

FILED

1 MARY CUMMINS  
2 Plaintiff  
3 645 W. 9th St. #110-140  
4 Los Angeles, CA 90015  
5 In Pro Per  
6 Telephone: (310) 877-4770  
7 Email: mmmaryinla@aol.com

2013 JAN 17 AM 10:30  
CLERK, U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES  
BY \_\_\_\_\_

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

11 MARY CUMMINS ) Case No. CV11 08081 DMG (MANx)  
12 Plaintiff )  
13 v. )  
14 AMANDA LOLLAR aka BAT WORLD ) **PLAINTIFF'S NOTICE OF**  
15 SANCTUARY an individual person, ) **MOTION AND MOTION TO**  
16 BAT WORLD SANCTUARY an ) **VACATE ORDERS**  
17 unknown business entity, REBECCA ) Date: *February 15, 2013*  
18 DMYTRYK, ERIC SHUPPS, ) Time: *9:30 a.m.*  
19 TIFFANY KROG, ANNETTE STARK ) Place: Room 7  
20 Defendants ) Judge: Dolly Gee

**NOTICE OF MOTION AND MOTION TO VACATE ORDERS**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on 2-15-13 at 9:30 a.m.

or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable Dolly Gee, Room 7 of the United States District Court, Central District of California, Los Angeles, CA, Plaintiff Mary Cummins ("Cummins") will, and hereby does, move this Court for an Order to vacate orders on Defendants' Motion for Summary Judgment

1 and Plaintiff's Motion to Reconsider Order on Defendants' Motion for Summary  
2 Judgment and to transfer this case to the appropriate court(s).

3 This motion is made pursuant to Federal Rules of Civil Procedure 60, (a)  
4 Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may  
5 correct a clerical mistake or a mistake arising from oversight or omission whenever  
6 one is found in a judgment, order, or other part of the record. The court may do so on  
7 motion or on its own, with or without notice, (b) Grounds for Relief from a Final  
8 Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a  
9 party or its legal representative from a final judgment, order, or proceeding for the  
10 following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (4) the  
11 judgment is void; (6) any other reason that justifies relief.

12 This court did not have legal jurisdiction over this case when the orders were  
13 made on November 16, 2012 and January 14, 2013. This court did not have  
14 jurisdiction because diversity no longer existed when Plaintiff added three California  
15 defendants September 27, 2012. The court only realized this January 14, 2013.  
16 Therefore those orders are void and should be vacated.

17 This motion is based on this Notice of Motion and Motion, the accompanying  
18 Points and Authorities, the Declaration of Mary Cummins and the Exhibits thereto, and  
19 all other papers filed in this action and oral testimony or other information introduced  
20 at the hearing on this motion.

21 Respectfully submitted,

22 *Mary Cummins*

23 Mary Cummins, Plaintiff

24 Dated: January 17, 2013

25 645 W. 9th St. #110-140

26 Los Angeles, CA 90015

27 In Pro Per

28 Direct: (310) 877-4770

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION AND BACKGROUND**

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2  
3 Plaintiff filed her initial complaint September 29, 2011 against Amanda Lollar,  
4 Bat World Sanctuary and John Does 1-10. The Does were then unknown. The  
5 complaint was filed in Federal Court because of diversity of parties, i.e. Plaintiff is a  
6 California resident, Defendants Lollar, Bat World Sanctuary are residents of Texas. The  
7 identities and location of the Does were at that time unknown.

8 Through subpoena Plaintiff learned the identities of the John Does and filed her  
9 second amended complaint September 27, 2012 (Document #97). Plaintiff added John  
10 Does Rebecca Dmytryk, Annette Stark, Tiffany Krog and Eric Shupps. Defendants  
11 Dmytryk, Stark and Krog are residents of California. Defendants Lollar, Shupps are  
12 residents of Texas. When Plaintiff added the California Does, there was no longer  
13 diversity of parties. At that time this court no longer had jurisdiction. This is a  
14 defamation case. It is not a Federal subject matter. Therefore this court no longer had  
15 jurisdiction due to diversity or subject matter. The case should have been transferred to  
16 a court(s) with jurisdiction. Plaintiff is a pro se and did not realize this. Neither did  
17 Judge Dolly Gee even though it was clearly stated on the first page in the complaint  
18 that three of the Does were residents of California.

19 November 27, 2012 Judge Dolly Gee signed an order granting Defendants'  
20 Amanda Lollar and Bat World Sanctuary motion for summary judgment (Document  
21 #103). Plaintiff filed a motion to reconsider the order on Defendants' motion for  
22 summary judgment. Judge Dolly Gee signed an order January 14, 2013 denying  
23 Plaintiff's motion for reconsideration (Document #127). Both of those orders were  
24 made after this court no longer had jurisdiction on this case. A mistake was made. For  
25 these reasons those orders should be vacated and this case transferred to court(s) that  
26 have jurisdiction over this case.

