

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ENVIGO RMS, LLC,

Defendant.

Case No. 6:22-00028-NKM

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION**

When federal agents and other law enforcement arrived at Envigo RMS's ("Envigo") Cumberland, Virginia beagle breeding facility ("Cumberland Facility") on May 18, 2022, they found over three thousand dogs and puppies, a number of whom were in need of veterinary care for painful conditions like severe dental disease and infected fighting wounds. *See* Ex. A (Declaration of Dr. Samantha Moffitt) ¶ 8 (identifying 446 dogs and puppies in "acute distress"¹). Beagles were crammed into overcrowded enclosures while numerous enclosures remained empty. Puppies raced to drink water when members of the federal warrant team assisted them with the Cumberland Facility's watering system. Beagles were observed fighting each other, guarding the single food receptacle available in each enclosure and the single access point to water. Beagle dogs and puppies remained on the same dangerous flooring that Envigo had first been cited for in July 2021.

¹ Acute distress means any animal requiring immediate veterinary treatment or other care to promptly alleviate a life-threatening illness, injury or any suffering, as deemed by a licensed veterinarian. Ex. A ¶ 8.

During the five days that the federal warrant team was at the Cumberland Facility, they documented numerous, serious violations of the Animal Welfare Act (“AWA”), many of which had appeared on previous inspection reports produced by the United States Department of Agriculture’s (“USDA”) Animal and Plant Health Inspection Service (“APHIS”).” Based on evidence from the first day of the execution of the search warrant at the Cumberland Facility, the United States simultaneously filed this civil enforcement action and an *ex parte* motion for temporary restraining order. ECF Nos. 1, 2. On May 21, 2022, this Court granted a temporary restraining order (“TRO”). ECF No. 6. Based in part on more complete information from the execution of the search warrant as well as the results of a June 8, 2022 assessment of the Cumberland Facility to determine compliance with this Court’s TRO by Inspector Amy Taylor (“Inspector Taylor”), the United States now moves to convert certain provisions of the TRO into a preliminary injunction and moves for additional relief.

I. THE ANIMAL WELFARE ACT: STATUTORY AND REGULATORY BACKGROUND

Congress enacted the AWA to, *inter alia*, “insure that animals intended for use in research facilities . . . are provided humane care and treatment.” 7 U.S.C. § 2131(1). The AWA imposes “minimum requirements” for handling, housing, feeding, watering, sanitation, and adequate veterinary care, among other requirements. *Id.* § 2143(a)(2)(A). AWA-licensed dealers must comply in all respects with the regulations and standards setting out those minimum requirements. 9 C.F.R. § 2.100(a).² Indeed, by signing the application for a license, the applicant acknowledges that it has reviewed the AWA and its regulations and standards and “agrees to comply with them.”

² The AWA defines a “dealer” as “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, (1) any dog or other animal whether alive or dead for research, teaching, exhibition, or use as a pet.” 7 U.S.C. § 2132(f); *see also* 9 C.F.R. § 1.1 (definition of dealer).

9 C.F.R. § 2.2. Anyone who falls within the statutory definition of a dealer must obtain and maintain a valid license from the Secretary. 7 U.S.C. § 2134 (prohibiting dealers from conducting AWA-regulated activities unless they “have obtained a license from the Secretary and such license shall not have been suspended or revoked”).

The AWA authorizes USDA to conduct investigations or inspections as necessary to determine whether any dealer has violated or is violating any provision of the AWA or its regulations or standards. 7 U.S.C. § 2146(a) (The USDA “shall, at all reasonable times, have access to the places of business and the facilities, animals, and those records required to be kept . . . of any such dealer.”). The Act also provides that United States district courts are “vested with jurisdiction specifically to enforce, and to prevent and restrain violations of this chapter, and shall have jurisdiction in all other kinds of cases arising under this chapter” except in one instance not applicable here. 7 U.S.C. § 2146(c).

II. THE CUMBERLAND FACILITY: FACTUAL BACKGROUND

Envigo holds Class A license number 32-A-0774, and owns, deals in, and breeds the beagles at its Cumberland Facility that are the subject of this action. Envigo has a pattern and practice of violating the AWA and the regulations and standards promulgated thereunder. Since APHIS first inspected the Cumberland Facility in July 2021, Envigo has been cited over 60 times by APHIS inspectors. *See* ECF Nos. 2-2, 2-3, 2-4, 2-5, 2-6. The citations fall into the following major categories: (1) failure to provide adequate veterinary care; (2) failure to provide access to potable water and uncontaminated, palatable food of sufficient quantity and nutritive value; (3) failure to keep dogs safe; (4) failure to maintain the dogs in safe and sanitary conditions; (5) failure to employ a sufficient number of qualified employees to care for the number of dogs at the Cumberland Facility; and (6) failure to make and retain accurate and complete records. More than

half of those citations were “critical” or “direct” violations³—the most serious type of AWA citation.

