

1 REPORTER'S RECORD

2 VOLUME 1 OF 1 VOLUMES

3 TRIAL COURT CAUSE NO. 352-248169-10

4 COURT OF APPEALS CAUSE NO. 02-12-00285-CV

5
6 BAT WORLD SANCTUARY, ET AL) IN THE 352ND JUDICIAL
7 vs.) DISTRICT COURT OF TEXAS
8 MARY CUMMINS) IN AND FOR TARRANT COUNTY
9

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11 **MOTION TO RECUSE/MOTION FOR SANCTIONS**12 August 17, 2012
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20 On the 17th day of August, 2012, the following
21 proceedings came on to be heard in the above-titled and
22 numbered cause before the Honorable Jeff Walker, Judge
23 Presiding, held in Fort Worth, Texas, reported by machine
24 shorthand utilizing computer-aided transcription.
25

COPY

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P R O C E E D I N G S

(Motion to Recuse, August 17, 2012)

1
2
3 **THE COURT:** Okay. Ladies and gentlemen, my name
4 is Jeff Walker. I'm the presiding judge of the Eighth
5 Administrative Judicial Region. I'm here today in my capacity
6 as the presiding judge to hear the motion to recuse filed by
7 Mary Cummins in Cause Number 352-248169-10.

8 You're Ms. Cummins?

9 **MS. CUMMINS:** Yes.

10 **THE COURT:** Are you ready to proceed?

11 **MS. CUMMINS:** Yes, Your Honor.

12 Would you prefer me --

13 **THE COURT:** And you're Mr. Turner?

14 **MR. TURNER:** Yes, sir. We're ready.

15 **THE COURT:** And are you ready to proceed?

16 **MR. TURNER:** Yes.

17 **THE COURT:** All right. I have read the
18 documents that each of you has filed. Quite frankly, they go
19 well beyond the issue of recusal into other matters. And,
20 quite frankly, we're going to limit ourself to the recusal
21 issue, which is your motion to recuse, Ms. Cummins.

22 **MS. CUMMINS:** Yes.

23 **THE COURT:** I know in your papers you talk about
24 things involving Mr. Turner and his clients and other matters.
25 We're not going to get into any of that. I'm not here for

1 that purpose. I can't help you at all with any of that. My
2 authority is limited by rule and by statute to hearing the
3 motion to recuse.

4 I have read your motion. And boiling it down it
5 can be stated that your motion is one that -- in which you
6 claim that Judge Brigham has a bias and should be removed from
7 this case. Is that a fair statement?

8 *MS. CUMMINS:* Yes.

9 *THE COURT:* All right. And that's the issue
10 we're going to deal with.

11 You're not represented by counsel, are you,
12 Ms. Cummins?

13 *MS. CUMMINS:* No. I'm pro se.

14 *THE COURT:* That's fine. It's quite all right.
15 But I feel, under the circumstances, that I need to give you a
16 little bit of background on the issue of recusal. It is not a
17 simple issue.

18 Have you read Rule 18a and b of the Texas Rules
19 of Civil Procedure?

20 *MS. CUMMINS:* Yes.

21 *THE COURT:* That's a good start. Have you read
22 any of the cases dealing with the issue of bias and proof of
23 bias?

24 *MS. CUMMINS:* Yes.

25 *THE COURT:* Good. You understand that the

1 burden of proof rests with you? That, in essence, there is a
2 legal presumption that exists in every court in every state in
3 this country that the judge of that court has the requisite
4 qualifications, education, background and temperament to hear
5 any matter that comes before that judge. It is your
6 obligation to put on evidence that overcomes that presumption.

7 Understood?

8 *MS. CUMMINS:* Yes.

9 *THE COURT:* Okay.

10 *MS. CUMMINS:* Your Honor, would you prefer for
11 me to give testimony and argument from the table or the
12 podium?

13 *THE COURT:* We'll get to that in just a minute.

14 *MS. CUMMINS:* Okay.

15 *THE COURT:* Since you are pro se, there is some
16 latitude that is allowed, but that is not latitude that
17 extends to being ignorant of the law.

18 You understand it's your obligation to
19 understand what the rules and the law are?

20 *MS. CUMMINS:* Yes.

21 *THE COURT:* Okay. Do you have any questions of
22 me at this point, Ms. Cummins?

23 *MS. CUMMINS:* No.

24 *THE COURT:* Okay. I have been the presiding
25 judge of this region for almost 20 years. I have heard

1 hundreds of motions to recuse. I can tell you, Ms. Cummins,
2 that it is, indeed, not a simple area of the law. It must be
3 proved -- that recusal must be proved by a preponderance of
4 the evidence -- I said evidence, not opinions, okay? You have
5 to come with something more than opinions.

6 You may have noticed when you were reading Rule
7 18a, it says that a motion for recusal cannot be based solely
8 on the rulings of the judge. That is, if the judge ruled
9 against you that is not evidence of bias.

10 Clear?

11 **MS. CUMMINS:** Yes.

12 **THE COURT:** Okay. Do you wish to make an
13 opening statement before we get into the evidence?

14 **MS. CUMMINS:** Um, yes.

15 **THE COURT:** All right. You may use -- in this
16 capacity, since you're not giving evidence, but you're giving
17 your opening statement -- by the way, your opening statement
18 is not evidence -- you may use the lecturn, which is between
19 you and Mr. Turner.

20 And I believe all of this is wired into a
21 recording device?

22 **COURT REPORTER:** (Nods head.)

23 **THE COURT:** Yours, okay. We do have a court
24 reporter taking down everything that's being said.

25 All right. Ms. Cummins, if you would, use the

1 lecturn.

2 *MS. CUMMINS:* Good afternoon, Your Honor.

3 I'm here today with a motion to recuse and
4 disqualify Judge Brigham in this case. I believe I have
5 grounds to recuse him, because I was never given notice that
6 there would be a visiting judge for the trial. I was never
7 given any written notice. I had no idea until he walked into
8 the room. Had I been given any notice, I would have timely
9 filed a motion to recuse before the matter had even started.

10 I realize I can also disqualify the judge based
11 on constitutional grounds, and I believe I have those grounds.
12 I was deprived of my right to a fair and impartial trial.

13 *THE COURT:* Excuse me.

14 *MS. CUMMINS:* I was --

15 *THE COURT:* Excuse me just a second. I didn't
16 see any of that in your motion, Ms. Cummins, a claim of
17 constitutional grounds. Is this something new that you're
18 bringing up?

19 *MS. CUMMINS:* Well, actually I did file a
20 response to Mr. Turner's Rule 13 Sanctions. I think I
21 included some of it in there. But I believe the recusal is
22 for -- I thought it would also include constitutional grounds.

23 *THE COURT:* Well --

24 *MS. CUMMINS:* He -- I believe there's a bias.

25 *THE COURT:* Rule 18 -- that Rule 18, that I

1 referred you to, says that in your written motion you must
2 state specifically what your grounds are. And there's a good
3 reason for that being there, Ms. Cummins. That is to allow
4 the judge that you seek to have recused have the first
5 opportunity to determine whether or not to step down. If you
6 don't put it in that motion, the judge doesn't know that's
7 going to be a part of this hearing.

8 *MS. CUMMINS:* I didn't --

9 *THE COURT:* And it won't be a part of this
10 hearing. You're limited to what you have specifically pled.

11 *MS. CUMMINS:* Okay. I believe that there was --
12 Judge Brigham had a -- a bias against me, and I brought
13 evidence here today to show you that I believe he has a
14 relationship with Mr. Turner, and I have brought physical
15 evidence.

16 And I believe Judge Brigham made up his mind
17 before I even finished calling all my witnesses and showing
18 all my exhibits.

19 And I believe I have the right for him to be
20 recused and disqualified, and I believe it would void his oral
21 court order as per Texas Government Code 74.053. And I'm
22 prepared to show evidence and testimony today.

23 *THE COURT:* I'm going to have to ask you to bear
24 with me. I'm having a hard time hearing you. And apparently
25 that microphone is not on.

1 **MS. CUMMINS:** Is this on? Is it on?

2 **THE COURT:** I don't think so.

3 **MS. CUMMINS:** I could just speak louder, if
4 you'd like.

5 **THE COURT:** That might be helpful to me.
6 Try it now.

7 **MS. CUMMINS:** Testing. Can you hear me?

8 **THE COURT:** Great. I'm not used to this
9 courtroom.

10 **MS. CUMMINS:** Anyway, I believe I have evidence
11 and testimony that I can provide you today to show that I have
12 good reason to recuse and disqualify Judge William Brigham,
13 because I wasn't given notice of a visiting judge, and I
14 believe he has a predisposed bias against me.

15 **THE COURT:** Okay. Do you wish to make an
16 opening statement, Mr. Turner?

17 **MR. TURNER:** Briefly, Your Honor.

18 Your Honor, I think the evidence is going to
19 show that the motion to recuse was not verified, as required
20 by 18a.

21 Evidence is going to show that even if the facts
22 that she pled are true, they're not sufficient to justify
23 recusal.

24 And the evidence is going to show that she did
25 not file this motion as soon as practicable after the

1 movant -- movant knew of the grounds for the motion.

2 And I think the evidence is also going to show
3 that there is no bias, there is no special relationship, and
4 Judge Brigham need not be recused.

5 Thank you.

6 **THE COURT:** Okay. Call your first witness,
7 Ms. Cummins.

