

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **CV 11-8081-DMG (MANx)** Date July 17, 2012

Title ***Mary Cummins v. Amanda Lollar, et al.*** Page 1 of 5

Present: The Honorable **DOLLY M. GEE, UNITED STATES DISTRICT JUDGE**

VALENCIA VALLERY

Deputy Clerk

NOT REPORTED

Court Reporter

Attorneys Present for Plaintiff(s)
None Present

Attorneys Present for Defendant(s)
None Present

**Proceedings: IN CHAMBERS—ORDER DENYING MOTION FOR PRELIMINARY
INJUNCTION [Doc. # 30]**

On May 2, 2012, *pro se* plaintiff Mary Cummins filed a motion for preliminary injunction noticed for hearing on June 1, 2012.¹ [Doc. # 30.] Opposition by defendants Bat World Sanctuary and Amanda Lollar was filed on May 11, 2012. [Doc. # 31.] On May 16, 2012, plaintiff filed her reply. [Doc. # 33.] At the June 1, 2012 hearing, the Court took the matter under submission. [Doc. # 34.] Having considered the motion, opposition, reply and the record herein, and for the reasons set forth below, the Court DENIES plaintiff's motion for preliminary injunction.

**I.
BACKGROUND**

On September 29, 2011, plaintiff filed a complaint against defendants Amanda Lollar and Bat World Sanctuary alleging defamation, defamation per se, interference with business relations, interference with prospective economic advantage and intentional infliction of emotional distress. On December 22, 2011, plaintiff filed a first amended complaint ("FAC") against the same defendants and alleging the same causes of action, providing more specificity than the original complaint. [Doc. # 21.] In the FAC, plaintiff alleges that defendants have posted false defamatory statements about plaintiff on the Internet, including statements that plaintiff "has a criminal record," was "convicted" of "theft of property, forged name on a credit card," is a "cyberstalker," "cybersquatter," "hacked into our website" and "email list," "posts pornography in children's chat rooms," "commits animal cruelty," and "tortures animals."

¹ Although according to the title of the document it is a motion for temporary restraining order, preliminary injunction and permanent injunction, it appears from the context of the motion and the language in plaintiff's proposed order that plaintiff is seeking a preliminary injunction. The motion, therefore, shall be treated as a motion for preliminary injunction (i.e., seeking provisional relief during the pendency of this action and pending trial on the merits herein). As such, plaintiff may seek permanent injunctive relief upon trial on the merits.

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In her motion for preliminary injunction, plaintiff seeks an “order requiring Defendants to remove the libel . . . they have posted on the Internet about Plaintiff and to refrain from re-posting or sharing stated material.”² (Mot. for Prel. Inj., at 1.) More specifically, plaintiff attaches eleven exhibits to her motion, exhibits 1 through 8, which purportedly are copies of web pages plaintiff asserts contain the libelous statements she seeks to have removed.³

II. LEGAL STANDARD

A plaintiff seeking injunctive relief must show that (1) she is likely to succeed on the merits; (2) she is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favor; and (4) an injunction is in the public interest. *Toyo Tire Holdings of Ams. Inc. v. Cont’l Tire N. Am., Inc.*, 609 F.3d 975, 982 (9th Cir. 2010) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008)). An injunction is also appropriate when a plaintiff raises “serious questions going to the merits,” demonstrates that “the balance of hardships tips sharply in [its] favor,” and “shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (quoting *Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008)).

III. DISCUSSION

By this motion, plaintiff seeks an order requiring defendants to remove eight web pages from the Internet asserting that they contain false and defamatory statements about her.

² Plaintiff also requests an order requiring websites which are hosting defendants’ postings to refrain from allowing the posting or re-posting of such material. These websites, however, are not defendants herein. As such, they cannot be bound by any order issued herein.

³ Although plaintiff failed to file a declaration or affidavit to authenticate or provide a foundation for the exhibits attached to her motion, plaintiff attached her declaration to her reply brief filed May 16, 2012 providing the necessary authentication and foundation. Also attached to plaintiff’s declaration are additional exhibits of more web pages for which plaintiff seeks removal. Pursuant to the Local Rules, the evidence upon which plaintiff relies in support of her motion is required to be filed and served with the notice of motion. C.D. Cal. L.R. 7-5(b). Because these web pages are only attached to plaintiff’s reply and were not provided in plaintiff’s motion, defendants do not have the opportunity to address them. As such, they shall not be treated as part of plaintiff’s motion.