During the July 2021 routine inspection,⁴ APHIS cited Envigo for failing to investigate and accurately diagnose the cause of death for 300 puppies that had died in a seven-month time period. *See* ECF No. 2-3 (July 2021 Inspection Report Part 2) at 2. For each of those puppy deaths, the cause of death was listed as “unknown causes.” *Id.* Envigo staff could not identify a cause of death for 173 of those puppies because their bodies had begun decomposing before a necropsy could be done. *See id.* at 3. Pursuant to guidance from Envigo’s attending veterinarian, Envigo staff was not required to notify the attending veterinarian when puppies were found dead, and animal care staff were allowed to make the decision about whether to perform a necropsy. Inspectors also identified multiple dogs with medical problems that had not been treated—and for some dogs, not even identified—prior to the inspection, including a dog suffering from such severe dental disease that the roots of the teeth were visible. ECF No. 2-2 (July 2021 Inspection Report Part 1) at 2-5. APHIS inspectors also found that, between January 1, 2021, and July 22, 2021, 71 dogs were injured when a body part was pulled through the wall of their enclosures by a dog in an adjacent enclosure. *See* ECF No. 2-3 at 7. A review of records revealed that every one of these dogs was euthanized, even those with minor injuries. *Id.* APHIS inspectors also found that over 200 beagle puppies were housed in enclosures that contained flooring with openings large enough

³ A “critical” noncompliance is one that has a “serious or severe adverse effect on the health and well-being of the animal.” Animal Welfare Inspection Guide, USDA at 2-10. https://www.aphis.usda.gov/animal_welfare/downloads/Animal-Care-Inspection-Guide.pdf (“APHIS Animal Welfare Inspection Guide”) (last visited June 10, 2022). A “direct” noncompliance is a critical noncompliance that is having a serious or severe adverse effect on the health and well-being of the animal at the time of the inspection. *Id.* at 2-11.

⁴ A “routine” inspection is an unannounced, complete inspection of every aspect of the facility that is regulated under the AWA. APHIS Animal Welfare Inspection Guide at 3-23.

for the beagle puppies' feet to pass through up to their shoulders. *See* ECF No. 2-2 at 9-10. APHIS inspectors observed Envigo staff members trying for approximately three minutes to free a trapped female dog. *See id.* at 10.

APHIS returned to the Cumberland Facility on October 25, 2021, to conduct a focused inspection.⁵ APHIS inspectors determined that Envigo had failed to correct 11 different noncompliances, of which six were among the most serious violations—"directs" and "criticals." *See* ECF No. 2-4 (October 2021 Inspection Report) at 3, 5-6, 8-10, 12-13. Envigo was cited for multiple dogs with medical conditions that were not previously identified or treated, including a female beagle with multiple skin lesions and swelling on all four feet. *See id.* at 4. APHIS inspectors also found that nine dogs had been injured after a body part was pulled through the wall by a dog in an adjacent kennel and, once again, Envigo had euthanized all of the injured dogs regardless of whether the injury was minor or substantial. *Id.* at 8. Other dogs were observed with fight wounds, and yet Envigo had taken no steps to address the issue of the beagles fighting each other. *Id.* at 9-10. Finally, Envigo had not replaced the noncompliant flooring and, thus, APHIS inspectors observed multiple puppies with legs and feet passing through the openings in the floors of their enclosures. *Id.* at 8.

During the November 2021 routine inspection, APHIS determined that Envigo once again failed to meet numerous minimum requirements, including for adequate veterinary care. *See* ECF No. 2-5 (November 2021 Inspection Report). Thirty dogs with severe dental disease, including loose teeth, exposed roots of teeth, and bleeding gums, had not been treated despite Envigo staff

⁵ A "focused" inspection may include: re-inspection for direct noncompliances identified during a previous inspection; re-inspection for a specific noncompliance identified during a previous inspection; a partial inspection of the facility, such as animals only or records only; or a partial inspection to follow up on a public complaint concerning animal welfare. *See* APHIS Animal Welfare Inspection Guide at 3-24.

observing the condition as early as August 2021. *See id.* at 3. An additional 34 beagles had medical conditions that had not been observed by Envigo staff let alone treated. *See id.* at 4. Upon review of medical records documenting the euthanasia of dogs and puppies, APHIS inspectors found that many puppies were not receiving anesthesia prior to being euthanized. *See id.* at 2-3. APHIS inspectors also found that the enclosures still failed to keep dogs safe from injury by attacks from dogs in adjacent enclosures. *See id.* at 12. In addition, Envigo continued to fall short of the minimum requirements for feeding and sanitation. APHIS inspectors found food receptacles that contained moldy feed and live maggots. *Id.* at 15.

When APHIS returned four months later, inspectors again observed food receptacles that had excessive grime and were filled with moldy, wet food. *See* ECF No. 2-6 (March 2022 Inspection Report) at 6. APHIS inspectors also identified 97 dogs with injuries consistent with a fight. *See id.* at 5. The flooring in enclosures remained noncompliant, and medical records indicated that multiple dogs had been injured as a result of being stuck in the flooring. *See id.* at 4-5. During this inspection, APHIS inspectors personally observed multiple dogs stuck in the flooring. *See id.* at 4. Two weeks before the execution of the search warrant, APHIS returned to the Cumberland Facility to conduct another, but substantially more limited, focused inspection. *See* Ex. C (May 3, 2022 Inspection Report). Inspectors again found the facility's flooring to be non-compliant. *Id.* at 2-3.

On May 18, 2022, law enforcement officers began executing a federal search warrant at Envigo's Cumberland Facility. That warrant authorized the examination of every beagle at the facility, and the seizure of those beagles determined by a licensed veterinarian to be in acute distress. *See supra* n.2. Four hundred forty-six dogs were determined to be in acute distress, were seized pursuant to the warrant, and later were permanently surrendered by Envigo. *See* ECF No.

12 at 1-2. In addition, over the course of five days, a designated team assisting with the execution of the search warrant assessed animal enclosures as well as the buildings themselves for compliance with the AWA. Based on the AWA violations observed the first day of the execution of the warrant and Envigo's history of noncompliance, the United States moved for an *ex parte* TRO. ECF No. 2. The Court granted the United States' request for relief on May 21, 2022. ECF No. 6. The United States conducted a compliance check pursuant to paragraph 17 of the TRO on June 8, 2022, during which serious and ongoing violations of the AWA were again observed.