8 **MS. CUMMINS:** Should I do it from the podium or
9 can I do it from the desk?

10 **THE COURT:** If you're going to testify we need
11 to put you in the witness box.

12 **MS. CUMMINS:** Okay.

13 **THE COURT:** Before you take your seat,
14 Ms. Cummins, would you raise your right hand?

15 *(Witness sworn.)*

16 **THE COURT:** Ms. Cummins, typically testimony
17 would be in the form of question and answer.

18 **MS. CUMMINS:** May I do it as a narrative?

19 **THE COURT:** That's what I was going to talk to
20 you about. I'm going to let you do it in the narrative, but I
21 want you to go slow enough so that Mr. Turner, if need be, can
22 voice his objections to the testimony you're giving and get a
23 ruling from me before you proceed.

24 **MS. CUMMINS:** Okay.

25 **THE COURT:** Clear?

1 *MS. CUMMINS:* Yes.

2 *THE COURT:* All right. Go ahead.

3 **MARY CUMMINS,**

4 having been first duly sworn, testified as follows:

5 **DIRECT EXAMINATION**

6 **BY NARRATIVE:**

7 *MS. CUMMINS:* Before the trial began I sent a
8 few e-mails to the Court confirming the trial, and I received
9 a few responses back. And none of the responses stated that
10 there would be a visiting judge.

11 And I would like to enter into evidence two
12 e-mails which I had with the Court, to and from, which no one
13 mentioned that there would be a visiting judge.

14 *THE COURT:* You need -- do you have copies of
15 those e-mails?

16 *MS. CUMMINS:* Yes. And you also --

17 *THE COURT:* You need to have them marked by the
18 court reporter.

19 *MS. CUMMINS:* Okay. I brought my own stickers.

20 I would like to enter as Exhibit 1 --
21 Defendant's Exhibit 1, an e-mail from Linda Blair to me on
22 June 6th. This would be five days before the trial.

23 And her e-mail states: Just confirming, the
24 above reference is called for trial Monday, June 11, 2012, at
25 9:00 a.m.

1 Do I hand this to you here?

2 *MR. TURNER:* Can I just briefly look at them,
3 Your Honor?

4 *MS. CUMMINS:* Plaintiff has a copy of what I'm
5 going to present. Everything was in the file.

6 *MR. TURNER:* No objection to 1, Your Honor.

7 *THE COURT:* All right. Movant's Number 1 is
8 admitted. By the way, it's tagged Defendant's Exhibit Number
9 1, is admitted.

10 *MS. CUMMINS:* On June 1st Linda Blair e-mailed
11 me and confirmed that it is a bench trial and there will be a
12 pretrial right before the start of the trial, which is Monday,
13 June 11th, at 9:00 a.m. Again, I was not informed that there
14 would be a visiting judge. And the plaintiffs -- Mr. Turner
15 has a copy of this in the filing.

16 Would you like me to show it to him anyway?

17 *MR. TURNER:* I'd like to see it, Your Honor. I
18 have a copy of something that she sent me. I don't know if
19 it's the same thing.

20 *MS. CUMMINS:* It's Exhibit 6 in your -- my
21 response to your Rule 13 Sanctions.

22 *MR. TURNER:* No objection to Defendant's 2, Your
23 Honor.

24 *THE COURT:* Defendant's Exhibit 2 is admitted.

25 *MS. CUMMINS:* Anyway, on June 11th, 2012, I

1 arrive for trial. And the first that I knew that Judge
2 Brigham would be the judge overseeing this case was when he
3 walked in the door. Had I known that Judge Brigham would have
4 been the judge of this case and I had been notified properly,
5 I would have timely filed a motion to recuse the judge. I
6 realize I can file one motion to recuse for no reason. But I
7 was not given this opportunity.

8 *THE COURT:* Excuse me. That statement "I know
9 that I could recuse once for no reason."

10 *MS. CUMMINS:* I was told I could -- if I'm
11 giving a notice that there's --

12 *THE COURT:* Hold on, hold on. Remember, this is
13 testimony.

14 *MS. CUMMINS:* Okay.

15 *THE COURT:* We're now into opinions.

16 *MS. CUMMINS:* Okay.

17 I am a pro se because I cannot afford an
18 attorney. And I realize the judge is not allowed to give me
19 any advice or tell me what to do, but he failed to tell me of
20 my right to be able to recuse him before the start of the
21 trial.

22 Anyway, I believe that plaintiff's attorney,
23 Mr. Turner, has a relationship with Judge Brigham, as
24 evidenced by what he said to me before the May 4th, 2011
25 temporary injunction hearing. And before that hearing his

1 client -- Mr. Turner and I were the only ones in the room, and
2 Mr. Turner and his client came behind me and said to the back
3 of my head: I've known this judge for years, he'll sign
4 whatever I put in front of him.

5 Now, I -- May 10th, 2012, we had pretrial
6 motions with Judge Bonnie Sudderth. And at that time I was
7 telling her that I believed Mr. Turner was unethical. And one
8 of the reasons I believed -- I stated he was unethical was
9 because of what he had told me before the May 4th hearing.

10 And I would like to submit into evidence
11 excerpts from the proceeding as Defendant's Exhibit 3.

12 And on page 4, line 6 -- you can have that.

13 *THE COURT:* Don't refer to it until it's
14 admitted.

15 *MS. CUMMINS:* I would like to admit it.

16 *THE COURT:* Okay. Any objection?

17 *MR. TURNER:* Is that Number 3, Your Honor?

18 *THE COURT:* Yes.

19 *MR. TURNER:* No objection.

20 *THE COURT:* Defendant's Exhibit 3, which is
21 entitled Excerpts of Proceedings May 10, 2012; is that
22 correct?

23 *MS. CUMMINS:* Yes, Your Honor.

24 *THE COURT:* All right. Will be admitted.

25 *MS. CUMMINS:* Anyway, at that time I had told

1 Judge Bonnie Sudderth what I had just told to you, about what
2 Mr. Turner had said before the temporary injunction hearing --
3 this was before I knew Judge William Brigham would be the
4 judge for my case. I was under the assumption that Judge
5 Sudderth would be hearing it. So I had no reason to -- no
6 other reason to tell her this. And I told her the exact same
7 thing I told you now. Which was, Mr. Turner said, "Good, we
8 have a substitute judge. I've known this guy for years" and
9 basically paraphrased, saying: He's going to sign whatever I
10 want to have signed.

11 *THE COURT:* What page was that on, Ms. Cummins?

12 *MS. CUMMINS:* I believe that is your page --
13 it's the first page of cross-examination, which I think is the
14 4th page.

15 *THE COURT:* Okay.

16 *MS. CUMMINS:* And on June 14th, 2012, Judge
17 Brigham made his oral order to the Court, and he told
18 Mr. Turner to write the proposed written court order and to
19 send it to him. And Mr. Turner wrote the proposed order, and
20 instead of sending it to the court he sent it to his house.

21 And I would like to submit as Exhibit 4, a copy
22 of the letter from Mr. Turner to Judge Brigham. You have a
23 copy of this.

24 *MR. TURNER:* No objection to Defendant's 4, Your
25 Honor.

1 **MS. CUMMINS:** I would like to submit this into
2 evidence, Exhibit 4.

3 And in that --

4 **THE COURT:** Defendant's 4 is admitted.

5 **MS. CUMMINS:** And if you take a look at the
6 address line you can see that it's blacked out. I realized
7 that it was a short address line, and was most likely
8 someone's home address. So I looked up the judge's home
9 address and I printed it out in the same font, and it matched
10 character for character.

11 At that point I sent an e-mail to Linda Blair
12 stating, should I be sending my objections to the order to the
13 Judge's house? She never responded, and of course I never
14 sent anything to the Judge's house because even I know that's
15 not proper.

16 A few days later I received a letter from Kelly
17 Boseman, Mr. Turner's assistant, and the letter was
18 basically -- she's telling me about her conversation with
19 Judge William Brigham. And the letter basically states that
20 she mistakenly sent the proposed judgment to the Judge's home
21 address, and Judge Brigham advised her that he does not
22 conduct business from his home and he would destroy the
23 judgment and she would need to send it directly to the Court.

24 I would like to submit Defendant's Exhibit
25 Number 5 to the Court.

1 **MR. TURNER:** No objection.

2 **THE COURT:** Defendant's 5 is admitted.

3 **MS. CUMMINS:** Now, I believe this -- now, Judge
4 Brigham was -- oversaw the temporary injunction hearing which
5 was May 4th, 2012. And at the conclusion of that hearing
6 Judge Brigham asked if Mr. Turner had an order for him to
7 sign, and Mr. Turner handed him a 6-page order.

8 **THE COURT:** Excuse me just a second. What was
9 that date?

10 **MS. CUMMINS:** That was the May 4th, 2011
11 temporary injunction hearing. These are the only two times
12 Judge Brigham oversaw this case.

13 **THE COURT:** Uh-huh. Thank you.

14 **MS. CUMMINS:** And Mr. Turner handed the order to
15 the Judge. I was not allowed to see the order. And it is
16 about -- yes, it's six pages. And I witnessed Judge Brigham
17 -- he probably read it in about maybe six seconds. And
18 there's quite a lot here. I don't believe he was able to read
19 the entire injunction during that time.

20 And I would like to submit a copy of the
21 temporary injunction, which the Judge signed, as Exhibit 6.
22 I'm sorry it's not that clear, but I believe you probably have
23 a copy in the court documents.

