

COMMONWEALTH OF PENNSYLVANIA	:	IN THE COURT OF COMMON PLEAS
DEPARTMENT OF AGRICULTURE	:	TIOGA COUNTY
	:	
Respondent/Plaintiff	:	
	:	
v.	:	NO. 1 CV 2009
	:	
SCOTT FAY, EUGENE MOSHER,	:	CIVIL ACTION - EQUITY
CONNIE ADAMS, TAMMY LONG	:	
	:	
Petitioners/Defendants	:	

ANSWER TO PETITIONER SCOTT FAY’S PETITION FOR CONTEMPT AND REQUEST FOR INJUNCTIVE RELIEF AND RESPONDENT DEPARTMENT OF AGRICULTURE’S PETITION FOR CONTEMPT AND REQUEST FOR SANCTIONS

AND NOW, comes the Respondent/Plaintiff, Commonwealth of Pennsylvania, Department of Agriculture (hereinafter “the Department”), by and through its legal counsel, David C. McKenzie III, Esquire, and files the within 1) Answer to Petitioner Scott Fay’s Petition for Contempt and Request for Injunctive Relief and 2) Department’s Petition for Contempt and Request for Sanctions, setting forth as follows:

ANSWER TO PETITIONER SCOTT FAY’S PETITION FOR CONTEMPT AND REQUEST FOR INJUNCTIVE RELIEF AND

1. The averments contained in paragraph No. 1 of the Petition for Contempt are admitted. A true and correct copy of the Settlement Agreement is attached hereto, incorporated herein, and marked as Exhibit “A.”
2. The averments contained in paragraph No. 2 of the Petition for Contempt are admitted.

3. The averments contained in paragraph No. 3 of the Petition for Contempt are admitted.

4. The averments contained in paragraph No. 4 of the Petition for Contempt are admitted in part and denied in part. By way of further answer, Petitioner's averments lack the candor due this Honorable Court. Moreover, Petitioner's lack of candor in the averments of paragraph No. 4 is the linchpin to his Petition for Contempt. On March 26, 2009, Petitioner's counsel informed Department's counsel that Petitioner possessed approximately ten (10) dogs that still needed to be "placed", i.e. transferred from Petitioner's possession. Petitioner's counsel requested an extension of the ninety (90) day deadline to effectuate the transferring of the remaining dogs. Contrary to Petitioner's averments in paragraph No. 4, his counsel did not merely request an extension of the deadline by which he was required to transfer all dogs in his possession in excess of five (5). Rather, Petitioner's counsel represented to the Department that Petitioner would have all excess dogs transferred as of the expiration of the extended deadline. Petitioner conveniently leaves this crucial fact out, for with it, his petition fails. The Department granted a three (3) week extension.¹ Furthermore, intuitively there could be no other rationale for the extension of the deadline. The Department would have no cause to grant an extension of the deadline based upon a representation by Petitioner's counsel, or in any other form, that even after the extension Petitioner would still be in possession of excess dogs.² Despite his counsel's representation that Petitioner would transfer all excess dogs by the expiration of the requested extended deadline, and the Department's

¹ It is undisputed that an extension of the ninety (90) day deadline was granted. See paragraphs No. 5 and No. 15 of the Petition for Contempt.

² If Petitioner avers that there was no representation he would be divested of all excess dogs by the expiration of the extended deadline, then it must necessarily be true that at the time of his request for the extension he never intended to comply with the Settlement Agreement.

granting of an extension for that very purpose, Petitioner strategically chose not to inform the Department about his failure to effectuate the transfer of his excess dog by the extended deadline. For had Petitioner informed the Department of his failure, as he does now by the averments of his Petition for Contempt, he would have confirmed his violation of provisions 1, 1(a), 1(g), and 1(h) of the Settlement Agreement and held himself open to a Petition for Contempt filed by the Department. Instead, Petitioner lay silent until an investigation by state dog wardens, conducted on July 10, 2009, nearly three (3) months after which Petitioner was to be in possession of no more than five (5) dogs, revealed thirty-four (34) dogs in his possession. Only after being caught-in-the-act did Petitioner allege to the Department that he was merely waiting those many months for it to “approve the transfer” of his excess dogs, despite there being no such language in the Settlement Agreement. Incredibly, Petitioner now comes before this Honorable Court alleging contempt by the Department for failing to “approve the transfer” of thirty-four (34) dogs he intentionally and successfully kept hidden from the Department for three (3) months.³ Accordingly, Petitioner’s conduct in the filing of the instant Petition for Contempt is a violation of Pa.R.C.P 1023.1(c) as well as 3.1 and 3.3 of Pa.R.Prof.Conduct as it is improper, arbitrary, vexatious, frivolous, lacking in candor, and done so in bad faith in an attempt to legitimize Petitioner’s own violations of the Settlement Agreement, Dog Law, and Rabies Prevention and Control in Domestic Animals and Wildlife Act.

