


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

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY 

8 UNITED STATES DISTRICT COURT
9
10 CENTRAL DISTRICT OF CALIFORNIA

11 MARY CUMMINS
12 *Plaintiff*

13 v.

14 AMANDA LOLLAR aka BAT
15 WORLD SANCTUARY an individual
16 person, BAT WORLD SANCTUARY
17 an unknown business entity, JOHN
18 DOES 1-10
19 *Defendants*

) Case No. CV11 08081 DMG MAN_x

) **OPPOSITION TO DEFENDANTS'**
) **MOTION TO DISMISS FOR**
) **IMPROPER VENUE OR**
) **ALTERNATIVE TO TRANSFER**
) **VENUE**

) [Federal Rule of Civil Procedure 12(b)
) (3); 28 U.S.C. § 1332]

20 Plaintiff Mary Cummins, (hereinafter "Plaintiff") alleges as follows:

21 **INTRODUCTION**

22 For the reasons set forth below, this Court has personal jurisdiction over
23 Defendants Amanda Lollar aka Bat World Sanctuary an individual, Bat World
24 Sanctuary an unknown business entity and John Does 1-10. Accordingly, Plaintiff
25 respectfully requests that the Court deny Defendants' Motion to Dismiss for Improper
26 Venue or in the alternative, Motion to Transfer Venue.

27 1. The evidence clearly establishes that this Court has personal jurisdiction over
28 Defendants through the Doctrine of Diversity of Citizenship. In an attempt to avoid
jurisdiction, Defendants argue that **all** Defendants are located in Texas. They forget

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS OR ALTERNATIVELY, TRANSFER
VENUE

1 that Plaintiff is also suing John Does 1-10. Plaintiff firmly believes that the John Does
2 are located in states other than California or Texas.

3 2. This Court has personal jurisdiction Pursuant to Section 1391(a)(2) because a
4 substantial part of the events or omissions giving rise to the claims occurred in this
5 District. The Internet posts were not just made on websites located in California.
6 Plaintiff and Plaintiff's business were damaged by Defendants in this District in
7 California. "In a tort action, the locus of the injury is a relevant factor in making the
8 determination." Myers v. Bennett Law Offices, 238 F.3d 1068 (9th Cir. 2001). "The
9 economic injuries occurred in California." Fiore v. Walden (9th Cir. Sept. 12, 2011).
10 "In a defamation case where there is widespread dissemination of the allegedly
11 defamatory matter, such as there was via the internet in the case before us, the most
12 important consideration in choosing the applicable law is the residence of the party
13 allegedly defamed" (Fuqua Homes, Inc. v. Beattie, 2004 U.S. App. LEXIS 26041 (8th
14 Cir., Dec. 15, 2004).

15 3. This Court has personal jurisdiction over all Defendants as they agreed to the
16 legal jurisdiction of California when they signed up for their Google, Blogger, Yahoo,
17 YouTube and Facebook accounts as part of the terms of service agreement. Not only
18 did they agree to this jurisdiction but Google, Blogger, Yahoo, YouTube and Facebook
19 are located in California as are their servers.

20 The Ninth Circuit has held that a district court can exercise specific personal
21 jurisdiction over a non-resident defendant if: (1) the defendant purposely directs his
22 activities or consummates some transaction with the forum or resident thereof, or
23 performs some act by which he purposefully avails himself of the privilege of
24 conducting activities in the forum; (2) the plaintiff's claim arises out of or results from
25 the defendant's forum-related activities; and (3) such exercise of jurisdiction is
26 reasonable. Menken v. Emm, 503 F.3d 1050, 1056-57 (9th Cir. 2007); Yahoo! Inc. v.
27

1 La Ligue Contre Le Racisme, 433 F.3d 1199, 1205-06 (9th Cir. 2006); Panavision Int'l,
2 L.P. v. Toeppen, 141 F.3d 1316, 1320 (9th Cir. 1998).

3 4. Defendants purposefully directed their activities at Plaintiff and availed
4 themselves of the privilege of conducting activities in California. The “purposeful
5 availment” requirement is satisfied when an intentional act is both aimed at and has an
6 effect in the forum state and causes harm, “the brunt of which is suffered – and which
7 the defendant knows is likely to be suffered – in the forum state.” Core-Vent Corp. v.
8 Nobel Industries AB, 11 F.3d 1482, 1486 (9th Cir. 1993) (citing Calder v. Jones, 465
9 U.S. 783, 783-784 (1984). Under this well-established “effects test,” personal
10 jurisdiction over Defendants is proper.

