

Cause No. 352-248169-10

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2	BAT WORLD SANCTUARY and) IN THE DISTRICT COURT
3	AMANDA LOLLAR,)
	Plaintiffs,) TARRANT COUNTY, TEXAS
4)
	vs.) 352 nd Judicial District
5)
6	MARY CUMMINS,) Hearing: June 2, 2011
	Defendant) TELEPHONIC APPEARANCE
7) REQUESTED

MARY CUMMINS RESPONSE TO PLAINTIFF'S MOTION FOR DISCOVERY SANCTIONS AND DEFENDANTS REQUEST FOR PROTECTIVE ORDER REQUIRING PLAINTIFF TO COMPLY WITH TRCP 199.1

1. Without waiving her objection to personal jurisdiction, Defendant Mary Cummins (hereinafter "Defendant" or "Cummins") appears and respectfully requests that this honorable court deny Plaintiffs Motion to Compel and for Sanctions, and requests this court issue a protective order requiring Plaintiff to comply with the provisions of TRCP 199.1, on the following grounds:

a. Timely notice was not given pursuant to TRCP 199.1(a), in that less than 24 hours notice was given and is not adequate;

b. Timely notice was not given pursuant to TRCP 199.1(c), in that less than 24 hours notice was given and is not adequate for a non-stenographic deposition and no stenographer was scheduled to take testimony;

c. Plaintiff's attorney is aware of these facts and was aware of them before filing his motion;

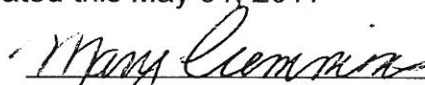
d. Plaintiff has made no effort and has shown no interest in re-scheduling the deposition, even though Plaintiff was advised that his notice was not received

until the day of the scheduled deposition. A protective order is necessary to
 MARY CUMMINS RESPONSE TO PLAINTIFF'S MOTION TO COMPEL AND DEFENDANTS REQUEST FOR PROTECTIVE ORDER REQUIRING PLAINTIFF TO COMPLY WITH TRCP 199.1

1 ensure that Cummins is permitted to have her testimony taken by telephone or
2 other approved electronic means, and that Plaintiff is required to serve adequate
3 notice is given as set forth in TRCP 199.1. There is absolutely no reason why
4 the Plaintiff's attorney cannot communicate with Defendant to arrange a date and
5 time for deposition.

6 2. Defendant relies upon the attached "AFFIDAVIT OF MARY CUMMINS IN
7 RESPONSE TO PLAINTIFF'S MOTION TO COMPEL AND DEFENDANTS REQUEST
8 FOR PROTECTIVE ORDER REQUIRING PLAINTIFF TO COMPLY WITH TRCP 199.1"
9 in responding this motion. Defendant requests personal appearance by telephone for
10 the reasons given in the Affidavit, or in the alternative if telephone is not available to the
11 court, that the court accept this brief as an appearance.

12
13 Dated this May 31, 2011

14 

15 Mary Cummins, Defendant Pro se
16 645 W 9th St, #110-140
17 Los Angeles, CA 90015
18 Phone 310-877-4770
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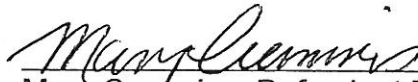
MARY CUMMINS RESPONSE TO PLAINTIFF'S MOTION TO COMPEL AND DEFENDANTS REQUEST
FOR PROTECTIVE ORDER REQUIRING PLAINTIFF TO COMPLY WITH TRCP 199.1

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2 **CERTIFICATE OF SERVICE**

3 I, Mary Cummins, hereby certify that a TRUE COPY of the above DEFENDANT MARY
4 CUMMINS RESPONSE TO PLAINTIFFS MOTION TO COMPEL AND FOR
5 SANCTIONS was served on the Plaintiffs' Attorney of record by FAX and by FIRST
6 CLASS MAIL at

7 Randy Turner
8 1800 N Norwood Dr Ste 100
9 Hurst, Texas 76054
10 Fax: 817-268-1563
11 this 31st Day of May, 2011

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

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2 BAT WORLD SANCTUARY and) IN THE DISTRICT COURT
3 AMANDA LOLLAR,)
4 Plaintiffs,) TARRANT COUNTY, TEXAS
5 vs.)
6 MARY CUMMINS,)
7 Defendant) (Telephonic hearing requested)

8 **AFFIDAVIT OF MARY CUMMINS IN RESPONSE TO PLAINTIFF’S MOTION TO**
9 **COMPEL AND DEFENDANTS REQUEST FOR PROTECTIVE ORDER REQUIRING**
10 **PLAINTIFF TO COMPLY WITH TRCP 199.1**

11 1. I am a resident of California. The plaintiff is aware I reside in California and is
12 also aware that I am contesting jurisdiction in this case. Plaintiff did not timely serve
13 notice and notice was not mailed to the correct address which has been furnished to
14 this court. As a consequence, notice did not reach me until the day he wanted to hold
15 the deposition. I object to the improper, last-minute notice, and I object to Plaintiff’s
16 refusal to comply with TRCP 199.1(a) and (c). Plaintiffs have not amended their notice
17 or attempted to reschedule the deposition, even though nearly two months have
18 passed.