5. The averments contained in paragraph No. 5 of the Petition for Contempt are admitted in part and denied in part. On March 26, 2009, Petitioner’s counsel

³ Petitioner necessarily insists, therefore, that the Department should have been omniscient, able to guess that Petitioner failed to transfer those excess dogs his counsel represented he would.

informed Department's counsel that Petitioner possessed approximately ten (10) dogs that still needed to be "placed", i.e. transferred from Petitioner's possession. Petitioner's counsel requested an extension of the ninety (90) day deadline to effectuate the transferring of the remaining dogs. Petitioner's counsel represented to the Department that Petitioner would have all excess dogs transferred as of the expiration of the extended deadline. The Department granted a three (3) week extension. As such, the ninety (90) day time period identified in section 1(g) of the Settlement Agreement was extended by twenty-one (21) days, making April 20, 2009, the date by which Petitioner was to be in possession of no more than five (5) dogs.

6. The averments contained in paragraph No. 6 of the Petition for Contempt are denied. Petitioner misstates provision 1(h) of the Settlement Agreement and, in so doing, misrepresents the obligation placed upon him by the Settlement Agreement. Per the plain language of provision 1(h) of the Settlement Agreement, any dog that remained in Petitioner's possession after the expiration of ninety (90) days, which due to the Department's granting of the extension was extended to one hundred and eleven (111) days, was to be "transferred [by Petitioner] without compensation to a Humane Society or nonprofit kennel approved by the Department." The Department need not "approve the transfer" of any excess dogs. Rather, the transfer of dogs by Petitioner was to be to a Humane Society or nonprofit kennel "approved by the Department." There is a significant distinction between the two that escapes Petitioner. That distinction is illustrated by the following italicized hypothetical/example: *After the expiration of the extended deadline, Petitioner remains in possession of excess dogs. Petitioner does not seek the Department's approval to transfer the excess dogs. As such, the Department*

does not approve the transfer of the excess dogs. Petitioner transfers (without compensation) his dogs to a Humane Society or nonprofit kennel that, unbeknownst to Petitioner, is nevertheless “approved by the Department.” The result: Despite neither seeking nor obtaining “approval of the transfer,” Petitioner’s transfer is in complete compliance with the conditions of the Settlement Agreement because the only requirement placed upon him by provision 1(h) is that the transfer be to a Humane Society or nonprofit kennel that is “approved by the Department. The Settlement Agreement, specifically provisions 1(g) and 1(h), places the onus of transfer on Petitioner. Upon the expiration of the extended deadline, pursuant to 1(h), Petitioner had the obligation to transfer, without compensation, all dogs in his possession over five (5) to a Human Society or nonprofit kennel approved by the Department,. If Petitioner did not know what Humane Society or nonprofit kennel was “approved”, as he claimed three months after the fact, his recourse was not, as he did, to sit idly by failing to perform the obligations he agreed be imposed upon him by the Settlement Agreement. Petitioner’s error does not equate to contempt by the Department.