III. STANDARD OF REVIEW

A party seeking a preliminary injunction must demonstrate: (1) a likelihood of success on the merits; (2) that they are likely to suffer irreparable harm if the injunction is denied; (3) that the balance of equities tips in their favor; and (4) that the injunction is in the public interest. *Pashby v. Delia*, 709 F.3d 307, 320-21 (4th Cir. 2013) (citing *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008)). However, when the United States is moving for injunctive relief pursuant to a federal statute that expressly provides for such relief, no showing of irreparable harm is required. *See, e.g., Rum Creek Coal Sales v. Caperton*, 926 F.2d 353, 362 n.12 (4th Cir. 1991) (noting that the irreparable harm requirement has been "less strictly construed" in certain "areas in which remedies are governed by federal law" such as "where an injunction is authorized by a federal statute"); *Chao v. J.W. Roach & Sons Logging & Hauling*, No. 6:05-CV-00021, 2005 WL 8177416, at *1 (W.D. Va. Sept. 14, 2005) (explaining that the "United States . . . is not held to the requirements of a private litigant when it seeks the aid of the courts to give effect to a policy of Congress as manifested in a statute," and "[e]ven if the government does not show a likelihood of irreparable injury, an injunction may issue for the enforcement of an Act of Congress when it is in the public interest." (citation omitted)). Because the AWA explicitly authorizes the district court to grant injunctive relief, *see* 7 U.S.C. § 2146(c), the United States need not show irreparable harm.

Instead, the United States need only show that Envigo is engaged in—or imminently will be engaged in—conduct that violates the AWA.

IV. ARGUMENT

The United States is entitled to a preliminary injunction to ensure the safety and wellbeing of the beagles at the Cumberland Facility and to ensure that Envigo complies with the AWA. Fed. R. Civ. P. 65(a). Because the United States can meet all of the requirements for issuance of a preliminary injunction, the Court should grant the requested relief.

A. The United States is Likely to Succeed on the Merits of its Claims

First, the United States is likely to succeed on the merits of its claims. Envigo’s record of noncompliance is well documented. *See* ECF No. 2-2, 2-3 (APHIS documented violations of 18 different AWA provisions during the July 2021 routine inspection); ECF No. 2-4 (APHIS documented violations of 13 different AWA provisions during the October 2021 focused inspection); ECF No. 2-5 (APHIS documented violations of 26 different AWA provisions during the November 2021 routine inspection); ECF No. 2-6 (APHIS documented violations of five different AWA provisions during the March 2022 focused inspection); Ex. C (APHIS documented “repeat” violation of flooring provision of AWA).

The observations during the execution of the search warrant and the June 8, 2022 assessment reveal similar, ongoing violations of the AWA. *See* Ex. B (Declaration of Amy Katherine Taylor) ¶¶ 4, 11-12, 14-17 (overcrowded and unsafe enclosures); ¶¶ 7-8, 19 (inadequate access to wholesome, uncontaminated food and water of sufficient quantity); ¶¶ 11-12, 14-17 (unsafe primary enclosures); ¶ 20 (unsanitary conditions); ¶¶ 21-22 (fighting between beagles in enclosures and fighting between beagles in adjacent enclosures); Ex. A ¶¶ 9-11, 13-14 (inadequate veterinary care). These observations demonstrate that the beagles at the Cumberland Facility are being kept in inhumane conditions. Additionally, a June 8, 2022 assessment of the

Cumberland Facility by Inspector Taylor revealed additional, ongoing AWA violations. Ex. B ¶¶ 24-25, 27-31 (overcrowded and unsafe enclosures); ¶ 32 (inadequate veterinary care); ¶ 34 (beagles lacking continuous access to potable water); ¶ 33 (incompatible beagles housed together).

Envigo continues to repeatedly and routinely violate the AWA by failing to provide the beagles at the Cumberland Facility the care that they are legally owed under the AWA.⁶ The United States easily satisfies the requirement to show a likelihood of success on the merits.

1. Envigo is violating the Animal Welfare Act by providing inadequate veterinary care to the beagles at the Cumberland Facility.

The AWA's implementing regulations and standards require, among other things, that dealers ensure that the animals in their custody receive adequate care, and that they take appropriate steps to prevent and treat diseases and injuries, communicate with the attending veterinarian, and educate their personnel. 9 C.F.R. § 3.13(a)(2)-(3); 2.40(a), (b)(2)-(3). Envigo is failing to provide adequate veterinary care to the beagles in the Cumberland Facility.

⁶ Under 7 U.S.C § 2139, a principal-agent relationship has been established between Envigo and its employees. That section instructs that:

When construing or enforcing the provisions of [the AWA], the act, omission, or failure of any person acting for or employed by a . . . dealer . . . within the scope of his employment or office, shall be deemed the act, omission, or failure of . . . dealer . . . as well of such person.

⁷ U.S.C. § 2139. Under this provision, the “act, omission, or failure” of facility representatives and employees are considered to be Envigo's acts for purposes of the AWA. That Envigo's employees were the ones providing inadequate veterinary care or failing to provide wholesome and palatable food does not disturb the conclusion that Envigo violated the AWA. *See e.g., Cox v. U.S. Dep't of Agric.*, 925 F.2d 1102, 1105 (8th Cir. 1991) (rejecting argument that dealers did not violate the AWA because the dates in the records were supplied and recorded by their employees, as Section 2139 of the AWA imputes the acts of employees to their employers); *Hickey v. Dep't of Agric.*, 991 F.2d 803, *3 (9th Cir. 1993) (unpublished opinion) (imputing actions of licensee's mother to licensee under Section 2139 of the AWA).

