



dogs for use as pets to various licensed businesses. Defendant operated his business without the requisite license, although he had been timely warned against doing so by the APHIS.

Administrative proceedings were commenced against defendant. The ALJ issued an order directing defendant to cease and desist violating the Act and to pay \$14,430 in civil penalties. Cross-appeals were taken, and the judicial officer (“JO”) acting for the USDA adopted most of the ALJ’s findings. However, the JO increased the civil penalty to \$191,200. Defendant appealed to the Sixth Circuit, which affirmed the JO’s decision. *See Horton v. U.S. Dep’t of Agriculture*, 559 F. App’x 527 (6th Cir. 2014).

Plaintiff now demands judgment against defendant in the principal sum of \$191,200, plus costs of suit, and such other relief as this Court may deem just.

#### **B. Summary Judgment Standard**

When a party files a motion for summary judgment, it must be granted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record . . .; or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1).

#### **C. Analysis**

Defendant has not opposed, or in any way refuted, the factual and procedural allegations. Defendant’s sole defense, submitted as a letter to the Court that the Clerk filed as an answer, is that he cannot afford the fine. There is nothing in the record to support this assertion and, on summary judgment, a party is not entitled to rely solely on the pleadings. In any event, inability

to pay the civil penalty imposed under 7 U.S.C. § 2149(b) is not a valid defense. *See, e.g., In re: Tracey Harrington*, AWA Docket No. 07-0036, 2007 WL 7278316 at \*1 (U.S.D.A. Aug. 28, 2007) (inability to pay is not one of the statutory factors that must be considered when determining the amount of civil penalty); *In re: Marjorie Walker, d/b/a Linn Creek Kennel*, AWA Docket No. 04-0021, 2006 WL 2439003 at \*22 (U.S.D.A. Aug. 10, 2006) (rejecting inability to pay as a valid basis for reducing the civil penalty).

The affirmance by the Sixth Circuit of the administrative decision by the APHIS and the USDA is case dispositive. There being no opposition offered by defendant, and the record, in fact, supporting plaintiff's position, plaintiff is entitled to judgment as a matter of law.

## II. CONCLUSION

For the reasons set forth herein, this Court hereby reduces to judgment the administrative determination and fine against defendant, Lanzie Carroll Horton, Jr. Although plaintiff requested both "costs of suit[,] and such other relief ... as may [be] deemed just[,]" the Court further determines that this amorphous, unspecified, and unsupported request does not warrant any additional relief.

**IT IS SO ORDERED.**

Dated: June 30, 2016

  
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**HONORABLE SARA LIOI**  
**UNITED STATES DISTRICT JUDGE**