

BAT WORLD SANCTUARY and
AMANDA LOLLAR,

Plaintiffs,

vs.

MARY CUMMINS,

Defendant Pro se

§ IN THE DISTRICT COURT

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TARRANT COUNTY, TEXAS

352nd JUDICIAL DISTRICT

DEFENDANT’S MOTION OBJECTING TO ORDER OF REFERRAL TO MEDIATION

TO THE HONORABLE JUDGE OF SAID COURT:

Mary Cummins, Defendant Pro se, files this Motion Objecting to Order of Referral to Mediation, and in support shows the following:

I.

Trial has been set in this case for the week of January 9, 2012. Judge Bonnie Sudderth signed an order of referral to mediation November 28, 2011 (Exhibit 1). The order stated that parties must mediate on December 20, 2011 at 10:00 a.m. or any mutually-agreed upon date and time. The mediator was designated as Jason C.N. Smith, 600 8th Ave., Fort Worth, Texas 76104, (817) 334-0171. The mediation costs would be borne equally unless the parties agree otherwise.

2.

Defendant contacted court when Defendant received the order on December 8, 2011. Defendant told court Defendant could not find an affordable flight on December 19, 2011 during the holidays with such short notice. Defendant had also made plans months earlier to be away during that time for Defendant’s birthday. Defendant asked Plaintiffs’ attorney Randy Turner to change the date of December 20, 2011 to January 4, 2012 or any day during the first week of January 2012. Plaintiffs’ attorney said he would

1 only change the date if Defendant signed an injunction against Defendant (yes, against
2 herself) agreeing to remove every negative mention of Plaintiffs' attorney and Plaintiffs
3 from the entire Internet or else, **“the lawsuit will crank up into high gear again with
4 endless hearings, depositions, motions and, eventually, a trial. I am fine doing
5 that. I litigate for a living.”** Obviously Defendant cannot sign an injunction which is
6 physically, technically and legally impossible.

7 3.

8 Judge Bonnie Sudderth gave approval to mediate at a later date as long as it was
9 done in a “reasonable time frame.” Court coordinator relayed the message to the
10 mediator December 9, 2012. Defendant relayed this message to Plaintiffs via email
11 (Exhibit 2). Defendant stated in that email that Defendant left a phone message for
12 mediator asking about minimum number of hours and fees.

13 4.

14 Defendant contacted mediator by phone December 9, 2011 to schedule the date.
15 Defendant also left a message asking about the minimum number of hours and fees.
16 Defendant received no response. Defendant again contacted mediator by phone
17 December 11, 2011 and received no response. Defendant emailed mediator December
18 13, 2011 (Exhibit 3) asking to set up the appointment. By then Plaintiffs' attorney agreed
19 to January 4 mediation date but mediator had yet to confirm a time.

20 5.

21 December 15, 2011 Susan Davis paralegal to Jason Smith finally emailed Defendant
22 asking if Defendant was available January 4, 2011 (Exhibit 4). A week had passed since
23 Defendant asked for the appointment. Defendant replied via email (Exhibit 5) stating
24 that they'd waited a week to schedule the mediation. Airfare would be increased
25 because of later booking during the expensive holiday travel season. Defendant asked

1 to appear by phone or video or if they would reduce their mediation fee by the \$128
2 increase in airfare.

3 6.

4 December 16, 2011 Susan Davis emailed Defendant (Exhibit 6) that the court
5 coordinator contacted the mediator and stated mediation will be January 9, 2012 at 9:30
6 am. If parties do not settle that day, trial begins the next day. Mediation cost is \$1,000/
7 hour for four hours split between the parties or \$2,000 minimum.

8 7.

9 Defendant objects to this mediation for the following reasons:

10 a. The mediation fee is not fair. Average Texas mediation fee is \$500/party for a half day
11 four hour mediation session. Mediator's fee of \$2,000 is four times the state average.

12 Defendant believes mediator is taking advantage of the court's order to mediate or
13 instantly go to trial. Defendant can't afford the cost of this mediation.

14 b. There is a conflict of interest between the mediator and Plaintiffs' attorney Randy
15 Turner. Mediator Jason Smith is a friend of Plaintiffs' attorney Randy Turner. They both
16 work with the Humane Society of North Texas. They both speak for animal issues in Fort
17 Worth, Texas. They both spoke for strengthening the aggressive dog laws at the same
18 City Council meeting. Defendant also believes that their assistants are personal friends
19 as evidenced by Plaintiffs' attorney's assistant Kelly Bozeman's response to Susan
20 Davis' email to parties (Exhibit 7).

21 c. Plaintiffs never filed a scheduling order for this case.

22 d. Parties were not given the chance to first agree to a mediator. The mediator was
23 appointed by the court. Defendant would have and is objecting to this specific mediator
24 based on fee and conflict of interest.

