \_\_, \_\_\_\_, 2009 WL 248415, at \*7 (U.S.D.A. Jan. 6, 2009) (opinion of Judicial Officer) (“Granting Amarillo Wildlife’s request to limit the disqualification order to Amarillo Wildlife and Mr. Azzopardi would enable Amarillo Wildlife to circumvent the disqualification order through its other directors, officers, and agents.”).

Therefore, APHIS properly denied the application for license submitted by Pine Lake because issuing a license to Pine Lake (or Allan Bauck) would be no different than issuing a license to Kathy Bauck (see, e.g., Exhs. 2-7, Exhs. E, C, G, F), and the regulations specifically permit the denial of a license when the issuance of a licensee would circumvent any order suspending, revoking, terminating or denying a license under the AWA. 9 C.F.R. § 2.11(d). Indeed, in the previous application for an AWA license submitted by Allan Bauck, he admitted that Allan Bauck is the same as Kathy Bauck. (See Exh. F at pp. 2-3; see also, e.g., Exh. E) To permit Pine Lake, or Alan Bauck, to obtain an AWA license would defy logic and common sense and would also ignore completely the criminal manner in which Kathy Bauck was convicted of running this AV A-licensed kennel, and would thus entirely undermine the State of Minnesota’s criminal prosecution and conviction of her (and not to mention the Secretary’s decision in AWA D-09-0139). Moreover, insuring the “humane care and treatment” of animals is one of the hallmark purposes of the Act (7 U.S.C. § 2131) and animal torture (or cruelty) at an AWA-licensed facility is wholly (and clearly) inconsistent with this fundamental purpose of the Act. As a result, an individual such as Kathy Bauck who has been convicted of animal torture (or cruelty) should not be granted a new AWA license under new a moniker, nor should an officer of Pick of the Litter escape responsibility for the criminal manner in which the Pick of the Litter kennel operated. (See Amarillo Wildlife, 68 Agric. Dec. \_\_\_\_, 2009 WL 248415; cf. 7 U.S.C. §

2139; 9 C.F.R. § 2.9; In re Lion's Gate Center, LLC, AWA No. D-09-0069 (initial decision and order filed Jan. 6, 2010).)

The chicanery on display here is neither original nor difficult to understand. Indeed, is remarkably similar to the facts described in Amarillo Wildlife, a case in which the Judicial Officer made clear that “[t]he regulations provide that no license shall be issued under circumstances that circumvent an order terminating an Animal Welfare Act license.” Amarillo Wildlife, 68 Agric. Dec. at \_\_\_, 2009 WL 248415, at \*7. In Amarillo Wildlife, the respondent’s president, director and agent, Carmel Azzopardi, was convicted of violating the Endangered Species Act. Id. at \_\_\_; 2009 WL 248415, at \*1. During the proceeding to terminate respondent’s AWA license, respondent, Amarillo Wildlife Refuge, Inc. (“Amarillo Wildlife”) had argued (1) that Mr. Azzopardi had resigned from Amarillo Wildlife and (2) that Amarillo Wildlife had “closed” and a new corporation that had been formed, Texas Wildlife Center, Inc., which it argued was entitled to obtain an AWA license. Id. at \_\_\_; 2009 WL 248415, at \*7. In response, the Judicial Officer found Mr. Azzopardi’s purported resignation irrelevant, as the basis for Amarillo Wildlife’s disqualification is Mr. Azzopardi relationship to it at the time of his criminal activity and conviction, and thus respondent’s “assertion regarding Mr. Azzopardi’s resignation . . . is not relevant to the instant proceeding.” Id. Additionally, the Judicial Officer rejected respondent’s contention that the corporation (Amarillo Wildlife) had closed and that Texas Wildlife Center, Inc. was a new entity. Instead, the Judicial Officer found that the corporate records “believe Amarillo Wildlife’s assertion that it is closed” and instead found that “Amarillo Wildlife ‘simply changed the name’ to Texas Wildlife Center, Inc.” Id. Importantly, the Judicial Officer, expressly rejected Amarillo Wildlife’s argument that “no sanction may be imposed on its directors, officers, and agents, other than Mr. Azzopardi . . . [since] [g]ranting



Amarillo Wildlife's request to limit the disqualification order to Amarillo Wildlife and Mr. Azzopardi would enable Amarillo Wildlife to circumvent the disqualification order through its other directors, officers, and agent." Id.

