**Cause No. 352-248169-10**

| | | |
|---|---|---|
| **BAT WORLD SANCTUARY and AMANDA LOLLAR,** | § | **IN THE DISTRICT COURT** |
| **Plaintiffs,** | § | |
| | § | **TARRANT COUNTY, TEXAS** |
| **vs.** | § | |
| **MARY CUMMINS,** | § | |
| **Defendant Pro se** | § | **352nd JUDICIAL DISTRICT** |

**MOTION FOR STAY OF FINAL JUDGMENT PENDING APPEAL**

**TO THE HONORABLE JUDGE OF SAID COURT:**

Defendant Mary Cummins respectfully asks for a stay pending appeal of the order signed by this court August 27, 2012. In support hereof, the Defendant shows the Court the following:

**ARGUMENT AND AUTHORITIES**

Whether this Court should stay the district court's judgment pending appeal turns on four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." Hilton v. Braunskill, 481 U.S. 770, 776 (1987). All four factors favor a stay. A movant need not show even a "probability" of success on the merits. See Ruiz v. Estelle, 650 F.2d 555, 565 (5th Cir. Unit A June 1981) (per curiam) ("If a movant were required in every case to establish that the appeal would probably be successful, the Rule would not require as it does a prior presentation to the district judge whose order is being appealed.") It is enough for the movant to "present a substantial case on the merits when a serious legal question is

involved and show that the balance of the equities weighs heavily in favor of granting the stay." Id.

## I. DEFENDANT WILL LIKELY PREVAIL ON THE MERITS.

The relief ordered by the district court is unlikely to survive appellate review. There are independent errors that require this Court to reverse parts or all of the district court's judgment in this case.

A. Plaintiffs did not show any of the elements of defamation, breach of contract, damages, malice or causation as per Appeal Briefs (Appellant's Appeal Brief[1], Appellees' Reply Brief[2], Defendant's Reply Brief[3]) and Amicus Briefs filed by attorney Paul Alan Levy of Public Citizen which has over 300,000 supporters worldwide with 14,000 in Texas[4] and David Casselman attorney for The Cambodia Wildlife Sanctuary and Elephants in Crisis.org[5] on behalf of Defendant Mary Cummins.

B. The Court's Ruling Violates the first Amendment by limiting freedom of speech. Defendant's reports to authorities were fair and privileged reports. Defendant spoke about an issue of public concern. Plaintiffs are public figures.

## II. DEFENDANT WILL SUFFER IRREPARABLE INJURY ABSENT A STAY

Defendant will suffer irreparable injury absent a stay. Plaintiffs filed a sister state judgment in California and levied Defendant's only bank account leaving Defendant penniless. Defendant's bank account was levied weeks after she sent two rent payments to her landlord. Unbeknownst to Defendant her landlord was out of the country and did not cash the checks which amount to $4,200. The Los Angeles County

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[1] http://www.marycummins.com/mary_cummins_appeal.pdf

[2] http://www.marycummins.com/appellee_reply_brief.pdf

[3] http://www.marycummins.com/marycumminsreplybrief.pdf

[4] http://www.animaladvocates.us/cummins_amicus_brief.pdf

[5] http://www.animaladvocates.us/mary_cummins_v_bat_world_sanctuary_amicus_letter.pdf

Sheriff currently is holding $4,300 of Defendant's funds. If Plaintiffs take the $4,300, Defendant will be two months behind on her rent and could be evicted which would cause permanent and irreversible damage to Defendant and her non-profit organization.

## III. DEFENDANT'S IRREPARABLE INJURIES STRONGLY OUTWEIGH ANY HARM TO PLAINTIFFS

Plaintiffs will not be harmed in any way by a stay. Plaintiff Amanda Lollar has spun this case on the Internet to make her appear to be a "victim" of "defamation" when she is actually guilty of animal cruelty, neglect and violations of animal regulations. Amanda Lollar committed animal cruelty and was reported to authorities by Defendant. The main veterinarian for the USDA stated that "Amanda Lollar" "caused bats pain, suffering and death" (Exhibit 1). Lollar lost her USDA permit because she does not comply with the Animal Welfare Act (Exhibit 2). The Texas Parks & Wildlife Department stated that "Amanda Lollar" is not "an expert," "cannot treat bats with White Nose Syndrome," "cannot have an assurance colony," "none of her unreleasable bats are permitted," "she must defer to true bat experts Bat Conservation International and Fish & Wildlife Services," "she cannot exhibit bats," ... (Exhibit 3).

Because Lollar has spun this case in her favor on the Internet she is now making over $250,000 a year when they were previously only making $70,000. Plaintiff has already profited off the plight of Defendant and will not be harmed. The Appeal Brief was submitted September 10, 2013 and opinion should be released soon.