24 **MR. TURNER:** No objection to 6, Your Honor.

25 **MS. CUMMINS:** I would like to submit into

1 evidence Defendant's Exhibit Number 6.

2 *THE COURT:* Admitted.

3 *MS. CUMMINS:* Anyway, Judge Brigham, I believe,
4 is a man with many years of experience, but he allowed
5 Mr. Turner to -- to sign this order when Mr. Turner did not
6 post a bond.

7 And I don't believe the Judge read the order
8 fully before he signed it, because it was against third
9 parties, which is against Federal Rules of Civil Procedure
10 65(d).

11 And it also contained prior restraint --

12 *THE COURT:* Excuse me.

13 *MS. CUMMINS:* -- which is unconstitutional.

14 *THE COURT:* Excuse me just a second. Now you're
15 getting into argument.

16 *MS. CUMMINS:* Okay. I'm sorry.

17 *THE COURT:* The document, Defendant's Exhibit
18 Number 6, speaks for itself.

19 *MS. CUMMINS:* Okay. Anyway, June 14th, 2012, at
20 the end of the hearing Judge Brigham gave his -- immediately
21 after I had finished my closing arguments, probably within ten
22 seconds, he gave his oral order. Actually, before that
23 plaintiff's attorney's closing arguments stated what they
24 wanted in the court order, what they wanted out of this. They
25 stated they wanted 10,000 in liquidated damages, 176,000 in

1 legal fees, between 2 and \$4 million in compensatory damages
2 and between 2 and \$4 million in exemplary damages.

3 Immediately after I finished my closing argument
4 the Judge ruled, and he -- Judge Brigham basically gave
5 plaintiff absolutely every single thing that they asked for.
6 And he also stated that I was to remove -- there was a --
7 would be a permanent injunction on Plaintiff's Exhibit 17 and
8 Exhibit 18.

9 Now, in the trial Mr. Turner said that Exhibit
10 17 was about an inch-and-a-half thick and Exhibit 18 was about
11 an inch-and-a-half thick or so. I don't believe Judge Brigham
12 read --

13 **MR. TURNER:** Your Honor, I'm going to have to
14 object. We're getting into argument now, way beyond the scope
15 of this hearing.

16 **THE COURT:** Sustained.

17 **MS. CUMMINS:** Okay. Anyway, I have with me here
18 a copy of the minutes where Judge Brigham gives his oral order
19 of the Court.

20 I would like to submit it as Defendant's Exhibit
21 Number 7.

22 **MR. TURNER:** No objection.

23 **MS. CUMMINS:** And the Judge's --

24 **MR. TURNER:** Well, what I'm looking at does -- I
25 have no objection to this, but it doesn't have a number on it.

1 **MS. CUMMINS:** That's for you.

2 **MR. TURNER:** Okay. No objection to 7, Your
3 Honor.

4 **THE COURT:** Defendant's Exhibit 7 is admitted.

5 **MS. CUMMINS:** Yeah. And on page 4 is when the
6 Judge gives his oral ruling.

7 And I believe the Judge's oral ruling shows bias
8 because it seems to go beyond the scope of the actual trial
9 here. The Judge stated that, "I think that Amanda Lollar, the
10 plaintiff in this case, has a worldwide reputation in the
11 proper care of bats, similar to that of Jane Goodall in the
12 care of primates. Jane Goodall went to Africa to find
13 primates." I believe that shows he most certainly had a
14 pre-bias. Because Dr. Jane Goodall is a doctor who studied
15 the behavior of primates, whereas Ms. Lollar --

16 **MR. TURNER:** Your Honor, once again, I object to
17 argument and opinion.

18 **THE COURT:** I sustain.

19 **MS. CUMMINS:** Before the trial there was
20 supposed to be a pretrial motion for my motion of contempt
21 against the plaintiffs. And it was set to begin immediately
22 before the trial, and Judge Brigham did not hear that and I
23 wasn't able to get all items in discovery for that reason.

24 And during the trial, because I'm a pro se, I
25 did not realize that I was allowed to object to Mr. Turner

1 making statements which were --

2 *MR. TURNER:* Your Honor, I'm going to object to
3 relevance on what she knew or didn't know at the time of
4 trial.

5 *THE COURT:* Sustained.

6 *MS. CUMMINS:* During the trial Mr. Turner
7 brought up things which were completely irrelevant. Such as,
8 photos of me on vacation, photos --

9 *MR. TURNER:* Your Honor, now we're retrying the
10 case, and we're going to object to that line of testimony.

11 *THE COURT:* I believe she's going to refer to
12 the rulings of the Court --

13 *MR. TURNER:* Okay.

14 *THE COURT:* -- which are at issue, to some
15 extent.

16 But I'll remind you, a recusal cannot be based
17 solely on the rulings of the judge.

18 *MS. CUMMINS:* Okay. I'm basically mentioning
19 the rulings merely because I believe they show bias.

20 Anyway, I guess -- basically I don't believe I
21 received a fair trial. I believe Judge William Brigham is
22 biased against me. And -- oh, one last thing, we had three
23 days of trial and on the fourth day I was to start my
24 witnesses, and the Judge didn't know how many witness I had, I
25 could have had a day, could have had two days. But

1 unfortunately I could only afford to get one witness there for
2 me. And I believe court was from 9:30 until 10:30, and then
3 we did our closing arguments.

4 Immediately after I finished my closing argument
5 Mr. -- Judge Brigham took out a piece of paper and he -- he
6 stated his oral ruling. And this -- he obviously must have
7 written it ahead of time, which makes me feel that he was bias
8 against me before I had even finished examining all of my
9 witnesses or doing my argument or closing statement. He
10 already had a written order ready to go.

11 And for all these reasons I believe that Judge
12 William Brigham is biased against me, and I was never even
13 given the chance to file a timely motion to recuse before any
14 evidence was submitted.

15 And that's all I have.

16 **THE COURT:** Cross-examine?

17 **CROSS-EXAMINATION**

18 **BY MR. TURNER:**

19 Q. So, Ms. Cummins, what I'm hearing you say is that you
20 knew on May 4th of 2011 -- or in your mind you thought that
21 Judge Brigham was bias based on what you say I told you about
22 knowing him for years and he'll sign anything; is that
23 correct?

24 A. Yes.

25 Q. So on May 4th of 2011, you knew that you had grounds

1 -- you at least knew that he was biased, in your mind?

2 A. Yes.

3 Q. Okay. You didn't file this motion until July of
4 2012, correct?

5 A. If that's when I filed it.

6 Q. Okay. Now, on May 4th of 2011, when you said I told
7 you that I've known this judge for years and he'll sign
8 anything, where -- where were we?

9 A. I was standing -- sitting on the -- the front bench
10 there. And then you were with your client on the front bench
11 over here on the plaintiff's side. Both of you went out the
12 back door and came back around and sat directly behind me, and
13 you said that to the back of my head.

14 Q. So my client would have heard that, I guess?

15 A. Yes.

16 Q. Okay. And then you say that I said that again --
17 well, let me back up.

18 So I said that to the back of your head, you
19 didn't even turn around and look at me?

20 A. No.

21 Q. Okay. Did you respond when I said that?

22 A. No.

23 Q. And then four days -- six days later, on May 10th,
24 you claim that I -- once again I said: Good, we have a
25 substitute judge, he'll sign whatever I ask him to sign; is

1 that correct?

2 A. That's incorrect.

3 Q. Okay. Tell me what I said on May 10th.

4 A. May 10th, 2012 is a completely different hearing.
5 That was our pretrial motions. And this is -- I told you what
6 I said to the Judge.

7 Q. Okay. So -- okay. I guess I misunderstood.

8 You're not saying I made this type of statement
9 more than once, correct?

10 A. Correct.

11 Q. Okay. You're just saying on May 10th of 2012, you
12 told Judge Sudderth that I had made that statement?

13 A. Yes.

14 Q. And then on -- you just testified that at the
15 conclusion of the evidence you saw Judge Brigham writing
16 something down on a piece of paper before you finished putting
17 your witnesses on?

18 A. No.

19 Q. What did you see him doing that made you think he had
20 made up his mind before you put your witnesses on?

21 A. He pulled out a piece of paper and read from it?

22 Q. Okay. So he was sitting at the bench, where Judge
23 Walker is right now, and he pulled out a piece of paper and he
24 was reading from it; is that correct?

25 A. Yes.

1 Q. And he did this before you finished putting on your
2 witnesses?

3 A. No.

4 Q. When did he do that?

5 A. After I had concluded my testimony -- my closing
6 arguments.

7 Q. Okay. But just so I understand you, you're saying
8 that because he pulled out a piece of paper and started
9 reading from it you thought that he had made up his mind about
10 the case?

11 A. Yes, because he read the Court order.

12 Q. So he didn't announce his decision before you
13 finished putting on your witnesses, did he?

14 A. No, but he had written it.

15 Q. Well, how do you know that he had written it?

16 A. I didn't see him writing while I was examining my
17 witnesses.

18 Q. And if I understood you -- if I understood your
19 motion correctly, you said defendant was not given proper
20 legal notice of the visiting judge, and therefore you were
21 unable to timely file a motion to recuse Judge Brigham,
22 correct?

23 A. Yes. I was not give notice he would be the visiting
24 judge.

25 Q. Okay. So in any event -- the temporary hearing was

1 on May 4th. And is it your testimony that at that time, on
2 May 4th of 2011, you wanted Judge Brigham recused?