During the execution of the search warrant, in-field exam forms were completed for each beagle at the Cumberland Facility. A total of 446 beagles were found to be in “acute distress” because they required “immediate veterinary treatment or other care to promptly alleviate a life threatening illness/injury or any suffering.” Ex. A ¶ 8. The beagles in “acute distress” were found to be in need of prompt removal from the Cumberland Facility. *Id.* “Many” of the beagles that Dr. Moffitt examined “had a combination of medical issues.” *Id.* ¶ 20. For example, one beagle had “fight wounds, an eye infection with yellow discharge and swelling under the eye, and redness and irritation between all paw pads.” *Id.* Another beagle had “wounds consistent with having been in a fight on both ears, dental disease, a foot wound, skin irritation on all paws, and scabs on his thigh and abdomen.” *Id.*

Dr. Moffitt found that, of the beagles she examined, “many suffered from severe dental disease, including gingivitis, premature gum recession, and infections,” and some of the beagles “required teeth to be extracted.” *Id.* ¶ 9. Taking into consideration the age of the beagles and the severity of the dental conditions, it is “likely” that the beagles’ teeth are “in such poor condition due to poor nutrition and/or failure to take prophylactic steps.” *Id.* She also examined beagles “with broken teeth and silver staining on their teeth,” which is “likely due to [beagles] chewing on the metal kennel bars”—an activity that Dr. Moffitt “personally observed” and is “indicative of stress, anxiety and boredom.” *Id.* ¶ 10.

How Envigo houses the beagles at the Cumberland Facility is directly tied to the prevalence of and type of veterinary issues in the Cumberland Facility. For one, there were “many” beagles with “severe pododermatitis” or inflammation of the skin on the paw pads. *Id.* ¶ 11. These beagles had “red, swollen paws” and “exhibited outward signs of pain, like retracting their legs when the paws were touched.” *Id.* Dr. Moffitt noted that pododermatitis takes “several

days for the symptoms to be visible and is likely due to the beagles' paws coming into regular contact with dirty flooring.” *Id.* For the “number of beagles in each enclosure,” Envigo would need to “spot clean and sanitize the enclosures to ensure the health and wellbeing of the beagles.” *Id.* If each enclosure is “power washed only once a day and is not subsequently spot cleaned or sanitized” this “reduces the beagles’ ability to get out of their own urine and feces.” *Id.* The inadequate sanitation in the enclosures is also contributing to the occurrence of beagles with “distended bellies, which is an indicator that they have worms.” *Id.* ¶ 18. A “common way for dogs to become infected with worms is by eating the feces of other infected dogs,” and Dr. Moffitt “observed beagles at the Cumberland [F]acility eating feces.” *Id.*

In addition, the enclosures that the beagles are housed in contain flooring with grates that are large enough to allow the beagles’ toes and feet to pass through. Dr. Moffitt treated beagles with “already healed” missing toes, and observed a beagle with a toe “stuck in” the flooring. *Id.* ¶ 19. In addition to injury from the grated flooring, the enclosures also contain guillotine doors that separate the inside and outside portions of the enclosure that can lead to injury, as it did for a “puppy [who] was screaming and whimpering because the puppy’s paw had gotten stuck in the guillotine door.” *Id.*

The conditions of the beagles’ confinement also contribute to the veterinary care problems at the Cumberland Facility. Dr. Moffitt observed dogs with both healing and fresh puncture wounds and ear injuries, including a beagle with “severe, infected, and shredded ear pinna-the outer portion of the ear” as well as “two puncture wounds.” *Id.* ¶ 13. Another beagle had “wounds on both ears with a chunk missing from the right ear,” which are injuries “indicative of dogs fighting.” *Id.* ¶ 14. The dogs are “likely fighting due to the overcrowded enclosure conditions, boredom, the way the beagles are being fed, and stress.” *Id.* ¶ 15.

During the June 8, 2022 assessment of the Cumberland Facility, Inspector Taylor continued to observe beagles with veterinary issues. Like Dr. Moffitt, Inspector Taylor also observed multiple beagles with wounds indicative of fighting, including a beagle with “bite wounds on the ear and a fluid-filled pocket” as well as a “beagle with significant damage to the ear and an amputated tail.” Ex. B ¶ 32. Indeed, Inspector Taylor observed “a beagle with only one ear.” *Id.* In certain enclosures, she saw “pale white-yellow foamy vomit” indicative of “a dog being overheated.” *Id.* In other enclosures, she observed “puppies that were lethargic.” *Id.* When she pointed out a beagle that was favoring one of its legs to Envigo staff, the employee “removed the beagle from the enclosure,” “set the beagle on the ground,” and “[w]hen the dog flattened to the ground” the employee “placed the beagle back into” the enclosure “rather than further assessing the condition.” *Id.*

Envigo continues to provide inadequate veterinary care to the beagles at the Cumberland Facility.

2. Envigo is violating the Animal Welfare Act by failing to provide uncontaminated, wholesome, and palatable food to all beagles.

