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FILED
Superior Court of California
County of Los Angeles

DEC 07 2016

Sheri R. Carter, Executive Officer/Clerk
By Jenny Chea Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA,**
9 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

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11 **BAT WORLD SANCTUARY, and AMANDA**
LOLLAR, an individual

12
13 Plaintiff,

14 vs.

15 **MARY CUMMINS, an individual,**

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17 Defendant.
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Case No.: BS140207

*[Assigned for all purposes to the Honorable
Robert Hess, Dept. "24"]*

**OPPOSITION OF PLAINTIFF AMANDA
LOLLAR TO MOTION TO QUASH,
MODIFY SUBPOENA, PROTECTIVE
ORDER OF DEFENDANT MARY
CUMMINS**

Hearing Date: December 16, 2016
Time: 8:30 a.m.
Dept: "24"

ORIGINAL



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2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. INTRODUCTION**

4 By now, the court is well versed in the facts of this case. Plaintiff AMANDA LOLLAR
5 (“Plaintiff LOLLAR,”) obtained a six-million-dollar judgment against Defendant MARY CUMMINS
6 (“Defendant CUMMINS,”) in the state of Texas for, *inter alia*, defamation arising out of Defendant
7 CUMMINS’ false statements concerning Plaintiff’s abuse of animals in connection with her highly
8 acclaimed bat rehabilitation center “Bat World Sanctuary.” Rather than accept the consequences of
9 her highly inflammatory, false, and harmful online “tabloid-esque” stories regarding Bat World, which
10 caused the organization significant damage, Defendant CUMMINS has taken every effort to avoid the
11 judgment, including abusing the legal systems of two separate states, to prevent, foil, and delay
12 collection efforts taken by Plaintiff LOLLAR.

13 In this court alone, in the last calendar year, Defendant CUMMINS has filed no less than *six*
14 virtually identical motions to quash subpoenas¹ (as well as several motions for reconsideration,
15 “amended” motions, and an appeal, which is still pending, among other things.) Although each such
16 motion has been, essentially, denied, with Plaintiff being allowed, in large part, to move forward in
17 obtaining the documents sought, Defendant CUMMINS persists in re-filing essentially the same
18 motion, recycling the same, previously denied arguments, with respect to each and every subpoena
19 issued by Plaintiff. Her most recent iteration is no different, and, other than identifying still more lies
20 and omissions made by Defendant CUMMINS, Plaintiff’s argument remains unchanged. Plaintiff is
21 entitled to Defendant CUMMINS’ bank records, as she is a judgment debtor. Similarly, Plaintiff is
22 entitled to the banking records of Animal Advocates, as Defendant CUMMINS manipulates that
23 organization’s finances to serve her own separate purposes, and utilizes its financial accounts to avoid
24 her debts to Plaintiff. Accordingly, Plaintiff’s Motion to Quash should be denied.

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27 ¹ Motions to Quash were scheduled for hearing on February 19, 2016, April 15, 2016, May 10,
28 2016, August 26, 2016, and October 27, 2016, and now, December 16, 2016.

1 **A. Defendant's Filing of Successive Motions To Quash Is Improper, And Done in Bad**
2 **Faith**

3 Defendant has filed multiple unsuccessful motions to quash in this case, among a bevy of
4 other, unsuccessful and entirely frivolous motions, such as motions for reconsideration. Importantly,
5 each of her motions to quash raise the same arguments, despite the fact that they have all been roundly
6 rejected by this Court, on multiple occasions. Clearly, such actions are not taken in good-faith, as no
7 reasonable person would believe that the same arguments, previously denied, would be granted as to
8 an identical subpoena, simply because the banking institution is different. Rather, the filing of
9 successive motions to quash without any new legal or factual argument could only have been
10 undertaken for the improper purpose of delaying collection efforts, increasing the cost of collections,
11 and otherwise harassing Plaintiff. Defendant's bad-faith actions have already resulted in her being
12 sanctioned in Texas for her repeated filing of frivolous and improper motions. However, such
13 sanctions are clearly not sufficient to deter her wrongful conduct, as Defendant CUMMINS persists in
14 filing frivolous motions to quash, in an obvious attempt to prevent Plaintiff LOLLAR from collecting
15 any portion of the Defamation Judgment.