3 A. Repeat that, please.

4 Q. On May 4th of 2011, you wanted to recuse Judge
5 Brigham at that time?

6 A. I didn't know I had the right to recuse the Judge.

7 Q. But you wanted to recuse him?

8 A. I didn't know I had any right to.

9 Q. Did you think he was bias at that time?

10 A. Yes.

11 Q. So you thought he was bias before the hearing began
12 on May 4th?

13 A. No.

14 Q. It was at the conclusion of the hearing you decided
15 that he was biased?

16 A. Yes.

17 Q. And then you waited 14 months to file your motion
18 claiming that he was biased?

19 A. I didn't know I could file a motion to recuse.

20 Q. Okay.

21 **MR. TURNER:** That's all I have. Thank you, Your
22 Honor.

23 **THE COURT:** You can have re-direct at this
24 point, if you wish to put on any additional oral evidence.

25 **MS. CUMMINS:** Yes, Your Honor.

REDIRECT EXAMINATION**BY NARRATIVE:**

1
2
3 *MS. CUMMINS:* I am pro se, and I did the best I
4 can to research this case.

5 And Judge Sudderth and Judge Brigham never told
6 me -- they failed to tell me about my right to recuse. I did
7 not realize I could recuse a judge before. I didn't realize
8 it until recently. And I filed the motion to recuse as soon
9 as I realized I could recuse.

10 And I didn't even know that the main judge was
11 supposed to give me notice that there would be a visiting
12 judge. I didn't know that there was anything that I could
13 have done about it.

14 I filed the motion to recuse the moment --
15 probably within about two hours after I found out that I could
16 file a motion to recuse. I filed it as soon as I possibly
17 could.

18 And I felt that Judge Brigham was unfair
19 during --

20 *MR. TURNER:* Your Honor, I'm going to object to
21 argument again, what she felt that he was.

22 *THE COURT:* Correct.

23 *MS. CUMMINS:* Okay. Okay, that's it.

24 *THE COURT:* Anything additional, Mr. Turner?

25 *MR. TURNER:* No, Your Honor.

1 today.

2 At no time did I ever say to Ms. Cummins that I
3 know Judge Brigham, he's a friend of mine, he'll sign whatever
4 I put in front of him, or anything to that effect. I
5 absolutely never said anything like that.

6 Number two, Judge Brigham is not a friend of
7 mine, and I don't have a personal relationship with him. I've
8 tried cases to him. I'm bumped into him at Bar functions.

9 The reason the proposed judgment was mailed to
10 his home it was probably my mistake. That was the first time
11 I had tried a case to a visiting judge, and I wasn't sure of
12 the protocol, so I told my paralegal to find out where his
13 home address was and let's mail it there. She mailed it to
14 the Judge and I found out that that wasn't appropriate. So we
15 sent another motion to the -- to the Court here at the 352nd.

16 But at no time did I ever say anything like, I
17 have a relationship with Judge Brigham, or he'll sign anything
18 I put in front of him.

19 That's all I have, Your Honor.

20 *MS. CUMMINS:* May I cross-examine?

21 *THE COURT:* Certainly.

22 **CROSS-EXAMINATION**

23 **BY MS. CUMMINS:**

24 Q. Mr. Turner, have you ever sent anything to Judge
25 Brigham's home before?

1 A. No.

2 Q. How did you get his home address?

3 A. My paralegal got it. And she got it by calling the
4 Court Coordinator, Linda Blair, and Linda Blair gave it to
5 her.

6 Q. Linda Blair gave you the Judge's home address?

7 A. No. She gave it to my paralegal.

8 Q. What did you tell her the purpose of the home address
9 was for?

10 A. To mail the judgment to his house.

11 My paralegal told Linda Blair -- asked her for
12 his home address so we can mail him the judgment.

13 Q. She didn't say anything like, that would be
14 inappropriate?

15 A. No.

16 Q. Have you ever mailed a proposed order to a judge's
17 home address before?

18 A. No.

19 **MS. CUMMINS:** No further questions.

20 **MR. TURNER:** No further testimony, Your Honor.

21 And that's all I have, Your Honor. We rest.

22 **THE COURT:** Anything further, Ms. Cummins?

23 **MS. CUMMINS:** No.

24 Just in conclusion that --

25 **THE COURT:** Hold on just a second. This is kind

1 of a formal thing. I'm trying to determine whether or not
2 there's anymore evidence.

3 *MS. CUMMINS:* Oh, okay. I'm sorry.

4 *THE COURT:* No more?

5 *MS. CUMMINS:* No more evidence.

6 *THE COURT:* Because you were entitled to rebut,
7 to put on rebuttal evidence to Mr. Turner. That's why we're
8 doing this.

9 Now we're to that point where you can give your
10 opinions and that's called argument. If you would, take the
11 lecturn there and state your arguments to the Court.

12 *MS. CUMMINS:* I believe I have a right for the
13 motion to recuse and disqualify Judge William Brigham in this
14 case, because I was never given notice that there would be a
15 visiting judge.

16 I believe I'm entitled to this objection because
17 the presiding judge did not give timely notice of the
18 assignment of this case to the visiting judge. And I quoted
19 the Government Code in my filing.

20 And I had e-mailed the Court twice and phoned
21 another time, and no one had told me that there would have
22 been a visiting judge.

23 Had I known that there would have been a
24 visiting judge and it was Judge Brigham, I most certainly
25 would have figured out how to file a motion to recuse and I

1 would have done it timely. But I wasn't given that
2 opportunity, so I don't believe I received a fair trial for
3 that reason.

4 And I don't believe Judge William Brigham was
5 impartial or disinterested in this case. And I believe it was
6 a violation of the due process clause of the Constitution of
7 the State of Texas and of the United States.

8 I believe the personal interest and bias of the
9 Judge has deprived me of a fair trial, which is in violation
10 of the due process.

11 And I believe because of the evidence and
12 testimony I've given today and the exhibits I've shown you,
13 that Judge Brigham most certainly had a bias against me. And
14 for this reason, I would like to ask the Court to grant my
15 motion to recuse and disqualify the Judge on these grounds --
16 on these grounds, and also to void his oral order as per Texas
17 Government Code 74.053.

18 And I've also in this case filed a motion for
19 new trial and motion objecting to the order. And I filed a
20 motion for appeal, but it's not quite timely, I guess. But
21 for this reason I believe I should be able to request a new
22 trial and a new judge.

23 Thank you.

24 **MR. TURNER:** Waive argument, Your Honor.

25 **THE COURT:** Ms. Cummins, you made the statement

1 that Judge Sudderth failed to tell you of your right to
2 recuse. Was that your statement?

3 *MS. CUMMINS:* Actually I believe it would be --
4 my statement was that I believe Judge Brigham should have told
5 me that I would have had a right to recuse.

6 *THE COURT:* All right. You know, rights are --
7 excuse me. Rights in the law are typically set out in black
8 and white in the rules or in the statutes. Have you got a
9 rule or a statute that says Judge Brigham had a duty to advise
10 you of your right to recuse?

11 *MS. CUMMINS:* Yes, actually.

12 *(Brief pause.)*

13 *MS. CUMMINS:* One second. Let me pull it up.
14 Yes. A judge makes no effort to prevent a self-represented
15 litigant from making errors that jeopardize a litigant's
16 defense or claim may deny that litigant meaningful access to
17 the courts. And I refer you to, United States vs. Sanchez, 88
18 3d.

19 *THE COURT:* I'm sorry, I can't hear you.

20 *MS. CUMMINS:* I'm sorry. For example, one court
21 held that it's the sentencing court's failure to advise a pro
22 se defendant on his right to appeal was an error per se and
23 warranted remand. And that's United States vs. Sanchez.

24 *THE COURT:* That was a criminal case, wasn't it,
25 Ms. Cummins?

1 *MS. CUMMINS:* Yes.

2 Anyway, I believe that the Judge had the right
3 to tell me that because he was a visiting judge that I would
4 have had the right to recuse him. And I realize he's not
5 allowed to give me legal advice, but I wasn't notified of my
6 right to recuse.

7 *THE COURT:* Okay. Again, you haven't given me
8 any legal authority other than your opinion, correct?

9 *MS. CUMMINS:* I --

10 *THE COURT:* Because I want to give you -- I know
11 of no such law or case, Ms. Cummins. That's why if you can
12 educate me and enlighten me, that would be helpful.

13 *MS. CUMMINS:* Let me just quote this. Some
14 leniency may be appropriate in the context --

15 *THE COURT:* Would you mind using the lecturn
16 again?

17 *MS. CUMMINS:* Okay.

18 *THE COURT:* I can hear you better when you're
19 speaking into that microphone.

20 *MS. CUMMINS:* Some leniency may be appropriate
21 in the context of self-representative litigants, because the
22 judge must ensure that the parties receive a fair trial, see
23 Haines vs. Kerner, 44 U.S. (1972).

24 That is the only case I have. Just that --

25 *THE COURT:* Leniency in what area?

1 **MS. CUMMINS:** Just to ensure, I guess, that as a
2 pro se I'd still receive a fair trial and fair access to the
3 court system, that I wasn't apprised of my rights. Had I
4 known, or at least been informed ahead of time -- if I had
5 been given that there would have been a visiting judge, I
6 would have figured out the motion to recuse before then.
7 Because there's no way I would have had Judge Brigham be the
8 judge for the trial after what happened with the -- the way
9 he -- the actions -- things that happened during the temporary
10 injunction hearing.