Envigo fails to provide the beagles at the Cumberland Facility with food that is uncontaminated, wholesome, palatable, and of sufficient quantity and nutritive value to maintain the normal condition and weight of the animal, and a diet that is appropriate for the individual animal’s age and condition, in violation of 9 C.F.R. § 3.9(a). Envigo also fails to comply with the directive that food receptacles “must be readily accessible to all dogs,” “located so as to minimize contamination by excreta and pests,” 9 C.F.R. § 3.9(b), and that used food receptacles are “cleaned and sanitized” “more often” than two weeks if “necessary to prevent an accumulation of dirt, debris, food waste, excreta, and other disease hazards” in accordance with 9 C.F.R. § 3.11(b).

During the execution of the search warrant, it became apparent that “[r]egardless of how many beagles were in an enclosure, the enclosure contained only one food receptacle, which was accessible to only one beagle at a time.” Ex. A ¶ 15. This practice of only having one food receptacle per enclosure not only meant that beagles did not have food receptacles that are “readily accessible to all dogs” as 9 C.F.R. § 3.9(b) directs, but also it led to beagles “engaging in resource guarding behavior, such as aggressively growling at other beagles in the enclosure who wanted to access food,” and fighting. Ex. A ¶ 15. For example, a beagle “laying in front of the feeder with their head in the feeder” would “growl” when another beagle “would approach the feeder to attempt to eat.” Ex. B ¶ 7. During the time period that the buildings are cleaned each day, beagles “that are confined to the outside portion” of their enclosure have no access to food, as the food receptacles are all located in the inside portion of the enclosure. *Id.* ¶ 25.

Further, the food and the food receptacles themselves are prone to contamination. When Envigo staff added food to the food receptacles, they added to “the top of the food receptacle without cleaning out the old food or sanitizing the food receptacle.” Ex. A ¶ 16. Below the food receptacles, moldy food and flying pests were observed. *Id.*; Ex. B ¶ 19. In the whelping building housing nursing mothers and their puppies, some food receptacles had no lids. Inspector Taylor found two neonate puppies inside of the food receptacles, which is dangerous both to the puppy “because they could get trapped in the feeders” and for the nursing mothers “if the food becomes contaminated by [the puppy’s] feces.” *Id.* The food inside the food receptacle “had moisture, filth, bugs, hair, dirt, and feces in it.” *Id.* The food was further contaminated by the process by which Envigo employees cleaned the enclosures, as Inspector Taylor observed that, while employees were powerwashing the enclosures that dirty water was “splashing into the feeders.” *Id.* ¶ 20.

When Inspector Taylor returned to the Cumberland Facility on June 8, 2022, she continued to observe that, despite the Court's TRO requiring Envigo to ensure that each beagle is provided "uncontaminated, wholesome, palatable food," ECF No. 6 at 22, there were food receptacles with "bugs flying out" of the food. Ex. B ¶ 35. She was told by Envigo employees that food receptacles are "only clean[ed] or sanitize[d] . . . once every 14 days," and that in the intervening time period new food is placed "on top of the old food." *Id.* Inspector Taylor also observed that, in some enclosures, "food bowls [containing kibble] could be turned over by the beagles" thus "exposing the food to the feces on the mats." Ex. B ¶ 36.

3. Envigo is violating the Animal Welfare Act by failing to make potable water continuously available to all dogs.

Envigo is violating the AWA's directive that "[p]otable water must be continuously available to the dogs, unless restricted by the attending veterinarian" or in one instance not applicable here. 9 C.F.R. § 3.10(a).

Each enclosure contains one watering system on a "spigot or lickit system," which releases water when a beagle licks the system. Ex. B ¶ 8. During the execution of the search warrant, Inspector Taylor observed beagles in some enclosures guarding the lickit systems. *Id.* In other enclosures, the lickit systems were only a few inches off the ground of the enclosure so the beagles could "only access water by licking the dirty floor of the enclosure." *Id.* Puppies could not all "lick the lickit system hard enough to activate the system to access water," and when Inspector Taylor reached into the enclosure to release water from the lickit system "the puppies began to vigorously drink water from the lickit system as if they had not been able to access water in a very long time." *Id.*

Indeed, the lack of access to potable water continues even after this Court issued a TRO requiring Envigo to ensure that "every puppy who is no longer housed in the same enclosure

with their nursing mother [be] provided access to potable water from a water receptacle that the puppy can easily drink from without any assistance.” ECF No. 6 at 22. During her assessment, Inspector Taylor observed that, although “some plastic water bowls had been placed inside enclosures containing puppies,” she saw “water bowls containing no water.” Ex. B ¶ 34. And in a room that housed small puppies that, based on Inspector Taylor’s experience during the execution of the search warrant, “would not be able to access water from the lickit systems in the enclosures,” Inspector Taylor “observed that no water bowls had been installed” at all. *Id.* When water bowls containing water were placed inside the enclosures, she observed that the “small puppies started to drink.” *Id.*

In addition, during the June 8, 2022 assessment it became apparent that not all beagles had access to potable water while their enclosures were being cleaned. During the assessment, Inspector Taylor observed the cleaning of the enclosures. Ex. B ¶ 25. She noted that, when the building was cleaned, the “guillotine door separating the inside and outside portion of the enclosures was shut,” resulting in the beagles remaining in only a “portion of their enclosure for hours” while the entire building was cleaned. *Id.* Indeed, in a building where Inspector Taylor recorded the temperature as 90 degrees, she noticed that, “even though the cleaning of the building was complete,” the guillotine doors “were still closed.” *Id.* The beagles that are confined to the outside portion of their enclosure during this cleaning period have no access to water, because the lickit water systems are located in the inside portion of the enclosure. *Id.* Although Inspector Taylor did notice “one or two enclosures” had water receptacles in the outside portion of the enclosure, there was no water in those receptacles. *Id.*

4. Envigo is violating the Animal Welfare Act by failing to meet the minimum standards for handling.

Envigo has consistently failed to meet the minimum standards for handling the beagles,

resulting in the unnecessary suffering and, at times, death of beagles at the Cumberland Facility.

