

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

**MARY CUMMINS,
Plaintiff *pro se*,**

vs.

**BAT WORLD SANCTUARY and
AMANDA LOLLAR,
Defendants.**

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CIVIL ACTION NO. 4:12-cv-00560-Y

DEFENDANTS' MOTION FOR SANCTIONS

TO THE HONORABLE JUDGE OF SAID COURT:

Amanda Lollar and Bat World Sanctuary, Defendants, file this Motion for Sanctions under Rule 37, and support hereof show the following:

I.
INTRODUCTION

1. For the second time, Plaintiff has refused to participate in a Court-ordered “in-person” settlement conference, this time because, in her own words, this would be “pointless.”¹ Through the use of such tactics, Plaintiff has allowed this case to linger on the Court’s docket for more than three years, with very little of substance having been done. This is not to say that Cummins herself has not been active in those selfsame three years.

¹ See Doc. No. 142.

2. Rather, for the past three years Plaintiff has engaged in a relentless *pro se* litigation campaign against Defendants, filing multiple lawsuits against them in federal and state courts after Defendants took a \$6.0 million judgment against Plaintiff in 2012 for defamation.²

3. That suit was filed against Cummins in September of 2010.³ A year after that suit had been filed, Cummins decided to file her own defamation lawsuit against Defendants, Amanda Lollar and Bat World, in the United States District Court for the Central District of California.⁴ Thereafter, Bat World's Texas state court case against Cummins went to trial in June of 2012.

4. The week prior, however, Cummins brought a second suit against Defendants in the United States District Court for the Central District of California, including the previously-filed allegations of defamation, and now also alleging personal injuries from her brief time as an intern for Bat World. *See* Ex. 3 (000018). Thereafter, in the first suit in the Central District of California, Summary Judgment was granted to Bat World and Amanda Lollar.⁵ Cummins appealed this ruling to the Ninth Circuit Court of Appeals, but her appeal was denied for lack of jurisdiction. *See* Ex. 6 (000045).

5. In the interim, the court in Cummins' second case against Defendants in California federal court dismissed her defamation claims therein as a "bad faith" effort to

² *See Bat World Sanctuary & Amanda Lollar v. Cummins*, 2012 Tex. Dist. LEXIS 31 (Tex. Dist. Ct. 2012). Mary Cummins appealed the judgment which was affirmed by the Second Court of Appeals in a 76-page opinion. *See Cummins v. Bat World Sanctuary*, 2015 Tex. App. LEXIS 3472 (Tex. App.--Fort Worth Apr. 9, 2015). Cummins is presently in the course of drafting a Petition for Review with the Texas Supreme Court after having requested an extension for the filing of same, which was granted on June 15, 2015. *See* Ex. 1 (000001). Her *pro se* Petition for Review is presently due on July 15, 2015. *Id.*

³ *Bat World Sanctuary & Amanda Lollar v. Cummins*, 2012 Tex. Dist. LEXIS 31 (Tex. Dist. Ct. 2012).

⁴ *Cummins v. Lollar, et al*, No. CV 11-8081-DMG, Central District of California. *See* Ex. 2 (000005).

⁵ *See* Ex. 4 (000029). It should be noted that as the lawsuit in Texas state court proceeded, Cummins added Defendants' expert from that suit into her California defamation lawsuit. The claims against him were dismissed by an Order issued on August 9, 2013.

“circumvent venue requirements” and transferred the remaining personal injury claims to the present Court. *See* Ex. 5 (000041).

6. With both her California federal court cases against Defendants now gone, Cummins decided to try her luck in state court and filed a lawsuit against Amanda Lollar in the Superior Court of California, requesting a “restraining order” against her. The California superior court denied Plaintiff’s request for a restraining order, and ordered Cummins to pay Defendants \$6,350 in attorney’s fees “within ninety (90) days.”⁶ *See* Ex. 7 (000046). Cummins appealed the trial court’s ruling to the California Second Court of Appeal which affirmed the trial court judgment. *See* Ex. 8 (000047). Cummins thereafter filed a petition for review with the California Supreme Court which was denied on May 13, 2015. *See* Ex. 9 (000053).

7. The above recitation in no way purports to present all of the litigation activities of Cummins even related simply to these Defendants. Cummins has been embroiled in significant litigation seeking to prevent the collection efforts related to the \$6,000,000.00 judgment against her. Cummins has appealed these matters to the California Supreme Court. Additionally, after having lost her appeal as to the defamation judgment against her, Cummins is presently drafting her Petition for Review to the Texas Supreme Court, which is due on or before July 15, 2015. As can be seen, significant portions of Cummins life are devoted to her litigation activities just against these Defendants. Unfortunately for Defendants, her zeal in this regard does not appear to extend to advancing the present case.