19 2. I received from plaintiff’s attorney a notice of deposition on April 7, 2011, **THE**
20 **SAME DAY AS THE DEPOSITION WAS SCHEDULED** by plaintiff’s attorney. It is not
21 reasonable that a party should expect to conduct an out-of-state oral examination on
22 same-day notice.

23 3. Plaintiff’s attorney possesses my email address, but his notice was not
24 addressed correctly and was not mailed out in time to reach me prior to the time he
25 wanted to hold the deposition. The notice was dated and mailed on March 24th. A copy
is attached as Exhibit A (envelope) & Exhibit B (notice), attached. The Exhibit A
envelope was printed from the stamps.com web site. Exhibit A shows that Plaintiff failed
to include the suite number and post office box number “110-140a” in the address and
resulting in an incorrect bar code and zip code, which may have contributed to the a
mis-delivery or delay, but in any event sufficient time was not allowed to serve notice by
mail. Postal records show that UPS received the letter on March 28, but, possibly due
to the missing box information, the notice was mis-delivered or not placed in my box
until April 7. Exhibit A also shows that the notice was sent by certified mail, but the
signature card was already removed by someone else, and I was never asked to sign

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

1 for proof of delivery at the postal counter, making me believe that the item was mis-
2 delivered to a third party, and signed for by somebody else.

3 4. A courtesy copy from Mr. Turner by email would have prevented this issue. Even
4 if Plaintiff had properly addressed the notice, and even if the notice had been received
5 by me on March 28, there would not have been sufficient notice to arrange for an out-of-
6 state deposition.

7 5. Additionally, Plaintiff failed to serve notice on me at with least five days written
8 notice as required by TRCP 199.1(c), when scheduling a non-stenographic deposition,
9 because the notice was not properly addressed and delivery was delayed.

10 6. On the same day, April 7, 2011, I immediately informed Plaintiff's Attorney, Mr.
11 Mackenzie, by telephone message at 10:44 AM that the notice had not been received
12 by me prior to his deposition date. I also sent out an email, attached as Exhibit C.
13 There is no indication that a court stenographer had been scheduled for the
14 examination.

15 7. Plaintiff has not served any notice of deposition subsequent to his original notice
16 which was not timely or properly served, nor has any attempt been made by the
17 attorney to reschedule the deposition. It is for this reason that I believe that Plaintiff's
18 motion to compel is without merit.

19 8. I believe plaintiff's attorney is being uncooperative and abusive in this case for
20 the purpose of obtaining court orders and sanctions against me in order to force a
21 sanction or default judgment against me, and to avoid trying the case on its merits. It is
22 for this reason that I request that the court's order include a protective order which
23 requires Plaintiffs and their attorneys to comply with TRCP 199.1.

24 9. I am unable to appear personally in this hearing, as I cannot afford the travel
25 expense. I previously appeared in this court in person on May 4 at personal expense.
Plaintiff has not paid any of my travel costs to travel from California, and I am unable to
afford to travel in person for every motion that is brought. It is for this reason I am
requesting telephonic appearance.

This instrument was acknowledged before me on this 31st day of May, 2011, by:

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

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


Notary Public
My commission expires: _____

See Attached.

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CERTIFICATE OF SERVICE

I, Mary Cummins, hereby certify that a TRUE COPY of the above was served on the Plaintiffs' Attorney of record by FIRST CLASS MAIL and by FAX at Randy Turner
1800 N Norwood Dr Ste 100
Hurst, Texas 76054
Fax: 817-268-1563
this 31st Day of May, 2011


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

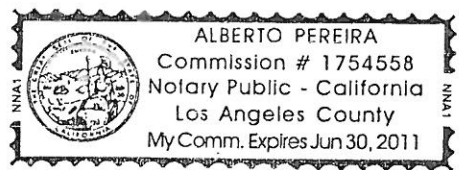
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Los Angeles

On 05-31-11 before me, ALBERTO PEREIRA, NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

personally appeared MARY CUMMINS
Name(s) of Signor(s)

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 [Handwritten 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 for A Legal Document

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: Mary Cummins

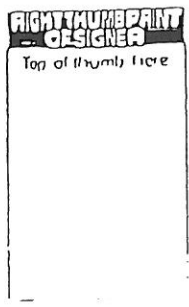
Capacity(ies) Claimed by Signer(s)

- 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 _____

Turner & McKenzie
1800 Norwood Drive
Suite 100
Hurst, Texas 76054

FOR ENVELOPE ADDRESS, FOLD
CERTIFIED MAIL



7009 2250 0003 7625 3847

\$5.540
US POSTAGE
FIRST-CLASS
FROM 76054
MAR 24 2011
stamps.com



Mary Cummins, Defendant
645 W. 9th St. 110-140 A
Los Angeles CA 90015-1640



A

B

CAUSE NO. 352-248169-10

BAT WORLD SANCTUARY and	§	IN THE DISTRICT COURT
AMANDA LOLLAR,	§	
<i>Plaintiffs</i>	§	
	§	
v.	§	TARRANT COUNTY, TEXAS
	§	
	§	
MARY CUMMINS,	§	
<i>Defendant</i>	§	352nd JUDICIAL DISTRICT