## IV. A STAY IS IN THE PUBLIC INTEREST

Everything which Defendant stated was freedom of speech and in the public interest. Every word Defendant stated came from her fair and privileged reports to authorities. The Texas Citizens Participation Act was signed into law and effective immediately on June 17, 2011. Because Defendant was sued September 2010 Defendant was not able

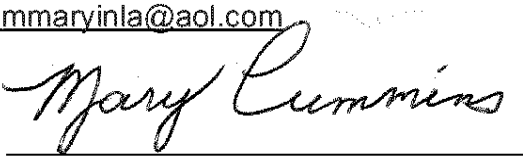
to have this case dismissed under the new Act. To punish a citizen who legally had to report Amanda Lollar to authorities would not be in the public interest especially in light of the subsequent passage of the Texas Citizens Participation Act.

**CONCLUSION**

Defendant respectfully requests that this Court stay its order and final judgment pending appeal as it relates to the monetary judgement of the court order.

Respectfully submitted,

Mary Cummins, Defendant Pro se
645 W 9th St, #110-140
Los Angeles, CA 90015-1640
Phone 310-877-4770
Email: mmmaryinla@aol.com

By: 

Mary Cummins, Defendant Pro Se
December 9, 2013

## CERTIFICATE OF CONFERENCE

Conference was held on the merits of this motion with Plaintiffs' attorney Randy Turner via email and agreement was not reached.

Mary Cummins, Defendant Pro Se
December 9, 2013

## CERTIFICATE OF SERVICE

I, Mary Cummins, hereby certify that a TRUE COPY of the above **MOTION FOR STAY OF FINAL JUDGMENT PENDING APPEAL** was served on the Plaintiffs' Attorney of record by FAX and by FIRST CLASS MAIL at

Randy Turner
Bailey & Galyen
1300 Summit Ave. #650
Fort Worth, Texas 76102
this 9th Day of December 2013

Mary Cummins, Defendant Pro se
December 9, 2013

**Cause No. 352-248169-10**

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| **Defendant Pro se** | § | **352nd JUDICIAL DISTRICT** |

**FIAT**

Defendant's DEFENDANT'S MOTION FOR STAY OF FINAL JUDGMENT PENDING APPEAL was filed on December ___, 2013. Defendant requests that the foregoing be set for hearing.

IT IS THEREFORE ORDERED that a hearing before this court on said Motion be set for the _____ day of _____ at _____ a.m./p.m. in the 352nd District Court of Tarrant County, Fort Worth, Texas.

Date_____.

_____

Judge Presiding

**Cause No. 352-248169-10**

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**DEFENDANT'S MOTION FOR TELEPHONIC HEARING**

TO THE HONORABLE JUDGE OF SAID COURT:

Mary Cummins, Defendant Pro se, files this Motion for Telephonic Hearing, and in support shows the following:

I.

The hearing is for MOTION FOR STAY OF FINAL JUDGMENT PENDING APPEAL in the above styled cause filed December 9, 2013. Hearing date has not yet been set.

2.

Defendant resides in Los Angeles County, California and their appearance by telephone would be the most expedient method of resolving the issues for all parties involved. Defendant does not have the money to pay for airfare, motel to/from Texas. Defendant is also physically disabled making travel difficult.

3.

No party in this action will suffer any prejudice if Defendant appears telephonically.

WHEREFORE, Defendant respectfully requests that the Court grant this Motion for Telephonic Hearing.

Respectfully submitted,

Mary Cummins, Defendant Pro se
645 W 9th St, #110-140
Los Angeles, CA 90015-1640
Phone 310-877-4770
Email: mmmaryinla@aol.com
December 9, 2013

By: Mary Cummins
Mary Cummins, Defendant Pro Se

**Cause No. 352-248169-10**

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| **vs.** | § | |
| **MARY CUMMINS,** | § | |
| **Defendant Pro se** | § | **352nd JUDICIAL DISTRICT** |

**FIAT**

Defendant's DEFENDANT'S MOTION FOR TELEPHONIC HEARING was filed on December ____, 2013. Defendant requests that the foregoing be set for hearing.

IT IS THEREFORE ORDERED that a hearing before this court on said Motion be set for the _____ day of _____ at _____ a.m./p.m. in the 352nd District Court of Tarrant County, Fort Worth, Texas.

Date_____.