7. See Department’s answer to paragraph No. 6 of the Petition for Contempt. By way of further answer, Petitioner’s averments lack the candor due this Honorable Court. On March 26, 2009, Petitioner’s counsel informed Department’s counsel that Petitioner possessed approximately ten (10) dogs that still needed to be “placed”, i.e. transferred from Petitioner’s possession. Petitioner’s counsel requested an extension of the ninety (90) day deadline to effectuate the transferring of the remaining dogs. Petitioner’s counsel represented to the Department that Petitioner would have all excess dogs transferred as of the expiration of the extended deadline. The Department granted a

three (3) week extension. Despite his counsel's representation that Petitioner would transfer all excess dogs by the expiration of the extended deadline, and the Department's granting of an extension for that very purpose, Petitioner strategically chose not to inform the Department of his failure to effectuate the transfer of his excess dog by the extended deadline. For had Petitioner informed the Department of said failure, as he does now by the averments of his Petition for Contempt, he would have confirmed his violation of provisions 1, 1(a), 1(g), 1(h) of the Settlement Agreement and held himself open to a Petition for Contempt filed by the Department. Instead, Petitioner lay silent until an investigation by state dog wardens, conducted on July 10, 2009, nearly three months after which Petitioner was to be in possession of no more than five (5) dogs, revealed thirty-four (34) dogs in his possession. Only after being caught-in-the-act did Petitioner allege to the Department that he was merely waiting those many months for it to "approve the transfer" of his excess dogs, despite there being no such language in the Settlement Agreement. Incredibly, Petitioner now comes before this Honorable Court alleging contempt by the Department for failing to "approve the transfer" of thirty-four (34) dogs he intentionally and successfully kept hidden from the Department for three (3) months. Accordingly, Petitioner's conduct in the filing of the instant Petition for Contempt is a violation of Pa.R.C.P 1023.1(c) as well as 3.1 and 3.3 of Pa.R.Prof.Conduct as it is improper, arbitrary, vexatious, frivolous, lacking in candor, and done so in bad faith in an attempt to legitimize Petitioner's own violations of the Settlement Agreement, Dog Law, and Rabies Prevention and Control in Domestic Animals and Wildlife Act.

8. See Department's answer to paragraph No. 6 of the Petition for Contempt. By way of further answer, Petitioner never sought transfer of the dogs in excess of five

(5) that remained in his possession as of the expiration of the extended deadline. Instead, Petitioner lay silent until an investigation by state dog wardens, conducted on July 10, 2009, nearly three months after which Petitioner was to be in possession of no more than five (5) dogs, revealed thirty-four (34) dogs in his possession. Only after being caught in the act did Petitioner allege to the Department that he was merely waiting those many months for it to “approve the transfer” of his excess dogs, despite there being no such language in the Settlement Agreement.

9. The averments contained in paragraph No. 9 of the Petition for Contempt are admitted.

10. The averments contained in paragraph No. 10 of the Petition for Contempt are admitted in part. By way of further answer, the summary citations filed by the Department involve alleged violations of the Dog Law as well as the Rabies Prevention and Control in Domestic Animals and Wildlife Act.

11. The averments contained in paragraph No. 11 of the Petition for Contempt are denied. By way of further answer, see Department’s answer to paragraph No. 6 of the Petition for Contempt. Furthermore, to the contrary, it is Petitioner’s admitted actions, i.e. his possession of more than five (5) dogs subsequent to the expiration of the extended deadline, that are in direct violation of the Settlement Agreement.

12. The averments contained in paragraph No. 12 of the Petition for Contempt are denied. Petitioner’s averments lack the candor due this Honorable Court. The notice that Petitioner’s counsel in fact supplied was that Petitioner would transfer all dogs in his possession in excess of five (5) by the extended deadline. On March 26, 2009, Petitioner’s counsel informed Department’s counsel that Petitioner possessed

