

BAT WORLD SANCTUARY and AMANDA LOLLAR,)	IN THE DISTRICT COURT
)	
Plaintiffs,)	TARRANT COUNTY, TEXAS
)	
vs.)	
)	
MARY CUMMINS,)	
)	
Defendant)	(Hearing by brief requested)
)	

AFFIDAVIT OF MARY CUMMINS IN SUPPORT OF HER MOTION TO DISMISS ON PERSONAL JURISDICTION

1. I am a resident of California. I have requested a hearing by brief on this motion because I do not have the financial means to travel to Texas on this motion. I believe that Plaintiffs allegation of jurisdiction is frivolous and is based on a fictitious paper as set forth below.

2. I provide no services, and have never provided services, within the State of Texas; I own no real property within Texas; I have never been employed there, and I have not entered into any contract within or without the State of Texas which necessarily must be fulfilled in Texas, as alleged by the Plaintiffs. I am an animal care advocate in and about the community of Los Angeles, California, and its surrounding areas. I provide services to the local California communities in the form of rescue and/or repatriation to endangered or orphaned pets, suburban wildlife animals, and other wildlife animals which have been unnaturally become displaced in the California suburban environment.

3. Plaintiff's lawsuit references an "Exhibit A" contract, which Plaintiffs rely upon to claim jurisdiction in this case. No such "Exhibit A" was served upon me or attached to the court papers served upon me in this case. No such valid contract exists. It is my information and belief that the attorney representing the plaintiffs in this case is relying upon a forged and fabricated document which has been provided to him by the plaintiffs. This is my basis for asking the court to strike its reference as it pertains to this motion on jurisdiction.

4. I have established no minimum contacts within Texas which would cause me to anticipate that I could be hailed into court there.

5. My services are based in California and require a technical knowledge which involves the safe handling and care for both wild and domestic animals, as required and regulated by California animal control agencies and the Humane Society. I have previously received in California certifications and/or training from a number of venues relating to this occupation. There are strict guidelines regarding the handling of diseased animals which are promulgated by the U.S. Department of Agriculture, and by California health departments and animal control departments. I have no such contacts or regulatory requirements with Texas.

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12. In an email sent to me from Kate Rugroden of the Bat World Regional Center known as "Bat World MidCities" (see Exhibit B), my suspicions that the grant-funded internship offer was bogus were validated by Rugroden. In the email, Rugroden confirms that I was never selected for the grant-funded internship as I had been falsely misled, but instead was given something they are calling an "open internship", which is a total invention and contradiction of the earlier information that had been stated to me. This was the first time that it had been mentioned to me that I had not been selected for the grant, or that my alleged "internship" was an "open" internship. A true and correct copy of the email from Rugroden is attached as Exhibit B. I stress that the truth regarding the grant and the "internship" was never relayed to me until after I had returned to California.

13. Before returning to California, I posted photos of my experiences on Facebook, a Palo Alto, California-based Internet service, and also on YouTube, a San Bruno, California-based Internet service. The pictures/videos I post on those sites are accurate captures of my personal experiences, and do not include any copyrighted materials. Plaintiff Lollar contacted YouTube in California and attempted to have my photographs removed for copyright violations, however YouTube attorneys informed Lollar there was no copyright violations, and YouTube permits the videos to remain.

14. On or about November 3, 2010, I was served a summons and complaint ("Citation and Petition") in the within case in person. The total number of pages served on me was seven (7) pages, which included only the citation page and the six (6) pages of the Plaintiffs' Petition. Paragraph 7 of Plaintiffs' Petition refers to an "Exhibit A", however no such Exhibit was attached to the complaint papers served on me. A true and correct copy of all the papers served on me are attached as "Exhibit C". As the court can plainly see, the number of pages which were faxed to the filing service total seven pages (see fax notation at top of pages and filing notation at bottom of pages dated September 15, 2010 showing 7 pages total).


