

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEFFREY LOWE,

LAUREN LOWE,

GREATER WYNNEWOOD EXOTIC ANIMAL
PARK, LLC, and

TIGER KING, LLC,

Defendants.

Case No. 6:20-cv-00423-JFH

**UNITED STATES' MOTION TO ENFORCE THE COURT'S
JANUARY 15, 2021 ORDER & THE PARTIES' STIPULATION**

The United States moves to enforce the Court's January 15, 2021 order granting the motion for preliminary injunction and motion for temporary restraining order filed by the United States. Dkt. 65. Per the Court's order, Defendants were required to "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." *Id.* at 33 ¶ 4. Despite the government's attempts over two weeks to assist Defendants in getting into compliance with the Court's order, the government has received only a few of the records it was entitled to. The government requests that Defendants be ordered to immediately provide the required records accounting for the additional and missing animals consistent with the Animal Welfare Act ("AWA") and its implementing regulations. *See* 9 C.F.R. § 2.75(b)(1).

The Court also ordered Defendants to "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." Despite several requests between January 29, 2021, and February 9, 2021,

by the United States to both Defendants and the veterinarian they hired as their attending veterinarian, the U.S. Department of Agriculture (“USDA”) still has not received documentation necessary to determine whether the veterinarian meets the requirements of 9 C.F.R. § 1.1. Moreover, the formal arrangements presented in the written program of veterinary care and subsequent emails from the veterinarian do not currently comply with 9 C.F.R. § 2.40. *See* Exh. DDD (Defendants’ & Dr. Fryer’s Program of Veterinary Care). Accordingly, the United States requests that the Court order Defendants to provide the documentation demonstrating that the veterinarian has “received training and/or experience in the care and management of the *species being attended*” to ensure that she qualifies as an attending veterinarian. 9 C.F.R. § 1.1 (emphasis added). The government also requests that Defendants be ordered to immediately make formal arrangements consistent with 9 C.F.R. § 2.40.

Additionally, pursuant to the Parties’ December 14, 2020 stipulation, approved by the Court on December 15, 2020, Defendants agreed not to acquire any animal covered by the Endangered Species Act or any animal covered by the AWA absent leave of court. Dkt. 23 ¶ 2; Dkt. 25. Nevertheless, during the January 20, 2021 inspection, inspectors from USDA’s Animal and Plant Health Inspection Service (“APHIS”) observed three dozen female animals housed with male animals. The government has twice requested confirmation that the animals are spayed and neutered or otherwise will be separated to prevent breeding, but have not received a response from Defendants. The government requests an order from the Court requiring Defendants to separate unaltered male and female animals to avoid violating the terms of the Parties’ court-approved stipulation by acquiring animals through birth.¹

I. LEGAL STANDARD

“Courts have the power to enforce their lawful orders.” *In re Unioil*, 948 F.2d 678, 682 (10th Cir. 1991) (citation omitted). “That authority is grounded in ‘the interest of the judicial branch in seeing that an unambiguous mandate is not blatantly disregarded by parties to a court proceeding.’” *Anglers Conservation Network v. Ross*, 387 F. Supp. 3d 87, 93 (D.D.C. 2019) (quoting *Int’l Ladies’ Garment Workers’ Union v. Donovan*, 733 F.2d 920, 922 (D.C. Cir. 1984) (per curiam)). A motion to enforce should be granted if a “prevailing plaintiff demonstrates that a

¹ Counsel for the government conferred with counsel for Defendants consistent with LCvR 7.1(f) on Thursday, February 4, 2021, but were unable to reach agreement on the issues raised in this motion.

defendant has not complied with a judgment entered against it.” *Heartland Hosp. v. Thompson*, 328 F. Supp. 2d 8, 11 (D.D.C. 2004) (citation omitted).

II. ARGUMENT

A. Defendants have failed to comply with the Court’s January 15, 2021 order to provide acquisition and disposition records.

Pursuant to the Court’s January 15, 2021 order, Defendants were required by January 22, 2021, to provide “acquisition and disposition records for any and all animals added to or missing from their inventories since June 22, 2020.” Dkt. 65 at 33. “Acquisition and disposition records are necessary to be able to accurately track animals being used in regulated activities to ensure their legal acquisition, proper care, and humane transportation.” Dkt. 28, Exh. P at 3. Defendants have failed to comply with the Court’s order in several ways. First, Defendants have failed to provide records accounting for a number of the animals missing from or added to the June 22, 2020, August 21, 2020, and December 16, 2020 inventories. Second, of the few records provided by Defendants, many of them fail to comply with the AWA regulations. Third, Defendants provided records that are inconsistent with other evidence that the government has regarding these animals, thereby calling into question the accuracy of the records provided in response to the Court’s order.

1. Defendants have failed to provide records accounting for “any and all” animals added to or missing from the June, August and December 2020 inventories.

