

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

MARY CUMMINS)	CIVIL ACTION
Plaintiff,)	
)	
vs.)	
AMANDA LOLLAR, DENISE)	
TOMLINSON, DOROTHY HYATT,)	Civil Action No.: 4:12-CV-00560-Y
MICHELLE MCCAULLEY, KATE)	
RUGRODEN, LESLIE STURGES, BAT)	
WORLD SANCTUARY, JOHN DOES 1-10)	
)	
Defendants.)	JURY

SECOND AMENDED COMPLAINT

INTRODUCTION AND SUMMARY

1. Cummins is a licensed California real estate appraiser and expert witness with over 28 years of experience. She is also a licensed wildlife rehabilitator specializing in mammals including bats.
2. May 2010 Cummins was forwarded a notice of internship from Bat World Sanctuary.
3. May 2010 Amanda Lollar President of Bat World Sanctuary via email to Cummins in California asked Cummins to be an intern at Bat World Sanctuary. Cummins took time away from her real estate appraisal business and non-profit to intern at Bat World Sanctuary.
4. While Cummins was at Bat World Sanctuary Amanda Lollar instructed Cummins to enter the “wild sanctuary” building at 115 N.E. 1st St., Mineral Wells, Texas. Cummins was instructed to put on a hair net/hat, booties and a head lamp to enter the darkened building to clean guano and check for ill, injured and orphaned bats. Cummins was further instructed to climb up a step stool to climb through a window to go out onto the roof of the building to look for bats outside. While Cummins attempted to climb through the window late June 2010 she hit her head on a piece of

wood. Cummins then fell backward injuring both her head and back passing out onto the hard floor. Cummins did not know that the building did not have an occupancy permit and was not up to code at the time she entered the building.

5. Cummins left the internship early. Immediately upon her return she visited doctors and medical practitioners to receive medical attention

PARTIES

6. Plaintiff Mary Cummins is a resident of Los Angeles County, California who also maintains her principal place of business there as well.

7. Defendant Bat World Sanctuary President Amanda Lollar is a resident of Palo Pinto County, Texas.

8. Defendant Bat World Sanctuary Treasurer Denise Tomlinson is a resident of Port Charles, Florida.

9. Defendant Bat World Sanctuary Vice President Dorothy Hyatt is a resident of Roanoke, Texas.

10. Defendant Bat World Sanctuary Secretary Michelle McCaulley is a resident of Corrales, New Mexico.

11. Defendant Bat World Sanctuary board member Kate Rugroden is a resident of Arlington, Texas.

12. Defendant Bat World Sanctuary board member Leslie Sturges is a resident of Annadale, Virginia.

13. Defendant Bat World Sanctuary is an unknown business entity located in Palo Pinto County, Texas.

14. Cummins is unaware of the names and true capacities of defendants, whether individual, corporate and/or partnership entities, named herein as DOES 1 through 10, inclusive, and therefore sues them for their fictitious names. Cummins will seek leave to amend this complaint when the true names and capacities of DOES 1 through 10, inclusive, are ascertained. Cummins is informed and believes, and based thereon alleges that the above-listed defendants and DOES 1 through 10, inclusive, are in some manner responsible for the wrongs alleged herein, and that at all times referenced each was the agent and servant of the other defendants and was acting within the course and scope of said agency and employment.

15. Cummins is informed and believes, and based thereon alleges, that at all relevant times herein, each of the defendants, including DOES 1 through 10, inclusive (collectively “Defendants”) directly knew or reasonably should have known of the acts and behavior alleged herein and the damages caused thereby, and by their actions and/or inaction directed, ratified and encouraged such acts and behavior. Cummins further alleges that Defendants had a non-delegable duty to prevent such acts and the behavior described herein, which duty Defendants failed and/or refused to perform.