15. The missing Plaintiff "Exhibit A" document is important as it refers to an alleged contract which Plaintiffs allege I signed on June 20, 2010, when in fact, no such contract was signed or approved by me, nor was any such document given by me to the Plaintiffs. The only documents which I signed and agreed to were the original grant-funded internship papers which I received and signed in California, and no subsequent contract was signed by me in Texas. Plaintiffs also rely on the missing "Exhibit A" document as their basis for the Texas court to take personal jurisdiction over me.

16. A true and correct copy of the actual agreement I signed with Plaintiff Bat World is attached as "Exhibit D" title "STATEMENT OF ACADEMIC INTEGRITY, AGREEMENT, AND RELEASE". The agreement is dated May 3, 2010, and is not the June 20, 2010 as alleged by Plaintiff. This intern agreement includes only basic information on the applicant, and a waiver and release. There is no provision of the agreement which requires Defendant to perform any act within the State of Texas per se as a requirement of contract performance, such that Texas can claim jurisdiction as alleged by the Plaintiffs.

17. Also attached is a copy of my application to Plaintiff Bat World for the grant-funded internship, labeled "Exhibit E", and dated May 3, 2010 and submitted to Bat World on the same date.

AFFIDAVIT OF MARY CUMMINS IN SUPPORT OF HER MOTION TO DISMISS ON PERSONAL JURISDICTION

1 This instrument was acknowledged before me on this 25th day of January, 2011,
2 by:

3 
4 Mary Cummins, Defendant Pro se
5 645 W 9th St, #110-140a
6 Los Angeles, CA 90015
7 Phone 310-877-4770

8 In witness whereof I hereunto set my hand and official seal.

9 Notary Public
10 My commission expires: _____

11
12 See Attached.
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AFFIDAVIT OF MARY CUMMINS IN SUPPORT OF HER MOTION TO DISMISS ON PERSONAL JURISDICTION

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

On 01-25-11 before me, ALBERTO PEREIRA, NOTARY PUBLIC

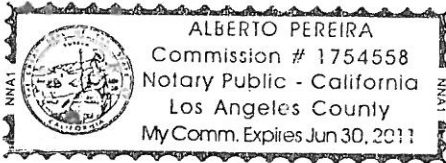
personally appeared MARY CUMMINS

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature] Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Affidavit of MARY CUMMINS in support of her motion to dismiss on personal jurisdiction

Document Date: Number of Pages:

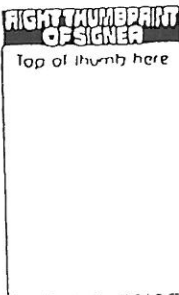
Signer(s) Other Than Named Above: Mary Cummins

Capacity(ies) Claimed by Signer(s)

Signer's Name:

- Individual
Corporate Officer - Title(s):
Partner - Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:

Signer is Representing



Signer's Name:

- Individual
Corporate Officer - Title(s):
Partner - Limited General
Attorney in Fact
Trustee
Guardian or Conservator
Other:


Signer is Representing



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CERTIFICATE OF SERVICE

I, Mary Cummins, hereby certify that a TRUE COPY of the above DEFENDANT'S SPECIAL APPEARANCE AND MOTION TO DISMISS ON PERSONAL JURISDICTION was served on the Plaintiffs' Attorney of record by FIRST CLASS MAIL at
Thomas W. Mackenzie
1800 N Norwood Dr Ste 100
Hurst, Texas 76054
Fax: 817-268-1563
this 25th Day of November, 2010


Mary Cummins, Defendant Pro se
645 W 9th St, #110-140a
Los Angeles, CA 90015
Phone 310-877-4770

AFFIDAVIT OF MARY CUMMINS IN SUPPORT OF HER MOTION TO DISMISS ON PERSONAL JURISDICTION

Exhibit A



BAT WORLD REGIONAL CENTERS

The Bat World centers listed below are affiliates of Bat World Sanctuary. Directors of these centers offer rescue and/or outreach educational programs in their immediate areas. Please note that these are not facilities which are open to the public.