11 5. Defendants’ websites and the other websites where Defendants posted were
12 not passive. Despite the evidence, Defendants try to insist that the websites where the
13 libel, defamation is posted are passive. Their argument is not convincing. The websites
14 are highly interactive sites. In 3DO Co. v. Poptop Software, Inc., like here, the
15 defendants posted a website, accessible by California residents, which permitted users
16 to view and download material. 3DO, 1998 LEXIS 21281, 49 U.S.P.Q.2d 1469.

17 Although the Defendants characterized their website as passive, the court held
18 otherwise, stating that defendant facilitated the downloads. Together, the facts that
19 Defendants knew that the Plaintiff is located in California and that its conduct was
20 likely to have an effect in California were sufficient to establish personal jurisdiction.
21 The same reasoning applies here. Defendants provided downloads of the libel,
22 defamation to California residents through their websites. Moreover, they were likely
23 to know that their conduct could impact Plaintiff located in California. In this case
24 Defendant’s also emailed links to the websites to residents of California.

25 6. Defendants argue that this case in the alternative should be transferred to the
26 District Court of Tarrant County, Texas because there is currently pending a previously
27 filed action between Plaintiff and two of the defendants, Lollar v. Cummins, Case No.
28

1 352-248169-10. The parties, allegations and damages are completely and absolutely
2 different and unrelated.

3 The Plaintiffs in Amanda Lollar, Bat World Sanctuary v. Cummins lawsuit are
4 Amanda Lollar and Bat World Sanctuary. The Defendant is Mary Cummins. The
5 Plaintiff in Cummins v. Lollar lawsuit is Mary Cummins. The Defendants are Amanda
6 Lollar aka Bat World Sanctuary an individual, Bat World Sanctuary an unknown
7 business entity and John Does 1-10. The parties are not the same.

8 The main claim in Lollar v. Cummins is supposed breach of contract then
9 defamation. The main claims in Cummins v. Amanda Lollar, Bat World Sanctuary,
10 John Does 1-10 is defamation, defamation per se, interference with business relations,
11 interference with prospective economic advantage and infliction of emotional distress.
12 The claims are not the same.

13 7. Defendants argue that the case should be dismissed due to the statute of
14 limitations. They refer to their Exhibit 1 which shows Blogger blog dates from 2006
15 and 2007. The dates of Blogger posts can be changed by the person who controls the
16 blog. One can put any date they like as evidenced by a Blogger blog entry made by
17 Plaintiff dated December 23, 1976, Exhibit 1. Google, Blogger and blogs did not exist
18 in 1976. The true date of any blog post can only be determined after examination.

19 Plaintiff filed this claim over Internet postings and emails made within the last
20 three to twelve months by Defendants, Exhibit 2.

21 The statute of limitations for a claim of defamation (1st and 2nd causes of
22 action) is one year. (Cal. Civ. Proc. Code §340).


23 The statute of limitations for a claim of intentional interference with business
24 relations and prospective economic advantage (3rd and 4th causes of action) is two
25 years (Cal. Civ. Proc. Code §339(1);); Knoell v. Petrovich, 76 Cal. App. 4th 164, 168
26 (1999); Orr v. Bank of America. NT & SA, 285 F. 3d 764 (9th Cir. 2002).

1 The statute of limitations for a claim of intentional infliction of emotional
2 distress (5th cause of action) is two years (Cal. Civ. Proc. Code §335.1; Pugliese v.
3 Superior Court, 146 Cal. App. 4th 1444, 1450 (2007).
4

5 **CONCLUSION**

6 The evidence that Defendants are subject to personal jurisdiction in this Court is
7 overwhelming. Through their conduct Defendants have established the minimum
8 contacts necessary for this Court to exercise personal jurisdiction over them.
9 Accordingly, Defendant's motion to dismiss or transfer should be denied.
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12

13 Respectfully submitted,

14 

15 Mary Cummins, Plaintiff

16 Dated: November 30, 2011

17 645 W. 9th St. #110-140

18 Los Angeles, CA 90015

19 In Pro Per

20 Telephone: (310) 877-4770
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EXHIBIT 1



MARY CUMMINS REAL ESTATE ANIMAL ADVOCATES

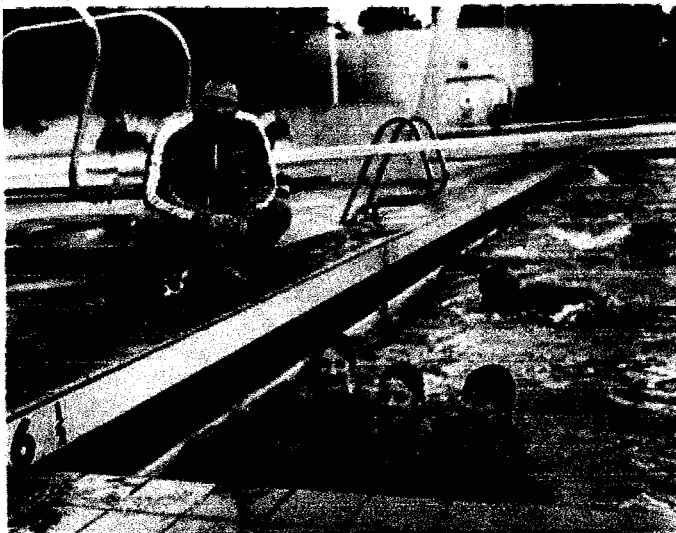
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THURSDAY, DECEMBER 23, 1976