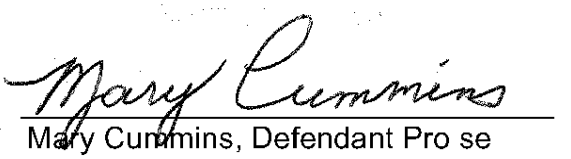
_____

Judge Presiding

## CERTIFICATE OF SERVICE

I, Mary Cummins, hereby certify that a TRUE COPY of the above **MOTION FOR TELEPHONIC HEARING** was served on the Plaintiffs' Attorney of record by FAX and by FIRST CLASS MAIL at

**RANDY TURNER**
Randy Turner
Bailey & Galyen
1300 Summit Ave. #650
Fort Worth, Texas 76102
December 9, 2013



Mary Cummins, Defendant Pro se
645 W 9th St, #110-140
Los Angeles, CA 90015-1640
Phone 310-877-4770
Email: mmmaryinla@aol.com

## Morris, Connie R (APHIS)

**From:** Gage, Laurie J (APHIS)
**Sent:** Thursday, May 05, 2011 4:13 PM
**To:** Jones, Daniel R (APHIS)
**Cc:** Morris, Connie R (APHIS); Gibbens, Robert (APHIS)
**Subject:** Re: Complaint against Bat World Sanctuary, Amanda Lollar

Hi All

I wanted to include another line about suffering in my previous analysis of this procedure.

I have reviewed the U-Tube footage and looked at the complaint about the bat that was mishandled by Ms. Amanda Lollar of the Bat World Sanctuary. This is indeed a violation of the AWA. Ms. Lollar should have sought veterinary assistance for the bat with dystocia. It would be one thing if she were only assisting a birth, but the moment Ms. Lollar realized this was a dystocia requiring an episiotomy, she should have taken the bat to her attending vet or a local veterinarian. Apologizing in the video to the bat does not solve the problem. This mother bat clearly experienced pain and suffering at Ms. Lollar's hand, so much so that it appeared to lose consciousness during the procedure. No anesthesia was given to the bat and no pain management was offered. I believe the mother bat could have survived if it had been properly anesthetized and the pup delivered using proper surgical techniques. It is possible the pup could also have survived if this case had been properly managed by a veterinarian.

Laurie J. Gage, D.V.M., Dipl. ACZM
USDA APHIS Large Cat Specialist

**From:** Digesualdo, Cynthia L - APHIS
**Sent:** Tuesday, April 10, 2012 02:05 PM
**To:** Ridenour, Randall - APHIS
**Cc:** McFadden, Gloria S - APHIS
**Subject:** RE: Returned Certified Mail (Cancel Letter)

Can we send this regular mail? She's a little far for me to hand deliver. Anyway, I can promise you she knows she's cancelled. Not happy with us and very glad to be rid of us.

## Laura Russell

**From:** Wendy Connally
**Sent:** Monday, July 09, 2012 1:54 PM
**To:** 'sanctuary@batworld.org'
**Cc:** Megan Russell
**Subject:** Bat World Sanctuary + BRIT WNS Symposium

Hi Amanda,

Your invitation for the Bat World – BRIT WNS Symposium reached me this morning. **Thanks for your interest in protecting our wonderful bats in Texas and sharing information about White Nose Syndrome**. I think it's great when concerned folks rally together for a good cause; however, I have a few concerns about the information supporting your event. I know that the Bat World Sanctuary has been on the forefront of bat rehabilitation in Texas for some time now; however, there are just a few issues in your announcement I'd like to address.

As you may know, US Fish and Wildlife Service (USFWS) and Bat Conservation International have been the primary nodes coordinating WNS information, survey and response protocols, and research on this fast-moving, little understood disease. The USFWS website (http://www.fws.gov/whitenosesyndrome/) and conference calls every two weeks with biologists working on these issues provide the most contemporary information on the spread and impact of the fungus (*Geomyces destructans*, Gd) and the disease (White Nose Syndrome). This is the fifth year they've hosted leading national and international scientists and researchers, conservation practitioners and regulators at the WNS Symposium to receive the latest updates on Gd and WNS transmission, spread, conditions and responses – what's new, what's working, what's not. This focused group participates in workshops, information presentations, and action-based discussions – these working groups are the leaders in understanding and responding to this disease. There is a lot to know about the relationship between the Gd fungus and the WNS expression (visible effects, stress, and mortality).

WNS has not been detected in Oklahoma. The *fungus* that causes WNS was detected in western Oklahoma a few years back; however, despite many comprehensive additional surveys, it has not been detected again, nor has the disease WNS been detected anywhere in the state.
TPWD has funded surveys in the Panhandle in suitable areas closest to that fungal detection and BCI has done other work to survey for the disease. The fungus and its expression as WNS have not been detected in Texas. There is a **lot** of research going on right now to understand the conditions, sites, and bat species in which the fungus expresses as WNS – while we don't have it in Texas, we certainly want to be adequately prepared for detection and response. We will continue to monitor potential areas and are working on our statewide surveillance and response protocols this year with a working group – I'm working on the list of stakeholders and I can certainly include you in that list if you are interested in learning more.