If you find a bat in trouble please do not touch it. You can find detailed information on how to safely contain the bat on our [Found a Bat?](#) page. For help outside the USA please see [International Rescue](#). Regional Bat World Rescue Centers are listed below. If a rescue center is not located in your area please visit [Local Rescue](#) to find a bat worker near your area.

ARIZONA - Bat World Phoenix™
CALIFORNIA - Bat World Mojave Education™
FLORIDA, South - Bat World Everglades™
IOWA - Bat World Heartland™
MAINE - Bat World Dirigo™
MASSACHUSETTS - Bat World Massachusetts
MISSOURI - Bat World Ozarks™
NEW MEXICO - Bat World Rio Grande Basin™
NEW YORK - Bat World Island Education™ (coming soon)
TEXAS, North - Bat World Sanctuary™ (Headquarters)
TEXAS, N. Central - Bat World Lone Star™
TEXAS, N. Central - Bat World Mid-Cities™
TEXAS, west - Bat World South Plains™
VIRGINIA, North - Bat World NOVA™
WISCONSIN - Bat World Milwaukee™

[Home](#) | [Contact Us](#)

BWRC APPLICATION (Note: Potential BWRCs are pre-selected to apply by the Board of BWS)
Memorandum of Understanding

Exhibit B

Bat World Training final results

11/23/10 5:24 PM

From: Bat World MidCities <bwmidcities@batworld.org>

To: mmmarinla@aol.com

Cc: Bat World Sanctuary <sanctuary@batworld.org>

Subject: Bat World Training final results

Date: Sat, Jul 3, 2010 6:56 pm

This will be our final communication. You and Kay were selected as recipients of "open" positions in the intern program, which were not covered by grant dollars, because we felt that you both would be qualified candidates. All of the grant-funded positions were filled by veterinary medicine students, wildlife biology students, biologists, forestry service staff and zoo personnel. Since neither you nor Kay met all the requirements, you were not assigned to positions funded by the grant. However, we elected to not charge you the normal tuition rate since our grant-funded interns were not being required to pay tuition. Bat World has absorbed all the expense of your stay and training. Regardless of whether an intern is assigned to a grant-funded position or an open position, the curriculum is the same. Since you did not complete the training, in accordance with the contract you signed, you are not permitted to identify yourself as having been trained or certified by Bat World Sanctuary in the rehabilitation and long-term care of insectivorous bats. I suggest you review your copy of the contract for additional elucidation. I hope this clarifies the situation to your satisfaction.

Kate

Exhibit C

THE STATE OF TEXAS
DISTRICT COURT, TARRANT COUNTY

CITATION

Cause No. 352-248169-10

BAT WORLD SANCTUARY, ET AL
VS.
MARY CUMMINS

TO: MARY CUMMINS

645 W 9TH ST #110-140 LOS ANGELES, CA 90015-

You said DEFENDANT are hereby commanded to appear by filing a written answer to the PLAINTIFF'S ORIGINAL PETITION at or before 10 o'clock A.M. of the Monday next after the expiration of 20 days after the date of service hereof before the 352nd District Court, 401 W BELKNAP, in and for Tarrant County, Texas, at the Courthouse in the City of Fort Worth, Tarrant County, Texas said PLAINTIFF being

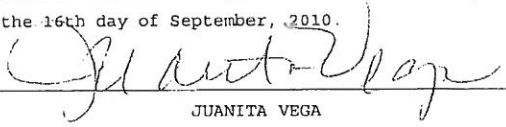
BAT WORLD SANCTUARY, AMANDA LOLLAR

Filed in said Court on September 15th, 2010 Against MARY CUMMINS

For suit, said suit being numbered 352-248169-10 the nature of which demand is as shown on said PLAINTIFF'S ORIGINAL PETITION a copy of which accompanies this citation.

THOMAS W MCKENZIE
Attorney for BAT WORLD SANCTUARY Phone No. (817)282-3868
Address 1800 N NORWOOD DR STE 100 HURST, TX 76054

Thomas A. Wilder, Clerk of the District Court of Tarrant County, Texas. Given under my hand and the seal of said Court, at office in the City of Fort Worth, this the 16th day of September, 2010.