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A. EXHIBITS 1, 2 AND 3:

Exhibit 1 is a web page posting from a Yahoo! Groups listserv, which states that plaintiff “has a criminal record” and refers to crimes of forged name on credit card, theft of property. It further states of plaintiff as follows:

“[r]ight 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 she was ordered to remove by the court, so she is now in contempt. She’s (sic) either thinks she’s above the law, or that this will never catch up to her. She typically bullies and harasses her victims into giving up, but that is not going to work for her this time around.”

(Mot. for Prelim. Inj., Exh. 1.)

Exhibit 2 is a web page posting from a Yahoo! Groups listserv, which refers to “our stalker friend, who has recently been attempting to hack into our site.”

Exhibit 3 appears to be an incomplete web page posting, which contains the following statement: “‘Someone’ hacked into my email address last night as well.” Plaintiff contends that this statement is referring to her.

With respect to Exhibits 1, 2 and 3, defendants provide defendant Lollar’s declaration, which asserts that all three “posts” were “removed and deleted from the ‘worldbatline’ list-serve months ago.” (Lollar Decl., attached to Defs.’ Opp’n. to Pl.’s Mot. for TRO, etc.) Plaintiff has provided no evidence controverting this assertion, nor has plaintiff provided any evidence that defendants might re-post the material. Because defendants have removed all three of these “posts,” plaintiff is not likely to suffer irreparable harm as to these statements in the absence of preliminary relief.

B. EXHIBITS 4, 5 AND 8

Exhibit 4 appears to be an Internet blog page entitled, “LA’s Animal Friends ‘Mary Cummins’ on Find Articles,” with many references to plaintiff. Exhibit 5 appears to be an Internet blog page entitled, “Victims of Miss Cummins,” which also contains many references to plaintiff. Exhibit 8 appears to be an Internet blog entitled, “Mary Cummins is Poor,” which also contains statements about plaintiff. In response, defendants deny being the author of the contents of Exhibit 4, 5 or 8, supported by Amanda Lollar’s declaration that she “had no involvement

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with the creation, maintenance, moderating or content of” Exhibits 4, 5 and 8. Plaintiff does not dispute this. In fact, plaintiff contends that Exhibits 4, 5 and 8 were authored by a John Doe. As such, plaintiff cannot demonstrate that she has a meritorious claim against defendants Bat World Sanctuary and Amanda Lollar as to the statements contained in Exhibits 4, 5 and 8. Nor can she show that she is likely to suffer irreparable harm in the absence of preliminary relief against these defendants.

C. EXHIBIT 6

Exhibit 6 is a copy of a webpage from defendants’ website, batworld.org. Plaintiff complains that this webpage states that plaintiff “has made false complaints to . . . Texas Parks and Wildlife, the USDA, the Texas Veterinary Medical Board, the Texas Department of Health,” and that “[e]very official who has investigated her complaints have found them to be without merit,” and states that plaintiff “has a decade-long history of bullying and attempting to ruin the careers of professionals across the U.S.” Without providing any other evidentiary support, plaintiff contends that these statements are untrue. Although defendants contend the statements are true, they represent that the phrase “who has a decade-long history of bullying and attempting to ruin the careers of professionals across the U.S.” Given that plaintiff merely contends that the other statements are false and defendants contend they are true, plaintiff has not made a sufficient showing to permit the Court to find that she is likely to succeed on the merits of her claim that said statements are false. As a result, as to these statements, the Court is unable to find at this time that plaintiff is likely to suffer irreparable harm in the absence of preliminary relief.

D. EXHIBIT 7

Exhibit 7 is a copy of a webpage from defendants’ website, batworld.org, containing the statement that “Cummins was charged with criminal contempt of court.” Plaintiff contends this statement is untrue. Defendants provide a copy of the motion for contempt and the order re contempt to support their contention that the statement is true. Although the motion by Bat World sanctuary and Amanda Lollar requested that Cummins be held in criminal contempt, the order, while finding Cummins in contempt, issued coercive sanctions rather than punitive sanctions. Moreover, the order does not indicate that the finding of contempt was beyond a reasonable doubt. As such, it appears that Cummins was found in civil contempt, not criminal contempt. While contending that the statement is true, defendants represent that the word “criminal” will be removed from the website. As such, plaintiff is not likely to suffer irreparable harm in the absence of preliminary relief.

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**IV.
CONCLUSION**

Based on the foregoing, plaintiff has failed to demonstrate that she is likely to suffer irreparable harm in the absence of preliminary relief. Accordingly, plaintiff's motion for preliminary injunction is DENIED.

IT IS SO ORDERED.