11 **THE COURT:** Okay. In the papers that you
12 parties have filed in this case, there's reference to an
13 attorney by the name of Neal Callaway.

14 **MS. CUMMINS:** Yes. He was my attorney for
15 awhile.

16 **THE COURT:** All right. And he withdrew from the
17 case?

18 **MS. CUMMINS:** Yes.

19 **THE COURT:** When did he withdraw?

20 **MS. CUMMINS:** October 6, 2011.

21 **THE COURT:** Okay. That was after the first time
22 that you had seen Judge Brigham in a hearing in this court?

23 **MS. CUMMINS:** Yes.

24 **THE COURT:** Okay. And you were represented at
25 that time?

1 *MS. CUMMINS:* No. I was pro se during the
2 temporary injunction hearing.

3 *THE COURT:* All right. So what hearing did
4 Mr. Callaway handle for you?

5 *MS. CUMMINS:* He was my attorney for
6 approximately -- I think from the end -- July 21, perhaps, to
7 August 6th. And he only handled one hearing, which had to do
8 with a protective order on my home address and a motion to
9 compel me to be deposed.

10 *THE COURT:* Okay. And was that in front of
11 Judge Sudderth or in front of Judge Brigham?

12 *MS. CUMMINS:* That was in front of Judge
13 Sudderth.

14 *THE COURT:* Okay. Let me see if I have the
15 sequence right, though. The first time that you had Judge
16 Brigham as the judge in your case was in 2011, correct?

17 *MS. CUMMINS:* Yes. May 4th, 2011.

18 *THE COURT:* Okay. Over a year ago from this
19 date?

20 *MS. CUMMINS:* Yes.

21 *THE COURT:* Okay. When was the next time that
22 you had him as a judge in this case?

23 *MS. CUMMINS:* At my trial, which was June 11th,
24 2012.

25 *THE COURT:* Okay. And that trial lasted how

1 long?

2 *MS. CUMMINS:* Three days and two hours.

3 *THE COURT:* Okay. And you were pro se at the
4 time?

5 *MS. CUMMINS:* Yes.

6 *THE COURT:* Okay. On the issue of pro se and
7 leniency, indeed we try to do that. But it must be done in a
8 way that we also give some solemnity to the rules and the law.
9 We can't break the rules, we can't break the law.

10 Mr. Turner has correctly stated that your motion
11 to recuse is not verified, it's not sworn to.

12 *MS. CUMMINS:* What does that mean?

13 *THE COURT:* It's not sworn to.

14 *MS. CUMMINS:* Should I have notarized it? I
15 don't know what that means.

16 *THE COURT:* Well, notarizations come in
17 different styles. But one style is where it's sworn to,
18 you're swearing to the contents and the statements within your
19 motion. You did not do that. That is one of the mandatory
20 requirements of a motion to recuse.

21 *MS. CUMMINS:* I believe I have a -- an affidavit
22 which I had notarized which was attached to the motion.

23 *THE COURT:* Different altogether.

24 Among other things, you did not incorporate that
25 into your motion. You did attach it to it. It's one of those

1 legally interesting situations. You have to swear to your
2 motion, it says so in the Rule.

3 I could have out of hand -- as soon as I was
4 given this motion to deal with, I could have sent out a letter
5 at that time ruling on your motion denying it. I did not,
6 because you were pro se, but I could have.

7 This thing about notice. Indeed the Rule does
8 say that notice is given, but it says when practicable.
9 Typically in this courthouse here notice is given through the
10 court staff. The fact that you don't get notice is only
11 material if you walk in there and you see a judge and you say,
12 I didn't have notice. You did not do that or anything like
13 it. You went ahead and conducted -- what was it, a
14 three-and-a-half day trial?

15 **MS. CUMMINS:** Yes.

16 **THE COURT:** Without objection to the sitting
17 judge, who was Judge Brigham. I could have denied your motion
18 for that reason alone. In essence, you waived the notice
19 requirement by proceeding on.

20 The Rule also specifies that you have ten days,
21 a 10-day window, prior to a scheduled hearing or trial. If
22 you know of the reasons for recusal you need to file your
23 motion prior to that ten-day period. There is an exception,
24 and you fell within that exception. You didn't know Judge
25 Brigham was going to hold the trial, even though you had seen

1 him before, you didn't know he was going to hold the trial
2 until he got there on -- June the 11th, was it?

3 *MS. CUMMINS:* Yes.

4 *THE COURT:* Okay. Now, this is an arguable
5 point at law, but you knew he had been on the case before and
6 you did not object, and you did not file a motion to recuse.
7 Did that waive any later appearances by Judge Brigham in the
8 case? There's some cases that say, yes, it's waived. You had
9 seen him before, you had heard rulings from him before, here
10 he is again. You understand what I'm saying?

11 *MS. CUMMINS:* Yes, I understand.

12 *THE COURT:* Okay. Again, another reason I could
13 have denied this motion to recuse. But because you are pro se
14 I wanted to concentrate upon your reasons. And you don't have
15 anything to deal with as far as waiver is concerned when it
16 comes to your reasons.

17 I've heard the testimony here today on the issue
18 of recusal based upon a bias. Basically it falls into a
19 couple of categories. One is the statement you say Mr. Turner
20 stated to the back of your head. I assume you wanted me to
21 conclude from that he wanted you to hear what he was saying.
22 That statement that he knew Judge Brigham -- and I believe
23 that part of it, Judge Brigham's been around a long time, like
24 me, a long time -- but you wanted me to believe an additional
25 thing, and that is that Mr. Turner had some kind of

1 relationship with Judge Brigham that caused Judge Brigham to
2 favor Mr. Turner over you. And that's where we begin to have
3 problems.

4 Had your statement gone unchallenged by
5 Mr. Turner it would have been a different issue. But he did
6 challenge it and said he never said that. And he further said
7 he never had such a relationship. And because the burden is
8 on you to overcome the presumption, all you had under those
9 circumstances was a tie. You did not overcome the
10 presumption.

11 Do you see where I'm going with this,
12 Ms. Cummins?

13 **MS. CUMMINS:** Yes.

14 **THE COURT:** The matter of Judge Brigham hearing
15 the evidence and ruling on it, I assume in your words, too
16 fast, it did occur -- his ruling did occur after closing
17 arguments, right?

18 **MS. CUMMINS:** Yes.

19 **THE COURT:** It wasn't at the conclusion of the
20 evidence. You got to argue your points, Mr. Turner got to
21 argue his points, and I assume you got to make the closing
22 statement. You would get the final word, because you said it
23 was only less than ten seconds after you closed that the Judge
24 made his rulings.

25 Do you think he had already made up his mind?

1 *MS. CUMMINS:* Yes.

2 *THE COURT:* Sure. How long do you think would
3 be a reasonable amount of time, having heard the evidence that
4 he heard, in which to make up his mind?

5 *MS. CUMMINS:* Are you asking me that question?

6 *THE COURT:* Yes, ma'am. It's kind of a
7 rhetorical question.

8 *MS. CUMMINS:* Oh.

9 *THE COURT:* Do you think he should have taken an
10 hour, a day, a week, a month?

11 *MS. CUMMINS:* I was just told by some attorneys
12 that it's very rare for a judge to instantly rule.

13 *THE COURT:* I can't speak to that, when you talk
14 about what attorneys have said. I can tell you what an almost
15 24-year-on-the-bench judge would say. I have a pretty good
16 idea what I was going to do when both sides rested.

17 Sometimes I didn't. Sometimes I'd say I want to
18 think about it. Sometimes I'd say I want to take a look at
19 the law, I'll give you my opinion later.

20 Judges use the same thought processes that
21 normal people use. You hold a conversation, you reach
22 conclusions, right? You don't have to take two or three days
23 to think about it?

24 *MS. CUMMINS:* Sometimes I do.

25 *THE COURT:* Sometimes we all do. But my point

1 is, the mere fact that he made his decision on the spot does
2 not indicate anything other than he had made up his mind.

3 How is that proof of a bias, unless you happen
4 to be the one that does not get the favorable ruling, in which
5 case the Rule says recusal cannot be based upon rulings alone.

6 I'm going to deny your motion to recuse,
7 Ms. Cummins.

8 *(Motion for Sanctions.)*

9 **THE COURT:** Now, at this time we're going to
10 open up for hearing the matter of the sanctions that Mr.
11 Turner is seeking.

12 I want to point out something to both of you.
13 His motion for sanctions is based on Rule 13 of the Rules of
14 Civil Procedure. There's actually a sanction rule contained
15 in Rule 18, and that's left up to me. I don't need a motion
16 from one of the parties to get into that. And the criteria
17 for the two motions are different somewhat.

18 Mr. Turner, this is your motion, are you ready
19 to proceed?

20 **MR. TURNER:** Yes, Your Honor.

21 And I have -- I have a proposed order denying
22 the recusal.

23 As far as the motion for sanctions, I would
24 simply ask the Court to take judicial notice of the testimony
25 that's just been laid out in this hearing, and then I would

1 like to testify briefly about my attorney's fees.

2 *THE COURT:* Let me make a statement at this
3 point. I appreciate the offer of your order, but I do my own
4 orders. They're very brief and to the point and we will
5 prepare one after this hearing is over with, while everybody
6 is still here.

7 *MR. TURNER:* Yes, sir.