By  Deputy
JUANITA VEGA

NOTICE: You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 AM. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Thomas A. Wilder, Tarrant County District Clerk, 401 W BELKNAP, FORT WORTH TX 76196-0402

OFFICER'S RETURN

Received this Citation on the _____ day of _____, _____ at _____ o'clock _____ M; and executed at _____ within the county of _____, State of _____ at _____ o'clock _____ M on the _____ day of _____, _____ by delivering to the within named (Def.): _____ defendant(s), a true copy of this Citation together with the accompanying copy of PLAINTIFF'S ORIGINAL PETITION, having first endorsed on same the date of delivery.

Authorized Person/Constable/Sheriff: _____
County of _____ State of _____ By _____ Deputy

Fees \$ _____
State of _____ County of _____ (Must be verified if served outside the State of Texas)

Signed and sworn to by the said _____ before me this _____ day of _____, _____ to certify which witness my hand and seal of office

(Seal) _____
County of _____, State of _____

social security number are 481.

4. Defendant, Mary Cummins, is an individual residing in the State of California and may be served with process at 645 West 9th Street, #110-140, Los Angeles, California 90015.

JURISDICTION

5. This court has *in personam* jurisdiction over Defendant because:

a) The Texas long-arm statute authorizes the exercise of jurisdiction because Defendant entered into a contract with Plaintiff, a Texas resident, and one or both parties were to perform the contract in whole or in part in Texas (TEX. CIV. PRAC. & REM. CODE ANN. § 17.042 (Vernon 2008)); and

b) The exercise of jurisdiction over Defendant is consistent with federal and state constitutional due-process guarantees. Specifically, Defendant has established minimum contacts with the Texas; and the assertion of jurisdiction complies with traditional notions of fair play and substantial justice.

FACTS OF THE CASE

6. Bat World Sanctuary is an internationally renowned non-profit organization dedicated to the rescue and rehabilitation of bats. Amanda Lollar is its founder and president. Along with rescuing and rehabilitating bats Bat World Sanctuary has

education programs for children, maintains a sanctuary for wild bats, and operates continuing education internships and workshops for animal care professionals and rehabilitators.

7. Defendant, Mary Cummins, was accepted as an intern into Bat World Sanctuary's internship program. On June 20, 2010 Defendant and Bat World Sanctuary entered into a written contract in which Bat World Sanctuary agreed to train Defendant in the care, treatment and medical management of insectivorous bats. Under the terms of the contract, Defendant agreed that the data, techniques, results, and anecdotal information provided to her during her internship were the property of Bat World Sanctuary and that she would not distribute, share, or publish this information without obtaining prior written permission from Bat World Sanctuary. A copy of the contract is attached hereto as Exhibit A.

8. While Defendant was on the Bat World Sanctuary's premises she videotaped and photographed Bat World's techniques, results, data and anecdotal information, often without the knowledge of Bat World Sanctuary. After leaving the program Defendant began posting these videotapes and photographs on the internet without Bat World Sanctuary's permission, thereby breaching her contract with Bat World Sanctuary. Defendant refuses to remove these videotapes and photographs from the internet where they remain as of the date of the filing of this suit.

9. Defendant has also posted on the internet and You Tube false statements of fact concerning Bat World Sanctuary and Amanda Lollar. These statements are defamatory and injure Amanda Lollar's reputation, thereby exposing her to public hatred, contempt or ridicule, or financial injury. The statements also injure Amanda Lollar in her

profession. Defendant's defamation of Amanda Lollar are proximately causing Amanda Lollar to suffer actual damages.

BREACH OF CONTRACT

10. Defendant's conduct as describe above constitutes breach of contract for which Plaintiffs bring this suit. The breach of contract was a producing cause of actual damages to Plaintiffs.

ATTORNEY'S FEES

11. This is a suit on a contract and Bat World Sanctuary brings this suit to recover reasonable and necessary attorney's fees under Section 38.001(8) of the Texas Civil Practice and Remedies Code.