16 **B. Defendant Has Been Untruthful As to Her Ongoing Relationship to Animal Advocates**

17 In addition to her bad-faith filing tactics, Defendant CUMMINS also has proven herself to be a
18 habitual liar, with respect to statements made by her in her pleadings. By now, Defendant
19 CUMMINS' fabrications and blatant mis-statements of fact with respect to her ongoing involvement
20 with Animal Advocates, (and her using that entity as her own personal piggy bank and "money
21 laundering" vehicle,) is well documented. Multiple financial documents evidence Defendant
22 CUMMINS' habit of making personal expenditures from the Animal Advocates Account, and/or
23 depositing her personal funds into that account, to avoid seizure of any such funds by Plaintiff as
24 satisfaction of the judgment. These documents have been filed in this action on several previous
25 occasions. Further sources establish her continuing control and management of that company, for her
26 own personal benefit, long after she admits, and indeed, through to the present. (Conlogue Dec.,
27 Exhibit "C.")
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1 In fact, documents recently obtained establish that Defendant CUMMINS was actively (and
2 steadily) utilizing the Animal Advocates checking accounts *at least through October 31, 2016* (the last
3 day on which Plaintiff has obtained records.) (Id.) Notably, these expenses occur *months after*
4 Defendant CUMMINS stated, in open court, at the successive hearings on her motions to Quash, that
5 she was “no longer associated” in any manner with Animal Advocates. The Court initially relied on
6 these statements when narrowing Plaintiff’s subpoenas as to Animal Advocate’s financial documents
7 back in April, 2016; an action which apparently emboldened Defendant CUMMINS to “double down”
8 on her false and misleading statements concerning her relationship to that entity in her subsequent
9 motions to quash.

10 These are simply the most recently discovered act of blatant misrepresentation performed by
11 Defendant CUMMINS. Her previous history of denying her connections with Animal Advocates, all
12 while (1) writings check on behalf of the entity (2) filing tax documents on behalf of that entity, (3)
13 depositing and withdrawing money into the bank accounts of that entity, is well documented. Plaintiff
14 requests sanctions against Defendant CUMMINS for her repeated false and fraudulent pleadings filed
15 in this action.

16 **C. Defendant CUMMINS’ Motion Should Be Denied And Plaintiff Should Be Awarded**
17 **Sanctions**

18 It is now clear that Defendant CUMMINS regularly and habitually uses her Animal Advocates
19 bank accounts to shelter her assets and avoid Plaintiff’s collection efforts, and routinely intermingles
20 her assets with those of the entity in order to avoid her debt to Plaintiff. Accordingly, the subpoena to
21 First Bank, seeking records from Animal Advocates as well as from Defendant CUMMINS, is not
22 overbroad. Defendant CUMMINS’ *sixth* attempt to quash this very same subpoena (served to a
23 different financial entity) is entirely frivolous and unmeritorious, and is simply her most recent ploy to
24 harass Plaintiff LOLLAR and impede her collection efforts at the taxpayers’ expense. Such conduct is
25 sanctionable under both California Code of Civil Procedure § 2023.030, and California Code of Civil
26 Procedure Sections 128.5 and 128.7. Defendant CUMMINS’ motion for a protective order is similarly
27 meritless in that it is procedurally and substantively deficient. Such deficiencies warrant sanctions
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1 under California Code of Civil Procedure § 2031.060(h). As such, Plaintiff LOLLAR herby requests
2 sanctions against Defendant CUMMINS for both her improper actions and unsuccessful motion for a
3 protective order.

4 **II. DEFENDANT'S MOTION TO QUASH SHOULD BE DENIED**

5 **A. The Document Requests Are Not Overly Broad**

6 Defendant CUMMINS only raises two (2) new arguments in her motion to quash – that the
7 subpoena is overbroad because the related document requests do not identify “Animal Advocates” by
8 its EIN Number, and is overbroad as to herself because it does not identify her by her social security
9 number. Both her contentions are false. With respect to Animal Advocates’ accounts, Plaintiffs’
10 subpoena seeks documents from that organization by identifying *both* the organizations name *and* EIN
11 number. (Conlogue Dec., Exhibit “A, request 1 and 2.”) With respect to Defendant CUMMINS,
12 Plaintiff’s subpoena specifically identifies Defendant by name and social security number. (Conlogue
13 Dec., Exhibit “A,” request No. 3.) Accordingly, there is no merit to the argument that First Bank
14 could reasonably confuse Defendant CUMMINS’ records, as sought by this subpoena, with the
15 records of any other individual with that same name, if indeed there are any.