approximately ten (10) dogs that still needed to be “placed”, i.e. transferred from Petitioner’s possession. Petitioner’s counsel requested an extension of the ninety (90) day deadline to effectuate the transferring of the remaining dogs. Petitioner’s counsel represented to the Department that Petitioner would have all excess dogs transferred as of the expiration of the extended deadline. The Department granted a three (3) week extension. Despite his counsel’s representation that Petitioner would transfer all excess dogs by the expiration of the extended deadline, and the Department’s granting of an extension for that very purpose, Petitioner strategically chose not to inform the Department of his failure to effectuate the transfer of his excess dog by the extended deadline. For had Petitioner informed the Department of the failure, as he does now by the averments of his Petition for Contempt, he would have confirmed his violation of provisions 1, 1(a), 1(g), and 1(h) of the Settlement Agreement and held himself open to a Petition for Contempt filed by the Department. Instead, Petitioner lay silent until an investigation by state dog wardens, conducted on July 10, 2009, nearly three months after which Petitioner was to be in possession of no more than five (5) dogs, revealed thirty-four (34) dogs in his possession. Only after being caught-in-the-act did Petitioner allege to the Department that he was merely waiting those many months for it to “approve the transfer” of his excess dogs, despite there being no such language in the Settlement Agreement. Incredibly, Petitioner now comes before this Honorable Court alleging contempt by the Department for failing to “approve the transfer” of thirty-four (34) dogs he intentionally and successfully kept hidden from the Department for three (3) months. Accordingly, Petitioner’s conduct in the filing of the instant Petition for Contempt is a violation of Pa.R.C.P 1023.1(c) as well as 3.1 and 3.3 of Pa.R.Prof.Conduct as it is

improper, arbitrary, vexatious, frivolous, lacking in candor, and done so in bad faith in an attempt to legitimize Petitioner's own violations of the Settlement Agreement, Dog Law, and Rabies Prevention and Control in Domestic Animals and Wildlife Act. By way of further answer, Furthermore, the Settlement Agreement did not contemplate the Department taking possession of any of the excess dogs ultimately transferred on July 23, 2009. However, on July 13, 2009, Petitioner's counsel requested "authorization" or for the Department to remove the excess dogs so that Petitioner would be in compliance with the Settlement Agreement. No longer able to trust Petitioner to effectuate the transfer of excess dogs, and given the representation of Petitioner's counsel, the Department effectuated the transfer of excess dogs on July 23, 2009.

13. The averments contained in paragraph No. 13 of the Petition for Contempt are denied. By way of further answer, see Department's answer to paragraph No. 11 of the Petition for Contempt.

14. The averments contained in paragraph No. 14 of the Petition for Contempt are denied. Petitioner's claimed excuse for possessing more than five (5) dogs after the expiration of the extended deadline in no way alleviates the responsibilities placed upon him by Dog Law and the Rabies Prevention and Control in Domestic Animals and Wildlife Act. For example, assuming *arguendo* that Petitioner had more than five (5) dogs in his possession after the expiration of the extended deadline because he was unable to transfer them absent the Department's "approval," the Dog Law nevertheless requires that any dog owned, kept, harbored, within Petitioner's care, or permitted to remain on or about a premises occupied by Petitioner, be licensed. By way of further example, the Rabies Prevention and Control in Domestic Animals and Wildlife Act, and

its promulgated regulations, require any dog over three months of age owned or kept by Petitioner be vaccinated from rabies and that upon request for proof of same, Petitioner provide said proof within 48 hours of the request. As such, Petitioner's unfounded allegations of contempt against the Department are no defense to the citations filed against him, and, respectfully, the stay of those citations should be lifted. The Department's filing of citations based upon Petitioner's violations of the Dog Law and the Rabies Prevention and Control in Domestic Animals and Wildlife Act is well within the discretion afforded it by the law of this Commonwealth.

15. The averments contained in paragraph No. 15 of the Petition for Contempt are denied. By way of further answer, see Department's answer to paragraph No. 6 of the Petition for Contempt. Furthermore, to the contrary, it is Petitioner, by admittedly possessing more than five (5) dogs subsequent to the expiration of the extended deadline, which has clearly violated the Settlement Agreement.

16. The averments contained in paragraph No. 16 of the Petition for Contempt are admitted in part. By way of further answer, at the time of filing of the Petition for Contempt the non-traffic citations were scheduled for hearing before the Honorable James E. Carlson on September 30, 2009. As a result of the temporary injunctive relief requested in the petition, and subsequently granted by this Honorable Court, the hearing for those citations was continued to a date uncertain.

17. The averments contained in paragraph 17 of the Petition for Contempt constitute a request for temporary injunctive relief, which, as of the filing of the Department's answer to the Petition for Contempt, has been granted by this Honorable Court thereby requiring no response by the Department. In the event this Honorable

Court deems a response necessary, the averments contained in paragraph 17 of the Petition for Contempt are denied.