**PLAINITFF'S NOTICE OF INTENT TO TAKE ORAL DEPOSITION OF
DEFENDANT, MARY CUMMINS**

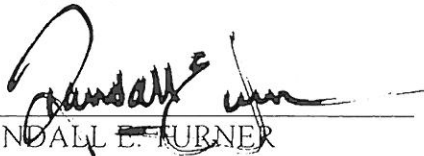
To: Pro Se Defendant, MARY CUMMINS, 645 W. 9th Street, #110-140a
Los Angeles, California 9005.

Please take notice that Plaintiffs, by and through their attorney of record, will take the oral deposition MARY CUMMINS on **Thursday, April 7, 2011 at 10:00 a.m.** at the Law Office Turner & McKenzie, 1800 Norwood Drive, Suite 100, Hurst, Texas 76054. The deposition will be recorded by other than stenographic means. The deposition will be recorded by an audio tape recorder and will not be recorded stenographically.

Such deposition will continue until concluded to the satisfaction of all parties and may be used in evidence in the above styled and numbered cause. This deposition may be videotaped.

Respectfully submitted,

LAW OFFICE OF TURNER & MCKENZIE
1800 N. Norwood Drive, Suite 100
Hurst, TX 76054
817-282-3868 Phone
817-268-1563 FAX



RANDALL E. TURNER
SBN: 20328310
ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF CONFERENCE

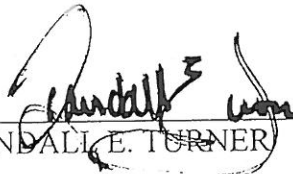
A conference was attempted on March 22, 2011 and March 24, 2011 with the pro se Defendant, Mary Cummins, to agree on a date, time, place and materials to be furnished. As Pro Se Defendant Mary Cummins has not returned our calls, an agreement could not be reached. Therefore this deposition shall be taken pursuant to this notice.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served upon the Attorney of record (or Pro Se Defendant) of all parties to the above-entitled and numbered cause in accordance with TEX. R. CIV. P. 21a, on this 24 day of March, 2011, by the following method:

- personal delivery
- telephonic document transfer (fax)
- certified mail and first class
- courier receipted delivery

Via CMrrr: 7009 2250 0003 7625 3847
Defendant, Mary Cummins
645 W. 9th St , #110-140a
Los Angeles, California 90015



RANDALL E. TURNER

TURNER & MCKENZIE, PC
ATTORNEYS AT LAW

- * Randall E. Turner
- ** Thomas W. McKenzie

- Board Certified in
Personal Injury Trial Law and
Civil Trial Law by the
Texas Board of Legal Specialization
- Civil Trial Specialist by the
National Board of Legal Specialization
- Also Licensed in Colorado
- ** Also Licensed in Oklahoma

1800 Norwood Dr.
Suite 100
Hurst, Texas 76054
Tel: (817) 282-3868
Fax: (817) 268-1563
www.turnermckenzie.com

March 24, 2011

Via CMrrr: 7009 2250 0003 7625 3847
Mary Cummins, Defendant
645 W. 9th St., #110-140a
Los Angeles, California 90015

Re: *Bat World Sanctuary, et al. vs. Mary Cummins*; Cause No: 352-248169-10

Dear Mrs. Cummins:

Enclosed please find Plaintiffs Notice of Intent to Take the Oral Deposition of Defendant
May Cummins.

If you have any questions please feel free to contact me.

Sincerely,



Kelly Perkins

Paralegal to Randall E. Turner
kelly@turnermckenzie.com

C

Mary Cummins here

5/28/11 10:12 AM

From: Mary Cummins <mmmaryinla@aol.com>
To: kelly@turnermckenzie.com; randall@turnermckenzie.com
Subject: Mary Cummins here
Date: Thu, Apr 7, 2011 10:50 am

I just received your letter about my deposition. Please, email a copy of all correspondence and filings. That is my mailing address. Even though I've told them to tell me instantly when there is mail from Texas, they have not been doing that. I just left a message at 10:44 a.m. on your phone. I also need at least 30 days notice for any hearing or meeting because I have to book a flight and hotel room. I am in Los Angeles, California. Thank you.

Mary Cummins
Animal Advocates
<http://www.AnimalAdvocates.us>
<http://www.Facebook.com/AnimalAdvocatesUSA>
<http://AnimalAdvocatesWildlifeRehabilitation.Blogspot.com>
CA DFG permitted Wildlife Rehabilitator
Rio Hondo Police Academy
State Humane Association of California
Animal Law Enforcement Academy
HSUS NDART, EARS
IWRC, NWRA, CCWR