1 e. This case is not ready for mediation. Plaintiffs have refused to hand over discovery.
2 Defendant must file another motion to compel discovery and other items. Plaintiffs also
3 only turned over half of the wide angle view video of Defendant's deposition. Plaintiffs
4 have refused to allow Defendant to depose their witnesses even though Defendant has
5 asked repeatedly.

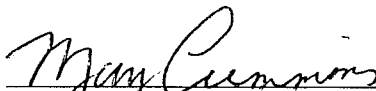
6 f. Mediation will not result in settlement. Mediation would be a waste of time and money.
7 Plaintiffs' attorney has made it perfectly clear that he does not intend to settle.
8 Defendant has made two settlement offers and Plaintiff did not reply. Plaintiffs' attorney
9 stated he intends to go to trial.

10 ~~8.~~

11 Defendant requests that this court cancel mediation for all the reasons set forth in
12 this motion. In the alternative Defendant requests mediation take place at a later date.
13 Defendant requests that mediation be done pro bono by the Dispute Resolution
14 Services of Tarrant County. In the alternative Defendant requests that Defendant be
15 allowed to select an unbiased, independent mediator that charges no more than \$500/
16 party for four total hours of mediation.

17 Respectfully submitted,

18
19 Mary Cummins, Defendant Pro se
20 645 W 9th St, #110-140
21 Los Angeles, CA 90015-1640
22 Phone 310-877-4770
23 Email: mmmaryinla@aol.com

24 By: 
25 Mary Cummins, Defendant Pro Se

1

CAUSE NO. 352-248169-10

BAT WORLD SANCTUARY ET AL	§	IN THE DISTRICT COURT
	§	
vs.	§	352 nd JUDICIAL DISTRICT
	§	
MARY CUMMINS	§	TARRANT COUNTY, TEXAS

ORDER OF REFERRAL TO MEDIATION

This case is set for trial for the week of January 9, 2012.

Pursuant to Chapter 154, Texas Civil Practices & Remedies Code, the Court finds that the above-entitled cause is appropriate for alternative dispute resolution proceedings. IT IS THEREFORE ORDERED that the parties to this cause participate in mediation proceedings in a good faith effort to resolve their dispute.

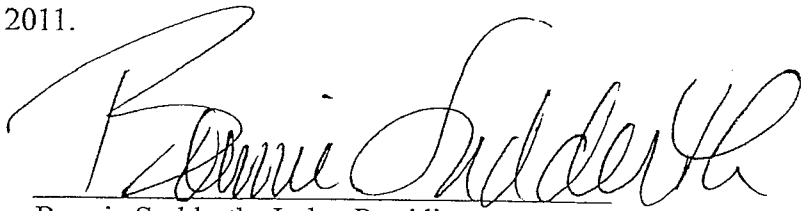
Counsel are jointly responsible for initiating a conference between them and the mediator to confirm the scheduling of the mediation and to make satisfactory arrangements for the payment of said mediation costs, which shall be borne equally unless the parties agree otherwise.

The mediation shall occur at a mutually-agreed upon date and time, or in the alternative on Tuesday, December 20, 2011 at 10:00 o'clock a.m.

Jason C.N. Smith, 600 8th Ave., Fort Worth, Texas 76104, (817) 334-0171, shall serve as the mediator.

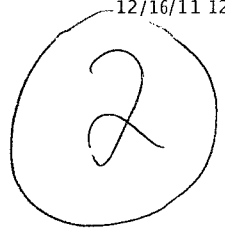
All parties are ORDERED to appear and participate in the mediation proceedings. A party's failure to participate in mediation will result in sanctions, including dismissal for want of prosecution.

Signed this the 28 day of November, 2011.



 Bonnie Sudderth, Judge Presiding

MAILED COPY TO ALL ATTORNEYS
 AND PRO SE PARTIES OF RECORD
 11/28/11 *DBB*



From: Mary Cummins <mmmaryinla@aol.com>

To: Randy <Randy@TurnerMcKenzie.com>; Kelly <Kelly@TurnerMcKenzie.com>

Subject: Mediation date change

Date: Fri, Dec 9, 2011 3:41 pm

Judge Bonnie will allow a change in mediation date. The court coordinator contacted the mediator's office. So did I. What dates are you available for mediation? I asked for their rates and if there is a minimum number of hours we have to mediate. Jason Smith was in mediation all day long today so he'll get back to me on Monday. Our trial begins week of January 9. How about 1/3 to 1/6? That is Tuesday to Friday. I'd prefer Wednesday January 4 if that works for you. Because I asked you what you wanted before and you did not answer, I doubt we will settle in mediation.