8 *THE COURT:* Do you wish to make an opening
9 statement?

10 *MR. TURNER:* Oh, I'm sorry, Judge.

11 I'm not going to put on any other evidence, in
12 addition to what the Court has already heard. I would just
13 like to testify as to attorney's fees in support of my motion
14 for sanctions.

15 *THE COURT:* Okay. Ms. Cummins, since this is
16 the opening statement phase of this motion for sanctions,
17 would you like to make any opening statement?

18 *MS. CUMMINS:* Yes, Your Honor.

19 Just so I'm clear, the Rule 13 Sanctions is in
20 regard to my motion to recuse the Judge?

21 *THE COURT:* I assume that's what it is.

22 *MS. CUMMINS:* Okay.

23 Anyway, I brought the motion to recuse and
24 disqualify the Judge. I believe it was -- it most certainly
25 had grounds and I brought it in good faith. And I most

1 certainly didn't bring it to harass.

2 I fully believed that I had the right to recuse
3 Judge Brigham. And I believe there was -- I believe there was
4 basis in law and fact and that I acted in good faith.

5 I believe my motion had merit and legal standing
6 and it wasn't for harassment purposes. And I most certainly
7 did not bring it for no reason at all.

8 (Fifth Amendment Right Invoked)

9 **THE COURT:** All right. Mr. Turner, do you have
10 evidence to present?

11 **MR. TURNER:** I do want to call Ms. Cummins,
12 briefly, Your Honor, to the witness stand.

13 **THE COURT:** This is an unusual situation,
14 Ms. Cummins. Hold on just a second. You don't have to go
15 back, stay where you are.

16 This sanction motion under Rule 13 has as
17 potential punishment those set forth in Rule 215 of the Rules
18 of Civil Procedure, which include contempt. That is a quasi
19 criminal matter. As such, you're entitled to your
20 Constitutional rights under the Fifth Amendment and otherwise.
21 Your right to remain silent. If you put on any evidence you
22 waive that right.

23 Do you understand what I'm saying?

24 **MS. CUMMINS:** Yes. But if this is a -- could
25 possibly be criminal contempt, wouldn't I then be allowed an

1 attorney?

2 *THE COURT:* That's -- you may have an attorney.
3 This is not a criminal case. I cannot assign you one, but you
4 have the right to have an attorney if you want to get one. We
5 can reschedule this hearing until you have a lawyer.

6 *MS. CUMMINS:* There's no way I'd be able to
7 afford a lawyer. But Judge Sudderth told me that if I were to
8 be in criminal contempt I would be able to have an attorney
9 appointed.

10 *THE COURT:* Then you need to deal with
11 Ms. Sudderth.

12 *MS. CUMMINS:* Okay. Didn't you just say this
13 was a quasi criminal situation?

14 *THE COURT:* It is. And because of it, I feel
15 like I'm obligated to tell you what your rights are. The
16 right to remain silent, the right to counsel, all those other
17 things you've seen a number of times, right?

18 *MS. CUMMINS:* Yes.

19 *THE COURT:* He's about to put you on the stand.
20 You're not required to testify unless you want to. If you do,
21 either through Mr. Turner putting you on the stand or you
22 voluntarily get on the stand, you waive that Fifth Amendment
23 right. That's where I'm going with all this.

24 *MS. CUMMINS:* Okay.

25 *THE COURT:* It's entirely up to you.

1 *MS. CUMMINS:* Then I won't take the stand.

2 *THE COURT:* I'm sorry?

3 *MS. CUMMINS:* Then I won't take the stand.

4 *THE COURT:* Okay.

5 *MR. TURNER:* Then I would like to testify, Your
6 Honor.

7 *THE COURT:* All right.

8 You're still under oath, Mr. Turner.

9 **RANDALL E. TURNER,**

10 having been first duly sworn, testified as follows:

11 **DIRECT EXAMINATION**

12 **BY NARRATIVE:**

13 *MR. TURNER:* I'm Randy Turner. I've been
14 practicing law 32 years, board certified.

15 I'm familiar with the reasonable charges for
16 attorneys in Tarrant County, Texas. And for a lawyer with my
17 experience and qualifications \$300 an hour is a reasonable
18 fee.

19 When Ms. Cummins filed her motion to recuse,
20 from the time I received that up until right before this
21 hearing, I had a total of about five hours of my time in this
22 case. And then we've got almost another hour or so. Six
23 hours times \$300 an hour would be a reasonable fee for an
24 attorney to defend or represent the plaintiffs in this motion
25 to recuse.

1 That's all I have.

2 **MS. CUMMINS:** No cross-examination.

3 **THE COURT:** I'm sorry?

4 **MS. CUMMINS:** No cross-examination.

5 **THE COURT:** Okay.

6 **MR. TURNER:** And that's all I have, Your Honor.

7 **THE COURT:** All right.

8 Mr. Turner, do you want to make a closing
9 statement?

10 **MR. TURNER:** I'll waive closing statement, Your
11 Honor.

12 **THE COURT:** Do you wish to add anything further,
13 Ms. Cummins?

14 **MS. CUMMINS:** No, Your Honor.

15 *(Rulings by the Court)*

16 **THE COURT:** Mr. Turner, I'm reading Rule 13, and
17 the thing that I think you have a problem with here is -- the
18 opening sentence of that rule says: The signatures of
19 attorneys or parties constitute a certificate by them that
20 they have read the pleadings, motion or other paper that to
21 the best of their knowledge, information and belief formed,
22 after reasonable inquiry, the instrument is not groundless and
23 brought in bad faith or groundless and brought for purposes of
24 harassment. It's that word "belief" that is, I think, the
25 problem that you have.

1 From what I've heard from Ms. Cummins, she
2 stated it was her belief and she stated the basis for her
3 belief. Your motion for Rule 13 sanctions is denied.

4 *(Brief pause.)*

5 **THE COURT:** I'm now looking at the sanctions
6 rule contained in Rule 18a, which provides for monetary
7 sanctions in the form of reasonable attorney's fees and
8 expenses and do not include any of the other sanctions under
9 Rule 215.

10 Rule 18a -- and I'm cutting down to the part
11 that I want to touch on -- after notice of hearing the Judge
12 who hears the motion may order the party or attorney who filed
13 the motion or both to pay a reasonable attorney's fees and
14 expenses incurred by other parties if the Judge determines
15 that the motion was, one, groundless and filed in bad faith
16 or, for the purposes of harassment; or, two, clearly brought
17 for unnecessary -- clearly brought for unnecessary delay and
18 without sufficient cause.

19 Ms. Cummins, the grounds that you have stated
20 and you put on evidence of raises a question of how groundless
21 must it be. I have read all of your motions, your
22 responses -- both parties -- your attachments, your exhibits.
23 It seemed pretty clear to me that there was an awful lot of
24 ranker on your part about the process, about the good 'ol
25 boys, about your feeling of ill treatment at the hands of the

1 judiciary in the State of Texas that you put out there for the
2 whole world. And now I've heard the evidence, which, quite
3 frankly, don't substantiate any of those statements. Makes
4 one wonder if you did it for purposes of harassment.

5 You know, in one of your e-mails your -- I guess
6 it's a blog, I don't do that sort of thing -- that you sent
7 out under some kind of byline that you have, you talked about
8 this nice female judge, Bonnie Sudderth, and that her
9 supervisor swapped her out of the case for an old white guy.

10 **MS. CUMMINS:** I don't remember saying that
11 specifically.

12 **THE COURT:** Well, for Judge Brigham.

13 Where did you get the idea that I swap one for
14 Judge Sudderth without her knowledge or consent?

15 **MS. CUMMINS:** Um, when Judge William Brigham
16 came into the courtroom he says, I have been appointed to this
17 case by Supervising Judge Jeffrey Walker for jurisdictional
18 purposes.

19 **THE COURT:** He didn't say why he did that?

20 **MS. CUMMINS:** No.

21 **THE COURT:** Did you know that Judge Sudderth had
22 asked for him?

23 **MS. CUMMINS:** Did she?

24 **THE COURT:** Did you know that Judge Sudderth had
25 asked for Judge Brigham?

1 **MS. CUMMINS:** No. May I ask if she did?

2 **THE COURT:** I knew you were going to ask that
3 question. Here's her written request.

4 **MS. CUMMINS:** May I view it?

5 **THE COURT:** Sure. Come on up here and take a
6 look at it.

7 *(Brief pause.)*

8 **MS. CUMMINS:** If she made the request, why
9 didn't she give me notice that he would be the visiting judge?

10 **THE COURT:** She's under no obligation to do
11 that.

12 I'm in a situation, Ms. Cummins, where, under
13 Rule 13, the lawyer or the party is obligated to check their
14 facts before they put them in the pleadings. And they verify
15 that when they put their signature on that pleading; whether
16 it's a motion or a petition or whatever it happens to be. And
17 that signature then becomes their verification that they've
18 checked their facts before they set them down on paper, so
19 that they're nothing more than uninformed opinions.

20 Rule 18 has no requirement like that, requiring
21 you to set out those kind of facts that you have done your
22 research. But it does require you to swear to the contents.
23 You know, I told you I was going to overlook that because you
24 are a pro se litigant.

25 I cannot, however, overlook the fact that you

1 have done little in working on background before you put it
2 all down on paper.

3 *MS. CUMMINS:* Would -- may I ask a question?

4 *THE COURT:* Yes, ma'am.