DEFAMATION

12. Defendant's conduct as described herein constitutes common law defamation and libel under Section 73.001 of the Texas Civil Practice and Remedies Code. The defamation and libel were a proximate cause of actual damages to Plaintiffs.

EXEMPLARY DAMAGES

13. Defendant committed the defamation and libel described above with malice. Therefore, Amanda Lollar brings this action to recover exemplary damages under Section 41.003 of the Texas Civil Practice and Remedies Code.

REQUEST FOR TEMPORARY INJUNCTION

14. The acts and conduct of Defendant have caused and will continue to cause irreparable harm unless Defendant is restrained and enjoined from allowing the videotapes, photographs, and false statements described above to remain on the internet and You Tube. Plaintiffs have no adequate remedy at law and are likely to succeed on the merits of this suit.

15. Plaintiffs request the Court to issue an order temporarily enjoining the Defendant from allowing the videotapes, photographs, and false statements described above to remain on the internet during the pendency of this suit and ordering Defendant to remove the videotapes, photographs, and false statements from the internet and You Tube.

REQUEST FOR PERMANENT INJUNCTION

16. Upon final trial of the merits of this cause, Plaintiffs request that this Court enter an order permanently enjoining Defendant from allowing the videotapes, photographs, and false statements described above to remain on the internet and ordering Defendant to remove the videotapes, photographs, and false statements from the internet and You Tube.

PRAYER

17. Plaintiffs pray that this Honorable Court grant their request for a temporary injunction and permanent injunction and enter judgment against the defendant for actual damages and exemplary damages within the jurisdictional limit of this court along with reasonable attorney's fees, court costs, and grant such other relief at law and equity to which Plaintiffs may be justly entitled.

Respectfully submitted,

TURNER & MCKENZIE, PC
1800 Norwood, Suite 100
Hurst, Texas 76054
Telephone: (817) 282-3878
Fax: (817) 268-1563
Email: randy@turnermckenzie.com

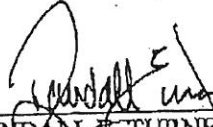
By: 
RANDALL E. TURNER
State Bar No. 20328310
Attorneys for Plaintiffs

Exhibit D

-will check for rabies
10/1/03 & needed

DATE OF YOUR MOST RECENT INOCULATION AGAINST RABIES: 2002 YOUR TITER: _____

DATE OF LAST TETANUS INOCULATION: 1995

IF, FOR HEALTH REASONS OR FOR SOME OTHER REASON, YOU DO ELECT NOT TO HAVE THIS INOCULATION. PLEASE INITIAL HERE _____

DO YOU HAVE ANY ALLERGIES OR RESPIRATORY PROBLEMS? Yes IF YES, PLEASE LIST _____

Dust from the air, mold, pollen, etc.

ACADEMIC INTREGRITY, AGREEMENT, AND WAIVER OF LIABILITY

All internship participants are required to sign the following Agreement/Liability Waiver before attending. You must have a titer of 1.5 or greater in order to attend. Proof of your rabies vaccination from your personal physician must be sent with this waiver.

STATEMENT OF ACADEMIC INTREGRITY

The atmosphere at Bat World Sanctuary pleasant and easy going, however, a high level of professionalism is expected during internships. Interns will be expected to cooperate with instructors at all times and work with others as a team, and to show respect to other students. It is expected that interns be prompt for appointment times. Interns are expected to follow directions completely. If something is not understood, the intern is expected to ask for clarification before proceeding. The bats being cared for during internships can be very fragile, and any change from routine can prove to be life-threatening to them. Therefore, there will be no deviations from the already established schedule. Trading positions on the schedule or interrupting other interns during their specific training (without prior permission) will not be tolerated. If you finish your assignment early, please ask one of the instructors where in the facility you could prove to be most useful at that time. The conditions at Bat World Sanctuary are clean, sanitary and sometimes sterile. Therefore, it is expected that interns wear clean attire and exercise good personal hygiene.