16 Notably, and although Plaintiff has served a virtually identical subpoenas to no less than eight
17 different financial institutions in this calendar year, alone, to date no records have been produced
18 relating to an individual (or entity) other than those at issue in this case. Simply, the “confusion”
19 alleged by Defendant CUMMINS involving persons with similar names has not occurred, and is not
20 likely to occur, in the future. The document requests served in connection with this subpoena are
21 sufficiently specific, and include sufficient individualized information (including social security
22 number and EIN number,) to ensure that the records of unrelated persons are not inadvertently
23 produced.

24 **B. Defendant’s Motion is Moot**

25 The subpoena to First Bank at issue in this motion demanded the production of documents by
26 November 21, 2016. The custodian of records at First Bank contacted counsel for Plaintiff on
27 November 21, 2016 and inquired as to whether a motion to quash had been filed by Defendant
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1 CUMMINS. (Conlogue Dec. ¶ 4) Plaintiff's counsel notified the custodian that, as of that date,
2 Plaintiff had not been served with any motion to quash, and was not aware of any having been filed.
3 (Conlogue Dec. ¶ 5) The custodian of records then noted that, although Defendant CUMMINS had
4 repeatedly called the custodian, and threatened him, as well as several other employees, and otherwise
5 aggressively accosted several persons associated with First Bank over the telephone, no motion to
6 quash had been received by their office either, and thus, documents would be produced the following
7 day in accordance with the subpoena. (Conlogue Dec. 6.) Several days later, the promised documents
8 were received by Plaintiff's counsel, and were promptly forwarded to Defendant CUMMINS.
9 (Conlogue Dec. Exhibit "B.")

10 Critically, the day following First Bank's document production, November 23, 2016,
11 Defendant tardily filed a motion to quash, seeking to prevent the production of documents pursuant to
12 the subpoena. However, her motion is moot because it was filed, and served, subsequent to the
13 production of the very documents she seeks to prevent from being produced. Accordingly, there is
14 nothing left to "quash," and Defendant's motion should be denied.

15 Defendant CUMMINS is, of course, aware that documents have already been produced,
16 pursuant to the subpoena, but has done nothing to take this motion "off-calendar," despite knowing
17 that the relief she is seeking is no longer available to her. This is yet another example of Defendant
18 CUMMIN's abusive use of the judicial system for the purposes of harassing Plaintiff and causing her
19 to incur unnecessary expenses, through the filing of frivolous and unmeritorious motions.

20 **III. DEFENDANT CUMMINS SHOULD BE SANCTIONED FOR FILING THIS**
21 **FRIVOLOUS MOTION TO QUASH, AND FOR PURPOSEFULLY ATTEMPTING TO**
22 **INTERFERE WITH PLAINTIFF'S PROPER COLLECTION EFFORTS**

23 The court may impose a monetary sanction ordering that one engaging in the misuse of the
24 discovery process, or any attorney advising that conduct, or both pay the reasonable expenses,
25 including attorney's fees, incurred by anyone as a result of that conduct. The court shall impose that
26 sanction unless it finds that the one subject to the sanction acted with substantial justification or that
27 other circumstances make the imposition of the sanction unjust. (Cal. Civ. Proc. Code § 2023.030
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1 (West.) Misuses of the discovery process include making, without substantial justification, an
2 unmeritorious objection to discovery.” (Cal. Civ. Proc. Code § 2023.010 (West).) The Court also has
3 discretion to impose sanctions based on frivolous actions or delaying tactics. (Cal. Civ. Proc. Code §
4 128.5 (West).) Or where the allegations or factual evidence submitted in connection with a motion do
5 not have evidentiary support or are unwarranted on the evidence (Cal. Code Civ. Proc. Section 128.7)
6 Whether a pleading or motion lacks merit such that sanctions are appropriate is measured by an
7 objective standard; where a “reasonable” person would find the conduct to be without legal merit, or a
8 position without factual support, then the conduct is sanctionable as frivolous and vexatious,
9 regardless of whether the party has a *subjective* belief that his conduct is harassing. (*Finnie v. Town of*
10 *Tiburon* (1988) 199 Cal.App.3d 1, 12; *Chitsazzadeh v. Kramer & Kaslow* (2011) 199 Cal.App.4th
11 676, 683-684; *see also Weisman v. Bower* (1987) 193 Cal.App.3d 1231, 1236; *Winick Corp. v. County*
12 *Sanitation Dist. No. 2* (1986) 185 Cal.App.3d 1170, 1177; *Bach v. McNelis* (1989) 207 Cal.App.3d
13 852, 876.) The Court may also impose sanctions, under Cal. Civ. Proc. Code § 128.5, where a party
14 misrepresents material facts in a motion or opposition. (*See Young v. Rosenthal* (1989) 212 Cal.3d 96,
15 127-128.)