**There are currently no USFWS-approved protocols for the treatment and release of WNS-positive (WNS+) bats.** Bottom line is that we (Texas) would not want to accept WNS+ bats from outside of the state. And, per the Bat World Wildlife Rehabilitation Permit Provision 12, y'all are not authorized to transport from/to other states without coordinating written permission with TPWD. For interstate transfer to be a more regular occurrence, a special provision would have to be made on the permit explicitly; however, because we do not have WNS in Texas, TPWD would not permit WNS+ bats coming across state lines into Texas to any TPWD-permitted rehab facility, nor would we authorize acceptance of any bat from WNS+ states. We could not be certain that WNS+ bats would not pass the fungus or disease to *uninfected releasable bats in the facility*, and then the spores of the fungus could spread upon release of the healthy bats. Another concern would be that if a rehabbed infected bat appears to recover and was released, it could potentially spread the fungal spores and/or breed with indigenous bats (same species, of course) and have possible impacts to their fitness to fend off the disease.

In the event that WNS is detected in Texas, we would currently follow the established USFWS protocols for detection and response. When we get our state-specific protocols in place, TPWD will review all bat rehabilitator's permits and

may include some level of quarantine holding and transfer to a permitted scientific research facility, but would not include treatment or release until we know more about the disease. In order for any permitted bat rehabber to provide quarantine facilities, the permit would need to be amended to accommodate these activities, along with a *strong scientifically-supported reason for doing so*. Any quarantine practices in any facility must be sufficient to protect uninfected, indigenous bats in the same facility against infection and prevent the release of the fungal spores to the outside world where they could infect wild bats.

I'm a bit concerned with this statement: **"The cost of the symposium will be used to fund a new state-of-the-art sanctuary facility for the successful rescue, breeding, maintenance and eventual release of bats affected by WNS."** At this time, TPWD would not provide a permit for any facility to rescue, breed, maintain or (especially) release bats *which test positive for the fungus or WNS until peer-reviewed published research has shown that the treatment could be effective*. Additionally, the Bat World Wildlife Rehabilitation Permit Provision 15a prohibits breeding of any of the animals held under the authority of the permit. While I understand that you provide habitat for a wild maternity colony (*thank you!*), no captive, rehabbing, or nonreleasable bats can be bred at your rehabilitation facility under your permit. All rehab animals at any facility should be separated by sex to prevent breeding. Any future breeding, which would be directly related to an identified need to recover a bat species, would need to occur under other TPWD permit programs and conditions.

Please review the terms of your permit to address this statement: "... **live, rescued bats will be an integral part of the instruction throughout the day, but participants will not be handling them for the purposes of this symposium.**" The Bat World Wildlife Rehabilitation Permit allows (Provision 10) *limited* permanent retention of non-releasable wildlife, on a *case-by-case basis*, for educational purposes IF approved by TPWD (see Texas Administrative Code §69.44. General Provisions. e. 1: *The department may permit the retention of non-releasable wildlife for approved educational, fostering, or socialization purposes, or for transfer to zoological, scientific, or educational permit holders. Requests must be made in writing to the department)*. Using live bats during the symposium is fine if they are not bats currently under rehabilitative care and if they've been approved by TPWD to retain as non-releasable for education. I noticed on some of your past annual reports that you indicated several bats in some years that were transferred to "captive colony;" however, I'm unaware of any case-by-case approvals in our files which would authorize you to hold any non-releasable bats for educational purposes and y'all do not have an educational display permit for that purpose. It's possible in our recent turn over that maybe we are missing some authorization paperwork or we just need to update our files that you have a captive colony, appropriate facilities for non-releasable bats, and/or numbers and species of those now-captive bats? You could coordinate that update with Megan Russell if we're out of date on that information – we have had a lot of change in that program in the last several years, certainly as long as you've been operating the Sanctuary.

Please feel free to visit with Megan Russell (megan.russell@tpwd.state.tx.us) in our Nongame Permits shop or me if you need more information on any of the aspects above.
Your workshop is a great opportunity to reach quite a few people about bat conservation and this devastating disease. We appreciate your efforts!

All the best,

Wendy Connally, Program Lead
Texas Parks & Wildlife Department
*Rare Species, Nongame Permits, and*
*Texas Conservation Action Plan*
direct 512.389.4975
cell 512.461.6237
wendy.connally@tpwd.state.tx.us

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BCC