18. The averments contained in paragraph No. 18 of the Petition for Contempt are denied. By way of further answer, any counsel fees incurred by Petitioner are a direct result of Petitioner's improper, arbitrary, vexatious, frivolous, lacking in candor, bad faith attempt to legitimize Petitioner's own violations of the Settlement Agreement, Dog Law, and Rabies Prevention and Control in Domestic Animals and Wildlife Act.

19. The averments contained in paragraph No. 19 of the Petition for Contempt are denied. The Settlement Agreement placed no burden on the Department to remove the excess dogs of Petitioner's after the expiration of the extended deadline. Petitioner acknowledges this very fact throughout his Petition for Contempt where he affirms, albeit while mistakenly assuming he required "approval to transfer" the excess dogs, his obligation to transfer the excess dogs subsequent to the expiration of the extended deadline.⁴ By way of further answer, assuming *arguendo* that the Department was to either "approve the transfer" of dogs in excess of five (5) that remained in Petitioner's possession subsequent to the expiration of the extended deadline, or take possession of those dogs, any expenses incurred by Petitioner as a result of caring for and providing for the dogs during that time are the result of Petitioner's own failure to adhere to provision 1(g) of the Settlement Agreement. In other words, had Petitioner transferred the excess dogs prior to the expiration of the extended deadline as he agreed via the Settlement Agreement, there would have been no excess dogs for which he would have incurred alleged substantial expense. By way of still further answer, if Petitioner was aggrieved by having to care for excess dogs he failed to transfer by the deadline, then he was under

⁴ See Petition for Contempt, paragraphs No.6, No. 7, No. 8, and No. 11.

an obligation to limit his alleged damages. However, to do so Petitioner would have had to inform the Department of his violations of provisions 1, 1(a), 1(g), and 1(h) of the Settlement Agreement and hold himself open to a Petition for Contempt filed by the Department.

20. The averments contained in paragraph No. 20 of the Petition for Contempt are denied. Upon review of the plain language of provision 1(h), it is readily apparent that the Department did not violate the Settlement Agreement. Throughout the Petition for Contempt, Petitioner not once refers to the actual language of provision 1(h) of Settlement Agreement, instead choosing to aver his interpretation of same, although it is the language of this provision upon which he bases his Petition for Contempt against the Department. By way of further answer, despite his counsel's representation that Petitioner would transfer all excess dogs by the expiration of the requested extended deadline, and the Department's granting of an extension for that very purpose, Petitioner strategically chose not to inform the Department of his failure to effectuate the transfer of his excess dogs by the extended deadline. Incredibly, Petitioner now comes before this Honorable Court alleging contempt by the Department for failing to "approve the transfer" of thirty-four (34) dogs he intentionally and successfully kept hidden from the Department for three (3) months. As such, the sanctions warranted in the instant matter are those against Petitioner for his violation of Pa.R.C.P 1023.1(c) as well as 3.1 and 3.3 of Pa.R.Prof.Conduct as the Petition for Contempt is improper, arbitrary, vexatious, frivolous, lacking in candor, and done so in bad faith in an attempt to legitimize Petitioner's own violations of the Settlement Agreement, Dog Law, and Rabies Prevention and Control in Domestic Animals and Wildlife Act.

WHEREFORE, the Pennsylvania Department of Agriculture respectfully requests that this Court deny the Petitioner Scott Fay's Petition for Contempt and Request for Injunctive Relief, and lift the stay of all other actions or proceedings filed against Petitioner Scott Fay. Petitioner's allegations are unfounded inasmuch as provision 1(h) of the Settlement Agreement does not require the Department to "approve the transfer" of excess dogs after the expiration of the deadline. Assuming *arguendo* that it did, the Department could not "approve" excess dogs, the existence of which Petitioner chose to conceal.

NEW MATTER

**DEPARTMENT'S PETITION
FOR CONTEMPT AND REQUEST FOR SANCTIONS**

21. Department hereby incorporates paragraph 1-20 above as if the same were fully set forth herein at length.

22. Pursuant to the Settlement Agreement entered into by the parties on December 30, 2008, specifically provision 1(g), Petitioner had ninety (90) days from December 30, 2008, or until March 30, 2009, to transfer all the dogs he possessed in excess of five (5).