16 In this action, Defendant CUMMINS began by unsuccessfully attempting to re-litigate the
17 issues adjudicated by the Defamation Judgment through a failed motion to vacate the judgment filed
18 on or about May 20, 2013. Subsequently, she filed a motion to quash a subpoena issued by Plaintiff to
19 One West Bank, and, when that motion was denied, brought an *ex parte* application seeking
20 reconsideration of that ruling, which was also denied. She then filed at least four (4) more motions to
21 quash, which argued the exact same issues already addressed in Defendant CUMMINS’ first motion to
22 quash, and already decided against her. In fact, Defendants’ “legal argument” was largely “cut and
23 pasted” from her previous papers, despite the fact that such arguments were already denied by the
24 court not once, but twice before. In such pleadings, she repeatedly stated that she had no involvement
25 with Animal Advocates – a statement which has proven, in multiple ways, to be patently false. In
26 truth, Defendant CUMMINS is inextricably linked to Animal Advocates, relies on Animal Advocates
27 for housing and utilities, and co-mingles her assets with Animal Advocates’ accounts in order to
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1 prevent Plaintiff LOLLAR from recovering the Defamation Judgment. In fact, recently obtained
2 banking records show that Defendant CUMMINS likely still relies on Animal Advocates for all of
3 those things, and absolutely was relying on the company for all of those things even while she was
4 making such arguments to the court. Given her repeated falsehoods, and her successive filings of
5 motions that have already, essentially, been heard, she is subject to sanctions under Section 128.5 of
6 the California Code of Civil Procedure, for filing a frivolous and vexatious pleading, and under
7 Section 128.7, of the California Code of Civil Procedure for filing a pleading with unwarranted factual
8 contentions, not borne out by the evidence.

9 This motion is nothing more that the latest example in a long line of duplicative, unmeritorious
10 motions filed by her in this Court, in an attempt to delay enforcement, unnecessarily increase litigation
11 costs for Plaintiff LOLLAR, and prevent Plaintiff from executing upon the Defamation Judgment.
12 Such actions evidence complete misuse of the discovery process, exemplify frivolous motion practice,
13 and are nothing but a vehicle for Defendant CUMMINS to repeat and “double-down” on her lies, and
14 abuse of Plaintiff. Her conduct must be made to stop.

15 Because Defendant has failed to show that she is “substantially justified” in making this
16 frivolous and entirely deficient motion for a protective order, Plaintiff respectfully requests that this
17 court subject Defendant to monetary sanctions under Cal. Civ. Proc. Code § 2031.060(h) as the
18 unsuccessful moving party.

19 **IV. DEFENDANT CUMMINS’ MOTION FOR A PROTECTIVE ORDER SHOULD BE**
20 **DENIED AND MONETARY SANCTIONS ISSUED AGAINST HER AS THE**
21 **UNSUCCESSFUL MOVANT FOR A PROTECTIVE ORDER**

22 The court, “for ‘good cause’ shown,” may issue a protective order only where one is *necessary*
23 to protect a party from “unwarranted annoyance, embarrassment, or oppression, or undue burden and
24 expense.” CAL. CIV. PROC. CODE § 2031.060 (b). A motion for a protective order must be
25 accompanied by a meet and confer declaration and, under California law, it is the moving party’s
26 burden “to establish the *necessity* of the requested relief.” *Id.* § 2031.060(a); *American Home*
27 *Assurance Co. v. Societe Commerciale Toutelectric* (2002) 104 Cal.App.4th 406, 427 (emphasis
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1 added). Any party “who unsuccessfully makes or opposes a motion for a protective order” shall be
2 subject to monetary sanctions, unless the court finds that the unsuccessful party “acted with substantial
3 justification” or “other circumstances render sanctions unjust. CAL. CIV. PROC. CODE § 2031.060(h).

4 As an initial matter, Defendant CUMMINS’ motion for a protective order fails to include the
5 mandatory “meet and confer” declaration required by the code of civil procedure. Despite being
6 reminded by the court on multiple occasions that such declarations are necessary, and that “meeting
7 and conferring” prior to filing a motion for a protective order is necessary, Defendant CUMMINS
8 persists in completely ignoring that mandatory requirement. Accordingly, Defendant’s motion for a
9 protective order is procedurally flawed and for that reason alone should be denied.