What the Judicial Officer described (and expressly rejected) in Amarillo Wildlife is, almost to a T, what Allan Bauck, Pine Lake, is attempting to do here. To limit the disqualification to just Kathy Bauck and Pick of the Litter would enable Kathy Bauck and Pick of the Litter<sup>11</sup> to circumvent the disqualification order through its other directors, officers and agents. For example, it is undisputed that Allan Bauck served as an incorporator of Pick of the Litter and as its vice-president. (Exhs. 3, G; see also Exhs. 2, C, E, F.) As evidenced by the letterhead they used, both Allan Bauck and Kathy Bauck are principals of the dog kennel Kathy Bauck was found to have been operating in a criminal manner. (Exh. E.) Finally, Pine Lake is nothing more than the new name for the entity previously known as Puppy's on Wheels a/k/a "Puppies on Wheels" and "Pick of the Litter". (Exh. 7.) The only difference between what happened in Amarillo Wildlife and what Pine Lake, Kathy Bauck and Allan Bauck are attempting here is that none of them is attempting to claim, as was done in Amarillo Wildlife, that Kathy Bauck has "resigned" from Pine Lake (which, as the Judicial Officer held, would be irrelevant).

Indeed, petitioner does not (and most likely cannot) argue that because what is really occurring is Kathy Bauck is trying to shield her activities, so as to escape her license termination and disqualification, behind the latest moniker of her husband's name and behind the paltry subterfuge of "Pine Lake Enterprises", using, amongst other things, the exact same address, phone number and corporate charter number as before, and doing little more than filing an amendment to the business she and Allan Bauck started to change its name to Pine Lake

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<sup>11</sup> Also known as "Puppies on Wheels" and "Puppy's on Wheels" and a/k/a "Pine Lake Enterprises".

Enterprises. The inartful chicanery on display here is no different than when, in August 2008, Kathy Bauck tried to shield her activities by changing her business name from "Pick of the Litter" to "Puppy's on Wheels," the latter a name that Kathy Bauck expressly denies using (see Answer ¶ 11, filed in AWA No. D-09-0139), notwithstanding correspondence signed by her indicating exactly the opposite (see, e.g., Exh. E). Specifically, in July 2008, the State of Minnesota filed its original complaint and summons and finding of probable cause in State of Minnesota v. Bauck, 56-CR-08-2271 (see Order to Show Cause ¶ 4) and initiated its revocation of the stayed sentence in State of Minnesota v. Bauck, 56-CR-08-1131 (See Exh. 9 (revocation filed July 30, 2008 with hearing August 11, 2008) and then one month later, Kathy Bauck changed her business name from Pick of the Litter to Puppy's on Wheels. (See Exh. 5-6; see also Exh. E.) Just like Kathy Bauck tried to change her business name in August 2008, one month after the original complaint was filed in the "2271" case,<sup>12</sup> here, Kathy Bauck initiated this attempt to change her business name in July 2009 (see Exh. E), one month after the order to show cause was filed in AWA No. D-09-0139 (June 2009).

Thus, there can hardly be any dispute that APHIS properly denied the application for an AWA license submitted by Allan Bauck, on behalf of Pine Lake, as it was nothing more than an impermissible attempt to circumvent Kathy Bauck's license termination. See 9 C.F.R. § 2.11(d). Accordingly, summary judgment should be granted and a decision and order should be issued denying the application for an Animal Welfare Act license submitted by Pine Lake

<sup>12</sup> The amended complaint that was filed in the "2271" case was attachment D to the Order to Show Cause ("OSC") in AWA No. D-09-0139. The original complaint in the "2271" case was not attached to the OSC, but was referenced paragraph 4 of the OSC and in paragraph 7 of the answer filed to the OSC.

Enterprises, Inc., Allan R. Bauck and finding that petitioner and Allan R. Bauck are unfit to be licensed and are disqualified from obtaining an AWA license.<sup>13</sup>

**III. Allan Bauck is additionally unfit to be licensed because he has been engaged in the unlicensed sale of hundreds of dogs.**

The mere fact that Allan Bauck and Kathy Bauck would attempt to deceive APHIS and the United States Department of Agriculture by submitting an application for license using nothing more than a new fictitious name for their criminally-convicted business enterprise is reason enough to deny the application for license submitted by Pine Lake and to order that Kathy Bauck, Allan Bauck and any president, director, officer, agents and owners of any entity in which either or both of them may have a substantial interest (such as, but not limited to, Pine Lake, Puppy's on Wheels, Puppies on Wheels, and Pick of the Litter) be disqualified from obtaining an AWA license, if not permanently. However, here, their actions warrant special scrutiny and action since, amongst other things, Allan Bauck, for well over a year, has been selling, in his own name, hundreds of dogs for resale use as pets or breeding purposes, without being licensed, in a willful violation of the AWA and the AWA regulations. (See Exhs. H-M)