8. This lawsuit has been on file for three years. During these years Plaintiff has engaged in one dilatory tactic after the next, refusing to answer written discovery, filing a motion to quash subpoenas of medical records, motions to extend time to reply to discovery requests,

⁶ This was ordered on July 1, 2013. As of the date of this motion Plaintiff has not made a single payment towards this amount.

motion for protective order, “motion for stay of proceedings for medical emergency,” etc. As a result of Cummins’ conscious tactics, Defendants still do not have complete written discovery answers, and despite numerous specific requests on the part of Defendants, not a single deposition has been taken. Indeed, Cummins was duly noticed for deposition in this case,⁷ but simply refused to appear. As a result of Plaintiff’s actions, the discovery period in this case has ended with little in the way of substantive discovery having been done.

9. Cummins shows a similar propensity for disobeying the orders of this Court. Plaintiff’s second refusal to participate in the second court-ordered settlement conference because it would be “pointless” and “there is no reason to meet” is only the latest example of Plaintiff’s flagrant abuse of the judicial process. *See* Doc. No. 142. While Plaintiff is fond of suggesting that her failings should be forgiven based upon her *pro-se* status, as the above recitation shows, Cummins is in no way an unsophisticated litigant. Just as to these Defendants, she has handled matters in the Northern District of Texas, Central District of California, California Superior Court, Texas District Court, Texas Second District Court of Appeals, California Second Court of Appeals, Supreme Court of California, and Supreme Court of Texas.

II. **ARGUMENT AND AUTHORITIES**

10. Rule 16(f)(1)(C) of the Federal Rules of Civil Procedure provides that the Court may issue “any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii) if a party fails to obey a scheduling or other pretrial order.” Plaintiff has twice refused to obey this Court’s order to attend an “in-person” settlement conference on the ground that a settlement conference would be a “pointless.” *See* Doc. Nos. 139, 142. The Court should, therefore, issue sanctions for the continued disobedience to its Orders.

⁷ *See* Ex. 10 (000054).

11. Federal Rule of Civil Procedure 16 “specifically addresses a district court’s authority to conduct pretrial conferences—including settlement conferences—to manage its cases, including the imposition of sanctions.” *Okonkwo v. Glendale Union High Sch. Dist.*, 2009 WL 536568, at *2 (D. Ariz. Mar. 4, 2009) (citing FED. R. CIV. P. 16(a)(5) and (f)). “Although parties cannot be compelled to settle a case, a district court may compel parties and their counsel to attend settlement conferences and to participate in negotiations in good faith.” *Id.*

12. Rule 16 empowers the Court, “[o]n motion or on its own...[to] issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii), if a party or its attorney...fails to obey a scheduling or other pretrial order.” FED. R. CIV. P. 16(f)(1)(C). Rule 37 provides: “the court where the action is pending may issue further just orders...includ[ing]...dismissing the action or proceeding in whole or in part” for “fail[ure] to obey an order.” FED. R. CIV. P. 37 b)(2)(A)(v). Furthermore, “[i]nstead of or in addition to any other sanction, the court must order the party, its attorney, or both to pay the reasonable expenses--including attorney’s fees--incurred because of any noncompliance with this rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.” *Id.* at 16(f)(2) (emphasis added). *See also Falcon Farms, Inc. v. R.D.P. Floral, Inc.*, 2008 WL 3874598, at *2 (S.D. Fla. Aug. 14, 2008) (explaining that Rule “16(f)(1)(C) permits a court to issue any just order, including those authorized by Rule 37(b)(2)(A)(ii)-(vii), if a party fails to obey a pretrial order, such as this Court’s mediation order” and granting plaintiff’s request for sanctions).

13. There is no justification for Cummins’ second violation of this Court’s Order. Though she states that such an “in-person” conference would be “pointless,”⁸ Cummins is in no position to make any determination about the relative merits of a Court-ordered settlement conference. Only the Court holds this power. *See Empire, Inc. v. Wal-Mart Stores, Inc.*, 188

⁸ *See* Doc. No. 142.

F.R.D. 478, 479-80 (E.D. Ky. 1999) (“[I]t was the Court, not the parties, who ordered the settlement conference and, therefore, it is the Court, and only the Court, which may set aside its Order.”) (emphasis added).

14. Defendants therefore request that the Court issue appropriate sanctions for Plaintiff’s continued refusal to obey this Court’s Orders.

Respectfully submitted,

By: /s/ Randall E. Turner

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CERTIFICATE OF SERVICE

Pursuant to CM/ECF Civil and Criminal Administrative Procedures Manual, I hereby certify that on July 3, 2015, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of

the court. The electronic case filing system will send a “Notice of Electronic Filing” to the following attorneys of record and/or pro se parties who have consented in writing to accept this Notice as service of this document by electronic means:

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By: /s/ *Randall E. Turner*