The government twice brought to Defendants’ attention a number of missing records; however, many records remain outstanding. First, the government has not received the 34 acquisition and disposition records that Defendants failed to present to APHIS inspectors on July 8, 2020. *See* Dkt. 28, Exh. P at 3-4. Second, the government has not received disposition records for three Big Cats Defendants transferred in August 2020. Defendants provided a record for three Big Cats transferred to Tiger Haven in August 2020. However, the government has information that, in fact, Defendants transferred *six* Big Cats to that facility in August 2020. Third, the government has not received accurate records for Defendants’ wolves. On the August 21, 2020 inventory, there are 12 wolves listed. Dkt. 28, Exh. V at 7-8. Defendants provided a disposition record for 11 wolves that were transferred to the Wild Animal Sanctuary in October 2020. However, on the December 16, 2020 inventory, there are four wolves listed. Dkt. 28, Exh. DD at

8. Thus, Defendants must have acquired wolves between August and December 2020 and must provide an acquisition records for those animals.

Additionally, the government has not received acquisition and disposition records for the following animals. Defendants listed a De Brazza's monkey on the June 22, 2020 inventory, who no longer appeared on the August 21, 2020 inventory. *Compare* Dkt. 28, Exh. J at 8, *with* Dkt. 28, Exh. V. Defendants listed two Bare-tailed wooly opossums on the August, 21, 2020 inventory, but only one was listed on the December 16, 2020 inventory. *Compare* Dkt. 28, Exh. V at 24, *with* Dkt. 28, Exh. DD at 16. There are also a handful of animals who appear for the first time on the December 16, 2020 inventory, including Gladys (tiger), Cersi (tiger), Chuckles (tiger) and Tierian (tiger).

Defendants have also failed to provide any acquisition records for births. *See* 9 C.F.R. § 2.75(b)(1) (“The [acquisition] records shall include any offspring born of any animal while in his or her possession or under his or her control.”). These records must accurately identify the parents and any other littermates. *See* 9 C.F.R. § 2.75(b)(1). The December 16, 2020 inventory lists Daniel, for example, as the only cub for the August 21, 2020 litter. It would be rare for there to be one cub in a litter unless the “mother is bred too young, overbred, or malnourished.” Exh. AAA ¶ 3 (Fourth Declaration of Dr. Laurie Gage). A healthy tiger should produce two to seven cubs per litter with the typical litter having three to four cubs. *Id.* Defendants have previously made statements implying that Tiki, a tiger cub transferred to Tiger Haven in September 2020, was Daniel's littermate. Dkt. 56 at 4 & Exh. 8 ¶ 12. They also provided a record stating that Tiki was a month old at the time of transfer. Exh. FFF at 6 (Acquisition & Disposition Records sent by Dan Card). However, based on the information provided by Tiger Haven, this was false. Tiki was two weeks old at the time of transfer and was in fact the littermate of Shadow and Chanel who were born September 5, 2020. Exh. ZZ ¶ 4 (Decl. of Mary Lynn Haven); *see also* Dkt. 28, Exh. DD at 14. Thus, Tiki is not Daniel's littermate. Defendants must accurately identify the parents of Daniel and any littermates that he had and their whereabouts. They must also produce acquisition records for all other births during the relevant timeframe.

The Court has already ordered Defendants to produce these records. Dkt. 65. The government respectfully requests that the Court order Defendants to immediately provide these records with complete and accurate information to undersigned counsel, which are already 21 days late.

2. Defendants' records do not comply with AWA regulations.

Under 9 C.F.R. § 2.75(b)(1), an exhibitor “shall make, keep, and maintain records or forms which fully and correctly disclose [certain] information concerning animals other than dogs and cats, purchased or otherwise acquired, owned, held, leased, or otherwise in his or her possession or under his or her control, or which is transported, sold euthanized, or otherwise disposed of by” that exhibitor. The records must include the following information:

- the name and address of the person from whom the animals were purchased or otherwise acquired or to whom an animal was sold or given;
- the USDA license or registration number of the person if she or he is licensed or registered under the AWA;
- If the person is not licensed or registered under the AWA, the record must include the vehicle license number and State, and the driver's license number (or photographic identification card for nondrivers issued by a State);
- The date of purchase, acquisition, sale or disposal of the animal and;
- The species of the animal.

Id. § 2.75(b)(1)(i)-(vi)

On January 20, 2021, Defendants presented five disposition records covering 34 animals to APHIS inspectors. Exh. EEE. Only one of those records complied with the AWA regulations. On January 22, 2021, the government alerted Defendants to the fact that the few records APHIS received did not comply with AWA regulations. The government again raised the issue of non-compliance with the AWA regulations on January 25, 2021, and on January 29, 2021. Defendants have not corrected the records for the skunks, the sloth, or the animals that were transferred to Tiger Haven in Tennessee to provide the information required by the AWA regulations and should be ordered to do so immediately.

3. Defendants' records are so inconsistent that they call into question whether they “fully and correctly” disclose information required under the AWA regulations.

The AWA regulations require that the records “fully and correctly” disclose information about the animals referenced. 9 C.F.R. § 2.75(b)(1). However, the few records provided call into question whether Defendants have complied with this provision. For example, the travel certificate

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