Mary Cummins

From: mmmaryinla <mmmmaryinla@aol.com>

To: brenderlawfirm <brenderlawfirm@artbrender.com>

Subject: To: Jason Smith - mediator

Date: Tue, Dec 13, 2011 8:54 am

3

My case has been sent to you for mediation i.e., Bat World Sanctuary et al v. Mary Cummins cause no. 352-248169-10. Linda Blair court coordinator for Judge Bonnie Sudderth called your office about the mediation date which was tentatively set for December 20, 2011 at 10:00 a.m. I left a message for you last Friday at (817) 334-0171. Your secretary said you'd get back to me by Monday, yesterday but I haven't heard anything. Legal assistant for Plaintiff's attorney Randy Turner said they would agree to January 3, 2012 for half day mediation which is the minimum. I was later told you are busy this day. Our trial is currently scheduled for the week of January 9, 2012 but I just filed for a continuance so we will have time to mediate. Can you let me know what's happening with the appointment? I have to schedule my flight. The sooner I book, the cheaper the flight. I'm an out of state defendant. Thanks.

Mary Cummins
Defendant pro se
645 W. 9th St. #110-140
Los Angeles, CA 90015-1640
(310) 877-4770

4

From: Susan Davis <susand@artbrender.com>

To: mmmaryinla <mmmmaryinla@aol.com>

Cc: kelly <kelly@turnermckenzie.com>

Subject: Mediation

Date: Thu, Dec 15, 2011 12:41 pm

Ms. Cummins:

I have left you a message on your phone to contact me regarding scheduling the mediation in your case. Are you available on 1/4/12 at 1:30 p.m. for mediation?

Please advise.

Susan Davis
Paralegal to Jason C.N. Smith
Law Offices of Art Brender
600 Eighth Avenue
Fort Worth, Texas 76104
(817) 334-0171, telephone
(817) 334-0274, telecopier
susand@artbrender.com

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From: Mary Cummins <mmmaryinla@aol.com>
To: susand <susand@artbrender.com>
Cc: kelly <kelly@turnermckenzie.com>; Randy <Randy@TurnerMcKenzie.com>
Subject: Re: Mediation
Date: Thu, Dec 15, 2011 12:56 pm

I left a message last Friday. Airfare has gone from \$250 to \$378 with horrible flight times few non-stops in the mean time.

I filed a motion for continuance of the trial date but it has not yet been heard. Our current trial date is the week of January 9, 2012. If plaintiff will agree to the continuance, we will have more time to mediate.

Do I have to be there in person? Can I be on the phone? If so, time/date is fine with me. I can appear by video if need be. Thanks.

Mary Cummins
Defendant pro se
(310) 877-4770

-----Original Message-----

From: Susan Davis <susand@artbrender.com>
To: mmmaryinla <mmmaryinla@aol.com>
Cc: kelly <kelly@turnermckenzie.com>
Sent: Thu, Dec 15, 2011 7:41 am
Subject: Mediation

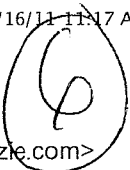
Ms. Cummins:

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Please advise.

Susan Davis
Paralegal to Jason C.N. Smith
Law Offices of Art Brender
600 Eighth Avenue
Fort Worth, Texas 76104
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susand@artbrender.com

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From: Susan Davis <susand@artbrender.com>

To: Mary Cummins <mmmaryinla@aol.com>; Kelly <kelly@turnermckenzie.com>; Randy <Randy@TurnerMcKenzie.com>

Subject: Bat World Sanctuary v. Mary Cummins Mediation

Date: Fri, Dec 16, 2011 9:06 am

Dear parties:

The Court through its Coordinator has informed the mediator that the Court will require the parties to mediate this case on January 9, 2012. If this case is not resolved on that date, the Court through its Coordinator has informed the mediator that the matter will go to trial on the next day.

Accordingly, I am scheduling mediation of this matter for 9:30 a.m. on January 9, 2012 to take place at my office, Law Offices of Art Brender, 600 Eighth Avenue, Fort Worth, Texas 76104. I am tentatively scheduling this matter for four hours but will be available the rest of the day as necessary.

The mediator's fee is \$1,000 an hour split equally by the parties. Thus, I would request each of you bring a check made payable to Jason Smith in the amount of \$500. If this mediation lasts longer than four hours the mediator's fee will be \$250 an hour, to be split equally among the parties.

Each party is invited to provide a position statement to acquaint the mediator with each party's position by January 5, 2012.

I look forward to trying to resolve this matter on January 9, 2012.