5 *MS. CUMMINS:* Um, I had no idea I would have
6 been able to find out the exact reason why Judge Brigham was
7 on -- the visiting judge. I had no idea I could have been
8 able to find out what the reason was. I just took what he
9 said when he came to the courtroom as the truth.

10 *THE COURT:* So what's your point?

11 *MS. CUMMINS:* My question is, I did not know
12 that I would have been able to call up the Court and say, hey,
13 what -- in fact, I actually did e-mail Linda Blair and I said,
14 what happened to Judge Bonnie Sudderth? And she never got
15 back to me. So there's no way I would have been able to find
16 out because Ms. Blair did not tell me. I said what happened
17 to Judge Bonnie, where is she? And she never replied.

18 *THE COURT:* But you do remember your comments in
19 your blog? And I'm only referring to those because it tells
20 me something about who you are and how it affects the motion
21 that you filed.

22 Where you put in there about how you were being
23 treated in Texas courts. Do you remember those statements?
24 Do you want to look back at your paperwork?

25 *MS. CUMMINS:* Well, I don't have it in front of

1 me, and we haven't authenticated any of his exhibits. I don't
2 know if that's exactly what I said.

3 I have repeatedly said that Judge Bonnie
4 Sudderth has always been fair and polite and kind in all the
5 pretrial motions. I didn't have any problems with Judge
6 Sudderth.

7 **THE COURT:** But you made it sound like some kind
8 of conspiracy was going on among the good 'ol boys to remove
9 this judge you favored for one you knew nothing about.

10 **MS. CUMMINS:** Um, I -- I -- I knew about Judge
11 Brigham. And obviously if I had known he was going to be the
12 visiting judge I would have timely filed the motion to recuse.

13 All I know is that he showed up there and I was
14 given no notice or no option that I would even be able to
15 recuse right then and there at the beginning of the trial.

16 **THE COURT:** Well, Ms. Cummins, I'm going to
17 sanction you under Rule 18a, Subparagraph H. The sanction
18 is -- I'll make a finding that your motion to recuse was
19 groundless and filed in bad faith. It only provides for
20 attorney's fees and expenses, and I'm going to set that at
21 \$500. You'll have 30 days in which to pay that to Mr. Turner.

22 And I will have a prepared order in the mail to
23 you soon as I have it written up, signed and placed in the
24 file.

25 That concludes this hearing.

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MR. TURNER: Thank you, Your Honor.
(Proceedings adjourned)

1 STATE OF TEXAS

2 COUNTY OF TARRANT

3 I, Monica J. Willenburg, Official Court Reporter
4 in and for the 352nd District Court of Texas in and for
5 Tarrant County, do hereby certify that the above and foregoing
6 contains a true and correct transcription of all portions of
7 evidence and other proceedings requested in writing by counsel
8 for the parties to be included in this volume of the
9 Reporter's Record in the above-styled and numbered cause, all
10 of which occurred in open court or in chambers and were
11 reported by me.

12 I further certify that this Reporter's Record of
13 the proceedings truly and correctly reflects the exhibits, if
14 any, offered by the respective parties, if requested.

15 I further certify that the total cost for the
16 preparation of this Reporter's Record is \$ 236.25
17 and was paid/will be paid by PLAINTIFF.

18 WITNESS MY OFFICIAL HAND, on this the 28th of
19 September, 2012.

20

21

22 Monica J. Willenburg, CSR, RPR
23 Texas CSR No. 3386, Exp: 12/31/12
24 Official Court Reporter
25 352nd District Court
401 W. Belknap, 8th Floor
Fort Worth, Texas 76196
Telephone: (817)884-2732
email: mwillenburg@tarrantcounty.com

From: Linda Blair <LABlair@TarrantCounty.com>
Subject: 352-248169-10 Monday's Trial
Date: June 6, 2012 11:44:30 AM PDT
To: "Mary Cummins (mmaryinla@aol.com)" <mmaryinla@aol.com>
1 Attachment, 10.3 KB

Just confirming:

The above referenced is called to trial Monday, June 11th, 2012 at 9:00 am.

Linda Blair

Court Coordinator
352nd District Court
401 W. Belknap
Fort Worth, TX 76196
817-884-2730



Exhibit 6

From: Linda Blair <LABlair@TarrantCounty.com>
Subject: **RE: Bat World Sanctuary v Cummins - 352-248169-10 Questions about trial**
Date: June 1, 2012 10:37:57 AM PDT
To: 'Mary Cummins' <mmmaryinla@aol.com>

As of today it is a Bench Trial and the pre-trial will be held just prior to the start of trial which is Monday, June 11th at 9:00am.

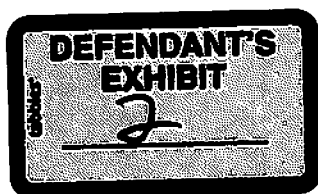
From: Mary Cummins [mailto:mmmaryinla@aol.com]
Sent: Thursday, May 31, 2012 4:07 PM
To: Linda Blair
Subject: Bat World Sanctuary v Cummins - 352-248169-10 Questions about trial

This is a non-jury trial, correct? I looked everywhere and don't see jury trial.

Are there any pre-trial instructions?

Were we supposed to have a pre-trial conference?

I read the Judge's court guidelines and couldn't find the answers there. Thanks.



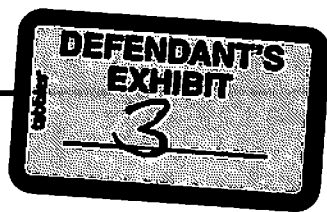
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EXCERPT OF REPORTER'S RECORD
VOLUME 1 OF 1 VOLUMES
TRIAL COURT CAUSE NO. 352-248169-10

BAT WORLD SANCTUARY) IN THE 352ND JUDICIAL
vs.) DISTRICT COURT OF TEXAS
MARY CUMMINS) IN AND FOR TARRANT COUNTY

EXCERPTS OF PROCEEDING
May 10, 2012

On the 10th day of May, 2012, the following
excerpt of proceedings came on to be heard in the above-titled
and numbered cause before the Honorable Bonnie Sudderth, Judge
Presiding, held in Fort Worth, Texas, reported by machine
shorthand utilizing computer-aided transcription.



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645 W. 9th Street
#110-140
Los Angeles, California 90015
Telephone: (310) 877-4770

Pro Se

1 P R O C E E D I N G S

2 * * *

3 (Motion to Amend Injunction)

4 **CROSS-EXAMINATION**

5 **BY NARRATIVE:**

6 2011
On May 4th, you weren't here and substitute
7 Judge William Brigham was here. And I want to make one
8 important note. Before the Judge came in here, there was no
9 one else in the courtroom, except me, I was sitting right
10 there. And Mr. Turner and his client was sitting over there.
11 They both came around and they sat directly behind me and they
12 said, "Good. We have a substitute judge. I've known this guy
13 for years "-- and basically paraphrased saying -- "he's going
14 to sign whatever I want to have signed."

15 And then they went back to the other side of the
16 -- of their courtroom. So he just did that intentionally, I
17 don't know, to frighten me or bother me, to let me know that
18 he has a special relationship with Judge Brigham. Anyway --

19 **THE COURT:** Ms. Cummins, I assure you, that if
20 that was said that would not be a true statement. Judge
21 Brigham is a distinguished jurist.

22 * * *

23 **MR. TURNER:** She posted all this stuff on the
24 Internet, so we're asking that it be --

25 **THE COURT:** I mean, I understand that. But I

1 also understand that I can't order her to remove something she
2 doesn't have control over. That would be abusive on my part.

3 * * *

4 *THE COURT:* I am concerned that the way you've
5 presented this order I'm asking her -- I may be ordering her
6 to do something that she physically cannot do. If -- that she
7 has no power to do. If the fact of the matter is that by
8 merely ordering this these websites will do it on their own,
9 then it needs to be -- the order needs to be worded in that
10 manner.

11 * * *

12 *MS. CUMMINS:* I printed out every single link
13 that he listed and I numbered them. He hasn't shown you all
14 of the pages.

15 *THE COURT:* Okay. Now I see how they
16 correspond.

17 *(Brief pause.)*

18 *THE COURT:* Okay. Now, the testimony at this
19 hearing was that Ms. Cummins testified she has no control over
20 the content of LA Animal Watch. Now, that's all the evidence
21 there is at this hearing on that matter. I can't -- I can't
22 -- without more evidence that she has some control over that
23 website, I don't see how I can ask her to do anything with
24 regard to that.

25 *MR. TURNER:* Judge, I think Amanda Lollar

1 testified that she's part of that. She does have that
2 control.

3 *THE COURT:* Well, I understand that. And I know
4 that there was no objection to that. But I have concerns
5 about her lack of personal knowledge on that and where she may
6 have gotten the information about that. And it seems awfully
7 conclusory for her to say that she has -- to me that's a mere
8 accusation, it's not evidence of who controls this website.

9 *MR. TURNER:* I think Mary Cummins also admitted
10 saying the things that are on that website.

11 *THE COURT:* No, I agree with that. I agree she
12 did testify to that. But again, that's someone else quoting
13 her. If what she says is true, and that's the only evidence
14 at this hearing, how can I not take it as true?

15 *MR. TURNER:* The only other thing that I would
16 point the Court to would be the hearing that we had a few
17 months ago on a motion to amend the temporary injunction. And
18 if I remember correctly, at that time she admitted authorizing
19 those things and being involved in that LA Animal Watch. I
20 could be wrong, but I'd have to go read the transcript, but I
21 think in that hearing she admitted involvement with that.