7 U.S.C. § 2143(a)(1), (2); 9 C.F.R. § 3.7.

Envigo is required to ensure that the beagles within a primary enclosure are compatible. 9 C.F.R. § 3.7. And yet the Cumberland Facility is plagued with the recurring problem of beagles fighting each other. During the execution of the search warrant, Inspector Taylor noticed that there were enclosures that contained one beagle “hunched in the corner in a manner that indicated it was overwhelmed.” Ex. B ¶ 4. In other enclosures, she observed that “the dominant beagle would start to growl” when another beagle would approach the sole food receptacle in the enclosure to “attempt to eat.” *Id.* ¶ 7. She observed “fighting between dogs in the same enclosure,” mostly in “enclosures with at least four [beagles] inside of the enclosure.” *Id.* ¶ 21; Ex. A ¶ 14 (observing “dogs fighting cagemates”). There was such “rampant fighting” that Inspector Taylor was forced to “constantly stop” her work assessing the enclosures to “open the doors and physically intervene to stop the fighting.” Ex. B ¶ 21.

Unsurprisingly, the fighting among the beagles leads to injury. Dr. Moffitt examined dogs with old and fresh puncture wounds and ear injuries, including a female beagle with “severe, infected, and shredded” outer portion of ears and “two puncture wounds.” Ex. A ¶ 13. Other beagles with “injuries . . . indicative of dogs fighting” included a beagle with “wounds on both ears” and “a chunk missing from the right ear.” *Id.* ¶ 14. Dr. Moffitt personally observed beagles “biting around the head, ears, and neck” when fighting their cagemates and beagles in adjacent enclosures. *Id.*

Even after this Court’s Order that Envigo ensure “only compatible dogs [be] housed together in an enclosure,” ECF No. 6 at 22, during the June 8, 2022 assessment Inspector Taylor observed a beagle being aggressive towards other beagles in its enclosure and, in another

enclosure, beagles “actively fighting” within a primary enclosure. Ex. B ¶ 33. In the enclosure containing the fighting beagles, Inspector Taylor saw one beagle “cowering in the corner” and, when Envigo employees “did nothing to address the fighting,” she had to ask Envigo employees to remove the aggressive beagle from its primary enclosure.

5. Envigo is violating the Animal Welfare Act by subjecting the beagles at the Cumberland Facility to Unsafe and Unsanitary Conditions.

Envigo repeatedly exposes the beagles to unsafe and unsanitary conditions. *See* 7 U.S.C. § 2143(a)(1), (2); 9 C.F.R. §§ 3.1, 3.6, 3.11.

First, Envigo continues to house beagles in overcrowded enclosures, thereby negatively impacting the beagles’ health and welfare. In July and again in November, APHIS put Envigo on notice that it was failing to provide a number of beagles at the Cumberland Facility with even the minimum space required by the AWA. ECF No. 2-2 at 10-11, 2-5 at 13-14. As APHIS explained, the failure to provide adequate space

can cause discomfort, crowding, distress, poor sanitation, increased incidence of illness, and aggression. Prolonged overcrowding can also lead to engrained and long-lasting negative behaviors (such as increased aggression and future incompatibility, as is seen at this facility) as dogs age.

ECF No. 2-5 at 14; *see also* Ex. A ¶¶ 10, 11, 14. Despite these warnings, Envigo continues to house beagles in overcrowded conditions.

Under 9 C.F.R. § 3.6(c)(1)(i), dogs, including weaned puppies, housed in a primary enclosure, must be provided a minimum amount of floor space, calculated using a formula based on the length of the dogs in the enclosure. During the execution of the warrant, the veterinary teams measured every beagle at the Cumberland facility from the tip of its nose to the base of its tail. The enclosure team then measured the length and width of the enclosures. Based on these calculations, a number of enclosures continue to be overcrowded, including several that contain 10 dogs but only have enough space for 7 dogs and several others that contain 9 dogs but only

have sufficient space for 6 dogs. *See* Ex. D (Examples of Overcrowded Enclosures).

The overcrowded conditions are particularly egregious in light of the fact that there are numerous empty enclosures available throughout the Cumberland Facility. *See* Ex. B ¶ 5. Inspector Taylor observed in many enclosures that one beagle would be hunched in the corner in a manner that indicated it was overwhelmed. *See id.* ¶ 4. As APHIS warned, some beagles exhibited aggressive behavior including resource guarding. *See id.* ¶¶ 7, 8 (beagles guarding food receptacle and the watering system); *see also* Ex. A ¶ 15 (Dr. Moffitt also observing some beagles engaging in resource-guarding behavior, such as aggressively growling at other beagles in the enclosure who wanted to access food). Inspector Taylor observed that much of the fighting between dogs within an enclosure occurred in enclosures that had at least four dogs in the same enclosure. Ex. B ¶ 21.

