

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

PEOPLE FOR THE ETHICAL)	
TREATMENT OF ANIMALS, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-20-00612-PRW
)	
LAUREN LOWE,)	
Defendant.)	

ORDER

Before the Court is Plaintiff’s Motion to Enforce Subpoena and to Compel Testimony and the Production of Documents (Dkt. 1).¹ Plaintiff, People for the Ethical Treatment of Animals, Inc. (“PETA”), asks the Court to order Defendant, Lauren Lowe, to produce documents and testify at a deposition in compliance with two subpoenas issued from another district.² Plaintiff also asks the Court to award it costs and reasonable attorney’s fees incurred in compelling Mrs. Lowe’s compliance.³

The Court agrees that Mrs. Lowe must produce the documents at issue; must sit for and provide truthful, complete, and non-evasive answers to the questions asked during

¹ Mrs. Lowe, despite having been duly served, *see* Summons Issued Electronically as to Lauren Lowe (Dkt. 8); Summons Returned Executed by People for the Ethical Treatment of Animals, Inc. (Dkt. 10), filed no response to the instant motion.

² Pl.’s Mot. to Enforce Subpoena and to Compel Test. and the Produc. of Docs. (Dkt. 1) at 13.

³ *Id.*

her deposition; and must pay for the reasonable costs, including attorney's fees, incurred in compelling her compliance with the subpoenas.

If Mrs. Lowe does not comply with this order in full within 30 days of its entry, the Court will consider imposing sanctions and holding her in contempt of court.

Background

The present dispute arises from a lawsuit proceeding in the United States District Court for the Southern District of Indiana before Judge Richard L. Young.⁴ There, Plaintiff, a well-known animal rights organization, filed an action against Wildlife in Need and Wildlife in Deed, Inc., an exotic animal facility in Charlestown, Indiana, and Timothy and Melisa Stark, the operators of that facility, alleging violations of the Endangered Species Act stemming from the declawing of lions, tigers, and hybrids of those animals without medical need; the separation of lion, tiger, and hybrid cubs from their mothers to use them for commercial display and public interaction; and the confinement of lions, tigers, and hybrids in inadequate enclosures and without adequate medical care or other physical and psychological necessities.⁵

In its lawsuit, Plaintiff seeks, among other relief, the termination of all ownership rights in the lions, tigers, and hybrids at issue and the appointment of a special master or

⁴ *PETA v. Wildlife in Need and Wildlife in Deed, Inc.*, No. 4:17-cv-00186-RLY-DML (S.D. Ind.).

⁵ Pl.'s Mot. to Enforce Subpoena and to Compel Test. and the Produc. of Docs. (Dkt. 1) ¶ 15.

guardian ad litem to identify reputable wildlife sanctuaries and to determine the most appropriate placement for the forfeited animals, with the ultimate goal being to have the animals transferred over to that sanctuary.⁶ To preserve that remedy, Judge Young has ordered the “preserv[ation of] the Big Cats in this litigation” and prohibited the “transfer, relocat[ion], s[a]ll[e], or remov[al of] the Big Cats from W[ildlife in Need]’s facility absent court approval.”⁷

Meanwhile, Mr. Stark was planning to open another zoo in Thackerville, Oklahoma, with Jeffrey Lowe, a Wynnewood, Oklahoma, resident and operator of the Greater Wynnewood Exotic Animal Park, of *Tiger King* fame.⁸ According to PETA, this plan was, in part, an effort to transfer the lions, tigers, and hybrids at issue to Mr. Lowe in Oklahoma, thereby preventing any eventual transfer of those animals to a sanctuary.⁹ Mr. Stark allegedly brought five of his lion cubs to Mr. Lowe in July of 2019.^{10, 11}

⁶ See Am. Compl. (Dkt. 285) ¶¶ 96, 109, 113, *PETA v. Wildlife in Need and Wildlife in Deed, Inc.*, No. 4:17-cv-00186-RLY-DML (S.D. Ind. Jan. 29, 2020).

⁷ Entry on Pl.’s Mot. Related to Evid. Preservation (Dkt. 239) at 12, *PETA v. Wildlife in Need and Wildlife in Deed, Inc.*, No. 4:17-cv-00186-RLY-DML (S.D. Ind. July 25, 2019).

⁸ See Pl.’s Mot. to Enforce Subpoena and to Compel Test. and the Produc. of Docs. (Dkt. 1) ¶¶ 10, 16.

⁹ *Id.* ¶¶ 16, 17.

¹⁰ *Id.* ¶¶ 17, 18.

¹¹ Because of his receipt of those lion cubs, Judge Young added Mr. Lowe as a necessary defendant on January 17, 2020. See *id.* ¶ 20.