22 *MS. CUMMINS:* No.

23 *THE COURT:* Well, then, with regard to that one
24 you're going to have to offer that testimony at this hearing.
25 I can't just take evidence at another hearing and add it to

1 this one. If you want to supplement the record with that, if
2 that is indeed what she said, then I'm amenable to
3 supplementing the record if that's what she testified to at a
4 prior hearing. But without that, I can't -- I can't pull that
5 out of the air. I've got to go on what was testified to
6 that's competent testimony at this hearing.

7 * * *

8 (Motion to Void Injunction)

9 *THE COURT:* Okay. The motion to void the
10 injunction is denied. Basically you're just asking that prior
11 order be undone. And we're on the eve of trial, and I'm not
12 going to re-visit an order that's been active in this Court
13 since almost the get-go of this case. However, I am going to
14 look at the request for -- for the amendments to the temporary
15 injunction. I'll give you a ruling on that hopefully the
16 first of next week.

17 * * *

18 (*Proceedings adjourned*)
19
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1 STATE OF TEXAS

2 COUNTY OF TARRANT

3 I, Monica J. Willenburg, Official Court Reporter
4 in and for the 352nd District Court of Texas in and for
5 Tarrant County, do hereby certify that the above and foregoing
6 contains a true and correct transcription of an excerpt of
7 portions of evidence and other proceedings requested in
8 writing by counsel for the parties to be included in this
9 volume of the Reporter's Record in the above-styled and
10 numbered cause, all of which occurred in open court or in
11 chambers and were reported by me.

12 I further certify that this Reporter's Record of
13 the proceedings truly and correctly reflects the exhibits, if
14 any, offered by the respective parties, if requested.

15 I further certify that the total cost for the
16 preparation of this Reporter's Record is \$40.00 and was
17 paid/will be paid by DEFENDANT.

18 WITNESS MY OFFICIAL HAND, on this the 4th of
19 August, 2012.

20

21

22 Monica J. Willenburg, CSR, RPR
23 Texas CSR No. 3386, Exp: 12/31/12
24 Official Court Reporter
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***** BOARD CERTIFIED
CIVIL TRIAL

^ CPA

June 25, 2012

Honorable Judge Brigham



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

Dear Judge Brigham:

Enclosed please find the proposed judgment which has been drafted pursuant to the court's order. A copy of this proposed judgment has been mailed to the defendant, Mary Cummins at 645 W. 9th St., 110-140, Los Angeles, California 90015.

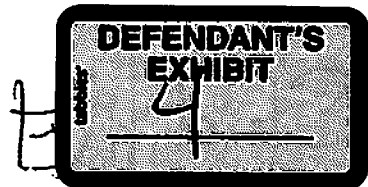
Thank you for your consideration.

Sincerely,

RS
Randall E. Turner

RET/kb

Cc
Mary Cummins
645 W. 9th St., 110-140
Los Angeles, California 900015



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CIVIL TRIAL

* CPA

June 27, 2012

352nd Judicial District Court
Linda Blair/Court Coordinator
401 W. Belknap Street
Fort Worth, Texas 76196

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

Dear Ms. Blair:

As per my conversation with Judge William Brigham, I am writing this letter to the court with regard to the Judgment that was sent out on June 25, 2012 for the above mentioned matter. I mistakenly sent the proposed Judgment to Judge Brigham's home address. I have not experienced a visiting Judge and when Mr. Turner advised me to send the Judgment to the Judge, I thought he meant directly.

Judge Brigham has advised me that he does not conduct business from home and that he would destroy the judgment and I would need to send it directly to the court and copy the defendant on this correspondence and advise her of our conversation.

Per Judge Brigham's instructions, please find enclosed another copy of the judgment which has been drafted pursuant to the courts order.

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

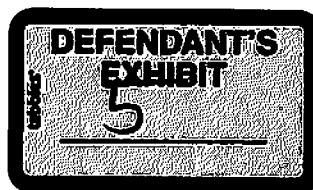
Sincerely,

Kelly Dozeman

Paralegal to Randall E. Turner
khozeman@galyen.com

Cc
Mary Cummins
645 W. 9th St., 110-140
Los Angeles, California 90015

LAW OFFICES OF PHILLIP GALYEN, P.C.
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WEATHERFORD • McALLEN • FLORIDA • MISSOURI



CAUSE NO. 352-248169-10

BAT WORLD SANCTUARY and
AMANDA LOLLAR,
Plaintiffs

v.

MARY CUMMINS,
Defendant

§ IN THE DISTRICT COURT
§
§
§
§ TARRANT COUNTY, TEXAS
§
§
§
§ 352nd JUDICIAL DISTRICT

TEMPORARY INJUNCTION

On the 3rd day of May, 2011 came on to be heard the application for a temporary injunction filed by the plaintiffs. The plaintiffs appeared by and through their attorneys at record. The defendant, Mary Cummins, appeared in person. After hearing the evidence and considering the evidence the Court finds that the defendant has published on the internet defamatory statements and that the plaintiffs' application for a temporary injunction should be granted.

IT IS THEREFORE ORDERED that Mary Cummins immediately remove from the internet all of the materials concerning Bat World Sanctuary and Amanda Lollar which have been posted or placed on the internet at the following URL's and locations:

CARE2.COM

<http://www.care2.com/news/number/225453/06/0724699>

TRFACE.COM

http://trface.com/video/42467a_becofatmostlikelyweb-ratna-found-in-mexico-walk-bat-at-bat-world.htm

FRIENDFEED.COM

<http://friendfeed.com/entry/414113/amanda-lollar-commits-suicide-tragedy-2010>

ANIMALSUFFERING.COM

<http://www.animalsuffering.com/forum/viewtopic.php?t=9447>

TCPIX.COM

<http://www.tcpx.com/member/profile/animalcrucelly>

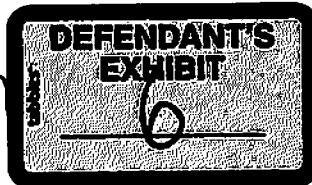
INDYBAY.ORG

<http://www.indybay.org/member/show/200335/01106/0593.php>

Bat World Sanctuary and Amanda Lollar v. Mary Cummins

TEMPORARY INJUNCTION

Exh



http://www.fox.com/community/foxvids/...
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WTF? SPARKS
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http://www.wtfsparks.com/...

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TEMPORARY INJUNCTION

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A P P E A R A N C E S

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EXHIBITS

EXHIBIT

<u>NO.</u>	<u>DESCRIPTION</u>	<u>OFFERED</u>	<u>ADMITTED</u>
	None		

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BEGINNING OF REQUESTED EXCERPT

(June 14, 2012, 10:35 a.m.)

THE COURT: The evidence is complete. The summation is complete. There will be no more evidence and no more summation. The Court is about to rule.

In this case, the Court is of the opinion that plaintiff is entitled to recover. I think the plaintiff has clearly proven that a defamation in this case was egregious as well as malicious as well as intentional. I think that Amanda Lollar, the plaintiff in this case, had a worldwide reputation in the proper care of bats similar to that of Jan Goodall in the care of primates. Jan Goodall went to Africa to find primates.

Amanda Lollar in Palo Pinto County, Texas, where it probably has maybe one of largest concentration of bats in Texas, at least, maybe Austin has a few more. I don't know. The concentration of bats in the old Crazy Well Hotel, now known as the Baker Hotel that shut the Crazy Well Hotel down years ago, the bats have been there forever. The Court finds that the defendant did, in fact, sign the contract proven by excellent expert testimony point after point after point.

1 So, Mr. Turner, if you will prepare a
2 final judgment in this case and mail a copy of it to the
3 defendant, Mary Cummins, at 645 West Ninth Street,
4 Number 110-140, Los Angeles, California 90015-1640, and
5 in that final judgment compensatory damages of
6 \$3 million; exemplary damages of an additional
7 \$3 million; a permanent injunction on items Plaintiffs'
8 17 and 18; liquidated damages and then attorney fees of
9 \$176,700.

10 Mail it to her for her review. Her
11 signature is not necessary. Upon proper submission, it
12 will be signed by the Court. Thank you. We will stand
13 in recess.

14 MR. TURNER: Thank you, Your Honor.

15 (End of requested excerpt.)
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1 STATE OF TEXAS)

2 COUNTY OF TARRANT)

3

4 I, Carolyn Hawks-Gayaldo, Deputy Official Reporter
5 in and for the 352nd District Court of Tarrant County,
6 State of Texas, do hereby certify that the above and
7 foregoing contains a true and correct transcription of
8 all portions of evidence and other proceedings requested
9 in writing by counsel for the parties to be included in
10 this volume of the Reporter's Record in the above-styled
11 and numbered cause, all of which occurred in open court
12 or in chambers and were reported by me.

13 I further certify that this Reporter's Record of
14 the proceedings truly and correctly reflects the
15 exhibits, if any, admitted by the respective parties.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is \$50.00 and has
18 been paid by Plaintiffs.

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WITNESS MY OFFICIAL HAND on this the 14th day of
June, 2012.

/s/Carolyn H. Gayaldo
CAROLYN H. GAYALDO CSR 7181
EXPIRATION DATE 12/31/13
Deputy Official Court Reporter
352nd District Court
Tarrant County, Texas
Allied Court Reporters
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