The only way in which Allan Bauck can escape responsibility for the sales that are described below is to argue that they were sales made under AWA license number 41-B-0159, issued to "KATHY BAUCK" -- in which case, if these are really sales by Kathy Bauck, and not Allan Bauck, then the fact that Allan Bauck has been listed as the "owner" in attached certificates of veterinary inspection ("CVIs") submitted to the Minnesota Board of Animal Health (see Exhs. H-M) serves: (1) as further evidence that the application for license submitted by Allan Bauck on behalf of Pine Lake is nothing more than an attempt to circumvent Kathy Bauck's license termination, as Allan Bauck and Kathy Bauck must therefore be one in the same,

<sup>13</sup> Indeed, to the extent Pine Lake is just Puppy's on Wheels with a new name, petitioner has already been found unfit by the Secretary. See Kathy Jo Bauck, 68 Agric. Dec. \_\_\_\_, 2009 WL 4838286.

operating a common enterprise; and (2) puts into question the veracity of the information and records Allan Bauck (as well as Kathy Bauck) are providing to the Minnesota Board of Animal Health.<sup>14</sup> These are either (1) sales by Allan Bauck, in which case they occurred without him being licensed and further demonstrate that he is unfit to be licensed, or (2) these are sales by Kathy Bauck, in which case (a) Kathy Bauck and Allan Bauck are one in the same and the application for an AWA license submitted by Allan Bauck is an attempt to circumvent her license termination and (b) they have been providing false or fraudulent records to the State of Minnesota, both of which are separate bases under 9 C.F.R. §§ 2.11(a)(6) and 2.11(d) for denying the application for license.

Here, in looking at only the four-month period, from August until November 2009, surrounding the application for license submitted by Allan Bauck on behalf of Pine Lakes, Allan Bauck sold, in commerce, no fewer than three hundred fifty-nine (359) dogs, for resale use as pets or breeding purposes, in willful violation of section 2134 of the Act and section 2.1(a)(1) of the Regulations. 7 U.S.C. § 2134, 9 C.F.R. § 2.1(a)(1). Specifically, attached hereto as exhibits H through M are 36 certificates of veterinary inspection (“CVIs”) submitted in the name of Allan Bauck to the Minnesota Board of Animal Health demonstrating that a sale took place (see box 8 “reason for movement”) from Allan Bauck (see boxes 1-2 “owner/cosignor”) to various buyers in the Midwest and on the East coast (see boxes 5-7 “consignee” and

<sup>14</sup> AWA license number 41-B-0159 was issued to Kathy Bauck and thus, assuming arguendo, if these sales occurred under the auspices of that license, then the CVIs submitted to the Minnesota Board of Animal Health (as well as the copies that accompany the shipment and go to the veterinarian) should bare the same name as that of the licensee, not some fictitious name or name belonging to a third-party. As the Judicial Officer explained, one of the reasons why “the failure to obtain an Animal Welfare Act license before operating as a dealer is a serious violation” of the AWA is because enforcement of the Act and regulations “depends upon the identification of persons operating as dealers”. Wayne Shaffer, 60 Agric. Dec. at 478, 2001 WL 1143410, at \*23. Accordingly, providing a name other than that of the licensee on these CVI clearly frustrates APHIS’s ability to enforce the Act and identify persons operating as dealers. The same holds true for anyone else who might need to rely on those CVIs to identify persons operating as dealers (for example, if a communicable disease was discovered on the truck during its interstate shipment, it would not be unreasonable for federal, state and/or local officials to expect the copy of the CVI that accompanies the shipment to contain the proper name of the individual or entity to whom the AWA license has been issued, so as to properly, and efficiently, track any other contemporaneous shipments by that licensee).

“destination”). In looking solely at this four-month period, in August 2009, Allan Bauck sold ninety-one (91) dogs before submitting, on September 9, 2009, his application for an AWA license on behalf of Pine Lake,<sup>15</sup> and then, from September 12, 2009 [a mere two days after submitting his application for license] through November 2009, continued to sell an additional two hundred sixty-eight (268) dogs,<sup>16</sup> even though, as his application for license demonstrates, he was clearly aware of the licensing requires under the Act and regulations. (See Exh. A, F, Exh. 8, Exhs. H-M.) All of these 359 sales are in Allan Bauck’s name and were made to pet stores (see Exh. B)<sup>17</sup> or to AWA licensed facilities (see Exh. I).