23. On March 26, 2009, Petitioner's counsel informed Department's counsel that Petitioner possessed approximately ten (10) dogs that still needed to be "placed", i.e. transferred from Petitioner's possession.

24. Petitioner's counsel requested an extension of the ninety (90) day deadline to effectuate the transferring of the remaining dogs.

25. An extension of the deadline was granted by the Department.

26. As a result of the extension, the new date by which Petitioner was to transfer all the dogs he possessed in excess of five (5) was mid-April.⁵

COUNT 1 – VIOLATION OF PROVISION 1(G) OF SETTLEMENT AGREEMENT

27. Department hereby incorporates paragraph 1-26 above as if the same were fully set forth herein at length.

28. As of the expiration of the extended deadline, Petitioner remained in possession of excess, i.e. more than five (5), dogs.⁶

WHEREFORE, Respondent Department of Agriculture respectfully requests that this Court find Petitioner Scott Fay in contempt of the Settlement Agreement and Order of this Court, specifically provision 1(g), for possessing more than five (5) dogs after the expiration of the deadline imposed by provision 1(g) and extended by the Department per the request of Petitioner's counsel, imposing those sanctions or penalties this Honorable Court deems just and appropriate.

COUNT 2 – VIOLATION OF PROVISION 1(A) OF SETTLEMENT AGREEMENT

29. Department hereby incorporates paragraph 1-28 above as if the same were fully set forth herein at length.

30. Pursuant to the Settlement Agreement entered into by the parties on December 30, 2008, specifically provision 1(a), Petitioner was to own, possess, harbor or control no more than a total of five (5) dogs.

⁵ See Petitioner Scott Fay's Petition for Contempt, paragraph No. 19.

⁶ See Petitioner Scott Fay's Petition for Contempt, paragraphs No. 7, No. 8, and No. 19.

31. As of the expiration of the extended deadline, Petitioner remained in possession of more than five (5), dogs.⁷

WHEREFORE, Respondent Department of Agriculture respectfully requests that this Court find Petitioner Scott Fay in contempt of the Settlement Agreement and Order of this Court, specifically provision 1(a), for possessing more than five (5) dogs after the expiration of the deadline imposed by provision 1(g), extended by the Department per the request of Petitioner's counsel, imposing those sanctions or penalties this Honorable Court deems just and appropriate.

COUNT 3 – VIOLATION OF PROVISION 1(G) OF SETTLEMENT AGREEMENT

32. Department hereby incorporates paragraph 1-31 above as if the same were fully set forth herein at length.

33. Pursuant to the Settlement Agreement entered into by the parties on December 30, 2008, specifically provision 1, Petitioner consented to a permanent injunction which enjoined him from operating a kennel as described by 3 P.S. § 459-206 in the Commonwealth without a valid license.

34. The Dog Law, 3 P.S. § 102, defines a "kennel" as any establishment in or though which at least 26 dogs are kept or transferred in a calendar year.

35. The Dog Law, 3 P.S. § 102, defines an "establishment" as:

1) The premises on, in or through which a dog is kept, bred, harbored, boarded, sheltered, maintained, sold, given away, exchanged or in any way transferred.

2) The term shall encompass all of the following on, in or through which any of the activities under paragraph (1) take place:

(i) The home, homestead, place of business or operation of a person, including a dealer, which includes all of the land, property,

⁷ See Petitioner Scott Fay's Petition for Contempt, paragraphs No. 7, No. 8, and No. 19.

housing facilities or any combination of land, property or housing facilities of the individual or person.

(ii) All of the persons residing in or on the establishment.

(iii) A person, organization, business or operation which utilizes offsite or rescue network kennel homes to keep, maintain, breed, train, transfer dogs.

(3) The term shall not include a gathering of dog owners where dogs remain in the custody and care of their owners, such as a hotel or campground, a place for grooming or training or an event such as a field trial, performance event, hunting event or dog show.

36. The Dog Law, 3 P.S. § 206, identifies a Kennel Class I kennel as a kennel in or through which a total of 50 dogs or less [but no less than 26 otherwise by definition it would not be a “kennel”] are kept or transferred in a calendar year.