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28

**II. ARGUMENT**

Federal Rules of Civil Procedure 60 states “(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice, (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (4) the judgment is void; (6) any other reason that justifies relief.”

This court did not have legal jurisdiction over this case when the orders were made on November 16, 2012 and January 14, 2013. This court did not have jurisdiction because diversity no longer existed when Plaintiff added three California defendants September 27, 2012. Judge Dolly Gee only realized this January 14, 2013. From Judge Dolly Gee’s order (Document 128),

“Plaintiff asserts subject matter jurisdiction based on diversity of citizenship, 28 U.S.C. § 1332(a). (SAC ¶ 2.) “Diversity jurisdiction requires complete diversity between the parties— each defendant must be a citizen of a different state from each plaintiff.” Diaz v. Davis, 549 F.3d 1223, 1234 (9th Cir. 2008) (citing Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267, 267, 2 L.Ed. 435 (1806)). Here, Plaintiff is a citizen of California. (SAC ¶ 4.) Newly named Defendants Rebecca Dmytryk, Tiffany Krog, and Annette Stark are also citizens of California. (Id. at ¶¶ 8, 10, 11.) Therefore, it appears that complete diversity no longer exists between the parties.”

**III. CONCLUSION**

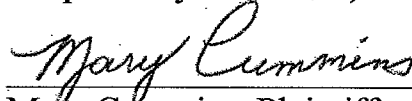
September 27, 2012 this court lost jurisdiction over the claims in this case. Therefore any orders made after this date that relate to the claims in the complaint are

1 void and should be vacated. This case and defendants should be transferred to court(s)  
2 which have jurisdiction over this case.

3 **IV. PRAYER**

4 For the foregoing reasons, Plaintiff respectfully requests that the Court vacate all  
5 orders that relate to the claims of this case made after September 27, 2012. Plaintiff  
6 further requests that this court transfer this case with related Defendants to court(s)  
7 which have jurisdiction over the parties and subject matter.

8  
9 Respectfully submitted,

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11 Mary Cummins, Plaintiff

12 Dated: January 17, 2013

13 645 W. 9th St. #110-140

14 Los Angeles, CA 90015

15 In Pro Per

16 Telephone: (310) 877-4770

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DECLARATION OF MARY CUMMINS

I, Mary Cummins, Plaintiff In Pro Per, declare and state:

1. I filed the initial complaint September 29, 2011 against Amanda Lollar, Bat World Sanctuary and John Does 1-10 (Document #1.)
2. I filed the second amended complaint September 27, 2012 (Document #97) adding John Does Rebecca Dmytryk, Tiffany Krog, Annette Stark and Eric Shupps.
3. In my second amended complaint I clearly stated that Rebecca Dmytryk, Tiffany Krog, Annette Star are residents of California.
4. In my second amended complaint I clearly stated that Eric Shupps is a resident of Texas.
5. My complaint is for Defamation, Defamation per se, Interference with Business Relations, Interference with Prospective Economic Advantage, Infliction of Emotional Distress.
6. I am Plaintiff in pro per. I am not a lawyer. I did not receive any advice from any lawyer. A lawyer did not review any of my documents.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 17, 2013, in Los Angeles, California.



Mary Cummins, Plaintiff in Pro Per

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PROOF OF SERVICE BY MAIL  
(FRCivP 5 (b)) or  
(CCP 1013a, 2015.5) or  
(FRAP 25 (d))

I am Plaintiff in pro per whose address is 645 W. 9th St. #110-140, Los Angeles, California 90015-1640. I am over the age of eighteen years.

I further declare that on the date hereof I served a copy of:

**PLAINTIFF'S NOTICE OF MOTION AND MOTION TO VACATE ORDERS**

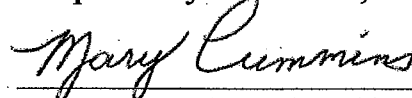
on the following interested parties by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at 645 W. 9th St. #110-140, Los Angeles, CA 90015-1640.

Annette Stark c/o Richard Reinhardt 5143 Loleta Avenue Los Angeles, CA 90041	Dean A. Rocco Jackson Lewis LLP 725 S. Figueroa, # 2500 Los Angeles, CA 90017
Ronald Zurek Wesierksi & Zurek LLP 1000 Wilshire Blvd. #1750 Los Angeles, CA 90017	Sandra McMullen Jackson Lewis LLP 725 S. Figueroa, #2500 Los Angeles, CA 90017
Rebecca Dmytryk 20178 Rockport Way Malibu, CA 90265	

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed this day, January 17, 2013, at Los Angeles, California.

Respectfully submitted,



Mary Cummins, Plaintiff

Dated: January 17, 2013

645 W. 9th St. #110-140

Los Angeles, CA 90015