When Inspector Taylor returned to the Cumberland Facility on June 8, 2022, there continued to be up to 10 dogs in an enclosure and there remained empty enclosures in the buildings. *Id.* ¶ 24. As of that visit, each enclosure continued to have only one food receptacle. To make matters worse, Inspector Taylor observed that, when Envigo staff cleaned the enclosures, the beagles would be confined to the portion of the enclosure not being cleaned for hours. *Id.* ¶ 25. Rather than closing off the portion of the enclosure being cleaned for only the amount of time needed to clean that enclosure, Envigo staff would clean the entire wing before lifting the guillotine door separating the inside and outside portions of the enclosure. In one case, Envigo staff failed to raise the guillotine doors to allow the beagles access to the rest of their enclosures even after the staff had finished cleaning. *Id.* (also noting that the temperature reading in that room was 90 degrees). Thus, an already serious problem is exacerbated by Envigo's method of cleaning the enclosures.

Second, the primary enclosures violate 9 C.F.R. § 3.6(a)(2)(v), which states that primary enclosures “must be constructed and maintained so that they . . . [e]nable the dogs . . . to remain dry and clean.” While the enclosures were powerwashed daily, Inspector Taylor noticed that, after the enclosures were powerwashed, “no employees went through the building to spot clean the enclosures.” Ex. B ¶ 20. Even enclosures that had been cleaned in the morning “continued to have feces on the walls and floors.” Ex. B ¶ 9. In the building that housed nursing mothers and their puppies, Inspector Taylor did not see Envigo employees “ever” remove the rubber mat meant to cover the flooring to “clean the other side of the mat or the grated flooring underneath.” Ex. B ¶ 20. Even after the powerwashing was complete, the rubber mats “still had dirt, grime, and feces on them.” *Id.*

The filth in the enclosures contributed to injuries for the beagles. Dr. Moffitt examined “many” beagles with severe pododermatitis, which is “likely due to the beagles’ paws coming into regular contact with dirty flooring” and the beagles’ inability “to get out of their own urine and feces.” Ex. A ¶ 11. Dr. Moffitt also observed beagles with “distended bellies,” indicating that they had worms. *Id.* Dogs become infected with worms by, among other things, “eating the feces of other infected dogs.” Ex. A ¶ 18. Dr. Moffitt observed beagles at the Cumberland Facility eating feces. *Id.*

During the June 8, 2022 assessment, Inspector Taylor observed that some enclosures had new black mats installed on top of the grated flooring in the outside and inside portions of the enclosures. Ex. B ¶ 28. The mats “allow[ed] liquid as well as urine and feces to pool so that the beagles were forced to stand, sleep, or lie in their own excreta.” *Id.* Inspector Taylor observed that in some of these enclosures, beagles were indeed “standing in their own urine and feces.” *Id.* An added danger to beagles on the black mats installed in the exterior portion of the enclosures is

that the black mats were in sunlight. Ex. B ¶ 29. When Inspector Taylor touched a stack of black rubber mats outside one of the buildings, the mats were “so hot that [she] felt like [she] had been burned and snatched [her] hand back.” Ex. B ¶ 29.

Third, the buildings that contained the beagles’ enclosures are not “kept clean and in good repair” as outlined in 9 CFR § 3.11(c). Instead, the buildings at the Cumberland Facility contained an “extremely strong” odor and were littered with “cockroaches, flies, and moths” and, in various buildings, “a large buildup of rodent feces.” Ex. B ¶ 9. In addition, the buildings were “hot and muggy.” Ex. B ¶ 10. In certain buildings, Inspector Taylor observed black mold on the ceilings. Ex. B ¶ 18.

Fourth, enclosures had sharp points and edges that could injure the beagles, and contained rust in violation of 9 C.F.R. § 3.6(a)(2)(i) and 9 C.F.R. § 3.1(c)(1). Inspector Taylor observed transition doors in the enclosures containing rust, as well as other transition doors with sharp edges. Ex. B ¶ 12. Some of the flooring in the enclosures had gaps “where the flooring was worn or chewed,” and in those enclosures “the plastic coating of the metal bars of the flooring had been chewed off” such that the “rust was coming off the metal bars.” Ex. B ¶ 16. Dr. Moffitt observed a puppy “screaming and whimpering because the puppy’s paw had gotten stuck in the guillotine door that separates the inside and outside portions of the enclosure.” Ex. A ¶ 19.

Fifth, the flooring in the primary enclosures violates the AWA. Throughout the facility, the flooring had gaps large enough for a beagle’s toes and feet to be caught. Ex. B ¶ 14. Inspector Taylor had to “assist” six beagles to get their toes and feet out of the flooring. Ex. B ¶ 15. For other dogs, Inspector Taylor “observed dogs slip through the grated flooring but eventually maneuver themselves out.” *Id.* For yet other beagles, Inspector Taylor observed the

beagles “slip into the gaps with their entire leg in the gap in the flooring and, after a few tries to try and maneuver out of the flooring and pull themselves out of the grates.” *Id.* Inspector Taylor even observed the floors “bend under the weight of the dogs” and, when the beagles “jumped,” she saw the flooring “mov[e] and creat[e] significant gaps and access to the waste pit below the enclosures.” Ex. B ¶ 17. During the June 8, 2022 assessment, Inspector Taylor observed that in certain enclosures the flooring “bowed up and bowed down when all of the beagles were in one portion of the enclosure or were running around in the enclosure.” Ex. B ¶ 31. Unsurprisingly, she observed that the bowing occurred more in those enclosures that contained four or more beagles.