In the months following that transfer, Jeff Lowe intimated that his wife, Lauren Lowe, was involved with the transfer and receipt of the lion cubs. In a social media post from October 1, 2019, Mr. Lowe indicated that Mrs. Lowe had a recording of Mr. Stark and Mr. Lowe discussing the transfer of the lion cubs from Mr. Stark to Mr. Lowe.¹² Then, in his later deposition, Mr. Lowe testified that (1) Mrs. Lowe received and cared for the lion cubs dropped off by Mr. Stark, (2) Mrs. Lowe reminded him that one of the lion cubs died in transit, and (3) Mr. Lowe kept animal husbandry records sought by PETA in the home he shares with Mrs. Lowe, suggesting that she may have access to those records.¹³ For these reasons, Plaintiff subpoenaed Mrs. Lowe for the aforementioned records and recording, as well as for her testimony in a deposition.¹⁴

Mrs. Lowe did not object to the subpoena for the recording and records.¹⁵ Nevertheless, Mrs. Lowe made no effort to produce those materials.¹⁶ And in her deposition, Mrs. Lowe was uncooperative. The very first exchange of the deposition is emblematic:

Q: [. . .] Lauren, I understand that you were present during your husband's May 27, 2020 deposition before he hung up on the proceedings. Nevertheless, I want to remind you of a couple of quick ground rules. Please speak clearly for the court reporter, especially because you are –

¹² *See id.* ¶ 19.

¹³ *Id.* ¶ 25.

¹⁴ *Id.* ¶¶ 27, 29.

¹⁵ *Id.* ¶ 39.

¹⁶ *Id.* ¶ 28.

A: I'm sorry, but you're making an assumption. I'm just going to interrupt you there. You're making an assumption. You think I was there the whole time.

Q: Were you present during your husband's deposition?

A: You're making an assumption that I was there the whole time.

Q: I just asked you a question. Were you present during your husband's deposition?

A: And I made my answer.

Q: I asked you a yes or no question. Were you present during your husband's deposition?

A: No. You didn't ask me a yes or no question. You said I was, and I'm telling you I was only there part time.

Q: Correct me. Were you present during your husband's deposition?

A: Okay. Next question.

Q: Were you present –

A: Until my daughter starts crying, I'm going to end this because you – this is wasting my time for \$40.

Q: Were you present during your husband's deposition?

A: Goddamn, not the whole thing.¹⁷

Mrs. Lowe went on to refuse to answer basic questions relating to the health of the cubs, arguing that information was “protected by HIPAA.”¹⁸ And when Plaintiff's Counsel

¹⁷ *Id.* at Ex 1, 4:25–6:7.

¹⁸ *See id.* at Ex 1, 13:9–14.

pointed out that HIPAA does not cover the medical information of animals, Mrs. Lowe complained that Plaintiff's Counsel was attempting to give her legal advice.¹⁹ Later, when Plaintiff's Counsel asked where the subpoenaed (but not produced) records are kept, Mrs. Lowe had this to say:

Q: Where are [the records] kept?

A: I don't have access to those.

Q: Do you know where they are kept?

A: It sounds like you're trying to break into my facility.

Q: Do you know where the records are kept?

A: It sounds like you're trying to plan to break into this facility. It sounds like it.

Q: Mrs. Lowe, please answer the question.

A: Should I be worried? Because it sounds like you guys are trying to do that.

Q: Did someone else just speak to you?

A: No. Now, are you trying to break into this facility to try to steal records?

Q: Where are the acquisition records kept at your facility?

A: Asher, you ask me this question one more time and I'm giving you the same answer, and I'm going to hang up.

Q: You have at this point not given an answer. Are you refusing to answer?

A: I have given you an answer. I have just said I don't have access.

¹⁹ *See id.* at Ex 1, 13:15–14:20.

Q: Why do you not have access?

A: Next question.

Q: Why do you not have access to these records?

A: It's not my USDA license.

Q: So it would be impossible for you to right now go and review –

A: I'm not doing anything that I have no access to.

Q: Is access to these records restricted?

A: Definitely from you.

Q: Are they restricted from you?

A: They're definitely restricted from you.

Q: That was not my question. My question is –

A: And that's my answer.

Q: – are you restricted from accessing these records?

A: I have no access to these records. If I have no access, then I have no access. Next question, Asher.

Q: What does "I have no access" mean?

A: Good God, you are the dumbest lawyer I have ever met.

Q: In what way do you have no access?

A: Literally, if you ask me that question one more time, I'm going to make you famous.²⁰

²⁰ *Id.* at Ex 1, 21:8–23:7.

Soon after, and only about forty minutes into the deposition, Mrs. Lowe unilaterally ended the deposition.²¹

Legal Standard

Federal Rule of Civil Procedure 45 lays out the procedure by which parties can subpoena nonparties for depositions and testimony; the inspection, copying, testing, and sampling of documents, electronically stored information, and other tangible things; and inspections of premises.²² Rule 45 also provides that, in response to a subpoena “to produce documents or tangible things or to permit inspection,” the person subpoenaed “may serve on the party or attorney designated in the subpoena a written objection”²³ “The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served.”²⁴ “A nonparty’s failure to object in writing to a subpoena duces tecum within the time frame specified by Rule 45(d)(2)(B) ordinarily constitutes a waiver of any objection to production of the designated documents.”²⁵

Federal Rules of Civil Procedure 37 and 45 provide parties with tools to enforce a subpoena. “A party seeking discovery may move for an order compelling an answer,

²¹ *See id.* at Ex 1, 35:1–12.

