

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 20-cv-423-JFH

**JEFFREY LOWE, LAUREN LOWE,
GREATER WYNNEWOOD EXOTIC
ANIMAL PARK, LLC, and TIGER KING,
LLC,**

Defendants.

OPINION AND ORDER

This matter is before the Court on the Corrected Partial Motion to Dismiss (“Dismissal Motion”) filed by Defendants Jeffrey Lowe a/k/a Jeff Lowe (“Jeff Lowe”), Lauren Lowe, Greater Wynnewood Exotic Animal Park, LLC (“GWEAP, LLC”) and Tiger King, LLC (collectively referred to as “Defendants”). Dkt. No. 73. For the reasons set forth below, the motion is denied.

I. FACTUAL AND PROCEDURAL BACKGROUND

This case arises from alleged violations by Defendants of the Endangered Species Act, 16 U.S.C. §§ 1531-44, (“ESA”) and the Animal Welfare Act, 7 U.S.C. §§ 2131-59, (“AWA”) in connection with an unlicensed exhibition facility known as Tiger King Park, in Thackerville, Oklahoma, which, at the time the Complaint was filed, housed approximately 100 to 200 ESA protected animals for the purpose of exhibiting their animals to the public (“Thackerville Facility”). *See generally* Dkt. No. 2. The United States filed its complaint on November 19, 2020, seeking declaratory and injunctive relief. *Id.* Specifically, the United States seeks an order: (1) declaring that Defendants have violated the ESA and the AWA; (2) enjoining Defendants from interfering with United States Department of Agriculture (“USDA”) inspections of their

properties, exhibiting animals without a license and placing the animals' health and safety at risk; and (3) requiring Defendants to relinquish possession of all ESA protected animals. *Id.* at 46-47.

On November 25, 2020, the United States filed its first motion for preliminary injunction requesting that the Court: (1) require Defendants to provide a complete and accurate inventory of the animals in their custody or control; (2) prohibit Defendants from acquiring or disposing of any animals without notice to the United States and consent of the Court; (3) require Defendants to submit complete and accurate veterinary records; and (4) authorize inspectors from the USDA's Animal and Plant Health Inspection Services ("APHIS") to conduct inspections of the Thackerville Facility. Dkt. No. 9; Dkt. No. 10 at 31-32. Subsequently, the United States filed a second motion for preliminary injunction and moved for a temporary restraining order based on a December 15, 2020 APHIS inspection. Dkt. No. 27; Dkt. No. 28 at 13-14; Dkt. No. 32.

On January 12, 2021, the Court held an evidentiary hearing on the United States' requests for a preliminary injunction and a temporary restraining order. Dkt. No. 35. Based on the arguments and evidence presented at the hearing, the Court concluded that the United States was entitled to preliminary injunctive relief. Dkt. No. 65 at 32. On January 15, 2021, the Court entered an Order requiring that Defendants (including anyone acting, directly or indirectly, through them or on their behalf): (1) immediately cease exhibiting animals protected by the ESA and the AWA without a valid USDA exhibitor's license; (2) retain a qualified attending veterinarian under formal arrangements consistent with the requirements of 9 C.F.R. §§ 1.1, 2.40, no later than January 29, 2021; (3) provide acquisition and disposition records for any and all animals added to or missing from their inventories since June 22, 2020, no later than January 22, 2021; (4) submit complete and accurate veterinary records to counsel for the United States within 7 days of any animal being treated by a veterinarian; (5) submit acquisition and disposition records to counsel for the United

States within 7 days of any change to the animal inventory; (6) immediately relinquish all Big Cats one year old or younger, along with their respective mothers, to the United States; (7) not acquire or dispose of any ESA or AWA protected animal without first conferring with the United States and obtaining leave of Court; and (8) permit APHIS to conduct routine inspections of the Thackerville Facility up to every three weeks, at the USDA's discretion. Dkt. No. 65 at 33-34.