AGREEMENT

I agree that while interning at Bat World Sanctuary I will refrain from the use of tobacco, illegal drugs and alcohol on any and all property owned by Bat World Sanctuary. I agree to refrain from exceedingly offensive or abusive language and behavior. I understand that if I arrive consistently late for non-emergency reasons, or if I am personally preoccupied during lessons, these lessons will not be reiterated for my benefit. I understand that my not abiding by these rules can result in my immediate dismissal at the sole discretion of the instructors of Bat World Sanctuary. I understand that if I am dismissed for any of the above reasons, I will lose all further internship opportunities provided by Bat World Sanctuary. I understand that if I cannot attend this internship in full for emergency reasons, I may be entitled to a rain-check to a future internship program provided by Bat World Sanctuary.

WAIVER OF LIABILITY

I hereby voluntarily assume all risks inherent in or arising from participation from any and all internship or volunteer programs I attend at Bat World Sanctuary. I hereby voluntarily release, discharge and relinquish any and all actions or causes of action for mental duress, personal injury, personal illness including rabies and histoplasmosis, property damage or any other damages arising from participation in this program or any activities incidental thereto wherever or however the activities may occur. By my signature, I indicate that I understand that this release is intended to discharge in advance the Bat World Sanctuary, any of it's officers, agents, or volunteers for any of the above mentioned causes of action even though that liability may arise out of negligence or carelessness on the part of those persons or Bat World Sanctuary.

I certify that that I have read the above Statement of Academic Integrity, Agreement and Waiver in its entirety and that I understand and agree with the contents. I also state that I am 18 years of age or older and that I am in good physical and mental health.

Signature Mary Linn Date 5-3-10



EXHIBIT C

Bat World Sanctuary
2010 Continuing Education Internship Application

NAME Mary Brennan DATE 5-3-10
PERMANENT ADDRESS 645 W. 20th St
CITY, STATE, ZIP Los Angeles, CA 90007 PHONE 213-221-1170
EMAIL ADDRESS marybrennan@earthlink.net ALT. PHONE 213-221-1170
AGE 44 COLLEGE/UNIVERSITY ATTENDING OR EMPLOYER Self employed

PROFESSOR/ADVISOR OR SUPERVISOR NA

NUMBER OF INTERNSHIP HOURS REQUIRED BY YOUR SCHOOL OR EMPLOYER 0

CLASS OF 1984 MAJOR Psychology / Sociology PRESENT YEAR OF STUDY NA

EDUCATION: PLEASE LIST PROFESSIONAL SCHOOLS, COLLEGES, OR HIGH SCHOOL:
1. Beverly Hills High School
2. University of Southern California

AWARDS, SCHOLARSHIPS, OR HONORS Dean's list, honor roll, scholarship to USC

PERSONAL PROFILE: Please include a short description of your interest, educational background, work experience or career goals which might relate to your internship. Attach a separate sheet if necessary. See attached

PLEASE LIST SPECIFIC COURSE WORK, PAPERS, FIELD RESEARCH, OR OTHER EXPERIENCES THAT MIGHT RELATE TO YOUR INTERNSHIP. (Attach a separate sheet if necessary) See attached

PLEASE LIST TWO REFERENCES

Name	Address	Occupation	Years Known
<u>Anna Dresden</u>	<u>LA, CA</u>	<u>Wildlife Rehabilitator</u>	<u>10</u>
<u>MaryEllen Sagerman</u>	<u>Altadena, CA</u>	<u>Wildlife Rehabilitator</u>	<u>5</u>

PLEASE INDICATE DATE PREFERENCES. Select at least two dates from the following list, in order of preference

- 1st student schedules:
- June 6-June 20
 - June 20-July 4
 - July 4-July 18
 - July 18-Aug 1
 - Aug 1-Aug 15
 - Aug 15-Aug 29

- 2nd student schedules:
- June 9-June 23
 - June 23-July 7
 - July 7-July 21
 - July 21-Aug 4
 - Aug 4-Aug 18
 - Aug 18-Sept 1