37. As of the expiration of the extended deadline, Petitioner possessed thirty-four (34) dogs.

38. On July 10, 2009, Petitioner remained in possession of thirty-four (34) dogs.

39. Petitioner Scott Fay does not possess a kennel license issued by the Department.

WHEREFORE, Respondent Department of Agriculture respectfully requests that this Court find Petitioner Scott Fay in contempt of the Settlement Agreement and Order of this Court, specifically provision 1, for operating a kennel in this Commonwealth without a license, imposing those sanctions or penalties this Honorable Court deems just and appropriate.

COUNT 4 – VIOLATION OF PROVISION 1(H) OF SETTLEMENT AGREEMENT

40. Department hereby incorporates paragraph 1-39 above as if the same were fully set forth herein at length.

41. Provision 1(h) of the Settlement Agreement states, “At the expiration of ninety (90) days, any dog not permitted to be possessed by [Petitioner] under section 1.a) and 1.e) will be transferred without compensation to a Humane Society or nonprofit kennel approved by the Department.”

42. Pursuant to the Settlement Agreement entered into by the parties on December 30, 2008, specifically provision 1(a), Petitioner was to own, possess, harbor or control no more than a total of five (5) dogs.

43. At the expiration of ninety (90) days from the date of the Settlement Agreement, Petitioner remained in possession of more than five (5) dogs.

44. At the expiration of the extension of the ninety (90) days granted Petitioner by the Department, Petitioner remained in possession of more than five (5) dogs.

45. On July 10, 2009, Petitioner remained in possession of thirty-four (34) dogs.

WHEREFORE, Respondent Department of Agriculture respectfully requests that this Court find Petitioner Scott Fay in contempt of the Settlement Agreement and Order of this Court, specifically provision 1(h), for failing to transfer, without compensation, those dogs in his possession in excess of five (5) to a Humane Society or nonprofit kennel approved by the Department subsequent to the expiration of the ninety (90) day deadline,

which was extended by the Department per the request of Petitioner, imposing those sanctions or penalties this Honorable Court deems just and appropriate.

RESPECTFULLY SUBMITTED,

DAVID C. MCKENZIE III
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Pennsylvania Department of Agriculture
Office of Chief Counsel
Bureau of Dog Law Enforcement
2301 N. Cameron St., room 201
Harrisburg, PA 17110
(717) 787-8744

CERTIFICATE OF SERVICE

I, DAVID C. MCKENZIE III, Esquire, Assistant Counsel for the Respondent, the Commonwealth of Pennsylvania Department of Agriculture, hereby certifies that a true and correct copy of the within ANSWER TO PETITIONER SCOTT FAY'S PETITION FOR CONTEMPT AND REQUEST FOR INJUNCTIVE RELIEF AND RESPONDENT DEPARTMENT OF AGRICULTURE'S PETITION FOR CONTEMPT AND REQUEST FOR SANCTIONS, has been served on all counsel of record, by first class mail, postage pre-paid, according to the Pennsylvania Rules of Civil Procedure, on the 10th day of October 2009.

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COMMONWEALTH OF PENNSYLVANIA	:	IN THE COURT OF COMMON PLEAS
DEPARTMENT OF AGRICULTURE	:	TIOGA COUNTY
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Respondent/Plaintiff	:	
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v.	:	NO. 1 CV 2009
	:	
SCOTT FAY, EUGENE MOSHER,	:	CIVIL ACTION - EQUITY
CONNIE ADAMS, TAMMY LONG	:	
	:	
Petitioners/Defendants	:	

RULE TO SHOW CAUSE

AND NOW, this ____ day of _____, _____, upon consideration of the within Department's Petition for Contempt and Request for Sanctions, a Rule is hereby entered upon Scott Fay, to show cause, if any, why the relief requested in the Petition should not be granted. Said Rule is returnable on the ___ day of _____, 2009, at _____ o'clock ___m. in the main courtroom, Tioga County Court House 118 Main Street, Wellsboro, Pennsylvania. Scott Fay is warned that should he fail to appear, an Order granting the request relief may be entered in his absence.

BY THE COURT:

Hon. Robert E. Dalton, Jr., P.J.