Mary Cummins in LA Times, trains with Olympic swimmers

Los Angeles Times - January 1, 1977



L - R: Coach Boris Zenov, Gold medalist Marina Koshevaya, Mary Cummins, Silver medalist Mariana Yarchenia

Expert advice - Mary Cummins, center, 11 year old breast stroke specialist at the Culver City swim team, gets some helpful hits from Olympic Gold Medalist Marina Koshevaya, left, and Mariana Yarchenia, silver medalist and the Soviet coach Boris Zenov. The Soviet swimmers will leave Jan 3 for the Soviet Union after ending a week's stay with a swim meet Jan. 2 at USC.

Mary Cummins of Animal Advocates is a wildlife rehabilitator licensed

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ABOUT ME



MARY CUMMINS - ANIMAL ADVOCATES

Mary Cummins is a licensed wildlife rehabilitator with

Animal Advocates in Los Angeles, California. Mary Cummins rescues coyotes, bobcats, foxes, raccoons, opossums, skunks, squirrels, bunnies, gophers, moles, voles, bats and more! Mary Cummins is also a real estate appraiser which is how I pay for my animal "habit."

VIEW MY COMPLETE PROFILE

EXHIBIT 2

Hi, mary | Sign Out | Help

Make Y! Your Homepage

Yahoo! Mail

YAHOO! GROUPS

Search

Web Search

SOLAR HOMES!

LENNAR®



LAUREL CREEK IN EASTVALE

Tour brand new solar homes

ACT NOW



EVERYTHING'S INCLUDED HOMES

Start a Group | My Groups

worldbatline · World Bat Line

Search for other groups...

Search

Home Messages



Click here for the latest updates on Groups Message search

Members Only

Post

Files

Photos

Links

Database

Polls

Calendar

Promote

Groups Labs

(Beta)

Messages

Messages Help

Message #

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Search

Advanced

Mary Cummins

Message List

Reply

Message #33659 of 33660 < Prev | Next >

Re: Mary Cummins

Tue May 10, 2011 6:49 pm

Yes, she also has a criminal record:

Show Message Option

Case Number LAW95W00B78-01

Count 1 484E(A) PC PTY THFT:ACQ CRED CRD W/O CONS

Count 2 484F(B) PC FORGE NAME ON CREDIT CARD

Count 3 484G(A) PC THEFT BY FORG/INVALID CRED CAR

Count 4 484(A) PC THEFT OF PROPERTY

"batworldsanctuary"

<sanctuary@...>

batworldsanc...

Offline

Send Email

Other lawsuits involve cybersquatting which she lost via default judgment

(BC329942, FAA BEVERLY HILLS INC VS MARY CUMMINGS ET AL), neighbor dispute which

she promptly settled (BC259366, Simas v. Cummins) and defamation which plaintiff

abandoned because they were able to get rid of her defamation (LCo49092).

She also goes by Mary Cummins, Mary Cummins-Cobb and Mary Katherine Cummins.

And sometimes her name shows up as Mary Cummings. And she has used the same

email mmmaryinla@... for years. She has hundreds of aliases she uses as well.

Right now she's encouraging her facebook friends to re-post the videos and defamation I've managed to get removed. These are the same items

Yahoo! Groups Tips

Did you know...

Real people. Real stories. See how Yahoo! Groups impacts members worldwide

Best of Y! Groups



Check them out and nominate your group.

Already receiving group email?

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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:

OPPOSITION TO DEFENDANTS' MOTION TO DISMISS FOR IMPROPER VENUE OR ALTERNATIVE, TO TRANSFER VENUE

on the following 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.

Stephen M. MacPhail
Bragg & Kuluva
555 S. Flower St., #600
Los Angeles, CA 90071

I also faxed a copy to Stephen M. MacPhail at (213) 612-5712.

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

Executed this day, November 30, 2011, at Los Angeles, California

Respectfully submitted,



Mary Cummins, Plaintiff

Dated: November 30, 2011

645 W. 9th St. #110-140

Los Angeles, CA 90015

In Pro Per

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