The evidence here establishes that these are unlicensed sales by Allan Bauck<sup>18</sup> and thus further demonstrate that he is unfit to be licensed and that summary judgment should be granted and a decision and order issued denying the application submitted by Allan Bauck on behalf of Pine Lake and disqualifying both from obtaining an AWA license.

It is well-established that an AWA license is required of anyone operating or intending to operate as a dealer. Specifically, section 2.1 of the regulations requires “[a]ny person operating or intending to operate as a dealer . . . must have a valid license”. 9 C.F.R. § 2.1(a)(1).<sup>19</sup> It is also well-established that engaging in the sale of regulated animals without a license is a serious violation, as it undercuts the Secretary’s ability to ensure that animals

<sup>15</sup> See Exhibits H and I (certificate numbers 1346168 through 1346176 (Exhibit H); 1330782, 1330783 and 1330785 through 1330787 (Exhibit I)).

<sup>16</sup> See Exhibits J, K, L, and M (certificate numbers 1330784, 1346062 through 1346064, 1346120, 1346121 (Exhibit J); 1346056 through 1346060 (Exhibit K); 1346070 through 1346075 (Exhibit L); 1346094 through 1346098 (Exhibit M)).

<sup>17</sup> Because of the federal holidays in December and January, it was not possible to submit this exhibit (Exhibit 8) by January 11, 2010. Exhibit 8 is a declaration by an APHIS official authenticating Exhibits H through M [assuming that they are not self-authenticating] and identifying the purchasers identified in such exhibits. APHIS intends to supplement this motion for summary judgment by filing the aforementioned declaration by the end of this week.

<sup>18</sup> See, e.g., Exh. A, Exhs. H-M. If desired, APHIS can provide additional evidence and/or argument in support of its position regarding this issue.

<sup>19</sup> Dealer is defined to include “any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of: Any dog . . . for research, teaching, testing, experimentation, exhibition, or for use as a pet; or any dog at the wholesale level for hunting, security, or breeding purposes”.

intended for use in commerce “are provided humane care and treatment” and risks the health and well-being of such animals. See 7 U.S.C. § 2131; In re: J. Wayne Shaffer et al., 60 Agric. Dec. 444, 478, 2001 WL 1143410, at \*23 (U.S.D.A. Sept. 26, 2001) (opinion of Judicial Officer) (“[T]he failure to obtain an Animal Welfare Act license before operating as a dealer is a serious violation because enforcement of the Animal Welfare Act and the Regulations and Standards depends upon the identification of persons operating as dealers.”).

The sale of each dog constitutes a separate violation (7 U.S.C. § 2149(b)) and thus, in just this four-month period alone, Allan Bauck committed no fewer than three hundred fifty-nine (359) violations. As such, Allan Bauck has been violating the Act and regulations in blatant fashion and is, for this additional reason, unfit to be licensed. Indeed, the sheer number and brazen nature of these sales warrants a substantial, if not permanent, disqualification for Allan Bauck, and any person doing business with him, or any president, director, officer, agent or owner of any legal entity in which he has a substantial interest.

Even if these transactions were somehow not viewed as unlicensed sales by Allan Bauck, there can be dispute that the CVIs establish that Allan Bauck is either trying to circumvent Kathi Bauck’s license termination or that he is selling dogs in his own name without being licensed to do so, or both. Either way, these sales demonstrate that petition and he are unfit to be licensed and that summary judgment should be granted and a decision and order issued denying the application submitted by Allan Bauck on behalf of Pine Lake and disqualifying both from obtaining an AWA license.

### Conclusion

For the foregoing reasons, APHIS’s motion for summary judgment should be granted and a judgment and order should be issued denying the application for an AWA license

and disqualify petitioner, Allan Bauck, Kathy Bauck, and any and all entities in which they have operated under and/or in which they have a substantial interest from obtaining an Animal Welfare Act, pursuant to sections 2133 and 2151 of the Act and sections 2.11 and 2.12 of the regulations. 7 U.S.C. §§ 2133, 2151; 9 C.F.R. §§ 2.11, 2.12.

January 11, 2010

Respectfully submitted,



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