On February 12, 2021, the United States filed a motion to enforce the Court's January 15, 2021 Order. Dkt. No. 72. The United States claimed that Defendants failed to comply with the Order by: (1) failing to provide complete and accurate acquisition and disposition records; (2) failing to retain a qualified attending veterinarian under formal arrangements consistent with the requirements of 9 C.F.R. §§ 1.1, 2.40; and (3) breeding animals without conferring with the United States and without leave of Court. Dkt. No. 72 at 3-10. Defendants did not file a response to the United States' motion. On March 8, 2021, the United States requested that the motion to enforce be deemed confessed due to Defendants' failure to respond. Dkt. No. 76. On March 22, 2021, the Court entered an Order granting the United States' motion to enforce and setting a show cause hearing for May 12, 2021 for Defendants to show why they should not be found in contempt for violating the Court's January 15, 2021 Order. Dkt. No. 78; Dkt. No. 80.

During the May 12, 2021 show cause hearing, the Court found by clear and convincing evidence that the Defendants violated the Court's Orders and civil contempt sanctions were warranted. *See* Dkt. No. 101. The Court ordered Defendants to be fined \$1,000 per day, beginning May 12, 2021, until they came into full compliance with the requirements set forth in the Court's January 15, 2021 and March 22, 2021 Orders. Dkt. No. 97 at 8. The Court also invited the United States to submit an accounting of actual damages it incurred as a result of Defendants' noncompliance and noted it would consider further sanctions if Defendants did not become fully

compliant with the Orders by June 11, 2021. *Id.* On May 28, 2021, the United States filed a Motion for Costs. Dkt. No. 100. On June 18, 2021, the United States filed a Notice of Defendants' Continued Noncompliance describing the Defendants' failure to cure numerous deficiencies as well as additional violations of the Court's orders. Dkt. No. 106. The Court has set another show cause hearing for September 16, 2021 on the United States' Motion for Costs and Notice of Defendants' Continued Noncompliance. Dkt. No. 111.

On February 15, 2021, Defendants filed their Dismissal Motion. The majority of the Dismissal Motion reiterates arguments from Defendants' responses to the United States' injunction briefing. Defendants claim that: (1) the United States' AWA claim must be dismissed because the United States uses an impermissibly broad definitions of "exhibit;"¹ (2) the United States' claim that Defendants "exhibit" animals violates the First Amendment; and (3) the United States fails to state a claim against Tiger King, LLC. Dkt. No. 73. The United States responded on March 1, 2021. Dkt. No. 75.

II. LEGAL STANDARD

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). In reviewing a motion to dismiss, the Court disregards conclusory allegations, but accepts all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff, and drawing all reasonable inferences in the plaintiff's favor. *Brooks v. Mentor Worldwide LLC*, 985 F.3d 1272, 1281 (10th Cir. 2021). The Court's duty is to "determine whether the complaint sufficiently alleges facts supporting all the elements necessary

¹ Although Defendants claim that the United States' definition of "exhibit" takes improperly broad liberties with the statutory definition, they also argue the statute itself is void for vagueness under the Fifth Amendment. The Court will address both arguments together.

to establish an entitlement to relief under the legal theory proposed.” *Forest Guardians v. Forsgren*, 478 F.3d 1149, 1160 (10th Cir. 2007). Under the plausibility standard, dismissal for failure to state a claim is “proper only where it is obvious that the plaintiff cannot prevail on the facts he has alleged.” *Kay v. Bemis*, 500 F.3d 1214, 1217 (10th Cir. 2007) (internal quotation marks omitted).

III. DISCUSSION

A. The Government Sufficiently States a Claim for Violation of the AWA

Defendants argue that the United States’ AWA claim should be dismissed because its “definition of ‘exhibitor’ and ‘public’ is so broad it strains credulity” and “completely take[s] it out of the realm of what Congress intended.” Dkt. No. 73 at 3, 10. Defendants’ arguments fail for the same reasons discussed in the Court’s January 15, 2021 order.

Under the AWA, the term “exhibitor” means “any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary.” 7 U.S.C. § 2132(h). The term includes “carnivals, circuses, and zoos exhibiting such animals whether operated for profit or not.” *Id.* Here, Defendants argue that they do not fall within the statutory definition of “exhibitor” because they have not operated “a public or private brick-and-mortar location which intentionally invites the general public in to view animals” since August 2020. Dkt. No. 73 at 8. Defendants also argue that certain of their activities—including allowing the animals to be filmed for a Netflix® documentary series, posting videos of the animals through the paid subscription services Cameo and OnlyFans, advertising a zoo currently under construction, and allowing friends to visit and play with the animals—do not constitute “exhibiting” for purposes of the AWA. *Id.* at 4-6. The Court does not agree.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.