10 In any event, Defendant’s motion is also substantively deficient in that it does not plead facts
11 establishing that producing the request financial records would actually cause “unwarranted
12 annoyance, embarrassment, or oppression, or undue burden and expense.” *Id.* § 2031.060(b). Instead,
13 Defendant simply asserts that she is “positive Plaintiff would use any data in any financial records to
14 harass, stalk or harm [her], [her] family, friends and clients.” (Declaration of Defendant Mary
15 Cummins.) As such, Defendant has failed to meet her burden as the moving party to “establish the
16 necessity of the requested relief.” *American Home Assurance Co.*, 104 Cal.App.4th at 427.
17 Defendant’s motion for a protective order should therefore be denied.

18 Because Defendant has failed to show that she is “substantially justified” in making this
19 frivolous and entirely deficient motion for a protective order, Plaintiff respectfully requests that this
20 court subject Defendant to monetary sanctions under Cal. Civ. Proc. Code § 2031.060(h) as the
21 unsuccessful moving party.

22 **V. CONCLUSION**

23 For the foregoing reasons, Plaintiff LOLLAR respectfully requests that Defendant CUMMINS’
24 motion to quash be denied, and further requests that Defendant CUMMINS be sanctioned under
25 Section 128.5 and 128.7 of the California Code of Civil Procedure for filing this frivolous motion, for
26 the apparent purpose of forcing Plaintiff to incur unnecessary attorneys’ fees and costs, and to interfere
27 with Plaintiff LOLLAR’s collection of the Defamation Judgment. Finally, Plaintiff LOLLAR requests
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1 that Defendant CUMMINS be sanctioned as the unsuccessful moving party on a motion for a
2 protective order, under Cal. Civ. Proc. Code § 2031.060(h)

3 Dated: December 6, 2016

Christian S. Molnar Law Corporation

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Ashley M. Conlogue, Esq, attorneys for
6 Plaintiff AMANDA LOLLAR, an
7 individual

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DECLARATION OF ASHLEY M. CONLOGUE, ESQ.

I, Ashley M. Conlogue, declare:

1. I am an associate attorney employed by the Christian S. Molnar Law Corporation, counsel for Plaintiff AMANDA LOLLAR, an individual ("Plaintiff LOLLAR.") I have personal knowledge of the matters set forth in this Declaration and, if called as a witness, I could and would testify competently as to the matters stated below.

2. I am making this Declaration in support of Plaintiff LOLLAR's Opposition to Defendant CUMMINS' Motion to Quash, Modify Subpoena, Protective Order.

3. A true and correct copy of the subpoena served on First Bank is attached hereto as **Exhibit "A,"** and incorporated herein by this reference as though fully set forth.

4. The subpoena to First Bank at issue in this motion demanded the production of documents by November 21, 2016. The custodian of records at First Bank contacted me on November 21, 2016 and inquired as to whether a motion to quash had been filed by Defendant CUMMINS.

5. I notified the custodian that, as of that date, Plaintiff had not been served with any motion to quash, and was not aware of any having been filed.

6. The custodian of records responded that, although Defendant CUMMINS had repeatedly called the custodian, and threatened him, as well as several other employees, and otherwise aggressively accosted several persons associated with First Bank over the telephone, no motion to quash had been received by their office either, and thus, documents would be produced the following day in accordance with the subpoena.

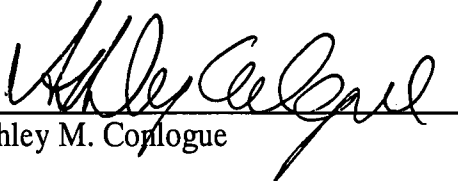
7. Several days later, the promised documents were received by me and were promptly forwarded to Defendant CUMMINS, with an explanatory cover letter. A true and correct copy of the cover letter is attached hereto as **Exhibit "B,"** and incorporated herein by this reference as though fully set forth.

8. Documents produced by First Bank in response to this subpoena establish that Defendant CUMMINS is currently (as of October 31, 2016) continuing to control and manage Animal Advocates, for her own personal benefit, and is continuing to utilize the company to conceal her own

1 personal assets. A true and correct excerpt of these documents is attached hereto as **Exhibit "C,"** and
2 incorporated herein by this reference as though fully set forth.

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

5 Executed on this 6th day of December, 2016, at Beverly Hills, California.

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8 Ashley M. Conlogue
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