Sincerely,

Jason C.N. Smith
Law Offices of Art Brender
600 Eighth Avenue
Fort Worth, Texas 76104
(817) 334-0171, telephone
(817) 334-0274, telecopier
susand@artbrender.com

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From: Kelly <kelly@turnermckenzie.com>

To: 'Mary Cummins' <mmmaryinla@aol.com>; susand <susand@artbrender.com>; Randy <Randy@TurnerMcKenzie.com>

Subject: RE: Bat World Sanctuary v. Mary Cummins Mediation

Date: Fri, Dec 16, 2011 9:31 am

Yes, I did.

Sincerely,

Kelly Bozeman

Paralegal to Randall E. Turner

kelly@turnermckenzie.com

Law Offices of Turner & McKenzie, PC

1800 N. Norwood Drive, Suite 100

Hurst, TX 76054

817-282-3868 ext 304

817-268-1563(fax)

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From: Mary Cummins [<mailto:mmmaryinla@aol.com>]

Sent: Friday, December 16, 2011 11:24 AM

To: kelly@turnermckenzie.com; susand@artbrender.com; Randy@TurnerMcKenzie.com

Subject: Re: Bat World Sanctuary v. Mary Cummins Mediation

What's this response about? Did you mean to hit "reply all," Kelly?

Mary Cummins

Defendant pro se

-----Original Message-----

From: Kelly <kelly@turnermckenzie.com>

To: 'Susan Davis' <susand@artbrender.com>; 'Mary Cummins' <mmmaryinla@aol.com>; Randy <Randy@TurnerMcKenzie.com>

Sent: Fri, Dec 16, 2011 4:07 am

Subject: RE: Bat World Sanctuary v. Mary Cummins Mediation

Thank you Susan!

Sincerely,

Kelly Bozeman
Paralegal to Randall E. Turner
kelly@turnermckenzie.com

Law Offices of Turner & McKenzie, PC
1800 N. Norwood Drive, Suite 100
Hurst, TX 76054
817-282-3868 ext 304
817-268-1563 (fax)

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-----Original Message-----

From: Susan Davis [<mailto:susand@artbrender.com>]
Sent: Friday, December 16, 2011 11:05 AM
To: Mary Cummins; Kelly; Randy@TurnerMcKenzie.com
Subject: Bat World Sanctuary v. Mary Cummins Mediation

Dear parties:

The Court through its Coordinator has informed the mediator that the Court will require the parties to mediate this case on January 9, 2012. If this case is not resolved on that date, the Court through its Coordinator has informed the mediator that the matter will go to trial on the next day.

Accordingly, I am scheduling mediation of this matter for 9:30 a.m. on January 9, 2012 to take place at my office, Law Offices of Art Brender, 600 Eighth Avenue, Fort Worth, Texas 76104. I am tentatively scheduling this matter for four hours but will be available the rest of the day as necessary.

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I look forward to trying to resolve this matter on January 9, 2012.

Sincerely,

Jason C.N. Smith
Law Offices of Art Brender
600 Eighth Avenue

Fort Worth, Texas 76104
(817) 334-0171, telephone
(817) 334-0274, telecopier
susand@artibrender.com

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communication, along with any attachments hereto or links herein, from
your system.
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CERTIFICATE OF SERVICE

I, Mary Cummins, hereby certify that a TRUE COPY of the above DEFENDANT'S MOTION OBJECTING TO ORDER OF REFERRAL TO MEDIATION was served on the Plaintiffs' Attorney of record by FAX and by FIRST CLASS MAIL at

Randy Turner
Turner & McKenzie
1800 N. Norwood Dr # 100
Hurst, Texas 76054
Fax: 817-268-1563
this 16th Day of December, 2011


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

Cause No. 352-248169-10

**BAT WORLD SANCTUARY and
AMANDA LOLLAR,**

Plaintiffs,

vs.

MARY CUMMINS,

Defendant Pro se

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IN THE DISTRICT COURT

TARRANT COUNTY, TEXAS

352nd JUDICIAL DISTRICT

FIAT

Defendant's MOTION OBJECTING TO ORDER OF REFERRAL TO MEDIATION
was filed on 12/16/2011. Defendant requests that the foregoing be set for hearing.

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

Date _____.


Judge Presiding

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

3 Respectfully submitted,

4
5 Mary Cummins, Defendant Pro se
6 645 W 9th St, #110-140
7 Los Angeles, CA 90015-1640
8 Phone 310-877-4770
9 Email: mmmaryinla@aol.com

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By:


Mary Cummins, Defendant Pro Se

1 **CERTIFICATE OF SERVICE**

2 I, Mary Cummins, hereby certify that a TRUE COPY of the above **MOTION FOR**
3 **TELEPHONIC HEARING** was served on the Plaintiffs' Attorney of record by FAX and by
4 **FIRST CLASS MAIL** at
5 Randy Turner
6 Turner & McKenzie
7 1800 N. Norwood Dr # 100
8 Hurst, Texas 76054
9 Fax: 817-268-1563
10 this 16th Day of December, 2011

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