²² *See* Fed. R. Civ. P. 45(a)(1), (c); *see also* Fed. R. Civ. P. 34(c) (“As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.”).

²³ Fed. R. Civ. P. 45(d)(2)(B).

²⁴ *Id.*

²⁵ *Metro Mart, Inc. v. N. Star Mut. Ins. Co.*, No. 5:14-cv-1215-W, 2015 WL 13567095, at *2 (W.D. Okla. June 9, 2015) (citations omitted).

designation, production, or inspection.”²⁶ This motion may be made when, among other things, “a deponent fails to answer a question asked under Rule 30 or 31,”²⁷ where “an evasive or incomplete disclosure, answer, or response [is] treated as a failure to disclose, answer, or respond.”²⁸ Such “[a] motion for an order to a nonparty must be made in the court where the discovery is or will be taken.”²⁹ With certain qualifications not applicable here, “[i]f [such] motion is granted . . . [,] the court must, after giving an opportunity to be heard, require the . . . deponent whose conduct necessitated the motion . . . to pay the movant’s reasonable expenses incurred in making the motion, including attorney’s fees.”³⁰ Similarly, “the serving party may move the court for the district where compliance is required for an order compelling production or inspection.”³¹ And if a subpoenaed person “fails without adequate excuse to obey the subpoena or an order related to it,” “[t]he court for the district where compliance is required . . . may hold [such] person in contempt”³²

²⁶ Fed. R. Civ. P. 37(a)(3)(B).

²⁷ Fed. R. Civ. P. 37(a)(3)(B)(i).

²⁸ Fed. R. Civ. P. 37(a)(4).

²⁹ Fed. R. Civ. P. 37(a)(2).

³⁰ Fed. R. Civ. P. 37(a)(5)(A).

³¹ Fed. R. Civ. P. 45(d)(2)(B)(i); *see also* Fed. R. Civ. P. 34(c) (“As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.”).

³² *See* Fed. R. Civ. P. 45(g).

Analysis

Mrs. Lowe has relevant knowledge and likely has relevant evidence. Mr. Lowe's statements on social media suggest that Mrs. Lowe overheard the conversation between Mr. Stark and Mr. Lowe about the transportation and transfer of possession of the lion cubs at issue. Further, by her own admission, she received and cared for the lion cubs upon their arrival. Mr. Lowe's representations and Mrs. Lowe's evasive responses pertaining to the location of materials that are the subject of one of the subpoenas, meanwhile, suggest that Mrs. Lowe may have access to those materials and, minimally, that she knows where they can be found.

Nevertheless, to date, Mrs. Lowe has not complied with either subpoena: She has neither furnished the records or recording sought nor meaningfully sat for her deposition. Moreover, Mrs. Lowe never served written objections to the subpoena for the records and recording or filed a response to the present motion to enforce the subpoenas and recover the reasonable costs incurred in compelling her compliance.

In short, Mrs. Lowe is withholding relevant information and may be withholding relevant materials with no valid excuse.

Conclusion

Mrs. Lowe must comply with the subpoenas issued in *People for the Ethical Treatment of Animals, Inc. v. Wildlife in Need and Wildlife in Deed, Inc., Timothy L. Stark, Melisa D. Stark, and Jeff Lowe*, No. 4:17-cv-00186-RLY-DML (S.D. Ind.),

attached to Plaintiff's Motion to Enforce Subpoena and to Compel Testimony and the Production of Documents (Dkt. 1) as Exhibit 1.

If Mrs. Lowe does not comply with these subpoenas in full within 30 days of the entry of this order, the Court will consider imposing sanctions and holding her in contempt of court.

IT IS SO ORDERED that Defendant, Lauren Lowe, shall comply with the May 29, 2020 Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action issued to her by Plaintiff, People for the Ethical Treatment of Animals, Inc. She shall deliver to Plaintiff the materials requested in that subpoena no later than thirty days after the entry of this order. If she fails to produce the materials requested in the subpoena by that date, the Court will consider imposing sanctions and holding her in contempt of court.

IT IS FURTHER ORDERED that Defendant, Lauren Lowe, shall comply with the May 29, 2020 Subpoena to Testify at a Deposition in a Civil Action issued to her by Plaintiff, People for the Ethical Treatment of Animals, Inc. She shall sit for a full deposition in accordance with that subpoena and shall provide complete and direct answers as required by law no later than thirty days after the entry of this order. If she fails to sit for a deposition and provide complete and direct answers during the same by that date, the Court will consider imposing sanctions and holding her in contempt of court.

IT IS FURTHER ORDERED that Defendant, Lauren Lowe, shall pay the reasonable costs, including attorney's fees, incurred by Plaintiff in compelling her compliance with the aforementioned subpoenas. The Court instructs Plaintiff to file a detailed breakdown of the expenses it incurred in compelling Mrs. Lowe's compliance with the subpoenas no later than October 9, 2020.

IT IS SO ORDERED this 21st day of September, 2020.



PATRICK R. WYRICK
UNITED STATES DISTRICT JUDGE