JURISDICTION AND VENUE

16. This court has subject matter jurisdiction based on complete diversity of citizenship pursuant to 28 U.S.C. § 1332. Defendants are located in Texas, Florida, California, Virginia and New Mexico. John Doe defendants may be located in other states. Damages resulting from the matter exceed \$75,000 exclusive of costs. Plaintiff requests exemplary and punitive damages in the amount of \$500,000.

17. Venue in this district is proper under 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to the damages occurred in this district.

**FIRST CAUSE OF ACTION
NEGLIGENCE**

Against All Defendants

18. Cummins incorporates by reference each of the allegations contained in paragraphs 1 through 17, inclusive, in this claim for relief.

19. Defendants owed a duty to exercise the use of ordinary care to prevent injury to others, including Cummins.

20. Defendants breached their duty to Cummins by failing to act in a manner consistent with the standard of care exercised by the average reasonable person.

21. Defendants' negligent acts or omissions were a substantial factor in bringing about Cummins' injury. Defendants did not tell Cummins that the building did not have an occupancy permit, was not up to code, the premises were dangerous and the step stool was unstable.

As a direct and legal result of said conduct, Cummins has suffered substantial injury causing damages in an amount according to proof at trial, but in no event less than the jurisdictional minimums of this Court.

**SECOND CAUSE OF ACTION
NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE**

Against All Defendants

22. Cummins incorporates by reference each of the allegations contained in paragraphs 1 through 17, inclusive, in this claim for relief.

23. Cummins had work booked for her return to California following her internship at Bat World Sanctuary.

24. Defendants owed a duty of care to Cummins based on the existence of a special relationship between the parties.

25. Defendants wrongfully interfered with the relationship between Cummins and her clients. Cummins was not able to work as a result of her injury. Cummins lost clients and employment.

26. As an actual and foreseeable result of Defendants' negligent interference, Cummins has suffered damages in an amount to be proven at the time of trial, but in no event less than the jurisdictional minimums of this Court.

**THIRD CAUSE OF ACTION
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

Against All Defendants

27. Cummins incorporates by reference each of the allegations contained in paragraphs 1 through 17, inclusive, in this claim for relief.

28. Defendants' conduct was outrageous.

29. Defendants' negligence caused Plaintiff emotional distress. Defendants acted with reckless disregard of the rights, privileges and economic advantages of Plaintiff.

30. As a direct consequence of Defendants' actions as described herein, Plaintiff suffered and continues to suffer emotional distress.

31. Defendants' conduct was a substantial factor in causing Plaintiff's emotional distress.

PRAYER FOR RELIEF

WHEREFORE, Cummins requests the following judgment against Defendants, and each of them, jointly and severally, for:

32. For an order of compensatory, special, consequential and incidental damages caused by the negligent conduct of Defendants, and each of them, in an amount to be proven at trial but in no event less than the jurisdictional minimums of this Court \$75,000;
33. Economic loss and loss of other benefits due as a result of defendants' wrongful conduct in an amount to be determined at trial;
34. Damages of pain, suffering and emotional distress, in an amount to be determined at trial;
35. For an order of exemplary and punitive damages of \$500,000;
36. For interest, reasonable attorneys fees and costs of suit;
37. Such other and further relief as the Court deems just and proper.

DATED: August 29, 2012

Respectfully submitted,

/s/ Mary Cummins
Mary Cummins, Plaintiff
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CERTIFICATE OF SERVICE

I, Mary Cummins, hereby certify that a TRUE AND CORRECT COPY of the above
PLAINTIFF'S SECOND AMENDED COMPLAINT was served on the Plaintiffs' Attorney of
record by FIRST CLASS MAIL, FAX and EMAIL at,

DAVID E. BURKE
10982 Roebling Avenue #553
Los Angeles, CA 90024

Also sent by Fax: (818) 347-2148
Also sent by Email: davidedwardburke@gmail.com

By: /ss/ Mary Cummins
Mary Cummins, Plaintiff Pro Se