In the whelping building, Envigo had placed black rubber mats in the enclosures in “an attempt to cover the gaps in the flooring,” but the black mats were observed being “folded over, which could result in a puppy being trapped under the mat or trapped in the flooring.” Ex. A ¶ 12. And in “more than [twelve] separate enclosures” Inspector Taylor saw that the black mat had “shifted” to “expos[e] the grated flooring underneath.” Ex. B ¶ 14. During the June 8, 2022 assessment, Inspector Taylor observed these mats once again, and once again the mats were “being chewed,” were “filthy,” and “had been rolled back to reveal portions of the flooring underneath the mat.” Ex. B ¶ 30.

The flooring led to injuries for the beagles. Dr. Moffitt observed beagles with missing toes and observed a beagle actively stuck in the flooring. Ex. A ¶ 19. Indeed, when the beagles were placed on the ground outside of their enclosures they “looked like they were ice skating and seemed to not know how to walk properly, as if they were not accustomed to walking on solid ground.” Ex. A ¶ 12.

The dogs at the Cumberland Facility are subject to inadequate and unsafe living

conditions.

B. The United States Need Not Show a Likelihood of Irreparable Harm Absent Injunctive Relief But Has Done So Anyway.

Because an injunction is expressly authorized by the AWA and the United States has made a substantial showing of the likelihood of success on the merits of its underlying claims that Envigo is violating the AWA, this Court need not find irreparable harm to grant an injunction. *See Pathways Psychosocial v. Town of Leonardtown*, 223 F. Supp. 2d 699, 717 (D. Md. 2002) (presuming irreparable harm from violation of civil rights statute); *Doe v. Wood Cnty. Bd. of Educ.*, 888 F. Supp. 2d 771, 777 (S.D. W. Va. 2012) (granting preliminary injunction and holding that “a violation of Title IX may constitute irreparable harm” (citing *McCormick ex rel. McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275, 301-02 n.25 (2d Cir. 2004))); *see also Shafer v. United States*, 229 F.2d 124, 128 (4th Cir. 1956) (“It is a familiar doctrine that an injunction is an appropriate means for the enforcement of an Act of Congress when it is in the public interest.”).

Alternatively, the United States has demonstrated that, absent a preliminary injunction, Envigo will continue to violate the AWA thereby causing irreparable harm to the government for which there is no adequate remedy. Specifically, the United States has established in its *ex parte* motion for temporary restraining order and above, Envigo’s continued, serious violations of the AWA will result in the unnecessary suffering, serious illness, and even death of the dogs and puppies that are under Envigo’s care. *See* ECF No. 6 at 18-19 (finding that the government has clearly demonstrated irreparable harm); *see also United States v. Lowe*, No. 20-CV-0423-JFH, 2021 WL 149838, at *14 (E.D. Okla. Jan. 15, 2021) (finding in the alternative that defendants’ continued failure to provide adequate care to their AWA-protected animals would result in irreparable harm absent injunctive relief). Irreparable harm is suffered “when monetary damages

are difficult to ascertain or are inadequate.” *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 551 (4th Cir. 1994) (citations omitted). As the Court concluded in its May 21, 2022 order, “the Court will not be able to unwind or in any way remedy the physical harm done to these dogs at the end of this case if the Court does not grant the requested immediate relief.” ECF No. 6 at 19.

Without relief from this Court requiring Envigo to provide the beagles at its Cumberland Facility the humane care that they are legally owed under the AWA, the United States cannot effectively enforce the AWA against Envigo, who continues to willfully violate it. Therefore, to the extent it applies, the irreparable harm prong weighs in favor of issuing the preliminary injunction.

C. The Balance of Equities and the Public Interest Weigh in Favor of the United States.

As the Court previously found, the final two *Winter* factors weigh in favor of granting the United States’ request for relief. *See* ECF No. 6 at 19-20.

The balance of equities weighs in favor of the United States, which has a “strong interest in ensuring compliance with federal law and regulations to safeguard humane treatment of animals, as well as to ensure the efficacy of USDA’s inspection and licensing regime.” *Id.* at 20. Congress made clear in its AWA statement of policy that animals intended for use in research facilities must be provided humane care and treatment. *See* 7 U.S.C. § 2131(1). Moreover, it is always in the public interest for citizens to follow the law and not financially profit from their law-breaking endeavors. In contrast to the irreparable harm to the United States in the absence of injunctive relief, Envigo bears only the burden of complying with its obligations as a licensed dealer under the AWA—the very obligations it agreed to comply with when it chose to apply for an AWA dealer license. *See* 9 C.F.R. § 2.2. The United States merely seeks to ensure that Envigo does not

take unilateral action impacting the availability, health, and wellbeing of the animals in Envigo's care that would prevent the Court from providing effective relief to the United States. Thus, the balance of equities weighs in favor of granting the United States its requested injunctive relief. Issuing the preliminary injunction also serves the public interest by "giv[ing] effect to Congress's purpose in enacting the AWA, to ensure that 'animals intended for use in research facilities . . . are provided humane care and treatment.'" ECF No. 6 at 20 (quoting 7 U.S.C. § 2131(1)).

V. CONCLUSION

Despite numerous citations and a court order, Envigo continues to violate the AWA by failing to provide the beagles at its Cumberland Facility with humane care and treatment. Its violations are documented in multiple APHIS inspection reports, and confirmed by observations made during the execution of the federal warrant and the June 8, 2022 compliance visit. Envigo has continued to operate the Cumberland Facility in blatant disregard for the law and will continue to circumvent the AWA unless this Court grants the requested relief. The United States' requested preliminary injunction is narrowly tailored to address Envigo's continuing serious violations at the Cumberland Facility, and is necessary and appropriate to insure that the beagles at the Cumberland Facility are provided the humane care and treatment that they deserve and are legally owed.

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Respectfully Submitted,

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